PERCEPTIONS OF PROHIBITED PERSONNEL PRACTICES: AN UPDATE

UNITED STATES MERIT SYSTEMS PROTECTION BOARD

A REPORT TO THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES
BY THE U.S. MERIT SYSTEMS PROTECTION BOARD

FEBRUARY 2023

Perceptions of Prohibited Personnel Practices: An Update

Research Highlights

FEBRUARY 2023

The Prohibited Personnel Practices (PPPs), codified at 5 U.S.C. §2302(b), are a list of employment practices banned in the Federal civil service. If a personnel action is taken as a result of a PPP, that action may be reversed and those responsible may be disciplined.

What Are the PPPs?

The PPPs specify that agency officials may not—

- Discriminate;
- Consider improper recommendations;
- Coerce political activity;
- Obstruct or influence a person to withdraw from a job competition;
- Grant an unauthorized preference;
- Engage in nepotism;
- Knowingly violate the preference rights of a veteran;
- Retaliate for whistleblowing or the exercise of certain rights;
- Implement a non-disclosure policy unless the policy comports with the laws regarding whistleblower protection and disclosures to Congress or Inspectors General;
- Access medical records for the purpose of committing another PPP; or
- Take an action that would violate a law, rule, or regulation that implements a merit system principle.

PPPs with Increased Perceptions

	2010	2021	Diff.
Political Affiliation Discrimination	3.2%	7.1%	+3.9 pts.
Political Activity Coercion	2.3%	4.6%	+2.3 pts.
Sex Discrimination	11.7%	12.8%	+1.1 pts.
Appeal or Grievance Retaliation	11.1%	12.1%	+1.0 pts.
Race Discrimination	13.7%	14.6%	+0.9 pts.
Disabling Condition Discrimination	7.1%	7.9%	+0.8 pts.
Religious Discrimination	3.3%	3.6%	+0.3 pts.
Veterans' Rights Violation	4.5%	4.7%	+0.2 pts.

Summary of Findings

Our 2021, 2016, and 2010 merit principles surveys asked Federal employees a series of questions regarding whether respondents had observed a variety of PPPs in the workplace.

In 2010, 34 percent of respondents reported they saw or experienced one or more PPPs, while in 2016, 46 percent reported the same. However, in 2021, this perception rate dropped to 29 percent.

Across all three surveys, certain PPPs were consistently seen more than others, with manipulation of recruitment actions to benefit a particular individual being the most prevalent. Likewise, race, sex, and age discrimination (in that order) were perceived more than the other discrimination PPPs.

Only two PPPs increased by more than 2 percentage points when comparing 2010 and 2021. Both involve partisan politics, and both are at double their rate from 2010. In six agencies, perceptions of political affiliation discrimination exceeded eight percent of respondents. Over half a million Federal employees work at agencies where the perception rate for political affiliation discrimination approached or exceeded ten percent of survey respondents.

The survey data also show that PPP perceptions correlate with lower levels of employee engagement and an increased desire to find employment elsewhere. Individuals who reported seeing multiple PPPs without experiencing any were even more likely to say that they want to leave than those who experienced a single PPP. These survey results were consistent with views expressed by agency representatives who overwhelmingly told us that that the promise of protecting workers from the prohibited personnel practices was an important tool for attracting and retaining good employees.

For a copy of the full report, please visit www.mspb.gov/studies

The prohibited personnel practices (PPPs) listed below are adapted from the statutory language that appears in section 2302 of title 5, United States Code. (See Appendix A for the full text.)

It is a prohibited personnel practice to:

1. Discriminate on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation;

2. Solicit or consider any personnel recommendation or statement not based on personal knowledge or records of performance, ability, aptitude, general qualifications, character, loyalty, or suitability;

3. Coerce an employee's political activity;

4. Deceive or obstruct any person with respect to such person's right to compete for employment;

5. Influence a person to withdraw from competition;

6. Grant any preference or advantage not authorized by law, regulation, or rule;

7. Seek to employ or promote a relative;

8. Retaliate or threaten to retaliate against a whistleblower, whether an employee or an applicant;

9. Retaliate or threaten to retaliate against employees or applicants who exercise their appeal, complaint, or grievance rights; testify for or assist an individual in doing so; cooperate with an inspector general or the Special Counsel, or refuse to violate a law, rule or regulation;

10. Discriminate based on actions not adversely affecting performance;

11. Knowingly violate veterans' preference requirements;

12. Violate any law, rule, or regulation implementing or directly concerning the merit principles;

13. Implement a nondisclosure policy or agreement that does not comport with the laws regarding whistleblower protection and disclosures to Congress or Inspectors General; or

14. Access the medical record of an employee or applicant as part of the commission of any conduct described above.

U.S. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419-0001

February 28, 2023

The President
President of the Senate
Speaker of the House of Representatives

Dear Sirs and Madam:

In accordance with the requirements of 5 U.S.C. § 1204(a)(3), it is my honor to submit this U.S. Merit Systems Protection Board (MSPB) report, *Perceptions of Prohibited Personnel Practices: An Update*. This report provides an update to our 2011 report, *Prohibited Personnel Practices: Employee Perceptions*, and our 2019 research brief, *The Perceived Incidence of Prohibited Personnel Practices*.

The prohibited personnel practices (PPPs), codified at 5 U.S.C. § 2302(b), are a set of behaviors that are expressly prohibited because they are inherently incompatible with a merit-based civil service and the public interest. For example, an agency official may not discriminate, coerce political activity, obstruct an employment competition, engage in nepotism, retaliate against an employee or applicant for whistleblowing, or knowingly violate a veteran's preference right.

Our 2010, 2016, and 2021 Merit Principles Surveys asked Federal employees a series of questions regarding whether respondents had observed certain PPPs in the workplace. In 2010, 34 percent of respondents reported they saw or experienced one or more PPPs. While perception rates increased in 2016, by 2021 the perception rate had dropped to 29 percent. Perception rates for only two PPPs increased by more than 2 percentage points when comparing 2010 and 2021. Both involve partisan politics, and both are at double their rate from 2010. Over half a million Federal employees work at agencies where the perception rate for political affiliation discrimination approached or exceeded ten percent of survey respondents in 2021.

Across all three surveys, certain PPPs were consistently seen more than others, with manipulation of recruitment actions to benefit a particular individual being the most prevalent. Likewise, race, sex, and age discrimination (in that order) were perceived more than the other discrimination PPPs. The survey data also show that PPP perceptions correlate with lower levels of employee engagement and an increased desire to find employment elsewhere. Individuals who reported seeing multiple PPPs without experiencing any were even more likely to want to leave than those who experienced a single PPP.

I believe you will find this report useful as you consider issues affecting the Federal workforce.

Respectfully,

Cathy Harris
Acting Chairman

Perceptions of Prohibited Personnel Practices: An Update

A Report to the President and the Congress of the United States
by the U.S. Merit Systems Protection Board

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Executive Summary

The 14 prohibited personnel practices (PPPs), codified at 5 U.S.C. § 2302 ("the Statute"), are a set of behaviors that agency officials are not permitted to engage in when they take (or fail to take) personnel actions. Under 5 U.S.C. § 1204(a)(3), the U.S. Merit Systems Protection Board (MSPB or "the Board") has a statutory responsibility to report to Congress and the President regarding "whether the public interest in a civil service free of prohibited personnel practices is being adequately protected[.]" The purpose of this report is to update our 2011 and 2019 publications on the PPPs, which discuss the extent to which Federal employees perceive that PPPs occur and steps that agencies can take to prevent PPPs and address those perceptions.

MSPB conducted surveys in 2010, 2016, and 2021 measuring Federal employee perceptions regarding a variety of workplace issues, including the individual PPPs. Survey questions asked whether the respondent had been personally affected by a specific PPP, whether they had observed that PPP without being personally affected, or whether they perceived that the PPP had not occurred. (The survey addressed both personal experiences of these practices and observations of them because, as discussed below, the data show that employees observing a PPP without experiencing it personally may nonetheless engender negative consequences for an organization.) This report primarily discusses the 2021 results and compares these to findings from earlier surveys to analyze trends.

Findings

Employee perceptions of PPPs decreased in 2021.

In 2010, 34 percent of Merit Principles Survey (MPS) respondents reported that they either observed or experienced one or more of the PPPs itemized in that survey. That figure rose to 46 percent in 2016 but decreased to 29 percent in 2021.

Certain PPPs are consistently perceived at a higher rate than others.

Across all three surveys, the PPP that respondents perceived the most was an attempt to define the scope or manner of a recruitment action, or the qualifications required, for the purpose of improving the chances of a particular person's right to compete for employment. Additionally, within the PPP of discrimination, there was a pattern in which bases were the most frequently perceived. Across all three survey administrations, race, sex, and age discrimination (in that order) were perceived more than the other discrimination PPPs.

Employee perceptions of discrimination based on political party and coercion of political activity increased in 2021.

Section 2302(b)(1)(e) of title 5 expressly prohibits discrimination on the basis of political affiliation, while section 2302(b)(3) prohibits pressuring someone to support or oppose a particular candidate or party for elected office. (Political discrimination is how a person is treated based on their affiliations and views, while coercion is an attempt to induce certain behaviors in the future.) These were the only two PPPs in 2021 that were notably higher than their 2010 levels. Political coercion perceptions doubled, from 2.3 to 4.6 percent, while political discrimination perceptions more than doubled, from 3.2 to 7.1 percent.

Employee perceptions of retaliation for whistleblowing decreased, but so did awareness of whistleblowing rights language.

In 2010, 8.1 percent of respondents reported experiencing or observing retaliation for whistleblowing. In 2016, this increased to 14.3 percent; while in 2021, it decreased to 6.5 percent. The 13th PPP requires the use of certain language to inform employees under a non-disclosure agreement (NDA) or a non-disclosure policy (NDP) about their whistleblowing rights and remedies. The percentage of employees under an NDA or an NDP who recalled receiving the required information about rights or remedies dropped between 2016 and 2021, with the decrease varying from 2.8 percentage points to 7.5 percentage points, depending on the survey question.

Employees who indicated they had experienced or observed a PPP reported that the perceived offenders often were individuals in more than one role.

The 2021 MPS asked respondents who perceived a PPP to indicate the role(s) of the perceived offenders: coworker, team leader, supervisor, manager, executive, human resources, or other. For 10 of the 22 PPP items, more than half of the respondents selected at least two different roles. For the PPP of retaliation against a whistleblower, 31 percent selected three or more roles. Between 18 percent and 39 percent of respondents who perceived a discrimination-related PPP felt that a coworker took part in the offense. This data appears to indicate that when problems exist, multiple levels of the organization may be playing a role.

Analyses of organizational characteristics may help identify risk factors for PPPs.

The 2021 MPS data shows certain "risk factors" for increased reports that PPPs have taken place. For example, while 30 percent of respondents in large agencies (with over 50,000 employees) reported seeing or experiencing PPPs, only 22 percent of respondents in small agencies answered likewise. The agency with the most perceptions had a rate more than double that of the agency with the fewest (36 percent versus 16 percent). The percentage of employees saying they perceived a PPP varied by job family, with the miscellaneous occupations group (which includes corrections officers and police) at one end of the spectrum reflecting nearly double the perceptions of the accounting and budget group at the other end (39 percent vs. 20 percent). Employees in a work unit that had a substantial gender imbalance were approximately 7 percentage points more likely to report a PPP than those with an equal balance between the genders. Thus, analyses of organizational characteristics may help agencies identify work units with heightened risk factors.

Observing and experiencing PPPs may negatively affect employee engagement.

While 64 percent of those respondents who reported that they neither saw nor experienced a PPP also gave responses that indicated that they were engaged (based on their responses to our 16-item engagement scale), only 33 percent of those who observed a PPP (without experiencing one) expressed an engaged state, and only 16 percent of those who were personally affected by a PPP expressed an engaged state. Those who perceived PPPs were more likely to express an intention to leave their job ("quit intention"), with greater intentions among those who felt personally affected by a PPP. Further, those who indicated that they observed or experienced a PPP were less likely to recommend their agency as a place to work, creating a lost opportunity for the agency to attract new talent. The effects of perceived PPPs on these sets of intentions appeared to increase when respondents perceived that their senior leaders tolerated unethical conduct by supervisors.

Recommendations

Agencies should delve deeper into their workforce data for insights on human capital challenges and problematic aspects of agency culture.

The extent to which individual PPPs are an issue for agencies varies, and even when an agency can be identified as having a particular problem, it does not necessarily mean the entire agency shares that problem to the same degree. Each Chief Human Capital Officer (CHCO) should examine their agency's MPS data to identify issues and use that knowledge to inform other data-gathering methods, such as questions to place on internal surveys or exit surveys, or which HR metrics to track. The MPS data is only a starting point, not the finishing line.

Agency heads are responsible, by law, for the prevention of PPPs within their agencies and should therefore be involved in the activities to achieve that goal.

Day-to-day tasks for managing human capital can and should be delegated, and the responsibility for preventing PPPs can and should be shared, but it rests with an agency head to ensure that the organization as a whole works towards reducing PPPs. While agency heads should support CHCOs with necessary resources for measuring PPPs, and encourage employees to complete associated surveys and assist other data-gathering efforts, the ultimate purpose of data gathering is to make an informed plan for action. As different agencies may have different needs, action plans should be tailored to the agency's unique situation with a cost-benefit analysis that evaluates good management outcomes. Agency heads should ensure that such plans are made and implemented—and prove effective.

Supervisors, managers, and executives should work collectively to ensure that the workplace has a healthy, merit-based culture.

The data indicates that PPPs, particularly those involving discrimination, are often perceived as the actions of more than one person. Supervisors, managers, and executives all have the responsibility to ensure a workplace free of harassment and discrimination of any kind. This means leading by example and holding subordinates accountable for their own conduct.

The U.S. Office of Personnel Management (OPM) should examine Government-wide results—both positive and negative—and use those results to inform its activities.

Agencies set local policies, but OPM is responsible for Government-wide personnel management, including regulations, policies, and advice to agencies. While perceptions of most PPPs dropped in 2021, perceptions of two PPPs (discrimination based on political affiliation and political coercion) increased. OPM should consider what can be done to address this. OPM should also consider what the Government may have done in the 2 years preceding the survey that might have resulted in lower rates of perceptions for most other PPPs—and how the Government can leverage any lessons learned from that period to foster positive results in the future.

Introduction

The U.S. Merit Systems Protection Board (MSPB or the Board) has a statutory responsibility to report to Congress and the President regarding "whether the public interest in a civil service free of prohibited personnel practices is being adequately protected."[1] The prohibited personnel practices (PPPs), codified at 5 U.S.C. § 2302, are a set of 14 behaviors that agency officials are not permitted to engage in when they consider taking personnel actions. (A copy of the PPPs is contained in Appendix A.)

Purpose of this Report

In this report, we provide data from MSPB's 2021 Merit Principles Survey (MPS) alongside earlier data to identify trends in Federal employees' perceptions of PPPs. We also explain the interaction between PPP perceptions and important engagement issues, including the potential impact on recruitment and retention initiatives. Additionally, this report contains 2021 perception data for PPPs that have been enacted since the 2016 MPS.

Methodology

This report relies primarily on data from MSPB surveys conducted in fiscal years 2010, 2016, and 2021.[2] It was also informed by questionnaires sent to select agencies.[3]

Throughout this report, we discuss the correlation of certain items. Correlation is a relationship between two items, but it does not necessarily mean that one has directly caused the other. Further, when two items are related, it is not always possible to establish which came first.[4] As a result, identified issues often must be addressed from more than one direction.

This report discusses perception rates for individual PPPs. However, some PPPs are dependent on a triggering event. For example, a perception of retaliation based on whistleblowing activity requires a belief that someone engaged in whistleblowing. Likewise, perceiving the manipulation of a recruitment action to the advantage of a person requires a belief that there was a recruitment action. Additionally, some employees may not feel they would be aware if a particular PPP had

[1] *See* 5 U.S.C. § 1204(a)(3).

[2] The 2021 MPS had a response rate of 33% with 33,138 respondents from 27 agencies. (These agencies represented a total of 98% of the Federal workforce). The 2016 MPS path with the PPP questions had a response rate of 39% with 14,473 respondents. The 2010 MPS had a response rate of 58% with 42,020 respondents. To learn more about the methodology of these surveys, visit our e-FOIA webpage at https://www.mspb.gov/FOIA/SurveyData.htm.

[3] For the agency questionnaires, agencies were permitted to submit a single reply or to have sub-elements submit individual replies. Approximately three-quarters of the civil service is employed in one of the responding organizations. Additionally, a different questionnaire was sent to the Office of Special Counsel (OSC) asking for their opinions on certain matters given OSC's role to prevent and remediate PPPs.

[4] *See* Steven M. Shugan, "Causality, Unintended Consequences and Deducing Shared Causes," *Marketing Science,* Nov. 2007, Vol. 26, No. 6, 731 (explaining that signs of something can be often observed before the underlying cause, giving an erroneous impression of which came first).

occurred. All PPP questions included a response option for "Don't Know/NA."[5] Except when stated otherwise, data in this brief only reflects responses from those who expressed that they were in a position to form a view that: (1) they were personally affected by the PPP in question; (2) they observed the PPP without being personally affected; or (3) the PPP did not occur.[6] Due to the rounding of decimals, some data in the charts and tables may not appear to total 100 percent.

The MPS was administered between January and April of 2021, and the PPP questions asked about the actions of an agency official in the preceding 2 years. Thus, the questions encompassed as much as a full year of experiences during an unprecedented pandemic, which may have affected workers in any number of ways, including increased telework for some, but not all, respondents.[7] We cannot state what effect, if any, the unusual circumstances had on the survey results, but we note the strong potential that events which affected American life so extensively could influence matters at work and employee perceptions of those matters as well.

[5] Section 2303(b) of title 5 is broken into 14 enumerated items, but some have additional sub-parts, such as section 2302(b)(1), which addresses different forms of discrimination. In total, the 2021 MPS had 22 questions about perceiving a particular type of PPP. The rates of perception for each are discussed throughout the report but can also be found in a single table in Appendix C.

[6] Following the administration of the 2021 MPS, each agency received a summary of their data for the survey's core questions—including the PPP items—and the Government-wide averages for those items.

[7] Prior to the pandemic, only 3% of employees teleworked daily, but during the peak of the pandemic, 59% of employees teleworked every day. U.S. Office of Personnel Management, *Federal Employee Viewpoint Survey: Governmentwide Management Report* (2020), at 14, available at https://www.opm.gov/fevs/reports.

