



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

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**Annual Performance Report (APR)  
for  
Fiscal Year (FY) 2023**

and

**Annual Performance Plan (APP)  
for  
FY 2024 (Final) & FY 2025 (Proposed)**

**March 8, 2024**

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# Table of Contents

<b>Introduction.....</b>	<b>1</b>
Reduction of the Petitions for Review (PFR) Inherited Inventory .....	1
Summary of FY 2023 Performance Results .....	2
About MSPB .....	2
Current Organization.....	3
Summary of Changes in This APR-APP .....	3
Linking This Plan to Other Agency Documents .....	3
<b>MSPB Performance Framework.....</b>	<b>4</b>
Mission.....	4
Vision .....	4
Organizational Values.....	4
Strategic Goals and Objectives .....	5
Management Objectives: .....	5
<b>Comprehensive Performance Results and Plans .....</b>	<b>6</b>
Strategic Goal 1 .....	6
Strategic Goal 2.....	15
Management Objectives .....	18
<b>Means and Strategies Needed to Accomplish MSPB’s Objectives .....</b>	<b>24</b>
Strategic Goal 1 .....	24
Strategic Goal 2.....	26
Management Objectives .....	27
Internal Management Challenges .....	28
External Trends.....	30
<b>Performance Measurement and Program Evaluation.....</b>	<b>32</b>
<b>Program Evaluation.....</b>	<b>32</b>
<b>Appendix A: WPEA Data for FY 2023 .....</b>	<b>34</b>
<b>Appendix B: Information Required under 5 U.S.C. § 7701(i)(1) and (2).....</b>	<b>41</b>
<b>Appendix C: Modernization of Public-facing Digital Services Report .....</b>	<b>42</b>
<b>Appendix D: More Information about MSPB.....</b>	<b>44</b>
<b>List of Common Abbreviations and Acronyms.....</b>	<b>49</b>

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## Foreword

The U.S. Merit Systems Protection Board (MSPB) submits this Annual Performance Report and Annual Performance Plan (APR-APP) for FY 2023-2025, which combines the final APR for FY 2023 with the APPs for FY 2024 (final) and FY 2025 (proposed), as required by the Government Performance and Results Act Modernization Act of 2010 (GPRAMA). It also contains information about cases involving whistleblowers pursuant to the Whistleblower Protection Enhancement Act of 2012 (WPEA, see Appendix A), appeals processing as required by Title 5 of the United States Code (U.S.C.) § 7701(i)(1) (see Appendix B), and, in accordance with the 21<sup>st</sup> Century Integrated Digital Experience Act (Pub. L. 115-336), our *Modernization of Public-facing Digital Services Report* (see Appendix C).

The APR-APP contains information about MSPB, including its origins in civil service history; role and functions; scope of responsibility; organization and structure; how it brings value to the merit systems, Federal agencies, the workforce, and the public; and information about merit system principles (MSPs) and prohibited personnel practices (PPPs) (see Appendix D). The APR-APP is based on the MSPB Strategic Plan for FY 2022-2026, compares annual performance results for FY 2023 to performance targets defined in March 2023, and includes prior year results for comparative purposes. It also contains final performance goals, measures, and targets for FY 2024; and proposed goals, measures, and targets for FY 2025; along with explanatory information on changes; a summary of the external trends and internal management challenges that may affect MSPB's work; means and strategies; and information about performance measurement and program evaluation.

The APR-APP has been prepared in accordance with GPRAMA and guidance provided by the Office of Management and Budget (OMB) and other sources. Additional information about MSPB's activities can be found in the Annual Report (AR) for FY 2022, pursuant to 5 U.S.C. § 1206. MSPB's APR-APPs and ARs are available on MSPB's website at [www.mspb.gov](http://www.mspb.gov).

MSPB invites customers and stakeholders to send comments on the APR-APP to:

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# U.S. Merit Systems Protection Board

## APR-APP for FY 2023-2025

### Introduction

A highly qualified, diverse Federal workforce managed under MSPs and in a manner free from PPPs is critical to ensuring Federal agency performance and service to the public. MSPs are essential management practices that help ensure the Federal Government's ability to recruit, select, develop, maintain, and manage a high-quality workforce, and thereby reduce staffing costs and improve organizational results for the American people. PPPs are specific, proscribed behaviors that undermine MSPs and adversely affect the effectiveness and efficiency of the workforce and the Government. MSPB's fundamental function is to ensure that the Federal workforce is managed in a manner consistent with MSPs and protected from PPPs.

### Reduction of the Petitions for Review (PFR) Inherited Inventory

Between January 7, 2017, and March 3, 2022, the Board did not have a quorum of members and therefore could not vote on any PFRs of initial decisions. (MSPB continued to process initial appeals and issue decisions in the regional and field offices (RO/FOs), processed appeals at headquarters (HQ), prepared draft decisions awaiting Board review and voting, and conducted other statutory and administrative functions where possible without a quorum.) By the time a quorum was restored on March 4, 2022, with the swearing-in of Raymond A. Limon and Tristan L. Leavitt as Board members, the number of cases at HQ—the inherited inventory—was 3,793. Restoration of a quorum allowed MSPB to resume issuing decisions on PFRs and other cases at HQ and to resume issuing reports of merit systems studies.

On June 1, 2022, Cathy A. Harris was sworn in as the third Board member, providing a full complement of Board members for the first time since March 1, 2015. Ms. Harris was designated as Vice Chairman and has been serving as Acting Chairman.<sup>1</sup> Member Leavitt departed MSPB after fulfilling his term, which ended on February 28, 2023. Acting Chairman Harris and Member Limon represent a quorum of Board members, and MSPB remains fully operational.

In FY 2023, MSPB made significant progress towards reducing the HQ inherited inventory by closing 1,484 cases,<sup>2</sup> which greatly exceeds the average annual number of cases decided by the Board.<sup>3</sup> These case closures include more than 75% of the oldest 1,000 cases. As of September 30,

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<sup>1</sup> Acting Chairman Harris's nomination as Chairman was returned to the President at the end of the 117<sup>th</sup> Congress. On January 3, 2023, the President renominated her as Chairman, and her nomination was referred to the Senate Committee on Homeland Security and Governmental Affairs. On July 3, 2023, President Biden announced his intent to nominate Henry J. Kerner as Member. Mr. Kerner's nomination was sent to the Senate on July 11, 2023. After a nomination hearing on November 30, 2023, Mr. Kerner was reported favorably out of the Senate Committee on Homeland Security and Governmental Affairs and placed on the Senate calendar. Both nominations were returned to the President at the end of the 1<sup>st</sup> session of the 118<sup>th</sup> Congress. On January 8, 2024, the nominations were sent to the Senate, and on January 17, 2024, they were reported favorably out of the Senate Committee on Homeland Security and Governmental Affairs and placed on the Senate calendar. On March 6, 2024, the Senate confirmed Ms. Harris as Chairman.

<sup>2</sup> From Case Processing Statistics, Summary of Cases Decided by MSPB, a report developed for Table 1 of the U.S. Merit Systems Protection Board Annual Report for FY 2023.

<sup>3</sup> The annual average for cases processed (excluding sequestration-related furlough cases that were handled via consolidation) between FY 2010 and FY 2016 (prior to the loss of a quorum) was 935 cases.

2023, 1,884 cases (approximately half) of the inherited inventory (3,793 cases)<sup>4</sup> remained, and MSPB expects to resolve these pending cases in FY 2024 and FY 2025.

## Summary of FY 2023 Performance Results

In FY 2023, MSPB exceeded 4 of 9 strategic and management objectives, including those for adjudication of initial appeals in the RO/FOs and adjudication of HQ cases, which resulted in a significant reduction of the inherited inventory. MSPB met 4 of 9 objectives, including those for quality of initial decisions and for merit system studies. MSPB did not meet its information technology (IT) modernization objective, due to the challenges inherent in replacing legacy core business applications while trying to support record caseloads due to the inherited inventory. MSPB continued to improve several performance goals (PGs) and measures during FY 2023, as noted in this document. Performance targets are updated for FY 2024, while most FY 2025 performance targets are to be determined (TBD) based on FY 2024 results. Detailed information is provided in the section on [Comprehensive Performance Results and Plans](#).

## About MSPB

**A Merit-based U.S. Civil Service.** A brief review of the history of our Federal civil service helps explain the origin and purpose of MSPB. Until the early 1880s, the Federal civil service was a patronage or “spoils” system in which the president’s administration appointed Federal workers based on their political beliefs and support of his campaign rather than on the employee’s suitability and qualifications to perform particular Federal jobs.<sup>5</sup> Over time, this practice contributed to an unstable Government workforce lacking the necessary qualifications to perform its work, which in turn adversely affected the efficiency and effectiveness of the Government and its ability to serve the American people.

The patronage system continued until President James A. Garfield was assassinated by a disgruntled Federal job seeker who felt he was owed a Federal job because he supported the president’s campaign. A public outcry for reform resulted in passage of the Pendleton Act in 1883. The Pendleton Act created the Civil Service Commission (CSC), which monitored and regulated a civil service system based on merit and the use of competitive examinations to select qualified individuals for Federal positions. Congress later enacted the Lloyd-LaFollette Act of 1912, which provided that a civil servant could be removed only for such cause as promoted the efficiency of the service. Subsequent laws and regulations authorized the CSC to review the procedures used to remove civil servants and the validity of the reasons for removal. These developments contributed to improvements in Government efficiency and effectiveness by helping to ensure the stable retention of a highly qualified Federal workforce, free from partisan political pressure and available to provide capable and effective service to the American people.

During the following decades, it became clear that the CSC could not, in an adequate and proper manner, simultaneously set managerial policy, protect the merit systems, and adjudicate employee appeals. Concern over the inherent or perceived conflict of interest in the CSC’s role as both the rule-maker and adjudicator of those same rules was a principal motivating factor behind the passage

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<sup>4</sup> Merit Systems Protection Board Lack of Quorum and the Inherited Inventory: Chart of Cases Decided and Cases Pending, [https://www.mspb.gov/foia/files/HQ\\_Case\\_Processing\\_Data.pdf](https://www.mspb.gov/foia/files/HQ_Case_Processing_Data.pdf).

<sup>5</sup> Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, *Journal of the Federal Circuit Historical Society*, Vol. 4, 2010, pages 109-110.



of the Civil Service Reform Act of 1978 (CSRA).<sup>6</sup> The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission,<sup>7</sup> by serving as the guardian of the merit systems and adjudicating employee appeals; the Office of Personnel Management (OPM) as the president’s agent for Federal workforce policy and procedure; and the Federal Labor Relations Authority to oversee Federal labor-management relations.

## **Current Organization**

MSPB HQ, located in Washington, D.C., has eight offices that are responsible for conducting its statutory and support functions. These are the Offices of Appeals Counsel (OAC), Clerk of the Board (OCB), Equal Employment Opportunity (EEO), Financial and Administrative Management (FAM), General Counsel (OGC), Information Resources Management (IRM), Policy and Evaluation (OPE), and Regional Operations (ORO). The EEO Director reports directly to the Chairman, and the directors of the other offices report to the Chairman through the Executive Director. MSPB also has six ROs and two FOs located throughout the United States. These offices process initial appeals and report to the ORO Director. More information about MSPB’s role; functions and scope of responsibilities; organizational structure; and how it brings value to the merit systems, the Federal workforce, and the public is contained in Appendix D.

## **Summary of Changes in This APR-APP**

This APR-APP includes final FY 2023 performance results, and performance targets for FY 2024 (final) and FY 2025 (proposed). MSPB revised the FY 2024 targets from those contained in the [FY 2024 APP](#) (published in March 2023) based on restoration of the full Board, results of assessing various PGs and measures, and other changes in internal and external factors. The sections on internal challenges and external factors affecting our work, performance measurement and program evaluation, and means and strategies for achieving our objectives have also been updated.

## **Linking This Plan to Other Agency Documents**

This APR-APP aligns with MSPB’s [Strategic Plan for FY 2022-2026](#). Individual performance plans for MSPB’s senior executives are linked to appropriate agency annual performance and management goals, as required. MSPB compares program performance results to performance targets in accordance with the GPRAMA and OMB guidance. The goals and targets for FY 2024 (final) and 2025 (proposed) are in line with MSPB’s proposed budgets for those years.<sup>8</sup> MSPB’s plans and reports are posted on MSPB’s website at [www.mspb.gov](http://www.mspb.gov).

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<sup>6</sup> Ibid. page 113.

<sup>7</sup> Ibid. page 114.

<sup>8</sup> MSPB does not define agency priority goals, does not have low-priority program activities, and does not have a specific role in achieving Federal cross-agency priority goals. MSPB does not have any duplicative, overlapping, or fragmented programs as referenced in Executive Order (EO) 13576, “Delivering an Efficient, Effective, and Accountable Government,” dated June 13, 2011. MSPB also has not identified any unnecessary agency plans and reports as referenced in GPRAMA (Pub. L. 111-352 § 1125).

# MSPB Performance Framework

## Mission

*Protect the merit system principles and promote an effective Federal workforce free of prohibited personnel practices.*

## Vision

*A highly qualified, diverse Federal workforce that is fairly and effectively managed, providing excellent service to the American people.*

## Organizational Values

**Excellence:** We will base our decisions on statutes, regulations, and legal precedents; use appropriate scientific research methods to conduct our studies and make practical recommendations for improvement; and develop and use appropriate processes to oversee the regulations and significant actions of OPM. We will interact with our customers and stakeholders in a professional, respectful, and courteous manner. We will strive to be a model merit-based organization by applying the lessons we learn in our work to the internal management of MSPB.

**Fairness:** We will conduct our work in a fair, unbiased, and objective manner. We will be inclusive in considering the various perspectives and interests of stakeholders in our work and in our external and internal interactions with individuals and organizations.

**Timeliness:** We will issue timely decisions in accordance with our performance goals and targets.<sup>9</sup> We will issue timely reports on the findings and recommendations of our merit systems studies. We will respond promptly to inquiries from customers and stakeholders.

**Transparency:** We will make our regulations and procedures easy to understand and follow. We will communicate with our customers and stakeholders using clear language. We will make our decisions, merit systems studies, and other materials easy to understand and widely available and accessible on our website. We will enhance the understanding of our processes and the impact of our products through outreach efforts.

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<sup>9</sup> In FY 2024, MSPB will continue to focus on measures related to reducing the inherited inventory rather than average processing time.

## Strategic Goals and Objectives

**Strategic Goal 1: Serve the public interest by protecting merit system principles and safeguarding the civil service from prohibited personnel practices.**

### Strategic Objectives:

- 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.
- 1A-RO: Provide understandable, high-quality resolution of initial appeals in the RO/FOs, supported by fair and efficient adjudication and ADR processes.
- 1A-HQ: Provide understandable, high-quality resolution of appeals at HQ, supported by fair and efficient adjudication and ADR processes.
- 1B: Enforce timely compliance with MSPB decisions.
- 1C: Conduct objective, timely studies of the Federal merit systems and Federal human capital (HC) management issues.
- 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.

**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.**

### Strategic Objectives:

- 2A: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful, targeted outreach and engagement.
- 2B: Advance the understanding of merit, MSPs, and PPPs for stakeholders and the public by developing and sharing informational and educational materials and guidance.

### Management Objectives:

- M1: Lead, manage, and develop employees to ensure a highly qualified, diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.
- M2: Modernize IT to support agency mission and administrative functions.

