United States

Merit Systems Protection Board

Strategic Plan

for

FY 2014 - 2018

(Draft for External Consultation)

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U.S. Merit Systems Protection Board Strategic Plan for FY 2014–2018

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 of the Government. This Strategic Plan will help ensure the U.S. Merit Systems Protection Board (MSPB) fulfills its fundamental functions to protect merit, promote adherence to MSPs, and prevent PPPs. This Strategic Plan was prepared in accordance with the Government Performance and Results Act Modernization Act of 2010 (GPRAMA) and covers FY 2014—2018.

About MSPB

A bit of civil service history. Understanding the origin of MSPB and the role it plays in ensuring effective human capital management in the Federal Government requires a brief review of the history of our Nation's Federal civil service. From the earliest days of our Government through the early 1880s, the Federal civil service operated under a patronage or "spoils system."[1] Federal employees were appointed based on their support of a President's election campaign and political beliefs. There were no requirements for such appointees to be suitable for Federal service or to have the qualifications to perform particular jobs. As administrations changed, large numbers of Federal employees were replaced with new employees appointed by the new administrations. At various times, the Capitol was besieged with thousands of office seekers who believed they were owed a Federal job based on their political support of the President. Over time, this practice contributed to an unstable workforce lacking the necessary qualifications to perform their work, which in turn adversely affected the efficiency and effectiveness of the Government and its ability to serve the American people.

The inherent weaknesses of the patronage system and its impact on Government effectiveness were recognized by concerned individuals and groups, resulting in various reform movements. However, there was little momentum for change until President James A. Garfield was assassinated in 1881 by a disgruntled Federal job seeker. A large public outcry for civil service reform ensued, which led to the enactment of the Pendleton Act in 1883. The Pendleton Act created the Civil Service Commission (CSC), and tasked it with monitoring a merit-based civil service based on the use of competitive examinations to support the appointment of qualified individuals to Federal positions. This contributed to improvements in Government efficiency and effectiveness by helping to ensure that a stable, highly qualified Federal workforce, free from partisan political pressure, was available to serve the American people.

[1] Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, *Journal of the Federal Circuit Historical Society*, Vol. 4, 2010, pages 109-110.

During the decades that followed, laws were enacted and actions undertaken that established the principle of "promoting the efficiency of the civil service" as the standard for removing a Federal employee. These laws and actions also granted preference for hiring military veterans, established a more transparent process for removing veterans from Federal jobs, and extended the veterans' job protections to other civil servants.[2] The CSC was given additional authority to oversee the removal of Federal employees and to adjudicate employees' appeals of their removal.[3] Although the CSC made several internal changes to better manage the appeal process, it became clear over time that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate employee appeals of actions Federal agencies took against them. Concern over the inherent or perceived conflict of interest in the CSC's role as both rule-maker and judge was a principal motivating factor behind the enactment of the Civil Service Reform Act of 1978 (CSRA).[4] The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;[5] 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.[6]

MSPB's role and functions. During hearings on the CSRA, the role and functions of MSPB were described during testimony by various members of Congress: ". . . [MSPB] will assume principal responsibility for safeguarding merit principles and employee rights" and be "charged with ensuring adherence to merit principles and laws" and with "safeguarding the effective operation of the merit principles in practice."[7] MSPB inherited the adjudication functions of the CSC and provides due process to employees and agencies as an independent, third-party adjudicatory authority for employee appeals of adverse actions (e.g., removals, suspensions for more than 14 days, and furloughs) and retirement decisions. For matters within its jurisdiction, the CSRA gave MSPB the statutory authority to develop its adjudicatory processes and procedures, issue subpoenas, call witnesses, and enforce compliance with MSPB decisions.

The CSRA also gave MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and Federal human capital management issues, to ensure that Federal employees are managed in accordance with MSPs and in a manner free from PPPs. In addition, MSPB was given the authority and responsibility to review the rules, regulations, and significant actions of OPM. 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 a PPP. 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 avoidance of PPPs.[8] In summary, the CSRA granted MSPB the statutory authority and responsibility to adjudicate employee appeals, enforce compliance with MSPB decisions, conduct objective studies of Federal merit systems and human capital management issues, and review and take appropriate action on OPM's rules, regulations, and significant actions. Appendix A contains a summary of MSPB's offices and their responsibilities and an organizational chart.

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[2] The Lloyd LaFollette Act of 1912; the Veterans Preference Act of 1944, as amended; and Executive Order 10,988.

