



U.S. Merit Systems Protection Board

APR-APP

for

FY 2014 - 2016

**Annual Performance Report for FY 2014
and
Annual Performance Plan for
FY 2015 (Final) – FY 2016 (Proposed)**

February 2, 2015

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United States
Merit Systems Protection Board



**Annual Performance Report for FY 2014
and Annual Performance Plan for
FY 2015 (Revised) and FY 2016 (Proposed)**

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Foreward

The U.S. Merit Systems Protection Board submits this Annual Performance Report and Annual Performance Plan (APR-APP). The APR-APP combines the Annual Performance Report for FY 2014 with the Annual Performance Plan for FY 2015 (Revised)–2016(Proposed) as required by the Government Performance and Results Act Modernization Act of 2012 (GPRAMA). It also contains information about MSPB appeals processing as required by Section 7701(i)(1) and (2) of Title 5 United States Code, and information about whistleblower cases processed by MSPB in accord with the Whistleblower Protection Enhancement Act of 2012 (WPEA).

The APR-APP contains information about MSPB including: its origin in relation to civil service history; its role and functions; its scope of responsibility; its organization and structure; how it brings value to the merit systems, Federal agencies, the workforce, and the public; and provides information about the merit system principles (MSPs) and prohibited personnel practices (PPPs). The APR-APP contains the annual performance report for FY 2014 comparing actual results to performance targets and includes prior year results for comparative purposes. The APR-APP also contains the final performance goals, measures, and targets for FY 2015 and proposed targets for FY 2016 along with explanatory information on changes. The APR-APP includes an overall summary of the external trends and challenges that have affected or may continue to affect MSPB's performance and information about performance measurement and program evaluation.

The APR-APP has been prepared in accordance with guidance provided by the Office of Management and Budget (OMB) and other sources. Except for clerical support, the APR-APP was prepared by Government Employees. The APR-APP is available on the MSPB website www.mspb.gov.

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

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U.S. Merit Systems Protection Board

Annual Performance Plan (draft)

FY 2014 (Revised) and FY 2015 (Proposed)

Introduction

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

This Annual Performance Plan (APP) contains performance goals, measures, and targets for the strategic and management objectives defined in MSPB's draft [Strategic Plan](#) for FY 2014 – 2018. The APP includes revised performance targets for FY 2015, proposed targets for FY 2016, and performance results for FY 2014 and prior years.

Summary of Critical Issues

Highlights of the most significant external factors and internal challenges MSPB is facing are presented here. Most of this information is also provided in the [section](#) on Trends and Challenges that May Affect Agency Performance, which includes additional information and narrative.

External Trends. The most significant external issues currently affecting MSPB's mission include the over 32,400 furlough appeals filed in 2013 as a result of sequestration, changes to MSPB's processes mandated by the Whistleblower Protection Enhancement Act of 2012 (WPEA), and the recently enacted Veterans Access, Choice, and Accountability Act of 2014 (P.L. 113-146).

By the end of FY 2014, approximately 34 percent of individual furlough appeals had been processed in MSPB's regional and field offices. Of the individual furlough appeals processed, about 20 percent were dismissed, and of those not dismissed, less than 1 percent were settled—a much smaller portion than for regular adverse action appeals. Of the furlough initial appeals adjudicated on the merits, 99.5 percent of the initial decisions affirmed the agency furlough action. As MSPB continues to process these furlough appeals, it is committed to maintaining the processing of nonfurlough appeals (e.g., appeals related to removals, demotions, suspensions, whistleblowing, veterans hiring, and retirement, etc.). By the end of FY 2014, MSPB processed 70 percent of its nonfurlough initial appeals workload (existing cases at the start of the year plus those received during the year). At the same time, MSPB maintained the quality of initial decisions. Using its FY 2014 appropriations, MSPB increased its initial appeals permanent adjudicatory staff in FY 2014 by 18 full-time positions. Although these staff members have not yet reached full performance levels, they contributed to the overall adjudication of furlough and nonfurlough initial appeals.

The WPEA provided additional rights to whistleblowers and those who engage in other protected activity in the Federal Government. The law expanded the scope of protected disclosures, broadened MSPB's whistleblower jurisdiction, expanded options for granting corrective action, and permitted

review of MSPB decisions by multiple Federal Courts of Appeals.¹ These changes have increased the number of whistleblower cases filed with MSPB and increased the complexity of MSPB's processing of whistleblower cases. The changes also may lead to more and lengthier hearings in whistleblower cases and more addendum appeals (e.g., claims for compensatory and other damages or for attorney's fees) for whistleblower cases. The WPEA also requires MSPB to track and report more detailed information about whistleblower cases in its performance reports. MSPB needs additional permanent resources to enable it to meet the requirements of the WPEA. In accordance with the WPEA, information about MSPB's processing of whistleblower cases during FY 2014 is contained in Appendix A.

The recently enacted Veterans Access, Choice, and Accountability Act of 2014 changes the appeal rights of members of the Senior Executive Service (SES) at the Department of Veterans Affairs (VA). In particular, the Act stipulates that appeals by members of the SES employed by VA must be adjudicated by MSPB Administrative Judges (AJs) within 21 days, without possible subsequent review by the full MSPB Board. In our experience, to meet this timeline and ensure each party is afforded full and fair adjudication, the MSPB AJ assigned to the case, as well as a team of other MSPB legal staff members, have had to suspend processing of other adjudicatory work until a decision is issued in the VA case. This has effectively slowed the processing of other cases in the regional and field offices adjudicating the VA cases, and at HQ when HQ legal staff members are involved in the team supporting the adjudication of the VA case. An increase in adjudicatory staff in the regional and field offices and at HQ is necessary for MSPB to comply with the 21-day statutory requirement. In compliance with the new VA law, MSPB provided [information](#) about how it will implement these changes to Congress and this information is available at www.mspb.gov.

The extraordinary increase in our adjudication workload, the legislative changes included in the WPEA and VA legislation, and other current and anticipated Federal merit systems and workforce issues only adds to MSPB's responsibility to perform its other statutory functions to conduct merit systems studies and review the rules, regulations, and significant actions of the Office of Personnel Management (OPM). To carry out these statutory functions, MSPB must ensure it has a stable, flexible, cloud-based capability to conduct surveys of the Federal workforce, including periodic Merit Principles Surveys, other studies surveys, and customer satisfaction surveys. In addition, MSPB must continue its efforts to shift to e-adjudication. These capabilities will improve MSPB's effectiveness and efficiency, but will require an investment in resources. MSPB is committed to performing its functions to the best of its ability and to justifying and requesting the resources necessary to carry out its statutory responsibilities effectively and efficiently.

Internal Challenges. MSPB's enacted FY 2014 appropriations supported filling 41 permanent positions including 35 existing adjudication positions and 5 non-adjudication positions. Eight of these 41 permanent positions were filled by existing MSPB employees enabling MSPB to use the expertise of its current workforce. However, these 8 internal transfers also created new vacancies. Thus, despite recent hiring, MSPB continues to operate below the resource level needed to execute its mission as effectively and efficiently as possible. Furthermore, 52 (23 percent) MSPB employees, including almost one third of our AJs who process initial appeals (both furlough and nonfurlough cases), are eligible to retire in the next two years. Although MSPB's appropriations for FY 2015 will support its current work, given the possibility of sequestration in FY 2016 and beyond, MSPB is carefully considering the risks associated with hiring permanent employees on a position-by-position basis.

¹ The original two-year pilot for MSPB whistleblower decisions to be appealed to other circuit courts beyond the Court of Appeals for the Federal Circuit was extended for an additional three years by the All Circuit Review Extension Act (P.L. 113-170).

Despite resources issues, MSPB issued over 16,000 initial decisions and over 1,000 decisions at HQ while maintaining our decision quality at both levels. By the end of FY 2014, MSPB reduced its inventory of Petition for Review (PFR) cases pending at headquarters (HQ) by 34 percent compared to the end of FY 2013. MSPB also reduced the number of PFR cases pending at HQ for 300 days or more by 77 percent (not including furlough appeals that arrived in late FY 2014). This reduction in inventory was supported by an increase in the adjudicatory staff at HQ, although many of the new staff had not yet reached full performance level. The reduction of PFR inventory and increase in staff is important for two reasons. First, MSPB began receiving furlough PFRs in late FY 2014, receiving over 900 PFRs of furlough initial decisions by the end of the year. Second, when a new Board Member is nominated, confirmed, and sworn-in to replace Vice Chairman Anne Wagner, following her departure (no later than 28 February 2015), MSPB may experience a temporary slowing of PFR processing as the new Board member acclimates to the position.

Processing furlough and nonfurlough cases, complying with the WPEA and VA legislation, maintaining the PFR inventory, and performing its other statutory functions, coupled with budget uncertainty in FY 2016 and beyond, will likely significantly impact MSPB's ability to meet performance targets. MSPB is committed to maintaining the quality of its adjudication decisions and performing its other statutory functions. Therefore, resolution of appeals at all levels and for all types of cases have and will likely take longer for the near future. To mitigate these likely delays in processing, MSPB hired 11 temporary employees in selected adjudication offices who are being used strategically to assist in processing initial appeals and maintain the PFR inventory.

MSPB is experiencing reductions in employee satisfaction and engagement (based on the Federal Employee Viewpoint Survey results) similar to the Governmentwide results recently reported by OPM. These reductions are exacerbated by the arrival of tens of thousands of furlough appeals resulting in the largest adjudication workload in MSPB's history. The WPEA and new VA legislation have further complicated MSPB's adjudication mission. A large majority of our employees are committed to MSPB's mission and willing to do the extra work necessary to accomplish our mission. Furthermore, results of MSPB's Internal Survey administered in September-October 2014 showed improvements over the previous year in communication and employee inclusion. Even so, MSPB will need sustained resources in order to meet its challenges.

About the U.S. Merit Systems Protection Board

A Merit-based U.S. Civil Service. A brief review of 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 their suitability and qualifications to perform particular jobs.² Over time, this practice contributed to an unstable workforce lacking the necessary qualifications to perform their work, which in turn adversely affected the efficiency and effectiveness of the Government and its ability to serve the American people. The 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 of his support of 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. This process contributed to improvements in Government

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

efficiency and effectiveness by helping to ensure that a stable, highly qualified Federal workforce, free from partisan political pressure, was available to provide capable and effective service to the American people.

During the following decades, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate employee appeals. Concern over the inherent or perceived conflict of interest in the CSC's role as both the rule-maker and adjudicator of those same rules was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA).³ The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;⁴ OPM as the President's agent for Federal workforce policy and procedure; and the Federal Labor Relations Authority to oversee Federal labor-management relations.

MSPB's Role, Functions, and Scope of Responsibilities. During hearings on the CSRA, various Members of Congress testified and described the role and functions of MSPB: “. . . [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.”⁵ MSPB inherited CSC's adjudication functions and provides due process to employees and agencies as an independent, third-party adjudicatory authority for employee appeals of 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. Since the CSRA, Congress has given MSPB jurisdiction to hear appeals under a variety of other laws.⁶ Congress also granted MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and Federal human capital management issues to ensure employees are managed under the MSPs and free from PPPs. In addition, Congress granted MSPB the authority and responsibility to review the rules, regulations, and significant actions of OPM. Under various statutes, MSPB serves as an independent, third-party adjudicatory authority for over two million Federal civilian employees in almost every Federal department and agency, applicants for Federal civilian jobs, and certain United States Postal Service (USPS) employees and uniformed military service members.⁷

Findings and recommendations from MSPB's merit system 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 are generally 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 system and helps ensure that Federal employees are managed in adherence with the MSPs and free from PPPs. This broad authority includes all employees in all the agencies for which OPM sets policy, beyond the specific individual employees who may file appeals to MSPB. MSPB's customers, partners, and stakeholders include a wide range of policy-makers; Federal agencies and councils; Federal employees and managers and

³ Ibid. page 113.

⁴ Ibid. page 114.

⁵ 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).

⁶ Including 5 U.S.C. Chapter 43, and all those set out at 5 C.F.R. Part 1201.3; the Uniformed Services Employment and Reemployment Rights Act (USERRA), Public Law No. 103-353, codified at 38 U.S.C. §§ 4301-4335; Whistleblower appeals including IRA appeals involving personnel actions listed in 5 C.F.R. § 1209.4(a) and otherwise appealable actions are listed in 5 C.F.R. §§ 1201.3 (a)(1) through (a)(19), and as amended by the WPEA (Public Law 112-199); and the Hatch Act Modernization Act of 2012.

⁷ For most Federal employees under Title 5 U.S.C. and others such as certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3) and reduction-in-force actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a.

groups that represent them; appellants, appellant representatives, and agency representatives; professional legal groups, academia, and management research organizations; and good Government groups.

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

MSPB headquarters, located in Washington, DC, has eight offices that are responsible for conducting MSPB's statutory and support functions. The Directors of these eight offices report to the Chairman through the Executive Director. MSPB also has eight regional and field offices located throughout the United States. These offices process initial appeals and report through the Director of Regional Operations. Information about each Office's responsibilities and the MSPB organizational chart are contained in Appendix B. The agency is currently authorized to employ approximately 226 Full-time Equivalents (FTEs) to conduct and support its statutory duties. Many support functions are performed by other Federal agencies through interagency agreements.

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 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 job protections are provided to the most highly qualified employees. This, in turn, helps reduce the likelihood that the Government will need to undertake the process to remove that employee in the future. These management costs are necessary to ensure the ultimate goal of a strong, highly qualified, stable merit-based civil service that serves in the public's interest over the long term rather than at the pleasure of current political leaders.

