



Annual Report

for FY 2024

June 24, 2025

Foreword

In accordance with § 1206 of Title 5, United States Code (U.S.C.), the U.S. Merit Systems Protection Board (MSPB) submits this Annual Report (AR) on its significant actions during fiscal year (FY) 2024.

Information about MSPB's FY 2024 program performance results (as required under the Government Performance and Results Act Modernization Act of 2010 (GPRAMA)) are available in the [Annual Performance Report \(APR\) FY 2024](#). Financial accountability and audit information is included in MSPB's [Annual Financial Report \(AFR\) for FY 2024](#). MSPB's ARs, AFRs, and GPRAMA documents are posted on the [Plans, Budget & Performance](#) page on MSPB's website when they are released.

Go to www.mspb.gov to learn more about MSPB's work, sign up for MSPB's adjudication or studies listservs, or follow us on X (formerly Twitter) [@USMSPB](#) and [LinkedIn](#).

We invite customers and stakeholders to send comments to improve MSPB's ARs to:

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U.S. MERIT SYSTEMS PROTECTION BOARD

FISCAL YEAR 2024 ANNUAL REPORT

MESSAGE FROM THE ACTING CHAIRMAN

I am pleased to submit MSPB's Annual Report for FY 2024. I am honored to have been named Acting Chairman and Vice Chairman by President Donald J. Trump, after serving on the Board as a Member since June 3, 2024.

In FY 2024, MSPB continued to focus on reducing the inherited inventory of cases which accumulated between 2017 and 2022 when the Board lacked a quorum and was unable to issue any opinions on petitions for review of initial decisions. In FY 2024, MSPB reduced the inventory by closing 2,340 cases. By the end of FY 2024, only 226 cases remained from the almost 3,800 cases originally in the inventory. I'm proud to say that as of the issuance of this report, the inherited inventory has been virtually eliminated. I am grateful for the service and collegiality of former Chairman Cathy A. Harris, former Vice Chairman Raymond A. Limon, and Member Tristan L. Leavitt (in prior years). We could not have made so much progress toward eliminating the inherited inventory without their tireless efforts.

In addition, MSPB's administrative judges issued 4,740 decisions in FY 2024, including addendum cases (involving compliance and attorneys' fees cases) and stay requests. Case processing statistics for the cases decided in the regional and field offices and headquarters (HQ) are provided in the "Fiscal Year 2024 in Review" section of this report. MSPB issued 13 precedential decisions at HQ, some of which are summarized in the section on "Significant Decisions Issued by the Board." We have also included a summary of "Significant Court Opinions Issued in FY 2024."

Finally, the section on the "Review of the U.S. Office of Personnel Management's Significant Actions" summarizes our activities and analysis of four key topics: Final Regulations on the Pathways Programs, "Improving the Federal Hiring Experience" Memorandum, Artificial Intelligence Hiring Guidance, and Time-Limited Promotion Final Rule, followed by our "Review of the Rules and Regulations of OPM."

Looking forward, we remain as committed as ever to our mission to protect merit system principles and promote a workforce free from prohibited personnel practices. I am extremely thankful for the contributions of all MSPB employees to this effort.

Kind regards,



Henry J. Kerner
Acting Chairman
June 24, 2025

INTRODUCTION

This MSPB Annual Report for FY 2024 includes adjudication case processing statistics for the regional and field offices (RO/FOs) and for headquarters (HQ); summaries of significant Board cases and court opinions relevant to MSPB's work; and a summary of MSPB work reviewing the rules, regulations, and significant actions of the Office of Personnel Management (OPM).

FISCAL YEAR 2024 IN REVIEW

Summary of Cases Decided by MSPB

Table 1: FY 2024 Summary of Cases Decided By MSPB

| Cases Decided in MSPB Regional and Field Offices | |
|--|--------------|
| Appeals | 4,182 |
| Addendum Cases ¹ | 535 |
| Stay Requests ² | 23 |
| TOTAL Cases Decided in RO/FOs | 4,740 |
| Cases Decided by Administrative Law Judges (ALJs) - Original Jurisdiction³ | 10 |
| Cases Decided by the Board | |
| Appellate Jurisdiction: | |
| Petitions for Review (PFRs) - Appeals | 2,129 |
| PFRs - Addendum Cases | 114 |
| Reviews of Stay Request Rulings | 0 |
| Requests for Stay of Board Order | 0 |
| Reopenings | 10 |
| Court Remands | 1 |
| Compliance Referrals | 36 |
| Equal Employment Opportunity Commission Non-concurrence Cases | 0 |
| Arbitration Cases | 10 |
| Subtotal - Appellate Jurisdiction | 2,300 |
| Original Jurisdiction ⁴ | 8 |
| Interlocutory Appeals | 0 |
| TOTAL Cases Decided by the Board⁵ | 2,308 |
| TOTAL Decisions (Board, ALJs, RO/FOs) | 7,058 |

¹ Includes 104 requests for attorney fees, 232 Board Remand cases, 141 Compliance cases, 8 court remand cases, 39 requests for compensatory damages (discrimination cases only), 10 requests for consequential damages, and 1 request for Liquidated damages.

² Includes 18 stay requests in whistleblower cases and 5 in non-whistleblower cases.

³ Initial Decisions by ALJs. Case type breakdown: 1 Disciplinary Action - Hatch Act case, 1 Action Against SES cases, 6 Actions Against ALJs, and 2 Corrective Actions Brought Against Agency.

⁴ Final Board Decisions. Case Type Breakdown: 1 Request for Stay, 2 Petitions for Rulemaking, 2 PFRs of Actions Against ALJs, 2 Requests for Regulation Review, and 1 Disciplinary Action – Hatch Act.

⁵ This number reflects an update from the 2,340 cases reported in the MSPB Annual Performance Report for FY 2024.