[3] Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, *Journal of the Federal Circuit Historical Society*, Vol. 4, 2010, pages 111-112.

[4] Ibid. page 113.

[5] Ibid. page 114.

[6] The Office of Special Counsel (OSC) was formed by CSRA as part of the MSPB. OSC became a separate agency in 1989.

[7] Legislative History of the Civil Service Reform Act of 1978. Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. 2, (pages 1469-1470).

[8] Title 5 U.S.C. §1204(f) and §1206.

Since enactment of the CSRA, Congress has given MSPB jurisdiction to hear cases and complaints filed under a variety of other laws.[9] Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), a person entitled to the rights and benefits provided by chapter 43 of title 38, United States Code, may file an appeal with the Board alleging that a Federal agency employer or OPM failed or refused, or is about to fail or refuse, to comply with a provision of that chapter such as reemployment rights following a period of uniformed (military) service or discrimination based on a person's uniformed service.[10] This prohibition applies with respect to initial employment, reemployment, retention in employment, promotion, or any benefit of employment. Under the Veterans Employment Opportunity Act (VEOA), veterans who seek employment in the Federal civil service and are not hired, have the right to seek redress before MSPB for any alleged violation of their veterans' preference rights. VEOA also provides a means of redress for any violation of an individual's rights under any statute or regulation relating to veterans' preference.

Under the Whistleblower Protection Act (WPA), MSPB exercises jurisdiction over claims made by whistleblowers in two types of appeals. An 'individual right of action' (IRA) appeal is authorized by 5 U.S.C. 1221(a) with respect to personnel actions that are allegedly threatened, proposed, taken, or not taken because of the appellant's whistleblowing activities.[11] If the action is not otherwise directly appealable to MSPB, the appellant must seek corrective action from the Office of Special Counsel (OSC). An 'otherwise appealable action' appeal is an appeal to MSPB under laws, rules, or regulations other than 5 U.S.C. 1221(a) that includes an allegation that the agency action was based on the employee's whistleblowing activities. The appellant may choose either to seek corrective action from OSC before appealing to MSPB or appeal directly to MSPB.[12]

Congress enacted significant changes to whistleblower protections in the Whistleblower Protection Enhancement Act (WPEA) of 2012 (Public Law 112-199). This legislation amends the WPA to: expand the scope of protected disclosures; eliminate or narrow some exclusions from coverage; add to the covered actions over which MSPB has appellant jurisdiction; extend protections to all TSA employees; authorize MSPB to impose disciplinary action in some retaliation cases; expand MSPB's authority to award compensatory and other damages; and require MSPB to include whistleblowing case processing data in its annual performance reports. The WPEA also suspends, for 2 years, the exclusive jurisdiction of the U.S. Court of Appeals for the Federal Circuit over MSPB whistleblower cases, and adds a 13th PPP. The WPEA enhances whistleblower protections and gives MSPB more responsibility and authority in whistleblowing cases which is likely to add to MSPB's case workload and case complexity. TSA coverage under the WPEA took effect in November 2012, and the remaining sections of the law took effect on December 27, 2012.[13]

MSPB also processes cases from public employees related to alleged violations of political behavior prohibited by the Hatch Act. The Hatch Act Modernization Act of 2012, which took effect on January 28, 2013, broadens the scope of permissible political activities for state, local, and Federal employees, and effects MSPB's jurisdiction and processing of such cases. The Act expands the range of penalties that MSPB may apply to violations of the Act by Federal employees, and, in some cases, permits retroactive application of these new penalty provisions for Federal employees.

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[9] Also including 5 U.S.C. Chapter 43, and all those set out at 5 C.F.R. Part 1201.3.

[10] Public Law No. 103-353, codified at 38 U.S.C. §§ 4301-4335.

[11] IRA appeals involved personnel actions listed in 5 C.F.R. § 1209.4(a).

[12] Examples of such otherwise appealable actions are listed in 5 C.F.R. §§ 1201.3 (a)(1) through (a)(19).

[13] The updated text for the 8 sections of the U.S.C. changed by the WPEA is available on the MSPB website at http://www.mspb.gov/appeals/uscode.htm.

Finally, MSPB hears appeals from employees covered in merit systems established under other statutes. For example, MSPB has jurisdiction over certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3) and reduction-in-force actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a.

The Merit System Principles and the Prohibited Personnel Practices

The CSRA also codified for the first time the values of the merit systems as the MSPs, and delineated specific actions and practices as the PPPs that were prohibited because they were contrary to merit systems values.[14] The WPEA added a 13th PPP. The MSPs and PPPs are summarized below and their full text is contained in Appendix B.

