



# **U.S. Merit Systems Protection Board**

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**Annual Performance Report  
for  
FY 2021**

and

**Annual Performance Plan  
for  
FY 2022 (Final) & FY 2023 (Proposed)**

**March 28, 2022**

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## Foreword

The U.S. Merit Systems Protection Board (MSPB) submits this Annual Performance Report and Annual Performance Plan (APR-APP) for fiscal years (FYs) 2021-2023, which combines the final APR for FY 2021 with the APP for FY 2022 (Final) and FY 2023 (Proposed), as required by the Government Performance and Results Act Modernization Act of 2010 (GPRAMA). It also contains information about cases involving whistleblowers pursuant to the Whistleblower Protection Enhancement Act of 2012 (WPEA) (see Appendix A), and appeals processing as required by Title 5 of the United States Code (U.S.C.) § 7701(i)(1) (see Appendix B). Finally, in accordance with the 21<sup>st</sup> Century Integrated Digital Experience Act (Pub. L. 115-336), Appendix C contains our *Modernization of Public-facing Digital Services Report*.

Prior to March 4, 2022, MSPB had been without a quorum of Board members for five years, from January 8, 2017 to March 3, 2022. It had not had any presidentially appointed, Senate-confirmed Board members since March 1, 2019. The lack of quorum prevented MSPB from issuing decisions on petitions for review (PFRs) and other cases at headquarters (HQ), and from issuing reports of merit systems studies. Despite these restrictions, MSPB continued to carry out its functions to the maximum extent possible, including adjudication of initial appeals in its regional and field offices (RO/FOs). Details on how the lack of a quorum has affected our performance are contained in the body of this document.

The APR-APP contains information about MSPB including its origins in civil service history; role and functions; scope of responsibility; organization and structure; and how it brings value to the merit systems, Federal agencies, the workforce, and the public. It also provides information about the merit system principles (MSPs) and prohibited personnel practices (PPPs). The APR-APP is based on the MSPB Strategic Plan for FY 2022-2026, compares annual performance results for FY 2021 to performance targets defined in May 2021, and includes prior year results for comparative purposes. It also contains: final goals, measures, and targets for FY 2022 and proposed goals, measures, and targets for FY 2023, along with explanatory information on changes; an overall summary of the external trends and internal management challenges that have affected or may affect MSPB's performance; and information about performance measurement and program evaluation.

The APR-APP has been prepared in accordance with GPRAMA, guidance provided by the Office of Management and Budget (OMB), and other sources. Additional information about MSPB's activities can be found in the Annual Report (AR) for FY 2021, pursuant to 5 U.S.C. § 1206. MSPB's APRs, APPs, and ARs are available on MSPB's website at [www.mspb.gov](http://www.mspb.gov).

MSPB invites customers and stakeholders to send comments on the APR-APP to:

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# U.S. Merit Systems Protection Board

## APR-APP for FY 2021-2023

### Introduction

A highly qualified, diverse Federal workforce managed under the merit system principles (MSPs), and in a manner free from prohibited personnel practices (PPPs), is critical to ensuring Federal agency performance and service to the public. The MSPs are essential management practices that help ensure that the Federal Government is able to recruit, select, develop, maintain, and manage a high-quality workforce and thereby reduce staffing costs and improve organizational results for the American people. The PPPs are specific, proscribed behaviors that undermine the MSPs and adversely affect the effectiveness and efficiency of the workforce and the Government. MSPB's fundamental function is to ensure that the Federal workforce is managed in a manner consistent with the MSPs and protected from PPPs.

This APR-APP aligns with the strategic and management objectives defined in MSPB's Strategic Plan for FY 2022-2026. It also includes final FY 2021 performance results and performance targets for FY 2022 (final) and for FY 2023 (proposed). MSPB adjusted the FY 2022 targets from those contained in the FY 2022 APP published in May 2021 based on changes in external and internal factors. The goals and targets for FY 2022 and 2023 are in line with MSPB's proposed budgets for those years.<sup>1</sup> See [Comprehensive Performance Results and Plans](#).

### About MSPB

**A Merit-Based U.S. Civil Service.** Briefly reviewing the history of our Federal civil service is helpful in understanding the origin and purpose of MSPB. Until the early 1880s, the Federal civil service was a patronage or "spoils" system in which the president's administration appointed Federal workers based on their political beliefs and support of his campaign, rather than on the employee's suitability and qualifications to perform particular Federal jobs.<sup>2</sup> Over time, this practice contributed to an unstable Government workforce lacking the necessary qualifications to perform its work, which in turn adversely affected the efficiency and effectiveness of the Government and its ability to serve the American people.

The patronage system continued until President James A. Garfield was assassinated by a disgruntled Federal job seeker who felt he was owed a Federal job because he supported the President's campaign. A public outcry for reform resulted in passage of the Pendleton Act in 1883. The Pendleton Act created the Civil Service Commission (CSC), which monitored and regulated a civil service system based on merit and the use of competitive examinations to select qualified individuals for Federal positions. Congress later enacted the Lloyd-LaFollette Act of 1912, which provided that a civil servant could be removed only for such cause as promoted the efficiency of the service. Subsequent laws and regulations authorized the CSC to review the procedures used to remove civil servants and the validity of the reasons for removal. These developments contributed to improvements in Government efficiency and effectiveness by helping to ensure the stable retention

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<sup>1</sup> MSPB does not define priority goals, does not have low-priority program activities, and does not have a specific role in achieving Federal cross-agency priority goals. MSPB does not have any duplicative, overlapping, or fragmented programs as referenced in Executive Order (EO) 13576, "Delivering an Efficient, Effective, and Accountable Government," dated June 13, 2011. MSPB also has not defined any unnecessary agency plans and reports as referenced in GPRAMA (Pub. L. 111-352 § 1125).

<sup>2</sup> Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, *Journal of the Federal Circuit Historical Society*, Vol. 4, 2010, pages 109-110.

of a highly qualified Federal workforce, free from partisan political pressure, available to provide capable and effective service to the American people.

During the following decades, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate employee appeals. Concern over the inherent or perceived conflict of interest in the CSC's role as both the rule-maker and adjudicator of those same rules was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA).<sup>3</sup> The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;<sup>4</sup> the Office of Personnel Management (OPM) as the president's agent for Federal workforce policy and procedure; and the Federal Labor Relations Authority to oversee Federal labor-management relations. More information about MSPB's role, functions and scope of responsibilities, organizational structure, and how it brings value to the merit systems, the Federal workforce, and the public is contained in Appendix D.

## **Current Organization**

Prior to March 4, 2022, MSPB had been without a quorum of Board members for five years (from January 8, 2017 through March 3, 2022), and without any presidentially appointed, Senate-confirmed Board members since March 1, 2019. Since 2019, MSPB continued to operate in accordance with its continuity of operations plan (COOP). Under the COOP, MSPB's General Counsel served as the agency's Acting Chief Executive and Administrative Officer. The lack of quorum led to a backlog of PFRs and other cases at HQ awaiting Board decisions. As of the end of September 2021, MSPB had a total of 3,465 pending cases at HQ. The lack of quorum also prevented MSPB from releasing reports of merit systems studies, promulgating substantive regulations to accompany congressional changes in its jurisdiction or processes, and it affected the review of OPM significant actions. Nonetheless, administrative judges (AJs) in the RO/FOs continued to receive initial appeals, conduct hearings, and issue initial decisions. MSPB HQ continued to receive PFRs and to draft proposed PFR decisions for consideration by Board members upon their arrival. MSPB continued to conduct research and drafted a new research agenda for review by the Board now that a quorum is restored. The agency's executive, financial, and administrative operations continued to function. As a result, MSPB continued to perform its critical mission to the extent possible during this prolonged interval.

President Trump's nominations of Dennis D. Kirk as Board Chairman and B. Chad Bungard and Julia A. Clark as Board Members expired at the end of the 116<sup>th</sup> Congress. At the beginning of the 117<sup>th</sup> Congress, President Trump nominated Mr. Kirk as the Board Member, but his nomination was withdrawn by President Biden on February 4, 2021. On June 24, 2021, President Biden nominated Cathy Ann Harris to be a Member and Chair of the MSPB and Raymond A. Limon to be a Member of the MSPB with the designation of Vice Chair. On September 13, President Biden nominated Tristan Leavitt as the third Member of the MSPB. On September 22, the Senate Committee on Homeland Security and Governmental Affairs held a nomination hearing for the three nominees. On October 6, 2021, the nominees were reported favorably out of committee and the nominations were placed on the Senate calendar. On January 3, 2022, the Senate returned Ms. Harris's nomination to the President, and she was renominated on January 4, 2022. On February 4, 2022, her nomination was reported favorably out of committee and placed on the Senate calendar. On March 1, 2022, the Senate confirmed the nominations of Mr. Limon and Mr. Leavitt, and on

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<sup>3</sup> Ibid. page 113.

<sup>4</sup> Ibid. page 114.

March 4, 2022, they were sworn in as Board Members. We hope the necessary action will be taken to confirm Ms. Harris in early calendar year 2022.

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

### **Summary of Changes in this APR-APP**

This APR-APP makes clear that, until a new Board is confirmed, MSPB cannot define FY 2022 and FY 2023 targets for the performance goals (PGs) related to quality of initial appeals, PFR processing, compliance case processing, and requests to review OPM regulations. Strategic and management objectives and PGs for FY 2022 reflect changes in the MSPB Strategic Plan for FY 2022-2026. Final performance results for FY 2021, and the performance plans for FY 2022 (final) and FY 2023 (proposed) are included. The Performance Framework and the Means and Strategies sections have been updated accordingly. The Comprehensive Results and Plans section primarily uses the FY 2021 strategic and management objectives and PGs, and it includes explanations for the FY 2022 changes and proposed targets for FY 2023. Some FY 2022 and many FY 2023 targets are to be determined (TBD) based on restoration of a quorum and results achieved in the prior FY. The external factors section updates information about the COVID-19 pandemic and includes new EOs and recent court decisions.

### **Linking this Plan to Other Agency Documents**

This APR-APP is based on MSPB's Strategic Plan for FY 2022-2026. Individual performance plans for MSPB's senior executives are linked to appropriate agency annual performance and management goals, as required. MSPB compares program performance results to performance targets in accordance with the GPRAMA and OMB guidance. MSPB's plans and reports are posted on MSPB's website at [www.mspb.gov](http://www.mspb.gov).

# MSPB Performance Framework

## Mission

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

## Vision

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

## Organizational Values

- Excellence:** We will base our decisions on statutes, regulations, and legal precedents; use appropriate scientific research methods to conduct our studies and make practical recommendations for improvement; and develop and use appropriate processes to oversee the regulations and significant actions of OPM. We will interact with our customers and stakeholders in a professional, respectful, and courteous manner. We will strive to be a model merit-based organization by applying the lessons we learn in our work to the internal management of MSPB.
- Fairness:** We will conduct our work in a fair, unbiased, and objective manner. We will be inclusive in considering the various perspectives and interests of stakeholders in our work and in our external and internal interactions with individuals and organizations.
- Timeliness:** We will issue timely decisions in accordance with our performance goals and targets. We will issue timely reports on the findings and recommendations of our merit systems studies. We will respond promptly to inquiries from customers and stakeholders.
- Transparency:** We will make our regulations and procedures easy to understand and follow. We will communicate with our customers and stakeholders using clear language. We will make our decisions, merit systems studies, and other materials easy to understand, and widely available and accessible on our website. We will enhance the understanding of our processes and the impact of our products through outreach efforts.

## Strategic 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.
  - 1A-RO: Provide understandable, high-quality resolution of initial appeals in the RO/FOs, supported by fair and efficient adjudication and ADR processes.
  - 1A-HQ: Provide understandable, high-quality resolution of appeals at HQ, supported by fair and efficient adjudication and ADR processes.
- 1B: Enforce timely compliance with MSPB decisions.
- 1C: Conduct objective, timely studies of the Federal merit systems and Federal human capital management issues.
- 1D: Review and act upon the rules, regulations, and significant actions of the OPM, 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: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful, targeted outreach and engagement.
- 2B: Advance the understanding of merit, the MSPs, and the PPPs for stakeholders and the public by developing and sharing informational and educational materials and guidance.

## Management Objectives

- M1: Lead, manage, and develop employees to ensure a highly qualified, diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.
- M2: Modernize information technology (IT) to support agency mission and administrative functions.

## Comprehensive Performance Results and Plans

This section is structured primarily on the PGs defined in FY 2021. Beginning in FY 2022, MSPB is changing several objectives, PGs, measures, and targets. New objective and performance goal statements, new measures, and new targets are included in each relevant section. These changes enhance the focus on reducing the backlog of cases at HQ while carrying out all other adjudication functions, and clarify or simplify the other goals and objectives. Some changes may be final at the beginning of FY 2022, some changes will be finalized over the course of FY 2022. MSPB's quorum was restored in early March 2022. The Board is resuming operations related to issuing HQ decisions and other functions. We hope that the Senate will soon confirm Ms. Harris so the Board will have a full slate of Members.

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

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

Results indicate this objective was **Partially Met**. MSPB exceeded the target for average processing time for initial appeals and met the target for cases left unchanged by the court. MSPB also met the targets for conducting surveys of adjudication and ADR customers. However, no changes were made to the customer surveys to account for the new applications because the new core adjudication applications are not yet fully implemented. Because MSPB began FY 2021 without a quorum of Board members, targets were not set or results rated for quality of initial appeals (which is based on PFR decisions), and average PFR processing time. Even though MSPB did not have a quorum for the entirety of 2021, it continued to process cases at HQ and prepare proposed decisions in PFR and original jurisdiction cases for review by new Board members when they arrive. At the end of FY 2021, 3,465 PFR cases were pending at HQ.

Beginning in FY 2022, MSPB will split the adjudication objective into two subobjectives, one to focus on adjudication of initial appeals and ADR conducted by RO/FOs and one to focus on adjudication of cases and ADR at HQ. The PGs for initial appeals include quality and timeliness of initial decisions (including addenda), and a new measure for the ADR function. The FY 2022 target for timeliness of initial appeals remains at 120 days or fewer. In FY 2022, appropriate goals and measures for initial appeals decision quality and ADR processing and programs will be determined by assessing these processes and available data. Reviewing and determining goals and measures for initial decision quality and ADR processes will involve new Board members, consideration of new rules, laws, and regulations that affect MSPB jurisdiction and case processing, and assessment of data obtained as MSPB begins to issue decisions at HQ (which will include remands and reversals of previously issued initial decisions). Previous PGs related to automated customer service surveys of participants in the initial appeals and ADR processes will be discontinued effective FY 2022. MSPB will continue to conduct adjudication customer surveys; however, pending implementation of our new adjudication system, MSPB will not include the surveys as PGs in the APP.

The PGs for HQ case processing will include a measure of quality of PFR decisions, timeliness of PFR processing, and one or two new PGs specifically related to reducing the backlog of cases at HQ. The goals for backlog reduction are currently placeholder goals to be defined in FY 2022, along with a suitable measures, now that a quorum has been restored and the new Board Members can determine how to approach adjudicating the backlog. MSPB has long considered the proportion of cases left unchanged by the Court of Appeals for the Federal Circuit (CAFC) as a surrogate or proxy

measure for MSPB decision quality. In FY 2022, MSPB will continue to use the current measure but will consider the specific numeric calculation for this measure, and perhaps other aspects of HQ decision quality, to determine possible changes to this measure. Also in FY 2022, MSPB will consider input from the new Board, as well as the approach the new Board adopts to reduce the backlog of HQ cases, in order to define an appropriate target for timeliness of HQ case processing. The FY 2023 targets for all goals are TBD based on FY 2022 results.

Linking FY 2021 and FY 2022 Adjudication PG Numbers: The order of detailed results and plans for the adjudication PGs in this section follows that for FY 2021, and involves eliminating some PGs and including placeholder PGs to be defined in FY 2022. Specific changes in wording and numbering for each PG and for each related performance measure are noted in the following sections. The following table of PG numbers for FY 2021 and FY 2022 is provided to help navigate adjudication results and plans for the adjudication objective.

Performance Goal Topic	FY 2021 PG Number	FY 2022 PG Number
Initial decision quality	1A-1	1A-RO-1
Participant perceptions of the initial appeals process	1A-3	Eliminated
Initial appeals timeliness	1A-4	1A-RO-2
New placeholder PG for ADR process	New in FY 2022	1A-RO-3
Participant perceptions of the ADR process	1A-6	Eliminated
PFR decision quality	1A-2	1A-HQ-1
PFR timeliness	1A-5	1A-HQ-2
New placeholder PG to reduce HQ case backlog	New in FY 2022	1A-HQ-3
New companion placeholder PG on backlog reduction (if needed)	New in FY 2022	1A-HQ-4

**Strategic Objective 1A: Beginning in FY 2022, this objective is restated as “Provide understandable, high-quality resolution of initial appeals in the RO/FOs, supported by fair and efficient adjudication and ADR processes” to focus on initial appeals case processing and ADR processes, and is renumbered 1A-RO.**

<b>Performance Goal 1A-1: Maintain quality of initial decisions. Beginning in FY 2022, this PG reads “Ensure quality of initial decisions” and is renumbered as 1A-RO-1.</b>			
<b>Measure:</b> Percent of initial decisions that are reversed or remanded on PFR due to AJ error or oversight. A new measure will be defined in FY 2022.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	2%	<b>FY 2021</b>	No target set, no quorum.
<b>FY 2016</b>	5%	<b>FY 2022</b>	No numeric target set. Assess processes and available data and determine an appropriate measure for initial decision quality.
<b>FY 2017</b>	Not rated, no quorum.	<b>FY 2023</b>	TBD based on FY 2022 results.
<b>FY 2018</b>	No target set, not rated, no quorum.		
<b>FY 2019</b>	No target set, not rated, no quorum.		
<b>FY 2020</b>	No target set, not rated, no quorum.		
<b>FY 2021</b>	No target set, not rated, no quorum.		