Despite our relatively small size and budget, MSPB provides enormous value to the Federal workforce, Federal agencies, and to the American taxpayer by helping to ensure a more effective and efficient merit-based civil service that provides better service to the public. MSPB adds value by providing superior adjudication services, including alternative dispute resolution, which ensure due process and result in decisions that are based in law, regulation, and legal precedent and not on arbitrary or subjective factors. MSPB's adjudication process is guided by reason and legal analysis, which are hallmarks of both our legal system and our merit system. 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 provides guidance to agencies and employees on proper behavior and the ramifications of improper behavior. This 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 how to prepare thorough and legally sound cases. Strong enforcement of MSPB decisions ensures timely, effective resolution of current disputes and encourages more timely compliance with future MSPB decisions.

MSPB's high-quality, objective merit systems studies provide value by identifying and assessing innovative and effective merit-based management policies and practices and recommending improvements. For example, MSPB studies have shown that improved hiring and selection, improved merit-based management, and greater employee engagement lead to a highly qualified Federal workforce, improved organizational performance, and better service to the public. Effective management processes also help reduce the occurrence and costs of PPPs, which negatively affect agency and employee performance. Review of OPM significant actions, rules, and regulations protects the integrity and viability of the merit systems and civil service and provides benefits similar to those related to merit systems studies. Better merit-based management helps improve employee and agency performance. It also logically leads to less employee misconduct and fewer adverse actions, which reduces costs in terms of fewer PPPs and fewer unsubstantiated appeals. This provides indirect value to the American taxpayer in decreased Governmentwide costs and confidence that the Government is doing its job well and appropriately managing the 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 practices that were prohibited (PPPs) because they were contrary to merit system values.⁸ 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 principles 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, 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 willingly 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 waste of funds, abuse of authority, or danger to public health or

⁸ Title 5 U.S.C. § 2301 and § 2302, respectively.

safety; in retaliation or reprisal for an employee's exercise of his or her rights and legal protections; or based on past conduct that does not adversely affect the job. The actions also must not: knowingly violate veterans' preference; violate the MSPs; or implement or enforce a nondisclosure policy, form, or agreement, which does not include a specific statement that its provisions are consistent with and do not supersede applicable statutory whistleblower protections.

Linking this Plan to Other Agency Documents

This APP is based on the strategic and management objectives contained in MSPB's Strategic Plan for FY 2014 – 2018.⁹ Individual performance plans for MSPB's senior executives are linked to agency annual performance and management goals, as applicable. MSPB reports program performance results compared to performance targets in accordance with GPRAMA and Office of Management and Budget (OMB) guidance. MSPB's plans and reports are posted on MSPB's website www.mspb.gov.

The performance goals, measures, and targets describe what MSPB can accomplish with the budgetary and FTE resources enacted for FY 2015 and requested for FY 2016. The extraordinary increase in appeals filed due to furloughs is affecting targets for case processing timeliness, review of OPM regulations, outreach (especially if it involves travel), the program evaluation schedule, and more limited progress toward some strategic outcome goals. MSPB adjusted the FY 2015 performance goals, measures, and targets from those contained in the FY 2015 [APP](#) based on recent changes in external and internal factors. MSPB further adjusted the FY 2015 and 2016 performance goals, measures, and targets based on additional appeals activity (e.g., related to furlough appeals, WPEA, and VA legislation), agency performance through FY 2014, and OMB and Congressional budget actions.

⁹ In accordance with the GPRAMA and OMB Guidance, MSPB does not define priority goals, does not have low priority program activities, nor does it have a specific role in achieving Federal cross-agency priority goals. MSPB does not have any duplicative, overlapping, or fragmented programs as referenced in the Executive Order on 'Delivering an Efficient, Effective, and Accountable Government.' MSPB also does not have any internal management challenges reported in the GAO High Risk List.

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MSPB Performance Framework

Mission

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

Vision

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

Organizational Values

- Excellence:** We will base our decisions on statutes, regulations, and legal precedents; use appropriate scientific research methods to conduct our studies and make practical recommendations for improvement; and develop and use appropriate processes to oversee the regulations and significant actions of 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.
- 1B: Enforce timely compliance with MSPB decisions.
- 1C: Conduct objective, timely studies of the Federal merit systems and Federal human capital management issues.
- 1D: Review and act upon the rules, regulations, and significant actions of the Office of Personnel Management, as appropriate.

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

Strategic Objectives:

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

Management Objectives

Management Objectives: Effectively and Efficiently . . .

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

Tabular Summary of Current Progress and Future Targets

Summary of MSPB FY 2014 Performance Results			
Strategic Goal 1: Serve the public interest by <i>protecting</i> Merit System Principles and <i>safeguarding</i> the civil service from Prohibited Personnel Practices.			
Strategic Obj. 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.		Substantially Met	
Performance Goal	Performance Measure	2014 Target	2014 Result
1A-1 : Quality of initial decisions	Percent initial decisions reversed/ remanded on PFR	10% or fewer	7%
1A-2 : Quality of Board/PFR decisions	Percent decisions unchanged by the reviewing court	92% or greater	96%
1A-3 : Participant perceptions of the adjudication <i>process</i>	Percent participant agreement	Procure survey platform	See report
1A-4 : Initial appeals processing timeliness	Average processing time	None set	See interim data
1A-5 : PFR processing timeliness	Average processing time	260 days	287 days
1A-6 : Participant perceptions of the ADR <i>process</i>	Percent participant agreement	Procure survey platform	See report
Strategic Obj. 1B: Enforce timely compliance with MSPB decisions.		Not Met	
1B-1 : Compliance case processing timeliness	Weighted average processing time for all compliance cases	135 days or fewer	215 days
Strategic Obj. 1C: Conduct objective, timely studies of Federal merit systems and Federal human capital management issues.		Met	
1C-1 : Number/scope of <i>Issues of Merit</i> newsletter editions	Number/scope of newsletters editions published	3-4 newsletter editions	3 editions published
1C-2 : Number/scope of study reports	Number/scope of reports published	3-5 reports completed	4 new reports published
Strategic Obj. 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.		Met	
1D-1 : Review OPM rules/regulations	Number/scope of OPM regulations reviewed	Track activity	3 decisions issued
1D-2 : Review OPM significant actions	Number/scope of OPM significant actions reviewed	Maintain scope; publish review	See report
Strategic Goal 2: Advance the public interest through <i>education</i> and <i>promotion</i> of stronger merit systems, adherence to Merit System Principles, and the <i>prevention</i> of Prohibited Personnel Practices.			
Strategic Obj. 2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit system laws & regulations.		Exceeded	
2A-1 : References to MSPB's work	Scope of references to MSPB's work	Maintain scope	See report
2A-2 : Create policy-related products	Number/scope of policy-related products	Post new study report highlights	Posted highlights for 3 new & 4 previous reports

Strategic Goal 2: Continued			
Strategic Obj. 2B: Support & improve the practice of merit, adherence to MSPs, & prevention of PPPs in the workplace through outreach.		Exceeded	
Performance Goal	Performance Measure	2014 Target	2014 Result
2B-1: Conduct merit-based outreach events	Number/scope of merit-based outreach events	70 events, improve tracking	100+ outreach events
Strategic Obj. 2C: Advance the understanding of the concept of merit, MSPs, & PPPs through the use of educational standards, materials & guidance established by MSPB.		Met	
2C-1: Practice/educational website materials accessed	Number of visits/accesses from website	Within \pm 5% of previous year	12% more visits 30% fewer hits
2C-2: Create/update electronic educational materials	Number/type of new or updated educational materials	5 or more products	8 items and 9 radio interviews

Management Obj. M1: Lead & manage employees to ensure an engaged workforce with competencies to perform mission.		Met	
M1-1: Ensure workforce competencies	Percent agreement FEVS competency questions	65% or more	64%
M1-2: Maintain perceptions of diversity & inclusion	Percent agree with FEVS diversity & IS inclusion questions	65% \leq Diversity 68% \leq Inclusion	61% Diversity 77% Inclusion
M1-3: Maintain employee engagement	Percent agreement FEVS engagement questions	68% or more	62%
Management Obj. M2: Manage budget and financial resources and improve adjudication efficiency to ensure necessary resources now and in the future.		Met	
M2-1: Ensure justified budgets & resource accountability	Percent of funded positions vacant at end of each month, averaged over the year.	Develop measure set targets	Chose measure and set future targets
M2-2: Improve adjudication processing efficiency	Proportion of cases processed entirely electronically	Track e-filing, Develop RFI for e-Adjudication	See report
Management Obj. M3: Manage IT and information services programs to support mission.		Met	
M3-1: MSPB website meets customer needs	Percent agreement website survey questions	Procure survey platform	See report
M3-2: Ensure IT application and system availability	Average percent downtime of key systems	1.75 % or less mean downtime	1.13%
M3-3: Maintain internal/external IT customer support	Percent of internal and external tickets resolved within SLA	85% or more	92%
Management Obj. M4: Ensure individual and workplace safety and security.		Exceeded	
M4-1: Employees prepared to ensure safety and security	Average % agree on Internal Survey (IS) safety and security questions	70% or more	89%

Summary of MSPB FY 2015 (Revised) and FY 2016 (Proposed) Performance Plan

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

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

Performance Goal	Performance Measure	2015 Target	2016 Target
1A-1 : Quality of initial decisions	Percent initial decisions reversed/remanded on PFR	10% or fewer	
1A-2 : Quality of Board/PFR decisions	Percent decisions unchanged by the reviewing court	92% or greater	
1A-3 : Participant perceptions of the adjudication <i>process</i>	Percent participant agreement	Administer customer surveys	Continue surveys, address issues
1A-4 : Initial appeals processing timeliness	Average processing time	Decide majority of furlough cases, track other cases	TBD
1A-5 : PFR processing timeliness	Average processing time	260 days and track inventory	TBD
1A-6 : Participant perceptions of the ADR <i>process</i>	Percent participant agreement	Administer customer surveys	Continue surveys, address issues

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

1B-1 : Compliance case processing timeliness	Weighted average processing time for all compliance cases	135 days or fewer
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Strategic Obj. 1C: Conduct objective, timely studies of Federal merit systems and Federal human capital management issues.

1C-1 : Number/scope of <i>Issues of Merit</i> newsletter editions	Number/scope of newsletters published	3-4 newsletter editions	
1C-2 : Number/scope of study reports	Number/scope of reports published	3-5 reports published	
1C-3 : Conduct surveys of Federal Employees to assess & report on health of merit system	Conduct/analyze periodic surveys of Federal employees	Design next Merit Principles Survey (MPS)	Conduct next MPS; analyze MPS results

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

1D-1 : Review OPM rules/regulations	Number/scope of OPM regulations reviewed	Track and report activity
1D-2 : Review OPM significant actions	Number/scope of OPM significant actions reviewed	Maintain scope; publish review

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

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

2A-1 : References to MSPB's work	Scope of references to MSPB's work	Maintain scope
2A-2 : Create policy-related products	Number/scope policy-related products	Post highlights for all new study reports

Strategic Goal 2: Continued			
Strategic Obj. 2B: Support & improve the practice of merit, adherence to MSPs, & prevention of PPPs in the workplace through outreach.			
Performance Goal	Performance Measure	2015 Target	2016 Target
2B-1: Conduct merit-based outreach events	Number/scope of merit-based outreach events	70 outreach events or more	
Strategic Obj. 2C: Advance the understanding of the concept of merit, MSPs, & PPPs through the use of educational standards, materials & guidance established by MSPB.			
2C-1: Practice/educational website materials accessed	Number visits to the MSPB website	Within \pm 5% of previous year	
2C-2: Create/update electronic educational materials	Number/type of new or updated educational materials	Post 5 or more new or updated educational materials	
2C-3: MSPB website meets customer needs	Percent agreement website survey questions	Administer customer surveys	Continue surveys, address issues

Management Obj. M1: Lead & manage employees to ensure an engaged workforce with competencies to perform mission.			
M1-1: Ensure workforce competencies	Average percent agreement EVS competency questions	65% or more	
M1-2: Maintain perceptions of diversity & inclusion	Average percent agree with FEVS diversity & IS inclusion questions	Diversity - improve 3% or more from previous year; Inclusion - 68% or more	
M1-3: Maintain employee engagement	Average percent agreement EVS engagement questions	Improve by 3% or more from previous year	
Management Obj. M2: Manage budget and financial resources and improve adjudication efficiency to ensure necessary resources now and in the future.			
M2-1: Ensure justified budgets & resource accountability	Percent of funded positions vacant at end of each month, averaged over the year.	10% or fewer	
M2-2: Improve adjudication processing efficiency	Proportion of cases processed entirely electronically	Track e-filing, hire vendor for e-Adjudication	Assess process for adjudication, create/begin to implement plan
Management Obj. M3: Manage IT and information services programs to support mission.			
M3-1: Ensure IT application and system availability	Average percent downtime of key systems	1.75% or less mean downtime	1.5% or less mean downtime
M3-2: Maintain internal/external IT customer support	Percent of internal and external tickets resolved within SLA	85% or more	90% or more
Management Obj. M4: Ensure individual and workplace safety and security.			
M4-1: Employees prepared to ensure safety and security	Average % agree on Internal Survey (IS) safety and security questions	75% or more	75% or more

Means and Strategies Needed to Accomplish our Objectives

MSPB will continue to use the means and strategies delineated in its Strategic Plan for FY 2014-2018. However, within resources constraints, MSPB will emphasize the following means and strategies to accomplish its objectives in FY 2015-2016.