MSPs include:

- Fair and open competition for positions with equal opportunity to achieve a workforce from all segments of society;
- Merit-based selection for jobs;
- Advancement and retention based on qualifications and job performance;
- Fair and equitable treatment in all aspects of management;
- Equal pay for work of equal value;
- Training that improves organizational and individual performance;
- Protection from arbitrary action, favoritism, or coercion for political purposes;
- Protection against reprisal for lawful disclosure of violations of law and waste, fraud, and abuse;
- Effective and efficient use of the workforce; and
- That all employees should maintain high standards of integrity, conduct, and concern for the public interest.

PPPs state that employees shall NOT take, or influence others to take, personnel actions that:

1. Discriminate for or against an individual or applicant on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
2. Consider information beyond the persons qualifications, performance, or suitability for public service;
3. Coerce political activity or take action in reprisal for refusal to engage in political activity;
4. Deceive or willfully obstruct rights to compete for employment;
5. Influence a person to withdraw from competition to affect the employment prospects of another;
6. Grant preference beyond that provided by law to affect a person's employment prospects;
7. Are based on or create nepotism;
8. Are in retaliation or reprisal for whistleblowing–the lawful disclosure of violation of law, rule, regulation, gross mismanagement or waste of funds, abuse of authority, or danger to public health or safety;
9. Are in retaliation or reprisal for an employee's exercise of their rights and legal protections;
10. Are based on past conduct that does not adversely affect the job;
11. Knowingly violate veterans' preference;

[14] Title 5 U.S.C. § 2301 and § 2302, respectively.

12. Violate the merit systems principles; or
13. Implement or enforce a nondisclosure policy, form, or agreement, which does not include a specific statement that its provisions are consistent with and do not supersede applicable statutory whistleblower protections.

MSPB's Scope of Impact

Through its adjudication and studies functions, MSPB affects almost every Federal employee, and through those employees, affects the quality of the service provided to the American people. Under various statutes, MSPB provides an independent, third-party review authority for over 2 million Federal civilian employees, applicants for Federal civilian jobs, and selected categories of the almost 575 thousand employees of the U.S. Postal Service (USPS) and 1.4 million uniformed military service members. MSPB's adjudication function covers individuals in almost every Federal cabinet level department, small and independent agencies, Government Boards, and other Executive branch organizations.

MSPB's merit systems studies function provides findings and recommendations that are applicable to and can improve Federal management in all Federal Executive branch organizations. Because these study findings and recommendations focus in part on improving public management in support of fundamental public service values, they also generally apply to the management of Federal legislative branch and judicial branch employees and public employees at the state and local level.

Through MSPB's authority to review and act on OPM rules, regulations, and significant actions, MSPB protects the Federal merit systems and helps ensure that Federal employees are managed in adherence with MSPs and free from PPPs. This broad authority includes all employees in all the agencies for which OPM sets policy, beyond the specific individual employees who may file appeals to MSPB of actions their agencies have taken against them.

MSPB Customers, Partners, and Stakeholders

MSPB has a range of customers, partners, and stakeholders beyond the President and Congress who receive our reports on Federal merit systems studies and on OPM significant actions, and who look to MSPB as a key component of a healthy civil service. Adjudication customers include those who appear before us such as appellants, appellant representatives, and agency representatives. Legal stakeholder groups include bar associations, attorney associations focused on Federal labor law, employee unions, management associations, veterans and military organizations, and other people or groups interested in our decisions and legal precedents. Customers and stakeholders primarily interested in our merit systems studies and OPM review functions include agency leaders, Chief Human Capital Officers, HR Directors, EEO Directors, HR and EEO specialists, academicians, good Government groups, and affinity groups. This group also includes other Government and non-profit organizations that do work similar to MSPB's studies function, such as the Government Accountability Office and the Partnership for Public Service.

