
United States
Merit Systems Protection Board



Strategic Plan for FY 2014 – 2018

March 10, 2014

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MSPB

Strategic Plan

for

FY 2014 – 2018

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U.S. Merit Systems Protection Board Strategic Plan for FY 2014–2018

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 of the Government. This Strategic Plan will help ensure that the U.S. Merit Systems Protection Board (MSPB) fulfills its fundamental functions to protect merit, promote adherence to MSPs, and prevent PPPs. This Strategic Plan was prepared in accordance with the Government Performance and Results Act Modernization Act of 2010 (GPRAMA) and covers FY 2014–2018.

About MSPB

A bit of civil service history. Understanding the origin of MSPB and the role it plays in ensuring effective human capital management in the Federal Government requires a brief review of the history of our Nation’s Federal civil service. From the earliest days of our Government through the early 1880s, the Federal civil service operated under a patronage or “spoils system.”¹ Federal employees were appointed based on their support of a President’s election campaign and political beliefs. There were no requirements that such appointees be suitable for Federal service or have the qualifications to perform particular jobs. As administrations changed, large numbers of Federal employees were replaced with new employees appointed by the new administrations. At various times, the Capitol was besieged with thousands of office seekers who believed they were owed a Federal job based on their political support of the President. Over time, this practice contributed to an unstable workforce lacking the necessary qualifications to perform their work, which in turn adversely affected the efficiency and effectiveness of the Government and its ability to serve the American people.

The inherent weaknesses of the patronage system and its impact on Government effectiveness were recognized by concerned individuals and groups, resulting in various reform movements. However, there was little momentum for change until President James A. Garfield was assassinated in 1881 by a disgruntled Federal job seeker. A large public outcry for civil service reform ensued, which led to the enactment of the Pendleton Act in 1883. The Pendleton Act created the Civil Service Commission (CSC) and tasked it with monitoring a merit-based civil service based on the use of competitive examinations to support the appointment of qualified individuals to Federal positions. This 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 serve the American people.

¹ 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.

Following passage of the Pendleton Act, laws were enacted and actions undertaken that established the principle of “promoting the efficiency of the civil service” as the standard for removing a Federal employee. These laws and actions also granted preference for hiring military veterans, established a more transparent process for removing veterans from Federal jobs, and extended the veterans’ job protections to other civil servants.² The CSC was given additional authority to oversee the removal of Federal employees and to adjudicate employees’ appeals of their removal.³ Although the CSC made several internal changes to better manage the appeal process, it became clear over time that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate employee appeals of actions Federal agencies took against them. Concern over the inherent or perceived conflict of interest in the CSC’s role as both rule-maker and judge was a principal motivating factor behind the enactment of the Civil Service Reform Act of 1978 (CSRA).⁴ The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;⁵ 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.⁶

MSPB’s role and functions. During hearings on the CSRA, the role and functions of MSPB were described during testimony by various members of Congress: “. . . [MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with ensuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”⁷ MSPB inherited the adjudication functions of the CSC and provides due process to employees and agencies as an independent, third-party adjudicatory authority for employee appeals of adverse actions (e.g., removals, suspensions for more than 14 days, and furloughs) and retirement decisions. For matters within its jurisdiction, the CSRA gave MSPB the statutory authority to develop its adjudicatory processes and procedures, issue subpoenas, call witnesses, and enforce compliance with MSPB decisions.

The CSRA also gave MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and Federal human capital management issues, to ensure that Federal employees are managed in accordance with MSPs and in a manner free from PPPs. In addition, MSPB was given the authority and responsibility to review the rules, regulations, and significant actions of OPM. 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 a PPP. 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 avoidance of PPPs.⁸ In summary, the CSRA granted MSPB the statutory authority and responsibility to adjudicate employee appeals, enforce compliance with MSPB decisions, conduct objective studies of Federal merit systems and human capital management issues, and review and take appropriate action on OPM’s rules, regulations, and significant actions. Appendix A contains additional information about MSPB’s functions, scope and impact; and customers and stakeholders.

² The Lloyd LaFollette Act of 1912; the Veterans Preference Act of 1944, as amended; and Executive Order 10,988.

³ Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, *Journal of the Federal Circuit Historical Society*, Vol. 4, 2010, pages 111-112.

⁴ Ibid. page 113.

⁵ Ibid. page 114.

⁶ The Office of Special Counsel (OSC) was formed by CSRA as part of MSPB. OSC became a separate agency in 1989.

⁷ 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 1469-1470).

⁸ Title 5 U.S.C. §1204(f) and §1206.

Current Organization. MSPB is an independent Federal agency within the Executive Branch. MSPB's Board Members, including the Chairman, Vice Chairman, and Board Member, are appointed by the President, and confirmed by the Senate. Board Members serve overlapping, non-renewable 7-year terms and can be removed only for cause. No more than two of the three Board Members can be from the same political party. MSPB also has independent budgetary and hiring authority for its GS employees. The Board Members' primary role is to adjudicate the cases brought to the Board. The Chairman, by statute, is the chief executive and administrative officer.

