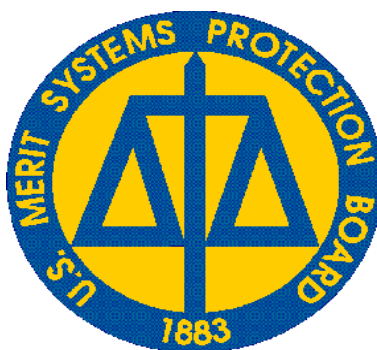


**United States**  
**Merit Systems Protection Board**



**Congressional Budget  
Justification  
For Fiscal Year 2013**

**Prepared for  
Committee on Appropriations**

**February 2012**

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# U.S. Merit Systems Protection Board

## FY 2013 Budget Request

### Executive Summary

#### Introduction

A highly qualified Federal workforce managed under the Merit System Principles (MSPs) is critical to ensuring effective and efficient Federal agency performance and service to the public. The MSPs are, in essence, good management practices and the most fundamental function of the MSPB is to ensure that Federal agencies use these good management practices in managing the Federal workforce. The MSPs help ensure that the Federal Government is able to recruit, select, develop, and maintain a high quality workforce and thereby reduce staffing costs and improve organizational results that serve the public. A fully funded, well-run MSPB is critical to protecting the Federal merit systems, ensuring due process, promoting Governmentwide MSPs, and preventing Prohibited Personnel Practices (PPPs). This FY 2013 Congressional Budget Justification (CBJ) includes an executive summary and overview of MSPB, the FY 2013 budget request, and the Annual Performance Plan (APP) for FY 2012 (Revised) and FY 2013 (Proposed). MSPB's Strategic Plan (SP) for FY 2012 – 2016 will be sent separately.<sup>1</sup>

#### About MSPB

MSPB has its origin in the Pendleton Act of 1883, which established the Civil Service Commission (CSC) and a merit-based employment system for the Federal Government. The Pendleton Act was passed after the assassination of President Garfield by a disgruntled Federal job seeker and grew out of the 19<sup>th</sup> century reform movement to curtail the excesses of political patronage in government and ensure a stable highly qualified workforce to serve the public. Over time, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate appeals. Concern over the inherent conflict of interest in the CSC's role as both rule-maker and judge was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA). The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;<sup>2</sup> the Office of Personnel Management (OPM) to serve as the President's agent for Federal workforce management policy and procedure; and the Federal Labor Relations Authority (FLRA) to oversee Federal labor-management relations. The CSRA also codified for the first time the values of the merit systems as MSPs and defined PPPs.<sup>3</sup>

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<sup>1</sup>MSPB's SP and APP were developed by Federal employees in accordance with Government Performance and Results Act Modernization Act (GPRAMA) requirements and Office of Management and Budget (OMB) guidance.

<sup>2</sup> Bogdanow, M., and Lanphear, T., "History of the Merit Systems Protection Board," *Journal of the Federal Circuit Historical Society*, Volume 4, 2010.

<sup>3</sup> Title 5 U.S.C. § 2301 and Title 5 U.S.C. § 2302, respectively.

## **MSPB Return on Investment**

Considering MSPB's relatively small size and budget, it provides enormous value to the Federal workforce, Federal agencies, and the American taxpayer in terms of a more effective and efficient merit-based civil service that ensures high quality service to the public. MSPB demonstrates this return on investment through its new Strategic Goals that fulfill our statutory mission of protecting and promoting merit, increasing adherence to MSPs, and preventing or reducing PPPs.

### **(1) Superior, efficient adjudication and alternative dispute resolution services ensure due process, creating confidence in the workforce and preserving the ability to attract and maintain quality employees.**

MSPB's resolutions of cases are based in law, regulation, and legal precedent. Reason and legal analysis guide our decisions and serve as hallmarks of both our legal system and our merit system. As a neutral, independent third party, MSPB adjudication adds value by improving the fairness and consistency of the process and decisions. In addition, MSPB increases the efficiency of employee appeals by achieving economies of scale that would otherwise be impossible to achieve through separate adjudication of appeals by each agency. The body of legal precedent generated through adjudication, and the transparency and openness of the adjudication process, improve long-term effectiveness and efficiency by providing guidance to agencies and employees on proper behavior, the ramifications of improper behavior, and how to prepare and present thorough and well-reasoned cases. Strong enforcement of MSPB decisions ensures timely, effective resolution of current disputes and encourages more timely compliance with future MSPB decisions.

- FY 2011 Results:
- Exceeded decision quality targets
    - 98% of cases left unchanged by the Court of Appeals for Federal Circuit versus target of 92% or more
  - Did NOT meet adjudication timeliness targets
    - 94 days for initial appeals versus 90 day target
    - 213 days for PFRs versus 150 day target
    - 288 days for enforcement cases versus 200 day target
  - Exceeded targets on alternative dispute resolution

### **(2) High quality, cost-effective objective merit systems studies provide guidance and identify trends in the workforce, helping managers to administer more effectively and efficiently.**

MSPB studies add value through assessing and identifying innovative and effective merit-based management policies and practices. The reports make recommendations to the President, Congress, OPM, and agencies regarding how to enhance policy and practice that will result in improved management and workforce efficiency. For example, MSPB research has shown that effective and efficient hiring and selection, improved merit-based management, and greater employee engagement contribute to a highly qualified Federal workforce, improved organizational performance, and better service to the public. These factors also help reduce the occurrence and costs of PPPs that negatively affect agency and employee performance. Merit systems studies also help reduce the occurrence and personnel

costs associated with PPPs that negatively affect agency and employee performance. For example, the content of the President's hiring initiative contained several long-standing recommendations from MSPB studies on how to improve the hiring process. Recent proposed legislation also includes recommendations made in earlier MSPB reports for improving the supervisory workforce. MSPBs most recent reports include:

- *Blowing the Whistle: Barriers to Federal Employees Making Disclosures*
- *Telework: Weighing the Information, Determining an Appropriate Approach*
- *Prohibited Personnel Practices: Employee Perceptions*
- *Women in the Federal Government: Ambitions and Achievements*
- *U.S. Merit Systems Protection Board: 2011-2013 Research Agenda*
- *Making the Right Connection: Targeting Best Competencies for Training*
- *Whistleblower Protections for Federal Employees*
- *A Call to Action: Improving First-Level Supervision*

**(3) Through third-party review of OPM policies and significant actions, the Government receives one additional layer of protection against the implementation of faulty policies that cost time and money to correct.**

Under statute, MSPB is required to review the rules, regulations, and significant actions of OPM. This OPM review function protects the integrity and viability of the merit systems and civil service, provides benefits similar to those related to merit systems studies, and reduces potential costs by preventing PPPs and improving adherence to MSPs. This provides direct value to the American taxpayer via decreased Governmentwide costs associated with the withdrawal of policies and other corrective actions. One particular example provides tangible evidence of the impact MSPB has had on OPM's regulations.

In a 2007 report, MSPB found that OPM's regulations regarding the appeal rights of probationary or trial period employees were misleading. As a result, in 2008, OPM finalized regulations clarifying the appeal rights of these individuals, potentially avoiding violation of employees' due process rights and additional litigation.

In FY 2011, MSPB took action to formalize and strengthen its review of OPM significant actions and will continue to focus on review of OPM regulations beginning in FY 2012 as part of its overall responsibilities to protect the merit systems, promote MSPs, and prevent PPPs.

### **Mission Delivery: Hallmark of a Fair, Effective, and Efficient Agency**

MSPB continues its FY 2011-12 planning initiatives to build a stronger, modern and efficient agency, building upon its successes under a finalized strategic plan, improved performance plan, and new resource management plan. Beyond the importance of these plans individually is the critical linkage of the plans to each other, ensuring that each employee can understand and track their connection to all plans and demonstrate their contributions to agency goals and objectives through individual performance plans. Through prioritized and linked goals and objectives, the agency and its employees are held accountable to specific results, and achievements are directly rewarded.

Beginning in FY 2011, MSPB is focusing on dynamic internal management concepts to ensure the delivery of mission and achievement of goals through employee engagement and smarter operations. Because the mission of MSPB mirrors the mission of the Government itself regarding MSPs and PPPs, we choose to lead by example through our “Walking the Talk” initiative. By “walking the talk,” our daily practices demonstrate that guidance from MSPB is cost-effective, beneficial, and realistic. For example, in FY 2012, MSPB is establishing Executive Subcommittees to review and improve training and development and recognition and awards programs. To help managers and employees realize the intent of this initiative, MSPB employs four management concepts: *Resource Alignment, Fostering Innovation, Minimizing Risk, and Full Engagement.*

### **Resource Alignment**

Recognizing the agency’s full potential relies on the careful alignment of agency resources. As fiscal environments tighten, MSPB places greater importance on the administration of assets and funding to ensure that we set priorities appropriately and facilitate mission delivery without unnecessary expense. Proper resource alignment relies on three elements working together to develop, execute and evaluate resource operations:

- *Environmental Awareness* – Discovering and monitoring external trends, potential issues, and unmet needs to provide an accurate picture for planning attainable mission delivery.
  - Methods applied: Mission-gap analysis, workforce and legislative forecasting, and stakeholder participation in policy reviews.
- *Operational Effectiveness* – Answering the call to duty through informed target setting and public transparency.
  - Methods applied: Annual performance and resource planning, concurrent mid-year reviews of programs, formal program evaluation, and improved performance measurement.
- *Linked Performance Management* – Optimizing results using analytics and rational reasoning through a single framework that is easy to navigate and track.
  - Methods applied: Combined assessment of mission and management performance, customer service evaluations that link to performance measures, transparency of internal and external feedback, OpenGov participation, concurrent legal and ethical reviews of operations and policies, and redesigned executive performance plans.