## Comprehensive Performance Results and Plans

**Strategic Goal 1: Serve the public interest by protecting merit system principles and safeguarding the civil service from prohibited personnel practices.**

**Strategic Objective 1A: Provide understandable, high-quality resolution of appeals supported by fair and efficient adjudication and ADR processes.**

**Strategic Objective 1A-RO: Provide understandable, high-quality resolution of initial appeals in the RO/FOs, supported by fair and efficient adjudication and ADR processes.**

This objective was **Exceeded**. MSPB exceeded the target for timeliness of initial appeals processing with an average of 102 days, more than 10% fewer days than the target. In addition, 86% of reviewed initial decisions (IDs) met the Quality Review Team (QRT) standards. The QRT includes rotating members who review a sample of IDs to determine, among other things, whether the IDs were well organized and readable; and considered and analyzed material legal and factual issues, controlling case law, and statutory and regulatory authorities. This measure focuses on all IDs, not just those for which a PFR is filed. The PG statement for ADR is to ensure use of ADR processes, and the measure is the percentage of appeals referred to the Mediation Appeals Program (MAP). For FY 2023, 10% of IDs were referred to mediation, exceeding the objective.

The FY 2024 target for initial appeals quality is to have 85% of reviewed decisions meet QRT standards. The FY 2024 target for ADR is to refer 7% or more of appeals to MAP. The FY 2024 target for average processing time for initial appeals remains 120 days or fewer. The FY 2025 targets for all PGs are TBD based on FY 2024 results.

<b>Performance Goal 1A-RO-1: Ensure quality of IDs.</b>	
<b>Measure:</b> Percentage of reviewed IDs that meet QRT standards.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	86% of decisions reviewed met QRT standards.
<b>FY 2023 Target</b>	85% of decisions reviewed meet QRT standards.
<b>Future Targets</b>	
<b>FY 2024</b>	85% of decisions reviewed meet QRT standards.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2021</b>	New measure in FY 2022 to be implemented in FY 2023.
<b>FY 2022</b>	New measure was defined as stated above. Regional Directors have reviewed 91% of all IDs issued, excluding settlements and withdrawals; ORO has reviewed 10% of such decisions, providing written feedback when not in compliance with law, regulation, or policy.

<b>Performance Goal 1A-RO-2: Ensure processing timeliness for IDs (including addendum appeals).</b>	
<b>Measure:</b> Average case processing time for initial appeals (including addendum appeals).	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	102 days.
<b>FY 2023 Target</b>	120 days or fewer.
<b>Future Targets</b>	
<b>FY 2024</b>	120 days or fewer.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	102 days.
<b>FY 2019</b>	105 days.
<b>FY 2020</b>	102 days.
<b>FY 2021</b>	105 days.
<b>FY 2022</b>	96 days.

<b>Performance Goal 1A-RO-3: Encourage resolution through ADR.</b>	
<b>Measure:</b> Percentage of appeals referred to MAP.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	10% of cases referred to MAP.
<b>FY 2023 Target</b>	6% or higher.
<b>Future Targets</b>	
<b>FY 2024</b>	7% or higher.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2021</b>	New PG and measure in FY 2022 to be implemented in FY 2023.
<b>FY 2022</b>	MAP process changes have improved timeliness of MAP case processing, and a new PG statement and measure are defined above.

**Strategic Objective 1A-HQ: Provide understandable, high-quality resolution of HQ appeals, supported by fair and efficient adjudication and ADR processes.**

This objective was **Exceeded**. The PG for quality of Board decisions involves decisions on the merits issued by the Court of Appeals for the Federal Circuit (CAFC) on appeals of MSPB decisions filed with the Court. Appeals of MSPB decisions filed with the Court may include decisions issued by HQ or initial appeal decisions issued in the RO/FOs (but, in a typical year, would have a significantly larger percentage of decisions issued by HQ). Because this measure includes HQ decisions, it is considered an HQ case processing PG. A new measure for quality of Board decisions, implemented in FY 2023, is defined as the percentage of CAFC cases examining the merits of the MSPB’s decision that affirm the Board’s decision. This is a change from the prior measure (cases left unchanged by the CAFC) and is intended to focus on a more precise affirmance rate. (Note that the prior year results are for the previous measure of cases left unchanged by the CAFC.) The FY 2023 target for this measure was 82% or higher of Board cases affirmed by the CAFC. The FY 2023 result was 87% of Board cases affirmed by the CAFC.

Given the unique circumstances of the 5-year loss of a quorum, average processing time will not be meaningful in the short term and will not be a useful indicator for managing the process of reducing the unprecedented inventory of pending cases the new Board inherited. In its place, MSPB adopted new PGs and measures to track reduction of the inventory of cases at HQ. These two new measures are the total number of HQ cases decided during the year and the percentage of oldest cases (as identified at the beginning of the FY) decided by the end of the FY. These two PGs, in combination, reflect the Board’s desire to reduce the overall inventory with a focus on closing older cases first. MSPB exceeded the numeric target of 1,000 or more for cases decided at HQ, with a total of 1,484 cases closed; and exceeded the goal of issuing decisions in 75% of the oldest 1,000 cases (as identified at the beginning of the FY), with 905 of the oldest 1,000 cases closed (121% of the target).

For FY 2024, the target for Board case quality is 82% or higher of Board cases affirmed by the CAFC. The FY 2024 targets for inventory reduction PGs are to issue decisions in 1,000 or more HQ cases and to issue decisions in 75% (750) or more of the oldest 1,000 cases (as identified at the beginning of the FY). The FY 2025 targets for all HQ adjudication measures are TBD based on FY 2023 results.

<b>Performance Goal 1A-HQ-1: Ensure quality of Board decisions.</b>	
<b>Measure:</b> Percentage of MSPB decisions affirmed of the cases decided on the merits by the CAFC.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	87% affirmed.
<b>FY 2023 Target</b>	82% or higher.
<b>Future Targets</b>	
<b>FY 2024</b>	83% or higher.
<b>FY 2025</b>	TBD based on FY 2024 results.

<b>Past Results</b>	
<b>FY 2018</b>	92% (using previous calculation)
<b>FY 2019</b>	86% (using previous calculation)
<b>FY 2020</b>	94% (using previous calculation)
<b>FY 2021</b>	83% (using previous calculation)
<b>FY 2022</b>	87% (using previous calculation); new measure for affirmance rate is stated above.

<b>Performance Goal 1A-HQ-2: Reduce the total inventory of HQ cases.</b>	
<b>Measure:</b> Total number of cases decided at HQ.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	1,484 cases decided.
<b>FY 2023 Target</b>	Decide 1,000 cases or more.
<b>Future Targets</b>	
<b>FY 2024</b>	Decide 1,000 cases or more.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2021</b>	New PG and measure defined in FY 2022.
<b>FY 2022</b>	New measure was defined as stated above.

<b>Performance Goal 1A-HQ-3: Reduce the inventory of the oldest HQ cases.</b>	
<b>Measure:</b> The percentage of oldest cases (as identified at the beginning of the FY) decided.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	905 of (75% of) the oldest 1,000 cases = 121%.
<b>FY 2023 Target</b>	Decide 75% or more of the oldest 1,000 cases.
<b>Future Targets</b>	
<b>FY 2024</b>	Decide 75% or more of the oldest 1,000 cases.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2021</b>	New PG and measure in FY 2022.
<b>FY 2022</b>	New measure was defined as stated above.

**Strategic Objective 1B: Enforce timely compliance with MSPB decisions.**

This objective was **Exceeded**. MSPB surpassed the goal related to average processing time for compliance case addenda in the RO/FOs, with an average processing time of 93 days, more than 10% less than the target of 120 days. MSPB also assessed the HQ compliance case processing measure and determined that this measure should be deleted because the timing of many aspects of the process are outside of MSPB’s control. Therefore, it was not rated in FY 2023.

In FY 2024, MSPB will consider appropriate measures and numeric targets for processing compliance addenda in the RO/FOs to ensure we encourage resolution of these cases in ways that support long-term efficiency and effectiveness. FY 2025 targets for both measures are TBD based on FY 2024 results.

<b>Performance Goal 1B-1: Ensure processing timeliness of compliance cases in the RO/FOs.</b>	
<b>Measure:</b> Average processing time for compliance case addenda in the RO/FOs. A new measure may be defined in FY 2023.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	93 days.
<b>FY 2023 Target</b>	120 days or fewer. Consider appropriate measures and numeric targets to ensure we encourage resolution of compliance cases in ways that support long-term efficiency and effectiveness.
<b>Future Targets</b>	
<b>FY 2024</b>	120 days or fewer. Consider appropriate measures and numeric targets to ensure we encourage resolution of compliance cases in ways that support long-term efficiency and effectiveness.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	95 days
<b>FY 2019</b>	104 days
<b>FY 2020</b>	94 days
<b>FY 2021</b>	93 days
<b>FY 2022</b>	89 days



<b>Performance Goal 1B-2: Ensure processing timeliness of compliance cases at HQ. A new PG statement may be defined in FY 2024.</b>	
<b>Measure:</b> This performance goal was deleted at the end of FY 2023.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	MSPB reviewed this measure and determined that it should be deleted due to the timing of many aspects of the process being outside of the influence of MSPB. Therefore, it was not rated in FY 2023 and was recommended and approved for deletion.
<b>FY 2023 Target</b>	Define new measure for this function based on continued assessment of the process and resources required and coordination with new agency leaders.
<b>Past Results</b>	
<b>FY 2018</b>	No target set, not rated, no quorum.
<b>FY 2019</b>	No target set, not rated, no quorum.
<b>FY 2020</b>	No target set, not rated, no quorum.
<b>FY 2021</b>	No target set, not rated, no quorum.
<b>FY 2022</b>	Assessment of this PG statement and measure must be continued through FY 2023 to consider the process and resources needed to perform this function and to coordinate with new agency leaders.

**Strategic Objective 1C: Conduct objective, timely studies of the Federal merit systems and Federal HC management issues.**

This measure was **Met**. MSPB achieved the newsletter target by publishing 3 *Issues of Merit (IoM)* editions covering 7 MSPs and all 14 PPPs. Newsletter topics included preventing PPPs, patterns in perceptions of PPPs, sexual harassment in Federal workplaces, the effects of pressure to act unethically on employee engagement, supporting the human resources (HR) workforce, applicant assessments, using shared certificates, reference checking, hiring and managing students and recent graduates, hiring tech workers, developing job announcements, and performance appraisals. MSPB met the publication goal by publishing two reports, [\*Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem\*](#) and [\*Perceptions of Prohibited Personnel Practices: An Update\*](#), and one research brief, [\*Sexual Harassment in Federal Workplaces: 2021 Update\*](#). MSPB achieved the survey target by administering the Federal HR Workforce Survey from March through May 2023.

The FY 2024 targets are to develop a prototype of a new research product line, to publish 1 study product, and to design or implement a focused interagency studies survey. The FY 2025 targets are TBD based on FY 2024 results.

<b>Performance Goal 1C-1: Publish <i>IoM</i> newsletter or other articles.</b>	
<b>Measure:</b> Number and scope of <i>IoM</i> editions or other articles published.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	Published 3 <i>IoM</i> editions covering 7 MSPs and all 14 of the PPPs.
<b>FY 2023 Target</b>	Publish 3 <i>IoM</i> editions.
<b>Future Targets</b>	

FY 2024	Develop prototype of new research product line.
FY 2025	TBD based on FY 2024 results.
<b>Past Results</b>	
FY 2018	Published 3 <i>IoM</i> editions and 4 articles or briefs, <a href="#"><i>Building Blocks for Effective Performance Management: The Role of Feedback, Autonomy, and Meaningfulness in Employee Performance Behaviors</i></a> ; <a href="#"><i>Update on Sexual Harassment in the Federal Workplace</i></a> ; and <a href="#"><i>Improving Federal Hiring Through Better Assessment</i></a> (all MSPs and 3 PPPs).
FY 2019	Published 3 <i>IoM</i> editions and 4 research briefs, <a href="#"><i>Improving Federal Leadership Through Better Probationary Practices</i></a> ; <a href="#"><i>The Perceived Incidence of Prohibited Personnel Practices</i></a> ; <a href="#"><i>Remedying Unacceptable Employee Performance in the Federal Civil Service</i></a> ; and <a href="#"><i>Managing Employees to Perform Emotionally Laborious Work</i></a> (8 MSPs and 3 PPPs).
FY 2020	Published 3 <i>IoM</i> editions covering 8 MSPs. (Beginning in FY 2020, additional articles and research briefs were included in 1C-2.)
FY 2021	Published 3 <i>IoM</i> editions covering 7 MSPs and 3 PPPs.
FY 2022	Published 3 <i>IoM</i> editions covering 8 MSPs and 3 PPPs.

<b>Performance Goal 1C-2: Publish MSPB study reports, briefs, or other documents.</b>	
<b>Measure:</b> Number and scope (percentage of the workforce, agencies, or policy areas impacted) of merit systems study reports, briefs, and other documents published each year.	
<b>Current Performance Year</b>	
FY 2023 Result	Published two reports, <a href="#"><i>Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem</i></a> and <a href="#"><i>Perceptions of Prohibited Personnel Practices: An Update</i></a> , and one research brief, <a href="#"><i>Sexual Harassment in Federal Workplaces: 2021 Update</i></a> .
FY 2023 Target	Publish 2 or more study documents.
<b>Future Targets</b>	
FY 2024	Publish 1 study document.
FY 2025	TBD based on FY 2024 results.
<b>Past Results</b>	
FY 2018	No target set, not rated, no quorum.
FY 2019	No target set, not rated, no quorum. Took significant steps to prepare a new merit system studies research agenda for review/approval by the new Chairman.
FY 2020	Published research brief, <a href="#"><i>The State of Federal HR Workforce: Changes and Challenges</i></a> . Prepared for publication and awaiting approval by new Board: <i>MSPB Research Agenda for Merit Systems Studies</i> ; <i>Sexual Harassment in the Federal Workplace: Understanding and Addressing the Problem</i> ; and <i>The Importance of Job Fit for Federal Agencies and Employees</i> .
FY 2021	Published 5 research briefs, <a href="#"><i>The Importance of Job Fit for Agencies and Employees</i></a> ; <a href="#"><i>Direct-Hire Authority Under 5 U.S.C. § 3304: Usage and Outcomes</i></a> ; <a href="#"><i>Determining Acceptable Level of Competence for Step Increases</i></a> ; <a href="#"><i>Agency Leader Responsibilities Related to Prohibited Personnel Practices</i></a> ; and <a href="#"><i>Confidence in Ability to Perform Successfully</i></a> .
FY 2022	Published the <a href="#"><i>U.S. Merit Systems Protection Board Research Agenda 2022-2026</i></a> .

<b>Performance Goal 1C-3: Conduct surveys of Federal employees to assess and report on the health of the Federal merit systems.</b>	
<b>Measure:</b> Conduct periodic Governmentwide and focused surveys of Federal employees and others (including interrogatories directed to agencies), as appropriate.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	Administered the Federal HR Workforce Survey from March through May 2023, preparing for data analyses.
<b>FY 2023 Target</b>	Design or implement a focused interagency studies survey.
<b>Future Targets</b>	
<b>FY 2024</b>	Design or implement a focused interagency studies survey.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	Continued to analyze 2016 Merit Principles Survey (MPS) data and draft reports and other documents. The next MPS will include content from a new research agenda (awaiting input from a new Chairman) and a secure web-based survey capability. Began defining requirements for a new survey capability. MSPB has obtained Enterprise Human Resources Integration (EHRI) data from OPM for FY 2016 and 2017 and is negotiating with OPM for continued access to EHRI data.
<b>FY 2019</b>	Procured a new web-based, Federal Risk and Authorization Management Program (FedRAMP)-certified survey application. Survey data is a critical source of information for topics on the new research agenda. Two interrogatories were sent to agencies for responses.
<b>FY 2020</b>	Content of next Governmentwide MPS nearly completed. After two extensions of OPM's Federal Employee Viewpoint Survey (FEVS), the MPS is tentatively scheduled to be administered in the 2 <sup>nd</sup> quarter of FY 2021.
<b>FY 2021</b>	Successfully administered the 2021 MPS to more agencies than the 2010 and 2016 MPSs and in less than half the time to go from approval of final survey content to survey launch than in 2016. 2021 MPS data will support at least three research projects, and data were being prepared for public release. Also fielded two surveys to gather input on strategic planning from external stakeholders.
<b>FY 2022</b>	Posted 2021 MPS data and data documentation to <a href="https://data.gov">Data.gov</a> and on the MSPB <a href="#">website</a> . Prepared a survey of the Federal HR Workforce.