MSPB partners include those organizations with which it has formal statutory or functional relationships, such as OPM, OSC, the Equal Employment Opportunity Commission (EEOC), and the U.S. Court of Appeals for the Federal Circuit. MSPB's authority to review OPM rules,

regulations, and significant actions was described above. In addition, an MSPB Board Member may request an advisory opinion from the Director of OPM concerning the interpretation of any rule, regulation, or other policy directive promulgated by OPM. The OPM Director may request reconsideration of an MSPB decision where the Director determines that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management, and the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. OSC prosecutes cases before MSPB that involve violations of PPPs and the Hatch Act, and can bring corrective action. Specifically, if MSPB determines there is reason to believe that a current employee may have committed a PPP, then it refers the matter to OSC to investigate and take appropriate action. MSPB works with EEOC on 'mixed' cases that involve issues concerning both Federal MSPs and anti-discrimination principles as applied to Federal employees. Usually, MSPB and EEOC agree on the outcome of such cases. However, when the agencies do not agree, the case is decided by the Special Panel on Appeals as established by the CSRA. The U.S. Court of Appeals for the Federal Circuit hears cases resulting from an appeal of a Board decision on a PFR and in other specific circumstances in which no issue of discrimination was raised to or decided by the Board, or where a discrimination issue was abandoned on judicial review. MSPB applies precedents established by the Court in adjudicating initial appeals and PFRs.

MSPB employees and the MSPB Professional Association are also key stakeholders because they carry out the work of the agency. Federal civilian employees, applicants for Federal civilian jobs, and selected categories of USPS employees and military service members, are also stakeholders. This is because the precedents MSPB sets through adjudication, the findings and recommendations of our studies, and our review of OPM rules, regulations, and significant actions, affect how well these employees are managed, and how any potential appeals they may file are processed and decided. Several foreign governments also have an interest in MSPB and have used MSPB and the U.S. Merit System as models for establishing similar agencies and systems in their own countries. Finally, the public is a stakeholder because a successful MSPB helps ensure a healthy merit system and a high-quality workforce able to provide effective and efficient services to the American people.

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

The Federal merit systems are based on widely accepted organizational management practices and values that have been developed and reinforced through historical experience. Naturally, there are benefits and costs associated with merit-based management of the Federal workforce. Ensuring values such as fairness in all personnel matters; hiring and advancement based on qualifications and performance; protection from arbitrary personnel decisions, undue partisan political influence, and reprisal; and assurance of due process help ensure a strong merit-based workforce, but incur costs that are not directly comparable to the private sector. For example, the Government hiring process is typically longer than that of the private sector in part because of requirements to ensure selection of highly qualified employees based on assessment of applicant qualifications after fair and open competition. Effective assessment of candidates through the probationary or trial period takes time, but it improves the overall quality of the workforce and helps ensure that Federal job protections are provided to the most highly qualified employees. This, in turn, helps save costs by reducing the likelihood that the Government will need to undertake the lengthy process to remove an employee. These management costs are offset by the benefits associated with ensuring a more stable, highly qualified workforce that serves in the public's interest over the long term.

Considering MSPB's relatively small size and budget, it provides enormous value to the Federal workforce, Federal agencies, and to the American taxpayers. MSPB's effective and efficient adjudication of appeals, enforcement of its decisions, merit systems studies, and review of OPM adds value and saves costs by improving the quality of the workforce providing service to the public, strengthening adherence to MSPs, and preventing PPPs.

Value added through adjudication and enforcement. 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 systems. As a neutral, independent third party, MSPB's adjudication of employee appeals improves the fairness and consistency of the appeals 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 also 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 how to prepare and present thorough, well-reasoned cases. Strong enforcement of MSPB decisions ensures timely, effective resolution of current disputes and encourages more timely compliance with future MSPB decisions.

Value added through merit systems studies and review of OPM. 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 contributes 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. MSPB's review of OPM rules, regulations, and significant actions protects the integrity and viability of the merit systems and civil service and improves adherence to MSPs, and provides benefits similar to those related to merit systems studies. These reviews also help to 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.

Revising the Strategic Plan

MSPB's most recent strategic plan took effect in FY 2012 and included significant changes in its performance framework including an updated mission statement, new vision statement, new organizational values, 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 strategic goals include all of MSPB's statutory functions and responsibilities. Strategic Goal 1 focuses on reviewing and taking action on individual appeals, and reviewing and assessing existing and proposed merit systems laws, regulations, and practices to identify best practices and areas for improvement. Strategic Goal 2 focuses on informing and

encouraging actions by policy-makers that improve merit; conducting outreach to improve adherence to MSPs and prevent PPPs in the workplace; and providing educational materials, standards 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. Successfully implementing this Strategic Plan will ultimately yield better Federal management, improved Federal employee and agency performance, better service to the public, and increased value to American taxpayers.