<b>Performance Goal 1A-3: Maintain participants' positive perceptions of the adjudication process. Beginning in FY 2022, this PG and measure is eliminated.</b>			
<b>Measure:</b> Percent of adjudication participants surveyed who agree that MSPB adjudication processes are fair, open, accessible, understandable, and easy to use.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	Customer survey data collected from PFR customers in support of the PFR program evaluation.	<b>FY 2021</b>	Continue automated customer service and customer satisfaction survey, consider results, and take appropriate action to address issues. Change surveys, as appropriate, after implementing new core business applications.
<b>FY 2016</b>	Collected customer feedback from the PFR participants. Customer surveys submitted for OMB Paperwork Reduction Act (PRA) approval. Automated sampling and invitation process was developed.	<b>FY 2022</b>	Beginning in FY 2022, this PG is eliminated.
<b>FY 2017</b>	Implemented automated survey process and began data collection.	<b>FY 2023</b>	Not applicable.
<b>FY 2018</b>	Automated survey process ongoing.		
<b>FY 2019</b>	Surveys ongoing.		
<b>FY 2020</b>	Surveys ongoing.		
<b>FY 2021</b>	Surveys ongoing; no changes were made to the surveys because the new core adjudication applications are not yet implemented.		

<b>Performance Goal 1A-4: Maintain processing timeliness for initial appeals. Beginning in FY 2022, this PG reads “Ensure processing timeliness for IDs (including addendum appeals)” and is renumbered PG 1A-RO-2.</b>			
<b>Measure:</b> Average case processing time for initial appeals (including addendum appeals).			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	499 days*	<b>FY 2021</b>	120 days or fewer.
<b>FY 2016</b>	99.5% of furloughs and 78% of non-furlough workload completed.	<b>FY 2022</b>	120 days or fewer.
<b>FY 2017</b>	See Interim Indicator below.	<b>FY 2023</b>	TBD based on FY 2022 results.
<b>FY 2018</b>	102 days		
<b>FY 2019</b>	105 days		
<b>FY 2020</b>	102 days		
<b>FY 2021</b>	105 days		
* A weighted average including all initial appeals closed.			

**Interim Indicator for Initial Appeals Processing:**

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

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

<b>Performance Goal 1A-RO-3: New PG for the ADR process TBD.</b>			
<b>Measure:</b> A new measure will be defined in FY 2022 to measure some aspect of the ADR process.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2021</b>	New PG and measure in FY 2022.	<b>FY 2022</b>	No numeric target set. Consider and determine new goal and measure for the ADR process.
		<b>FY 2023</b>	TBD based on FY 2022 results.

<b>Performance Goal 1A-6: Maintain participants' positive perceptions of the ADR <u>process</u>. Beginning in FY 2022, this PG and measure is eliminated.</b>			
<b>Measure:</b> Percent of participants in the ADR programs, including initial appeals settlement and the Mediation Appeals Program (MAP), surveyed who agree the ADR process was helpful, valuable, and noncoercive, even if no agreement was reached.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	Collected feedback from participants in the MAP.	<b>FY 2021</b>	Continue automated customer service and customer satisfaction survey, consider results, and take appropriate action to address issues. Change surveys, as appropriate, after implementing new core business applications.
<b>FY 2016</b>	Collected customer feedback from MAP participants. Customer surveys submitted for OMB PRA approval. Automated sampling and invitation process was developed.	<b>FY 2022</b>	Beginning in FY 2022, this PG will be eliminated.
<b>FY 2017</b>	Implemented automated survey process and began data collection.	<b>FY 2023</b>	Not applicable.
<b>FY 2018</b>	Automated survey process ongoing.		
<b>FY 2019</b>	Surveys ongoing.		
<b>FY 2020</b>	Surveys ongoing.		
<b>FY 2021</b>	Surveys ongoing; no changes were made to the surveys because the new core adjudication applications are not yet implemented.		

**Strategic Objective 1A-HQ: Provide understandable, high-quality resolution of appeals supported by fair and efficient adjudication and ADR processes. Beginning in FY 2022, this objective is restated as “Provide understandable, high-quality resolution of HQ appeals, supported by fair and efficient adjudication and ADR processes” and is renumbered 1A-HQ.**

<b>Performance Goal 1A-2: Maintain quality of decisions reviewed by reviewing authority. Beginning in FY 2022, this PG reads “Ensure quality of PFR decisions” and is renumbered as PG 1A-HQ-1.</b>			
<b>Measure:</b> Percent of MSPB decisions left unchanged (affirmed or dismissed) upon review by the U.S. Court of Appeals for the Federal Circuit (CAFC). (MSPB will consider changes to this measure or its calculation in FY 2022.)			
Results		Targets	
FY 2015	96%	FY 2021	92% or more
FY 2016	94%	FY 2022	92% or more using the current calculation, unless this measure or its calculation is changed in FY 2022.
FY 2017	94%	FY 2023	TBD based on FY 2022 results.
FY 2018	92%		
FY 2019	86%		
FY 2020	94%		
FY 2021	83%		

<b>Performance Goal 1A-5: Maintain processing timeliness for PFRs. Beginning in FY 2022, this PG reads “Ensure processing timeliness for PFRs” and is renumbered as PG 1A-HQ-2.</b>			
<b>Measure:</b> Average case processing time for PFRs of initial appeals (including PFRs of addenda).			
Results		Targets	
FY 2015	190 days	FY 2021	No target set, no quorum.
FY 2016	185 days	FY 2022	No numeric target set. Consult new Board to determine appropriate measure and target.
FY 2017	Not rated, no quorum.	FY 2023	TBD based on FY 2022 results.
FY 2018	No target set, not rated, no quorum.		
FY 2019	No target set, not rated, no quorum.		
FY 2020	No target set, not rated, no quorum.		
FY 2021	No target set, not rated, no quorum.		

<b>Performance Goal 1A-HQ-3: Reduce the backlog of HQ cases. A new PG beginning in FY 2022 to focus on reducing the backlog of HQ cases.</b>			
<b>Measure:</b> A new measure to be defined to track reduction of the case backlog at HQ.			
Results		Targets	
FY 2021	New PG and measure in FY 2022.	FY 2022	No numeric target set. Define PG and measure depending on new Board’s approach to the backlog.
		FY 2023	TBD based on FY 2022 results.

<b>Performance Goal 1A-HQ-4: Reduce the backlog of HQ cases. An additional new PG beginning in FY 2022 to focus on reducing the backlog of HQ cases (if needed).</b>			
<b>Measure:</b> A new companion measure to be defined to track reduction of the case backlog at HQ (if needed).			
<b>Results</b>		<b>Targets</b>	
<b>FY 2021</b>	New PG and measure in FY 2022.	<b>FY 2022</b>	No numeric target set. Define PG and measure depending on new Board's approach to the backlog (if needed).
		<b>FY 2023</b>	TBD based on FY 2022 results.

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

This objective was **Not Rated**. No FY 2021 target was set for this goal because MSPB began the year without a quorum of Board members. While MSPB processed compliance cases at HQ and in the RO/FOs, the lack of quorum prevented the agency from releasing any HQ decisions. Thus, MSPB did not rate this objective and goal. However, in FY 2021 the RO/FOs issued 106 compliance decisions with an average processing time of 93 days. These cases are included in the computation for total average case processing timeliness for all initial appeals and addenda in the RO/FOs (see PG 1A-4).

Beginning in FY 2022, MSPB will split the compliance case processing timeliness performance goal into two PGs, one each for the RO/FOs and for HQ, respectively. The FY 2022 target for processing compliance in the RO/FOs is set at 120 days or fewer, identical to the timeliness target for processing initial appeals. Processing compliance cases at HQ is a more complicated endeavor that routinely involves extensive interaction with agencies. In FY 2022, MSPB will assess compliance case processing at HQ and determine an appropriate measure for this PG. The FY 2023 targets for both PGs are TBD based on FY 2022 results.

<b>Performance Goal 1B-1: Maintain timeliness of processing compliance/enforcement cases. Beginning in FY 2022, this PG reads “Ensure processing timeliness of compliance cases in the RO/FOs.”</b>			
<b>Measure:</b> Weighted average processing time for all enforcement cases. Beginning in FY 2022, this measure will be the “Average processing time for compliance case addenda in the RO/FOs” to focus only on cases closed in the RO/FOs. (The prior year results have been updated to reflect only cases from the RO/FOs.)			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	126 days*	<b>FY 2021</b>	No target set; new measure in FY 2022.
<b>FY 2016</b>	150 days*	<b>FY 2022</b>	120 days or fewer.
<b>FY 2017</b>	122 days*	<b>FY 2023</b>	TBD based on FY 2022 results.
<b>FY 2018</b>	95 days		
<b>FY 2019</b>	104 days		
<b>FY 2020</b>	94 days		
<b>FY 2021</b>	93 days		
* The results for FY 2015-2017 were affected by the processing of furlough cases. See PG 1A-4 (on the timeliness of initial appeals) above.			

<b>Performance Goal 1B-1: Maintain timeliness of processing compliance/enforcement cases. Beginning in FY 2022, this PG reads “Ensure processing timeliness of compliance cases at HQ” and is renumbered 1B-2.</b>			
<b>Measure:</b> Weighted average processing time for all enforcement cases. Beginning in FY 2022, a new measure will be defined to focus only on compliance cases closed at HQ.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	161 days*	<b>FY 2021</b>	No target set, no quorum.
<b>FY 2016</b>	159 days*	<b>FY 2022</b>	No numeric target set. Assess compliance case processing at HQ and determine appropriate measure for this PG.
<b>FY 2017</b>	No target set, not rated, no quorum.	<b>FY 2023</b>	TBD based on FY 2022 results.
<b>FY 2018</b>	No target set, not rated, no quorum.		
<b>FY 2019</b>	No target set, not rated, no quorum.		
<b>FY 2020</b>	No target set, not rated, no quorum.		
<b>FY 2021</b>	No target set, not rated, no quorum.		
* This is a weighted average of cases closed in the regional and field offices and cases closed at HQ.			

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

Results indicate this objective was **Exceeded**. MSPB achieved its targets for newsletters and other articles by publishing three *Issues of Merit (IoM)* newsletter editions covering seven of the nine MSPs and three PPPs. Newsletter article topics included recruiting and hiring (job fit, direct hire, and the new General Services Administration dashboard); disability retirement; choosing an online training program; performance management; pay equity; building supportive work environments; the Senior Executive Service (SES); and reentry and post-pandemic telework. MSPB exceeded its target for preparing for publication of study documents by publishing five research briefs: the importance of job fit for agencies and employees; direct hire authority; determining acceptable level of competence; agency leader responsibilities for PPPs; and confidence in ability to perform. MSPB exceeded its target for conducting surveys by successfully completing the 2021 Merit Principles Survey (MPS), and fielding two surveys to gather input on strategic planning from external stakeholders. This year the MPS went to more agencies than either of the two previous MPSs and required less than half the time from approval of final survey content to survey launch than the previous MPS. The MPS data collected in 2021 will support at least three research projects. As of the end of FY 2021, MPS data were being prepared for public release. (Note, 2021 MPS data have since been published on MSPB’s website at <https://www.mspb.gov/foia/SurveyData.htm>.)

The FY 2022 and FY 2023 target for the *IoM* newsletter is to publish three newsletter editions each year. The target for number of studies reports, briefs, or other documents is to publish two documents in FY 2022. The FY 2022 target for surveys is to design or implement a focused interagency studies survey. The FY 2023 targets for publishing study reports or briefs and conducting studies surveys is TBD based on FY 2022 results.

<b>Performance Goal 1C-1: Maintain the number and scope of <i>Issues of Merit (IoM)</i> newsletter editions or other articles. Beginning in FY 2022, this PG reads “Publish <i>Issues of Merit (IoM)</i> newsletter or other articles.”</b>			
<b>Measure:</b> Number and scope of <i>IoM</i> newsletter editions or other articles published.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	Published 3 <i>IoM</i> newsletter editions and 4 online articles (all MSPs and 8 PPPs).	<b>FY 2021</b>	Publish 3 <i>IoM</i> editions.
<b>FY 2016</b>	Published 3 <i>IoM</i> editions and 2 online articles (all MSPs and PPPs).	<b>FY 2022</b>	Publish 3 <i>IoM</i> editions.
<b>FY 2017</b>	Published 3 <i>IoM</i> editions and 2 online articles, entitled <a href="#"><i>Addressing Misconduct in the Federal Civil Service: Management Perspectives</i></a> and <a href="#"><i>MSPs: Keys to Managing the Federal Workforce</i></a> (all MSPs & PPPs).	<b>FY 2023</b>	Publish 3 <i>IoM</i> editions.
<b>FY 2018</b>	Published 3 <i>IoM</i> editions and 4 articles or briefs, entitled <a href="#"><i>Building Blocks for Effective Performance Management</i></a> , <a href="#"><i>The Role of Feedback, Autonomy, and Meaningfulness in Employee Performance Behaviors</i></a> , <a href="#"><i>Update on Sexual Harassment in the Federal Workplace</i></a> , and <a href="#"><i>Improving Federal Hiring Through Better Assessment</i></a> (all MSPs and 3 PPPs).		
<b>FY 2019</b>	Published 3 <i>IoM</i> newsletter editions and 4 research briefs, including <a href="#"><i>Improving Federal Leadership Through Better Probationary Practices</i></a> , <a href="#"><i>The Perceived Incidence of Prohibited Personnel Practices</i></a> , <a href="#"><i>Remedying Unacceptable Employee Performance in the Federal Civil Service</i></a> , and <a href="#"><i>Managing Employees to Perform Emotionally Laborious Work</i></a> (8 MSPs and 3 PPPs).		
<b>FY 2020</b>	Published 3 <i>IoM</i> newsletter editions covering 8 of 9 MSPs.		
<b>FY 2021</b>	Published 3 <i>IoM</i> newsletter editions covering 7 MSPs, 3 PPPs.		

<b>Performance Goal 1C-2: Maintain the number and scope of MSPB study reports, briefs, or other documents. Beginning in FY 2022, this PG reads “Publish MSPB study reports, briefs, or other documents.”</b>			
<b>Measure:</b> Number and scope (percent of the workforce, agencies, or policy areas impacted) of merit systems study reports, briefs, and other documents published each year.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	4 reports published (7 MSPs, 9 PPPs).	<b>FY 2021</b>	Prepare for publication of 3 or more study documents.
<b>FY 2016</b>	3 reports published (all MSPs).	<b>FY 2022</b>	Publish 2 or more study documents.
<b>FY 2017</b>	Not rated, no quorum.	<b>FY 2023</b>	TBD based on FY 2022 results.
<b>FY 2018</b>	No target set, not rated, no quorum.		
<b>FY 2019</b>	No target set, not rated, no quorum. Took significant steps to prepare a new merit system studies research agenda for review/approval by the new Chair.		

FY 2020	Published research brief <a href="#"><i>The State of Federal HR Workforce: Changes and Challenges</i></a> . Prepared for publication and awaiting approval by new Board: <i>MSPB Research Agenda for Merit Systems Studies, Sexual Harassment in the Federal Workplace: Understanding and Addressing the Problem</i> , and <i>The Importance of Job Fit for Federal Agencies and Employees</i> .	
FY 2021	Published 5 research briefs including: <a href="#"><i>The Importance of Job Fit for Agencies and Employees</i></a> , <a href="#"><i>Direct-Hire Authority Under 5 U.S.C. § 3304: Usage and Outcomes</i></a> , <a href="#"><i>Determining Acceptable Level of Competence for Step Increases</i></a> , <a href="#"><i>Agency Leader Responsibilities Related to Prohibited Personnel Practices</i></a> , and <a href="#"><i>Confidence in Ability to Perform Successfully</i></a> .	

<b>Performance Goal 1C-3: Conduct surveys of Federal employees to assess and report on the health of the Federal merit systems.</b>			
<b>Measure:</b> Conduct periodic Governmentwide and focused surveys of Federal employees and others (including interrogatories directed to agencies), as appropriate.			
<b>Results</b>		<b>Targets</b>	
FY 2015	Content for the next MPS to support the new FY 2015-2018 research agenda was developed, and a survey vendor was selected to program and administer the next MPS in early 2016. A Request for Quote for MSPB's survey platform was issued by Department of Interior's (DOI's) National Business Center; procurement of survey platform was put on hold to accomplish key milestones for the MPS, and as a result of the IT outage and changing Federal IT requirements.	FY 2021	Implement Governmentwide survey in 2 <sup>nd</sup> quarter FY 2021.
FY 2016	Successfully administered 2016 MPS to approximately 120,000 Federal employees from 24 Federal agencies. The survey was fully compliant with Federal IT and security requirements and covered topics such as PPPs, dealing with poor performers, sexual and other workplace harassment, and employee engagement.	FY 2022	Design or implement a focused interagency studies survey.
FY 2017	Analyzed MPS data and prepared study reports on selected topics, conducted after-action review of the survey process, prepared data for the National Archives and Records Administration, proactively posted MPS data on our website. Began working with OPM to renew the memorandum of understanding for use of Enterprise Human Resource Integration (EHRI) data.	FY 2023	TBD based on FY 2022 results.

FY 2018	Continued to analyze MPS 2016 data and draft reports and other documents. The next MPS will include content from a new research agenda (awaiting input from a new Chair) and a secure web-based survey capability. Began defining requirements for a new survey capability. MSPB has obtained EHRI data from OPM for FY 2016 and 2017, and is negotiating with OPM for continued access to EHRI data.	
FY 2019	Procured a new web-based, Federal Risk and Authorization Management Program (FedRAMP) certified survey application. Survey data is a critical source of information for topics on the new research agenda. Two interrogatories were sent to agencies for responses.	
FY 2020	Content of next Governmentwide MPS nearly completed. After two extensions of OPM's Federal Employee Viewpoint Survey (FEVS), the MPS is tentatively scheduled to be administered in the 2 <sup>nd</sup> quarter of FY 2021.	
FY 2021	Successfully administered the 2021 MPS to more agencies than the 2010 and 2016 MPSs and in less than half the time to go from approval of final survey content to survey launch than in 2016. 2021 MPS data will support at least three research projects and data were being prepared for public release. In early FY 2021. Also fielded two surveys to gather input on strategic planning from external stakeholders.	