### **Fostering Innovation**

Public and private entities often fail to make full use of the talent and knowledge that exists within their organization. In addition, agencies often underestimate the willingness of external partners and critics to provide insight and ideas. It is a priority for MSPB to continue to embrace the opinions of employees, stakeholders, and critics through demonstrated openness and commitment to listen and encourage participation in agency processes and policies. MSPB seeks to address constantly changing environmental and fiscal issues by improving customer service and processes to better

meet service demands. MSPB employs several approaches to enable employees and external participants to participate in initiatives aimed at improving operations. Current projects and activities include:

- Public Review of MSPB Federal Regulations (in conjunction with employees)
- Formalization of legal training programs for judges and legal staff
- Public meetings to discuss merit systems studies research agenda and developing issues
- Open participation in agency planning
- Executive subcommittees that enable and empower all levels of employees
- Investments in the increasingly popular and cost-effective mediation program
- MSP outreach and training upgraded to a strategic mission goal
- Creation of a Twitter app to allow easier access to Board information
- Fuller explanation of the decisions in non-precedential decisions
- Increased requests for amici curiae in high-profile Board cases

### **Minimizing Risk**

Managing risk to ensure successful mission delivery remains a top priority to lessen the effects of uncertainty on programs, apply resources appropriately to minimize adverse events, and maximize the realization of any beneficial opportunities. For these reasons, MSPB broke away from its past practice of single-year budgeting to incorporating short- and long-term goals and contingencies that will shape future operations. MSPB uses a number of approaches to assess and manage risk:

- Create and implement the first Resources Management Plan (RMP) that connects short and long term goals to agency resources and individual performance
- Appeal to change to multi-year funding to allow for a full procurement and execution processes to ensure proper planning and best-use of resources
- Create a formal program evaluation function headed by a new Performance Improvement Officer (PIO)
- Invest in workforce development and knowledge management
- Prepare for Continuity of Operations (COOP) and Continuity of Government (COG)
- Reconstruct budget processes with “full-circle accountability” managing to mission
- Communicate changes in laws, case laws, and regulations to legal staff
- Interact frequently with Congress to keep abreast of changes or potential issues
- Evaluate customer service, and promote mission familiarity and process orientation to minimize the filing of improper appeals
- Implement a new strategic workforce plan (with retirement forecasting)

### **Full Engagement**

Engagement, as a concept, is increasingly important as transparency initiatives elevate internal decisions and actions to a more visible, public level. Engagement assists with the identification of issues before they become larger problems. It can also improve operations, maximize resources, reduce bureaucracy, and help attract and maintain the best workers. Employee engagement provides employees with a stronger connection to the agency’s mission and their individual purpose, and can

increase job satisfaction through empowerment and opportunity. Stakeholder engagement opens doors to the outside world, helping to create a better connection and justification of programs and activities.

- Employee engagement is an integral part of MSPB's RMP
- All planning and reporting is linked from agency to individual levels as demonstrated in the RMP (see Agency Performance Management Process)
- An Executive Committee and Subcommittee structure to empower all employees and hold leaders and managers accountable
- Stakeholder outreach through formal meetings, appeals for participation in service and policy changes, and less formal opportunities to maintain interaction
- Establishment of an Engagement Coordinator who will serve as ombudsman in overseeing the health of the agency's engagement projects

## **Facilitating Mission Delivery Across The Government**

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

**Protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices. (MSPB Mission)**

MSPB continues to improve the effectiveness and long-term impact of its mission functions and responsibilities across the Government. Beginning in FY 2010, to increase the transparency of its adjudication processes and decisions, the Board began hearing oral arguments on cases with broad impact on the Government and the merit systems. In addition, the Board began issuing expanded explanations of its rationale in non-published decisions on petitions for review (PFRs) of certain initial decisions in order to promote understanding of the Board's decisions by the parties. MSPB expects that through public review and augmentation of its Federal Regulations, MSPB adjudication processes will become more consistent, modern, and user friendly for appellants, appellant representatives and agency representatives.

MSPB also continues to enhance outreach and education about MSPs through online activities, such as through the popular Merit System Principle of the Month section on MSPB's website, Twitter account (@USMSPB), and greater staff availability to assist agencies and quasi-government organizations with their training on MSPs. This education and outreach helps ensure that MSPs are consistently applied throughout the Government, and provides managers with the necessary tools to minimize appealed actions promote better management practices, and improve employee engagement. MSPB judges and merit studies personnel voluntarily take on the responsibility to provide this education and training in addition to their regular duties.

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

A number of significant external trends and issues are likely to affect MSPB's mission to protect the Federal merit systems through FY 2012 and FY 2013:



- Pressure to reduce operating budgets government-wide continues to draw tensions between basic operations and smart investments in the workforce and agency. This tension is significantly compounded in agencies where a vast majority of funding is dedicated to salaries and other non-discretionary expenses (over 95% at MSPB) while agencies continue to incur higher operating costs due to standard inflation of personnel and non-personnel expenses.
  - Through careful internal reviews and assessments of resources, MSPB has identified (but is not requesting at this time) \$2.8 million and nine FTE in additional resources in order to maintain its current performance and operating status, and to cover previously neglected mission requirements (e.g., OPM regulation review).
  - Increases due to inflation to services and rent continue to drive down available funds for program improvements and personnel hiring and training, which affects overall agency performance (e.g. increased processing times).
  - MSPB continues to make significant progress in cutting regular operating and administrative expenses. The agency has also imposed a hiring freeze, delayed OPM regulation review as a new program, cancelled critical legal training, limited supervisory and other professional development opportunities, and cancelled some statutory travel (e.g., alternative dispute resolution program travel for mediators). It should be noted, however, that failure to maintain these basic investments in the workforce and operational programs can cost more to restore performance and service in the long run than the initial savings.
- Governmentwide adjustments from mounting retirements and the consequences of budget cuts, Reductions in Force (RIF), and furloughs
  - Expected increase in appeals due to retirements (benefits claims appeals)
  - Increase in appeals due to RIFs, furloughs, agency realignments, and other actions to reduce or restructure the workforce
- More employees or applicants with Veterans' employment rights and potential changes in law and jurisdiction
  - Potential increases in adjudication workload, case complexity, and jurisdiction due to large-scale changes in law or regulation affecting merit systems and appeals
  - Increased complexity in studying the merit systems and reviewing OPM rules, regulations, and significant actions.
- Revisions to Federal management and HR policies, authorities, and flexibilities
  - Increases in appeals workload and case complexity

- Increased intricacy in conducting studies and providing recommendations to ensure changes are managed under MSPs and free from PPPs
- Additional requirements to educate management officials and employees
- Modernization of the Federal workforce toward a knowledge-based workforce
  - Additional observation and assessment of changes to ensure innovative practices that support MSPs and avoid violating PPPs
  - Will require coordinated modernization efforts across the Government in conjunction with other agencies and departments

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

- Preserve the integrity and enhance the capabilities of adjudication services
  - Fund adjudication staffing levels to account for pending mass retirements; may require small temporary increases in full-time employee (FTE) and related budget requirements.
  - Continue to focus on performance measures to ensure equal agency emphasis on decision quality, participant perception of the process, and timeliness of hearings and decisions
  - Expand outreach to stakeholders to improve adjudication efficiency, limit improper claims, and promote understanding of the adjudicatory process to Government agencies, employee unions and affinity groups, management organizations, good government groups, and others
  - Emphasize enforcement of compliance decisions and transparency of the enforcement process<sup>4</sup>
- Preserve the integrity of merit studies; developing regulation review capabilities
  - Expand promotion of merit studies to realize the full potential benefit of study findings to the rest of the Government
  - Escalate outreach with Government agencies and other groups on policy and practice issues that affect MSPs and PPPs, restricting the implementation and impact of study recommendations, and the coordination of research planning
  - Meet appropriate staffing levels to fulfill “new” mission requirements (OPM regulation review)
  - Enhance the flexibility and stability of the MSPB workforce

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

- Improve employee development, career training and management opportunities to support adjustments in mission operations
- Create opportunities for legal staff to cross-train as mediators and specialists to support sudden service demands (such as through a RIF)
- Cross-train IT and business support staff

## **Addressing Internal Deficiencies, Deficits, and Reductions**

***Cost-cutting as a regular part of business.*** MSPB conducted a series of exercises aimed at reducing costs across the agency. The cost-cutting exercises yielded immediate results by reducing some operating and administrative costs. These exercises will continue as a regular part of business. Through these actions MSPB seeks not only to optimize daily operations but also to install a permanent cultural change to ensure its continued success. Savings achieved include a FY 09-11 decrease in travel by 40%, equipment by 10%, and general operations by 4.3%.

***Critical investments in workforce planning.*** In FY 2013, approximately 47% of the adjudication staff (administrative judges) will be retirement eligible over the next three years. Two years of training is required before a judge can work independently. This inevitability is now a pressing concern, especially if appeals increase in number. Therefore, hiring flexibilities (temporary increases) may be required to maintain adequate staffing, and additional training is necessary to maintain proper knowledge levels.

***Budget practices that properly articulate personnel and operational requirements.*** The pattern of budget planning that focused primarily on annual activity rather than long-term strategic goals has resulted in insufficient annual funding levels for personnel and operations. For years, the agency relied on self-imposed annual hiring delays in order to meet the expense of annual operations. Over time, competition between these priorities created a domino effect across all areas of the agency, generating and sustaining workforce and operational deficiencies that now threaten the future accomplishment of mission. In addition to these deficiencies, unplanned contingencies and external demands complicate the already delicate equilibrium that MSPB holds between success and failure.

***Efficient operations through the effective application of personnel.*** MSPB continues to hold key positions vacant including administrative judges, legal counsels, attorneys, study analysts, administrative specialists, and high-level management positions. Low staff numbers contribute to a backlog of Board cases and prevent succession planning for administrative judges. While MSPB has made some progress on regulation compliance, deficits remain in suitable records management, FOIA request processing and tracking, OpenGov initiatives, IT standards, and general reporting.

## Organization and Structure of MSPB

MSPB is organized into several offices designed to conduct and support its statutory functions. The agency has three appointed Board members and is authorized 226 FTEs with offices in Washington, DC (headquarters) and six regional and two field offices, which are located throughout the United States.

### MSPB program offices and their functions

The three **Board Members** adjudicate the cases brought to MSPB. The bipartisan Board consists of the Chairman, Vice Chairman, and Member, with no more than two of its three members from the same political party. Board members are nominated by the President, confirmed by the Senate, and serve overlapping, non-renewable seven year terms. The **Chairman**, by statute, is the chief executive and administrative officer of MSPB. The Office Directors report to the Chairman through the **Executive Director**.

