U.S. Merit Systems Protection Board

APR-APP

for

FY 2019-2021

Annual Performance Report
for
FY 2019

Annual Performance Plan
for
FY 2020 (Final) and FY 2021 (Proposed)

February 10, 2020

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Foreword

The U.S. Merit Systems Protection Board (MSPB) submits this Annual Performance Report and Annual Performance Plan (APR-APP), which combines the Annual Performance Report for fiscal year (FY) 2019 with the Annual Performance Plan for FY 2020 (Final) – FY 2021 (Proposed), as required by the Government Performance and Results Act Modernization Act of 2010 (GPRAMA). It also contains information about cases involving whistleblowers pursuant to the Whistleblower Protection Enhancement Act of 2012 (WPEA)(see Appendix A), and appeals processing as required by Title 5 of the United States Code (U.S.C.) § 7701(i)(1) (see Appendix B). Finally, in accordance with the 21st Century Integrated Digital Experience Act (IDEA, Pub. L. 115-336), Appendix C contains our *Modernization of Public-facing Digital Services Report*.

Since January 8, 2017, MSPB has lacked a quorum of Board members, and since March 2019 has lacked any presidentially-appointed, Senate-confirmed Board members. This has prevented it from issuing decisions on petitions for review (PFRs) and other cases at headquarters, and from issuing reports of merit systems studies. Despite these restrictions, MSPB has continued to carry out its functions to the maximum extent possible. Details of our performance and how the lack of a quorum has affected our performance are contained in the body of this document.

The APR-APP contains information about MSPB including its origin in relation to civil service history; role and functions; scope of responsibility; organization and structure; and how it brings value to the merit systems, Federal agencies, the workforce, and the public. It also provides information about the merit system principles and prohibited personnel practices. The APR-APP contains the annual performance report for FY 2019 comparing actual results to performance targets including prior year results for comparative purposes. It also contains: final goals, measures, and targets for FY 2020 and proposed targets for FY 2021, along with explanatory information on changes; an overall summary of the external trends and internal management challenges that have affected or may continue to affect MSPB's performance; and information about performance measurement and program evaluation.

The APR-APP has been prepared in accordance with guidance provided by the Office of Management and Budget (OMB) and other sources. The APR-APP was prepared by Government employees in accordance with the GPRAMA. The APR-APP is available on the MSPB website at www.mspb.gov.

We invite customers and stakeholders to send comments to improve the APR-APP to:

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U.S. Merit Systems Protection Board
Annual Performance Report for FY 2019
Annual Performance Plan for
FY 2020 (Final) and FY 2021 (Proposed)

Introduction

A highly qualified, diverse Federal workforce managed under the merit system principles (MSPs), and in a manner free from prohibited personnel practices (PPPs) is critical to ensuring Federal agency performance and service to the public. The MSPs are essential management practices that help ensure that the Federal Government is able to recruit, select, develop, maintain, and manage 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 impact the effectiveness and efficiency of the workforce and the Government. The Merit Systems Protection Board's (MSPB) fundamental function is to ensure that the Federal workforce is managed in a manner consistent with the MSPs and protected from PPPs.

This Annual Performance Report and Annual Performance Plan (APR-APP) contains performance goals (PGs), measures, and targets for the strategic and management objectives defined in MSPB's Strategic Plan for FY 2020-2024. This APR-APP includes final performance results for FY 2019 and performance targets for FY 2020 (Final) and for FY 2021 (Proposed). MSPB adjusted the FY 2020 targets from those contained in the FY 2020 APP based on changes in external and internal factors. The APPs for FY 2020 and FY 2021 are in line with MSPB's enacted budget for FY 2020, and the Congressional Budget Justifications for FY 2021.[1]

Summary of FY 2019 Results

Highlights of MSPB's FY 2019 results are presented here. Complete performance results are provided in the section on Comprehensive Performance Results and Plans. Of its eleven strategic and management objectives, MSPB exceeded one, met or partially met nine, and could not rate one. Without a quorum of Board members, the Board could not issue decisions at headquarters (HQ) or release reports of merit systems studies. Therefore, MSPB could not rate at least one PG under the objectives for adjudication, conducting studies of the Federal merit systems, and reviewing the Office of Personnel Management (OPM), and these strategic objectives were only partially met in FY 2019. The strategic objective for enforcing MSPB decisions, and its single PG, could not be rated due to the lack of a quorum. MSPB exceeded the target for conducting outreach events.

Of the 28 PGs in the plan, 21 goals were rated, five were not rated (due to lack of quorum), and two were terminated. Of the 21 rated performance goals, 10 exceeded the targets, 10 achieved or met the targets, and one did not meet their respective targets. MSPB exceeded the targets for PGs related to initial appeals timeliness, publishing editions of its newsletters and other articles, conducting surveys to assess health of the merit system, posting products intended for policymakers and for educational purposes, conducting outreach events, ensuring safety and security, availability/reliability of

[1] MSPB does not define priority goals, does not have low priority program activities, and does not have a specific role in achieving Federal cross-agency priority goals. MSPB does not have any duplicative, overlapping, or fragmented programs as referenced in the Executive Order (EO) on Delivering an Efficient, Effective, and Accountable Government. MSPB also has not defined any unnecessary agency plans and reports as referenced in OMB Circular A-11, Part 6, Sections 210-13-210.17.

information technology (IT) infrastructure, internal IT service, and improving agency survey capability. MSPB did not meet the performance goal target for average vacancy rate.

About MSPB

A Merit-Based U.S. Civil Service. Briefly reviewing 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 on the employee's suitability and qualifications to perform particular Federal jobs.[2] Over time, this practice contributed to an unstable Government workforce lacking the necessary qualifications to perform its 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 he supported 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. Congress later enacted the Lloyd-LaFollette Act of 1912, which provided that a civil servant could be removed only for such cause as promoted the efficiency of the service. Subsequent laws and regulations authorized the CSC to review the procedures used to remove civil servants and the validity of the reasons for removal. These developments 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 capable and effective service to the American people.

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 the rule-maker and adjudicator of those same rules was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA).[3] The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;[4] OPM as the President's agent for Federal workforce policy and procedure; and the Federal Labor Relations Authority (FLRA) to oversee Federal labor-management relations. More information about MSPB's role, functions and scope of responsibilities, organizational structure, and how it brings value to the merit systems, the Federal workforce and the public is contained in Appendix D.

Current Organization

MSPB has been without a quorum of Board members since January 8, 2017, and without any presidentially-appointed Senate-confirmed Board members since March 1, 2019. Since that time, MSPB has continued to operate in accordance with its continuity of operations plan (COOP). Under the COOP, the MSPB's General Counsel serves as the agency's acting chief executive and administrative officer. The lack of quorum has created a backlog of petitions for review (PFRs) and other cases at HQ awaiting Board decisions. The lack of quorum also prevents MSPB from releasing reports of merit systems studies and promulgating substantive regulations to accompany congressional changes in our jurisdiction or processes. Nonetheless, administrative judges (AJs) in the regional and field offices (ROs/FOs) continue to receive initial appeals, conduct hearings, and

[2] 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.

[3] Ibid. page 113.

[4] Ibid. page 114.

issue initial decisions. MSPB HQ continues to receive PFRs and to draft proposed PFR decisions for consideration by Board members upon their arrival. We continue to conduct research and has drafted a new research agenda that will be reviewed for approval once a quorum is restored. The agency's executive, financial, and administrative operations also continue to function. As a result, MSPB continues to perform its critical mission during this time of significant transition.

In the spring of 2018, the President nominated Dennis D. Kirk as Board Chairman, and Julia A. Clark as Board Member. The Senate Committee on Homeland Security and Governmental Affairs held a nomination hearing on July 19, 2018. However, the nominees were not confirmed prior to the adjournment of the 115th Congress. On January 16, 2019, the President resubmitted the nominations for consideration by the 116th Congress. On February 13, 2019, the Committee advanced the two nominees to the Senate floor for consideration. On April 30, 2019, the President nominated B. Chad Bungard to serve as a Board Member. The Senate Homeland Security and Governmental Affairs Committee held a nomination hearing for Mr. Bungard on June 12, 2019, and voted unanimously on June 19, 2019 to advance his nomination. The nominations of Mr. Kirk, Ms. Clark, and Mr. Bungard now await action on the Senate floor.[5]

MSPB HQ, located in Washington, D.C., has eight offices that are responsible for conducting its statutory and support functions. These are the offices of Appeals Counsel, Clerk of the Board, Equal Employment Opportunity (EEO), Financial and Administrative Management, General Counsel, Information Resources Management, Policy and Evaluation (OPE), and Regional Operations (ORO). The EEO Director reports directly to the Chairman, and the directors of the other offices report to the Chairman through the Executive Director. MSPB also has six ROs and two FOs located throughout the United States. These offices process initial appeals and report to the ORO Director. The agency is currently authorized to employ approximately 235 full-time equivalents (FTEs) to conduct and support its statutory duties. Federal agencies also perform many support functions for MSPB through interagency agreements.

Summary of Changes in this APR-APP

This document makes clear that FY 2020 targets for the performance goals related to quality of initial appeals, PFR processing, enforcement case processing, publication of merit systems studies reports, and requests to review OPM regulations cannot be defined until a new Board is seated. In FY 2019, we terminated the performance goals related to help desk responses measured by iSupport and for obtaining feedback from e-Appeal users. We will reconsider performance goals, measures and targets for these issues when the new core business applications are fully implemented. The measure for employee understanding of safety and security practices has been consistently high over the last several years. We will continue to provide training and practice drills for safety and security; however, beginning in FY 2020 we will no longer include this performance goal in the APR-APP. We also made minor updates to means and strategies.

Linking this Plan to Other Agency Documents

Individual performance plans for MSPB's senior executives are linked to agency annual performance and management goals, 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 at www.mspb.gov.

[5] In the spring of 2018, the President nominated Andrew F. Maunz as Board Member. His nomination was not approved by the Senate prior to the adjournment of the 115th Congress. The President resubmitted his nomination for consideration by the 116th Congress. Subsequently, Mr. Maunz's nomination was withdrawn.

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MSPB Performance Framework

Mission

Protect the merit system principles and promote an effective Federal workforce free of prohibited personnel practices.

Vision

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

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 the Office of Personnel Management. 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 Goals and Objectives

Strategic Goal 1: Serve the public interest by *protecting* merit system principles and *safeguarding* the civil service from prohibited personnel practices.

Strategic Objectives:

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

1B: Enforce timely compliance with MSPB decisions.

1C: Conduct objective, timely studies of the Federal merit systems and Federal 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 policymakers, 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 successful outreach.

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

Management Objectives

Management Objectives: Effectively and Efficiently . . .

M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.

M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future.

M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.

M4: Modernize core business applications to achieve electronic adjudication and provide a web-based survey capability.

Tabular Summary of Current Progress and Annual Performance Plan

Table 1: Summary of MSPB FY 2019 Annual Performance Results			
Strategic Goal 1: Serve the public interest by *protecting* merit system principles and *safeguarding* the civil service from prohibited personnel practices.			
Strategic Obj. 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.			**Partially Met**
Performance Goal	**Performance Measure**	**2019 Target**	**FY 2019 Results**
1A-1: Quality of initial decisions	Percent initial decisions reversed/remanded on PFR due to AJ error/oversight	No target set, no quorum	No target set, no quorum (Not Rated)
1A-2: Quality of decisions reviewed by reviewing authority	Percent decisions unchanged by the reviewing court	92% or greater	86% (Met)
1A-3: Participant perceptions of the adjudication *process*	Percent participant agreement	Continue surveys, address issues	Surveys ongoing (Met)
1A-4: Initial appeals processing timeliness	Average processing time	120 days or fewer	105 days (Exceeded)
1A-5: PFR processing timeliness	Average processing time	No target set, no quorum	No target set, no quorum (Not Rated)
1A-6: Participant perceptions of the ADR *process*	Percent participant agreement	Continue surveys, address issues	Surveys ongoing (Met)
Strategic Obj. 1B: Enforce timely compliance with MSPB decisions.			**No Target, not rated**
1B-1: Compliance case processing timeliness	Weighted average processing time for all compliance cases	No target set, no quorum	No target set, no quorum (Not Rated)
Strategic Obj. 1C: Conduct objective, timely studies of Federal merit systems and Federal human capital management issues.			**Partially Met**
1C-1: Number/scope of *Issues of Merit (IoM)* newsletter editions or other articles	Number/scope of published newsletter editions and other articles	Publish 3 *IoM* editions	Published 3 eds. of *IoM* and 4 research briefs (Exceeded)
1C-2: Number/scope of study reports, briefs, or other documents	Number/scope of reports, briefs, and other documents published	No target set, no quorum	No target set, no quorum (Not Rated)
1C-3: Conduct surveys of Federal employees to assess and report on the health of merit systems	Conduct/analyze periodic surveys of Federal employees	Develop req'ments for survey capability; plan next merit principles survey (MPS)	Procured new web-based FedRAMP certified survey application (Exceeded)
Strategic Obj. 1D: Review and act upon the rules, regulations, and significant actions of the OPM, as appropriate.			**Partially Met**
1D-1: Review OPM rules/regulations	Number/scope of decisions issued involving OPM regulations	No target set, no quorum	No target set, no quorum (Not Rated)
1D-2: Review OPM significant actions	Number/scope of OPM significant actions reviewed	Maintain scope; publish review of significant actions	Published FY 2018 Annual Report (AR) (Met)
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 Obj. 2A: Inform, promote, and encourage actions by policymakers, as appropriate, that strengthen Federal merit systems laws the regulations.			**Met**
2A-1: References to MSPB's work	Scope of references to MSPB's work	Maintain scope	714 references in 129 sources (Met)
2A-2: Create policy-related products	Number/scope of policy-related products	3 products focused on policy or intended for policymakers	4 plus documents (Exceeded)

Strategic Goal 2: Continued			
Strategic Obj. 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach.			**Exceeded**
Performance Goal	**Performance Measure**	**2019 Target**	**2019 Results**
2B-1: Conduct merit-based outreach events	Number/scope of merit-based outreach events	115 Outreach events or more	Over 130 events (Exceeded)
Strategic Obj. 2C: Advance the understanding of the concept of merit, MSPs, and PPPs through the use of educational standards, materials and guidance established by MSPB.			**Met**
2C-1: Number/scope of materials accessed on the website	Number of visits to the MSPB website	Within ± 5% of previous year	1,614,904 visits (Met)
2C-2: Create/update electronic educational materials	Number/type of new or updated educational materials	Post 5 or more educational materials	6 plus documents (Exceeded)

Management Obj. M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.			**Met**
M1-1: Ensure workforce competencies	Average percent agreement on Federal Employee Viewpoint Survey (FEVS) competency questions	71% or higher	75% (Met)
M1-2: Maintain perceptions of diversity (div.) and inclusion (incl.)	Average percent agreement on FEVS div. and Internal Survey (IS) incl. questions	Div. 66% or higher Incl. 78% or higher	Div. 72% (Met) Incl. 84% (Met)
M1-3: Maintain employee engagement	Average percent agreement on FEVS engagement questions	68% or higher	72% (Met)
Management Obj. M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.			**Partially Met**
M2-1: Ensure justified budgets and resource accountability	Percent of funded positions vacant each month, averaged over the year	8% or fewer	9% (Not Met)
M2-2: Employees prepared to ensure safety and security	Average percent agreement on relevant IS questions	89% or higher	91% (Exceeded)
Management Obj. M3: Improve and maintain information technology (IT) and information services programs to support agency mission and administrative functions.			**Partially Met**
M3-1: Ensure available/reliable IT infrastructure and applications	Average percent agreement on relevant IS questions, ensure disaster recovery capability	56% or higher, begin disaster recovery capability	67% (Exceeded)
M3-2: Maintain internal/external IT customer support	Percent tickets closed within SLA and with customer agreement	Complete iSupport Implementation	Goal terminated (Not Rated)
M3-3: Ensure satisfaction with internal IT support	Average percent agreement on relevant IS questions	57% or higher	72% (Exceeded)
M3-4: Ensure e-Appeal Online meets customer needs	Average percent agreement on e-Appeal customer survey questions	Develop automated customer survey	Goal terminated (Not Rated)
Management Obj. M4: Modernize core business applications to achieve electronic adjudication and provide a web-based survey capability.			**Met**
M4-1: Improve adjudication processing efficiency	Modernize core adjudication business applications; proportion of cases processed entirely electronically	Select and begin to implement new core business apps	Awarded contract, began configuration for e-filing and initial appeals processing (Met)
M4-2: Improve agency survey capability	Ensure secure, web-based survey application (in conjunction with 1C-3)	Begin to develop req'ments for survey application	Procured new web-based FedRAMP certified survey application (Exceeded)