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

Results indicate this objective was **Partially Met**. Due to the lack of quorum, MSPB did not set targets for or rate the PG involving review of OPM regulations. MSPB achieved its target for reviewing OPM significant actions by publishing in the Annual Report for FY 2020 a review of OPM significant actions such as the COVID-19 pandemic, improving applicant assessment, human capital (HC) reviews, and guidance on the appointment of political appointees into the career service during the election period.

In FY 2022, MSPB will not set a target for review of OPM regulations, but MSPB will continue to publish a review of OPM significant actions in the MSPB Annual Report for FY 2021. In FY 2022, MSPB will also reassess how to measure the functions involving review of OPM rules, regulations, and significant actions with input from new Board members. The FY 2023 targets for these functions are TBD based on FY 2022 results.

<b>Performance Goal 1D-1: Maintain program for review of OPM regulations. Beginning in FY 2022, this PG reads “Review OPM Regulations.”</b>			
<b>Measure:</b> Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of decisions issued involving OPM rules and regulations (or implementation of the same). (MSPB may define a new measure in FY 2022.)			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	One decision issued in response to a request for OPM regulation review.	<b>FY 2021</b>	No target set, no quorum.
<b>FY 2016</b>	Nine decisions issued in response to requests for OPM regulation review.	<b>FY 2022</b>	No target set; reassess how to measure this statutory function with input from new Board members.
<b>FY 2017</b>	Not rated, no quorum.	<b>FY 2023</b>	TBD based on FY 2022 results.
<b>FY 2018</b>	Not rated, no quorum.		
<b>FY 2019</b>	No target set, not rated, no quorum.		
<b>FY 2020</b>	No target set, not rated, no quorum.		
<b>FY 2021</b>	No target set, not rated, no quorum.		

<b>Performance Goal 1D-2: Maintain program for reviewing and reporting on OPM significant actions. Beginning in FY 2022, this PG reads “Review and report on OPM significant actions.”</b>			
<b>Measure:</b> Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of OPM significant actions that are reviewed and reported. (MSPB may define a new measure in FY 2022.)			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	Published MSPB’s FY 2014 AR including review of OPM significant actions. Significant actions in FY 2014 included final rules implementing the Hatch Act Modernization Act of 2012 and implementing phased retirement, the Governmentwide strategy on gender pay equity, and the Governmentwide Veterans Recruitment and Employment Strategic Plan.	<b>FY 2021</b>	Maintain scope of review; publish review of OPM significant actions for previous year in MSPB AR.
<b>FY 2016</b>	Published MSPB’s FY 2015 AR including review of OPM significant actions. Significant actions in FY 2015 included SES reform and modernization, the recruitment, engagement, diversity, and inclusion initiative, and Federal supervisory and managerial framework and guidance.	<b>FY 2022</b>	Publish review of OPM significant actions in the FY 2021 AR; reassess how to measure this statutory function with input from new Board members.
<b>FY 2017</b>	Published MSPB’s FY 2016 AR including review of OPM significant actions. Significant actions in FY 2016 included evolution of OPM structure and finances, guidance on placement of political appointees in the career service during the 2016 presidential transition, strengthening the SES, and closing mission-critical skills gaps.	<b>FY 2023</b>	TBD based on FY 2022 results.

FY 2018	Published MSPB's FY 2017 AR including review of OPM significant actions. Significant FY 2017 actions included the final rule regarding the Annual Employee Survey (AES) requirement and the 2017 FEVS, reforming the Federal Government and reshaping the Federal civilian workforce, framework for continuing development of Federal senior executives, and Governmentwide survey of Federal work-life programs.	
FY 2019	Published MSPB's FY 2018 AR including review of OPM significant actions. Significant FY 2018 actions included a review of themes of previous reviews including OPM's purpose, funding, focus, and activities.	
FY 2020	Published MSPB's FY 2019 AR including review of OPM significant actions. Significant FY 2019 actions included agency HC programs, hiring, workforce shaping, work-life programs, and employee performance management and rewards.	
FY 2021	Published MSPB's FY 2020 AR including review of OPM significant actions. Significant FY 2020 actions were related to the COVID-19 pandemic, improving applicant assessment, HC reviews, and guidance on the appointment of political appointees into the career service during the election period.	

**Strategic Goal 2: Advance the public interest through *education* and *promotion* of stronger merit systems, *adherence* to merit system principles, and *prevention* of prohibited personnel practices.**

**Strategic Objective 2A: MSPB's work is referenced by a variety of policy-related, educational, professional, or media sources. Beginning in FY 2022, this objective is combined with objective 2C. (See changes described below to FY 2021 objective 2C.)**

Results indicate this objective was **NOT MET**. MSPB cases, studies, reports, newsletter articles, and other products were cited over 500 times in 92 different sources or outlets, which was less than 90% of the number of sources in FY 2020. Sources included trade publications on Federal management and legal issues, wire services, major daily newspapers, congressional sources, and a variety of websites and blogs. There were several notable references to MSPB's studies work in FY 2021, including citations in: OPM's final [regulations](#) on Probation, Performance-Based Reduction in Grade, and Removal Actions; [testimony](#) by Anne Joseph O'Connell to the House Subcommittee on Government Operations; the National Academy of Public Administration's (NAPA) [report](#) on the review of OPM; Government Accountability Office (GAO) reports on sexual harassment, employee engagement, and gender pay differences; and in a [letter](#) from the House Committee of Oversight and Reform to President Biden calling for nominations of MSPB Board members.

Beginning in FY 2022, this PG will be combined with PG 2C, placed under new objective 2B, and renumbered 2B-2. In FY 2022, MSPB will report the scope of references to our work and reassess how to measure this function with input from new Board members. The FY 2023 target is TBD based on FY 2022 results.

<b>Performance Goal 2A-1: Maintain scope of references to MSPB work and products. Beginning in FY 2022, this PG reads “Track the scope of references to MSPB’s work and work products” and is renumbered as 2B-2.</b>			
<b>Measure:</b> Scope (location or identity of citing organization) of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, Federal legislation, professional literature, EOs, the media, or other sources. (MSPB may define a new measure for this PG in FY 2022.)			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	MSPB’s work was cited in at least 115 different sources. MSPB work was cited in GAO reports on engagement and on using probationary periods to manage poor performers. The MSPB report on due process was cited in congressional testimony and in Congressman Mark Takano’s blog on pending legislation on the Department of Veterans Affairs (VA) Accountability Act of 2015. OPM cited MSPB engagement reports in a white paper on engaging the Federal workforce.	<b>FY 2021</b>	Maintain scope of references.
<b>FY 2016</b>	MSPB’s work was cited over 680 times in over 135 different sources. MSPB studies were cited in the August 2016 GAO report on OPM oversight of Federal hiring authorities, an International Personnel Management Association News article, in a textbook on Federal Human Resources (HR), and in congressional discussions of veterans’ hiring, addressing employee misconduct, and preventing discrimination on the basis of sexual orientation.	<b>FY 2022</b>	Report scope of references; reassess how to measure this function with input from new Board members.
<b>FY 2017</b>	MSPB’s work was cited over 600 times in 150 different sources. Several MSPB study reports were cited in the OMB Memorandum M-17-22 on Reforming the Federal Government, and in testimony at a Senate hearing on empowering Federal managers. MSPB’s report on veterans hiring was cited in a <a href="#">report</a> by the Congressional Research Service (CRS), and reports on engagement and on SES training were cited in a new Federal management handbook published by the American Society for Personnel Administration. The 2017 National Defense Authorization Act (NDAA) provision to repeal the 180-day waiver for hiring people with previous military experience used MSPB’s veterans’ hiring report.	<b>FY 2023</b>	TBD based on FY 2022 results.

FY 2018	MSPB’s work was cited 610 times in 136 different sources. Sources of particular import include two GAO reports; OPM’s unlocktalent.gov website; posts and letters by selected senators and representatives; the National Academy of Science, Engineering, and Medicine; NAPA; the American Psychological Association; and a book on health care management.	
FY 2019	MSPB’s work was cited 714 times in 129 different sources. Notable citations include a <a href="#">letter</a> from the House VA Committee to the Secretary of the VA; a CRS Report entitled <a href="#">Merit Systems Protection Board (MSPB): A Legal Overview</a> ; and, <a href="#">Report: Symposium on the Federal Workforce for the 21<sup>st</sup> Century</a> by the MITRE Corporation.	
FY 2020	MSPB’s work was cited 453 times in 119 sources. Notable citations for policymakers include references to MSPB’s studies on sexual harassment in GAO’s <a href="#">report</a> and <a href="#">testimony</a> about sexual harassment at VA; a bipartisan, bicameral congressional <a href="#">letter</a> to VA about sexual harassment; references to sexual harassment studies and case law in a briefing <a href="#">report</a> by the U.S. Commission on Civil Rights; and an MSPB studies report on Adverse Actions cited in the CAFC <a href="#">decision</a> in <i>Sayers v. VA</i> .	
FY 2021	MSPB’s work was cited 520 times in 92 sources. Notable citations include MSPB studies work cited in: OPM’s final <a href="#">regulations</a> on Probation, Performance-Based Reduction in Grade, and Removal Actions; <a href="#">testimony</a> by Anne Joseph O’Connell to the House Subcommittee on Government Operations; NAPA’s <a href="#">report</a> on the review of OPM; GAO reports on sexual harassment, employee engagement, and gender pay differences; and in a <a href="#">letter</a> from the House Committee of Oversight and Reform to President Biden calling for nominations of MSPB Board members.	

**Strategic Objective 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach. Beginning in FY 2022 this objective reads “Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful, targeted outreach and engagement” and is renumbered as 2A.**

Results indicate this objective was **Exceeded**. MSPB conducted 138 outreach events, over twice the target (60). The COVID-19 pandemic and the response to it negatively affected the number of events in FY 2020 and resulted in a very conservative target for FY 2021. The number of events in FY 2021

was similar to the average of outreach events conducted in FY 2015-2019. FY 2021 outreach event topics included MSPB adjudication processes and legal precedent, Federal employment law, merit systems studies research, and general merit systems issues. Audiences were varied and included Federal employment law attorneys, HR and EEO professionals, academic and Federal researchers, legal organizations, Federal executive branch departments and agencies, employee and affinity groups, academic institutions, and the merit protection commissioner from Australia. Despite the ongoing health crisis, MSPB staff presented virtually at the Federal Dispute Resolution conference, Federal Circuit Bar Association events, and the Chicago-Kent College of Law’s annual Federal Sector Labor Relations and Labor Law Conference. Notably, MSPB was consulted by OMB officials about hiring assessments using subject matter experts and structured interviews.

Beginning in FY 2022, this objective will be renumbered 2A, and the PG renumbered 2A-1. In FY 2022, MSPB plans to conduct 90 outreach events. Consistent with improving equity, we plan to ensure that adjudication information is presented to audiences representing employees/appellants and agencies more equally, as well as others we serve. MSPB also will assess past outreach events and the outreach process and determine how to target events to key audiences and how to measure outreach success. The FY 2023 target is TBD based on FY 2022 results.

<b>Performance Goal 2B-1: Maintain the number and scope of outreach contacts. Beginning in FY 2022, this PG reads “Conduct effective outreach and engagement” and is renumbered 2A-1.</b>			
<b>Measure:</b> Number and scope of MSPB contacts with practitioners and stakeholders focused on improving the understanding or practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace. (MSPB may define a new measure for this PG in FY 2022.)			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	Conducted 144 outreach events on legal, studies, merit/MSPs/PPPs, administrative, and other issues.	<b>FY 2021</b>	Conduct 60 or more outreach events.
<b>FY 2016</b>	Conducted over 115 outreach events on legal, studies, merit/MSPs/PPPs, administrative, and other issues. Updated the outreach portion of the new office calendar.	<b>FY 2022</b>	Conduct 90 or more outreach events, improve the audience balance in events; assess past outreach events and the outreach process and determine how to target events to key audiences and how to measure outreach success.
<b>FY 2017</b>	Conducted 138 outreach events and implemented the new outreach calendar, which improves the collection of outreach data including type of audience feedback collected at events.	<b>FY 2023</b>	TBD based on FY 2022 results.
<b>FY 2018</b>	Conducted 134 outreach events. Consideration of methods to collect customer feedback on events to continue in FY 2019.		
<b>FY 2019</b>	Conducted over 130 outreach events; given the low rate of events early in the FY, we decided that improvements in collection of customer feedback at outreach events will be reconsidered in the future in conjunction with agency priorities and available resources.		
<b>FY 2020</b>	Conducted 76 outreach events.		
<b>FY 2021</b>	Conducted 138 outreach events.		

**Strategic Objective 2C: Advance the understanding of merit, the MSPs, and the PPPs by developing and sharing informational and educational materials and guidance. Beginning in FY 2022, this objective reads “Advance the understanding of merit, the MSPs, and the PPPs for stakeholders and the public by developing and sharing informational and educational materials and guidance,” is combined with objective 2A and renumbered as 2B.**

Results indicate this objective was **Exceeded**. MSPB exceeded the target for the number and scope of available informational and educational materials and guidance made available on our website, by posting over 25 documents in 12 categories. These documents included: five research briefs; three *IoM* editions, five agency documents; 2020 AES/FEVS results; two Federal Register notices, eight press releases, three Privacy Impact Assessments, two No FEAR Act updates, monthly reports on pending PFR data, and MSPB case reports.

Beginning in FY 2022, this objective will focus on developing and sharing informational and educational materials and will include PGs related to making material available (previous PG 2C-1) and references to MSPB’s work (see previous PG 2A-1 above). In FY 2022, MSPB will continue to post or distribute eight new or updated informational or educational products. MSPB will also review and assess the scope and type of materials and guidance we want to make available and determine how to measure and establish appropriate targets for this PG. The FY 2023 target is TBD based on FY 2022 results.

<b>Performance Goal 2C-1: Maintain number and scope of available informational and educational materials and guidance. Beginning in FY 2022 this PG reads “Develop and share informational and educational materials and guidance about merit, the MSPs, and the PPPs” and is renumbered as 2B-1.</b>			
<b>Measure:</b> Number of new or updated informational or educational documents made available electronically or on MSPB’s website. (MSPB may define a new measure for this PG in FY 2022.)			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	Posted three <i>Research Highlights</i> for merit systems study reports; regulations governing MSPB’s jurisdiction; Chairman Grundmann’s testimony on proposed VA legislation (S. 1082, S. 1117, and S. 1856); and the FY 2014 AR. Updated the pro bono page, and the appellant Questions & Answers on review of Board decisions by the CAFC. Posted a link to the <i>Guide on LGBT Discrimination Protections for Federal Workers</i> .	<b>FY 2021</b>	Post or distribute electronically eight new or updated informational or educational products.
<b>FY 2016</b>	Posted <i>Research Highlight</i> for reports on <i>SES Training, Nepotism, and MSPs: Guiding the Fair and Effective Federal Management</i> ; two Federal News Radio interviews on studies reports; Chairman Grundmann’s record testimony from MSPB’s December 2016 House reauthorization hearing; her radio interview on VA SES appeals; the interim final rule on discovery in compliance proceedings; an updated guide to MSPs; and Organizational Functions and Delegations of Authority on the e-FOIA (Freedom of Information Act) Reading Room page.	<b>FY 2022</b>	Post or distribute electronically eight new or updated informational or educational products; review and assess the scope and type materials and guidance and determine how to measure and establish appropriate targets for this PG.

FY 2017	Published interactive versions of the <i>Adverse Action</i> report and <i>MSPs: Use in Guiding Fair and Effective Management of the Workforce</i> ; two external reviews of MSPB's IT systems; an annotated illustration of current avenues of review or appeal for a Federal adverse action; designation of the new Vice Chairman Mark A. Robbins; guidance on lack of quorum; and the 2016 MPS data. Updated/ reorganized the e-FOIA Reading Room web page and created a new Privacy Act Program webpage.	FY 2023	TBD based on FY 2022 results.
FY 2018	Posted four articles or briefs, three <i>IoM</i> newsletter editions; and one radio and one video interview. Added links to Board member nominations, updated Acting Chairman Robbins's biography, and added pages for recent Board members and their lengths of service. Updated information for appellants seeking judicial review of whistleblower claims, VA appeals under 38 U.S.C. § 714, PFR withdrawal policy, lack of quorum frequently asked questions (FAQs), Information Quality Guidelines, and 2017 FOIA logs.		
FY 2019	Posted three <i>IoM</i> editions and four research briefs; three Federal Register notices and five press releases; the FY 2018 AR; other agency reports, plans, and budget documents; the 2018 FEVS results; updated FAQs on MSPB functions given the lack of Board members; updated history of Board member service; and changes to the AJ Handbook.		
FY 2020	Created a COVID-19 webpage, and guidance pursuant to EO 13891 and OMB Memorandum M-20-02. Published our Data Governance Body's charter in accord with the Federal Data Strategy (FDS). Published a new merit systems studies fact sheet, a research brief entitled <a href="#"><i>The State of Federal HR Workforce: Changes and Challenges</i></a> , and 3 <i>IoM</i> newsletter editions. Updated the accessibility and PPP webpages. Published policy for prohibited conduct and the Zoom for Government privacy act statement and rules of behavior for external users. Published the MSPB Strategic Plan for FY 2020-2024, APR-APP for FY 2019-2021, Congressional Budget Justification (CBJ) for FY 2021, FY 2019 AR, FY 2019 Annual Financial Report (AFR), and an information sheet on reductions in force (RIFs). Posted updated figures on PFR processing, FAIR Act inventory, 2019 AES/FEVS results, and No FEAR Act data.		