Cases Processed in the Regional and Field Offices

Table 2: Disposition of Appeals Decided in the Regional and Field Offices, by Type of Case

| | Decided | Dismissed | | Settled | | Adjudicated | |
|--|-------------|-------------|-------------|------------|-------------|-------------|-------------|
| Type of Case | # | # | % | # | % | # | % |
| Adverse Action by Agency | 1391 | 684 | 49.2 | 489 | 35.2 | 218 | 15.6 |
| Termination of Probationers | 622 | 589 | 94.7 | 28 | 4.5 | 5 | 0.8 |
| Reduction in Force | 5 | 3 | 60 | 0 | 0 | 2 | 40 |
| Performance | 69 | 17 | 24.6 | 29 | 42 | 23 | 33.3 |
| Acceptable Level of Competence (ALOC) ⁶ | 13 | 8 | 61.5 | 5 | 38.5 | 0 | 0 |
| Suitability | 31 | 21 | 67.7 | 6 | 19.4 | 4 | 12.9 |
| CSRS Retirement: Legal | 104 | 58 | 55.8 | 3 | 2.9 | 43 | 41.3 |
| CSRS Retirement: Disability | 2 | 1 | 50 | 0 | 0 | 1 | 50 |
| CSRS Retirement: Overpayment | 28 | 14 | 50 | 7 | 25 | 7 | 25 |
| FERS Retirement: Legal | 227 | 169 | 74.5 | 9 | 4 | 49 | 21.6 |
| FERS Retirement: Disability | 696 | 671 | 96.4 | 2 | 0.3 | 23 | 3.3 |
| FERS Retirement: Overpayment | 184 | 89 | 48.4 | 53 | 28.8 | 42 | 22.8 |
| FERCCA | 3 | 2 | 66.7 | 1 | 33.3 | 0 | 0 |
| Individual Right of Action | 322 | 197 | 61.2 | 78 | 24.2 | 47 | 14.6 |
| USERRA | 50 | 34 | 68 | 8 | 16 | 8 | 16 |
| VEOA | 55 | 33 | 60 | 4 | 7.3 | 18 | 32.7 |
| Other ⁷ | 380 | 361 | 95 | 16 | 4.2 | 3 | 0.8 |
| Total | 4182 | 2951 | 70.6 | 738 | 17.6 | 493 | 11.8 |

⁶ ALOC means an employee is effectively performing the duties and responsibilities of his or her assigned job, which warrants advancing the employee's rate of pay to the next higher step at the grade of the employee's position. If an employee's performance is not at an ALOC, then the agency must, under most circumstances, deny his or her within-grade increase.

⁷ "Other" appeals include Restoration to Duty (16), Miscellaneous (313), and additional types such as Reemployment Priority, Employment Practices, and others.

Table 3: Disposition of Appeals by Agency
(in descending order by number of decided appeals)

| | Decided | Dismissed | | Settled | | Adjudicated | |
|---|---------|-----------|------|---------|------|-------------|------|
| | # | # | % | # | % | # | % |
| Office of Personnel Management ⁸ | 1255 | 1012 | 80.6 | 78 | 6.2 | 165 | 13.1 |
| Department of Veterans Affairs | 553 | 384 | 69.4 | 115 | 20.8 | 54 | 9.8 |
| United States Postal Service | 314 | 188 | 59.9 | 99 | 31.5 | 27 | 8.6 |
| Department of the Army | 307 | 199 | 64.8 | 74 | 24.1 | 34 | 11.1 |
| Department of the Navy | 252 | 175 | 69.4 | 52 | 20.6 | 25 | 9.9 |
| Department of Defense | 231 | 167 | 72.3 | 48 | 20.8 | 16 | 6.9 |
| Department of Homeland Security | 219 | 132 | 60.3 | 53 | 24.2 | 34 | 15.5 |
| Department of the Air Force | 188 | 125 | 66.5 | 44 | 23.4 | 19 | 10.1 |
| Department of the Treasury | 156 | 124 | 79.5 | 23 | 14.7 | 9 | 5.8 |
| Department of Justice | 140 | 80 | 57.1 | 32 | 22.9 | 28 | 20 |
| Department of Agriculture | 93 | 64 | 68.8 | 22 | 23.7 | 7 | 7.5 |
| Social Security Administration | 76 | 56 | 73.7 | 7 | 9.2 | 13 | 17.1 |
| Department of the Interior | 71 | 46 | 64.8 | 15 | 21.1 | 10 | 14.1 |
| Department of Health and Human Services | 64 | 34 | 53.1 | 20 | 31.3 | 10 | 15.6 |
| Department of Transportation | 47 | 29 | 61.7 | 6 | 12.8 | 12 | 25.5 |
| Department of Commerce | 36 | 22 | 61.1 | 6 | 16.7 | 8 | 22.2 |
| Department of Labor | 27 | 18 | 66.7 | 6 | 22.2 | 3 | 11.1 |
| Department of State | 23 | 15 | 65.2 | 4 | 17.4 | 4 | 17.4 |
| Department of Energy | 16 | 8 | 50 | 7 | 43.8 | 1 | 6.3 |
| General Services Administration | 10 | 6 | 60 | 3 | 30 | 1 | 10 |
| Federal Deposit Insurance Corporation | 9 | 6 | 66.7 | 2 | 22.2 | 1 | 11.1 |
| Small Business Administration | 9 | 8 | 88.9 | 0 | 0 | 1 | 11.1 |
| Smithsonian Institution | 9 | 5 | 55.6 | 0 | 0 | 4 | 44.4 |
| Department of Housing and Urban Development | 8 | 6 | 75 | 2 | 25 | 0 | 0 |
| Environmental Protection Agency | 7 | 3 | 42.9 | 2 | 28.6 | 2 | 28.6 |
| National Archives and Records Admin | 7 | 2 | 28.6 | 4 | 57.1 | 1 | 14.3 |
| Agency for International Development | 5 | 4 | 80 | 1 | 20 | 0 | 0 |

⁸ Most appeals in which OPM is the agency are retirement cases involving decisions made by OPM as the administrator of the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS).

Table 3: Disposition of Appeals by Agency (continued)

