United States

Merit Systems Protection Board

Annual Performance Plan for

FY 2012 (Revised) and FY 2013 (Proposed)

January 17, 2012

Note: The FY 2012 performance measures and targets were finalized on December 30, 2011.

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U.S. Merit Systems Protection Board
Performance Plan for
FY 2012 (Revised) and FY 2013 (Proposed)

Introduction

A highly qualified, diverse Federal workforce managed in accordance with the Merit System Principles (MSPs) and in a manner free from Prohibited Personnel Practices (PPPs) is critical to ensuring agency performance and service to the public. The MSPs are, in essence, good management practices that help ensure that the Federal Government is able to recruit, select, develop, and maintain a high-quality workforce and thereby reduce staffing costs and improve organizational results for the American people. The PPPs are specific proscribed behaviors that undermine the MSPs and adversely affect the effectiveness and efficiency of the workforce and the Government. The fundamental function of the U.S. Merit Systems Protection Board (MSPB) is to ensure that the Federal workforce is managed under the MSPs and protected from the PPPs.

About MSPB

MSPB has its origin in the Pendleton Act of 1883, which was passed following the assassination of President James A. Garfield by a disgruntled Federal job seeker. The Pendleton Act created the Civil Service Commission (CSC), which implemented the use of competitive examinations to support the appointment of qualified individuals to Federal positions in a manner based on merit and free from partisan political pressure. This improved Government effectiveness and efficiency by helping to ensure that a stable, highly qualified Federal workforce was available to provide effective service to the American people. Over time, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate appeals. Concern over this conflict of interest in the CSC's role as both rule-maker and judge was a principal motivating factor behind enactment of the Civil Service Reform Act of 1978 (CSRA). The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;[1] the Office of Personnel Management (OPM) to serve as the President's agent for Federal workforce management policy and procedure; and the Federal Labor Relations Authority (FLRA) to oversee Federal labor-management relations. The CSRA also codified for the first time the values of the merit systems as the MSPs and delineated the PPPs.[2]

MSPB inherited the adjudication functions of the Commission and provides due process to employees and agencies as an independent, third-party adjudicatory authority for employee appeals of adverse actions and retirement decisions. The CSRA gave MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and of Federal human capital management issues. It also gave MSPB the authority and responsibility to review and act on OPM rules and regulations when a PPP is involved, and to review and report on OPM significant actions.[3]

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

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

[3] Title 5 U.S.C § 1204(a)(3), § 1204 (a)(4), and § 1206, respectively.

Since passage of the CSRA, Congress has given jurisdiction to MSPB to hear cases and complaints filed under a variety of other laws.[4] In summary, the statutory functions of MSPB include adjudicating a wide range of employee appeals, enforcing compliance with MSPB decisions, conducting studies of the Federal merit systems, and reviewing OPM rules, regulations, and significant actions.

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

Considering MSPB's relatively small size and budget, it provides enormous value to the Federal workforce and Federal agencies, and to the American taxpayers in terms of better service to the public and a more effective and efficient merit-based civil service. MSPB adds value by providing superior adjudication of employee appeals, including alternative dispute resolution, which ensures due process and results in decisions that are based in law, regulation, and legal precedent and not on non-merit or subjective factors. MSPB's adjudication process is guided by reason and legal analysis, which are hallmarks of both our Nation's legal system and our merit system. As a neutral, independent third party, MSPB's adjudication of employee appeals 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, work together to improve the long-term effectiveness and efficiency of the civil service. They support better adherence to MSPs and prevention of PPPs by providing guidance to agencies and employees on proper behavior and the ramifications of improper behavior. This adjudication information also improves the effectiveness and efficiency of the adjudication process by helping the involved parties understand the law, and improving their ability to prepare and present thorough and well-reasoned cases. Strong enforcement of MSPB decisions ensures timely and 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 assessing current management policies and practices, identifying innovative and effective merit-based management policies and practices, and making recommendations for improvements. For example, MSPB research has shown that effective and efficient hiring and selection, improved merit-based management, and greater employee engagement contribute to a highly qualified Federal workforce, improved organizational performance, and better service to the public. These factors also help reduce the occurrence and costs of PPPs that negatively affect agency and employee performance. Review of OPM rules, regulations, and significant actions protects the integrity and viability of the merit systems and civil service, improves adherence to MSPs, and provides benefits similar to those related to merit systems studies. These reviews also help reduce costs in terms of fewer PPPs, less employee misconduct, fewer adverse actions, and fewer unsubstantiated appeals. This benefits American taxpayers in terms of decreased Governmentwide costs and increased confidence that the Government is doing its job and appropriately managing the workforce.

[4] Including the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Veterans Employment Opportunity Act (VEOA), the Whistleblower Protection Act (WPA), 5 U.S.C. Chapter 43, and all those set out at 5 C.F.R., Part 1201.3.

Linking this Plan to Other Agency Documents

This Annual Performance Plan (APP) is based on the MSPB Strategic Plan (SP) for FY 2012–2016. The new SP includes an updated agency mission statement, new vision and organizational values statements, more outcome-oriented strategic goals, and revised long-term measures in order to more thoroughly encompass MSPB's broader role in protecting merit and preventing PPPs as intended by the CSRA. The new Strategic Goals move beyond previous Strategic Goals to include all of MSPB's statutory functions and responsibilities. Strategic Goal 1 focuses on reviewing and taking action on individual appeals and on reviewing and assessing existing and proposed merit system laws, regulations, and practices to identify best practices and areas for improvement. Strategic Goal 2 focuses on informing and encouraging policy-makers to take actions that improve merit; conducting outreach to improve the adherence to MSPs and prevention of PPPs in the workplace; and providing educational standards, materials, and guidance to improve the understanding of merit, MSPs, and PPPs. These two Strategic Goals underscore the importance of applying the results of our work under Strategic Goal 1 to protecting merit, strengthening the merit systems, increasing adherence to MSPs, and preventing or reducing PPPs in the future under Strategic Goal 2.

