



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

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## **APR-APP**

for

## **FY 2018 - 2020**

**FY 2018 Annual Performance Report (APR)**

and

**Annual Performance Plan (APP) for  
FY 2019 (Revised) and FY 2020 (Proposed)**

**March 18, 2019**

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## Table of Contents

<b>Introduction</b> .....	<b>1</b>
Summary of FY 2018 Results .....	2
Significant External Trends and Internal Management Challenges.....	2
About MSPB.....	4
<b>Linking this Plan to Other Agency Documents</b> .....	<b>5</b>
<b>MSPB Performance Framework</b> .....	<b>7</b>
Mission.....	7
Vision .....	7
Organizational Values.....	7
Strategic Goals and Objectives.....	8
Management Objectives.....	8
<b>Tabular Summary of Current Progress and Performance Plan</b> .....	<b>9</b>
Table 1: Summary of MSPB FY 2018 Performance Results .....	9
Table 2: Summary of MSPB FY 2019 (Final) – 2020 (Proposed) Performance Plan.....	11
<b>Comprehensive Performance Results and Plans</b> .....	<b>13</b>
Strategic Goal 1.....	13
Strategic Goal 2.....	20
Management Objectives .....	27
<b>Means and Strategies Needed to Accomplish Our Objectives</b> .....	<b>36</b>
Strategic Goal 1.....	36
Strategic Goal 2.....	38
Management Objectives .....	39
<b>Trends and Challenges that May Affect Agency Performance</b> .....	<b>42</b>
Internal Management Challenges.....	42
Significant External Trends and Issues .....	45
<b>Program Evaluation and Performance Measurement</b> .....	<b>49</b>
<b>Appendix A: Information About FY 2018 Whistleblower Appeals</b> .....	<b>53</b>
<b>Appendix B: Information Required under 5 U.S.C. § 7701(i)(1) and (2)</b> .....	<b>59</b>
<b>Appendix C: More Information about MSPB</b> .....	<b>60</b>
<b>List of Common Abbreviations and Acronyms</b> .....	<b>65</b>

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## Foreword

The U.S. Merit Systems Protection Board (MSPB) submits this annual performance report and annual performance plan (APR-APP), which combines the annual performance report for fiscal year (FY) 2018 with the annual performance plan for FY 2019 (Final) – FY 2020 (Proposed), as required by the Government Performance and Results Act Modernization Act of 2010 (GPRAMA). It also contains information about cases involving whistleblowers pursuant to the Whistleblower Protection Enhancement Act of 2012, and appeals processing as required by Title 5 of the United States Code (U.S.C.) § 7701(i)(1).

Since January 8, 2017, MSPB has lacked a quorum of Board members, which has prevented it from issuing decisions on petitions for review and other cases at headquarters, and from issuing reports of merit systems studies. Despite these restrictions, MSPB has continued to carry out its functions to the maximum extent possible. Details of our performance and how the lack of a quorum has affected our performance are contained in the body of this document.

The APR-APP contains information about MSPB including its origin in relation to civil service history; role and functions; scope of responsibility; organization and structure; and how it brings value to the merit systems, Federal agencies, the workforce, and the public. It also provides information about the merit system principles and prohibited personnel practices. The APR-APP contains the annual performance report for FY 2018 comparing actual results to performance targets including prior year results for comparative purposes. It also contains: final goals, measures, and targets for FY 2019 and proposed targets for FY 2020, along with explanatory information on changes; an overall summary of the external trends and internal management challenges that have affected or may continue to affect MSPB's performance; and information about performance measurement and program evaluation.

The APR-APP has been prepared in accordance with guidance provided by the Office of Management and Budget (OMB) and other sources. The APR-APP was prepared by Government employees in accordance with the GPRAMA. The APR-APP is available on the MSPB website at [www.mspb.gov](http://www.mspb.gov).

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

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**U.S. Merit Systems Protection Board**  
**Annual Performance Results for FY 2018**  
**Annual Performance Plan for FY 2019 (Final) and FY 2020 (Proposed)**

## **Introduction**

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

MSPB has been without a quorum of Board members since January 8, 2017, including the entirety of FY 2018. The lack of a quorum prevents the Board from issuing decisions on petitions for review (PFR) and other cases at headquarters (HQ), issuing final reports of merit systems studies, promulgating regulations for implementing legislative changes in our jurisdiction and processes, and from setting FY 2019 targets for several performance goals (PGs) and one strategic objective. Despite these limitations, MSPB continues to carry out all other functions of the agency. Appeals continue to be received in MSPB's regional and field offices (ROs/FOs). MSPB's administrative judges (AJs) review these cases, hold hearings, and issue initial decisions on these cases. The Board continues to receive PFRs and to draft recommended decisions in those cases to await review by new Board members. The parties to initial decisions may also file requests for review by the U.S. Court of Appeals for the Federal Circuit (CAFC), file claims of discrimination (mixed cases) with any other district court or with the Equal Employment Opportunity Commission (EEOC), or file certain whistleblower claims with any circuit courts under the WPEA. MSPB's research staff members continue to collect and analyze data, issue newsletters and other articles, and prepare research reports for consideration by new Board members. MSPB's executive, financial, budgetary, and other administrative operations continue to function. As a result the Board continues to further its mission during this time of significant transition.

On January 23, 2017, the President designated Mark A. Robbins as Vice Chairman. In accordance with statute, Vice Chairman Robbins served as Acting Chairman until his departure on February 28, 2019. In the spring of 2018, the President nominated three new Board members: Dennis D. Kirk as Chairman, Andrew F. Maunz designated as Vice Chairman, and Julia A. Clark as Board Member. The Senate Committee on Homeland Security and Governmental Affairs held a confirmation hearing on July 19, 2018. However, the nominees were not confirmed prior to the adjournment of the 115<sup>th</sup> Congress. On January 16, 2019, the President resubmitted the three nominations for consideration by the 116<sup>th</sup> Congress. Subsequently, the nomination for Mr. Maunz was withdrawn. On February 13, 2019, the remaining two nominees were approved by the Senate Committee. Since March 1, 2019, MSPB has continued to operate in accord with its continuity of operations plan (COOP). Under the COOP, the MSPB General Counsel serves as the agency's acting chief executive and administrative officer.

This APR-APP contains PGs, measures, and targets for the strategic and management objectives defined in MSPB's Strategic Plan for FY 2018-2022. This APR-APP also includes final results for FY 2018, final performance targets for FY 2019, and proposed targets for FY 2020. The performance

plans for FY 2019 and FY 2020 are in line with the enacted budget for FY 2019 and the proposed budget for FY 2020. Should the FY 2019 enacted budget be lower than requested, the PGs and targets for FY 2019 and FY 2020 will be adjusted. The APR-APP also contains information about cases involving whistleblowers pursuant to the Whistleblower Protection Enhancement Act of 2012 (WPEA, [Appendix A](#)), and appeals processing as required by Title 5 of the U.S.C. § 7701(i)(1), ([Appendix B](#)).

## Summary of FY 2018 Results

Highlights of MSPB's FY 2018 results are presented here. Complete performance results are provided in the section on [Comprehensive Performance Results and Plans](#).

Of its strategic and management objectives, MSPB exceeded one, met or partially met nine, and could not rate one. Without a quorum of Board members, the Board could not issue decisions at HQ or release reports of merit systems studies. Therefore, MSPB could not rate at least one PG under the objectives for adjudication, conducting studies of the Federal merit systems, and reviewing the Office of Personnel Management (OPM), and these strategic objectives were only partially met in FY 2018. Likewise, the strategic objective for enforcing MSPB decisions, and its single PG, could not be rated due to the lack of a quorum. Notwithstanding the lack of a quorum, MSPB exceeded its target for initial appeals timeliness, and for publishing editions of its newsletters and other articles.

MSPB exceeded the objective related to advancing the public interest through education by exceeding the PG targets for number of visits to the website and for the number of education related products made available on the website. MSPB met the objective for informing policy-makers by achieving the goal for number and scope of citations of MSPB's work, and exceeding the number of products focused on policy change or intended for policy-makers. MSPB met the objective for number of outreach events.

MSPB met all of its four management objectives. Results for the employee competency, diversity, inclusion, and engagement PG s were within the targeted range. MSPB achieved the targets for average vacancy rate and for ratings of safety and security. MSPB exceeded the targets related to internal and external information technology (IT) customer service and availability and reliability of IT infrastructure. MSPB met its other targets for IT operations and IT modernization.

## Significant External Trends and Internal Management Challenges.

**External trends.** Significant external trends affecting MSPB's mission include recent and proposed changes to law and jurisdiction, retirement eligibility of the Federal workforce, and potential budget and workforce changes in FY 2019 and beyond, including Governmentwide reorganization. In addition, though discussed in this document as an internal management challenge, the lack of quorum is an issue that is beyond the control of MSPB, so it is also an external factor. More information about these external trends and issues may be found in the section [Trends and Challenges that May Affect Agency Performance](#).

In FY 2018, the National Defense Authorization Act (NDAA) for FY 2018 was enacted and several actions were taken to implement sections of the NDAA for 2017. Both Acts made several human resources (HR) management changes that apply Governmentwide. MSPB was affected by other laws passed in FY 2018, such as the "Follow the Rules Act," which amended the WPEA, and the authorization, for the first time, that when the Board lacks a quorum, a single Board member may extend Office of Special Counsel (OSC) stay requests. During FY 2018, Congress enacted the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 (October 2017) and the All Circuit Review Act (June 2018), which both affect MSPB adjudication. In May 2018, several

Executive Orders (EOs) were issued that could impact MSPB both internally and externally. Government reform efforts continued with publication of the President's Management Agenda in March 2018, and the Government Reform Plan in June 2018. Budget and workforce changes related to Government reform could result in furloughs, reductions in force (RIFs), or early retirements through Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP). Finally, both the number of Federal employees eligible to retire, and the number of employees being added to the retirement rolls, also are increasing.

These changes could affect the merit systems, management of the workforce and MSPB functions and operations, both directly and indirectly. For example, legislative, demographic, budget, and workforce changes could increase MSPB's appeals workload, increase the complexity of cases it adjudicates, reduce the timelines for processing appeals, or require changes in MSPB adjudication procedures. The changes also emphasize the importance of continued focus on our merit systems studies and OPM review functions to help ensure the workforce is managed under the MSPs and free from PPPs. MSPB will continue to track these external factors and identify and assess their potential impact on MSPB's operations, mission, and resource requirements.

**Internal Management Challenges.** MSPB's greatest internal management challenges include the lack of quorum, other human capital (HC) management issues, and IT stability, security, and modernization. More information about internal management challenges is provided in the section on [Trends and Challenges that May Affect Agency Performance](#).

Pursuant to [5 U.S.C. § 1203\(c\)](#), Member Mark A. Robbins assumed responsibility and authority for all functions vested in the Chairman effective January 8, 2017. On January 23, 2017, President Donald J. Trump designated him as the Board's Vice Chairman. Without at least two Board members, MSPB lacks a quorum, which prevents it from issuing decisions in PFRs and other cases at HQ, issuing reports of merit systems studies, and promulgating regulations in response to legislative changes enacted by Congress. As stated earlier, despite the lack of quorum, MSPB continues to execute its other statutory and management functions, including receiving and processing initial appeals in the ROs/FOs, receiving and processing of PFRs (up to the point of consideration and voting by new Board members), conducting merit systems studies research and publishing selected information (short of complete studies reports), reviewing OPM's significant actions, and conducting MSPB's administrative and management functions.

Approximately 25 percent of MSPB employees, including nearly 35 percent of MSPB's permanent AJs involved in adjudicating initial appeals, and their managers in the MSPB regional and field offices (ROs/FOs) and HQ, are eligible to retire in the next two years. In addition, several critical MSPB leadership positions over that last couple of years have been led by acting directors, and MSPB has had turnover in several critical one-deep positions. A recent court decision affecting the management of administrative law judges (ALJs), and the May 2018 EOs also affect MSPB, both internally and externally. Even if no significant increases in workload occur, MSPB must be able to retain its full-time equivalent (FTE) level in FY 2019 and beyond to perform its statutory functions effectively and efficiently.

MSPB is shifting from paper to electronic appeals processing (internally and externally) and electronic records management to improve efficiency and customer service and comply with Governmentwide initiatives. The e-Adjudication initiative will yield important improvements in efficiency, but will require a significant initial and sustained investment of resources. MSPB's long-term ability to conduct surveys to support merit systems studies requires obtaining an automated, web-based, survey capability that provides flexibility in survey design and administration and works securely in a cloud-based environment. We also must ensure a secure environment for storing and

processing workforce data. MSPB now has two overarching IT goals: (1) improving the stability and reliability of our IT environment, and (2) modernizing our core business applications and obtaining a new survey capability.

## About MSPB

**A Merit-based U.S. Civil Service.** Briefly reviewing the history of our Federal civil service is helpful in understanding the origin and purpose of MSPB. Until the early 1880s, the Federal civil service was a patronage or “spoils system” in which the president’s administration appointed Federal workers based on their political beliefs and support of his campaign, rather than on the employee’s suitability and qualifications to perform particular Federal jobs.<sup>1</sup> Over time, this practice contributed to an unstable Government workforce lacking the necessary qualifications to perform its work, which in turn adversely affected the efficiency and effectiveness of the Government and its ability to serve the American people. The patronage system continued until President James A. Garfield was assassinated by a disgruntled Federal job seeker who felt he was owed a Federal job because he supported the President’s campaign. A public outcry for reform resulted in passage of the Pendleton Act in 1883. The Pendleton Act created the Civil Service Commission (CSC), which monitored and regulated a civil service system based on merit and the use of competitive examinations to select qualified individuals for Federal positions. Congress later enacted the Lloyd-LaFollette Act of 1912, which provided that a civil servant could be removed only for such cause as promoted the efficiency of the service. Subsequent laws and regulations authorized the CSC to review the procedures used to remove civil servants and the validity of the reasons for removal. These developments contributed to improvements in Government efficiency and effectiveness by helping to ensure that a stable, highly qualified Federal workforce, free from partisan political pressure, was available to provide capable and effective service to the American people.

During the following decades, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate employee appeals. Concern over the inherent or perceived conflict of interest in the CSC’s role as both the rule-maker and adjudicator of those same rules was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA).<sup>2</sup> The CSRA replaced the CSC with three new agencies including: MSPB as the successor to the Commission;<sup>3</sup> OPM as the President’s agent for Federal workforce policy and procedure; and the Federal Labor Relations Authority (FLRA) to oversee Federal labor-management relations.

**Current Organization.** MSPB is an independent Federal agency within the Executive Branch. MSPB’s Board members, consisting of the Chairman, Vice Chairman, and Member, are appointed by the President, and confirmed by the Senate. Board members serve overlapping, nonrenewable 7-year terms and can be removed only for cause. No more than two of the three Board members may be from the same political party. MSPB also has independent budgetary authority, as well as independent hiring authority for its general schedule employees. The Board members’ primary role is to adjudicate the cases brought to the Board. The Chairman, by statute, is the chief executive and administrative officer. The current status of Board members and nominations was provided above. MSPB has also experienced considerable turnover among its senior Directors (see below).

MSPB HQ, located in Washington, DC, has eight offices that are responsible for conducting its statutory and support functions. These are the Offices of Appeals Counsel, Clerk of the Board,

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<sup>1</sup> Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, Journal of the Federal Circuit Historical Society, Vol. 4, 2010, pages 109-110.

<sup>2</sup> Ibid. page 113.

<sup>3</sup> Ibid. page 114.

Equal Employment Opportunity (EEO), Financial and Administrative Management, General Counsel, Information Resources Management, Policy and Evaluation, and Regional Operations. The EEO Director reports directly to the Chairman. The Directors of the other offices report to the Chairman through the Executive Director (ED). MSPB also has eight ROs/FOs located throughout the United States. These offices process initial appeals and report to the Director of Regional Operations. The agency currently is authorized to employ approximately 235 FTEs to conduct and support its statutory responsibilities. Many support functions are performed by other Federal agencies through interagency agreements. More information about MSPB's role, functions, and scope of responsibility may be found in the MSPB [Strategic Plan](#) for FY 2018-2022, and in [Appendix C](#).

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

This APP is based on the strategic and management objectives contained in MSPB's [Strategic Plan](#) updated for FY 2018–2022. Individual performance plans for MSPB's senior executives are linked to agency annual performance and management goals, as applicable. MSPB reports program performance results compared to performance targets in accordance with GPRAMA and OMB guidance. MSPB's plans and reports are posted on MSPB's website at [www.mspb.gov](http://www.mspb.gov).

The performance goals, measures, and targets describe what MSPB can accomplish with the budgetary and FTE resources enacted for FY 2019 and requested for FY 2020. MSPB adjusted the FY 2019 targets from those contained in the FY 2018 [APP](#) based on recent changes in external and internal factors. MSPB proposed FY 2018 performance goals, measures, and targets based on current agency performance, external factors such as recent enacted legislation, internal management challenges, and OMB and Congressional budget actions.<sup>4</sup>

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<sup>4</sup> Consistent with GPRAMA and OMB guidance, MSPB does not define priority goals, does not have low priority program activities, nor does it have a specific role in achieving Federal cross-agency priority goals. MSPB does not have any duplicative, overlapping, or fragmented programs as referenced in the Executive Order on 'Delivering an Efficient, Effective, and Accountable Government.' MSPB also has not defined any unnecessary agency plans and reports as referenced in OMB Circular A-11, Part 6, Section 290.

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# MSPB Performance Framework

## Mission

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

## Vision

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

## Organizational Values

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

## Strategic Goals and Objectives

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

### Strategic Objectives:

- 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.
- 1B: Enforce timely compliance with MSPB decisions.
- 1C: Conduct objective, timely studies of the Federal merit systems and Federal human capital management issues.
- 1D: Review and act upon the rules, regulations, and significant actions of the Office of Personnel Management, as appropriate.

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

### Strategic Objectives:

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

## Management Objectives

### Management Objectives: Effectively and Efficiently . . .

- M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.
- M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.
- M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.
- M4: Modernize core business applications to achieve electronic adjudication and provide a web-based survey capability.