| | Decided | Dismissed | | Settled | | Adjudicated | |
|---|--------------|--------------|-------------|------------|-------------|-------------|-------------|
| | # | # | % | # | % | # | % |
| National Aeronautics and Space Admin | 5 | 5 | 100 | 0 | 0 | 0 | 0 |
| Equal Employment Opportunity Commission | 4 | 3 | 75 | 1 | 25 | 0 | 0 |
| Government Publishing Office | 4 | 1 | 25 | 3 | 75 | 0 | 0 |
| Department of Education | 3 | 3 | 100 | 0 | 0 | 0 | 0 |
| National Science Foundation | 3 | 2 | 66.7 | 1 | 33.3 | 0 | 0 |
| U.S. Agency for Global Media | 3 | 2 | 66.7 | 1 | 33.3 | 0 | 0 |
| Executive Office of the President, Office of Administration | 2 | 1 | 50 | 0 | 0 | 1 | 50 |
| Federal Housing Finance Agency | 2 | 1 | 50 | 1 | 50 | 0 | 0 |
| Merit Systems Protection Board | 2 | 0 | 0 | 0 | 0 | 2 | 100 |
| Nuclear Regulatory Commission | 2 | 1 | 50 | 1 | 50 | 0 | 0 |
| Office of Special Counsel | 2 | 2 | 100 | 0 | 0 | 0 | 0 |
| Pension Benefit Guaranty Corporation | 2 | 2 | 100 | 0 | 0 | 0 | 0 |
| Railroad Retirement Board | 2 | 1 | 50 | 1 | 50 | 0 | 0 |
| Administrative Office of the U.S. Courts | 1 | 1 | 100 | 0 | 0 | 0 | 0 |
| Commodity Futures Trading Commission | 1 | 0 | 0 | 1 | 100 | 0 | 0 |
| Corporation for National and Community Service | 1 | 1 | 100 | 0 | 0 | 0 | 0 |
| Election Assistance Commission | 1 | 1 | 100 | 0 | 0 | 0 | 0 |
| Federal Communications Commission | 1 | 1 | 100 | 0 | 0 | 0 | 0 |
| Federal Mediation and Conciliation Service | 1 | 0 | 0 | 1 | 100 | 0 | 0 |
| International Boundary and Water Comm: U.S. and Mexico | 1 | 1 | 100 | 0 | 0 | 0 | 0 |
| National Credit Union Administration | 1 | 1 | 100 | 0 | 0 | 0 | 0 |
| National Security Council | 1 | 0 | 0 | 1 | 100 | 0 | 0 |
| Office of the Director of National Intelligence | 1 | 1 | 100 | 0 | 0 | 0 | 0 |
| Office of the U.S. Trade Representative | 1 | 0 | 0 | 1 | 100 | 0 | 0 |
| Securities and Exchange Commission | 1 | 1 | 100 | 0 | 0 | 0 | 0 |
| Selective Service System | 1 | 0 | 0 | 0 | 0 | 1 | 100 |
| Tennessee Valley Authority | 1 | 1 | 100 | 0 | 0 | 0 | 0 |
| TOTAL | 4,182 | 2,951 | 70.6 | 738 | 17.6 | 493 | 11.8 |

Table 4: Disposition of Initial Appeals Adjudicated on the Merits by Agency

| | Adjudicated | Affirmed | | Reversed | | Mitigated/ Modified | | Other | |
|---|-------------|------------|-------------|-----------|-------------|------------------------|------------|-----------|------------|
| | # | # | % | # | % | # | % | # | % |
| Office of Personnel Management ⁹ | 165 | 113 | 68.5 | 40 | 24.2 | 0 | 0 | 12 | 7.3 |
| Department of Veterans Affairs | 54 | 46 | 85.2 | 6 | 11.1 | 2 | 3.7 | 0 | 0 |
| Department of Homeland Security | 34 | 27 | 79.4 | 4 | 11.8 | 3 | 8.8 | 0 | 0 |
| Department of the Army | 34 | 26 | 76.5 | 8 | 23.5 | 0 | 0 | 0 | 0 |
| Department of Justice | 28 | 21 | 75 | 6 | 21.4 | 1 | 3.6 | 0 | 0 |
| United States Postal Service | 27 | 21 | 77.8 | 4 | 14.8 | 2 | 7.4 | 0 | 0 |
| Department of the Navy | 25 | 18 | 72 | 6 | 24 | 1 | 4 | 0 | 0 |
| Department of the Air Force | 19 | 16 | 84.2 | 3 | 15.8 | 0 | 0 | 0 | 0 |
| Department of Defense | 16 | 12 | 75 | 4 | 25 | 0 | 0 | 0 | 0 |
| Social Security Administration | 13 | 11 | 84.6 | 2 | 15.4 | 0 | 0 | 0 | 0 |
| Department of Transportation | 12 | 11 | 91.7 | 1 | 8.3 | 0 | 0 | 0 | 0 |
| Department of Health and Human Services | 10 | 9 | 90 | 1 | 10 | 0 | 0 | 0 | 0 |
| Department of the Interior | 10 | 7 | 70 | 3 | 30 | 0 | 0 | 0 | 0 |
| Department of the Treasury | 9 | 9 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Department of Commerce | 8 | 7 | 87.5 | 0 | 0 | 1 | 12.5 | 0 | 0 |
| Department of Agriculture | 7 | 5 | 71.4 | 1 | 14.3 | 1 | 14.3 | 0 | 0 |
| Department of State | 4 | 3 | 75 | 1 | 25 | 0 | 0 | 0 | 0 |
| Smithsonian Institution | 4 | 4 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Department of Labor | 3 | 3 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Environmental Protection Agency | 2 | 2 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Merit Systems Protection Board | 2 | 2 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Department of Energy | 1 | 1 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Executive Office of the President, Office of Administration | 1 | 1 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Federal Deposit Insurance Corporation | 1 | 1 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| General Services Administration | 1 | 1 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| National Archives and Records Admin | 1 | 1 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Selective Service System | 1 | 1 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Small Business Administration | 1 | 1 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 493 | 380 | 77.1 | 90 | 18.3 | 11 | 2.2 | 12 | 2.4 |

⁹ Most appeals in which OPM is the agency are retirement cases involving decisions made by OPM as the administrator of CSRS and FERS.