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

The **Office of Appeals Counsel** conducts legal research and prepares proposed decisions for the Board in cases where a party Petitions for Review (PFRs) of an Administrative Judge's (AJ) initial decision and in most other cases decided by the Board. The office prepares proposed decisions on interlocutory appeals of rulings made by judges, 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 headquarters, rules on certain procedural matters, and issues MSPB decisions and orders. The office serves as MSPB's public information center, coordinates media relations, produces public information publications, operates MSPB's library and on-line information services, and administers the Freedom of Information Act and Privacy Act programs. The office also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records systems, legal research systems, and the Government in the Sunshine Act program.

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

The **Office of Financial and Administrative Management** administers the budget, accounting, travel, time and attendance, human resources, procurement, property management, physical security, and general services functions of MSPB. It develops and coordinates internal management programs, including review of agency internal controls. It also administers the agency's cross-

servicing agreements with the U.S. Department of Agriculture (USDA), National Finance Center for payroll services, U.S. Department of the Treasury, Bureau of the Public Debt for accounting services, and USDA, Animal and Plant Health Inspection Service for human resources management services.

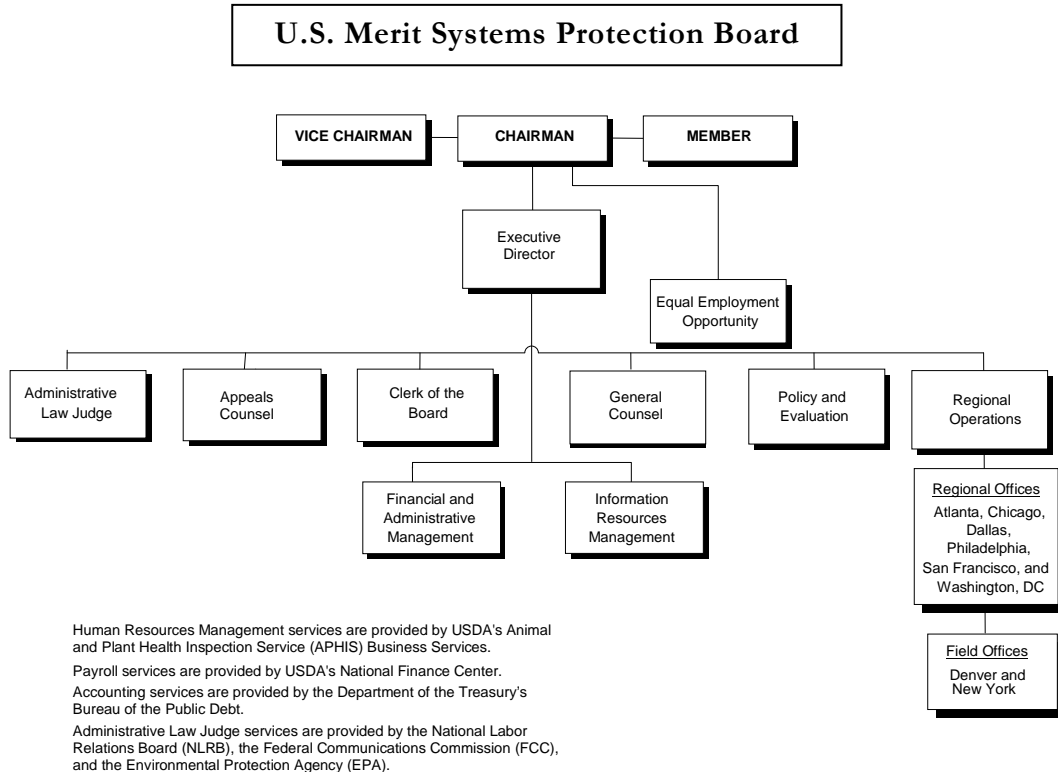
The **Office of the General Counsel**, as legal counsel to MSPB, advises the Board and MSPB offices on a wide range of legal matters arising from day-to-day operations. The office represents MSPB in litigation; prepares proposed decisions for the Board to enforce a final MSPB decision or order, in response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

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

The **Office of Policy and Evaluation** carries out MSPB's statutory responsibility to conduct special studies of the civil service and other Federal merit systems. The office delivers reports of these studies to the President and the Congress and distributes them to a national audience. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB studies. The office reviews and reports on the significant actions of OPM. The office also conducts program evaluations for the agency and has responsibility for preparing MSPB's strategic and performance plans and performance reports required by the GPRAMA.

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

# MSPB Organization Chart



## FY 2013 Congressional Budget Justification

### Summary of FY 2013 Independent Budget Request

The agency has determined it must exercise its statutory independent budget authority in order to request a correction from the proposed funding level as shown below. This correction, in the form of an increase of \$2,407,000 accounts for accurate funding of authorized FTEs, at the level necessary to cover critical functions, vacant positions, succession planning, as well as a modest increase to related object classes. The \$43,400,000 bypass request includes a transfer of \$2,345,000 from the Civil Service Retirement and Disability Fund. The table below summarizes the proposed and independent requests.

	<b>FY 12 Funding</b>	<b>FY 13 Proposed</b>	<b>FY 13 Independent Budget Request</b>
Salaries and Expense	\$ 40,258,000	\$ 38,648,000	\$ 41,055,000
CSRD Reimbursement	<u>2,345,000</u>	<u>2,345,000</u>	<u>2,345,000</u>
<b>Total</b>	<b>\$ 42,603,000</b>	<b>\$ 40,993,000</b>	<b>\$ 43,400,000</b>

The increase of \$797,000 in our Independent Budget Request over the FY 12 funding level amounts to an increase of less than 2% and ensures the agency will not have to resort to adverse personnel actions or reductions in other object classes at a time when our workload is expected to increase.

It should be noted that the agency identified but is not requesting \$2.8 million and an increase of nine FTEs in additional requirements-driven resources that are critical to meeting all statutory mission goals. These resources reflect the requirements necessary to maintain current operational standards, begin certain program improvements, and begin to manage a pending loss of institutional knowledge and staff that will affect case processing times and quality of decisions. The cost to the Government as a whole may vary in the form of increased time to process appeals, limitations on mediation program availability, possible implementation of flawed personnel regulations, and a decrease in special studies and educational materials on MSPs for Federal employees and managers. These service deficiencies can lead to lower employee satisfaction and confidence among the Federal workforce, which can result in an increased number of appeals filed with the MSPB.

The decision to exercise independent budget authority is based on the urgent desire to avert a developing critical internal environment that will directly interfere with the accomplishment of MSPB's statutory mission. This decision, after heavy deliberation and the exhaustion of other avenues of potential relief, is to ensure that the agency can meet its operational requirements that, in turn, strengthen the Federal government as a whole. In exercising its independent authority, the MSPB requests \$41,055,000 in general funds for FY 2013 to provide for salaries and related expenses and to ensure that the agency continues to meet its strategic and annual performance goals. The agency also requests a transfer of \$2,345,000 from the Civil Service Retirement and Disability Fund to cover personnel compensation and benefit costs and other operating expenses associated with adjudicating retirement appeals. MSPB has authority to adjudicate appeals from a final administrative action or order affecting the rights or interests of an individual under 5 U.S.C. § 8347(d) (the Civil Service Retirement System) and 5 U.S.C. § 8461(e) (the Federal Employees' Retirement System), Pursuant to 5 U.S.C. § 8348(a)(3), the Fund is made available, subject to such annual limitation as Congress may prescribe, for any expenses incurred by MSPB in the administration of such appeals. The total FY 2013 bypass request of \$43,400,000 will fund 226 full-time equivalent work-years of effort.

## **Performance Budget**

The performance budget is structured based on the MSPB Strategic Plan for FY 2012 – 2016. The agency's performance goals cover the critical components of two strategic goals, and our performance measures support MSPB's ability to manage and report performance over time. The strategic goals are:

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

**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**

## Summary of FY 2013 Costs

MSPB's FY 2013 independent budget request of \$43,400,000 reflects an increase of \$797,000 from our FY 2012 enacted level of \$42,603,000. With this level of funding MSPB expects to fully support 226 fully funded positions and FTEs, continue to maintain quality services in support of agency functions, and meet the goals and objectives of its Strategic Plan. Our request includes inflationary adjustments common to most Federal agencies as well as reductions in recognition of the changing economic and political environment. A discussion of our more significant increases and decreases over the FY 2012 enacted funding level follows:

### *Personnel Compensation and Benefits – an increase of \$630,000*

MOC	Description	FY 12 Enacted (000)	FY 13 Request (000)	Increase (decrease) over FY 12 (000)
11	Personnel Compensation	\$24,718	\$25,218	\$500
12	Personnel Benefits	\$6,454	\$6,584	\$130

Personnel compensation and benefit costs make up the largest amount of our budget submission. Thus, any reduction in resources affects our ability to hire and maintain a highly qualified staff at our requested FTE level. Our request assumes we will continue to be authorized at 226 FTEs although we have determined that 235 FTEs would correct budgetary deficiencies that are now emerging as larger, long-term concerns. Agency benefit costs, as a percentage of salaries will continue to rise as the percentage of the workforce under the Federal Employees Retirement System continues to grow.

It is important to note that MSPB has approximately 70 employees (33% of our current staff) eligible to retire within the next 3 years. The current lump sum leave liability for the retirement eligibles was recently estimated to be \$1,263,000 or an average of \$17,800 per retirement eligible. If 25% of the employees eligible for retirement elect to retire each year, the agency could face annual lump sum leave payments of about \$300,000. At the time of our estimate, this group included a significant number of AJs that hear our cases (26 of 55 AJs or 47% of our AJs are eligible for retirement).

We estimate that if eligible AJs retire over the next 3 years the lump sum leave payments would cost the agency approximately \$400,000. Moreover, the loss of AJs, many of whom have been extensively trained and who have worked for MSPB for many years, would represent a significant loss of institutional memory that would be hard to quantify and replace. Undoubtedly, the caseload for those who remain would be overwhelming. Additionally, the agency would incur substantial costs to train their replacements, assuming funds were available. Training an AJ to work at the full performance level requires approximately 2 years.



*Travel – no increase over FY 12*

MOC	Description	FY 12 Enacted (000)	FY 13 Request (000)	Increase (decrease) over FY 12 (000)
21	Travel & Transportation of Persons	\$450	\$450	0

Management will strive to control travel costs although it is likely the MSPB caseload will increase as Federal agencies reorganize their work force as a result of Governmentwide budget cut backs. To meet our mission all AJs must frequently travel to hearing sites distant from the various regional offices. **While we are making better use of electronic conferencing, we have little control over the number of hearings that might require travel.**

*Transportation of Things – an increase of \$10,000*

MOC	Description	FY 12 Enacted (000)	FY 13 Request (000)	Increase (decrease) over FY 12 (000)
22	Transportation of Things	\$67	\$77	\$10

This category covers freight related costs and various courier services. We expect costs for these services to increase in FY 13 as the agency expects our caseload to increase.