## Tabular Summary of Current Progress and Performance Plan

Table 1: Summary of MSPB FY 2018 Performance Results			
<b>Strategic Goal 1: Serve the public interest by <i>protecting</i> Merit System Principles and <i>safeguarding</i> the civil service from Prohibited Personnel Practices.</b>			
<b>Strategic Obj. 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.</b>			<b>Partially Met</b>
Performance Goal	Performance Measure	2018 Target	2018 Result
<a href="#">1A-1</a> : Quality of initial decisions	Percent initial decisions reversed/remanded on PFR	Target not set, no quorum	No target set, not rated, no quorum.
<a href="#">1A-2</a> : Quality of decisions reviewed by reviewing authority	Percent decisions unchanged by the reviewing court	92% or greater	92% (Met)
<a href="#">1A-3</a> : Participant perceptions of the adjudication <i>process</i>	Percent participant agreement	Continue surveys, address issues	Automated surveys ongoing (Met)
<a href="#">1A-4</a> : Initial appeals processing timeliness	Average processing time	120 days or fewer	102 days (Exceeded)
<a href="#">1A-5</a> : PFR processing timeliness	Average processing time	Target not set, no quorum	No target set, not rated, no quorum.
<a href="#">1A-6</a> : Participant perceptions of the ADR <i>process</i>	Percent participant agreement	Continue surveys, address issues	Automated surveys ongoing (Met)
<b>Strategic Obj. 1B: Enforce timely compliance with MSPB decisions.</b>			<b>No Target, Not Rated</b>
<a href="#">1B-1</a> : Compliance case processing timeliness	Weighted average processing time for all compliance cases	Target not set, no quorum	No target set, not rated, no quorum.
<b>Strategic Obj. 1C: Conduct objective, timely studies of Federal merit systems and Federal human capital management issues.</b>			<b>Partially Met</b>
<a href="#">1C-1</a> : Number/scope of <i>Issues of Merit (IoM)</i> newsletter editions	Number/scope of published newsletter editions and Noteworthy articles	3-4 <i>IoM</i> editions or Noteworthy articles	3 <i>IoM</i> eds. and 4 other articles (Exc.)
<a href="#">1C-2</a> : Number/scope of study reports	Number/scope of reports published	Target not set, no quorum	No target set, not rated, no quorum.
<a href="#">1C-3</a> : Conduct surveys of Federal employees to assess and report on the health of merit systems	Conduct/analyze periodic surveys of Federal employees	Analyze MPS data; renew OPM data use agreement	See report (Met)
<b>Strategic Obj. 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.</b>			<b>Partially Met</b>
<a href="#">1D-1</a> : Review OPM rules/regulations	Number/scope of OPM regulations reviewed	Track and report activity	Not rated, no quorum
<a href="#">1D-2</a> : Review OPM significant actions	Number/scope of OPM significant actions reviewed	Maintain scope; publish review of significant actions	Published FY 2017 Annual Report (Met)
<b>Strategic Goal 2: Advance the public interest through <i>education</i> and <i>promotion</i> of stronger merit systems, <i>adherence</i> to Merit System Principles, and the <i>prevention</i> of Prohibited Personnel Practices.</b>			
<b>Strategic Obj. 2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.</b>			<b>Met</b>
<a href="#">2A-1</a> : References to MSPB's work	Scope of references to MSPB's work	Maintain scope	610 citations in 136 sources (Met)
<a href="#">2A-2</a> : Create policy-related products	Number/scope of policy-related products	Post highlights for study reports	4 OPE articles, 3 other (Exceeded)

Strategic Goal 2: Continued			
<b>Strategic Obj. 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach.</b>			<b>Met</b>
Performance Goal	Performance Measure	2018 Target	2018 Result
<a href="#">2B-1</a> : Conduct merit-based outreach events	Number/scope of merit-based outreach events	Within $\pm$ 5% of previous year	134 outreach events conducted (Met)
<b>Strategic Obj. 2C: Advance the understanding of the concept of merit, MSPs, and PPPs through the use of educational standards, materials and guidance established by MSPB.</b>			<b>Exceeded</b>
<a href="#">2C-1</a> : Number/scope of materials accessed on the website	Number of visits to the MSPB website	Within $\pm$ 5% of previous year	1,539,045 visits (Exceeded)
<a href="#">2C-2</a> : Create/update electronic educational materials	Number/type of new or updated educational materials	Post 5 or more educational materials	See report (Exceeded)

<b>Management Obj. M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.</b>			<b>Met</b>
<a href="#">M1-1</a> : Ensure workforce competencies	Average percent agreement on Federal Employee Viewpoint Survey (FEVS) competency questions	Within $\pm$ 5% from previous year	71% (Met)
<a href="#">M1-2</a> : Maintain perceptions of diversity and inclusion	Average percent agreement on FEVS diversity and Internal Survey (IS) inclusion questions	Within $\pm$ 5% from previous year	Diversity 61% Inclusion 81% (Met)
<a href="#">M1-3</a> : Maintain employee engagement	Average percent agreement on FEVS engagement questions	Within $\pm$ 5% from previous year	66% (Met)
<b>Management Obj. M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.</b>			<b>Met</b>
<a href="#">M2-1</a> : Ensure justified budgets and resource accountability	Percent of funded positions vacant each month, averaged over the year	8% or fewer	8% (Met)
<a href="#">M2-2</a> : Employees prepared to ensure safety and security	Average percent agreement on relevant IS questions	Within $\pm$ 5% from previous year	92% (Met)
<b>Management Obj. M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.</b>			<b>Met</b>
<a href="#">M3-1</a> : Ensure available/reliable IT infrastructure and applications	Average percent agreement on relevant IS questions	Within $\pm$ 5% from previous year	64% (Exceeded)
<a href="#">M3-2</a> : Maintain internal/external IT customer support	Percent tickets closed within SLA and with customer agreement	Continue cSupport, plan for iSupport system	See report (Met)
<a href="#">M3-3</a> : Ensure satisfaction with internal IT support	Average percent agreement on relevant IS questions	Within $\pm$ 5% from previous year	72% (Exceeded)
<a href="#">M3-4</a> : Ensure e-Appeal Online meets customer needs	Average percent agreement on e-Appeal customer survey questions	Continue developing automated e-Appeal user survey	See report (Met)
<b>Management Obj. M4: Modernize core business applications to achieve electronic adjudication, migrate the data center to the cloud, and provide a web-based survey capability.</b>			<b>Met</b>
<a href="#">M4-1</a> : Improve adjudication processing efficiency	Proportion of cases processed entirely electronically	Develop req'ments for next generation core business apps.	See report (Met)
<a href="#">M4-2</a> : Improve infrastructure and network integrity and management	Migrate data center to managed services environment in the cloud	Begin migrating data center to the cloud	See report (Met)

**Table 2: Summary of MSPB FY 2019 (Final) – 2020 (Proposed) Performance Plan**

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

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

Performance Goal	Performance Measure	2019 Target (Final)	2020 Target (Proposed)
<a href="#">1A-1</a> : Quality of initial decisions	Percent initial decisions reversed/remanded on PFR due to AJ error/oversight	No target set, no quorum	To be determined (TBD) based on FY 2019 results
<a href="#">1A-2</a> : Quality of decisions reviewed by reviewing authority	Percent decisions unchanged by the reviewing court	92% or greater	
<a href="#">1A-3</a> : Participant perceptions of the adjudication <i>process</i>	Percent participant agreement	Continue surveys, address issues	
<a href="#">1A-4</a> : Initial appeals processing timeliness	Average processing time	120 days or fewer	
<a href="#">1A-5</a> : PFR processing timeliness	Average processing time	No target set, no quorum	TBD based on FY 2019 results
<a href="#">1A-6</a> : Participant perceptions of the ADR <i>process</i>	Percent participant agreement	Continue surveys, address issues	

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

<a href="#">1B-1</a> : Compliance case processing timeliness	Weighted average processing time for all compliance cases	No target set, no quorum	TBD based on FY 2019 results
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**Strategic Obj. 1C: Conduct objective, timely studies of Federal merit systems and Federal human capital management issues.**

<a href="#">1C-1</a> : Number/scope of <i>IoM</i> newsletter editions or other articles	Number/scope of published newsletter editions and other articles	Publish 3 <i>IoM</i> editions	
<a href="#">1C-2</a> : Number/scope of study reports, briefs, or other documents	Number/scope of reports, briefs, and other documents published	No target set, no quorum	TBD based on FY 2019 results
<a href="#">1C-3</a> : Conduct surveys of Federal employees to assess and report on the health of merit systems	Conduct/analyze periodic surveys of Federal employees	Develop req'ments for survey capability; plan for next MPS	TBD based on FY 2019 results

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

<a href="#">1D-1</a> : Review OPM rules/regulations	Number/scope of decisions issued involving OPM regulations	No target set, no quorum	TBD based on FY 2019 results
<a href="#">1D-2</a> : Review OPM significant actions	Number/scope of OPM significant actions reviewed	Maintain scope; publish review of significant actions	

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

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

<a href="#">2A-1</a> : References to MSPB's work	Scope of references to MSPB's work	Maintain scope	
<a href="#">2A-2</a> : Create policy-related products	Number/scope of policy-related products	3 products focused on policy or intended for policy-makers	TBD based on FY 2019 results

<b>Strategic Goal 2: Continued</b>			
<b>Strategic Obj. 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach.</b>			
<b>Performance Goal</b>	<b>Performance Measure</b>	<b>2019 Target (Final)</b>	<b>2020 Target (Proposed)</b>
<b>2B-1:</b> Conduct merit-based outreach events	Number/scope of merit-based outreach events	115 Outreach events or more	TBD based on FY 2019 results
<b>Strategic Obj. 2C: Advance the understanding of the concept of merit, MSPs, and PPPs through the use of educational standards, materials and guidance established by MSPB.</b>			
<b>2C-1:</b> Number/scope of materials accessed on the website	Number of visits to the MSPB website	Within $\pm$ 5% of previous year	TBD based on FY 2019 results
<b>2C-2:</b> Create/update electronic educational materials	Number/type of new or updated educational materials	Post 5 or more educational materials	

<b>Management Obj. M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.</b>			
<b>M1-1:</b> Ensure workforce competencies	Average percent agreement on FEVS competency questions	71% or higher	TBD based on FY 2019 results
<b>M1-2:</b> Maintain perceptions of diversity (div.) and inclusion (incl.)	Average percent agreement on FEVS div. and Internal Survey (IS) incl. questions	Div. 66% or higher Incl. 78% or higher	TBD based on FY 2019 results
<b>M1-3:</b> Maintain employee engagement	Average percent agreement on FEVS engagement questions	68% or higher	TBD based on FY 2019 results
<b>Management Obj. M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.</b>			
<b>M2-1:</b> Ensure justified budgets and resource accountability	Percent of funded positions vacant each month, averaged over the year	8% or fewer	
<b>M2-2:</b> Employees prepared to ensure safety and security	Average percent agreement on relevant IS questions	89% or higher	TBD based on FY 2019 results
<b>Management Obj. M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.</b>			
<b>M3-1:</b> Ensure available/reliable IT infrastructure and applications	Average percent agreement on relevant IS questions, ensure disaster recovery capability	56% or higher, begin disaster recovery capability	TBD based on FY 2019 results
<b>M3-2:</b> Maintain internal/external IT customer support	Percent tickets closed within SLA and with customer agreement	Complete iSupport Implementation	Integrate iSupport and new applications
<b>M3-3:</b> Ensure satisfaction with internal IT support	Average percent agreement on relevant IS questions	57% or higher	TBD based on FY 2019 results
<b>M3-4:</b> Ensure e-Appeal Online meets customer needs	Average percent agreement on e-Appeal customer survey questions	Develop automated customer survey	Implement new automated survey
<b>Management Obj. M4: Modernize core business applications to achieve electronic adjudication and provide a web-based survey capability.</b>			
<b>M4-1:</b> Improve adjudication processing efficiency	Modernize core adjudication business applications; proportion of cases processed entirely electronically	Select and begin to implement new core business apps	Substantially implement new core applications
<b>M4-2:</b> Improve agency survey capability	Ensure secure, web-based survey application (in conjunction with 1C-3)	Begin to develop requirements for survey application	TBD based on FY 2019 results

## Comprehensive Performance Results and Plans

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

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

This objective was **Partially Met**. MSPB exceeded its target for average processing time for initial appeals, and met its targets for cases left unchanged by the CAFC and for conducting surveys of adjudication and ADR customers. Because MSPB began FY 2018 without a quorum of Board members, the agency did not set targets for quality of initial appeals (which is based on issuance of PFR decisions), and average processing time for PFRs. These PGs were not rated in FY 2018. Even though MSPB did not have a quorum for the entirety of FY 2018, it continued to process cases at HQ and prepare draft decisions for Board review, and the Vice Chairman voted on hundreds of PFR cases. As of the end of FY 2018, approximately 1,800 PFR cases were pending at HQ, and over 1,500 draft PFR decisions had been prepared and await consideration by new Board members when they arrive. Additionally, MSPB HQ offices prepared several draft decisions in original jurisdiction cases for consideration by new Board members when they arrive. Due to the continued lack of quorum, MSPB will not set FY 2019 targets for quality of initial appeals and for average PFR processing time. The FY 2020 targets for these PGs are to be determined (TBD) based on FY 2019 results. The FY 2019 and FY 2020 targets for the remaining PGs will be the same as for FY 2018.

Performance Goal 1A-1: Maintain quality of initial decisions.			
Measure: Percent of initial decisions that are reversed or remanded on Petition for Review (PFR) due to error or oversight.			
Results		Targets	
FY 2012	6%	FY 2018	No target set, no quorum.
FY 2013	8%	FY 2019	No target set, no quorum.
FY 2014	7%	FY 2020	TBD based on FY 2019 results.
FY 2015	2%		
FY 2016	5%		
FY 2017	Not rated, no quorum.		
FY 2018	No target set, not rated, no quorum.		

Performance Goal 1A-2: Maintain quality of decisions reviewed by reviewing authority.			
Measure: Percent of MSPB decisions left unchanged (affirmed or dismissed) upon review by the U.S. Court of Appeals for the Federal Circuit (CAFC).			
Results		Targets	
FY 2012	94%	FY 2018	92% or more.
FY 2013	93%	FY 2019	92% or more.
FY 2014	96%	FY 2020	92% or more.
FY 2015	96%		
FY 2016	94%		

<b>FY 2017</b>	94%	
<b>FY 2018</b>	92%	

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

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

<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Survey development and search for platform continued, implementation of new surveys postponed until FY 2013 due to resource limitations and competing priorities. (New in FY 2012)	<b>FY 2018</b>	Continue to obtain automated customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
<b>FY 2013</b>	Worked with contractor to assess hosting and security requirements and reviewed responses to Request for Information (RFI) designed to obtain information on current solutions for secure web-based survey platform. Further progress was limited by competing priorities and the state of emerging web-based survey solutions.	<b>FY 2019</b>	Continue to obtain automated customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
<b>FY 2014</b>	Dept. of Interior National Business Center published an RFI to assess availability and drafted a Request for Quote (RFQ) to be issued to several cloud service providers.	<b>FY 2020</b>	Continue to obtain automated customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
<b>FY 2015</b>	Customer survey data collected from PFR customers in support of the PFR program evaluation.		
<b>FY 2016</b>	Collected customer feedback from the PFR participants. Customer surveys submitted for OMB Paperwork Reduction Act (PRA) approval. Automated sampling and invitation process was developed. Data collection will begin when OMB approves the surveys.		
<b>FY 2017</b>	Implemented automated survey process and began data collection.		
<b>FY 2018</b>	Automated survey process ongoing.		

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

**Measure:** Average case processing time for initial appeals.

<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	93 days	<b>FY 2018</b>	120 days or fewer.
<b>FY 2013</b>	93 days	<b>FY 2019</b>	120 days or fewer.
<b>FY 2014</b>	262 days*	<b>FY 2020</b>	120 days or fewer.
<b>FY 2015</b>	499 days*		
<b>FY 2016</b>	99.5% of furloughs and 78% of non-furlough workload completed.		

<b>FY 2017</b>	See Interim Indicator below.	
<b>FY 2018</b>	102 days	

\* A weighted average including all initial appeals closed.

**Interim Indicator for Initial Appeals Processing:**

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

FY 2013	75%	(5,538/7,396)
FY 2014	70%	(5,212/7,480)
FY 2015	70%	(5,418/7,752)
FY 2016	78%	(5,886/7,669)
FY 2017 Target	65%	(closure of 2,030 cases filed before October 1, 2016)
FY 2017 Result	98%	(1,989/2,030)

<b>Performance Goal 1A-5: Maintain processing timeliness for PFRs.</b>			
<b>Measure:</b> Average case processing time for petitions for review (PFRs) of initial appeals.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	245 days*	<b>FY 2018</b>	No target set, no quorum.
<b>FY 2013</b>	281 days	<b>FY 2019</b>	No target set, no quorum.
<b>FY 2014</b>	287 days**	<b>FY 2020</b>	TBD based on FY 2019 results.
<b>FY 2015</b>	190 days		
<b>FY 2016</b>	185 days		
<b>FY 2017</b>	Not rated, no quorum.		
<b>FY 2018</b>	No target set, not rated, no quorum.		

\* 74 PFR cases were delayed in the *Latham vs. USPS* case. Not counting the 74 *Latham*-related cases, average processing time was 237 days. \*\* 20 PFR cases were delayed awaiting the decisions issued by the CAFC related to *Conyers* and *Gargjulo*. If those cases are removed from the calculations, the average processing time was 279 days.

<b>Performance Goal 1A-6: Maintain participants' positive perceptions of the ADR <u>process</u>.</b>			
<b>Measure:</b> Percent of participants in the ADR programs, including initial appeals settlement and the Mediation Appeals Program (MAP), surveyed who agree the ADR process was helpful, valuable, and noncoercive, even if no agreement was reached.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Survey development and search for platform continued, implementation of surveys postponed until FY 2013 due to resource limitations and competing priorities.	<b>FY 2018</b>	Continue to obtain ADR customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
<b>FY 2013</b>	Worked with contractor to assess hosting and security requirements and reviewed responses to RFI designed to obtain information on current solutions for secure web-based survey platform. Further progress limited by competing priorities and the state of emerging web-based survey solutions.	<b>FY 2019</b>	Continue to obtain ADR customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
<b>FY 2014</b>	Department of Interior (DOI) National Business Center (NBC) published an RFI to assess availability and drafted a RFQ for issuance to several cloud service providers.	<b>FY 2020</b>	Continue to obtain ADR customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.

<b>FY 2015</b>	Collected feedback from participants in the MAP.	
<b>FY 2016</b>	Collected customer feedback from MAP participants. Customer surveys submitted for OMB PRA approval. Automated sampling and invitation process was developed. Data collection to begin when OMB approves the surveys.	
<b>FY 2017</b>	Implemented automated survey process and began data collection.	
<b>FY 2018</b>	Automated survey process ongoing.	

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

This objective was **Not Rated (No Quorum)**. MSPB set no FY 2018 target for this PG because we began the year without a quorum of Board members. MSPB continued to process compliance in the ROs/FOs (164 cases with an average processing time of 95 days). Although compliance cases were processed at HQ, the lack of quorum meant that no decisions on these cases were issued at HQ. Thus, we did not rate this objective or its PG in FY 2018. Because we began FY 2019 without a quorum, no FY 2019 target was set for this PG. The FY 2020 target is TBD based on FY 2019 results.

<b>Performance Goal 1B-1: Maintain timeliness of processing compliance/enforcement cases.</b>			
<b>Measure:</b> Weighted average processing time for all enforcement cases.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	244 days	<b>FY 2018</b>	No target set, no quorum.
<b>FY 2013</b>	355 days	<b>FY 2019</b>	No target set, no quorum.
<b>FY 2014</b>	215 days	<b>FY 2020</b>	TBD based on FY 2019 Results.
<b>FY 2015</b>	161 days		
<b>FY 2016</b>	159 days		
<b>FY 2107</b>	No target set, not rated, no quorum.		
<b>FY 2018</b>	No target set, not rated, no quorum.		

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

This objective was **Partially Met**. MSPB exceeded its target for newsletters and other articles by publishing three editions of the *IaM* newsletter covering all nine MSPs. Newsletter articles included topics such as barriers to using the supervisory probationary period, aligning employee engagement with results, a shared understanding of sexual harassment, temporary and term appointments, and an entire edition on the 40<sup>th</sup> anniversary of the CSRA. MSPB published four additional articles on the roles of feedback, autonomy, and meaningfulness in employee performance behaviors; an update on sexual harassment; improving hiring through better assessment; and building blocks for effective performance management. Due to the lack of a quorum, MSPB did not set a target for publication of merit system study reports in FY 2018. Therefore, we did not rate the PG on publication of study reports in FY 2018. Of note, MSPB has at least two merit system study reports awaiting review by

new Board members. MSPB’s survey target was met by beginning negotiations for a Memorandum of Understanding (MOU) with OPM for MSPB’s use of OPM’s Enterprise Human Resource Integration (EHRI) data, and beginning to develop requirements for a new survey capability to ensure secure, effective, and efficient surveys of Federal employees and others to support MSPB’s merit systems studies function.