Table 2: Summary of MSPB FY 2020 (Final) – 2021 (Proposed) Performance Plans			
Strategic Goal 1: Serve the public interest by *protecting* merit system principles and *safeguarding* the civil service from prohibited personnel practices.			
Strategic Obj. 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.			
Performance Goal	**Performance Measure**	**2020 Target (Final)**	**2021 Target (Proposed)**
1A-1: Quality of initial decisions	Percent initial decisions reversed/remanded on PFR due to AJ error/oversight	No target set, No quorum	To be determined (TBD) based on FY 2020 results
1A-2: Quality of decisions reviewed by reviewing authority	Percent decisions unchanged by the reviewing court	92% or more	TBD based on FY 2020 results
1A-3: Participant perceptions of the adjudication *process*	Percent participant agreement	Continue surveys, plan survey changes to account for new apps	Continue surveys, implement changes for new apps
1A-4: Initial appeals processing timeliness	Average processing time	120 days or fewer	
1A-5: PFR processing timeliness	Average processing time	No target set, No quorum	TBD based on FY 2020 results
1A-6: Participant perceptions of the ADR *process*	Percent participant agreement	Continue surveys, plan survey changes to account for new apps	Continue surveys, implement changes for new apps
Strategic Obj. 1B: Enforce timely compliance with MSPB decisions.			
1B-1: Compliance case processing timeliness	Weighted average processing time for all compliance cases	No target set, No quorum	TBD based on FY 2020 results
Strategic Obj. 1C: Conduct objective, timely studies of Federal merit systems and Federal human capital management issues.			
1C-1: Number/scope of *IoM* newsletter editions or other articles	Number/scope of published newsletter editions and other articles	Publish 3 *IoM* editions	
1C-2: Number/scope of study reports, briefs, or other documents	Number/scope of reports, briefs, and other documents published	Prepare for publication of 4 or more study report or other documents	TBD based on FY 2020 results
1C-3: Conduct surveys of Federal employees to assess and report on the health of merit systems	Conduct/analyze periodic surveys of Federal employees	Design/implement Gov't-wide survey in the 4th Q, or 1st Q FY 2021	Implement Gov't-wide survey no later than the 1st quarter
Strategic Obj. 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.			
1D-1: Review OPM rules/regulations	Number/scope of decisions issued involving OPM regulations	No target set, No quorum	TBD based on FY 2020 results
1D-2: Review OPM significant actions	Number/scope of OPM significant actions reviewed	Maintain scope; publish review of OPM significant actions	
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 Obj. 2A: Inform, promote, and/or encourage actions by policymakers, as appropriate, that strengthen Federal merit systems laws the regulations.			
2A-1: References to MSPB's work	Scope of references to MSPB's work	Maintain scope	
2A-2: Create policy-related products	Number/scope of policy-related products	3 products focused on policy or intended for policymakers	TBD based on FY 2020 results

Strategic Goal 2: Continued			
Strategic Obj. 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach.			
Performance Goal	**Performance Measure**	**2020 Target (Final)**	**2021 Target (Proposed)**
2B-1: Conduct merit-based outreach events	Number/scope of merit-based outreach events	Conduct 100 events or more	TBD based on FY 2020 results
Strategic Obj. 2C: Advance the understanding of the concept of merit, MSPs, and PPPs through the use of educational standards, materials and guidance established by MSPB.			
2C-1: Number/scope of materials accessed on the website	Number of visits to the MSPB website	Within ± 5% of previous year	TBD based on FY 2020 results
2C-2: Create/update electronic educational materials	Number/type of new or updated educational materials	Post 5 or more educational materials	

Management Obj. M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.			
M1-1: Ensure workforce competencies	Average percent agreement on FEVS competency questions	70% or higher	TBD based on FY 2020 results
M1-2: Maintain perceptions of diversity (div.) and inclusion (incl.)	Average percent agreement on FEVS div. and Internal Survey (IS) incl. questions	Div. 70% or higher Incl. 70% or higher	TBD based on FY 2020 results
M1-3: Maintain employee engagement	Average percent agreement on FEVS engagement questions	70% or higher	TBD based on FY 2020 results
Management Obj. M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future.			
M2-1: Ensure justified budgets and resource accountability	New measure to be defined in FY 2020	Identify new measure for budget & financial performance	TBD based on FY 2020 results
Management Obj. M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.			
M3-1: Ensure available/reliable IT infrastructure and applications	Average percent agreement on relevant IS questions, ensure disaster recovery capability	65% or higher	TBD based on FY 2020 results
M3-2: Ensure satisfaction with internal IT support	Average percent agreement on relevant IS questions	65% or higher	TBD based on FY 2020 results
Management Obj. M4: Modernize core business applications to achieve electronic adjudication and provide a web-based survey capability.			
M4-1: Improve adjudication processing efficiency	Modernize core adjudication business applications; proportion of cases processed entirely electronically	Substantially develop new core applications	TBD based on FY 2020 results
M4-2: Improve agency survey capability	Ensure secure, web-based survey application (in conjunction with 1C-3)	Fully implement a FedRAMP certified, web-based survey capability	TBD based on FY 2020 results

Comprehensive Performance Results and Plans

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.

Results indicate that this objective was **Partially Met**. MSPB exceeded its target for average processing time for initial appeals, and achieved its targets for cases left unchanged by the Court of Appeals for the Federal Circuit (CAFC) and for conducting surveys of adjudication and ADR customers. Because MSPB began FY 2019 without a quorum of Board members, we did not set targets for quality of initial appeals (which is based on PFR decisions), and for average PFR processing time. These performance goals were not rated in FY 2019. Even though MSPB did not have a quorum for the entirety of FY 2019, it continued to process cases at HQ and prepare draft decisions in PFRs and original jurisdiction cases for review by new Board members when they arrive. As of the end of FY 2019, over 2,378 PFR cases were pending at HQ. MSPB did not set FY 2020 targets for quality of initial appeals and average processing time for PFRs because we began the year without a quorum. The FY 2021 targets for these performance goals are to be determined (TBD) based on FY 2020 results. The FY 2020 and FY 2021 targets for average case processing time for initial appeals will remain at 120 days or fewer. The FY 2020 targets for surveys of initial appeals and ADR customers are to continue surveys, address issues, and prepare changes to survey to account for implementation of new core business applications. The FY 2021 targets for these two goals are to continue surveys, address issues, and implement changes to surveys to account for new business applications.

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 2013	8%	**FY 2019**	No target set, no quorum.
FY 2014	7%	**FY 2020**	No target set, no quorum.
FY 2015	2%	**FY 2021**	TBD based on FY 2020 results.
FY 2016	5%		
FY 2017	Not rated, no quorum.		
FY 2018	No target set, not rated, no quorum.		
FY 2019	No target set, not rated, no quorum.		

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 (CAFC).

Results		Targets	
FY 2013	93%	**FY 2019**	92% or more.
FY 2014	96%	**FY 2020**	92% or more
FY 2015	96%	**FY 2021**	TBD based on FY 2020 results.
FY 2016	94%		

FY 2017	94%	
FY 2018	92%	
FY 2019	86%	

Performance Goal 1A-3: Maintain participants' positive perceptions of the adjudication process.			
Measure: Percent of adjudication participants surveyed who agree that MSPB adjudication processes are fair, open, accessible, understandable, and easy to use.			
Results		**Targets**	
FY 2013	Worked with contractor to assess hosting and security requirements and reviewed responses to Request for Information (RFI) designed to obtain information on current solutions for secure web-based survey platform. Further progress was limited by competing priorities and the state of emerging web-based survey solutions.	**FY 2019**	Continue to obtain automated customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
FY 2014	Department of Interior (DOI) National Business Center (NBC) published an RFI to assess availability and drafted a Request for Quote (RFQ) to be issued to several cloud service providers.	**FY 2020**	Continue automated customer service and customer satisfaction survey, consider results, and take appropriate action to address issues. Consider changes to customer surveys, as appropriate, in response to implementation of new applications.
FY 2015	Customer survey data collected from PFR customers in support of the PFR program evaluation.	**FY 2021**	Continue automated customer service and customer satisfaction survey, consider results, and take appropriate action to address issues. Implement changes to surveys, as appropriate, in response to implementation of new applications.
FY 2016	Collected customer feedback from the PFR participants. Customer surveys submitted for OMB Paperwork Reduction Act (PRA) approval. Automated sampling and invitation process was developed.		
FY 2017	Implemented automated survey process and began data collection.		
FY 2018	Automated survey process ongoing.		
FY 2019	Surveys ongoing.		

Performance Goal 1A-4: Maintain processing timeliness for initial appeals.			
Measure: Average case processing time for initial appeals.			
Results		**Targets**	
FY 2013	93 days	**FY 2019**	120 days or fewer.
FY 2014	262 days*	**FY 2020**	120 days or fewer.
FY 2015	499 days*	**FY 2021**	120 days or fewer.
FY 2016	99.5% of furloughs and 78% of non-furlough workload completed.		
FY 2017	See Interim Indicator below.		

FY 2018	102 days	
FY 2019	105 days	
* A weighted average including all initial appeals closed.		

Interim Indicator for Initial Appeals Processing:
1A-4a: Percent of initial decisions issued for nonfurlough initial appeals. In FY 2017, this indicator was redefined as the percent of cases closed that were filed prior to October 1, 2016. Discontinued in FY 2018.

FY 2013	75%	(5,538/7,396)
FY 2014	70%	(5,212/7,480)
FY 2015	70%	(5,418/7,752)
FY 2016	78%	(5,886/7,669)
FY 2017 Target	65%	(closure of 2,030 cases filed before October 1, 2016)
FY 2017 Result	98%	(1,989/2,030)

Performance Goal 1A-5: Maintain processing timeliness for PFRs.			
Measure: Average case processing time for PFRs of initial appeals.			
Results		**Targets**	
FY 2013	281 days	**FY 2019**	No target set, no quorum.
FY 2014	287 days*	**FY 2020**	No target set, no quorum.
FY 2015	190 days	**FY 2021**	TBD based on FY 2020 results.
FY 2016	185 days		
FY 2017	Not rated, no quorum.		
FY 2018	No target set, not rated, no quorum.		
FY 2019	No target set, not rated, no quorum.		
* 20 PFR cases were delayed awaiting the decisions issued by the CAFC related to *Conyers* and *Gargiulo*. If those cases are removed from the calculations, the average processing time was 279 days.			

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 noncoercive, even if no agreement was reached.			
Results		**Targets**	
FY 2013	Worked with contractor to assess hosting and security requirements and reviewed responses to RFI designed to obtain information on current solutions for secure web-based survey platform. Further progress limited by competing priorities and the state of emerging web-based survey solutions.	**FY 2019**	Continue to obtain ADR customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
FY 2014	DOI's NBC published an RFI to assess availability and drafted a RFQ for issuance to several cloud service providers.	**FY 2020**	Continue automated customer service and customer satisfaction survey, consider results, and take appropriate action to address issues. Consider changes to customer surveys, as appropriate, in response to implementation of new applications.

FY 2015	Collected feedback from participants in the MAP.	**FY 2021**	Continue automated customer service and customer satisfaction survey, consider results, and take appropriate action to address issues. Implement changes to surveys, as appropriate, in response to implementation of new applications.
FY 2016	Collected customer feedback from MAP participants. Customer surveys submitted for OMB PRA approval. Automated sampling and invitation process was developed.		
FY 2017	Implemented automated survey process and began data collection.		
FY 2018	Automated survey process ongoing.		
FY 2019	Surveys ongoing.		

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

This objective was **Not Rated (No Quorum)**. No FY 2019 target was set for this performance goal because we began the year without a quorum of Board members. While MSPB continued to process compliance cases at HQ, the lack of quorum meant that the agency was unable to release decisions from HQ in compliance/enforcement cases, therefore the performance goal was not rated. However, the ROs/FOs processed 109 compliance cases in an average of 104 days. MSPB did not set a FY 2020 target for this performance goal because we began the year without a quorum. The FY 2021 target for this performance goal is TBD based on FY 2020 results.

Performance Goal 1B-1: Maintain timeliness of processing compliance/enforcement cases.			
Measure: Weighted average processing time for all enforcement cases.			
Results		**Targets**	
FY 2013	355 days	**FY 2019**	No target set, no quorum.
FY 2014	215 days	**FY 2020**	No target set, no quorum.
FY 2015	161 days	**FY 2021**	TBD based on FY 2020 results.
FY 2016	159 days		
FY 2017	No target set, not rated, no quorum.		
FY 2018	No target set, not rated, no quorum.		
FY 2019	No target set, not rated, no quorum.		

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

Results indicate this objective was **Partially Met**. MSPB exceeded its target for newsletters and other articles by publishing three *IoM* newsletter editions and four other articles. Newsletter articles covered eight of nine MSPs and four of fourteen PPPs and included articles on broad topics such as performance management, hiring, applicant assessment, pay, and emotional labor. MSPB published four additional briefs or articles on probationary periods for supervisors and managers, perceived incidence of PPPs, remedying unacceptable performance, and managing employees who perform emotionally laborious work. Due to the lack of a quorum at the beginning of the year, MSPB did not

set a FY 2019 target for publication of merit system study reports. Therefore, the performance goal for publication of study reports was not rated. However, MSPB made significant progress in drafting a new research agenda to guide merit systems studies work for the next few years. The draft agenda, containing both new topics and topics building on previous research, will be presented to the new Board members when they arrive. Ultimately, it will be up to the new Chairman to approve a final research agenda. MSPB's survey target was to develop requirements for a new survey capability to ensure secure, effective, and efficient surveys of Federal employees and others to support MSPB's studies function. MSPB exceeded this target by going beyond defining requirements to completing procurement of a new web-based, FedRAMP certified survey application. The FY 2020 and FY 2021 targets for publication of newsletters will be to publish 3 *IoM* newsletter editions each year. Given the uncertainty over whether the quorum will be restored in FY 2020, the FY 2020 target for publication of merit system study reports will be preparing for publication of four (4) study reports or other documents. The FY 2021 target for this performance goal is TBD based on FY 2020 results. The FY 2020 target for conducting merit systems studies surveys is to use the new FedRAMP certified survey application to design and implement a Governmentwide survey in the 4th quarter of FY 2020 or the 1st quarter of FY 2021. In FY 2021 MSPB will process and begin analyzing the survey data and begin drafting new studies reports.

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* (*IoM*) newsletter editions or other articles published.			
Results		**Targets**	
FY 2013	Published 3 *IoM* newsletter editions and 1 article (8 MSPs).	**FY 2019**	Publish 3 *IoM* editions.
FY 2014	Published 3 *IoM* newsletter editions and 6 online articles (all MSPs and 4 PPPs).	**FY 2020**	Publish 3 *IoM* editions.
FY 2015	Published 3 *IoM* newsletter editions and 4 online articles (all MSPs and 8 PPPs).	**FY 2021**	Publish 3 *IoM* editions.
FY 2016	Published 3 *IoM* editions and 2 online articles (all MSPs and PPPs).		
FY 2017	Published 3 *IoM* editions and 2 online articles entitled, *Addressing Misconduct in the Federal Civil Service: Management Perspectives* and *MSPs: Keys to Managing the Federal Workforce* (all MSPs & PPPs).		
FY 2018	Published 3 *IoM* editions and 4 articles or briefs entitled *Building Blocks for Effective Performance Management*, *The Role of Feedback, Autonomy, and Meaningfulness in Employee Performance Behaviors*, *Update on Sexual Harassment in the Federal Workplace*, and *Improving Federal Hiring Through Better Assessment* (all MSPs and 3 PPPs).		
FY 2019	Published 3 *IoM* newsletter editions and 4 research briefs, including *Improving Federal Leadership Through Better Probationary Practices*, *The Perceived Incidence of Prohibited Personnel Practices*, *Remedying Unacceptable Employee Performance in the Federal Civil Service*, and *Managing Employees to Perform Emotionally Laborious Work* (8 MSPs and 3 PPPs).		

Performance Goal 1C-2: Maintain the number and scope of MSPB study reports, briefs, or other documents.			
Measure: Number and scope (percent of the workforce, agencies, or policy areas impacted) of merit systems studies reports, briefs, and other documents published each year.			
Results		**Targets**	
FY 2013	1 report completed (3 MSPs).	**FY 2019**	No target set, no quorum.
FY 2014	4 reports approved and published.	**FY 2020**	Prepare for publication of 4 or more study reports or other documents.
FY 2015	4 reports published (7 MSPs, 9 PPPs).	**FY 2021**	TBD based on FY 2020 results.
FY 2016	3 reports published (all MSPs).		
FY 2017	Not rated, no quorum.		
FY 2018	No target set, not rated, no quorum.		
FY 2019	No target set, not rated, no quorum. Took significant steps to prepare a new merit system studies research agenda for review and approval by the new Chairman, including collecting ideas from external stakeholders and internal sources, developing the process for rating ideas, selecting research topics or ideas for the agency-level research agenda, drafting summaries of ideas and preparing draft agenda for review by agency leadership.		

Performance Goal 1C-3: Conduct surveys of Federal employees to assess and report on health of the Federal merit systems.			
Measure: Conduct periodic Governmentwide and focused surveys of Federal employees and others (including interrogatories directed to agencies), as appropriate.			
Results		**Targets**	
FY 2015	Content for the next MPS to support the new FY 2015-2018 research agenda was developed, and a survey vendor was selected to program and administer the next MPS in early 2016. An RFQ for MSPB's survey platform was issued by DOI's NBC; procurement of survey platform was put on hold to accomplish key milestones for the MPS, and as a result of the IT outage and changing Federal IT requirements. (New in FY 2015.)	**FY 2019**	Develop requirements for survey application (in conjunction with M4-2); plan content for next MPS.
FY 2016	Successfully administered 2016 MPS to approximately 120,000 Federal employees from 24 Federal agencies. The survey was fully compliant with Federal IT and security requirements and covered topics such as PPPs, dealing with poor performers, sexual and other workplace harassment, and employee engagement.	**FY 2020**	Using a FedRAMP certified, web-based survey capability (see M4-2), design and implement a Governmentwide survey in 4th quarter FY 2020 or 1st quarter FY 2021.

FY 2017	Analyzed MPS data and prepared study reports on selected topics, conducted after-action review of the survey process, prepared data for the National Archives and Records Administration, proactively posted MPS data on our website. Began working with OPM to renew the memorandum of understanding for use of Enterprise Human Resource Integration (EHRI) data.	**FY 2021**	Implement Governmentwide survey no later than 1st quarter FY 2021; process and begin analyzing survey data and begin drafting survey-related reports.
FY 2018	Continued to analyze MPS 2016 data and draft reports and other documents. MSPB is targeting the next MPS for FY 2019 – FY 2020, but this timeline will be reassessed when a quorum is restored. This will require content based on a new research agenda that is awaiting input from a new Chairman and a secure web-based survey capability for survey development and administration. MSPB began defining requirements for a new survey capability. MSPB has obtained EHRI data from OPM for FY 2016 and 2017, and is negotiating with OPM for continued access to EHRI data.		
FY 2019	Procured a new web-based, FedRAMP certified survey application. Survey data is a critical source of information for topics on the new research agenda. Two interrogatories were sent to agencies for responses.		