Cases Processed at Headquarters

Table 5: Disposition of PFRs of Initial Decisions by Type of Case

| | Decided | | Dismissed | | Settled | | Denied | | Denied But Reopened ¹⁰ | | Granted | |
|--|-------------|--|------------|------------|-----------|----------|-------------|-------------|-----------------------------------|--------------|------------|-------------|
| Type of Case | # | | # | % | # | % | # | % | # | % | # | % |
| Adverse Actions | 931 | | 60 | 6.4 | 11 | 1.2 | 699 | 75.1 | 9 | 1 | 152 | 16.3 |
| Termination of Probationers | 134 | | 7 | 5.2 | 2 | 1.5 | 119 | 88.8 | 1 | 0.8 | 5 | 3.7 |
| Reduction in Force | 4 | | 0 | 0 | 0 | 0 | 2 | 50 | 0 | 0 | 2 | 50 |
| Performance | 52 | | 6 | 11.5 | 0 | 0 | 19 | 36.5 | 0 | 0 | 27 | 51.9 |
| ALOC ¹¹ | 3 | | 0 | 0 | 0 | 0 | 2 | 66.7 | 0 | 0 | 1 | 33.3 |
| Suitability | 23 | | 1 | 4.4 | 0 | 0 | 21 | 91.3 | 0 | 0 | 1 | 4.4 |
| CSRS Retirement-Legal | 94 | | 5 | 5.3 | 0 | 0 | 78 | 83 | 0 | 0 | 11 | 11.7 |
| CSRS Retirement-Disability | 6 | | 0 | 0 | 0 | 0 | 5 | 83.3 | 0 | 0 | 1 | 16.7 |
| CSRS Retirement-Overpayment | 13 | | 0 | 0 | 0 | 0 | 9 | 69.2 | 0 | 0 | 4 | 30.8 |
| FERS Retirement-Legal | 83 | | 5 | 6 | 1 | 1.2 | 65 | 78.3 | 3 | 3.6 | 9 | 10.8 |
| FERS Retirement-Disability | 84 | | 2 | 2.4 | 0 | 0 | 70 | 83.3 | 1 | 1.2 | 11 | 13.1 |
| FERS Retirement-Overpayment | 52 | | 4 | 7.7 | 0 | 0 | 36 | 69.2 | 2 | 3.9 | 10 | 19.2 |
| FERCCA | 2 | | 0 | 0 | 0 | 0 | 1 | 50 | 0 | 0 | 1 | 50 |
| Individual Right of Action | 358 | | 7 | 2 | 5 | 1.4 | 241 | 67.3 | 8 | 2.2 | 97 | 27.1 |
| VEOA - Veterans Employment Opportunities Act | 45 | | 4 | 8.9 | 0 | 0 | 35 | 77.8 | 2 | 4.4 | 4 | 8.9 |
| USERRA - Uniformed Services Employment and Reemployment Rights Act | 29 | | 5 | 17.2 | 0 | 0 | 18 | 62.1 | 1 | 3.5 | 5 | 17.2 |
| Other ¹² | 216 | | 11 | 5.1 | 3 | 1.4 | 173 | 80.1 | 2 | 0.9 | 27 | 12.5 |
| Total | 2129 | | 117 | 5.5 | 22 | 1 | 1593 | 74.8 | 29 | 131.8 | 368 | 17.3 |

¹⁰ Denied But Reopened includes cases denied on the basis of the issues raised in the PFR, but which the Board has considered an issue sua sponte, i.e., of the Board's own accord (5 C.F.R. § 1201-117(a)). This definition applies also to Table 6.

¹¹ ALOC means an employee is effectively performing the duties and responsibilities of his or her assigned job, which warrants advancing the employee's rate of pay to the next higher step at the grade of the employee's position. If an employee's performance is not at an ALOC, then the agency must, under most circumstances, deny his or her within-grade increase.

¹² Includes cases such as restoration cases, short suspension cases, and miscellaneous cases.

Table 6: Disposition of PFRs of Initial Decisions, by Agency

| | Decided | | Dismissed | | Settled | | Denied | | Denied But Reopened | | Granted | |
|--|---------|--|-----------|------|---------|-----|--------|------|---------------------|------|---------|------|
| | # | | # | % | # | % | # | % | # | % | # | % |
| Department of Veterans Affairs | 372 | | 25 | 6.7 | 8 | 2.2 | 240 | 64.5 | 6 | 1.61 | 93 | 25 |
| Office of Personnel Management ¹³ | 346 | | 21 | 6.1 | 0 | 0 | 275 | 79.5 | 6 | 1.73 | 44 | 12.7 |
| Department of the Army | 188 | | 1 | 0.5 | 5 | 2.7 | 141 | 75 | 2 | 1.06 | 39 | 20.7 |
| United States Postal Service | 164 | | 12 | 7.3 | 1 | 0.6 | 129 | 78.7 | 2 | 1.22 | 20 | 12.2 |
| Department of Homeland Security | 160 | | 5 | 3.1 | 2 | 1.3 | 122 | 76.3 | 3 | 1.88 | 28 | 17.5 |
| Department of Defense | 139 | | 5 | 3.6 | 2 | 1.4 | 102 | 73.4 | 1 | 0.72 | 29 | 20.9 |
| Department of the Navy | 129 | | 7 | 5.4 | 0 | 0 | 106 | 82.2 | 2 | 1.55 | 14 | 10.9 |
| Department of the Air Force | 92 | | 2 | 2.2 | 0 | 0 | 74 | 80.4 | 3 | 3.26 | 13 | 14.1 |
| Department of Justice | 81 | | 4 | 4.9 | 0 | 0 | 64 | 79 | 1 | 1.23 | 12 | 14.8 |
| Department of the Treasury | 66 | | 2 | 3 | 1 | 1.5 | 55 | 83.3 | 0 | 0 | 8 | 12.1 |
| Department of Agriculture | 58 | | 1 | 1.7 | 0 | 0 | 42 | 72.4 | 0 | 0 | 15 | 25.9 |
| Social Security Administration | 50 | | 6 | 12 | 0 | 0 | 37 | 74 | 0 | 0 | 7 | 14 |
| Department of Commerce | 41 | | 2 | 4.9 | 2 | 4.9 | 30 | 73.2 | 0 | 0 | 7 | 17.1 |
| Department of Health and Human Services | 35 | | 5 | 14.3 | 0 | 0 | 23 | 65.7 | 1 | 2.86 | 6 | 17.1 |
| Department of Transportation | 31 | | 1 | 3.2 | 0 | 0 | 24 | 77.4 | 0 | 0 | 6 | 19.4 |
| Department of the Interior | 28 | | 0 | 0 | 0 | 0 | 26 | 92.9 | 0 | 0 | 2 | 7.1 |
| Department of Labor | 24 | | 3 | 12.5 | 0 | 0 | 14 | 58.3 | 1 | 4.17 | 6 | 25 |
| Department of Housing and Urban Development | 20 | | 5 | 25 | 0 | 0 | 13 | 65 | 1 | 5 | 1 | 5 |
| National Aeronautics and Space Admin | 12 | | 1 | 8.3 | 0 | 0 | 9 | 75 | 0 | 0 | 2 | 16.7 |
| Department of Energy | 11 | | 1 | 9.1 | 1 | 9.1 | 8 | 72.7 | 0 | 0 | 1 | 9.1 |
| Small Business Administration | 9 | | 0 | 0 | 0 | 0 | 5 | 55.6 | 0 | 0 | 4 | 44.4 |
| Federal Deposit Insurance Corporation | 8 | | 0 | 00 | 0 | 0 | 6 | 75 | 0 | 0 | 2 | 25 |
| General Services Administration | 7 | | 1 | 14.3 | 0 | 0 | 5 | 71.4 | 0 | 0 | 1 | 14.3 |
| Department of State | 5 | | 1 | 20 | 0 | 0 | 2 | 40 | 0 | 0 | 2 | 40 |
| Environmental Protection Agency | 5 | | 2 | 40 | 0 | 0 | 2 | 40 | 0 | 0 | 1 | 20 |
| Smithsonian Institution | 5 | | 1 | 20 | 0 | 0 | 4 | 80 | 0 | 0 | 0 | 0 |

¹³ Most appeals in which OPM is the agency are retirement cases involving decisions made by OPM as the administrator of CSRS and FERS.