In FY 2019, MSPB is adjusting the PG for publication of merit systems studies to include extensive research briefs or other articles that are longer than those included in newsletters, but not equivalent to a full-blown study report. Because we began FY 2019 without a quorum, MSPB is not setting a FY 2019 target for publication of merit system study reports or extensive research briefs. However, MSPB will begin efforts to develop an interim research agenda to guide merit systems studies work until a quorum is restored. The FY 2019 and FY 2020 targets for publication of *IoM* newsletters and other shorter articles will focus on publication of three editions of the newsletter. The FY 2019 target for the studies survey goal is to develop requirements for a survey application (in conjunction with M4-2), and begin developing content for the next Merit Principles Survey (MPS). The FY 2020 target is TBD based on FY 2019 results.

<b>Performance Goal 1C-1: Maintain the number and scope of <i>Issues of Merit</i> newsletter editions or other articles.</b>			
<b>Measure:</b> Number and scope of <i>Issues of Merit (IoM)</i> newsletter editions or other articles published.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2013</b>	Published 3 <i>IoM</i> newsletter editions and 1 article (8 MSPs).	<b>FY 2018</b>	Publish 3–4 <i>IoM</i> editions or Noteworthy articles.
<b>FY 2014</b>	Published 3 <i>IoM</i> newsletter editions and 6 online articles (all MSPs and 4 PPPs).	<b>FY 2019</b>	Publish 3 <i>IoM</i> editions.
<b>FY 2015</b>	Published 3 <i>IoM</i> newsletter editions and 4 online articles (all MSPs and 8 PPPs).	<b>FY 2020</b>	Publish 3 <i>IoM</i> editions.
<b>FY 2016</b>	Published 3 <i>IoM</i> editions and 2 online articles (all MSPs and PPPs).		
<b>FY 2017</b>	Published 3 <i>IoM</i> editions and 2 online articles entitled, <a href="#"><i>Addressing Misconduct in the Federal Civil Service: Management Perspectives</i></a> and <a href="#"><i>MSPs: Keys to Managing the Federal Workforce</i></a> (all MSPs & PPPs).		
<b>FY 2018</b>	Published 3 <i>IoM</i> editions and 4 articles entitled <a href="#"><i>Building Blocks for Effective Performance Management</i></a> , published research briefs including <a href="#"><i>The Role of Feedback, Autonomy, and Meaningfulness in Employee Performance Behaviors</i></a> , and <a href="#"><i>Update on Sexual Harassment in the Federal Workplace</i></a> , and a perspectives brief entitled <a href="#"><i>Improving Federal Hiring Through Better Assessment</i></a> (all MSPs and 3 PPPs).		

<b>Performance Goal 1C-2: Maintain the number and scope of MSPB study reports, briefs, or other documents.</b>			
<b>Measure:</b> Number and scope (percent of the workforce, agencies, or policy areas impacted) of merit systems studies reports, briefs, and other documents published each year.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	3 reports completed.	<b>FY 2018</b>	No target set, no quorum.
<b>FY 2013</b>	1 report completed (3 MSPs).	<b>FY 2019</b>	No target set, no quorum.
<b>FY 2014</b>	4 reports approved and published.	<b>FY 2020</b>	TBD based on FY 2019 results.
<b>FY 2015</b>	4 reports published (7 MSPs, 9 PPPs).		

<b>FY 2016</b>	3 reports published (all MSPs).	
<b>FY 2017</b>	Not rated, no quorum.	
<b>FY 2018</b>	No target set, not rated, no quorum.	

**Performance Goal 1C-3: Conduct surveys of Federal employees to assess and report on health of the Federal merit systems.**

**Measure:** Conduct periodic Governmentwide and focused surveys of Federal employees and others (including interrogatories directed to agencies), as appropriate.

<b>Results</b>		<b>Targets</b>	
<b>FY 2015</b>	Content for the next MPS to support the new FY 2015-2018 research agenda was developed, and a survey vendor was selected to program and administer the next MPS in early 2016. An RFQ for MSPB's survey platform was issued by the Department of Interior (DOI) National Business Center; procurement of survey platform was put on hold to accomplish key milestones for the MPS, and as a result of the IT outage and changing Federal IT requirements. (New in FY 2015.)	<b>FY 2018</b>	Continue analyzing MPS and other survey results and prepare study reports on selected topics; ensure access to OPM Federal employee data; continue to consider options to ensure a secure cloud-based survey capability.
<b>FY 2016</b>	Successfully administered 2016 MPS to approximately 120,000 Federal employees from 24 Federal agencies. The survey was fully compliant with Federal IT and security requirements and covered topics such as PPPs, dealing with poor performers, sexual and other workplace harassment, and employee engagement.	<b>FY 2019</b>	Develop requirements for survey application (in conjunction with M4-2); plan content for next MPS.
<b>FY 2017</b>	Analyzed MPS data and prepared study reports on selected topics, conducted after-action review of the survey process, prepared data for the National Archives and Records Administration, proactively posted MPS data on our website. Began working with OPM to renew the memorandum of understanding (MOU) for use of Enterprise Human Resource Integration (EHRI) data.	<b>FY 2020</b>	TBD based on FY 2019 results.
<b>FY 2018</b>	Continued to analyze MPS 2016 data and draft reports and other documents. MSPB is targeting the next MPS for FY 2019 – FY 2020, but this timeline will be reassessed when a quorum is restored. This will require content based on a new research agenda that is awaiting input from a new Chairman and a secure web-based survey capability for survey development and administration. MSPB began defining requirements for a new survey capability. MSPB has obtained EHRI data from OPM for FY 2016 and 2017, and is negotiating with OPM for continued access to EHRI data.		

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

This objective was **Partially Met**. MSPB published the Annual Report for FY 2017, which contained the review of OPM’s 2017 significant actions and updates of selected significant actions from prior reports. MSPB monitored OPM’s significant actions for FY 2018, which include significant changes in pay and benefits in the [President’s Management Agenda](#), and implementation guidance for EOs on labor relations, adverse actions for reasons of conduct or performance, and moving ALJs to the excepted service. We had three requests for review of OPM regulations pending at the end of FY 2018. However, due to the lack of quorum, no HQ decisions were issued and we could not rate the PG involving review of OPM regulations. Beginning in FY 2019, the measure will focus on the number and scope of regulatory review decisions issued. There will be no target set in FY 2019, and the FY 2020 target is TBD based on FY 2019 results. The FY 2019 and FY 2020 targets for review of OPM significant actions remain the same as for FY 2018.

<b>Performance Goal 1D-1: Maintain program for review of OPM regulations.</b>			
<b>Measure:</b> Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of decisions issued involving OPM rules and regulations (or implementation of the same).			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	After-action review of MSPB internal processes for review of OPM regulations postponed due to resource limitations and competing priorities.	<b>FY 2018</b>	Track program activity and scope.
<b>FY 2013</b>	Reviewed MSPB internal procedures for reviewing OPM rules and regulations.	<b>FY 2019</b>	No target set, no quorum.
<b>FY 2014</b>	Decisions issued on 3 cases involving review of OPM regulations.	<b>FY 2020</b>	TBD based on FY 2019 results.
<b>FY 2015</b>	One decision issued in response to a request for OPM regulation review.		
<b>FY 2016</b>	Nine decisions issued in response to requests for OPM regulation review.		
<b>FY 2017</b>	Not rated, no quorum.		
<b>FY 2018</b>	Not rated, no quorum.		

<b>Performance Goal 1D-2: Maintain program for reviewing and reporting on OPM significant actions.</b>			
<b>Measure:</b> Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of OPM significant actions that are reviewed and reported.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Published MSPB’s FY 2011 Annual Report, including a broader range of FY 2011 OPM significant actions, updates of earlier OPM actions, and added contextual information. After-action review of MSPB procedures of at least one OPM significant action postponed due to resource limitations, staff changes, and competing priorities.	<b>FY 2018</b>	Maintain scope of review and publish review of OPM significant actions for previous year in MSPB Annual Report.
<b>FY 2013</b>	Published MSPB’s FY 2012 Annual Report, including a review of OPM significant actions. After-action review submitted to Executive Director.	<b>FY 2019</b>	Maintain scope of review; publish review of OPM significant actions for previous year in MSPB Annual Report.

<b>FY 2014</b>	Published MSPB's FY 2013 Annual Report including review of OPM significant actions.	<b>FY 2020</b>	Maintain scope of review; publish review of OPM significant actions for previous year in MSPB Annual Report.
<b>FY 2015</b>	Published MSPB's FY 2014 Annual Report including review of OPM significant actions.		
<b>FY 2016</b>	Published MSPB's FY 2015 Annual Report including review of OPM significant actions.		
<b>FY 2017</b>	Published MSPB's FY 2016 Annual Report including review of OPM significant actions.		
<b>FY 2018</b>	Published MSPB's FY 2017 Annual Report including review of OPM significant actions.		

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

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

This objective was **Met**. The PG for scope of citations was achieved. MSPB cases, studies, reports, newsletter articles, and other products were cited over 600 times in over 135 different print and electronic sources. Sources included trade publications on Federal management and legal issues, wire services, major city daily newspapers, congressional sources, and a variety of websites and blogs. Sources of particular import include two Government Accountability Office (GAO) reports; OPM's unlocktalent.gov website; posts and letters by selected senators and representatives; the National Academies of Sciences, Engineering, and Medicine (NASEM); the National Academy of Public Administration (NAPA); the American Psychological Association (APA), and a book on health care management. MSPB exceeded its target for articles published with policy-makers as a primary audience including an update on sexual harassment; improving hiring through better assessment; and building blocks for effective performance management. The FY 2019 and FY 2020 targets for citation of MSPB's work will remain as they were in FY 2018. Beginning in FY 2019, MSPB will focus on providing a specific number of products focused on policy-making or on policy-makers. This will encourage development of additional products related to policy-making beyond highlights related to merit systems studies. For FY 2019, the target will be three or more such products. The FY 2020 target is TBD based on FY 2019 results.

<b>Performance Goal 2A-1: Maintain scope of references to MSPB work and products.</b>			
<b>Measure:</b> Scope (location or identity of citing organization) of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, Federal legislation, professional literature, Executive Orders (EOs), the media, or other sources.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	MSPB's work was cited in electronic and print sources (e.g., the <i>Washington Post</i> , GovExec.com, and Fed News Radio); in testimony by Special Counsel Carolyn Lerner about OSC's education and legislative efforts, in a presentation at the Federal Dispute Resolution conference, and in a November 2011 OSC press release.	<b>FY 2018</b>	Maintain scope of references.

<p><b>FY 2013</b></p>	<p>MSPB's work was cited in over 70 different online or print media sources, trade publications (e.g., published by legal, employee, management, or union groups), and scientific journals from around the world; and several blogs and websites. MSPB's study on training supervisors was cited in OPM's guidance on supervisory training; and reports on employee engagement were referenced in a book about engaging Government employees published by the American Management Association.</p>	<p><b>FY 2019</b></p>	<p>Maintain scope of references.</p>
<p><b>FY 2014</b></p>	<p>MSPB's work was cited in over 94 different sources including 24 professional or trade sources; 38 city newspapers; 16 wire services including AP, UPI, and CNN Wire; 7 congressional sources; and 9 blogs or other sources. Congress cited <i>The Power of Employee Engagement</i> report in its request for the GAO to study Federal employee morale and engagement. MSPB was also cited in legislation on sensitive positions and new Department of Veterans Affairs (VA) legislation.</p>	<p><b>FY 2020</b></p>	<p>Maintain scope of references.</p>
<p><b>FY 2015</b></p>	<p>MSPB's work was cited in at least 115 different sources including 48 professional and trade publications, 36 print or online city newspapers, 7 congressional sources, 16 wire services, and 9 blogs and other sources. MSPB work was cited in GAO reports on engagement and on using probationary periods to manage poor performers. The MSPB report on due process was cited in congressional testimony and in Congressman Mark Takano's blog on pending legislation on the VA Accountability Act of 2015. OPM cited MSPB engagement reports in a white paper on engaging the Federal workforce.</p>		
<p><b>FY 2016</b></p>	<p>MSPB's work was cited over 680 times in over 135 different sources including 29 professional or trade publications, 12 congressional publications, 17 wire services, and 48 newspapers. MSPB studies were cited in the August 2016 GAO report on OPM oversight of Federal hiring authorities, an International Personnel Management Association News article, in a text book on Federal HR, and in congressional discussions of veterans' hiring, addressing employee misconduct, and preventing discrimination on the basis of sexual orientation.</p>		

FY 2017	MSPB's work was cited over 600 times in 150 different sources. Several MSPB study reports were cited in the OMB Memorandum M-17-22 on Reforming the Federal Government, and in testimony by the Senior Executive Assn. and the Federal Managers Assn at a Senate hearing on empowering Federal managers. MSPB's report on veterans hiring was cited in a <a href="#">report</a> by the Congressional Research Service, and reports on engagement and on Senior Executive Service (SES) training were cited in a new Federal management handbook published by American Society for Personnel Administration. The 2017 NDAA provision to repeal the 180-day waiver for hiring people with previous military experience used MSPB's veterans' hiring report.	
FY 2018	MSPB's work was cited 610 times in 136 different sources. Sources of particular import include two GAO reports; OPM's unlocktalent.gov website; posts and letters by selected senators and representatives; NASEM; NAPA; APA, and a book on health care management.	

<b>Performance Goal 2A-2: Maintain the number and scope of MSPB products focused on policy-makers or changing Governmentwide policy.</b>			
<b>Measure:</b> Number, type, and scope of MSPB products created and made available to inform policy-makers on issues and potential improvements to merit systems policies, laws, and/or regulations.			
<b>Results</b>		<b>Targets</b>	
FY 2012	Posted text and video on the website of the Chairman's testimony for the Senate oversight hearing.	FY 2018	Develop and post highlights from all new MSPB studies that focus on policy issues, as appropriate.
FY 2013	Posted 3 one-page ' <i>Research Highlights</i> ' or brief summaries of the findings and recommendations of merit system study reports related to policy issues.	FY 2019	Develop and post 3 or more products focused on policy change or informing policy-makers.
FY 2014	Posted <i>Research Highlights</i> for the clean records, favoritism, training and experience, sexual orientation, and veterans hiring policies and practices reports and four previously published reports. Compiled highlights into a "catalog" of MSPB studies including an introduction by the Chairman.	FY 2020	TBD based on FY 2019 results.
FY 2015	Posted <i>Research Highlights</i> for reports on veterans redress laws, fair and open competition, and due process; a monograph on Federal employee due process rules and reality; and the Chairman Grundmann's record testimony on Senate bills S. 1082, S. 1117, and S. 1856.		

FY 2016	Posted <i>Research Highlights</i> for reports on SES training, nepotism in the Federal workforce, and the MSPs: guiding fair and effective management; Chairman Grundmann’s record testimony from MSPB’s December 2015 reauthorization hearing before the House Committee on Oversight and Government Reform Subcommittee on Government Operations; and an article on using indefinite suspensions in cases involving possible criminal behavior.	
FY 2017	Published an interactive version of the Adverse Action Report; management perspectives on addressing misconduct in the civil service; the <i>MSPs: Use in Guiding Fair and Effective Management of the Workforce</i> ; and an annotated diagram illustrating current avenues of review of appeal for an adverse action taken against Federal employees.	
FY 2018	Published an article (including a separate summary of methodology and separate graphics) entitled <a href="#"><i>Building Blocks for Effective Performance Management</i></a> ; published research briefs including <a href="#"><i>The Role of Feedback, Autonomy, and Meaningfulness in Employee Performance Behaviors</i></a> and <a href="#"><i>Update on Sexual Harassment in the Federal Workplace</i></a> ; and a perspectives brief entitled <a href="#"><i>Improving Federal Hiring Through Better Assessment</i></a> .	

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

This objective was **Met**. The number of MSPB outreach events was within 5 percent of the number of outreach events in 2017. Outreach event topics included MSPB adjudication processes and legal precedent, Federal employment law, merit systems studies research, and general merit systems issues. Audiences varied from Federal labor law attorneys, human resources and equal employment opportunity professionals, academic and Federal researchers, legal organizations, Federal executive branch departments and agencies, employee and affinity groups, academic institutions, and television and radio audiences, among others. MSPB also presented at such diverse annual conferences as the Federal Dispute Resolution conference, the American Society for Public Administration annual conference, the Federal Circuit Bar Association Bench and Bar MSPB Summit, the Federal Circuit Conference, and the Society for Industrial and Organizational Psychology annual conference. The FY 2019 target will be to conduct 115 outreach events. This is lower than the number conducted in FY 2018. We anticipate the restoration of a quorum in FY 2019, after which MSPB employee resources will be focused on the backlog and moving forward on other initiatives that have awaited permanent leadership, thus limiting the resources available to conduct outreach. The FY 2020 target is TBD based on FY 2019 results.

Performance Goal 2B-1: Maintain the number and scope of outreach contacts.			
Measure: Number and scope of MSPB contacts with practitioners and stakeholders focused on improving the understanding or practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace.			
Results		Targets	
FY 2012	Conducted almost 150 events on legal, merit system studies, and other topics; events included visits by the CAFC and sister agencies (OSC, OPM, and Dept. of Labor/Appeals Review Board), and several events involving MSPB regulations.	FY 2018	Conduct or participate in a number of events within $\pm$ 5% of the number from 2016. Using new outreach calendar data, consider methods to collect customer feedback on outreach events.
FY 2013	Conducted 94 outreach events on topics related to MSPB studies, legal cases and processes, merit/MSPs/PPPs, and other issues.	FY 2019	Conduct 115 or more outreach events. Consider methods to improve collecting customer feedback at events.
FY 2014	Conducted 100+ outreach events on legal, studies, merit/MSPs/PPPs, administrative, and other issues.	FY 2020	TBD based on FY 2019 results.
FY 2015	Conducted 144 outreach events on legal, studies, merit/MSPs/PPPs, administrative, and other issues. Participant surveys from formal conferences were available.		
FY 2016	Conducted over 115 outreach events on legal, studies, merit/MSPs/PPPs, administrative, and other issues. Updated the outreach portion of the new office calendar.		
FY 2017	Conducted 138 outreach events and implemented the new outreach calendar, which improves the collection of outreach data including type of audience feedback collected at events.		
FY 2018	Conducted 134 outreach events. Consideration of methods to collect customer feedback on events will continue in FY 2019.		

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

This objective was **Exceeded**. The number of visits to pages on the MSPB website increased from FY 2017 by 16 percent and over five new or updated educational and informational materials or documents were made available on the website. These documents included information about the All Circuit Review Act; MSPB's new procedures to grant certain requests to withdraw PFRs; information about the President's nominees for MSPB Chairman, Vice Chairman, and Board member; updates on Frequently Asked Questions (FAQs) about the impact of the lack of quorum; monthly information on the number of PFRs pending at headquarters and before the Board; the new 14<sup>th</sup> PPP; a radio interview; and a television interview. The FY 2019 and FY 2020 targets for both PGs will remain as defined in FY 2018.