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

1. Provide effective and efficient adjudication of appeals in our regional and field offices and at HQ and improve the transparency of the adjudication process.
2. Effectively and efficiently, implement the requirements of the WPEA, and the Veterans Access, Choice and Accountability Act of 2014.
3. Effectively and efficiently manage the adjudication of the large increase in appeals (e.g., furloughs and RIFs) resulting from sequestration and other Federal budgetary constraints.
4. Appropriately balance quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
5. Provide effective and impartial ADR services (including settlement and mediation) to meet the needs of the involved parties.
6. Ensure effective representation of MSPB in cases brought before other adjudicatory bodies, such as the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court.
7. Obtain a secure web-based survey platform (preferably hosted in the cloud) to support surveys to measure customer service and customer satisfaction.

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

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

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

1. Conduct independent, objective, and timely studies of the Federal merit systems and Federal management issues and practices, and expeditiously report findings and recommendations to the President, Congress, Federal HR policy-makers, practitioners, and other stakeholders.
2. Obtain a secure web-based survey platform (preferably hosted in the cloud) to support merit systems studies and measure customer service and customer satisfaction.
3. Use periodic Governmentwide and more focused surveys to assess and report on the overall health of the Federal merit systems, practice of merit, and occurrence of PPPs.
4. Ensure MSPB has the analytic workforce necessary to conduct and ensure the value of merit system studies and perform essential program evaluation responsibilities.

Strategic Objective 1D: Review OPM rules, regulations, and significant actions.

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

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

1. Translate and deliver information from adjudication, merit systems studies, and OPM review into outreach products designed to inform actions by policy-makers that will support merit, improve adherence to MSPs, and prevent PPPs.
2. Track citations and references of MSPB's work and products in professional, academic, trade and media print and online publications to ensure the information we create about merit is being disseminated appropriately.

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

1. Translate information from adjudication, merit systems studies, and OPM review into outreach products designed to inform actions by practitioners that will support merit, improve adherence to MSPs, and prevent PPPs.
2. Consider the electronic, web-based delivery of outreach presentations to improve efficiency of outreach and reduce travel costs.
3. Better track outreach events and audience feedback to improve the outreach success.

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

1. Provide information about adjudication processes, outcomes, and legal precedent to support adjudication participants' ability to prepare and file strong cases with MSPB.
2. Develop educational materials and guidelines on the concept of merit, MSPs, PPPs, and how a merit-based civil service helps ensure excellent Government service to the public.

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

1. Hire and retain a diverse and highly qualified legal, analytic, and administrative workforce that can effectively accomplish and support the knowledge-based work of the agency.
2. Provide employee orientation, on-the-job training, and other developmental and training experiences to ensure employees have the competencies necessary to perform MSPB's work.
3. Use results from the Employee Viewpoint Survey, Internal Survey, and MSPB IdeasScale Community (MSPB's suggestion box), and apply leadership skills related to showing appreciation and supporting open communication, etc. to strengthen and maintain a culture to support a diverse, inclusive, and fully engaged workforce.

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

1. Use people and budgetary resources effectively and efficiently to ensure adequate staff are available and prepared to accomplish our goals and provide value now and in the future.
2. Ensure access to and encourage increased use of e-Appeal Online
3. Assess current adjudication processes and adjudication IT applications and systems, and develop requirements for and an implementation plan for e-Adjudication – a permanent shift from paper-based work processes and products to automated electronic work processes and products, especially for appeals filed electronically.

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

1. Develop and implement IT hardware, software, and systems to support effective and efficient MSPB adjudication, studies, OPM review, and administrative programs.
2. Obtain a secure web-based survey platform (preferably hosted in the cloud) to support merit systems studies and program evaluation and to measure customer satisfaction.
3. Ensure the MSPB website meets the needs of our customers.

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

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

Performance Goals, Performance Measures, Results, and Targets

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

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

Results and targets: This objective focuses on MSPB's responsibilities to resolve appeals at the regional and field offices and at HQ through adjudication and ADR procedures. A balanced set of measures is used which includes decision quality, processing timeliness, and customer satisfaction with the adjudication and ADR processes.

This objective was **SUBSTANTIALLY MET**. The performance goals related to quality of initial appeals and PFRs were exceeded. MSPB's regional and field offices processed a record number of over 16,300 initial and addendum appeals in FY 2014. Although no target was set for timeliness of initial processing, data indicate that the average processing time for initial appeals was 262 days. 11,102 (34 percent) furlough appeals were processed in an average of 330 days, and 5,212 (70 percent) nonfurlough initial appeals were processed in an average of 115 days. The performance target for timeliness of PFR processing was 10.3 percent greater than the target of 260 days. However, 20 cases were on hold pending release of decisions by the U.S. Court of Appeals for the Federal Circuit in *Conyers* and *Gargiulo*. Removing these cases from the calculations gives an average processing time for PFRs of 279 days, which is within 10 percent of the target. In addition, since the end of 2013, MSPB reduced its inventory of pending PFRs at HQ by 34 percent and reduced the inventory of PFR cases pending at HQ for more than 300 days by 77 percent (not counting over 900 furlough PFR cases that arrived at HQ in the last quarter of the year). Adequate progress was made in obtaining a viable cloud-based survey platform to enable administration of customer service and customer satisfaction surveys to adjudication and ADR participants.

As discussed earlier, MSPB filled several permanent adjudication vacancies including AJs, paralegals and legal assistants, HQ writing attorneys (who draft PFR decisions for Board Member review and approval), other legal staff, two Regional Directors and one Chief Administrative Judge. Many of these positions had been vacant for several months to over a year and several were to replace senior AJs who retired. We anticipate more retirements of AJs and other key staff members. Due to future budget uncertainties, it is not likely that we will be able to replace all of these AJs. MSPB is continuing to plan for a shift to e-Adjudication ensuring that MSPB adjudicates (internally processes) cases electronically at least for all cases that are filed electronically. This will result in long-term efficiencies but will require an initial and sustained investment of resources to develop requirements and an implementation plan for this shift. This initiative is included in management goal M2-2. MSPB will continue to focus on issuing high quality decisions. Therefore, FY 2015-2016 targets for decision quality will remain as they were for FY 2014. MSPB is also committed to obtaining a viable, secure, cloud-based survey platform to support obtaining customer satisfaction information from adjudication and ADR participants and has set FY 2015-2016 targets accordingly.

Given the huge number of furlough appeals currently being processed, MSPB will track, but is not establishing, FY 2015 – 2016 average processing time targets for initial appeals. MSPB is committed to issuing initial decisions in a vast majority of furlough appeals by the end of FY 2015, while

maintaining the processing of nonfurlough appeals.¹⁰ To convey the status of initial appeals processing in the absence of an overall average processing time target, MSPB will track interim indicators for initial appeals processing. Targets are not established for these indicators because the overall processing and final resolution of furlough cases is not predictable. The percent of individual furlough initial appeals processed gives the status of MSPB's resolution of these cases (Interim indicator 1A-4a). Because sequestration is suspended through FY 2015, we do not expect additional furlough appeals to be filed in FY 2015. Therefore, the current inventory of furlough initial appeals will continue to decrease, and the proportion of furlough appeals processed will continue to increase through FY 2015. The percent of initial decisions issued of the nonfurlough initial appeals workload (workload equals the number on-hand at the beginning of the time period plus the number received) provides information about the changes in the inventory and processing pace of nonfurlough appeals (Interim indicator 1A-4b). MSPB will always have an inventory of nonfurlough initial appeals on-hand because new appeals are always arriving. However, monitoring these indicators will help us manage and balance the processing of furlough and nonfurlough cases until all of the furlough appeals (filed due to sequestration) are resolved.

For PFR processing, MSPB will focus on maintaining average processing time and ensuring a manageable inventory of PFRs. This will be challenging because of the hundreds of furlough PFR cases that began arriving in late FY 2014. The FY 2015 average processing time target is set at 260 days or fewer, and the FY 2016 target is to be determined (TBD) based on FY 2015 results. To manage the PFR inventory, MSPB will track and set targets for two interim indicators that involve pending cases. The first interim indicator is the inventory or number of PFRs and PFR addendum cases pending at HQ (Interim indicator 1A-5a). The PFR inventory fluctuates because we are always closing and receiving cases. The FY 2015 target for PFR inventory is 500 cases at the end of FY 2015 and the FY 2016 is TBD based on FY 2015 results. The second interim indicators is the number of older cases, defined as those that are 300 days old or more, pending at HQ (Interim indicator 1A-5b). Older cases occur from time to time because of various circumstances (e.g., review is awaiting results of a related and potentially precedential case being considered by the courts). The number of older cases fluctuates, but it is important to minimize the number of older cases pending in order to provide the parties timely resolution of the case. The target for FY 2015 is to have 50 or fewer older case at HQ at the end of FY 2015, and the FY 2016 target is TBD based on FY 2015 results. In addition to tracking interim indicators, MSPB is continuing its program evaluation of the PFR process to identify changes that may speed processing while retaining PFR decision quality.¹¹

Performance Goal 1A-1: Maintain quality of initial decisions.			
Measure: Percent of initial decisions that are reversed or remanded on Petition for Review (PFR) due to error or oversight.			
Results		Targets	
FY 2008	6%	FY 2014	10% or fewer
FY 2009	5%	FY 2015	10% or fewer
FY 2010	9%	FY 2016	10% or fewer
FY 2011	7%		
FY 2012	6%		
FY 2013	8%		
FY 2014	7%		

¹⁰ As a matter of comparison, it took two years for MSPB to process approximately 12,000 appeals from Air Traffic Controllers who were fired under President Reagan. At that time, MSPB had 400 employees.

¹¹ Case processing details as required under 5 U.S.C. §7701(i)(1) and (2) are contained in Appendix C.

Performance Goal 1A-2: Maintain quality of decisions reviewed by reviewing authority.

Measure: Percent of MSPB decisions left unchanged (affirmed or dismissed) upon review by the U.S. Court of Appeals for the Federal Circuit.

Results		Targets	
FY 2008	87%*	FY 2014	92% or more
FY 2009	92%	FY 2015	92% or more
FY 2010	92%	FY 2016	92% or more
FY 2011	98%		
FY 2012	94%		
FY 2013	93%		
FY 2014	96%		

* Adjusting for cases affected by *Kirkendall v. Department of the Army* resulted in 94% of cases left unchanged by the court.

Performance Goal 1A-3: Maintain participants' positive perceptions of the adjudication process.

Measure: Percent of adjudication participants surveyed who agree MSPB adjudication processes are fair, open, accessible, understandable, and easy to use.

Results		Targets	
FY 2012*	Survey development and search for platform continued, implementation of new surveys postponed until FY 2013 due to resource limitations and competing priorities.	FY 2014	Publish Request for Proposal (RFP) and procure web-based survey platform capability.
FY 2013	Worked with contractor to assess hosting and security requirements and reviewed responses to Request for Information (RFI) designed to obtain information on current solutions for secure web-based survey platform. Further progress limited by competing priorities and the state of emerging web-based survey solutions.	FY 2015	Administer routine adjudication customer service/customer satisfaction surveys using new survey platform or another survey application, set future targets.
FY 2014	Dept. of Interior National Business Center published an RFI to assess availability and drafted a Request for Quote (RFQ) to be issued to several cloud service providers.	FY 2016	Continue to obtain customer service and customer satisfaction feedback, consider results and take appropriate action to address issues that do not meet targets.

* New measure in FY 2012.

Performance Goal 1A-4: Maintain processing timeliness for initial appeals.

Measure: Average case processing time for initial appeals.

Results		Targets	
FY 2008	87 days	FY 2014	No target established. See results of interim indicators.
FY 2009	83 days	FY 2015	Issue a vast majority of furlough appeal initial decisions. Track interim indicators below.
FY 2010	89 days	FY 2016	TBD based on FY 2015 results.
FY 2011	94 days		
FY 2012	93 days		
FY 2013	93 days		
FY 2014	262 days*		

* 11,102 furlough appeals were processed with an average processing time of 330 days (average processing time for furlough appeals is cumulative from FY 2013 through FY 2014); and 5,212 nonfurlough appeals were processed with an average processing time of 115 days (average processing time for nonfurlough appeals is only for FY 2014).

Interim Indicators for Initial Appeals Processing: (Not including furlough cases involving administrative law judges.)

1A-4a: Percent of individual furlough appeals processed.

FY 2013	0.7%	(229/32,279)
FY 2014	34%	(11,046/32,437)

1A-4b: Percent of initial decisions issued (including cases dismissed, settled, or adjudicated on the merits) for nonfurlough initial appeals.

FY 2013	75%	(5,538/7,396)
FY 2014	70%	(5,212/7,480) ¹²

Performance Goal 1A-5: Maintain processing timeliness for PFRs.

Measure: Average case processing time for petitions for review (PFRs) of initial appeals.

Results		Targets	
FY 2008	112 days	FY 2014	260 days or fewer (see indicators)
FY 2009	94 days	FY 2015	260 days or fewer; track indicators.
FY 2010	134 days	FY 2016	TBD based on FY 2015 results.
FY 2011	213 days		
FY 2012	245 days*		
FY 2013	281 days		
FY 2014	287 days**		

* 74 PFR cases were impacted by the *Latham vs. USPS* oral argument case. The average overall PFR processing time, not counting these *Latham* cases, was 237 days.