*Rent, Communications, & Utilities – an increase of \$83,000*

MOC	Description	FY 12 Enacted (000)	FY 13 Request (000)	Increase (decrease) over FY 12 (000)
23	Rent, Communications & Utilities	\$4,379	\$4,462	\$83

At the time of this request, the lease for the Washington Regional offices (WRO) has expired and the MSPB is negotiating with the General Services Administration (GSA) on lease renewals for its WRO location and intends to do the same with our Denver regional office (whose lease expired in December 2011). The agency makes rental payments to the GSA for office space in Atlanta, Chicago, Dallas, New York, Philadelphia, and San Francisco. MSPB currently has commercial leases for office space at our Denver Field Office. All future rent payments in accordance with the new leases will be made to GSA.

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

increases for telecommunications and utilities. We expect postage and postage meter rental costs to remain unchanged.

***Printing – an increase of \$36,000***

MOC	Description	FY 12 Enacted (000)	FY 13 Request (000)	Increase (decrease) over FY 12 (000)
24	Printing & Reproduction	\$133	\$169	\$36

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

***Other Contractual Services – an increase of \$48,000***

MOC	Description	FY 12 Enacted (000)	FY 13 Request (000)	Increase (decrease) over FY 12 (000)
25	Other Contractual Services	\$3,087	\$3,135	\$48

MSPB expects costs to increase by about 1.5% for goods and services. This object class includes the agency’s Reimbursable Service Agreements (RSA) with the Treasury Department’s Bureau of Public Debt (BPD) for accounting, purchasing, and travel-related services and our RSA with the Department of Agriculture Animal and Plant Health Inspections Service for personnel services.

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

***Supplies and Subscriptions – an increase of \$392,000***

MOC	Description	FY 12 Enacted (000)	FY 13 Request (000)	Increase (decrease) over FY 12 (000)
26	Supplies & Materials	\$191	\$583	\$392

MSPB will be purchasing more on-line subscriptions and reducing purchases for paper copies from legal service providers such as Westlaw. Approximately \$345,000 of the increase will result charging our on-line Westlaw subscription to object class 26. Previously, this subscription was charged to

object class 31. Thus, most of the increase results from a change in classifying certain expenditures that formerly were charged to Equipment.

***Equipment – a decrease of \$402,000***

MOC	Description	FY 12 Enacted (000)	FY 13 Request (000)	Increase (decrease) over FY 12 (000)
31	Equipment	\$779	\$377	(\$402)

Overall, we expect equipment expenditures to decrease in FY 2013. Mostly, we will be replacing items at the end of their life cycle. These items include some copy machines, printers, and other IT related hardware and software items. A change in the way we account for certain on line subscriptions (Westlaw) will reduce equipment expenditures and will be expensed under supplies in FY 2013.

**Efforts to Reduce Costs**

A change in the way the agency spends funds for daily operations has allowed MSPB to minimize increases for purchases of goods and services. MSPB has taken steps to reduce travel and conference costs. Additionally, MSPB expects to reduce costs by the following:

- Consolidating subscriptions to online legal services, publications, and annual legal updates;
- Making greater use of conference calls, web-based training, and video conference meetings;
- Consolidating the use of a GSA schedule Court Reporting service to serve all of our regional offices;
- Leasing office machines such as printers, fax machines, and copiers when cost-benefit analysis favors leasing; and
- Participating with GSA in negotiating lease renewals resulting in rent savings.

**Budget Schedules**

**Fiscal Year 2011 Financial Summary**

(dollars in thousands)

**Financial Sources**

Appropriations	\$ 40,258
Civil Service Retirement and Disability Trust Fund	2,579
Reimbursements	20
FY 10 Carryover Funds	573

**Total Financial Sources** \$ 43,430

**Obligations Incurred**

Personnel Compensation	\$ 24,454
Personnel Benefits	6,435
Benefits for former Personnel	3
Travel of Things	49
Travel of Persons	305
Rental Payments	3,300
Communications, Utilities, and Miscellaneous	698
Printing and Reproduction	93
Other Services	2,942
Supplies and Materials	157
Equipment	1,144
Leasehold Improvements	6
Adjustments of PY funds	52
FY 10 Carryover Obligations	388
Reimbursable Obligations	2,588

**Total Obligations Incurred** \$ 42,614

**Schedule Q - Employment Summary**

	FY 2011 Actual	FY 2012 Enacted	FY 2013 Request	Change
Direct:				
Civilian full-time equivalent employment	203	211	211	0
Reimbursable:				
Civilian full-time equivalent employment	<u>15</u>	<u>15</u>	<u>15</u>	<u>0</u>
<b>Total...</b>	<b>218</b>	<b>226</b>	<b>226</b>	<b>0</b>

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

	<b>FY 2012 Enacted</b>	<b>FY 2013 By Pass Request</b>	<b>Change</b>
Direct obligations:			
Personnel compensation	24,718	25,218	500
Civilian personnel benefits	6,451	6,584	133
Benefits for former personnel	3	0	-3
Travel and transportation of persons	450	450	0
Transportation of things	67	77	10
Rental payments to GSA	3,060	3,400	340
Rental payments to others	582	291	-291
Communications, utilities, and miscellaneous charges	737	771	34
Printing and reproduction	133	169	36
Advisory and assistance services	0	50	50
Other services	1,345	1,425	80
Other purchases of goods and services from government accounts	1,197	1,159	-38
Operation & maintenance of facilities	25	26	1
Operation & maintenance of equipment	520	475	-45
Supplies & Materials **	191	583	392
Equipment	779	377	-402
Leasehold Improvements...	0	0	0
Reimbursable Obligations...	2,345	2,345	0
<b>Total New Obligations...</b>	<b>\$ 42,603</b>	<b>\$ 43,400</b>	<b>\$ 797</b>

\*\* Some items classified under BOC 31 (Equipment) to be classified under BOC 26 (Supplies) starting in FY 13.

**Schedule P - Program and Financing (In Thousands of Dollars)**

	FY 2011 Enacted	FY 2012 Enacted	FY 2013 by-pass Request
<b>Obligations by program activity:</b>			
Direct programs:			
Total new obligations	42,857	40,258	43,400
<b>Budgetary resources available for obligation:</b>			
New budget authority (gross)	42,857	42,603	43,400
Total new obligations (-)	<u>- 42,857</u>	<u>- 42,603</u>	<u>-43,400</u>
Unobligated balance expiring/withdrawn	0	0	0
<b>New budget authority (gross), detail:</b>			
Appropriation	40,258	40,258	41,055
Offsetting collections (cash)	20	20	20
Transferred from the Civil Service Retirement & Disability Fund (24-8135)	<u>2,579</u>	<u>2,345</u>	<u>2,345</u>
Total new budget authority (gross)	42,857	42,623	43,420
<b>Change in obligated balances:</b>			
Obligated balance, start of year	4,590	4,590	4,590
Total new obligations	42,857	42,623	43,420
Total outlays (gross) (-)	- 42,857	- 42,623	-43,420
Adjustments in expired accounts	<u>0</u>	<u>0</u>	<u>0</u>
Obligated balance, end of year	4,590	4,590	4,590
<b>Outlays (gross), detail:</b>			
Outlays from new discretionary Authority	38,637	38,403	39,200
Outlays from discretionary balances	<u>4,200</u>	<u>4,200</u>	<u>4,200</u>
Total outlays (gross)	42,837	42,603	43,400
<b>Offsets:</b>			
From Federal sources	- 2,579	- 2,345	-2,345
<b>Net budget authority and outlays:</b>			
Budget authority	40,258	40,258	41,055
Outlays	40,258	40,258	41,055

# **U.S. Merit Systems Protection Board Performance Plan for FY 2012 (Revised) and FY 2013 (Proposed)**

## **Introduction**

A highly qualified, diverse Federal workforce managed in accordance with the Merit System Principles (MSPs) and in a manner free from Prohibited Personnel Practices (PPPs) is critical to ensuring agency performance and service to the public. The MSPs are, in essence, good management practices that help ensure that the Federal Government is able to recruit, select, develop, and maintain a high-quality workforce and thereby reduce staffing costs and improve organizational results for the American people. The PPPs are specific proscribed behaviors that undermine the MSPs and adversely affect the effectiveness and efficiency of the workforce and the Government. The fundamental function of the U.S. Merit Systems Protection Board (MSPB) is to ensure that the Federal workforce is managed under the MSPs and protected from the PPPs.

## **About MSPB**

MSPB has its origin in the Pendleton Act of 1883, which was passed following the assassination of President James A. Garfield by a disgruntled Federal job seeker. The Pendleton Act created the Civil Service Commission (CSC), which implemented the use of competitive examinations to support the appointment of qualified individuals to Federal positions in a manner based on merit and free from partisan political pressure. This improved Government effectiveness and efficiency by helping to ensure that a stable, highly qualified Federal workforce was available to provide effective service to the American people. Over time, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate appeals. Concern over this conflict of interest in the CSC's role as both rule-maker and judge was a principal motivating factor behind enactment of the Civil Service Reform Act of 1978 (CSRA). The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;<sup>5</sup> the Office of Personnel Management (OPM) to serve as the President's agent for Federal workforce management policy and procedure; and the Federal Labor Relations Authority (FLRA) to oversee Federal labor-management relations. The CSRA also codified for the first time the values of the merit systems as the MSPs and delineated the PPPs.<sup>6</sup>

MSPB inherited the adjudication functions of the Commission and provides due process to employees and agencies as an independent, third-party adjudicatory authority for employee appeals of adverse actions and retirement decisions. The CSRA gave MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and of Federal human capital management issues. It also gave MSPB the authority and responsibility to review and act on OPM rules and regulations when a PPP is involved, and to review and report on OPM significant actions.<sup>7</sup>

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

<sup>6</sup> Title 5 U.S.C. § 2301 and Title 5 U.S.C. § 2302, respectively.