**Strategic Objective 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.**

This objective was **Met**. Information regarding requests to review OPM regulations and a review of OPM significant actions were included in the [Annual Report for FY 2022](#).

The FY 2024 target for review of OPM regulations is to publish relevant information about FY 2023 cases in the FY 2023 AR. The target for review of OPM significant actions is to maintain the scope

and publish the review of OPM significant action in the FY 2023 AR. The FY 2025 target for both PGs is TBD based on FY 2024 results.

<b>Performance Goal 1D-1: Review OPM Regulations.</b>	
<b>Measure:</b> Include relevant information about cases requesting review of OPM regulations in the MSPB AR.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	FY 2022 AR published on April 18, 2023.
<b>FY 2023 Target</b>	Publish relevant information about FY 2022 cases involving review of OPM regulations in the FY 2022 AR.
<b>Future Targets</b>	
<b>FY 2024</b>	Publish relevant information about FY 2023 cases involving a review of OPM regulations in the FY 2023 AR.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2021</b>	New measure in FY 2022.
<b>FY 2022</b>	New measure was defined as stated above.

<b>Performance Goal 1D-2: Review and report on OPM significant actions.</b>	
<b>Measure:</b> Number and scope (e.g., percentage of the workforce, agencies, or policy areas impacted) of OPM significant actions that are reviewed and reported.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	FY 2022 AR published on April 18, 2023.
<b>FY 2023 Target</b>	Maintain scope; publish review of OPM significant actions in the FY 2022 AR.
<b>Future Targets</b>	
<b>FY 2024</b>	Maintain scope; publish review of OPM significant actions in the FY 2023 AR
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	Published MSPB's FY 2017 AR, including review of OPM significant actions. Significant FY 2017 actions included the final rule regarding the Annual Employee Survey (AES) requirement and the 2017 FEVS, reforming the Federal Government and reshaping the Federal civilian workforce, a framework for continuing development of Federal senior executives, and a Governmentwide survey of Federal work-life programs.
<b>FY 2019</b>	Published MSPB's FY 2018 AR, including review of OPM significant actions. Significant FY 2018 actions included a review of themes of previous reviews, such as OPM's purpose, funding, focus, and activities.
<b>FY 2020</b>	Published MSPB's FY 2019 AR, including review of OPM significant actions. Significant FY 2019 actions included agency HC programs, hiring, workforce shaping, work-life programs, and employee performance management and rewards.

<b>FY 2021</b>	Published MSPB's FY 2020 AR, including review of OPM significant actions. Significant FY 2020 actions were related to the COVID-19 pandemic, improving applicant assessment, HC reviews, and guidance on the appointment of political appointees into the career service during the election period.
<b>FY 2022</b>	Published MSPB's FY 2021 AR, including review of OPM significant actions. Within the context of OPM leadership changes, the mandated study of OPM, and the COVID-19 pandemic, OPM's FY 2021 significant actions related to previous EOs, the presidential transition, and streamlining Federal hiring. MSPB will retain the current measure for review of OPM significant actions.

**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.**

**Strategic Objective 2A: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful, targeted outreach and engagement.**

This objective was **Exceeded**. MSPB conducted 129 outreach events, over 40% more than the target of 90 events. Outreach events were conducted on topics such as merit systems and merit-based management; Federal disciplinary policies; MSPB regulations, procedures, results, and legal precedent; and results of merit systems studies. Events were conducted with Federal executive branch departments or agencies, Federal court organizations, affinity groups, a variety of legal groups (e.g., bar and other attorney associations, national institutes, law schools), and major legal and research conferences.

The FY 2024 target is to conduct 60 outreach events. The FY 2024 target has been lowered due to staffing and budget constraints. The FY 2025 target is TBD based on FY 2024 results.

<b>Performance Goal 2A-1: Conduct effective outreach and engagement.</b>	
<b>Measure:</b> Number and scope of MSPB contacts with practitioners and stakeholders focused on improving the understanding or practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	Conducted 129 outreach events.
<b>FY 2023 Target</b>	Conduct 90 outreach events, adjust the outreach calendar, update guidance on outreach, and consider issues and methods for targeting outreach and engagement to specific groups.
<b>Future Targets</b>	
<b>FY 2024</b>	Conduct 60 outreach events.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	Conducted 134 outreach events. Consideration of methods to collect customer feedback on events to continue in FY 2019.
<b>FY 2019</b>	Conducted over 130 outreach events; given the low rate of events early in the FY, we decided that improvements in collection of customer feedback at outreach events will be reconsidered in the future in conjunction with agency priorities and available resources.

<b>FY 2020</b>	Conducted 76 outreach events.
<b>FY 2021</b>	Conducted 138 outreach events.
<b>FY 2022</b>	Conducted 112 outreach events and identified outreach process issues that need resolution to balance events and target specific groups. MSPB will continue to measure the number of outreach events.

**Strategic Objective 2B: Advance the understanding of merit, MSPs, and PPPs for stakeholders and the public by developing and sharing informational and educational materials and guidance.**

This objective was **Met**. MSPB achieved the FY 2023 target of publishing 6 or more informational or educational documents. Documents included 2 study reports, 1 research brief, and 3 *IoM* newsletters. Also, MSPB’s work was cited 314 times in 64 sources. Notable citations included a Government Accountability Office (GAO) report, *VA Equal Employment Opportunity: Increased Attention Needed to Improve Program Effectiveness*, that referenced MSPB’s 2023 report, [Prohibited Personnel Practices: An Update](#). The FY 2024 target for publishing informational or educational documents is to develop a prototype for new educational materials and services product lines. The FY 2024 target for tracking references to our work is to maintain the scope of references and consider updates to the external references database and ways to improve access to automated tools for tracking references. The FY 2025 targets for both goals are TBD based on FY 2024 results.

<b>Performance Goal 2B-1: Develop and share informational and educational materials and guidance about merit, MSPs, and PPPs.</b>	
<b>Measure:</b> Number of new or updated informational or educational documents that contain information about the civil service and its history, the merit systems, MSPs, PPPs, and our process and outcomes made available electronically or on MSPB’s website.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	Published a variety of resources, including materials on the e-Appeal Information Hub, Frequently Asked Questions Regarding Lack of Quorum and Restoration of the Full Board, the FY 2022 Annual Report, and 2 merit systems studies reports (one on sexual harassment and the other an update on PPPs), 1 research brief (on sexual harassment), and 3 <i>IoM</i> editions.
<b>FY 2023 Target</b>	Post or distribute electronically 6 new or updated informational or educational products.
<b>Future Targets</b>	
<b>FY 2024</b>	Post or distribute electronically 4 new or updated informational or educational products. Develop a prototype for new educational materials and services product lines for OPE to share results related to MSPB research studies.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	Posted 4 articles or briefs, 3 <i>IoM</i> editions, and 1 radio and 1 video interview. Added links to Board member nominations, updated Acting Chairman Robbins’s biography, and added pages for recent Board members and their lengths of service. Updated information for appellants seeking judicial review of whistleblower claims, Department of Veterans Affairs (VA) appeals under 38 U.S.C. § 714, PFR withdrawal policy, lack of quorum frequently asked questions (FAQs), Information Quality Guidelines, and 2017 Freedom of Information Act (FOIA) logs.
<b>FY 2019</b>	Posted 3 <i>IoM</i> editions and 4 research briefs; 3 Federal Register (FR) notices and 5 press releases; the FY 2018 AR; other agency reports, plans, and budget documents; the 2018

	FEVS results; updated FAQs on MSPB functions given the lack of Board members; updated history of Board member service; and changes to the Judges Handbook.
<b>FY 2020</b>	Created a COVID-19 webpage and guidance pursuant to EO 13891 and OMB Memorandum M-20-02. Published our Data Governance Body's charter in accordance with the Federal Data Strategy (FDS). Published a new merit systems studies fact sheet, a research brief entitled <i>The State of Federal HR Workforce: Changes and Challenges</i> , and 3 <i>IoM</i> editions. Updated the accessibility and PPP webpages. Published policy for prohibited conduct and the Zoom for Government privacy act statement and rules of behavior for external users. Published the MSPB Strategic Plan for FY 2020-2024, the APR-APP for FY 2019-2021, the Congressional Budget Justification (CBJ) for FY 2021, the FY 2019 AR, the FY 2019 Annual Financial Report (AFR), and an information sheet on reductions in force (RIFs). Posted updated figures on PFR processing, Federal Activities Inventory Reform (FAIR) Act inventory, 2019 AES/FEVS results, and Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) data.
<b>FY 2021</b>	Posted over 20 documents in 12 categories, including: 5 research briefs; 3 <i>IoM</i> editions; 5 agency documents (APR-APP, AFR, APR, CBJ, and AR); 2020 AES/FEVS results; 2 FR notices; 8 press releases; 3 Privacy Impact Assessments; 2 No FEAR Act updates; monthly reports on pending cases at HQ; and MSPB case reports.
<b>FY 2022</b>	Published 8 press releases (end of maximum telework, release of the 2021 AR, arrival of new Board members and senior executives (4), PFR mediation pilot, and new research agenda); 3 Federal Register (FR) notices (reasonable accommodation, civil monetary penalty inflation adjustment, and service contract inventory); several documents related to the restoration of a quorum and the adjudication process (Board members biographies, update to FAQs on a quorum, ratification orders for MSPB Administrative Judge (AJ) and contract Administrative Law Judge (ALJ) appointments, recommended approach to reducing the backlog, update on Clerk's authority for PFR withdrawal, explanation of docket number construction, several new precedential decisions, and reports of pending HQ cases); studies documents, including 3 editions of <i>IoM</i> , new MSPB research agenda, and release of 2021 MPS data; and several agency plans and reports, including the new Strategic Plan, the APR-APP for 2021-2023, the FY 2021 AR, the FY 2021 AFR, the FY 2022 CBJ, FOIA reports, and 2021 AES data (from the 2021 FEVS). Clarification of documents appropriate for this measure is provided in the statement of the measure above.

<b>Performance Goal 2B-2: Track the scope of references to MSPB's work and work products.</b>	
<b>Measure:</b> Scope (location or identity of citing organization) of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, Federal legislation, professional literature, EOs, the media, or other sources.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	MSPB's work was cited 314 times in 64 sources.
<b>FY 2023 Target</b>	Maintain the scope of references; consider updates to the external references database and ways to improve access to tools for tracking external references.
<b>Future Targets</b>	
<b>FY 2024</b>	Maintain the scope of references; consider updates to the external references database and ways to improve the ability to track meaningful external references.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	MSPB's work was cited 610 times in 136 different sources. Sources of particular import include 2 GAO reports; OPM's unlocktalent.gov website; posts and letters by selected senators and representatives; the National Academy of Science, Engineering, and

	Medicine; the National Academy of Public Administration (NAPA); the American Psychological Association; and a book on health care management.
<b>FY 2019</b>	MSPB's work was cited 714 times in 129 different sources. Notable citations include a <a href="#">letter</a> from the House Department of Veterans Affairs (VA) Committee to the Secretary of the VA; a Congressional Research Service Report entitled <a href="#">Merit Systems Protection Board (MSPB): A Legal Overview</a> ; and the publication <a href="#">Report: Symposium on the Federal Workforce for the 21<sup>st</sup> Century</a> by the MITRE Corporation.
<b>FY 2020</b>	MSPB's work was cited 453 times in 119 sources. Notable citations for policymakers include references to MSPB's studies on sexual harassment in GAO's <a href="#">report</a> and <a href="#">testimony</a> about sexual harassment at VA; a bipartisan, bicameral congressional <a href="#">letter</a> to VA about sexual harassment; references to sexual harassment studies and case law in a briefing <a href="#">report</a> by the U.S. Commission on Civil Rights; and an MSPB studies report on Adverse Actions cited in the CAFC <a href="#">decision</a> in <i>Sayers v. VA</i> .
<b>FY 2021</b>	MSPB's work was cited 520 times in 92 sources. Notable citations include MSPB studies work cited in OPM's final <a href="#">regulations</a> on Probation, Performance-Based Reduction in Grade, and Removal Actions; <a href="#">testimony</a> by Anne Joseph O'Connell to the House Subcommittee on Government Operations; NAPA's <a href="#">report</a> on the review of OPM; GAO reports on sexual harassment, employee engagement, and gender pay differences; and a <a href="#">letter</a> from the House Committee of Oversight and Reform to President Biden calling for nominations of MSPB Board members.
<b>FY 2022</b>	MSPB's work was cited 550 times in 113 sources. Notable citations include MSPB studies work cited in GAO reports on <a href="#">direct hiring in future emergencies</a> and on <a href="#">sexual harassment in the VA</a> ; 4 academic articles in public policy journals citing use of 2016 MPS data or study reports on merit systems or managing the federal workforce; and the Partnership for Public Service's <a href="#">Trustworthy: Increasing Civil Servants' Trust at Work</a> , citing 4 separate study reports. MSPB will continue to measure the scope of references to MSPB's work.

## Management Objectives

**Management Objective M1: Lead, manage, and develop employees to ensure a highly qualified, diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.**

This objective was **Met**. The result for inclusion was exceeded, with an average of 81%, more than 10% above the target of 70%. The results for competencies, diversity, and engagement were 70%, 67%, and 71%, respectively, all within 10% of the target.

The FY 2024 targets for all PGs are for the average percent positive to be 70% or higher. The FY 2025 targets for all PGs are TBD based on FY 2024 results.

<b>Performance Goal M1-1: Ensure MSPB's workforce has the competencies needed to perform its mission.</b>	
<b>Measure:</b> Percentage of employees who report (on the FEVS or internal survey (IS)) that they and others in the workforce have the appropriate competencies needed to perform MSPB's mission.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	Competency average = 70%.
<b>FY 2023 Target</b>	Competency average = 70% or higher.
<b>Future Targets</b>	
<b>FY 2024</b>	Competency average = 70% or higher.



<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	FEVS Competency average = 71%.
<b>FY 2019</b>	FEVS Competency average = 75%.
<b>FY 2020</b>	Competency average = 80% (derived from the IS due to the FEVS delay).
<b>FY 2021</b>	Competency average = 73% (derived from the IS due to the FEVS delay).
<b>FY 2022</b>	Competency average = 73%.

<b>Performance Goal M1-2: Ensure positive perceptions of workforce diversity by MSPB employees.</b>	
<b>Measure:</b> Average percentage agreement on FEVS (or IS) diversity questions.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	Diversity average = 67%.
<b>FY 2023 Target</b>	Diversity average = 70% or higher.
<b>Future Targets</b>	
<b>FY 2024</b>	Diversity average = 70% or higher.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	Diversity average = 61%.
<b>FY 2019</b>	Diversity average = 72%.
<b>FY 2020</b>	Diversity average = 75% (derived from the IS due to the FEVS delay).
<b>FY 2021</b>	Diversity average = 76% (derived from the IS due to the FEVS delay).
<b>FY 2022</b>	Diversity average = 68% (derived from the IS due to FEVS changes).

<b>Performance Goal M1-3: Ensure positive perceptions of workplace inclusion by MSPB employees.</b>	
<b>Measure:</b> Average percentage agreement on IS workplace inclusion questions.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	Inclusion average = 81%.
<b>FY 2023 Target</b>	Inclusion average = 70% or higher.
<b>Future Targets</b>	
<b>FY 2024</b>	Inclusion average = 70% or higher.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	Inclusion average = 81%.
<b>FY 2019</b>	Inclusion average = 84%.

<b>FY 2020</b>	Inclusion average = 83%.
<b>FY 2021</b>	Inclusion average = 86%.
<b>FY 2022</b>	Inclusion average = 81%.