** 20 PFR cases were impacted by the decisions issued by the U.S. Court of Appeals for the Federal Circuit related to *Conyers and Gargiulo*. If those cases are removed from the calculations, the average processing time is 279 days.

¹² Includes cases filed as a result of the Government shutdown in October 2013.

Interim Indicators for PFR Processing:

- 1A-5a: Number of PFR and PFR addendum cases **pending** at HQ at the end of the year.
- | | |
|----------------|--|
| FY 2013 | 620 |
| FY 2014 | 411 (not including furlough PFRs received late in FY 2014) |
| Target FY 2015 | 500 |
| Target FY 2016 | TBD based on FY 2015 results |
- 1A-5b: Number of PFRs **pending** at HQ for more than 300 days.
- | | |
|----------------|------------------------------|
| FY 2013 | 100 |
| FY 2014 | 23 |
| Target FY 2015 | 50 |
| Target FY 2016 | TBD based on FY 2015 results |

Performance Goal 1A-6: Maintain participants' positive perceptions of the ADR <i>process</i> .			
Measure: Percent of participants in the ADR programs, including initial appeals settlement and the Mediation Appeals Program (MAP), surveyed who agree the ADR process was helpful, valuable, and noncoercive, even if no agreement was reached.			
Results		Targets	
FY 2012*	Survey development and search for platform continues, implementation of new surveys postponed until FY 2013 due to resource limitations and competing priorities.	FY 2014	Publish Request for Proposal (RFP) and procure web-based survey platform capability.
FY 2013	Worked with contractor to assess hosting and security requirements and reviewed responses to Request for Information (RFI) designed to obtain information on current solutions for secure web-based survey platform. Further progress limited by competing priorities and the state of emerging web-based survey solutions.	FY 2015	Administer routine ADR customer service/customer satisfaction surveys using new survey platform or another survey application, set future targets.
FY 2014	Dept. of Interior National Business Center published an RFI to assess availability and drafted a Request for Quote (RFQ) to be issued to several cloud service providers.	FY 2016	Obtain ADR customer service and customer satisfaction feedback, consider results and take appropriate action to address issues that do not meet targets.

* New measure in FY 2012.

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

Results and targets: This objective focuses on MSPB's statutory authority to enforce compliance with its decisions. This objective was **NOT MET** because the average processing time for compliance cases of 215 days was 60 percent longer than the target of 135 days. This is the overall processing time for compliance cases including both initial decisions issued by AJs and compliance cases resolved at HQ, weighted for the number of cases closed in each venue. MSPB closed many older compliance cases in FY 2014, therefore, the FY 2015-2016 targets for the weighted average processing time for compliances cases remains set at 135 days.

Performance Goal 1B-1: Maintain timeliness of processing compliance/enforcement cases.			
Measure: Weighted average processing time for all enforcement cases.			
Results		Targets	
FY 2009*	171 days	FY 2014	135 days or fewer.
FY 2010	180 days	FY 2015	135 days or fewer.
FY 2011	288 days	FY 2016	135 days or fewer.
FY 2012	244 days		
FY 2013	355 days**		
FY 2014	215 days		

* New measure in FY 2009.

** 6 compliance cases were closed at HQ with an average processing time of 388 days (ranging from 99 – 952 days). 89 initial appeals compliance addendum cases were closed with an average processing time of 129 days. The weighted average processing time for all compliance cases is 145 days.

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

Results and targets: This strategic objective focuses on MSPB authority to conduct studies of the Federal merit systems and human capital management issues. This objective was **MET**. The performance target for publication of newsletter editions and other articles was achieved, with newsletter and other articles covering all of the MSPs and 4 PPPs. The performance target for studies was achieved with approval and publication of four merit system study reports related to several MSPs and PPPs. The report topics included favoritism in the Federal workplace, evaluating training and experience during the hiring process, sexual orientation in the Federal workplace, and veteran’s employment policy and practice. In addition, MSPB began developing its merit system studies research agenda for FY 2015-2018 including a public meeting during which the Board Members heard from a variety of stakeholders about their views on MSPB’s agenda.

Resource limitations and competing priorities (especially internal program evaluation requirements support for agency-wide initiatives, and resources for developing the research agenda and obtaining a survey platform) are straining the analytic and research resources available to conduct merit systems studies. The continued viability of the studies program relies on conducting surveys of Federal employees. Therefore, conducting surveys has been added as Performance Goal 1C-3 beginning in FY 2015. In FY 2015, MSPB will continue the process of procuring and implementing a secure, cloud-based survey platform to support its merit systems studies mission (and MSPB customer service surveys). In FY 2015, MSPB will design the next Merit Principles Survey with administration targeted for FY 2016. Despite competition for resources, MSPB will maintain the FY 2014 targets for number of *IoM* newsletter editions and number of studies to FY 2015 and 2016.

Performance Goal 1C-1: Maintain the number and scope of <i>Issues of Merit</i> newsletter editions or other articles.			
Measure: Number and scope of <i>Issues of Merit (IoM)</i> newsletter editions or other articles published.			
Results		Targets	
FY 2013*	3 editions of the <i>IoM</i> newsletter and 1 article related to 8 MSPs.	FY 2014	Publish 3–4 <i>IoM</i> eds. or articles.

FY 2014	3 <i>IoM</i> newsletter editions and 6 rotating content articles published which related to all MSPs and 4 PPPs.	FY 2015	Publish 3–4 <i>IoM</i> eds. or articles.
		FY 2016	Publish 3–4 <i>IoM</i> eds. or articles.

* New measure in FY 2013.

Performance Goal 1C-2: Maintain the number and scope of MSPB study reports.			
Measure: Number and scope (percent of the workforce, agencies, or policy areas impacted) of merit systems studies reports published each year.			
Results		Targets	
FY 2008	6 reports completed.	FY 2014	3-5 study reports completed.
FY 2009	6 reports completed.	FY 2015	3-5 study reports published.
FY 2010	5 reports completed.	FY 2016	3-5 study reports published.
FY 2011	4 reports completed.		
FY 2012	3 reports completed.		
FY 2013	1 report (3 MSPs) completed.		
FY 2014	4 reports approved and published.		

Performance Goal 1C-3: Conduct surveys of Federal employees to assess and report on health of the Federal merit systems.			
Measure: Conduct periodic Governmentwide and focused surveys of Federal employees and others (including interrogatories directed to agencies), as appropriate.			
Results		Targets	
FY 2014*	New performance goal in FY 2015.	FY 2015	Continue the process to procure and implement a secure, cloud-based survey capability; develop the next Merit Principles Survey (MPS).
		FY 2016	Finalize procurement and implementation of the survey platform; analyze MPS & other survey results.

* New measure in FY 2015.

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

Results and targets: This strategic objective focuses on MSPB statutory authorities to review OPM’s rules, regulations, and significant actions. The objective was **MET**. Three decisions were issued involving external requests to review OPM regulations. In addition, MSPB issued its FY 2013 Annual Report, which included a review of OPM’s significant actions for that year at a scope equal to that in previous years. MSPB will maintain its program to review OPM rules, regulations, and significant actions. The FY 2015-2016 targets will focus on maintaining the scope of the review and publishing the results of the significant action review in its Annual Report.

Performance Goal 1D-1: Maintain program for review of OPM regulations.			
Measure: Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of OPM rules and regulations (or implementation of the same) reviewed.			
Results		Targets	
FY 2012*	After-action review of MSPB internal processes for review of OPM regulations postponed due to resource limitations and competing priorities.	FY 2014	Track program activity and scope.
FY 2013	Reviewed MSPB internal procedures for reviewing OPM rules and regulations.	FY 2015	Track program activity and scope.
FY 2014	Decisions issued on 3 review of OPM regulations cases.	FY 2016	Track program activity and scope.

* New measure in FY 2012.

Performance Goal 1D-2: Maintain program for review and reporting of OPM significant actions.			
Measure: Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of OPM significant actions reviewed and reported.			
Results		Targets	
FY 2012*	Published FY 2011 Annual Report, which contained a broader range of OPM significant actions, updates of earlier actions, and added contextual information. After-action review of MSPB procedures of at least one OPM significant action postponed due to resource limitations, staff changes, and competing priorities.	FY 2014	Maintain scope of review, publish review of OPM significant actions in MSPB Annual Report.
FY 2013	Published MSPB's FY 2012 Annual Report, which included summary of OPM's significant actions. After-Action review completed and submitted to Executive Director.	FY 2015	Maintain scope of review, publish review of OPM significant actions in MSPB Annual Report.
FY 2014	Published FY 2013 Annual Report containing summary of FY 2013 OPM significant actions equal in scope to previous years.	FY 2016	Maintain scope of review, publish review of OPM significant actions for previous year in MSPB Annual Report.

* New measure in FY 2012.

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

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

Results and targets: This strategic objective focuses on MSPB efforts to develop and share information from its work with policy-makers and others who can use the information to improve merit-based laws, regulations, and policies. The objective was **MET**. MSPB’s legal and studies work were cited in over 94 worldwide sources. Five new one-page *Research Highlights* were created focused on policy issues, and a catalog of highlights from recent study reports was created (2A-3). The FY 2015-2016 targets are to post highlights for all new MSPB studies that focus on policy issues.

Performance Goal 2A-1: Maintain scope of references to MSPB work and products.			
Measure: Scope (location or identity of citing organization) of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, Federal legislation, professional literature, Executive Orders, the media, or other sources.			
Results		Targets	
FY 2012*	MSPB legal and studies work were referenced in electronic and print sources (e.g., the Washington Post, GovExec.com, & Fed News Radio); in testimony by Special Counsel Carolyn Lerner about OSC’s education and legislative efforts, in her presentation at the Federal Dispute Resolution conference, and in an OSC 11/22/2011 press release; a cost-effective method to automatically track references to MSPB work was not identified.	FY 2014	Maintain scope of references. (Renummer as Performance Goal 2A-1.)
FY 2013	MSPB studies or legal work was cited in over 70 online or print media sources, trade publications (e.g., published by legal, employee, management, or union groups), and scientific journals from around the world; and several blogs and websites. MSPB’s study on training supervisors was cited in OPM’s guidance on supervisory training; and reports on employee engagement were referenced in a book about engaging Government employees published by the American Management Association.	FY 2015	Maintain scope of references.

FY 2014	MSPB was cited in over 94 sources including 24 professional or trade sources; 38 city print or online newspapers; 16 wire services including AP, UPI, and CNN Wire; 7 Congressional sources; and 9 blogs or other sources. Congress cited MSPB's <i>The Power of Employee Engagement</i> report in its request for the GAO to study Federal employee morale and engagement. MSPB work was also cited in legislation on sensitive positions and the new VA legislation.	FY 2016	Maintain scope of references.
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* New measure in FY 2012.

Performance Goal 2A-2: Maintain the number and scope of MSPB products focused on policy-makers or changing Governmentwide policy.			
Measure: Number, type, and scope of MSPB products created and made available to inform policy makers on issues and potential improvements to merit systems policies, laws, and/or regulations.			
Results		Targets	
FY 2012*	Products include text of the Chairman's testimony for the Senate oversight hearing, and a video of Chairman's testimony linked on MSPB's website.	FY 2014	Develop and post highlights from all new MSPB studies that focus on policy issues, as appropriate. (Renumber as Performance Goal 2A-2.)
FY 2013	Developed and posted 3 one-page 'Research Highlights' - brief summaries of the findings & recommendations of merit system study reports related to policy issues.	FY 2015	Develop and post highlights from all new MSPB studies that focus on policy issues, as appropriate.
FY 2014	Posted research highlights for the <i>Clean Records, Favoritism, Training and Experience, Sexual Orientation, and Veterans hiring policies and practices</i> and four previously published reports. Compiled highlights into a "catalog" of MSPB studies including an introduction by the Chairman.	FY 2016	Develop and post highlights from all new MSPB studies that focus on policy issues, as appropriate.

* New measure in FY 2012.

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

Results and targets: This strategic objective focuses on MSPB's efforts to improve the practice of merit through outreach and web usage. This objective was **EXCEEDED**. MSPB conducted more than 100 outreach events on topics related to legal issues, merit system studies, and merit/MSPs/PPPs. Events included 9 Fed News Radio or other media interviews and 7 international events. The Federal Law Enforcement Training Center requested 100 copies of MSPB's recent report on *Favoritism* to use in its course for new managers. MSPB staff conducted events for several legal and research conferences and universities, and the Federal Bar and Federal Circuit Bar Associations, among others. Several presentations by MSPB staff resulted in Continuing Education Credits (legal or otherwise) for participants. MSPB's large adjudication workload may limit the resources available for outreach events, especially when they require travel or significant

resources to develop presentations or materials. The targets for FY 2015-2016 are to conduct 70 outreach events each year. In FY 2015, MSPB will also improve its collection of outreach information including audience feedback where possible.

Performance Goal 2B-1: Maintain the number and scope of outreach contacts.			
Measure: Number and scope of MSPB contacts with practitioners and stakeholders focused on improving the understanding or practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace.			
Results		Targets	
FY 2012*	Almost 150 events were recorded in the outreach calendar on topics focused on legal, merit system studies, and other issues; additional events included visits by sister agencies (invited visits by OSC, OPM, Federal Circuit, and Dept. of Labor/Appeals Review Board), and several events involving MSPB regulations.	FY 2014	Conduct or participate in 70 outreach events; implement improvements in the recording of outreach events; focus on collecting audience feedback. (Renummer as Performance Goal 2B-1.)
FY 2013	Conducted 94 outreach events on topics related to MSPB studies, legal cases and processes, merit/MSPs/PPPs, and other issues.	FY 2015	Conduct or participate in 70 outreach events. Collect audience surveys from official conference or event host.
FY 2014	Conducted 100+ outreach events on legal, studies, merit/MSPs/PPPs, administrative, and other issues.	FY 2016	Conduct or participate in 70 outreach events.