In revising the strategic plan, MSPB considered changes in the external environment such as passage of the WPEA and other changes in law and jurisdiction, sequestration and reductions in Federal budgets including potentially large increases in MSPB workload due to furloughs and other workforce-related actions agencies may take to manage their budgets, and increases in the number of retirements among Federal employees. MSPB also considered internal challenges such as reductions in our budget, the proportion of MPSB employees who are eligible to retire, and the number of persistent vacancies due to budget uncertainty. Although these external and internal factors have, and will continue to affect MSPB's performance on some measures, MSPB has elected to retain the current agency performance framework. The mission, vision, values, strategic goals, and strategic objectives define what MSPB believes it must do to carry out its responsibilities to protect the Federal merit systems, even though it may not be able to do so as quickly, or in the same manner as in the past. MSPB has made selected revisions to its strategic measures and targets and to the eans and strategies it will use to accomplish its strategic goals and objectives. In addition, MSPB has elected to include management objectives in its strategic plan to emphasize critical internal leadership, management, and operational programs essential to support accomplishment of its strategic objectives.

Stakeholder feedback and Congressional consultation. MSPB will consult with its internal and external stakeholders, including Congress, during the summer of 2013. Their input and the actions we take on their suggestions will be summarized in the revised plan.

Links to Other MSPB Plans and Reports

This strategic plan provides the foundation for MSPB's work for the next several years. It defines our purpose and lays out the long-term outcomes we hope to achieve. In accordance with the GPRAMA, MSPB's Annual Performance Plans (APP) includes program performance goals (the same as the strategic objectives in this strategic plan), performance measures, and annual performance targets designed to move the agency incrementally toward achievement of its strategic goals, strategic objectives and management objectives. The APP is submitted as part of the Performance Budget provided to the Office of Management and Budget (OMB) and published as part of the Congressional Budget Justification submitted to Congress. MSPB reports program performance results as compared to the goals, measures, and targets in the APR. Beginning with the FY 2012 APR and FY 2013-2014 APP, the APP and APR are combined in the MSPB Annual Performance Report and Plan (APRP) published in conjunction with the Congressional Budget Justification in February of each year. The APRP presents information about MSPB's performance results and performance plans in a coherent, cogent, and straightforward manner, and minimizes the duplication and redundancy that would be contained in separate reports and plans. The strategic plan and APRPs are posted on MSPB's website in accordance with GPRAMA and OMB Guidance.

MSPB Strategic Framework

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.

Strategic Objectives:

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.

Strategic Objectives:

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.

MSPB Management Objectives

Management Objectives: Effectively and Efficiently . . .

M1: Lead and manage employees to ensure an engaged workforce with the competencies to perform MSPB's mission.

M2: Manage budget, financial and other administrative programs to obtain and sustain the necessary resources now and in the future.

M3: Manage information technology and information services programs to support our mission.

M4: Ensure employee and workplace safety and security.

Measuring Achievement of Our Strategic Goals and Objectives

The following measures for each Strategic Goal and associated Objectives are intended to be carried out over the long-term. They include outcome, output, process, customer service, and customer satisfaction measures. Some outcome measures exceed what MSPB can do or control on its own, but reflect important areas in which MSPB can make a contribution to strengthening merit, improving adherence to MSPs, and preventing PPPs.

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.

S1A-1. Percent of adjudication participants and stakeholders over time who agree that MSPB decisions are thorough, understandable, thoughtful, and legally sound (though they may not agree with the outcome of the decisions).

S1A-2. Percent of MSPB decisions over time that are left unchanged (affirmed or dismissed) by the U.S. Court of Appeals for the Federal Circuit.

S1A-3. Average case processing time for initial appeals and Petitions for Review (PFRs) of initial appeals over time.

- S1A-3a. Achieve/maintain a standard average case processing time for initial appeals of 120 days or fewer over time. (93 days in FY 2012)
- S1A-3b. Achieve/maintain a standard average case processing time for PFRs of 150 days or fewer over time. (245 days in FY 2012)

S1A-4. Percent of adjudication participants over time who agree that MSPB adjudication processes are fair, open, accessible, easy to use, and understandable.

S1A-5. Percent of participants in ADR program (including initial appeals settlement and the Mediation Appeals Program (MAP)) over time who agree the ADR process was helpful, valuable, and non-coercive even if no agreement was reached.

1B. Enforce timely compliance with MSPB decisions.

S1B-1. Average processing time for enforcement cases over time.

Achieve/maintain a standard average case processing time for enforcement cases of 200 days or fewer over time. (244 days in FY 2012)

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

S1C-1. Percent of stakeholders over time who agree that the research agenda includes topics with high potential to strengthen Federal merit systems policies and practices.

