# United States Merit Systems Protection Board



# Annual Performance Report (FY 2012) and Plan (FY 2013 (Final) – FY 2014 (Proposed))

**April 10, 2013** 

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#### **Forward**

The U.S. Merit Systems Protection Board submits this Annual Performance Report and Plan (APRP). The APRP combines the Annual Performance Report for FY 2012 with the Annual Performance Plan for FY 2013–2014 as required by the Government Performance and Results Act Modernization Act of 2012 (GPRAMA). It also contains information about MSPB appeals processing as required by Section 7701(i)(1) and (2) of Title 5 United States Code.

The APRP contains information about MSPB including: its origin in relation to civil service history; its role and functions; its scope of responsibility; its organization and structure; and, how it brings value to the merit systems, Federal agencies, the workforce, and the public. The APRP also provides information about the merit system principles (MSPs) and prohibited personnel practices (PPPs). The APRP contains the annual performance report for FY 2012 comparing actual results to performance targets and includes prior year results for comparative purposes. The APRP also contains the annual performance plan including final performance goals, measures, and targets for FY 2013 and proposed targets for FY 2014 along with explanatory information on changes. The APRP includes an overall summary of the external trends and challenges that have affected or may continue to affect MSPB's performance and information about performance measurement and program evaluation.

The APRP has been prepared in accordance with guidance provided by the Office of Management and Budget (OMB) and other sources. Except for clerical support, the APRP was prepared by Government Employees. The APRP is available on the MSPB website www.mspb.gov.

We invite customers and stakeholders to send comments to improve the APRP to:

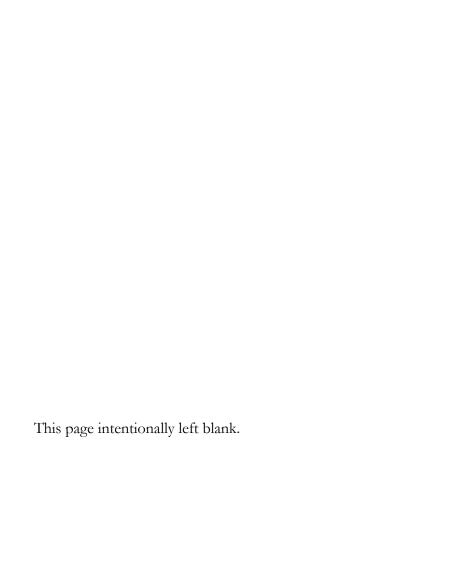
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# U.S. Merit Systems Protection Board Annual Performance Report (FY 2012) and Plan (FY 2013 (Revised) – 2014 (Proposed)

#### 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 consistent with the MSPs, and protected from occurrence of PPPs.

This Annual Performance Report and Plan (APRP) combines the Annual Performance Report for FY 2012 with the Annual Performance Plan for FY 2013–2014. The APRP contains information about MSPB including: its origin in relation to civil service history, its role and functions, its scope of responsibility; its organization and structure; and how it brings value to the merit systems, Federal agencies, the workforce, and the public. The APRP also provides information about the MSPs and PPPs. The APRP contains the annual performance report for FY 2012 comparing actual results to performance targets and includes prior year results for comparative purposes. The APRP also contains the annual performance plan including final performance goals, measures, and targets for FY 2013 and proposed targets for FY 2014 along with explanatory information on changes. A two-page tabular summary of current results and future targets is followed by a comparative assessment of results and targets. The APRP also includes an overall summary of the external trends and internal challenges that have affected or may continue to affect MSPB's performance and information about performance measurement and program evaluation.

#### Summary of Key Issues

Results: In relation to strategic goal one, MSPB continued to issue high-quality decisions (exceeding the performance targets for quality of initial decisions and PFRs) and improve the transparency of its adjudication processes at headquarters. MSPB also completed essential work on the first comprehensive revision of its adjudication regulations since its founding. It exceeded the performance target for electronic filing of pleadings and met the targets related to initial appeals timeliness and electronic filing of initial appeals. MSPB met the target for number of merit system studies completing reports relating to workplace violence, job characteristics and rewards that improve employee motivation, and managing the workforce in a merit-based environment, and changed one performance goal related to studies. MSPB did not meet the performance targets for PFR timeliness and timeliness of enforcement of decisions, and postponed four performance goals, including those related to conducting customer surveys and review of OPM rules, regulations, and significant actions.

<sup>&</sup>lt;sup>1</sup> In accordance with OMB guidance, the performance goals in the FY 2012 plan are now called strategic objectives for FY 2013—2014. For simplicity and consistency, the results for FY 2012 follow this new format.

In relation to strategic goal two, MSPB met all seven of its performance goals. MSPB continued to strengthen its efforts to influence improvements in policies relating to merit, the practice of merit in the workplace, and the understanding of merit through contacts with policy-makers, outreach, and MSPB's website. Highlights include the Chairman's testimony before the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia<sup>2</sup> and use of MSPB products by the Office of Special Counsel and other agencies. MSPB conducted almost 150 outreach events, posted several new educational materials on its website, and recorded hundreds of thousands of website visits and accesses to documents on the website.

External Trends: The significant external trends or issues affecting the Federal merit systems and MSPB's ability to carry out its mission to protect the those systems include the reductions in the Federal budget, increasing retirements of Federal employees, changes in law and jurisdiction, changes in employee management flexibilities, and changes in government work. Pressure to reduce the Federal budget may increase agency use of reductions in force (RIFs). Moreover, governmentwide "sequestration," which took effect in March 2013, is expected to result in furloughs of hundreds of thousands of Federal employees. Because these actions are appealable, MSPB's adjudication workload may increase, while MSPB itself is subject to sequestration, and as such, will have fewer resources. Other budget actions such as pay freezes, limits on awards, and delays or limits in hiring also affect the effectiveness and efficiency of the workforce, as well as employee morale. These potential effects emphasize the importance of merit system studies to help ensure strong merit-based management. The number of retirements of Federal employees is increasing and will continue to grow especially if Congress changes the retirement system in ways that affect current employees. The Office of Personnel Management (OPM) is issuing more retirement decisions as it works to reduce the retirement claims backlog. At the same time, the proportion of Federal Employees Retirement System (FERS) claims to all retirement claims is growing. According to OPM, FERS claims are more complex than claims filed under the Civil Service Retirement System (CSRS). More retirement claims and more complex FERS claims may result in a greater number of retirement appeals being filed with MSPB, and those appeals may be more complicated for MSPB to process.

Changes in law and jurisdiction include enactment of the Whistleblower Protection Enhancement Act (WPEA) and changes in the Hatch Act, as well as court decisions that affect how MSPB processes cases. The WPEA, which provides additional rights to whistleblowers in the Federal government, is likely to increase the number of whistleblower appeals filed with MSPB. In addition, expanding the scope of protected disclosures, expanded jurisdiction, expanded options for granting corrective action, and review of MSPB decisions by multiple Federal courts of Appeals will increase the complexity of MSPB's processing of whistleblower cases. The changes will likely lead to more hearings on whistleblowing cases, which will increase the workload and slow processing. They may also lead to more addendum appeals such as claims for compensatory and other damages or attorney's fees. The WPEA also requires MSPB to track specific information on its whistleblower cases and report that information in its performance reports. MSPB will require additional resources to enable it to meet the requirements of the WPEA. There also have been recent changes in the Hatch Act. Among other changes, the Hatch Act Modernization Act of 2012 provided MSPB with greater discretion in issuing penalties for violation of the Hatch Act, which may require MSPB to provide a more in-depth analysis of such cases. The recent Supreme Court decision in Kloeckner v. Solis may affect the way MSPB processes mixed cases that relate to both merit system and equal employment opportunity issues. Changes in management flexibilities may include expansion of

<sup>&</sup>lt;sup>2</sup> This subcommittee is now the Subcommittee on Efficiency and Effectiveness of Government Programs and the Federal Workforce.

authorities such as the new Pathways Programs or retraction of authorities and subsequent transfer of employees back to the traditional Title 5 system. These changes will likely increases MSPB's adjudication workload and heighten the importance of MSPB's merit systems studies work and its responsibility to review OPM's rules, regulations, and significant actions.

Internal Challenges: Internally, current vacancies, retirement eligibility especially among administrative judges (AJs), budget constraints and uncertainties, and competing priorities for existing resources have had, and will likely continue to have, an adverse impact on MSPB's performance. Twenty-five percent of MSPB employees, including almost 35 percent of MSPB's AJs, will be eligible to retire in the next year. MSPB also has a large number of vacancies among the writing attorneys who identify legal issues and draft decisions for Board Members to consider. There are vacancies in other key positions including two of seven Office Directors, and other key positions are occupied by employees that are eligible to retire. Resource limits and budget uncertainties have prevented or delayed the ability to fill vacancies or support efforts to prepare for retirements. Once hired, it takes 2–3 years to fully train professionals in key positions, thus prolonging the impact of vacancies on agency performance. Resource limits and competing priorities are affecting results and/or targets for average processing time for both initial appeals and PFRs, the number of merit system studies produced, conducting after-action reviews of MSPB's internal processes related to reviewing OPM's rules regulations and significant actions, and conducting outreach especially when it involves travel or requires extensive preparation or staff time. Resources and competing priorities also have limited MSPB's progress in restructuring its customer service and customer satisfaction survey program and its program evaluation schedule.

More information about how internal challenges and external factors are affecting specific performance goals is provided in the Comparative Assessment of Current Results and Future Targets section. Additional information is provided in the Summary of Trends and Challenges that May Affect Agency Performance located at the end of the APRP.

#### About the U.S. Merit Systems Protection Board

A Merit-based U.S. Civil Service: A brief review of the history of our Federal civil service is helpful in understanding the origin and purpose of MSPB. Until the early 1880s, the Federal civil service was a patronage or "spoils system" in which the President's administration appointed Federal workers based on their political beliefs and support of his campaign rather than their suitability and qualifications to perform particular jobs.<sup>3</sup> 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 patronage system continued until President James A. Garfield was assassinated by a disgruntled Federal job seeker who felt he was owed a Federal job because of his support of the President's campaign. A public outcry for reform resulted in passage of the Pendleton Act in 1883. The Pendleton Act created the Civil Service Commission (CSC), which monitored and regulated a civil service system based on merit and the use of competitive examinations to select qualified individuals for Federal positions. This process 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 provide effective service to the American people.

