

MSPB Strategic Plan for FY 2012 – 2016: Summary of Stakeholder Comments and Related Actions Taken in the Strategic Plan

The process the U.S. Merit Systems Protection Board (MSPB) used to consult with its internal and external stakeholders on the new MSPB Strategic Plan (or Plan) was the most thorough it has ever undertaken. As a result, MSPB received more comments on this Strategic Plan than on the previous three strategic plans combined. In general, the comments were positive and complimentary, and they included a variety of constructive suggestions geared toward improving, strengthening, and clarifying various components of the Plan. The comments MSPB received along with the actions it took to address them are summarized in the following table, which is posted publically in support of MSPB’s commitment to transparency and Open Government.

As expected, MSPB received a number of comments during the consultation process that did not relate directly to the Strategic Plan, and therefore, they are not included in this summary. Many of these comments were thoughtful and constructive, and may be considered and addressed via other processes such as through our regulation review initiative, through general reviews and updates of internal processes and procedures, through the work of existing programs, or through other means.

Stakeholder Consultation Comments	Actions Taken in the Strategic Plan
<p>Forward-looking, ambitious, commend continued attention to cutting-edge studies and enhanced use of metrics for internal program evaluation. Revise details in history regarding inherent conflict of interest within the Civil Service Commission (CSC). A strong firewall existed and impression that process was tainted is unjust and unfair to the Federal Employees’ Appeal Authority. Main driver for separating appeals was perception of Federal employee unions that they could improve their winning percentage by influencing the make-up of the MSPB.</p>	<p>The Plan acknowledges that the CSC made efforts to separate the appeals and policy-making processes. However, the Congressional record still referred to the perceived or inherent conflict of interest between these processes as a motivating factor for the Civil Service Reform Act of 1978 (CSRA).</p>
<p>Excellent in general discussion of MSPB mission to prevent prohibited personnel practices (PPPs) and announcing commitment to clarity and transparency. Add language to describe to laypersons what MSPB does in understandable terms and define PPPs. Add 1-2 sentences in history about how corrupt the civil service system was before the Pendleton Act to set stage for themes later in the plan. Under Excellence value, change to “Statutes, regulations, and legal precedents.” Under external trends, add possible increase in alleged involuntary retirements to the retirement topic.</p>	<p>Summarized merit system principles (MSPs) and PPPs in the narrative and listed the full text in an Appendix. Clarified the prevalence of corruption prior to the Pendleton Act and made other clarifying corrections under values and external trends.</p>

Stakeholder Consultation Comments	Actions Taken in the Strategic Plan
<p>Setting an excellent transparency precedent, plan is excellent piece of work, mission and vision are clear and objectives are linked to strategic goals. Measure 1D (Office of Personnel Management (OPM) review) is basically quantitative and seemingly unrelated to a quality goal associated with an impact on OPM. This could be manipulated by doing more reviews that drive OPM crazy, with little impact on OPM's work</p>	<p>MSPB consulted various stakeholders on appropriate measures for our responsibilities to review OPM rules, regulations and significant actions. In addition to the number of reviews, MSPB adopted the suggestions that it also track the scope of such reviews in terms of the percent of the workforce, agencies, or policy areas impacted by the reviews.</p>
<p>Under 'excellence' value, change to plural for statutes and precedents. Plan accurately refers to merit systems, but the plan should identify and describe the multiple merit systems we protect. The number and complexity of such systems makes MSPB's work more challenging, and more important.</p>	<p>Included a summary of the 'merit systems' MSPB covers, such as title 10, title 38, Foreign Service, and others.</p>
<p>The Plan has no evidence of pilot projects (as permitted under the Government Performance & Results Act of 1993), nor a new focus on results, service quality, or customer satisfaction. Performance goals are more descriptions of the Board's work, than what it is supposed to be doing and how it is supposed to be doing it. Need a bolder approach for the future. Plan needs substance about what the Board is going to do and when.</p>	<p>Pilot projects as described under GPRA would not really be effective for MSPB. MSPB believes its new Strategic Plan is a bold approach to what it intends to do, and more completely reflects the intent of the CSRA. The means and strategies section contains information about how MSPB will accomplish its goals and objectives. The increased focus on service quality and customer satisfaction is evident in the balance of measures for adjudication (decision quality, timeliness, and participant satisfaction with the process), the increased emphasis on participant satisfaction with the alternative dispute resolution (ADR) process, and additional customer satisfaction measures for studies. There are long-term numeric targets for adjudication timeliness and merit system studies. Other long-term numeric targets will be established as we develop new measures and measurement processes.</p>