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

Results indicate that this objective was **Partially Met**. Due to the lack of quorum, MSPB did not set targets for, nor rate the performance goal for, processing HQ cases involving review of OPM regulations. No new cases requesting review of OPM regulations were received in FY 2019, and there are currently five (5) cases pending at HQ involving requests to review OPM regulations. MSPB published the Annual Report (AR) for FY 2018, which included information for policymakers about OPM's history and capacity, thus achieving the target for review of OPM's significant actions. MSPB did not set a FY 2020 target for cases involving review of OPM regulations because we began the year without a quorum. The FY 2021 target for reviewing OPM regulations is TBD based on FY 2020 results. The FY 2020 and FY 2021 targets for the review of OPM significant actions are to maintain the scope of review and publish a summary of the reviews in MSPB ARs for the preceding years, respectively.

Performance Goal 1D-1: Maintain program for review of OPM regulations.			
Measure: Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of decisions issued involving OPM rules and regulations (or implementation of the same).			
Results		**Targets**	
FY 2013	Reviewed MSPB internal procedures for reviewing OPM rules and regulations.	**FY 2019**	No target set, no quorum.

FY 2014	Decisions issued on 3 cases involving review of OPM regulations.	**FY 2020**	No target set, no quorum.
FY 2015	One decision issued in response to a request for OPM regulation review.	**FY 2021**	TBD based on FY 2020 results.
FY 2016	Nine decisions issued in response to requests for OPM regulation review.		
FY 2017	Not rated, no quorum.		
FY 2018	Not rated, no quorum.		
FY 2019	No target set, not rated, no quorum.		

Performance Goal 1D-2: Maintain program for reviewing and reporting on OPM significant actions.			
Measure: Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of OPM significant actions that are reviewed and reported.			
Results		**Targets**	
FY 2013	Published MSPB's FY 2012 AR, including a review of OPM significant actions. Significant actions in FY 2012 included policy actions related to: recruitment and hiring; presidential transition guidance and procedures for placement of political appointees in the career Federal service; OPM request for reconsideration of *Conyers v. Department of Defense*; introduction of an senior executive service (SES) standardized performance appraisal system; applying performance appraisal assessment tool (PAAT), goals, engagement, account-ability, and results pilot; advancing agency use of telework; implementing phased retirement; diversity and inclusion guidance; and extension of certain benefits to same-sex partners. Actions involving delivery of services or benefits included a new strategic goal to improve access to health insurance, introduction of USAJOBS 3.0, and reducing the number of pending retirement claims.	**FY 2019**	Maintain scope of review; publish review of OPM significant actions for previous year in MSPB AR.
FY 2014	Published MSPB's FY 2013 AR including review of OPM significant actions. Significant actions in FY 2013 included guidance on agency policies to prevent domestic violence, SES exit survey, guidance for supervisory training and Uniformed Services Employment and Reemployment Rights Act (USERRA), USAHire, extension of certain benefits to same-sex spouses of Federal employees, and proposed rules for designation of national security positions and for nondiscrimination.	**FY 2020**	Maintain scope of review; publish review of OPM significant actions for previous year in MSPB AR.

FY 2015	Published MSPB's FY 2014 AR including review of OPM significant actions. Significant actions in FY 2014 included final rules implementing the Hatch Act Modernization Act of 2012 and implementing phased retirement, the governmentwide strategy on gender pay equity, and the Government veterans recruitment and employment strategic plan.	**FY 2021**	Maintain scope of review; publish review of OPM significant actions for previous year in MSPB AR.
FY 2016	Published MSPB's FY 2015 AR including review of OPM significant actions. Significant actions in FY 2015 included SES reform and modernization, recruitment, engagement, diversity, and inclusion initiative, and Federal supervisory and managerial framework and guidance.		
FY 2017	Published MSPB's FY 2016 AR including review of OPM significant actions. Significant actions in FY 2016 included evolution of OPM structure and finances, guidance on placement of political appointees in the career service during the 2016 presidential transition, strengthening the SES, and closing mission-critical skills gaps.		
FY 2018	Published MSPB's FY 2017 AR including review of OPM significant actions. Significant FY 2017 action included the final rule regarding the Annual Employee Survey requirement and the 2017 FEVS, reforming the Federal Government and reshaping the Federal civilian workforce, framework for continuing development of Federal senior executives, and governmentwide survey of Federal work-life programs.		
FY 2019	Published MSPB's FY 2018 AR including review of OPM significant actions. The significant actions section of the FY 2018 report included a review of overarching themes of previous review including OPM's purpose, funding, focus, and activities.		

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

Results indicate that this objective was **Met**. MSPB's performance goal for scope of citations was achieved. MSPB cases, studies, reports, newsletter articles, and other products were cited hundreds of times in nearly 130 different sources. Sources include trade publications on Federal management and legal issues, wire services, major city daily newspapers, congressional sources, and a variety of websites and blogs. Notable citations include a letter from the House Committee on Veterans' Affairs to the Secretary of the Department of Veterans Affairs (VA); a Congressional Research Service (CRS) report

entitled *Merit Systems Protection Board (MSPB): A Legal Overview*; and, from the MITRE Corporation, the *Report: Symposium on the Federal Workforce for the 21st Century*. MSPB exceeded its target for articles or documents published or posted with policymakers as a primary audience. These documents included: updated frequently asked questions (FAQs) on MSPB functions given the lack of Board members; the FY 2018 Annual Report (including information about OPM's history and capacity); Acting Chairman Mark Robbins's February 28, 2019 testimony at a hearing on the effects of Board member vacancies before the House Committee on Oversight and Reform Subcommittee on Government Operations; Acting Chief Executive and Administrative Officer Tristan Leavitt's July 23, 2019 testimony at a hearing on whistleblowers at the VA before the House Committee on Veterans Affairs Subcommittee on Oversight and Investigations; a data webpage as required by the Evidence Act; Personal Assistance Services Policy and Procedures (as required by Equal Employment Opportunity Commission's (EEOC's) amended regulations implementing Section 501 of the Rehabilitation Act of 1973); and other annual agency reports, plans, and budget documents. The FY 2020 and FY 2021 targets for references of MSPB's work are to maintain the scope of references. The FY 2020 target for posting documents intended to inform policymakers is to post three (3) or more such documents. The FY 2021 target for this goal is TBD based on FY 2020 results.

Performance Goal 2A-1: 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 (EOs), the media, or other sources.			
Results		**Targets**	
FY 2013	MSPB's work was cited in over 70 different online or print media sources, trade publications, and scientific journals from around the world; and several blogs and websites. MSPB's study on training supervisors was cited in OPM's guidance on supervisory training; and reports on employee engagement were referenced in a book about engaging Government employees published by the American Management Association.	**FY 2019**	Maintain scope of references.
FY 2014	MSPB's work was cited in over 94 different sources. Congress cited *The Power of Employee Engagement* report in its request for the Government Accountability Office (GAO) to study Federal employee morale and engagement. MSPB was also cited in legislation on sensitive positions and new Department of Veterans Affairs (VA) legislation.	**FY 2020**	Maintain scope of references.
FY 2015	MSPB's work was cited in at least 115 different sources. MSPB work was cited in GAO reports on engagement and on using probationary periods to manage poor performers. The MSPB report on due process was cited in congressional testimony and in Congressman Mark Takano's blog on pending legislation on the VA Accountability Act of 2015. OPM cited MSPB engagement reports in a white paper on engaging the Federal workforce.	**FY 2021**	Maintain scope of references.

FY 2016	MSPB's work was cited over 680 times in over 135 different sources. MSPB studies were cited in the August 2016 GAO report on OPM oversight of Federal hiring authorities, an International Personnel Management Association News article, in a text book on Federal human resources (HR), and in congressional discussions of veterans' hiring, addressing employee misconduct, and preventing discrimination on the basis of sexual orientation.	
FY 2017	MSPB's work was cited over 600 times in 150 different sources. Several MSPB study reports were cited in the OMB Memorandum M-17-22 on Reforming the Federal Government, and in testimony by at a Senate hearing on empowering Federal managers. MSPB's report on veterans hiring was cited in a report by the CRS, and reports on engagement and on SES training were cited in a new Federal management handbook published by American Society for Personnel Administration. The 2017 National Defense Authorization Act (NDAA) provision to repeal the 180-day waiver for hiring people with previous military experience used MSPB's veterans' hiring report.	
FY 2018	MSPB's work was cited 610 times in 136 different sources. Sources of particular import include two GAO reports; OPM's unlocktalent.gov website; posts and letters by selected senators and representatives; the National Academy of Science, Engineering, and Medicine; the National Academy of Public Administration; the American Psychological Association; and a book on health care management.	
FY 2019	MSPB's work was cited 714 times in 129 different sources. Notable citations include a letter from the House VA Committee to the Secretary of the VA; a CRS Report entitled *Merit Systems Protection Board (MSPB): A Legal Overview*; and from the MITRE Corporation, *Report: Symposium on the Federal Workforce for the 21st Century*.	

Performance Goal 2A-2: Maintain the number and scope of MSPB products focused on policymakers or changing Governmentwide policy.			
Measure: Number, type, and scope of MSPB products created and made available to inform policymakers on issues and potential improvements to merit systems policies, laws, and/or regulations.			
Results		**Targets**	
FY 2013	Posted three (3) one-page *Research Highlights* or brief summaries of the findings and recommendations of merit system study reports related to policy issues.	**FY 2019**	Develop and post 3 or more products focused on policy change or informing policymakers.
FY 2014	Posted *Research Highlights* for the clean records, favoritism, training and experience, sexual orientation, and veterans hiring policies and practices reports and four previously published reports. Compiled highlights into a "catalog" of MSPB studies including an introduction by the Chairman.	**FY 2020**	Develop and post 3 or more products focused on policy change or informing policymakers.
FY 2015	Posted *Research Highlights* for reports on veterans redress laws, fair and open competition, and due process; a monograph on Federal employee due process rules and reality; and Chairman Grundmann's testimony on Senate bills S. 1082, S. 1117, and S. 1856.	**FY 2021**	TBD based on FY 2020 results.
FY 2016	Posted *Research Highlights* for reports on SES training, nepotism in the Federal workforce, and the MSPs: guiding fair and effective management, Chairman Grundmann's testimony from MSPB's December 2015 reauthorization hearing before the House Committee on Oversight and Government Reform Subcommittee on Government Operations, and an article on using indefinite suspensions in cases involving possible criminal behavior.		
FY 2017	Published an interactive version of the Adverse Action Report; perspectives on addressing misconduct in the civil service; the *MSPs: Use in Guiding Fair and Effective Management of the Workforce*; and an annotated diagram illustrating current avenues of review of appeals of adverse action taken against Federal employees.		
FY 2018	Published articles entitled *Building Blocks for Effective Performance Management*, *The Role of Feedback, Autonomy, and Meaningfulness in Employee Performance Behaviors*, *Update on Sexual Harassment in the Federal Workplace;* and *Improving Federal Hiring Through Better Assessment*.		

FY 2019	Published updated FAQs on MSPB functions given the lack of Board members; the FY 2018 AR including information for policymakers about OPM's history and capacity; Acting Chairman Robbins's February 28, 2019 testimony at a hearing on the effects of Board member vacancies before the House Committee on Oversight and Reform Subcommittee on Government Operations; the Acting Chief Executive and Administrative Officer Leavitt's July 23, 2019 testimony at a hearing on whistleblowers at the VA before the House VA Committee Subcommittee on Oversight and Investigations; a data webpage as required by Evidence Act; Personal Assistance Services Policy and Procedures; and other annual agency reports, plans, and budget documents.	

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

Results indicate this objective was **Exceeded**. The number of MSPB outreach events was 14 percent more than the target. Outreach event topics included MSPB adjudication processes and legal precedent, Federal employment law, merit systems studies research, and general merit systems issues. Audiences were varied and included Federal employment law attorneys, human resources and equal employment opportunity professionals, academic and Federal researchers, legal organizations, Federal executive branch departments and agencies, employee and affinity groups, academic institutions, and officials from Japan, Armenia and Brazil, among others. MSPB staff presented at the Federal Dispute Resolution conference, the American Society for Public Administration annual conference, the Federal Circuit Bar Association's MSPB Summit, the International Personnel Assessment Council annual conference, the EEOC's Examining Conflicts in Employment Law conference, and the Chicago-Kent School of Law's Federal Sector Labor Relations and Labor Law Conference. Approximately half of the outreach events for the year occurred in the last quarter of FY 2019. The prolonged lack of quorum has prohibited the release of precedential Board decisions and of reports of merit systems studies, which provide significant informational content for outreach events. The FY 2020 target for this goal is set at 100 outreach events or more in consideration the lack of quorum, and possible changes in agency priorities and available resources upon confirmation of a new Board. The FY 2021 target for this performance goal is TBD based on FY 2020 results.

Performance Goal 2B-1: 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 2013	Conducted 94 outreach events on topics related to MSPB studies, legal cases and processes, merit/MSPs/ PPPs, and other issues.	**FY 2019**	Conduct 115 or more outreach events. Consider methods to improve collecting customer feedback at events.
FY 2014	Conducted 100+ outreach events on legal, studies, merit/MSPs/PPPs, administrative, and other issues.	**FY 2020**	Conduct 100 or more outreach events.

FY 2015	Conducted 144 outreach events on legal, studies, merit/MSPs/PPPs, administrative, and other issues.	**FY 2021**	TBD based in FY 2020 results.
FY 2016	Conducted over 115 outreach events on legal, studies, merit/MSPs/PPPs, administrative, and other issues. Updated the outreach portion of the new office calendar.		
FY 2017	Conducted 138 outreach events and implemented the new outreach calendar, which improves the collection of outreach data including type of audience feedback collected at events.		
FY 2018	Conducted 134 outreach events. Consideration of methods to collect customer feedback on events to continue in FY 2019.		
FY 2019	Conducted over 130 outreach events; given the low rate of events early in the FY, we decided that improvements in collection of customer feedback at outreach events will be reconsidered in in the future in conjunction with agency priorities and available resources.		

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

Results indicate this objective was **Met.** The number of visits to pages on the MSPB website was within five (5) percent of the number of visits in FY 2018. MSPB exceeded the target number of educational and informational materials made available on the website, with over 6 new or updated categories of documents posted to the website. These documents included: 3 *IoM* newsletter editions and 4 research briefs; 3 Federal Register notice and 5 press releases; the FY 2018 AR; other agency annual reports, plans, and budget documents; the 2018 FEVS results; updated FAQs on MSPB functions given the lack of Board members; an updated history of Board member service; and changes to the AJ Handbook. The FY 2020 targets are to retain the number of web visits at ± 5 percent from the previous year, and to post or electronically distribute 5 or more textual or multimedia educational materials or documents. The FY 2021 targets are TBD based on FY 2020 results.

Performance Goal 2C-1: Maintain the number and scope of materials viewed or accessed from MSPB's website that are designed to improve the practice and understanding of merit.			
Measure: Number of visits to the MSPB website pages involving information, materials, or guidance related to improving the practice and understanding of merit from MSPB's website.			
Results		**Targets**	
FY 2013	Over 554,000 visits to select webpages and over 16 million hits to documents linked on those webpages.	**FY 2019**	Number of visits within ± 5 % of FY 2018 results.
FY 2014	Over 634,000 visits to select webpages and almost 11.8 million hits to documents linked on those webpages.	**FY 2020**	Number of visits within ± 5 % of FY 2019 results.
FY 2015	Over 655,400 visits to select MSPB webpages, within ± 5% of the visits in FY 2014.	**FY 2021**	TBD based on FY 2020 results.

FY 2016	892,379 visits to select webpages, over 36% more than in FY 2015.	
FY 2017	1,326,462 visits to select webpages, over 48% more than in FY 2016.	
FY 2018	1,539,045 visits to select webpages, over 16% more than in FY 2017.	
FY 2019	1,614,904 visits to select webpages, within 5% of the number in FY 2018.	

Performance Goal 2C-2: Maintain number and scope of available educational materials and guidance.			
Measure: Number and type of merit systems educational materials and guidance MSPB makes available electronically or on MSPB's website.			
Results		**Targets**	
FY 2013	Posted 13 or more new or revised documents related to merit/MSPs/ PPPs, and at least as many documents related to legal processes and appeals issues including: 3+ items on the WPEA and changes to the Hatch Act; 2 PPP summaries including; 8 *Research Highlights* from MSPB study reports; 4+ items on MSPB's new adjudication regulations; 4+ items on MSPB's new appeal form; and 5+ items on furlough appeals.	**FY 2019**	Post or distribute electronically 5 new or updated textual or multimedia educational products.
FY 2014	Posted 8 *Research Highlights*; 9 radio interviews; a letter and report regarding the VA SES legislation; webpage and training video for those interested in providing pro bono representation; 2 materials for the studies research agenda; 2 materials for the Special Panel oral argument; items related to MSPB's new jurisdictional regulations; and 12 documents related to furlough cases.	**FY 2020**	Post or distribute electronically 5 new or updated textual or multimedia educational products.
FY 2015	Posted 3 *Research Highlights* for merit systems study reports; regulations governing MSPB's jurisdiction; FY 2014 AR; Chairman Grundmann's testimony on proposed VA legislation (S. 1082, S. 1117, and S. 1856); and updated the pro bono page, and the appellant Questions & Answers on review of Board decisions by the CAFC. Posted a link to the *Guide on LGBT Discrimination Protections for Federal Workers*.	**FY 2021**	TBD based on FY 2020 results.

FY 2016	Posted *Research Highlight* for reports on *SES Training*, *Nepotism*, and *MSPs: Guiding the Fair and Effective Federal Management*; two FedNewsRadio interviews on studies reports; Chairman Grundmann's record testimony from MSPB's December 2016 reauthorization hearing in the House; the Chairman's radio interview on VA SES appeals; the interim final rule on discovery in compliance proceedings; an updated guide to MSPs; and Organizational Functions and Delegations of Authority on the e-FOIA (Freedom of Information Act) Reading Room page.	
FY 2017	Published interactive version of the *Adverse Action* report and *MSPs: Use in Guiding Fair and Effective Management of the Workforce*; two external reviews of MSPB's IT systems; an annotated diagram illustrating current avenues of review or appeal for a Federal adverse action; designation of the new Vice Chairman Mark A. Robbins; guidance on lack of quorum; and the 2016 MPS data. Also updated/reorganized the e-FOIA Reading Room webpage adding new information and created a new Privacy Act Program webpage.	
FY 2018	Posted four articles or (see 1C-1); 3 *IoM* newsletter editions; and one radio and one video interview. Added links to Board member nominations, updated Acting Chairman Robbins's biography, and added pages for recent Board members and their lengths of service. Updated information for appellants seeking judicial review of whistleblower claims, VA appeals under 38 U.S.C. § 714, PFR withdrawal policy, lack of quorum FAQs, Information Quality Guidelines, and 2017 FOIA logs.	
FY 2019	Posted 3 *IoM* newsletter editions and 4 research briefs; 3 Federal Register notice and 5 press releases; the FY 2018 AR; other agency annual reports, plans, and budget documents; the 2018 FEVS results; updated FAQs on MSPB functions given the lack of Board members; an updated history of Board member service; and changes to the AJ Handbook.	