S1C-2. Percent of external stakeholders over time who agree that study reports are objective, timely, well written, and include recommendations that can be implemented at the appropriate level.

S1C-3. Number and scope (percent of the workforce, agencies, or policy areas impacted) of merit systems studies published over five-year period.

Publish 18-20 merit systems studies over a five-year period. (3 rpts in FY 2012)

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

S1D-1. Number and scope (percent of the workforce, agencies, or policy areas impacted) of OPM rules or regulations, or implementation of the same, reviewed over time.

S1D-2. Number and scope (percent of the workforce, agencies, or policy areas impacted) of OPM significant actions reviewed over time.

Strategic Goal 2: Advance the public interest through *education* and *promotion* of stronger merit systems, *adherence* to the 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.[15]

S2A-1. Number and scope of changes in merit systems laws, regulations, rules, and other policies initiated or implemented over time, that strengthen merit, improve adherence to MSPs, or prevent PPPs.

S2A-2. Number of references to MSPB decisions, reports, newsletters, web content, or other materials over time in policy papers, legislation, professional literature, Executive Orders, or the media.

S2A-3. Number and scope of contacts made over time with Governmentwide policy-makers focused on supporting or improving Governmentwide merit systems laws, regulations, rules, Executive Orders, and other policies.

2B. Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through outreach.[16]

S2B-1. Increase in the proportion of Federal employees who perceive adherence to the MSPs over time (following a possible drop in adherence as agencies educate their employees about merit, the MSPs, and the PPPs).

S2B-2. Increase in the number of agencies over time that adopt one or more practices or recommendations related to strengthening merit, improving adherence to the MSPs, and preventing the PPPs (based on an external survey).

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[15] This includes contacts with Governmentwide policy-makers including Congress, Chief Human Capital Officers (CHCO) Council, OPM, and others involved in Governmentwide merit systems policy who focus on information gained from adjudication case law, oral arguments, merit system studies, and review of OPM rules, regulations, and significant actions.

[16] This includes contacts (e.g., presentations, speeches, meetings, web content, and participation in committees and panels) with stakeholders involved in the practice of merit (e.g., agency senior leaders, managers, and employees, CHCO Council, Human Resource (HR) and EEO Directors, HR and EEO specialists, the media, and other stakeholder groups).

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

S2C-1. Increase in the proportion of agencies that provide training and/or educational materials about the merit systems, MSPs, and PPPs to their employees over time.

S2C-2. Number and scope of educational information about the merit systems, MSPs, PPPs, MSPB decisions, the appeals process, studies, newsletters, etc., that are viewed or accessed from MSPB's website over time.

S2C-3. Number and type of merit systems educational materials and guidance that MSPB makes available over time.

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Means and Strategies Needed to Accomplish our Goals and Objectives

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. Effectively and efficiently implement necessary changes in adjudication and reporting of whistleblower cases in accordance with the WPEA.
3. Effectively and efficiently manage the adjudication of the large increase in appeals (e.g., furloughs and RIFs) resulting from sequestration and other Federal budgetary constraints
4. Ensure continuity of legal expertise, increase legal training and expertise of adjudication staff and monitor adjudication performance and accountability.
5. Appropriately balance quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
6. Provide effective and impartial ADR services (including settlement and mediation) to meet the needs of the involved parties.
7. Ensure effective representation of MSPB in cases brought before other adjudicatory bodies, such as the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court.
8. Provide effective and efficient processing of requests for enforcement of MSPB decisions and improve the transparency of the enforcement process.
9. 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.
10. Obtain a web-based survey platform to support merit systems studies, and customer service and customer satisfaction performance measurement.
11. Use periodic surveys to assess and report on the overall health of the Federal merit systems, practice of merit, and occurrence of PPPs.
12. Expand MSPB's studies program capacity and increase the value and impact of studies.
13. 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. Obtain a web-based survey platform to support merit systems studies, and customer service and customer satisfaction performance measurement.
2. 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.
3. 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.
4. Provide information about adjudication processes, outcomes, and legal precedent to support adjudication participants' ability to prepare and file strong cases with MSPB.
5. Develop educational standards, materials, and guidelines on merit, MSPs, PPPs, and the a merit-based civil service to ensuring excellent Government service to the public.

6. 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.
7. 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 Strategies for Accomplishing Management Objectives

1. Lead and manage people.
   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 prevent PPPs at MSPB.

2. Manage budget, financial, and other administrative programs.
   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 programs.
   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 (FOIA), 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. Ensure employee and workplace safety and security.
   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, accessible to, and understandable by those who need them.