<b>FY 2021</b>	Posted over 20 documents in 12 categories including: five research briefs; three <i>IoM</i> editions; five agency documents (APR-APP, AFR, APR, CBJ, and AR); 2020 AES/FEVS results; two Federal Register notices; eight press releases; three Privacy Impact Assessments; two No FEAR Act updates; monthly reports on pending cases at HQ; and MSPB case reports.	
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## Management Objectives

**Management Objective M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB’s mission and support functions successfully. Beginning in FY 2022, this objective reads “Lead, manage, and develop employees to ensure a highly qualified, diverse, inclusive, and engaged workforce with the competencies to perform MSPB’s mission and support functions successfully.**

Results indicate this objective was **Exceeded**. Internal Survey (IS) results indicate that target for employees competencies was met, and the targets for diversity/inclusion and engagement were exceeded. All concepts were measured using the MSPB IS because the 2021 FEVS was delayed to November 2021.

Beginning in FY 2022, the PG for diversity/inclusion will be split into two, one each for diversity and inclusion, respectively. This will simplify and clarify assessing and reporting indicators of these two important values. In FY 2022, MSPB may return to using the OPM FEVS to measure diversity and engagement, assuming its timing will ensure data are available for reporting. Otherwise, data for these PGs will be obtained from the IS. The FY 2022 and FY 2023 targets for competencies, diversity, inclusion, and employee engagement are defined as an average positive response to relevant questions of 70 percent or higher.

<b>Performance Goal M1-1: Ensure MSPB’s workforce has the competencies needed to perform its mission.</b>			
Measure: Percent of employees who report on the FEVS (or IS) that they and others in the workforce have the appropriate competencies needed to perform MSPB’s mission.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	FEVS Competency average = 79%.	<b>FY 2021</b>	Competency average = 70% or higher.
<b>FY 2016</b>	FEVS Competency average = 68%.	<b>FY 2022</b>	Competency average = 70% or higher.
<b>FY 2017</b>	FEVS Competency average = 71%.	<b>FY 2023</b>	Competency average = 70% or higher.
<b>FY 2018</b>	FEVS Competency average = 71%.		
<b>FY 2019</b>	FEVS Competency average = 75%.		
<b>FY 2020</b>	Competency average = 80% (derived from the IS due to the FEVS delay).		
<b>FY 2021</b>	Competency average = 73% (derived from the IS due to the FEVS delay).		

<b>Performance Goal M1-2: Maintain positive perceptions of diversity and inclusion by MSPB employees. Beginning in FY 2022, this PG reads “Ensure positive perceptions of workforce diversity by MSPB employees.”</b>			
<b>Measure:</b> Average percent agreement on FEVS (or IS) diversity questions. Beginning in FY 2022, this measure will focus only on diversity.			
Results		Targets	
<b>FY 2015</b>	FEVS Diversity average = 71%.	<b>FY 2021</b>	Diversity average = 70% or higher.
<b>FY 2016</b>	FEVS Diversity average = 67%.	<b>FY 2022</b>	Diversity average = 70% or higher.
<b>FY 2017</b>	FEVS Diversity average = 66%.	<b>FY 2023</b>	Diversity average = 70% or higher.
<b>FY 2018</b>	FEVS Diversity average = 61%.		
<b>FY 2019</b>	FEVS Diversity average = 72%.		
<b>FY 2020</b>	Diversity average = 75% (derived from the IS due to the FEVS delay).		
<b>FY 2021</b>	Diversity average = 76% (derived from the IS due to the FEVS delay).		

<b>Performance Goal M1-3: Maintain positive perceptions of diversity and inclusion by MSPB employees. Beginning in FY 2022, this PG reads “Ensure positive perceptions of workplace inclusion by MSPB employees” and is numbered M1-3.</b>			
<b>Measure:</b> Average percent agreement on IS workplace inclusion questions. Beginning in FY 2022, this measure will focus only on inclusion.			
Results		Targets	
<b>FY 2015</b>	IS Inclusion average = 77%.	<b>FY 2021</b>	Inclusion average = 70% or higher.
<b>FY 2016</b>	IS Inclusion average = 78%.	<b>FY 2022</b>	Inclusion average = 70% or higher.
<b>FY 2017</b>	IS Inclusion average = 76%.	<b>FY 2023</b>	Inclusion average = 70% or higher.
<b>FY 2018</b>	IS Inclusion average = 81%.		
<b>FY 2019</b>	IS Inclusion average = 84%.		
<b>FY 2020</b>	IS Inclusion average = 83%.		
<b>FY 2021</b>	IS Inclusion average = 86%.		

<b>Performance Goal M1-4: Strengthen and maintain employee engagement and address engagement issues identified in the FEVS. Beginning in FY 2022, this PG reads “Ensure positive employee engagement” and as renumbered as M1-4.</b>			
<b>Measure:</b> Average percent agreement on FEVS (or IS) engagement questions.			
Results		Targets	
<b>FY 2015</b>	FEVS Engagement Index = 74%.	<b>FY 2021</b>	Engagement Index = 70% or higher.
<b>FY 2016</b>	FEVS Engagement Index = 69%.	<b>FY 2022</b>	Engagement Index = 70% or higher.
<b>FY 2017</b>	FEVS Engagement Index = 70%.	<b>FY 2022</b>	Engagement Index = 70% or higher.
<b>FY 2018</b>	FEVS Engagement Index = 66%.		
<b>FY 2019</b>	FEVS Engagement Index = 72%.		

<b>FY 2020</b>	FEVS Engagement Index = 80%.	
<b>FY 2021</b>	Engagement Index = 82% (derived from the IS due to the FEVS delay).	

**Management Objective M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future. (This PG was discontinued in mid-FY 2021.)**

This objective was **Not Rated**. This objective was discontinued in mid-FY 2021 as not being needed. This objective and PG will not be included in the APP for FY 2022-2023. If it is determined that there is a need to focus on a particular budgetary, financial, or administrative function in the future, then a new objective and PG may be added at that time.

<b>Performance Goal M2-1: Develop fully-justified budgets and ensure resource accountability. This PG and measure was discontinued in mid-FY 2021 as not needed.</b>			
<b>Measure (for years prior to FY 2021):</b> Percent of funded positions vacant at the end of each month, averaged over the year.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	4% of funded positions vacant, averaged over 12 months.	<b>FY 2021</b>	Consider new goal and measure when quorum is restored.
<b>FY 2016</b>	8.7% of funded positions vacant, averaged over 12 months.	<b>FY 2022</b>	PG discontinued in mid-FY 2021.
<b>FY 2017</b>	3.4% of funded positions vacant, averaged over 12 months.	<b>FY 2023</b>	Not applicable.
<b>FY 2018</b>	8% of funded positions vacant, averaged over 12 months.		
<b>FY 2019</b>	9% of funded positions vacant, averaged over 12 months.		
<b>FY 2020</b>	Postponed/not rated; will consider new goal/measure when quorum is restored.		
<b>FY 2021</b>	This PG was discontinued in mid-FY 2021 and not rated.		

**Management Objective M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions. Beginning in FY 2022, this objective is combined with previous objective M4, renumbered as M2, and reads “Modernize information technology to support agency mission and administrative functions.”**

Results indicate this objective was **Exceeded**. Results from the FY 2021 IS indicated that the average positive responses by employees about the availability and reliability of the IT infrastructure and for employee satisfaction with IT support exceeded their respective targets. The FY 2021 target to finalize a goal statement and define a measure for cybersecurity was met.

Beginning in FY 2022, this IT operations objective will be combined with the IT modernization objective (previously M4) and renumbered M2. The PGs for this new objective will include: reliability of IT infrastructure (eliminating the part of the goal and measure relating to the “availability” of the IT infrastructure as it is subsumed under reliability); internal IRM customer service; cybersecurity; modernizing e-adjudication (e-adjudication); and effective cloud-based services. The FY 2022 and FY 2023 targets for IS responses on the reliability of IT infrastructure and internal IRM customer service are 70 percent or higher. The FY 2022 target for cybersecurity is

to scan 75% of assets through the Department of Homeland Security’s (DHS) Continuous Diagnostics and Mitigation (CDM) program. The FY 2023 target for cybersecurity is TBD based on FY 2022 results. The FY 2022 and FY 2023 targets for modernizing e-adjudication and for cloud-based services are described under FY 2021 objective M4.

<b>Performance Goal M3-1: Ensure availability and reliability of MSPB IT systems, hardware, and applications. Beginning in FY 2022, this PG reads “Ensure reliability of MSPB IT systems, hardware, and applications” and is renumbered M2-1.</b>			
<b>Measure:</b> Average percent agreement with relevant questions on the MSPB IS; ensure disaster recovery capability. Beginning in FY 2022, disaster recovery will be removed from the measure.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	The target for average unscheduled downtime was met (1.16%). However, MSPB had a significant disruption in its IT infrastructure resulting in the loss of the virtual environment and permanent loss of significant employee working and archived documents.	<b>FY 2021</b>	Average agreement = 70% or higher.
<b>FY 2016</b>	Implemented cloud backup service for OneDrive and an isolated test environment; monitoring nightly backups; upgraded network hardware in many locations; began new IT Testing Group to test new technology and applications; assessed and adjusted M3 goals, measures, and targets for FY 2017 and beyond to take advantage of IS data for selected IT measures.	<b>FY 2022</b>	Average agreement for reliability = 70% or higher.
<b>FY 2017</b>	2017 IS average agreement = 58%, compared to the 2016 result of 45%.	<b>FY 2023</b>	Average agreement for reliability = 70% or higher.
<b>FY 2018</b>	IS average agreement = 64%.		
<b>FY 2019</b>	IS average agreement = 67%.		
<b>FY 2020</b>	IS average agreement = 79%.		
<b>FY 2021</b>	IS average agreement = 83%.		

<b>Performance Goal M3-2: Ensure satisfaction with internal IT support and services. Beginning in FY 2022, this PG is renumbered as M2-2.</b>			
<b>Measure:</b> Average percent agreement on relevant IS questions.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2016</b>	New PG in FY 2017.	<b>FY 2021</b>	Average agreement = 70% or higher.
<b>FY 2017</b>	2017 IS average agreement = 52%, compared to the 2016 result of 47%.	<b>FY 2022</b>	Average agreement = 70% or higher.
<b>FY 2018</b>	IS average agreement = 72%.	<b>FY 2023</b>	Average agreement – 70% or higher.
<b>FY 2019</b>	IS average agreement = 72%; goal renumbered as M3-2 for FY 2020.		
<b>FY 2020</b>	IS average agreement = 80%.		
<b>FY 2021</b>	IS average agreement = 78%.		

<b>Performance Goal M3-3: Continuously enhance cybersecurity. Beginning in FY 2022, this PG is renumbered as M2-3.</b>			
<b>Measure:</b> Percentage of IT assets scanned through the Department of Homeland Security's Continuous Diagnostics and Mitigation (CDM) program.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2020</b>	New goal in FY 2021	<b>FY 2021</b>	Finalize the goal statement and define a measure for tracking cybersecurity.
		<b>FY 2022</b>	75% of assets scanned.
<b>FY 2021</b>	Measure and FY 2022 target developed.	<b>FY 2023</b>	TBD based on FY 2022 results.

**Management Objective M4: Modernize core business applications to achieve electronic adjudication, and provide a web-based survey capability. Beginning in FY 2022, this objective is combined with Objective M3 and renumbered as M2. (See changes above under FY 2021 objective M3.)**

Results indicate this objective was **Met**. MSPB met the target for modernizing adjudication business applications. Wireframes for new applications and pilot release 1 were completed. The percentages of electronic filings of initial appeals and pleadings were the highest since we started measuring them in FY 2012. The MPS was successfully completed via our new web-based survey capability in April 2021; an authority to operate (ATO) the survey platform was issued; and a System of Records Notice (SORN) for MSPB studies was published.

The new M2 objective is described under FY 2021 objective M3, above. The FY 2022 target for modernizing core business applications is to substantially complete the new system. The FY 2023 target for that goal is to implement the new system. Beginning in FY 2022 the survey PG is expanded to include all cloud-based services. The FY 2022 target for the cloud-based services PG is to review these services and determine how to best measure this PG. The FY 2023 targets for that goal is TBD based on FY 2022 results.

<b>Performance Goal M4-1: Improve efficiency of adjudication case processing. Beginning in FY 2022, this PG is renumbered as M2-4.</b>			
<b>Measure:</b> Modernize core adjudication applications; proportion of cases processed entirely electronically.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	Interim indicators: 56% of initial appeals and 80% of pleadings filed electronically. Issued a Request for Information on e-adjudication and Guidance on archiving electronic case files (ECFs). Developed a timeline for expanding ECFs and implementing mandatory e-filing for agencies and representatives.	<b>FY 2021</b>	Deliver roadmap for IT modernization, including moving MSPB applications to the cloud.

<b>FY 2016</b>	Interim indicators: 61% of initial appeals and 81% of pleadings filed electronically. Expanded ECF Pilot to the Denver FO. Implemented new e-Appeal servers, and up-graded the e-Appeal LiveCycle and Active PDF document conversion/assembly software. Developed and implemented ECF marking capability and documentation in Quick Case and Law Manager and conducted training. Submitted personnel actions to support adding critical skills to help ensure expertise needed for e-adjudication.	<b>FY 2022</b>	Substantially complete the new system.
<b>FY 2017</b>	Interim indicators: 61% of initial appeals and 82% of pleadings filed electronically. Arranged two vendor demonstrations of appeals workflow solutions. Completed significant work on e-Appeal release 9.7, a new enhanced version of the Quick Case application, a new Document Management System Upload Application (for litigation cases), and essentially completed a new application to automate the completion of ECFs (for courts, Department of Justice, Equal Employment Opportunity Commission, etc.). Partnered with OMB's Office of the Federal Chief Information Officer (CIO) for weekly calls or meetings regarding this goal.	<b>FY 2023</b>	Implement the new system.
<b>FY 2018</b>	Interim indicators: 69% of initial appeals and 89% of pleadings filed electronically. Completed requirements development for new core business applications, including those to support e-adjudication, and issued the Request for Proposal.		
<b>FY 2019</b>	Interim indicators: 69% of initial appeals and 89% of pleadings filed electronically. Awarded contract for new core business applications; began configuring e-filing and initial appeals processing components.		

FY 2020	Interim indicators: 77% of initial appeals and 93% of pleadings were filed electronically, an increase from FY 2019 and the highest MSPB has experienced since 2013; significantly expanded ECFs to allow for use in any FY 2020 appeal, and any FY 2019 case in RO/FOs where the electronic record is complete as an ECF. Continued development of initial appeal process on new application platform. Further modernization progress delayed due to the COVID-19 pandemic.	
FY 2021	Interim indicators: 84% of initial appeals and 94% of pleadings were filed electronically. Wireframes for new application completed, pilot release 1 completed for next generation adjudication system.	

<b>Performance Goal M4-2: Improve agency survey capability. Beginning in FY 2022, this PG reads “Deploy and maintain effective, secure cloud-based services” and is renumbered M2-5.</b>			
<b>Measure:</b> Ensure secure, web-based survey application in conjunction with 1C-3. A new measure for cloud-based services will be defined in FY 2022.			
<b>Results</b>		<b>Targets</b>	
FY 2017	Drafted a Performance Work Statement for moving our data center to the cloud. Continued to work with OMB’s Office of the Federal CIO regarding this PG. Collaborated with OPE and DOI to assess obtaining a secure cloud-based solution to analyze OPM data.	FY 2021	Support successful implementation of Governmentwide survey (under 1C-3).
FY 2018	Work accelerated on IT modernization and it became clear that separately migrating to a new data center would not be cost-effective because the new core applications will be cloud-based. Therefore, data center migration resources were devoted to improving disaster recovery for the existing data center and supporting collateral projects necessary for comprehensive IT modernization to achieve 100% e-adjudication.	FY 2022	No numeric target. Review these services and determine how to best measure this goal.
FY 2019	Procured a new web-based, FedRAMP certified survey application.	FY 2023	TBD based on FY 2022 results.
FY 2020	Supported initial access and awarded contract for technical support, and issued an authority to operate for the Qualtrics web-based survey platform.		
FY 2021	MPS successfully completed via the new web-based survey capability in April 2021; an ATO for the survey platform was issued; and a SORN was published for MSPB studies.		

## Means and Strategies Needed to Accomplish MSPB's Objectives

MSPB will use the following means and strategies to accomplish its objectives. These may be adjusted, emphasized in specific years, and may be carried out by one or more MSPB offices.

### Strategic Goal 1

#### **Strategic Objective 1A (Strategic Objectives 1A-RO and 1A-HQ): Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and ADR processes.**

1. Determine fair approaches (e.g., policies and processes, adjudication systems, case management, the order in which cases are voted, etc.) to reducing the backlog of petitions for review (PFRs) and other cases at HQ, while ensuring each matter receives accurate and due consideration; determine how to track and measure success in reducing this backlog; and implement appropriate changes to the PGs, measures, and targets in MSPB's Annual Performance Plans (APPs) to ensure transparency in accomplishing this important objective.
2. Issue regulations to effectively and efficiently implement changes in statute, regulation, policy, or case law, as necessary.
3. Consider and implement requests for additional HC (e.g., additional FTE) and other resources, and use all flexibilities (e.g., details, temporary hires) to ensure MSPB has sufficient adjudication staff to reduce the backlog at HQ, maintain high-quality and timely adjudication of new HQ cases, and continue to maintain high-quality and timely adjudication of initial appeals, including remands, on PFR.
4. Review the measures for adjudication quality in the ROs/FOs and at HQ to ensure they focus on appropriate aspects of the adjudication process and decision quality. Consider measures of adjudication quality that do not require review by a higher appellate authority (e.g., the Board on PFR or the courts). Ensure an appropriate balance of focus and measurement on adjudication quality and accuracy versus adjudication quantity or speed.
5. Modernize MSPB's core adjudication business applications including its electronic filing (e-filing) platform, case management, document management, and document assembly capabilities as MSPB transitions from paper to 100% electronic adjudication (e-adjudication). Consider automated e-filing customer feedback methods when the new system is implemented.
6. Continue to improve and maintain adjudication data and related systems, practices, and policies to ensure accurate, valid, and reliable case processing data for management and reporting purposes that ensure clarity and comply with standard data practices and statutes (e.g., GPRAMA, WPEA, and the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act)).
7. Ensure sufficient information and support for appellants who file with MSPB such as improving the clarity and readability (e.g., plain language and accessibility) of MSPB processes, forms, orders, etc.; increasing accessibility to necessary tools, especially for appellants who potentially belong to underserved communities; and considering ways to strengthen the pro bono program. Ensure consistent application of and accountability for adjudication processes, services, and data for all RO/FOs.
8. Continue using automated surveys to invite feedback from participants in initial appeals and ADR and make changes to the process based on their feedback, as appropriate. Consider designing and implementing an automated survey for participants in HQ cases.