Management Objectives

Management Objective M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.

Results indicate this objective was **Met.** The FY 2019 results for employee ratings of competencies, diversity, and engagement from the FEVS, and the ratings of inclusion from the IS were all within 10 percent of the targets. The FY 2019 ratings for competency, diversity, inclusion and engagement increased by 4, 11, 3, and 6 raw percentage points, respectively, over the ratings in FY 2018. Beginning in FY 2020, MSPB will use absolute numeric values for its survey targets, thus eliminating the need for computational adjustments each year. The FY 2020 targets for competencies, diversity, inclusion, and engagement are set 70 percent agreement or higher. This target is 5 percent higher than the 65 percent agreement OPM uses to define a strength on the FEVS. The FY 2021 targets are TBD based on FY 2020 results.

Performance Goal M1-1: Ensure MSPB's workforce has the competencies needed to perform its mission.

Measure: Percent of employees who report on the Federal Employee Viewpoint Survey (FEVS) that they and others in the workforce have the appropriate competencies needed to perform MSPB's mission.

Results		Targets	
FY 2013	2013 FEVS Competency average = 63%	**FY 2019**	Competency average = 71% or higher.
FY 2014	2014 FEVS Competency average = 64%	**FY 2020**	Competency average = 70% or higher.
FY 2015	2015 FEVS Competency average = 79%	**FY 2021**	TBD based on FY 2020 results.
FY 2016	2016 FEVS Competency average = 68%		
FY 2017	2017 FEVS Competency average = 71%		
FY 2018	2018 FEVS Competency average = 71%		
FY 2019	2019 FEVS Competency average = 75%		

Performance Goal M1-2: Maintain positive perceptions of diversity and inclusion by MSPB employees.

Measure: Average percent agreement on diversity (FEVS questions) and workplace inclusion Internal Survey (IS questions).

Results		Targets	
FY 2013	2013 FEVS Diversity average = 72% 2013 FEVS Inclusion average = 65% 2013 IS Inclusion average = 75%	**FY 2019**	Diversity average = 66% or higher. Inclusion average = 78% or higher.
FY 2014	2014 FEVS Diversity average = 61% 2014 IS Inclusion average = 77%	**FY 2020**	Diversity average = 70% or higher. Inclusion average = 70% or higher.
FY 2015	2015 FEVS Diversity average = 71% 2015 IS Inclusion average = 77%	**FY 2021**	TBD based on FY 2020 results.
FY 2016	2016 FEVS Diversity average = 67% 2016 IS Inclusion average = 78%		
FY 2017	2017 FEVS Diversity average = 66% 2017 IS Inclusion average = 76%		

FY 2018	2018 FEVS Diversity average = 61% 2018 IS Inclusion average = 81%	
FY 2019	2019 FEVS Diversity average = 72% 2019 IS Inclusion average = 84%	

Performance Goal M1-3: Strengthen and maintain employee engagement and address engagement issues identified in the FEVS.			
Measure: Average percent agreement on FEVS engagement questions.			
Results		**Targets**	
FY 2013	A small group of agency leaders (ED, was established to review survey results and recommend appropriate actions. MSPB decided to use FEVS engagement scores because 2012 FEVS and IS engagement scores were consistent. 2013 FEVS Engagement Index = 68%	**FY 2019**	Engagement index = 68% or higher.
FY 2014	2014 FEVS Engagement Index = 62%	**FY 2020**	Engagement Index = 70% or higher.
FY 2015	2015 FEVS Engagement Index = 74%	**FY 2021**	TBD based on FY 2020 results.
FY 2016	2016 FEVS Engagement Index = 69%		
FY 2017	2017 FEVS Engagement Index = 70%		
FY 2018	2018 FEVS Engagement Index = 66%		
FY 2019	2019 FEVS Engagement Index = 72%		

Management Objective M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future.

Results indicate this objective was **Partially Met**. The result for average vacancy rate was over 10 relative percentage points higher than the target, thus this target was not achieved. The average of the percent positive responses from the 2019 IS questions on workforce and workplace safety and security exceeded the target with an average percent agreement more than 10 percent of the difference in the target of 89 percent and the maximum of 100 percent. In FY 2020, we will consider other measures of budgeting and financial management to replace vacancy rate. The FY 2021 target for budgeting and financial management is TBD based on FY 2020 results. The performance goal for safety and security has been consistently high for the last several years. While MPSB will continue its efforts to ensure the workforce is prepared for threats to safety and security, it is not including safety and security as a performance goal beginning in FY 2020.

Performance Goal M2-1: Develop fully-justified budgets & ensure resource accountability			
Measure: Percent of funded positions vacant at the end of each month, averaged over the year.			
Results		**Targets**	
FY 2013	12% of funded positions vacant, averaged over 12 months.	**FY 2019**	8% or fewer of funded positions vacant, averaged over 12 months.
FY 2014	12% of funded positions vacant, averaged over 12 months.	**FY 2020**	Consider other measures of budgeting and financial management.
FY 2015	4% of funded positions vacant, averaged over 12 months.	**FY 2021**	TBD based on FY 2020 results.
FY 2016	8.7% of funded positions vacant, averaged over 12 months.		
FY 2017	3.4% of funded positions vacant, averaged over 12 months.		

FY 2018	8% of funded positions vacant, averaged over 12 months.	
FY 2019	9% of funded positions vacant, averaged over 12 months.	

Performance Goal M2-2: Offices, employees, and visitors are safe and secure from internal and external natural or man-made threats or emergencies.			
Measure: Average percent of MSPB employees who agree with questions on the IS about their preparedness to ensure safety and security.			
Results		**Targets**	
FY 2013	Trained all employees on Active Shooter and Workplace Violence Awareness; implemented Visible Visitor badge program; conducted earthquake and shelter-in-place drills; updated/briefed COOP to all offices. 2013 IS average agreement = 78%	**FY 2019**	Average agreement = 89% or higher.
FY 2014	2014 IS average agreement = 89%	~~**FY 2020**~~	Goal terminated beginning in FY 2020.
FY 2015	2015 IS average agreement = 87%		
FY 2016	2016 IS average agreement = 85%		
FY 2017	2017 IS average agreement = 90%		
FY 2018	2018 IS average agreement = 92%		
FY 2019	2019 IS average agreement = 91%		

Management Objective M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.

Results indicate that this objective was **Partially Met**. Results from the 2019 IS indicated that the average positive responses on employee ratings of availability and reliability of the IT infrastructure and for employee satisfaction with IT support exceeded their respective targets by 19 and 26 relative percentage points, respectively. The performance goal related to implementation of the iSupport ticket system was terminated in FY 2019 in favor of ticketing options possible with the new core business applications. The performance goal related to customer surveys of e-Appeal users was terminated in FY 2019 in light of the pending implementation of a new e-Appeal system. We will reconsider performance goals, measures, and targets for help desk operations and e-Appeal customer satisfaction when all new core business applications are implemented. With termination of the iSupport PG, the internal IRM customer service goal will be renumbered as PG 3.2 beginning in FY 2020. Beginning in FY 2020, MSPB use absolute numeric targets for survey goals thus preventing the need for computational adjustments each year. The FY 2020 targets for availability/ reliability of IT systems and for internal IRM customer service will be set at 65 percent agreement or higher. The FY 2021 targets are TBD based on FY 2020 results.

Performance Goal M3-1: Ensure availability and reliability of MSPB IT systems, hardware, and applications.			
Measure: Average percent agreement with relevant questions on the MSPB Internal Survey (IS); ensure disaster recovery capability.			
Results		**Targets**	
FY 2013	Average unscheduled downtime for key systems was 0.48%.	**FY 2019**	Average agreement at 56% or higher; begin disaster recovery capability

FY 2014	Average unscheduled downtime for key systems was 1.13%.	**FY 2020**	Average agreement = 65% or higher.
FY 2015	The target for average unscheduled downtime was met (1.16%). However, MSPB had a significant disruption in its IT infrastructure resulting in the loss of the virtual environment and permanent loss of significant employee working and archived documents.	**FY 2021**	TBD based on FY 2020 results.
FY 2016	Implemented cloud backup service for OneDrive and an isolated test environment; monitoring nightly backups; upgraded network hardware in many locations; began new IT Testing Group to test new technology and applications; assessed and adjusted M3 goals, measures, and targets for FY 2017 and beyond to take advantage of IS data for selected IT measures. Took necessary IT actions to achieve the targets listed for 1A-1 (new case processing system report), 1A-3, 1A-6, 1C-3, 2B-1, and 2C-3 (PG discontinued).		
FY 2017	2017 IS average agreement = 58%, compared to the 2016 result of 45%.		
FY 2018	2018 IS average agreement = 64%.		
FY 2019	2019 IS average agreement = 67%		

Performance Goal M3-2: Ensure effective and efficient resolution of internal and external help-desk tickets.			
Measure: Proportion of internal and external IT service help-desk tickets resolved within required Service Level Agreement (SLA), using c or iSupport ticketing system, and with agreement of customer.			
Results		**Targets**	
FY 2013	94% of all tickets were resolved within SLA; 98% (6,097/6,234) of external tickets and 87% (2,334/2,677) of internal tickets.	**FY 2019**	Complete iSupport implementation.
FY 2014	92% (10,712/11,621) of all tickets were resolved within SLA.	~~**FY 2020**~~	Goal terminated in FY 2019.
FY 2015	Although 85% of help-desk tickets were resolved within SLA, the IT outage resulted in the loss of the virtual environment and the permanent loss of a significant number of employees' working and archived documents.		
FY 2016	Implemented cloud backup service for OneDrive and an isolated test environment; upgraded network hardware; began new IT Testing Group to test new technology and applications; adjusted M3 goals, measures, and targets to take advantage of IS data for relevant IT measures.		

FY 2017	Continued use of cSupport with emphasis on closing tickets only with customer agreement; began planning for implementation of iSupport to occur after completing agency-wide laptop replacement project.	
FY 2018	Implemented Configuration Management Database in the iSupport development environment; completed test conversion of databases from cSupport to iSupport; upgraded iSupport development system to current version; continued iSupport configuration; completed requirements development for various ticket workflows, e.g., employees, requisitions and inventory.	
FY 2019	iSupport implementation terminated in favor of options possible with new core business applications. Consider new goal and measure to track user help requests beginning in FY 2022 when new adjudication applications are fully implemented.	

Performance Goal M3-3: Ensure satisfaction with internal IT support and services.			
Measure: Average percent agreement on relevant Internal Survey (IS) questions.			
Results		**Targets**	
FY 2016	New PG in FY 2017.	**FY 2019**	Average agreement at 57% or higher.
FY 2017	2017 IS average agreement = 52%, compared to the 2016 result of 47%.	**FY 2020**	Average agreement = 65% or higher. (PG renumbered to M3-2.)
FY 2018	2018 IS average agreement = 72%.	**FY 2021**	TBD based on FY 2020 results.
FY 2019	2019 IS average agreement = 72%; goal renumbered as M3.2 for FY 2020.		

Performance Goal M3-4: Ensure e-Appeal Online meets customer needs.			
Measure: Average percent agreement on automated e-Appeal customer survey questions.			
Results		**Targets**	
FY 2016	New PG in FY 2017.	**FY 2019**	Develop automated user survey as part of piloting new e-filing system.
FY 2017	Began developing automated survey for e-Appeal users.	~~**FY 2020**~~	Goal terminated in FY 2019.
FY 2018	Identified several MSPB employees w provided input to requirements for a successor e-filing system as part of modernizing MSPB's core business applications (see M4-1). Given their input, there was no need for a separate e-Appeal customer survey in FY 2018. Development of an e-Appeal user survey will continue in FY 2019.		

FY 2019	Goal to survey e-Appeal users terminated in light of pending implementation of new e-Appeal system. Consider new goal and measure beginning in FY 2022 following full and successful implementation of all new adjudication applications.	

Management Objective M4: Modernize core business applications to achieve electronic adjudication, and provide a web-based survey capability.

Interim results for this measure indicate this objective was **Met.** MSPB achieved the target for progress on modernizing its core business applications by awarding the contract for new core business application and beginning the configuration of the components for e-filing and initial appeals processing. MSPB exceeded its target for obtaining a new survey capability by going beyond requirements development to completing the procurement of a new web-based, FedRAMP certified survey application. The FY 2020 target for PG M4.1 is to substantially complete development of the next generation of MSPB core business applications, and related IT modernization efforts. The FY 2021 for this PG is TBD based on FY 2020 results. The FY 2020 target for improving MSPB's survey capability is to fully implement a FedRAMP certified, web-based survey capability to ensure MSPB's ability to design, test, and implement Governmentwide surveys (see 1C-3) no later than 1st quarter FY 2021. The FY 2021 target for this PG is TBD based in FY 2020 results.

Performance Goal M4-1: Improve efficiency of adjudication case processing.			
Measure: Proportion of cases processed entirely electronically.			
Results		**Targets**	
FY 2013	Interim indicators: 47% of initial appeals and 66% of pleadings filed electronically.	**FY 2019**	Select and begin to implement the next generation of MSPB core business applications, and related IT modernization efforts.
FY 2014	Interim indicators: 55% of initial appeals and 83% of pleadings filed electronically. Furlough cases were processed electronically in selected regional offices, 37 PFRs of furlough cases were filed electronically, and one furlough Board decision was filed electronically with the court. Drafted an RFI for e-Adjudication.	**FY 2020**	Substantially complete development of the next generation of MSPB core business applications, and related IT modernization efforts.
FY 2015	Interim indicators: 56% of initial appeals and 80% of pleadings filed electronically. Issued an RFI on e-Adjudication and Guidance on archiving electronic case files (ECFs). Developed a timeline for expanding ECFs and implementing mandatory e-filing for agencies and representatives.	**FY 2021**	TBD based on FY 2020 results.

FY 2016	Interim indicators: 61% of initial appeals and 81% of pleadings filed electronically. Reinstituted routine meetings on e-Appeal enhancements and e-Adjudication, and expanded ECF Pilot to the Denver FO. Implemented new e-Appeal servers, and up-graded the e-Appeal LiveCycle and Active PDF document conversion/assembly software. Developed and implemented ECF marking capability and document-ation in Quick Case and Law Manager and conducted training. Submitted personnel actions to support adding critical skills to help ensure expertise needed for e-Adjudication.		
FY 2017	Interim indicators: 61% of initial appeals and 82% of pleadings filed electronically. Arranged two vendor demonstrations of appeals workflow solutions. Completed significant work on e-Appeal release 9.7, a new enhanced version of the Quick Case application, a new Document Management System Upload Applica-tion (for litigation cases), and essentially completed a new application to auto-mate the completion of ECFs (for courts, Department of Justice, EEOC, etc.). Partnered with OMB's Office of the Federal Chief Information Officer (CIO) for weekly calls or meetings regarding this goal.		
FY 2018	Interim indicators: 69% of initial appeals and 89% of pleadings filed electronically. Completed requirements development for new core business applications, including those to support e-Adjudication, and issued the Request for Proposal.		
FY 2019	Interim indicators: 69% of initial appeals and 89% of pleadings filed electronically. Awarded contract for new core business applications; began configuration of e-filing and initial appeals processing components.		

Performance Goal M4-2: Improve agency survey capability			
Measure: Ensure secure, web-based survey application in conjunction with 1C-3.			
Results		**Targets**	
FY 2017	Drafted a Performance Work Statement (PWS) for moving our data center to the cloud. Continued to work with OMB's Office of the Federal CIO regarding this PG. Collaborated with OPE and DOI to assess obtaining a secure cloud-based solution to analyze OPM data.	**FY 2019**	Begin developing requirements for survey application.

FY 2018	Work accelerated on IT modernization (see PG M4-1), and it became clear that separately migrating to a new data center would not be cost-effective because the new core applications will be cloud-based. Therefore, we are devoting data center migration resources to improving disaster recovery for the existing data center and supporting collateral projects necessary for comprehensive IT modernization to achieve 100% e-Adjudication.	**FY 2020**	Fully implement a FedRAMP certified, web-based survey capability to ensure ability to design, test, and implement Governmentwide surveys (see 1C-3) no later than 1st quarter FY 2021.
FY 2019	Completed procurement of a new web-based, FedRAMP certified survey application.	**FY 2021**	TBD based on FY 2020 results.

Means and Strategies Needed to Accomplish Our Objectives

Over the next four to five years, MSPB will use the following means and strategies to accomplish its objectives. Selected means and strategies may be adjusted and may be emphasized in specific years, or may be used over the entire period. Strategies may be carried out by one or more offices.