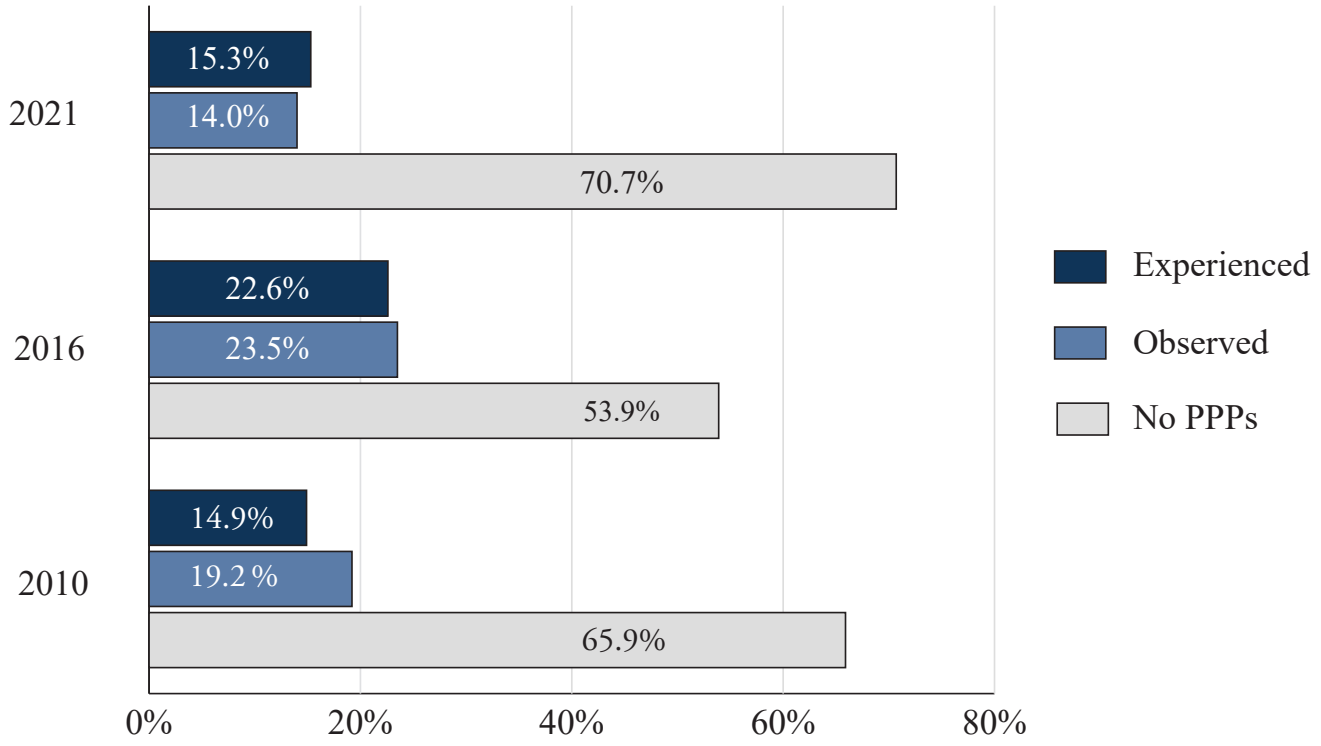
Chapter One: Prohibited Personnel Practices Definitions and Changes in Perceptions

This chapter briefly describes the overall survey results, the meaning of each PPP, and, where possible, the extent to which surveyed Federal employees perceived that they were affected in the preceding 2 years by an official committing that particular PPP. Although perception of a PPP may be a warning sign that a PPP has occurred, it does not constitute documented proof of a violation of the statute. For a more in-depth discussion of the meaning of most individual PPPs, see our 2011 report, *Prohibited Personnel Practices: Employee Perceptions*.

A Reduction in Perceptions for Most PPPs in 2021

PPP perception rates did not remain constant over our last three surveys, as shown in the chart below. In 2010, 34 percent of MPS respondents reported that they either observed or experienced one or more of the PPPs itemized in that survey. In 2016, fewer PPPs had questions on the survey (and thus opportunities to be reported), yet 46 percent of employees said that they either observed or experienced one or more of the PPPs. However, survey results from 2021 show a marked drop in perceptions, with only 29 percent of respondents in 2021 stating that they experienced or observed one or more PPPs.

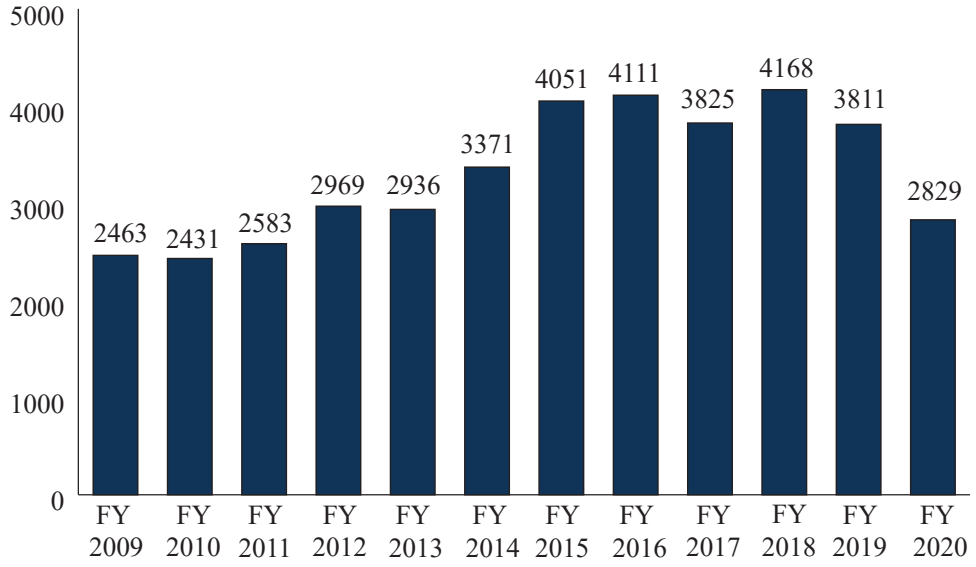
Chart 1: Perceptions of Experienced and Observed PPPs (2010, 2016, 2021)



The data implies a slow change in the relationship between observing and experiencing PPPs. In 2010, more individuals reported observing a PPP than experiencing one. In 2016, the gap between the two had shrunk, but still, more individuals reported observing than experiencing a PPP. In 2021, this was reversed, with more individuals reporting experiencing a PPP than observing one. The result is that while perceptions of personal experience of a PPP were nearly the same when comparing 2010 to 2021, observations dropped by over 5 percentage points and more people overall said they perceived no PPPs in 2021.[8]

The U.S. Office of Special Counsel (OSC) has a statutory responsibility to assess PPP allegations.[9] As shown in Chart 2, OSC received an increased number of complaints alleging a PPP between 2010 and 2016, with a notable drop for 2020. The MPS asked respondents about their experiences in the preceding 2 years. Thus, the survey data for those stating they experienced a PPP is relatively consistent with what could be expected based on the complaints data from OSC.[10]

Chart 2: PPP Cases Received by OSC (FY 2009-FY 2020)[11]



In the sections and tables below, we discuss individual PPPs and identify the difference in percentage points results reported over the period 2010 to 2021, demonstrating the extent to which perceptions of many PPPs have returned to a level closer to 2010 than 2016. We examined whether

[8] With the increases in telework during the pandemic, it seems probable that this change in observation levels between 2016 and 2021 may be at least partially the result of some respondents having fewer occasions to observe interactions between officials and other employees. However, we cannot establish the extent to which increased telework played a role in the occurrence of PPPs or may have affected the ways in which management-employee interactions were perceived.

[9] 5 U.S.C. § 1214(a)(1)(A) ("The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.")

[10] The survey responses may be affected by a principle known as the "recency effect." Events that occurred more recently are not only remembered more clearly, but they also are given greater weight when making judgments about what has happened. This may explain why the data has a particularly strong resemblance to OSC's data for 2020. *See* Christoph Engel and Sinika Timme, "Coherence-Based Reasoning and Order Effects in Legal Judgments," *Psychology, Public Policy, and Law* (2020) Vol. 26, No. 3, 333–352, 334; Nathaniel J. S. Ashby and Tim Rakow, "Forgetting the Past: Individual Differences in Recency in Subjective Valuations from Experience," *Journal of Experimental Psychology: Learning, Memory, and Cognition* (2014) Vol. 40, No. 4, 1153–1162, 1153; Leora C. Dahl, *et. al.*, "Investigating Investigators: How Presentation Order Influences Participant–Investigators' Interpretations of Eyewitness Identification and Alibi Evidence," *Law and Human Behavior* (2009) Vol. 33, 368–380, 377.

[11] U.S. Office of Special Counsel, Annual Reports FYs 2020, 2014, available at www.osc.gov.

those differences are statistically significant (i.e., the probability that the observed data is not the result of random chance). When comparing the 2010 and 2021 surveys, differences of seven-tenths or more percentage points are considered statistically significant.[12] The meaning of the statistical significance can depend on larger patterns and trends. (The rates of perception for each PPP in 2021 can be found in a single table in Appendix C.)

Discrimination Laws – 5 U.S.C. § 2302(b)(1)

Under the 1st statutory PPP, any employee who has authority to take, direct others to take, recommend, or approve any personnel action is prohibited from discriminating against employees or applicants on the basis of their membership in a protected class (i.e., race, religion, sex, national origin, age, disability, marital status, sexual orientation, or political affiliation).[13] As Table 1 shows, with the exception of political affiliation discrimination, all discrimination PPPs in 2021 returned to a perception rate close to the 2010 baseline. (Although, as stated earlier, the difference in results between these two years is considered statistically significant at 0.7 percentage points or more.)

Table 1: Perception Levels (Observed and Experienced Combined) of Discrimination PPPs

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has discriminated in favor or against someone in a personnel action based upon …	2010	2016	2021	2021 vs 2010
Race	13.7%	20.6%	14.6%	**+0.9%**
Religion	3.3%	5.1%	3.6%	**+0.3%**
Sex	11.7%	19.9%	12.8%	**+1.1%**
National Origin	5.5%	7.7%	5.3%	**–0.2%**
Age	11.5%	17.6%	10.8%	**–0.7%**
Disabling Condition	7.1%	12.4%	7.9%	**+0.8%**
Marital Status	4.2%	5.3%	2.9%	**–1.3%**
Sexual Orientation[14]	4.4%	6.3%	3.7%	**–0.7%**
Political Affiliation	3.2%	4.1%	7.1%	**+3.9%**

[12] For a more in-depth discussion of how the statistical significance was calculated, *see* Appendix B.

[13] For an example of this PPP, *see Special Counsel v. Zimmerman*, 36 M.S.P.R. 274, 298-301 (1988), in which the Board adopted the finding of an administrative law judge that a supervisor had engaged in acts of discrimination on the basis of religion in violation of 5 U.S.C. § 2302(b)(1)(A) by directing anti-Semitic slurs and taunts at his subordinate and taking no action to stop other subordinates from making similar comments.

[14] We previously studied sexual orientation discrimination under a different PPP that covered discrimination on the basis of off-duty misconduct (5 U.S.C. § 2302(b)(10)). However, in 2020, the U.S. Supreme Court held that Title VII's prohibitions against discrimination on the basis of sex include discrimination on the basis of sexual orientation and gender identity. *See Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1754 (2020). It is therefore presented now as part of 5 U.S.C. § 2302(b)(1), and a different question is used for section (b)(10), as shown later.

Overall, in 2021, one in every five employees stated that they either observed or experienced at least one form of discrimination. In three agencies, it was one in every four employees, and no agency had less than one in every 10 employees report that they either observed or experienced at least one of these discrimination PPPs.[15] Additionally, as shown in the table, there is a consistent pattern in which discrimination PPPs are perceived the most. While overall perception rates ebb and flow, across all three survey administrations, race-based discrimination was perceived the most frequently, followed by sex-based, and then age-based.[16]

While some discrimination PPPs decreased (e.g., marital status, which decreased by 1.3 percentage points), political affiliation discrimination was one of only two surveyed PPPs in 2021 that experienced an increase in perceptions exceeding 1.1 percent compared to the 2010 baseline. The other increase was perceived coercion of political activity (described later in this chapter). As these two PPPs were outliers, and each of them doubled their 2010 rate, a more in-depth discussion of them is provided in Chapter Four.

Improper Recommendations – 5 U.S.C. § 2302(b)(2)

The 2nd statutory PPP prohibits an official from considering recommendations regarding personnel actions unless the person providing the recommendation has personal knowledge or possesses records that form the basis for the recommendation.[17] As with most PPPs in 2021, perceptions of this PPP increased in 2016, and then dropped markedly in 2021. The 2021 MPS perception level for improper recommendations was 2.2 percentage points below the 2010 baseline, which is considered statistically significant.

Table 2: Perception Levels (Observed and Experienced Combined) for Improper Recommendations

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has…	2010	2016	2021	2021 vs 2010
… solicited or considered improper employment recommendations	13.2%	16.9%	11.0%	**–2.2%**

Political Coercion – 5 U.S.C. § 2302(b)(3)

The 3rd statutory PPP prohibits an official from coercing anyone's political activity or retaliating against an employee or applicant "as a reprisal for the refusal of any person to engage in such political activity." While political discrimination (discussed previously) and coercion may be

[15] Two agencies are not included in this calculation because their small population size creates a large margin for error in the data. MSPB is one of those agencies. In the interest of full disclosure, if MSPB were reported on, it would have the lowest PPP perception rate of any agency, but even MSPB would not have a "perfect score" of zero across all 22 PPP items.

[16] Sex-based discrimination increased by 1.1%, which is sufficient to be considered statistically significant. For an in-depth discussion of sexual harassment, which is one form of sex-based discrimination, see our recent report, *Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem*.

[17] For a discussion of this PPP, *see Wenzel v. Department of Interior*, 33 M.S.P.R. 344, 351 (1987), holding that"[t]he legislative history of this provision indicates that it was designed to preclude an agency's reliance on statements or recommendations by outsiders and to specifically avoid partisan or political interference in effecting a personnel action." *See also Roane v. Department of Health and Human Services*, 8 M.S.P.R. 339, 343 (1981) (explaining that, "the sparse legislative history of the statutory provision indicates that the [2nd PPP] was intended to prevent the use of improper influence to obtain a position or promotion").

related and coexist, they are distinct PPPs. Political discrimination is how a person is treated based on their affiliations and views, while coercion is an attempt to induce certain behaviors in the future.[18]

Political coercion historically has been one of the less commonly perceived PPPs and was not included as a question on the 2016 survey. However, as stated earlier, this was one of only two PPPs to notably increase between 2010 and 2021, with the other being political affiliation discrimination. For further discussion of these two outliers, see Chapter Four.

Table 3: Perception Levels (Observed and Experienced Combined) for Coercion of Political Activity

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has…	2010	2016	2021	2021 vs 2010
…tried to pressure someone to support or oppose a particular candidate or party for elected office.	2.3%	*	4.6%	**+2.3%**

* Not asked in that year's MPS

Obstructing Competition – 5 U.S.C. § 2302(b)(4)

The 4th PPP in the statute prohibits an official from using deception or otherwise willfully acting to obstruct someone's right to compete for employment.[19] As shown in Table 4, perceptions of this PPP increased in 2016 before dropping in 2021 to a level slightly below the 2010 baseline. This is consistent with the pattern for several other recruitment-oriented PPPs, as will be shown in the next few tables, although not all drops qualified as statistically significant, as this one did.

Table 4: Perception Levels (Observed and Experienced Combined) for Obstruction of Competition

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has…	2010	2016	2021	2021 vs 2010
…obstructed someone's right to compete for employment	13.6%	18.1%	11.7%	**−1.9%**

[18] *Compare Special Counsel v. Department of Commerce*, 23 M.S.P.R. 561, 563 (1984) (granting the Special Counsel's request for an extension of a stay of a removal action based on a finding that there were reasonable grounds to believe that the removal was the result of discrimination based on political affiliation, where the removal was proposed after the employee's "immediate supervisor questioned him regarding his political beliefs," in a workplace where there were "pejorative comments made [ ] about [similar] political views") *with Special Counsel v. Acconcia*, 107 M.S.P.R. 60, 63-64 (2007) (in which the Board explained that "the coercion of political contributions, is one of 'the most pernicious of the activities made unlawful by the Hatch Act'" and that a single occasion of soliciting funds from a subordinate for a political campaign warranted removal).

[19] One example of this prohibited conduct can be found in the case of *Special Counsel v. Hoban*, 24 M.S.P.R. 154, 160 (1984). In *Hoban*, the administrative law judge held that the evidence "led to the conclusion that respondent downgraded [his employee's performance appraisal] to inhibit [the employee's] chances to compete for promotion to a detective's position."

Influencing a Withdrawal from Competition – 5 U.S.C. § 2302(b)(5)

The 5th statutory PPP focuses on attempts to influence an individual to withdraw from competition.[20] It is distinct from obstructing competition because it seeks to influence the employee to an action (withdrawal), while the obstruction of competition in the 4th statutory PPP does not necessarily seek any activity by the employee, but rather can act on the process external to the employee.[21] Of the four recruitment-specific survey questions (obstructing competition, pressure to withdraw from competition, manipulation of a vacancy's qualifications, and nepotism in hiring), this PPP was the only one where the drop in relation to the 2010 data was not statistically significant.

Table 5: Perception Levels (Observed and Experienced Combined) for Influencing a Withdrawal from Competition

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has…	2010	2016	2021	2021 vs 2010
…tried to influence someone to withdraw from competition for a position for the purpose of helping or injuring someone else's chances	7.0%	15.4%	6.6%	**−0.4%**

Granting an Improper Advantage – 5 U.S.C. § 2302(b)(6)

The 6th statutory PPP prohibits an official from providing any advantage to a candidate, unless there is a law, rule, or regulation that authorizes the advantage.[22] For an action to qualify for this PPP, the official must be acting "for the purpose of improving or injuring the prospects of any particular person for employment[.]"[23] As the Board has explained," [i]t is not the [personnel] action itself that violates the law, but, instead, the intent behind the action."[24]

This PPP, like most others, increased in 2016. However, in 2021, it dropped below the 2010 baseline by more percentage points—and by a larger share of its 2010 baseline number—than any other PPP.[25] Nevertheless, across three decades of MPS administrations, the granting of an improper advantage has consistently been the most widely perceived PPP.[26] Due to its prevalence, this PPP is discussed in Chapter Five's section on identifying solutions to PPPs.

[20] For a discussion of this PPP, *see Special Counsel v. Brown*, 61 M.S.P.R. 559, 565 (1994), explaining that "the statute requires a two-part showing: (1) that an employee influenced or attempted to influence a person to withdraw from competition and (2) that the influence was exerted to improve or injure the employment prospects of another."

[21] *Compare Special Counsel v. Brown*, 61 M.S.P.R. 559, 565 (1994) (influencing an applicant to withdraw from competition for a position) *with Special Counsel v. Hoban*, 24 M.S.P.R. 154, 160 (1984) (downgrading a personnel appraisal to inhibit the applicant's chances to compete for a position).

[22] There are several preferences or advantages provided by law or regulation, such as veterans' preference, reemployment priority lists, the Interagency Career Transition Assistance Program (ICTAP), and the Department of Defense Priority Placement Program. For more on these programs *see* https://www.opm.gov/policy-data-oversight/veterans-employment-initiative/vet-guide/ (veterans' preference); https://www.opm.gov/policy-data-oversight/workforce-restructuring/employee-guide-to-career-transition/ctap_guideline.pdf (other three programs).

[23] 5 U.S.C. § 2302(b)(6).

[24] *Special Counsel v. Lee*, 114 M.S.P.R. 57, 65 (2010) (citing *Special Counsel v. Byrd*, 59 M.S.P.R. 561, 570 (1993)), *rev'd in part sub nom. Beatrez v. Merit Systems Protection Board*, 413 F. App'x 298 (Fed. Cir. 2011).

[25] For a discussion of some of the effects of not having fair and open competition, *see* U.S. Merit Systems Protection Board, *The Impact of Recruitment Strategy on Fair and Open Competition for Federal Jobs* (2015), available at www.mspb.gov/studies.

[26] U.S. Merit Systems Protection Board, *Prohibited Personnel Practices* (2011), at 28-33, available at www.mspb.gov/studies.

Table 6: Perception Levels (Observed and Experienced Combined) for Granting an Improper Advantage in a Recruitment Action

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has…	2010	2016	2021	2021 vs 2010
…tried to define the scope or manner of a recruitment action, or the qualifications required, for the purpose of improving the chances of a particular person	22.0%	30.6%	16.3%	**−5.7%**

Nepotism – 5 U.S.C. § 2302(b)(7)

The 7th PPP in the statute prohibits an official from acting to appoint, employ, promote, or advance a relative, or to advocate for such an act.[27] "Relative" is specifically defined in the statute, which can help eliminate confusion about where the law draws the line between favoritism and nepotism.[28] A relative means "an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister."[29] Our 2016 report, *Preventing Nepotism in the Federal Service*, discusses this issue in greater depth and includes recommendations for agencies, employees, and applicants to help limit such offenses.[30]

As shown in Table 7, perceptions of nepotism increased slightly between 2010 and 2016 but dropped below the 2010 baseline in 2021, as occurred for the other recruitment-specific PPPs.