MSPB headquarters, located in Washington, DC, has eight offices that are responsible for conducting its statutory and support functions. These include the Offices of Appeals Counsel, Clerk of the Board, Equal Employment Opportunity, Financial and Administrative Management, General Counsel, Information Resources Management, Policy and Evaluation, and Regional Operations. The Directors of these eight offices report to the Chairman through the Executive Director. MSPB also has eight regional and field offices located throughout the United States. These offices process initial appeals and report through the Director of Regional Operations. The agency is currently authorized to employ approximately 226 Full-time Equivalents (FTEs) to conduct and support its statutory duties. Many support functions are performed by other Federal agencies through interagency agreements. Over the last several years, reduced funding and budget uncertainty have eroded MSPB's resources such that MSPB currently has far fewer FTE.

Revising the Strategic Plan. In revising the strategic plan, MSPB considered changes in the external environment such as changes in law and jurisdiction (e.g., the WPEA), sequestration and reductions in Federal budgets (including large increases in MSPB workload due to furloughs, RIFs, and other similar actions), and increases in the number of retirements among Federal employees. MSPB also considered internal challenges such as changes in its budget, the proportion of MSPB employees who are eligible to retire, and the number of persistent vacancies due to budget uncertainty. Although these external and internal factors have affected, and will likely continue to affect MSPB's performance, MSPB has elected to retain the current agency performance framework. The mission, vision, values, strategic goals, and strategic objectives define MSPB's responsibilities to protect the Federal merit systems as envisioned by the CSRA. In addition, MSPB has elected to include management objectives in its strategic plan to emphasize critical internal leadership, management, and operational programs essential to support accomplishment of its strategic objectives. Achieving these strategic and management objectives will ultimately yield better Federal management, improved Federal employee and agency performance, better service to the public, and increased value to American taxpayers. Unfortunately, previous resource limitations and budget uncertainty past 2015 mean that MSPB will not be able to achieve results as quickly, or in the same manner as in the past. MSPB conducted extensive stakeholder consultation on the new strategic plan. More information about the consultation process, changes in the plan based on stakeholder comments, and links to other agency planning and reporting documents are contained in Appendix B.

How MSPB serves 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, Federal agencies, and to the American taxpayers. MSPB's effective and efficient adjudication of appeals, enforcement of its decisions, merit systems studies, and review of OPM regulations and significant actions adds value and saves costs by improving the quality of the workforce providing service to the public, strengthening adherence to MSPs, and preventing PPPs.

Value added through adjudication and enforcement. MSPB adds value by providing superior adjudication of employee appeals, including alternative dispute resolution, which ensures due process and 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 systems. As a neutral, independent third party, MSPB's adjudication of employee appeals improves the fairness and consistency of the appeals 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 also 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 how to prepare and present thorough, well-reasoned cases. Strong enforcement of MSPB decisions ensures timely, effective resolution of current disputes and encourages more timely compliance with future MSPB decisions.

Value added through merit systems studies and review of OPM. 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 contributes 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. MSPB's review of OPM rules, regulations, and significant actions protects the integrity and viability of the merit systems and civil service and improves adherence to MSPs, and provides benefits similar to those related to merit systems studies. These reviews also help to 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.

The Merit System, Merit System Principles, and the Prohibited Personnel Practices

The Federal merit systems are based on widely accepted organizational management practices and values that have been developed and reinforced through historical experience. Naturally, there are benefits and costs associated with merit-based management of the Federal workforce. Ensuring 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 help ensure a strong merit-based workforce but incur costs that are not directly comparable to the private sector. For example, the Government hiring process is typically longer than that of the private sector in part because of requirements to ensure selection of highly qualified employees based on assessment of applicant qualifications after fair and open competition. Effective assessment of candidates through the probationary or trial period takes time, but it improves the overall quality of the workforce and helps ensure that Federal job protections are provided to the most highly qualified employees. This, in turn, helps save costs by reducing the likelihood that the Government will need to undertake the lengthy process to remove an employee.

These management costs are offset by the benefits associated with ensuring a more stable, highly qualified workforce that serves in the public's interest over the long term.

The CSRA codified for the first time the values of the merit systems as the MSPs, and delineated specific actions and practices as the PPPs that were prohibited because they were contrary to merit systems values.⁹ The WPEA added a 13th PPP. The MSPs and PPPs are summarized below and their full text is contained in Appendix C.

MSPs include:

- 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;
- Training that improves organizational and individual performance;
- Protection from arbitrary action, favoritism, or coercion for political purposes;
- Protection against reprisal for lawful disclosure of violations of law and waste, fraud, and abuse;
- Effective and efficient use of the workforce; and
- That all employees should maintain high standards of integrity, conduct, and concern for the public interest.