<sup>&</sup>lt;sup>3</sup> Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, Journal of the Federal Circuit Historical Society, Vol. 4, 2010, pages 109-110.

During the following decades, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate employee appeals. Concern over the inherent or perceived conflict of interest in the CSC's role as both 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; 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.

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 insuring adherence to merit principles and laws" and with "safeguarding the effective operation of the merit principles in practice." MSPB inherited CSC's adjudication functions and provides due process to employees and agencies as an independent, third-party adjudicatory authority for employee appeals of adverse actions and retirement decisions. For matters within its jurisdiction, MSPB was granted the statutory authority to develop its adjudicatory processes and procedures, issue subpoenas, call witnesses, and enforce compliance with final MSPB decisions. Congress also granted MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and Federal human capital management issues to ensure employees are managed under the MSPs and free from PPPs. In addition, Congress granted MSPB the authority and responsibility to review the rules, regulations, and significant actions of OPM.

Since passage of the CSRA, Congress has given MSPB jurisdiction to hear cases and complaints filed under a variety of other laws including the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Veterans Employment Opportunity Act (VEOA), and the Whistleblower Protection Act (WPA) as amended by the Whistleblower Protection Enhancement Act of 2012 (WPEA). In addition, MSPB hears appeals from certain employees covered in merit systems established under other statutes such as Veterans Health Administration employees managed under Title 38 U.S.C., reduction-in-force actions affecting certain members of the Foreign Service managed under Title 22 U.S.C., and certain postal service employees managed under Title 39 U.S.C.

MSPB's Scope of Responsibilities: Under various statutes, MSPB serves as an independent, third-party adjudicatory authority for over two million Federal civilian employees in almost every Federal department and agency, applicants for Federal civilian jobs, and certain U.S. Postal Service (USPS) employees and uniformed military service members. Findings and recommendations from MSPB's merit system studies strengthen merit and improve public management and administration in the Federal executive branch. Although MSPB's studies are focused on the Federal workforce and merit systems, they are generally applicable to the management of Federal legislative branch and judicial branch employees and even to public employees at the state and local level. Through its authority to review and act on OPM rules, regulations, and significant actions, MSPB protects the merit system and helps ensure that Federal employees are managed in adherence with the 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.

<sup>&</sup>lt;sup>4</sup> Ibid. page 113.

<sup>&</sup>lt;sup>5</sup> Ibid. page 114.

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

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

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

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

MSPB's high-quality, objective merit systems studies provide value through assessment and identification of innovative and effective merit-based management policies and practices and recommendations for improvements. For example, improved hiring and selection, improved meritbased management, and greater employee engagement lead to a highly qualified Federal workforce, improved organizational performance, and better service to the public. They also help reduce the occurrence and costs of PPPs, which negatively affect agency and employee performance. Review of OPM significant actions, rules, and regulations protects the integrity and viability of the merit systems and civil service and provides benefits similar to those related to merit systems studies. Better merit-based management helps improve employee and agency performance. It also logically leads to less employee misconduct and fewer adverse actions which reduces costs in terms of fewer

PPPs and fewer unsubstantiated appeals. This provides indirect value to the American taxpayer in decreased Governmentwide costs and confidence that the Government is doing its job and appropriately managing the workforce.

## The Merit System Principles and 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 that were prohibited (PPPs) because they were contrary to merit system values.<sup>7</sup> The MSPs include the values of: fair and open competition for positions with equal opportunity to achieve a workforce from all segments of society; merit-based selection for jobs; advancement and retention based on qualifications and job performance; fair and equitable treatment in all aspects of management; equal pay for work of equal value; and training that improves organizational and individual performance. The MSPs also include: protection from arbitrary action, favoritism, or coercion for political purposes; and protection against reprisal for lawful disclosure of violations of law and waste, fraud, and abuse. The principles also state that the workforce should be used effectively and efficiently and that all employees should maintain high standards of integrity, conduct, and concern for the public interest.

The PPPs state that employees shall NOT take or influence others to take personnel actions that: discriminate for or against an individual or applicant on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation; consider information beyond the person's qualifications, performance, or suitability for public service; or coerce political activity or are in reprisal for refusal to engage in political activity. These actions also may not: deceive or willingly obstruct an individual's rights to compete for employment; influence a person to withdraw from competition to affect the prospects of another; or grant preference beyond that provided by law. The actions may also not be: based on or create nepotism; 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; in retaliation or reprisal for an employee's exercise of his or her rights and legal protections; or based on past conduct that does not adversely affect the job. The actions also must not: knowingly violate veteran's preference; violate the merit systems principles; or 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** Offices and Their 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.

<sup>&</sup>lt;sup>7</sup> Title 5 U.S.C. § 2301 and § 2302, respectively.

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 online 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 crossservicing 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.

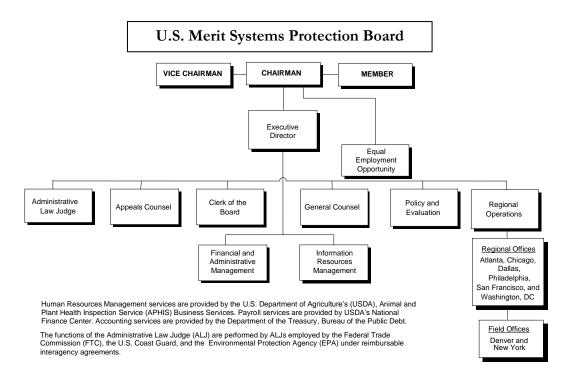
The Office of the General Counsel, as legal counsel to MSPB, advises the Board and MSPB offices on a wide range of legal matters arising from day-to-day operations. The office represents MSPB in litigation; coordinates the review of OPM rules and regulations; prepares proposed decisions for the Board 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). Als 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



#### Linking this Plan to Other Agency Documents

This APRP is based on MSPB's Strategic Plan for FY 2012–2016 and is organized by the strategic goals and strategic objectives that cover MSPB's statutory functions and responsibilities. Each strategic objective has one or more performance goals. Each performance goal includes a performance measure and performance targets for each year, as appropriate. The four strategic objectives under Strategic Goal 1 include 13 performance goals that cover MSPB's functions involved in adjudicating cases, enforcing compliance with decisions, conducting merit systems studies, and reviewing OPM rules, regulations, and significant actions. The three strategic objectives under Strategic Goal 2 include seven performance goals that reflect MSPB's efforts to ensure its work has a positive affect 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. 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 2.8

The performance goals, measures, and targets describe what MSPB can accomplish with the budgetary and FTE resources enacted for FY 2013 and requested for FY 2014. In recognition of the current budgetary environment, MSPB has adjusted its budget to request fewer resources for FY 2013 and FY 2014 than those required to execute its mission as effectively and efficiently as possible. This reduction is reflected in the targets for case processing timeliness, number of merit systems studies, review of OPM regulations, outreach (especially if it involves travel), the program evaluation schedule, and more limited progress toward some strategic outcome goals. MSPB adjusted the FY 2013 performance goals measures and targets from those contained in the FY 2013 Congressional Budget Justification. MSPB may adjust the FY 2014 performance goals, measures, and targets based on Congressional actions taken on the FY 2013 budget, other Congressional budget actions, legislative action such as passage of the WPEA, final FY 2012 performance results, the FY 2014 pass back, and other factors that may affect its mission and goals.

MSPB administers its management and administrative functions in support of the mission goals through internal management objectives. Individual performance plans for the agency's senior executives are linked to agency annual performance goals and internal management objectives, as applicable. MSPB reports program performance results compared to performance targets in accordance with GPRAMA and OMB guidance. MSPB's plans and reports are posted on MSPB's website www.mspb.gov.

<sup>&</sup>lt;sup>8</sup> In accordance with the GPRAMA and OMB Guidance, MSPB does not define priority goals or low priority program activities, nor does it have 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 also does not have any internal management challenges reported in the GAO High Risk List.

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#### **MSPB Performance 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 the

impact of our products through outreach efforts.

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.
- Enforce timely compliance with MSPB decisions. 1B:
- 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.