Table 7: Perception Levels (Observed and Experienced Combined) for Nepotism

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has…	2010	2016	2021	2021 vs 2010
…advocated for the appointment, employment, promotion, or advancement of a relative	12.2%	14.0%	9.4%	**−2.8%**

Retaliation for Whistleblowing– 5 U.S.C. § 2302(b)(8)

The 8th statutory PPP prohibits an official from taking or failing to take a personnel action because of "any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences: (i) any violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger

[27] 5 U.S.C. § 2302(b)(7).

[28] The MPS asks about advocating for the "appointment, employment, promotion, or advancement of a personal friend" in addition to the separate question about doing the same for a relative. Across all three surveys, such favoritism was perceived more than nepotism. The greatest difference between the two was in 2021 (21% vs. 9%) compared to 2016 (23% vs. 14%) or 2010 (21% vs. 12%).

[29] 5 U.S.C. § 3110(a)(3).

[30] U.S. Merit Systems Protection Board, *Preventing Nepotism in the Federal Service* (2016), available at www.mspb.gov/studies.

to public health or safety[.]"[31] Perceptions of this PPP increased in 2016 then returned in 2020 to a position slightly below the 2010 baseline.[32]

Table 8: Perception Levels (Observed and Experienced Combined) for Retaliation for Whistleblowing

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work took or threatened to take a personnel action against an employee because the employee …	2010	2016	2021	2021 vs 2010
… disclosed a violation of law, rules, or regulations or reported fraud, waste, or abuse [or a substantial and specific danger to public health or safety][33]	8.1%	14.3%	6.5%	**−1.6%**

Other Retaliation – 5 U.S.C. § 2302(b)(9)

Section 2302(b)(9) prohibits officials from taking reprisals against an employee or applicant for "the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation."[34] As with perceptions of retaliation for whistleblowing (above), perceptions of retaliation for exercising an appeal or grievance right increased markedly in 2016 and then dropped in 2021. While perceived retaliation for whistleblowing ended slightly below its 2010 baseline and perceived retaliation for appeal rights ended slightly above its 2010 baseline, they were each less than 2 percentage points from their 2010 rate. More noteworthy may be that the question regarding retaliation for exercising a grievance or appeal right consistently had over 1 in 10 respondents reporting that it occurred. This level of perception could indicate a cultural entrenchment or pattern of misunderstandings that may need to be addressed.

[31] Punctuation modified and section abbreviated because the statute contains fine print regarding the disclosure of information where the law prohibits disclosure, or of information that involves national security, for which special provisions are made for the proper avenues for disclosure. Interested parties are strongly encouraged to consult the rules in full.

[32] MSPB has an extensive history of studying perceptions related to whistleblowing and has issued multiple reports on this issue. *See, e.g.*, U.S. Merit Systems Protection Board, *Blowing the Whistle: Barriers to Federal Employees Making Disclosures* (2011), *Whistleblowing in the Federal Government: An Update* (1993), and *Whistleblowing and the Federal Employee: Blowing the Whistle on Fraud Waste and Mismanagement, Who Does it and What Happens* (1981).

[33] By its very nature, a survey often requires that language be "boiled down," particularly legalese. The 2010 and 2016 surveys asked whether an official "took or threatened to take a personnel action against an employee because the employee disclosed a violation of law, rules, or regulations or reported fraud, waste, or abuse." In light of the pandemic, we deemed it necessary to add to the 2021 survey item additional words from the statute: "a substantial and specific danger to public health or safety."

[34] Section 2302(b)(9) has four subparts, but given the limitations of a survey, we have historically asked only about retaliation for an appeal or grievance. The subpart covers taking or threatening to take a personnel action because of: "(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation [including but not limited to a section 2302(b)(8) violation)]; (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to [in part (A) respecting whistleblower rights]; (C) cooperating with or disclosing information to the Inspector General [ ] of an agency, or the Special Counsel, in accordance with applicable provisions of law; or (D) for refusing to obey an order that would require the individual to violate a law, rule or regulation[.]"

Table 9: Perception Levels (Observed and Experienced Combined) of Retaliation for the Exercise of an Appeal or Grievance Right

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work took or threatened to take a personnel action against an employee because the employee …	2010	2016	2021	2021 vs 2010
...filed an appeal or grievance	11.1%	18.9%	12.1%	**+1.0%**

The 9th PPP also prohibits retaliation because of an employee's refusal to obey an order that would require the individual to violate a law, rule, or regulation. The words "rule or regulation" were added to the statute in 2017.[35] Accordingly, an item was added to the 2021 MPS so we could inform Congress of the extent to which retaliation for a refusal "to violate a law, rule, or regulation" is perceived. A total of 5.8 percent of respondents stated that they either observed or were personally affected by this, which is within one percentage point of the 6.5 percent perception rate for whistleblowing retaliation.

Non-Meritorious Discrimination Based on Conduct – 5 U.S.C. § 2302(b)(10)

The 10th statutory PPP prohibits discrimination "for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others[.]" The Board has held that the legislative history of 5 U.S.C. § 2302(b)(10) and the "judicial interpretation of that provision" indicate that the protection of this PPP was "intended to apply to off-duty non-job related conduct."[36] However, off-duty conduct may be a source of discipline if there is a nexus to the efficiency of the service.[37] As shown in Table 10, the results in 2021 were very similar to those of 2010. The difference between those surveys was not considered statistically significant.

Table 10: Perception Levels (Observed and Experienced Combined) for Discrimination on the Basis of Off-Duty Conduct

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has…	2010	2016	2021	2021 vs 2010
…discriminated against someone in a personnel action on the basis of off-duty conduct which was entirely unrelated to the job.	7.6%	*	7.7%	**+0.1%**

* Not asked in that year's MPS

[35] For a summary of the history behind Congress's decision to amend the statute to include rules and regulations, *see* U.S. Merit Systems Protection Board, "'Obey Now, Grieve Later' Loses Some Ground," *Issues of Merit* (Fall 2017), available at www.mspb.gov/studies.

[36] *Thompson v. Farm Credit Administration*, 51 M.S.P.R. 569, 585 (1991).

[37] *Doe v. Department of Justice*, 565 F.3d 1375, 1379 (2009) ("To sustain the charge of misconduct, the agency must have established by preponderant evidence the existence of a nexus between the employee's misconduct and the work of the agency, *i.e.*, the agency's performance of its functions.")(*citing Brown v. Department of the Navy*, 229 F.3d 1356, 1358 (Fed. Cir. 2000)); "Conduct that might be overlooked in some settings can be the cause for removal in other settings in which the conduct is perceived as more clearly inappropriate or contrary to the mission of the employing agency," *Brown* at 1362.

Violating Veterans' Preference – 5 U.S.C. § 2302(b)(11)

Title 5 provides certain hiring, retention, and removal process preferences for veterans who have served the country in uniform, with the amount of preference varying based on the nature of the service and extent of the veteran's sacrifice.[38] Section 2302(b)(11) prohibits an official from knowingly violating an individual's veterans' preference rights. Table 11 contains the survey results regarding veterans' preference, in which the difference between 2010 and 2021 was too small to be considered statistically significant.

Table 11: Perception Levels (Observed and Experienced Combined) for Violating Veterans' Preference or Protection Laws

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has…	2010	2016	2021	2021 vs 2010
…knowingly violated a lawful form of veterans' preference or veterans' protection laws	4.5%	7.0%	4.7%	**+0.2%**

For perspective, we also asked a related question—whether the respondent was personally affected by an official inappropriately favoring a veteran. In all three survey administrations, inappropriate favoritism of a veteran was perceived more often than a violation of veterans' preference.[39] We cannot rule out the possibility that, in some cases, required preferences could be misinterpreted as inappropriate. Agencies with data indicating that their employees have concerns about inappropriate favoritism should seek further information about the nature of the perceived favoritism and then tailor their communications with employees and supervisors accordingly to prevent improprieties, misunderstandings, or both. Agencies should be vigilant in ensuring not only that veterans receive their proper preferences, but also that the only preferential treatment being granted is that which is authorized by law.[40]

Violating Merit Principles – 5 U.S.C. § 2302(b)(12)

The 12th PPP in the statute applies to personnel actions that violate "any law, rule, or regulation implementing, or directly concerning, the merit system principles[.]" Because this PPP does not lend itself to an informed multiple-choice question or short series of questions, perception data for this PPP is not directly captured by the PPP survey questions. For a discussion of perceptions related to the individual merit system principles, see our 2016 report, *The Merit System Principles: Guiding the Fair and Effective Management of the Federal Workforce*, and our 2013 report, *Managing Public Employees in the Public Interest: Employee Perspectives on Merit Principles in Federal Workplaces*. Both discuss responses to 25 questions related to the merit system principles from the 2010 MPS.

[38] Additional preference points may be granted for service in a warzone or for injuries. For more on veterans' preference rights, *see* U.S. Merit Systems Protection Board, *Veteran Hiring in the Civil Service: Practices and Perceptions* (2014), available at www.mspb.gov/studies.

[39] The survey results for violation of preference rights and inappropriate favoritism of a veteran, respectively, were 4.5% vs. 6.5% in 2010, 7.0% vs. 11.5% in 2016, and 4.7% vs. 6.0% in 2021.

[40] For more on favoritism in general, *see* U.S. Merit Systems Protection Board, *Preserving the Integrity of the Federal Merit Systems: Understanding and Addressing Perceptions of Favoritism* (2013), available at www.mspb.gov/studies.

Non-Disclosure Provisions – 5 U.S.C. § 2302(b)(13)

A 2012 law added section 2302(b)(13) to title 5, creating a 13th PPP.[41] It requires that any nondisclosure policy, form, or agreement include a 104-word statement to the effect that the rules for whistleblower protections cannot be altered by the policy, form, or agreement. The commission of this PPP occurs when an official implements or enforces a policy or agreement that lacks the statement.[42]

MSPB's surveys address this issue in two different ways. The first asks a series of detailed questions and is not considered part of our standard PPP question set that we use to track overall PPP frequency. The second sums up perceptions in just a single question and is part of our PPP question set for the overall tracking of PPPs.

For the more detailed inquiry, we asked employees whether, in the preceding 2 years, they had been asked to enter into a non-disclosure agreement (NDA) or told of a non-disclosure policy (NDP).[43] We then asked those who answered affirmatively whether they were informed of their whistleblowing rights and remedies. As shown in Table 12, for both NDAs and NDPs, a smaller percentage reported being informed of their rights in 2021 compared to 2016, and a smaller percentage reported being informed of their remedies. In short, when NDAs and NDPs are being used, the data regarding informing employees—as required by law—indicated a decline in compliance in every metric measured.

[41] Whistleblower Protection Enhancement Act (WPEA), P.L.112-199 (2012) § 104. For more information about the use of NDAs and NDPs in the Federal workplace, *see* U.S. Office of Special Counsel, *Memorandum on Non-Disclosure Polices Forms, or Agreements* (Feb. 1, 2018), available at https://osc.gov/Documents/PPP/Policy%20Statements/Non-Disclosure%20Policies%2C%20Forms%2C%20or%20Agreements%2C%20February%201%2C%202018.pdf.

[42] The required language is: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling." 5 U.S.C. § 2302(b)(13). Nearly identical language had long been required by an annual appropriations rider dating back to FY 1988, sometimes known as the "Grassley anti-gag rider," which prohibited appropriated funds from being used to enforce any agreement or policy without the language. *See* S. Rep. 112-155, 16 (2012) (Senate Report to accompany the WPEA).

[43] As with other survey items discussed in this report, responses of "don't know" or "not applicable" have been removed so readers can focus on the views of those who felt they were in a position to offer an opinion.

Table 12: Information Provided to Employees Regarding Non-Disclosure Agreements and Policies

	2016	2021	2021 vs 2010
In the past 2 years, has your agency asked you to enter into a nondisclosure agreement?	13.0%	8.5%	**−4.5%**
If you were asked to enter into such an agreement— Did the non-disclosure agreement state that the provisions did not supersede or alter your right to blow the whistle on wrongdoing?	46.1%	43.3%	**−2.8%**
Did the non-disclosure agreement state that the provisions did not supersede or alter your right to whistleblower protections if you made a disclosure of wrongdoing?	48.4%	43.1%	**−5.3%**
In the past 2 years, has your agency informed you of a non-disclosure policy?	16.1%	12.5%	**−3.6%**
If you were informed about such a policy— Did the communication about the non-disclosure policy include that the policy did not supersede or alter your right to blow the whistle on wrongdoing?	75.9%	68.4%	**−7.5%**
Did the communication about the non-disclosure policy include that the policy did not supersede or alter your right to whistleblower protections if you made a disclosure of wrongdoing?	75.0%	70.1%	**−4.9%**

As stated previously, we also sought to encapsulate aspects of the 13th PPP in a single question. This survey item inquired whether an official had "asked an employee to sign a non-disclosure agreement limiting the individual's ability to blow the whistle on wrongdoing." Unlike the questions about being informed in general, this question asked for a judgment about the impact of the NDA on the employee: did it *limit* whistleblowing ability?[44] The percent of employees who said they either saw or were personally affected by this dropped from 3.9 percent in 2016 to 2.3 percent in 2021.

[44] When describing the purpose of the 13th PPP, Senator Grassley stated, "Federal employees have rights and obligations to report wrongdoing to Congress or Inspectors General. And, even though federal law protects their right to do so, employees are led to believe that they have signed away their rights to speak outside the chain of command. As a result, employees witnessing wrongdoing often remain silent… The taxpaying public has a right to know about the government's dirty laundry." Sen. Chuck Grassley, "Federal Agencies Failing to Implement Anti-gag Provision of Whistleblower Law," Apr. 2, 2014, available at http://www.grassley.senate.gov/news/news-releases/grassley-federal-agencies-failing-implement-anti-gag-provision-whistleblower-law.

While the impact of an NDA on employee perceptions of their ability to blow a whistle is important, the statement codified at 5 U.S.C. § 2302(b)(13) is not optional. We encourage agencies to explore what they can do to improve communications for NDAs and NDPs—but particularly for NDAs, given that less than half of the employees stating that they had an NDA believed that it included the required information.

Prohibition on Accessing a Medical Record – 5 U.S.C. § 2302(b)(14)

The 14th PPP in the statute prohibits an official from "access[ing] the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of the other 13 PPPs. The legislative record shows that one reason this PPP was enacted in 2017 was Congress's concern that medical records were possibly being accessed to retaliate against whistleblowers, particularly at the Department of Veterans Affairs (DVA), where employees may also be veterans who have received medical care from the DVA and thus have their information in the medical system.[45]

The 2021 MPS asked respondents whether, in the prior 2 years, an official had "accessed the medical record of an employee or applicant in an attempt to commit a prohibited personnel practice." (The 2021 MPS closed in April 2021, months before the issuance of the executive order instructing agencies to collect COVID-19 vaccination records. Therefore, perceptions regarding medical records are unlikely to be affected by that issue.)[46] Results show that 2.5 percent of respondents perceived this PPP. While the DVA did have a perception rate for this PPP that is *slightly* greater than average (3.1 percent), six agencies had rates that were higher than DVA's, although no agency exceeded 3.7 percent.

Summary of Data for 5 U.S.C. § 2302(b)

The data from 2010, 2016, and 2021 show that while the perception rates for PPPs overall rise and fall, a few patterns emerge:

1. The most frequently perceived PPP is consistently the manipulation of a recruitment action to improve the chances of a particular person.
2. Race, sex, and age discrimination, in that order, are the most frequently perceived forms of discrimination.
3. Only two PPPs did not return to a level close to (or below) where they were in 2010—both doubled, and both were linked to political improprieties (discrimination based on affiliation and coercion of political activity).

[45] "In 2015, Special Counsel Lerner testified that '[i]n several cases, the medical records of whistleblowers have been accessed and information in those records has apparently been used to attempt to discredit the whistleblowers.' At the Committee's March 2015 field hearing in Tomah, Wisconsin, whistleblower and Army veteran Ryan Honl testified that Tomah VAMC employees accessed his medical records despite the fact that Mr. Honl had never received care at the Tomah VAMC. In addition, Brandon Coleman and Shea Wilkes, both veteran VA employees, testified at the Committee's September 2015 hearing that their medical records were improperly accessed by VA officials after they began raising concerns about patient care at the VA facilities where they worked. Mr. Wilkes testified that he has talked with more than 50 whistleblowers across the country who have had their medical records accessed." S. Rep. 115-44, 8 (2017) (Senate Report to accompany the *Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017*, which established the 14th PPP).

[46] *See* Executive Order 14043 (Sept. 9, 2021).

Examining Government-wide data can be helpful to Congress, the President, and the U.S. Office of Personnel Management (OPM) to understand what the Government is facing to inform their decisions regarding laws, executive orders, rules, and regulations related to protecting the merit systems from the commission of PPPs. Ultimately, however, the statute assigns to agency heads the responsibility to prevent PPPs.[47] And, as will be discussed in the next chapter, not every agency experiences the PPPs to the same degree.

[47] 5 U.S.C. § 2302(c)(2) "The head of each agency shall be responsible for [ ] preventing prohibited personnel practices." For more on the responsibilities of agency heads, *see* U.S. Merit Systems Protection Board, *Agency Leader Responsibilities Related to Prohibited Personnel Practices* (May 2021), available at www.mspb.gov/studies.

Chapter Two: Individual Characteristics and Prohibited Personnel Practices

The 2021 MPS included several questions about the characteristics of the respondent and their environment, including agency, age, supervisory status, occupation, salary, gender, and gender balance in the respondent's work unit. The extent to which different characteristics interact with the PPP items varies by PPP. This chapter will discuss a few of those interactions and why differences in that data may be important.

Agency and PPP Perceptions

The extent to which PPPs were perceived in agencies differed greatly, as shown in Chart 3. The agency with the most perceived PPPs had a rate more than double that of the agency with the fewest (36 percent versus 16 percent). The scope of differences between agencies was even greater for individual PPPs. For example, perception rates for the PPP of race discrimination varied from 7.5 percent to 22.1 percent, a nearly three-fold difference; while for political affiliation discrimination, perception rates ranged from 2.3 percent to 12.0 percent, a more than five-fold difference.

By statute, the responsibility to prevent PPPs rests with agency heads.[48] We strongly encourage agency leaders, but also chief human capital officers (CHCOs), diversity, equity, inclusion, and accessibility (DEIA) officials, inspectors general, agency ethics officers, and other stakeholders to delve deeper into their own MPS data.[49] However, the MPS data does have limitations, as no agency had more than 2,300 individuals responding to the MPS. Thus, MPS data may best serve as a starting point to let agencies know when they might have an issue with a particular PPP or group of PPPs. This can—and should—influence further steps, such as crafting the right questions for internal surveys, exit surveys, and focus groups, and tracking HR and workforce accountability metrics.[50] The information from those resources, in turn, can help an agency create an action plan to address the specific problems it faces, which may not be the same across an entire agency.[51] The MPS data does not purport to have all the answers. But to get the answers, one must ask the right questions, and an agency's MPS data on specific PPPs may be useful for that.