PPPs state that employees shall NOT take, or influence others to take, personnel actions that:

1. Discriminate for or against an individual or applicant on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
2. Consider information beyond the persons qualifications, performance, or suitability for public service;
3. Coerce political activity or take action in reprisal for refusal to engage in political activity;
4. Deceive or willfully obstruct rights to compete for employment;
5. Influence a person to withdraw from competition to affect the employment prospects of another;
6. Grant preference beyond that provided by law to affect a person's employment prospects;
7. Are based on or create nepotism;
8. Are in retaliation or reprisal for whistleblowing—the lawful disclosure of violation of law, rule, regulation, gross mismanagement or waste of funds, abuse of authority, or danger to public health or safety;
9. Are in retaliation or reprisal for an employee's exercise of their rights and legal protections;
10. Are based on past conduct that does not adversely affect the job;
11. Knowingly violate veterans' preference;
12. Violate the merit systems principles; or
13. Implement or enforce a nondisclosure policy, form, or agreement, which does not include a specific statement that its provisions are consistent with and do not supersede applicable statutory whistleblower protections.

⁹ Title 5 U.S.C. § 2301 and § 2302, respectively.

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MSPB Strategic 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 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.

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

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

Strategic Objectives:

- 2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.
- 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through outreach.
- 2C: Advance the understanding of the concepts of merit, MSPs, and PPPs through the use of educational standards, materials, and guidance established by MSPB.

Management Objectives

Management Objectives: Effectively and Efficiently . . .

- M1: Lead and manage employees to ensure an engaged workforce with the competencies to perform MSPB's mission.
- M2: Manage budget and financial resources and improve efficiency to ensure necessary resources now and in the future.
- M3: Manage information technology and information services programs to support our mission.
- M4: Ensure employee and workplace safety and security.

Means and Strategies Needed to Accomplish MSPB's Objectives

Over the next 4-5 years, MSPB will use the following means and strategies to accomplish its objectives. Selected means and strategies may be adjusted and/or emphasized in specific years.

Strategic Goal 1

Strategic Objective 1A: Resolve appeals through adjudication and ADR.

1. Provide effective, efficient, and appropriately transparent adjudication of appeals in our regional and field offices and at headquarters.
2. Effectively and efficiently implement changes in adjudication and reporting of cases in accordance with changes in statute, regulation, or policy (e.g., as related to the WPEA).
3. Assess and make changes in adjudication processes and the IT and information services programs and applications to improve the effectiveness and efficiency of processing appeals (including large potential shifts in appeals due to furloughs and RIFs resulting from Federal budgetary or other external factors such as sequestration). (Also a strategy for M2 below.)
4. Ensure adequate adjudication capacity through strategic workforce planning.
5. Ensure continuity of legal expertise in legal and procedural issues through effective and efficient knowledge sharing and appropriate legal training of adjudication staff.
6. Review Board and Court decisions, share significant changes with stakeholders, and determine and implement necessary changes to adjudication processes and procedures.
7. Monitor adjudication performance and ensure accountability of the adjudication process.
8. Appropriately balance emphasis on the quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources though this may reflect somewhat less emphasis on timeliness than in the past.
9. Provide effective and impartial ADR services (including settlement and mediation) to meet the needs of the involved parties.
10. Ensure effective representation of MSPB in cases brought before other adjudicatory bodies, such as the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court.

Strategic Objective 1B: Enforce compliance with MSPB decisions.

1. Provide effective and efficient processing of requests for enforcement of MSPB decisions and improve the transparency of the enforcement process.

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

1. Periodically conduct a transparent process to develop and update the merit systems studies research agenda that includes feedback from studies stakeholders and customers.
2. Conduct independent, objective, and timely studies of the Federal merit systems and Federal management issues and practices in accordance with accepted research practices.

3. Expeditiously and appropriately report findings and recommendations from merit systems studies that provide value to the President, Congress, Federal human resources (HR) policy-makers, practitioners, and other stakeholders and that positively impact the merit systems and Federal human capital management.
4. Publish *Issues of Merit* newsletter editions and rotating web content that address timely, focused information about Federal merit systems and workforce management issues.
5. Obtain and maintain a web-based MSPB survey platform to support merit systems studies, and customer service and customer satisfaction performance measurement.
6. Administer periodic Merit Principle Surveys (MPS), 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.
7. Ensure MSPB's studies program capacity through strategic workforce management that increases the value and impact of studies to stakeholders.

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

1. Maintain the review of OPM rules, regulations, and significant actions and take action, as appropriate, to ensure adherence to MSPs and avoidance of PPPs.

Strategic Goal 2

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

1. Translate information from adjudication, merit systems studies, and OPM review into products designed to influence actions by policy-makers and practitioners 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 to ensure information about merit is disseminated appropriately.

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

1. Translate information from adjudication, merit systems studies, and OPM review into outreach and other products designed to inform and influence actions by practitioners that will support merit, improve adherence to MSPs, prevent PPPs, or improve the understanding of MSPB, its functions and processes.
2. Conduct outreach activities within available resources (e.g., conference presentations, practitioner forums, briefings, etc.) designed to improve the practice and understanding of merit, MSPs and PPPs, and that provide value to participants.
3. Consider the electronic, web-based delivery of outreach presentations to improve efficiency of outreach and reduce travel costs.
4. Track outreach events and emphasize audience feedback to improve outreach effectiveness.