# Summaries of MSPB's Current Results and Future Targets

# **Summary of FY 2012 Performance Results**

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

| )  | ternative dispute resolution (ADR) pr  |  |               |
|--|--|--|---------------|
| Performance Goal   | Performance Measure  | Comparison<br>(Target / Observed)                      | Result        |
| A-1: Quality of initial decisions  | Percent initial decisions reversed/<br>remanded on PFR                         | 10% or fewer/ 6%                                       | Exceeded      |
| 1A-2: Quality of Board/PFR decisions   | Percent decisions left unchanged by the reviewing court                        | 92% or more/ 94%                                       | Exceeded      |
| 1A-3: Perceptions of the adjudication <i>process</i>                                   | Percent participant agreement  | Measurement process and set future targets             | Postponed     |
| 1A-4: Processing timeliness for initial appeals  | Average processing time  | 100 days or fewer/93 days                              | Met           |
| 1A-5: Processing timeliness for PFRs   | Average processing time  | 195 days of fewer/ 245 days                            | Not Met       |
| 1A-6: Perceptions of the ADR process   | Percent participant agreement  | Establish measurement process and set future targets   | Postponed     |
| 1A-7: Efficiency of filing initial appeals   | Percent initial appeals filed electronically                                   | 44% or more/ 55%                                       | Met           |
| 1A-8: Efficiency of filing pleadings   | Percent pleadings submitted electronically                                     | 38% or more / 56%                                      | Exceeded      |
| Strategic Objective 1B: Enforce timely com   | ppliance with MSPB decisions.  |  |               |
| 1B-1: Processing timeliness for compliance cases                                       | Average processing time  | 200 days or fewer/ 244 days                            | Not Met       |
| Strategic Objective 1C: Conduct objective,   | timely studies of Federal merit system   | ns and human capital mana                              | gement issues |
| 1C-1: Customer feedback on quality and usefulness of study reports and recommendations | New measure in FY 2012   | Establish measurement process and set future targets   | Changed       |
| 1C-2: Number/scope of study reports  | Number/scope of reports published  | 3-5 merit system reports completed/3 reports completed | Met           |
| Strategic Objective 1D: Review and act upo   | on the rules, regulations, and significa                                       | ant actions of OPM, as appro                           | opriate.      |
| 1D-1: Review OPM rules/regulations   | Number/scope of OPM rules/regulations reviewed                                 | Conduct after-action review                            | Postponed     |
| 1D-2: Review OPM significant actions   | Number/scope of OPM significant actions reviewed/reported                      | Conduct after-action review                            | Postponed     |
| Strategic Goal 2: Advance the public intere<br>Merit System Principles,                | st through education and promotion of and the prevention of Prohibited Persons |  | lherence to   |
| Strategic Objective 2A: Inform, promote ar<br>Federal merit system                     | nd/or encourage actions by policy-mans laws and regulations.                   | akers, as appropriate, that st                         | rengthen      |
| 2A-1: Contacts with policy-makers  | Number/scope of policy-maker contacts  | Establish measurement process and set future targets   | Met           |
| 2A-2: References to MSPB work and products   | Scope of references to MSPB products or materials                              | Establish measurement process and set future targets   | Met           |
| 2A-3: Create policy-related products   | MSPB policy-related products created and made available                        | Establish measurement process and set future targets   | Met           |
| Strategic Objective 2B: Support and impro-<br>workplace through                        |  | MSPs, and prevention of PI                             | PPs in the    |
| 2B-1: Number/scope of practice-of-merit materials obtained from website                | Number of visits/accesses of practice of merit materials                       | Establish measurement process and set future targets   | Met           |
| obtained from website  | 1  | Establish measurement process                          |               |
|  | Number/scope of merit-based outreach   | and set future targets                                 | Met           |
| 2B-2: Conduct merit-based outreach events  Strategic Objective 2C: Advance the under   |  | and set future targets Ps, and PPPs through the us     |               |
| 2B-2: Conduct merit-based outreach events  Strategic Objective 2C: Advance the under   | standing of the concept of merit, MS   | and set future targets Ps, and PPPs through the us     |               |

# Summary of MSPB FY 2013 – 2014 Performance Targets

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

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

| adjudication and alternative dispute resolution (ADR) processes.  |   |   |   |  |
|---|---|---|---|--|
| Performance Goal  | Performance Measure   | 2013 Target   | 2014 Target                               |  |
| 1A-1: Quality of initial decisions  | Percent initial decisions reversed/<br>remanded on PFR  | 10%   | or less                                   |  |
| 1A-2: Quality of Board/PFR decisions  | Percent decisions left unchanged by the reviewing court   | 92% or more   |   |  |
| 1A-3: Perceptions of the adjudication <i>process</i>  | Percent participant agreement   | Set meas. process and future targets                                | Survey development and set future targets |  |
| 1A-4: Processing timeliness for initial appeals   | Average processing time   | 100 days or less  | 105 days or less                          |  |
| 1A-5: Processing timeliness for PFRs  | Average processing time   | 245 days or fewer   | TBD                                       |  |
| 1A-6: Perceptions of the ADR process  | Percent participant agreement   | Set meas. process and future targets                                | Survey development and set future targets |  |
| 1A-7: Efficiency of filing initial appeals  | Percent initial appeals filed electronically  | 50% c   | r more                                    |  |
| 1A-8: Efficiency of filing pleadings  | Percent pleadings submitted electronically  | 50% c   | or more                                   |  |
| Strategic Objective 1B: Enforce timely con  | npliance with MSPB decisions.   |   |   |  |
| 1B-1: Processing timeliness for compliance cases  | Average processing time   | 200 days or less  | 190 days or less                          |  |
| Strategic Objective 1C: Conduct objective,  | timely studies of Federal merit system  | ms and human capital  | management issues.                        |  |
| 1C-1: Number/scope of Issues of Merit editions  | Number/scope of newsletters published   | Publish 3-4 newslett  | er editions or articles                   |  |
| 1C-2: Number/scope of study reports   | Number/scope of reports published   | 3-5 merit system  | reports completed                         |  |
| Strategic Objective 1D: Review and act up   | on the rules, regulations, and signific   | ant actions of OPM, as  | appropriate.                              |  |
| 1D-1: Review OPM rules/regulations  | Number/scope of OPM rules/regulations reviewed  | Conduct after-action review of internal process                     | TBD                                       |  |
| 1D-2: Review OPM significant actions  | Number/scope of OPM significant actions reviewed/reported   | Publish review of sig.<br>actions & conduct after-<br>action review | TBD                                       |  |
| Strategic Goal 2: Advance the public interest through <i>education</i> and <i>promotion</i> of stronger merit systems, adherence to Merit System Principles, and the <i>prevention</i> of Prohibited Personnel Practices. |   |   |   |  |
| Strategic Objective 2A: Inform, promote as Federal merit syste  | nd/or encourage actions by policy-mms laws and regulations.   | akers, as appropriate, t  | hat strengthen                            |  |
| 2A-1: Contacts with policy-makers   | Number/scope of policy-maker contacts   | Distribute products to policy-makers                                | TBD                                       |  |
| 2A-2: References to MSPB work and products  | Scope of references to MSPB products or materials   | Search for automated tracking method                                | TBD                                       |  |
| 2A-3: Create policy-related products  | MSPB policy-related products created and made available   | Develop at least one new based policy product                       | TBD                                       |  |
|   | Strategic Objective 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through outreach. |   |   |  |
| 2B-1: Number/scope of practice-of-merit materials obtained from website   | Number of visits/accesses of practice of merit materials  | Visit/accesses within 5 % of FY 2012 results                        | TBD                                       |  |
| 2B-2: Conduct merit-based outreach events   | Number/scope of merit-based outreach  | Conduct/participate in 90 events                                    | TBD                                       |  |
| Strategic Objective 2C: Advance the understanding of the concept of merit, MSPs, and PPPs through the use of education standards, materials, and guidance established by MSPB.  |   |   |   |  |
| 2C-1: Number/scope of educational materials obtained from website   | Number of visits/accesses of merit educational materials  | Visits/accesses within 5<br>% of FY 2012 results                    | TBD                                       |  |
| 2C-2: Create and make available electronic educational materials  | Number/type of educational materials made available on website  | Post electronically<br>6-10 educational products                    | TBD                                       |  |

# Comparative Assessment of Results and Future Performance Targets

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

Strategic Objective 1A: Provide understandable, high-quality resolution of appeals supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.9

#### Performance Goal 1A-1: Maintain quality of initial decisions.

**Measure:** Percent of initial decisions that are reversed or remanded on Petition for Review (PFR) due to error or oversight.

| Results |    | Targets |              |
|---------|----|---------|--------------|
| FY 2007 | 9% | FY 2012 | 10% or fewer |
| FY 2008 | 6% | FY 2013 | 10% or fewer |
| FY 2009 | 5% | FY 2014 | 10% or fewer |
| FY 2010 | 9% |         |              |
| FY 2011 | 7% |         |              |
| FY 2012 | 6% |         |              |

This Performance Goal was **EXCEEDED** for FY 2012. The performance goal for quality of initial decisions is measured by the percent of initial decisions that are remanded or reversed on PFR due to error or oversight. Only six percent of AJs' initial decisions filed on PFR were remanded or reversed in FY 2012 due to error or oversight, which is 40 relative percentage points lower than the target value ((10% - 6%)/10%). This result underscores the importance MSPB places on quality of decisions, even though processing time for initial appeals (discussed shortly) is somewhat longer than in previous years.

Several factors could affect the quality of decisions in the future. MSPB anticipates an increase in the number of initial appeals filed in the next few years due to: the implementation of the WPEA (including significant changes in the definition of a protected disclosure); Governmentwide budget constraints leading agencies to implement an increasing number of RIFs, furloughs, or other appealable actions to reduce the size of their respective workforces; and an increase in the number of retirements of Federal employees. In addition, almost 50 percent of MSPB's current AJs, predominantly those with the most experience in processing appeals, will be eligible to retire in the next two years. An increase in the number of cases, coupled with the implementation of new laws, and loss of experienced AJs may contribute to the potential for more inadvertent errors. Despite these factors, MSPB intends to retain the target for initial appeals quality at 10 percent or fewer for FY 2013 and FY 2014.

Case processing details as required under 5 USC §7701(i)(1) and (2) are contained in Appendix A.

#### **Performance Goal 1A-2:** Maintain quality of decisions reviewed by reviewing authority.

Measure: Percent of MSPB decisions left unchanged (affirmed or dismissed) upon review by the U.S. Court of Appeals for the Federal Circuit.

| Results |      | Targets |             |
|---------|------|---------|-------------|
| FY 2007 | 91%  | FY 2012 | 92% or more |
| FY 2008 | 87%* | FY 2013 | 92% or more |
| FY 2009 | 92%  | FY 2014 | 92% or more |
| FY 2010 | 92%  |         |             |
| FY 2011 | 98%  |         |             |
| FY 2012 | 94%  |         |             |

A significant number of cases were affected by the court's decisions in Kirkendall v. Department of the Army. Adjusting for these cases results in 94% of cases left unchanged by the court.

This Performance Goal was **EXCEEDED** for FY 2012. The performance goal for quality of Board decisions is measured as the percent of MSPB decisions left unchanged by the court. In FY 2012, 94 percent of cases were left unchanged. This result is 25 relative percentage points of the difference between the target value and the maximum value (2%/(100%–92%)). Again, this result underscores the importance MSPB places on quality of PFR decisions even though timeliness for PFR processing continues to be longer than anticipated.

A number of factors could affect the percent of cases left unchanged by the court over the next several years. Passage of the WPEA includes significant changes in legal definitions and MSPB and OSC authorities related to whistleblowing. It is expected to increase the number of whistleblowing appeals filed with MSPB and make processing such appeals more complex. In addition, the WPEA permits (for a period of two years) appeals of MSPB decisions in whistleblower cases to other Federal Circuit courts rather than solely to the Court of Appeals for the Federal Circuit. These additional Federal courts of Appeals have not ruled previously on MSPB decisions in Federal Whistleblower cases. MSPB will track the outcomes of whistleblower cases filed in other Federal courts and consider how to report such cases. As MSPB and the courts work through the legal issues involved in implementing the new law, the courts may dismiss or affirm fewer MSPB decisions, thus leaving fewer MSPB decisions unchanged. Other factors that could impact the quality of Board decisions include a larger number of cases filed with the Board due to the same factors discussed above that affect initial appeals. Although these factors could result in fewer cases being left unchanged by the court, MSPB is committed to maintaining the quality of Board decisions and is retaining the 92 percent or greater target for this measure for FY 2013 and FY 2014.