<sup>7</sup> Title 5 U.S.C § 1204(a)(3), § 1204 (a)(4), and § 1206, respectively.

Since passage of the CSRA, Congress has given jurisdiction to MSPB to hear cases and complaints filed under a variety of other laws.<sup>8</sup> In summary, the statutory functions of MSPB include adjudicating a wide range of employee appeals, enforcing compliance with MSPB decisions, conducting studies of the Federal merit systems, and reviewing OPM rules, regulations, and significant actions.

### **Serving the Merit Systems, the Federal Workforce, and the Public**

Considering MSPB's relatively small size and budget, it provides enormous value to the Federal workforce and Federal agencies, and to the American taxpayers in terms of better service to the public and a more effective and efficient merit-based civil service. MSPB adds value by providing superior adjudication of employee appeals, including alternative dispute resolution, which ensures due process and results in decisions that are based in law, regulation, and legal precedent and not on non-merit or subjective factors. MSPB's adjudication process is guided by reason and legal analysis, which are hallmarks of both our Nation's legal system and our merit system. As a neutral, independent third party, MSPB's adjudication of employee appeals 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, work together to improve the long-term effectiveness and efficiency of the civil service. They support better adherence to MSPs and prevention of PPPs by providing guidance to agencies and employees on proper behavior and the ramifications of improper behavior. This adjudication information also improves the effectiveness and efficiency of the adjudication process by helping the involved parties understand the law, and improving their ability to prepare and present thorough and well-reasoned cases. Strong enforcement of MSPB decisions ensures timely and 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 assessing current management policies and practices, identifying innovative and effective merit-based management policies and practices, and making recommendations for improvements. For example, MSPB research has shown that effective and efficient hiring and selection, improved merit-based management, and greater employee engagement contribute to a highly qualified Federal workforce, improved organizational performance, and better service to the public. These factors also help reduce the occurrence and costs of PPPs that negatively affect agency and employee performance. Review of OPM rules, regulations, and significant actions protects the integrity and viability of the merit systems and civil service, improves adherence to MSPs, and provides benefits similar to those related to merit systems studies. These reviews also help reduce costs in terms of fewer PPPs, less employee misconduct, fewer adverse actions, and fewer unsubstantiated appeals. This benefits American taxpayers in terms of decreased Governmentwide costs and increased confidence that the Government is doing its job and appropriately managing the workforce.

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<sup>8</sup> Including the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Veterans Employment Opportunity Act (VEOA), the Whistleblower Protection Act (WPA), 5 U.S.C. Chapter 43, and all those set out at 5 C.F.R., Part 1201.3.



## Linking this Plan to Other Agency Documents

This Annual Performance Plan (APP) is based on the MSPB Strategic Plan (SP) for FY 2012–2016. The new SP includes an updated agency mission statement, new vision and organizational values statements, more outcome-oriented strategic goals, and revised long-term measures in order to more thoroughly encompass MSPB’s broader role in protecting merit and preventing PPPs as intended by the CSRA. The new Strategic Goals move beyond previous Strategic Goals to include all of MSPB’s statutory functions and responsibilities. Strategic Goal 1 focuses on reviewing and taking action on individual appeals and on reviewing and assessing existing and proposed merit system laws, regulations, and practices to identify best practices and areas for improvement. Strategic Goal 2 focuses on informing and encouraging policy-makers to take actions that improve merit; conducting outreach to improve the adherence to MSPs and prevention of PPPs in the workplace; and providing educational standards, materials, and guidance to improve the understanding of merit, MSPs, and PPPs. These two Strategic Goals underscore the importance of applying the results of our work under Strategic Goal 1 to protecting merit, strengthening the merit systems, increasing adherence to MSPs, and preventing or reducing PPPs in the future under Strategic Goal 2.

The FY 2012 (Revised)–2013 (Proposed) APP includes strategic objectives as program performance goals.<sup>9</sup> The APP includes performance measures and annual performance targets designed to move the agency incrementally on a path to achieve its Strategic Goals. The performance measures include the outcomes, outputs, and processes that are critical to successful achievement of our performance goals. The performance goals, measures, and targets describe what we can accomplish with the budgetary and full-time equivalent (FTE) resources enacted for FY 2012 and requested in the FY 2013 Congressional Budget Justification. In recognition of this tight budgetary environment, MSPB has intentionally requested fewer resources for FY 2012 and FY 2013 than those justified by our responsibilities. This reduction is reflected in the targets for case processing timeliness, number of merit systems studies, program evaluation, and more limited progress toward some strategic outcome goals. If budgetary and/or FTE resources approved for FY 2013 fall short of the requested amount, MSPB may need to further adjust the measures and FY 2013 targets.

Beginning in FY 2012, MSPB will administer its internal management and administrative functions in support of the mission goals through an internal Resources Management Plan (RMP) rather than the SP or the APP. The RMP will also link other agency documents, such as the Strategic Human Capital Management Plan, Equal Employment Opportunity Reporting Management Directive 715, Employee Engagement Plan, Information Technology Strategic Plan, Open Government Plan, and other similar documents. Individual performance plans for the agency’s employees and Senior Executives are linked to the RMP and the APP, as appropriate. MSPB reports program performance results compared to its APPs, along with financial accountability results, in the annual Performance and Accountability Report (PAR). The SP, APPs, and PARs are posted on MSPB’s website, when appropriate and in accordance with GPRAMA and OMB guidance.

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<sup>9</sup> In accordance with the Government Performance and Results Act Modernization Act (GPRAMA) and Office of Management and Budget (OMB) guidance, MSPB neither defines priority goals nor has a specific role in achieving Federal cross-agency priority goals. MSPB also does not have any duplicative, overlapping, or fragmented programs as referenced in the Executive Order on ‘Delivering an Efficient, Effective, and Accountable Government.’ MSPB does not have any low-priority programs, so no MSPB activities are reported in *The 2013 Cuts, Consolidations, and Savings (CCS) Volume of the President’s Budget* which identifies the lower-priority program activities under the GPRAMA, 31 U.S.C. 1115(b)(10). The public can access the volume at: <http://www.whitehouse.gov/omb/budget>.

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## Mission, Vision, Values, Strategic Goals, and Objectives of MSPB

### MSPB Mission

**Protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices.**

### MSPB Vision

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

### MSPB 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. 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 impact of our products through outreach efforts.

## MSPB 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.**

**Objectives/Performance Goals:**

- 1A: Provide understandable, high-quality resolution of appeals supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.
- 1B: Enforce timely compliance with MSPB decisions.
- 1C: Conduct objective, timely studies of the Federal merit systems and human capital management issues.
- 1D: Review and act upon the rules, regulations, and significant actions of the Office of Personnel Management, 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.**

**Objectives/Performance Goals:**

- 2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.
- 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through outreach.
- 2C: Advance the understanding of the concepts of merit, MSPs, and PPPs through the use of educational standards, materials, and guidance established by MSPB.

## Measuring Achievement of Our Performance Goals

Appendix A contains additional information about changes in our performance measures and targets.

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

**1A. Provide understandable, high-quality resolution of appeals supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.**

1A-1 Percent of Petition for Review (PFR) decisions that are reversed or remanded to administrative judges (AJs), adjusted for those due to changes in precedent or other issues not due to error or oversight.

Results:	FY 2007:	9%
	FY 2008:	6%
	FY 2009:	5%
	FY 2010:	9%
	FY 2011:	7%
Targets:	FY 2012:	10% or fewer
	FY 2013:	10% or fewer

1A-2 Percent of MSPB decisions left unchanged (affirmed or dismissed) upon review by the U.S. Court of Appeals for the Federal Circuit.

Results:	FY 2007:	91%
	FY 2008:	87%
	FY 2009:	92%
	FY 2010:	92%
	FY 2011:	98%
Targets:	FY 2012:	92% or more
	FY 2013:	92% or more

1A-3 Percent of adjudication participants surveyed who agree MSPB adjudication processes are fair, open, accessible, understandable, and easy to use.

Results:	FY 2011 and prior years:	New measure in FY 2012
Targets:	FY 2012:	Establish measurement process and set future targets
	FY 2013:	TBD based on FY 2012 results

1A-4 Average case processing time for initial appeals.

Results:	FY 2007:	89 days
	FY 2008:	87 days
	FY 2009:	83 days

	FY 2010:	89 days
	FY 2011:	94 days
Targets:	FY 2012:	100 days or fewer
	FY 2013:	100 days or fewer

1A-5 Average case processing time for petitions for review of initial appeals (PFRs).

Results:	FY 2007:	132 days
	FY 2008:	112 days
	FY 2009:	94 days
	FY 2010:	134 days
	FY 2011:	213 days
Targets:	FY 2012:	195 days or fewer
	FY 2013:	170 days or fewer

1A-6 Percent of participants in the ADR programs (including initial appeals settlement and Mediation Appeals Program (MAP)) surveyed who agree the ADR process was helpful, valuable, and non-coercive, even if no agreement was reached.

Results:	FY 2011 and prior years:	New measure in FY 2012
Targets:	FY 2012:	Establish measurement process and set future targets
	FY 2013:	TBD based on FY 2012 results

1A-7 Proportion of initial appeals filed electronically.

Results:	FY 2007:	29%
	FY 2008:	37%
	FY 2009:	39%
	FY 2010:	43%
	FY 2011:	48%
Targets:	FY 2012:	44% or more
	FY 2013:	46% or more

1A-8 Proportion of pleadings submitted electronically.

Results:	FY 2008 and prior years:	New measure in FY 2009
	FY 2009:	28%
	FY 2010:	36%
	FY 2011:	44%
Targets:	FY 2012:	38% or more
	FY 2013:	40% or more

**1B. Enforce timely compliance with MSPB decisions.**

1B-1 Average processing time for enforcement cases.

Results:	FY 2008 and prior years:	New measure and target in FY 2009
	FY 2009:	171 days
	FY 2010:	180 days
	FY 2011:	288 days

Targets:       FY 2012:       200 days or fewer  
                  FY 2013:       200 days or fewer

**1C. Conduct objective, timely studies of Federal merit systems and human capital management issues.**

1C-1 Percent of external studies stakeholders surveyed who agree that study reports are objective, timely, well written, and include recommendations that can be implemented at the appropriate level.