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Trends and Challenges that May Affect Agency Performance

A number of significant external trends and internal issues and challenges are likely to affect MSPB's mission through FY 2018. This section lists these trends, issues, and challenges, and their potential affect on MSPB.

External Trends

- Changes in law and jurisdiction (e.g., the WPEA, Hatch Act Modernization Act, etc.)
  - Large increases in adjudication workload, increased case complexity, and expanded case tracking, coding, and reporting requirements.
  - Increased complexity in studying the merit systems and reviewing OPM rules, regulations, and significant actions.

- Budget sequestration and reductions, and related workforce adjustments.
  - Large increase in furlough appeals as a result of sequestration and other Federal budget constraints and uncertainties.
  - 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 during these workforce changes.

- 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 effectively 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.

- Increase 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 the how changes in the workforce and type of work affect 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.

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.[17]
- Ensure MSPB's Strategic and Performance Plans 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.[18]
  - Ensure a sufficient number of adjudication staff who have the necessary competencies, knowledge, and training to perform their work.
  - Prepare for anticipated retirements of adjudication staff.

- Effectiveness of merit systems studies.
  - Ensure ability to administer surveys to support MSPB studies program and provide essential customer service and satisfaction data for agency performance goals
  - Use collected data more effectively to increase effectiveness and efficiency of Government as a whole.
  - Promote 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.

- 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 to establish an accurate and stable staffing structure.

[17] Title 5 U.S.C. § 1204(a)(4).

[18] 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 to 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 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 filed with MSPB, 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/external customer surveys, will help ensure the consistency, validity, and verifiability of the performance data used to manage MSPB programs and included in agency reports.

Proposed Program Evaluation and Performance Measurement System Review Schedule

In FY 2013, MSPB finalized an internal program evaluation policy and began a program evaluation of its PFR process. Assuming sufficient resources are available, MSPB will develop an agency policy for performance measurement, verification, and validation beginning in FY 2014. Based on the availability of resources, MSPB will undertake independent program evaluations of its mission and administrative support programs assess its performance measurement systems and processes over the next few years. A projected schedule for these activities is provided below.

Program/Performance Measurement System	Evaluation Start Year
Internal/external customer satisfaction/service surveys (including obtaining a web-based survey platform)	2012
PFR case processing	2013
Case processing in the regional and field offices	2015
Law manager case management system	2015
Administrative functions of the Office of the Clerk of the Board	2016
Merit System Studies	2016
IT program planning and implementation	2017
Functions of the Office of Regional Operations	2017
HR Management and EEO functions	2018

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Governmentwide Contextual Indicators of a Strong Merit-based Civil Service

MSPB cannot achieve its purpose to protect and promote a strong merit-based civil service on its own. Federal policy-makers and other stakeholders must do their part to establish and implement merit-based policies, and must apply these policies to the everyday practice of merit in the workplace. A strong merit-based civil service also requires the cooperation and commitment of every agency leader, manager, supervisor, and employee. If everyone does their part, we will have a stable, highly qualified workforce managed under MSPs and free from PPPs, able to provide superior services to the American people.

MSPB cannot control the ultimate strength of the Federal merit systems, or the degree to which other stakeholders do their part to support strong merit systems. However, we suggest that the following long-term Governmentwide contextual indicators illustrate important aspects of creating and maintaining a strong merit-based civil service in the Federal Government. These are long-term indicators with changes becoming evident over a period of several years, beyond the period of time covered in this Strategic Plan. Objective, verifiable, and valid information related to these indicators may be available from a variety of Federal agencies, as well as Government oversight organizations, public management groups, and other sources.

- ✓ Higher Governmentwide employee engagement and improved organizational management leading to higher organizational performance.
- ✓ More stable workforce with less turnover.
- ✓ Decrease in the actual or perceived occurrence of PPPs, or in the perception of the adverse impact of PPPs over time.
- ✓ Reduction in performance, disciplinary, or conduct actions (following an initial spike in such actions due to better understanding of the concept of merit, MSPs, PPPs, and the appeals process).
- ✓ Increase in the percent of Federal employees, supervisors, managers, and leaders who understand the basis of the Federal merit systems, the MSPs, and the PPPs.
- ✓ Increase in the percent of employees who agree they have confidence in the Federal merit systems appeals process.
- ✓ Increase in reported level of the public's trust of Federal civil servants or employees.