# **Performance Goal 1A-3:** Maintain participants' positive perceptions of the adjudication process.

Measure: Percent of adjudication participants surveyed who agree MSPB adjudication processes are fair, open, accessible, understandable, and easy to use.

| Results  |   | Targets |   |
|----------|---|---------|---|
| FY 2011* | New Measure in FY 2012  | FY 2012 | Establish measurement process and set future targets  |
| FY 2012  | Survey development and search for platform continues, implementation of new surveys postponed until FY 2013 due to resource limitations and | FY 2013 | Complete survey development<br>and schedule, implement as<br>scheduled, set future targets as<br>possible |
|          | competing priorities  | FY 2014 | TBD based on FY 2012 and 2013 results   |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was **POSTPONED** for FY 2012. The performance goal for participants' perceptions of the adjudication processes is measured by the proportion of participants surveyed who agree the adjudication processes are fair, open, accessible, understandable, and easy to use, even if they may not agree with the final decision reached in their case. In surveying adjudication participants (appellants, appellant representatives, and agency representatives) MSPB intends to balance the need for feedback with the possible burden placed on appellant representatives and agency representatives who may appear before us multiple times per year. In FY 2012, MSPB began restructuring its external customer satisfaction and customer service survey program to increase the validity and reliability of our customer survey data and support our efforts to improve customer service in accordance Executive Order 13571. Competing priorities, resource constraints and budget uncertainties have limited the progress made on the survey restructuring effort in FY 2012. Therefore, the target for FY 2013 is to continue the survey restructuring process, and the FY 2014 target is TBD based on FY 2013 results.

| Performano | Performance Goal 1A-4: Maintain processing timeliness for initial appeals. |         |                   |  |
|------------|--|---------|-------------------|--|
| Measure: A | Measure: Average case processing time for initial appeals.                 |         |                   |  |
| Results    | Results Targets  |         |                   |  |
| FY 2007    | 89 days  | FY 2012 | 100 days or fewer |  |
| FY 2008    | 87 days  | FY 2013 | 100 days or fewer |  |
| FY 2009    | 83 days  | FY 2014 | 105 days or fewer |  |
| FY 2010    | 89 days  |         |                   |  |
| FY 2011    | 94 days  |         |                   |  |
| FY 2012    | 93 days  |         |                   |  |

This Performance Goal was **MET** for FY 2012. The performance goals related to case processing timeliness are measured as the number of days it takes to process a case from when it is filed at MSPB until it is closed, averaged over all of the cases closed each year. The average case processing time for initial appeals was 93 days in FY 2012, seven days (or percentage points) shorter than the target ((100 days-93 days)/100 days). Average processing time for initial appeals has increased slightly in recent years due to a number of factors. Several very experienced adjudication staff members have retired in recent years and budget limitations have resulted in restrictions on hiring replacements. These conditions have collectively reduced the overall capacity of MSPB's 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 two years. Once vacancies are filled, it takes 2-3 years for a new AJ to become fully versed in the Board's law and procedures, thus prolonging the impact on case processing. Retirement of experienced AJs, constraints on replacing them, the expected increase in the number of appeals, and MSPB's commitment to maintaining decision quality, will likely result in an increase in initial appeals processing time.

In addition, adjudication participants and stakeholders have been concerned that previous MSPB case processing time constraints 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. In addition, the WPEA and recent court decisions related to how particular issues must be handled are likely to increase the time required to process certain cases. It is also important to ensure reasonable time for the parties to pursue alternative dispute resolution (ADR) procedures (e.g., settlement or mediation) to resolve their issues. ADR procedures are beneficial because they allow the parties to have more participation and control in the resolution process and the resulting agreement is usually more acceptable to both parties, theoretically reducing the likelihood of additional actions (e.g., filing a PFR or compliance action) in a particular case. To ensure adequate time for case preparation and discovery, provide time for ADR, and address other issues affecting timeliness, MSPB's new regulations include the opportunity for two 30-day suspensions instead of one as was permitted in the previous regulations. Finally, in addition to an anticipated increase in the number of whistleblower cases filed with MSPB, the expanded scope of protected disclosures means that fewer whistleblower cases may be dismissed and cases in which whistleblowing is raised as an affirmative defense may lead to more hearings and take more time to process. Additional information about the affect of the WPEA may be found in the section on External Factors. Given the factors affecting timeliness, the targets for average processing time for initial appeals are set at 100 days or fewer in FY 2013, and 105 days or fewer for FY 2014.

### Performance Goal 1A-5: Maintain processing timeliness for PFRs.

**Measure:** Average case processing time for petitions for review of initial appeals (PFRs).

| Results |           | Targets |                              |
|---------|-----------|---------|------------------------------|
| FY 2007 | 132 days  | FY 2012 | 195 days or fewer            |
| FY 2008 | 112 days  | FY 2013 | 245 days or fewer            |
| FY 2009 | 94 days   | FY 2014 | TBD based on FY 2013 results |
| FY 2010 | 134 days  |         |                              |
| FY 2011 | 213 days  |         |                              |
| FY 2012 | 245 days* |         |                              |

<sup>\* 74</sup> PFR cases were impacted by the Latham vs. USPS oral argument case. The average overall PFR processing time, not counting these Latham cases, was 237 days.

This Performance Goal was **NOT MET** for FY 2012. Average case processing time for PFRs increased to 245 days in FY 2012, 50 days or 26 percent slower than the target ((245-195)/195 = 26%). Longer PFR processing times are the result of several factors. The most significant factor is the loss of key, highly productive writing attorneys from the office that drafts decisions for the Board members to consider. These losses, coupled with limited hiring due to resource constraints, resulted in a relatively high number of vacancies among writing attorneys. In recent years, MSPB has also implemented changes to improve transparency of the PFR process including holding oral arguments and requesting amicus briefs in cases with broad and/or significant impact on the workforce or on Federal labor law. These process changes may lengthen the processing time for these selected cases. For example, the average PFR processing time in FY 2012, not counting the 74 PFR cases related to Latham et al v. US Postal Service was eight days shorter. However, these processes also improve transparency, increase participation in the Board's decision-making process, and increase the breadth and depth of the issues available for the Board to consider during deliberation. The Board is also providing additional information in non-precedential orders (NPOs) on certain PFR decisions and posting them on MSPB's website. The additional information from the NPOs improves the transparency of Board's decision-making process for the parties and provides information that may be of interest to those who may file appeals in the future, thus improving the long-term effectiveness and efficiency of the process. The Federal Circuit Court also reports that the additional information is helpful in their consideration of the issues.

In the next few years, several factors may affect the timeliness of PFR processing. Enactment of the WPEA, including the need to process additional cases and address potential conflicting precedents provided by multiple Federal courts of Appeals, will likely lengthen processing time. Anticipated budget restrictions will result in limited potential for filling current and future writing-attorney vacancies. Therefore, we anticipate that the number of vacancies among writing-attorneys will continue to be high in FY 2013. Once on board, it takes 2-3 years for writing attorneys to become fully versed in the Board's law and procedures, which prolongs the impact of these vacancies on case processing. Furthermore, for reasons similar to those for initial appeals, MSPB anticipates an increase in the number

of PFRs filed with the Board over the next few years. Increased case workload and fewer resources could lead to longer PFR processing times for the next 3–4 years or longer. To address PFR timeliness in the short term, MSPB is pilot-testing several changes to internal procedures that may speed processing. To address the issue in the longer term, MSPB plans to undertake a program evaluation of the PFR process that will help identify ways in which to speed processing and preserve decision quality. Planning for the program evaluation began in late FY 2012, and contingent on available resources, MSPB anticipates the program evaluation will begin in FY 2013. In addition, one of the changes in the new MSPB adjudication regulations is to limit the number of pages submitted when filing a PFR. Having the parties focus on submitting the most important and relevant documents for review, and limiting the tendency to submit documents already in the record, should reduce the materials reviewed by staff and thus improve processing time. MSPB will continue to address the issues affecting timeliness. Despite the anticipated limits in resources and the length of time it will take to define and implement process improvements, MSPB will strive to maintain average PFR processing time in FY 2013 at 245 days. The target for FY 2014 will be determined based on FY 2013 results.

#### **Performance Goal 1A-6:** Maintain participants' positive perceptions of the ADR process

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

| Results  |   | Targets |   |
|----------|---|---------|---|
| FY 2011* | New Measure in FY 2012  | FY 2012 | Establish measurement process and set future targets  |
| FY 2012  | Survey development and search for platform continues, implementation of new surveys postponed until FY 2013 due | FY 2013 | Complete survey development<br>and schedule, implement as<br>scheduled, set future targets as<br>possible |
|          | to resource limitations and competing priorities  | FY 2014 | TBD based on FY 2013 results  |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was **POSTPONED** for FY 2012. The performance goal on participant satisfaction with ADR processes (including settlement and mediation) is measured by the proportion of ADR participants who agree the processes are helpful, valuable, and non-coercive, even if no agreement was reached in the process (1A–6). The purpose of MSPB's ADR programs is to provide a range of helpful and appropriate options to appellants and agencies to resolve disputes. In FY 2012, MSPB began restructuring its external customer satisfaction and customer service survey program to 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 process is proceeding, but competing priorities and resource constraints have limited the progress made in FY 2012. MSPB will continue the restructuring process in FY 2013 and the target for FY 2014 is to be determined (TBD) based on FY 2013 results.

| Performan | Performance Goal 1A-7: Improve efficiency of filing initial appeals. |         |             |  |  |
|-----------|--|---------|-------------|--|--|
| Measure:  | Measure: Proportion of initial appeals filed electronically.         |         |             |  |  |
| Results   | Results Targets  |         |             |  |  |
| FY 2007   | 29%  | FY 2012 | 44% or more |  |  |
| FY 2008   | 37%  | FY 2013 | 50% or more |  |  |
| FY 2009   | 39%  | FY 2014 | 50% or more |  |  |
| FY 2010   | 43%  |         |             |  |  |
| FY 2011   | 48%  |         |             |  |  |
| FY 2012   | 55%  |         |             |  |  |