The FY 2012 (Revised)–2013 (Proposed) APP includes strategic objectives as program performance goals.[5] The APP includes performance measures and annual performance targets designed to move the agency incrementally on a path to achieve its Strategic Goals. The performance measures include the outcomes, outputs, and processes that are critical to successful achievement of our performance goals. The performance goals, measures, and targets describe what we can accomplish with the budgetary and full-time equivalent (FTE) resources enacted for FY 2012 and requested in the FY 2013 Congressional Budget Justification. In recognition of this tight budgetary environment, MSPB has intentionally requested fewer resources for FY 2012 and FY 2013 than those justified by our responsibilities. This reduction is reflected in the targets for case processing timeliness, number of merit systems studies, program evaluation, and more limited progress toward some strategic outcome goals. If budgetary and/or FTE resources approved for FY 2013 fall short of the requested amount, MSPB may need to further adjust the measures and FY 2013 targets.

Beginning in FY 2012, MSPB will administer its internal management and administrative functions in support of the mission goals through an internal Resources Management Plan (RMP) rather than the SP or the APP. The RMP will also link other agency documents, such as the Strategic Human Capital Management Plan, Equal Employment Opportunity Reporting Management Directive 715, Employee Engagement Plan, Information Technology Strategic Plan, Open Government Plan, and other similar documents. Individual performance plans for the agency's employees and Senior Executives are linked to the RMP and the APP, as appropriate. MSPB reports program performance results compared to its APPs, along with financial accountability results, in the annual Performance and Accountability Report (PAR). The SP, APPs, and PARs are posted on MSPB's website, when appropriate and in accordance with GPRAMA and OMB guidance.

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[5] In accordance with the Government Performance and Results Act Modernization Act (GPRAMA) and Office of Management and Budget (OMB) guidance, MSPB neither defines priority goals nor has a specific role in achieving Federal cross-agency priority goals. MSPB also does not have any duplicative, overlapping, or fragmented programs as referenced in the Executive Order on 'Delivering an Efficient, Effective, and Accountable Government.' MSPB does not have any low-priority programs, so no MSPB activities are reported in *The 2013 Cuts, Consolidations, and Savings (CCS) Volume of the President's Budget* which identifies the lower-priority program activities under the GPRAMA, 31 U.S.C. 1115(b)(10). The public can access the volume at: http://www.whitehouse.gov/omb/budget.

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The Mission, Vision, Values, Strategic Goals, and Objectives of MSPB

MSPB Mission

Protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices.

MSPB Vision

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

MSPB Organizational Values

Excellence: We will base our decisions on statutes, regulations, and legal precedents; use appropriate scientific research methods to conduct our studies and make practical recommendations for improvement; and develop and use appropriate processes to oversee the regulations and significant actions of OPM. We will interact with our customers and stakeholders in a professional, respectful, and courteous manner. We will strive to be a model merit-based organization by applying the lessons we learn in our work to the internal management of MSPB.

Fairness: We will conduct our work in a fair, unbiased, and objective manner. We will be inclusive in considering the various perspectives and interests of stakeholders in our work, and in our external and internal interactions with individuals and organizations.

Timeliness: We will issue timely decisions in accordance with our performance goals and targets. We will issue timely reports on the findings and recommendations of our merit systems studies. We will respond promptly to inquiries from customers and stakeholders.

Transparency: We will make our regulations and procedures easy to understand and follow. We will communicate with our customers and stakeholders using clear language. We will make our decisions, merit systems studies, and other materials easy to understand, and widely available and accessible on our website. We will enhance the understanding of our processes and impact of our products through outreach efforts.

MSPB Strategic Goals and Objectives

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

Objectives/Performance Goals:

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

1B: Enforce timely compliance with MSPB decisions.

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

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

Strategic Goal 2: Advance the public interest through *education* and *promotion* of stronger merit systems, *adherence* to Merit System Principles, and *prevention* of Prohibited Personnel Practices.

Objectives/Performance Goals:

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

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

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

Measuring Achievement of Our Performance Goals

Appendix A contains additional information about changes in our performance measures and targets.

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

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

1A-1 Percent of Petition for Review (PFR) decisions that are reversed or remanded to administrative judges (AJs), adjusted for those due to changes in precedent or other issues not due to error or oversight.

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

1A-2 Percent of MSPB decisions left unchanged (affirmed or dismissed) upon review by the U.S. Court of Appeals for the Federal Circuit.

Results:	FY 2007:	91%
	FY 2008:	87%
	FY 2009:	92%
	FY 2010:	92%
	FY 2011:	98%
Targets:	FY 2012:	92% or more
	FY 2013:	92% or more

1A-3 Percent of adjudication participants surveyed who agree MSPB adjudication processes are fair, open, accessible, understandable, and easy to use.

Results:	FY 2011 and prior years: New measure in FY 2012
Targets:	FY 2012: Establish measurement process and set future targets
	FY 2013: TBD based on FY 2012 results

1A-4 Average case processing time for initial appeals.