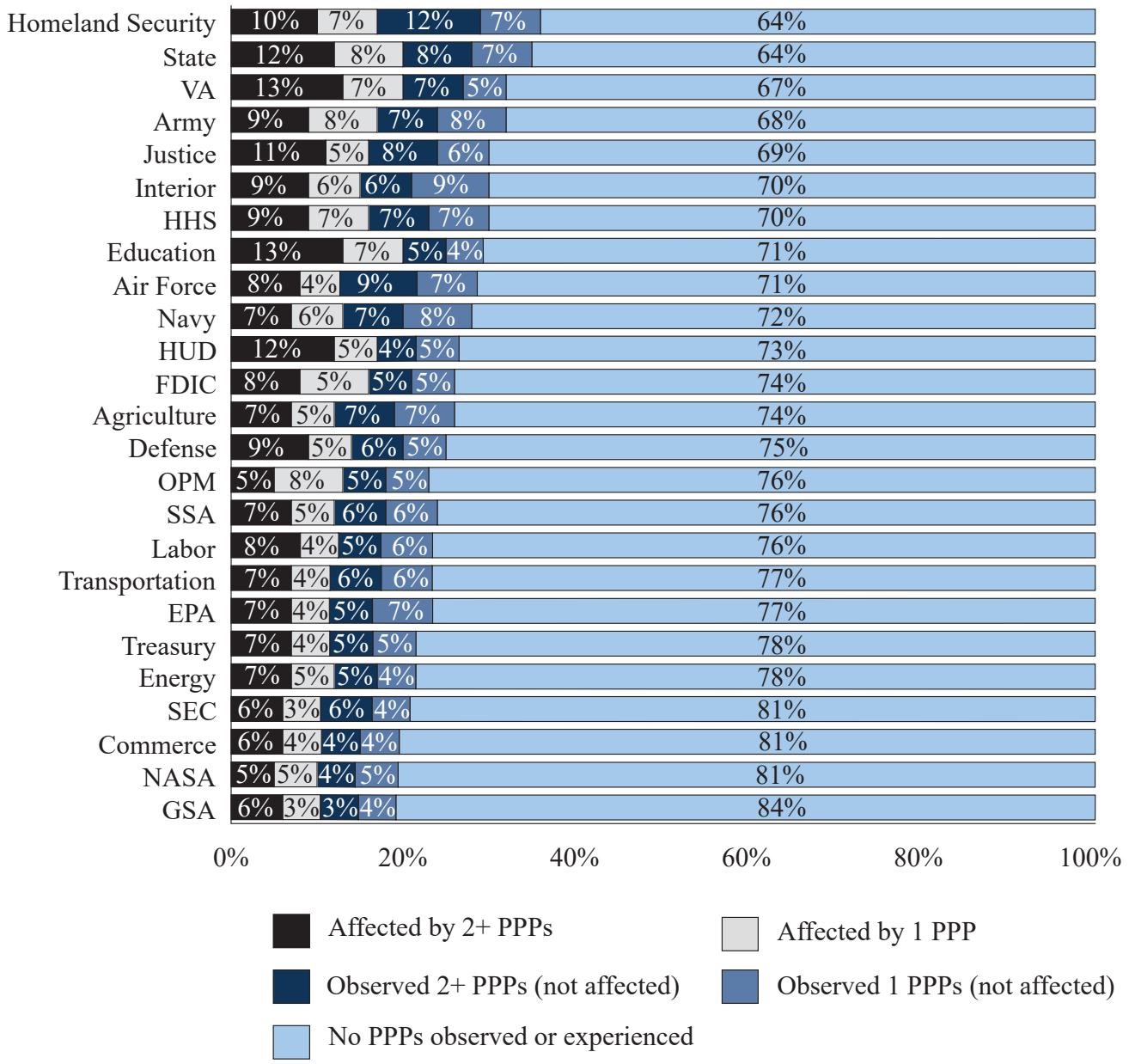
[48] 5 U.S.C. § 2302(c)(2) "The head of each agency shall be responsible for [ ] preventing prohibited personnel practices." For more on the responsibilities of agency heads, *see* U.S. Merit Systems Protection Board, *Agency Leader Responsibilities Related to Prohibited Personnel Practices* (May 2021), available at www.mspb.gov/studies.

[49] The data for the 2021 and 2016 surveys is available for download at https://www.mspb.gov/FOIA/SurveyData.htm.

[50] For example, if HR data shows that a particular geographic location has a higher quit rate than other locations doing similar work, or that people in one division quit after disproportionately short tenures compared to what might be expected, further inquiries may be warranted. This may be distinct from other reports, such as MD-715, which tracks demographic classes. For more on MD-715, *see* U.S. Equal Employment Opportunity Commission, *Instructions to Federal Agencies for EEO MD-715*, available at https://www.eeoc.gov/federal-sector/management-directive/instructions-federal-agencies-eeo-md-715.

[51] For more on how to use large-scale surveys to create an action plan, *see* U.S. Merit Systems Protection Board, *Survey Results Action Guide*, https://www.mspb.gov/studies/studies/Survey_Results_Action_Guide_679131.pdf; U.S. Office of Personnel Management, *Guide for Interpreting and Acting on Federal Employee Viewpoint Survey Results*, available at https://www.opm.gov/policy-data-oversight/training-and-development/reference-materials/online-courses/maximizing-employee-engagement/content/common/cw/data/Guide_for_Interpreting_and_Acting_on_Federal_EVS_Results.pdf.

Chart 3: Percent of Respondents, by Agency, Reporting PPP Experience or Observation



Agency Size and PPP Perceptions

For every PPP on the 2021 MPS, respondents were more likely to report the presence of that PPP if they were employed in a large agency. (To enable general comparisons, we placed the dividing line between large and small agencies at 50,000 employees.) The difference between the two agency groupings varied by PPP from as little as a tenth of a percentage point (for marital status discrimination) to 5.2 percentage points (for nepotism). However, the more important finding for studying cultures may be the cumulative effect, with 70.1 percent of employees in large agencies reporting no PPPs compared to 78.3 percent in small agencies.

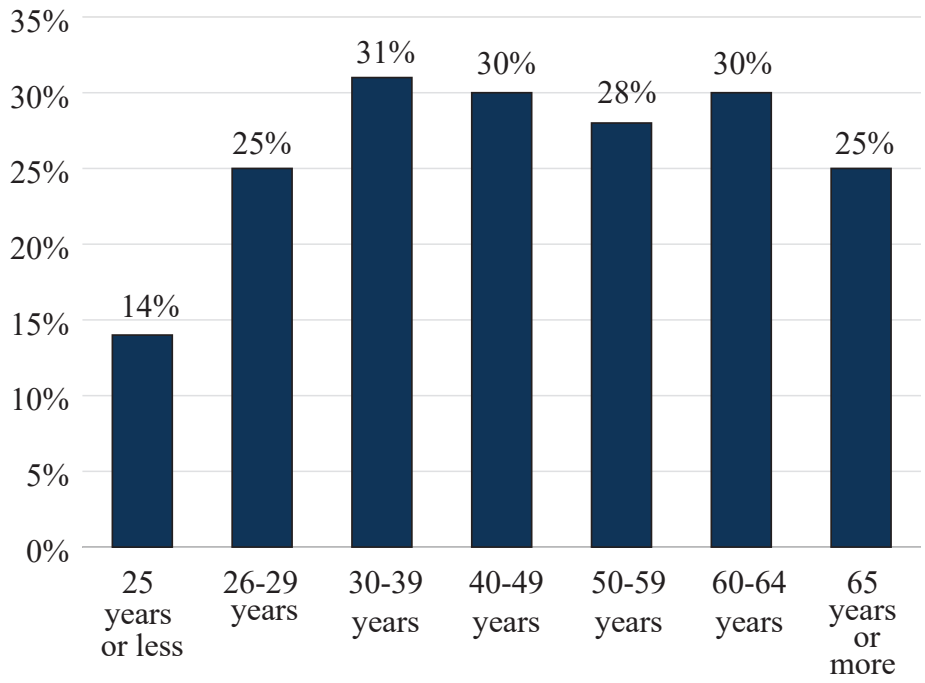
Employees in larger agencies were both more likely to say they personally experienced PPPs (15.6 percent vs. 12.2 percent) and to say they observed PPPs without personally experiencing any (14.3 percent vs. 9.5 percent). As discussed in the next section, there are risks in compressing

data to create comparative groups, since not every small agency is the same and their reasons for collectively reflecting lower perception rates may differ. However, this data can help agencies determine when they are in a category that generally carries higher risks of PPP perceptions; and, therefore, whether they should dedicate more time to identifying and addressing PPPs.

Age and PPP Perceptions

When considering the relationship between age and PPP perceptions, age-based discrimination may be the first PPP to come to mind. It is not surprising that a respondent's age correlates with perceptions of age discrimination, or that those over age 60 were the most likely to perceive such discrimination. However, when looking at the broader pattern for all PPPs, employees under age 30 or over age 64 were the least likely to perceive a PPP in general, as demonstrated in the chart below.[52]

Chart 4: PPP Perceptions (Observed and Experienced Combined) by Age Grouping



One risk this data may highlight is the potential for diluting effects when compressing multiple groups. For example, if we divide the population solely into those under age 40 and those age 40 or greater, the differences are less than one percentage point. For those under age 40, a total of 29.4 percent of respondents reported seeing any PPPs, while for those at age 40 or greater, it was 28.6 percent—a far different picture than can be seen for the youngest and oldest employees in the chart.[53] This is why, for employers especially, generalized data can be a place to start but should rarely be the end of the inquiry.[54]

[52] Each age grouping had at least 300 unweighted respondents.

[53] This holds true even for discrimination PPPs. The percent of respondents under age 40 who saw no section 2302(b)(1) PPPs was 81.0%, while the percent for age 40 or greater was 80.4%.

[54] The statute instructs MSPB to inform Congress the extent to which the merit systems are free from the commission of PPPs. The obligation of agency heads is to prevent PPPs in their individual agencies. These are different missions, calling for different uses of the MPS data. However, data used by MSPB for the former may help alert agency heads to areas in need of attention for the latter. *Compare* 5 U.S.C. § 1204 (c)(3) *with* 5 U.S.C. § 2302 (c)(2)(A).

Supervisory Status and PPP Perceptions

In aggregate, supervisors (including managers and executives) were more likely than non-supervisors to state that they perceived no PPPs (73.8 percent vs. 71.0 percent). The reason for this likely varies greatly by individual supervisors and their situations. In some cases, the causes may include that the supervisors will often be in a better position to know what personnel actions are being taken and why.[55] However, the perception gap differed greatly by agency. For all PPPs combined, eight agencies had less than 2 percentage points difference between the perceptions of supervisors and non-supervisors, while five agencies had more than 8 percentage points difference.[56] Thus, it is likely that not all the causes for differences in perceptions are baked into the roles.

There is one crucial note about the possibility that supervisors may sometimes be in a better position to know what personnel actions are taking place and why. In seven agencies, the supervisors reported perceiving PPPs even *more* than non-supervisors. In one agency, supervisors perceived it more often by over 5 percentage points. We cannot state definitively that these supervisors were better informed than their non-supervisory peers, but it is something that should concern any agency when faced with such results.

Occupation and PPP Perceptions

OPM classification standards group occupations into "job families." For example, series 0201 (human resources specialist) and series 0203 (human resources assistant) are both in the "0200 job family," which covers series numbered 0201 through 0299. As shown in the chart below, the job family with the lowest perceptions of being personally affected by a PPP had less than half the perception rate of the job family with the highest (10 percent vs. 23 percent).[57] (Some job families are less common than others and did not have an adequate number of respondents on the 2021 MPS to responsibly generalize to that family.)[58]

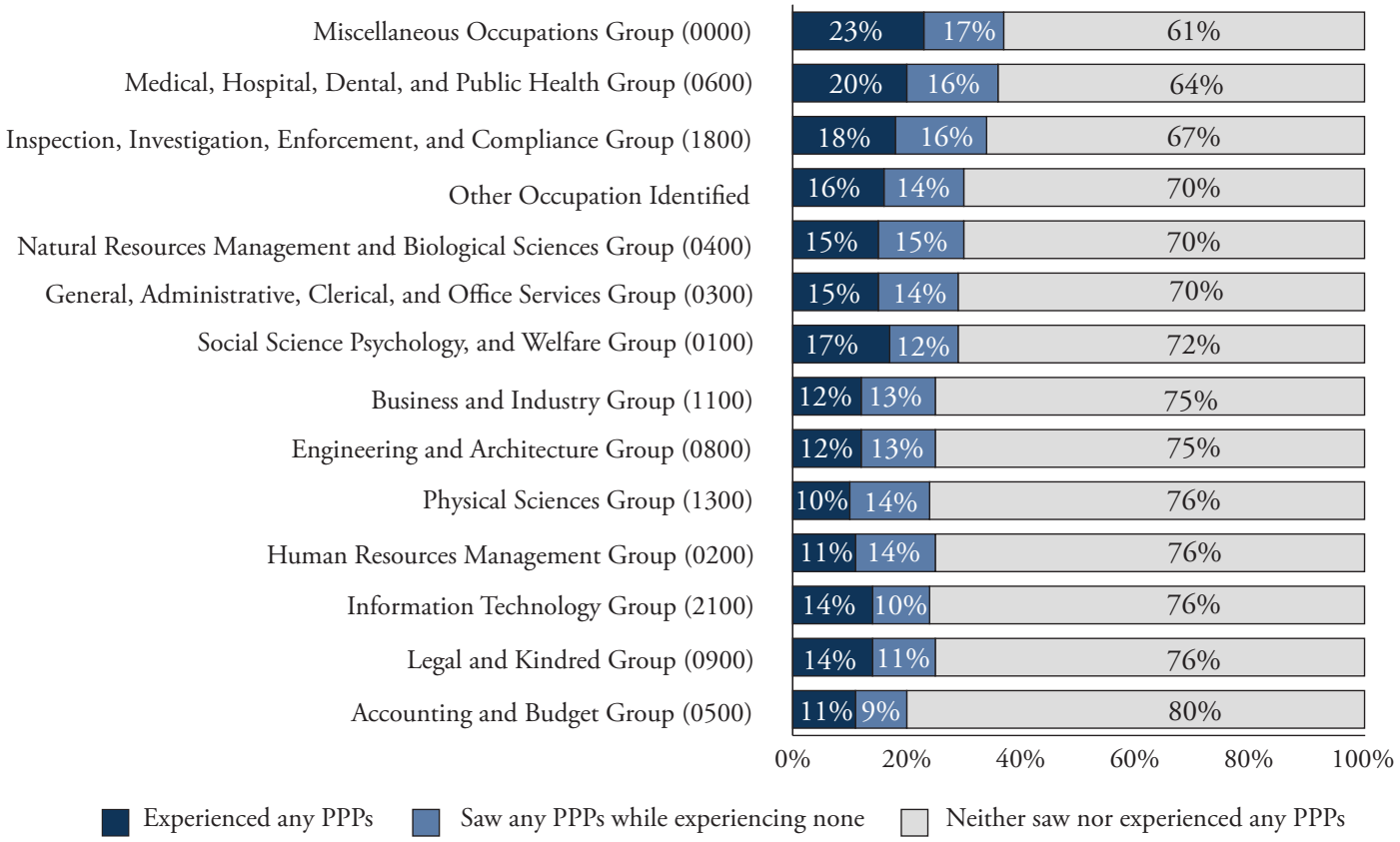
[55] Many personnel actions are protected by the Privacy Act. For a discussion of exceptions to that rule, *see* U.S. Department of Justice, *Overview of the Privacy Act*, "Conditions of Disclosures to Third Parties," available at https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/disclosures-third-parties.

[56] For this issue, we limited the analysis to agencies with at least 800 unweighted respondents to provide a large enough population to study. Twenty-three agencies met this criterion.

[57] As the 14th PPP addresses medical records, it is important to note that the 14th PPP did *not* drive the results in the chart for the medical job family, even though the medical job family had one of the highest rates of *overall* PPP perceptions. The "Medical, Hospital, Dental, and Public Health Group," which would presumably have greater access to medical records than most occupations, had one of the lowest rates of perception for the 14th PPP, at 1.3% seeing or experiencing this PPP, while the overall average was 2.5%.

[58] The chart and discussion are limited to general schedule (white-collar) job families with 490 or more unweighted respondents. The "Miscellaneous Occupations" group includes occupations such as (but not limited to) police officer, correctional officer, emergency management, safety and occupational health management, and security administration.

Chart 5: PPP Perceptions by Job Family

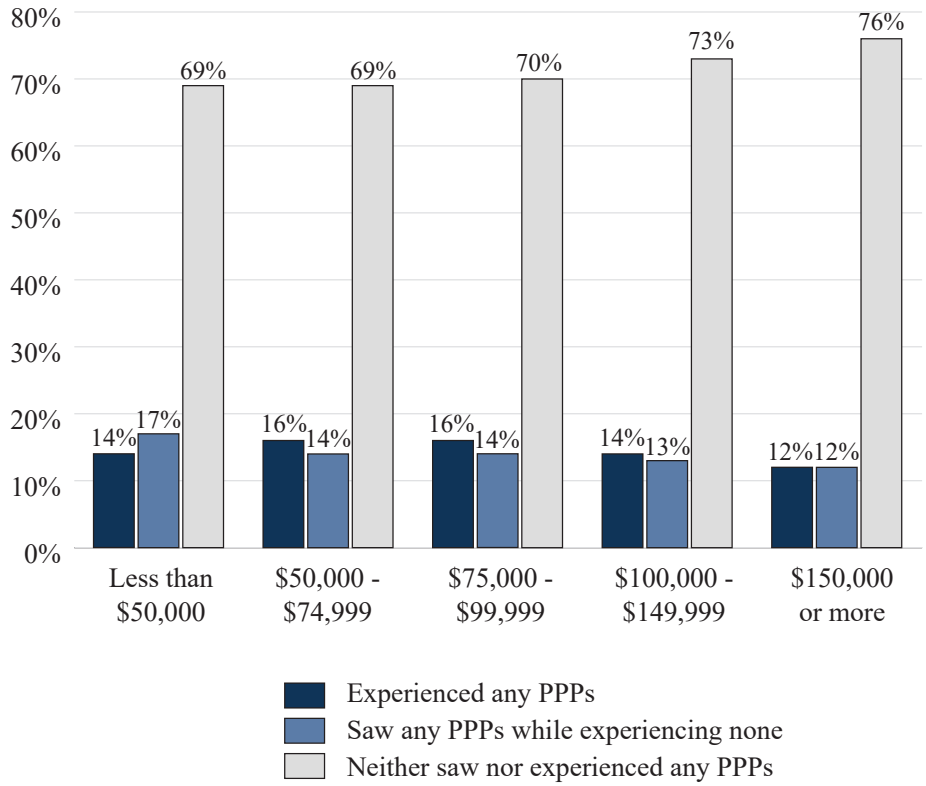


Agencies that know they employ members in a job family that has higher rates of perceived PPPs than other job families should pay particular attention to the work units in which such individuals are employed. We cannot state the causes for these perceptions, but whether there are PPPs that need to be prevented or misperceptions that need to be repaired through better communication and trust-building, the data indicates that some job families are in greater need of attention than others.

Salary and PPP Perceptions

In general, as an individual's salary increased, the probability that they reported no PPPs occurring in the work unit also increased, as shown in Chart 6.

Chart 6: PPP Perceptions by Salary Grouping



However, the extent to which salary correlated with views on the individual PPPs varied, and in many cases the outliers are logical for that PPP. For example, given that there are fewer jobs at the highest grades for individuals to compete to get, it is not surprising that employee perceptions of officials obstructing competition, or pressuring someone to withdraw from competition, were higher at the lower end of the salary spectrum.[59]

As previously explained, the data indicates that supervisors may generally be less likely to perceive PPPs. Therefore, it is important to note that when comparing non-supervisors at each salary level to other non-supervisors, and when separately comparing supervisors at each grade level to other supervisors, the pattern remained that those making the most money perceived PPPs the least.[60]

There could be many reasons why those with lower salaries would be more likely to perceive PPPs in the workplace, and we cannot definitively establish what is responsible for the outcome.[61] What we do know is that those with the least organizational power to defend themselves (as reflected by salary) report that they see it the most. We recommend that agencies use their workforce data to examine which offices have higher concentrations of lower-salaried positions and subsequently to

[59] The PPP of obstruction of competition had results in a straight line of decreasing perception as salary increased (15.0%, 14.3%, 10.9%, 9.3%, 7.8%), as did an attempt to influence a person to withdraw (8.5%, 7.3%, 7.0%, 5.4%, 5.3%). The salary categories are the same as in Chart 6.