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

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

Results		Targets	
<b>FY 2012</b>	Almost 260,000 visits to select webpages and almost 3,800,000 hits to documents linked those webpages.	<b>FY 2018</b>	Number of visits within $\pm 5\%$ of FY 2017 results.
<b>FY 2013</b>	Over 554,000 visits to select webpages and over 16 million hits to documents linked on those webpages.	<b>FY 2019</b>	Number of visits within $\pm 5\%$ of FY 2018 results.
<b>FY 2014</b>	Over 634,000 visits to select webpages (12% more than in 2013) and nearly 11.8 million hits (30% fewer than in 2013) to documents linked on those webpages.	<b>FY 2020</b>	Number of visits within $\pm 5\%$ of FY 2019 results.
<b>FY 2015</b>	Over 655,400 visits to select MSPB webpages, within $\pm 5\%$ of the visits in FY 2014.		
<b>FY 2016</b>	892,379 visits to select webpages, over 36% more than in FY 2015.		
<b>FY 2017</b>	1,326,462 visits to select webpages, over 48% more than in FY 2016.		
<b>FY 2018</b>	1,539,045 visits to select webpages, over 16% more than in FY 2017.		

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

**Measure:** Number and type of merit systems educational materials and guidance MSPB makes available electronically or on MSPB’s website.

Results		Targets	
<b>FY 2012</b>	Posted 11 PPPs of the month; 4 training videos; several significant case reports; an interview with Chairman Grundmann and an article following a Senate hearing; live radio interviews with MSPB officials and staff; and information about the oral argument in <i>Latham v. U.S. Postal Service</i> .	<b>FY 2018</b>	Post or distribute electronically 5 new or updated textual or multimedia educational products.
<b>FY 2013</b>	Posted 13 or more new or revised documents related to merit/MSPs/ PPPs, and at least as many documents related to legal process and appeals issues including: 3+ items on the WPEA and changes to the Hatch Act; 2 PPP summaries including a summary of the new 13 <sup>th</sup> PPP; 8 <i>Research Highlights</i> from MSPB study reports; 4+ items on MSPB’s new adjudication regulations; 4+ items on MSPB’s new appeal form; and 5+ items on furlough appeals.	<b>FY 2019</b>	Post or distribute electronically 5 new or updated textual or multimedia educational products.

FY 2014	Posted 8 <i>Research Highlights</i> (also listed under 2A-2); 9 radio interviews; a letter and report regarding the VA SES legislation; webpage and training video for those interested in providing pro bono representation; 2 materials for the studies research agenda; 2 materials for the Special Panel oral argument; items related to MSPB's new jurisdictional regulations; and 12 informational updates or agency administrative files related to furlough cases.	FY 2020	Post or distribute electronically 5 new or updated textual or multimedia educational products.
FY 2015	Posted 3 <i>Research Highlights</i> for merit systems study reports; regulations governing MSPB's jurisdiction; FY 2014 Annual Report; Chairman Grundmann's testimony on proposed VA legislation (S. 1082, S. 1117, and S. 1856); and updated the pro bono page, and the appellant Q&A on review of Board decisions by the CAFC. Posted a link to the <i>Guide on LGBT Discrimination Protections for Federal Workers</i> because of MSPB's significant role in developing the guidance.		
FY 2016	Posted <i>Research Highlight</i> for reports on <i>SES Training, Nepotism, and MSPs: Guiding the Fair and Effective Federal Management</i> ; two FedNewsRadio interviews on merit systems studies reports; Chairman Grundmann's record testimony from MSPB's December 2016 reauthorization hearing in the House; the Chairman's radio interview on VA SES appeals; the interim final rule on discovery in compliance proceedings; an updated guide to MSPs; and Organizational Functions and Delegations of Authority on the e-FOIA (Freedom of Information Act) Reading Room page.		
FY 2017	Published interactive version of the <i>Adverse Action</i> report and <i>MSPs: Use in Guiding Fair and Effective Management of the Workforce</i> ; two external reviews of MSPB's IT systems; an annotated diagram illustrating current avenues of review or appeal for a Federal adverse action; designation of the new Vice Chairman Mark A. Robbins; guidance on lack of quorum; and the 2016 MPS data. Also updated/reorganized the e-FOIA Reading Room webpage adding new information and created a new Privacy Act Program webpage.		

FY 2018	Posted four articles or briefs including <a href="#">Building Blocks for Effective Performance Management</a> , <a href="#">The Role of Feedback, Autonomy, and Meaningfulness in Employee Performance Behaviors</a> , <a href="#">Update on Sexual Harassment in the Federal Workplace</a> , and <a href="#">Improving Federal Hiring Through Better Assessment</a> ; 3 <i>ToM</i> newsletter editions; a radio interview with Acting Chairman Robbins; and a video interview with Laura Shugrue and Jim Read. Added links to nominations of new Chairman, Vice Chairman, and Member, updated the Acting Chairman’s biography, and added pages for recent Board members and their lengths of service. Updated information for appellants seeking judicial review of whistleblower claims, VA appeals under 38 U.S.C. § 714, PFR withdrawal policy, lack of quorum FAQs, Information Quality Guidelines, and 2017 FOIA logs.		
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## Management Objectives

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

This objective was **Met**. The 2018 Federal Employee Viewpoint Survey (FEVS) results for employee perceptions of competencies, diversity, and engagement, and the 2018 Internal Survey (IS) results for inclusion, were within plus or minus 5 raw percentage points from the previous year. Beginning in FY 2019, the targets for these PGs will be defined as the numeric average of the results from the preceding five years. Using numeric targets gives an absolute target, and helps prevent successive decreases in results that could be considered a success under the plus or minus 5 percent target used in previous years. The FY 2020 targets are TBD based on FY 2019 results.

Performance Goal M1-1: Ensure MSPB’s workforce has competencies needed to perform its mission.			
<b>Measure:</b> Percent of employees who report on the Federal Employee Viewpoint Survey (FEVS) or MSPB Internal Survey (IS) that they and others in the workforce have the appropriate competencies needed to perform MSPB’s mission.			
Results		Targets	
FY 2012	2012 FEVS Competency Average = 68%	FY 2018	Maintain FEVS Competency Average within 5% of result from previous year.
FY 2013	2013 FEVS Competency Average = 63%	FY 2019	Competency average = 71% or higher.
FY 2014	2014 FEVS Competency Average = 64%	FY 2020	TBD based on FY 2019 results.
FY 2015	2015 FEVS Competency Average = 79%		
FY 2016	2016 FEVS Competency Average = 68%		
FY 2017	2017 FEVS Competency Average = 71%		
FY 2018	2018 FEVS Competency Average = 71%		

<b>Performance Goal M1-2: Maintain positive perceptions of diversity and inclusion by MSPB employees.</b>			
<b>Measure:</b> Average percent agreement on diversity (FEVS questions) and workplace inclusion (IS questions).			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Conducted several events and MSPB Unity Day with activities designed to improve understanding of diversity and inclusion. 2012 FEVS Diversity Average = 66% 2012 FEVS Inclusion Average = 67% 2012 IS Inclusion Average = 73%	<b>FY 2018</b>	Maintain diversity and inclusion within 5% of result from previous year.
<b>FY 2013</b>	Conducted 9 diversity awareness events designed to improve inclusion and understanding of diversity. 2013 FEVS Diversity Average = 72% 2013 FEVS Inclusion Average = 65% 2013 IS Inclusion Average = 75%	<b>FY 2019</b>	Diversity average = 66% or higher. Inclusion average = 78% or higher.
<b>FY 2014</b>	Held events or issued information about numerous diversity/inclusion topics; held Unity Day with six different sessions; supervisors completed mandatory training on ADR and reasonable accommodation; issued revised Anti-Harassment Policy and Procedures. 2014 FEVS Diversity Average = 61% 2014 IS Inclusion Average = 77%	<b>FY 2020</b>	TBD based on FY 2019 results.
<b>FY 2015</b>	2015 FEVS Diversity Average = 71% 2015 IS Inclusion Average = 77%		
<b>FY 2016</b>	2016 FEVS Diversity Average = 67% 2016 IS Inclusion Average = 78%		
<b>FY 2017</b>	2017 FEVS Diversity Average = 66% 2017 IS Inclusion Average = 76%		
<b>FY 2018</b>	2018 FEVS Diversity Average = 61% 2018 IS Inclusion Average = 81%		

<b>Performance Goal M1-3: Strengthen and maintain employee engagement and address engagement issues identified in the FEVS.</b>			
<b>Measure:</b> Average percent agreement on FEVS engagement questions.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Employee engagement was discussed in Chairman's all-hands meeting and individual office briefings by the ED and PIO. An engagement ombudsman was appointed to track agency engagement efforts; Executive Committee sub-committees established and began work. 2012 FEVS Engagement Index = 68%	<b>FY 2018</b>	Maintain engagement index within 5% of result from previous year.

<b>FY 2013</b>	A small group of agency leaders (ED, EEO Director, General Counsel, Clerk of the Board, and PIO) was established to review survey results and recommend appropriate actions; most subcommittee recommendations were approved and implemented or were under development (e.g., ‘Kudos’ page, and Languages of Appreciation training for leaders and supervisors); MSPB IdeaScale Community implemented to improve the suggestions process; decided to use FEVS engagement scores because 2012 FEVS and IS scores were consistent; 2013 FEVS Engagement Index = 68%	<b>FY 2019</b>	Engagement index = 68% or higher.
<b>FY 2014</b>	2014 FEVS Engagement Index = 62%	<b>FY 2020</b>	TBD based on FY 2019 results.
<b>FY 2015</b>	2015 FEVS Engagement Index = 74%		
<b>FY 2016</b>	2016 FEVS Engagement Index = 69%		
<b>FY 2017</b>	2017 FEVS Engagement Index = 70%		
<b>FY 2018</b>	2018 FEVS Engagement Index = 66%		

**Management Objective M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.**

This objective was **Met**. Monthly vacancy results averaged over the year indicated that 8.0 percent of funded positions were left vacant, which meets the target. The average of the percent of positive responses from the 2018 IS questions on workforce and workplace safety and security was also within the targeted range. The FY 2019 and FY 2020 targets for vacancy rate will remain at 8 percent or lower averaged over the year. Beginning in FY 2019, the target for employee perceptions of safety and security will be defined as the numeric average of the results over the preceding five years. An absolute value for the target helps prevent successive decreases in results that could be considered a success under the plus or minus 5 percent target used in previous years. The FY 2020 target is TBD based on FY 2019 results.

<b>Performance Goal M2-1: Develop fully-justified budgets &amp; ensure resource accountability</b>			
<b>Measure:</b> Percent of funded positions vacant at the end of each month, averaged over the year.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	6% of funded positions vacant, averaged over 12 months.	<b>FY 2018</b>	8% or fewer of funded positions vacant, averaged over 12 months.
<b>FY 2013</b>	12% of funded positions vacant, averaged over 12 months.	<b>FY 2019</b>	8% or fewer of funded positions vacant, averaged over 12 months.
<b>FY 2014</b>	12% of funded positions vacant, averaged over 12 months.	<b>FY 2020</b>	8% or fewer of funded positions vacant, averaged over 12 months.
<b>FY 2015</b>	4% of funded positions vacant, averaged over 12 months (including temporary hires).		
<b>FY 2016</b>	8.7% of funded positions vacant, averaged over 12 months.		
<b>FY 2017</b>	3.4% of funded positions vacant, averaged over 12 months.		
<b>FY 2018</b>	8% of funded positions vacant, averaged over 12 months.		

Performance Goal M2-2: Offices, employees, and visitors are safe and secure from internal and external natural or man-made threats or emergencies.			
<b>Measure:</b> Average percent of MSPB employees who agree with questions on the IS about their preparedness to ensure safety and security.			
Results		Targets	
<b>FY 2012</b>	Established a Safety and Security sub-committee of the Executive Committee based on FEVS results and recent security issues; developed an interim emergency protocol; all employees completed required Workplace Security Awareness training; rewrote Continuity of Operations Plan (COOP) and participated in Eagle Horizon exercise; conducted shelter-in-place drill. 2012 IS average agreement = 72%	<b>FY 2018</b>	Maintain percent agreement within 5% of result from previous year.
<b>FY 2013</b>	Trained all employees on Active Shooter and Workplace Violence Awareness; implemented Visible Visitor badge program; conducted earthquake and shelter-in-place drills; updated/briefed COOP to all offices. 2013 IS average agreement = 78%	<b>FY 2019</b>	Average agreement = 89% or higher.
<b>FY 2014</b>	2014 IS Average Agreement = 89%	<b>FY 2020</b>	TBD based on FY 2019 results.
<b>FY 2015</b>	2015 IS Average Agreement = 87%		
<b>FY 2016</b>	2016 IS Average Agreement = 85%		
<b>FY 2017</b>	2017 IS Average Agreement = 90%		
<b>FY 2018</b>	2018 IS Average Agreement = 92%		

**Management Objective M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.**

This objective was **Met**. According to FY 2018 IS results, the average positive responses on employee ratings of availability and reliability of the IT infrastructure was over 10 relative percentage points higher than in FY 2017  $((64-58)/58 = 10.3$  percent). The FY 2018 IS ratings for employee satisfaction with IT support were over 38 relative percentage higher than in FY 2017  $((72-52)/52 = 38.4$  percent). Both results exceeded the targets of plus or minus 5 percent from the average in 2017. We continued to use cSupport help-desk ticket system emphasizing that tickets not be closed unless the customer agrees, and made significant progress in planning for the implementation of iSupport, the successor ticket system. We also identified several MSPB employees who had used e-Appeal in previous positions. These employees provided input to requirements for a successor e-Appeal application as part of the modernization of MSPB's core business applications. Therefore, a survey of e-Appeal users was not necessary in FY 2018. Beginning in FY 2019, the targets for employee ratings of availability and reliability of IT infrastructure, and for internal perceptions of IRM service, will be defined as the numeric average of ratings over the preceding (up to) five years of results. An absolute value for the targets helps prevent successive decreases in results that could be considered a success under the plus or minus 5 percent target used in previous years. In FY 2019, we will also begin a disaster recovery capability for the existing data center. The FY 2020 targets for these two PGs is TBD based on FY 2019

results. The FY 2019 target for internal and external help desk tickets is to complete implementation of iSupport. The FY 2020 target is to integrate iSupport with the new core business applications. The FY 2019 target for surveying e-Appeal customers is to develop an automated user survey as part of piloting the new e-filing system. The FY 2020 target is to implement automated customer surveys for users of the new e-filing system.

<b>Performance Goal M3-1: Ensure availability and reliability of MSPB IT systems, hardware, and applications.</b>			
<b>Measure:</b> Average percent agreement with relevant questions on the MSPB Internal Survey (IS); ensure disaster recovery capability.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Prioritized systems to make tracking unscheduled downtime more meaningful and manageable; redesigned MSPB data center to minimize electrical, AC, and cabling issues; procured disaster recovery site (not yet operational).	<b>FY 2018</b>	Maintain percent agreement within 5% of result from previous year.
<b>FY 2013</b>	Average unscheduled downtime for key systems was 0.48%.	<b>FY 2019</b>	Average agreement at 56% or higher; begin disaster recovery capability
<b>FY 2014</b>	Average unscheduled downtime for key systems was 1.13%.	<b>FY 2020</b>	TBD based on FY 2019 results.
<b>FY 2015</b>	The target for average unscheduled downtime was met (1.16%). However, MSPB had a significant disruption in its IT infrastructure resulting in the loss of the virtual environment and permanent loss of significant employee working and archived documents.		
<b>FY 2016</b>	Implemented cloud backup service for OneDrive and an isolated test environment; monitoring nightly backups; upgraded network hardware in many locations; began new IT Testing Group to test new technology and applications; assessed and adjusted M3 goals, measures, and targets for FY 2017 and beyond to take advantage of IS data for measures related to meeting user business needs, internal customer service and availability and reliability of IT infrastructure. Took necessary IT actions to achieve the targets listed for 1A-1 (new Law Manager report), 1A-3, 1A-6, 1C-3, 2B-1, and 2C-3 (PG discontinued).		
<b>FY 2017</b>	2017 IS average agreement was 58%, compared to the 2016 result of 45%.		
<b>FY 2018</b>	2018 IS average agreement was 64%.		

<b>Performance Goal M3-2: Ensure effective and efficient resolution of internal and external help-desk tickets.</b>			
<b>Measure:</b> Proportion of internal and external IT service help-desk tickets resolved within required Service Level Agreement (SLA), using c or iSupport ticketing system, and with agreement of customer.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	92% of all tickets were resolved within SLA; 97% (3,412/3,502) of external tickets and 81% (2,403/2,870) of internal tickets.	<b>FY 2018</b>	Continue implementing iSupport.
<b>FY 2013</b>	94% of all tickets were resolved within SLA; 98% (6,097/6,234) of external tickets and 87% (2,334/2,677) of internal tickets.	<b>FY 2019</b>	Complete iSupport implementation.
<b>FY 2014</b>	92% (10,712/11,621) of all tickets were resolved within SLA.	<b>FY 2020</b>	Integrate iSupport with modernized core business applications.
<b>FY 2015</b>	Although 85% of help-desk tickets were resolved within SLA, the IT outage resulted in the loss of the virtual environment and the permanent loss of a significant number of employees' working and archived documents.		
<b>FY 2016</b>	Implemented cloud backup service for OneDrive and an isolated test environment; monitoring nightly backups; upgraded network hardware in many locations; began new IT Testing Group to test new technology and applications; assessed and adjusted M3 goals, measures, and targets for FY 2017 and beyond to take advantage on IS data for measures related to meeting user business needs, internal customer service, and availability and reliability of IT infrastructure. Took IT actions needed to achieve the targets listed for 1A-1 (new report), 1A-3, 1A-6, 1C-3, 2B-1, and 2C-3 (goal discontinued).		
<b>FY 2017</b>	Continued use of cSupport with emphasis on closing tickets only with customer agreement; began planning for implementation of iSupport to occur after completing agency-wide laptop replacement project.		
<b>FY 2018</b>	Implemented Configuration Management Database in the iSupport development environment; completed test conversion of databases from cSupport to iSupport; upgraded iSupport development system to current version; continued iSupport configuration; completed requirements development for various ticket workflows, e.g., employees, requisitions and inventory.		

Performance Goal M3-3: Ensure satisfaction with internal IT support and services.			
Measure: Average percent agreement on relevant Internal Survey (IS) questions.			
Results		Targets	
FY 2016	New PG in FY 2017.	FY 2018	Maintain percent agreement within 5% of result from previous year.
FY 2017	2017 IS average agreement was 52%, compared to the 2016 result of 47%.	FY 2019	Average agreement at 57% or higher.
FY 2018	2018 IS average agreement was 72%.	FY 2020	TBD based on FY 2019 results.

Performance Goal M3-4: Ensure e-Appeal Online meets customer needs.			
Measure: Average percent agreement on automated e-Appeal customer survey questions.			
Results		Targets	
FY 2016	New PG in FY 2017.	FY 2018	Continue developing automated e-Appeal user survey.
FY 2017	Began developing automated survey for e-Appeal users.	FY 2019	Develop automated user survey as part of piloting new e-filing system.
FY 2018	Identified several MSPB employees with e-Appeal experience from their previous positions. They provided input to requirements for a successor e-filing system as part of modernizing MSPB's core business applications (see M4-1). Given their input, there was no need for a separate e-Appeal customer survey in FY 2018. Development of an e-Appeal user survey will continue in FY 2019.	FY 2020	Implement automated customer survey for users of new e-filing system.