Strategic Goal 1

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

1. Provide effective, efficient, and appropriately transparent adjudication of appeals in our ROs/FOs and at HQ.
2. Work with new Board members to consider approaches to reducing the backlog of PFR and other cases at HQ, determine how to track and measure success in reducing this backlog, and implement appropriate changes to the performance goals, measures, and targets in MSPB's Annual Performance Plans to ensure transparency in accomplishing this important goal. (Similar to strategies for objective 1B and 1D.)
3. Effectively and efficiently implement changes in adjudicating cases in accordance with changes in statute, regulation, or policy (e.g., the VA Accountability and Whistleblower Protection Act of 2017).
4. Improve and maintain adjudication case processing data, data systems, practices, and policies to ensure valid and reliable data for management and reporting purposes that comply with standard data practices and statutes (e.g., GPRAMA, WPEA, etc.).
5. Examine and assess current adjudication processes, agency records management processes, IT infrastructure, applications, resources, and expertise, and in consideration of changes in Governmentwide IT procurement and security requirements, develop requirements, plan for, and then implement new core adjudication business applications to support implementing e-Adjudication as a permanent shift from paper-based to automated electronic adjudication and records management. (Also a strategy for objective M4.)
6. Ensure adequate adjudication expertise and capacity through strategic workforce planning. (Also a strategy for objectives 1B and M1.)
7. Ensure continuity of expertise in legal and procedural issues through effective and efficient knowledge sharing and appropriate training of adjudication staff.
8. Review Board and court decisions, share significant changes with stakeholders, and determine and implement necessary changes to adjudication processes and procedures.
9. Monitor adjudication performance and ensure accountability for the adjudication process, the quality of adjudication data, the quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
10. Provide effective and impartial ADR services (including settlement and mediation) to meet the needs of the involved parties.
11. Ensure effective representation of MSPB in cases brought before other adjudicatory bodies, such as the CAFC, any circuit court for certain whistleblower appeals, U.S. district courts for mixed cases, and the U.S. Supreme Court.
12. Continue the automated survey process to sample and invite feedback from adjudication and ADR customers and make changes based on feedback, as appropriate.

13. Consider the future structure of ROs/FOs, and adjudication offices at HQ, including location, cost, schedule of lease renewals, availability of technology, and other factors to improve effectiveness and efficiency.
14. Explore the sharing of services/contracts between MSPB and its sister agencies (Office of Special Counsel (OSC), FLRA, Office of Government Ethics, etc.) for court reporting and videoconferencing facilities.

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

1. Provide effective and efficient processing of requests for enforcing MSPB decisions and improve the transparency of the enforcement process.
2. Work with new Board members to consider approaches to reducing the backlog of enforcement cases at HQ, determine how to track and measure success in reducing this backlog, and implement appropriate changes to the performance goals, measures, and targets in MSPB's Annual Performance Plans to ensure transparency in accomplishing this important goal. (Similar to strategies for objectives 1A and 1D.)
3. Ensure adequate adjudication expertise and capacity through strategic workforce planning. (Also a strategy for objectives 1A and M1.)
4. Ensure continuity of expertise in legal and procedural issues through effective and efficient knowledge sharing and appropriate training of adjudication staff.
5. Review Board and court decisions, share significant changes with stakeholders, and determine and implement necessary changes to adjudication processes and procedures.
6. Monitor adjudication performance and ensure accountability for the adjudication process, the quality of adjudication data, the quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
7. Ensure effective representation of MSPB in cases brought before other adjudicatory bodies, such as the CAFC, any circuit court for certain whistleblower appeals, U.S. district courts for mixed cases, and the U.S. Supreme Court.

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

1. Conduct independent, objective, and timely studies of the Federal merit systems and Federal management issues and practices in accordance with accepted research practices.
2. Periodically conduct a transparent process to develop and update the merit systems studies research agenda that includes feedback from studies stakeholders and customers. (See the merit systems studies research agenda for FY 2015-2018.)
3. Expeditiously and appropriately report findings and recommendations from merit systems studies that provide value to the President, Congress, Federal HR policymakers, practitioners, Federal managers, supervisors, employees, and other stakeholders and that positively impact the merit systems and Federal human capital management.
4. Work with new Board members to ensure timely publication of merit system study reports following the almost three year absence of such reports due to the lack of a quorum. Determine and implement appropriate changes to the performance goals, measures, and targets in MSPB's Annual Performance Plans to ensure transparency in accomplishing this important goal.

5. Publish *IoM* newsletter editions, research highlights, and other products that address timely, focused information about Federal merit systems and workforce management issues.
6. Provide relevant survey subject matter expertise and survey technical and operational requirements to support agency efforts under M4-2 to maintain a FedRAMP certified IT survey capability that has flexible survey design and administration, and Governmentwide compatibility in a secure, cloud-based environment, to conduct research surveys and collect other similar data to support MSPB's merit systems studies mission and internal program evaluation. (Related to objective M4.)
7. Administer periodic MPSs, and other specialized surveys, to assess and report on the overall health of the Federal merit systems, practice, and understanding of merit in the workplace, and occurrence of PPPs.
8. Ensure MSPB has the analytic workforce needed to conduct high-quality objective studies, ensure the value and impact of study findings and recommendations, and perform essential program evaluation responsibilities through strategic workforce management. (Also a strategy for objective M1.)

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

1. Maintain review of OPM rules, regulations, and significant actions and take action, as appropriate, to ensure adherence to MSPs and avoidance of PPPs.
2. Work with new Board members to consider approaches to reducing the backlog of requests for review of OPM regulations, determine how to track and measure success in reducing this backlog, and implement appropriate changes to the performance goals, measures and targets in MSPB's Annual Performance Plans to ensure transparency in accomplishing this important goal. (Similar to strategies for objectives 1A and 1B.)
3. Monitor scope of OPM significant action review; include a review of the significant actions of OPM in the MSPB AR.

Strategic Goal 2

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

1. Translate and deliver information from adjudication, merit systems studies, and OPM review into products designed to inform and influence actions by policymakers that will support merit, improve adherence to MSPs, and prevent PPPs.
2. Track citations of and references to MSPB's work in professional, academic, trade, and media publications (print and electronic) to ensure information about MSPB's work in protecting merit systems is disseminated appropriately.

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

1. Conduct outreach activities within available resources (e.g., conference presentations, practitioner forums, mock hearings, briefings, etc.) designed to improve the practice and understanding of merit, MSPs and PPPs, and that provide value to participants.

2. Translate information from adjudication, merit systems studies, and OPM review into outreach presentations and other products designed to inform and influence actions by practitioners and other stakeholders that will improve adherence to MSPs, prevent PPPs, and/or improve the understanding of a merit-based civil service or understanding of MSPB, its functions, and processes.
3. Consider a centralized catalog of presentations and the electronic, web-based delivery of outreach presentations to improve efficiency of outreach and reduce travel costs.
4. Continue tracking outreach events, and note when MSPB presents material that results in continuing legal education and continuing education unit credits to audience members, which may promote cost-effective methods to meet these requirements.
5. Consider and develop effective and efficient methods to improve the ability to obtain and use feedback from outreach participants and audience members to assess outreach success, improve quality of outreach, gather suggestions for improvement, and better address stakeholder needs, within resource constraints.

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

1. Develop educational standards, materials, and guidelines on merit, MSPs, PPPs, and the merit-based civil service to ensure excellent Government service to the public.
2. Develop and make available information and materials about MSPB's adjudication processes, outcomes, and legal precedents to support the parties' ability to prepare and file thorough and well-reasoned arguments in appeals filed with MSPB.
3. Encourage agencies to use MSPB's educational standards, materials, and guidelines to implement educational programs for Federal employees and the public by recognizing agencies' merit systems educational efforts on MSPB's website or in MSPB reports.
4. Develop and make MSPB products and educational information widely available through the website, social media outlets, and other appropriate avenues.

Management Objectives

Management Objective M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.

1. Hire and retain a diverse and highly qualified legal, analytic/research, and administrative workforce that can effectively accomplish and support MSPB's knowledge-based work.
2. Provide developmental experiences and access to training and educational resources (e.g., employee orientation, on-the-job training, developmental assignments, formal training experiences, education and training resources, and drills when appropriate, etc.) to ensure employees have the competencies necessary to perform MSPB's work, and have appropriate information on topics such as (but not limited to) ensuring safety and security of personnel and the workplace, effective and efficient use of telework, retirement planning and financial literacy, and other relevant topics. Consider collaborating with other agencies to obtain cost-effective training.

3. Use results from the FEVS and IS, and apply leadership and management skills to strengthen and maintain a culture to support a diverse, inclusive, and fully engaged workforce.
4. Considering the external factors and internal challenges that may affect MSPB's mission and operations, initiate and maintain a continual strategic human capital planning (SHCP) process to consider MSPB's most critical human capital requirements needed to achieve its mission and support functions and to achieve its human capital management objectives.
5. Over the long-term, use the SHCP process to evaluate MSPB office and grade structure, assess the need for SES positions, consider Senior Leader positions, streamline hiring authorities, use personnel flexibilities (e.g., not-to-exceed temporary positions, Intergovernmental Personnel Act assignments, etc.), and ensure adequate training and development.

Management Objective M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future.

1. Establish and communicate mission, support, and operational priorities to ensure achievement of agency objectives and goals.
2. Use people and budgetary resources effectively and efficiently to ensure adequate staff are available and have the competencies to accomplish our goals.
3. Communicate justification of resources (funds, people, operational requirements, and contingencies) necessary to accomplish MSPB's objectives (mission and support) including how resource levels and external factors (such as Governmentwide reform efforts) may impact MSPB performance.
4. Periodically consider the structure of HQ offices (including possible consolidation and/or outsourcing of support functions), and the structure and location of ROs/FOs including statutory requirements, costs, availability of technology, best practices in operations, and other factors to improve effectiveness and efficiency.
5. Periodically assess long-term contracts and interagency agreements (e.g., legal citation software, leases, HR services, financial management, payroll, etc.) to ensure effective and efficient service and value to MSPB.

Management Objective M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.

1. Develop, implement, and maintain stable and secure IT infrastructure (hardware, software, applications, processes, and systems) and information services programs, with sufficient resources and expertise (e.g., privacy, IT security, network administration, records and information management, data integrity, FOIA, etc.), to meet customer business needs and provide effective and efficient MSPB adjudication, enforcement, studies, OPM review, and administrative support programs.
2. Gather customer feedback from e-Adjudication customers, and other internal and external users as needed, and make changes to relevant applications and functionality, as appropriate.
3. Ensure availability and reliability of MSPB's IT infrastructure (i.e., hardware, systems, servers, internet, applications, and file storage and retrieval).
4. Ensure disaster recovery capability for existing data center.
5. Ensure effective and efficient support of internal and external IT customers.

6. Improve compliance with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)).
7. Comply with OMB Memorandum M-17-25, "*Reporting Guidance for Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure*," and related OMB and Department of Homeland Security (DHS) requirements.
8. Provide ongoing computer and professional development training for MSPB staff and IT personnel, respectively.

Management Objective M4: Modernize core business applications to achieve electronic adjudication and provide a web-based survey capability.

1. Examine and assess current adjudication processes, agency records management processes, IT infrastructure, applications, resources, and expertise, and in consideration of changes in Governmentwide IT procurement and security requirements, develop requirements, plan for, and then implement new core adjudication business applications to support implementing e-Adjudication as a permanent shift from paper-based to automated electronic adjudication and records management. (Also a strategy for objective A1.)
2. Ensure access to and encourage increased use of e-Appeal Online; and continue to improve efficiency by shifting from paper-based adjudication work processes and products to automated electronic work processes and products.
3. Ensure secure storage and effective use of workforce data (from OPM and other sources) in a web-based environment.
4. Comply with OMB Memorandum M-17-25, "*Reporting Guidance for Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure*," and related OMB and DHS requirements.
5. Provide ongoing computer and professional development training for MSPB staff and IT personnel.
6. Consider consolidating, outsourcing, or reallocating resources and personnel to other mission-critical areas as a result of modernizing our core business applications in the cloud.
7. Use information about technical and operational survey requirements provided by agency subject-matter experts to obtain and maintain a FedRAMP certified IT survey capability that has flexible survey design and administration, and Governmentwide compatibility in a secure, cloud-based environment, to conduct research surveys and collect other similar data to support MSPB's merit systems studies mission and internal program evaluation. (Related to objective 1C.)

Trends and Challenges that May Affect Agency Performance

Internal Management Challenges

As discussed below, there are a number of internal management challenges currently facing MSPB. The most significant internal issue affecting MSPB is the lack of quorum of Board members. Other significant internal challenges that could affect MSPB's ability to carry out its mission include other human capital issues and IT stability, security, modernization.

Lack of Board Quorum. As discussed in the introduction to this document, MSPB has been without a quorum of Board members since January 8, 2017. Additionally, MSPB has been without any Presidentially-appointed Senate-confirmed Board members since March 1, 2019. The lack of quorum has led to a backlog of PFRs and other cases at HQ awaiting Board decisions. This backlog totaled over 2,378 pending PFRs at the end of September 2019, and it is growing every day. We anticipate that it will take three years or longer to process the inventory of cases at HQ once new Board members begin their work. The lack of quorum also prevents MSPB from releasing reports of merit systems studies and promulgating regulations to accompany congressional changes in our jurisdiction or processes.

The lack of quorum prevented MSPB from setting FY 2018 and FY 2019 performance targets and rating results for several PGs and one strategic objective, including PFR processing timeliness, enforcement case processing, number of reports of merit systems studies published, and quality of initial decisions (because this measure is based on the issuance of PFR decisions). Selection of FY 2020 interim measures and targets for these goals cannot be determined until we have a confirmed Board. We also could not rate the PG on review of OPM regulations because the Board must issue decisions on request for regulatory review. Once a quorum is restored, MSPB will determine the most appropriate measures and targets for these PGs. The status of Board member nominations is provided on page 2 of this document.

Other Human Capital Challenges. In addition to the lack of quorum, over 35 percent of all MSPB employees, including over 47 percent of permanent AJs and adjudication managers involved with processing initial appeals, were eligible to retire between the end of FY 2019 and the end of 2022. Several other MSPB employees who hold key leadership positions are eligible to retire in the near future. In addition, it is challenging to ensure continued expertise when employees in critical, one-deep positions depart the agency through retirement or transfer. For example, MSPB's Budget Officer retired in January 2018 and the new Budget Officer arrived in February 2019. The EEO Director departed in November 2018 and the new EEO Director arrived in mid-July 2019. Other critical, one-deep positions with recent turnover include the Procurement Officer and Records Officer. MSPB has also had a series of acting officials in key leadership roles including the CIO/Director of the Office of Information Resources, Clerk of the Board, General Counsel, and most recently, Executive Director. A new General Counsel arrived in October 2018, and the Acting CIO was designated to also serve as Acting Executive Director. Appointment of a permanent Executive Director will await the arrival of a new Chairman.

MSPB began a SHCP process three years ago to focus on its most critical long-term human capital needs. The plan focused on ensuring a reasonable hiring rate of newer adjudication employees to form a pool for succession management in adjudication, planning for continuing to perform the functions of those employees in one-deep, mission-critical positions when there are vacancies, and updating our IT expertise. Although MSPB has been able to recruit well-qualified individuals for its adjudicatory and other professional positions, it nevertheless often takes two to three years for these new staff to reach full performance level. Assessment of our SHCP process and identifying ways to strengthen this

process have been included in our program evaluation plan. This is a timely endeavor given the impending arrival of new Board members and will likely involve obtaining external SHCP expertise to assist us. The success of any strategic human capital planning effort depends on continued stability in funding for FY 2020 and beyond. This is necessary to retain expertise, improve competencies, sustain employee engagement, continue to improve our processes, and at the same time, continue to perform our statutory and support functions effectively and efficiently. Retaining resources is even more critical given recently enacted and possible future legislative and administrative changes that may affect our jurisdiction and processes.

On June 21, 2018, the Supreme Court issued its decision in *Lucia, et al. v. Securities and Exchange Commission (SEC)*, Docket No. 17-130. The Court held that SEC administrative law judges (ALJs) are inferior officers under the Appointments Clause of the Constitution because they exercise significant authority pursuant to the laws of the United States. Based on this finding, the Court held that SEC ALJs must be appointed in conformity with the requirements of the Appointments Clause, which requires that inferior officers either be Presidentially-nominated and Senate-confirmed or appointed through authority vested by Congress in the President, the courts of law, or the heads of departments. The parties conceded that SEC ALJs were not appointed in accordance with the Appointments Clause. Because the petitioner in *Lucia* originally had a hearing before a constitutionally invalid ALJ, the Court found that he was entitled to a new hearing before a different, properly appointed ALJ.

Lucia has the potential to affect MSPB from both an adjudicatory and operational standpoint. Although the MSPB does not currently employ any ALJs—we utilize other agencies' ALJs to adjudicate certain types of appeals through interagency agreements—we do hear appeals of adverse actions taken against ALJs under 5 U.S.C. § 7521. *Lucia* may affect MSPB case law regarding ALJs. In addition, some parties have raised *Lucia* challenges regarding MSPB's AJs. If *Lucia* challenges regarding MSPB AJs are sustained, appellants who raised successful challenges may be entitled to new proceedings before an officer appointed in conformity with the Appointments Clause.

The President's May 25, 2018 EOs 13836, 13837, and 13839[6] also affect MSPB from both an internal and external standpoint. Internally, the most significant issue is the requirement to renegotiate provisions of the collective bargaining agreement (CBA) between MSPB and its professional association that are inconsistent with the requirements and priorities set forth in the orders. MSPB also must conform its non-CBA performance management guidance and practices. A panel of the U.S. Court of Appeals for the D.C. Circuit recently overturned a lower court decision that declared invalid several provisions of the EOs relating to collective bargaining and official time. The D.C. Circuit determined that Federal unions cannot challenge the EOs in Federal court, but must instead first challenge them before the FLRA.[7] On August 30, 2019, multiple Federal employee unions jointly filed a petition for rehearing *en banc*, seeking to overturn the decision of the D.C. Circuit.[8] On September 25, 2019, the D.C. Circuit denied the petitions for rehearing.[9] On October 3, 2019, the D.C. Circuit issued its mandate, closing the case.[10] Thus, the EOs are now in effect. Information about how the EOs may affect MSPB's adjudication and settlement programs is contained in the section on external factors.

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[6] EO 13836, *Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining*; EO 13837, *Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use*; and EO 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit Systems Principles*.

[7] *American Federation of Government Employees, AFL-CIO v. Trump*, No. 18-5289, 2019 WL 3122446 (D.C. Cir. July 16, 2019).

[8] *American Federal of Government Employees, et al, v. Trump*, No. 18-5289, Appellee's Petition for Rehearing En Banc (D.C. Cir. Aug. 30, 2019) (ECF no. 1804329).