Results:	FY 2007:	89 days
	FY 2008:	87 days
	FY 2009:	83 days
	FY 2010:	89 days
	FY 2011:	94 days
Targets:	FY 2012:	100 days or fewer
	FY 2013:	100 days or fewer

1A-5 Average case processing time for petitions for review of initial appeals (PFRs).

Results:	FY 2007:	132 days
	FY 2008:	112 days
	FY 2009:	94 days
	FY 2010:	134 days
	FY 2011:	213 days
Targets:	FY 2012:	195 days or fewer
	FY 2013:	170 days or fewer

1A-6 Percent of participants in the ADR programs (including initial appeals settlement and Mediation Appeals Program (MAP)) surveyed who agree the ADR process was helpful, valuable, and non-coercive, even if no agreement was reached.

Results:	FY 2011 and prior years: New measure in FY 2012
Targets:	FY 2012: Establish measurement process and set future targets
	FY 2013: TBD based on FY 2012 results

1A-7 Proportion of initial appeals filed electronically.

Results:	FY 2007:	29%
	FY 2008:	37%
	FY 2009:	39%
	FY 2010:	43%
	FY 2011:	48%
Targets:	FY 2012:	44% or more
	FY 2013:	46% or more

1A-8 Proportion of pleadings submitted electronically.

Results:	FY 2008 and prior years: New measure in FY 2009	
	FY 2009:	28%
	FY 2010:	36%
	FY 2011:	44%
Targets:	FY 2012:	38% or more
	FY 2013:	40% or more

1B. Enforce timely compliance with MSPB decisions.

1B-1 Average processing time for enforcement cases.

Results:	FY 2008 and prior years:	New measure and target in FY 2009
	FY 2009:	171 days
	FY 2010:	180 days
	FY 2011:	288 days
Targets:	FY 2012:	200 days or fewer
	FY 2013:	200 days or fewer

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

1C-1 Percent of external studies stakeholders surveyed who agree that study reports are objective, timely, well written, and include recommendations that can be implemented at the appropriate level.

Results:	FY 2011 and prior years: New measure in FY 2012
Targets:	FY 2012: Establish measurement process and set future targets
	FY 2013: TBD based on FY 2012 results

1C-2 Number and scope (percent of the workforce, agencies, or policy areas impacted) of merit systems studies reports published each year.

Results:	FY 2007: Three reports completed or published
	FY 2008: Six reports completed or published
	FY 2009: Six reports completed or published
	FY 2010: Five reports completed or published
	FY 2011: Four external and four internal studies completed
Targets:	FY 2012: Three-five merit system reports completed
	FY 2013: Three-five merit system reports completed

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

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

Results:	FY 2011 and prior years: New measure in FY 2012
Targets:	FY 2012: Conduct after-action review of MSPB's actions on at least one of the major changes in OPM regulations or rules over the last four years
	FY 2013: Establish regulations review and performance measurement process and set future targets

1D-2 Number and scope (percent of the workforce, agencies, or policy areas impacted) of OPM significant actions reviewed and reported.

Results: FY 2011 and prior years: New measure in FY 2012

Targets: FY 2012: Conduct after-action review of at least one of OPM's significant actions over the last four years

FY 2013: Establish significant actions review and performance measurement process and set future targets

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.

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

2A-1 Number and scope of contacts made with Governmentwide policy-makers (Congress, Chief Human Capital Officers Council (CHCO), OPM, and others involved in merit systems policy) focused on supporting or improving Governmentwide merit systems laws, regulations, rules, Executive Orders, and other policies.

Results: FY 2011 and prior years: New measure in FY 2012

Targets: FY 2012: Establish measurement process and set future targets

FY 2013: TBD based on FY 2012 results

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

Results: FY 2011 and prior years: New measure in FY 2012

Targets: FY 2012: Establish measurement process and set future targets

FY 2013: TBD based on FY 2012 results

2A-3 Number, type, and scope of MSPB products created and made available to inform policy makers on improvements to merit systems policies, laws, and/or regulations.

Results: FY 2011 and prior years: New measure in FY 2012

Targets: FY 2012: Establish measurement process and set future targets

FY 2013: TBD based on FY 2012 results

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

2B-1 Number of views and/or accesses of MSPB precedential decisions, studies reports, and other web-based materials meant to improve the practice of merit, adherence to MSPs, or prevention of PPPs in the workplace.

Results: FY 2011 and prior years: New measure in FY 2012

Targets: FY 2012: Establish measurement process and set future targets

FY 2013: TBD based on FY 2012 results

2B-2 Number and scope of MSBP contacts with practitioners and stakeholders focused on improving the practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace.

Results:	FY 2011 and prior years: New measure in FY 2012
Targets:	FY 2012: Establish measurement process and set future targets
	FY 2013: TBD based on FY 2012 results

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, and type of educational information, materials, or guidance about the merit systems, MSPs, PPPs, MSPB decisions, the appeals process, studies, newsletters, etc., that are viewed or accessed from MSPB's website.

Results:	FY 2011 and prior years: New measure in FY 2012
Targets:	FY 2012: Establish measurement process and set future targets
	FY 2013: TBD based on FY 2012 results

2C-2 Number and type of merit systems educational materials and guidance MSPB makes available.