Results:        FY 2011 and prior years: New measure in FY 2012  
Targets:        FY 2012: Establish measurement process and set future targets  
                  FY 2013: TBD based on FY 2012 results

1C-2 Number and scope (percent of the workforce, agencies, or policy areas impacted) of merit systems studies reports published each year.

Results:        FY 2007: Three reports completed or published  
                  FY 2008: Six reports completed or published  
                  FY 2009: Six reports completed or published  
                  FY 2010: Five reports completed or published  
                  FY 2011: Four external and four internal studies completed  
Targets:        FY 2012: Three-five merit system reports completed  
                  FY 2013: Three-five merit system reports completed

**1D. Review and act upon the rules, regulations, and significant actions of the Office of Personnel Management, as appropriate.**

1D-1 Number and scope (percent of the workforce, agencies, or policy areas impacted) of OPM rules and regulations, or implementation of the same, reviewed.

Results:        FY 2011 and prior years: New measure in FY 2012  
Targets:        FY 2012: Conduct after-action review of MSPB's actions on at least one of the major changes in OPM regulations or rules over the last four years  
                  FY 2013: Establish regulations review and performance measurement process and set future targets

1D-2 Number and scope (percent of the workforce, agencies, or policy areas impacted) of OPM significant actions reviewed and reported.

Results:        FY 2011 and prior years: New measure in FY 2012  
Targets:        FY 2012: Conduct after-action review of at least one of OPM's significant actions over the last four years  
                  FY 2013: Establish significant actions review and performance measurement process and set future targets

**Strategic Goal 2: Advance the public interest through *education* and *promotion* of stronger merit systems, *adherence* to Merit System Principles, and the *prevention* of Prohibited Personnel Practices.**

**2A. Inform, promote and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.**

2A-1 Number and scope of contacts made with Governmentwide policy-makers (Congress, Chief Human Capital Officers Council (CHCO), OPM, and others involved in merit systems policy) focused on supporting or improving Governmentwide merit systems laws, regulations, rules, Executive Orders, and other policies.

Results: FY 2011 and prior years: New measure in FY 2012  
Targets: FY 2012: Establish measurement process and set future targets  
FY 2013: TBD based on FY 2012 results

2A-2 Number of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, legislation, professional literature, Executive Orders, or the media.

Results: FY 2011 and prior years: New measure in FY 2012  
Targets: FY 2012: Establish measurement process and set future targets  
FY 2013: TBD based on FY 2012 results

2A-3 Number, type, and scope of MSPB products created and made available to inform policy makers on improvements to merit systems policies, laws, and/or regulations.

Results: FY 2011 and prior years: New measure in FY 2012  
Targets: FY 2012: Establish measurement process and set future targets  
FY 2013: TBD based on FY 2012 results

**2B. Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through outreach.**

2B-1 Number of views and/or accesses of MSPB precedential decisions, studies reports, and other web-based materials meant to improve the practice of merit, adherence to MSPs, or prevention of PPPs in the workplace.

Results: FY 2011 and prior years: New measure in FY 2012  
Targets: FY 2012: Establish measurement process and set future targets  
FY 2013: TBD based on FY 2012 results

2B-2 Number and scope of MSBP contacts with practitioners and stakeholders focused on improving the practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace.

Results: FY 2011 and prior years: New measure in FY 2012  
Targets: FY 2012: Establish measurement process and set future targets  
FY 2013: TBD based on FY 2012 results



**2C. Advance the understanding of the concept of merit, MSPs, and PPPs through the use of educational standards, materials, and guidance established by MSPB.**

2C-1 Number, scope, and type of educational information, materials, or guidance about the merit systems, MSPs, PPPs, MSPB decisions, the appeals process, studies, newsletters, etc., that are viewed or accessed from MSPB's website.

Results: FY 2011 and prior years: New measure in FY 2012  
Targets: FY 2012: Establish measurement process and set future targets  
FY 2013: TBD based on FY 2012 results

2C-2 Number and type of merit systems educational materials and guidance MSPB makes available.

Results: FY 2011 and prior years: New measure in FY 2012  
Targets: FY 2012: Establish measurement process and set future targets  
FY 2013: TBD based on FY 2012 results

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## **Means and Strategies Needed to Accomplish Our Goals**

### **Means and Strategies for Strategic Goal 1**

1. Provide effective and efficient adjudication of appeals in our regional and field offices and at headquarters and improve the transparency of the adjudication process.
2. Ensure continuity of legal expertise; increase legal training and expertise of adjudication staff; and monitor adjudication performance and accountability.
3. Appropriately balance quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
4. Provide effective and impartial ADR services (including settlement and mediation) to meet the needs of the involved parties.
5. Ensure effective representation of MSPB in cases brought before other adjudication bodies, such as the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court.
6. Provide effective and efficient processing of requests for enforcement of MSPB decisions and improve the transparency of the enforcement process.
7. Conduct independent, objective, and timely studies of the Federal merit systems and Federal management issues and practices, and expeditiously report findings and recommendations to the President, Congress, Federal HR policy-makers, practitioners, and other stakeholders.
8. Use periodic surveys to assess and report on the overall health of the Federal merit systems, practice of merit, and occurrence of PPPs.
9. Expand MSPB's studies program capacity and increase the value and impact of studies.
10. Expand and strengthen the review of OPM rules, regulations, and significant actions and take action, as appropriate, to ensure adherence to MSPs and avoidance of PPPs.

### **Means and Strategies for Strategic Goal 2**

1. Use periodic surveys and other means to assess and report on the overall health of the Federal merit systems, practice of merit, and occurrence of PPPs.
2. Translate information from adjudication, merit systems studies, and OPM review into outreach products designed to influence actions by policy-makers and practitioners that will support merit, improve adherence to MSPs, and prevent PPPs.
3. Provide information about adjudication processes, outcomes, and legal precedent to support adjudication participants' ability to prepare and file strong cases with MSPB.
4. Develop educational standards, materials, and guidelines on merit, MSPs, PPPs, and the importance of a merit-based civil service to ensuring excellent service to the public.
5. Encourage agencies to use MSPB's educational standards, materials, and guidelines to implement compelling educational programs for Federal employees and the public by recognizing other agencies' best practices on the MSPB website, or in MSPB reports.
6. Increase transparency and outreach and make MSPB products and educational information widely available through the website, social media outlets, and other appropriate avenues.

**Agency-wide Administrative and Support Means and Strategies** (Administered through the RMP)

1. Manage people effectively and efficiently.
  - a. Hire and retain a diverse and highly qualified legal, analytic, and administrative workforce that can effectively accomplish and support the knowledge-based work of the agency.
  - b. Walk-the-talk – implement appropriate recommendations from study reports to improve adherence to MSPs and avoidance of PPPs.
2. Manage budget, financial, and other resources effectively and efficiently.
  - a. Use people and budgetary resources effectively and efficiently to ensure adequate staff are available and prepared to accomplish our goals and continue to provide value, now and in the future.
  - b. Improve budget planning and development to ensure complete justification of funds, people, operational requirements, and contingencies; ensure MSPB has the resources it needs to accomplish its mission; and prevent the use of routine hiring delays to fund operational and mission requirements.
3. Manage agency information technology (IT) and information services functions effectively and efficiently.
  - a. Ensure access to and increase the use of e-Appeal Online.
  - b. Continue to improve efficiency including shifting from paper-based work processes and products to electronic work processes and products.
  - c. Develop and implement IT hardware, software, and systems plans and schedules to support effective and efficient MSPB adjudication, studies, OPM review, and administrative programs.
  - d. Improve the ability to efficiently administer and host surveys in support of our studies function and better leverage the high-quality Governmentwide data we collect.
  - e. Manage information services functions, including information content, records management, Freedom of Information Act, Open Government, and related programs, to ensure information is appropriately available and accessible to internal and external customers
  - f. Effectively manage communication and public relations programs, including the use of electronic and social media, to provide appropriate and timely information to stakeholders and improve the impact of our programs.
4. Manage other processes and resources effectively and efficiently.
  - a. Improve MSPB's program evaluation capability and performance measurement validity and reliability.

- b. Improve efficiency and effectiveness of other administrative and management programs and processes including appropriate use of interagency agreements and contracts.
- c. Ensure MSPB internal and external policies and regulations are current, written in plain language, and accessible to and understandable by those who need them.

## **Trends and Challenges that May Affect Agency Performance**

A number of significant external trends and internal challenges are likely to affect MSPB's mission in FY 2012 and FY 2013. A list of these trends and challenges and their potential affect on MSPB follows.

### **External Trends**

- More employees or applicants with Veterans' employment rights and potential changes in law and jurisdiction.
  - Large increases in adjudication workload and jurisdiction, increased case complexity.
  - Increased complexity in studying the merit systems and reviewing OPM's rules, regulations, and significant actions.
- Revisions to management and HR policies, authorities, and flexibilities.
  - Increases in appeals workload and case complexity.
  - Increased complexity in studying merit and making recommendations to ensure workforce is managed under the MSPs and free from PPPs.
  - Increased complexity in studies to ensure that new and amended HR policies support adherence to MSPs and avoidance of PPPs.
  - Increased need to promote merit and educate Federal managers and employees about Federal merit systems, MSPs, and PPPs.
- Increases in the number of Federal employees retiring, and need to ensure employees have the competencies to perform knowledge-based work.
  - Increase in appeals workload due to increased retirements (e.g., benefits claims and alleged forced retirement cases).
  - Need to study how changes in the workforce and type of work impact MSPs and PPPs.
  - Increased need to promote merit in the Federal workplace and educate Federal managers and employees about Federal merit systems, MSPs, and PPPs.
- Budget cuts, Reductions in Force (RIF), and workforce adjustments.
  - Increase in appeals workload due to potential RIFs and actions taken in lieu of or in preparation for RIFs.
  - Need to conduct studies and make recommendations on how to ensure merit and avoid PPPs.

### **Internal Management Issues and Challenges**

- Mission planning and ensuring optimal effectiveness.