This Performance Goal was **MET** for FY 2012. To support MSPB's commitment to efficient case processing and improving customer service, MSPB measures the proportion of initial appeals filed electronically. Because MSPB cannot control appellants' decisions to use electronic filing, it rates this goal as Met for FY 2012. MSPB continued to improve the usability of its e-Appeal system, and continued its Electronic Case File pilot program designed to improve internal electronic processing of initial appeals. As individual access to computers and the Internet increases, electronic filing also is likely to increase. However, it is not possible to know the proportion of appellants who will have access to the necessary technology, or the desire to file electronically. Until more results are obtained, the target for electronic filing of initial appeals will be set at 50 percent or more for FY 2013 and FY 2014.

| Performano      | Performance Goal 1A-8: Improve efficiency of filing pleadings. |         |             |  |
|-----------------|--|---------|-------------|--|
| Measure: I      | Measure: Proportion of pleadings submitted electronically.     |         |             |  |
| Results Targets |  |         |             |  |
| FY 2008*        | New measure in FY 2009   | FY 2012 | 38% or more |  |
| FY 2009         | 28%  | FY 2013 | 50% or more |  |
| FY 2010         | 36%  | FY 2014 | 50% or more |  |
| FY 2011         | 44%  |         |             |  |
| FY 2012         | 56%  |         |             |  |

<sup>\*</sup> FY 2008 and prior years

This Performance Goal was **EXCEEDED** for FY 2012. To support MSPB's commitment to efficient case processing and improving customer service, MSPB measures the proportion of pleadings filed electronically. In FY 2012, over half of pleadings were filed electronically. In FY 2012, MSPB began a mandatory e-filing pilot program in two offices for agency representatives and appellant representatives (not applicable to *pro se* appellants). MSPB has some control over electronic filing of pleadings, so rates this goal as exceeded for FY 2012. MSPB intends to expand its mandatory e-filing program; however, we still anticipate reaching a plateau beyond which filing of pleadings is not likely to increase. Until more results are obtained, the target for electronic filing of pleadings will be set at 50 percent or more for FY 2013 and FY 2014.

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

#### **Performance Goal 1B-1:** Maintain timeliness of processing compliance/enforcement cases.

**Measure:** Average processing time for enforcement cases at headquarters.

| Results  |                        | Targets |                   |
|----------|------------------------|---------|-------------------|
| FY 2008* | New measure in FY 2009 | FY 2012 | 200 days or fewer |
| FY 2009  | 171 days               | FY 2013 | 200 days or fewer |
| FY 2010  | 180 days               | FY 2014 | 190 days or fewer |
| FY 2011  | 288 days               |         |                   |
| FY 2012  | 244 days               |         |                   |

<sup>\*</sup>FY 2008 and prior years

This performance goal was **NOT MET** for FY 2012. This performance goal is measured by the average processing time for enforcement cases at HQ. The average processing time for enforcement cases was 244 days in FY 2012, 22 percent longer than the target. There are relatively few compliance cases processed at HQ, therefore one or two cases that take a long time to reach compliance can greatly affect average processing time. In addition, the overall compliance process can be complex depending on the issues involved. MSPB's new regulations include changes in the way compliance cases are handled in the field and at HQ. Under previous regulations, when an AJ found non-compliance, a recommended decision was issued and the case was transferred to HQ for continued processing. Under the new regulations, a request for enforcement or compliance filed as an addendum in the regional or field office will result in an initial decision issued by that office finding compliance or noncompliance. If either party disagrees with that finding, they can file a PFR with the Board at HQ; otherwise the AJ's decision becomes the final decision. MSPB anticipates these changes will improve the efficiency of processing compliance cases. Given the overall complexity of the enforcement process and the variability of previous results, MSPB will retain a target for average processing time for enforcement cases of 200 days or fewer for FY 2013. In anticipation of more efficient processing of compliance cases under new regulations, the target is set at 190 days or fewer for FY 2014.

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

Performance Goal 1C-1: Maintain the number and scope of *Issues of Merit* newsletter editions or other articles.

**Measure**: Number and scope of *Issues of Merit* newsletter editions or other articles published each year.

| Results  |                        | Targets |   |
|----------|------------------------|---------|---|
| FY 2012* | New measure in FY 2013 | FY 2013 | Publish 3–4 newsletter editions or articles |
|          |                        | FY 2014 | Publish 3–4 newsletter editions or articles |

<sup>\*</sup>FY 2012 and prior years

The Performance Goal was **CHANGED** for FY 2012. The original performance goal involved customer satisfaction with MSPB study reports and was to be measured by the proportion of study report customers who agree the reports are objective, timely, wellwritten, and include objectives that can be implemented at the appropriate level. In FY 2012, during its restructuring of the customer survey process, MSPB determined that surveying stakeholders about published merit systems study reports on an annual basis would not be practical or necessarily effective. In particular, as compared to surveys of adjudication customers<sup>10</sup>, identifying and reaching a sufficient number of customers available and able to respond to questions about reports is limited for several reasons. Relatively few, often lengthy and complex, reports are published each year and the impact of reports usually occurs over a period of years. In addition, reading reports is based on the interests of the readers and their commitment to a strong merit system rather than a job requirement, and it is difficult to know who reads specific reports, or how to contact them on a routine basis. Because of the difficulty in surveying studies customers, MPSB will survey these customers only every few years, possibly in conjunction with gathering periodic stakeholder feedback on MSPB's research agenda.

For FY 2013 and beyond, MSPB is replacing this performance goal and measure with the number of *Issues of Merit* newsletter editions or other articles published each year. Newsletter editions and articles are shorter, timelier, and focus on more specific issues than in-depth merit systems study reports. Newsletter editions can be published more frequently and may cover a broader scope of issues, thus enabling MSPB to convey information about merit systems and Federal human capital management that augment the publication of study reports. The targets for FY 2013 and FY 2014 are 3-4 newsletter editions or articles each year.

<sup>&</sup>lt;sup>10</sup> Thousands of adjudication decisions are issued each year, and the parties and their representatives are directly impacted by participating in the adjudication process and by the decisions issued by MSPB. Adjudication customers can be located because MSPB necessarily maintains contact information for case processing purposes.

# Performance Goal 1C-2: Maintain the number and scope of MSPB study reports.

**Measure:** Number and scope (percent of the workforce, agencies, or policy areas impacted) of merit systems studies reports published each year.

| Results |   | Targets |                                    |
|---------|---|---------|------------------------------------|
| FY 2007 | Three reports completed or published              | FY 2012 | 3–5 merit system reports completed |
| FY 2008 | Six reports completed or published                | FY 2013 | 3–5 merit system reports completed |
| FY 2009 | Six reports completed or published                | FY 2014 | 3–5 merit system reports completed |
| FY 2010 | Five reports completed or published               |         |                                    |
| FY 2011 | Four external and four internal studies completed |         |                                    |
| FY 2012 | Three reports completed or published              |         |                                    |

This Performance Goal was **MET**. MSPB measures the number and scope of merit systems studies completed each year. MSPB completed 3 reports in FY 2012. These reports were *Employee Perceptions of Federal Workplace Violence*; Federal Employee Engagement: The Motivating Potential of Job Characteristics and Rewards; and Managing Public Employees in the Public Interest: Employee Perspectives on Merit Principles in Federal Workplaces. Combined, these reports affected the entire Federal workforce and all Federal agencies. Policy areas included workforce safety, engagement related to job design and rewards, and managing in the public interest. These reports primarily relate to the merit principles involved with recruitment, fair treatment, standards of integrity, conduct, and concern for the public interest, effective and efficient management of the workforce, and the PPP prohibiting violation of the MSPs. Merit system study reports are available on MSPB's website <a href="https://www.mspb.gov">www.mspb.gov</a>.

Depending on the breadth and depth of the particular topic of a study, the method of collecting data, and the complexity of the data and data analyses, it may take 18–30 months to complete a single study. In addition to the factors that impact the number of studies, the studies office has other important responsibilities that compete with studies resources. The studies staff has the primary role in reviewing and reporting on OPM significant actions (performance goal 1D), and developing and delivering targeted products and outreach based on merit system studies (performance goals 2A-3, 2B-2, and 2C-2). The studies staff also has an important role in providing input on MSPB's review of OPM rules and regulations (performance goal 1D). In addition, the office is involved in conducting program evaluations and in 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 additional responsibilities, the factors that can impact the study process, and typical variability in the number of reports completed each year, the targets for FY 2013 and FY 2014 are a range of 3–5 completed merit systems study reports each year.

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

## **Performance Goal 1D-1:** Strengthen and maintain program for review of OPM regulations.

**Measure:** Number and scope (percent of the workforce, agencies, or policy areas impacted) of OPM rules and regulations, or implementation of the same, reviewed.

| Results  |  | Targets |   |
|----------|--|---------|---|
| FY 2011* | New Measure in FY 2012   | 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 4 years                            |
| FY 2012  | After-action review of our internal process relating to an OPM regulation postponed due to resource limitations and competing priorities | FY 2013 | Conduct an after-action review of MSPB's internal approach and procedures relating to review of at least one previous major change in an OPM rule or regulation |
|          |  | FY 2014 | TBD based on FY 2013 results  |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was **POSTPONED** for FY 2012. This function is measured by the number and scope of impact of OPM regulations that are reviewed. Scope involved percent of the workforce, agencies, and policy areas affected or covered by the reviews. In FY 2012, MSPB intended to conduct an after-action review of MSPB's internal processes and procedures related to at least one of the major changes in OPM regulations or rules in the last four years as an initial step in strengthening this function. Resource limitations and competing priorities prevented MSPB from undertaking this after-action review. Moving forward, the target for the after-action review has been postponed to FY 2013. The FY 2014 target is TBD based on FY 2013 results.