Stakeholder Consultation Comments	Actions Taken in the Strategic Plan
<p>Great job, plan is excellent and provides broad vision and specific actions and measures. Plan should be living document, and track how MSPB will hold itself accountable for doing this and meeting its objectives. A more detailed description of what is needed to achieve the vision may help “line of sight,” program evaluation and communication. Is there value in having a layer of goals between objectives and vision? Does MSPB plan to evaluate its success in achieving the vision, and communicating results to stakeholders and policy-makers? Should MSPB periodically issue a “State of the Merit Systems” report that identifies and discusses successes and challenges not fully reached by our narrower adjudication and evaluation activities? Such a report could be similar to the MSPB report to the Volcker Commission, “Making the Civil Service Work: Recommendations for Change,” or Australia’s annual “State of the Service” report.</p>	<p>The new Plan contains some merit system ‘indicators’ as outcome measures for a strong merit-based civil service, but acknowledges that MSPB cannot achieve these outcomes on its own. Commitment by many agencies and stakeholders including every Federal supervisor, manager, and employee is necessary to achieve the outcomes related to a strong merit-based civil service. MSPB’s Performance Plan and internal Resource Management Plan will contain more detail about what MSPB will do which will help ‘line of sight’ for employees between daily operations and long-term mission, and help guide program evaluation and communication. MSPB does not necessarily intend to evaluate how successful it is at achieving its vision because the GPRA Modernization Act of 2010 (GPRAMA) focuses on achieving strategic goals and objectives/performance goals. However, MSPB may consider in the future producing a general report every 3-5 years on the ‘state of merit.’ Such a report would make it easier to talk about longer-term trends and track the long-term process involved with changing merit system and human resources management policy and practices.</p>
<p>Mission statement gets it right. MSPB tacitly acknowledges 32 year-long failure to review OPM regulations for PPPs. MSPB does not have the duty to prevent PPPs, rather that is the duty of agency heads and the Office of Special Counsel (OSC). To the extent MSPB has such a duty it is indirect as a result of properly performing its adjudicative, enforcement, OPM review and special studies functions to ensure agency heads and OSC do their duty. The Plan makes no mention of OSC, and authority for training rests with OSC. MSPB should request legislation to authorize training. The Plan should mention simple ways MSPB can work with OSC to achieve several goals in the plan.</p>	<p>The Plan now includes a brief explanation about how MSPB works with the Equal Employment Opportunity Commission (EEOC) and OSC to carry out its responsibilities to protect merit. Beyond what is described in the plan, MSPB is necessarily cautious about how it works with other agencies because of the necessity to maintain its independence and objectivity as intended by the CSRA. MSPB’s authority to provide guidance and standards related to training and education on merit systems, MSPs, and PPPs is implicit in its law and the intent of the CSRA.</p>

