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**United States**

**Merit Systems Protection Board**



**Strategic Plan for FY 2022-2026**

**Draft for Submission to OMB**

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# U.S. Merit Systems Protection Board

## Strategic Plan for Fiscal Year 2022-2026

### Introduction

A highly qualified, diverse Federal workforce managed in accordance with the merit system principles (MSPs) and in a manner free from prohibited personnel practices (PPPs) is critical to ensuring agency performance and service to the public. The MSPs are essential management practices that help ensure the Federal Government is able to recruit, select, develop, and maintain a high-quality workforce and thereby reduce staffing costs and improve organizational results for the American people. The PPPs are specific, proscribed behaviors that undermine the MSPs and adversely affect the effectiveness and efficiency of the workforce and the Government. This U.S. Merit Systems Protection Board (MSPB) Strategic Plan (SP) provides the foundation for MSPB's work for fiscal year (FY) 2022-2026. It defines the agency's purpose, lays out the long-term outcomes it hopes to achieve, and describes how MSPB will fulfill its functions to protect merit, promote adherence to MSPs, and prevent PPPs.

### MSPB: An Overview

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

The inherent weaknesses of the patronage system and its impact on Government effectiveness were recognized by concerned individuals and groups, resulting in various reform movements. However, there was little momentum for change until President James A. Garfield was assassinated in 1881 by a disgruntled Federal job seeker. A large public outcry for civil service reform ensued, which led to the enactment of the Pendleton Civil Service Reform Act in 1883 (the Pendleton Act). The Pendleton Act created the Civil Service Commission (CSC) and tasked it with monitoring a merit-based civil service which used competitive examinations to support the appointment of qualified individuals to Federal positions. In serving as one of its first Commissioners, Theodore Roosevelt (1889-1895) based his reform efforts on three principles: 1) Opportunities should be made equal for all citizens; 2) Only those who had merit should be appointed to Federal jobs; and 3) Public servants should not suffer for their political beliefs.<sup>2</sup> This contributed to improvements in Government

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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, pp. 109-110.

<sup>2</sup> See <https://www.opm.gov/about-us/our-mission-role-history/theodore-roosevelt/>

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

Following passage of the Pendleton Act, laws were enacted and actions taken that established the principle of “promoting the efficiency of the civil service” as the standard for removing a Federal employee. These laws and actions also granted preference for hiring military veterans, established a more transparent process for removing veterans from Federal jobs, and extended veterans’ job protections to other civil servants.<sup>3</sup> The CSC was given additional authority to oversee the removal of Federal employees and to adjudicate employees’ appeals of their removal.<sup>4</sup> Although the CSC made several internal changes to better manage the appeals process, it became clear over time that the CSC could not adequately and simultaneously set managerial policy, protect the merit systems, and adjudicate appeals of actions Federal agencies took against employees. Concern over the inherent or perceived conflicts of interest in the CSC’s role as both rule-maker and adjudicator of appeals was a principal motivating factor behind the enactment of the Civil Service Reform Act of 1978 (CSRA).<sup>5</sup> The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission, with an Office of Special Counsel (OSC) within MSPB to investigate and prosecute alleged PPPs;<sup>6</sup> the Office of Personnel Management (OPM) to serve as the president’s agent for Federal workforce management policy and procedure; and the Federal Labor Relations Authority to oversee Federal labor-management relations.<sup>7</sup>

The CSRA also codified for the first time the values of the merit systems as the MSPs, and delineated 12 specific actions and practices as the PPPs that were prohibited because they were contrary to merit system values.<sup>8</sup> More recently two new PPPs were added. The Whistleblower Protection Enhancement Act of 2012 (WPEA) added a 13<sup>th</sup> PPP which involves appropriate enforcement of non-disclosure agreements. The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 added a 14<sup>th</sup> PPP prohibiting access of medical records in the furtherance of a PPP. The full text of the MSPs and PPPs is contained in Appendix A.