Strategic Objective 2C: Advance the understanding of merit, MSPs, and 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 adjudication processes, outcomes, and legal precedents to support the parties' ability to prepare and file strong cases 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 Objectives M1: Lead and manage employees to ensure an engaged workforce with the competencies to perform MSPB's mission.**

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 employee orientation, on-the-job training, and other developmental and training experiences to ensure employees have the competencies necessary to perform MSPB's work, within budget constraints.
3. Use results from the Employee Viewpoint Survey, Internal Survey, and MSPB IdeaScale Community, and apply leadership and management skills to strengthen and maintain a culture to support a diverse, inclusive, and fully-engaged workforce.

Management Objective M2: Manage budget and financial resources and improve efficiency to ensure necessary resources now and in the future.

1. Establish and communicate operational priorities to ensure achievement of objectives.
2. Use people and budgetary resources effectively and efficiently to ensure adequate staff are available and prepared to accomplish our goals and provide value.
3. Communicate justification of resources (funds, people, operational requirements, and contingencies) necessary to accomplish MSPB objectives including how resource levels and external factors (such as sequestration) may impact MSPB performance.
3. Ensure access to and encourage increased use of e-Appeal Online; and continue to improve efficiency by shifting from paper-based work processes and products to automated electronic work processes and products.
4. Assess and make changes in adjudication processes and the IT and information services programs and applications to improve the effectiveness and efficiency of processing appeals (including large potential shifts in appeals due to furloughs and RIFs resulting from Federal budgetary or other external factors such as sequestration). (Also a strategy for A1 above.)

Management Objective M3: Manage IT and information services to support our mission.

1. Develop and implement IT hardware, software, and systems to support effective and efficient MSPB adjudication, studies, OPM review, and administrative programs.
2. Obtain a functional, secure, web-based survey platform to support merit systems studies and program evaluation and to obtain customer satisfaction information.
3. Upgrade IT infrastructure to improve effectiveness and efficiency in managing large fluctuations in appeals workload.
4. Ensure the MSPB website meets the needs of our customers.

Management Objective M4: Ensure employee and workplace safety and security.

1. Develop policies and practices, educate and train MSPB employees, and conduct drills to ensure all know their role in ensuring employees and the workplace are safe from natural and man-made threats to safety and security.

Assessing Achievement of MSPB Strategic and Management Objectives

The following performance goals are used to assess achievement of MSPB's objectives. They include outcome, output, process, customer service, and customer satisfaction performance goals and strategic indicators.¹⁰ More detailed information about performance goals, including measures and yearly targets for each goal are contained in APPs.

Strategic Goal 1

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

Performance Goals:

- 1A-1 Maintain quality of initial decisions.
- 1A-2 Maintain quality of decisions reviewed by reviewing authority.
- 1A-3 Maintain participants' positive perceptions of the adjudication *process*.
- 1A-4 Maintain processing timeliness for initial appeals.
- 1A-5 Maintain processing timeliness for PFRs.
- 1A-6 Maintain participants' positive perceptions of the ADR *process*.

Strategic Indicator:

- S1A-1 Percent of adjudication participants and legal stakeholders over time who agree that MSPB decisions are thorough, understandable, thoughtful, and legally sound.

1B. Enforce timely compliance with MSPB decisions.

Performance Goal:

- 1B-1 Maintain timeliness of processing compliance/enforcement cases.

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

Performance Goals:

- 1C-1 Maintain the number and scope of *Issues of Merit* newsletter editions or other articles.
- 1C-2 Maintain the number and scope of merit systems studies reports.

Strategic Indicators:

- S1C-1 Percent of studies stakeholders over time who agree study reports are objective, timely, well written, and include appropriate recommendations.

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

Performance Goals:

- 1D-1 Maintain program for review of OPM regulations.
- 1D-2 Maintain program for review and reporting of OPM significant actions.

¹⁰ Strategic indicators may exceed what MSPB can do or control on its own, but reflect important areas in which MSPB can make a contribution to strengthening merit, improving adherence to MSPs, and preventing PPPs. Strategic indicators may be measured every few years depending on MSPB's available resources.

Strategic Goal 2

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

Performance Goals:

- 2A-1 Maintain scope of references to MSPB work and products.
- 2A-2 Maintain the number and scope of MSPB products focused on policy-makers or changing Governmentwide policy.

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

Performance Goal:

- 2B-1 Maintain the number and scope of outreach contacts.

Strategic Indicator:

- S2B-1 Increase in the proportion of Federal employees who perceive adherence to the MSPs over time; following a possible drop in perceptions of adherence to merit as agencies educate their employees about merit, the MSPs, and the PPPs (also relevant to Objective 2C).

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

Performance Goals:

- 2C-1 Maintain the number and scope of MSPB website materials viewed/accessed related to improving the practice or understanding of merit, MSPs, or PPPs.
- 2C-2 Maintain the number and scope of available educational materials and guidance.

Strategic Indicator:

- S2C-1 Increase in the proportion of agencies that provide training and/or educational materials about the merit systems, MSPs, and PPPs to their employees over time.

Management Objectives

M1. Lead and manage employees to ensure an engaged workforce with the competencies to perform MSPB's mission.

Performance Goals:

- M1-1 Ensure the workforce has the competencies needed to perform MSPB's mission.
- M1-2 Maintain positive perceptions of diversity and inclusion by MSPB employees.
- M1-3 Strengthen and maintain employee engagement and address engagement issues identified in the EVS.