Table 6: Disposition of PFRs of Initial Decisions, by Agency (continued)

| | Decided | | Dismissed | | Settled | | Denied | | Denied But Reopened | | Granted | |
|---|--------------|--|------------|------------|-----------|----------|--------------|-------------|---------------------|------------|------------|-------------|
| | # | | # | % | # | % | # | % | # | % | # | % |
| Court Services and Offender Supervision Agency for DC | 4 | | 1 | 25 | 0 | 0 | 2 | 50 | 0 | 0 | 1 | 25 |
| Government Publishing Office | 4 | | 0 | 0 | 0 | 0 | 3 | 75 | 0 | 0 | 1 | 25 |
| Department of Education | 3 | | 0 | 0 | 0 | 0 | 2 | 66.7 | 0 | 0 | 1 | 33.3 |
| Equal Employment Opportunity Commission | 3 | | 0 | 0 | 0 | 0 | 3 | 100 | 0 | 0 | 0 | 0 |
| National Credit Union Administration | 3 | | 0 | 0 | 0 | 0 | 2 | 66.7 | 0 | 0 | 1 | 33.3 |
| Office of Special Counsel | 3 | | 1 | 33.3 | 0 | 0 | 2 | 66.7 | 0 | 0 | 0 | 0 |
| U.S. Agency for Global Media | 3 | | 0 | 0 | 0 | 0 | 3 | 100 | 0 | 0 | 0 | 0 |
| Corporation for National and Community Service | 2 | | 0 | 0 | 0 | 0 | 1 | 50 | 0 | 0 | 1 | 50 |
| Executive Office of the President, Office of Administration | 2 | | 0 | 0 | 0 | 0 | 2 | 100 | 0 | 0 | 0 | 0 |
| Federal Reserve System | 2 | | 0 | 0 | 0 | 0 | 2 | 100 | 0 | 0 | 0 | 0 |
| National Archives and Records Admin | 2 | | 0 | 0 | 0 | 0 | 2 | 100 | 0 | 0 | 0 | 0 |
| Railroad Retirement Board | 2 | | 0 | 0 | 0 | 0 | 2 | 100 | 0 | 0 | 0 | 0 |
| Agency for International Development | 1 | | 0 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 0 |
| Armed Forces Retirement Home | 1 | | 0 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 0 |
| Federal Election Commission | 1 | | 0 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 0 |
| Federal Housing Finance Agency | 1 | | 0 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 0 |
| Nuclear Regulatory Commission | 1 | | 0 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 0 |
| Ofc of National Drug Control Policy | 1 | | 0 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 0 |
| Peace Corps | 1 | | 0 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 0 |
| Pension Benefit Guaranty Corporation | 1 | | 0 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 0 |
| Securities and Exchange Commission | 1 | | 1 | 100 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Tennessee Valley Authority | 1 | | 0 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 0 |
| TOTAL | 2,129 | | 117 | 5.5 | 22 | 1 | 1,593 | 74.8 | 29 | 1.4 | 368 | 17.3 |

SIGNIFICANT DECISIONS

Significant Decisions Issued by the Board in FY 2024

Adverse Actions

Luna v. Department of Homeland Security, 2024 MSPB 2: In response to a charge of failure to cooperate in an investigation, the appellant alleged that the agency could not discipline him for failing to answer questions with criminal implications absent a “declination to prosecute” from the Department of Justice (DOJ). The Board noted that a public employee may be removed for not answering questions posed by his employing agency if he is adequately informed both that he is subject to discharge for not answering and that his replies and their fruits cannot be used against him in a criminal case. The Board held that adequate agency assurance of immunity under *Kalkines v. United States*, 200 Ct. Cl. 570, 574 (1973), does not require assent, written or otherwise, from DOJ.

Williams v. Department of Commerce, 2024 MSPB 8: The Board clarified that although an agency generally may not take an adverse action based on an employee’s use of approved leave, an exception exists when: (1) the employee was absent for compelling reasons beyond his control, so that agency approval or disapproval of leave was immaterial because he could not be on the job; (2) the absences continued beyond a reasonable time, and the agency warned the employee that an adverse action could be taken unless he became available for duty on a regular, full-time or part-time basis; and (3) the agency showed that the position needed to be filled by an employee available for duty on a regular, full-time or part-time basis. The Board held that an agency cannot prove such a charge by relying on absences that predated the warning; the charge will only be sustained when the post-warning absences were themselves excessive.

Compensatory Damages

Gilewicz v. Department of Homeland Security, 2024 MSPB 7: Given the limited precedent addressing compensatory damages in whistleblower reprisal cases, the Board clarified that it is appropriate to apply the case law pertaining to compensatory damages in Equal Employment Opportunity Commission cases by analogy. The Board cautioned, however, that the Civil Rights Act of 1991 limits the compensatory damages that may be awarded in a case involving an agency with more than 500 employees to \$300,000, while no such monetary cap exists for an award under 5 U.S.C. § 1221(g).