**MSPB’s role and functions.** During congressional hearings on the CSRA before its passage in 1978, the role and functions of MSPB were described during testimony by various members of Congress: “[MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with ensuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”<sup>9</sup> MSPB inherited the CSC’s adjudication functions and provides due process to employees as an independent, third-party quasi-judicial authority for employee appeals of adverse actions (e.g., removals, suspensions for more than 14 days, and furloughs) and retirement decisions. For matters within its jurisdiction, the CSRA gave MSPB the statutory authority to develop its adjudicatory processes and procedures, issue subpoenas, call witnesses, and enforce compliance with MSPB decisions.

The CSRA also gave MSPB broad authority to conduct independent, objective studies of the Federal merit systems and Federal human capital management issues, to ensure that Federal employees are managed in accordance with MSPs and in a manner free from PPPs. In addition, MSPB was given

<sup>3</sup> The Lloyd LaFollette Act of 1912; the Veterans Preference Act of 1944, as amended; and Executive Order (EO) 10,988.

<sup>4</sup> Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, *Journal of the Federal Circuit Historical Society*, Vol. 4, 2010, pp. 111-112.

<sup>5</sup> Ibid. p. 113.

<sup>6</sup> Ibid. p. 114.

<sup>7</sup> The Whistleblower Protection Act (WPA) of 1989 established OSC as a separate agency.

<sup>8</sup> 5 United States Code (U.S.C.) §§ 2301 and 2302, respectively.

<sup>9</sup> Legislative History of the CSRA of 1978. Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Vol. 2 (pp. 1469-70).

the authority and responsibility to review and report on the rules, regulations, and significant actions of OPM. MSPB reviews the degree to which OPM's significant actions affect adherence to MSPs and avoidance of PPPs. MSPB may, on its own motion or at the request of other parties, review and potentially overturn OPM regulations.<sup>10</sup> In summary, the CSRA granted MSPB the statutory authority and responsibility to adjudicate employee appeals, enforce compliance with MSPB decisions, conduct objective studies of Federal merit systems and human capital management issues, and review and take appropriate action on OPM's rules, regulations, and significant actions. Appendix B contains additional information about other areas of MSPB's jurisdiction, scope and effect, including how MSPB serves Federal employees, Federal agencies, and other important customers and stakeholders, including the public.

**Critical Issues Ahead.** Prior to March 4, 2022, MSPB had been without a quorum of Board members for *five years*, from January 8, 2017 through March 3, 2022. The restoration of a quorum will at last allow MSPB to fully pursue its mission. During the period we lacked a quorum, we continued to hold hearings and issue decisions on cases filed in the regional and field offices (RO/FOs). Appeals of those decisions at Headquarters (HQ), which have resulted in a backlog of 3,465 cases as of the end of FY 2021, comprise appeals of every type: adverse actions, performance issues, retirement appeals, and appeals filed by whistleblowers and veterans. The backlog also contains appeals to enforce compliance and requests for review of OPM regulations, each measurable by distinct agency objectives or performance goals (PGs). Eliminating the backlog is likely to take a few years, during which we will continue to receive new HQ appeals. In addition, there are various substantive changes needed to MSPB regulations that could not be addressed until a quorum was restored.

MSPB also has needed a quorum to review and approve the MSPB research agenda developed last year, and to issue research reports on merit systems studies. In 2021, MSPB administered a Governmentwide Merit Principles Survey of Federal employees which will provide essential data for several studies. Another matter that has awaited restoration of a quorum, but as of March 4, 2022, has been largely resolved, is issues raised by the Supreme Court decision in *Lucia v. Securities and Exchange Commission (SEC)*, 138 S. Ct. 2044 (2018), and its impact on MSPB administrative judges (AJs).

**Current Organization.** MSPB is an independent Federal agency within the executive branch. MSPB's Board members, consisting of a Chair, Vice Chair, and Member, are appointed by the President and confirmed by the Senate. Board members serve overlapping, non-renewable 7-year terms and can be removed only for cause. No more than two of the three Board members may be from the same political party. MSPB also has independent budgetary and hiring authority for its General Schedule employees. The Board members' primary role is to adjudicate the cases brought before them. The Chair, by statute, is the chief executive and administrative officer of the agency.