- Improve and strengthen performance of our statutory function to review and take appropriate action on OPM rules and regulations.<sup>10</sup>
  - Ensure MSPB's SPs and APPs encompass all statutory functions and focus on our role to protect and promote merit.
  - Improve integration of performance planning with the annual budget process to ensure legislative intent to protect and promote merit.
  - Strengthen agency culture and structure, and internal and external agency communication, to improve performance in the short and long term.
- Effectiveness of adjudication and enforcement.
    - Address external stakeholder concerns about MSPB case processing time constraints and the potential negative impact such constraints have on case development and discovery.
    - Balance performance measures of adjudication decision quality, timeliness, and participant satisfaction with the adjudication process.
    - Increase outreach to improve adjudication effectiveness and efficiency, and to improve understanding of the adjudicatory process.
    - Increase emphasis on enforcement of compliance decisions.<sup>11</sup>
    - Ensure a sufficient number of adjudication staff who have the necessary competencies, knowledge, and training to perform their work.
    - Prepare for anticipated retirement of adjudication staff.
- Effectiveness of merit systems studies.
    - Improve distribution and promotion of study findings and recommendations to capitalize on savings via better management, higher employee engagement, and fewer appeals.
    - Increase studies staff to maximize the value and impact of studies to the Government and American taxpayers.
    - Increase outreach to coordinate research plans and improve implementation of study recommendations that improve Federal management and service to the public.
    - Improve ability to administer surveys and use collected data to increase effectiveness and efficiency of Government as a whole.
- Effectiveness of performance and budget planning, and resource management.
    - Justify budgets to support the full mission of MSPB and improve planning for operational requirements, program improvements, and contingencies.
    - Eliminate the need to delay hiring to fund operational and mission requirements.
    - Improve workforce planning, including succession planning and support for employee development, to ensure and sustain the availability of high-quality, diverse professional and technical staff and establish an accurate and stable staffing structure (33% of MSPB employees, including 47% of AJs, will be retirement eligible within the next three years.).

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<sup>10</sup> Title 5 U.S.C. § 1204(a)(4)

<sup>11</sup> Title 5 U.S.C. § 1204(a)(2)

## **Program Evaluation and 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. Effective program evaluation is critical to ensuring that MSPB can continue to effectively and efficiently achieve its mission, and provide value, now and in the future.

MSPB is committed to high-quality program evaluation. However, ensuring our ability to perform our statutory mission, as well as ensuring compliance with requirements of the GPRAMA and recent program evaluation guidance from the OMB, will require increased resources and program evaluation staff. A relatively small increase in MSPB's program evaluation resources and staff will likely yield a large return in efficiency and cost savings for MSPB. This will, in turn, improve the value MSPB brings to agencies, Federal employees, individual parties to cases, and to the public.

### **Performance Measurement: Verification and Validation of Performance Information**

Most of the quantitative measures of adjudication performance come from MSPB's case management system. Other quantitative and qualitative performance measures are reported by MSPB's program offices. MSPB also collects customer satisfaction data from adjudication and merit systems studies customers and stakeholders, and from internal customers of our administrative programs. Better coordination and oversight of performance measurement processes, including internal and external customer surveys, will help ensure consistency, validity, and verifiability of the performance data used to manage MSPB programs and included in agency plans and reports.

### **Program Evaluation and Performance Measurement Schedule**

In FY 2012, MSPB will develop and establish policies and guidance for program evaluation and performance measurement verification and validation. Assuming requested resources are available, MSPB may have one to three evaluation or data verification/validation projects going on per year. The number of such projects will also depend on the scope and objectives of the project and the nature and complexity of the program or process being studied. If such resources are available in FY 2012 and 2013, MSPB plans to begin program evaluation and data verification/validation projects as indicated below.

<b>Program or Performance Measurement System</b>	<b>Evaluation Start Year</b>
PFR case processing	2012
Internal and external customer satisfaction/service surveys	2012
Case processing in the regional and field offices	2013



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## Appendix A: Revisions to Performance Measures and Targets

The performance measures and targets proposed for FY 2012 and FY 2013 reflect critical outcomes, outputs, or processes needed to achieve MSPB's performance goals. Tracking progress on our performance goals over time will provide critical evidence of our achievement of our Strategic Goals. The measures and targets established in this plan are consistent with the budget enacted for FY 2012 and the proposed budget for FY 2013. MSPB may adjust the measures and targets based on Congressional actions taken on the FY 2013 budget, interim FY 2012 performance results, and other factors that may have an affect on our mission and goals.

The four performance goals under Strategic Goal 1 include 13 measures and cover MSPB's functions involved in adjudicating cases, enforcing compliance with decisions, conducting merit systems studies, and reviewing and taking appropriate action on OPM rules, regulations, and significant actions. The three performance goals under Strategic Goal 2 include seven measures and reflect our efforts to ensure our work has an impact on strengthening merit systems laws and regulations; improving the practice of merit, increasing adherence to MSPs, and preventing PPPs; and advancing the understanding of merit, MSPs, and PPPs. A review of the revisions in performance measures and targets for FY 2012 and FY 2013 is provided below.

### Strategic Goal 1

MSPB plans to continue using selected measures of adjudication quality and timeliness and merit systems studies output that we have used for several years. The customer feedback measures related to our work will be assessed and redefined in FY 2012 as part of our effort to restructure our external customer satisfaction and customer service survey program. Restructuring our survey program will increase the validity and reliability of our customer survey data and support our efforts to improve customer service in accordance Executive Order 13571. The restructuring of the survey program involves customer feedback on the adjudication process (measure 1A-3), the ADR process (measure 1A-6), and merit systems study reports (measure 1C-1). Other measures have been eliminated, redefined, and/or shifted to performance goals under Strategic Goal 2. New measures will be developed for assessing MSPB performance in reviewing and taking appropriate action on OPM rules, regulations, and significant actions (measures 1D-1 and 1D-2).

**Adjudication:** In recent years, MSPB has reported on more measures of timeliness relative to other components of our adjudication function. Timeliness measures are quantifiable and thus provide an easy way to track and present adjudication results. However, timeliness is only one component of a successful adjudication function. MSPB is committed to using a more balanced set of measures for evaluating its adjudication function with more equal emphasis on measures of decision quality, processing timeliness, and participant feedback on fairness and openness of the adjudication and ADR processes.

To measure the quality of initial decisions, MSPB will continue to use the percent of PFR decisions that are remanded or reversed to MSPB judges for a new decision, adjusted for changes in precedent, or other reasons not due to error or oversight of the AJ (measure 1A-1). In FY 2011, seven percent of PFR decisions were reversed or remanded to AJs. We anticipate an increase in the number of initial appeals filed in the next few years due to several factors: Governmentwide budget constraints leading agencies to implement an increasing number of RIFs or other appealable actions

to reduce the size of the workforce; an increase in the number of retirements of Federal employees; and an increase in the number of employees and applicants with veterans employment rights returning to or seeking Federal jobs. In addition, 47 percent of our current AJs will be eligible to retire in the next three years, and under current budget constraints, it is likely to take longer to replace them in a timely way. Given these factors and the variability of actual results on this measure over the years, the FY 2012 and FY 2013 targets for this measure will remain 10 percent or fewer.

To measure the quality of Board decisions, we will continue to use the percent of decisions left unchanged by the U.S. Court of Appeals for the Federal Circuit (measure 1A-2). In FY 2011, 98 percent of Board decisions were left unchanged by the Court, which is the highest level in over 10 years. We are pleased with this result especially in light of our longer PFR processing time, which will be discussed shortly. While we would like to maintain this result, several factors will likely impact our success on this measure over the next several years. We may experience an increase in cases filed with the Board due to the same factors discussed above that affect initial appeals. In addition to increasing the appeals workload, these factors may also raise legal issues that have not been examined in a number of years leading to differences in the way the Board and the Court view such issues. This could result in fewer cases being left unchanged by the Court. Despite the factors that may affect the Court's actions on our cases, we are committed to maintaining the quality of our Board decisions and are retaining the 92 percent or greater target for this measure for FY 2012 and FY 2013.

While there are various ways to measure timeliness, MSPB will use average case processing time as the measure of adjudication timeliness. The number of days it takes to process a case from when it arrives to when it is closed, averaged over all of the cases closed each year, represents a straightforward and meaningful measure of overall processing time at the agency level.<sup>12</sup> The average case processing time for initial appeals increased to 94 days in FY 2011, which represents the longest time in recent years (measure 1A-4). This occurred in part because of the retirement of several very experienced adjudication staff members, accompanied by restrictions on hiring replacements resulting from budget limitations in the last several years. These staff losses and hiring restrictions, along with the two-three year period that it takes for new staff members to reach full performance levels, have collectively reduced the overall capacity of our adjudication staff to process initial appeals. The budget restrictions are likely to continue for the next several years, which will greatly limit MSPB's ability to replace the nearly 50 percent of its AJs that will be eligible to retire in the next three years. Having fewer AJs, the expected increase in the number of appeals (discussed above), and our commitment to maintain decision quality, will likely result in an increase in initial appeals processing time. Separate from issues related to caseload and resources, there have been concerns from adjudication participants and stakeholders that current MSPB case processing time constraints have had a potential negative impact on the ability of the parties to thoroughly develop their cases and fully execute the discovery process. There is also a growing consensus that the legal and factual aspects of cases have become more complex over time. Finally, MSPB is updating its adjudication regulations, which will likely impact processing timeliness. For all of these reasons, it is necessary to increase the target for average processing time for initial appeals to 100 days or fewer for FY 2012 and FY 2013. Depending on actions taken on the FY 2013 budget, it may be necessary to further increase these targets.

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<sup>12</sup> MSPB will continue to track and may occasionally include other information about timeliness in its reports. However, MSPB will no longer include the proportion of cases closed within specific time standards in its performance plans.

Average case processing time for PFRs increased to 213 days in FY 2011 (measure 1A-5). PFR processing time is affected to some degree by MSPB's intentional efforts to improve the transparency and understanding of and participation in the Board's decision-making process. The Board holds oral arguments or requests amicus briefs in cases with broad and/or significant impact on the workforce or on Federal labor law. While these processes may lengthen the processing time for these select cases, they also improve the breadth and depth of information available for the Board to consider in making its decision on these significant cases. In addition, the Board is providing additional information in non-precedential PFR decisions and recently began posting these decisions on the MSPB website. Providing this additional information improves the transparency of Board's decision-making process for the parties involved with the case and for our reviewing Court. Increased transparency also improves understanding of the Board's decision-making process for those who may file appeals with the Board in the future, thus improving the long-term effectiveness and efficiency of the process. While the timeliness of PFR processing is longer than we would like, the quality of Board decisions is high, and we are satisfied that our efforts to improve transparency and participation are important to the overall quality and understanding of the appeals process.