[9] *American Federal of Government Employees, et al, v. Trump*, No. 18-5289, Order Denying Petition for Rehearing En Banc (D.C. Cir. Sept. 25, 2019) (ECF no. 1807961).

[10] *American Federal of Government Employees, et al, v. Trump*, No. 18-5289, Mandate Issued (D.C. Cir. Oct. 3, 2019).

IT Stability, Security, and Modernization. MSPB is committed to transitioning to 100 percent electronic adjudication (e-Adjudication) to process cases more efficiently and improve service to our customers. In addition, e-Adjudication will support MSPB's efforts to comply with Governmentwide initiatives involving improving efficiency, effectiveness, accountability, and customer service; Federal paperwork reduction; and records management directives requiring that agencies convert records to electronic format. MSPB is also focused on ensuring it has the IT infrastructure and the IT and information services expertise to execute its mission and modernize its systems, including implementing e-Adjudication and its new, FedRAMP certified, web-based survey capability.

Beginning in FY 2017, MSPB pivoted away from continuing to customize our existing legacy business applications that are nearing end-of-life. In FY 2018, we developed comprehensive requirements to identify the "next generation" of MSPB's core business applications to fully enable e-Adjudication of MSPB appeals (while retaining the option for paper processing when necessary). In FY 2019, we selected a contractor to design and implement the new core business applications and began configuration of the e-Appeal and initial appeals processing components. We expect to complete implementation of core business applications and related IT modernization projects by the end of calendar year 2021. This multi-year effort will require a significant initial investment of resources, but in the end, is expected to yield important improvements in technology, systems, productivity, and efficiency.

MSPB must administer surveys of the Federal workforce and others to provide empirical data to support its merit systems studies research responsibilities. Implementing past surveys has been challenging due to limited internal IT expertise needed to support the survey process and ensure compliance with new and rapidly changing IT security requirements. Meeting these security requirements is necessary to obtain the cooperation and support of the MPS and other surveys by Federal agencies. Long-term effectiveness of the merit system studies program requires that MSPB have a more stable and flexible capacity to collect survey and other similar data in a secure, cloud-based environment.

MSPB's 2019 IS results indicated that employees have more positive views of the availability and reliability of MSPB's IT infrastructure continues to increase. However, given the importance of continuing with effective modernization, IT expertise is an important part of MSPB's SHCP.

Significant External Trends and Issues

Although discussed in the preceding section on internal management challenges, the status of nominations and restoration of a quorum is beyond MSPB's control, also making it an external factor. Other than the lack of Board members, the most significant external trends or issues affecting MSPB's ability to carry out its mission to protect the Federal merit systems include changes in law, jurisdiction, and appeals processes; and Government reform initiatives, including budget challenges, and workforce reshaping. If pending legislation does not change MSPB's workload or adjudication complexity, MSPB will require stable and sufficient resources in future years to perform its statutory functions effectively and efficiently. However, additional resources may be needed to meet new legislative changes to MSPB's adjudication procedures and simultaneously meet potential changes caused by other external factors.

Changes in Law, Jurisdiction, and Appeals Processes. The APR-APP for 2018-2020 contains a thorough review of laws passed in FY 2017 and FY 2018 that continue to have a potential to directly impact MSPB jurisdiction and operations, and indirectly impact the agency through changes to Federal human capital management policy and practice. Among these laws is the VA Accountability and

Whistleblower Protection Act of 2017.[11] MSPB saw an increase in the number of VA cases filed in its regional and field offices since this law took effect. The increase in cases emphasizes the need for MSPB to promulgate regulations regarding how it will address any differences in procedures necessitated by the VA law. However, we have been unable to promulgate substantive regulations due to the lack of quorum.

In FY 2019, no new legislation was been enacted that impacts MSPB's adjudicatory or studies functions. However, it is worth noting that section 5721 of the NDAA for FY 2020, passed on December 20, 2019, amended the PPP delineated in 5 U.S.C. 2302(b)(8) to specifically protect disclosures to Congress. Expanding the definition of disclosures to include those made to Congress could increase the number of appeals involving whistleblowing.[12]

In the last APR-APP we reported that the President's May 25, 2018 EO 13839 may significantly affect MSPB's case processing due to its prohibition on agencies entering into settlement agreements that "erase, remove alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records[.]" Historically, MSPB has resolved a high percentage of cases through settlement, including many settlements that involve such terms or other alterations to the appellant's personnel records. The settlement rate dropped over 6 percent from FY 2017 compared to FY 2019 (53.36 percent compared to 47.02 percent, respectively). Over time, the percentage of cases closed through settlement may continue to decrease. This, in turn, would likely increase the percentage of cases requiring a hearing, as well as the complexity of their adjudication. This may lead to an increase in the processing time for the cases that may have been settled in the past, with the secondary effect of increasing processing time for other cases when more time is spent on cases that are no longer likely to be settled. The other May 2018 EOs (13836 and 13837) could also lead to a significant increase in case receipts insofar as they direct agencies to endeavor to renegotiate CBAs to exclude adverse actions from grievance procedures. Similarly, these two EOs may result in fewer appellants who are represented on appeal, and union representatives may have less time to devote to representation duties. This may impact the quality of representation and therefore increase case processing times.

Over time, these changes could impact MSPB operations both directly and indirectly. Such changes are likely to affect MSPB's appeals workload, the need for changes in MSPB procedures, and the need for additional MSPB resources. Changes in law and jurisdiction also emphasize the importance of MSPB's responsibility to conduct studies of Federal merit systems and exercise its statutory authority to review OPM's significant actions to ensure that the Federal workforce continues to be managed in accordance with MSPs and free from PPPs. These changes increase the importance of MSPB's 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. These outreach and educational functions improve workforce management over time and may reduce the time and cost of processing appeals for agencies, appellants, and the Government.

Government Reform, Budget, and Workforce Reshaping. In March 2017, OMB issued EO 13781, *Presidential Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch*,[13] followed with implementing guidance in April 2017, in OMB Memorandum M-17-22, *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*.[14] In March 2018,

[11] Pub. L. 115-41.

[12] Pub. L. 116-92, the NDAA for FY 2020.

[13] EO 13781, March 13, 2017, at https://www.whitehouse.gov/the-press-office/2017/03/13/presidential-executive-order-comprehensive-plan-reorganizing-executive.

[14] OMB, April 12, 2017, at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-22.pdf.

OMB published the *President's Management Agenda (PMA)*,[15] and in June 2018 it published the *Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations*.[16] These plans outline Governmentwide changes as well as specific changes in several Government organizations affecting a variety of Government services. Some recommended changes are within the ability of the various agencies to implement, and some require action by Congress. In March 2019, OMB Published *Celebrating One Year of Progress: The President's Management Agenda Anniversary Report*, which includes specific accomplishments in the year since the PMA was published.[17] In July 2019, OMB published *One Year Update: Reform Plan and Reorganization Recommendations*.[18] Agencies are already beginning to implement their respective reform plans.[19]

Certain actions that may be taken by agencies as part of these reform efforts would be likely to have an effect on MSPB's workload. Workforce reduction actions can result in adverse actions affecting Federal employees, and affected employees may file appeals of those actions with MSPB. Reduction in force (RIF) actions, and some cases involving Voluntary Early Retirement Authority or Voluntary Separation Incentive Payment, are also appealable to MSPB. Historical trends indicate that increasing RIFs would lead to an increase in the number of appeals filed with MSPB, and RIF appeals are often more complex than some other types of appeals. Workforce reshaping also may affect workforce management, employee engagement, and employee effectiveness. Maintaining MSPB's strong merit systems studies and OPM review functions helps ensure the workforce continues to be managed under the MSPs and avoids PPPs. Indeed, the Appendix to OMB Memorandum M-17-22 references several MSPB merit systems study reports, which provide useful information to agencies as they implement changes to achieve the memorandum's objectives.

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[15] Executive Office of the President of the United States, March 20, 2018, at https://www.whitehouse.gov/wp-content/uploads/2018/03/Presidents-Management-Agenda.pdf.

[16] Executive Office of the President of the United States, June 21, 2018, at https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf.

[17] Executive Office of the President of the United States, March 20, 2019, at https://www.performance.gov/PMA-celebrating-one-year-of-progress/.

[18] Executive Offices of the President of the United States, July 30, 2019, at https://www.performance.gov/one-year-update-reform-reorg/.

[19] See *Statement of Scott Cameron, Principle Deputy Assistant Secretary for Policy, Management, and Budget, U.S. Department of the Interior, Testimony before the House Natural Resources Subcommittee on Oversight and Investigations Hearing on the Department of the Interior's Reorganization Effort*, April 30, 2019, at https://www.doi.gov/ocl/doi-reorganization, *Statement of Emily W. Murphy Administrator of the U.S. General Services Administration, Before The United States Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Regulatory Affairs and Federal Management*, July 26, 2018, at https://www.gsa.gov/about-us/newsroom/congressional-testimony/the-challenges-and-opportunities-of-the-proposed-government-reorganization-on-opm-and-gsa, and *USDA to Realign ERS with Chief Economist, Relocate ERS & NIFA Outside DC*, August 8, 2018, at https://www.usda.gov/media/press-releases/2018/08/09/usda-realign-ers-chief-economist-relocate-ers-nifa-outside-dc.

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Program Evaluation and Performance Measurement

Program Evaluation

MSPB programs broadly affect Federal merit systems and Federal management, and they generate significant value for Federal agencies and the public. Effective program evaluation is critical to ensuring that MSPB can continue to achieve its mission effectively and efficiently and to provide value now and in the future. Emphasis on program evaluations has increased in recent years and was listed in the Administration's Reform Plan released June 21, 2018 as an area that needs to be strengthened.[20] Program evaluations, as well as performance measurement, also are related to the Foundations for Evidence-Based Policymaking Act of 2018.[21] MSPB is committed to high-quality program evaluation. However, ensuring our ability to perform our statutory mission, as well as ensuring compliance with requirements of the GPRAMA and recent program evaluation guidance from OMB, could require increased resources and program evaluation staff.

A relatively small increase in MSPB's program evaluation resources and staff could likely yield a large return in efficiency and cost savings for MSPB. In turn, this would improve the value MSPB brings to agencies, Federal employees, individual parties to cases filed with MSPB, and to the public. If internal program evaluation resources are not available, contractor support is a viable, but potentially more expensive option for conducting tasks associated with program evaluations. This option is most useful when the evaluation topic is technical in nature, beyond the knowledge of existing program staff, or when the evaluation is focused on program evaluation itself or on the office within which program evaluation activities are conducted.

Performance Measurement: Verifying and Validating Performance Information

Most quantitative measures of MSPB's adjudication performance come from its automated case management system (Law Manager), which tracks location, timeliness, outcomes, and other information about cases filed with MSPB. Other quantitative and qualitative performance measures are reported by MSPB's program offices. MSPB also collects external customer satisfaction data from adjudication, ADR and (more rarely) merit systems studies customers and stakeholders. Several of MSPB's management PGs use data from OPM's FEVS. MSPB also has an active internal survey program, which measures various management PGs contained in MSPB GPRAMA reports, and provides customer feedback and customer service information on internal administrative programs such as IT, information services, HR, facilities, travel, procurement, and EEO programs.

MSPB has made many recent improvements in performance measurement. Even so, recent data integrity issues, coupled with the emphasis on 100 percent e-Adjudication and new core business applications, continue to highlight the importance of continuous improvement in performance measurement. MSPB needs to consider the status of its performance measurement functions, and seek to develop an agency-wide performance measurement policy that will improve oversight, accountability, and coordination of performance measurement processes. Such a policy will help ensure the consistency, validity, and verifiability of the performance data used to manage MSPB programs and included in agency reports. MSPB will develop an agency policy for performance measurement utilizing findings from its data integrity and regional case processing evaluations and the results of the requirements gathering process for new core business applications. The recent

[20] Executive Office of the President of the United States, June 21, 2018, *Delivering Government Solutions for the 21st Century: Reform Plan and Reorganization Recommendations*, pg. 118.

[21] Pub. L. 115-435, signed by the President on January 14, 2019.

work on developing a Federal Data Strategy is also relevant to agency program evaluation and performance measurement.[22]

Results of Program Evaluation Activity

Government Accountability Office assessment of processing WPEA cases at MSPB. GAO's 2017 report on the WPEA recommended updating the user guide for entering WPEA data at MSPB and improvements to MSPB's data quality checks to help identify discrepancies in WPEA data. In addition, MSPB has conducted an initial internal assessment of the data entry and data checking processes used for adjudication case management, including, but not limited to, whistleblower data. Finally, MSPB's considerable efforts in FY 2018 to define the requirements necessary for modernizing its core business applications also included information about Law Manager, our current case management system, which will serve as a foundation for updating the data entry user guide and defining appropriate quality checks in the reporting process. Developing the requirements necessary to update our core business applications, including a next-generation electronic case management system, also served as a surrogate evaluation of Law Manager. No additional evaluation of Law Manager will be performed since it is likely that it will be replaced with a new core business application in the next two years. In addition, the process used to identify the requirements for new core business applications provided essential background information as the initial steps in evaluating the functions of the Office of Regional Operations (ORO).

Define adjudication process/develop requirements for new core business applications. This activity involves validating the business and technical requirements for these applications, i.e., our case management, document management and document assembly systems, to support e-Adjudication, and developing a prioritized path for upgrades necessary to support our business processes. In FY 2017, we began by developing a PWS to create our requirements documentation. The contract was awarded in FY 2018 and work was completed in the 3rd quarter of 2018. In FY 2019, MSPB selected the contractor for design and implementation of the new business applications.

Program Evaluation Status

MSPB Program Evaluation Status		
Program/ System to Evaluate	**Evaluation Start Year**	**Status**
Case processing and data integrity in the ROs/FOs	**2017**	Initial information was provided by the GAO WPEA report. Additional information was provided in the internal assessment of data entry processes for case management data. In FY 2018, further information was provided in conjunction with our efforts to define the adjudication process as part of the initiative to develop requirements for new core business applications. Results of these efforts will help ensure compliance with GAO's recommendations from the WPEA report and the development of an agency-wide performance measurement policy. In addition, the automated process for surveying initial appeals and ADR participants provides ongoing data to inform next steps in this program evaluation. MSPB's adjudication process may also be affected by legislative changes in the appeals process including specific timeliness and procedural requirements. A preliminary draft report was prepared by OPE describing how key appeals data are collected and reported in Law Manager and providing recommendations for improving data quality. Next steps in this program evaluation, including changes in scope, will await results from ongoing activities, changes in legislation, and direction from a new Chairman.

[22] See https://strategy.data.gov/.

Functions of ORO	**2018**	In FY 2018, we developed requirements for modernizing our core business applications, including business process narratives, breakdowns of internal and external users groups, and data flow diagrams. This baseline information provides a starting point to help structure and inform any evaluation of our adjudicatory processes. While program evaluation of ORO functions was not the focus of the requirements development effort, it was helpful in better understanding our processes and systems. Further steps in conducting an evaluation of ORO functions will await guidance from a new Chairman.

Proposed Program Evaluation and Performance Measurement System Review Schedule

Efforts to develop an agency policy for performance measurement, verification, and validation resulted in realization that such a policy has implications for and is related to Governmentwide policy efforts involving data quality and integrity, data governance, and related issues. This work continued in FY 2019 as resources allowed. Based on the availability of resources, a projected schedule for program evaluation activities through FY 2021 is provided below. Additional specifications for these evaluations and changes in the evaluation focus or schedule may occur when the quorum is restored and we have a new Chairman.

Program/Performance Measurement System	Evaluation Start Year
Data integrity and case processing in the ROs and FOs	2017
Functions of ORO	2018 (rescheduled from 2020)
Implementation of SHCP process	2020
Assess agency telework usage and reporting	2020
Administrative functions of the Office of the Clerk of the Board	2021

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Appendix A: Information about FY 2019 Whistleblower Appeals

In accordance with the WPEA, MSPB is providing this information about whistleblower appeals in FY 2019. This report reflects cases processed from October 1, 2018, through September 30, 2019, and includes data on receipts and outcomes of initial appeals, and receipts of PFRs, in which violations of 5 U.S.C. § 2302(b)(8) and/or 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D) were alleged.[23] Adjudicating appeals is an ongoing process and appeals are often closed in a different year than that in which they were received. Therefore, the figures for initial appeals (or cases) received (i.e., Figure 1) and outcomes of initial appeals processed (i.e., Figures 3 and 6) in any given year will not be comparable. Data for PFRs received with claims related to whistleblowing are included in Figure 9. Data on PFR outcomes for whistleblower cases are not included in this report, as no PFR decisions were issued by the Board at HQ in FY 2019 due to the continued lack of quorum.[24]

There generally are two types of appeals that can involve claims of reprisal under §§ 2302(b)(8) and (b)(9). An otherwise appealable action (OAA) appeal involves an action that is directly appealable to the Board, such as a removal, demotion, or suspension of more than 14 days. In such an appeal, MSPB will review both the appealable action and the claim of reprisal for engaging in protected activity as an affirmative defense. An individual right of action (IRA) appeal – which may be based on an action that could have been appealed directly to the Board or on a less severe action that is not directly appealable – is limited to the issue of whether the action was taken because of protected activity. In this kind of case, the individual can appeal the claim of reprisal to the Board only if he or she files a complaint with the Office of Special Counsel (OSC) first, and OSC does not seek corrective action on the individual's behalf.[25]

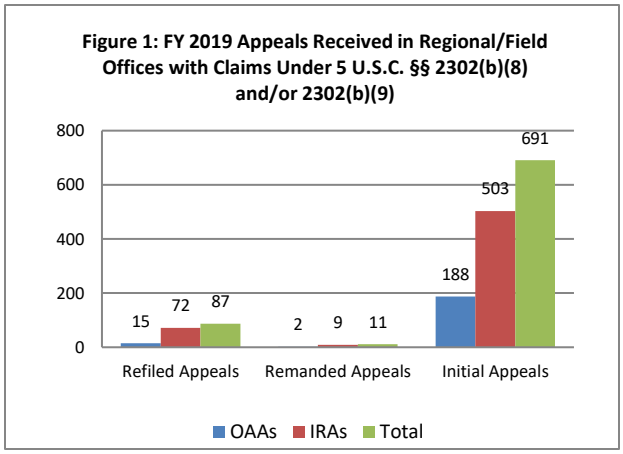


Figure 1 displays data on the number and types of appeals that MSPB received in FY 2019 in which violations of 5 U.S.C. § 2302(b)(8) and/or (b)(9) were alleged. Appeals "received" by ROs/FOs fall into three categories: initial appeals, remanded appeals, and refiled appeals. "Initial appeals" are new appeals filed by an appellant for the first time and thus represent new cases alleging reprisal. "Remanded appeals" are appeals that were previously adjudicated by a RO/FO, but which have been remanded on PFR by the Board at HQ, or by a Federal circuit court on appeal of a final Board decision.[26] "Refiled appeals" are appeals that are refiled – by the appellant or on the AJ's own motion – because they were previously dismissed without prejudice (DWOP) to refiling. A DWOP is a procedural option that allows for the dismissal and subsequent refiling of an appeal, often to allow the parties more time to prepare for the litigation of their cases.