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Appendix A: MSPB Organizational Structure and Office Functions

MSPB is headquartered in Washington, DC and has eight regional and field offices located throughout the United States. The agency is currently authorized to employ 226 Full-time Equivalents (FTEs) to conduct and support its statutory duties.

The **Board Members,** including the Chairman, Vice Chairman, and Board Member, are appointed by the President, confirmed by the Senate, and serve overlapping, non-renewable 7–year terms. No more than two of the three Board Members can be from the same political party. The Board Members adjudicate the cases brought to the Board. The Chairman, by statute, is the chief executive and administrative officer. 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 Federal Trade Commission (FTC), the Coast Guard, and the Environmental Protection Agency (EPA) under interagency agreements.

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

The **Office of Equal Employment Opportunity** plans, implements, and evaluates MSPB's 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's Animal and Plant Health Inspection Service for human resources 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

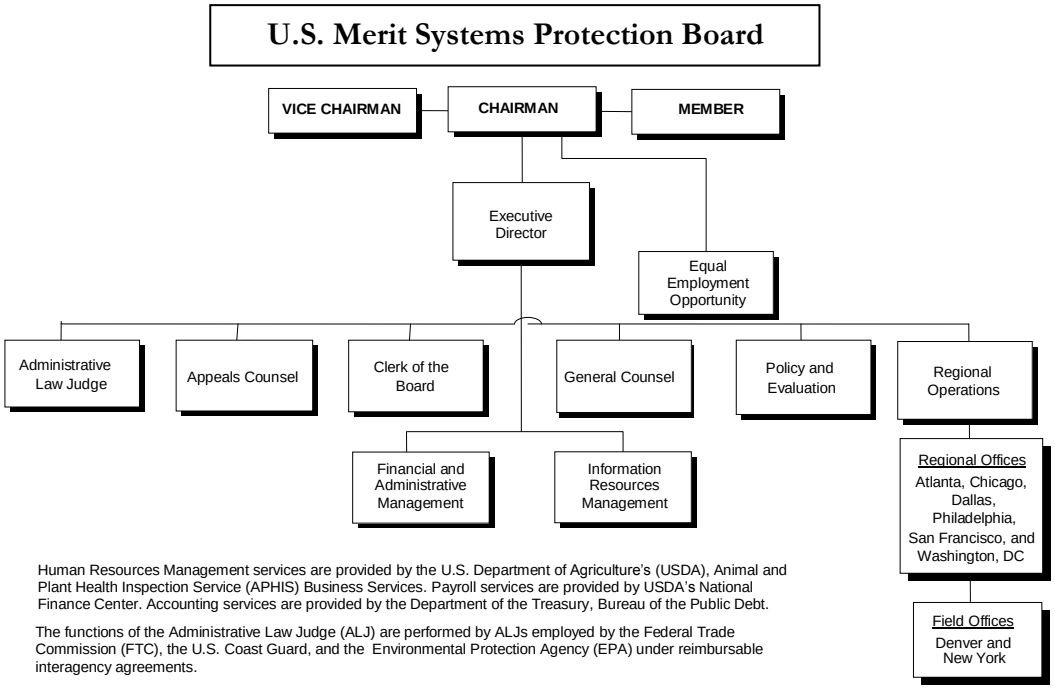
MSPB in litigation; coordinates the review of OPM rules and regulations; prepares proposed decisions for the Board to enforce a final MSPB decision or order, in response to requests to review OPM regulations, and for other assigned cases; conducts the agency's PFR settlement program; and coordinates the agency's legislative policy and congressional relations functions. The office also drafts regulations, conducts MSPB's ethics program, performs the Inspector General function, 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. Reports of these studies are sent to the President and the Congress and are distributed 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 special projects and program evaluations for the agency and has responsibility for preparing MSPB's strategic and performance plans and performance reports required by the Government Performance and Results Act Modernization Act of 2010 (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 Organizational Chart



Appendix B: The Merit System Principles and Prohibited Personnel Practices

The Merit System Principles: Title 5, United States Code, § 2301

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be--

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences--

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an absence of authority, or a substantial and specific danger to public health or safety.

The Prohibited Personnel Practices: Title 5, United States Code, § 2302

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority--

(1) discriminate for or against any employee or applicant for employment--

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action except as provided under section 3303(f);

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee of applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of--

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences--

(i) a violation of any law, rule or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences--

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of--

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) for refusing to obey an order that would require the individual to violate a law.

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

(11)

(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title. This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress; or

(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

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