9. Review adjudication staff performance management plans and processes, and update them as necessary to ensure accountability for the adjudication process, including the quality of adjudication data, quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.

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

1. Improve the transparency of enforcement case processing by reporting compliance timeliness separately for HQ and the RO/FOs, and consider reporting data by agency, as appropriate.
2. Consider approaches to improve timely and complete compliance with MSPB decisions and orders (including reduction of the backlog of compliance decisions at HQ). Approaches could include coordinating with individual agencies and assessing the use of existing and new accountability mechanisms (including changes to law or regulation).

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

1. Ensure timely publication of reports of merit systems studies (following over five years without a quorum). Determine and implement appropriate changes to the PGs, measures, and targets in MSPB's APPs to ensure transparency in accomplishing this important goal.
2. Routinely publish findings and recommendations from merit systems studies in appropriate documents (e.g., research reports, research briefs, perspectives, *Issue of Merit* newsletter articles, etc.), and disseminate the documents in suitable ways to both broad-based and targeted audiences and stakeholders.
3. Ensure appropriate and timely release of survey data.
4. Sustain MSPB's survey capability to periodically administer Governmentwide or smaller surveys to support the merit systems studies program.
5. Consider ways to encourage other agencies' support and participant completion of MSPB surveys that result in sufficient response rates, including actions to mitigate the barriers to survey participation.
6. Ensure MSPB has sufficient analytic and support staff to conduct high-quality objective studies and to promote the value and impact of study findings and recommendations in conveying such information to relevant stakeholders.
7. Consider developing an automated customer survey to gather feedback from those who download study reports from the MSPB website.

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

1. Consider any changes to track and measure success in processing cases involving the review of OPM regulations and implement appropriate changes to the PGs, measures, and targets in MSPB's APPs to ensure transparency in accomplishing this important goal.
2. Ensure results of MSPB review of OPM significant actions are distributed to all appropriate recipients through the publication of MSPB's Annual Reports.

## Strategic Goal 2

### **Strategic Objective 2A: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful, targeted outreach and engagement.**

1. Consider publicizing outreach opportunities to related agencies (OPM, OSC, the Equal Opportunity Employment Commission (EEOC), the Office of Government Ethics, etc.) to increase, within available resources, outreach activities designed to improve the practice and understanding of merit, MSPs, and PPPs by Federal employees, policymakers, key stakeholders, and the public.
2. Ensure outreach events reach all appropriate audiences including those on both sides of the adjudication process. Consider targeted engagement with key stakeholder groups (e.g., affinity groups, Federal employee and management groups, legal groups, researchers, etc.) to improve knowledge of MSPB's work and its role in protecting merit as well as to support Administration priorities.
3. Use effective tools to increase the proportion and enhance the quality of virtual outreach to improve efficiency of outreach and reduce travel costs.
4. Consider new measures of outreach to ensure quality and quantity of events, and balanced access to MSPB information.
5. Develop and implement effective and efficient methods to obtain and use feedback from a large proportion of outreach participants and audience members to assess outreach success, improve the quality of outreach, obtain suggestions for improvement, and better address stakeholder needs.

### **Strategic Objective 2B: Advance the understanding of merit, the MSPs, and the PPPs for stakeholders and the public by developing and sharing informational and educational materials and guidance.**

1. Develop and publish educational standards or criteria, materials, and guidelines on merit, MSPs, PPPs, and the merit-based civil service for specific stakeholder groups and the public.
2. Consider using social media to provide to stakeholders and the public information about a merit-based civil service and MSPB's work.
3. Consider hiring or contracting with a communications expert to develop, implement and maintain a communication and education program to improve the understanding of merit and MSPs, PPPs, and MSPB's role and processes for appropriate stakeholders.
4. Develop and make available information and materials about MSPB's adjudication processes, outcomes, and legal precedents to equally support appellants' and agencies' ability to prepare and file thorough and well-reasoned arguments in appeals filed with MSPB.
5. Consider working with other agencies, policymakers, and other stakeholders to establish requirements for periodic merit systems training for all Federal employees similar to the requirements for the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) to implement programs for Federal employees and the public by recognizing agencies' merit systems educational efforts.

## Management Objectives

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

1. Initiate and maintain a continual strategic human capital planning (SHCP) process to address external and internal HC challenges and ensure achievement of MSPB's most critical HC requirements. This may include reviewing positions and overall MSPB grade structure, identifying competency gaps and training needs for mission and support functions, leadership development and succession planning, management of critical one-deep positions, hiring and assessment policies and processes, use of personnel flexibilities, etc.
2. Ensure MSPB has a diverse and highly qualified legal, analytic/research, and support workforce that can effectively accomplish and support MSPB's knowledge-based adjudication, studies, and other mission-related work, including the HC needed to address the backlog of HQ cases simultaneous with performing other adjudication work, conducting studies, and filling career leadership vacancies.
3. Improve agency-wide focus on employee education and development to ensure access to training, educational resources, and developmental experiences that provide the competencies necessary to perform MSPB's work. Implement effective and ongoing employee orientation, improve employee understanding of data integrity and governance issues, and improve development for managerial and leadership positions. Collaborate with other agencies to obtain cost-effective training.
4. Sustain an effective internal Diversity and Inclusion Council and provide training for agency employees to improve understanding of these issues. Consider measures of diversity and inclusion and address issues as they arise to strengthen agency culture and improve agency performance.
5. Use results from the Federal Employee Viewpoint Survey (FEVS) and MSPB's Internal Survey (IS), work with MSPB employees and the Professional Association, and apply leadership and management skills to strengthen and maintain a culture that supports a competent, diverse, inclusive, and fully engaged workforce.
6. Ensure MSPB has the management policies (e.g., telework, performance management, COOP, etc.) to enable flexible work options that support mission performance, and workforce and workplace health and safety during emergencies.

### **Management Objective M2: Modernize IT to support agency mission and administrative functions.**

1. Ensure MSPB has a stable and secure IT infrastructure (e.g., systems, hardware, and applications) with sufficient resources and expertise (e.g., cybersecurity, network administration, etc.), to support the agency's mission and support functions, and provide for workplace flexibilities.
2. Modernize MSPB's core adjudication applications, including its e-filing, case management, document management, document assembly, and enterprise IT capabilities to ensure MSPB's successful transition from paper to 100% e-adjudication.
3. Sustain a fully functional survey capability that is certified by the Federal Risk and Authorization Management Program, with flexible survey design and administration to support deployment of secure, cloud-based, Governmentwide surveys for merit systems studies, program evaluation, and internal and external customer surveys.

## Trends and Challenges that May Affect Agency Performance

### Internal Management Challenges

The most significant internal issue that affected MSPB was the lack of quorum of Board members. Even though the quorum is now restored, other significant internal challenges that could affect MSPB's ability to carry out its mission include human capital issues and IT modernization. The COVID-19 pandemic is an external factor, and the internal challenges it creates are discussed in the external factors section.

**Lack of Board Quorum.** As discussed in the introduction, prior to March 4, 2022, MSPB had been without a quorum of Board members for five year, and without any presidentially appointed, Senate-confirmed Board members for three years. The lack of quorum led to a backlog of PFRs and other cases at HQ awaiting Board decisions. The backlog at HQ totaled 3,465 cases as of the end of September 2021. MSPB anticipates that it will take several years to process the inventory of cases at HQ now that a quorum is restored. However, the prolonged lack of quorum delayed resolution and finality for the parties to these appeals. The lack of quorum also prevented MSPB from releasing reports of merit systems studies, promulgating substantive regulations to accompany congressional changes to our jurisdiction or processes, and impeded our review of OPM significant actions.

The lack of quorum prevented MSPB from setting performance targets beginning in FY 2018. It also prevents the agency from rating results for several PGs and one strategic objective, including PFR processing timeliness, enforcement case processing, number of published reports of merit systems studies, and quality of initial decisions. MSPB also could not rate the PG on reviewing OPM regulations because there is no Board to issue decisions on requests for regulatory review. Now that a quorum is restored, MSPB will determine the most appropriate measures and targets for these PGs. The status of Board member nominations is found on page 2 of this document.

**Human Capital Challenges.** In addition to the lack of quorum, as of October 2021, over 28 percent of all MSPB employees, including almost 35 percent of AJs and adjudication managers involved with processing initial appeals, are eligible to retire between now and the end of 2023. Several other MSPB employees who hold key leadership positions are eligible to retire in the near future. In addition, ensuring continued expertise is a challenge when employees in critical, one-deep positions depart the agency through retirement or transfer. MSPB can begin to resolve vacancies in several key leadership positions now that a quorum has been resolved. Another matter that has awaited restoration of a quorum, but as of March 4, 2022 has been largely resolved, is issues raised by the Supreme Court decision in *Lucia v. the Securities and Exchange Commission*, 138 S. Ct. 2044 (2018), and its impact on MSPB AJs.

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

evaluation plan on page 41. This is a timely endeavor given the future arrival of new Board members and the current strategic planning cycle.<sup>5</sup> MSPB plans to utilize external SHCP expertise to assist us.

The success of any SHCP depends on continued, stable funding for FY 2022 and beyond. This funding is necessary to retain expertise, improve competencies, sustain employee engagement, continue to improve our processes, and at the same time, continue to perform our statutory and support functions effectively and efficiently. Sustained resources are necessary to have sufficient staff to reduce the backlog while simultaneously processing new cases at HQ, process initial appeals (including decision quality reviews) and adjudicating remands on PFR, publish merit systems studies reports, conduct other MSPB functions, and ensure adequate training and employee development. Retaining resources is even more critical given recently enacted and proposed legislative and administrative changes that may affect our jurisdiction and processes. (See the next section on Significant External Trends and Issues.) In addition, there is some anecdotal indication that job candidates may be hesitant to accept job offers from MSPB over uncertainty about the lack of Board members.

**IT Modernization.** MSPB is committed to transitioning to 100% e-adjudication to process cases more efficiently and improve service to our customers. In addition, e-adjudication will support MSPB's efforts to comply with Governmentwide initiatives involving improving efficiency, effectiveness, accountability, and customer service; paperwork reduction requirements; and records management directives, including OMB Memorandum M-19-21,<sup>6</sup> requiring that agencies convert records to electronic format. MSPB also is focused on ensuring it has the IT infrastructure and expertise to execute its mission and modernize its systems, including implementing e-adjudication and supporting its new, FedRAMP-certified, web-based survey capability. In FY 2021, MSPB transitioned to new laptops for all employees and implemented its new cloud-based website.

Beginning in FY 2017, MSPB pivoted away from continually customizing its existing legacy business applications that are nearing end-of-life. In FY 2018, MSPB developed comprehensive requirements to identify the "next generation" of MSPB's core business application to fully enable e-adjudication of MSPB appeals (while retaining the option for paper processing when necessary). This includes replacing systems for case management, document management and document assembly, e-Appeal Online, and integrating the new application with our public-facing website, the extranet, and our intranet. In FY 2019, MSPB selected a contractor to design and implement the new core business application and began configuring the electronic filing and initial appeal processing components. Progress on this project was delayed in FY 2020 due to the pandemic. In FY 2021, wireframes of internal and external user interfaces representing an end-to-end schematic of the adjudication process were delivered and user pilot testing for initial functionality was successfully conducted. The adjudication application is on track to be delivered in FY 2023. This multi-year effort requires a significant investment of resources and will yield important improvements in infrastructure, systems, productivity, efficiency, and services.

MSPB must administer surveys of the Federal workforce and others to provide empirical data to support its merit systems studies research responsibilities. This requires MSPB to have a sustained capacity to collect survey and other similar data in a secure, cloud-based environment. MSPB fully

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<sup>5</sup> See OMB Circular A-11, Part 6, Section 230.

<sup>6</sup> OMB Memorandum M-19-21, Transition to Electronic Records, June 28, 2019, at <https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-21.pdf>.

deployed the new survey capability in 2021 and must continue to support effective deployment of this platform in the future.

## External Trends

Among the external trends issues that affect MSPB's ability to carry out its mission include the COVID-19 pandemic, and the Government's response to it; changes in law, jurisdiction, and appeals processes; and Government reform, budget challenges, and workforce reshaping. In June 2020, there was also a Supreme Court decision involving employment rights that could increase MSPB's workload. If pending legislation does not change MSPB's workload or adjudication complexity, MSPB still will require stable and sufficient resources in future years to perform its statutory functions effectively and efficiently, especially in the face of the case backlog at HQ. Moreover, additional resources may be needed to meet new legislative changes to MSPB's adjudication procedures and simultaneously meet potential challenges caused by other external factors.

**Changes in Law, Jurisdiction, and Appeals Processes.** The APR-APP for FY 2020-2022 contains information on the Supreme Court decision in *Bostock v. Clayton County, GA*, 140 S. Ct. 1731 (2020) related to LGBT employment rights; the CAFC's decision in *Hessami v. MSPB*, 979 F.3d 1362 (Fed. Cir. 2020); and the NDAA for FY 2020, which explicitly protects whistleblower disclosures to Congress.

On January 1, 2021, sections 1131 to 1138 of the NDAA for FY 2021 enacted the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, which substantially upgraded the incentive process in whistleblower cases and allows, and in certain cases requires, legal representation for whistleblowers. Of note, Section 1108 of the NDAA for FY 2022 repeals the two-year probationary period for DOD employees, as defined in 10 U.S.C. Section 1599e, leaving most probationary periods for DOD employees at one year. Recently, the CAFC issued a decision in *Santos v. National Aeronautics and Space Administration*, 990 F.3d 1355 (Fed Cir. 2021). This decision expands the scope of admissible evidence and discovery in performance-based actions taken under 5 U.S.C. § 4302. On September 13, 2021, MSPB and the Transportation Security Administration (TSA) entered into a memorandum of understanding concerning the rights of Transportation Security Officers (TSOs) to appeal to MSPB certain adverse actions, i.e., removals, demotions, and long-term suspensions after the TSO's probationary period has ended, mirroring the Title 5 appeals rights of other Federal employees. These recent changes are likely to increase the number of cases filed with MSPB, increase the number of hearings, complicate adjudicating these cases, and potentially require additional adjudication resources. This coincides with the expected restoration of a quorum and the critical need to reduce the backlog of cases at HQ. MSPB will likely need additional adjudication resources if it is to successfully address all of these adjudication requirements.

The CAFC also issued recent precedential decisions in *Connor v. VA*, 8 F.4<sup>th</sup> 1319 (Fed. Cir. 2021), and *Rodriguez v. VA*, 8 F.4<sup>th</sup> 1290, (Fed. Cir. 2021), that affect some VA cases. In *Connor*, the CAFC held that MSPB's review of decisions taken under 38 U.S.C. § 714 must include a complete penalty analysis including consideration of the *Douglas* factors. If the Board determines that the VA did not consider the relevant *Douglas* factors or that the selected penalty is unreasonable, the matter must be remanded to the VA for a new penalty determination. In *Rodriguez*, the CAFC further held that the burden of proof to be applied by the VA in taking an action under 38 U.S.C. § 714 is preponderant evidence, not substantial evidence. The immediate effect of the rulings will be increased appeals remanded to the VA for a legally correct penalty analysis, higher administrative costs associated with additional processing, and the need for new procedures for remanding and considering subsequent

VA actions. The long-term effect will be to increase hearing frequency and hours, staff time, and costs associated with more legally complex § 714 adjudications.

**Transition of the New Administration.** President Biden has issued several memoranda and EOs that affect Federal management, and they affect MSPB either directly or indirectly. Among the changes are revoking the 2018 labor relations EOs (see below), and issuing new memoranda and EOs delineating the administration’s priorities regarding external equity, the Federal workforce (addressing internal diversity, equity, inclusion, and accessibility; gender policy; customer service, and tribal consultation), climate change, the COVID-19 pandemic, and building trust through the use of science and evidence. The EOs and memoranda related to the Federal workforce could complicate affirmative defenses based on discrimination when appellants believe their agency has not complied with the letter or intent of these directives, or if they believe that the directives themselves are unlawful. MSPB will assess and comply with actions and submissions that are required or that most impact our work. MSPB will also consider and implement changes to agency planning documents and imbed improvements into agency operations, functions, and processes in response to new priorities, as appropriate.

In the last APR-APP, MSPB reported that President Trump’s EO 13839 (May 25, 2018) may significantly affect MSPB’s case processing because it prohibited agencies from entering into settlement agreements that “erase, remove, alter, or withhold from another agency any information about a civilian employee’s performance or conduct in that employee’s official personnel records[.]” OPM issued implementing regulations which were effective on November 16, 2020. President Biden revoked EO 13839 on January 22, 2021 (via EO 14003) and directed OPM to revisit regulations arising from EO 13839. OPM has yet to revoke the regulations implementing EO 13839. Until OPM revokes the regulations, MSPB remains constrained in its ability to accept these types of settlement agreements, which means more cases will be fully adjudicated instead of settled.