# Performance Goal 1D-2: Strengthen and maintain program for review and reporting of OPM significant actions.

**Measure:** Number and scope (percent of the workforce, agencies, or policy areas impacted) of OPM significant actions reviewed and reported.

| Results  |  | Targets |  |
|----------|--|---------|--|
| FY 2011* | New Measure in FY2012  | FY 2012 | Conduct after-action review of<br>at least one of MSPB's<br>significant actions over the last<br>four years  |
| FY 2012  | Published FY 2011 Annual Report contained a broader range of OPM significant actions, updates of actions initiated earlier, and additional context information. After- action review of our internal procedures relating to review of at least one OPM significant action postponed due to resource limitations, staff changes, and competing priorities | FY 2013 | Publish review of OPM Significant Actions; conduct an after-action review of MSPB's internal approach and procedures related to reviewing and reporting on at least one OPM significant action |
|          |  | FY 2014 | TBD based on FY 2013 results   |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was **POSTPONED** for FY 2012. The measure of this function is the number and scope of impact of the reviews of OPM significant actions in terms of the percent of the workforce, agencies, and policy areas affected or covered by these reviews. In FY 2012, MSPB intended to conduct an after-action review of MSPB's internal processes and procedures related to at least one of OPM's major significant actions in the last four years. Resource limitations and competing priorities prevented MSPB from undertaking this after-action review. However, in FY 2012, MSPB published the FY 2011 Annual Report which included an expanded review of the significant actions of OPM, including new actions, updates of previous actions, and additional background and other supporting information. The FY 2013 target is to conduct the after-action review originally planned for FY 2012, and to publish the review of OPM significant actions. The FY 2014 target is TBD based on FY 2013 results.

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.

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

Performance Goal 2A-1: Maintain contacts with policy-makers, as appropriate, that strengthen merit systems laws and regulations.

Measure: Number and scope of contacts made with Governmentwide policy-makers (Congress, CHCO Council, 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  |   | Targets |  |
|----------|---|---------|--|
| FY 2011* | New measure in FY 2012  | FY 2012 | Establish measurement process and set future targets   |
| FY 2012  | FY 2012  Contacts include Chairman's testimony at Senate authorizing subcommittee oversight hearing, two pre-hearing meetings with staff, and a meeting with House and Senate Appropriations subcommittee staff; MSPB will track policy contacts under agency outreach calendar | FY 2013 | Distribute Governmentwide policy products (at least those developed under Goal 2A-3) directly to policy-makers, as appropriate |
|          |   | FY 2014 | TBD based on FY 2013 results   |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was MET for FY 2012. The measure for this performance goal is the number and scope of contacts made with policy-makers focused on improving Governmentwide laws, regulations, and policies. 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. In FY 2012, MSPB determined that the number and scope of contacts with policy-makers would be tracked in the agency outreach calendar. In FY 2012, these contacts include the Chairman's testimony at an oversight hearing before MSPB Senate authorization Subcommittee, two pre-hearing meetings with staff, and meetings with the Senate and House appropriations subcommittee staff. The target for FY 2013 is to distribute Governmentwide policy focused products (at least those developed under performance goal 2A-3) directly to policy makers, as appropriate. The FY 2014 target is TBD based on FY 2013 results.

#### Performance Goal 2A-2: Maintain scope of references to MSPB work and products.

Measure: Scope (location or identity of citing organization) of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, Federal legislation, professional literature, Executive Orders, the media, or other sources.

| Results  |   | Targets |   |
|----------|---|---------|---|
| FY 2011* | New measure in FY 2012  | FY 2012 | Establish measurement process and set future targets  |
|          | MSPB study reports, significant cases, and other information was referenced in the Washington Post, GovExec.com, FederalNewsRadio.com, by Special Counsel Carolyn Lerner in her testimony about OSC's education and legislative efforts, her presentation at the Federal Dispute Resolution conference, and in an OSC 11/22/2011 press release; MSPB continues search for an automated method of tracking references to MSPB work | FY 2013 | Continue to search for an automated tracking method; MSPB work is cited in print or web-based media, and by one or more other organizations |
| FY 2012  |   | FY 2014 | TBD based on FY 2013 results  |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was **MET** for FY 2012. The measure for this goal is the scope (location or identity or citing organization) of references to MPSB decisions, reports, newsletters, web content, or other materials in policy papers, Federal legislation, professional literature, Executive Orders, the media or other sources. In terms of promoting policy it is the scope of the citations, rather than the number of citations that is important. MSPB tracked this information anecdotally in the past and in FY 2012 MSPB reviewed various automated methods for tracking citations of MSPB work. MSPB will continue to track references anecdotally, and in early FY 2013, MSPB decided to pilot test LexisNexis (its new legal citation software) as a method to automate tracking of references of MSPB work. In FY 2012, MSPB work was cited in a number of print and online media including the Washington Post, Government Executive, and Federal News Radio. In addition, the Special Counsel testified that OSC used MSPB reports in their education and legislative efforts, and she used study information in her presentation at the Federal Dispute Resolution conference. Other agencies, such as the Securities and Exchange Commission, reported using study reports to train its HR specialists. In FY 2013, the target is to ensure that MSPB's work is cited in print and or web-based media sources, and by one or more other organizations. The FY 2014 target is TBD based on FY 2013 results.

Performance Goal 2A-3: Maintain the number and scope of MSPB products focused on policy-makers or changing governmentwide policy.

Measure: 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  |  | Targets |   |
|----------|--|---------|---|
| FY 2011* | New measure in FY 2012   | FY 2012 | Establish measurement process and set future targets  |
| FY 2012  | Products include text of the<br>Chairman's testimony for the<br>Senate oversight hearing, and a<br>Video of Chairman's testimony<br>linked on MSPB's website | FY 2013 | Develop at least one new policy-<br>focused product that covers the<br>policy recommendations made<br>in MSPB studies |
|          |  | FY 2014 | TBD based on FY 2013 results  |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was **MET** for FY 2012. The performance goal for developing policy-related products for policy-makers is measured by 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 (2A-3). This measure recognizes that policymakers have limited time and may focus on specific issues of interest, and that communication products are most effective when they meet the needs of policy-makers. In FY 2012, these products include the text and video of the Chairman's testimony before the Senate oversight hearing, which are linked on MSPB's website. The FY 2013 target is to develop at least one new policy-focused product that covers the policy recommendations made in MSPB studies. The FY 2014 target is TBD based on FY 2013 results.

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

Performance Goal 2B-1: Maintain the number and scope of materials viewed or accessed from the MSPB website intended to improve the practice of merit.

**Measure:** Number of visits and accesses of web-based materials meant to improve the practice of merit, adherence to MSPs, or prevention of PPPs in the workplace including MSPB precedential decisions, non-precedential final orders (NPFOs), studies reports, and similar materials from MSPB's website.

| Results  |   | Targets |  |
|----------|---|---------|--|
| FY 2011* | New measure in FY 2012  | FY 2012 | Establish measurement process and set future targets     |
| FY 2012  | WebTrends reports and document access logs included over 128,000 visits to the studies and decisions webpages and nearly 2,000,000 hits (one or more documents accessed per hit) to documents on these webpages | FY 2013 | Number of visits & accesses within 5% of FY 2012 results |
|          |   | FY 2014 | TBD based on FY 2013 results                             |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was **MET**. The performance goal for web usage related to improving merit system practice is measured by the number of visits to and/or accesses of MSPB precedential decisions, non-precedential final orders (NPFOs), studies reports, and similar web-based materials (2B-1). These specific webpages and related documents were chosen because their purpose is weighted toward improving the practice of merit in the workplace or on improving the practice of those who file cases with MSPB. MSPB will obtain these data from WebTrends reports and/or logs from our document management system. In FY 2012, reports include almost 128,000 visits to the studies and decisions webpages and nearly 2,000,000 hits (one or more documents accessed per hit) to documents on these webpages. In FY 2013, the target is to achieve within 5 percent of the results reported for FY 2012. The target for FY 2014 is TBD based on FY 2013 results.

### **Performance Goal 2B-2:** Maintain the number and scope of outreach contacts.

**Measure**: Number and scope of MSPB contacts with practitioners and stakeholders focused on improving the understanding or practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace.

| Results   |   | Targets |  |
|---|---|---------|--|
| FY 2011*  | New measure in FY 2012  | FY 2012 | Establish measurement process and set future targets   |
| FY 2012 tracked in the calendar on top legal, merit syst other issues; adoutreach includagencies (invite OSC, OPM, Feand DoL, ARB | Almost 150 events were tracked in the outreach calendar on topics focused on legal, merit system studies, and other issues; additional            | FY 2013 | Conduct or participate in 90 events focused on legal, studies, or other issues; consider how to collect reliable feedback from participants of outreach events |
|   | outreach include visits by sister agencies (invited outreach with OSC, OPM, Federal Circuit, and DoL, ARB), and events involving MSPB regulations | FY 2014 | TBD based on FY 2013 results   |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was **MET** for FY 2012. The performance goal on MSPB outreach to improve practice is measured by 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. It is understood that many outreach events will also include an educational component. However, for simplicity, all outreach will be counted under this performance goal. Outreach events will be tracked using the agency outreach calendar. In FY 2012, almost 150 outreach events were conducted on topics related to legal, merit systems studies, and other issues. Additional outreach included invited "in-reach" exchanges of information with the Federal Circuit and MSPB's sister agencies including OSC, OPM, and the Department of Labor Administrative Review Board. Although not considered outreach events similar to presentations, MSPB is also increasing its efforts to assist pro se appellants through access to pro bono clinics and other sources of free or affordable legal assistance. The ability to conduct outreach is impacted by the availability of resources, especially if outreach events include travel. In order to encourage outreach in balance with other MSPB performance goals, the FY 2013 target is to conduct 90 outreach events focused on legal, studies or other issues, which is approximately the same level of outreach accomplished through the first three quarters of FY 2012. In FY 2013, MSPB will also consider how to collect routine feedback from participants of outreach events. The FY 2014 target is TBD based on FY 2013 results.

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

Performance Goal 2C-1: Maintain the number and scope of materials viewed or accessed from the MSPB website that are designed to improve understanding of merit.