M2. Manage budget and financial resources and improve efficiency to ensure necessary resources now and in the future**Performance Goals:**

- M2-1 Develop fully justified budgets and ensure resource accountability.
- M2-2 Improve efficiency of adjudication case processing.

M3. Manage information technology and information services programs to support our mission**Performance Goals:**

- M3-1 Website contains complete, accurate, timely, well-organized, easy-to-use, searchable and accessible information.
- M3-2 Effective and efficient operation of IT resources and systems.
- M3-3 Ensure effective customer support for internal and external IT customers.

M4. Ensure employee and workplace safety and security**Performance Goal:**

- M4-1 Offices, employees, and visitors are safe and secure from internal and external natural or man-made threats or emergencies.

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Trends and Challenges that May Affect Agency Performance

A number of significant external trends and internal issues and challenges are likely to affect MSPB's mission through FY 2018. This section lists these trends, issues, and challenges, and their potential affect on MSPB. MSPB studies, newsletters, decisions, and other information and products may help inform Congress and other stakeholders on the potential impacts on merit and the Federal workforce of various actions and external trends. Otherwise, the external trends described here are beyond MSPB's influence.

External Trends

- Widespread government budget reductions such as sequestration, future budget uncertainty, and related workforce adjustments.
 - Large increase in furlough appeals as a result of sequestration and other Federal budget constraints and uncertainties.
 - Increase in appeals workload due to potential RIFs and actions taken in lieu of or in preparation for RIFs.
 - Continued need to conduct studies and make recommendations on how to ensure merit and avoid PPPs during these workforce changes.
- Changes in law and jurisdiction (e.g., the WPEA, Hatch Act Modernization Act, etc.).
 - Increases in adjudication workload, increased case complexity, and expanded case tracking, coding, and reporting requirements.
 - Increased need for and complexity in studying the merit systems and reviewing OPM rules, regulations, and significant actions.
- Increase in the number of retirement-eligible Federal employees.
 - Increase in appeals workload due to increased retirements (e.g., benefits claims and alleged forced retirement cases).
 - Increased need to study the how changes in the workforce demographics and approaches to work affect the workforce, merit systems, 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.
- 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 effectively under the MSPs and free from PPPs.
 - Increased need to promote merit and educate Federal policy-makers, managers and employees, other stakeholders, and the public about Federal merit systems, MSPs, and PPPs.

Internal Management Issues and Challenges

- Previous resource limitations, budget uncertainties past FY 2015, and competing priorities for existing resources.
 - Limiting ability to execute existing mission and support functions effectively and efficiently (exacerbated by external factors such as furlough appeals and new requirements).
 - Limited resources and importance of preserving quality results means MSPB cannot achieve results as quickly or at the same level as in the past (e.g., case processing timeliness and number of studies).
 - Insufficient resources to make essential real-time improvements in processes and IT systems and applications in order to process huge increase in appeals workload competes with resources required to maintain systematic schedule of system modernization.
 - Resources needed for studies and review of OPM significant actions compete for resources needed to conduct program evaluations required under GPRAMA.
 - Insufficient staff resources and expertise to investigate, obtain, and implement a secure, web-based survey platform which is essential for the studies program and obtaining agency performance information related to customer service and customer satisfaction.
 - Resources needed for conducting effective outreach competes with resources needed to conduct other mission work, especially when outreach involves travel or significant investment of staff resources.
 - Resources needed for improving the practice and understanding of merit, MSPs, PPPs, and MSPB processes and procedures competes with resources needed to do other mission-related work.
 - Limiting ability to invest in, but increased need for, long term improvements in operational efficiency and effectiveness.
 - Insufficient resources and staff expertise to investigate, develop, and implement a modern, effective, and efficient e-adjudication system including e-filing, e-pleadings, electronic case-files and records, and electronic adjudication processes that minimize printing the components of case files.
 - Limiting ability to maintain necessary FTE capacity and employee competencies.
 - Long hiring lags even for critical leadership positions, MSPB ended FY 2013 with less than 196 positions filled of its 226 authorized FTE.
 - Insufficient resources for training and employee development needed to ensure employee competencies to perform MSPB's work.
 - Insufficient staff time to support execution of mission and permit transfer of tacit knowledge from experienced employees to new employees.
 - Insufficient resources to assess and develop an agency and workforce structure to ensure a successful MPSPB in the future.
- High proportion of MSPB employees who will be eligible to retire in the next three years.
 - Limited resources and uncertainty in the ability and timing for hiring replacements.
 - Insufficient resources to sustain staff expertise through transfer of tacit knowledge of experienced staff (see above), overlapping new hires, using re-employed annuitants to ensure transfer of critical knowledge and competencies.

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 effectively and efficiently achieve its mission and to 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 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, in turn, will improve the value MSPB brings to agencies, Federal employees, individual parties to cases filed with MSPB, 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 published publically or 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/external customer surveys, will help ensure that performance data used to manage MSPB programs and track agency performance continue to be consistent, valid and verifiable.