**Federal Budgets, Government Reform, and Workforce Reshaping.** Some Federal agencies, such as the U.S. Postal Service, have announced or put into effect reorganization plans. In addition, it is possible that agencies may face budget shortfalls or fiscal constraints following Federal pandemic expenditures.

Agencies’ budget challenges often lead to decisions that affect their employees. These decisions can result in adverse actions affecting Federal employees and these adverse actions are often appealable to MSPB, thus increasing MSPB’s workload. Furloughs, RIF actions, and some cases involving Voluntary Early Retirement Authority or Voluntary Separation Incentive Payments are appealable to MSPB. Historical trends indicate that RIFs lead to an increase in appeals filed with MSPB, and RIF appeals are often more complex than some other types of appeals. Workforce reshaping also may affect workforce management, employee engagement, and employee effectiveness. Maintaining MSPB’s strong merit systems studies and OPM review functions helps ensure adherence to the MSPs and avoidance of PPPs.

**The COVID-19 Pandemic.** It is likely that the Federal expenditures related to the COVID-19 pandemic will affect the budgets of Federal agencies in the future. While it is impossible to predict, it seems likely that many agencies will face budget cuts or shortfalls, which may lead to RIFs or furloughs of agency employees. In addition, agencies had to quickly develop new operational policies during the pandemic. The effect on employees of telework eligibility determinations, reentry and post-reentry policies, safety and security protocols, accountability for health and safety behaviors, vaccine mandates, and sharing health-related information, as examples, could affect merit-based management, and increase PPPs. The Administration’s federal employee vaccine

mandate was enjoined effective January 21, 2022,<sup>7</sup> but if it is reinstated, refusal to comply with it would likely result in numerous removal actions across the Federal Government, which would increase appeals filed with MSPB. Another possibility is an increase in whistleblowing (e.g., whistleblowing disclosures may include allegations regarding Government actions affecting the health and safety of the public) and claims of retaliation for whistleblowing related to the pandemic. MSPB has already received appeals on actions taken against employees that were related to the pandemic. In the longer-term, MSPB must be prepared to ensure its studies function is able to assess potential impacts of the pandemic on merit-based management and the occurrence of PPPs, among other potential effects.

The pandemic also affected MSPB's interactions with its customers. A large portion of MSPB initial appeals, PFRs, and pleadings are filed electronically. Even so, the agency developed policies for appellants and other case parties to continue to file by mail, and on a limited basis by email, and implemented video and web conferencing policies for virtual hearings. Alternative arrangements sometimes have been necessary for hearings when the parties do not have access to video or computers, or their options for web conferencing are otherwise limited. Those practices continued throughout FY 2021 and were made easier by continued improvements in electronic processing. While MSPB continued its ongoing work on modernizing our adjudication applications, our ability to work with our contractors involved in this effort was delayed by prohibitions on in-person meetings early in the pandemic. MSPB anticipates that the new system will be implemented in FY 2023.

The pandemic transformed daily life for MSPB employees in 2020 and 2021. MSPB is very fortunate that a good deal of its work can be conducted remotely. In FY 2020, MSPB instituted or expanded several policies including a mandatory work at home policy, more flexible work hours, and additional leave options. In early July 2020, MSPB moved from mandatory to maximum telework and developed policies and practices for employees to coordinate visits to MSPB offices for brief, infrequent, and mission-essential purposes. In FY 2021, MSPB deployed new laptops and monitors to all employees ensuring more reliable support for remote work. Employees also had to balance work and family life in new and more demanding ways, including overseeing virtual or hybrid schooling, for the entire 2020-2021 academic year. From a work perspective, most employees continued to work from home full-time, and to connect virtually for meetings and to conduct hearings. MSPB employees involved in critical in-office functions had to manage safe trips to the office throughout the pandemic.

MSPB leaders have continued to track the health and safety risks, CDC and Administration guidelines, and balance that information to craft policies and processes that protect the workforce and support the continued work of the agency. During the latter part of FY 2021, MSPB updated its COVID-19 Workplace Safety Plan and developed initial reentry plans for the return of MSPB's workforce to more routine work in the office, especially in anticipation of the arrival of new Board members. Because of the changing data related to pandemic risk, especially given the delta variant of the COVID-19 virus, these reentry plans must necessarily be flexible. As of October 4, 2021, MSPB employees had reentered MSPB offices with 25% maximum occupancy given high community transmission rates. However, both the trends in virus risk and the ongoing adjustments in reentry planning and associated guidance contribute to the continued pandemic-related stress of MSPB employees and leaders. Finally, even with leadership and agency support, each MSPB employee has had to manage the social and psychological aspects of the health risks of the virus, and the prolonged

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<sup>7</sup> For additional information on compliance with the injunction, see the [Safer Federal Workforce January 24, 2022 FAQ](#).

changes the virus has caused in work and life that everyone everywhere continues to face during the pandemic.

These external trends and issues bear on MSPB operations both directly and indirectly. They are likely to affect MSPB's appeals workload, the need to change MSPB procedures, and to require additional MSPB resources. They emphasize the importance of MSPB's responsibility to conduct studies of Federal merit systems and exercise its statutory authority to review OPM's significant actions to ensure that the Federal workforce continues to be managed in accordance with MSPs and free from PPPs. They magnify the importance of MSPB's responsibility to promote merit and educate employees, supervisors, managers, and leaders on the merit systems, MSPs, PPPs, and MSPB appellate procedures, processes, and case law. MSPB's educational and outreach functions improve workforce management over time and may reduce the time and cost of processing appeals for agencies, appellants, and the Government.

# 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. Program evaluation is critical to ensuring that MSPB continues to achieve its mission effectively and efficiently to provide value now and in the future. Emphasis on program evaluation has increased in recent years. The Evidence Act and the Federal Data Strategy are also relevant to agency program evaluation and performance measurement.<sup>8</sup>

MSPB is committed to high-quality program evaluation. Ensuring the ability to perform our statutory mission and comply with GPRAMA requirements and recent program evaluation guidance from OMB could require acquiring resources and enhancing program evaluation staff. A relatively small increase in MSPB's program evaluation resources and staff would likely yield a large return in efficiency and cost savings for MSPB. In turn, this would improve the value MSPB brings to agencies, Federal employees, individual parties to cases filed with MSPB, and to the public. If internal program evaluation resources are not available, contractor support is a viable, but potentially more expensive, option for conducting program evaluation tasks. This option is most useful when the evaluation topic is technical in nature, beyond the knowledge of existing program staff, or when the evaluation is focused on program evaluation itself or on the office responsible for program evaluation activities.

## Performance Measurement: Verifying and Validating Performance Information

Most quantitative measures of MSPB's adjudication performance (case processing in the RO/FOs and HQ, compliance case processing, and review of OPM regulations) come from its automated case management system (known as Law Manager), which tracks location, timeliness, outcomes, and other information about cases filed with MSPB. MSPB strives for completeness, quality control, verification and validation of these performance data in this system using controlled user access, limitations in field data entry, operating guides, and processes for cross-checking and correction of data throughout and at the end of the FY. Data fields to support new adjudication PGs or measures may be added to our case management system and new processes and training provided to users as necessary.

Results for the PGs related to merit systems studies, review of OPM significant actions, and educational materials can be verified and validated by examining MSPB's public website. MSPB employees provide data for outreach events and for external references to our work in databases accessible to them on the agency's intranet Portal. Additional information about external references to our work is obtained through structured news searches in Westlaw. Outreach and external references are examined and summarized at the end of the year by MSPB's Performance Improvement Officer (PIO). Data for MSPB's PGs related to HC management, IT reliability, and internal IRM customer service are collected using OPM's FEVS or MSPB's IS. The IS also provides customer satisfaction results for internal agency programs. The PIO designs, administers, analyzes, and reports the results of these surveys, including those needed for PG measures. Each year, FEVS data are posted on MSPB's website and IS data are posted on the Portal. Other quantitative and qualitative performance measures are reported by MSPB's program offices. For example, IRM

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<sup>8</sup> Public Law (Pub. L.) [115-435](#), and see <https://strategy.data.gov>.

ensures that data for the new PGs on cybersecurity and cloud-based services are verified, validated, and reported to the PIO.

In FY 2021, MSPB improved its performance measurement policies. Data integrity, the transformation to 100% e-adjudication, and new core business applications continually underscore the importance of persistent improvement in performance measurement. MSPB developed a new data integrity and certification policy and process for WPEA data, to begin in FY 2022. In addition to WPEA data, this policy applies to certifying performance data to be reported in MSPB’s APR-APPs and Annual Reports. MSPB will expand this policy to other adjudication and performance data as appropriate.

### Results and Status of Program Evaluation Activity

**Data integrity and assessment of processing WPEA cases at MSPB.** The Government Accountability Office’s (GAO) 2016 report on the WPEA recommended updating the user guide for entering data at MSPB and improvements to MSPB’s data quality checks to help identify discrepancies in WPEA data. MSPB initially assessed the data entry and data quality processes used for adjudication case management data, including, but not limited to, whistleblower data. In FY 2018, MSPB defined requirements for modernizing its core business applications, to emphasize data quality and automated checks in the new application. As mentioned above, MSPB approved a data integrity policy and review process for WPEA data in FY 2021, including certification of adjudication data included in MSPB’s external reports. Updated user guidance will be issued in FY 2022.

### Program Evaluation Status

MSPB Program Evaluation Status		
Program/ System to Evaluate	Evaluation Start Year	Status
Case processing and data integrity in the RO/FOs	FY 2017	Initial recommendations were provided by the GAO WPEA report. Additional improvements were determined by MSPB’s internal assessment of data entry processes for case management data. In FY 2018, further progress defined the adjudication process as integral to the initiative to developing requirements for new core business applications. Results of these efforts will help ensure compliance with GAO’s recommendations in the WPEA report. In FY 2021, MSPB issued a new data integrity policy and certification process for WPEA and other adjudication and performance data. This policy and process—and new user guidance—will be implemented in FY 2022.

### Proposed Program Evaluation and Performance Measurement System Review Schedule

Based on resources currently available, a projected schedule for program evaluation activities through FY 2023 is provided below. Changes in the specifications for these evaluations or in the evaluation schedule may occur if a new Chair has a different preference.

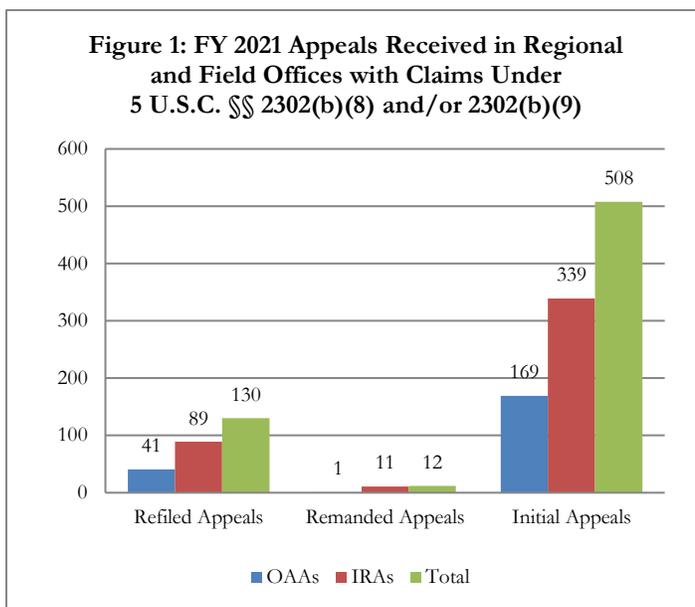
Program/Performance Measurement System	Evaluation Start Year (FY)
Implementation of SHCP process	2022
Assess agency telework usage and reporting	2022
Administrative functions of OCB	2023

## Appendix A: WPEA Data for FY 2021

In accordance with the WPEA, MSPB is providing this information about whistleblower appeals in FY 2021. This report reflects cases processed from October 1, 2020, through September 30, 2021, and includes data on receipts and outcomes of initial appeals, and receipts of PFRs in which violations of 5 U.S.C. § 2302(b)(8) and/or 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D) were alleged.<sup>9</sup> Adjudicating appeals is an ongoing process and appeals are often closed in a different year than they were received. Therefore, the figures for initial appeals (or cases) received (i.e., Figure 1) and outcomes of initial appeals processed (i.e., Figures 3 and 6) in any given year will not be comparable. Data for PFRs received with claims related to whistleblowing are included in Figure 9. Data on PFR outcomes for whistleblower cases are not included in this report as no PFR decisions were issued by the Board at HQ in FY 2021 due to the lack of quorum through FY 2021.

There generally are two types of appeals that can involve claims of reprisal under §§ 2302(b)(8) and (b)(9). An otherwise appealable action (OAA) appeal involves an action that is directly appealable to the Board, such as a removal, demotion, or suspension of more than 14 days. In such an appeal, MSPB will review both the appealable action and the claim of reprisal for engaging in protected activity as an affirmative defense. An individual right of action (IRA) appeal—which may be based on either an action that could have been appealed directly to the Board or on a less severe action that is not directly appealable—is limited to the issue of whether the action was taken because of protected activity. In this kind of case, the individual can appeal the claim of reprisal to the Board only if they file a complaint with OSC first, and OSC does not seek corrective action on the individual’s behalf.<sup>10</sup>

Figure 1 displays data on the number and types of appeals that MSPB received in FY 2021 in which violations of 5 U.S.C. §§ 2302(b)(8) and/or (b)(9) were alleged. Appeals received by RO/FOs fall into three categories: initial appeals, remanded appeals, and refiled appeals. Initial appeals are new appeals filed by an appellant for the first time and thus represent new cases alleging reprisal. Remanded appeals are appeals that were previously adjudicated by a RO/FO, but which have been remanded on PFR by the Board at HQ, or by a Federal circuit court on appeal of a final Board decision.<sup>11</sup> Refiled appeals are appeals that are refiled—by the appellant or on the AJ’s own motion—because they were previously

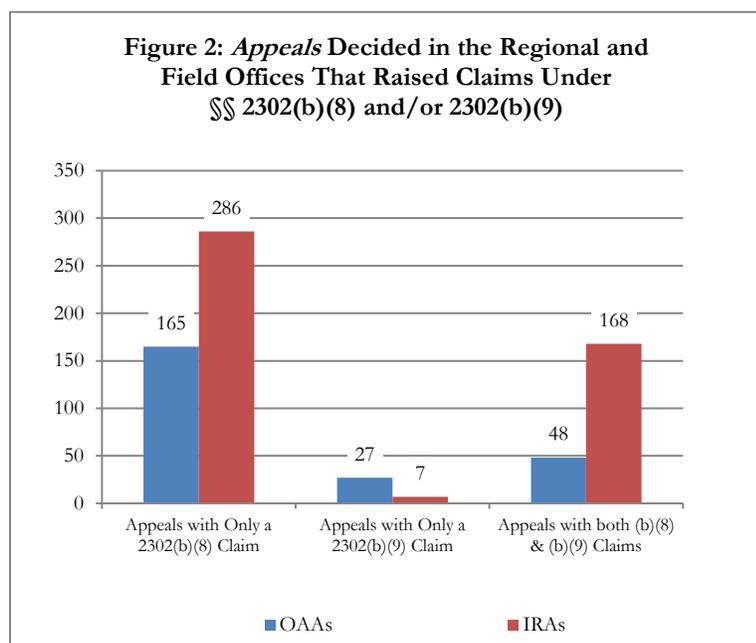


<sup>9</sup> This report generally refers to claims raised under 5 U.S.C. § 2302(b)(9); however, this report does not include claims raised under § 2302(b)(9)(A)(ii), as 5 U.S.C. § 1221(a) allows appellants to seek corrective action from MSPB as a result of prohibited personnel practices described only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

<sup>10</sup> Complaints in IRA appeals go first to OSC for review and, if warranted, OSC conducts an investigation. According to OSC, it is during this process that agencies often choose to take corrective action or settle an issue informally before OSC files a case with MSPB. MSPB adjudicates IRA appeals that have had the chance to be resolved while at OSC, but OSC did not seek corrective action.

<sup>11</sup> In FY 2021, there were no appeals remanded by the Board, as no Board decisions were issued on PFRs due to the lack of quorum. All remanded appeals in Figure 1 are cases that were remanded by a Federal circuit court on appeal of a final Board decision.

dismissed without prejudice (DWOP) to refiling. A DWOP is a procedural option that allows for the dismissal and subsequent refiling of an appeal, often to allow the parties more time to prepare for the litigation of their cases. Remanded or refiled appeals are not new cases; they are separately docketed appeals that are related to initial appeals filed earlier in the same FY or in a prior FY. If the related initial appeal was filed in the same FY, it would be included in the number of initial appeals. Because the RO/FOs must process and issue decisions in remanded and refiled appeals, these appeals are considered part of MSPB’s workload of appeals containing claims under §§ 2302(b)(8) and/or 2302(b)(9).



An appellant can file an appeal alleging a violation of § 2302(b)(8) only, a violation of § 2302(b)(9) only, or a violation of both.<sup>12</sup> Figure 2 depicts the number of appeals, both OAA appeals and IRA appeals, that were decided in FY 2021 in the RO/FOs and whether the appeal contained (a) a claim(s) under § 2302(b)(8) only; (b) a claim(s) under § 2302(b)(9) only; or (c) claims under both §§ 2302(b)(8) and (b)(9).