**Management Objective M4: Modernize core business applications to achieve electronic adjudication, and provide a web-based survey capability.**

This objective was **Met**. In FY 2018, 69 percent of initial appeals and 89 percent of pleadings, were filed electronically. These are the highest levels achieved so far. However, they were achieved using existing legacy adjudication applications, which are at or nearing end-of-life. MSPB completed requirements development for its new core business applications and issued a Request for Proposal (RFP) in FY 2018. This was an organized effort supported by external consultants, a core team of MSPB advisors (including representatives from offices beyond those that conduct adjudication functions), and several internal surveys to clarify requirements. The FY 2019 target for improving adjudication efficiency is to select and begin to implement the new core business applications, and related modernization efforts. The FY 2020 target is to substantially complete the implementation of new applications. As work on IT modernization efforts accelerated, it was clear that separately migrating our data center would not be cost effective since the new core business applications would be cloud-based. Therefore, MSPB is devoting these resources to improving disaster recovery for the existing data center (under M3-1) and to supporting collateral projects necessary for comprehensive IT modernization to achieve 100 percent e-Adjudication. In FY 2019, M4-2 will focus on obtaining a secure web-based survey capability to support its merit systems studies function and its internal and external customer surveys. The FY 2019 target for this goal is to begin development of requirements for the new survey application. The FY 2020 target is TBD based on FY 2019 results.

**Performance Goal M4-1 (was M2-2): Improve efficiency of adjudication case processing.**

**Measure:** Proportion of cases processed entirely electronically.

<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Interim indicators: 55% of initial appeals and 56% of pleadings filed electronically.	<b>FY 2018</b>	Continue to develop requirements for the next generation of MSPB core business applications, including those to support e-Adjudication.
<b>FY 2013</b>	Interim indicators: 47% of initial appeals and 66% of pleadings filed electronically.	<b>FY 2019</b>	Select and begin to implement the next generation of MSPB core business applications, and related IT modernization efforts.
<b>FY 2014</b>	Interim indicators: 55% of initial appeals and 83% of pleadings filed electronically. Furlough cases were processed electronically in selected regional offices, 37 PFRs of furlough cases were filed electronically, and one furlough Board decision was filed electronically with the court. Drafted an RFI for e-Adjudication.	<b>FY 2020</b>	Substantially complete implementation of the new MSPB core adjudication business applications, including related IT modernization efforts.
<b>FY 2015</b>	Interim indicators: 56% of initial appeals and 80% of pleadings filed electronically. Issued an RFI on e-Adjudication and Guidance on archiving electronic case files (ECFs). Developed a timeline for expanding ECFs and implementing mandatory e-filing for agencies and representatives. Timeline and project was suspended because of the IT outage in June 2015.		
<b>FY 2016</b>	Interim indicators: 61% of initial appeals and 81% of pleadings filed electronically. Reinstated routine meetings on e-Appeal enhancements and e-Adjudication, and expanded ECF Pilot to the Denver FO. Implemented new e-Appeal servers, and up-graded the e-Appeal LiveCycle and Active PDF document conversion/assembly software. Developed and implemented ECF marking capability and documentation in Quick Case and Law Manager and conducted training. Submitted personnel actions to support adding business analysis and other skills to help ensure expertise needed for e-Adjudication.		

<b>FY 2017</b>	Interim indicators: 61% of initial appeals and 82% of pleadings filed electronically. Acting CIO approved the performance work statement (PWS) to develop requirements for new core business applications, which was submitted to the contracting officer for solicitation in early FY 2018. Arranged two vendor demonstrations of appeals workflow solutions. Completed work on e-Appeal release 9.7, released a new enhanced version of the Quick Case application, and modified the Media Application and Media Server. Completed a new Document Management System Upload Application (for litigation cases) and essentially completed a new ECF application to automate the completion of ECFs for courts, Department of Justice, EEOC, etc.. The Denver FO continues to process cases completely electronically. Partnered with OMB's Office of the Federal CIO for weekly calls or meetings regarding this goal.	
<b>FY 2018</b>	Interim indicators: 69% of initial appeals and 89% of pleadings filed electronically. Completed requirements development for new core business applications, including those to support e-Adjudication, and issued the RFP.	

<b>Performance Goal M4-2: Improve agency survey capability</b>			
<b>Measure:</b> Ensure secure, web-based survey application in conjunction with 1C-3.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2017</b>	Drafted a PWS for moving our data center to the cloud. Discussed a shared service possibility with another agency and contacted various agencies and vendors regarding their experiences, recommendations, and capabilities. Continued to work with OMB's Office of the Federal CIO regarding this PG. Collaborated with OPE and DOI to assess obtaining a secure cloud-based solution to analyze OPM data.	<b>FY 2018</b>	Begin migrating the data center to a managed services environment in the cloud.
<b>FY 2018</b>	Work accelerated on IT modernization (see PG M4-1), and it became clear that separately migrating to a new data center would not be cost-effective because the new core applications will be cloud-based. Therefore, we are devoting data center migration resources to improving disaster recovery for the existing data center and supporting collateral projects necessary for comprehensive IT modernization to achieve 100% e-Adjudication.	<b>FY 2019</b>	Begin developing requirements for survey application.
		<b>FY 2020</b>	TBD based on FY 2019 results.

## Means and Strategies Needed to Accomplish Our Objectives

Over the next four to five years, MSPB will use the following means and strategies to accomplish its objectives. Selected means and strategies may be adjusted and may be emphasized in specific years, or may be used over the entire period. Strategies may be carried out by one or more offices. MSPB's approaches to complying with OMB Memorandum M-17-22 on reforming the Federal Government are included below under the appropriate strategic and management objectives.

### Strategic Goal 1

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

1. Provide effective, efficient, and appropriately transparent adjudication of appeals in our ROs/FOs and at HQ.
2. Effectively and efficiently implement changes in adjudicating cases in accordance with changes in statute, regulation, or policy (e.g., the VA Accountability and Whistleblower Protection Act of 2017).
3. Improve and maintain adjudication case processing data, data systems, practices, and policies to ensure valid and reliable data for management and reporting purposes that comply with standard data practices and statutes (e.g., GPRAMA, WPEA, etc.).
4. Examine and assess current adjudication processes, agency records management processes, IT infrastructure, applications, resources, and expertise, and in consideration of changes in Governmentwide IT procurement and security requirements, develop requirements, plan for, and then implement new core adjudication business applications to support implementing e-Adjudication as a permanent shift from paper-based to automated electronic adjudication and records management. (Also a strategy for M3.)
5. Ensure adequate adjudication expertise and capacity through strategic workforce planning. (Also a strategy for 1B and M1.)
6. Ensure continuity of expertise in legal and procedural issues through effective and efficient knowledge sharing and appropriate training of adjudication staff.
7. Review Board and court decisions, share significant changes with stakeholders, and determine and implement necessary changes to adjudication processes and procedures.
8. Monitor adjudication performance and ensure accountability for the adjudication process, the quality of adjudication data, the quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
9. Provide effective and impartial ADR services (including settlement and mediation) to meet the needs of the involved parties.
10. Ensure effective representation of MSPB in cases brought before other adjudicatory bodies, such as the CAFC, any circuit court for certain whistleblower appeals, U.S. district courts for mixed cases, and the U.S. Supreme Court.
11. Continue the automated survey process to sample and invite feedback from adjudication and ADR customers and make changes based on feedback, as appropriate.
12. Consider the future structure of ROs/FOs including location, cost, schedule of lease renewals, availability of technology, and other factors to improve effectiveness and efficiency.
13. Explore the sharing of services and contracts between MSPB and its sister agencies (OSC, FLRA, Office of Government Ethics, etc.) for court reporting and videoconferencing facilities.

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

1. Provide effective and efficient processing of requests to enforce MSPB decisions and improve the transparency of the enforcement process.
2. Ensure adequate adjudication expertise and capacity through strategic workforce planning. (Also a strategy for 1A and M1.)
3. Ensure continuity of expertise in legal and procedural issues through effective and efficient knowledge sharing and appropriate training of adjudication staff.
4. Review Board and court decisions, share significant changes with stakeholders, and determine and implement necessary changes to adjudication processes and procedures.
5. Monitor adjudication performance and ensure accountability for the adjudication process, the quality of adjudication data, the quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
6. Ensure effective representation of MSPB in cases brought before other adjudicatory bodies, such as the CAFC, any circuit court for certain whistleblower appeals, U.S. district courts for mixed cases, and the U.S. Supreme Court.

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

1. Conduct independent, objective, and timely studies of the Federal merit systems and Federal management issues and practices in accordance with accepted research practices.
2. Periodically conduct a transparent process to develop and update the merit systems studies research agenda that includes feedback from studies stakeholders and customers. (See the merit systems studies [research agenda](#) for FY 2015-2018.)
3. Expeditiously and appropriately report findings and recommendations from merit systems studies that provide value to the President, Congress, Federal HR policy-makers, practitioners, Federal managers, supervisors, employees, and other stakeholders and that positively impact the merit systems and Federal human capital management.
4. Publish *IoM* newsletter editions, research highlights, and other products that address timely, focused information about Federal merit systems and workforce management issues.
5. Obtain and maintain a survey capability that has flexible survey design and administration, and Governmentwide compatibility in a secure, cloud-based environment, to conduct research surveys and collect other similar data to support MSPB's merit systems studies mission and internal program evaluation. (Also a strategy for M4.)
6. Administer periodic MPSs, and other specialized surveys, to assess and report on the overall health of the Federal merit systems, practice and understanding of merit in the workplace, and occurrence of PPPs.
7. Ensure MSPB has the analytic workforce needed to conduct high-quality objective studies, ensure the value and impact of study findings and recommendations, and perform essential program evaluation responsibilities through strategic workforce management. (Also a strategy for M1.)

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

1. Maintain review of OPM rules, regulations, and significant actions and take action, as appropriate, to ensure adherence to MSPs and avoidance of PPPs.
2. Publish the MSPB Annual Report including a review of the significant actions of OPM.

**Strategic Goal 2**

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

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

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

1. Translate information from adjudication, merit systems studies, and OPM review into outreach presentations and other products designed to inform and influence actions by practitioners and other stakeholders that will improve adherence to MSPs, prevent PPPs, and/or improve the understanding of a merit-based civil service or understanding of MSPB, its functions, and processes.
2. Conduct outreach activities within available resources (e.g., conference presentations, practitioner forums, mock hearings, briefings, etc.) designed to improve the practice and understanding of merit, MSPs and PPPs, and that provide value to participants.
3. Consider a centralized catalog of presentations and the electronic, web-based delivery of outreach presentations to improve efficiency of outreach and reduce travel costs.
4. Continue tracking outreach events, and note when MSPB presents material that results in Continuing Legal Education and Continuing Education Unit credits to audience members, which may promote cost-effective methods to meet these requirements.
5. Consider and develop effective and efficient methods to improve the ability to obtain and use feedback from outreach participants and audience members to assess outreach success, improve quality of outreach, gather suggestions for improvement, and better address stakeholder needs, within resource constraints.

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

1. Develop educational standards, materials, and guidelines on merit, MSPs, PPPs, and the merit-based civil service to ensure excellent Government service to the public.

2. Develop and make available information and materials about MSPB's adjudication processes, outcomes, and legal precedents to support the parties' ability to prepare and file thorough and well-reasoned arguments in appeals filed with MSPB.
3. Encourage agencies to use MSPB's educational standards, materials, and guidelines to implement educational programs for Federal employees and the public by recognizing agencies' merit systems educational efforts on MSPB's website, or in MSPB reports.
4. Develop and make MSPB products and educational information widely available through the website, social media outlets, and other appropriate avenues.

## Management Objectives

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

1. Hire and retain a diverse and highly qualified legal, analytic/research, and administrative workforce that can effectively accomplish and support MSPB's knowledge-based work.
2. Provide employee orientation, on-the-job training, and other developmental and training experiences to ensure employees have the competencies necessary to perform MSPB's work, within budget constraints. Consider partnering with other agencies to obtain cost-effective training.
3. Use results from the FEVS, IS, and MSPB IdeaScale Community, and apply leadership and management skills to strengthen and maintain a culture to support a diverse, inclusive, and fully-engaged workforce.
4. Considering the external factors and internal challenges that may affect MSPB's mission and operations, initiate and maintain a continual strategic human capital planning (SHCP) process to consider MSPB's most critical human capital requirements needed to achieve its mission and support functions and achieve its human capital management objectives.
5. Over the long-term, use the SHCP process to evaluate MSPB grade structure, assess need for SES positions, consider Senior Leader positions, streamline hiring authorities, use personnel flexibilities (e.g., Not-to-Exceed temporary positions, Intergovernmental Personnel Act assignments, etc.), and ensure adequate training and development.

**Management Objective M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.**

1. Establish and communicate mission, support, and operational priorities to ensure achievement of agency objectives and goals.
2. Use people and budgetary resources effectively and efficiently to ensure adequate staff are available and have the competencies to accomplish our goals.
3. Communicate justification of resources (funds, people, operational requirements, and contingencies) necessary to accomplish MSPB's objectives (mission and support) including how resource levels and external factors (such as Governmentwide reform efforts) may impact MSPB performance.
4. Consider the structure of headquarters offices (including possible consolidation and/or outsourcing of support functions), and the structure and location of ROs/FOs including

statutory requirements, costs, availability of technology, best practices in operations, and other factors to improve effectiveness and efficiency.

5. Develop policies and practices, educate and train MSPB employees, and conduct drills to ensure all employees know their role in ensuring individuals and the workplace are safe from natural and man-made threats to safety and security.
6. Consider options to increase supervisors' and participants' training and maximize savings from MSPB's existing robust telework program.

**Management Objective M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.**

1. Develop, implement, and maintain stable and secure IT infrastructure (hardware, software, applications, processes, and systems) and information services programs, with sufficient resources and expertise (e.g., privacy, IT security, network administration, records and information management, data integrity, FOIA, etc.), to meet customer business needs and provide effective and efficient MSPB adjudication, enforcement, studies, OPM review, and administrative support programs.
2. Gather customer feedback from e-Adjudication customers, and other internal and external users as needed, and make changes to relevant applications and functionality, as appropriate.
3. Ensure availability and reliability of MSPB's IT infrastructure (i.e., hardware, systems, servers, internet, applications, and file storage and retrieval).
4. Ensure disaster recovery capability for existing data center.
5. Ensure effective and efficient support of internal and external IT customers.
6. Improve compliance with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)).
7. Comply with OMB Memorandum M-17-25, "*Reporting Guidance for Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure*," and related OMB and Department of Homeland Security (DHS) requirements.
8. Provide ongoing computer and professional development training for MSPB staff and IT personnel, respectively.

**Management Objective M4: Modernize core business applications to achieve electronic adjudication and provide a web-based survey capability.**

1. Examine and assess current adjudication processes, agency records management processes, IT infrastructure, applications, resources, and expertise, and in consideration of changes in Governmentwide IT procurement and security requirements, develop requirements, plan for, and then implement new core adjudication business applications to support implementing e-Adjudication as a permanent shift from paper-based to automated electronic adjudication and records management. (Also a strategy for A1.)
2. Ensure access to and encourage increased use of e-Appeal Online; and continue to improve efficiency by shifting from paper-based adjudication work processes and products to automated electronic work processes and products.
3. Ensure secure storage and effective use of workforce data (from OPM and other sources) in a web-based environment.

4. Comply with OMB Memorandum M-17-25, “*Reporting Guidance for Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure*,” and related OMB and DHS requirements.
5. Provide ongoing computer and professional development training for MSPB staff and IT personnel.
6. Consider consolidating, outsourcing, or reallocating resources and personnel to other mission-critical areas as a result of modernizing our core business applications in the cloud.
7. Obtain and maintain a survey capability that has flexible survey design and administration, and Governmentwide compatibility in a secure, cloud-based environment, to conduct research surveys and collect other similar data to support MSPB’s merit systems studies mission and internal program evaluation. (Also a strategy for 1C.)

# Trends and Challenges that May Affect Agency Performance

## Internal Management Challenges

As discussed below, there are a number of internal management challenges currently facing MSPB. The most significant internal issue affecting MSPB is the lack of quorum of Board members. Other significant internal challenges that could affect MSPB's ability to carry out its mission include other HC issues and information technology stability, security, modernization.

**Presidential Nominations to the Board and Restoration of Board Quorum.** MSPB has had only one Board member since January 8, 2017. On January 23, 2017, the President designated Mark A. Robbins as Vice Chairman. In accordance with statute, Vice Chairman Robbins served as Acting Chairman until his departure on February 28, 2019. The lack of quorum prevents MSPB from performing basic mission functions—issuing decisions on PFRs and other cases at headquarters, issuing final reports of merit systems studies, and promulgating substantive regulations in response to legislative changes such as the VA Accountability and Whistleblower Protection Act of 2017 and other changes to its jurisdiction and process. As of September 30, 2018, MSPB had approximately 1,800 PFRs pending at headquarters. These numbers grow every day. In a typical year, MSPB will receive approximately 1,000 PFRs. Thus it may take two-three years for new Board members to get through the backlog of PFRs and other cases at HQ, while also processing newly arriving PFRs.

The lack of quorum also prevented MSPB from setting FY 2018 and FY 2019 targets and rating results for several PGs and one strategic objective, including PFR processing timeliness, enforcement case processing, number of reports of merit systems studies published, and quality of initial decisions (because this measure is based on the issuance of PFR decisions). We also could not rate the PG on review of OPM regulations because regulatory review decisions must be issued by the Board at HQ. Once a quorum is restored, MSPB will determine the most appropriate measures and targets for these PGs.

As stated earlier, notwithstanding the lack of a quorum, MSPB's AJs continue to adjudicate appeals, conduct hearings, and issue initial decisions. Appellants in these actions may exercise their right to appeal directly to the CAFC, appeal mixed cases to the district courts or to the EEOC, and appeal whistleblower decisions to any U.S. circuit court of appeals.<sup>5</sup> MSPB HQ continues to receive PFRs and the Board's HQ offices continue to draft recommended decisions in those and other HQ cases. As of the end of FY 2018, MSPB career staff had drafted over 1,500 recommended decisions that are waiting for review and action by new Board members when a quorum is restored. MSPB also continues to conduct merit systems studies research, collect and analyze data, and draft new reports of merit systems studies that will be subject to the new Board members' approval. The agency's executive, financial, and administrative operations also continue to function. As a result, MSPB continues to perform its critical mission during this time of significant transition.

On March 5, 2018, the President nominated Andrew F. Maunz to be a member of the MSPB, with intention to be designated as Vice Chairman of the Board. On March 8, 2018, the President nominated Dennis D. Kirk to be a member and Chairman of the MSPB. On June 20, 2018, the President nominated Julia A. Clark to be a member of the Board. Mr. Kirk was nominated to fill the vacancy left by Susan T. Grundmann and if confirmed, his term would expire March 1, 2023. Mr. Maunz was nominated to fill the vacancy created by the expiration of the term served by Mark A. Robbins, and if confirmed, Mr. Maunz's term would expire March 1, 2025. Ms. Clark was nominated

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<sup>5</sup> The provision of the WPEA providing for judicial review of certain whistleblower claims by any circuit court of appeals expired on December 27, 2017. On July 7, 2018, the All Circuit Review Act made this provision permanent, retroactive to November 26, 2017 (Pub. L. 115-195).

to fill the vacancy left by Anne M. Wagner, and if confirmed, her term would expire March 1, 2021. On July 19, 2018, the U.S. Senate Committee on Homeland Security and Governmental Affairs conducted a confirmation hearing for all three nominees. However, the nominees were not confirmed prior to the adjournment of the 115<sup>th</sup> Congress. On January 16, 2019, the President resubmitted the three nominations for consideration by the 116<sup>th</sup> Congress. Subsequently, the nomination for Mr. Maunz was withdrawn. On February 13, 2019, the remaining two nominees were approved by the Senate Committee. Since March 1, 2019, MSPB has continued to operate in accord with its COOP, under which the MSPB General Counsel serves as the agency's acting chief executive and administrative officer.