* New measure in FY 2012.

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

Results and targets: This strategic objective focuses on MSPB’s efforts to improve the understanding of merit, MSPs, and PPPs. This objective was **MET**. MSPB experienced a 12 percent increase in the number of visits to the webpages, but a 30 percent decrease in the number of hits (accesses to MSPB documents) related to improving the practice and understanding of merit. MSPB will track only number of hits in the future and the targets for FY 2015-2016 will remain at \pm 5percent from the previous year. MSPB also plans to collect customer feedback from current web users in FY 2015 and beyond using its new cloud-based survey platform or another survey application (2C-3). In FY 2014, MSPB developed and posted at least 35 educational documents related to improving the understanding of merit, MSPs, and PPPs, or the understanding of legal processes and appeals issues. These materials including information about the new VA legislation, pro bono representation, studies research agenda, Special Panel, jurisdiction regulations, and furlough appeals. The FY 2015-2016 targets for this measure are 5 products.

Performance Goal 2C-1: Maintain the number & scope of materials viewed or accessed from MSPB's website that are designed to improve the practice and understanding of merit.

Measure: Number of visits to the MSPB website pages involving information, materials, or guidance related to improving the practice and understanding of merit from MSPB's website.

Results		Targets	
FY 2012*	Recorded almost 260,000 visits and almost 3,800,000 hits to documents linked on the MSPs, PPPs, <i>IoM</i> newsletter, and training webpages.	FY 2014	Number of visits & accesses within $\pm 5\%$ of FY 2013 results
FY 2013	Recorded over 400,000 visits and over 11.5 million hits to documents linked on the MSPs, PPPs, <i>IoM</i> newsletter, case report, and training webpages.	FY 2015	Number of visits within $\pm 5\%$ of FY 2014 results.
FY 2014	Recorded over 634,000 visits (12% more than in 2013) and nearly 11.8 million hits (30% fewer than in 2013) to documents linked on practice of merit and education webpages.	FY 2016	Number of visits within $\pm 5\%$ of FY 2015 results.

* New measure in FY 2012.

Performance Goal 2C-2: Maintain number and scope of available educational materials and guidance.

Measure: Number and type of merit system educational materials and guidance MSPB makes available electronically or on MSPB's website.

Results		Targets	
FY 2012*	Materials include 11 PPP's of the month, 4 training videos, and several significant case reports. Additional materials include the Chairman's interview and article following the Senate hearing, live radio interviews of MSPB officials and staff, and oral argument page for <i>Latham v. USPS</i> .	FY 2014	Post or distribute electronically 5 new or updated textual or multimedia educational products.
FY 2013	13 or more new or revised documents related to merit/MSPs/ PPPs, and at least that many documents related to legal process and appeals issues were made available on the website including: 3+ on the WPEA and changes to the Hatch Act 2 PPP summaries including a summary of new PPP 13; 8 <i>Research Highlights</i> from MSPB study reports 4+ on MSPB's new adjudication regulations 4+ on MSPB's new appeal form 5+ on furlough appeals	FY 2015	Post or distribute electronically 5 new or updated textual or multimedia educational products.

FY 2014	Posted 8 Research Highlights (also counted under 2A-2); 9 radio interviews; letter and report regarding the VA SES legislation; webpage and training video for those interested in providing pro bono representation; materials for the studies research agenda (2); materials for the Special Panel oral argument (2); items related to updating MSPB's jurisdictional regulations; 12 informational updates or agency administrative files related to furlough cases.	FY 2016	TBD based on FY 2015 results.
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* New measure in FY 2012.

Performance Goal 2C-3: Website contains complete, accurate, timely, well-organized, easy-to-use, searchable, and accessible information.			
Measure: Proportion of website users surveyed who agree website information is complete, accurate, timely, well organized, easy-to-use, searchable, and accessible (including Section 508 compliant) (external survey).			
Results		Targets	
FY 2012	Survey platform under consideration, no survey data collected in 2012.	FY 2014	Obtain and implement survey platform capability.
FY 2013	Survey platform operability and security requirements developed; reviewed results from RFI containing industry availability of solutions. GSA conducted usability test of the website and provided a report.	FY 2015	Administer routine website customer service/customer satisfaction surveys using new survey platform or another survey application, set future targets.
FY 2014	Dept. of Interior National Business Center published an RFI to assess availability and drafted a Request for Quote (RFQ) to be issued to several cloud service providers.	FY 2016	Obtain website customer service and customer satisfaction feedback, consider results, and take appropriate action to address issues that do not meet targets.

Management Objectives

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

Results and targets: In FY 2014, the objective was **MET**. MSPB exceeded the target for inclusion, was within 10 percent of the targets for competencies and engagement, and just missed achieving the target for diversity. The FY 2015-2016 targets for employee engagement and diversity will be to improve the average percent agreement on EVS questions by 3% or more from the previous year. The targets for employee competence and inclusion will remain that same as they were for FY 2014.

Performance Goal M1-1: Ensure MSPB's workforce has competencies needed to perform its mission.			
Measure: Percent employees who report that they have and that others in the workforce have the appropriate competencies needed to perform MSPB's mission (EVS or IS). ¹³			
Results		Targets	
FY 2012	2012 EVS average composite of competency questions 68%	FY 2014	65% average agreement or more.
FY 2013	2013 EVS average composite of competency questions 63%	FY 2015	65% average agreement or more.
FY 2014	2014 EVS average composite of competency questions 64%	FY 2016	65% average agreement or more.

Performance Goal M1-2: Maintain positive perceptions of diversity and inclusion by MSPB employees.			
Measure: Average percent agreement on diversity (EVS questions) and workplace inclusion questions (Internal Survey questions)).			
Results		Targets	
FY 2012	Conducted several events and MSPB Unity Day with activities designed to improve understanding of diversity and inclusion. 2012 EVS Diversity Comp. 66% 2012 EVS Inclusion Comp. 67% 2012 IS Inclusion Comp. 73%	FY 2014	68% or more average agreement (EVS Diversity) 65% (IS Inclusion composite).
FY 2013	Conducted 9 diversity awareness events designed to improve inclusion and understanding of diversity. 2013 EVS Diversity Comp. 72% 2013 EVS Inclusion Comp. 65% 2013 IS Inclusion Comp. 75%	FY 2015	Improve average percent agreement on EVS diversity questions by 3% or more over the previous year; 65% average percent agreement or more for IS inclusion questions.
FY 2014	Held events or issued information about numerous diversity/inclusion topics; held Unity Day with six different sessions; supervisors completed mandatory training on ADR and reasonable accommodation; issued revised Anti-Harassment Policy and Procedures. 2014 EVS Diversity Comp. 61% 2014 IS Inclusion Comp. 77%	FY 2016	Improve average percent agreement on EVS diversity questions by 3% or more over the previous year; 65% average percent agreement or more for IS inclusion questions.

¹³ EVS refers to OPM's Federal Employee Viewpoint Survey. IS refers to MSPB's Annual Employee Internal Survey.

Performance Goal M1-3: Strengthen and maintain employee engagement and address engagement issues identified in the EVS.			
Measure: Average percent agreement on EVS engagement questions.			
Results		Targets	
FY 2012	Employee engagement was discussed in Chairman's all-hands meeting and individual office briefings by the Executive Director & Performance Improvement Officer. An engagement ombudsman was appointed to track agency engagement efforts; Executive Committee subcommittees established and began work. 2012 EVS Engagement 68%	FY 2014	68% or more average agreement on EVS Engagement questions.
FY 2013	Small group of agency leaders (ED, OEEO, GC, CB, PIO) established to review survey results and recommend appropriate actions; most subcommittee recommendations were approved and implemented or were under development. (e.g., 'Kudos' page, & Languages of Appreciation training for leaders and supervisors); MSPB IdeaScale Community implemented to improve the suggestions process; Will use EVS scores because 2012 EVS & IS scores were consistent; 2013 EVS Engagement 68%	FY 2015	Improve average agreement by 3% or more over 2014 results.
FY 2014	2014 EVS Engagement comp. 62%	FY 2016	Improve average agreement by 3% or more over 2015 results.

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

Results and targets: This objective involves managing MSPB's budget and financial resources and improving adjudication efficiency to ensure MSPB has the necessary resources to carry out its mission. This objective was **Met**. MSPB will use the percent of funded positions vacant at the end of each month, average over the year, as a measure of budget and financial resources management. The targets for FY 2015 and FY 2016 will be 10 percent or fewer.

The second goal under this objective is to improve adjudication efficiency. To improve adjudication efficiency, MSPB is undertaking a multi-year process to shift to e-Adjudication. Currently, when cases or pleadings are filed electronically, MSPB almost always prints paper copies of the electronic case documents and processes the case by hand using paper. Although we create and maintain electronic documents throughout the adjudication process, the official case file and decision are retained as paper records. MSPB should be able to adjudicate all cases that are filed electronically without the use of paper. The shift to 100% e-Adjudication will result in long-term efficiencies but will require initial and sustained investment of resources to develop requirements and develop and implement a plan for this

major change initiative. The first critical step in transitioning to 100% e-Adjudication is assessing our current approach to and changes needed in the adjudication process, culture, and IT systems and tools. In FY 2014, MSPB developed interim guidance for using e-case files to process throughout the life-cycle of the appeal for furlough cases at the discretion of regional offices. Thirty-seven PFRs from furlough appeals used e-case files, and one Board furlough decisions was appealed electronically to the U.S. Court of Appeals for the Federal Circuit. MSPB also prepared a draft Request for Information to assess vendor interest in assisting MSPB with its shift to e-Adjudication. In FY 2015, we will continue the planning process and anticipate issuing an RFI/RFQ to select a vendor to assist in assessing current processes, tools, and systems and planning for the shift to e-Adjudication. In FY 2016, we will finalize the assessment of MSPB processes, systems and tools, review recommended improvements, and execute next steps in obtaining an e-Adjudication solution. As an interim gauge on electronic adjudication, 55 percent of initial appeals, and 83 percent of pleadings, were filed electronically in FY 2014. As we progress toward a new system of e-Adjudication, we will track and report statistics for e-filing and e-pleadings.

Performance Goal M2-1: Develop fully-justified budgets & ensure resource accountability			
Measure: Percent of funded positions vacant at the end of each month, averaged over the year.			
Results		Targets	
FY 2012	6% of 226 funded positions vacant averaged over 12 months	FY 2014	Monitor vacancies, determine appropriate measure, and set targets.
FY 2013	12% of 226 funded positions vacant averaged over 12 months.	FY 2015	10% or fewer of funded positions vacant averaged over 12 months
FY 2014	12% of funded positions vacant averaged over 12 months. Will use the percent of funded positions vacant at the end of each month, averaged over 12 months; targets for 2015-2016 set as indicated.	FY 2016	10% or fewer of funded positions vacant averaged over 12 months.

Performance Goal M2-2: Improve efficiency of case processing (long-term goal).			
Measure: Proportion of cases processed entirely electronically.			
Results		Targets	
FY 2012	Interim indicators: 55% of initial appeals and 56% of pleadings filed electronically.	FY 2014	Pilot aspects of electronic processing with furlough appeals; obtain resources to develop requirements & implementation plan for change in processing; continue to track and report interim indicators.
FY 2013	Interim indicators: 47% of initial appeals and 66% of pleadings filed electronically.	FY 2015	Issue RFI/RFQ and select vendor for assessing MSPB adjudication process, tools, and systems, recommend improvements in process, and assist in initial planning for the e-Adjudication. shift.

FY 2014	Interim indicators: 55% of initial appeals and 83% of pleadings were filed electronically. Furlough cases were processed electronically in selected regional offices, 37 PFRs of furlough cases were filed electronically, and one furlough Board decision was filed electronically with the Court. An RFI for e-Adjudication was drafted.	FY 2016	Finalize review of MSPB adjudication processes, tools, and systems, review recommended improvements and execute next steps in obtaining an e-Adjudication solution.
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Management Objective M3: Manage information technology (IT) and information services programs to support our mission.

Results and targets: This objective focuses on managing IT and information services to support MSPB’s mission. This objective was **Met**. The performance goals include operational effectiveness and efficiency of our IT systems, and internal and external IT customer support. Average critical unscheduled system downtime was 25 percent below the target. Percent of internal and external help-desk tickets resolved within service level agreements (SLA) was within 10 percent of the target. Of note, the number of total help-desk tickets increased 30 percent over the total for FY 2013. Adequate progress was made on obtaining a cloud-based survey platform, and the performance goal for customer satisfaction with MSPB’s external website was moved to Performance Goal 2C-3. Shifting to electronic adjudication will require full operational capability and increased capacity of our IT infrastructure and applications. MSPB is setting the FY 2015 target for average percent of unscheduled downtime for our key systems at 1.75 percent or less and at 1.5 percent or less for FY 2016. MSPB is setting the 2015 target for proportion of help-desk tickets (internal and external) resolved within SLA at 85 percent or more, and the FY 2016 target at 90 percent or more.