[60] There was an insufficient number of supervisors making less than $50,000 to include that category in this comparison.

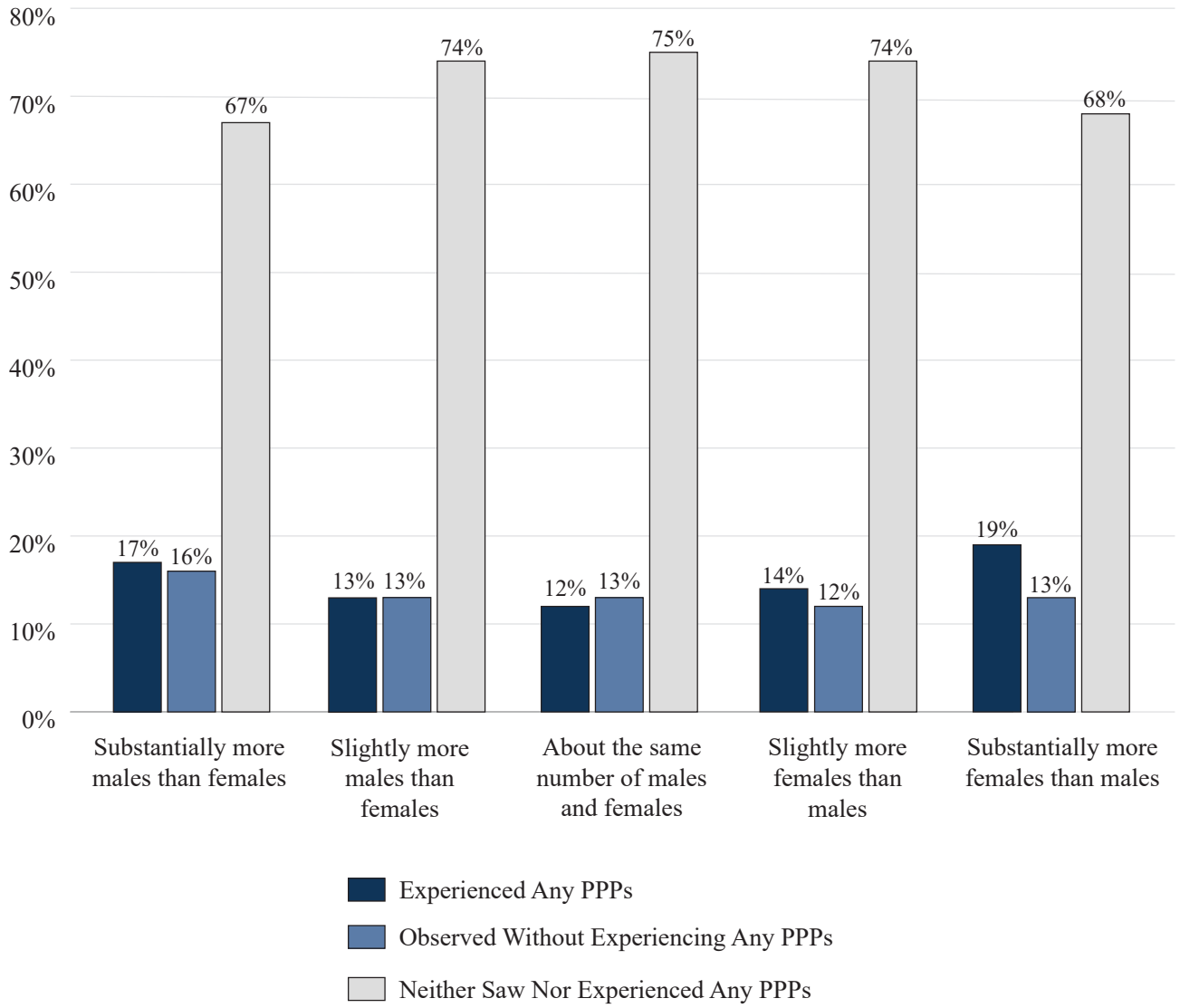
[61] Hypotheses that may merit further investigation include but are not limited to: (1) whether the culture of what is perceived as permissible conduct in the workplace differs in work units that involve higher-graded work; (2) the potential at different grade levels for different levels of physical isolation (such as working from home, in the field, or having very few peers present in an office) with such isolation affecting opportunities for interactions and observations; and (3) whether higher pay coincides with skills that would make it easier for employees to find other work, or with geographic areas that have broader job markets, thus making it less likely that an official would attempt improprieties, because officials would know that their employees have the option to leave for another job.

monitor them. One means of doing so is by internal surveys of current employees, but resignation data, exit surveys, complaints and grievances, and other records can also offer important data about the culture of an organization.

Gender and PPP Perceptions

In general, women indicated only slightly more than men that they perceived PPPs in their work unit (28.9 percent vs. 27.2 percent). No PPP had a gap of more than 4 percentage points, and all but one were less than 3 percentage points apart. In contrast, the gender composition of the workforce made as much as an 8 percentage point difference. As shown in Chart 7, the probability that a PPP was experienced or observed increased with a shift in the gender composition of the work unit—that is, employees working in units substantially comprised of one gender were more likely to experience or observe a perceived PPP.

Chart 7: PPP Perceptions and Workplace Gender Imbalances



One notable aspect of the gender data is that an imbalance correlated with increased perceptions of many of the individual PPPs, creating the cumulative effect shown in the chart. And while it may not be surprising that perceptions of sex-based discrimination increased by half when there was substantially more of one gender in the work unit, a similar effect was seen for the perceptions of retaliation against whistleblowers, where gender should not play as obvious a role. This may have implications for the ability of individuals to feel safe blowing the whistle in gender-imbalanced workplaces.[62]

Because some occupations tend to be disproportionately comprised of only one gender, it is difficult to state the role of gender balance in isolation from other factors. However, since workforce data can tell agencies when they have an organization where one gender predominates, leaders may want to pay particular attention to what occurs in those work units.

[62] In gender-balanced workplaces, 9.6% of respondents perceived sex-based discrimination, while it was perceived by 10.7% in the slightly imbalanced workplaces and 14.9% in the substantially imbalanced workplaces. For retaliation against whistleblowers, it was perceived by 5.2%, 5.9%, and 7.6% of respondents, respectively.

Chapter Three: Perceived Offenders

The PPPs apply to "[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action[.]"[63] Accordingly, MPS questions asked respondents who reported whether an "agency official (e.g., supervisor, manager, senior leader, etc.)" in their work unit had engaged in particular PPPs.

However, it is unhealthy for the efficiency and effectiveness of the workplace if behaviors such as discrimination or harassment occur, regardless of the structural role of the offender.[64] Moreover, given the relative number of co-workers most employees have compared to the number of people with the authority to take a personnel action, actions by coworkers could have serious negative effects on the quality of work life for an employee. Accordingly, the 2021 MPS asked those respondents who stated that they experienced or observed a PPP to indicate the role of the alleged offender by selecting all that apply from a list. These roles were: co-worker, team leader, supervisor, manager, executive, human resources, and other.

It is important to note that to receive the question about the perceived offender, a respondent first had to state that an "official" committed the PPP. Thus, the picture may be incomplete, and direct comparisons should not be made between those who are likely to be perceived as "officials" and those who are not. However, the extent to which non-officials were chosen as a perceived offender paints an important picture of the organizational cultures surrounding each PPP, and the data is therefore included in this report. Because we asked respondents to select all that apply, all rows in Table 12 total more than 100 percent.

[63] 5 U.S.C. § 2302.

[64] *See* 5 U.S.C. § 2301(b)(5) ("The Federal work force should be used efficiently and effectively"); 5 U.S.C. § 2301(b)(2) ("All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.") For more on the intersection of PPPs and the effective management of the workforce, *see* Chapter Five.

Table 13: Organizational Role of Perceived Offenders for PPPs (Observed and Experienced)

PPP	Coworker	Team Leader	Supv.	Manager	Exec.	HR	Other
Race-Based Discrimination	25%	10%	37%	48%	27%	12%	5%
Religion-Based Discrimination	29%	12%	37%	30%	18%	6%	6%
Sex-Based Discrimination	20%	12%	40%	46%	25%	9%	4%
National Origin-Based Discrimination	26%	17%	39%	42%	22%	9%	4%
Age-Based Discrimination	18%	11%	39%	51%	29%	12%	3%
Disabling Condition-Based Discrimination	21%	12%	48%	47%	28%	15%	4%
Marital Status-Based Discrimination	21%	20%	39%	43%	23%	9%	7%
Political Affiliation-Based Discrimination	39%	13%	29%	32%	22%	9%	6%
Sexual Orientation-Based Discrimination	30%	22%	37%	40%	22%	8%	3%
Improper Employment Recommendation	11%	10%	35%	53%	36%	13%	5%
Pressure for Political Support or Opposition	34%	17%	35%	36%	21%	9%	5%
Obstruction of Competition	9%	9%	37%	57%	33%	14%	3%
Influencing Withdrawal from Competition	10%	14%	37%	53%	27%	12%	6%
Manipulation of Recruitment	7%	8%	34%	58%	31%	14%	4%
Nepotism	17%	14%	34%	54%	31%	13%	3%
Retaliation for Whistleblowing	19%	15%	42%	58%	39%	15%	4%
Retaliation for Appeal or Grievance	17%	9%	45%	54%	30%	11%	3%
Retaliation for Refusal to Violate a Law, Rule, or Regulation	18%	12%	40%	54%	34%	13%	3%
Off-Duty Conduct-Based Discrimination	19%	14%	37%	49%	30%	9%	5%
Violation of Veteran's Rights	13%	11%	32%	58%	37%	28%	7%
Violation of NDA rules	13%	14%	29%	60%	34%	18%	5%
Accessing Medical Records to Commit a PPP	16%	12%	52%	48%	25%	19%	6%

As shown in the table, between 18 percent and 39 percent of respondents who perceived a discrimination-related PPP felt that a coworker took part in the offense. We asked OSC what, in their opinion, was the responsibility of agency officials when an employee experienced certain PPPs at the hands of a coworker. One of the examples we used was political affiliation discrimination, and this was OSC's reply:

> OSC believes that leaders within an agency, from first-line supervisors all the way to the head of the agency, have an obligation to ensure a workplace free of harassment and discrimination of any kind, including political-affiliation discrimination. Management should make clear to all employees that discrimination will not be tolerated, and management should provide clear guidance on the various routes available to employees who would like to file a complaint of discrimination, coercion, or harassment or a disclosure of wrongdoing.[65]

In short, the fact that a bad actor may be a peer of the affected employee instead of a supervisor does not alter an agency's obligation to address the situation.[66]

All PPPs on the 2021 MPS had at least one-third of the respondents choose two or more roles when identifying offenders for that PPP, and 10 PPP questions had more than half of respondents choose at least two roles.[67] For example, retaliation for whistleblowing had 37 percent choose one role, 32 percent choose two roles, and the remaining third choose three or more roles. Given the extent to which PPPs are perceived as coming from multiple directions at once, agencies that are serious about preventing PPPs may need to address their underlying organizational culture and ensure that employees at all levels understand their respective roles in preventing PPPs.

[65] We also asked about political coercion because it was the other PPP with a perception rate that had doubled. OSC provided the same reply, nearly word-for-word, prefaced with the statement, "Same answer as above."

[66] *See Special Counsel v. Zimmerman*, 36 M.S.P.R. 274, 292-93 (1988) (rejecting the argument that only a supervisor or manager may be found guilty of discriminatory conduct). *See also* U.S. Equal Employment Opportunity Commission, *Harassment*, available at https://www.eeoc.gov/harassment (explaining that a "harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee… The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action").

[67] The 10 PPP questions where at least half of respondents to the item chose two or more roles were: discrimination based upon national origin, disabling condition, marital status, sexual orientation, or off-duty conduct unrelated to the job; retaliation for whistleblowing, filing an appeal or grievance, or refusal to violate a law, rule, or regulation; violation of a veteran's rights; or asking an individual to sign a non-disclosure agreement limiting whistleblower rights.

Chapter Four: Perceptions Related to Political Discrimination and Coercion

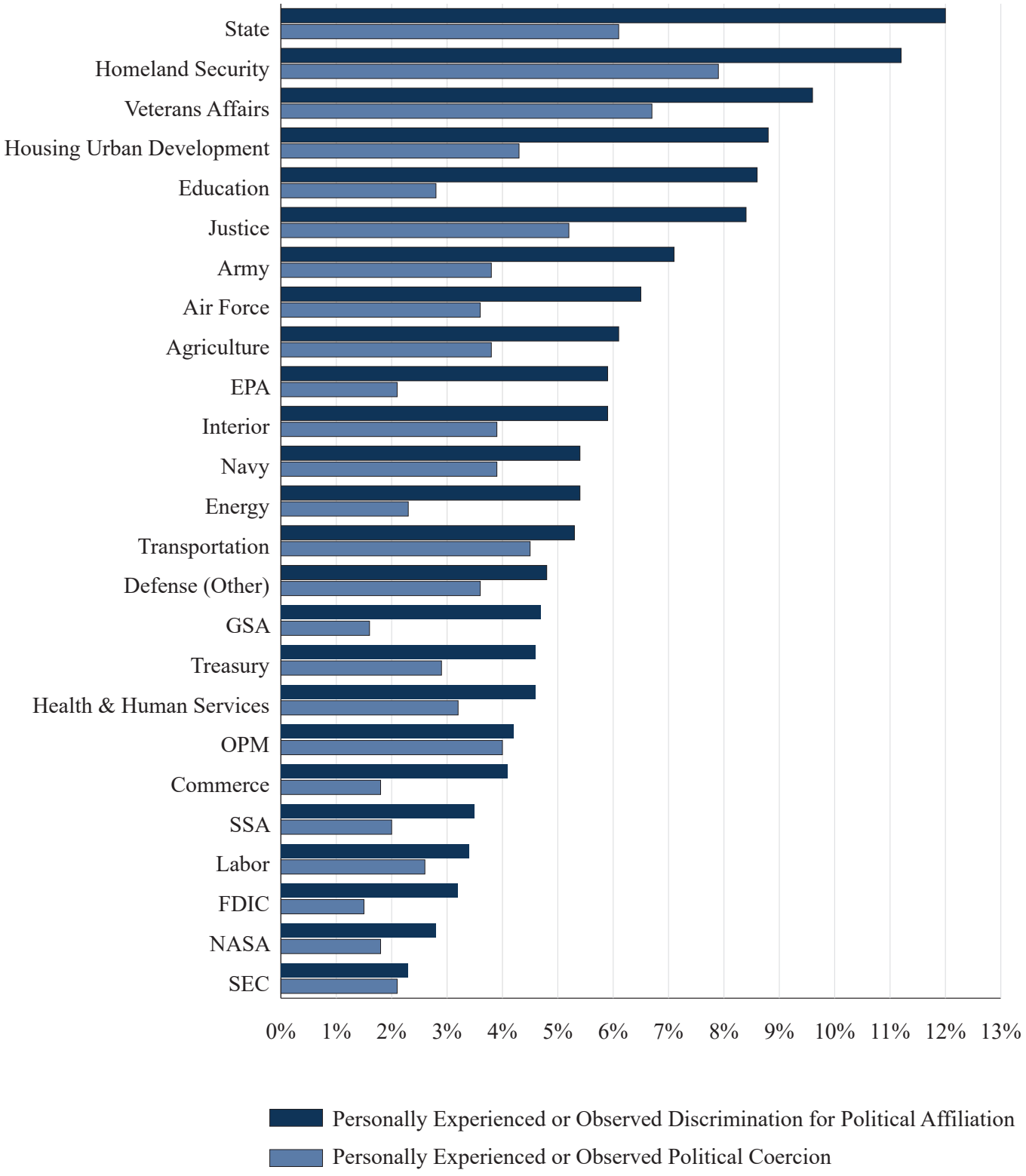
As shown in Chapter One, the 2010 and 2021 surveys had 18 PPP-related questions in common. The only PPPs to notably increase in 2021 compared to 2010 were political affiliation discrimination (increasing from 3.2 percent to 7.1 percent) and political activity coercion (increasing from 2.3 percent to 4.6 percent). Because these two PPPs were outliers, this chapter presents a closer look at some of their MPS data.[68]

It would be reasonable to hypothesize that the increased rates of perceived political discrimination and coercion could be a result of changes in broader society, which may be more politically divided than in previous generations.[69] But, as shown in the chart on the next page, perception levels varied greatly by agency, with some agencies having rates two or three times higher than others. Thus, it seems that the data cannot be explained solely by our Nation's political climate, but rather that factors particular to an agency may have contributed to these perceptions.

[68] This chapter does not address every characteristic covered in the prior chapters, but rather focuses on data that offers distinctive information. For example, as with the PPPs in general, perception rates for both political discrimination and coercion varied by age and occupation, were higher for non-supervisors, and were higher in workforces that did not have an equal gender balance. Thus, those characteristics are not separately addressed in this chapter.

[69] *See, e.g.*, "As Partisan Hostility Grows, Signs of Frustration with the Two-Party System," *Pew Research Center* (Aug. 9, 2022), available at https://www.pewresearch.org/politics/2022/08/09/as-partisan-hostility-grows-signs-of-frustration-with-the-two-party-system/ (showing that the number of both democrats and republicans with a "very unfavorable" views of the other party has roughly tripled since 1994); Frank Newport and Andrew Dugan, "Partisan Differences Growing on a Number of Issues," *Gallup* (Aug. 3, 2017), available at https://news.gallup.com/opinion/polling-matters/215210/partisan-differences-growing-number-issues.aspx (showing that "Americans' party identification has become an increasingly powerful lens through which they view the world around them").

Chart 8: Percent of Respondents, by Agency, Reporting Experience or Observation of Discrimination for Political Affiliation or Coercion



These agencies vary in many ways, including but not limited to size, occupational job families, and average employee salary. (As discussed in Chapter Two, these characteristics have a relationship to PPP perceptions in general.) Additionally, some of these agency missions may be perceived as more "political" in nature, blurring the line between differences of opinion on work-related matters and political affiliation identities.