**Other Human Capital Challenges.** In addition to the lack of quorum, nearly 25 percent of MSPB employees, including approximately 35 percent of our permanent AJs and adjudication managers involved with processing initial appeals, are eligible to retire in the next two years. Several other MSPB employees who hold key leadership positions or who are serving in one-deep mission-critical positions are eligible to retire in the near future. Indeed, the MSPB budget officer retired in January 2018, the previous Executive Director departed in September 2018, and the EEO Director departed in the fall of 2018. MSPB has had a series of Acting Directors in key leadership roles including the Chief Information Officer/Director of the Office of Information Resources, Clerk of the Board, General Counsel, and most recently, Executive Director. A new General Counsel arrived in October 2018, and the Acting CIO has been designated to also serve as Acting Executive Director. MSPB welcomed a new budget officer in February 2019, and is in the process of advertising for a new CIO and new EEO Director. Appointment of a new Executive Director will await the arrival of a new Chairman.

MSPB began a sustained SHCP process in FY 2016 to focus on its most critical long-term human capital needs. This includes maintaining a pool of newer adjudication employees to form a pool for succession management in adjudication, planning for continuing to perform the functions of those employees in one-deep mission-critical positions when there vacancies, and updating our IT expertise. Although MSPB has been able to recruit well-qualified individuals for its adjudicatory and other professional positions, it nevertheless often takes two to three years for these new staff to reach full performance level. By maintaining a human capital planning process, the agency will be able to proactively address and evaluate factors that may have an effect on our mission and daily operations. The success of these efforts depends on continued stability in funding for FY 2019 and beyond to retain expertise, improve competencies, sustain employee engagement, continue to improve our processes, and at the same time continue to perform our statutory and support functions effectively and efficiently. Retaining resources is even more critical given the recent and possible future legislative and administrative changes that may affect our jurisdiction and processes.

On June 21, 2018, the Supreme Court issued its decision in *Lucia, et al. v. Securities and Exchange Commission (SEC)*, Docket No. 17-130. The Court held that SEC ALJs are inferior officers under the Appointments Clause of the Constitution because they exercise significant authority pursuant to the laws of the United States. Based on this finding, the Court held that SEC ALJs must be appointed in conformity with the requirements of the Appointments Clause, which requires that inferior officers either be Presidentially-nominated and Senate-confirmed or appointed through authority vested by Congress in the President, the courts of law, or the heads of departments. The parties conceded that SEC ALJs were not appointed in accordance with the Appointments Clause. Because the petitioner in *Lucia* originally had a hearing before a constitutionally invalid ALJ, the Court found that he was entitled to a new hearing before a different, properly appointed ALJ.

*Lucia* has the potential to affect MSPB from both an adjudicatory and operational standpoint. Although the MSPB does not currently employ any ALJs—we use other agencies' ALJs through

interagency agreements—we do hear appeals of adverse actions taken against ALJs under 5 U.S.C. § 7521. Our case law regarding ALJs may be affected by *Lucia*. In addition, some appellants have argued that MSPB AJs are covered by the *Lucia* holding, although it bears noting that MSPB AJs are not appointed the way ALJs are appointed. If *Lucia* challenges regarding MSPB AJs are sustained, appellants who raised successful challenges may be entitled to new proceedings before an officer appointed in conformity with the Appointments Clause.

The President’s May 25, 2018 EOs—Nos. 13836, 13837, and 13839<sup>6</sup>—also affect the MSPB from both an internal and external standpoint. Internally, the most significant issue is the requirement, pursuant to all three orders, to renegotiate provisions of the Collective Bargaining Agreement (CBA) that are inconsistent with the requirements and priorities set forth in the orders. MSPB also must conform its non-CBA performance management guidance and practice to comport with the EOs.<sup>7</sup> As noted earlier, several provisions of the EOs relating to collective bargaining and official time have been declared invalid, but an appeal of this determination is pending in the DC Circuit.

**Information Technology Stability, Security, and Modernization.** MSPB is committed to transitioning to 100 percent electronic adjudication (e-Adjudication) to process cases more efficiently and improve service to our customers. In addition, e-Adjudication will support MSPB’s efforts to comply with Governmentwide initiatives involving improving efficiency, effectiveness, accountability, and customer service; Federal paperwork reduction; and records management directives requiring that agencies convert records to electronic format. MSPB is also focused on ensuring it has the IT infrastructure and the IT and information services expertise to execute its mission and modernize its systems, including implementing e-Adjudication and obtaining a viable, secure, cloud-based survey capability. Beginning in FY 2017, MSPB pivoted away from continuing to customize our existing legacy business applications for case management, document management, and document assembly, each of which is nearing end-of-life. In FY 2018, we developed comprehensive requirements to identify the “next generation” of MSPB’s core business applications to fully enable e-Adjudication of MSPB appeals (while retaining the option for paper processing when necessary). In the end, this effort will yield important potential improvements in technology, systems, productivity, and efficiency, and it will require a significant initial investment of resources. The e-Adjudication initiative is a multi-year effort beginning with the selection of a vendor for our new core adjudication business applications and the initial implementation in FY 2019. We expect to complete implementation of core applications and related IT modernization projects by the end of calendar year 2020.

MSPB must administer surveys of the Federal workforce and others to provide empirical data to support its merit systems studies research responsibilities. Implementing past surveys has been challenging due to limited internal IT expertise needed to support the survey process and ensure compliance with new and rapidly changing IT security requirements. Meeting these security requirements is necessary to obtain the cooperation and support of the MPS by Federal agencies. This issue is especially sensitive when millions of current and former Federal employees have experienced breaches of personnel data managed and housed by OPM. Long-term effectiveness of the merit system studies program requires that MSPB have a more stable and flexible capacity to securely collect survey and other similar data in a cloud-based environment. However, MSPB’s

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<sup>6</sup> EO 13836, *Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining*; EO 13837, *Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use*; and EO 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit Systems Principles*.

<sup>7</sup> On August 24, 2018, the U.S. District Court for the District of Columbia issued an order declaring numerous provisions of the May 25<sup>th</sup> EOs invalid and enjoining the executive branch from enforcing the portions of the EOs declared invalid. *AFGE, et al. v. Donald T. Trump, et al.*, C.A. No. 1:18-cv-1261 (August 24, 2018). This decision was appealed to the Court of Appeals for the DC Circuit on September 25, 3018, and is pending under docket number 18-5289.

ability to support procurement of such a survey capability, conduct merit system studies, and support program evaluation is competing for fewer existing analytic and IT resources.

MSPB's 2018 IS results indicated that employees have more positive views of the availability and reliability of MSPB's IT infrastructure than in FY 2017, which were higher than in FY 2016. Employees believe the internal communication about IT issues has greatly improved. However, based on IS results, external assessments, and the importance of continuing with effective modernization, MSPB included IT expertise as a critical requirement in its SHCP.

## Significant External Trends and Issues

Although discussed in the preceding section on internal management challenges, the status of nominations and restoration of a quorum is beyond MSPB's control, also making it an external factor. Other than the lack of a quorum, the most significant external trends or issues affecting MSPB's ability to carry out its mission to protect the Federal merit systems include: changes in law, jurisdiction and appeals processes; Government reform, budget, and workforce reshaping; and retirement eligibility of the Federal workforce. MSPB is committed to continuing to perform its functions to the best of its ability and to justifying and requesting only those resources necessary to carry out its statutory responsibilities effectively and efficiently. If pending legislation does not change MSPB's workload or adjudication complexity, MSPB will require stable and sufficient resources in future years to perform its statutory functions effectively and efficiently. However, additional resources may be needed to meet new legislative changes to MSPB's adjudication procedures and simultaneously meet potential changes caused by other external factors.

**Changes in Law, Jurisdiction, and Appeals Processes.** During FY 2018, actions were taken by OPM to implement portions of the NDAA of 2017.<sup>8</sup> Among other things (which are summarized in the APR-APP for FY 2017-2019), the Act created four categories of statutorily authorized paid leave—administrative leave, investigative leave, notice leave, and weather and safety leave—and established parameters for their use by Federal agencies. OPM was directed to issue regulations regarding these leave categories no later than 270 days after the enactment of the law, and agencies were directed to revise and implement their policies no later than 270 days after OPM issued its regulations. On April 10, 2018, OPM promulgated regulations only on weather and safety leave, which took effect on May 10, 2018.<sup>9</sup> However, OPM has stated that it will not enforce the reporting requirements for weather and safety leave until 270 days after it issues regulations on the remaining leave categories prescribed by the 2017 NDAA.<sup>10</sup>

In addition to defining new administrative leave categories, the FY 2017 NDAA provided two new potential avenues of appeal to the MSPB related to investigations. First, the 2017 NDAA provided that placing an employee on investigative leave for a period of not less than 70 work days shall constitute a personnel action under paragraph (8) or (9) of 5 U.S.C. § 2302(b), thus adding possible grounds on which an employee might file an appeal to MSPB related to whistleblowing.<sup>11</sup> Separately, the 2017 NDAA provided that when an employee who is the subject of an investigation resigns prior to the investigation's completion, and the investigation results in an adverse finding concerning the former employee, the head of an agency is required to make a permanent notation of the adverse finding in the former employee's official personnel file (OPF).<sup>12</sup> The former employee is entitled to

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<sup>8</sup> Pub. L. 114-328, passed December 23, 2016.

<sup>9</sup> 83 Fed. Reg. 15291.

<sup>10</sup> 83 Fed. Reg. 15291.

<sup>11</sup> Pub. L. 114-328 § 1138, to be codified at Title 5 U.S.C. § 6329(g).

<sup>12</sup> Title 5 U.S.C. § 3322.

notice of the adverse finding and an opportunity to challenge the finding and the notice of the adverse finding. If the agency upholds the adverse finding, the former employee is entitled to appeal to MSPB the agency's decision to notate the adverse finding in his or her OPF. The notation in the OPF, and the right to appeal it, assume added significance because Congress also created a requirement for agencies to check the OPF of any former employees before making hiring decisions.<sup>13</sup> The OPF provisions became effective upon enactment.<sup>14</sup>

On October 26, 2017, Congress enacted the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017.<sup>15</sup> This law creates a 14<sup>th</sup> PPP, which prohibits access to medical records of an employee or an applicant for employment as part of, or otherwise in furtherance of, any conduct described in PPPs 1 through 13. In addition, this law: (1) requires agency heads to propose disciplinary action against supervisors who have engaged in whistleblower retaliation, related to 5 U.S.C. 2302(b)(8), (9), or (14); (2) provides certain whistleblower protections to probationary Federal employees; (3) provides guidelines to enhance Federal employee awareness of Federal whistleblower protections; (4) creates priority transfer rights for whistleblowers who are granted a stay of a personnel action by the MSPB; and (5) enhances access to information by OSC.

On December 12, 2017, Congress enacted the NDAA of 2018.<sup>16</sup> The most significant provision of this law for purposes of whistleblower protection, section 1097(d), amends 5 U.S.C. §§ 4302 and 4313 to require that agencies establish criteria for adding the protection of whistleblowers as a critical element for supervisors' performance appraisals (including SES performance appraisals). The provision also requires agencies to report annually to Congress the number of performance appraisals that determine agency supervisors fail to meet these standards. Another provision of this law, section 1097(c), amends 5 U.S.C. § 2302(b)(9)(C) to provide whistleblower protections for employees who cooperate with or disclose information not only to an Inspector General or the Special Counsel, but also to any other component responsible for internal investigation or review of an agency. The 2018 NDAA also contains a provision (similar to the Dr. Chris Kirkpatrick Whistleblower Protection Act) that requires the head of the agency to propose discipline of a supervisor determined to have committed a PPP by the agency head, an ALJ, the MSPB, OSC, a judge of the United States, or the agency's Inspector General.<sup>17</sup> If a suspension of more than 14 days, a demotion, or a removal is taken against a supervisor under this statute, the supervisor has the right to appeal the matter to the MSPB. Finally, section 1097(c)(4) amends 5 U.S.C. § 1214 to permit OSC to petition the MSPB to order corrective action against an agency if the agency's investigation of an employee was begun, expanded, or extended in retaliation for a protected disclosure or activity, regardless of whether a personnel action was taken.

On July 7, 2018, the President signed the All Circuit Review Act.<sup>18</sup> The All Circuit Review Act reinstates (retroactive to November 26, 2017) and makes permanent the authority for appellants to file petitions for judicial review of MSPB decisions in certain whistleblower reprisal cases with any circuit court of appeals of competent jurisdiction (instead of only with the CAFC).

The President's May 25, 2018 EOs—Nos. 13836, 13837, and 13839—also affect the MSPB from both an internal and external standpoint. Externally, EO 13839 may significantly affect MSPB's case processing due to its prohibition on agencies entering into settlement agreements that “erase,

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<sup>13</sup> 5 U.S.C. § 3330(e).

<sup>14</sup> Pub. L. 114-328 § 1140.

<sup>15</sup> Pub. L. [115-73](#).

<sup>16</sup> Pub. L. 115-91.

<sup>17</sup> 5 U.S.C. § 7515(b).

<sup>18</sup> Pub. L. 115-195.

remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records...". Because MSPB currently resolves a high percentage of cases through settlement—including many settlements that involve such terms or other alterations to the appellant's personnel records—this is likely to have a significant effect on MSPB's adjudication process and case processing statistics, especially timeliness of case processing. In addition, the EOs could lead to a significant increase in case receipts insofar as they direct agencies to endeavor to renegotiate CBAs to exclude adverse actions from grievance procedures. Although, as noted earlier, several provisions of the EOs relating to CBAs and official time have been declared invalid (and this determination is pending on appeal in the DC Circuit), the effect of the other two EOs may result in fewer appellants who are represented on appeal, and union representatives may have less time to devote to representation duties.

These enacted, proposed, and contemplated changes in law, jurisdiction, or appeals processes could impact the merit systems, management of the workforce, and MSPB functions and operations both directly and indirectly. Such changes are likely to affect MSPB's appeals workload, the complexity of cases it adjudicates, the need for changes in MSPB procedures, and the need for additional MSPB resources. Changes in law and jurisdiction also emphasize the importance of MSPB's responsibility to conduct studies of Federal merit systems and exercise its statutory authority to review OPM's significant actions to ensure that the Federal workforce continues to be managed in accordance with MSPs and free from PPPs. These changes also increase the importance of MSPB's responsibility to promote merit and educate employees, supervisors, managers, and leaders on the merit systems, MSPs, PPPs, and MSPB appellate procedures, processes, and case law. These outreach and educational functions improve workforce management over time and may reduce the time and cost of processing appeals for agencies, appellants, and the Government. MSPB will continue to track congressional activity and will use its body of legal precedent and objective research findings to assess and identify the potential impact of changes in civil service law on MSPB's operations and mission.

**Government Reform, Budget, and Workforce Reshaping.** On March 13, 2017, OMB issued EO 13781, *Presidential Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch*,<sup>19</sup> followed with implementing guidance on April 12, 2017, in OMB Memorandum M-17-22, *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*.<sup>20</sup> On March 20, 2018, OMB published the *President's Management Agenda*,<sup>21</sup> and on June 21, 2018, OMB published the *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*.<sup>22</sup> These plans outline Governmentwide changes as well as specific changes in several Government organizations affecting a variety of Government services. Some recommended changes are within the ability of the various agencies to implement, and some require action by Congress.

Certain actions taken by agencies as part of these reform efforts are likely to have an effect on MSPB's workload. Workforce reduction actions can result in adverse actions affecting Federal employees, and affected employees may file appeals of those actions with MSPB. For example, Governmentwide budget sequestration in 2013 led to tens of thousands of furloughs of Federal employees, which, in turn, led to a huge increase, almost five times the normal workload, in the number of MSPB appeals. RIF actions, and some cases involving VERA or VSIP, are also appealable to MSPB. Historical trends indicate that increasing RIFs would lead to an increase in the

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<sup>19</sup> EO 13781, <https://www.whitehouse.gov/the-press-office/2017/03/13/presidential-executive-order-comprehensive-plan-reorganizing-executive>.

<sup>20</sup> <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-22.pdf>.

<sup>21</sup> <https://www.whitehouse.gov/wp-content/uploads/2018/03/Presidents-Management-Agenda.pdf>.

<sup>22</sup> <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>.

number of appeals filed to MSPB, and RIF appeals are often more complex than some other types of appeals. Workforce reshaping also may affect workforce management, employee engagement, and employee effectiveness. Maintaining MSPB's strong merit systems studies and OPM review functions helps ensure the workforce continues to be managed under the MSPs and avoids PPPs. Indeed, the Appendix to the OMB memorandum M-17-22 references several MSPB merit systems study reports, which provide useful information to agencies as they implement changes to achieve the memorandum's objectives.

**Retirement Eligibility of the Federal Workforce.** For many years, the proportion of Federal employees who are eligible to retire has been increasing. Federal employees usually do not retire immediately when they become eligible, but those who stay longer add to the total number of retirement-eligible employees each year.<sup>23</sup> From 2011 to 2015, MSPB had slight increases each year in the number of retirement initial appeals received, although such appeals dropped a bit in FY 2016 and FY 2017. Recently published research indicates that retirements increase in the first three years of a new Administration.<sup>24</sup> Indeed, retirement data indicate that from January to July 2018, retirement claims (or applications) filed with OPM increased by 15.6% over the same period in FY 2017.<sup>25</sup> As retirements increase, for whatever reasons, we expect to see an increase in retirement appeals. Although Federal retirements are difficult to predict, retirement eligibility in the Federal civil service must continue to be monitored.

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<sup>23</sup> Federal News Radio, [Feds ride the money, benefits wave longer than expected](#), April 29, 2015.

<sup>24</sup> Bolton, A., Figueiredo, J.M., and Lewis, D., National Bureau of Economic Research working paper, [Elections, Ideology, and Turnover in the U.S. Federal Government](#) (December 2016), and also the same authors published in Harvard Business Review, [Will Federal Employees Work for a President They Disagree With?](#), February 2017.

<sup>25</sup> <https://www.govexec.com/pay-benefits/2018/08/federal-retirement-claims-nearly-16-percent-so-far-2018-over-same-period-last-year/150310/>, <https://www.govexec.com/pay-benefits/2018/06/federal-agencies-where-most-employees-are-eligible-retire/149091/>, and <https://www.govexec.com/management/2018/07/how-agencies-oldest-workforces-are-preparing-retirement-exodus/150121/?oref=relatedstories>.

# Program Evaluation and Performance Measurement

## Program Evaluation

MSPB programs broadly affect Federal merit systems and Federal management, and they generate significant value for Federal agencies and the public. Effective program evaluation is critical to ensuring that MSPB can continue to achieve its mission effectively and efficiently and to provide value now and in the future. Emphasis on program evaluation has increased in recent years and was listed in the Administration's Reform Plan released June 21, 2018 as an area that needs to be strengthened.<sup>26</sup> MSPB is committed to high-quality program evaluation. However, ensuring our ability to perform our statutory mission, as well as ensuring compliance with requirements of the GPRAMA and recent program evaluation guidance from OMB, could require increased resources and program evaluation staff.