Stakeholder Consultation Comments	Actions Taken in the Strategic Plan
<p>Laudable goal to “protect merit principles and promote an effective Federal workforce free of PPPs” and value of basing decisions on “statute and legal precedent” and conducting work in fair, unbiased, and objective manner. Support plan for increasing legal training and expertise of legal staff, and improving adjudication customer satisfaction.</p>	<p>The Plan specifically states MSPB’s intent to use balanced measures of adjudication performance including decision quality, timeliness (with lengthened long-term targets for average processing time), and participant perceptions of the adjudication process. The Plan also contains means and strategies related to increased legal training and expertise of the adjudication staff, especially in light of the fact that nearly 50% of MSPB administrative judges (AJs) are retirement eligible in the next three years.</p>
<p>Add third goal related to ensuring that MSPB has sufficient resources to fulfill its mission, and these resources are used efficiently and effectively. Given its stated mission, MSPB is ludicrously underfunded and MSPB mission should be considered essential. Resources devoted to prevention save more resources needed to correct a problem. More emphasis on veterans rights as a unique and special case of PPPs, and reference to veterans preference under means and strategies including identifying and remediating methods to circumvent veterans preference and education about veteran preference. Include two key outcome indicators, total length of time from initial injury of employee/applicant until final remedy for injury has been provided; and total length of time from an initial determination by MSPB that employee/applicant was injured until final remedy for that injury.</p>	<p>MSPB appreciates the perception by this stakeholder that it is underfunded. There is additional narrative in the Plan on the value MSPB brings to the workforce, agencies, the Government, the public, and taxpayer. This value includes strengthening merit, improving adherence to MSPs, and preventing PPPs in the future through informing better policy, conducting outreach, and establishing merit systems education guidelines and standards. MSPB believes veterans rights are sufficiently addressed in the Plan, and including specific methods to remediate circumvention of veterans’ rights is beyond scope of a strategic plan. Education about veteran’s preference would fall under general merit, MSP, and PPP education, the details of which are also beyond the scope of a strategic plan. Proposed timeliness measures would be difficult for MSPB to track and go beyond the scope of the timeliness of MSPB processes. However, increasing the transparency of the adjudication and enforcement processes may improve understanding of the processes and thus reduce processing time in the future.</p>

Stakeholder Consultation Comments	Actions Taken in the Strategic Plan
<p>Plan deserves appreciation, is tight, concise, specific and collaborative. Mission and vision statements are perfect – short and to the point. Values are without argument, noble and necessary. Overall plan is solid, ambitious and needs to be sold and internalized. Well-made point about value MSPB provides. Concur that if MSPB is successful in doing what it states, fewer resources will be spent by the taxpayer on federal employee personnel disputes in the long run and federal service will improve. However, how MSPB will absorb the initial costs, or will it request increased funding is not clear. Short term infusion of funds would be helpful and more transparency on what MSPB believes is necessary, where it currently stands and what the shortfall means. Approve two strategic goals. On measures, do not measure satisfaction of the workforce, survey ADR participants about whether or not processes are effective in getting a fair and timely result. Consider adjusting program evaluation schedule moving review of OPM regulations and significant actions program back one year and moving review of the office of regional operations and case processing in the regional and field offices up one year.</p>	<p>The discussion of initial merit systems costs in the Plan relate to the initial costs of assessing and hiring in a merit-based system, and not to an initial increase in MSPB resources. MSPB has justified funding to correct for previous budget shortfalls and to fully fund our mission to review of OPM regulations. This information is contained in the FY 2012 and FY 2013 Congressional Budget Justifications which are publicly available on MSPB’s website. The measure of ADR participant satisfaction focuses on perceptions of the process. The schedule of program evaluations has been adjusted, but its implementation depends on the availability of the resources necessary to conduct these evaluations.</p>
<p>Version is more readable, well-organized and focused on the most critical points. Some performance measures will be challenging to accurately evaluate, but there is good variety of approaches. Consider changing the use of “overseeing OPM” and reference to the use of ‘emotion’ in the discussion of inappropriate criteria to use in adjudicating cases.</p>	<p>New measures have been adjusted to some degree, and it is true that some will be challenging to track. References to “overseeing OPM” have been removed and the plan now refers to reviewing OPM rules, regulations, and significant actions. The use of ‘emotion’ in the discussion of adjudicating cases is no longer used in the Plan.</p>
<p>High-level approach gives clear vision. Would it be appropriate to identify connection and/or separation in terms of EEOC complaint requirements that cross or intersect on issues? This becomes a duplication of effort for managers.</p>	<p>The Plan contains a brief summary of how MSPB works with EEOC on mixed cases. However, the impact that mixed cases may have on the effort of supervisors is beyond the scope of the Plan.</p>