Results:	FY 2011 and prior years: New measure in FY 2012
Targets:	FY 2012: Establish measurement process and set future targets
	FY 2013: TBD based on FY 2012 results

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Means and Strategies Needed to Accomplish Our Goals

Means and Strategies for Strategic Goal 1

1. Provide effective and efficient adjudication of appeals in our regional and field offices and at headquarters and improve the transparency of the adjudication process.
2. Ensure continuity of legal expertise; increase legal training and expertise of adjudication staff; and monitor adjudication performance and accountability.
3. Appropriately balance quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
4. Provide effective and impartial ADR services (including settlement and mediation) to meet the needs of the involved parties.
5. Ensure effective representation of MSPB in cases brought before other adjudication bodies, such as the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court.
6. Provide effective and efficient processing of requests for enforcement of MSPB decisions and improve the transparency of the enforcement process.
7. Conduct independent, objective, and timely studies of the Federal merit systems and Federal management issues and practices, and expeditiously report findings and recommendations to the President, Congress, Federal HR policy-makers, practitioners, and other stakeholders.
8. Use periodic surveys to assess and report on the overall health of the Federal merit systems, practice of merit, and occurrence of PPPs.
9. Expand MSPB's studies program capacity and increase the value and impact of studies.
10. Expand and strengthen the review of OPM rules, regulations, and significant actions and take action, as appropriate, to ensure adherence to MSPs and avoidance of PPPs.

Means and Strategies for Strategic Goal 2

1. Use periodic surveys and other means to assess and report on the overall health of the Federal merit systems, practice of merit, and occurrence of PPPs.
2. Translate information from adjudication, merit systems studies, and OPM review into outreach products designed to influence actions by policy-makers and practitioners that will support merit, improve adherence to MSPs, and prevent PPPs.
3. Provide information about adjudication processes, outcomes, and legal precedent to support adjudication participants' ability to prepare and file strong cases with MSPB.
4. Develop educational standards, materials, and guidelines on merit, MSPs, PPPs, and the importance of a merit-based civil service to ensuring excellent service to the public.
5. Encourage agencies to use MSPB's educational standards, materials, and guidelines to implement compelling educational programs for Federal employees and the public by recognizing other agencies' best practices on the MSPB website, or in MSPB reports.
6. Increase transparency and outreach and make MSPB products and educational information widely available through the website, social media outlets, and other appropriate avenues.

Agency-wide Administrative and Support Means and Strategies (Administered through the RMP)

1. Manage people effectively and efficiently.
    a. Hire and retain a diverse and highly qualified legal, analytic, and administrative workforce that can effectively accomplish and support the knowledge-based work of the agency.
    b. Walk-the-talk – implement appropriate recommendations from study reports to improve adherence to MSPs and avoidance of PPPs.
2. Manage budget, financial, and other resources effectively and efficiently.
    a. Use people and budgetary resources effectively and efficiently to ensure adequate staff are available and prepared to accomplish our goals and continue to provide value, now and in the future.
    b. Improve budget planning and development to ensure complete justification of funds, people, operational requirements, and contingencies; ensure MSPB has the resources it needs to accomplish its mission; and prevent the use of routine hiring delays to fund operational and mission requirements.
3. Manage agency information technology (IT) and information services functions effectively and efficiently.
    a. Ensure access to and increase the use of e-Appeal Online.
    b. Continue to improve efficiency including shifting from paper-based work processes and products to electronic work processes and products.
    c. Develop and implement IT hardware, software, and systems plans and schedules to support effective and efficient MSPB adjudication, studies, OPM review, and administrative programs.
    d. Improve the ability to efficiently administer and host surveys in support of our studies function and better leverage the high-quality Governmentwide data we collect.
    e. Manage information services functions, including information content, records management, Freedom of Information Act, Open Government, and related programs, to ensure information is appropriately available and accessible to internal and external customers
    f. Effectively manage communication and public relations programs, including the use of electronic and social media, to provide appropriate and timely information to stakeholders and improve the impact of our programs.
4. Manage other processes and resources effectively and efficiently.
    a. Improve MSPB's program evaluation capability and performance measurement validity and reliability.
    b. Improve efficiency and effectiveness of other administrative and management programs and processes including appropriate use of interagency agreements and contracts.
    c. Ensure MSPB internal and external policies and regulations are current, written in plain language, and accessible to and understandable by those who need them.

Trends and Challenges that May Affect Agency Performance

A number of significant external trends and internal challenges are likely to affect MSPB's mission in FY 2012 and FY 2013. A list of these trends and challenges and their potential affect on MSPB follows.

External Trends

- More employees or applicants with Veterans' employment rights and potential changes in law and jurisdiction.
  - Large increases in adjudication workload and jurisdiction, increased case complexity.
  - Increased complexity in studying the merit systems and reviewing OPM's rules, regulations, and significant actions.

- Revisions to management and HR policies, authorities, and flexibilities.
  - Increases in appeals workload and case complexity.
  - Increased complexity in studying merit and making recommendations to ensure workforce is managed under the MSPs and free from PPPs.
  - Increased complexity in studies to ensure that new and amended HR policies support adherence to MSPs and avoidance of PPPs.
  - Increased need to promote merit and educate Federal managers and employees about Federal merit systems, MSPs, and PPPs.

- Increases in the number of Federal employees retiring, and need to ensure employees have the competencies to perform knowledge-based work.
  - Increase in appeals workload due to increased retirements (e.g., benefits claims and alleged forced retirement cases).
  - Need to study how changes in the workforce and type of work impact MSPs and PPPs.
  - Increased need to promote merit in the Federal workplace and educate Federal managers and employees about Federal merit systems, MSPs, and PPPs.