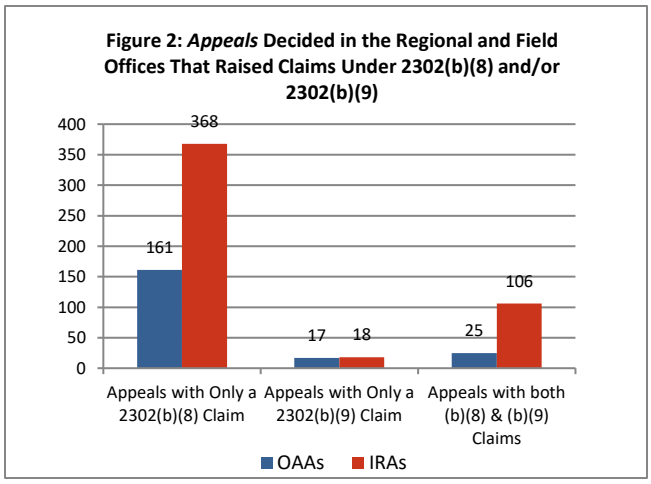
[23] This report generally refers to claims raised under 5 U.S.C. § 2302(b)(9); however, this report does not include claims raised under § 2302(b)(9)(A)(ii), as 5 U.S.C. § 1221(a) allows appellants to seek corrective action from MSPB as a result of prohibited personnel practices described only in § 2302(b)(8) or § 2302(b)(9)(A)(i), (B), (C), or (D).

[24] Since January 8, 2017, the Board has had no quorum, and since March 1, 2019, the Board has had no Presidentially-appointed, Senate-confirmed Board members. Since the lack of quorum began, no PFR decisions have been issued by the Board at HQ.

[25] Complaints in IRA appeals go first to OSC for review and, if warranted, OSC conducts an investigation. According to OSC, it is during this process that agencies often choose to take corrective action or settle an issue informally before OSC files a case with MSPB. MSPB adjudicates IRA appeals that have had the chance to be resolved while at OSC, but OSC did not seek corrective action.

[26] In FY 2019, there were no appeals remanded by the Board, as no Board decisions were issued on PFRs due to the lack of quorum. All remanded appeals in Figure 1 are cases that were remanded by a Federal circuit court on appeal of a final Board decision.

Remanded or refiled appeals are not new cases; they are separately docketed appeals that are related to initial appeals filed earlier in the same FY or in a prior FY. If the related initial appeal was filed in the same FY, it would be included in the number of "initial appeals." Because the ROs/FOs must process and issues decisions in remanded and refiled appeals, these appeals are considered part of MSPB's workload of appeals containing claims under §§ 2302(b)(8) and/or 2302(b)(9).



An appellant can file an appeal alleging a violation of § 2302(b)(8) only, a violation of § 2302(b)(9) only, or a violation of both.[27] Figure 2 depicts the number of appeals, both OAA appeals and IRA appeals, that were decided in FY 2019 in the regional and field offices and whether the appeal contained (a) a claim(s) under § 2302(b)(8) only; (b) a claim(s) under § 2302(b)(9) only; or (c) claims under both §§ 2302(b)(8) and (b)(9).

Figure 3 breaks down the totals displayed in Figure 2 for OAA appeals by depicting the outcomes of OAA appeals decided in the ROs/FOs in which violations of § 2302(b)(8) and/or (b)(9) were alleged. It is important to note that the outcome of an OAA *appeal* is separate from the outcome of a § 2302(b)(8) or (b)(9) *claim*.[28] An OAA appeal can be dismissed for a variety of reasons that have nothing to do with the merits of any reprisal claim raised therein. For example, the appeal may be untimely filed, the action or the appellant might be outside the Board's appellate jurisdiction, or the appellant might have made a binding election to challenge the action in another forum (such as through a negotiated grievance or arbitration procedures). This figure includes appeals that were withdrawn and appeals that were DWOP.[29] Cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

Figure 3: Outcomes in OAA *Appeals* Decided in the Regional and Field Offices

Types of Claim(s) Raised	DWOP	Settled	Withdrawn	Dismissed (Other than DWOP)	Adjudicated on the Merits	Total
Section 2302(b)(8) Only	18	29	6	59	49	161
Both sections 2302(b)(8) and (b)(9)	2	2	2	4	15	25
Section 2302(b)(9) Only	0	1	1	4	11	17

[27] Sections 2302(b)(8) and (b)(9) prohibit reprisal against an employee or applicant for employment based on different types of protected activity. Section 2302(b)(8) prohibits reprisal because of any disclosure that the employee or applicant reasonably believes evidences certain enumerated categories of wrongdoing. Employees who allege a violation of (b)(8) are typically referred to as alleging "reprisal for whistleblowing." Section 2302(b)(9)(A)(i) prohibits reprisal because of the exercise of any appeal, complaint, or grievance right with regard to a violation of § 2302(b)(8). Section 2302(b)(9)(B) prohibits reprisal because of testifying for or otherwise assisting any individual in the exercise of any right under § 2302(b)(9)(A)(i) or (ii). Section 2302(b)(9)(C) prohibits reprisal because of cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency or OSC. Section 2302(b)(9)(D) prohibits reprisal for refusing to obey an order that would require the individual to violate a law.

[28] The WPEA requires MSPB to report outcomes of appeals; however, when possible, MSPB additionally reports and summarizes the outcomes of claims.

[29] Note that DWOP cases are listed here for completeness, but do not reflect the final outcomes of whistleblower issues. DWOP cases can be refiled for final review of these issues.

In a case in which an appellant raises both § 2302(b)(8) and (b)(9) claims, the outcomes of those claims may differ.[30] Therefore, we are reporting the outcome of both (b)(8) and (b)(9) claims for cases in which both claims were raised and the OAA appeal was adjudicated on the merits, as depicted in Figures 4 and 5 below.

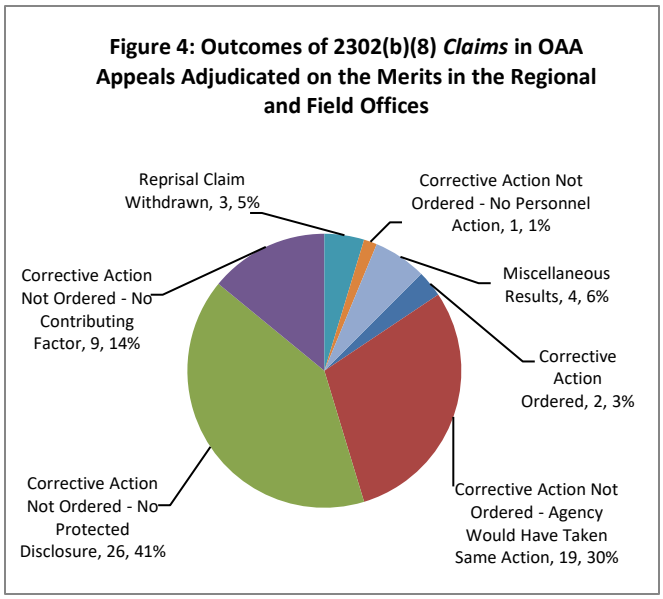


Figure 4 displays the resolution of § 2302(b)(8) claims within the 64 OAA appeals adjudicated on the merits in the ROs/FOs.[31] It includes both the 49 OAA appeals adjudicated on the merits with a § 2302(b)(8) claim only, as well as the 15 OAA appeals adjudicated on the merits with both § 2302(b)(8) and (b)(9) claims, as referenced in Figure 3.

The fact that corrective action is not ordered in an OAA appeal does not necessarily mean that the appellant obtained no relief. For example, in a removal appeal in which the appellant alleges reprisal, the Board could reverse the removal action because the agency failed to prove that the appellant committed the charged misconduct, or it could mitigate the removal penalty, while also finding that the appellant failed to establish reprisal. In any appeal involving a reprisal claim, the Board shall order corrective action for the reprisal claim if the appellant has demonstrated that: (1) he or she made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against him or her; and (3) his or her protected disclosure was a contributing factor in the personnel action. However, corrective action shall not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Figure 5 depicts the resolution of § 2302(b)(9) claims within the 26 OAA appeals adjudicated on the merits in the ROs/FOs. This figure includes the 11 OAA appeals adjudicated on the merits with a § 2302(b)(9) claim only and the 15 OAA appeals adjudicated on the merits with both § 2302(b)(8) and (b)(9) claims, as referenced in Figure 3. Figure 4 divides the outcomes of § 2302(b)(8) claims within OAA appeals adjudicated on the merits into subcategories of "Corrective Action Not Ordered" (i.e., no contributing factor, no protected disclosure, no personnel action, and the agency would have taken the same action). However, Figure 5 displays the outcomes

Figure 5: Outcomes of § 2302(b)(9) *Claims* in OAA Appeals Adjudicated on the Merits in the Regional/Field Offices

Corrective Action Ordered	Corrective Action Not Ordered	Claim Withdrawn	Total
1	25	0	26

[30] For example, an appellant may allege that he was removed in violation of § 2302(b)(8) for disclosing to his supervisor his belief that a practice at the agency endangered public health. In the same appeal, he also may allege that he was removed in violation of § 2302(b)(9) for testifying in a coworker's MSPB appeal which involved remedying a violation of § 2302(b)(8). In such a case, the appellant may decide to withdraw his § 2302(b)(9) claim, but prevail on his (b)(8) claim. Under that scenario, the outcome of the (b)(9) claim would be "Withdrawn," whereas the outcome of the (b)(8) claim would be "Corrective Action Ordered."

[31] Figure 4 also includes a category of "Miscellaneous Results," which represents OAA appeals that were adjudicated on the merits but wherein the § 2302(b)(8) claims in those cases were not adjudicated on the merits. An AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. For example, an AJ may strike a reprisal claim as a sanction for an appellant's repeated failure to comply with the AJ's orders, or determine that the Board is precluded from considering the reprisal claim because a security clearance determination is at issue.

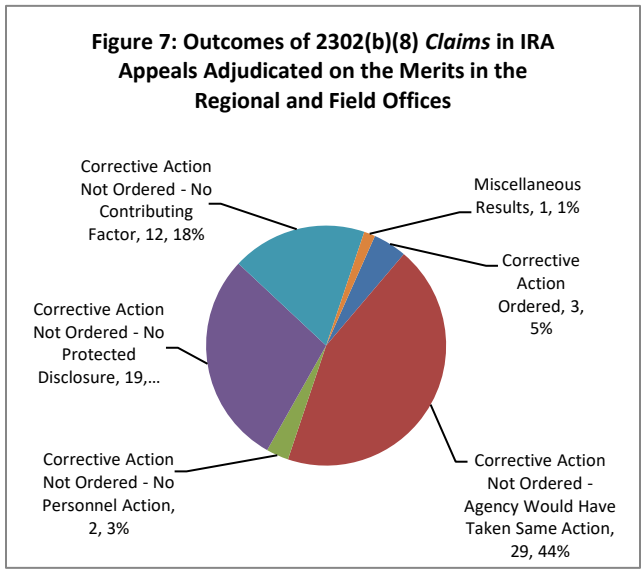
of § 2302(b)(9) claims within OAA appeals adjudicated on the merits only in the broader categories of "Corrective Action Ordered," "Corrective Action Not Ordered," and "Claim Withdrawn." Additionally, the "Corrective Action Not Ordered" category in Figure 5 includes OAA appeals in which the § 2302(b)(9) claim was not reached. As explained above with respect to Figure 4, an AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. As previously noted, the outcome of an *appeal* is separate from the outcome of a § 2302(b)(8) or (b)(9) *claim*.

Figure 6: Outcomes in IRA Appeals Decided in the Regional and Field Offices

Type of Claim(s)	DWOP	Settled	Withdrawn	Dismissed, Failure to Exhaust	Dismissed, Other Grounds	Adjudicated on Merits	Total
Section 2302(b)(8) Only	77	56	39	38	121	37	368
Both sections 2302(b)(8) and (b)(9)	15	17	4	8	33	29	106
Section 2302(b)(9) Only	3	0	0	0	8	7	18

Figure 6 breaks down the totals displayed in Figure 2 for IRA appeals by depicting the outcomes of those cases decided in the regional and field offices in which violations of § 2302(b)(8) and/or (b)(9) were alleged. In an IRA appeal, an appellant "shall seek corrective action from OSC before seeking corrective action from the Board."[32] If an IRA appeal is dismissed for "failure to exhaust" (i.e., because the appellant failed to first seek corrective action from OSC), the appellant can file a new IRA appeal after fulfilling the administrative exhaustion requirement.[33] Figure 6 also includes IRA appeals that were dismissed without prejudice.[34] Also, as in OAA appeals, cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

Figure 7 depicts the resolution of § 2302(b)(8) claims within the 66 IRA appeals adjudicated on the merits in the ROs/FOs. It includes the outcomes of the 37 IRA appeals adjudicated on the merits with a § 2302(b)(8) claim only and the 29 IRA appeals adjudicated on the merits with both § 2302(b)(8) and (b)(9) claims, as referenced in Figure 6. Just as in an OAA appeal, the Board shall order corrective action for the reprisal claim in an IRA appeal if the appellant has demonstrated that: (1) he or she made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against him or her; and (3) his or her protected disclosure was a contributing factor in the personnel action. However, corrective action shall not be



[32] 5 U.S.C. § 1214(a)(3).

[33] In Figure 6, within the category of "Dismissed, Other Grounds," the 8 IRA appeals in which a violation of § 2302(b)(9) only was alleged include IRA appeals that were dismissed for failure to exhaust.

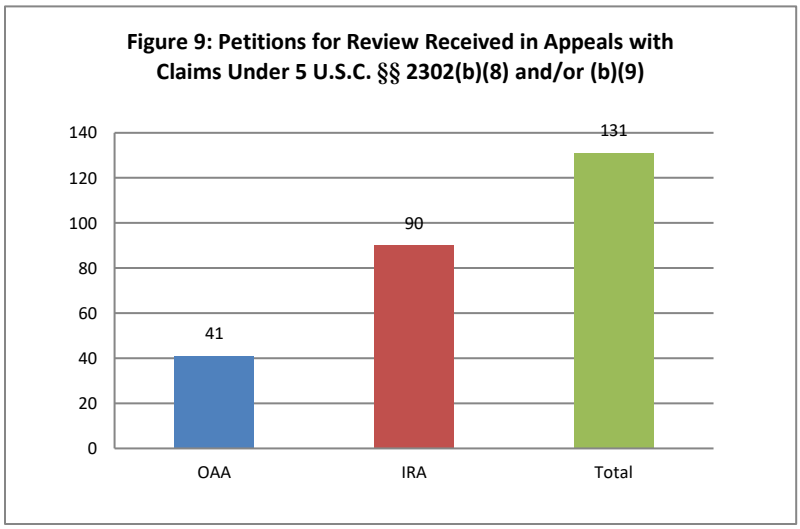
[34] Note that DWOP cases are listed here for completeness, but do not reflect the final outcomes of whistleblower issues. DWOP cases can be refiled for final review of these issues.

ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Figure 8 depicts the resolution of § 2302(b)(9) claims within the 36 IRA appeals adjudicated on the merits in ROs/FOs. This includes the outcomes of the 7 IRA appeals adjudicated on the merits with a § 2302(b)(9) claim only and the 29 IRA appeals adjudicated on the merits with both § 2302(b)(8) and (b)(9) claims, as referenced in Figure 6. While Figure 7 divides the outcomes of § 2302(b)(8) claims within IRA appeals adjudicated on the merits into subcategories of "Corrective Action Not Ordered" (i.e., no contributing factor, no protected disclosure, no personnel action, and the agency would have taken the same action), Figure 8 displays the outcomes of § 2302(b)(9) claims within IRA appeals adjudicated on the merits only in the broader categories of "Corrective Action Ordered," "Corrective Action Not Ordered," and "Claim Withdrawn." The "Corrective Action Not Ordered" category includes IRA appeals in which the § 2302(b)(9) claim was not reached.

Figure 8: Outcomes of § 2302(b)(9) Claims in IRA Appeals Adjudicated on the Merits in the Regional and Field Offices

Corrective Action Ordered	Corrective Action Not Ordered	Claim Withdrawn	Total
3	33	0	36



An appellant or an agency dissatisfied with an AJ's initial decision on an OAA or IRA appeal may file a PFR with the full Board at MSPB headquarters. Figure 9 shows the number of PFRs the Board received (on both OAA and IRA appeals) involving § 2302(b)(8) and/or (b)(9) claims. No Board decisions were issued on PFRs in FY 2019 due to the continued lack of quorum; however, MSPB continues to receive, review, and draft proposed decisions on PFRs. In addition, on May 11, 2018, former Vice Chairman Mark A. Robbins signed a policy stating that the Clerk of the Board may now exercise the delegated authority to grant a withdrawal of a PFR when requested by a petitioner if there is no apparent untimeliness of the petition and if no other party objects to the withdrawal.[35] In FY 2019, the Office of the Clerk of the Board granted 28 requests to withdraw PFRs in cases that involved § 2302(b)(8) and/or (b)(9) claims.