Figure 3 breaks down the totals displayed in Figure 2 for OAA appeals by depicting the outcomes of OAA appeals decided in the RO/FOs in which violations of §§ 2302(b)(8) and/or (b)(9) were

alleged. It is important to note that the outcome of an OAA *appeal* is separate from the outcome of a § 2302(b)(8) or (b)(9) *claim*.<sup>13</sup> An OAA appeal can be dismissed for a variety of reasons that have nothing to do with the merits of any reprisal claim raised therein. For example, the appeal may be untimely filed, the action or the appellant might be outside the Board’s appellate jurisdiction, or the appellant might have made a binding election to challenge the action in another forum (such as through negotiated grievance or arbitration procedures). This figure includes appeals that were withdrawn and appeals that were DWOP.<sup>14</sup> Cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

<sup>12</sup> Sections 2302(b)(8) and (b)(9) prohibit reprisal against an employee or applicant for employment based on different types of protected activity. Section 2302(b)(8) prohibits reprisal because of any disclosure that the employee or applicant reasonably believes evidences certain enumerated categories of wrongdoing. Employees who allege a violation of (b)(8) are typically referred to as alleging “reprisal for whistleblowing.” Section 2302(b)(9)(A)(i) prohibits reprisal because of the exercise of any appeal, complaint, or grievance right with regard to a violation of § 2302(b)(8). Section 2302(b)(9)(B) prohibits reprisal because of testifying for or otherwise assisting any individual in the exercise of any right under § 2302(b)(9)(A)(i) or (ii). Section 2302(b)(9)(C) prohibits reprisal because of cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency or OSC. Section 2302(b)(9)(D) prohibits reprisal for refusing to obey an order that would require the individual to violate a law, rule, or regulation.

<sup>13</sup> The WPEA requires MSPB to report outcomes of appeals; however, when possible, MSPB also reports and summarizes the outcomes of claims.

<sup>14</sup> Note that DWOP cases are listed here for completeness, but they do not reflect the final outcomes of whistleblower issues. DWOP cases can be refiled for final review of these issues.

Figure 3: Outcomes in OAA Appeals Decided in the Regional and Field Offices						
Types of Claim(s) Raised	DWOP	Settled	Withdrawn	Dismissed (other than DWOP)	Adjudicated on the Merits	Total
Section 2302(b)(8) Only	28	30	21	48	38	165
Section 2302(b)(9) Only	7	1	0	9	10	27
Both Sections 2302(b)(8) and (b)(9)	11	4	3	11	19	48

In a case in which an appellant raises both §§ 2302(b)(8) and (b)(9) claims, the outcomes of those claims may differ.<sup>15</sup> Therefore, we are reporting the outcome of both (b)(8) and (b)(9) claims for cases in which both claims were raised and the OAA appeal was adjudicated on the merits, as depicted in Figures 4 and 5 below.

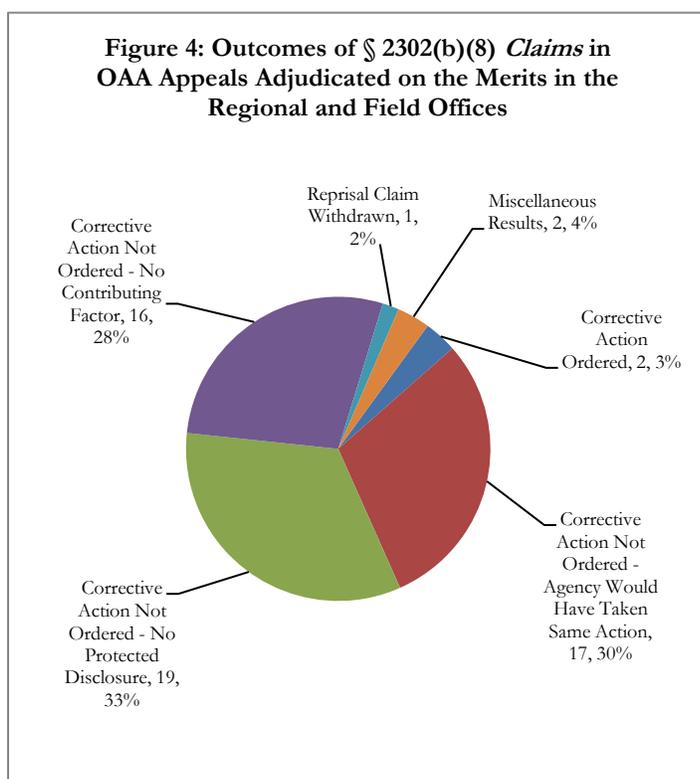


Figure 4 displays the resolution of § 2302(b)(8) claims within the 57 OAA appeals adjudicated on the merits in the RO/FOs.<sup>16 17</sup> It includes both the 38 OAA appeals adjudicated on the merits with a § 2302(b)(8) claim only, and the 19 OAA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in Figure 3.<sup>18</sup>

The fact that corrective action is not ordered in an OAA appeal does not necessarily mean that the appellant obtained no relief. For example, in a removal appeal in which the appellant alleges reprisal, the Board could reverse the removal action because the agency failed to prove that the appellant committed the charged misconduct, or it could mitigate the removal penalty, while also finding that the appellant failed to establish reprisal. In any appeal involving

<sup>15</sup> For example, an appellant may allege that they were removed in violation of § 2302(b)(8) for disclosing to their supervisor their belief that a practice at the agency endangered public health. In the same appeal, they also may allege that they were removed in violation of § 2302(b)(9) for testifying in a coworker’s MSPB appeal which involved remedying a violation of § 2302(b)(8). In such a case, the appellant may decide to withdraw their § 2302(b)(9) claim, but+ prevail on their (b)(8) claim. Under that scenario, the outcome of the (b)(9) claim would be “Withdrawn,” whereas the outcome of the (b)(8) claim would be “Corrective Action Ordered.”

<sup>16</sup> Percentages have been rounded up to the next whole number.

<sup>17</sup> Figure 4 also includes a category of “Miscellaneous Results,” which represents OAA appeals that were adjudicated on the merits but wherein the § 2302(b)(8) claims in those cases were not adjudicated on the merits. An AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. For example, an AJ may strike a reprisal claim as a sanction for an appellant’s repeated failure to comply with the AJ’s orders, or determine that the Board is precluded from considering the reprisal claim because a security clearance determination is at issue.

<sup>18</sup> In FY 2021, there were no OAA appeals adjudicated on the merits in which a section 2302(b)(8) claim was raised and corrective action was not ordered because there was no personnel action; thus, Figure 4 does not include a category for “Corrective Action Not Ordered – No Personnel Action.”

a reprisal claim, the Board shall order corrective action for the reprisal claim if the appellant has demonstrated that: (1) they made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against them; and (3) their protected disclosure was a contributing factor in the personnel action. However, corrective action shall not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Figure 5 depicts the resolution of § 2302(b)(9) claims within the 29 OAA appeals adjudicated on the merits in the RO/FOs. This figure includes the 10 OAA appeals adjudicated on the merits with a § 2302(b)(9) claim only and the 19 OAA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in

Figure 5: Outcomes of § 2302(b)(9) Claims in OAA Appeals Adjudicated on the Merits in the Regional and Field Offices				
Corrective Action Ordered	Corrective Action Not Ordered	Claim Withdrawn	Miscellaneous Results	Total
0	28	0	1	29

Figure 3. Figure 4 divides the outcomes of § 2302(b)(8) claims within OAA appeals adjudicated on the merits into subcategories of “Corrective Action Not Ordered” (i.e., no contributing factor, no protected disclosure, and the agency would have taken the same action). However, Figure 5 displays the outcomes of § 2302(b)(9) claims within OAA appeals adjudicated on the merits only in the broader categories of “Corrective Action Ordered,” “Corrective Action Not Ordered,” “Claim Withdrawn” and “Miscellaneous Results.”<sup>19</sup> Additionally, the “Corrective Action Not Ordered” category in Figure 5 includes OAA appeals in which the § 2302(b)(9) claim was not reached. As explained above with respect to Figure 4, an AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. As previously noted, the outcome of an *appeal* is separate from the outcome of a §§ 2302(b)(8) or (b)(9) *claim*.

Figure 6: Outcomes in IRA Appeals Decided in the Regional and Field Offices							
Type of Claim(s)	DWOP	Settled	Withdrawn	Dismissed, Failure to Exhaust	Dismissed, Other Grounds	Adjudicated on Merits	Total
Section 2302(b)(8) Only	71	45	22	26	96	26	286
Section 2302(b)(9) Only	0	1	1	0	1	4	7
Both Sections 2302(b)(8) and (b)(9)	43	33	6	7	31	48	168

Figure 6 breaks down the totals displayed in Figure 2 for IRA appeals by depicting the outcomes of those cases decided in the RO/FOs in which violations of §§ 2302(b)(8) and/or (b)(9) were alleged. In an IRA appeal, an appellant “shall seek corrective action from OSC before seeking corrective action from the Board.”<sup>20</sup> If an IRA appeal is dismissed for “failure to exhaust” (i.e., because the appellant failed to first seek corrective action from OSC), the appellant can file a new IRA appeal after fulfilling the administrative exhaustion requirement.<sup>21</sup> Figure 6 also includes IRA appeals that

<sup>19</sup> The “Miscellaneous Results” category represents OAA appeals that were adjudicated on the merits but the § 2302(b)(9) claims in those cases were not adjudicated on the merits.

<sup>20</sup> 5 U.S.C. § 1214(a)(3).

<sup>21</sup> In Figure 6, within the category of “Dismissed, Other Grounds,” the one IRA appeal in which a violation of only § 2302(b)(9) was alleged includes an IRA appeal that was dismissed for failure to exhaust.

were dismissed without prejudice.<sup>22</sup> In addition, as in OAA appeals, cases can be settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

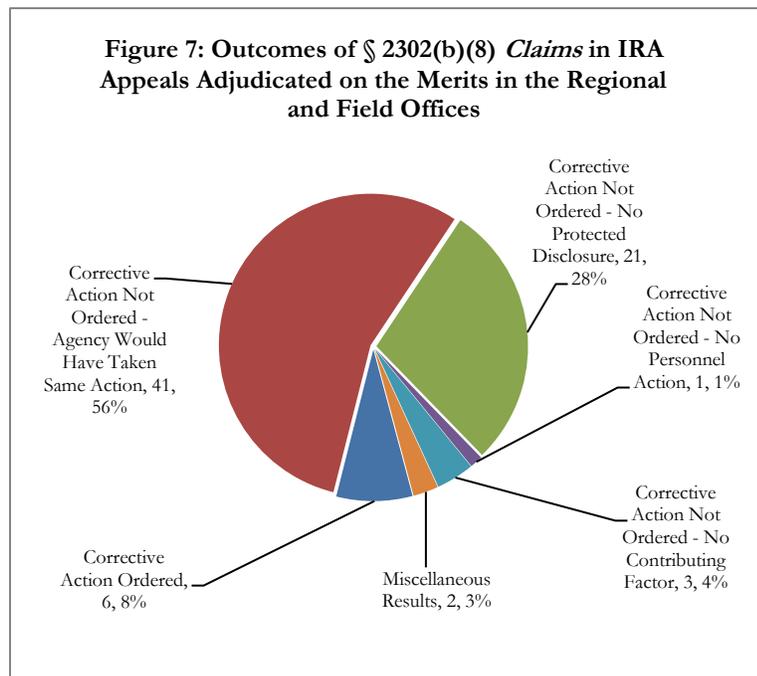


Figure 7 depicts the resolution of § 2302(b)(8) claims within the 74 IRA appeals adjudicated on the merits in the RO/FOs.<sup>23</sup> It includes the outcomes of the 26 IRA appeals adjudicated on the merits with a § 2302(b)(8) claim only and the 48 IRA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in Figure 6. Just as in an OAA appeal, the Board shall order corrective action for the reprisal claim in an IRA appeal if the appellant has demonstrated that: (1) they made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against them; and (3) their protected disclosure was a contributing factor in the personnel

action. However, corrective action shall not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Figure 8 depicts the resolution of § 2302(b)(9) claims within the 52 IRA appeals adjudicated on the merits in RO/FOs. This includes the outcomes of the 4 IRA appeals adjudicated on the merits with a § 2302(b)(9) claim only, and the 48 IRA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in Figure 6.

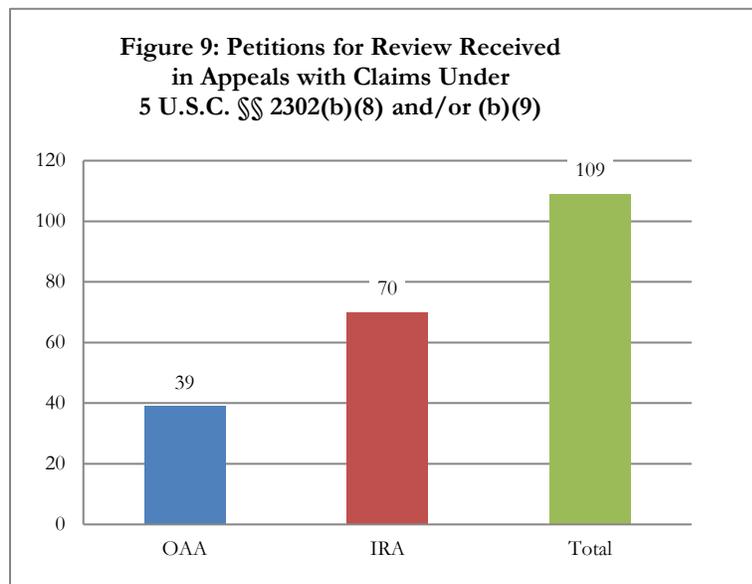
**Figure 8: Outcomes of § 2302(b)(9) Claims in IRA Appeals Adjudicated on the Merits in the Regional and Field Offices**

Corrective Action Ordered	Corrective Action Not Ordered	Claim Withdrawn	Miscellaneous Results	Total
6	45	0	1	52

While Figure 7 divides the outcomes of § 2302(b)(8) claims within IRA appeals adjudicated on the merits into subcategories of “Corrective Action Not Ordered” (i.e., no contributing factor, no personnel action, no protected disclosure, and the agency would have taken the same action), Figure 8 displays the outcomes of § 2302(b)(9) claims within IRA appeals adjudicated on the merits only in the broader categories of “Corrective Action Ordered,” “Corrective Action Not Ordered,” “Claim Withdrawn” and “Miscellaneous Results.” The “Corrective Action Not Ordered” category includes IRA appeals in which the § 2302(b)(9) claim was not reached.

<sup>22</sup> Note that DWOP cases are listed here for completeness, but they do not reflect the final outcomes of whistleblower issues. DWOP cases can be refiled for final review of these issues.

<sup>23</sup> Percentages have been rounded up to the next whole number.



An appellant or an agency dissatisfied with an AJ’s initial decision on an OAA or IRA appeal may file a PFR with the full Board at MSPB headquarters. Figure 9 shows the number of PFRs the Board received (on both OAA and IRA appeals) involving §§ 2302(b)(8) and/or (b)(9) claims. No Board decisions were issued on PFRs in FY 2021 due to the continued lack of quorum; however, MSPB continues to receive, review, and draft proposed decisions on PFRs. In addition, on May 11, 2018, former Vice Chairman Mark A. Robbins signed a policy stating that the Clerk

of the Board may exercise the delegated authority to grant a withdrawal of a PFR when requested by a petitioner if there is no apparent untimeliness of the petition and if no other party objects to the withdrawal.<sup>24</sup> In FY 2021, the Office of the Clerk of the Board granted five requests to withdraw PFRs in cases that involved §§ 2302(b)(8) and/or (b)(9) claims.

<sup>24</sup> See [https://mspb.gov/appeals/files/Policy\\_Regarding\\_Withdrawal\\_of\\_a\\_Petition\\_for\\_Review\\_1515773.pdf](https://mspb.gov/appeals/files/Policy_Regarding_Withdrawal_of_a_Petition_for_Review_1515773.pdf).

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

In accordance with 5 U.S.C. § 7701(i)(1) and (2), MSPB provides FY 2021 case processing information. In FY 2021, MSPB processed 4,867 total cases (not including ALJ and original jurisdiction cases at HQ). Seventy-two percent of initial appeals (including addendum cases) were processed in 120 days or less.<sup>25</sup>

Due to the lack of a quorum for all of FY 2021, MSPB issued no decisions from HQ. Therefore, MSPB will not report timeliness information for processing PFR cases at HQ. However, 17 PFR cases were withdrawn by order of the Clerk of the Board under a policy effected in May 2018. These cases did not involve a decision issued by the Board (because there was no quorum), so they are not included in any case processing statistics.

In general, each case is adjudicated on its merits consistent with law and legal precedent and in a manner consistent with the interest of fairness, which is achieved by assuring due process and the parties' full participation at all stages of the appeal. Under normal circumstances, several factors contribute to the length of time it takes to resolve a particular case. It takes time to issue notices, respond to discovery and other motions, subpoena documents and people, hold conferences with the parties, arrange for and question witnesses, present evidence, conduct hearings, and, often, to participate in ADR efforts. When there is good cause to do so, the parties may be granted additional time in an effort to preserve due process. Adjudication also may require more time when cases involve new or particularly complex legal issues, numerous factual issues, or the interpretation of new statutory or regulatory provisions. In addition, when Board members do not agree about the disposition of PFR issues or cases, the need to resolve disagreements or prepare separate opinions may increase the time needed for adjudication. Additional factors that affect processing time are discussed above in the performance results section of this APR-APP.

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<sup>25</sup> In June 2017, Congress set a 180-day limit for MSPB AJs to issue decisions in VA adverse action cases (38 U.S.C. § 714(d)).

## Appendix C: Modernization of Public-facing Digital Services Report<sup>26</sup>



### U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the General Counsel  
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Washington, DC 20419

Phone: (202) 653-6772; Fax: (202) 653-6203; E-Mail: [Tristan.Levitt@mspb.gov](mailto:Tristan.Levitt@mspb.gov)

General Counsel

January 11, 2022

The Honorable Shalanda D. Young  
Acting Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

RE: Modernization of Public-facing Digital Services Report

Dear Acting Director Young,

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

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

In FY 2019, MSPB contracted with Tyler Technologies, a FedRAMP-certified provider of case management software and IT services, to begin this effort. Although the project was paused for several months in FY 2020 as we adjusted our operations in response to the pandemic, we have since made additional progress. To date we have wireframed the entire application and completed development sprints covering a substantial portion of our adjudicatory business processes, including a public-facing electronic filing portal that will replace the existing e-Appeal Online. In May 2021, we piloted the development to that point, including the electronic filing portal. We are currently executing a series of five functionally-specific user acceptance testing sessions which will culminate in a pilot of the entire adjudicatory application early in FY 2023. We anticipate full implementation in late FY 2023. The projected cost for the modernization of our electronic filing portion of the application is \$423,000.