However, as the Supreme Court has stated, "it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent."[70]

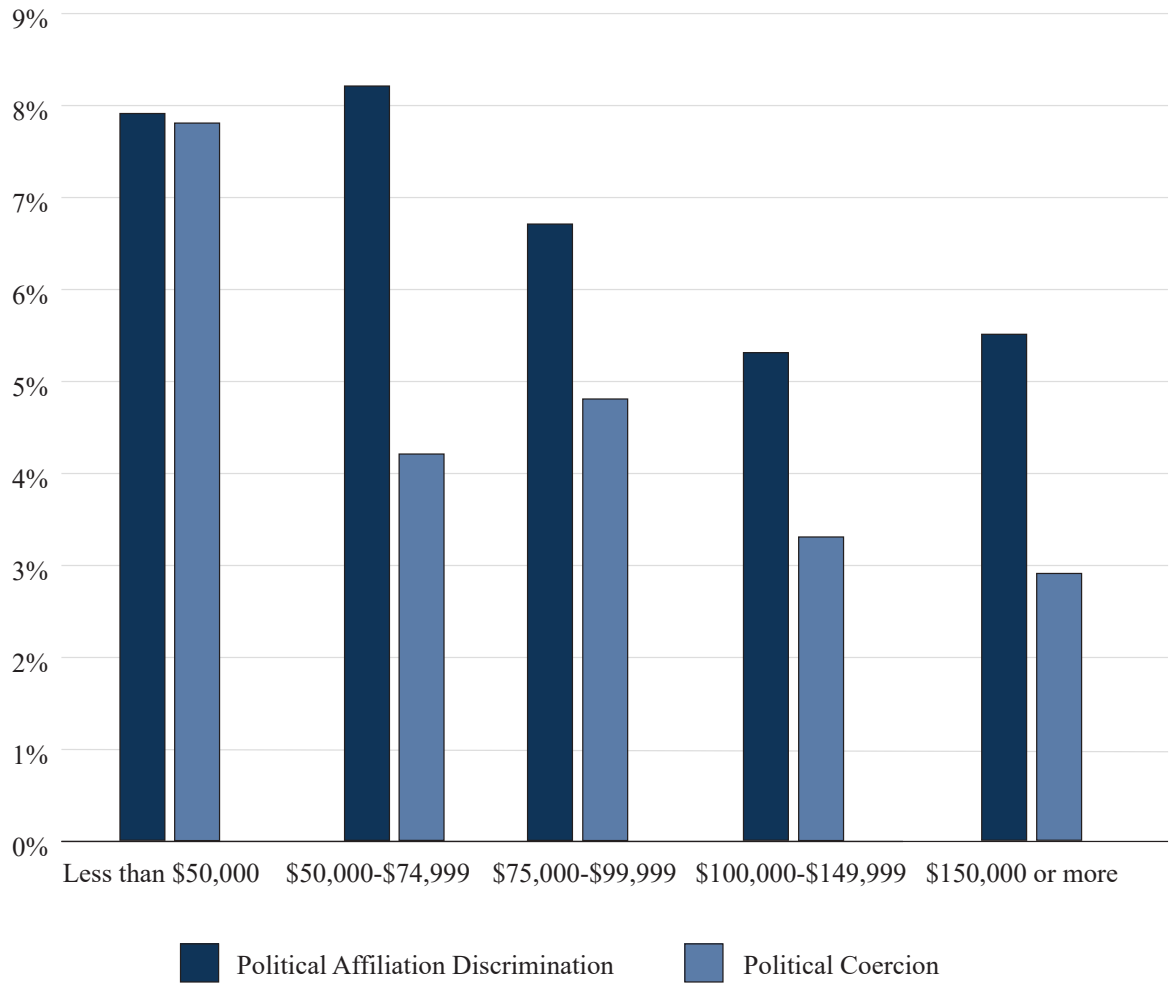
Thus, when a mission is particularly "political" in nature, it does not mean that the data in the chart can be ignored as somehow inevitable. Rather, agencies should be sensitive to the greater challenges they face in ensuring that the workplace is free from coercion and discrimination.

As discussed in Chapter Two, MPS respondents who made the lowest salaries had higher perception rates for the PPPs than those who made substantially more. However, as shown in the chart below, the two political PPPs did not interact with salary in the exact same way.[71] Employees making *less* than $50,000 reported that they perceived coercion and political affiliation discrimination at roughly similar rates (7.8 and 7.9 percent, respectively). However, for individuals making *more* than $50,000, the gap between political discrimination and coercion ranged from 1.9 to 3.9 percentage points. In other words, those with the least organizational power (as represented by salary) were disproportionately likely to report that coercion occurred in their work units compared to those with the most (again, as represented by salary).

[70] *U.S. Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, 413 U.S. 548, 565, (1973).

[71] On the MPS 2010, we grouped salaries differently. However, those with a salary of less than $70,000 in 2010 reported political coercion at a greater rate than those who made more (2.9 percent vs. 1.7 percent), and they also reported higher levels of political affiliation discrimination (3.9 percent vs. 2.2 percent).

Chart 9: Percent of Respondents, by Salary, Reporting that they either Saw or Experienced Discrimination for Political Affiliation or Coercion



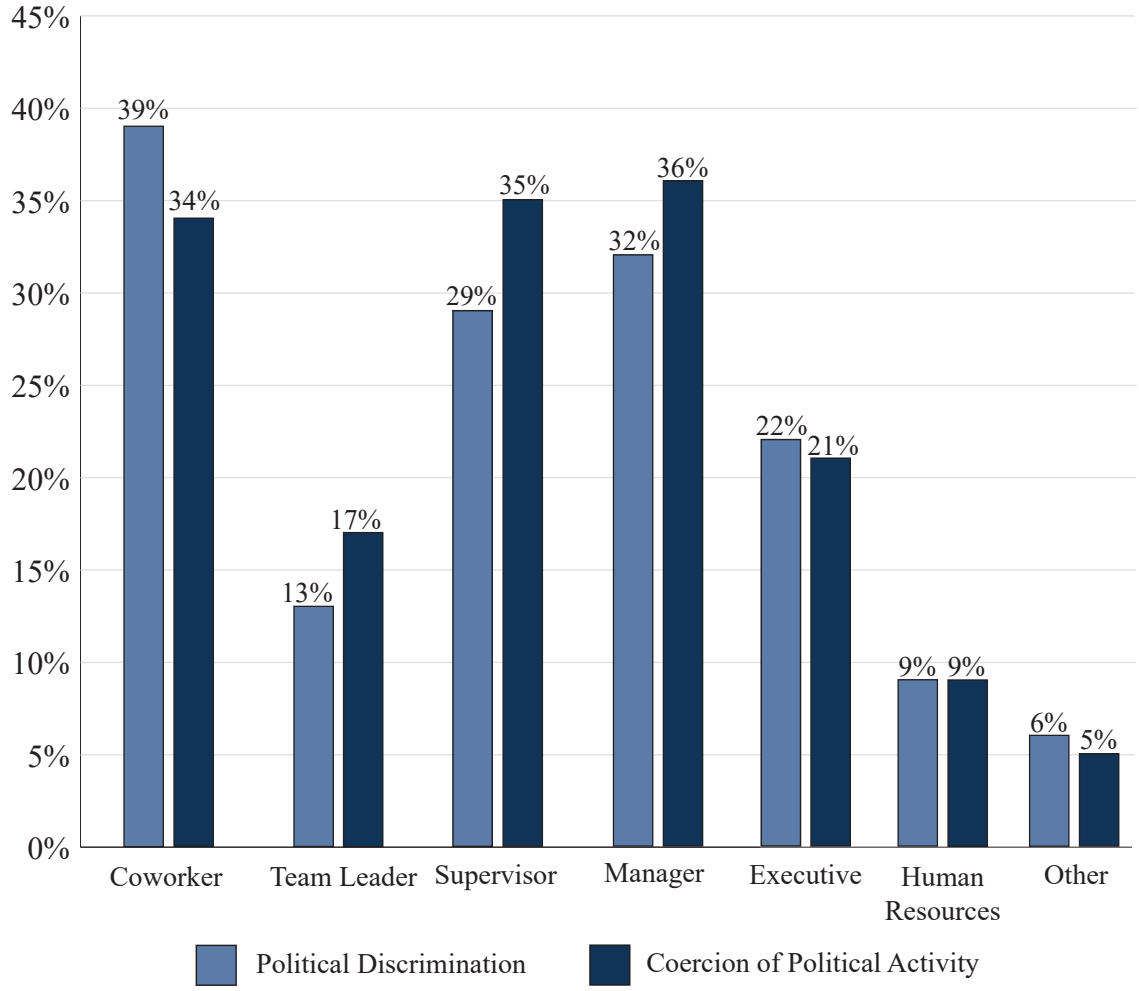
All supervisors, managers, and executives, but particularly those with employees on the lower end of the salary scale where power disparities are the greatest, should be attentive to what is occurring in the work unit and communicate with employees about what is acceptable in the workplace. Employees have a First Amendment right to free speech, but there are limits when it crosses the line into political activity at work.[72] Neither coercion nor political discrimination should be tolerated.

As discussed in Chapter Three, the 2021 MPS included questions that asked those who perceived PPPs to identify the roles of the individuals they felt committed the offense(s), selecting all that apply from a list. For those who perceived discrimination based on political affiliation, 36 percent chose individuals in more than one role. For the coercion of political activity, 44 percent chose individuals in more than one role. However, the data between the two offenses differs in another way. As shown in Chart 10, for political discrimination, the most commonly perceived offender

[72] U.S. Office of Special Counsel, *Black Lives Matter and the Hatch Act* (Jul. 14, 2020) available at https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Black%20Lives%20Matter%20and%20the%20Hatch%20Act.pdf (explaining that the "Hatch Act generally prohibits employees from using or displaying political party and partisan campaign slogans" but "does not prohibit employees from engaging in issue-based advocacy, such as activity in relation to an issue not specifically identified with a political party or partisan political group").

was a co-worker.[73] For coercion, where power can serve as a lever to force action, the likelihood that a team leader, supervisor, or manager was identified as the offender increased compared to discrimination.

Chart 10: Role of Perceived Offender for Political Affiliation Discrimination or Coercion[74]



The power to coerce begins with having power over a person or having the cooperation of those with power.[75] Thus, the effect of the individual's role on the prevalence of each type of offense is not surprising. After all, team leaders, supervisors, and managers would be in the best position to retaliate if the individual did not engage in the desired political activity. In contrast, peers can make life unpleasant, but they have less power to implement a personnel action. Executives, while having even more organizational power than supervisors or managers, often do not have regular

[73] As discussed in Chapter Three, that the offender may be a peer and not a supervisor does not relieve supervisors and higher officials from the responsibility to address the situation.

[74] It is important to remember that Chart 10 shows the perceived offender, which means it reflects responses from those who perceived the offense. Thus, coercion and discrimination begin on an equal footing in this chart—the offense has been perceived—even though the initial perception rates were not the same for each PPP. And, as stated before, it is possible that data for some roles may be incomplete due to the initial question regarding an "agency official" as the actor.

[75] *See* John C. Turner, "Explaining the Nature of Power: A Three-Process Theory," *European Journal of Social Psychology* (2005), Vol. 35 (noting the distinction between power as influence as opposed to control and explaining coercion as an individual or group resorting "to deploying the human and material resources it controls to constrain, block, compel and manipulate the target's behavior"); *Black's Law Dictionary*, "Coercion" (11th ed. 2019) (describing one form of coercion as "taking or withholding official action or causing an official to take or withhold action").

contact with employees several layers into the organization and may therefore need to work through intermediaries. Similarly, while human resources staff can process personnel actions, they are generally not the ones initiating the action.

Individuals in positions of power must be careful about what they say and do, and about how those messages are being interpreted by the recipients, even when those recipients may not be direct subordinates. Being coerced is a question of perception. One can feel coerced, and even act based on the fear that the experience created, with or without the person in power realizing what they have done to the employee, to the merit systems, and to the integrity of the organization. While knowing and deliberate coercion is an ethical issue that must be addressed, accidental coercion is a matter of care and competence. For the health of the civil service, both should be avoided.

Chapter Five: The Business Case and Solutions

The statute sets forth that PPPs are not permitted and that action can be taken to discipline those employees who commit one.[76] However, in addition to PPPs being contrary to law, they are also contrary to good business practices.[77] As shown in the data below, officials who desire that their workplaces run efficiently and effectively should take steps to ensure that PPPs do not occur and that the workforce perceives their officials as complying with the statute.

PPPs and Engagement

In recent years, MSPB, OPM, and others have emphasized the importance of engagement in the effective operation of the civil service.[78] Our report, *The Power of Federal Employee Engagement*, explained that, among other things, employee engagement had a relationship to agency performance results, reduced use of sick leave, and reduced workplace injuries.[79]

Data from the 2010 and 2016 surveys demonstrated a relationship between perceptions of PPPs and reported engagement levels.[80] As shown in Chart 11, that finding remains true for the 2021 MPS data, as well.[81] Sixty-four percent of those respondents who reported that they neither saw nor experienced a PPP were engaged (based on their answers to our 16 engagement-scale items). But only 33 percent of those who observed a PPP (without experiencing one) were engaged, and only 16 percent of those who were personally affected by a PPP were engaged.

[76] 5 U.S.C. § 2302(c)(2)(A) (prohibiting PPPs); 5 U.S.C. § 1215(a) (authorizing the Special Counsel to submit to MSPB a complaint that an individual has committed a PPP and authorizing MSPB to implement penalties up to and including removal from service or debarment from future service for a period of up to five years); 5 U.S.C. §§ 7503, 7512-7513 (authorizing agencies to suspend, demote, or remove employees when such actions would promote the efficiency of the service). *See also* 5 U.S.C. § 7515 (requiring that an agency propose discipline when certain entities have found that a supervisor has committed one of three specific PPPs related to whistleblowing).

[77] U.S. Merit Systems Protection Board, *The Perceived Incidence of Prohibited Personnel Practices* (2019), at 35-38, and *Prohibited Personnel Practices: Employee Perceptions* (2011), at 12-15, available at www.mspb.gov/studies.

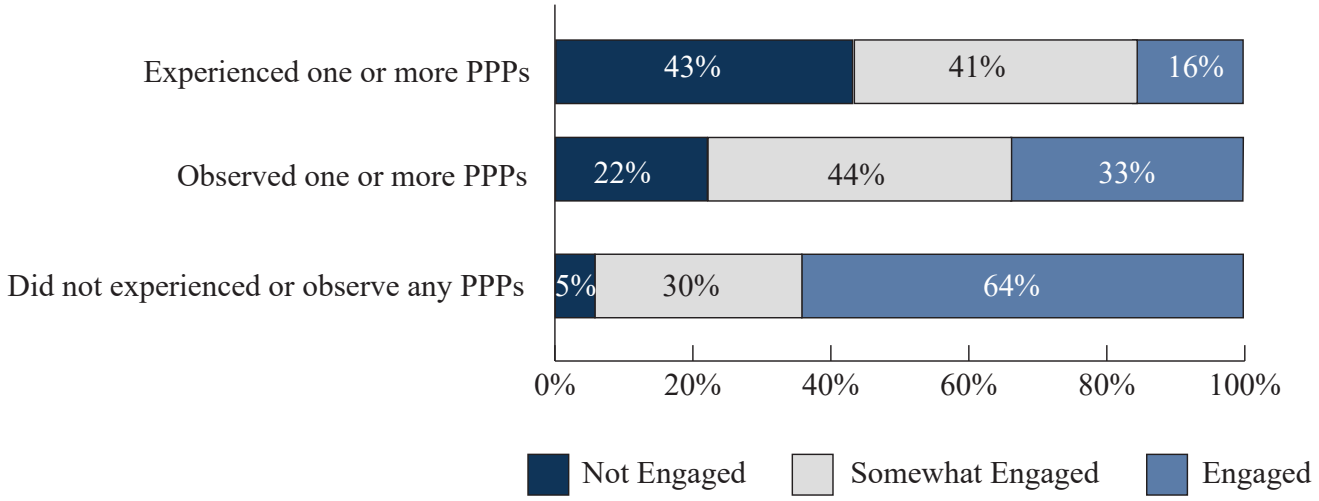
[78] *See, e.g.*, U.S. Office of Personnel Management, *The Keys to Unlocking Engagement*, available at https://www.opm.gov/fevs/reports/special-reports/report-the-key-to-unlocking-engagement-2016.pdf.

[79] U.S. Merit Systems Protection Board, *The Power of Federal Employee Engagement* (2008), at 27-35, available at www.mspb.gov/studies.

[80] U.S. Merit Systems Protection Board, *The Perceived Incidence of Prohibited Personnel Practices* (2019) and *Prohibited Personnel Practices: Employee Perceptions* (2011), available at www.mspb.gov/studies.

[81] For more on how the engagement index was designed, *see* Appendix D. The questions that comprise the full scale are also in Appendix D, along with the perception rate for each question.

Chart 11: PPP Perceptions and Engagement Levels



This data cannot establish whether observing a PPP increases the likelihood of an employee feeling disengaged, or whether disengagement increases the likelihood that management actions will be negatively interpreted as the commission of a PPP.[82] Neither of these scenarios, however, is good for the merit systems. Therefore, we recommend that agencies address the situation depicted in the chart from multiple directions: (1) preventing perceptions of PPPs;[83] and (2) fostering positive workplace and engagement environments.

PPPs and Ethical Environments

Research shows that a culture which permits certain unethical behaviors tends to be one where other unethical behaviors are prevalent.[84] On the 2016 MPS, respondents were more likely to report that supervisors and employees were ethical if senior leaders were also perceived as ethical.[85] (For tables showing these results from the 2016 questions, see Appendix E.)

The 2021 MPS data for the PPPs demonstrates a relationship between perceptions of the ethical environment established by senior leaders and the reported prevalence of perceived PPPs. As shown in the table below, both the number of perceived PPPs and whether the respondent felt they personally experienced a PPP had a relationship to their view of senior leaders' tolerance of

[82] Emotional experiences can enhance "attention, leading to increased detection of emotional events." R. J. Dolan, "Emotion, Cognition, and Behavior," *Science* (Nov. 8, 2002) Vol. 298, No. 5596, at 1191. As many of our engagement questions ask about how the person feels, and the PPPs tend to deal with experiencing or seeing mistreatment, it is not surprising that these sets of questions correlate. There is also a concept known as "mood-as-input" in which once a person is signaled that something is wrong, their cognitive processing may be alerted for other signs and possible causes, while positive mood signals assure the person that all is well, and they will be less likely to continue to analyze causes and effects. Sigal G. Barsade and Donald E. Gibson, "Why Does Affect Matter in Organizations?" *Academy of Management Perspectives* (Feb. 2007) Vol. 21, No. 1, at 45.

[83] As stated in Chapter Two, we cannot establish the extent to which there are PPPs that need to be prevented versus employee misperceptions that need to be repaired through better communication and trust-building, so both should be addressed.

[84] *See, e.g.*, Sean T. Hannah, et. al, "Joint Influences of Individual and Work Unit Abusive Supervision on Ethical Intentions and Behaviors: A Moderated Mediation Model," *Journal of Applied Psychology* (2013), Vol. 98, No. 4, at 590 (explaining that abusive supervision, whether experienced personally or vicariously, may negatively impact the ethical behaviors of others); Dong Liu, Hui Liao, and Raymond Loi, "The Dark Side of Leadership: A Three-Level Investigation of the Cascading Effect of Abusive Supervision on Employee Creativity," *Academy of Management Journal* (Oct. 2012), Vol. 55, No. 5, at 1206 (explaining that that "abusive supervision by top management renders middle-level managers more likely to display abusive behaviors"). We cannot state the causes for these perceptions, but whether there are PPPs that need to be prevented or misperceptions that need to be repaired through better communication and trust-building, the data indicates that some job families are in greater need of attention than others.

[85] The 2021 MPS did not have this full set of ethics questions.

unethical supervisors. But, of the two, it was the *number* of perceived PPPs (more than personal experience) that had the larger impact—with those who reported seeing multiple PPPs (while experiencing none) expressing a more negative opinion of senior leaders' actions than those who reported experiencing a single PPP.