<b>Performance Goal M1-4: Ensure positive employee engagement.</b>	
<b>Measure:</b> Average percentage agreement on FEVS (or IS) engagement questions.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	Engagement Index = 71%.
<b>FY 2023 Target</b>	Engagement Index = 70% or higher.
<b>Future Targets</b>	
<b>FY 2024</b>	Engagement Index = 70% or higher.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	Engagement Index = 66%.
<b>FY 2019</b>	Engagement Index = 72%.
<b>FY 2020</b>	Engagement Index = 80%.
<b>FY 2021</b>	Engagement Index = 82% (derived from the IS due to the FEVS delay).
<b>FY 2022</b>	Engagement Index = 74%.

**Management Objective M2: Modernize IT to support agency mission and administrative functions.**

This objective was **Not Met**. The results for IT reliability and internal customer service were 44% and 59%, respectively, both more than 10% below the target of 70%. MSPB did not meet its goal to implement the new e-Appeal system during FY 2023. In the second quarter of FY 2023, the project schedule for implementing e-Appeal shifted to the beginning of FY 2024. MSPB met both its cybersecurity targets, with 100% of assets scanned, and its cloud-based services goal, effectively replacing all legacy infrastructure with cloud-based solutions.

The FY 2024 targets for the IT reliability and internal customer service measures are to achieve an average percent positive of 60% or higher. The FY 2024 target for cybersecurity is to scan 95% or more of assets. The FY 2024 target for modernizing the core adjudication systems is to stabilize the new e-Appeal system, create additional document templates and required reports, and prepare the system for upgrades and enhancements in FY 2025. The FY 2024 target for cloud-based services is that 90% of legacy networks are moved to Software-Defined Wide Area Network (SDWAN).”

The FY 2025 targets for all PGs are TBD based on FY 2024 results.

<b>Performance Goal M2-1: Ensure reliability of MSPB IT systems, hardware, and applications.</b>	
<b>Measure:</b> Average percentage agreement on relevant IS questions.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	IT reliability average = 44%.
<b>FY 2023 Target</b>	IT reliability average = 70% or higher.
<b>Future Targets</b>	
<b>FY 2024</b>	IT reliability average = 60% or higher.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	IT reliability average = 61%.
<b>FY 2019</b>	IT reliability average = 65%.
<b>FY 2020</b>	IT reliability average = 77%.
<b>FY 2021</b>	IT reliability average = 82%.
<b>FY 2022</b>	IT reliability average = 74%.

<b>Performance Goal M2-2: Ensure satisfaction with internal IT support and services.</b>	
<b>Measure:</b> Average percentage agreement on relevant IS questions.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	IT internal support average = 59%.
<b>FY 2023 Target</b>	IT internal support average = 70% or higher.
<b>Future Targets</b>	
<b>FY 2024</b>	IT internal support average = 60% or higher.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	IT internal support average = 72%.
<b>FY 2019</b>	IT internal support average = 72%.
<b>FY 2020</b>	IT internal support average = 80%.
<b>FY 2021</b>	IT internal support average = 78%.
<b>FY 2022</b>	IT internal support average = 68%.

<b>Performance Goal M2-3: Continuously enhance cybersecurity.</b>	
<b>Measure:</b> Percentage of IT assets (any MSPB-owned items with IP addresses) scanned through the Department of Homeland Security’s Continuous Diagnostics and Mitigation program.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	100% of assets scanned.
<b>FY 2023 Target</b>	90% of assets scanned.
<b>Future Targets</b>	
<b>FY 2024</b>	95% of assets scanned.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2020</b>	New goal in FY 2021.
<b>FY 2021</b>	Measure and FY 2022 target developed.
<b>FY 2022</b>	94% of assets scanned; 100% received some scanning.

<b>Performance Goal M2-4: Improve efficiency of adjudication case processing.</b>	
<b>Measure:</b> Modernize core adjudication applications; proportion of cases processed entirely electronically.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	Prepared for go-live at the beginning of FY 2024. Interim indicators: 84% of initial appeals and 97% of pleadings filed electronically.
<b>FY 2023 Target</b>	Implement the new system.
<b>Future Targets</b>	
<b>FY 2024</b>	Implement the new system.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2018</b>	Interim indicators: 69% of initial appeals and 89% of pleadings filed electronically. Completed requirements development for new core business applications, including those to support electronic adjudication (e-adjudication), and issued the request for proposal.
<b>FY 2019</b>	Interim indicators: 69% of initial appeals and 89% of pleadings filed electronically. Awarded contract for new core business applications and began configuring electronic filing (e-filing) and initial appeals processing components.
<b>FY 2020</b>	Interim indicators: 77% of initial appeals and 93% of pleadings filed electronically, an increase from FY 2019 and the highest MSPB has experienced since 2013; significantly expanded electronic case files (ECFs) to allow for use in any FY 2020 appeal and in any FY 2019 case in RO/FOs where the electronic record is complete as an ECF. Continued development of initial appeal process on new application platform. Further modernization progress was delayed due to the COVID-19 pandemic.
<b>FY 2021</b>	Interim indicators: 84% of initial appeals and 94% of pleadings filed electronically. Wireframes for new application completed, and pilot release 1 completed for next-generation adjudication system.

<b>FY 2022</b>	Interim indicators: 85% of initial appeals and 95% of pleadings filed electronically. Completed pilot releases 2.1 through 2.4, including user acceptance testing for each sprint, and 2 production data test migrations (including case media). Completed training and communication plans; acquired external development, technical writing, and communication resources; and designated internal training and communication resources to support “go-live” in late FY 2023.
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<b>Performance Goal M2-5: Deploy and maintain effective, secure, cloud-based services.</b>	
<b>Measure:</b> Percentage of new IT investments that replace legacy on-premises technologies with Government-approved cloud service providers.	
<b>Current Performance Year</b>	
<b>FY 2023 Result</b>	100% of new IT investments that replaced legacy systems were cloud-based.
<b>FY 2023 Target</b>	75% of new IT investments that replace legacy systems are cloud-based.
<b>Future Targets</b>	
<b>FY 2024</b>	90% of legacy networks moved to SDWAN.
<b>FY 2025</b>	TBD based on FY 2024 results.
<b>Past Results</b>	
<b>FY 2021</b>	New PG and measure effective in FY 2023.
<b>FY 2022</b>	All Azure.gov services transferred to Azure.com cloud. Enhancements (single sign-on for Azure Active Directory and Qualtrics) were made to improve the confidentiality, integrity, and availability of all Microsoft cloud services. A new measure beginning in FY 2023 is included above.

## Means and Strategies Needed to Accomplish MSPB's Objectives

MSPB will use the following means and strategies to accomplish its objectives. These may be adjusted, emphasized in specific years, and carried out by one or more MSPB offices.

### Strategic Goal 1

**Strategic Objective 1A (Strategic Objectives 1A-RO and 1A-HQ): Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and ADR processes.**

1. Implement fair approaches (e.g., policies and processes, adjudication systems, case management, the order in which cases are voted) to reducing the inherited inventory of PFRs and other cases at HQ while ensuring that each matter receives accurate and due consideration; track and measure success in reducing HQ inherited inventory; and include appropriate PGs, measures, and targets in MSPB's APPs to ensure transparency in accomplishing this important objective.
2. Issue regulations as necessary to implement changes in statute, regulation, policy, or case law.
3. Consider and implement requests for additional HC (e.g., additional Full-Time Equivalent (FTE)) and other resources; and use all flexibilities (e.g., details, temporary hires) to ensure that MSPB has sufficient adjudication staff to reduce the inherited inventory, maintain Board case quality, and effect high-quality and timely adjudication of initial appeals, including remands on PFR.
4. Implement measures for adjudication quality in the ROs/FOs and at HQ to ensure a focus on appropriate aspects of the adjudication process and decision quality. Ensure an appropriate focus on and measurement of adjudication quality, accuracy, quantity, and speed.
5. Modernize MSPB's core adjudication business applications, including its e-filing platform, case management, document management, and document assembly capabilities as MSPB transitions from paper to 100% e-adjudication. Consider automated e-filing customer feedback methods when the new system is implemented.
6. Continue to improve and maintain adjudication data and related systems, practices, and policies to ensure accurate, valid, and reliable case processing data for management and reporting purposes that ensure clarity and comply with standard data practices and statutes (e.g., GPRAMA, WPEA, and the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act)). Consider hiring a Chief Data Officer.
7. Ensure sufficient information and support for appellants who file with MSPB, such as improving the clarity and readability (e.g., plain language and accessibility) of MSPB processes, forms, orders, etc.; increasing accessibility to necessary tools, especially for appellants who potentially belong to underserved communities; and considering ways to strengthen the pro bono program. Ensure consistent application of and accountability for adjudication processes, services, and data for all RO/FOs.
8. Continue using automated surveys to invite feedback from participants in initial appeals and ADR and make changes to the process based on their feedback, as appropriate. Consider designing and implementing an automated survey for participants in HQ cases.

9. Update adjudication staff performance management plans and processes as necessary to ensure accountability for the adjudication process, including the quality of adjudication data, quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.

**Strategic Objective 1B: Enforce timely compliance with MSPB decisions.**

1. Report compliance timeliness in the RO/FOs and ensure measures encourage long-term efficiency and effectiveness. Consider reporting data by agency, as appropriate.
2. Consider internal processes and resources needed for timely and complete compliance with MSPB decisions and orders. Consider external approaches to improve complete and timely compliance, such as coordinating with individual agencies and assessing the use of existing and new accountability mechanisms (including changes to law or regulation).

**Strategic Objective 1C: Conduct objective, timely studies of the Federal merit systems and Federal HC management issues.**

1. Ensure timely publication of reports of merit systems studies. Implement appropriate changes to the PGs, measures, and targets in MSPB's APPs to ensure transparency in accomplishing this important goal.
2. Routinely publish findings and recommendations from merit systems studies in appropriate documents (e.g., research reports, research briefs, perspectives, *IoM* articles) and disseminate the documents in suitable ways to both broad-based and targeted audiences and stakeholders.
3. Ensure appropriate and timely release of survey data.
4. Sustain MSPB's survey capability to periodically administer Governmentwide or smaller surveys to support the merit systems studies program.
5. Consider ways to encourage other agencies' support and participants' completion of MSPB surveys that result in sufficient response rates, including actions to mitigate the barriers to survey participation.
6. Given the high rate of retirement eligibility of MSPB studies research staff (66% between now and the end of FY 2024) and the 2-3 years it takes to achieve journey-level expertise, ensure MSPB has sufficient analytic and support staff to conduct high-quality, objective studies and to promote the value and impact of study findings and recommendations in conveying such information to relevant stakeholders.
7. Consider developing an automated customer survey to gather feedback from those who download study reports from the MSPB website.

**Strategic Objective 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.**

1. Measure success in processing cases involving the review of OPM regulations and make all OPM review information easily available to stakeholders by reporting relevant information about OPM regulation review cases in MSPB ARs.
2. Ensure results of MSPB review of OPM significant actions are distributed to all appropriate recipients through the publication of MSPB ARs.

## Strategic Goal 2

### **Strategic Objective 2A: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful, targeted outreach and engagement.**

1. Consider working with agencies involved in merit systems or Federal management (OPM, the Office of Special Counsel (OSC), the Equal Employment Opportunity Commission, the Office of Government Ethics, etc.) to increase, within available resources, outreach opportunities designed to improve the practice and understanding of merit, MSPs, and PPPs by Federal employees, policymakers, key stakeholders, and the public.
2. Assess and resolve issues to ensure that we can solicit and conduct targeted outreach and engagement, including for those on both sides of the adjudication process and other key stakeholder groups (e.g., affinity groups, Federal employee and management groups, legal groups, researchers), to improve knowledge of MSPB's work and its role in protecting the merit system principles.
3. Use effective tools to increase the proportion and enhance the quality of virtual outreach to improve breadth and efficiency of outreach and reduce travel costs.
4. Consider new measures of outreach to ensure the quality and quantity of events and balanced access to MSPB information.
5. Develop and implement effective and efficient methods to obtain and use feedback from a large proportion of outreach participants and audience members to assess outreach success, improve the quality of outreach, obtain suggestions for improvement, and better address stakeholder needs.

### **Strategic Objective 2B: Advance the understanding of merit, MSPs, and PPPs for stakeholders and the public by developing and sharing informational and educational materials and guidance.**

1. Develop and publish educational standards or criteria, materials, and guidelines on merit, MSPs, PPPs, and the merit-based civil service for specific stakeholder groups and the public.
2. Consider using social media to notify stakeholders and the public about information related to a merit-based civil service and MSPB's work.
3. Consider hiring or contracting with a communications expert to develop, implement, and maintain a communication and education program to improve the understanding of merit and MSPs, PPPs, and MSPB's role and processes for appropriate stakeholders.
4. Develop and make available information and materials about MSPB's adjudication processes, outcomes, and legal precedents to equally support appellants' and agencies' ability to prepare and file thorough and well-reasoned arguments in appeals filed with MSPB.
5. Consider working with other agencies, policymakers, and stakeholders to establish requirements or standards for periodic merit systems training for all Federal employees similar to the requirements for the No FEAR Act. Consider ways to encourage implementation of these standards in education programs for Federal employees and the public, such as recognizing agencies' merit systems educational efforts.



## Management Objectives

### **Management Objective M1: Lead, manage, and develop employees to ensure a highly qualified, diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.**

1. Ensure a continual strategic human capital planning (SHCP) process to address external and internal HC challenges and ensure achievement of MSPB's most critical HC requirements. This may include reviewing positions and overall MSPB grade structure, identifying competency gaps and training needs for mission and support functions, promoting leadership development and succession planning, improving management of critical one-deep positions, and leveraging hiring and assessment policies and processes and the use of personnel flexibilities.
2. Ensure that MSPB has a diverse and highly qualified legal, analytic/research, and support workforce that can effectively accomplish and support MSPB's knowledge-based adjudication, studies, and other mission-related work, including the HC needed to address the inherited inventory while simultaneously performing other adjudication work, conducting studies, and filling other key vacancies.
3. Improve agency-wide focus on employee education and development to ensure access to training, educational resources, and developmental experiences that provide the competencies necessary to perform MSPB's work. Implement an effective and ongoing employee orientation program; improve employee understanding of data integrity and governance issues; and improve development for supervisory, managerial, and leadership positions. Collaborate with other agencies to obtain cost-effective training.
4. Sustain an effective internal Diversity and Inclusion Council and provide training for agency employees to improve understanding of these issues. Consider measures of diversity and inclusion and address issues as they arise to strengthen agency culture and improve agency performance.
5. Use results from the FEVS and MSPB's IS, work with MSPB employees and the Professional Association, and apply leadership and management skills to strengthen and maintain a culture that supports a competent, diverse, inclusive, and fully engaged workforce.
6. Ensure MSPB has the management policies (e.g., telework, performance management, continuity of operations) to enable flexible work options that support mission performance, workforce and workplace health and safety during emergencies, and the hiring and retention of talented employees.

### **Management Objective M2: Modernize IT to support agency mission and administrative functions.**

1. Ensure MSPB has a stable and secure IT infrastructure (e.g., systems, hardware, applications) with sufficient resources and expertise (e.g., cybersecurity, network administration) to support the agency's mission and support functions and to provide for workplace flexibilities.
2. Modernize MSPB's core adjudication applications, including its e-filing, case management, document management, document assembly, and enterprise IT capabilities to ensure MSPB's successful transition from paper to 100% e-adjudication.
3. Sustain a fully functional, cloud-based survey capability that is certified by FedRAMP, with flexible survey design and administration to support deployment of secure, cloud-based, Governmentwide surveys for merit systems studies, program evaluation, and internal and external customer surveys.

## Trends and Challenges that May Affect Agency Performance

### Internal Management Challenges

The most significant issues that impacted MSPB involved efforts to reduce the inherited inventory of PFR cases following the restoration of a quorum in FY 2022 and the implementation of multiple IT modernization initiatives. These challenges were exacerbated by inadequate staffing, which soon may become an even greater problem due to attrition associated with high levels of retirement eligibility among current employees.