Discrimination

Wilson v. Small Business Administration, 2024 MSPB 3: The Board clarified the burdens of proof in Title VII disparate treatment discrimination cases, finding that: (1) there is no burden shifting under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973), if an appellant is only trying to prove that discrimination was a motivating factor in the appealed action; (2) there is the potential for burden shifting if an appellant is trying to prove that discrimination was a but-for cause of the appealed action; and (3) an employee may proceed in at least one of two ways to prove but-for causation, including the *McDonnell Douglas* evidentiary framework and the mixed-motive framework. Under the former, once an appellant makes a prima facie case of discrimination, the agency bears the burden of articulating a nondiscriminatory explanation for the action. The appellant bears the ultimate burden of proving that discriminatory animus was a but-for cause of the personnel action and may satisfy that burden by showing that the employer’s reason is pretextual or more likely than not motivated by discrimination. Under the latter framework, if an appellant proves motivating factor, the burden of persuasion shifts to the agency. If the agency does not prove that it would have taken the same action in the absence of discrimination, the appellant has established but-for causation and will be eligible for full relief. If an agency does prove its “same action defense” under the mixed-motive framework, the action is not reversed, and the appellant may not receive reinstatement, back pay, or damages. An appellant may choose to show but-for causation under the “pretext” framework, the mixed-motive framework, or both theories simultaneously.

Retirement

Tabakman v. Office of Personnel Management, 2024 MSPB 9: The appellant voluntarily retired after he was removed for misconduct, challenged his removal before the Board, and entered into a settlement agreement that resulted in a 75-day suspension without pay, a period of leave without pay, and his return to duty without back pay. OPM terminated the appellant's annuity payments retroactive to the date they began and determined that he had received an overpayment. The Board held that the appellant was without fault in the creation of the overpayment because he performed no act of commission or omission that resulted in the overpayment, noting that 5 U.S.C. § 7701(h) and (j) permit the Board to provide for the settlement of appeals and permit retirement-eligible individuals to receive the benefits that they have earned while they are challenging a removal action. Nevertheless, the Board determined that the appellant was not entitled to a waiver of the overpayment because recovery of the overpayment would not be against equity and good conscience.

Significant Court Opinions Issued in FY 2024

As a service to MSPB's stakeholders, we have provided brief summaries of significant opinions issued by the U.S. Court Of Appeals for the Federal Circuit and other Federal appellate courts in appeals of MSPB cases, and by the Supreme Court in cases that are potentially relevant to MSPB.

Significant Opinions Issued by the U.S. Court Of Appeals for the Federal Circuit

Probationary Termination/Jurisdiction

Jones v. Merit Systems Protection Board, [98 F.4th 1376](#) (Fed. Cir. 2024): The appellant argued that he was an employee within the meaning of 5 U.S.C. § 7511(a)(1)(B) entitled to bring an adverse action appeal because he had 1 year of current continuous service in the same or similar positions based on his work as an attorney with the U.S. Department of Agriculture (USDA) and as an attorney with the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The Federal Circuit affirmed the MSPB's final decision that the appellant's ATF and USDA positions were not "similar" for purposes of the statute because, although both positions fell under the employment law umbrella, there were meaningful distinctions between the positions. The Court found that the MSPB properly considered the nature and character of the work the appellant performed in each position and that substantial evidence supported the MSPB's determination that the two positions involved different duties and required different skills, fundamentally affecting the nature and character of the work.

Whistleblowing/Compensatory Damages

Perlick v. Department of Veterans Affairs, [104 F.4th 1326](#) (Fed. Cir. 2024): The Federal Circuit held that future lost earnings are recoverable as compensatory damages pursuant to the Whistleblower Protection Enhancement Act, 5 U.S.C. § 1221(g)(1)(A)(ii). The Court held that the Board erred in improperly raising the burden for the appellant to establish such damages by requiring that she "guarantee" future employment to recover lost earnings, rather than prove them by a preponderance of the evidence. Accordingly, the Court vacated and remanded the appeal for further proceedings.

Significant Opinions Issued by Other Circuit Courts

Whistleblowing/Nonfrivolous Allegations

Jones v. U.S. Merit Systems Protection Board, [103 F.4th 984](#) (4th Cir. 2024): The appellants alleged that their employing agency "ceased contemplating permanent promotions" for them and restructured their division after they engaged in protected whistleblower activity. The MSPB dismissed the appeal because it held the appellants had not alleged a legally cognizable "personnel action" under the Whistleblower Protection Act. The 4th Circuit reversed the MSPB's final order and held that the "nonfrivolous allegation" standard

is a low bar that required only that the appellants allege, with some factual support, that it was “possible” for the agency’s conduct to meet the legal definition of a “personnel action.”

Significant Decisions Issued by the Supreme Court

Harrow v. Department of Defense, [144 S.Ct. 1178](#) (2024): The Supreme Court held that the 60-day deadline under 5 U.S.C. § 7703(b)(1) to petition the Federal Circuit for review of a final MSPB decision or order is not jurisdictional. The Court did not address the Government’s newly raised alternative argument that, even if the 60-day deadline is non-jurisdictional, it is not subject to equitable tolling. The Court left that question to the Federal Circuit on remand.

Muldrow v. City of St. Louis, Missouri, [601 U.S. 346](#) (2024): The Supreme Court held that an employee challenging a job transfer under Title VII of the Civil Rights Act of 1964 must allege the transfer caused “only some injury respecting her employment terms or conditions,” as opposed to a “significant” injury. Accordingly, the Court held that an employee who alleged her employer transferred her to a less prestigious administrative role that required her to work weekends and did not include a take-home police car because she was a woman had made out a claim for sex discrimination under Title VII.

REVIEW OF THE U.S. OFFICE OF PERSONNEL MANAGEMENT’S SIGNIFICANT ACTIONS

As required by statute,¹⁴ MSPB reviews and reports on the significant actions of OPM over the preceding fiscal year, including an analysis of whether those actions are in accord with the merit system principles (MSPs) and free from prohibited personnel practices (PPPs).¹⁵ As Congress intended, this analysis is based on those activities that the Board decides are significant,¹⁶ and is a general review of the policies and effectiveness of OPM, not an investigation of the internal operation of OPM and its employees.¹⁷ OPM’s actions broadly affect the Federal workforce, Federal agencies, and applicants for Federal jobs.

The evaluation of OPM’s significant actions focuses on activities from the prior fiscal year. Therefore, these activities were implemented under the prior administration and do not reflect the priorities or direction of the current presidential administration. Also, some activities that were finalized in FY 2024 were cited in the FY 2023 review of OPM’s significant actions¹⁸ and are therefore not addressed in this year’s review.

To determine OPM’s significant actions for FY 2024, MSPB staff reviewed key information sources and documented potential significant actions from that scan. These actions were then grouped and categorized to enable staff to determine which were substantive. MSPB also communicated with OPM officials, asking them to submit what they considered to be their most significant actions based on the definition provided by MSPB. In addition, MSPB contacted agencies’ Chief Human Capital Officers (CHCOs) to obtain their feedback on OPM’s significant actions.