Performance Goal M3-1: Ensure availability of IT applications and systems.			
Measure: Average percent unscheduled key system downtime (and related cost of lost work) at HQ, regional and field offices (including network, Office 365, public website, e-Appeal, DMS, CMS/LM, Phone, and VTC, etc.).			
Results		Targets	
FY 2012	Prioritized systems to make tracking unscheduled downtime more meaningful and manageable; redesigned MSPB data center to minimize electrical, AC, and cabling issues; procured disaster recovery site (not yet operational).	FY 2014	1.75% or less average downtime.
FY 2013	Average unscheduled downtime for key systems was 0.48%.	FY 2015	1.75% or less average downtime.
FY 2014	Average unscheduled downtime for key systems was 1.13%.	FY 2016	1.5% or less average downtime.

Performance Goal M3-2: Ensure effective customer support for external IT customers.			
Measure: Proportion of internal and external IT service help-desk tickets resolved within required service level agreement (SLA) (C-support ticketing system).			
Results		Targets	
FY 2012	92% of all tickets were resolved within SLA. (97% (3412/3502) of external tickets and 81% (2403/2870) of internal tickets).	FY 2014	85% or more.
FY 2013	94% of all tickets were resolved within SLA. (98% (6097/6234) of external tickets and 87% (2334/2677) of internal tickets).	FY 2015	85% or more.
FY 2014	92% (10,712/11,621) of all tickets were resolved within SLA.	FY 2016	90% or more.

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

Results and targets: This objective focuses on individual and workplace safety and security from natural or man-made threats or emergencies. This objective was **Exceeded**. The measure is the average percent composite of employees who agree with questions on the internal survey (IS) about their preparedness to ensure safety and security. The FY 2014 average composite score was 89 percent, 19 percentage points above the target. MSPB conducted a mandatory Threat Assessment Service (FPS) satellite office, worked with FPS to establish Occupancy Emergency Plan for HQ, participated in Eagle Horizon COOP exercise and active shooter table-top exercise, and established for Denver Office. At HQ, MSPB held floor warden training, established an Federal Protective sign-in for visitors and visible security monitors. Agency-wide, MSPB conducted active shooter training, held fire, shelter-in-place, and earthquake drills, and issued a Domestic Violence, Sexual Assault and Stalking policy. The FY 2015–2016 targets are set at 75 percent average agreement on the IS questions.

Performance Goal M4-1: Offices, employees, and visitors are safe and secure from internal and external natural or man-made threats or emergencies.			
Measure: Average percent of MSPB employees who agree with questions on the IS about their preparedness to ensure safety & security.			
Results		Targets	
FY 2012	Established a Safety and Security Executive Committee subcommittee based on EVS results and recent security issues; developed an interim emergency protocol; all employees completed required Workplace Security Awareness training; rewrote Continuity of Operations Plan (COOP) Plan and participated in Eagle Horizon exercise; conducted shelter-in-place drill. 2012 IS average agreement 72%.	FY 2014	75% or more average agreement.

FY 2013	Trained all employees on Active Shooter and Workplace Violence Awareness; implemented Visible Visitor badge program; conducted earthquake and shelter-in-place drills; updated and briefed COOP plan to all offices. 2013 IS average agreement 78%.	FY 2015	75% or more average agreement.
FY 2014	2014 IS average agreement 89%.	FY 2016	75% or more average agreement.

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Trends and Challenges that May Affect Agency Performance

Significant External Trends and Issues

The most significant external trends or issues affecting MSPB's ability to carry out its mission to protect the Federal merit systems include, budget reductions (including past and possible future sequestration) and related consequences such as thousands of furlough appeals, increasing retirements of Federal employees, and changes in law and jurisdiction. MSPB is committed to performing its functions to the best of its ability and to justifying and requesting the resources necessary to carry out its responsibilities. Recent enacted budgets have been essential for MSPB to rebuild its workforce, address mission requirements, and begin to prepare for the future. Stable and timely resources in future years will be required for MSPB to be able to perform its statutory functions effectively and efficiently. This is particularly important in the years ahead when MSPB must be prepared to address potential workload increases caused by external factors. Budget reductions at MSPB, through sequestration or other means, that could require furloughs of MSPB employees, and would significantly impact MSPB's to perform its mission.

Budget reductions, sequestration, and related consequences such as furlough appeals.

Budget sequestration in FY 2013 resulted in over 32,000 furlough appeals filed with MSPB, a workload that MSPB is still processing. Through FY 2014, additional improvements and changes to our IT infrastructure and systems, and adjudication processes were made to process furlough appeals. The overall number of IT help-desk tickets (from both internal and external users) was 30 percent higher in FY 2014. By the end of FY 2014, 34 percent of individual furlough appeals were processed—closed through dismissal, settlement, or adjudication on the merits. Twenty percent of individual furlough cases were dismissed, of those over 60 percent were withdrawn by the appellant or cancelled. Less than 1 percent of non-dismissed furlough appeals were settled—a much smaller portion than for regular adverse action appeals. Of the 79 percent of individual furlough initial appeals adjudicated on the merits, 99.5 percent of the initial decisions affirmed the agency furlough action. At the same time during FY 2014, MSPB processed 70 percent of its nonfurlough appeals workload (the number on hand at the beginning of the year plus the number received of appeals related to issues such as whistleblowing, veterans hiring, and retirement, etc.). Processing initial appeals is and will continue to be challenging because the staff of MSPB's regional and field offices is the single pool of resources available for resolving furlough and nonfurlough appeals. By the end of FY 2014, over 900 PFRs of furlough initial decisions were filed with the Board at HQ, well over the total number of PFRs normally filed at HQ in one year. This is approximately 8 percent of the individual furlough initial decisions issued for the entire year, and is a minimum estimate because initial decisions issued later in the FY would not have had the time to file a PFR. Therefore, we are not able to estimate the percent of furlough initial decisions that may be filed on PFR.

If Governmentwide sequestration is implemented, as expected in FY 2016 and beyond, additional furloughs, early retirement incentives (Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP)), and more actions, such as reductions in force (RIFs), may be taken by agencies to manage their reduced resources. Even in FY 2015, some agencies may be considering furloughs to address their budget reductions. Repetitive use of furloughs may have adverse consequences such as encouraging employees to transfer to agencies that experience fewer furloughs, or retire from or otherwise leave Federal Government entirely. Data indicate that departures from Federal service have increased from 2009 through 2013 and most of the recent departures from Federal service are through retirement.¹⁴ Agencies are already using VERA and

¹⁴ Partnership for Public Service, Fed Figures 2014: Federal Departures, 8/14/2014; available at <http://ourpublicservice.org/OPS/publications/viewcontentdetails.php?id=247>

VSIP to decrease their workforces. Agencies also may begin to use RIFs to permanently decrease or restructure their workforces. Historical trends indicate that increasing RIFs would lead to increases in the number of appeals filed to MSPB, and RIF appeals are generally more complex than some other types of appeals. Taken together, these actions could lead to significantly more appeals filed with MSPB in FY 2015, FY 2016, and beyond.

Recent legislation introduced in Congress would reduce the size of the Federal workforce through attrition – filling fewer positions than are vacated over time. Reducing the workforce without a comparable reduction in Government mission results in a smaller less experienced workforce left to achieve the same results. For agencies that are already overwhelmed, reducing the workforce will likely lead to decreased agency performance. Even if the legislation is not enacted into law, agencies may nonetheless implement hiring delays or freezes, and reductions in training and development. Agency-initiated workforce reductions, long delays in hiring, and reductions in workforce training have logical consequences such as loss of institutional knowledge, reduced workforce expertise and thus decreased workforce capacity to carry out agency missions. Depending on how these issues develop, it could take years for Federal agencies to recover from these affects. Efforts to manage large shifts in agency resources almost always impact Federal employees either directly or indirectly. Such changes create tensions that can adversely affect the workplace culture, employee engagement, and merit-based management, potentially weaken adherence to merit principles, and even increase the occurrence of PPPs. In addition to preparing for additional appeals, continued emphasis on merit systems studies is important to ensure adherence to MSPs and avoidance of PPPs by Federal agencies. It is also important to promote merit and educate the workforce, especially managers and leaders, about how to adhere to MSPs and to avoid PPPs when making management decisions such as those related to reducing the workforce.

Increasing retirements of Federal employees: The proportion of retirement-eligible Federal employees is increasing and by September 2017, nearly 600,000 (about 31%) will be eligible to retire Governmentwide.¹⁵ As stated above, Federal retirements have begun to increase and they will likely continue to do so. Sequestration and repeated furloughs may add to the number of retirements. As retirements increase, we expect to see an increase in retirement appeals. OPM has been reducing some of the backlog of retirement claims, thus increasing the number of retirement decisions that may be appealable to MSPB. As the Government replaces retiring employees with relatively younger, less experienced employees, the average age of the workforce is likely to decrease. As this occurs, we may see an increase in appeals as historical information indicates that employees with less work experience are typically involved in more appealable actions than are employees with more work experience.

There are several statutory changes in Federal retirement that may alter the rate of Federal retirements. For example, the new authority that phases in the opportunity for employees covered by FERS to claim service credit toward retirement for their sick leave balance, and the authority to allow full-time Federal employees to phase their retirements or work in part-time status, may alter retirement rates and thus may impact retirement appeals. Changes to the retirement program, such as increasing the level of employee contributions to fund their annuities or changing the calculations for annuities (such as basing an annuity on the average high five salary years instead of the average high three salary years), especially for current retirement-eligible employees, could lead to a surge in retirements, followed by a surge in retirement appeals to MSPB.

Changes in law and jurisdiction: Recent changes in law and jurisdiction that have a direct impact on MSPB include the WPEA and the Veterans Access, Choice, and Accountability Act of 2014.

¹⁵ Government Accountability Office, Federal Workforce: Recent Trends in Federal Civilian Employment and Compensation (GAO-14-215), January 2014.

Enactment of the WPEA affects how MSPB processes cases. The WPEA provides additional rights to whistleblowers and those who engage in other protected activity in the Federal Government. The law expands the scope of protected disclosures, expands MSPB's whistleblower jurisdiction, expands options for granting corrective action, and permits review of MSPB decisions by multiple appellate courts. These increased the complexity of MSPB's processing of whistleblower claims and increased the number of whistleblower cases filed with MSPB. The changes have also led to more and potentially lengthier hearings on whistleblowing cases, and may lead to more addendum appeals (e.g., claims for compensatory and other damages or for attorney's fees) for whistleblower cases. The WPEA also requires MSPB to track and report more detailed information about whistleblower cases in its performance reports. MSPB needs additional permanent resources to enable it to meet the requirements of the WPEA.

The recently enacted Veterans Access, Choice, and Accountability Act of 2014 changes the appeal rights of members of the Senior Executive Service (SES) at the Department of Veterans Affairs (VA). In particular, the Act stipulates that VA SES appeals must be adjudicated by MSPB AJs within 21 days, without possible subsequent review by the full MSPB Board. In our experience, to meet this timeline and ensure each party is afforded due process and full and fair adjudication, the MSPB AJ assigned to the case, as well as a team of other MSPB legal staff members, have had to suspend processing of all other adjudicatory work until a decision is issued in the VA SES case. This has effectively slowed the processing of all other cases in the regional and field offices adjudicating the VA cases, and at HQ when HQ legal staff members are involved in the team supporting the adjudication of the VA case. The increase in adjudicatory staff in the regional and field offices and at HQ is necessary for MSPB to comply with the 21-day statutory requirement. In compliance with the new VA law, MSPB provided [information](#) about how MSPB will implement these changes to Congress and this information is available on MSPB's website at www.mspb.gov.

Changes in law emphasize the importance of MSPB's responsibility to conduct studies of Federal merit systems and human capital management practices to ensure the changes are implemented and operated in accordance with MSPs and are free from PPPs. When changes in law are implemented through OPM regulations, it is imperative that MSPB maintain its ability to exercise its statutory authority to review OPM regulations. Reviewing OPM regulations can save the Government direct costs, such as those associated with transferring employees in and out of new management systems that are later terminated, and indirect costs, such as those associated with negative employee perceptions of the new system and possible reductions in morale. Changes in law, appeal rights, and appellate jurisdiction also increase the importance of MSPB's statutory 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. Education on these issues, promoting merit, and sharing important information about appeals procedures will improve workforce management over time and reduce the cost of appeals to agencies, appellants, and the Government.

Internal Issues and Challenges

MSPB's enacted FY 2014 appropriations supported hiring employees in 41 permanent positions. This includes filling 35 adjudication positions and 5 positions in other mission and support offices. Of the 41 permanent positions, 8 were filled by existing MSPB employees allowing MSPB to take advantage of the expertise of its current employees. However, these internal transfers also created additional vacancies to replace those employees in their original positions. Thus, despite recent hiring, MSPB continues to operate below the resource level needed to execute its mission as effectively and efficiently as possible. It takes 2 to 3 years for permanent adjudication and other professional staff to reach journey-level performance. In addition, 52 (23 percent) of MSPB

employees, including almost one-third of our AJs, are eligible to retire in the next two years. Several other MSPB employees who hold key leadership positions or who are the only employee serving in a key mission or support function are eligible to retire in the near future.