- Budget cuts, Reductions in Force (RIF), and workforce adjustments.
  - Increase in appeals workload due to potential RIFs and actions taken in lieu of or in preparation for RIFs.
  - Need to conduct studies and make recommendations on how to ensure merit and avoid PPPs.

Internal Management Issues and Challenges

- Mission planning and ensuring optimal effectiveness.
  - Improve and strengthen performance of our statutory function to review and take appropriate action on OPM rules and regulations.[6]

[6] Title 5 U.S.C. § 1204(a)(4)

- Ensure MSPB's SPs and APPs encompass all statutory functions and focus on our role to protect and promote merit.
- Improve integration of performance planning with the annual budget process to ensure legislative intent to protect and promote merit.
- Strengthen agency culture and structure, and internal and external agency communication, to improve performance in the short and long term.

- Effectiveness of adjudication and enforcement.
  - Address external stakeholder concerns about MSPB case processing time constraints and the potential negative impact such constraints have on case development and discovery.
  - Balance performance measures of adjudication decision quality, timeliness, and participant satisfaction with the adjudication process.
  - Increase outreach to improve adjudication effectiveness and efficiency, and to improve understanding of the adjudicatory process.
  - Increase emphasis on enforcement of compliance decisions.[7]
  - Ensure a sufficient number of adjudication staff who have the necessary competencies, knowledge, and training to perform their work.
  - Prepare for anticipated retirement of adjudication staff.

- Effectiveness of merit systems studies.
  - Improve distribution and promotion of study findings and recommendations to capitalize on savings via better management, higher employee engagement, and fewer appeals.
  - Increase studies staff to maximize the value and impact of studies to the Government and American taxpayers.
  - Increase outreach to coordinate research plans and improve implementation of study recommendations that improve Federal management and service to the public.
  - Improve ability to administer surveys and use collected data to increase effectiveness and efficiency of Government as a whole.

- Effectiveness of performance and budget planning, and resource management.
  - Justify budgets to support the full mission of MSPB and improve planning for operational requirements, program improvements, and contingencies.
  - Eliminate the need to delay hiring to fund operational and mission requirements.
  - Improve workforce planning, including succession planning and support for employee development, to ensure and sustain the availability of high-quality, diverse professional and technical staff and establish an accurate and stable staffing structure (33% of MSPB employees, including 47% of AJs, will be retirement eligible within the next three years.).

[7] Title 5 U.S.C. § 1204(a)(2)

Program Evaluation and Performance Measurement

Program Evaluation

MSPB programs broadly affect Federal merit systems and Federal management, and they generate significant value for Federal agencies and the public. Effective program evaluation is critical to ensuring that MSPB can continue to effectively and efficiently achieve its mission, and provide value, now and in the future.

MSPB is committed to high-quality program evaluation. However, ensuring our ability to perform our statutory mission, as well as ensuring compliance with requirements of the GPRAMA and recent program evaluation guidance from the OMB, will require increased resources and program evaluation staff. A relatively small increase in MSPB's program evaluation resources and staff will likely yield a large return in efficiency and cost savings for MSPB. This will, in turn, improve the value MSPB brings to agencies, Federal employees, individual parties to cases, and to the public.

Performance Measurement: Verification and Validation of Performance Information

Most of the quantitative measures of adjudication performance come from MSPB's case management system. Other quantitative and qualitative performance measures are reported by MSPB's program offices. MSPB also collects customer satisfaction data from adjudication and merit systems studies customers and stakeholders, and from internal customers of our administrative programs. Better coordination and oversight of performance measurement processes, including internal and external customer surveys, will help ensure consistency, validity, and verifiability of the performance data used to manage MSPB programs and included in agency plans and reports.

Program Evaluation and Performance Measurement Schedule

In FY 2012, MSPB will develop and establish policies and guidance for program evaluation and performance measurement verification and validation. Assuming requested resources are available, MSPB may have one to three evaluation or data verification/validation projects going on per year. The number of such projects will also depend on the scope and objectives of the project and the nature and complexity of the program or process being studied. If such resources are available in FY 2012 and 2013, MSPB plans to begin program evaluation and data verification/validation projects as indicated below.

Program or Performance Measurement System	Evaluation Start Year
PFR case processing	2012
Internal and external customer satisfaction/service surveys	2012
Case processing in the regional and field offices	2013

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Appendix A: Revisions to Performance Measures and Targets

The performance measures and targets proposed for FY 2012 and FY 2013 reflect critical outcomes, outputs, or processes needed to achieve MSPB's performance goals. Tracking progress on our performance goals over time will provide critical evidence of our achievement of our Strategic Goals. The measures and targets established in this plan are consistent with the budget enacted for FY 2012 and the proposed budget for FY 2013. MSPB may adjust the measures and targets based on Congressional actions taken on the FY 2013 budget, interim FY 2012 performance results, and other factors that may have an affect on our mission and goals.

The four performance goals under Strategic Goal 1 include 13 measures and cover MSPB's functions involved in adjudicating cases, enforcing compliance with decisions, conducting merit systems studies, and reviewing and taking appropriate action on OPM rules, regulations, and significant actions. The three performance goals under Strategic Goal 2 include seven measures and reflect our efforts to ensure our work has an impact on strengthening merit systems laws and regulations; improving the practice of merit, increasing adherence to MSPs, and preventing PPPs; and advancing the understanding of merit, MSPs, and PPPs. A review of the revisions in performance measures and targets for FY 2012 and FY 2013 is provided below.