PFR case processing time has also increased due to a lack of budget resources, which has prevented or delayed our ability to hire adjudication staff over the last two-three years resulting in a relatively high number of vacancies for the writing attorneys who draft Board decisions. Anticipated budget restrictions in the next few years will likely result in limited potential for filling these vacancies in the near term. In addition, MSPB anticipates the arrival of a new Board Member in FY 2012. This may also lead to slowed PFR processing time as the new Board Member adjusts to MSPB processes, and the writing attorneys learn the views and style of the new Board Member. Furthermore, for reasons similar to those discussed above for initial appeals, we anticipate an increase in the number of PFRs filed with the Board over the next few years. In addition, MSPB is currently in the process of updating its adjudication regulations, which may also affect processing timeliness. Despite the factors that may slow PFR processing time, MSPB's longer-term goal is to achieve an average processing time for PFRs of 150 days by the end of FY 2014. To make progress toward this target, we have set our FY 2012 target for PFR average processing time at 195 days or fewer, and the FY 2013 target at 170 days or fewer. This will be a very challenging undertaking. MSPB intends to begin an evaluation of the PFR process in FY 2012 (contingent on obtaining requested resources), which may help identify improvements in PFR processing that will increase timeliness while preserving decision quality. Depending on actions taken on the FY 2013 budget, interim FY 2012 results, and other factors, MSPB may need to further increase the targets for average PFR processing time.

It is important that appellants, appellant representatives, and agency representatives perceive that the adjudication processes are fair, open, accessible, understandable, and easy to use, even if they do not agree with the final decision reached in their case (measure 1A-3). In surveying adjudication participants, we will seek to balance our interest in providing them with an opportunity for feedback with the possible burden that our asking for such feedback may place on them. It is especially important to consider the burden placed on appellant representatives and agency representatives who may appear before us multiple times per year. MSPB will restructure its customer service survey of adjudication participants in FY 2012. The FY 2013 target is to be determined based on FY 2012 results.

MSPB will continue to seek feedback from participants in our ADR programs (including settlement and mediation programs). The purpose of our ADR programs is to provide a range of helpful and

appropriate options to appellants and agencies to resolve disputes. The focus is the degree to which participants perceive the processes to be helpful, valuable, and non-coercive, even if no agreement was reached in the process (measure 1A-6). Although the degree to which the processes lead to a successful resolution of the dispute is important, participants' experiences while being involved in these processes are our primary interest. Therefore, MSPB will no longer track ADR success rates in its performance plans. MSPB will restructure its customer service survey of ADR participants in FY 2012. The FY 2013 target is to be determined based on FY 2012 results.

To support MSPB's commitment to efficient case processing and improving customer service, MSPB will continue to track the proportion of initial decisions filed electronically (measure 1A-7) and the proportion of pleadings filed electronically (measure 1A-8). In FY 2011, the proportion of initial appeals filed electronically was 48 percent, and the proportion of pleadings filed electronically was 44 percent. These proportions have increased steadily over the last several years, and we are making efforts to strengthen these programs. In FY 2011, we expanded our Electronic Case File pilot program to include all regional offices and headquarters and, in FY 2012, we will begin a mandatory e-filing pilot program for agencies and representatives. As individual access to computers and the Internet increases, we anticipate that electronic filing will likely continue to increase. However, not every individual who may wish to file an appeal with MSPB will have access to or the desire to file electronically, so we expect to reach a natural plateau at some point beyond which we would not expect to see an increase in the use of electronic filing. Recent results indicate that electronic filing does not yet seem to be approaching a plateau. Given these results, and our efforts to improve electronic processing, we will increase the targets for these measures in the next two years. The targets for electronic filing of initial appeals will be set at 44 percent or more in FY 2012 and at 46 percent or more in FY 2013. The targets for electronic filing of pleadings will be set at 38 percent or more in FY 2012 and at 40 percent or more in FY 2013.

**Enforcement of MSPB decisions:** MSPB will continue to measure average processing time for enforcement cases in FY 2012 (measure 1B-1). The enforcement process begins when the request for compliance is filed in a regional or field office. If the AJ finds that the parties to the case are not in compliance, then the case goes to headquarters. The processing time includes actions taken by MSPB staff to research the case, notify the alleged non-compliant party (sometimes more than once), as well as the time it takes both parties to submit relevant information regarding compliance. Of note, the issues presented for resolution in enforcement cases – including disputes over back pay, reconstruction of the hiring process, and whether employees' new duties are substantially similar to their previous duties – appear to have become more complex over time. Accordingly, the amount of time required to obtain the necessary information from the involved parties to adequately address such issues has increased. In addition, because there are relatively few enforcement cases each year, only one or two very complex enforcement cases can substantially affect the average processing time. This is evidenced by the variability in processing time that MSPB has experienced over time. Unfortunately, the average processing time for enforcement cases increased in FY 2011. However, given the overall complexity of the enforcement process and past processing time results, MSPB will retain a target for average processing time for enforcement cases of 200 days or fewer for FY 2012 and FY 2013.

**Merit Systems Studies:** Stakeholder perceptions that our published merit systems study reports are objective, timely, and well written are important indicators of the success of our merit systems studies function (measure 1C-1). In FY 2012, MSPB will establish a measurement process for this

indicator and will set future targets as a part of its overall restructuring of the external customer service survey program. The FY 2013 target will be determined based on FY 2012 results. MSPB will also continue to measure the number and scope of merit systems studies completed each year (measure 1C-2). Depending on the breadth and depth of the particular topic of a study, the method of collecting data, the complexity of the data and data analyses, and the relative experience of the project manager and analysts involved in the study, it may take 18-30 months to complete a single study. In addition, there are other important aspects of the studies program and other MSPB functions related to the studies program that are performed by the studies staff. During MSPB's recent strategic planning process, it was determined that placing greater focus and emphasis on specific activities and functions would allow MSPB to better achieve its Strategic Goals and carry out its statutory responsibilities as intended by the CSRA. These functions include reviewing and reporting on OPM significant actions (performance goal 1D), providing input on MSPB's review of OPM rules and regulations (performance goal 1D), and developing and delivering targeted communication products and educational materials on merit systems, MSPs, and PPPs (under Strategic Goal 2). In addition, the office is involved in conducting program evaluations and ensuring the validity and reliability of performance data and data systems as required by GPRAMA. However, MSPB has not received the necessary increase in staff or resources to carry out these important additional activities. Therefore, MSPB must adjust the target for the number of merit systems studies reports until necessary resources become available. Given the aforementioned changes in focus and emphasis, the many factors that can impact the study process, past results, and variability in the number of reports completed each year, our targets for FY 2012 and FY 2013 are a range of three to five completed merit systems study reports each year. The previous measure of the studies program related to conducting periodic Merit Principles Surveys will no longer be used. Conducting surveys is a strategy used to accomplish our work, but is not a valuable measure in and of itself.

**Review of OPM rules, regulations, and significant actions:** MSPB intends to strengthen its statutory function to review and take action on OPM rules and regulations, and to review and report on OPM significant actions. MSPB may, on its own motion, or at the request of other parties, review and potentially overturn OPM regulations if such regulations, or the implementation of such regulations, would require an employee to commit one or more PPPs. MSPB is also responsible for annually reviewing and reporting on the significant actions of OPM and the degree to which they may affect adherence to MSPs and the avoidance of PPPs. An important measure of this function is the number and scope of impact of these reviews in terms of the percent of the workforce, agencies, and policy areas affected or covered by these reviews. In FY 2012, MSPB will conduct an after-action review of MSPB's actions related to at least one of the major changes in OPM regulations or rules in the last four years. In FY 2013, we will establish a regulations review and performance measurement process and set future targets (measure 1D-1). Similarly, in FY 2012, MSPB will conduct an after action review of at least one of OPM's major significant actions in the last four years. In FY 2013, MSPB will establish an OPM significant action review and performance measurement process and set future targets (measure 1D-2).

## **Strategic Goal 2**

This Strategic Goal focuses on efforts to use information from our adjudication, enforcement, merit systems studies, and OPM review work to support merit, improve adherence to MSPs, and prevent PPPs in the future. This includes informing and/or encouraging policy-makers to take actions that improve merit; conducting outreach to improve adherence to MSPs and prevention of PPPs in the workplace; and providing educational standards, materials, and guidance to improve the

understanding of merit, MSPs, and PPPs. Most of the measures we will use to measure these performance goals are new. In FY 2012, we will establish measurement processes and set future targets for these measures. The FY 2013 targets are TBD based on FY 2012 results.

**Inform, promote, and/or encourage actions by policy-makers:** Measures of this performance goal include the number and scope of contacts made with Governmentwide policy-makers focused on supporting or improving merit systems laws, regulations, rules, Executive Orders, and other policies (measure 2A-1). Policy-makers include Congressional members and staff, the CHCO Council, OPM, and others involved in considering or setting Governmentwide or large scale policies related to merit systems, improving adherence to MSPs, or preventing PPPs. MSPB will also track the number of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, legislation, professional literature, Executive Orders, or the media (measure 2A-2). This is similar to the merit systems studies measure on impact used in the past, but it is numeric rather than qualitative and includes references to other MSPB information. The third measure for this performance goal focuses on the number, type, and scope of MSPB products created and made available to inform policy-makers on improvements to merit systems policies, laws, and/or regulations (measure 2A-3). This measure recognizes that policy-makers may focus on specific issues, and that communication products are most effective when they meet the needs of various audiences or stakeholders.

**Support stronger merit-based practices in the workplace:** Measures of this performance goal include the number of views and/or accesses of MSPB precedential decisions, studies reports, newsletters, and other web-based materials meant to improve the practice of merit, adherence to MSPs, or prevention of PPPs in the workplace (measure 2B-1). In addition, we will measure the number and scope of MSPB contacts with practitioners and stakeholders focused on improving the practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace (measure 2B-2).

**Advance the understanding of merit, MSPs, and PPPs:** There are two measures of this performance goal. The first measure is the number, scope, and type of educational materials, or guidance about the merit systems, MSPs, PPPs, MSPB decisions, the appeals process, studies, newsletters, etc., that are viewed or accessed from MSPB's website (measure 2C-1). The second measure is the number and type of merit systems educational materials and guidance MSPB makes available (measure 2C-2).