Measure: Number of visits and accesses of educational information, materials, or guidance about the merit systems including, MSPs, PPPs, MSPB case reports, the appeals process (training), Issues of Merit (IoM) newsletters, etc., from MSPB's website.

| Results  |   | Targets |  |
|----------|---|---------|--|
| FY 2011* | New measure in FY 2012  | FY 2012 | Establish measurement process and set future targets     |
| FY 2012  | WebTrends reports and document access logs included almost 260,000 visits to the MSPs, PPPs, <i>IoM</i> newsletter, case report, and training webpages, and almost 3,800,000 hits (one or more documents accessed per hit) to documents on these webpages | FY 2013 | Number of visits & accesses within 5% of FY 2012 results |
|          |   | FY 2014 | TBD based on FY 2013 results                             |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was **MET**. The performance goal for web usage related to MSPB educational products is measured by number of visits and accesses of educational materials or guidance about the merit systems including MSPs, PPPs, MSPB case reports, training, *IoM* newsletters, etc., that are viewed or accessed from MSPB's website. Web usage for these webpages and related documents are included here because their primary focus and intent is improving the understanding of merit, although some of the content could also be used to improve merit system practice. These data will be tracked in WebTrends reports and document access logs. In FY 2012, reports include almost 260,000 visits to the MSPs, PPPs, *IoM* newsletter, case report, and training webpages, and almost 3,800,000 hits (one or more documents accessed per hit) to documents on these webpages. The FY 2013 target is to achieve within 5 percent of the results reported for FY 2012. The FY 2014 target is TBD based on FY 2013 results.

## Performance Goal 2C-2: Maintain number and scope of available educational materials and guidance.

Measure: Number and type of merit system educational materials and guidance MSPB makes available electronically or on the MSPB website.

| Results   |  | Targets |   |
|---|--|---------|---|
| FY 2011*  | New measure in FY 2012   | FY 2012 | Establish measurement process and set future targets  |
| the month, four training videos, and several significance reports. Additional materials include the Chairman's interview and article following the Sena hearing, live radio interview MSPB officials and staff, | videos, and several significant case reports. Additional   | FY 2013 | Post on the website or distribute electronically 6–10 new or updated textual or multimedia educational products |
|   | Chairman's interview and article following the Senate hearing, live radio interviews of MSPB officials and staff, and the oral argument page for | FY 2014 | TBD based on FY 2013 results  |

<sup>\*</sup>FY 2011 and prior years

This Performance Goal was MET. The performance goal for MSPB merit systems educational products is the number and type of merit systems educational materials and guidance MSPB makes available on the website or electronically (2C-2). These could be new products or significant updates to existing materials. In FY 2012 MSPB made available 11 PPP's of the month, four training videos, and several significant case reports. Additional information includes the Chairman's interview and article following the Senate hearing, and live radio interviews. The FY 2013 target is to post on the website or distribute electronically 6-10 new or updated textual or multimedia products. The FY 2014 target is TBD based on FY 2013 results.

## Summary of Trends and Challenges that May Affect Agency Performance

### Significant External Trends and Issues

The most significant external trends or issues affecting MSPB's ability to carry out its mission to protect the Federal merit systems include: reductions in the Federal budget including the implementation of "sequestration," which will impact MSPB in unique ways; increasing retirements of Federal employees; changes in law and jurisdiction; changes in employee management flexibilities; and changes in Government work.

**Reductions in the Federal budget:** Governmentwide actions to decrease Federal budgets have or may include pay freezes, severe limitations in employee awards (e.g., performance, special acts, and quality step increases), and limits on within-grade increases. The freeze in Federal pay and limits on awards may increase retirement and adversely impact employee morale and productivity. Constraints on pay and awards may also shift employees' attention to the application of performance appraisal systems and ratings, which could in turn increase performance-based appeals to MSPB.

In March 2013, after Congress was unable to agree on an alternative course of action, governmentwide "sequestration was implemented. According to OMB, sequestration will require that "hundreds of thousands" of Federal employees be furloughed between April 2013 and October 2013. Significantly, these employees will have the right under Federal law to appeal each furlough to MSPB. Moreover, as a results of sequestration, MSPB could be required to process and adjudicate these cases at a time when it – as an executive agency – will be subject to budget cuts and reduced resources because of sequestration. Budget reductions may also increase agency use of reductions in force (RIFs) to decrease the size of the workforce, actions taken in lieu of or in preparation for RIFs, hiring delays or freezes, and reductions in training and development. Historical trends indicate that increasing RIFs would lead to potentially large increases in the number of appeals to MSPB.

Freezing employee pay, reductions or long delays in hiring, and reductions in workforce training will likely effect the efficiency and effectiveness of the workforce in terms of loss of expertise and workforce capacity to carry out agency missions. In addition, it is difficult to know how personal financial stress may affect employee conduct, performance, morale, or engagement. It could take years for Federal agencies to recover from these issues. Emphasis on merit systems studies is important to continue studying the impact of these workforce changes on adherence to MSPs and avoidance of PPPs. It is also important to promote merit and educate the workforce, especially managers and leaders, about how to adhere to MSPs and to avoid PPPs when making management decisions such as those related to reducing the workforce.

**Increasing retirements of Federal employees:** The proportion of retirement-eligible Federal employees continues to increase. The number of Federal retirements has already begun to increase and will likely continue to grow in the next few years. As retirements increase, we expect to see an increase in retirement appeals. In addition, OPM is reducing its backlog of retirement claims, increasing the number of retirement decisions that may be appealable to MSPB. Finally, the proportion of Federal Employee Retirement System (FERS) retirement claims to all retirement claims is increasing. According to OPM, FERS retirement claims are more complex than CSRS claims, thus appeals of FERS decisions filed with MSPB are likely to take more time to process than CSRS claims. As the Government replaces retiring employees with relatively younger, less experienced employees, the average age of the workforce is likely to decrease. As this occurs, we

may see an increase in appeals as historical information indicates that less experienced employees typically experience more appealable actions than do employees that are more experienced.

Statutory changes in Federal retirement such as the new authority that phases in the opportunity for employees in the FERS to claim service credit toward retirement for their sick leave balance, and the potential to allow full-time Federal employees to phase their retirements or work in part-time status, may alter retirement rates and thus may impact retirement appeals. If Congress changes the retirement program, such as increasing the level of employees' contributions to fund their annuity or changing the calculations for the annuity (such as basing the annuity on the average high five years instead of the average high three years) for current retirement-eligible employees, the Government could experience a surge in retirements, followed by a surge in retirement appeals to MSPB.

Changes in law and jurisdiction: The most recent changes in law and jurisdiction that have a direct impact on MSPB involve the U.S. Postal Service's (USPS) National Reassessment Project (NRP), the WPEA, changes to the Hatch Act, and recent Court decisions. 11

**USPS NRP:** While most Postal Service non-preference eligible employees do not have the right to appeal an adverse action to MSPB, restoration appeals from USPS employees cover a much broader category of employees. On December 13, 2011, the Board heard oral arguments in Latham et al v. <u>U.S. Postal Service</u>, a set of over 70 cases involving restoration rights of Postal Service employees suffering work-related injuries and the Board's jurisdiction over such cases. In these cases, the Board affirmed the Postal Service's obligation, based on its own rules, to restore employees who have been injured on the job to available work that is medically suitable, and the Board affirmed that MSPB has jurisdiction over appeals involving this issue. To the degree that more injured USPS employees are denied restoration, MSPB expects to continue to see an increasing number of restoration-to-duty appeals from USPS employees. Depending on how these cases are interpreted, it could increase the number of restoration-to-duty appeals to the Board from other Federal agencies.

WPEA: The modifications and supplemental coverage contained in the WPEA both extend coverage to matters not previously within the jurisdiction of MSPB and expand MSPB's adjudicatory authority in such cases. The WPEA is likely to: increase the number of individual right of action (IRA) and otherwise appealable action whistleblower appeals; reduce the number of dismissals through the expanded definition of a protected disclosure; and increase the complexity of whistleblower appeals in terms of content and review of MSPB decisions by multiple Circuit courts. The WPEA is also likely to: increase the number of hearings on the merits on such cases; increase the information and data collected and reported for such cases; increase travel to represent MSPB at various Circuit courts; and increase addendum appeals related to attorney's fees, compensatory damages related to IRA appeals or if the agency conducts an investigation of an employee is retaliation for whistleblowing, monetary awards, and enforcement of MSPB decisions. These changes will have dramatic effects on MSPB and will require the commitment of greater resources so that it can implement Congress's mandate. MSPB has established working groups including representatives from all offices to facilitate smooth implementation of the Act.

Hatch Act: The Hatch Act Modernization Act of 2012 broadens the scope of permissible political activities for some Federal, state, and local employees. Under the new law, Federal employees who live in the District of Columbia may run for local political office and take an active role in political

<sup>11</sup> The recent Supreme Court decision in Kloeckner v. Solis may also affect the way MSPB processes mixed cases that involve both merit systems issues and equal employment opportunity issues.

management and political campaigns to the same degree that residents of Maryland and Virginia who live in the immediate vicinity of the District of Columbia may engage in those activities. The amendments also expand the range of penalties that may apply to violations of the Act by Federal employees. Under certain conditions, these new penalty provisions for Federal employees apply retroactively to any violation that occurred before the effective date. It is unclear at this time how changes in the Hatch may impact MSPB's work or workload.

Changes in law, appeal rights, and appellate jurisdiction also increase the importance of MSPB's statutory responsibility to promote merit and educate employees, supervisors, managers, and leaders on the merit systems, MSPs, PPPs, and MSPB appellate procedures, processes, and case law. Education on these issues, promoting merit, and sharing important information about appeals procedures will improve workforce management over time and reduce the cost of appeals to agencies, appellants, and the Government.

Changes in employee management flexibilities: Management flexibilities might include expanded authorities in hiring such as the pathways programs, or new pay authorities such as paybanding. Changes in management flexibilities could involve implementing expanded flexibilities (e.g., MaxHR in the Department of Homeland Security or the National Security Personnel System (NSPS)) or returning to traditional management authorities. For example, the National Defense Authorization Act for FY 2010 (Public Law 111-84) required the Department of Defense (DoD) to transfer all employees and positions from NSPS back to traditional title 5 authorities by January 1, 2012. In January 2012, the Board released its decision in Arrington v. Department of the Navy, in which it found that the transfer of the appellant from the NSPS resulted in her being improperly downgraded to GS-13, when prior to her participation in the NSPS she had been a GS-14 employee, and that under the facts of the case, this constituted an appealable reduction in grade.