Strategic Goal 1

MSPB plans to continue using selected measures of adjudication quality and timeliness and merit systems studies output that we have used for several years. The customer feedback measures related to our work will be assessed and redefined in FY 2012 as part of our effort to restructure our external customer satisfaction and customer service survey program. Restructuring our survey program will increase the validity and reliability of our customer survey data and support our efforts to improve customer service in accordance Executive Order 13571. The restructuring of the survey program involves customer feedback on the adjudication process (measure 1A-3), the ADR process (measure 1A-6), and merit systems study reports (measure 1C-1). Other measures have been eliminated, redefined, and/or shifted to performance goals under Strategic Goal 2. New measures will be developed for assessing MSPB performance in reviewing and taking appropriate action on OPM rules, regulations, and significant actions (measures 1D-1 and 1D-2).

Adjudication: In recent years, MSPB has reported on more measures of timeliness relative to other components of our adjudication function. Timeliness measures are quantifiable and thus provide an easy way to track and present adjudication results. However, timeliness is only one component of a successful adjudication function. MSPB is committed to using a more balanced set of measures for evaluating its adjudication function with more equal emphasis on measures of decision quality, processing timeliness, and participant feedback on fairness and openness of the adjudication and ADR processes.

To measure the quality of initial decisions, MSPB will continue to use the percent of PFR decisions that are remanded or reversed to MSPB judges for a new decision, adjusted for changes in precedent, or other reasons not due to error or oversight of the AJ (measure 1A-1). In FY 2011, seven percent of PFR decisions were reversed or remanded to AJs. We anticipate an increase in the number of initial appeals filed in the next few years due to several factors: Governmentwide budget constraints leading agencies to implement an increasing number of RIFs or other appealable actions

to reduce the size of the workforce; an increase in the number of retirements of Federal employees; and an increase in the number of employees and applicants with veterans employment rights returning to or seeking Federal jobs. In addition, 47 percent of our current AJs will be eligible to retire in the next three years, and under current budget constraints, it is likely to take longer to replace them in a timely way. Given these factors and the variability of actual results on this measure over the years, the FY 2012 and FY 2013 targets for this measure will remain 10 percent or fewer.

To measure the quality of Board decisions, we will continue to use the percent of decisions left unchanged by the U.S. Court of Appeals for the Federal Circuit (measure 1A-2). In FY 2011, 98 percent of Board decisions were left unchanged by the Court, which is the highest level in over 10 years. We are pleased with this result especially in light of our longer PFR processing time, which will be discussed shortly. While we would like to maintain this result, several factors will likely impact our success on this measure over the next several years. We may experience an increase in cases filed with the Board due to the same factors discussed above that affect initial appeals. In addition to increasing the appeals workload, these factors may also raise legal issues that have not been examined in a number of years leading to differences in the way the Board and the Court view such issues. This could result in fewer cases being left unchanged by the Court. Despite the factors that may affect the Court's actions on our cases, we are committed to maintaining the quality of our Board decisions and are retaining the 92 percent or greater target for this measure for FY 2012 and FY 2013.

While there are various ways to measure timeliness, MSPB will use average case processing time as the measure of adjudication timeliness. The number of days it takes to process a case from when it arrives to when it is closed, averaged over all of the cases closed each year, represents a straightforward and meaningful measure of overall processing time at the agency level.[8] The average case processing time for initial appeals increased to 94 days in FY 2011, which represents the longest time in recent years (measure 1A-4). This occurred in part because of the retirement of several very experienced adjudication staff members, accompanied by restrictions on hiring replacements resulting from budget limitations in the last several years. These staff losses and hiring restrictions, along with the two-three year period that it takes for new staff members to reach full performance levels, have collectively reduced the overall capacity of our adjudication staff to process initial appeals. The budget restrictions are likely to continue for the next several years, which will greatly limit MSPB's ability to replace the nearly 50 percent of its AJs that will be eligible to retire in the next three years. Having fewer AJs, the expected increase in the number of appeals (discussed above), and our commitment to maintain decision quality, will likely result in an increase in initial appeals processing time. Separate from issues related to caseload and resources, there have been concerns from adjudication participants and stakeholders that current MSPB case processing time constraints have had a potential negative impact on the ability of the parties to thoroughly develop their cases and fully execute the discovery process. There is also a growing consensus that the legal and factual aspects of cases have become more complex over time. Finally, MPSB is updating its adjudication regulations, which will likely impact processing timeliness. For all of these reasons, it is necessary to increase the target for average processing time for initial appeals to 100 days or fewer for FY 2012 and FY 2013. Depending on actions taken on the FY 2013 budget, it may be necessary to further increase these targets.

[8] MSPB will continue to track and may occasionally include other information about timeliness in its reports. However, MSPB will no longer include the proportion of cases closed within specific time standards in its performance plans.