MSPB's enacted appropriations for FY 2015 will help stabilize its resources. However, because of uncertain resources and the possibility of sequestration in FY 2016 and beyond, MSPB will carefully consider the risks associated with hiring permanent employees on a position-by-position basis. Uncertain budgets mean that MSPB will likely fill positions as they become vacant and will be unable to hire in advance of predicted retirements. This means that MSPB will have limited ability to transfer important knowledge from experienced employees to new employees before they retire. Over time, this will reduce the overall expertise of MSPB's workforce. A less experienced workforce, coupled with the requirement to process a huge number of furlough cases, maintain processing of our normal adjudication workload, comply with the WPEA and VA SES appeals requirements, maintain inventory of PFR cases, and perform our other statutory functions will likely result in overall reductions in agency performance. MSPB is committed to maintaining the quality of its adjudication decisions. Therefore, processing appeals at all levels and for all types of cases, will take longer for the near future. To help mitigate these likely delays in processing, MSPB hired a total of 11 temporary employees in FY 2014 who are being used strategically in selected offices to assist in processing initial appeals and maintain the PFR inventory at a manageable level.

MSPB met its performance targets for merit systems studies, and made adequate progress on obtaining a cloud-based survey platform to conduct research and customer service surveys. However, MSPB's ability to improve the collection of important customer service information and to conduct program evaluation currently is competing for fewer existing resources. Resource limits also affect MSPB's ability to maintain its review of OPM rules, regulations, and significant actions. MSPB's ability to conduct outreach is also affected by resource constraints, especially if it involves travel or extensive preparation or staff time, which takes the participants away from their other work. MSPB is committed to executing its functions as effectively and efficiently as possible, even in the face of the extraordinary number of furlough appeals.

The arrival of tens of thousands of furlough appeals at MSPB highlighted the need to shift from paper processing to complete electronic processing of initial appeals in the regional and field offices and of appeals filed at HQ. MSPB will need resources in FY 2015 and FY 2016 to obtain technical and professional services to assist in developing the requirements and an implementation plan for this shift in processing. In the long run, this effort will yield important potential improvements in efficiency, but will require a significant initial investment of resources.

MSPB employees continue to report high levels of commitment to the agency's mission. However, employee ratings from the Federal Employee Viewpoint Surveys (FEVS) on having the resources needed to accomplish the mission dropped significantly in 2012 and 2013. In FY 2014, the proportion of employees who *agreed* they had the resources they needed rose. However, it was still lower than the proportion who *disagreed* that they had the resources they needed. MSPB will continue to focus on strong internal management, communication, and other strategies to mitigate the impact of fewer resources. In fact, results from MSPB's Internal Survey administered in September and October showed improvements in most areas of communication and on employee perceptions of inclusion issues. However, absent stable funding, these strategies will not be sufficient to address current and anticipated resource issues, process the thousands of furlough appeals remaining from FY 2013, and continue to perform its other statutory functions effectively and efficiently.

Program Evaluation and Performance Measurement

Program Evaluation

MSPB programs broadly affect Federal merit systems and Federal management, and they generate significant value for Federal agencies and the public. Effective program evaluation is critical to ensuring that MSPB can continue to achieve its mission effectively and efficiently and to provide value now and in the future. MSPB is committed to high-quality program evaluation. However, ensuring our ability to perform our statutory mission, as well as ensuring compliance with requirements of the GPRAMA and recent program evaluation guidance from OMB, will require increased resources and program evaluation staff. A relatively small increase in MSPB's program evaluation resources and staff will likely yield a large return in efficiency and cost savings for MSPB. In turn, this will improve the value MSPB brings to agencies, Federal employees, individual parties to cases filed with MSPB, and to the public.

Performance Measurement: Verification and Validation of Performance Information

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

Proposed Program Evaluation and Performance Measurement System Review Schedule

Assuming sufficient resources are available, MSPB will develop an agency policy for performance measurement, verification, and validation beginning in FY 2015. Based on the availability of resources, MSPB will undertake independent program evaluations of its mission and administrative support programs and assess its performance measurement systems and processes over the next few years. A projected schedule for these activities in FY 2015 and FY 2016 is provided below.

Program/Performance Measurement System	Evaluation Start Year
PFR case processing	2013
Case processing in the regional and field offices	2016
Law manager case management system	2016

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Appendix A: Information about FY 2014 Whistleblower Appeals

In accordance with the Whistleblower Protection Enhancement Act (WPEA) of 2012, MSPB is providing this information about whistleblower appeals in FY 2014. These data reflect cases processed from October 1, 2013 through September 30, 2014.¹⁶

There are generally two types of whistleblower appeals. An otherwise appealable action (OAA) appeal involves a personnel action that is directly appealable to the Board, such as a removal, demotion, or suspension of more than 14 days. In such an appeal, both the appealable action and the claim of reprisal for whistleblowing will be reviewed by the Board. In an individual right of action (IRA) appeal, the individual is subject to a personnel action and claims that the action was taken in reprisal for whistleblowing, but the personnel action itself is not one that is directly appealable to the Board (e.g., a reassignment with no reduction in pay or grade). In this kind of case, the individual can appeal the claim of reprisal to the Board only if he or she files a complaint with OSC first, and OSC does not seek corrective action on the individual's behalf.¹⁷ In an IRA appeal, the Board will not review the merits of the personnel action (because it is not appealable to MSPB) but will resolve only the claim of reprisal for whistleblowing. Figure 1 displays data on the number and percent of each type of whistleblower appeal MSPB received in FY 2014.¹⁸

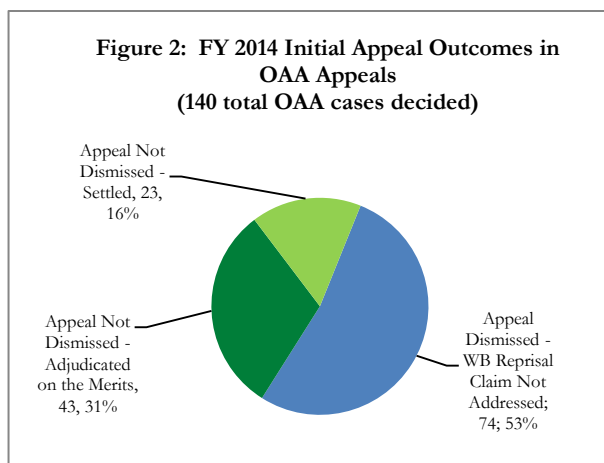
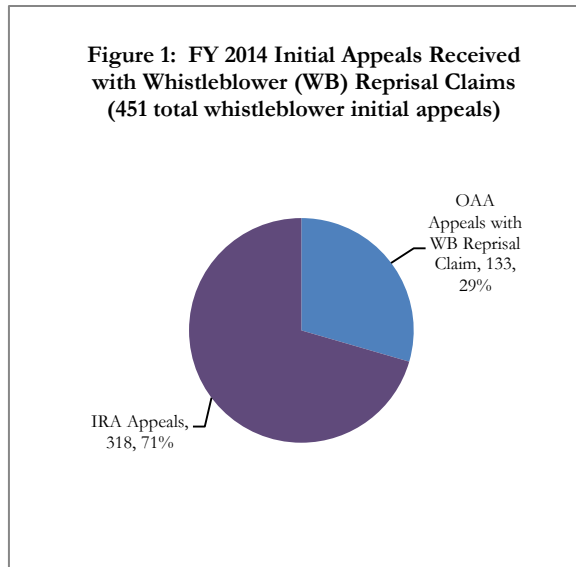


Figure 2 depicts the outcomes of the OAA appeals with claims of whistleblowing reprisal. It is important to note that an OAA appeal can be dismissed for a variety of reasons that have nothing to do with the merits of any whistleblower reprisal claim raised therein. For example, the appeal may be untimely, 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 excludes the initial appeals that were dismissed without prejudice (DWOP). DWOP

¹⁶ The WPEA requires that we report information about cases we receive with claims related to whistleblowing as well as the outcomes of whistleblower appeals. Adjudicating appeals is an ongoing process and appeals are often closed in a different year than that in which they were received. Therefore, the figures for cases received and outcomes of cases processed in any year, will not be comparable.

¹⁷ IRA claims go first to OSC for review and if warranted investigation by OSC. 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 cases that have had the chance to be resolved while at OSC, but OSC did not seek corrective action.

¹⁸ The large number of furlough appeals filed in FY 2013, and the subsequent processing of those appeals beginning in FY 2014 has likely impacted the number (and proportion) of whistleblower appeals filed with and processed by MSPB. Comparing figures across years will be difficult until furlough cases are resolved.

is a procedural option that allows for the dismissal and subsequent refile of an appeal. These cases were not counted because outcomes in these cases would be determined only when the case is refiled. Cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute a way that both parties achieve some positive result.

Figure 3 displays the resolution of the whistleblowing reprisal claim within the OAA appeal adjudicated on the merits. The fact that whistleblower reprisal is not found in an otherwise appealable action appeal does not necessarily mean that the appellant obtained no relief. For example, in a removal appeal in which the appellant alleges whistleblower 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 whistleblower reprisal. In any appeal involving a whistleblower reprisal claim, the Board shall order corrective action if the appellant has demonstrated that: (1) he or she made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against him or her; and (3) his or her protected disclosure was a contributing factor in the personnel action. However, corrective action shall not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

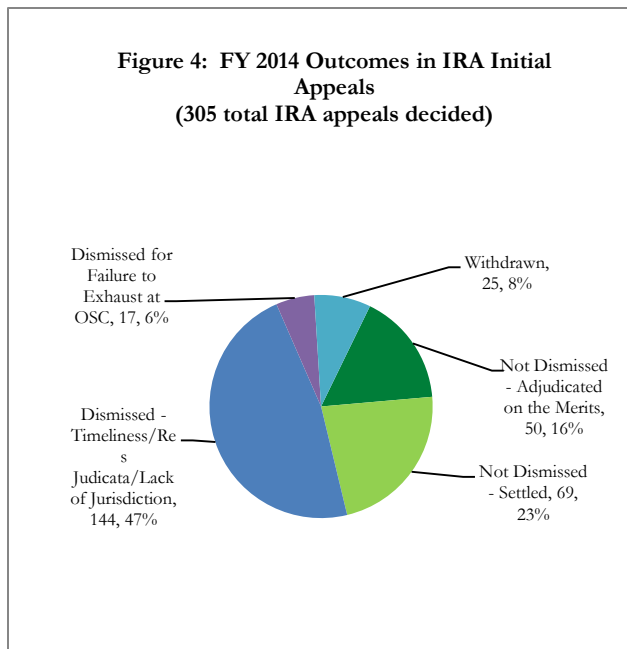
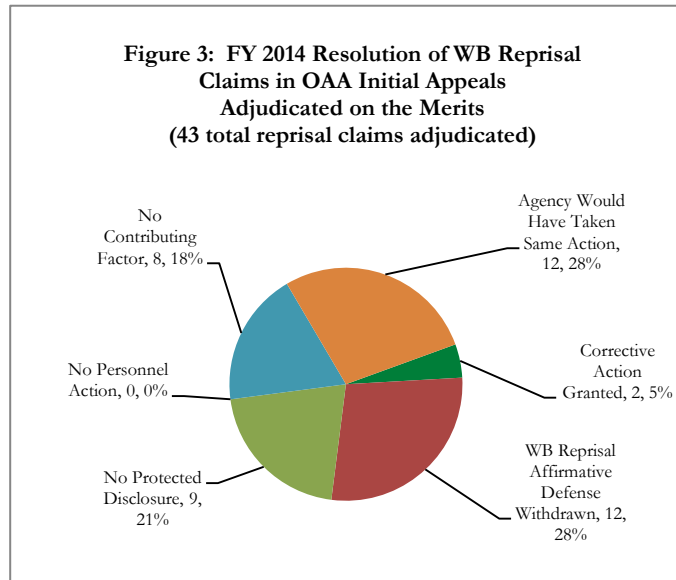
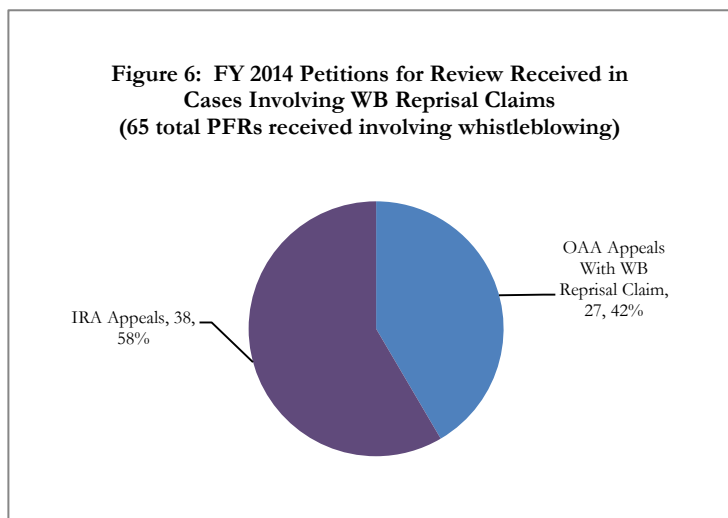
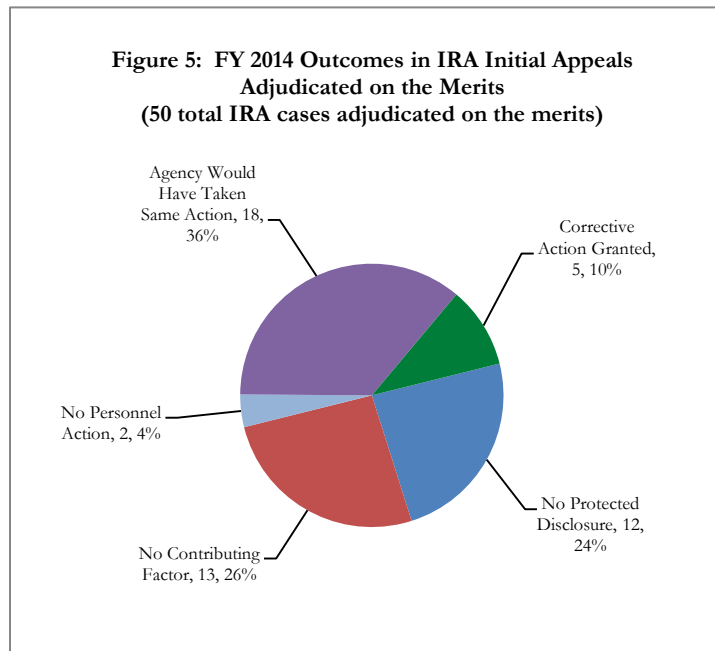