Analyses of MSPB’s environmental scan and input from OPM officials and CHCOs helped MSPB identify a list of 10 significant actions for further research.¹⁹ Based on the additional analyses and research, MSPB finalized the list of four actions and noted their implications for MSPs and PPPs. Below is a discussion of OPM’s FY 2024 significant actions.

Final Regulations on the Pathways Programs

On April 12, 2024, OPM issued final regulations for the Pathways Programs to alleviate challenges agencies have had using the programs to recruit qualified early career talent. The Pathways Programs were established in 2010 to improve the Government’s ability to compete for early career talent.²⁰ The programs provided three paths into Federal employment: (1) the Internship Program for current high school, vocational, technical, undergraduate, and graduate students; (2) the Recent Graduates Program for individuals who graduated with qualifying degrees or certificates within the previous 2 years (or up to 6 years for qualifying veterans); and (3) the Presidential Management Fellows Program which provided leadership development opportunities to individuals who received advanced degrees within the preceding 2 years.²¹

¹⁴ 5 U.S.C. § 1206.

¹⁵ 5 U.S.C. § 2301(b) and 5 U.S.C. § 2302(b), respectively.

¹⁶ Committee on Conference, Civil Service Reform Act of 1978, Conference Report to Accompany S. 2640, 95th Cong., 2nd Sess., 1978, H. Rept. No. 95-1717, p. 133. MSPB defines an OPM significant action as an activity performed by OPM that has broad impact on how the Federal Government manages the workforce. Significant actions can consist of regulations, rules, policies, programs, guidance, consultative services, oversight activities, or other major activities performed by OPM. They can be actions that are proposed, in progress, or completed. The actions may originate from a third party, such as the Office of Management and Budget (OMB), but require OPM to play a significant role in the implementation or oversight of the activities.

¹⁷ Senate Committee on Governmental Affairs, Civil Service Reform Act of 1978, Report to Accompany S. 2640, 95th Cong., 2nd Sess., 1978, S. Rept. No. 95-969, p. 32.

¹⁸ MSPB, [MSPB FY 2023 Annual Report](#), April 2024, pp. 30-33.

¹⁹ The analysis included regulatory and policy analyses; literature reviews of peer reviewed research, public policy research, and media sources; and data requests from OPM.

²⁰ [Executive Order 13562](#), “Recruiting and Hiring Students and Recent Graduates,” December 27, 2010.

²¹ The February 19, 2025 Executive Order, “[Commencing The Reduction Of The Federal Bureaucracy](#),” terminated the Presidential Management Fellows program but maintained the internship and recent graduate programs.

The new rule is intended to help agencies build career talent pipelines by expanding applicant eligibility, extending the timeline for participant conversion into the competitive service, clarifying participants' training and development requirements, and creating greater ability to convert candidates to positions in non-host agencies, among other changes. Prior reviews of the programs demonstrate that they provide a streamlined process for hiring interns and recent graduates and adhere to the MSPs, but they have not been used to the extent anticipated.²² It is also well documented that the Government lacks a strong pipeline of early career talent due to the relatively low proportion of interns, recent graduates, and employees under the age of 30 in the workforce.²³ Therefore, the 2024 regulations attempt to align with the MSPs by recruiting and hiring qualified early career talent (MSP 1), managing employees efficiently and effectively (MSP 5), and educating and training employees to help improve performance (MSP 7).

OPM indicated it had done significant analyses to inform the rule-making process, including consulting agency CHCOs to determine which rule changes would be most impactful. In FY 2022, MSPB asked CHCO representatives what their top challenges were in recruiting, hiring, or managing students and recent graduates. We received a variety of answers to this question, but most answers centered around budget and resource constraints, educating hiring managers on and convincing them to use the programs, private sector competition, and the length of the hiring process.²⁴ While this rule change received positive attention upon publication, subsequent changes in Federal hiring and current Federal workforce reshaping efforts may limit its impact and our ability to measure whether the new rule achieves its intended results.

“Improving the Federal Hiring Experience” Memorandum

On August 14, 2024, OPM and OMB released a joint memo (M-24-16) that calls on agencies to increase efficiency in hiring, eliminate complexity, and promote coordination across agencies. The memo provides already-established tools, resources, and guidance to help agencies identify improvements they can make to the hiring experience. By improving the efficiency and effectiveness of agency hiring, the memo seeks to ensure that agencies are recruiting and hiring a qualified workforce (MSP 1), treating applicants fairly (MSP 2), determining pay commensurate with applicant skill levels (MSP 3), managing hiring in a more efficient and effective way (MSP 5), and providing training and resources to improve organizational performance (MSP 7).

The Federal hiring process has long been criticized for being lengthy, not resulting in qualified candidates, and being too complex for applicants and even hiring officials to understand.²⁵ Many reform efforts have been centered on improving the hiring process, but criticisms continue. The memo attempts to provide agencies the tools, guidance, and training resources to help them improve the hiring experience. Specifically, this memo outlines four major goals: (1) strengthen strategic workforce planning, recruitment, hiring, and data analytics at the enterprise level; (2) design and build an improved applicant experience; (3) improve the hiring manager experience to ensure applicants referred are qualified; and (4) empower human resources (HR) professionals and minimize their burden by simplifying and advancing processes and policies using effective assessments.

The literature establishes the importance of the overall hiring experience for applicants. Poor experiences create negative outcomes, such as lower levels of organizational attractiveness and reputation, less likelihood of recommending the organization to others, and less chance the candidate will accept a job

²² For instance, OPM, *The Pathways Programs Their Use and Effectiveness Two Years After Implementation*, August 2016; Volcker Alliance, *Inspired to Serve: The Final Report of the National Commission on Military, National, and Public Service*, March 2020.

²³ For instance, Volcker Alliance, *Inspired to Serve*, p. 74; Biden Administration, FY 2023 Budget, “Strengthening the Federal Workforce,” https://www.whitehouse.gov/wp-content/uploads/2022/03/ap_7_strengthening_fy2023.pdf, p. 76; FedScope - Federal Workforce Data - OPM.gov, Employment Cube, data downloaded on December 4, 2024.

²⁴ MSPB, “How Agencies Hire and Manage Students and Recent Graduates,” Issues of Merit, January 2023.