Average case processing time for PFRs increased to 213 days in FY 2011 (measure 1A-5). PFR processing time is affected to some degree by MSPB's intentional efforts to improve the transparency and understanding of and participation in the Board's decision-making process. The Board holds oral arguments or requests amicus briefs in cases with broad and/or significant impact on the workforce or on Federal labor law. While these processes may lengthen the processing time for these select cases, they also improve the breadth and depth of information available for the Board to consider in making its decision on these significant cases. In addition, the Board is providing additional information in non-precedential PFR decisions and recently began posting these decisions on the MSPB website. Providing this additional information improves the transparency of Board's decision-making process for the parties involved with the case and for our reviewing Court. Increased transparency also improves understanding of the Board's decision-making process for those who may file appeals with the Board in the future, thus improving the long-term effectiveness and efficiency of the process. While the timeliness of PFR processing is longer than we would like, the quality of Board decisions is high, and we are satisfied that our efforts to improve transparency and participation are important to the overall quality and understanding of the appeals process.

PFR case processing time has also increased due to a lack of budget resources, which has prevented or delayed our ability to hire adjudication staff over the last two-three years resulting in a relatively high number of vacancies for the writing attorneys who draft Board decisions. Anticipated budget restrictions in the next few years will likely result in limited potential for filling these vacancies in the near term. In addition, MSPB anticipates the arrival of a new Board Member in FY 2012. This may also lead to slowed PFR processing time as the new Board Member adjusts to MSPB processes, and the writing attorneys learn the views and style of the new Board Member. Furthermore, for reasons similar to those discussed above for initial appeals, we anticipate an increase in the number of PFRs filed with the Board over the next few years. In addition, MSPB is currently in the process of updating its adjudication regulations, which may also affect processing timeliness. Despite the factors that may slow PFR processing time, MSPB's longer-term goal is to achieve an average processing time for PFRs of 150 days by the end of FY 2014. To make progress toward this target, we have set our FY 2012 target for PFR average processing time at 195 days or fewer, and the FY 2013 target at 170 days or fewer. This will be a very challenging undertaking. MSPB intends to begin an evaluation of the PFR process in FY 2012 (contingent on obtaining requested resources), which may help identify improvements in PFR processing that will increase timeliness while preserving decision quality. Depending on actions taken on the FY 2013 budget, interim FY 2012 results, and other factors, MSPB may need to further increase the targets for average PFR processing time.

It is important that appellants, appellant representatives, and agency representatives perceive that the adjudication processes are fair, open, accessible, understandable, and easy to use, even if they do not agree with the final decision reached in their case (measure 1A-3). In surveying adjudication participants, we will seek to balance our interest in providing them with an opportunity for feedback with the possible burden that our asking for such feedback may place on them. It is especially important to consider the burden placed on appellant representatives and agency representatives who may appear before us multiple times per year. MSPB will restructure its customer service survey of adjudication participants in FY 2012. The FY 2013 target is to be determined based on FY 2012 results.

MSPB will continue to seek feedback from participants in our ADR programs (including settlement and mediation programs). The purpose of our ADR programs is to provide a range of helpful and

appropriate options to appellants and agencies to resolve disputes. The focus is the degree to which participants perceive the processes to be helpful, valuable, and non-coercive, even if no agreement was reached in the process (measure 1A-6). Although the degree to which the processes lead to a successful resolution of the dispute is important, participants' experiences while being involved in these processes are our primary interest. Therefore, MSPB will no longer track ADR success rates in its performance plans. MSPB will restructure its customer service survey of ADR participants in FY 2012. The FY 2013 target is to be determined based on FY 2012 results.

To support MSPB's commitment to efficient case processing and improving customer service, MSPB will continue to track the proportion of initial decisions filed electronically (measure 1A-7) and the proportion of pleadings filed electronically (measure 1A-8). In FY 2011, the proportion of initial appeals filed electronically was 48 percent, and the proportion of pleadings filed electronically was 44 percent. These proportions have increased steadily over the last several years, and we are making efforts to strengthen these programs. In FY 2011, we expanded our Electronic Case File pilot program to include all regional offices and headquarters and, in FY 2012, we will begin a mandatory e-filing pilot program for agencies and representatives. As individual access to computers and the Internet increases, we anticipate that electronic filing will likely continue to increase. However, not every individual who may wish to file an appeal with MSPB will have access to or the desire to file electronically, so we expect to reach a natural plateau at some point beyond which we would not expect to see an increase in the use of electronic filing. Recent results indicate that electronic filing does not yet seem to be approaching a plateau. Given these results, and our efforts to improve electronic processing, we will increase the targets for these measures in the next two years. The targets for electronic filing of initial appeals will be set at 44 percent or more in FY 2012 and at 46 percent or more in FY 2013. The targets for electronic filing of pleadings will be set at 38 percent or more in FY 2012 and at 40 percent or more in FY 2013.

Enforcement of MSPB decisions: MSPB will continue to measure average processing time for enforcement cases in FY 2012 (measure 1B-1). The enforcement process begins when the request for compliance is filed in a regional or field office. If the AJ finds that the parties to the case are not in compliance, then the case goes to headquarters. The processing time includes actions taken by MSPB staff to research the case, notify the alleged non-compliant party (sometimes more than once), as well as the time it takes both parties to submit relevant information regarding compliance. Of note, the issues presented for resolution in enforcement cases – including disputes over back pay, reconstruction of the hiring process, and whether employees' new duties are substantially similar to their previous duties – appear to have become more complex over time. Accordingly, the amount of time required to obtain the necessary information from the involved parties to adequately address such issues has increased. In addition, because there are relatively few enforcement cases each year, only one or two very complex enforcement cases can substantially affect the average processing time. This is evidenced by the variability in processing time that MSPB has experienced over time. Unfortunately, the average processing time for enforcement cases increased in FY 2011. However, given the overall complexity of the enforcement process and past processing time results, MSPB will retain a target for average processing time for enforcement cases of 200 days or fewer for FY 2012 and FY 2013.