A relatively small increase in MSPB's program evaluation resources and staff could likely yield a large return in efficiency and cost savings for MSPB. In turn, this would improve the value MSPB brings to agencies, Federal employees, individual parties to cases filed with MSPB, and to the public. If internal program evaluation resources are not available, contractor support is a viable, but potentially more expensive option for conducting tasks associated with program evaluations. This option is most useful when the evaluation topic is technical in nature, beyond the scope of knowledge of existing program analytic staff, or when the evaluation is focused on program evaluation itself or on the office within which program evaluation activities are conducted.

## Performance Measurement: Verifying and Validating Performance Information

Most quantitative measures of MSPB's adjudication performance come from its automated case management system based in Law Manager, which tracks location, timeliness, outcomes, and other information about cases filed with MSPB. Other quantitative and qualitative performance measures are reported by MSPB's program offices. MSPB also collects external customer satisfaction data from adjudication, ADR and (more rarely) merit systems studies customers and stakeholders. Several of MSPB's management PGs use data from OPM's FEVS. MSPB also has an active IS program, which measures various management PGs contained in MSPB GPRAMA reports, and provides customer feedback and customer service information on internal administrative programs such as IT, information services, HR, facilities, travel, procurement, and EEO programs.

MSPB has made many recent improvements in performance measurement. Even so, recent data integrity issues, coupled with the emphasis on 100 percent e-Adjudication and new core business applications, continue to highlight the importance of continuous improvement in performance measurement. MSPB needs to consider the status of its performance measurement functions, and seek to develop an agency-wide performance measurement policy that will improve oversight, accountability, and coordination of performance measurement processes. Such a policy will help ensure the consistency, validity, and verifiability of the performance data that are used to manage MSPB programs and are included in agency reports. MSPB will coordinate development of an agency policy for performance measurement with findings from the data integrity evaluation and the results of the requirements gathering process for new core business applications. The recent work on developing a Federal Data Strategy is also relevant to agency program evaluation and performance measurement.<sup>27</sup>

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<sup>26</sup> *Delivering Government Solutions for the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations*, June 21, 2018, pg. 118.

<sup>27</sup> <https://strategy.data.gov/>.

## Results of Program Evaluation Activity

**GAO assessment of processing WPEA cases at MSPB.** GAO’s 2017 report on the WPEA recommended data entry users guide for entering WPEA data at MSPB and improvements to MSPB’s data quality checks to help identify discrepancies in WPEA data. In addition, MSPB has conducted an initial internal assessment of the data entry and data checking processes used for adjudication case management, including, but not limited to, whistleblower data. Finally, MSPB’s considerable efforts in FY 2018 to define the requirements necessary for modernizing its core business applications also included information about Law Manager, our current case management system, that will serve as a foundation for updating the data entry user guide and defining appropriate quality checks in the reporting process. Thus, developing requirements necessary to update our core business applications, including a next-generation electronic case management system, will serve as a surrogate evaluation of Law Manager. No additional evaluation of Law Manager will be performed since it is likely that it will be replaced with a new core business application in the next two years. In addition, the process used to identify the requirements for new core business applications provided initial information also provided essential background information as the initial steps in evaluating the functions of the Office of Regional Operations.

**Define adjudication process/develop requirements for new core business applications.** This activity involves validating the business and technical requirements for these applications, i.e., our case management, document management and document assembly systems, to support e-Adjudication, and developing a prioritized path for upgrades necessary to support our business processes. We began this activity in FY 2017 by developing a PWS to create our requirements documentation. The contract was awarded in FY 2018 and work was completed in the 3<sup>rd</sup> quarter of 2018.

## Program Evaluation Status

MSPB Program Evaluation Status		
Program/System to Evaluate	Evaluation Start Year	Status
Law Manager case management system (as part of updating our core business applications for adjudication and to support e-Adjudication)	2016	Initial input from GAO report on WPEA, continuing under auspices of defining requirements for new core business applications and more broadly with a new agency-wide performance measurement policy, including verifying and validating data. MSPB will take steps to make critical changes in Law Manager to ensure implementation of the GAO recommendations. However, further action will await the results of ongoing activities.
IT program planning and implementation (in conjunction with updating business applications to support e-Adjudication; moved from 2018 due to IT issues in 2015)	2016	Initial information was contained in external reports on our IT infrastructure by Kelyn, VMware and Cask. In FY 2018, we derived additional information from the development of requirements for core business applications. The business process narratives and workflow diagrams are primarily descriptive, but are also evaluative in some respects. In FY 2016, IT staff expertise was listed as a critical issue in MSPB’s SHCP. In addition, the IS continues to contain questions relevant to IT program planning and implementation. Next steps in this program evaluation will await results from ongoing activities and direction from the new Chairman.

Case processing and data integrity in the ROs/FOs	2017	Initial information was provided by the GAO WPEA report. Additional information was provided in the internal assessment of data entry processes for case management data. In FY 2018, further information was provided in conjunction with our efforts to define the adjudication process as part of the initiative to develop requirements for new core business applications. Results of these efforts will help ensure compliance with GAO’s recommendations from the WPEA report and the development of an agency-wide performance measurement policy. In addition, the automated process for surveying initial appeals and ADR parties or customers provide ongoing data to inform next steps in this program evaluation. MSPB’s adjudication process may also be affected by legislative changes in the appeals process including specific timeliness requirements. A preliminary draft report was prepared by OPE describing how key appeals data are collected and reported in Law Manager and providing recommendations for improving data quality. Next steps in this program evaluation, including changes in scope, will await results from ongoing activities, changes in legislation, and direction from the new Chairman.
Functions of the Office of Regional Operations	2018	In FY 2018, we developed requirements for modernizing our core business applications, including business process narratives, breakdowns of internal and external users groups, and data flow diagrams. This baseline information provides a starting point to help structure and inform any evaluation of our adjudicatory processes. While program evaluation of ORO functions was not the focus of the requirements development effort, the efforts were helpful in better understanding our processes and systems. Further steps in conducting an evaluation of ORO functions will await guidance from the new Chairman.

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

In FY 2018, efforts to develop an agency policy for performance measurement, verification, and validation resulted in realization that such a policy has implications for and is related to Governmentwide policy efforts involving data quality and integrity, and data governance. Investigation of these related initiatives will continue in FY 2019. Based on the availability of resources, MSPB will undertake independent program evaluations of its mission and administrative support programs and assess its performance measurement systems and processes over the next few years. A projected schedule for these activities through FY 2020 is provided below. Additional specifications for these evaluations, and changes in the evaluation focus or schedule may occur when the quorum is restored and we have a new Chairman.

**Program/Performance Measurement System**

**Evaluation Start Year**

Data integrity and case processing in the ROs and FOs  
 Functions of the Office of Regional Operations

2017  
 2018 (moved from 2020)

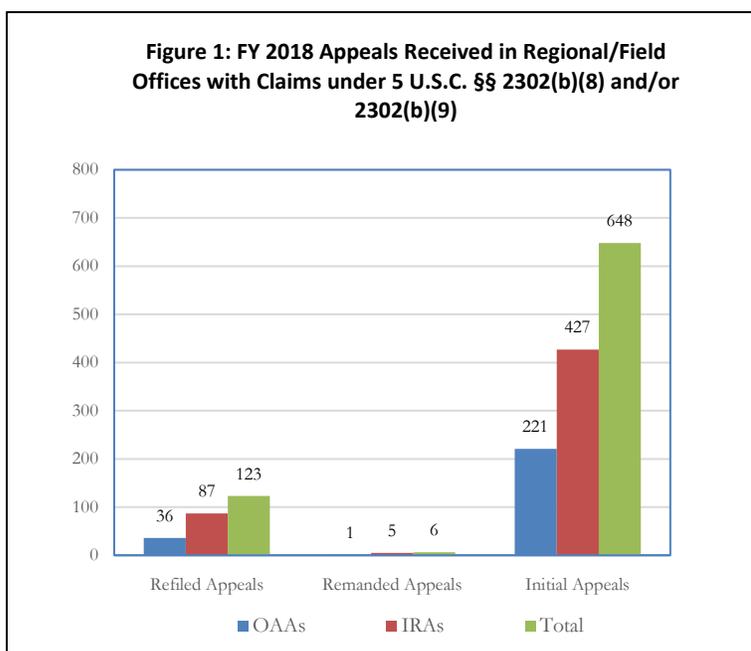
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## Appendix A: Information About FY 2018 Whistleblower Appeals

In accordance with the WPEA, MSPB is providing this information about appeals in FY 2018. This report reflects cases processed from October 1, 2017, through September 30, 2018, and includes data on receipts and outcomes in initial appeals, and receipts in PFRs, in which violations of 5 U.S.C. § 2302(b)(8) and/or 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D) were alleged.<sup>28</sup> Adjudicating appeals is an ongoing process and appeals are often closed in a different year than that in which they were received. Therefore, the figures for initial appeals received (i.e., Figure 1) and outcomes of initial appeals processed (e.g., Figures 3 and 6) in any given year will not be comparable. Data for PFRs received with claims related to whistleblowing are included in Figure 9. PFR outcome data for whistleblower cases are not included in this report, as no Board decisions were issued on PFRs in FY 2018 due to the continued lack of quorum.<sup>29</sup>

There generally are two types of appeals that can involve claims of reprisal under sections 2302(b)(8) and (b)(9). An otherwise appealable action (OAA) appeal involves an adverse action that is directly appealable to the Board, such as a removal, demotion, or suspension of more than 14 days. In such an appeal, MSPB will review both the appealable action and the claim of reprisal for engaging in protected activity as an affirmative defense. An individual right of action (IRA) appeal—which may be based on an action that could have been appealed directly to the Board or on a less severe action that is not directly appealable—is limited to the issue of whether the action was taken because of protected activity. In this kind of case, the individual can appeal the claim of reprisal to the Board only if he or she files a complaint with the Office of Special Counsel (OSC) first, and OSC does not seek corrective action on the individual’s behalf.<sup>30</sup>

Figure 1 displays data on the number and types of appeals that MSPB received in FY 2018 in which violations of 5 U.S.C. § 2302(b)(8) and/or (b)(9) were alleged. Appeals “received” by ROs/FOs fall into three categories: initial appeals, remanded appeals, and refiled appeals. “Initial appeals” are new appeals filed by an appellant for the first time and thus represent new cases alleging reprisal. “Remanded appeals” are appeals that were previously adjudicated by a RO/FO, but which have been remanded on PFR by the Board at MSPB HQ, or by a Federal circuit court on appeal of a

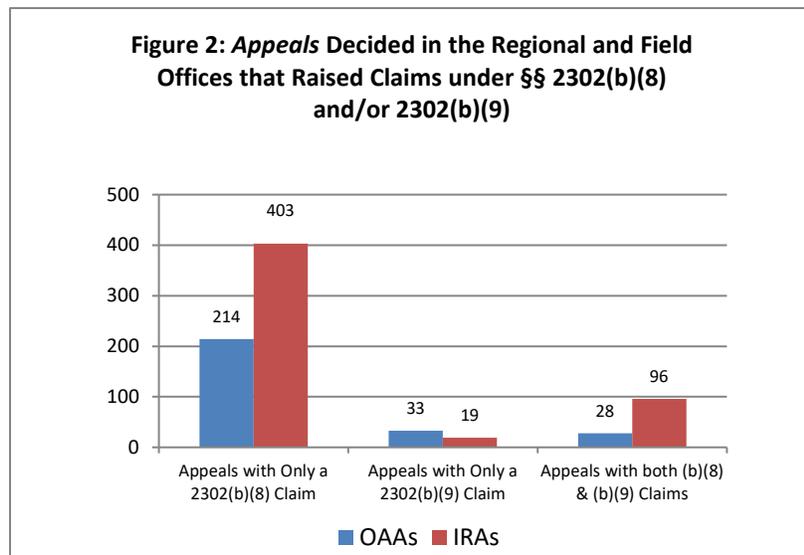


<sup>28</sup> This report generally refers to claims raised under section 2302(b)(9); however, this report does not include claims raised under section 2302(b)(9)(A)(ii), as 5 U.S.C. § 1221(a) allows appellants to seek corrective action from MSPB as a result of prohibited personnel practices described only in section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D).

<sup>29</sup> Effective on January 8, 2017, Mark A. Robbins served as a single Board member. Lacking a quorum since that date, including for all of FY 2018, MSPB has been unable to issue decisions on PFR and other cases at HQ.

<sup>30</sup> Complaints in IRA appeals go first to OSC for review and, if warranted, OSC conducts an investigation. According to OSC, it is during this process that agencies often choose to take corrective action or settle an issue informally before OSC files a case with MSPB. MSPB adjudicates IRA appeals that have had the chance to be resolved while at OSC, but OSC did not seek corrective action.

final Board decision.<sup>31</sup> “Refiled appeals” are appeals that are refiled – by the appellant or on the AJ’s own motion – because they were previously dismissed without prejudice (DWOP) to refiling. A DWOP is a procedural option that allows for the dismissal and subsequent refiling of an appeal, often to allow the parties more time to prepare for the litigation of their cases. Remanded or refiled appeals are not new cases; they are separately docketed appeals that are related to initial appeals filed earlier in the same FY or in a prior FY. If the related initial appeal was filed in the same FY, it would be included in the number of “initial appeals.” Because the ROs/FOs must process remanded and refiled appeals and issue decisions in these appeals, these appeals are considered part of MSPB’s workload of appeals containing claims under sections 2302(b)(8) and/or 2302(b)(9).



An appellant can file an appeal alleging a violation of section 2302(b)(8) only, a violation of section 2302(b)(9) only, or a violation of both.<sup>32</sup> Figure 2 depicts the number of appeals, both OAA appeals and IRA appeals, that were decided in FY 2018 in the ROs/FOs and whether the appeal contained (a) a claim(s) under section 2302(b)(8) only; (b) a claim(s) under section 2302(b)(9) only; or (c) claims under both sections 2302(b)(8) and (b)(9).

Figure 3 breaks down the totals displayed in Figure 2 for OAA appeals by depicting the outcomes of OAA appeals decided in the RO/FO in which violations of section 2302(b)(8) and/or (b)(9) were alleged. It is important to note that the outcome of an OAA *appeal* is separate from the outcome of a section 2302(b)(8) or (b)(9) *claim*.<sup>33</sup> An OAA appeal can be dismissed for a variety of reasons that have nothing to do with the merits of any reprisal claim raised therein. For example, the appeal may be untimely filed, the action or the appellant might be outside the Board’s appellate jurisdiction, or the appellant might have made a binding election to challenge the action in another forum (such as through a negotiated grievance or arbitration procedures). This figure includes appeals that were withdrawn and appeals that were dismissed without prejudice (DWOP). Cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

<sup>31</sup> In FY 2018, there were no appeals remanded by the Board, as no Board decisions were issued on PFRs due to the lack of quorum. All remanded appeals in Figure 1 are cases that were remanded by a Federal circuit court on appeal of a final Board decision.

<sup>32</sup> Sections 2302(b)(8) and (b)(9) prohibit reprisal against an employee or applicant for employment based on different types of protected activity. Section 2302(b)(8) prohibits reprisal because of any disclosure that the employee or applicant reasonably believes evidences certain enumerated categories of wrongdoing. Employees who allege a violation of (b)(8) are typically referred to as alleging “reprisal for whistleblowing.” Section 2302(b)(9)(A)(i) prohibits reprisal because of the exercise of any appeal, complaint, or grievance right with regard to a violation of section 2302(b)(8). Section 2302(b)(9)(B) prohibits reprisal because of testifying for or otherwise assisting any individual in the exercise of any right under section 2302(b)(9)(A)(i) or (ii). Section 2302(b)(9)(C) prohibits reprisal because of cooperating with or disclosing information to the Inspector General of an agency or OSC. Section 2302(b)(9)(D) prohibits reprisal for refusing to obey an order that would require the individual to violate a law.

<sup>33</sup> The WPEA requires MSPB to report outcomes of appeals; however, when possible, MSPB additionally reports and summarizes the outcomes of claims.

Figure 3: Outcomes in OAA Appeals Decided in the Regional and Field Offices.						
Types of Claim(s) Raised	DWOP	Settled	Withdrawn	Dismissed (Other than DWOP)	Adjudicated on the Merits	Total
Section 2302(b)(8) Only	27	34	17	74	62	214
Both sections 2302(b)(8) and (b)(9)	2	8	1	3	14	28
Section 2302(b)(9) Only	2	6	2	14	9	33

In a case in which an appellant raises both section 2302(b)(8) and (b)(9) claims, the outcomes of those claims may differ.<sup>34</sup> Therefore, we are reporting the outcome of both (b)(8) and (b)(9) claims for cases in which both claims were raised and the OAA appeal was adjudicated on the merits, as depicted in Figures 4 and 5 below.

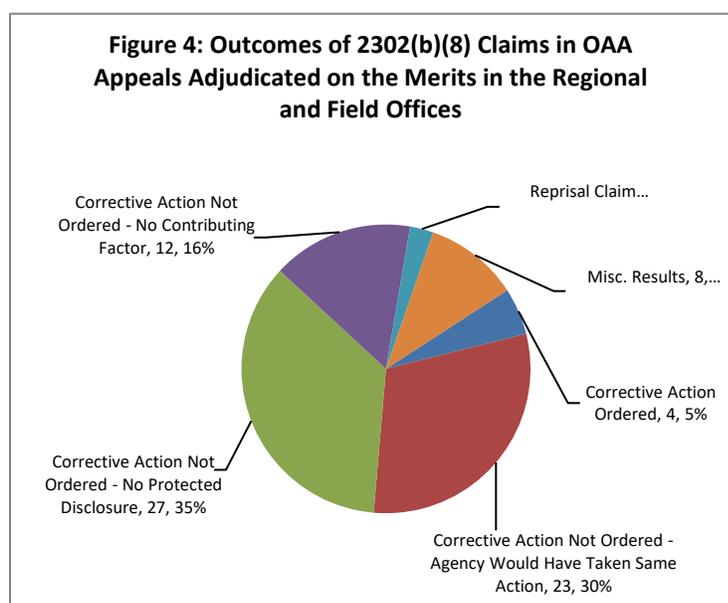


Figure 4 displays the resolution of section 2302(b)(8) claims within the 76 OAA appeals adjudicated on the merits in the ROs/FOs.<sup>35</sup> It includes both the 62 OAA appeals adjudicated on the merits with a section 2302(b)(8) claim only, as well as the 14 OAA appeals adjudicated on the merits with both section 2302(b)(8) and (b)(9) claims, as referenced in Figure 3. In FY 2018, there were no OAA appeals adjudicated on the merits in which a section 2302(b)(8) claim was raised and corrective action was not ordered because there was no personnel action; thus, this figure does not include a category for “Corrective Action Not Ordered – No Personnel Action.”

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

<sup>34</sup> For example, an appellant may allege that he was removed in violation of section 2302(b)(8) for disclosing to his supervisor his belief that a practice at the agency endangered public health. In the same appeal, he also may allege that he was removed in violation of section 2302(b)(9) for testifying in a coworker’s MSPB appeal which involved remedying a violation of section 2302(b)(8). In such a case, the appellant may decide to withdraw his section 2302(b)(9) claim, but prevail on his section (b)(8) claim. Under that scenario, the outcome of the section (b)(9) claim would be “Withdrawn,” whereas the outcome of the section (b)(8) claim would be “Corrective Action Ordered.”