Table 14: Perceptions of Tolerance of Unethical Supervisors (by Level of PPP Exposure)

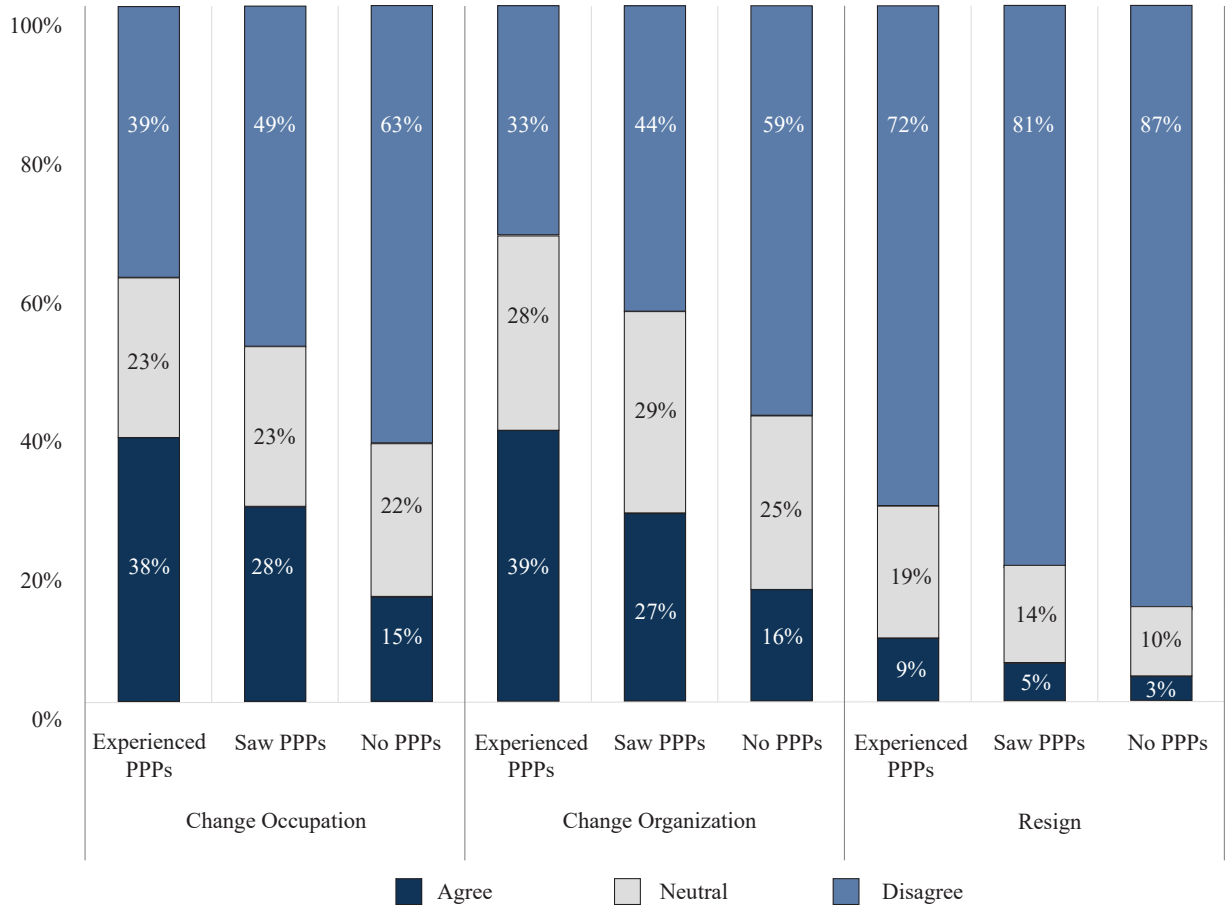
	My senior leaders tolerate unethical supervisors		
	Agree	Neither Agree nor Disagree	Disagree
Affected by 2+ PPPs	56%	18%	26%
Affected by 1 PPP	32%	31%	37%
Observed 2+ PPPs (not affected)	38%	30%	32%
Observed 1 PPP (not affected)	17%	32%	52%
No PPPs Observed or Experienced	11%	19%	69%

We cannot establish the extent to which respondents were—or were not—thinking of the PPPs when answering this question about senior leaders' tolerance of unethical supervisors. But whether employees were holding senior leaders to account for seemingly permitting PPPs or expressing displeasure about the larger ethical environment in which those PPPs were perceived, the data supports the concept that PPPs are part of an agency's ethical culture. And, as discussed in the following section, perceptions of a poor ethical environment, especially one with PPPs, may harm an agency's ability to hire and retain a quality workforce.

PPPs and Talent Loss

The survey asked employees three separate questions to address whether, in the next 2 years, they intended to: (1) move to a different occupation; (2) move to a different organization or agency; or (3) resign from the Federal Government. As shown in Chart 12, for each of these questions about their future intentions, the intent to quit was higher if the individual observed a PPP compared to those who did not perceive any PPPs. Quit intentions increased even further if they personally experienced a PPP.

Chart 12: PPP Perceptions (Observed and Experienced) and Quit Intentions



Respondents who reported in 2021 that their senior leaders tolerated unethical supervisors expressed much higher quit intentions than respondents who did not report this. This held true even for those respondents who reported seeing no PPPs while reporting that their leaders tolerated unethical supervisors, although the desire to leave was even more prevalent when a perceived PPP was reported.

Table 15 shows the interaction of perceived PPPs and tolerance of unethical supervisors with the question on plans to move to a different organization or agency. As demonstrated below, the intent to leave more than tripled from 12 percent for those who did not perceive any PPPs and thought their supervisors did not tolerate unethical supervisors to 44 percent for those who both felt they had experienced a PPP and that senior leaders tolerate unethical supervisors. (For data tables addressing all three departure intention questions, see Appendix F.)

Table 15: Perceptions of PPPs, Tolerance of Unethical Supervisors, and Plan to Move to a Different Organization or Agency

My senior leaders tolerate unethical supervisors	PPP Exposure	Plan to move to a different organization or agency		
		Disagree	Neither Agree nor Disagree	Agree
Agree	Experienced PPP(s)	31%	26%	44%
	Observed (PPPs)	40%	23%	38%
	Neither Experienced nor Observed	47%	21%	33%
Neither Agree nor Disagree	Experienced PPP(s)	28%	38%	33%
	Observed (PPPs)	37%	38%	25%
	Neither Experienced nor Observed	47%	34%	19%
Disagree	Experienced PPP(s)	41%	23%	36%
	Observed (PPPs)	51%	26%	23%
	Neither Experienced nor Observed	64%	24%	12%

MPS respondents also indicated that they were less likely to recommend their agency as a place to work if they agreed that their senior leaders tolerated unethical supervisors. Consistent with the above data on an increased desire to quit, those who reported that the agency tolerated unethical supervisors and also that they observed a PPP were even less likely to recommend their agency as an employer than those who reported leadership tolerance for unethical supervisors but did not observe a PPP. (For the chart showing the interaction between PPPs and willingness to recommend the employer, see Appendix F.)

The nature of the MPS is that it seeks perceptions from current employees. It cannot be used to address the question of how many employees actually will depart, nor can it indicate how many have already departed prior to the survey's administration as a result of perceived PPPs. However, the effects of perceived PPPs on quit intentions reflected in the survey data is consistent with what agencies reported through the questionnaires. Agency representatives overwhelmingly indicated that the promise of protecting workers from PPPs was a very important tool for attracting and retaining good employees, although one agency representative went out of his way to tell us that the promise alone was insufficient, stating that, "you have to do it."[86]

Thus, it appears that:

1. Perceptions of PPPs positively correlate with the respondents' desire to leave and a reduced probability of recommending the agency as an employer to others;

[86] Twenty-one agency representatives indicated it was important to a "great extent," while two indicated it was important to "some extent." No one indicated it was important to "little extent," and the only respondent who stated anything along the lines of an answer of it being important to "no extent" was the one who, rather than selecting from the list, told us that the promise was insufficient—it was action that mattered.

2. Perceptions of leadership tolerance of unethical behaviors positively correlate with the respondents' desire to leave and a reduced probability of recommending the agency as an employer to others; and

3. A combination of perceptions of both PPPs and tolerance of unethical leaders may have a greater negative impact on talent recruitment and retention than either problem alone.

Accordingly, if agencies are to deal effectively with the challenge of maintaining a high-quality workforce, whether through recruitment or retention, the agency's ethical environment may need to be addressed.

We recognize that to say, "employ ethical people" is not—in and of itself—a plan. A recurring concern with assessments of applicant integrity and honesty is their "fakeability"—the degree to which a dishonest but clever applicant can deduce the strategy behind many of the questions and respond as an honest person would.[87] Reference checks, however, can provide a more reliable source of information about the past ethical conduct of applicants. We recommend that agencies include in their assessment plans a measure for expressly identifying potential ethical issues before making a final selection. This may apply to all positions but especially to supervisory positions.

For those situations in which the agency is already the employer of an unethical person, chapter 75 of title 5 authorizes an agency to take disciplinary actions to "promote the efficiency of the service."[88] Further, the Board has held that conduct that knowingly "aids and abets" a person committing a PPP may be an offense that warrants discipline.[89] The most appropriate response for an agency to take when faced with an official committing a PPP or ethical impropriety can vary by the specific facts of the case—and in some situations, a form of alternative discipline may be appropriate.[90] But, while circumstances—and therefore agency responses—may vary, officials do have options to address PPPs and unethical conduct.

Identifying Solutions to Prevent PPPs

The best solution for a particular issue will depend on precisely what is occurring and why. Thus, while we can offer examples of possible approaches, it is important that agencies investigate closely what is happening to a workforce and tailor a solution to the particular problem.

[87] U.S. Merit Systems Protection Board, *Reference Checking in Federal Hiring: Making the Call* (2005), at 22, available at www.mspb.gov/studies. *See also* U.S. Merit Systems Protection Board, "When Can Training Help Remedy Wrongdoing?" *Issues of Merit* (Fall 2016) (discussing how the teaching of rules can enhance the effectiveness of preexisting integrity but cannot substitute for it).

[88] *See, e.g., Booker v. Department of Veterans Affairs*, 110 M.S.P.R. 72, 80-82 (2008) (holding that it was reasonable to remove a supervisor for a single incident of sexual harassment).

[89] In *Special Counsel v. Lee*, the Board held that a human resources advisor had an obligation to exercise independent judgment and challenge "local management's fairly obvious efforts to grant a preference" in violation of 5 U.S.C. § 2302(b)(6). For having aided and abetted the commission of this PPP, the employee was suspended for 45 days. *Special Counsel v. Lee*, 114 M.S.P.R. 57, 72-74, 78 (2010); *rev'd in part Beatrez v. Merit Systems Protection Board*, 413 F. App'x 298 (Fed. Cir. 2011) (finding that a different HR employee involved in the action lacked the same intent to assist in the commission of the PPP, and that discipline for her was therefore not warranted).

[90] For more on alternative discipline, *see* U.S. Merit Systems Protection Board, *Alternative Discipline: Creative Solutions for Agencies to Effectively Address Misconduct* (2008), available at www.mspb.gov/studies.

For example, in 2012, the Office of the Inspector General (OIG) for the Department of Justice (DOJ) reported "the third occasion in eight years" in which the OIG found that a particular division in DOJ had issues with nepotistic hiring contrary to law. Multiple officials were implicated in the 2012 report, including two officials allegedly engaging "in nepotism by hiring each other's children."[91]

Soon thereafter, DOJ expanded its vacancy application process to require applicants to disclose not only if there were agency employees to whom they were related (required by an OPM standard form) but also the existence of domestic partners, those with whom the applicant shared a household, and distant relatives with whom there was a close personal relationship. DOJ also created a form in which the selecting official was required to certify in writing whether the selection was influenced by an employee who is a relative of—or in a covered relationship with—the selectee. The selecting official also had to certify whether there had been contact with an employee who was a relative of—or in a covered relationship with—the selectee, and, if there had been contact, explain why the contact did not affect the selection. The forms were then reviewed by another senior official who had not been involved in the hiring action."[92]

As stated in MSPB's 2016 report describing DOJ's practices, "as with any procedure, a cost-benefit analysis would be wise. There are already complaints that the hiring process is overly burdened with procedures and paperwork; but, the more vulnerable a position is to nepotism or ethical violations, the more appropriate it becomes to apply additional protections[.]"[93]

In a recent edition of MSPB's newsletter, *Issues of Merit*, we discussed one possible means to address perceptions of manipulation of a hiring action to favor an individual—the most commonly perceived PPP.[94] The article pointed out several benefits to using subject matter experts (SMEs) to design the recruitment announcement, develop the assessment plan, and apply the assessments. By using peers of the vacant position to conduct these tasks, and by advancing only the very best candidates to the final step, the agency may reduce the risk of a selecting official choosing a candidate who is clearly less qualified, because that person ought never be referred to the official at all.

An agency may find this additional investment worthwhile, particularly after factoring in advantages beyond the perceived PPPs. For example, when candidates are interviewed by a diverse group of their future peers, the agency may get better recommendations than any one person could give, and the candidates may get a better sense of the workplace. Additionally, the person selected may have greater credibility on arrival and have peers who are now invested in their success because those peers put their own reputations on the line by recommending the candidate after the assessment process. Another benefit is that the selectee may be more eager to accept an offer

[91] U.S. Department of Justice, Office of the Inspector General, *Report Regarding Investigation of Improper Hiring Practices in the Justice Management Division* (Jul. 2012), at 1, 95.

[92] For more on the U.S. Department of Justice's (DOJ's) process, including copies of the forms, *see* U.S. Merit Systems Protection Board, *Preventing Nepotism in the Federal Service* (2016), at 34-36, Appendix D, available at www.mspb.gov/studies.

[93] *Id*. at 35.

[94] *Id*. at 35. *See* U.S. Merit Systems Protection Board, "Preventing Perceptions of Favoritism: Consider Using Subject Matter Experts," *Issues of Merit* (Apr. 2022), available at www.mspb.gov/studies.

from a workplace that shows it values its employees' expertise by involving the SMEs in the hiring process. However, the use of SMEs is not without costs, as these tasks would briefly take the SMEs away from their other duties, and they may need additional training on how to effectively perform these tasks.

Whether this use of SMEs is suitable can vary by the positions, workforces, and applicant pools involved. The same is true for many other possible solutions to PPP problems within agencies. We recommend that agencies investigate what problems they have, and where and why they have them, and then tailor the solutions with a cost-benefit analysis of what burdens may come with the additional precautions, what benefits those precautions bring (both for preventing PPPs and general good management), and how those costs and benefits compare to the problems the agency, bureau, or smaller sub-division may face.

Conclusion

The frequency of most PPP perceptions decreased in 2021. However, employees still reported experiencing and observing PPPs at notable levels. In 2010, 34 percent of MPS respondents reported that they either experienced or observed one or more of the PPPs itemized in that survey. That figure rose to 46 percent in 2016 but was only 29 percent in 2021. Only two PPPs in 2021 had perception rates more than 1.1 percentage points higher than their 2010 levels: political coercion (perceptions doubled, from 2.3 to 4.6 percent) and political discrimination (perceptions more than doubled, from 3.2 to 7.1 percent). OPM, agencies, and other stakeholders should consider whether this data—for both increases and decreases in PPPs—may offer insights for future policies.

The survey data shows certain risk factors for increased perceptions that PPPs have taken place. The extent to which individual PPPs are perceived varies by agency, and even when an agency can be identified as having a particular problem, it does not necessarily mean the entire agency shares that problem to the same degree. Agency leaders should examine their data in greater depth to identify issues within their own agencies and to use that information to inform other data-gathering methods, such as questions to place on internal surveys or exit surveys or which HR and workforce accountability metrics to track. That data then should be used to devise an action plan tailored to the specific needs of the agency or to individual directorates where problems are more localized.

Although perception rates rose and fell for most PPPs, certain PPPs are consistently perceived at a higher rate compared to others. Across all three surveys (in 2010, 2016, and 2021), the most commonly perceived PPP was an attempt to define the scope or manner of a recruitment action, or the qualifications required, for the purpose of improving a particular person's chances for selection. Additionally, across all three surveys, the three most commonly perceived forms of discrimination were race, sex, and age discrimination, appearing in that order in each survey. Accordingly, agencies should pay particular attention to these PPPs in their action plans.

Survey respondents who perceived that they had experienced or observed a PPP reported that it often came from individuals in more than one role. Ten of the 22 PPP items had more than half of the respondents select at least two different roles. Accordingly, where such problems exist, agencies should examine whether there is a systemic issue as opposed to focusing on individual bad actors alone. Additionally, a relationship exists between PPP perceptions and employee quit intentions. The effects of PPPs on talent loss were exacerbated when respondents perceived that their senior leaders tolerated unethical conduct by supervisors. We recommend the use of reference checks in hiring to assess past conduct by potential employees and the use of disciplinary authorities, when necessary, to address ongoing conduct by current employees. We also recommend that leaders set the tone at the top through their own actions by serving as role models for ethical conduct.

Our overarching recommendation is that agencies commit to establishing and promoting an ethical culture at all levels of their organizations, cascading from senior executives to front-line workers, because it is the culture that will drive the day-to-day decisions that people make, including whether they will engage in actions that constitute PPPs or that others may perceive as PPPs. To adhere to the requirements of 5 U.S.C. § 2302(b), and to avoid the negative consequences discussed throughout this report, agencies need to prioritize having an ethical culture and to ensure that their policies and practices provide the necessary support to put that culture into action.

Appendix A: The Prohibited Personnel Practices (5 U.S.C. § 2302)

(a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b).

(2) For the purpose of this section–

(A) "personnel action" means–

(i) an appointment;

(ii) a promotion;

(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

(iv) a detail, transfer, or reassignment;

(v) a reinstatement;

(vi) a restoration;

(vii) a reemployment;

(viii) a performance evaluation under chapter 43 of this title or under title 38;

(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;

(x) a decision to order psychiatric testing or examination;

(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and

(xii) any other significant change in duties, responsibilities, or working conditions; with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

(B) "covered position" means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action–

(i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration;

(C) "agency" means an Executive agency and the Government Publishing Office, but does not include–

(i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D);

(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Office of the Director of National Intelligence, and the National Reconnaissance Office; and

(II) as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, provided that the determination be made prior to a personnel action; or

(iii) the Government Accountability Office; and

(D) "disclosure" means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences–

(i) any violation of any law, rule, or regulation; or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

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

(1) discriminate for or against any employee or applicant for employment–

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

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of–

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of–

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences–

(i) any violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs;

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences–

(i) any violation (other than a violation of this section) of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

(C) any disclosure to Congress (including any committee of Congress) by any employee of an agency or applicant for employment at an agency of information described in subparagraph (B) that is–

(i) not classified; or

(ii) if classified–

(I) has been classified by the head of an agency that is not an element of the intelligence community (as defined by section 3 of the National Security Act of 1947 (50 U.S.C. 3003)); and

(II) does not reveal intelligence sources and methods.

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of–

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation–

(i) with regard to remedying a violation of paragraph (8); or

(ii) other than with regard to remedying a violation of paragraph (8);

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);

(C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) refusing to obey an order that would require the individual to violate a law, rule, or regulation;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;

(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement–

(A) does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."; or

(B) prohibits or restricts an employee or applicant for employment from disclosing to Congress, the Special Counsel, the Inspector General of an agency, or any other agency component responsible for internal investigation or review any information that relates to any violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection; or

(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).

This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

(c)(1) In this subsection–

(A) the term "new employee" means an individual–

(i) appointed to a position as an employee on or after the date of enactment of this subsection; and

(ii) who has not previously served as an employee; and

(B) the term "whistleblower protections" means the protections against and remedies for a prohibited personnel practice described in paragraph (8) or subparagraph (A)(i), (B), (C), or (D) of paragraph (9) of subsection (b).

(2) The head of each agency shall be responsible for–

(A) preventing prohibited personnel practices;

(B) complying with and enforcing applicable civil service laws, rules, and regulations and other aspects of personnel management; and

(C) ensuring, in consultation with the Special Counsel and the Inspector General of the agency, that employees of the agency are informed of the rights and remedies available to the employees under this chapter and chapter 12, including–

(i) information with respect to whistleblower protections available to new employees during a probationary period;

(ii) the role of the Office of Special Counsel and the Merit Systems Protection Board with respect to whistleblower protections; and

(iii) the means by which, with respect to information that is otherwise required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, an employee may make a lawful disclosure of the information to–

(I) the Special Counsel;

(II) the Inspector General of an agency;

(III) Congress (including any committee of Congress with respect to information that is not classified or, if classified, has been classified by the head of an agency that is not an element of the intelligence community and does not reveal intelligence sources and methods); or

(IV) another employee of the agency who is designated to receive such a disclosure.

(3) The head of each agency shall ensure that the information described in paragraph (2) is provided to each new employee of the agency not later than 180 days after the date on which the new employee is appointed.

(4) The head of each agency shall make available information regarding whistleblower protections applicable to employees of the agency on the public website of the agency and on any online portal that is made available only to employees of the agency, if such portal exists.

(5) Any employee to whom the head of an agency delegates authority for any aspect of personnel management shall, within the limits of the scope of the delegation, be responsible for the activities described in paragraph (2).

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under–

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(e)(1) For the purpose of this section, the term "veterans' preference requirement" means any of the following provisions of law:

(A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.

(B) Sections 943(c)(2) and 1784(c) of title 10.