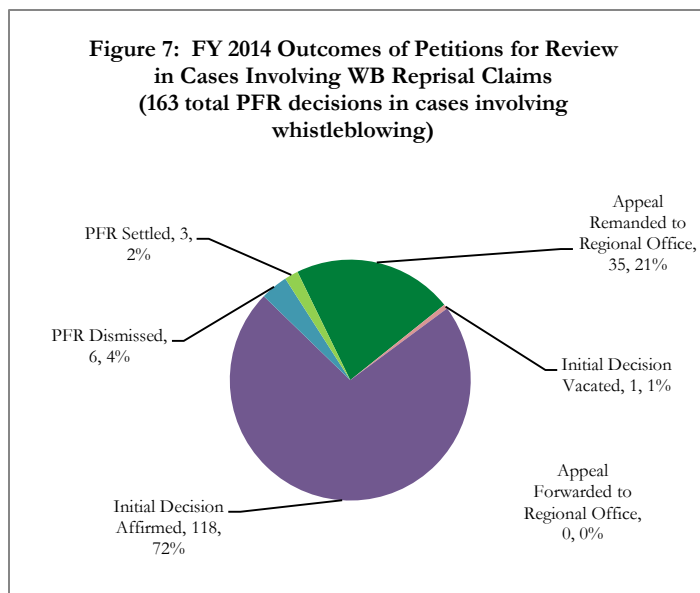
Figure 4 conveys the outcomes of IRA appeals. In an IRA appeal, an appellant “shall seek corrective action from the Office of Special Counsel before seeking corrective action from the Board.” 5 U.S.C. § 1214(a)(3). If an IRA appeal is dismissed for “failure to exhaust,” (i.e., because the appellant failed to first seek corrective action from OSC), the appellant can file a new IRA appeal after fulfilling the administrative exhaustion requirement. Again, this chart does not include IRA appeals that were DWOP’d because an outcome in those cases would be determined only when the appeal is refiled. Also, cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

Figure 5 depicts the outcomes of IRA appeals adjudicated on the merits. Just as in an OAA appeal, the Board shall order corrective action in an IRA appeal if the appellant has demonstrated that: (1) he or she made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against him or her; and (3) his or her protected disclosure was a contributing factor in the personnel action. However, corrective action shall not be 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.



An appellant or agency who is dissatisfied with an initial decision of an AJ on an OAA or IRA whistleblower appeal may file a petition for review (PFR) for review of the initial decision by the full Board at MSPB headquarters. Figure 6 shows the number of PFRs (both OAA and IRA) the Board received on initial appeals involving claims of whistleblowing.

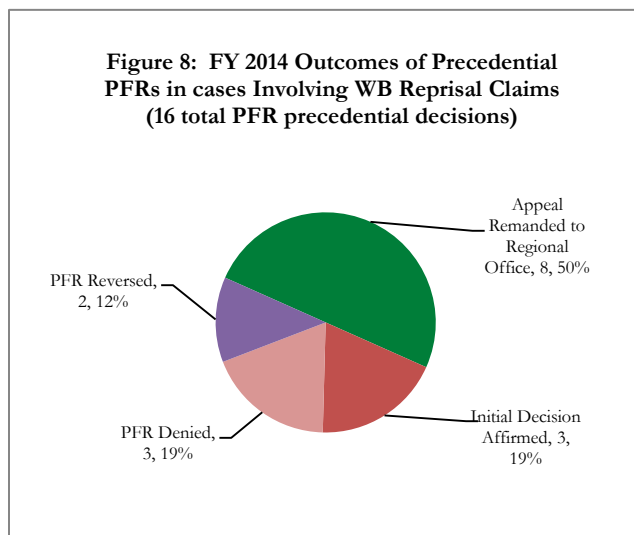
Figure 7 shows the outcomes of PFR cases involving whistleblower claims. It is important to note that PFR outcomes are the decisions of the Board relative to the initial decision issued by the AJ, not relative to the initial action taken by the agency. Under 5 C.F.R. § 1201.115, the Board may issue a decision that denies or grants the PFR and affirms, reverses, or vacates, in whole or in part, the initial decision. Whether or not a PFR is denied or granted may have nothing to do with the claim related to whistleblowing. If the Board's decision is final, it will include an appropriate notice of appeal rights to the appellant. Alternatively, the Board may remand the appeal to the AJ for further proceedings, in which case the Board's decision is not yet final and no appeal rights are given. The Board forwards a matter to a regional office when there is an issue raised that should be addressed in the context of a separate Board appeal. When the Board forwards or remands a decision to the AJ, it generally means that the issues in the case are still under consideration, potentially including issues related to whistleblowing. The Board vacates an initial decision when it issues a final decision that reaches a different outcome from that reached in the initial decision.



During FY 2014, the Board issued decisions on 163 PFRs of initial appeals that involved whistleblower claims. During FY 2014, 35 of the whistleblower appeals were remanded. Of those 35 appeals, 14 were OAA appeals and as such, the scope of the remand may or may not pertain to the whistleblower reprisal claim. Therefore, when a PFR in an OAA appeal is remanded to the regional or field offices, it may present an opportunity for whistleblower claims within the case to be re-evaluated. The remaining 21 remands were for IRA appeals, in which the only issue before the Board was whether a personnel action was taken in reprisal for whistleblowing. It is relatively rare for

cases to settle after an initial decision has been issued and a party has subsequently filed a PFR. Settlements at the PFR level are reached at the discretion of the parties. The settlement agreements contain terms that are acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

Because the WPEA is relatively new, MSPB is providing general information about FY 2014 precedential PFR decisions on whistleblower cases as a service to our stakeholders. More information about the most significant of these cases will be available in the MSPB Annual Report for FY 2014. In FY 2014, the Board issued 16 precedential decisions involving whistleblower claims (12 for IRA appeals and 4 for OAA appeals). These precedential decisions significantly contribute to the Board’s case law and the Board and AJs are required to follow or distinguish these decisions in any future decisions involving whistleblower claims. These precedential decisions covered a variety of issues, including, but not limited to: The relevant deadlines for filing an MSPB appeal after the exhaustion of administrative remedies with the OSC in an IRA appeal; the rights of probationary employees in the context of appeals with whistleblower claims; the nonfrivolous allegations of whistleblower reprisal needed to establish Board jurisdiction in an IRA appeal; the effect of the WPEA on who is protected as a whistleblower and what constitutes a protected disclosure; the retroactivity of various provisions of the WPEA; the definition of a personnel action within the context of a whistleblower claim; and the agency’s burden in a whistleblower case to prove by clear and convincing evidence that it would have taken the same personnel action against an appellant in the absence of a protected disclosure. Figure 8 conveys the outcomes of the 16 precedential WB PFRs.



Appendix B: MSPB Offices and Their Functions

MSPB is headquartered in Washington, DC and has eight regional and field offices located throughout the United States. The agency is currently authorized to employ 226 FTEs to conduct and support its statutory duties.

The **Board Members**, including the Chairman, Vice Chairman, and Board Member, are appointed by the President, confirmed by the Senate, and serve overlapping, non-renewable 7-year terms. No more than two of the three Board Members can be from the same political party. The Board Members adjudicate the cases brought to the Board. The Chairman, by statute, is the chief executive and administrative officer. The Office Directors report to the Chairman through the Executive Director.

The **Office of the Administrative Law Judge (ALJ)** adjudicates and issues initial decisions in corrective and disciplinary action complaints (including Hatch Act complaints) brought by the Special Counsel, proposed agency actions against ALJs, MSPB employee appeals, and other cases assigned by MSPB. The functions of this office are currently performed by ALJs at the Federal Trade Commission (FTC), the Coast Guard, and the Environmental Protection Agency (EPA) 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 headquarters (HQ), rules on certain procedural matters, and issues Board decisions and orders. It serves as MSPB's public information center, coordinates media relations, operates MSPB's library and on-line information services, and administers the Freedom of Information Act (FOIA) and Privacy Act 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 equal employment opportunity programs. It processes complaints of alleged discrimination brought by agency employees and provides advice and assistance on affirmative employment initiatives to MSPB's managers and supervisors.

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

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

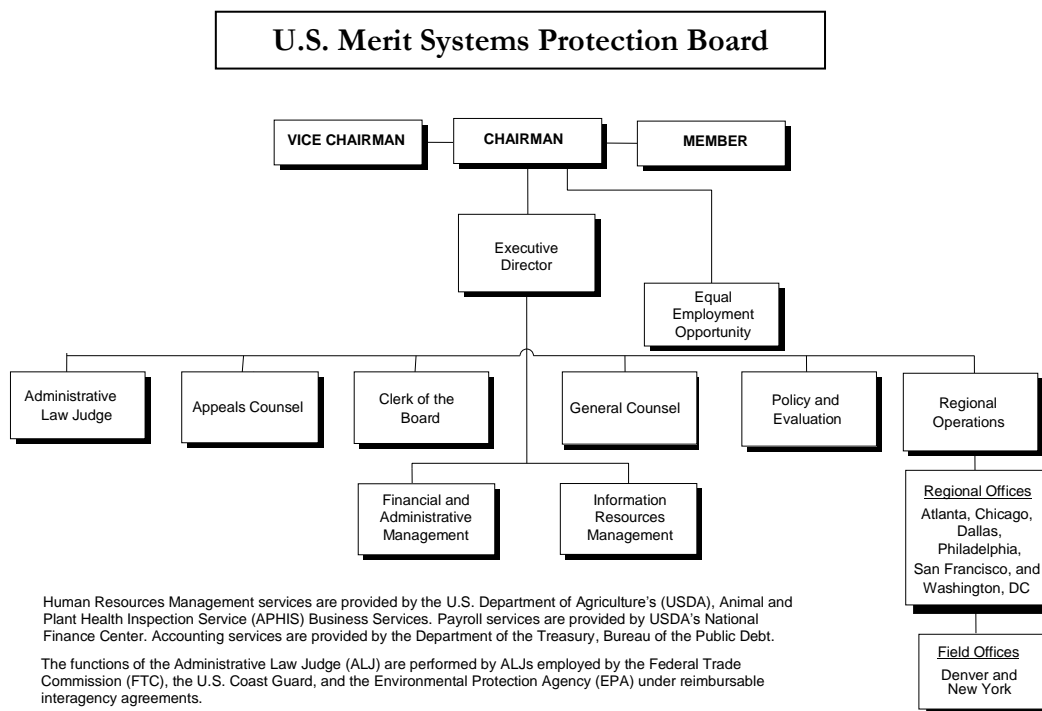
coordinates the agency’s legislative policy and congressional relations functions. The office also drafts regulations, conducts MSPB’s ethics program, performs the Inspector General function, and plans and directs audits and investigations.

The **Office of Information Resources Management** develops, implements, and maintains MSPB’s automated information systems to help MSPB manage its caseload efficiently and carry out its administrative and research responsibilities.

The **Office of Policy and Evaluation** carries out MSPB’s statutory responsibility to conduct special studies of the civil service and other Federal merit systems. Reports of these studies are sent to the President and the Congress and are distributed to an international audience. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB studies. The office also carries out MSPB’s statutory responsibility to review and report on the significant actions of OPM. The office conducts special projects and program evaluations for MSPB and has responsibility for preparing MSPB’s strategic and performance plans and performance reports required by the Government Performance and Results Act Modernization Act of 2010.

The **Office of Regional Operations** oversees the agency’s six regional and two field offices, which receive and process appeals and related cases. It also manages MSPB’s Mediation Appeals Program (MAP). AJs in the regional and field offices are responsible for adjudicating assigned cases and for issuing fair, well-reasoned, and timely initial decisions.

MSPB Organizational Chart



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

In accordance with 5 USC § 7701(i)(1) and (2), MSPB provides case processing information for FY 2014. In FY 2014, MSPB received 6,960 initial appeals, PFRs, and addendum cases (not including original jurisdiction cases). MSPB processed 17,321 total cases (not including ALJ and original jurisdiction cases at HQ). Twenty percent of initial appeals (including addendum) were processed in 110 days or less (23 percent in 120 days or less). Nine percent of PFRs (including addendum) were processed in 110 days or less (19 percent in 150 days or less). Therefore, 80 percent of initial appeals took over 110 days to process, 77 percent took over 120 days to process; 91 percent of PFRs took over 110 days to process and 81 percent took 150 days or more to process.

In general, each case is adjudicated on its merits in accordance with law and legal precedent and in a manner consistent with the interests of fairness, which is achieved by assuring due process and the parties' full participation at all stages of the appeal. 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, arrange for and question witnesses, present evidence, conduct a hearing, and often to participate in alternative dispute resolution 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, particularly complex, or numerous factual issues, or the interpretation of new statutory or regulatory provisions. In addition, when Board Members do not agree regarding 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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