**The PFR Inherited Inventory Caused by the Lack of a Quorum.** As noted earlier, from January 7, 2017, to March 3, 2022, the Board lacked a quorum of members and therefore could not vote on any PFRs of IDs. A quorum was restored on March 4, 2022, with the swearing-in of Raymond A. Limon and Tristan L. Leavitt as Board members. Although Member Leavitt departed when his term ended on February 28, 2023, Cathy A. Harris was sworn in on June 1, 2022, as the third Board member (and now Acting Chairman), thereby ensuring that a quorum is maintained.

Restoration of a quorum allowed MSPB to resume issuing decisions on PFRs and other cases at HQ and to resume issuing reports of merit systems studies. However, given the length of the time without a quorum, the number of cases in the inventory had reached 3,793. In FY 2023, MSPB made significant progress towards reducing that inherited inventory by closing 1,484 cases. This includes more than 75% of the oldest 1,000 cases. As of the start of FY 2024, approximately 50% of the inherited inventory remains, which MSPB expects to eliminate in FY 2024 and FY 2025.

**Inadequate Staffing and Retirement Eligibility.** MSPB was authorized 235 FTE positions for FY 2023 but has been unable to fully staff the agency for several years due to budget constraints. Based on the most recent budget limitations imposed by the Fiscal Responsibility Act of 2023, MSPB has put hiring actions on hold pending further attrition and is maintaining just 190 FTEs. Holding at this FTE level reduces MSPB's ability to adjudicate efficiently and to adequately support its Research Agenda.

Following the lengthy lack of a quorum, considerable attorney resources from OAC, the office that drafts the recommended decisions on which the Board members vote, were needed to update cases in the inherited inventory because statutes, Governmentwide regulations, and case law changed since the recommended decisions were originally drafted. Moreover, those attorneys have not been available to work cases filed more recently at HQ, slowing processing times for newer cases. In addition, given vacancies and the need to internally detail staff to provide essential support to other offices, the number of attorneys in OAC is down by 33%. Adequately staffing the legal offices is critical to further reducing the inherited inventory, timely processing new cases, and defending the Board's decisions in court. Furthermore, MSPB is hampered from pursuing research on its published Research Agenda by the loss of 66% of technical research staff in OPE.

In addition to existing vacancies, by the end of FY 2025, approximately 24% of MSPB employees will be eligible to retire. Having nearly one quarter of employees eligible for immediate retirement compounds staffing challenges and portends slower case processing times and a lack of technical ability to complete new merit systems research and studies. Such a reduction in MSPB's workforce limits the capacity for outreach and education services, which play a key role in ensuring that Federal agencies and their employees understand the Board's role and processes. Educating the Federal workforce also improves efficiency and effectiveness throughout the Government by helping

agencies understand and act in accordance with MSPs, avoid PPPs, and promote the overall efficiency of the civil service.

**IT Modernization.** In FY 2019, MSPB began modernizing its core business applications, starting with the development of a new cloud-based e-filing and case management workflow system that is certified by FedRAMP.<sup>10</sup> This updated functionality replaces several legacy systems, including MSPB’s e-Appeal Online, document management, and document assembly systems, which were at or nearing end-of-life and prevented MSPB from achieving 100% electronic adjudication of appeals. The new e-Appeal system was implemented in October 2023 and will continue to evolve to fully support internal and external stakeholder needs. MSPB has been striving to improve user experience by designing this enterprise application to ensure that appellants, appellant representatives, and agency representatives are able to easily and intuitively file appeals and pleadings and self-manage most aspects of their cases before the Board. This effort directly aligns with the second priority of the President’s Management Agenda – Delivering Excellent, Equitable, and Secure Federal Services and Customer Experience.

In FY 2021, MSPB engaged in planning efforts to modernize all remaining legacy systems; upgrade its network architecture to support a hybrid workforce; increase internet capacity as MSPB transitions to cloud-based services; enhance cybersecurity consistent with EO 14028, “Improving the Nation’s Cybersecurity”; and transition business processes to comply with the Government’s transition to electronic records.

In FY 2022, MSPB began network transformation efforts to support a cloud-based environment. These efforts continued in FY 2023 with the migration of MSPB’s analog phone system to a cloud-based softphone platform.

MSPB had planned to engage in several other modernization efforts in FY 2024, including a phased lifecycle replacement of laptops and migrating MSPB’s research and analysis tools to a cloud-based, software-as-a-service (SaaS) platform to improve security and reliability and reduce the complexity of IT services. A SaaS solution would allow for web integration so MSPB can publish dashboards using our merit systems research and surveys. However, based on the uncertainty surrounding the enactment of the FY 2024 budget, these efforts are now delayed into FY 2025, but will be pursued then only if the enacted budget authority permits.

MSPB continues to prioritize maturation of its cybersecurity program and seeks cybersecurity funding to better comply with OMB requirements, Department of Homeland Security (DHS) binding operational and emergency directives, and EO 14028. Without an enhanced budget specifically to support cybersecurity initiatives and programs, MSPB will continue to be in a reactive security posture, putting the organization at risk when it could instead, with adequate resources, take active measures to identify and protect against threats and move to a risk-based decision-making model in line with Federal guidance. The threat landscape is constantly shifting, and the tools, capabilities, and training needed to combat threats are continuously evolving; it is essential that MSPB keep up.

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<sup>10</sup> See Appendix C: Modernization of Public-facing Digital Services Report, in accordance with sections 3(b) and (d) of the 21<sup>st</sup> Century Integrated Digital Experience Act (21<sup>st</sup> Century IDEA).

## External Trends

Among the external trends that affect MSPB's ability to carry out its mission are changes in law, jurisdiction, appeals processes, regulations, and executive orders; court decisions; and budgetary constraints. These changes can continue to have significant impacts on MSPB workloads, processes, and programs for many years.

### Changes in Law, Jurisdiction, Appeals Processes, Regulations, and Executive Orders.

**Whistleblower Protection Enhancement Act of 2012 (WPEA) and Subsequent Related Legislation.** Concerns about whistleblower protection prompted the enactment of the Whistleblower Protection Enhancement Act of 2012 (WPEA). Subsequently, initial appeals filed in the RO/FOs and PFRs to the Board involving reprisal for whistleblowing or other activity which are protected by the WPEA have increased significantly. The WPEA and subsequent whistleblower case law also increased the complexity of adjudicating whistleblower cases. For example, Congress expanded protections for disclosures made during the course of investigations beyond those conducted by an agency Inspector General or the Office of Special Counsel. Pursuant to legislation passed in December 2017, an employee also is protected from reprisal for cooperation "with any other component responsible for internal investigation or review." National Defense Authorization Act, Pub. L. 115-91, 131 Stat. 1283, 1618, § 1097 (Dec. 12, 2017) (amending, among other provisions, 5 U.S.C. § 2302(b)(9)(C)). The Board has determined that such investigative disclosures are protected regardless of their content. *See, e.g., Pridgen v. Office of Management and Budget*, 2022 MSPB 31, ¶ 62 (2022). Consequently, MSPB's jurisdiction over whistleblowing—even in the absence of an otherwise appealable action—may now cover more actions, as well as more employees. As a result, the adjudication of cases under the WPEA has become more challenging, time-consuming, and resource-intensive.

**Expansion of Whistleblower Appeal Rights for Federal Bureau of Investigation (FBI) Employees.** On December 23, 2022, Congress enacted Public Law 117-263, the National Defense Authorization Act (NDAA) for FY 2023. The NDAA amended 5 U.S.C. § 2303, allowing FBI employees to appeal a final Department of Justice (DOJ) determination or corrective action order to the MSPB pursuant to 5 U.S.C. § 1221. *See* Public Law 117-263, § 5304(a), codified at 5 U.S.C. § 2303(d). On February 2, 2024, the Department of Justice issued final regulations providing whistleblower protections for FBI employees. The regulations include a new 28 C.F.R. § 27.7 that informs complainants of the right to file an appeal with MSPB. The regulation took effect on March 4, 2024. In FY 2023, MSPB received one potential whistleblower claim from an FBI employee. *See Tumblin v. Department of Justice*, MSPB No. DC-1221-23-0398-W-1 (Initial Dec. July 28, 2023; final on Sept. 1, 2023).

**The NDAA for FY 2022 (P.L. 117-81).** The NDAA for FY 2022 included two provisions with potential bearing on MSPB operations. Section 1105 amends the guidelines for reductions in civilian positions at Department of Defense (DOD) (10 U.S.C. § 1597(e)) by changing the determination criteria for employee separation from being "primarily on the basis of performance" to "account[in] for employee performance ... among other factors as determined by the Secretary." It is still unclear how this change will be interpreted by MSPB and other tribunals. Section 1106 repeals the two-year probationary period for Title 10 employees, returning to the prior one-year requirement. This repeal, effective December 31, 2022, provides MSPB appeal rights to DOD civilian employees who have completed one year of service, and thus may lead to a slight increase in MSPB's caseload.

**Expansion of Appeal Rights for Transportation Security Officers (TSOs) at the Department of Homeland Security (DHS), Transportation Security Administration (TSA).** On June 3, 2021, DHS Secretary Alejandro N. Mayorkas issued a memorandum supporting the TSA workforce through improving the TSO employment experience. Specifically, the Secretary directed a review and evaluation of whether its current standards align with Title 5 personnel protections. Expecting legislation that would provide MSPB appeal rights, TSA began to afford TSOs similar appeal rights to MSPB as other TSA employees. On September 13, 2021, MSPB entered into a reimbursable agreement with TSA to adjudicate such appeals. In FY 2022, MSPB adjudicated 52 appeals under their newly established rights, pending legislation that would otherwise increase our non-reimbursable workload. The agreement was renewed for FY 2023, and 61 appeals have been adjudicated as of September 30, 2023. The TSA reimbursable agreement was renewed for FY 2024.

**Fair Chance Act.** OPM issued regulations, effective October 2, 2023, to implement the Fair Chance to Compete for Jobs Act of 2019 (Fair Chance Act), 5 U.S.C. §§ 9201-9206. These regulations create a new appeal right to MSPB for employees who have been charged with violating the Fair Chance Act. With some exceptions, the Fair Chance Act prohibits Federal agencies and Federal contractors acting on their behalf from requesting that an applicant for Federal employment disclose criminal history record information before the agency makes a conditional offer of employment to that applicant. Under OPM's new regulation at 5 C.F.R. § 920.202, it is a violation of the Fair Chance Act if an agency employee requests information about an applicant's criminal history prior to making a conditional offer of employment to that applicant (unless the position is exempted or excepted from the Fair Chance Act). For a first violation, OPM shall issue a written warning to the employee; a second violation could result in a suspension of not more than 7 days.<sup>11</sup> Therefore, a first or second violation would not result in an appealable action. A third or subsequent violation, however, could result in a suspension of more than 7 days as well as civil monetary penalties.<sup>12</sup> If OPM issues a suspension for more than 14 days or combines a suspension and a civil penalty, the employee has the right to appeal to MSPB under 5 C.F.R. § 754.204.

These external trends and issues bear on MSPB operations both directly and indirectly. They are likely to affect MSPB's appeals workload, necessitate changes in MSPB procedures, and require additional MSPB resources. They drive home the importance of MSPB's responsibility to conduct studies of Federal merit systems and to exercise the agency's statutory authority to review OPM's significant actions to ensure that the Federal workforce continues to be managed in accordance with MSPs and free from PPPs. These external trends magnify the importance of MSPB's responsibility to promote merit and educate employees, supervisors, managers, and leaders on the merit systems; MSPs; PPPs; and MSPB appellate procedures, processes, and case law. MSPB's educational and outreach functions improve workforce management over time and may reduce the time and cost of processing appeals for agencies, appellants, and the Government.

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<sup>11</sup> See 5 C.F.R. § 754.202(a) & (b)(1).

<sup>12</sup> See 5 C.F.R. § 754.202(b)(2)-(b)(5).

## Performance Measurement and Program Evaluation

### Performance Measurement: Verifying and Validating Performance Information

Most quantitative measures of MSPB's adjudication performance (case processing in the RO/FOs and HQ, and compliance case processing in the ROs/FOs) previously came from the automated case management system known as Law Manager, which tracked location, timeliness, outcomes, and other information about cases filed with MSPB. However, with the implementation of the new e-Appeal system, MSPB will need to create new reports to capture this data going forward. To maintain data quality, MSPB will need to build checks for completeness, quality control, and verification and validation of performance data into this system using controlled user access, limitations in field data entry, operating guides, and processes for cross-checking and correcting data throughout and at the end of the FY. Data fields to support new adjudication PGs or measures may be added to the system, and new processes and training provided to users, as necessary.

Results for the PGs related to merit systems studies, review of OPM regulations and significant actions, and educational/informational materials can be verified and validated by examining MSPB's public website. MSPB employees provide data for outreach events and for external references to our work in databases accessible to them on the agency's intranet. Additional information about external references to our work is obtained through structured news searches in Westlaw. Outreach and external references are examined and summarized at the end of the year by MSPB's Performance Improvement Officer (PIO). Data for MSPB's PGs related to HC management, IT reliability, and internal IRM customer service are collected using OPM's FEVS or MSPB's IS. The IS also provides customer satisfaction results for internal agency programs. The PIO designs, administers, analyzes, and reports the results of these surveys, including those needed for PG measures. Each year, FEVS data are posted on MSPB's website, and IS data are posted on the intranet. Other quantitative and qualitative performance measures are reported by MSPB's program offices. For example, IRM ensures that data for the new PGs on cybersecurity and cloud-based services are verified, validated, and reported to the PIO.

In FY 2022, MSPB implemented its new data integrity policy. In addition to WPEA data, this policy applies to certifying performance data reported in MSPB's APR-APPs and ARs. MSPB will expand this policy to other adjudication and performance data, as appropriate. Data integrity, the transformation to 100% e-adjudication, and new core business applications continually underscore the importance of continuous improvement in performance measurement.

### Program Evaluation

MSPB programs broadly affect Federal merit systems and Federal management, and they generate significant value for Federal agencies and the public. Program evaluation is critical to ensuring that MSPB continues to achieve its mission effectively and efficiently to provide value now and in the future. Governmentwide emphasis on program evaluation has increased in recent years. The Evidence Act and the Federal Data Strategy also are relevant to agency program evaluation and performance measurement.<sup>13</sup>

Although MSPB is committed to high-quality program evaluation, the agency currently lacks the resources to fully support the previously planned evaluation activities (i.e., SHCP and agency future-of-work in FY 2023). Ensuring the ability to perform our statutory mission and comply with

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<sup>13</sup> Public Law (Pub. L.) [115-435](#), and see <https://strategy.data.gov>.

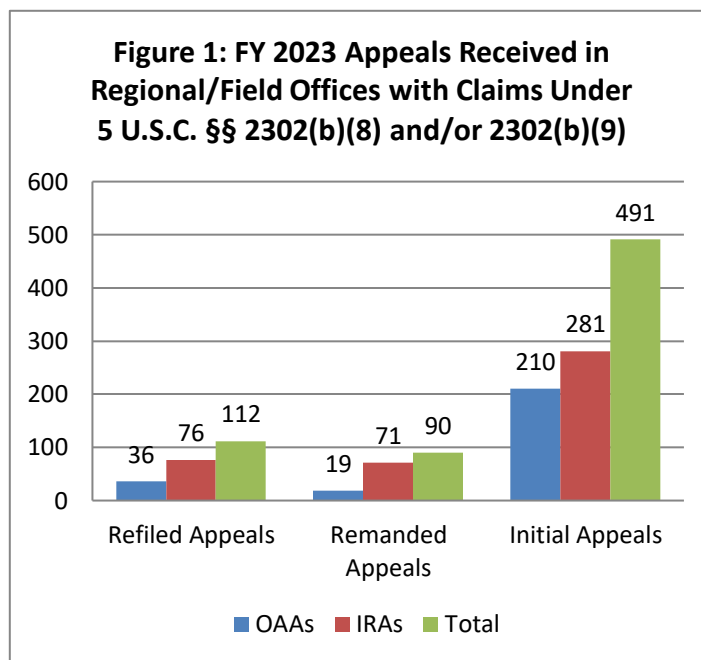
GPRAMA requirements and recent program evaluation guidance from OMB could require acquiring resources and enhancing program evaluation staff. A relatively small increase in MSPB's program evaluation resources and staff would likely yield a large return in efficiency and cost savings for MSPB. In turn, this would improve the value MSPB brings to agencies, Federal employees, individual parties to cases filed with MSPB, and the public.