Proposed Program Evaluation and Performance Measurement System Review Schedule

In FY 2013, MSPB finalized an internal program evaluation policy and began a program evaluation of its PFR process. Assuming sufficient resources are available, MSPB will develop an agency policy for performance measurement, verification, and validation beginning in FY 2014. Based on the availability of resources, MSPB will undertake independent program evaluations of its mission and administrative support programs and assess its performance measurement systems and processes over the next few years. A projected schedule for these activities is provided below.

Program/Performance Measurement System	Evaluation Start Year
Case processing in the regional and field offices	2015
Law manager case management system	2015
Administrative functions of the Office of the Clerk of the Board	2016
Merit System Studies	2016
IT program planning and implementation	2017
Functions of the Office of Regional Operations	2017
HR Management and Equal Employment Opportunity (EEO) functions	2018

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Governmentwide Contextual Indicators of a Strong Merit-based Civil Service

MSPB cannot achieve its purpose to protect and promote a strong merit-based civil service on its own. Federal policy-makers and other stakeholders must do their part to establish and implement merit-based policies, and must apply these policies to the everyday practice of merit in the workplace. A strong merit-based civil service also requires the cooperation and commitment of every agency leader, manager, supervisor, and employee. If everyone does their part, we will have a stable, highly qualified workforce managed under MSPs and free from PPPs, able to provide superior services to the American people.

MSPB cannot control the ultimate strength of the Federal merit systems or the degree to which other stakeholders do their part to support strong merit systems. However, we suggest that the following long-term Governmentwide contextual indicators illustrate important aspects of creating and maintaining a strong merit-based civil service in the Federal Government. These are long-term indicators with changes becoming evident over a period of several years, beyond the period of time covered in this Strategic Plan. Objective, verifiable, and valid information related to these indicators may be available from a variety of Federal agencies, as well as Government oversight organizations, public management groups, and other sources.

- ✓ Higher Governmentwide employee engagement and improved organizational management leading to higher organizational performance.
- ✓ A stable (with constructive turnover), competent, diverse, and inclusive workforce.
- ✓ Decrease in the actual or perceived occurrence of PPPs, or in the perception of the adverse impact of PPPs over time.
- ✓ Reduction in performance, disciplinary, or conduct actions (following a possible spike in such actions due to better understanding of the concept of merit, MSPs, PPPs, and the appeals process).
- ✓ Increase in the percent of Federal employees, supervisors, managers, and leaders who understand the basis of the Federal merit systems, the MSPs, and the PPPs.
- ✓ Increase in the percent of employees who agree they have confidence in the Federal merit systems appeals process.
- ✓ Increase in reported level of the public's trust of Federal civil servants or employees.

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Appendix A: More about MSPB

MSPB's Jurisdiction Under Other Federal Laws

Since enactment of the CSRA, Congress has given MSPB jurisdiction to hear cases and complaints filed under a variety of other laws.¹¹ Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), a person entitled to the rights and benefits provided by chapter 43 of title 38, United States Code, may file an appeal with the Board alleging that a Federal agency employer or OPM failed or refused, or is about to fail or refuse, to comply with a provision of that chapter such as reemployment rights following a period of uniformed (military) service or discrimination based on a person's uniformed service.¹² This prohibition applies with respect to initial employment, reemployment, retention in employment, promotion, or any benefit of employment. Under the Veterans Employment Opportunity Act (VEOA), veterans who seek employment in the Federal civil service and are not hired, have the right to seek redress before MSPB for any alleged violation of their veterans' preference rights. VEOA also provides a means of redress for any violation of an individual's rights under any statute or regulation relating to veterans' preference.

Under the Whistleblower Protection Act (WPA), MSPB exercises jurisdiction over claims made by whistleblowers in two types of appeals. An 'individual right of action' (IRA) appeal is authorized by 5 U.S.C. 1221(a) with respect to personnel actions that are allegedly threatened, proposed, taken, or not taken because of the appellant's whistleblowing activities.¹³ If the action is not otherwise directly appealable to MSPB, the appellant must seek corrective action from the Office of Special Counsel (OSC). An 'otherwise appealable action' appeal is an appeal to MSPB under laws, rules, or regulations other than 5 U.S.C. 1221(a) that includes an allegation that the agency action was based on the employee's whistleblowing activities. The appellant may choose either to seek corrective action from OSC before appealing to MSPB or appeal directly to MSPB.¹⁴

Congress enacted significant changes to whistleblower protections in the Whistleblower Protection Enhancement Act (WPEA) of 2012 (Public Law 112-199). This legislation amends the WPA to: expand the scope of protected disclosures; eliminate or narrow some exclusions from coverage; add to the covered actions over which MSPB has appellant jurisdiction; extend protections to all TSA employees; authorize MSPB to impose disciplinary action in some retaliation cases; expand MSPB's authority to award compensatory and other damages; and require MSPB to include whistleblowing case processing data in its annual performance reports. The WPEA also suspends, for 2 years, the exclusive jurisdiction of the U.S. Court of Appeals for the Federal Circuit over MSPB whistleblower cases, and adds a 13th PPP. The WPEA enhances whistleblower protections and gives MSPB more responsibility and authority in whistleblowing cases which is likely to add to MSPB's case workload and case complexity. TSA coverage under the WPEA took effect in November 2012, and the remaining sections of the law took effect on December 27, 2012.¹⁵

MSPB also processes cases from public employees related to alleged violations of political behavior prohibited by the Hatch Act. The Hatch Act Modernization Act of 2012, which took effect on January

¹¹ Also including 5 U.S.C. Chapter 43, and all those set out at 5 C.F.R. Part 1201.3.