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

<sup>26</sup> In accordance with the 21<sup>st</sup> Century Integrated Digital Experiences Act (IDEA), (Pub. L. 115-336).

providing an updated, consistent appearance across devices, including mobile. The new website was released to agency employees for testing during FY 2020 and again in FY 2021, with public release in July 2021. The new website fully complies with all eight elements in section 3(a) of 21st Century IDEA. The cost for the MSPB website was \$57,000.

We are pleased with our progress in modernizing these public-facing digital services, and we look forward to implementing the new adjudicatory application with a new electronic filing system in FY 2023. Should you or your staff have any questions about this report, please have them contact Robert Duffy, MSPB's Chief Information Officer, at (202) 254-4176 or robert.duffy@mspb.gov.

Sincerely,



Tristan L. Leavitt  
General Counsel\*

TLL/rd

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\* Because currently there are no presidentially appointed, Senate-confirmed Board members, pursuant to MSPB's Continuity of Operations Plan, the functions of MSPB's chief executive and administrative officer are vested in the General Counsel.

## Appendix D: More Information about MSPB

### MSPB's Role, Functions, and Scope of Responsibilities

During congressional hearings on the CSRA before it was passed in 1978, various members of Congress testified and described the role and functions of MSPB, stating that “[MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with insuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”<sup>27</sup> MSPB inherited CSC’s adjudication functions and provides due process to employees as an independent, third-party adjudicatory authority for employee appeals including adverse actions (such as removals, furloughs, and certain suspensions) and retirement decisions. For matters within its jurisdiction, MSPB was granted the statutory authority to develop its adjudicatory processes and procedures, issue subpoenas, call witnesses, and enforce compliance with MSPB decisions. Subsequent to the CSRA, Congress expanded MSPB’s jurisdiction to hear appeals under a variety of other laws, giving it authority over a wide range of appeals.<sup>28</sup> Congress also granted MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and Federal HC management issues to ensure employees are managed under the MSPs and free from PPPs. In addition, Congress granted MSPB the authority and responsibility to review the rules, regulations, and significant actions of OPM. Under various statutes, MSPB serves as an independent, third-party adjudicatory authority for over two million Federal civilian employees in almost every Federal department and agency, applicants for Federal civilian jobs, and certain U.S. Postal Service employees and uniformed military service members.<sup>29</sup>

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

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

<sup>28</sup> Beyond those included in 5 U.S.C. chapters 43 and 75, and all those set out at 5 C.F.R. Part 1201.3; the Federal Employee Retirement System Act of 1986, 5 U.S.C. § 8461(e), (Pub. L. 99-335), Title I, §§ 101, 100 Stat. 571 (1986); the Uniformed Services Employment and Reemployment Rights Act, (Pub. L. 103-353), codified at 38 U.S.C. §§ 4301-4335; whistleblower appeals including IRA appeals involving personnel actions listed in 5 C.F.R. § 1209.4(a) and OAAs are listed in 5 C.F.R. §§ 1201.3 (a)(1) through (a)(11), and as amended by the WPEA (Pub. L. 112-199); the Hatch Act Modernization Act of 2012; the VA Accountability and Whistleblower Protection Act, (Pub. L. [115-41](#)), enacted on June 23, 2017; the Follow the Rules Act (Pub. L. [115-40](#)), enacted on June 14, 2017; the authority for a single Board member to extend OSC stay requests (Pub. L. [115-42](#)); the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 (Pub L. [115-73](#)), enacted on October 26, 2017; and most recently, section 5721 of the NDAA of FY 2020 (Pub. L. [116-92](#)) enacted on December 20, 2019.

<sup>29</sup> This includes most Federal employees under 5 U.S.C. and others such as certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3) and RIF actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a.

## MSPB Offices and Their Functions

MSPB is headquartered in Washington, D.C. and has six ROs and two FOs located throughout the United States. The agency is currently authorized to employ 235 FTEs.

The **Board members**, consisting of the Chair, Vice Chair and Board Member, are appointed by the President, confirmed by the Senate, and serve overlapping, nonrenewable 7-year terms. No more than two of the three Board members can be from the same political party. The Board members adjudicate the cases brought to the Board. The Chair, by statute, is the chief executive and administrative officer. Except for the EEO Director who reports directly to the Chair, the Directors of the following offices report to the Chair through the Executive Director.

The **Office of the Administrative Law Judge** adjudicates and issues initial decisions in corrective and disciplinary action complaints (including Hatch Act complaints) brought by OSC, proposed agency actions against ALJs, MSPB employee appeals, and other cases assigned by MSPB. In FY 2021, the functions of this office were performed by ALJs at the Federal Trade Commission and the U.S. Coast Guard under interagency agreements.

The **Office of Appeals Counsel** conducts legal research and prepares proposed decisions for the Board to consider for cases in which a party files a PFR of an initial decision issued by an AJ and in most other cases decided by the Board. The office prepares proposed decisions on interlocutory appeals of AJ rulings, makes recommendations on reopening cases on the Board's own motion, and provides research, policy memoranda, and advice to the Board on legal issues.

The **Office of the Clerk of the Board** receives and processes cases filed at MSPB HQ, rules on certain procedural matters, and issues Board decisions and orders. It serves as MSPB's public information center, coordinates media relations, operates MSPB's library and online information services, and administers the FOIA, privacy, and accessibility programs. It also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records systems, website content, and the Government in the Sunshine Act program.

The **Office of Equal Employment Opportunity** plans, implements, and evaluates MSPB's EEO programs. It processes complaints of alleged discrimination brought by agency employees and provides advice and assistance on affirmative employment initiatives to MSPB's managers and supervisors. The EEO Director also coordinates MSPB's Diversity and Inclusion Council.

The **Office of Financial and Administrative Management** administers MSPB's budget, accounting, travel, time and attendance, human resources, procurement, property management, physical security, and general services functions. It develops and coordinates internal management programs, including reviewing agency internal controls. It also administers the agency's servicing agreements with the U.S. Department of Agriculture's (USDA) National Finance Center (NFC) for payroll services, the U.S. Department of the Treasury's Bureau of the Fiscal Service (BFS) for accounting services, and USDA's Animal and Plant Health Inspection Service (APHIS) for human resources services.

The **Office of the General Counsel**, as legal counsel to MSPB, advises the Board and MSPB offices on a wide range of legal matters arising from day-to-day operations. The office represents MSPB in litigation; coordinates the review of OPM rules and regulations; prepares proposed decisions for the Board to enforce a final MSPB decision or order in response to requests to review OPM regulations and for other assigned cases; conducts the agency's PFR settlement program; and

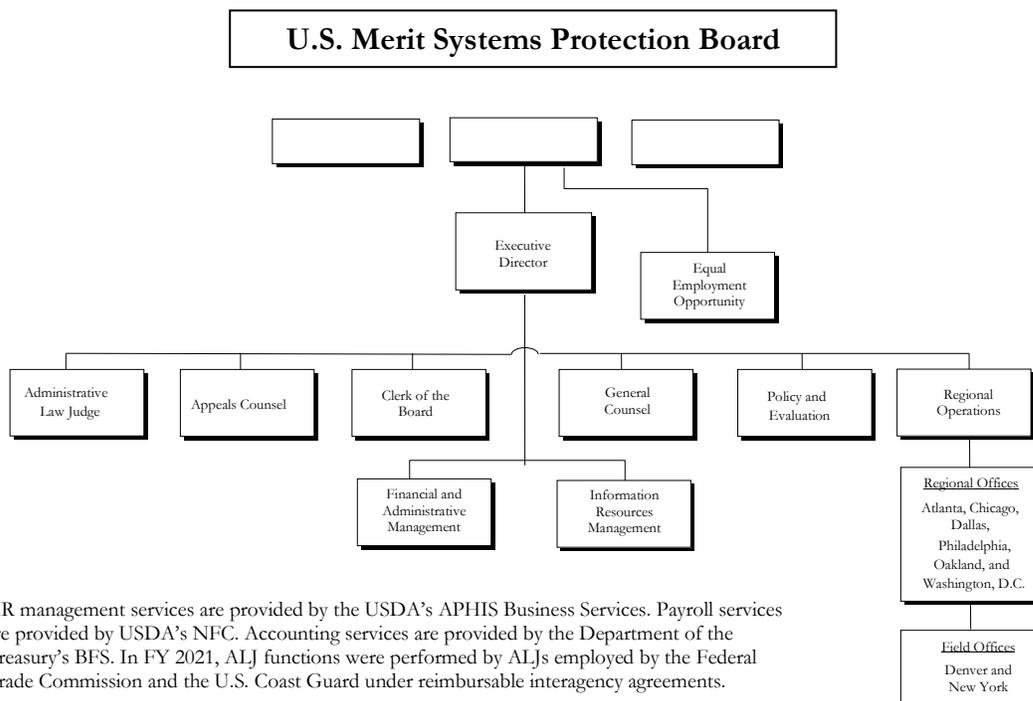
coordinates the agency’s legislative policy and congressional relations functions. The office also drafts regulations, conducts MSPB’s ethics program, performs the inspector general function, and plans and directs audits and investigations.

The **Office of Information Resources Management** develops, implements, and maintains MSPB’s IT systems and enterprise applications, and manages MSPB’s cybersecurity program. These services help MSPB manage its caseload efficiently and carry out its administrative and research responsibilities.

The **Office of Policy and Evaluation** carries out MSPB’s statutory responsibility to conduct special studies of the civil service and other Federal merit systems. Reports of these studies are sent to the President and the Congress and are distributed to an international audience. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB studies. The office also carries out MSPB’s statutory responsibility to review and report on the significant actions of OPM. The office conducts special projects and program evaluations for MSPB and has responsibility for conducting MSPB’s functions required by GPRAMA.

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

### MSPB Organizational Chart



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

The Federal merit systems are based on widely accepted organizational management practices and values that have been developed and reinforced through historical experience. There are costs and benefits associated with merit-based management of the Federal workforce. Ensuring merit system

values such as fairness in all personnel matters; hiring and advancement based on qualifications and performance; protection from arbitrary personnel decisions, undue partisan political influence, and reprisal; and assurance of due process, incurs necessary costs (e.g., in time and effort) that are not comparable to the private sector. For example, the Federal Government may require more time and effort to fill a Federal job than a private employer as a result of: (1) requirements for public notice of vacancies to support the merit principle of fair and open competition to attain a workforce from all segments of society; (2) fair and rigorous assessment of applicants consistent with the merit principles of equal opportunity and selection based on relative ability; and (3) review and documentation of applicant eligibility and entitlements in compliance with laws and public policies such as those relating to veterans' preference and the disabled. These processes improve the overall quality of the workforce and help ensure that Federal jobs and job protections are provided to the most highly qualified applicants. This, in turn, helps reduce the likelihood that the Government will need to undertake the process to remove employees in the future. These management costs are necessary to ensure the ultimate goal of a strong, highly qualified, consistently staffed, merit-based civil service that serves in the public's interest over the long term, rather than at the pleasure of political leaders.

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

MSPB's high-quality, objective merit systems studies provide value by identifying and assessing innovative and effective merit-based management policies and practices and recommending improvements. MSPB studies have shown that improved hiring and selection, improved merit-based management, and greater employee engagement lead to a highly qualified Federal workforce, improved organizational performance, and better service to the public. Results, findings, and recommendations from MSPB's merit systems studies function are shared through reports, newsletters, research and perspective briefs, and other articles posted to our website and through outreach. For example, one MSPB report provides information on and dispels misconceptions about due process in the civil service, which is useful to policymakers, managers, legal practitioners, and other stakeholders. Effective management processes also help reduce the occurrence and costs of PPPs, which negatively affect agency and employee performance. Review of OPM's significant actions, rules, and regulations protects the integrity and viability of the civil service and merit systems

and provides benefits similar to those related to merit systems studies. Better merit-based management helps improve employee and agency performance. It also logically leads to less employee misconduct and fewer adverse actions, which reduces costs in terms of fewer PPPs and fewer unsubstantiated appeals. This provides indirect value to the American taxpayer in decreased Governmentwide costs and increased confidence that the Government is doing its job well and appropriately managing its workforce.

## **The Merit System Principles and Prohibited Personnel Practices**

The CSRA codified for the first time the values of the merit systems as the MSPs and delineated specific actions and personnel practices that are PPPs because they are contrary to merit system values.<sup>30</sup> The MSPs include the values of: fair and open competition for positions, with equal opportunity to achieve a workforce from all segments of society; merit-based selection for jobs; advancement and retention based on qualifications and job performance; fair and equitable treatment in all aspects of management; equal pay for work of equal value; and training that improves organizational and individual performance. The MSPs also include protection from arbitrary action, favoritism, or coercion for political purposes; and protection against reprisal for lawful disclosure of violations of law and waste, fraud, and abuse. The MSPs further state that the workforce should be used effectively and efficiently and that all employees should maintain high standards of integrity, conduct, and concern for the public interest.

The PPPs state that employees shall not take or influence others to take personnel actions that: discriminate for or against an individual or applicant on the bases of race, color, religion, sex, national origin, age, disabling (handicapping) condition, marital status, or political affiliation; consider information beyond the person's qualifications, performance, or suitability for public service; or coerce political activity or commit reprisal for refusal to engage in political activity. These actions also may not: deceive or willfully obstruct an individual's rights to compete for employment; influence a person to withdraw from competition to affect the prospects of another; or grant preference beyond that provided by law. The actions also may not be: based on or create nepotism; in retaliation or reprisal for whistleblowing—the lawful disclosure of a violation of law, rule or regulation, gross mismanagement or gross waste of funds, abuse of authority, or danger to public health or safety; in retaliation or reprisal for an employee's exercise of his or her rights and legal protections, or assistance to another in the person's exercise of his or her rights; or based on past conduct that does not adversely affect the job. The actions also must not: knowingly violate veterans' preference requirements; violate the MSPs; or implement or enforce a nondisclosure policy, form, or agreement, which lacks a specific statement that its provisions are consistent with and do not supersede applicable statutory whistleblower protections. On October 26, 2017, Congress created a 14<sup>th</sup> PPP, which prohibits access of medical records as part of, or to further, any conduct related to, any other PPP.<sup>31</sup> On December 20, 2019, section 5721 of the NDAA for FY 2020 expanded the definition of disclosure under 5 U.S.C. § 2302(b)(8) to include disclosures to Congress.<sup>32</sup>

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<sup>30</sup> 5 U.S.C. § 2301 and § 2302, respectively. And see MSPB's website for further information on [MSPs](#) and [PPPs](#).

<sup>31</sup> The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, (Pub. L. [115-73](#)), amends 5 U.S.C. § 2302(b) to add "(14) access to the medical records of another employee or applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13)."

<sup>32</sup> The NDAA for FY 2020, (Pub. L. [116-92](#)).

## List of Common Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
AES	Annual Employee Survey
AFR	Annual Financial Report
AJ	Administrative Judge
ALJ	Administrative Law Judge
APHIS	USDA's Animal and Plant Health Inspection Service
APR-APP	Annual Performance Report and Annual Performance Plan
AR	MSPB Annual Report
ATO	Authority to Operate
BFS	Department of Treasury's Bureau of Fiscal Service
CAFC	Court of Appeals for the Federal Circuit
CBA	Collective Bargaining Agreement
CBJ	Congressional Budget Justification
CIO	Chief Information Officer
COOP	Continuity of Operations Plan
CRS	Congressional Research Service
CSC	Civil Service Commission
CSRA	Civil Service Reform Act of 1978
DOI	Department of the Interior
DHS	Department of Homeland Security
DWOP	Dismissal Without Prejudice
ECF	Electronic case files
EEO	MSPB's Office of Equal Employment Opportunity
EHRI	Enterprise Human Resources Integration
EO	Executive Order
FAQs	Frequently Asked Questions
FDS	Federal Data Strategy
FedRAM	Federal Risk and Authorization Management Program
FEVS	Federal Employee Viewpoint Survey
FO	MSPB Field Office
FOIA	Freedom of Information Act
FTE	Full-time equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GPRAMA	GPRM Modernization Act of 2010
HC	Human Capital
HR	Human Resources
HQ	Headquarters

IDEA	21 <sup>st</sup> Century Integrated Digital Experience Act
<i>IoM</i>	<i>Issues of Merit</i> newsletter
IRA	Individual Right of Action (type of whistleblower appeal)
IRM	MSPB's Office of Information Resources Management
IS	Internal Survey
IT	Information Technology
MAP	Mediation Appeals Program
MPS	Merit Principles Survey
MSP	Merit System Principles
MSPB	Merit Systems Protection Board
NAPA	National Academy of Public Administration
NDAA	National Defense Authorization Act
NFC	USDA's National Finance Center
OAA	Otherwise Appealable Action
OCB	MSPB's Office of the Clerk of the Board
OMB	Office of Management and Budget
OPE	MSPB's Office of Policy and Evaluation
OPM	Office of Personnel Management
ORO	MSPB's Office of Regional Operations
OSC	Office of Special Counsel
PFR	Petition for Review of an Initial Decision
PG	Performance Goal
PIO	Performance Improvement Officer
PPP	Prohibited Personnel Practices
PRA	Paperwork Reduction Act
RIF	Reduction in Force
RO	Regional Office
SES	Senior Executive Service
SHCP	Strategic Human Capital Plan
SORN	System of Records Notice
TBD	To be determined
TSA	DHS's Transportation Security Administration
U.S.C.	United States Code
USCIS	United States Citizenship and Immigration Services
USDA	U.S. Department of Agriculture
VA	Department of Veterans Affairs
WPEA	Whistleblower Protection Enhancement Act of 2012



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