[35] https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1515773&version=1521400&application=ACROBAT

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Appendix B: Information Required under 5 U.S.C. § 7701(i)(1) and (2)

In accordance with 5 U.S.C. § 7701(i)(1) and (2), MSPB provides FY 2019 case processing information. In FY 2019, MSPB processed 5,112 total cases (not including ALJ and original jurisdiction cases at HQ). Seventy-two percent of initial appeals (including addendum cases) were processed in 120 days or less.[36]

Due to the lack of a quorum for all of FY 2019, MSPB issued no decisions from HQ (except for stays that could be issued by the single Board member before March 1, 2019). Therefore, we will not report timeliness information for processing PFR cases at HQ. However, it may be of interest to note that 24 PFR cases were withdrawn by order of the Clerk of the Board under a new procedure begun in May 2018. These cases did not involve a decision issued by the Board (there was no quorum) so are not included in any case processing statistics.

In general, each case is adjudicated on its merits consistent with law and legal precedent and in a manner consistent with the interest of fairness, which is achieved by assuring due process and the parties' full participation at all stages of the appeal. Under normal circumstances, 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 and people, hold conferences with the parties, arrange for and question witnesses, present evidence, conduct hearings, and, often, to participate in ADR 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 or particularly complex legal issues, numerous factual issues, or the interpretation of new statutory or regulatory provisions. In addition, when Board members (assuming a quorum exists) do not agree about 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 above in the performance results section of this APR-APP.

[36] In June 2017, Congress set a 180-day limit for MSPB AJ's to issue decisions in VA adverse action cases (38 U.S.C. § 714(d).

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Appendix C: Modernization of Public-facing Digital Services Report[37]

U.S. MERIT SYSTEMS PROTECTION BOARD

1615 M Street, NW
Washington, DC 20419

Phone: (202) 254-4500; Fax: (202) 653-7208

Acting Chief Executive and Administrative Officer*

December 20, 2019

The Honorable Russell Vought
Acting Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Modernization of Public-facing Digital Services Report

Dear Acting Director Vought:

In accordance with sections 3(b) and (d) of the 21st Century Integrated Digital Experience Act (21st Century IDEA), I am pleased to provide the Merit Systems Protection Board's (MSPB) report on modernizing our public-facing digital services.

The MSPB has two primary websites for public engagement: our electronic filing website, e-Appeal Online, at https://e-appeal.mspb.gov, and our agency website at https://www.mspb.gov. Both websites are part of a broader information technology (IT) modernization effort that began in fiscal year (FY) 2018 with requirements development for updating and consolidating our legacy case management, document assembly, and document management systems, among others. Our websites rely on and interact with the documents and information in these legacy systems. As such, each is a priority for modernization to meet the requirements in section 3(a) of 21st Century Idea.

In FY 2019, MSPB contracted with MicroPact, a FedRAMP-certified provider of case management software and IT services, to begin this effort. To date, we have completed development sprints covering a portion of our adjudicatory business processes, including a public-facing electronic filing portal that will replace the existing e-Appeal Online. We anticipate pilot testing the new system early in calendar year 2020, and implementing it in FY 2021. The projected cost for the modernization of our electronic filing website is $423,000.

The MSPB began modernizing its agency website in FY 2019 with the goal of adopting U.S. Web Design Standards, improving search functionality using Search.gov, leveraging the General Services Administration's Digital Analytics Program, and

* Because there are no Senate-confirmed members at the Merit Systems Protection Board, the functions of the chief executive and administrative officer of the Merit Systems Protection Board are being carried out by the MSPB General Counsel pursuant to the agency's Continuity of Operations Plan.

[37] In accordance with the 21st Century Integrated Digital Experience Act, Pub. L. 115-336.

providing an updated, consistent appearance across devices, including mobile. The new website will be released to agency employees for testing early in calendar year 2020, and we expect to implement the website in FY 2020. The new website will fully comply with all eight elements in section 3(a) of 21st Century IDEA. The projected cost for the modernization of our agency website is $57,000.

We are excited about our progress in modernizing our public-facing digital services, and look forward to implementing them in FY 2020 and FY 2021. Should you or your staff have any questions about this report, please have them contact William Spencer, Acting Executive Director, at 202-653-7200 or william.spencer@mspb.gov.

Sincerely,

Tristan Leavitt
General Counsel

Appendix D: More Information about MSPB

MSPB's Role, Functions, and Scope of Responsibilities

During congressional hearings on the CSRA before it was passed in 1978, various members of Congress testified and described the role and functions of MSPB, stating that "[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."[38] MSPB inherited CSC's adjudication functions and provides due process to employees as an independent, third-party adjudicatory authority for employee appeals including adverse actions (such as removals, furloughs, and certain suspensions) 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 MSPB decisions. Subsequent to the CSRA, Congress expanded MSPB's jurisdiction to hear appeals under a variety of other laws, giving it authority over a wide range of appeals.[39] 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. 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 employees and uniformed military service members.[40]

Findings and recommendations from MSPB's merit systems studies help to 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 generally are applicable to the management of Federal legislative branch and judicial branch employees and even to public employees at the state and local levels. Through its authority to review and act on OPM rules, regulations, and significant actions, MSPB protects the merit systems and helps ensure that Federal employees are managed in adherence with the MSPs and free from PPPs. This authority includes employees in all agencies for which OPM sets policy, beyond the specific individual employees who may file appeals with MSPB. MSPB's customers, partners, and stakeholders include a wide range of policymakers; Federal agencies and councils; Federal employees and managers and groups that represent them; appellants, appellant representatives, and agency representatives; professional legal groups, academia, and management research organizations; and good Government groups.

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[38] 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).

[39] Beyond those included in 5 U.S.C. chapters 43 and 75, and all those set out at 5 C.F.R. Part 1201.3; the Federal Employee Retirement System (FERS) Act of 1986, 5 U.S.C. § 8461(e), enacted by Pub. L. 99-335, Title I, § 101, 100 Stat. 571 (1986); USERRA, Pub. L 103-353, codified at 38 U.S.C. §§ 4301-4335; whistleblower appeals including IRA appeals involving personnel actions listed in 5 C.F.R. § 1209.4(a) and otherwise appealable actions are listed in 5 C.F.R. §§ 1201.3 (a)(1) through (a)(11), and as amended by the WPEA (Pub. L. 112-199); the Hatch Act Modernization Act of 2012; the VA Accountability and Whistleblower Protection Act, Pub. L. 115-41, enacted on June 23, 2017; the Follow the Rules Act (Pub. L. 115-40), enacted on June 14, 2017; the authority for a single Board member to extend OSC stay requests (Pub. L. 115-42); the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 (Pub L. 115-73, enacted on October 26, 2017, and most recently, section 5721 of the NDAA of FY 2020 (Pub. L. 116-92) enacted on December 20, 2019.

[40] This includes most Federal employees under Title 5 U.S.C. and others such as certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3) and RIF actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a.

MSPB Offices and Their Functions

MSPB is headquartered in Washington, D.C. and has six regional and two field offices (ROs/FOs) located throughout the United States. The agency is currently authorized to employ 235 FTEs to conduct and support its statutory duties.

The **Board members**, consisting of the Chairman, Vice Chairman, and Board Member, are appointed by the President, confirmed by the Senate, and serve overlapping, nonrenewable 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. Except for the EEO Director who reports directly to the Chairman, the Directors of the following offices report to the Chairman through the Executive Director.

The **Office of the Administrative Law Judge** (ALJ) adjudicates and issues initial decisions in corrective and disciplinary action complaints (including Hatch Act complaints) brought by OSC, proposed agency actions against ALJs, MSPB employee appeals, and other cases assigned by MSPB. In FY 2018, the functions of this office were performed by ALJs at the Federal Trade Commission, and the Coast Guard 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 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 AJ rulings, 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 HQ, rules on certain procedural matters, and issues Board decisions and orders. It serves as MSPB's public information center, coordinates media relations, operates MSPB's library and on-line information services, and administers the FOIA and Privacy programs. It 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 EEO 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 MSPB's budget, accounting, travel, time and attendance, human resources, procurement, property management, physical security, and general services functions. It develops and coordinates internal management programs, including review of agency internal controls. It also administers the agency's servicing agreements with the U.S. Department of Agriculture's (USDA) National Finance Center (NFC) for payroll services, the U.S. Department of the Treasury's Bureau of the Fiscal Services (BFS) for accounting services, and USDA's Animal and Plant Health Inspection Service (APHIS) 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

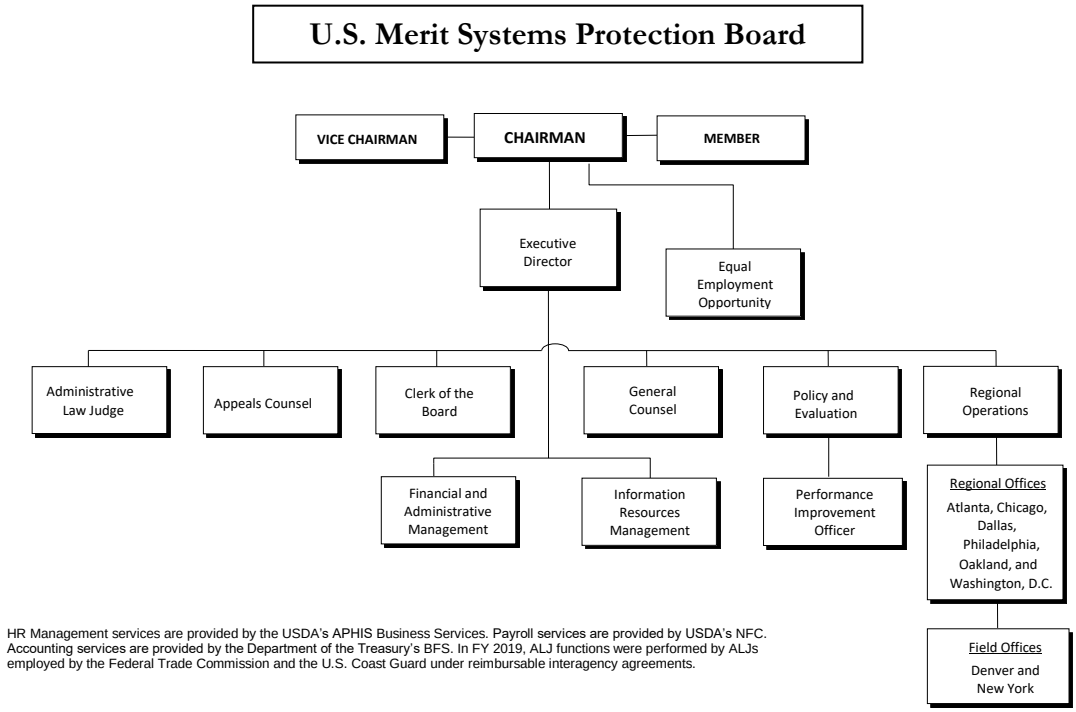
OPM regulations and for other assigned cases; conducts the agency's PFR settlement program; and coordinates the agency's legislative policy and congressional relations functions. The office also drafts regulations, conducts MSPB's ethics program, performs the inspector general function, and plans and directs audits and investigations.

The **Office of Information Resources Management** develops, implements, and maintains MSPB's automated information technology systems to help MSPB 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 an international audience. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB studies. The office also carries out MSPB's statutory responsibility to review and report on the significant actions of OPM. The office conducts special projects and program evaluations for MSPB and has responsibility for preparing MSPB's strategic and performance plans and performance reports required by GPRAMA.

The **Office of Regional Operations** oversees the agency's six ROs and two FOs that receive and process appeals and related cases. It also manages MSPB's MAP. AJs in the ROs/FOs are responsible for adjudicating assigned cases and for issuing fair, well-reasoned, and timely initial decisions.

MSPB Organizational Chart



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 (e.g., in time and effort) 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: (1) requirements for public notice of vacancies to support the merit principle of fair and open competition to attain a workforce from all segments of society; (2) fair and rigorous assessment of applicants consistent with the merit principles of equal opportunity and selection based on relative ability; and (3) review and documentation of applicant eligibility and entitlements in compliance with laws and public policies such as those relating to veterans' preference and the disabled. These processes improve the overall quality of the workforce and help ensure that Federal jobs and job protections are provided to the most highly-qualified applicants. This, in turn, helps reduce the likelihood that the Government will need to undertake the process to remove employees in the future. These management costs are necessary to ensure the ultimate goal of a strong, highly qualified, stable merit-based civil service that serves in the public's interest over the long term, rather than at the pleasure of political leaders.

Despite our relatively small size and budget, MSPB provides enormous value to the Federal workforce, Federal agencies, and to the American taxpayer by helping to ensure a more effective and efficient merit-based civil service that provides better service to the public. 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 the legal system and the merit systems. The quality of MSPB's decisions is evidenced by the high affirmance rate of its decisions by the courts. 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 provide guidance to agencies and employees on proper behavior and the ramifications of improper behavior. This information, shared through outreach, our regulations, and extensive material on our website, improves the 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 learn how to prepare thorough and 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 by identifying and assessing innovative and effective merit-based management policies and practices and recommending improvements. For example, MSPB studies have shown that improved hiring and selection, improved merit-based management, and greater employee engagement lead to a highly qualified Federal workforce, improved organizational performance, and better service to the public. Results, findings, and recommendations from MSPB's merit systems studies function are shared through reports, newsletters, research and perspective briefs, and other articles posted to our website and through outreach. A recent MSPB report provides information on and dispels misconceptions about due process in the civil service, which is useful to policymakers, managers, legal practitioners, and other stakeholders. Effective management processes also help reduce the occurrence and costs of PPPs, which negatively affect agency and employee performance. Review of OPM's significant actions, rules, and regulations protects the integrity and viability of the civil service and merit systems 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 well and appropriately managing its workforce.

The Merit System Principles and Prohibited Personnel Practices

The CSRA codified for the first time the values of the merit systems as the MSPs and delineated specific actions and personnel practices that were prohibited (PPPs) because they were contrary to merit system values.[41] 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 MSPs further 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 bases of race, color, religion, sex, national origin, age, disabling (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 commit reprisal for refusal to engage in political activity. These actions also may not: deceive or willfully 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 also may not be: based on or create nepotism; in retaliation or reprisal for whistleblowing—the lawful disclosure of a violation of law, rule or regulation, gross mismanagement or gross 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 assistance to another in the person's exercise of his or her rights; or based on past conduct that does not adversely affect the job. The actions also must not: knowingly violate veterans' preference requirements; violate the MSPs; or implement or enforce a nondisclosure policy, form, or agreement, which lacks a specific statement that its provisions are consistent with and do not supersede applicable statutory whistleblower protections. On October 26, 2017, Congress created a 14th PPP, which prohibits access of medical records as part of, or to further, any conduct related to, any other PPP.[42] On December 20, 2019, section 5721 of the NDAA for FY 2020 expanded the definition of disclosure under 5 U.S.C. 2302(b)(8) to include disclosures to Congress.[43]

[41] 5 U.S.C. § 2301 and § 2302, respectively.

[42] The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, Pub. L. 115-73), amends 5 U.S.C. § 2302(b) to add "(14) access to the medical records of another employee or applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13)."

[43] Pub. L. 116-92, the NDAA for FY 2020.

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List of Common Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
AJ	Administrative Judge
ALJ	Administrative Law Judge
APHIS	USDA's Animal and Plant Health Inspection Service
APR-APP	Annual Performance Report and Annual Performance Plan
AR	MSPB Annual Report
BFS	Department of Treasury's Bureau of Financial Services
CAFC	Court of Appeals for the Federal Circuit
CB	Clerk of the Board
CBA	Collective Bargaining Agreement
CIO	Chief Information Officer
COOP	Continuity of Operations Plan
CRS	Congressional Research Service
CSC	Civil Service Commission
CSRA	Civil Service Reform Act of 1978
CSRS	Civil Service Retirement System
DOI	Department of Interior
DHS	Department of Homeland Security
DWOP	Dismissal Without Prejudice
ECF	Electronic case files
ED	Executive Director
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
e-FOIA	Electronic Freedom of Information Act webpage
EHRI	Enterprise Human Resource Integration
EO	Executive Order
FAQs	Frequently Asked Questions
FERS	Federal Employees' Retirement System
FEVS	Federal Employee Viewpoint Survey
FLRA	Federal Labor Relations Authority
FO	Field office
FOIA	Freedom of Information Act
FTE	Full-time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GPRA	Government Performance and Results Act
GPRAMA	GPRA Modernization Act of 2010
GSA	General Services Administration
HC	Human Capital
HR	Human Resources

HQ	Headquarters
IoM	*Issues of Merit* newsletter
IRA	Individual Right of Action (type of whistleblower appeal)
IS	Internal Survey
IT	Information Technology
MAP	Mediation Appeals Program
MPS	Merit Principles Survey
NBC	DOI National Business Center
MSP	Merit System Principles
MSPB	Merit Systems Protection Board
NDAA	National Defense Authorization Act
NFC	USDA's National Finance Center
OAA	Otherwise Appealable Action
OMB	Office of Management and Budget
OPE	MSPB's Office of Policy and Evaluation
OPM	Office of Personnel Management
ORO	MSPB's Office of Regional Operations
OSC	Office of Special Counsel
PFR	Petition for Review of an Initial Decision
PG	Performance Goal
PIO	Performance Improvement Officer
PPP	Prohibited Personnel Practices
PRA	Paperwork Reduction Act
PWS	Performance Work Statement
RFI	Request for Information
RFQ	Request for Quote
RIF	Reductions in Force
RO	Regional office
SEC	Securities and Exchange Commission
SES	Senior Executive Service
SHCP	Strategic Human Capital Plan (or planning)
SLA	Service Level Agreement
TBD	To be determined
U.S.C.	United States Code
USDA	U.S. Department of Agriculture
USERRA	Uniformed Services Employment and Reemployment Rights Act
VA	Department of Veterans Affairs
VERA	Voluntary Early Retirement Authority
VSIP	Voluntary Separation Incentive Plan
WPEA	Whistleblower Protection Enhancement Act of 2012

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