¹² Public Law No. 103-353, codified at 38 U.S.C. §§ 4301-4335.

¹³ IRA appeals involved personnel actions listed in 5 C.F.R. § 1209.4(a).

¹⁴ Examples of such otherwise appealable actions are listed in 5 C.F.R. §§ 1201.3 (a)(1) through (a)(19).

¹⁵ The updated text for the 8 sections of the U.S.C. changed by the WPEA is available on the MSPB website at <http://www.mspb.gov/appeals/uscode.htm>.

28, 2013, broadens the scope of permissible political activities for state, local, and Federal employees, and effects MSPB's jurisdiction and processing of such cases. The Act expands the range of penalties that MSPB may apply to violations of the Act by Federal employees, and, in some cases, permits retroactive application of these new penalty provisions for Federal employees.

Finally, MSPB hears appeals from employees covered in merit systems established under other statutes. For example, MSPB has jurisdiction over certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3) and reduction-in-force actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a.

MSPB's Scope of Impact

Through its adjudication and studies functions, MSPB affects almost every Federal employee, and through those employees affects the quality of the service provided to the American people. Under various statutes, MSPB provides an independent, third-party review authority for over 2 million Federal civilian employees, applicants for Federal civilian jobs, and selected categories of the almost 575 thousand employees of the U.S. Postal Service (USPS) and 1.4 million uniformed military service members. MSPB's adjudication function covers individuals in almost every Federal cabinet level department, small and independent agencies, Government Boards, and other Executive branch organizations.

MSPB's merit systems studies function provides findings and recommendations that are applicable to and can improve Federal management in all Federal Executive branch organizations. Because these study findings and recommendations focus in part on improving public management in support of fundamental public service values, they also generally apply to the management of Federal legislative branch and judicial branch employees and public employees at the state and local level. Through MSPB's authority to review and act on OPM rules, regulations, and significant actions, MSPB protects the Federal merit systems and helps ensure that Federal employees are managed in adherence with MSPs and free from PPPs. This broad authority includes all employees in all the agencies for which OPM sets policy, beyond the specific individual employees who may file appeals to MSPB of actions their agencies have taken against them.

MSPB Customers, Partners, and Stakeholders

MSPB has a range of customers, partners, and stakeholders beyond the President and Congress who receive our reports on Federal merit systems studies and on OPM significant actions and who look to MSPB as a key component of a healthy civil service. Adjudication customers include those who appear before us such as appellants, appellant representatives, and agency representatives. Legal stakeholder groups include bar associations, attorney associations focused on Federal labor law, employee unions, management associations, veterans and military organizations, and other people or groups interested in our decisions and legal precedents. Customers and stakeholders primarily interested in our merit systems studies and OPM review functions include agency leaders, Chief Human Capital Officers, HR Directors, EEO Directors, HR and EEO specialists, academicians, good Government groups, and affinity groups. This group also includes other Government and non-profit organizations that do work similar to MSPB's studies function, such as the Government Accountability Office and the Partnership for Public Service.

MSPB partners include those organizations with which it has formal statutory or functional relationships, such as OPM, OSC, the Equal Employment Opportunity Commission (EEOC), and the U.S. Court of Appeals for the Federal Circuit. MSPB's authority to review OPM rules,

regulations, and significant actions was described above. In addition, an MSPB Board Member may request an advisory opinion from the Director of OPM concerning the interpretation of any rule, regulation, or other policy directive promulgated by OPM. The OPM Director may request reconsideration of an MSPB decision where the Director determines that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management, and the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. OSC prosecutes cases before MSPB that involve violations of PPPs and the Hatch Act and can bring corrective action. Specifically, if MSPB determines there is reason to believe that a current employee may have committed a PPP, then it refers the matter to OSC to investigate and take appropriate action. MSPB works with EEOC on 'mixed' cases that involve issues concerning both Federal MSPs and anti-discrimination principles as applied to Federal employees. Usually, MSPB and EEOC agree on the outcome of such cases. However, when the agencies do not agree, the case is decided by the Special Panel on Appeals as established by the CSRA. The U.S. Court of Appeals for the Federal Circuit hears cases resulting from an appeal of a Board decision on a PFR and in other specific circumstances in which no issue of discrimination was raised to or decided by the Board or where a discrimination issue was abandoned on judicial review. MSPB applies precedents established by the Court in adjudicating initial appeals and PFRs.

MSPB employees and the MSPB Professional Association are also key stakeholders because they carry out the work of the agency. Federal civilian employees, applicants for Federal civilian jobs, and selected categories of USPS employees and military service members, are also stakeholders. This is because the precedents MSPB sets through adjudication, the findings and recommendations of our studies, and our review of OPM rules, regulations, and significant actions, affect how well these employees are managed and how any potential appeals they may file are processed and decided. Several foreign governments also have an interest in MSPB and have used MSPB and the U.S. Merit System as models for establishing similar agencies and systems in their own countries. Finally, the public is a stakeholder because a successful MSPB helps ensure a healthy merit system and a high-quality workforce able to provide effective and efficient services to the American people.