²⁵ For instance, see MSPB, *Reforming Federal Hiring: Beyond Faster and Cheaper*, September 2006; National Academy for Public Service, *No Time To Wait: Building a Public Service for the 21st Century* Series, 2017, 2018; The Partnership for Public Service, *The Partnership for Public Service’s Vision for a Better Government*, August 15, 2024; Volcker Alliance, *Inspired to Serve: The Final Report of the National Commission on Military, National, and Public Service*, March 2020.

offer.²⁶ Therefore, the strategies in the memo (e.g., improving communication to applicants, creating more user-friendly application processes, being more responsive to the public, etc.) are important areas to improve. When it comes to workforce planning and improving the overall experience for hiring managers and HR staff, the research shows how important these aspects are to the vitality and success of any organization.²⁷ When there are misalignments with employee skill sets, the overall mission strategy, and the implementation and evaluation of progress, the organization and its people are hampered to produce expected outcomes.

The memo provides valuable tools, guidance, and training resources to help agencies think strategically about their workforce needs and to improve the experience of applicants, hiring managers, and HR staff to improve the overall hiring process. It is also well aligned with the current Administration's January 20, 2025, Executive Order [*Reforming the Federal Hiring Process and Restoring Merit to Government Service*](#).

Artificial Intelligence Hiring Guidance

In FY 2024, OPM supported agencies' efforts to hire and manage a workforce of artificial intelligence (AI) experts by [*authorizing direct-hire authority*](#) (DHA) for AI-related positions; issuing guidance on AI [*policy*](#), [*skills-based hiring*](#), and [*pay flexibilities*](#); and establishing an AI [*workforce competency model*](#). These actions are intended to help agencies recruit a qualified AI workforce (MSP 1), treat applicants fairly (MSP 2), determine pay commensurate with applicant skill levels (MSP 3), ensure that ethical and responsible care is taken when developing and implementing AI tools (MSP 4), manage hiring in a more efficient and effective way (MSP 5), and provide training and resources to improve organizational performance (MSP 7).

OPM's authorization for DHA for AI-related positions streamlined the process to recruit and hire applicants with the needed skills in a timely manner. Furthermore, the guidance OPM released on pay flexibilities, incentive pay, and leave and workforce flexibility programs provided a single source to help agencies understand the flexibilities available to them when recruiting for these skills, including information on where to find additional resources.

Finally, OPM conducted an occupational study of AI, analyzing data from industry and academia as well as gathering input from Federal agencies and subject matter experts. As a result, OPM developed a consistent definition of AI work and a competency model for AI-related activities. The analysis determined that AI work is multidisciplinary and impacts multiple Governmentwide occupations. OPM's [*Artificial Intelligence Classification Policy and Talent Acquisition Guidance*](#) provides instructions on how to identify AI work that ensures consistency and accuracy in determining the appropriate classification. Given the complexity of the competency model and its wide application, OPM also provided a training plan for HR specialists, hiring managers, and industrial organizational psychologists that will help ensure that the new system is understood and effectively implemented.

OPM indicated it is planning to measure success by increases in job postings using competency-based assessments, hiring manager satisfaction, and selection rates, alongside a decrease in postings relying on education or other proxies. It will take time for this data to mature so that evaluators can determine the utility of the competency model. This approach is in line with the June 26, 2020, [*Executive Order on Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates*](#). Furthermore, reducing AI skill gaps can mitigate risks identified on the high-risk list of the U.S. Government Accountability Office.²⁸

²⁶ J.M. McCarthy, T.N. Bauer, D. Truxillo, N.R. Anderson, A. Costa & S. M. Ahmed. (2017), Applicant perspectives in selection: A state-of-the-science review, future directions and implications for management science. *Journal of Management*, 6, 1693-1725.

²⁷ Bamford, C., Hoffman, A., Wheelen, T., Hunger, J. (2023). *Strategic Management and Business Policy: Globalization, Innovation and Sustainability*. United States: Pearson Education.

²⁸ U.S. Government Accountability Office, [*High-Risk Series: Heightened Attention Could Save Billions More and Improve Government Efficiency and Effectiveness*](#) (GAO-25-107743), February 2025, p. 273.

OPM's efforts to support agency AI hiring are significant because technology improvements have made AI more accessible, scalable, and impactful. The Federal Government will need to develop AI strategies, policy, and ethical requirements as it uses AI in its own programs to serve the American public.

Time-Limited Promotion Final Rule

On July 25, 2024, OPM issued revised regulations related to time-limited promotions. The new rule specifies that employees who are detailed or temporarily promoted to higher-graded duties of a higher-graded position should be paid accordingly for the entire time spent performing the duties. OPM also issued [guidance](#) to agencies regarding this final rule. The final rule is intended to ensure fair treatment through proper hiring and pay (MSP 2), provide equal pay for work of equal value (MSP 3), and manage the workforce efficiently and effectively (MSP 5).

Under [5 CFR 335.103](#), agencies can noncompetitively assign employees to time-limited promotions for up to 120 days. If the time-limited promotion is expected to last longer than 120 days, the agency is required to apply competitive procedures to the appointment. Prior to 2004, if an agency were found to have erroneously promoted an employee to a position for longer than 120 days without applying competitive procedures, the employee would receive back pay for the entire time worked in the position. In 2004, the Federal Labor Relations Authority, based on an advisory opinion from OPM, capped the higher pay rate at 120 days. Therefore, employees no longer received back pay for the entire time that they worked in the position.

The rule change attempts to do two things. First, it corrects the error in interpretation of the 2004 OPM advisory opinion that kept employees from being made whole after improperly serving on a detail for longer than 120 days. Second, the new rule and guidance remind agencies to use competitive procedures for time-limited promotions exceeding 120 days. While the rule may not apply to many employees, it does get to the heart of equal pay for work of equal value, as required by the MSPs.

Review of the Rules and Regulations of OPM

MSPB has authority to review OPM rules and regulations upon request, or on its own motion, to determine if the regulations or the implementation of the regulations would cause a person to commit a PPP.²⁹ These rare requests are processed under HQ adjudication procedures for original jurisdiction cases. In FY 2024, no such cases were received, but two such cases (filed in FY 2023 and FY 2018) were decided. MSPB has issued decisions in all regulation review cases associated with the inherited inventory, and all regulation review cases currently pending were filed in FY 2025.

²⁹ 5 U.S.C. § 1204(a)(4) and 5 U.S.C. Section 1204(f)(1-4) at <https://www.govinfo.gov/content/pkg/USCODE-2011-title5/html/USCODE-2011-title5-partII-chap12-subchapI-sec1204.htm>.



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