## Appendix A: WPEA Data for FY 2023

In accordance with the WPEA, MSPB is providing this information about whistleblower appeals in FY 2023. This report reflects cases processed from October 1, 2022, through September 30, 2023, and includes data on receipts and outcomes of initial appeals, and receipts of PFRs in which violations of 5 U.S.C. § 2302(b)(8) and/or 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D) were alleged.<sup>14</sup> Adjudicating appeals is an ongoing process, and appeals are often closed in a different year than they were received. Therefore, the figures for cases received (i.e., Figure 1 for initial appeals and Figure 9 for PFRs) and outcomes of cases processed (i.e., Figures 3, 6, and 10) in any given year will not be comparable.

There generally are two types of appeals that can involve claims of reprisal under §§ 2302(b)(8) and (b)(9). An otherwise appealable action (OAA) appeal involves an action that is directly appealable to the Board, such as a removal, demotion, or suspension of more than 14 days. In such an appeal, MSPB will review both the appealable action and the claim of reprisal for engaging in protected activity as an affirmative defense. An individual right of action (IRA) appeal—which may be based on either an action that could have been appealed directly to the Board or on a less severe action that is not directly appealable—is limited to the issue of whether the action was taken because of protected activity. In this kind of case, the individual can appeal the claim of reprisal to the Board only if they first file a complaint with OSC, and OSC does not seek corrective action on the individual’s behalf.<sup>15</sup>

Figure 1 displays data on the number and types of appeals that MSPB received in FY 2023 in which violations of 5 U.S.C. §§ 2302(b)(8) and/or (b)(9) were alleged. Appeals received by RO/FOs fall into three categories: initial appeals, remanded appeals, and refiled appeals. Initial appeals are new appeals filed by an appellant for the first time and thus represent new cases alleging reprisal. Remanded appeals are appeals that were previously adjudicated by a RO/FO but which have been remanded on PFR by the Board at HQ or by a Federal circuit court on appeal of a final Board decision. Refiled appeals are appeals that are refiled—by the appellant or on the AJ’s own motion—because they were previously dismissed without prejudice (DWOP) to refiling. A DWOP is a procedural option that allows for the dismissal and subsequent refiling of an appeal, often to allow the parties more time to prepare for the litigation of their cases or to explore settlement talks or mediation. Remanded or refiled

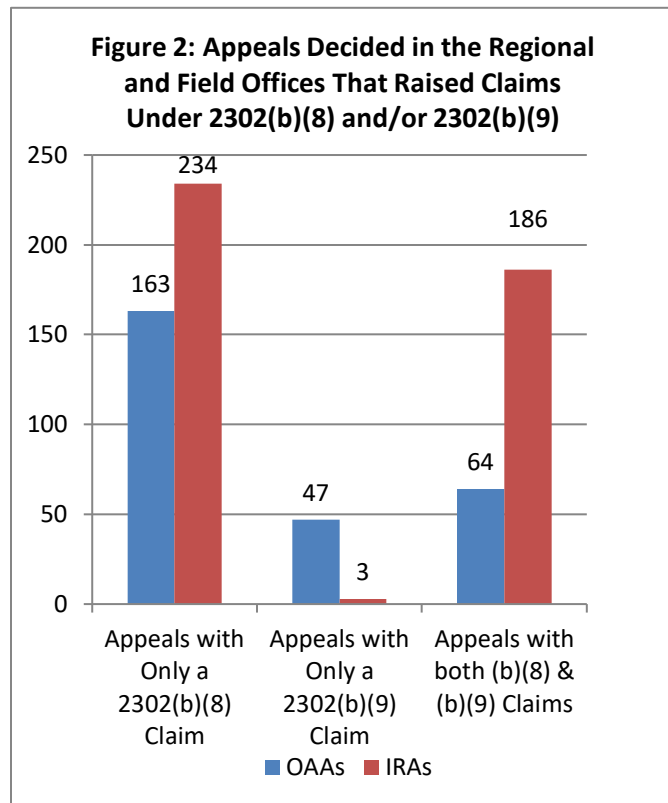


<sup>14</sup> This report generally refers to claims raised under 5 U.S.C. § 2302(b)(9); however, this report does not include claims raised under § 2302(b)(9)(A)(ii), as 5 U.S.C. § 1221(a) allows appellants to seek corrective action from MSPB as a result of prohibited personnel practices described only in § 2302(b)(8) or § 2302(b)(9)(A)(i), (B), (C), or (D).

<sup>15</sup> Complaints in IRA appeals go first to OSC for review and, if warranted, OSC conducts an investigation. According to OSC, it is during this process that agencies often choose to take corrective action or settle an issue informally before OSC files a case with MSPB. MSPB adjudicates IRA appeals that have had the chance to be resolved while at OSC but for which OSC did not seek corrective action.



appeals are not new cases; they are separately docketed appeals that are related to initial appeals filed earlier in the same FY or in a prior FY. If the related initial appeal was filed in the same FY, it would be included in the number of initial appeals. Because the RO/FOs must process and issue decisions in remanded and refiled appeals, these appeals are considered part of MSPB’s workload of appeals containing claims under §§ 2302(b)(8) and/or 2302(b)(9).



An appellant can file an appeal alleging a violation of § 2302(b)(8) only, a violation of § 2302(b)(9) only, or a violation of both.<sup>16</sup> Figure 2 depicts the number of appeals, both OAA appeals and IRA appeals, that were decided in FY 2023 in the RO/FOs and whether the appeal contained a claim(s) under § 2302(b)(8) only; a claim(s) under § 2302(b)(9) only; or claims under both §§ 2302(b)(8) and (b)(9).

Figure 3 breaks down the totals displayed in Figure 2 for OAA appeals by depicting the outcomes of OAA appeals decided in the RO/FOs in which violations of §§ 2302(b)(8) and/or (b)(9) were alleged. It is important to note that the outcome of an OAA *appeal* is separate from the outcome of a § 2302(b)(8) or (b)(9) *claim*.<sup>17</sup> An OAA appeal can be dismissed for a variety of reasons that have nothing to do with the merits of any reprisal claim raised therein. For example, the appeal may be untimely

filed, the action or the appellant might be outside of the Board’s appellate jurisdiction, or the appellant might have made a binding election to challenge the action in another forum (such as through negotiated grievance or arbitration procedures). This figure includes appeals that were withdrawn and appeals that were DWOP.<sup>18</sup> Cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties; thus, the agreement resolves the dispute in a way that allows both parties to achieve some positive result.

<sup>16</sup> Sections 2302(b)(8) and (b)(9) prohibit reprisal against an employee or applicant for employment based on different types of protected activity. Section 2302(b)(8) prohibits reprisal because of any disclosure that the employee or applicant reasonably believes evidences certain enumerated categories of wrongdoing. Employees who allege a violation of (b)(8) are typically referred to as alleging “reprisal for whistleblowing.” Section 2302(b)(9)(A)(i) prohibits reprisal because of the exercise of any appeal, complaint, or grievance right with regard to a violation of § 2302(b)(8). Section 2302(b)(9)(B) prohibits reprisal because of testifying for or otherwise assisting any individual in the exercise of any right under § 2302(b)(9)(A)(i) or (ii). Section 2302(b)(9)(C) prohibits reprisal because of cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency or OSC. Section 2302(b)(9)(D) prohibits reprisal for refusing to obey an order that would require the individual to violate a law, rule, or regulation.

<sup>17</sup> The WPEA requires MSPB to report outcomes of appeals; however, when possible, MSPB also reports and summarizes the outcomes of claims.

<sup>18</sup> Note that DWOP cases are listed here for completeness, but they do not reflect the final outcomes of whistleblower issues. DWOP cases can be refiled for final review of these issues.

Figure 3: Outcomes in OAA Appeals Decided in Regional/ Field Offices						
Types of Claim(s) Raised	DWOP	Settled	Withdrawn	Dismissed (other than DWOP)	Adjudicated on the Merits	Total
Section 2302(b)(8) Only	18	39	3	73	30	163
Section 2302(b)(9) Only	4	12	6	13	12	47
Both Sections 2302(b)(8) and (b)(9)	8	11	2	23	20	64

In a case in which an appellant raises both §§ 2302(b)(8) and (b)(9) claims, the outcomes of those claims may differ.<sup>19</sup> Therefore, we are reporting the outcome of both (b)(8) and (b)(9) claims for cases in which both claims were raised and the OAA appeal was adjudicated on the merits, as depicted in Figures 4 and 5 below.

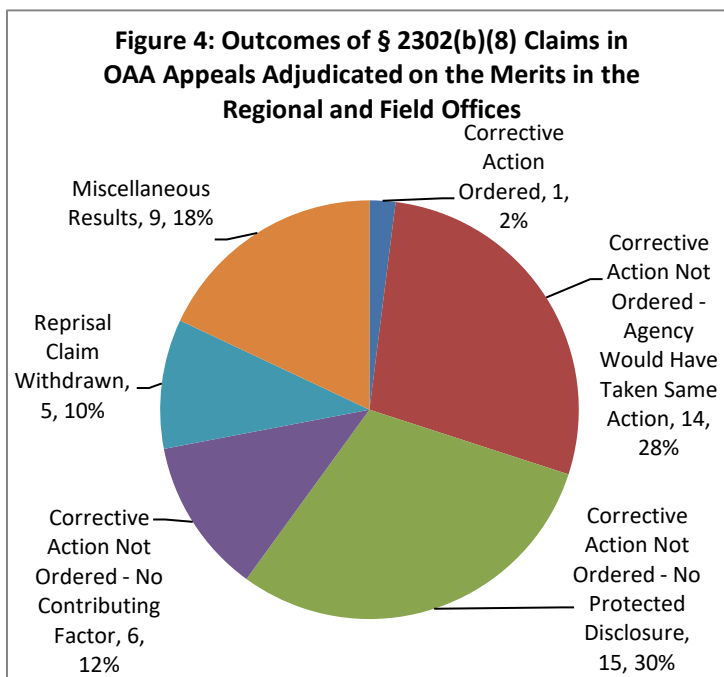


Figure 4 displays the resolution of § 2302(b)(8) claims within the 50 OAA appeals adjudicated on the merits in the RO/FOs.<sup>20 21</sup> It includes both the 30 OAA appeals adjudicated on the merits with a § 2302(b)(8) claim only and the 20 OAA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in Figure 3.

The fact that corrective action is not ordered in an OAA appeal does not necessarily mean that the appellant obtained no relief. For example, in a removal appeal in which the appellant alleges reprisal, the Board could reverse the removal action because the agency failed to prove that the appellant committed the charged misconduct, or

it could mitigate the removal penalty, while also finding that the appellant failed to establish reprisal. In any appeal involving a reprisal claim, the Board shall order corrective action for the reprisal claim if the appellant has demonstrated that: (1) they made a protected disclosure; (2) the agency has taken

<sup>19</sup> For example, an appellant may allege that they were removed in violation of § 2302(b)(8) for disclosing to their supervisor their belief that a practice at the agency endangered public health. In the same appeal, they also may allege that they were removed in violation of § 2302(b)(9) for testifying in a coworker’s MSPB appeal which involved remedying a violation of § 2302(b)(8). In such a case, the appellant may decide to withdraw their § 2302(b)(9) claim but prevail on their (b)(8) claim. Under that scenario, the outcome of the (b)(9) claim would be “Withdrawn,” whereas the outcome of the (b)(8) claim would be “Corrective Action Ordered.”

<sup>20</sup> Percentages have been rounded up to the next whole number.

<sup>21</sup> Figure 4 also includes a category of “Miscellaneous Results,” which represents OAA appeals that were adjudicated on the merits but wherein the § 2302(b)(8) claims in those cases were not adjudicated on the merits. An AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. For example, an AJ may strike a reprisal claim as a sanction for an appellant’s repeated failure to comply with the AJ’s orders or determine that the Board is precluded from considering the reprisal claim because a security clearance determination is at issue.

or threatened to take a personnel action against them; and (3) their protected disclosure was a contributing factor in the personnel action. However, corrective action shall not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Figure 5 depicts the resolution of § 2302(b)(9) claims within the 32 OAA appeals adjudicated on the merits in the RO/FOs. This figure includes the 12 OAA appeals adjudicated on the merits with a § 2302(b)(9) claim only and the 20 OAA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in

Figure 5: Outcomes of § 2302(b)(9) Claims in OAA Appeals Adjudicated on the Merits in Regional/Field Offices				
Corrective Action Ordered	Corrective Action Not Ordered	Claim Withdrawn	Miscellaneous Results	Total
1	27	0	4	32

Figure 3. Figure 4 divides the outcomes of § 2302(b)(8) claims within OAA appeals adjudicated on the merits into subcategories of “Corrective Action Not Ordered” (i.e., no contributing factor, no protected disclosure, and the agency would have taken the same action). However, Figure 5 displays the outcomes of § 2302(b)(9) claims within OAA appeals adjudicated on the merits only in the broader categories of “Corrective Action Ordered,” “Corrective Action Not Ordered,” “Claim Withdrawn,” and “Miscellaneous Results.”<sup>22</sup> As explained above with respect to Figure 4, an AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. As previously noted, the outcome of an *appeal* is separate from the outcome of a §§ 2302(b)(8) or (b)(9) *claim*.

Figure 6: Outcomes in IRA Appeals Decided in Regional/Field Offices							
Type of Claim(s)	DWOP	Settled	Withdrawn	Dismissed, Failure to Exhaust	Dismissed, Other Grounds	Adjudicated on Merits	Total
Section 2302(b)(8) Only	59	40	11	12	83	29	234
Section 2302(b)(9) Only	0	2	0	0	0	1	3
Both Sections 2302(b)(8) and (b)(9)	41	39	11	8	50	37	186

Figure 6 breaks down the totals displayed in Figure 2 for IRA appeals by depicting the outcomes of those cases decided in the RO/FOs in which violations of §§ 2302(b)(8) and/or (b)(9) were alleged. In an IRA appeal, an appellant “shall seek corrective action from OSC before seeking corrective action from the Board.”<sup>23</sup> If an IRA appeal is dismissed for “failure to exhaust” (i.e., because the appellant failed to first seek corrective action from OSC), the appellant can file a new IRA appeal after fulfilling the administrative exhaustion requirement.<sup>24</sup> Figure 6 also includes IRA appeals that were dismissed without prejudice.<sup>25</sup> In addition, as in OAA appeals, cases can be settled at the

<sup>22</sup> The “Miscellaneous Results” category represents OAA appeals that were adjudicated on the merits but for which the § 2302(b)(9) claims in those cases were not adjudicated on the merits.

<sup>23</sup> 5 U.S.C. § 1214(a)(3).

<sup>24</sup> In Figure 6, the category of “Dismissed, Other Grounds” would include IRA appeals in which a violation of only § 2302(b)(9) was alleged and the appeals were dismissed for failure to exhaust. There were no cases in this category this year.

<sup>25</sup> Note that DWOP cases are listed here for completeness, but they do not reflect the final outcomes of whistleblower issues. DWOP cases can be refiled for final review of these issues.

discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that allows both parties to achieve some positive result.