Merit Systems Studies: Stakeholder perceptions that our published merit systems study reports are objective, timely, and well written are important indicators of the success of our merit systems studies function (measure 1C-1). In FY 2012, MSPB will establish a measurement process for this

indicator and will set future targets as a part of its overall restructuring of the external customer service survey program. The FY 2013 target will be determined based on FY 2012 results.
MSPB will also continue to measure the number and scope of merit systems studies completed each year (measure 1C-2). Depending on the breadth and depth of the particular topic of a study, the method of collecting data, the complexity of the data and data analyses, and the relative experience of the project manager and analysts involved in the study, it may take 18-30 months to complete a single study. In addition, there are other important aspects of the studies program and other MSPB functions related to the studies program that are performed by the studies staff. During MSPB's recent strategic planning process, it was determined that placing greater focus and emphasis on specific activities and functions would allow MSPB to better achieve its Strategic Goals and carry out its statutory responsibilities as intended by the CSRA. These functions include reviewing and reporting on OPM significant actions (performance goal 1D), providing input on MSPB's review of OPM rules and regulations (performance goal 1D), and developing and delivering targeted communication products and educational materials on merit systems, MSPs, and PPPs (under Strategic Goal 2). In addition, the office is involved in conducting program evaluations and ensuring the validity and reliability of performance data and data systems as required by GPRAMA. However, MSPB has not received the necessary increase in staff or resources to carry out these important additional activities. Therefore, MSPB must adjust the target for the number of merit systems studies reports until necessary resources become available. Given the aforementioned changes in focus and emphasis, the many factors that can impact the study process, past results, and variability in the number of reports completed each year, our targets for FY 2012 and FY 2013 are a range of three to five completed merit systems study reports each year. The previous measure of the studies program related to conducting periodic Merit Principles Surveys will no longer be used. Conducting surveys is a strategy used to accomplish our work, but is not a valuable measure in and of itself.

Review of OPM rules, regulations, and significant actions: MSPB intends to strengthen its statutory function to review and take action on OPM rules and regulations, and to review and report on OPM significant actions. MSPB may, on its own motion, or at the request of other parties, review and potentially overturn OPM regulations if such regulations, or the implementation of such regulations, would require an employee to commit one or more PPPs. MSPB is also responsible for annually reviewing and reporting on the significant actions of OPM and the degree to which they may affect adherence to MSPs and the avoidance of PPPs. An important measure of this function is the number and scope of impact of these reviews in terms of the percent of the workforce, agencies, and policy areas affected or covered by these reviews. In FY 2012, MSPB will conduct an after-action review of MSPB's actions related to at least one of the major changes in OPM regulations or rules in the last four years. In FY 2013, we will establish a regulations review and performance measurement process and set future targets (measure 1D-1). Similarly, in FY 2012, MSPB will conduct an after action review of at least one of OPM's major significant actions in the last four years. In FY 2013, MSPB will establish an OPM significant action review and performance measurement process and set future targets (measure 1D-2).

Strategic Goal 2

This Strategic Goal focuses on efforts to use information from our adjudication, enforcement, merit systems studies, and OPM review work to support merit, improve adherence to MSPs, and prevent PPPs in the future. This includes informing and/or encouraging policy-makers to take actions that improve merit; conducting outreach to improve adherence to MSPs and prevention of PPPs in the workplace; and providing educational standards, materials, and guidance to improve the

understanding of merit, MSPs, and PPPs. Most of the measures we will use to measure these performance goals are new. In FY 2012, we will establish measurement processes and set future targets for these measures. The FY 2013 targets are TBD based on FY 2012 results.

Inform, promote, and/or encourage actions by policy-makers: Measures of this performance goal include the number and scope of contacts made with Governmentwide policy-makers focused on supporting or improving merit systems laws, regulations, rules, Executive Orders, and other policies (measure 2A-1). Policy-makers include Congressional members and staff, the CHCO Council, OPM, and others involved in considering or setting Governmentwide or large scale policies related to merit systems, improving adherence to MSPs, or preventing PPPs. MSPB will also track the number of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, legislation, professional literature, Executive Orders, or the media (measure 2A-2). This is similar to the merit systems studies measure on impact used in the past, but it is numeric rather than qualitative and includes references to other MSPB information. The third measure for this performance goal focuses on the number, type, and scope of MSPB products created and made available to inform policy-makers on improvements to merit systems policies, laws, and/or regulations (measure 2A-3). This measure recognizes that policy-makers may focus on specific issues, and that communication products are most effective when they meet the needs of various audiences or stakeholders.

Support stronger merit-based practices in the workplace: Measures of this performance goal include the number of views and/or accesses of MSPB precedential decisions, studies reports, newsletters, and other web-based materials meant to improve the practice of merit, adherence to MSPs, or prevention of PPPs in the workplace (measure 2B-1). In addition, we will measure the number and scope of MSPB contacts with practitioners and stakeholders focused on improving the practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace (measure 2B-2).

Advance the understanding of merit, MSPs, and PPPs: There are two measures of this performance goal. The first measure is the number, scope, and type of educational materials, or guidance about the merit systems, MSPs, PPPs, MSPB decisions, the appeals process, studies, newsletters, etc., that are viewed or accessed from MSPB's website (measure 2C-1). The second measure is the number and type of merit systems educational materials and guidance MSPB makes available (measure 2C-2).