(C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.

(D) Section 301(c) of the Foreign Service Act of 1980.

(E) Sections 106(f), 7281(e), and 7802(5) of title 38.

(F) Section 1005(a) of title 39.

(G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.

(H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

(2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).

(f)(1) A disclosure shall not be excluded from subsection (b)(8) because–

(A) the disclosure was made to a supervisor or to a person who participated in an activity that the employee or applicant reasonably believed to be covered by subsection (b)(8)(A)(i) and (ii);

(B) the disclosure revealed information that had been previously disclosed;

(C) of the employee's or applicant's motive for making the disclosure;

(D) the disclosure was not made in writing;

(E) the disclosure was made while the employee was off duty;

(F) the disclosure was made before the date on which the individual was appointed or applied for appointment to a position; or

(G) of the amount of time which has passed since the occurrence of the events described in the disclosure.

(2) If a disclosure is made during the normal course of duties of an employee, the principal job function of whom is to regularly investigate and disclose wrongdoing (referred to in this paragraph as the "disclosing employee"), the disclosure shall not be excluded from subsection (b)(8) if the disclosing employee demonstrates that an employee who has the authority to take, direct other individuals to take, recommend, or approve any personnel action with respect to the disclosing employee took, failed to take, or threatened to take or fail to take a personnel action with respect to the disclosing employee in reprisal for the disclosure made by the disclosing employee.

Appendix B: Statistical Significance

Understanding how we determined the statistical significance for the differences in the data between 2010 and 2021 is not necessary to use this report. However, this explanation is provided for those who may be interested. To determine the statistical significance, we utilized unweighted data to calculate an initial *p* value. The initial *p* value was multiplied by 19, as there are 19 survey items that permit a comparison of MPS 2010 and MPS 2021 data. The difference in the data between the two survey administrations was considered statistically significant if the adjusted *p* value was less than .01. As a result of each individual calculation, the dividing line of significance was at seven-tenths of a percentage point. The table below provides the outcome for each of the survey items.

	2010 Percent (as Decimal)	2010 Item Response Population	2021 Percent (as Decimal)	2021 Item Response Population	Percentage Point Difference	Significant at $p<.01$	Significant at $p<.05$
Discrimination: Race	0.125	29107	0.122	22964	+0.3%	No	No
Discrimination: Religion	0.027	27875	0.028	21883	-0.1%	No	No
Discrimination: Sex	0.100	28426	0.114	22694	-1.4%	Yes	Yes
Discrimination: National Origin	0.049	28031	0.043	22031	+0.6%	No	Yes
Discrimination: Age	0.097	28433	0.099	22470	-0.2%	No	Yes
Discrimination: Disabling Condition	0.057	28211	0.057	22136	0.0%	No	No
Discrimination: Marital Status	0.033	27842	0.026	21952	+0.7%	Yes	Yes
Discrimination: Political Affiliation	0.028	27266	0.058	2834	-3.0%	Yes	Yes
Discrimination: Sexual Orientation	0.033	27444	0.030	21800	+0.3%	No	No

	2010 Percent (as Decimal)	2010 Item Response Population	2021 Percent (as Decimal)	2021 Item Response Population	Percentage Point Difference	Significant at $p<.01$	Significant at $p<.05$
Improper employment recommendations	0.096	26431	0.091	21535	+0.5%	No	No
Pressure for or against a candidate or party	0.018	27951	0.033	22412	-1.5%	Yes	Yes
Obstructed a right to compete for employment	0.106	27190	0.092	21971	+1.4%	Yes	Yes
Withdrawal from competition	0.059	27265	0.055	21290	+0.4%	No	No
Tried to manipulate a recruitment action	0.186	27693	0.146	21637	+4.0%	Yes	Yes
Nepotism	0.098	26997	0.065	20494	+3.3%	Yes	Yes
Discrimination: Off-duty conduct	0.057	26762	0.057	19869	0.0%	No	No
Violation of veteran rights	0.036	26012	0.032	19866	+0.4%	No	No
Retaliation for whistleblowing	0.063	26582	0.051	19398	+1.2%	Yes	Yes
Retaliation for filing an appeal or grievance	0.087	26598	0.097	19177	-1.0%	Yes	Yes

Appendix C: Rates of Perception in 2021

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has...	This has NOT occurred in my work unit ↓	This has occurred in my work unit, but I was not personally affected by this ↓	I was personally affected by this ↓
…discriminated in favor or against someone in a personnel action based upon race.	85.4%	8.2%	6.4%
…discriminated in favor or against someone in a personnel action based upon religion.	96.4%	2.2%	1.4%
…discriminated in favor or against someone in a personnel action based upon sex.	87.2%	7.5%	5.3%
…discriminated in favor or against someone in a personnel action based upon sexual orientation.	96.3%	2.8%	0.9%
…discriminated in favor or against someone in a personnel action based upon national origin.	94.7%	3.2%	2.1%
…discriminated in favor or against someone in a personnel action based upon age.	89.2%	5.4%	5.4%
…discriminated in favor or against someone in a personnel action based upon disabling condition.	92.1%	3.9%	4.0%
…discriminated in favor or against someone in a personnel action based upon marital status.	97.1%	1.5%	1.4%
…discriminated in favor or against someone in a personnel action based upon political affiliation.	92.9%	4.6%	2.5%
… solicited or considered improper employment recommendations.	89.0%	6.7%	4.3%
…tried to pressure someone to support or oppose a particular candidate or party for elected office.	95.4%	3.1%	1.4%
…obstructed someone's right to compete for employment.	88.3%	6.5%	5.2%
…tried to influence someone to withdraw from competition for a position for the purpose of helping or injuring someone else's chances.	93.4%	4.5%	2.2%
…tried to define the scope or manner of a recruitment action, or the qualifications required, for the purpose of improving the chances of a particular person.	83.7%	10.4%	5.9%

In the past 2 years, an agency official (e.g., supervisor, manager, senior leader, etc.) in my work unit has...	I was personally affected by this ↓	This has occurred in my work unit, but I was not personally affected by this ↓	This has NOT occurred in my work unit ↓
…advocated for the appointment, employment, promotion, or advancement of a relative.	1.9%	7.5%	90.6%
...disclosed a violation of law, rules, or regulations or reported fraud, waste, abuse, or a substantial and specific danger to public health or safety.	2.6%	3.9%	93.5%
... took or threatened to take a personnel action against an employee because the employee filed an appeal or grievance.	4.1%	8.0%	87.9%
... took or threatened to take a personnel action against an employee because the employee refused to violate a law, rule, or regulation.	2.6%	3.2%	94.2%
…discriminated in favor or against someone in a personnel action on the basis of off-duty conduct which was entirely unrelated to the job.	2.6%	5.1%	92.3%
…knowingly violated a lawful form of veterans' preference or veterans' protection laws.	2.1%	2.5%	95.3%
… asked an employee to sign a non-disclosure agreement limiting the individual's ability to blow the whistle on wrongdoing.	0.9%	1.4%	97.7%
...accessed the medical record of an employee or applicant in an attempt to commit a prohibited personnel practice.	1.0%	1.5%	97.5%

*Row totals may not equal 100% due to rounding.

Appendix D: Perception Rates For Engagement Index Questions

As discussed in Chapter Four, MPS data showed a relationship between PPP perceptions and levels of engagement. The MPS engagement index consists of 16 questions, each of which had a five-level response scale: Strongly Disagree, Disagree, Neither Agree nor Disagree, Agree, and Strongly Agree. We assigned a point value ranging from 1 to 5 to each of these possible responses and combined them into a single score ranging from 16 to 80 points. Scores were then grouped into "engaged," "somewhat engaged," or "not engaged" categories based on whether their overall result was an average of: (1) agreement or better; (2) less than agreement but at least a neutral response; or (3) below a neutral response. The chart below offers a visual depiction of the categories.

Chart 13: Creation of Categories for the MPS Engagement Score

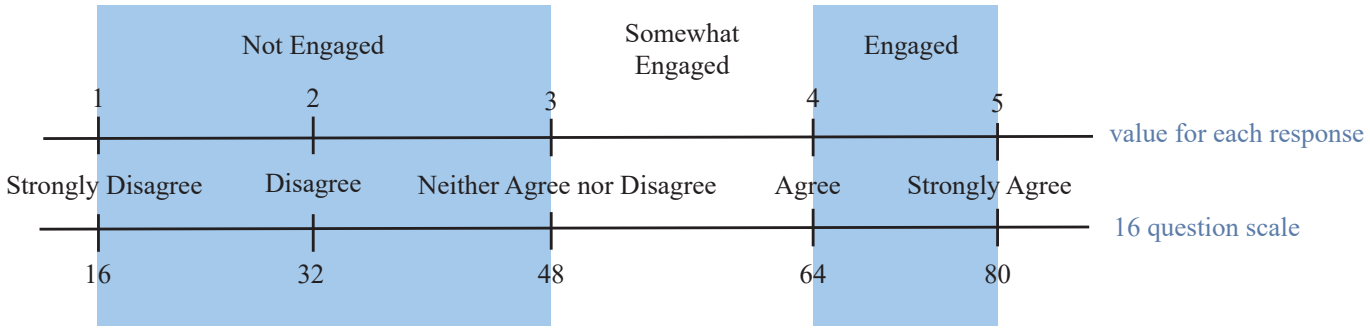


Table 16 provides the individual survey items from the MSPB engagement index and the results for each question broken out by whether the respondent experienced at least one PPP, observed at least one PPP while experiencing none, or neither observed nor experienced any PPPs from the survey. As the table shows, seeing and experiencing PPPs consistently correlate with less positive views on the individual engagement questions.

Table 16: Questions on the MSPB Engagement Index and Perceptions of PPPs

Engagement Index Question	PPP Exposure	Disagree	Neither Agree nor Disagree	Agree
My agency is successful at accomplishing its mission.	Experienced PPP(s)	17%	14%	69%
	Observed PPP(s)	8%	12%	80%
	Neither Experienced nor Observed	3%	7%	90%
The work I do is meaningful to me.	Experienced PPP(s)	10%	10%	80%
	Observed PPP(s)	6%	11%	83%
	Neither Experienced nor Observed	3%	6%	91%
My work unit produces high quality products and services.	Experienced PPP(s)	16%	15%	69%
	Observed PPP(s)	8%	14%	77%
	Neither Experienced nor Observed	2%	7%	91%
I would recommend my agency as a place to work.	Experienced PPP(s)	33%	22%	45%
	Observed PPP(s)	18%	21%	61%
	Neither Experienced nor Observed	6%	11%	83%
Overall, I am satisfied with my supervisor.	Experienced PPP(s)	36%	16%	47%
	Observed PPP(s)	19%	17%	64%
	Neither Experienced nor Observed	6%	8%	86%

Table 16: Questions on the MSPB Engagement Index and Perceptions of PPPs (Continued)

Workplace Culture Question	PPP Exposure	Disagree	Neither Agree nor Disagree	Agree
Overall, I am satisfied with managers above my immediate supervisor.	Experienced PPP(s)	50%	21%	29%
	Observed PPP(s)	31%	22%	47%
	Neither Experienced nor Observed	11%	15%	74%
I know what is expected of me on the job.	Experienced PPP(s)	14%	11%	75%
	Observed PPP(s)	7%	8%	85%
	Neither Experienced nor Observed	3%	5%	92%
My job makes good use of my skills and abilities.	Experienced PPP(s)	38%	13%	49%
	Observed PPP(s)	20%	15%	64%
	Neither Experienced nor Observed	8%	9%	82%
I have the resources to do my job well.	Experienced PPP(s)	36%	19%	45%
	Observed PPP(s)	25%	18%	57%
	Neither Experienced nor Observed	12%	13%	75%
I have sufficient opportunities (such as challenging assignments or projects) to earn a high performance rating.	Experienced PPP(s)	39%	19%	42%
	Observed PPP(s)	22%	20%	58%
	Neither Experienced nor Observed	9%	13%	78%
Recognition and rewards are based on performance in my work unit.	Experienced PPP(s)	56%	19%	25%
	Observed PPP(s)	34%	23%	43%
	Neither Experienced nor Observed	12%	18%	70%

Table 16: Questions on the MSPB Engagement Index and Perception of PPPs (continued)

Workplace Culture Question	PPP Exposure	Disagree	Neither Agree nor Disagree	Agree
I am satisfied with the recognition and rewards I receive for my work.	Experienced PPP(s)	58%	20%	21%
	Observed PPP(s)	34%	25%	41%
	Neither Experienced nor Observed	15%	20%	65%
I am given a real opportunity to improve my skills in my organization.	Experienced PPP(s)	45%	24%	31%
	Observed PPP(s)	27%	24%	49%
	Neither Experienced nor Observed	10%	17%	73%
I am treated with respect at work.	Experienced PPP(s)	37%	20%	43%
	Observed PPP(s)	13%	16%	72%
	Neither Experienced nor Observed	3%	7%	89%
My opinions count at work.	Experienced PPP(s)	50%	20%	30%
	Observed PPP(s)	25%	23%	52%
	Neither Experienced nor Observed	8%	14%	78%
A spirit of cooperation and teamwork exists in my work unit.	Experienced PPP(s)	40%	19%	41%
	Observed PPP(s)	20%	20%	60%
	Neither Experienced nor Observed	7%	11%	82%

Appendix E: Perceptions of Ethical Environments

As discussed in Chapter Five, respondents on the 2016 MPS were more likely to report that supervisors were ethical if senior leaders were perceived as ethical.[95] Similarly, respondents were more likely to report that other employees were ethical if supervisors and senior leaders were seen as ethical. The data is presented in the tables below.

Table 17: Perceptions of Ethical Behavior by Senior Leaders and Supervisors

	Supervisors at my agency demonstrate ethical behavior		
Senior leaders at my agency demonstrate ethical behavior	Agree	Neither Agree nor Disagree	Disagree
Agree	93%	5%	2%
Neither Agree nor Disagree	28%	67%	6%
Disagree	24%	20%	56%

Table 18: Perceptions of Ethical Behavior by Senior Leaders and Employees

	Employees at my agency demonstrate ethical behavior		
Senior leaders at my agency demonstrate ethical behavior	Agree	Neither Agree nor Disagree	Disagree
Agree	89%	9%	2%
Neither Agree nor Disagree	36%	58%	6%
Disagree	36%	29%	35%

Table 19: Perceptions of Ethical Behavior by Supervisors and Employees

	Employees at my agency demonstrate ethical behavior		
Supervisors at my agency demonstrate ethical behavior	Agree	Neither Agree nor Disagree	Disagree
Agree	90%	8%	2%
Neither Agree nor Disagree	23%	71%	6%
Disagree	23%	26%	52%

[95] All rows in the displayed tables have at least 850 unweighted respondents.

Appendix F: Talent Loss and Recruitment

As discussed in our chapter on the business case for preventing PPPs: (1) perceptions that PPPs occur in the work unit correlate with increased quit intentions; (2) perceptions that senior leaders tolerate unethical supervisors correlate with increased quit intentions; and (3) the combination of these two perceptions appears to be particularly harmful to the respondents' intentions to remain. Additionally, they harm the probability of the respondent recommending the agency as a place to work.

The tables on the following pages provide data for three types of departure intent: (1) change of employing agency; (2) change of occupation; and (3) resignation from the entire Federal Government.[96] These are followed by a table for the willingness to recommend the agency as an employer.

Each type of departure creates different consequences for the American taxpayer. When people change positions, jobs may remain vacant for some time as agencies seek to find new candidates, creating a greater burden on those who remain and potentially affecting the timeliness of products to customers or other elements of agency efficiency, effectiveness, productivity, or success. Additionally, efforts by human resources employees and supervisors must be diverted from other duties to assess job applications. If employees change occupations, then in addition to the above costs, there may a "learning curve" in the new position. And when employees leave government service altogether, the potential loss (cost) includes not only the employees who leave but also all the training previously invested in them.

The costs and difficulties for an agency caused by such churn may vary. We also cannot state for a fact that these surveyed individuals will, in fact, depart. However, any agency interested in recruiting and retaining a quality workforce should consider the implications of this data.

[96] All rows had at least 750 unweighted respondents.

Table 15 (Repeated from Chapter Five): Perceptions of PPPs, Tolerance of Unethical Supervisors, and Plan to Move to a Different Organization or Agency

My senior leaders tolerate unethical supervisors	PPP Exposure	Plan to move to a different organization or agency		
		Disagree	Neither Agree nor Disagree	Agree
Agree	Experienced PPP(s)	31%	26%	44%
	Observed (PPPs)	40%	23%	38%
	Neither Experienced nor Observed	47%	21%	33%
Neither Agree nor Disagree	Experienced PPP(s)	28%	38%	33%
	Observed (PPPs)	37%	38%	25%
	Neither Experienced nor Observed	47%	34%	19%
Disagree	Experienced PPP(s)	41%	23%	36%
	Observed (PPPs)	51%	26%	23%
	Neither Experienced nor Observed	64%	24%	12%

Table 20: Perceptions of PPPs, Tolerance of Unethical Supervisors, and Plan to Change Occupation or Line of Work

My senior leaders tolerate unethical supervisors	PPP Exposure	Plan to change occupation or line of work		
		Disagree	Neither Agree nor Disagree	Agree
Agree	Experienced PPP(s)	37%	20%	43%
	Observed (PPPs)	42%	21%	37%
	Neither Experienced nor Observed	49%	19%	32%
Neither Agree nor Disagree	Experienced PPP(s)	38%	33%	29%
	Observed (PPPs)	42%	29%	29%
	Neither Experienced nor Observed	51%	33%	16%
Disagree	Experienced PPP(s)	43%	21%	36%
	Observed (PPPs)	56%	20%	23%
	Neither Experienced nor Observed	69%	20%	11%

Table 21: Perceptions of PPPs, Tolerance of Unethical Supervisors, and Plan to Resign from the Federal Government

My senior leaders tolerate unethical supervisors	PPP Exposure	Plan to resign from the Federal Government		
		Disagree	Neither Agree nor Disagree	Agree
Agree	Experienced PPP(s)	68%	21%	12%
	Observed (PPPs)	80%	13%	6%
	Neither Experienced nor Observed	75%	11%	14%
Neither Agree nor Disagree	Experienced PPP(s)	70%	24%	6%
	Observed (PPPs)	74%	21%	5%
	Neither Experienced nor Observed	79%	18%	3%
Disagree	Experienced PPP(s)	79%	15%	7%
	Observed (PPPs)	86%	11%	3%
	Neither Experienced nor Observed	91%	8%	2%

As stated previously, perceptions of PPPs also bore a relationship to the willingness of respondents to recommend their agency as a place to work.[97] While both tolerance of unethical supervisors and PPP perceptions correlated with a decreased willingness to recommend the agency as an employer, the results were most dramatic when tolerance for unethical supervisors was combined with PPPs. As shown in Table 22, for those who neither saw PPPs nor felt their senior leaders tolerated unethical supervisors, 90 percent recommended their agency as an employer. For those who felt both that they had experienced a PPP and that unethical supervisors were tolerated, the rate dropped to 36 percent.

[97] All rows had at least 900 unweighted respondents.

Table 22: Perceptions of PPPs, Tolerance of Unethical Supervisors, and Willingness to Recommend the Agency as an Employer

My senior leaders tolerate unethical supervisors:	PPP Exposure	Willing to recommend the agency as an employer		
		Disagree	Neither Agree nor Disagree	Agree
Agree	Experienced PPP(s)	47%	18%	36%
	Observed (PPPs)	27%	29%	44%
	Neither Experienced nor Observed	13%	10%	77%
Neither Agree nor Disagree	Experienced PPP(s)	20%	24%	48%
	Observed (PPPs)	16%	219%	61%
	Neither Experienced nor Observed	10%	18%	69%
Disagree	Experienced PPP(s)	25%	20%	56%
	Observed (PPPs)	12%	15%	72%
	Neither Experienced nor Observed	3%	7%	90%

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