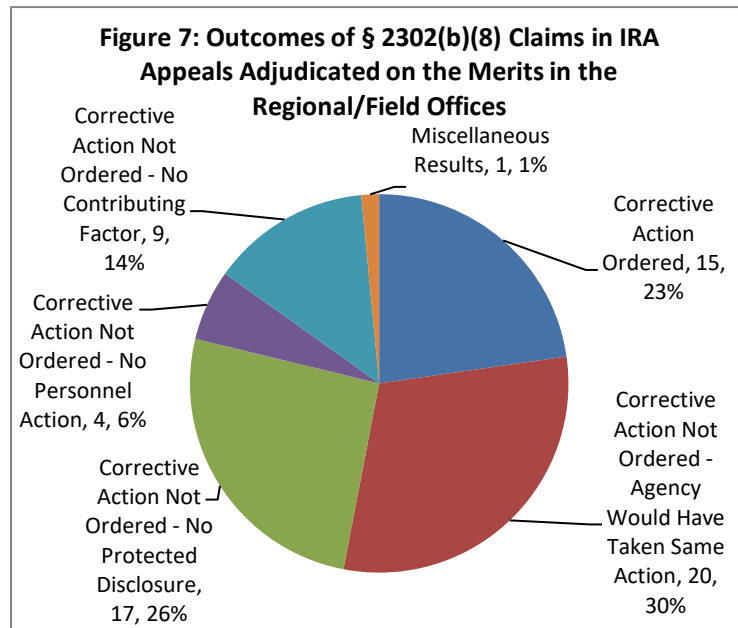


Figure 7 depicts the resolution of § 2302(b)(8) claims within the 66 IRA appeals adjudicated on the merits in the RO/FOs.<sup>26</sup> It includes the outcomes of the 29 IRA appeals adjudicated on the merits with a § 2302(b)(8) claim only and the 37 IRA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in Figure 6. Just as in an OAA appeal, the Board shall order corrective action for the reprisal claim in an IRA appeal if the appellant has demonstrated that: (1) they made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against them; and (3) their protected

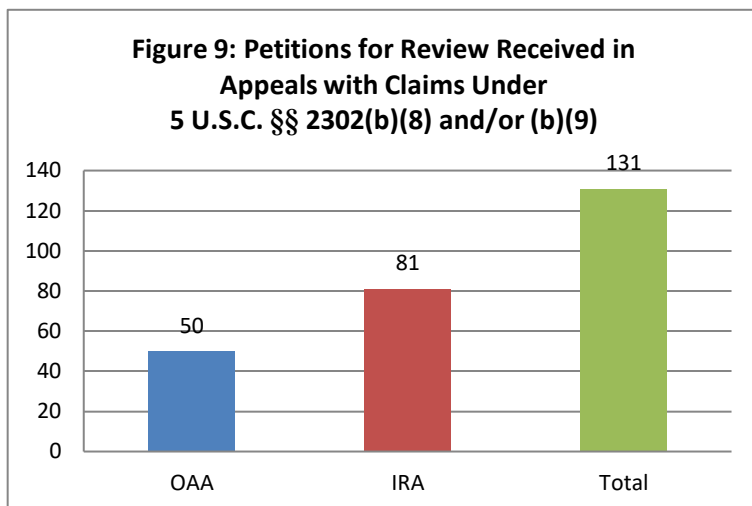
disclosure was a contributing factor in the personnel action. However, corrective action shall not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Figure 8 depicts the resolution of § 2302(b)(9) claims within the 38 IRA appeals adjudicated on the merits in RO/FOs. This includes the outcomes of the one IRA appeal adjudicated on the merits with a § 2302(b)(9) claim only and the 37 IRA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in Figure 6. While Figure 7 divides the outcomes of § 2302(b)(8) claims within IRA appeals adjudicated on the merits into subcategories of “Corrective Action Not Ordered” (i.e., no contributing factor, no personnel action, no protected disclosure, and the agency would have taken the same action), Figure 8 displays the outcomes of § 2302(b)(9) claims within IRA appeals adjudicated on the merits only in the broader categories of “Corrective Action Ordered,” “Corrective Action Not Ordered,” “Claim Withdrawn,” and “Miscellaneous Results.”

**Figure 8: Outcomes of § 2302(b)(9) Claims in IRA Appeals Adjudicated on the Merits in Regional/Field Offices**

Corrective Action Ordered	Corrective Action Not Ordered	Claim Withdrawn	Miscellaneous Results	Total
8	30	0	0	38

<sup>26</sup> Percentages have been rounded up to the next whole number.



An appellant or an agency dissatisfied with an AJ’s initial decision on an OAA or IRA appeal may file a PFR with the full Board at MSPB headquarters. Figure 9 shows the number of PFRs the Board received (on both OAA and IRA appeals) involving §§ 2302(b)(8) and/or (b)(9) claims.

In addition, on June 22, 2022, Member Raymond Limon, Member Tristan Leavitt, and Vice Chairman and Acting Chairman Cathy Harris

issued an updated policy reiterating that the Clerk of the Board may exercise the delegated authority to grant a withdrawal of a PFR when requested by a petitioner if there is no apparent untimeliness of the petition and if no other party objects to the withdrawal.<sup>27</sup> In FY 2023, the Office of the Clerk of the Board granted 6 requests to withdraw PFRs in cases that involved §§ 2302(b)(8) and/or (b)(9) claims.

Figure 10 shows the outcomes of PFR cases involving §§2302(b)(8) and/or (b)(9) claims. It is important to note that PFR outcomes are the decisions of the Board relative to the initial decision issued by the AJ, not relative to the initial action taken by the agency. Under 5 C.F.R. § 1201.115, the Board may issue a decision that denies or grants the PFR and affirms, reverses, or vacates, in whole or in part, the initial decision. Whether a PFR is denied or granted may have nothing to do with the reprisal claim. If the Board’s decision is final, it will include a notice of appeal rights to the appellant. Alternatively, the Board may remand the appeal to the AJ for further proceedings, in which case the Board’s decision is not yet final and no appeal rights are due. The Board vacates an initial decision when it issues a final decision that reaches a different outcome from that reached in the initial decision.

**Figure 10: Outcomes of Petitions for Review in Cases with Claims Under 5 U.S.C. §§ 2302(b)(8) and/or (b)(9)**

Settled	Dismissed	Affirmed	Remanded to Regional/Field Office	Reversed	Vacated	Withdrawn	No Majority	Total
40	24	264	82	10	1	0	1	422

During FY 2023, the Board issued decisions on 422 PFRs of appeals that involved §§2302(b)(8) and/or (b)(9) claims. Eighty-two of these appeals were remanded. In OAA

appeals, the scope of the remand may or may not pertain to the reprisal claim. Therefore, when a PFR in an OAA appeal is remanded to the RO/FO, it may present an opportunity for reprisal claims within the case to be re-evaluated. In IRA appeals, the only issue before the Board is whether a personnel action was taken in reprisal for engaging in protected activity. Settlements at the PFR level are voluntary and are reached at the discretion of the parties. The settlement agreements contain terms that are acceptable to both parties, thus the agreement resolves the dispute in a way that allows both parties to achieve some positive result. During FY 2023, the Board issued one order

<sup>27</sup> See [https://mspb.gov/appeals/files/Policy\\_Regarding\\_Withdrawal\\_of\\_a\\_Petition\\_for\\_Review\\_1515773.pdf](https://mspb.gov/appeals/files/Policy_Regarding_Withdrawal_of_a_Petition_for_Review_1515773.pdf). This policy was issued following a similar policy that was signed on May 11, 2018, by former Vice Chairman and Acting Chairman Mark A. Robbins.

in a case with a claim under 2302(b)(8) and/or(b)(9) where there was no majority; thus, the initial decision became the final decision of the Board. *See* 5 C.F.R. § 1200.3(b).

## Appendix B: Information Required under 5 U.S.C. § 7701(i)(1) and (2)

In accordance with 5 U.S.C. § 7701(i)(1) and (2), MSPB provides FY 2023 case processing information. In FY 2023, MSPB processed 4,572 total cases decided in the ROs/FOs (not including ALJ cases). Of the 4,135 IDs and addendum cases processed in the RO/FOs, 74% were processed in 120 days or less.<sup>28</sup>

MSPB's quorum was restored on March 4, 2022, and the Board began the effort to reduce the inventory it inherited from the 5-year lack of a quorum. For FY 2023 and FY 2024, MSPB eliminated the HQ timeliness target because average processing time for HQ will be extremely high in the early years of inventory reduction, will not convey helpful information about HQ case processing or inventory reduction, and will not be useful in managing the process. Instead, MSPB set a target to issue decisions in at least 1,000 cases in FY 2023, including decisions in at least 750 of the oldest cases pending at the beginning of FY 2023. The Board issued decisions in 1,484 cases in FY 2023, including in 905 of the oldest cases pending before the Board as of October 1, 2022 (the beginning of FY 2023). Additionally, in FY 2023, 14 PFR cases were withdrawn by order of the Clerk of the Board under a policy effected by the Board on June 28, 2022.<sup>29</sup> These cases did not involve a decision issued by the Board so are not included in any case processing statistics.

In general, each case is adjudicated on its merits consistent with law and legal precedent and in a manner consistent with the interest of fairness, which is achieved by assuring due process and the parties' full participation at all stages of the appeal. Under normal circumstances, several factors contribute to the length of time it takes to resolve a particular case. At the initial appeal level, it takes time to issue notices, respond to discovery and other motions, subpoena documents and people, hold conferences with the parties, arrange for and question witnesses, present evidence, conduct hearings, and, often, participate in ADR efforts. When there is good cause to do so, the parties may be granted additional time to preserve due process. Adjudication also may require more time when cases involve new or particularly complex legal issues, numerous factual issues, or the interpretation of new statutory or regulatory provisions. In addition, at the PFR level, when Board members do not agree about the disposition of PFR issues or cases, the need to resolve disagreements or prepare separate opinions may increase the time needed for adjudication. Additional factors that affect processing time are discussed above in the performance results section of this APR-APP.

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<sup>28</sup> In June 2017, Congress set a 180-day limit for MSPB AJs to issue decisions in certain VA adverse action cases (38 U.S.C. § 714(d)). In FY 2023, there were 46 section 714 cases decided in the RO/FOs. This number includes 6 Board remands and 1 Court remand. The initial appeals generally involve mixed-case appeals that went through the EEO process, or actions put on hold by the VA's internal investigation process, Office of Accountability and Whistleblower Protection. The number does not include attorney fees, petitions for enforcement or damages cases.

<sup>29</sup> See [https://www.mspb.gov/appeals/files/Policy\\_Regarding\\_Withdrawal\\_of\\_a\\_Petition\\_for\\_Review\\_1515773.pdf](https://www.mspb.gov/appeals/files/Policy_Regarding_Withdrawal_of_a_Petition_for_Review_1515773.pdf).

## Appendix C: Modernization of Public-facing Digital Services Report<sup>30</sup>



### U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Chairman

1615 M Street, N.W.

Washington, DC 20419

Phone: (771) 210-1633 ; Fax (202) 653-7208

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#### Acting Chairman

January 23, 2024

The Honorable Shalanda D. Young  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

RE: Modernization of Public-facing Digital Services Report

Dear Director Young,

In accordance with sections 3(b) and (d) of the 21st Century Integrated Digital Experience Act (21st Century IDEA), I am pleased to provide the Merit Systems Protection Board's (MSPB) report on modernizing our public-facing digital services.

MSPB has two primary websites for public engagement: our electronic filing website, eAppeal at <https://e-appeal.mspb.gov>, and our agency website at <https://www.mspb.gov>. Both websites are part of a broader information technology (IT) modernization effort that began in fiscal year (FY) 2018 with requirements development for updating and consolidating our legacy case management, document assembly, and document management systems, among others. Our websites rely on and interact with the documents and information in these legacy systems. As such, each is a priority for modernization to meet the requirements in section 3(a) of 21st Century IDEA.

In FY 2019, MSPB contracted with Tyler Technologies, a FedRAMP-certified provider of case management software and IT services, to begin this effort. To date, 90% of the required application functionality for electronic filers (e-filing) is in production, allowing MSPB e-filers to successfully file and monitor their appeals. The remaining required e-filing functionality includes enhancements to existing functionality and is scheduled for deployment in FY 2024. The total projected cost for modernizing the e-filing portion of the application is \$900,000.

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<sup>30</sup> In accordance with the 21<sup>st</sup> Century Integrated Digital Experiences Act, (Pub. L. 115-336).



MSPB began modernizing its agency website in FY 2019 with the goal of adopting U.S. Web Design Standards, improving search functionality using Search.gov, leveraging the General Services Administration's Digital Analytics Program, and providing an updated, consistent appearance across devices, including mobile. The new website was released to agency employees for testing during FY 2020 and again in FY 2021 with public release in July 2021. The new website fully complies with all eight elements in section 3(a) of 21st Century IDEA. The cost for the MSPB website was \$57,000. Cloud hosting for the public site is an additional \$7,500 per year.

We are pleased with our progress in modernizing these public-facing digital services, and we look forward to completing the implementation of the modernized e-filing system in FY 2024. Should you or your staff have any questions about this report, please contact Craig Thomas, Chief Information Officer, at 202-254-4429 or [craig.thomas@mspb.gov](mailto:craig.thomas@mspb.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy Harris", with a long horizontal flourish extending to the right.

Cathy A. Harris  
Acting Chairman

## Appendix D: More Information about MSPB

### MSPB's Role, Functions, and Scope of Responsibilities

During congressional hearings on the CSRA before it was passed in 1978, various members of Congress testified and described the role and functions of MSPB, stating that “[MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with insuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”<sup>31</sup> MSPB inherited CSC’s adjudication functions and provides due process to employees as an independent, third-party adjudicatory authority for employee appeals including adverse actions (such as removals, furloughs, and certain suspensions) and retirement decisions. For matters within its jurisdiction, MSPB was granted the statutory authority to develop its adjudicatory processes and procedures, issue subpoenas, call witnesses, and enforce compliance with MSPB decisions. Congress also granted MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and Federal HC management issues to ensure that employees are managed under MSPs and free from PPPs. In addition, Congress granted MSPB the authority and responsibility to review the rules, regulations, and significant actions of OPM. After the CSRA, Congress expanded MSPB’s jurisdiction to hear appeals under a variety of other laws, giving it authority over a wide range of appeals.<sup>32</sup> Under various statutes, MSPB serves as an independent, third-party adjudicatory authority for over two million Federal civilian employees in almost every Federal department and agency, applicants for Federal civilian jobs, and certain U.S. Postal Service employees and uniformed military service members.<sup>33</sup>

Findings and recommendations from MSPB’s merit systems studies help to strengthen merit and improve public management and administration in the Federal executive branch. Although MSPB’s studies are focused on the Federal workforce and merit systems, they generally are applicable to the management of Federal legislative branch and judicial branch employees and even to public employees at the state and local levels. Through its authority to review and act on OPM rules, regulations, and significant actions, MSPB protects the merit systems and helps ensure that Federal employees are managed in adherence with MSPs and free from PPPs. This authority includes employees in all agencies for which OPM sets policy, beyond the specific individual employees who may file appeals with MSPB. MSPB’s customers, partners, and stakeholders include a wide range of policymakers; Federal agencies and councils; Federal employees and managers and groups that represent them; appellants, appellant representatives, and agency representatives; professional legal groups, academia, and management research organizations; and good-government groups.

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<sup>31</sup> Legislative History of the Civil Service Reform Act of 1978, Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. 2, pages 5-6.