<sup>35</sup> Figure 4 also includes a category of “Miscellaneous Results,” which represents OAA appeals that were adjudicated on the merits but wherein the section 2302(b)(8) claims in those cases were not adjudicated on the merits. An AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. For example, an AJ may strike a reprisal claim as a sanction for an appellant’s repeated failure to comply with the AJ’s orders, or determine that the Board is precluded from considering the reprisal claim because a security clearance determination is at issue.

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

<b>Figure 5: Outcomes of Section 2302(b)(9) Claims in OAA Appeals Adjudicated on the Merits in the Regional and Field Offices.</b>			
<b>Corrective Action Ordered</b>	<b>Corrective Action Not Ordered</b>	<b>Claim Withdrawn</b>	<b>Total</b>
3	20	0	23

Figure 5 depicts the resolution of section 2302(b)(9) claims within the 23 OAA appeals adjudicated on the merits in the ROs/FOs. This figure includes the 9 OAA appeals adjudicated on the merits with a section 2302(b)(9) claim only and the 14 OAA appeals adjudicated on the merits with both section 2302(b)(8) and (b)(9) claims, as

referenced in Figure 3. While Figure 4 divides the outcomes of section 2302(b)(8) claims within OAA appeals adjudicated on the merits into subcategories of “Corrective Action Not Ordered” (i.e., no contributing factor, no protected disclosure, and the agency would have taken the same action), Figure 5 displays the outcomes of section 2302(b)(9) claims within OAA appeals adjudicated on the merits only in the broader categories of “Corrective Action Ordered,” “Corrective Action Not Ordered,” and “Claim Withdrawn.”<sup>36</sup> As previously noted, the outcome of an *appeal* is separate from the outcome of a section 2302(b)(8) or (b)(9) *claim*.

Figure 6 breaks down the totals displayed in Figure 2 for IRA appeals by depicting the outcomes of those cases decided in the ROs/FOs in which violations of section 2302(b)(8) and/or (b)(9) were alleged. In an IRA appeal, an appellant “shall seek corrective action from OSC before seeking corrective action from the Board.”<sup>37</sup> If an IRA appeal is dismissed for “failure to exhaust” (i.e., because the appellant failed to first seek corrective action from OSC), the appellant can file a new IRA appeal after fulfilling the administrative exhaustion requirement.<sup>38</sup> Figure 6 also includes IRA appeals that were dismissed without prejudice. Also, as in OAA appeals, cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

<b>Figure 6: Outcomes in IRA Appeals Decided in the Regional and Field Offices</b>							
<b>Type of Claim(s)</b>	<b>DWOP</b>	<b>Settled</b>	<b>Withdrawn</b>	<b>Dismissed, Failure to Exhaust</b>	<b>Dismissed, Other Grounds</b>	<b>Adjudicated on Merits</b>	<b>Total</b>
Section 2302(b)(8) Only	70	56	31	59	118	69	403
Both sections 2302(b)(8) and (b)(9)	21	14	0	9	26	26	96
Section 2302(b)(9) Only	3	0	2	N/A	7	7	19

<sup>36</sup> Additionally, the “Corrective Action Not Ordered” category in Figure 5 includes OAA appeals in which the section 2302(b)(9) claim was not reached. As explained above with respect to Figure 4, an AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons.

<sup>37</sup> 5 U.S.C. § 1214(a)(3).

<sup>38</sup> In Figure 6, within the category of “Dismissed, Other Grounds,” the 7 IRA appeals in which a violation of section 2302(b)(9) only was alleged, include any IRA appeals, in which a violation of section 2302(b)(9) only was alleged, that were dismissed for failure to exhaust.

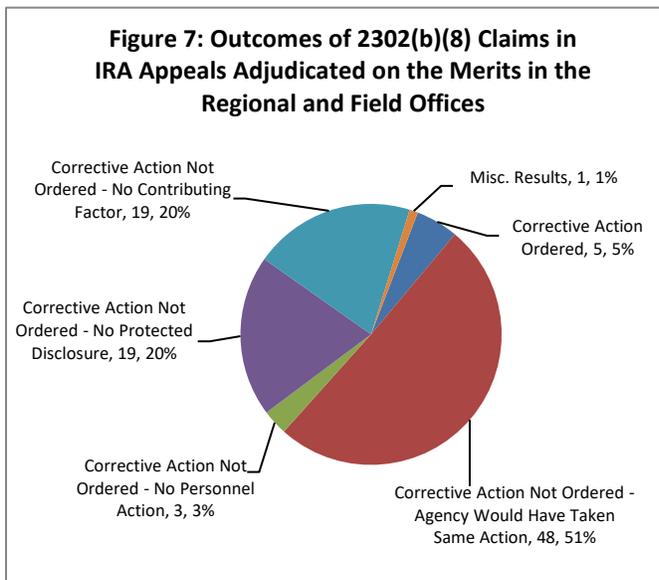


Figure 7 depicts the resolution of section 2302(b)(8) claims within the 95 IRA appeals adjudicated on the merits in the ROs/FOs. It includes the outcomes of the 69 IRA appeals adjudicated on the merits with a section 2302(b)(8) claim only and the 26 IRA appeals adjudicated on the merits with both section 2302(b)(8) and (b)(9) claims, as referenced in Figure 6. Just as in an OAA appeal, the Board shall order corrective action for the reprisal claim in an IRA appeal if the appellant has demonstrated that: (1) he or she made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against him or her; and (3) his or her protected disclosure was a contributing factor in the personnel action.

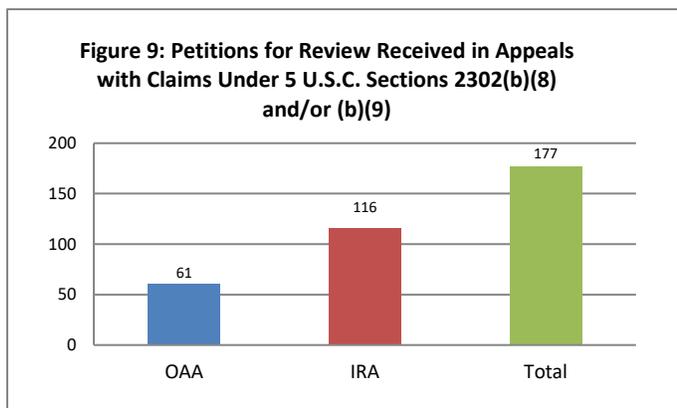
However, corrective action shall not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

Figure 8 depicts the resolution of section 2302(b)(9) claims within the 33 IRA appeals adjudicated on the merits in the ROs/FOs. This includes the outcomes of the 7 IRA appeals adjudicated on the merits with a section 2302(b)(9) claim only and the 26 IRA appeals adjudicated on the merits with both section 2302(b)(8) and (b)(9) claims, as referenced in Figure 6. While Figure 7 divides the outcomes of section 2302(b)(8) claims within IRA appeals adjudicated on the merits into subcategories of “Corrective Action Not Ordered” (i.e., no contributing factor, no protected disclosure, no personnel action, and the agency would have taken the same action), Figure 8 displays the outcomes of section 2302(b)(9) claims within IRA appeals adjudicated on the merits only in the broader categories of “Corrective Action Ordered,” “Corrective Action Not Ordered,” and “Claim Withdrawn.” The “Corrective Action Not Ordered” category includes IRA appeals in which the section 2302(b)(9) claim was not reached.

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

Corrective Action Ordered	Corrective Action Not Ordered	Claim Withdrawn	Total
3	30	0	33

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



Vice Chairman Mark A. Robbins signed a policy, effective May 11, 2018, stating that the Clerk of the Board may now exercise the delegated authority to grant a withdrawal of a PFR2 when requested by a petitioner if there is no apparent untimeliness of the petition and if no other party objects to the withdrawal.<sup>39</sup> In FY 2018, the Office of the Clerk of the Board granted 4 requests to withdraw petitions for review in cases that involved section 2302(b)(8) and/or (b)(9) claims.

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<sup>39</sup> <https://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1515773&version=1521400&application=ACROBAT>

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

In accordance with 5 U.S.C. § 7701(i)(1) and (2), MSPB provides FY 2017 case processing information. In FY 2018, MSPB processed 5,447 total cases (not including ALJ and original jurisdiction cases at HQ). Sixty-nine percent of initial appeals (including addendum cases) were processed in 110 days or less (75 percent in 120 days or less). Therefore, 31 percent of initial appeals took over 110 days to process (25 percent took over 120 days to process).<sup>40</sup>

Due to the lack of a quorum for all of FY 2018, MSPB issued no decisions from HQ (except for stays that could be issued by the single Board member). Therefore, we will not report timeliness information for processing PFR cases at HQ.

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

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<sup>40</sup> In June 2017, Congress set a 180-day limit for MSPB AJ's to issue decisions in VA adverse action cases (38 U.S.C. § 714(d)).

## Appendix C: More Information about MSPB

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

During congressional hearings on the CSRA before it was passed in 1978, various Members of Congress testified and described the role and functions of MSPB stating that: “[MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with insuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”<sup>41</sup> MSPB inherited Civil Service Commission (CSC) adjudication functions and provides due process to employees as an independent, third-party adjudicatory authority for employee appeals including adverse actions (such as removals, furloughs, and certain suspensions) and retirement decisions. For matters within its jurisdiction, MSPB was granted the statutory authority to develop its adjudicatory processes and procedures, issue subpoenas, call witnesses, and enforce compliance with MSPB decisions. Subsequent to the CSRA, Congress expanded MSPB’s jurisdiction to hear appeals under a variety of other laws giving it authority over a wide range of appeals.<sup>42</sup> Congress also granted MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and Federal human capital management issues to ensure employees are managed under the MSPs and free from PPPs. In addition, Congress granted MSPB the authority and responsibility to review the rules, regulations, and significant actions of OPM. Under various statutes, MSPB serves as an independent, third-party adjudicatory authority for over two million Federal civilian employees in almost every Federal department and agency, applicants for Federal civilian jobs, and certain U.S. Postal Service employees and uniformed military service members.<sup>43</sup>

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

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<sup>41</sup> Legislative History of the Civil Service Reform Act of 1978, Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. 2 (pages 5-6).

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

<sup>43</sup> This includes most Federal employees under Title 5 U.S.C. and others such as certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3) and RIF actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a.

## MSPB Offices and Their Functions

MSPB is headquartered in Washington, DC and has six regional and two field offices (ROs/FOs) located throughout the United States. The agency is currently authorized to employ 235 FTEs to conduct and support its statutory duties.

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

The **Office of the Administrative Law Judge (ALJ)** adjudicates and issues initial decisions in corrective and disciplinary action complaints (including Hatch Act complaints) brought by the Special Counsel, proposed agency actions against ALJs, MSPB employee appeals, and other cases assigned by MSPB. In FY 2018, the functions of this office were performed by ALJs at the Federal Trade Commission, the Coast Guard, and the Environmental Protection Agency under interagency agreements.

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

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

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

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

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

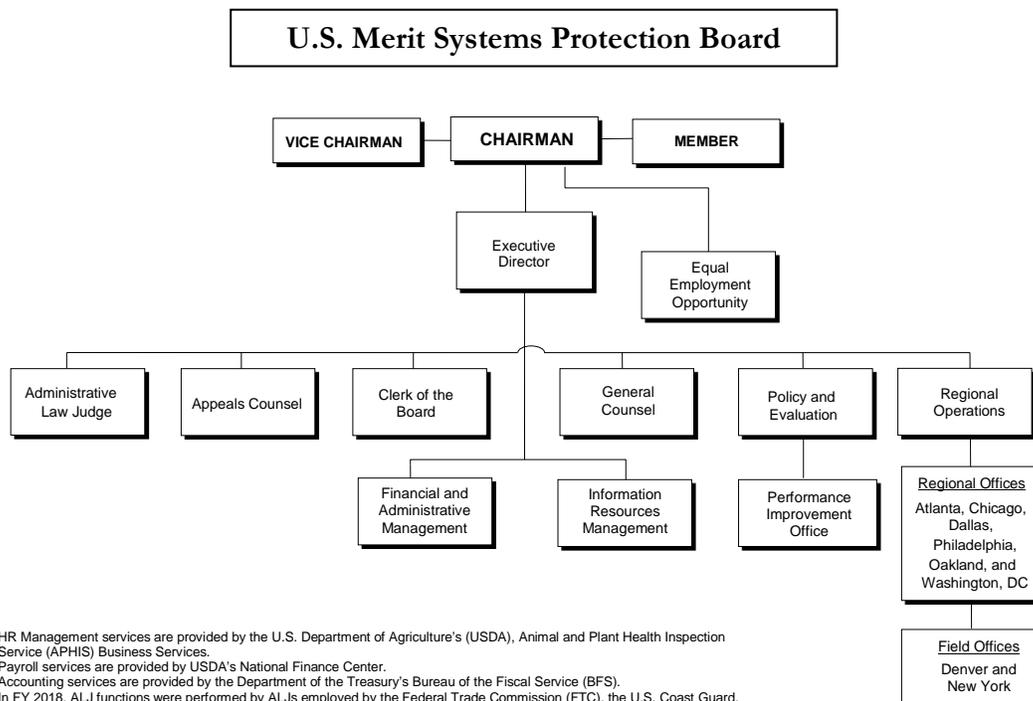
OPM regulations, and for other assigned cases; conducts the agency’s PFR settlement program; and coordinates the agency’s legislative policy and congressional relations functions. The office also drafts regulations, conducts MSPB’s ethics program, performs the Inspector General function, and plans and directs audits and investigations.

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

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

The **Office of Regional Operations** oversees the agency’s six ROs/FOs, which receive and process appeals and related cases. It also manages MSPB’s MAP. AJs in the ROs/FOs are responsible for adjudicating assigned cases and for issuing fair, well-reasoned, and timely initial decisions.

### MSPB Organizational Chart



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

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

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

MSPB's high-quality, objective merit systems studies provide value by identifying and assessing innovative and effective merit-based management policies and practices and recommending improvements. For example, MSPB studies have shown that improved hiring and selection, improved merit-based management, and greater employee engagement lead to a highly qualified Federal workforce, improved organizational performance, and better service to the public. Results, findings, and recommendations from MSPB's merit systems studies function are shared through reports, newsletters, research and perspective briefs, and other articles posted to our website and through outreach. A recent MSPB report provides information on and dispels misconceptions about due process in the civil service, which is useful to policy-makers, managers,

legal practitioners, and other stakeholders. Effective management processes also help reduce the occurrence and costs of PPPs, which negatively affect agency and employee performance. Review of OPM's significant actions, rules, and regulations protects the integrity and viability of the civil service and merit systems and provides benefits similar to those related to merit systems studies. Better merit-based management helps improve employee and agency performance. It also logically leads to less employee misconduct and fewer adverse actions, which reduces costs in terms of fewer PPPs and fewer unsubstantiated appeals. This provides indirect value to the American taxpayer in decreased Governmentwide costs and confidence that the Government is doing its job well and appropriately managing its workforce.

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

The CSRA codified for the first time the values of the merit systems as the MSPs and delineated specific actions and personnel practices that were prohibited (PPPs) because they were contrary to merit system values.<sup>44</sup> The MSPs include the values of: fair and open competition for positions, with equal opportunity to achieve a workforce from all segments of society; merit-based selection for jobs; advancement and retention based on qualifications and job performance; fair and equitable treatment in all aspects of management; equal pay for work of equal value; and training that improves organizational and individual performance. The MSPs also include: protection from arbitrary action, favoritism, or coercion for political purposes; and protection against reprisal for lawful disclosure of violations of law and waste, fraud, and abuse. The MSPs further state that the workforce should be used effectively and efficiently and that all employees should maintain high standards of integrity, conduct, and concern for the public interest.

The PPPs state that employees shall NOT take or influence others to take personnel actions that: discriminate for or against an individual or applicant on the bases of race, color, religion, sex, national origin, age, disabling (handicapping) condition, marital status, or political affiliation; consider information beyond the person's qualifications, performance, or suitability for public service; or coerce political activity or commit reprisal for refusal to engage in political activity. These actions also may not: deceive or willfully obstruct an individual's rights to compete for employment; influence a person to withdraw from competition to affect the prospects of another; or grant preference beyond that provided by law. The actions also may not be: based on or create nepotism; in retaliation or reprisal for whistleblowing—the lawful disclosure of a violation of law, rule or regulation, gross mismanagement or gross waste of funds, abuse of authority, or danger to public health or safety; in retaliation or reprisal for an employee's exercise of his or her rights and legal protections, or assistance to another in the person's exercise of his or her rights; or based on past conduct that does not adversely affect the job. The actions also must not: knowingly violate veterans' preference requirements; violate the MSPs; or implement or enforce a nondisclosure policy, form, or agreement, which lacks a specific statement that its provisions are consistent with and do not supersede applicable statutory whistleblower protections. On October 26, 2017, Congress created a 14<sup>th</sup> PPP, which prohibits access of medical records as part of, or to further, any conduct related to, any other PPP.<sup>45</sup>

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<sup>44</sup> 5 U.S.C. § 2301 and § 2302, respectively.

<sup>45</sup> The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, Pub. L. [115-73](#), amends 5 U.S.C. § 2302(b) to add "(14) access to the medical records of another employee or applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13)."

## List of Common Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
AJ	Administrative Judge
ALJ	Administrative Law Judge
APR-APP	Annual Performance Report and Annual Performance Plan
CB	Clerk of the Board
CBA	Collective Bargaining Agreement
CIO	Chief Information Officer
COOP	Continuity of Operations Plan
CSC	Civil Service Commission
CSRA	Civil Service Reform Act of 1978
CSRS	Civil Service Retirement System
DOI	Department of Interior
DWOP	Dismissal Without Prejudice
ED	Executive Director
EEOC	Equal Employment Opportunity Commission
e-FOIA	Electronic Freedom of Information Act webpage
EHRI	Enterprise Human Resource Integration
FERS	Federal Employees' Retirement System
FEVS	Federal Employee Viewpoint Survey
FLRA	Federal Labor Relations Authority
FTE	Full-time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GPRA	Government Performance and Results Act
GPRAMA	GPRA Modernization Act of 2010
GSA	General Services Administration
HC	Human Capital
HR	Human Resources
HQ	Headquarters
<i>IoM</i>	<i>Issues of Merit</i> newsletter
IRA	Individual Right of Action (type of whistleblower appeal)
IS	Internal Survey
IT	Information Technology
MAP	Mediation Appeals Program
MPS	Merit Principles Survey
NBC	DIO National Business Center
MSP	Merit System Principles
NDAA	National Defense Authorization Act
OAA	Otherwise Appealable Action

OMB	Office of Management and Budget
OPM	Office of Personnel Management
OSC	Office of Special Counsel
PFR	Petition for Review of an Initial Decision
PIO	Performance Improvement Officer
PPP	Prohibited Personnel Practices
PWS	Performance Work Statement
RFI	Request for Information
RFQ	Request for Quote
RIF	Reductions in Force
SES	Senior Executive Service
SHCP	Strategic Human Capital Plan (or planning)
SLA	Service Level Agreement
TBD	To be determined
USERRA	Uniformed Services Employment and Reemployment Rights Act
VA	Department of Veterans Affairs
VERA	Voluntary Early Retirement Authority
VSIP	Voluntary Separation Incentive Plan
WPEA	Whistleblower Protection Enhancement Act of 2012



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