Stakeholder Consultation Comments	Actions Taken in the Strategic Plan
<p>Process for developing strategic plan appears to have been very inclusive. Strategic goals and objectives are closely tied to MSPB’s mission, clearly written and should be easily understood by MSPB employees and stakeholders. MSPB may want to include targets for goals and objectives designed to assess progress. Many measures are output rather than outcome oriented. An (education) outcome measure would be how MSPB would measure increased understanding. This would make it easier to gage progress a la GPRAMA. We believe the term “oversight of OPM” refers to MSPB statutory authority to review OPM rules, regulations and significant actions. We recommend defining OPM oversight as used in the plan as review of OPM rules, regulations and significant actions, or similar language.</p>	<p>Additional numeric targets and outcome measures have been included in the Plan, and further information will be available as these measures and measurement processes are developed. The Plan now refers to review of OPM rules, regulations, and significant actions rather than to OPM “oversight.”</p>
<p>Plan is comprehensive, professional and reflects thoughtful and useful strategies for MSPB. Consider more attention focused on individual right of action (IRA) appeals as attention on issues raised in such appeals may lead to better enforcement of merit principles and fewer PPPs. Mention your recent use of oral arguments in your efforts to increase transparency. We applaud goal to increase training on PPPs and suggest finding ways to create incentives for agencies to provide such training. For example, MSPB could provide recognition on its website to agencies demonstrating best practices. Clarify what you mean by eliminating the routine use of hiring delays to offset operational requirements, and the status of program evaluations.</p>	<p>The plan includes additional information about MSPB’s jurisdiction beyond the adjudication of adverse action and retirement cases, including whistleblower appeals. The Strategic and Performance Plans include MSPB’s intent to increase the transparency of the appeals process, and to encourage agencies to improve merit systems education as strategies to accomplish its goals. The Plan clarifies the information about hiring delays and adjusted the program evaluation schedule to reference program evaluations to be initiated in FY 2012 or later.</p>
<p>Extend training on merit principles, employee rights regarding Whistleblower protections, and PPPs throughout the Federal workforce. Under trends and challenges, add structural inadequacy for high stakes whistleblower cases. Include concrete steps and a strategic plan to implement transparency objectives related to the MSPB Open Government Plan. Define customers and stakeholders in the plan. Overall impressed by breadth and depth and agree that many priorities are timely and appropriate.</p>	<p>The plan makes clear that MSPB’s guidance and standards on merit systems, MSP and PPP training is intended to be used Governmentwide. The issue involving structural inadequacy to address high-stakes whistleblower cases is beyond the scope of the Plan. More specific information about MSPB implementation of its Open Government plan is included in the internal RMP. The Strategic Plan includes additional information about MSPB’s customers, partners, and stakeholders in an appendix. The Plan also includes a general reference to reviewing and updating MSPB regulations in the means and strategies section.</p>

Stakeholder Consultation Comments	Actions Taken in the Strategic Plan
<p>Feedback from Senate Committee staff was complimentary of MSPB's broader strategic goals and objectives, especially strategic goal 2. In particular, Committee staff conveyed that education about the merit systems to improve the understanding of the merit systems and MSPs is a critical method of protecting and strengthening merit because the MSPs, unlike the PPPs, are not actionable. Committee staff also suggested MSPB consider doing an after-action review of a major OPM regulatory change to help guide future review of OPM regulations. They were also complimentary of the breadth of external issues MSPB cited as affecting its appeals workload and other statutory functions. These external factors include an increase in the number of employees and job candidates with veterans' employment rights, anticipated increase in Governmentwide retirements, and possible impact of Government reorganization that may increase the likelihood of Reductions in Force (RIFs). The Committee staff understood the importance of these external factors especially in light of the high proportion of MSPB AJs who will be retirement eligible in the next 2-3 years.</p>	<p>Other than conducting an after-action review of a major OPM regulatory change, which we will do as part of the Annual Performance Plan for FY 2012, Senate Committee staff feedback did not require changes in the MSPB Strategic Plan.</p>