<sup>32</sup> Beyond those included in 5 U.S.C. chapters 43 and 75, and all those set out at 5 C.F.R. Part 1201.3; the Federal Employee Retirement System Act of 1986, 5 U.S.C. § 8461(e), (Pub. L. 99-335), Title I, §§ 101, 100 Stat. 571 (1986); the Uniformed Services Employment and Reemployment Rights Act, (Pub. L. 103-353), codified at 38 U.S.C. §§ 4301-4335; whistleblower appeals including IRA appeals involving personnel actions listed in 5 C.F.R. § 1209.4(a) and OAAs are listed in 5 C.F.R. §§ 1201.3 (a)(1) through (a)(11), and as amended by the WPEA (Pub. L. 112-199); the Hatch Act Modernization Act of 2012; the VA Accountability and Whistleblower Protection Act, (Pub. L. [115-41](#)), enacted on June 23, 2017; the Follow the Rules Act (Pub. L. [115-40](#)), enacted on June 14, 2017; the authority for a single Board member to extend OSC stay requests (Pub. L. [115-42](#)); the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 (Pub L. [115-73](#)), enacted on October 26, 2017; and most recently, section 5721 of the NDAA of FY 2020 (Pub. L. [116-92](#)), enacted on December 20, 2019.

<sup>33</sup> This includes most Federal employees under 5 U.S.C. and others such as certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3) and RIF actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a.

## MSPB Offices and Their Functions

MSPB is headquartered in Washington, D.C. and has six ROs and two FOs located throughout the United States. The agency is authorized up to 235 FTE employees to conduct and support its statutory duties. Other Federal agencies also perform many support functions for MSPB through interagency agreements.

The **Board members**, consisting of the Chairman, Vice Chairman, and Member, are appointed by the President, confirmed by the Senate, and serve overlapping, nonrenewable 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. Except for the EEO Director, who reports directly to the Chairman, the Directors of the following offices report to the Chairman through the Executive Director.

The **Office of the Administrative Law Judge** adjudicates and issues IDs in corrective and disciplinary action complaints (including Hatch Act complaints) brought by OSC, proposed agency actions against ALJs, MSPB employee appeals, and other cases assigned by MSPB. In FY 2021, the functions of this office were performed by ALJs at the Federal Trade Commission and the U.S. Coast Guard under interagency agreements.

The **Office of Appeals Counsel** conducts legal research and prepares proposed decisions for the Board to consider for cases in which a party files a PFR of an ID issued by an AJ and in most other cases decided by the Board. The office prepares proposed decisions on interlocutory appeals of AJ rulings; 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** receives and processes cases filed at MSPB HQ, rules on certain procedural matters, and issues Board decisions and orders. It serves as MSPB's public information center; coordinates media relations; operates MSPB's library and online information services; and administers the FOIA, privacy, and accessibility programs. It also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records systems, website content, and the Government in the Sunshine Act program.

The **Office of Equal Employment Opportunity** plans, implements, and evaluates MSPB's EEO 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 EEO Director also coordinates MSPB's Diversity and Inclusion Council.

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

The **Office of the General Counsel**, 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; prepares proposed decisions for the Board to enforce a final MSPB decision or

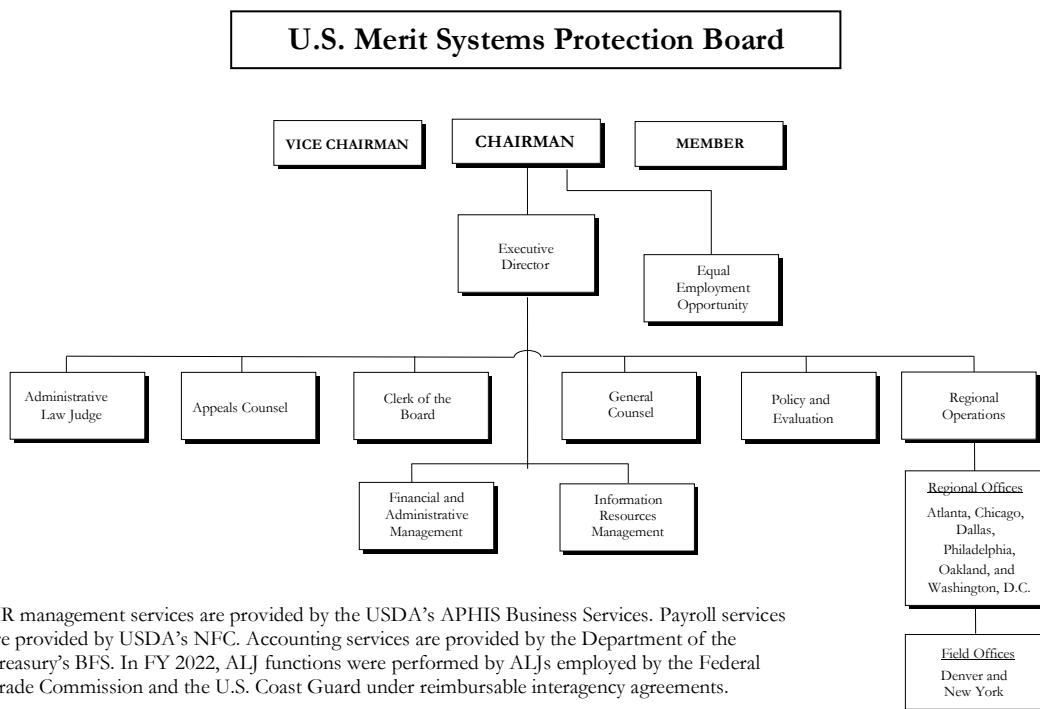
order, in response to requests to review OPM regulations, and for other assigned cases; and coordinates the agency’s legislative policy and congressional relations functions. The office also drafts regulations, conducts MSPB’s ethics program, and performs the inspector general function, including planning and directing audits and investigations.

The **Office of Information Resources Management** develops, implements, and maintains MSPB’s IT systems and enterprise applications and manages MSPB’s cybersecurity program. These services help MSPB manage its caseload efficiently and carry out its administrative and research responsibilities.

The **Office of Policy and Evaluation** 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 widely distributed. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB studies. The office also carries out MSPB’s statutory responsibility to review and report on the significant actions of OPM. The office conducts special projects and program evaluations for MSPB and has responsibility for executing MSPB’s functions required by GPRAMA.

The **Office of Regional Operations** oversees the agency’s six ROs and two FOs that receive and process initial appeals and related cases. This office provides guidance to AJs and oversight of the initial appeals adjudication process. It also manages MSPB’s MAP and conducts the agency’s PFR settlement program. AJs in the RO/FOs are responsible for adjudicating assigned cases and for issuing fair, well-reasoned, and timely IDs.

### MSPB Organizational Chart



HR management services are provided by the USDA’s APHIS Business Services. Payroll services are provided by USDA’s NFC. Accounting services are provided by the Department of the Treasury’s BFS. In FY 2022, ALJ functions were performed by ALJs employed by the Federal Trade Commission and the U.S. Coast Guard under reimbursable interagency agreements.

## How MSPB Brings Value to the Merit Systems, the Federal Workforce, and the Public

The Federal merit systems are based on widely accepted organizational management practices and values that have been developed and reinforced through historical experience. There are costs and benefits associated with merit-based management of the Federal workforce. Ensuring merit system values, such as fairness in all personnel matters; hiring and advancement based on qualifications and performance; protection from arbitrary personnel decisions, undue partisan political influence, and reprisal; and assurance of due process incurs necessary costs (e.g., in time and effort) that are not comparable to the private sector. For example, the Federal Government may require more time and effort to fill a Federal job than a private employer as a result of: (1) requirements for public notice of vacancies to support the merit principle of fair and open competition to attain a workforce from all segments of society; (2) fair and rigorous assessment of applicants consistent with the merit principles of equal opportunity and selection based on relative ability; and (3) review and documentation of applicant eligibility and entitlements in compliance with laws and public policies, such as those relating to veterans' preference and the disabled. These processes improve the overall quality of the workforce and help ensure that Federal jobs and job protections are provided to the most highly qualified applicants. This, in turn, helps reduce the likelihood that the Government will need to undertake the process to remove employees in the future. These management costs are necessary to ensure the goal of a strong, highly qualified, consistently staffed, merit-based civil service that serves in the public's interest over the long term rather than at the pleasure of political leaders.

Despite our relatively small size and budget, MSPB provides enormous value to the Federal workforce, Federal agencies, and the American public by helping to ensure a more effective and efficient merit-based civil service that provides better service to the public. MSPB adds value by providing superior adjudication services, including ADR, which ensures due process and results in decisions that are based in law, regulation, and legal precedent, not on arbitrary or subjective factors. MSPB's adjudication process is guided by reason and legal analysis, which are hallmarks of both the legal system and the merit systems. The quality of MSPB's decisions is evidenced by the high affirmance rate of its decisions by the courts. Centralized adjudication of appeals by a neutral, independent third party improves the fairness and consistency of the process and resulting decisions and is more efficient than separate adjudication of appeals by each agency. The body of legal precedent generated through adjudication and the transparency and openness of the adjudication process provide guidance to agencies and employees on proper behavior and the ramifications of improper behavior. This information, shared through outreach, our regulations, and extensive material on our website, improves the long-term effectiveness and efficiency of the civil service and supports better adherence to MSPs and prevention of PPPs. This adjudication information also improves the effectiveness and efficiency of the adjudication process by helping parties understand the law and learn how to prepare thorough and legally sound cases. Strong enforcement of MSPB decisions ensures timely, effective resolution of current disputes and encourages more timely compliance with future MSPB decisions.

MSPB's high-quality, objective merit systems studies provide value by identifying and assessing innovative and effective merit-based management policies and practices and recommending improvements. MSPB studies have shown that improved hiring and selection, improved merit-based management, and greater employee engagement lead to a highly qualified Federal workforce, improved organizational performance, and better service to the public. Results, findings, and recommendations from MSPB's merit systems studies function are shared through reports, research briefs, newsletters, and other articles posted to our website and through outreach. For example, one MSPB report provides information on and dispels misconceptions about due process in the civil service, which is

useful to policymakers, managers, legal practitioners, and other stakeholders. Effective management processes also help reduce the occurrence and costs of PPPs, which negatively affect agency and employee performance. Review of OPM's significant actions, rules, and regulations protects the integrity and viability of the civil service and merit systems and provides benefits similar to the merit systems studies. Better merit-based management helps improve employee and agency performance. It also logically leads to less employee misconduct and fewer adverse actions, which reduces costs in terms of fewer PPPs and fewer unsubstantiated appeals. This provides indirect value to the American taxpayer in decreased Governmentwide costs and increased confidence that the Government is doing its job well and appropriately managing its workforce.

## **The Merit System Principles and Prohibited Personnel Practices**

The CSRA codified for the first time the values of the merit systems as MSPs and delineated specific actions and personnel practices that are PPPs because they are contrary to merit system values.<sup>34</sup> MSPs include the values of fair and open competition for positions, with equal opportunity to achieve a workforce from all segments of society; merit-based selection for jobs; advancement and retention based on qualifications and job performance; fair and equitable treatment in all aspects of management; equal pay for work of equal value; and training that improves organizational and individual performance. MSPs also include protection from arbitrary action, favoritism, or coercion for political purposes, and protection against reprisal for lawful disclosure of violations of law and waste, fraud, and abuse. MSPs further state that the workforce should be used effectively and efficiently and that all employees should maintain high standards of integrity, conduct, and concern for the public interest.

PPPs state that employees shall not take or influence others to take personnel actions that: discriminate for or against an individual or applicant on the bases of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation; consider information beyond the person's qualifications, performance, or suitability for public service; or coerce political activity or commit reprisal for refusal to engage in political activity. These actions also may not deceive or willfully obstruct an individual's rights to compete for employment; influence a person to withdraw from competition to affect the prospects of another; or grant preference beyond that provided by law. The actions also may not be based on or create nepotism; in retaliation or reprisal for whistleblowing—the lawful disclosure of a violation of law, rule or regulation, gross mismanagement or gross waste of funds, abuse of authority, or danger to public health or safety; in retaliation or reprisal for an employee's exercise of his or her rights and legal protections, or assistance to another in the person's exercise of his or her rights; or based on past conduct that does not adversely affect the job. The actions also must not knowingly violate veterans' preference requirements; violate MSPs; or implement or enforce a nondisclosure policy, form, or agreement, which lacks a specific statement that its provisions are consistent with and do not supersede applicable statutory whistleblower protections. On October 26, 2017, Congress created a 14<sup>th</sup> PPP, which prohibits access of medical records as part of, or to further, any conduct related to any other PPP.<sup>35</sup> On December 20, 2019, section 5721 of the NDAA for FY 2020 expanded the definition of disclosure under 5 U.S.C. § 2302(b)(8) to include disclosures to Congress.<sup>36</sup>

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<sup>34</sup> 5 U.S.C. § 2301 and § 2302, respectively. And see MSPB's website for further information on [MSPs](#) and [PPPs](#).

<sup>35</sup> The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, (Pub. L. [115-73](#)), amends 5 U.S.C. § 2302(b) to add "(14) access to the medical records of another employee or applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13)."

<sup>36</sup> The NDAA for FY 2020, (Pub. L. [116-92](#)).

## List of Common Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
AES	Annual Employee Survey
AFR	Annual Financial Report
AJ	Administrative Judge
ALJ	Administrative Law Judge
APHIS	USDA’s Animal and Plant Health Inspection Service
APR-APP	Annual Performance Report and Annual Performance Plan
AR	MSPB Annual Report
BFS	Department of the Treasury’s Bureau of Fiscal Service
CAFC	Court of Appeals for the Federal Circuit
CBJ	Congressional Budget Justification
CSC	Civil Service Commission
CSRA	Civil Service Reform Act of 1978
DWOP	Dismissal Without Prejudice
e-Adjudication	Electronic Adjudication
e-Filing	Electronic Filing
ECF	Electronic Case Files
EEO	MSPB’s Office of Equal Employment Opportunity
EHRI	Enterprise Human Resources Integration
EO	Executive Order
FAIR	Federal Activities Inventory Reform
FAM	MSPB’s Office of Financial and Administrative Management
FAQs	Frequently Asked Questions
FDS	Federal Data Strategy
FedRAMP	Federal Risk and Authorization Management Program
FEVS	Federal Employee Viewpoint Survey
FO	MSPB Field Office
FOIA	Freedom of Information Act
FR	Federal Register
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GPRAMA	Government Performance and Results Act Modernization Act of 2010
HC	Human Capital
HR	Human Resources
HQ	Headquarters
ID	Initial Decision
<i>IoM</i>	MSPB's <i>Issues of Merit</i> newsletter
IRA	Individual Right of Action (type of whistleblower appeal)
IRM	MSPB’s Office of Information Resources Management
IS	MSPB’s Internal Survey

IT	Information Technology
MAP	MSPB's Mediation Appeals Program
MPS	MSPB's Merit Principles Survey
MSP	Merit System Principles
MSPB	Merit Systems Protection Board
NAPA	National Academy of Public Administration
NDAA	National Defense Authorization Act
NFC	USDA's National Finance Center
No FEAR Act	Notification and Federal Employee Antidiscrimination and Retaliation Act
OAA	Otherwise Appealable Action (type of whistleblower appeal)
OAC	MSPB's Office of Appeals Counsel
OCB	MSPB's Office of the Clerk of the Board
OGC	MSPB's Office of General Counsel
OMB	Office of Management and Budget
OPE	MSPB's Office of Policy and Evaluation
OPM	Office of Personnel Management
ORO	MSPB's Office of Regional Operations
OSC	Office of Special Counsel
PFR	Petition for Review of an Initial Decision
PG	Performance Goal
PIO	Performance Improvement Officer
PPP	Prohibited Personnel Practices
Pub. L.	Public Law
QRT	Quarterly Review Team
RIF	Reduction in Force
RO	MSPB Regional Office
SDWAN	Software-Defined Wide Area Network
SHCP	Strategic Human Capital Plan
TBD	To Be Determined
TSA	Transportation Security Administration
TSO	Transportation Security Officer
U.S.C.	United States Code
USDA	U.S. Department of Agriculture
VA	Department of Veterans Affairs
WPEA	Whistleblower Protection Enhancement Act of 2012





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