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Appendix B: More about the new Strategic Plan

Consultation on the new Strategic Plan.

MSPB electronically consulted with its internal and external stakeholders, including Congress, during the summer of 2013. Internal consultation with MSPB employees and managers was accomplished via the MSPB IdeaScale Community and directly with the MSPB Professional Association. Consultation with external stakeholders included:

- Chair and Ranking members and staff of MSPB's Authorizing Committee and Subcommittee and Appropriations subcommittee in the House and Senate,
- MSPB's sister agencies, members of the Chief Human Capital Offices Council (CHCOC), and members of the Small Agency Council (SAC)
- Good government organizations, employee and management groups, affinity groups, legal and academic organizations, postal and military organizations and others, and
- Members of MSPB's studies and decisions listservs, and the public through website postings, a press release, and social media.

Most comments were submitted to the MSPBstrategicplan@mspb.gov email address, and a few were sent by letter.

Comments were received from Federal agencies, employee and management groups, good government groups, legal organizations, and individual stakeholders. Comments were supportive of the mission, vision, organizational values, strategic goals and strategic objectives in the plan. Comments were also supportive of the description of MSPB's origins, purpose, scope, customers and stakeholders, how MSPB brings value, and the internal and external factors that impact MSPB's mission and performance. More specific comments reflected concern that the processing speed of initial appeals may not provide sufficient time for discovery and other essential elements of due process. Stakeholders supported MSPB's efforts to improve the transparency of the PFR process through Non-Precedential Orders. At the same time, stakeholders agreed with the agency's emphasis on improving the timeliness of PFR processing. Stakeholders also supported MSPB's commitment to balanced measures of its adjudication process that includes decision quality, timeliness, and obtaining regular customer feedback on the adjudication process from MSPB's adjudication customers through customer surveys. Other comments supported MSPB's practice of gathering stakeholder input in developing its merit systems studies research agenda and encouraged MSPB to emphasize merit systems education.

In response to these comments, MSPB clarified its commitment to continue to use balanced measures of the adjudication process which means somewhat less emphasis on processing speed than in the past. Other stakeholder comments related to adjudication accountability, enforcement of MSPB decisions, and importance of conducting a merit principles survey every few years, were addressed in the means and strategies MSPB uses to accomplish its strategic objectives. Comments that went beyond the scope of the strategic plan were shared anonymously with selected MSPB Offices, as appropriate.

Links to Other MSPB Plans and Reports.

This strategic plan provides the foundation for MSPB's work for the next several years. It defines our purpose and lays out the long-term outcomes we hope to achieve. In accordance with the GPRAMA, MSPB's Annual Performance Plans (APP) include one or more program performance

goals for each strategic objective in the strategic plan. Each performance goal has a performance measure, and annual performance targets designed to move the agency incrementally toward achievement of its strategic goals, strategic objectives and management objectives. The APP is submitted as part of the Performance Budget provided to the Office of Management and Budget (OMB) and published at the same time as the Congressional Budget Justification submitted to Congress. MSPB reports program performance results as compared to the goals, measures, and targets in the APP. Beginning with the FY 2012 APR and FY 2013-2014 APP, the APP and APR are combined in the MSPB Annual Performance Report and Plan (APR-APP). The APR-APP presents information about MSPB's performance results and performance plans in a coherent, cogent, and straightforward manner, and minimizes the duplication and redundancy that would occur by publishing the annual report and annual plans separately. The strategic plan and APR-APPs are posted on MSPB's website at www.mspb.gov in accordance with GPRAMA and OMB Guidance.

Appendix C: The Merit System Principles and Prohibited Personnel Practices

The Merit System Principles: Title 5, United States Code, § 2301

(b) Federal personnel management should be implemented consistent with the following merit system principles:

- (1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.
- (2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
- (3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
- (4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.
- (5) The Federal work force should be used efficiently and effectively.
- (6) Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
- (7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
- (8) Employees should be--
 - (A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - (B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
- (9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences--
 - (A) a violation of any law, rule, or regulation, or
 - (B) mismanagement, a gross waste of funds, an absence of authority, or a substantial and specific danger to public health or safety.

The Prohibited Personnel Practices: Title 5, United States Code, § 2302

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority--

- (1) discriminate for or against any employee or applicant for employment--
 - (A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

- (B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
 - (C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
 - (D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
 - (E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
- (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action except as provided under section 3303(f);
 - (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee of applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
 - (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
 - (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
 - (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
 - (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;
 - (8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of--
 - (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences--
 - (i) a violation of any law, rule or regulation, or
 - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
 - (B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences--
 - (i) a violation of any law, rule, or regulation, or
 - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

- (9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of--
- (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
 - (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);
 - (C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
 - (D) for refusing to obey an order that would require the individual to violate a law.
- (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;
- (11)
- (A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or
 - (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;
- (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title. This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress; or
- (13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.



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