Management flexibilities may also be directed through administrative actions such as Presidential Executive Orders. For example, President Obama issued Executive Order 13562 in December 2010, establishing the Pathways Programs. The Pathways Programs creates a set of excepted service appointing authorities tailored to ease and encourage recruitment, hiring, development, and retention of students and recent graduates. The Pathways Programs formally acknowledges a longstanding interest of Federal agencies and Federal managers—the ability to hire high-quality college graduates into professional and administrative occupations. It is unknown what impact the Pathways Programs will have on hiring and management or if it will succeed in its goals. MSPB plans to follow closely the evolution and implementation of these programs.

Changes in Federal management flexibilities also emphasize the need for MSPB to continue its study of Federal merit systems and human capital management practices to ensure the flexibilities are implemented and operated in accordance with MSPs and are free from PPPs. Flexibilities and other changes in human resource management policies issued through OPM regulation make it imperative that MSPB strengthen its ability to exercise its statutory authority to review OPM regulations. Reviewing OPM regulations can save the Government direct costs such as those associated with transferring employees in and out of more flexible systems that are later terminated, and indirect costs associated with negative employee perceptions of the new system and possible reductions in morale. Finally, changes in management flexibilities also increase the importance of MSPB's role in promoting and educating employees and the public about the merit system, MSPs, and PPPs.

Changes in Government Work: Government work has continued to shift from administrative processing to knowledge-based work. Most Federal human resources management systems, policies and practices were designed in the 1940s and 1950s for a fundamentally administrative workforce. Systems, policies, and practices such as those for classification, recruitment and hiring, performance management and pay, and training and development do not have the flexibility to effectively manage and support the Government's modern workforce which is required to performs more professional, knowledge-based work. At the same time, MSPs and fair treatment along with freedom from discrimination and from the occurrence of PPPs must continue to be assured. Improvements are also needed in the selection and training of supervisors and managers who must use the existing management systems to manage a modern workforce and achieve results for the public. These changes emphasize the need for a strong merit systems studies function and increased focus on promoting and educating employees and the public about the merit systems, MSPs, and PPPs.

### **Internal Management Activities and Challenges**

MSPB continued to focus on improving internal management to ensure delivery of mission and achievement of agency goals. To determine internal priorities, MSPB considered prior agency internal reviews, the current status of internal programs, the results of the FY 2011 Federal Employee Viewpoint Survey, and its efforts to 'walk-the-talk' (implement appropriate recommendations from MSPB merit system studies). In FY 2012, MSPB focused on improving overall employee engagement, the link between agency and SES performance, employee recognition, training and development, budget justifications, IT resources management, and safety and security.

MSPB focused on various aspects of employee engagement including communication, linking performance and employee recognition, and training and development. Communication efforts included Chairman Grundmann's conducting the first ever MSPB all-hands meeting of agency employees, followed by presentations and O&A by the Executive Director and Performance Improvement Officer about the new agency strategic and performance plans with all MSPB headquarters and field offices. MSPB began development of new SES performance plans linked to agency plans and will continue this effort in FY 2013. Executive Committee subcommittees were established to review and make recommendations to improve training and development and employee recognition. Subcommittees included representatives from all offices (both at headquarters and in the regional and field offices) and employees at all levels of the agency. MSPB is currently in the process of implementing most of these recommendations made by these subcommittees. In addition, MSPB conducted a Legal Training Symposium in May 2012, which included sessions ranging from updates on MSPB's legal precedents, Federal employment law and policy, MSPB adjudication practices and procedures, new MSPB regulations, and other professional and administrative topics. MSPB University, an internal program for providing professional and personal development opportunities, provided eight courses addressing subjects such as Federal benefits, presentations from our sister agencies, stress reduction, and low-cost sources for training.

MSPB's efforts to improve budget justification resulted in retention of proportionally more resources for FY 2012 than many other agencies, although we continue to operate below the resource level needed to execute our mission as effectively and efficiently as possible. MSPB also improved its management of IT resources, including replacing and upgrading standard employee laptop hardware and software, moving email to the cloud, and continuing improvements in IT backup facilities. An Executive Committee subcommittee was appointed to review and make recommendations to improve safety and security. Improvements in safety and security were implemented in FY 2012, including an interim safety and security plan, and further improvements, including more safety and security training, are intended for FY 2013.

MSPB implemented its new Strategic Plan for FY 2012–2016 which more thoroughly reflects MSPB's broader role in protecting merit and preventing PPPs as intended by the Civil Service Reform Act of 1978. MSPB's Annual Performance Plan for FY 2012 was the first APP implemented under the new Strategic Plan. Successfully implementing these new plans will better protect merit systems, increase adherence to MSPs, and prevent or reduce PPPs which will ultimately result in better Federal management, improved Federal employee and agency performance, better service to the public, and increased value to American taxpayers.

Despite the progress made in these areas, MSPB continues to struggle with internal challenges primarily related to the retirement eligibility of its workforce, increasing number of vacancies, limited resources, budget uncertainties, and competing priorities for existing resources. Almost one-third of MSPB employees and nearly 50 percent of MSPB's AJs are eligible to retire in the next two years. MSPB does not have the resources to hire in advance of these retirements in order to ensure a smooth transition and transfer critical knowledge of adjudication and other key agency processes. Given budget uncertainties, it is difficult to plan when to advertise to fill vacancies and in many instances, recruitment occurs well after a position becomes vacant. In addition, the number of writing attorneys who identify legal issues and draft decisions for the Board Members to consider has decreased significantly as several highly experienced writing attorneys have retired or taken other positions at MSPB. There are not sufficient resources to fill all these vacancies. Once hired it takes 2–3 years for an AJ or a writing attorney to become fully versed in the Board's law and procedures. The average processing time for initial decisions and PFRs is increasing. In particular, PFR processing time has been higher than targeted levels in recent years, and the inventory of PFR cases is growing. MSPB will continue to emphasize adjudication decision quality and transparency over processing speed. Given these factors, it is likely that average processing time for initial decisions and PFRs will continue to increase. Efforts to strengthen MSPB's review of OPM rules, regulations, and significant actions, to improve the collection of important customer service information and to conduct program evaluation compete for fewer existing resources. Limited and competing resources also affect MSPB's ability to conduct outreach, especially if it involves travel or extensive preparation or staff time which take the participants away from their other work.

There are also key vacancies in other Board offices and several employees holding key positions are eligible to retire in the near future. There are not sufficient resources to fill these vacancies, nor to hire in advance of retirement in key positions. In addition, MSPB experienced significant changes in key agency leadership positions. During FY 2012, the Director of the Office of Appeals Counsel (OAC) took another position within MSPB, the Director of Financial and Administrative Management (FAM) took a position at another agency, and the Director of the Office of Policy and Evaluation (OPE) retired. In January 2013, MSPB selected a new Director of the Office of Appeals Counsel, the General Counsel was appointed as the Executive Director and a new General Counsel was appointed. These leadership changes affect four of seven offices at HQ as well as the agency as a whole. As resources permit, recruitment efforts to fill remaining key leadership positions and prioritize hiring of other key staff will continue into FY 2013. Although MSPB employees report high levels of commitment to the agency's mission, resource issues are affecting employee morale. MSPB will continue to focus on strong internal management (as discussed above) and communication in an effort to mitigate the impact of fewer resources. MSPB will also continue to request and justify the resources it requires to conduct its mission and make clear the impact that resource constraints has on its performance.

# 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 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 is likely to yield a large return in internal 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. These data are validated and verified each year through routine cross-checking by multiple MSPB offices. Inconsistencies are corrected and the resulting agency-level data are well within the level of accuracy required for use of the data. Other quantitative and qualitative performance measures are reported by MSPB's program offices and are usually validated and verified through public posting of information (such as studies) or reports from automated systems (such as web usage and document access logs). MSPB also collects customer satisfaction data from adjudication and merit systems studies' customers and stakeholders and from internal customers of our administrative programs. Coordination and oversight of performance measurement processes, including internal and external customer surveys, will help ensure consistency, validity, and verifiability of the performance data included in agency plans and reports.

#### Program Evaluation and Performance Measurement Schedule

In FY 2012, MSPB began developing policies 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 occurring simultaneously 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 2013 and 2014, MSPB plans to begin program evaluation and data verification/validation projects as indicated below.

| Program or Performance Measurement System                   | Evaluation Start Year |
|---|-----------------------|
| PFR case processing   | 2012                  |
| Internal and external customer satisfaction/service surveys | 2012                  |
| Case processing in the regional and field offices           | 2013                  |
| Law Manager and case management system                      | 2014                  |

# Appendix A

In accordance with 5 USC \$7701(i)(1) and (2), MSPB provides case processing information for FY 2012. Overall, MSPB received 7,352 initial appeals, PFRs and addendum cases and processed 7,585 cases (including ALJ and original jurisdiction cases. Seventy percent of initial appeals (including addendum) were processed in 110 days or less (81 percent in 120 days or less). Five percent of PFRs (including addendum) were processed in 110 days or less (16 percent in 150 days or less). The remaining 30 percent of initial appeals took over 100 days to process, 19 percent took over 120 days to process. The remaining 95 percent of PFRs took over 110 days to process and 84 percent took 150 days or more to process.

Each case is adjudicated on its merits in accordance with law and legal precedent and in a manner consistent with the interests of fairness, which is achieved by assuring due process and the parties' full participation at all stages of the appeal. Several factors contribute to the length of time it takes to resolve a particular case. It takes time to issue notices, respond to discovery and other motions, subpoena documents, arrange for and question witness, present evidence, conduct a hearing, and often to participate in alternative dispute resolution efforts. When there is good cause to do so, the parties may be granted additional time in an effort to preserve due process. Adjudication also may require more time when cases involve new, particularly complex, or numerous factual issues, or the interpretation of new statutory or regulatory provisions. In addition, when Board members do not agree regarding the disposition of PFR issues or cases, the need to resolve disagreements or prepare separate opinions may increase the time needed for adjudication. Additional factors that affect processing time are discussed in the results section of this APRP.