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, Equal Employment Opportunity (EEO), Financial and Administrative Management, General Counsel, Information Resources Management (IRM), Policy and Evaluation, and Regional Operations (ORO). The EEO Director reports directly to the Chair, and the directors of the other offices report to the Chair through the Executive Director. MSPB also has six ROs and two FOs located throughout the United States. These offices process initial appeals and report to the ORO Director. The agency is currently authorized to employ up to 235 full-time equivalents (FTEs) to

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<sup>10</sup> 5 U.S.C. §§ 1204(f) and 1206.

conduct and support its statutory duties. Many support functions are performed by other Federal agencies through interagency agreements.

MSPB has been without any presidentially appointed, Senate-confirmed Board members since March 1, 2019. Since that time, MSPB has continued to operate in accordance with its continuity of operations plan (COOP). Under the COOP, MSPB's General Counsel serves as the agency's acting chief executive and administrative officer in the absence of any Board members. On June 24, 2021, the President nominated Cathy A. Harris to be a member and Chair of the Board and Raymond A. Limon to be a member of the Board with a designation as Vice Chair. On September 13, President Biden nominated Tristan L. Leavitt as the third Board member. The Senate Committee on Homeland Security and Governmental Affairs held a nomination hearing for the three nominees on September 22. On October 6, 2021, the nominees were reported favorably out of committee and the nominations were placed on the Senate calendar. On January 3, 2022, the Senate returned Ms. Harris's nomination to the President, and she was renominated on January 4, 2022. On March 1, 2022, the Senate confirmed the nominations of Mr. Limon and Mr. Leavitt, and on March 4, 2022, they were sworn in as Board members. We hope necessary action will be taken to confirm Ms. Harris in early calendar year 2022.

**Revising the Strategic Plan.** This SP was developed in accordance with the Government Performance and Results Act Modernization Act of 2021 (GPRAMA) and guidance from the Office of Management and Budget (OMB). Prior to updating the SP, MSPB consulted its employees, external stakeholders, and the public to gather their thoughts and perspectives about MSPB and its future plans. From that input, a new draft SP was created which is a somewhat streamlined version of MSPB's prior SP. This draft was reviewed by MSPB program managers and approved for submission to the OMB in September 2021 by MSPB leadership. In the fall of 2021, MSPB consulted with Congress on the draft SP. Additional information about changes in this SP in response to stakeholder comments and how it links to other agency planning and reporting documents is contained in Appendix C.



## MSPB Strategic Framework

### MSPB Mission

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

### MSPB Vision

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

### MSPB Organizational Values

**Excellence:** We will base our decisions on statutes, regulations, and legal precedents; use appropriate scientific research methods to conduct our studies and make practical recommendations for improvement; and develop and use appropriate processes to oversee the regulations and significant actions of OPM. We will interact with our customers and stakeholders in a professional, respectful, and courteous manner. We will strive to be a model merit-based organization by applying the lessons we learn in our work to the internal management of MSPB.

**Fairness:** We will conduct our work in a fair, unbiased, and objective manner. We will be inclusive in considering the various perspectives and interests of stakeholders in our work, and in our external and internal interactions with individuals and organizations.

**Timeliness:** We will issue timely decisions in accordance with our performance goals and targets. We will issue timely reports on the findings and recommendations of our merit systems studies. We will respond promptly to inquiries from customers and stakeholders.

**Transparency:** We will make our regulations and procedures easy to understand and follow. We will communicate with our customers and stakeholders using clear language. We will make our decisions, merit systems studies, and other materials easy to understand and widely available and accessible on our website. We will enhance understanding of our processes and the impact of our products through outreach efforts.

## Strategic Goals and Objectives

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

### Strategic Objectives:

- 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution (ADR) processes.
  - 1A-RO: Provide understandable, high-quality resolution of initial appeals in the RO/FOs, supported by fair and efficient adjudication and ADR processes.
  - 1A-HQ: Provide understandable, high-quality resolution of appeals at HQ, supported by fair and efficient adjudication and ADR processes.
- 1B: Enforce timely compliance with MSPB decisions.
- 1C: Conduct objective, timely studies of the Federal merit systems and Federal HC management issues.
- 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.

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

### Strategic Objectives:

- 2A: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful, targeted outreach and engagement.
- 2B: Advance the understanding of merit, the MSPs, and the PPPs for stakeholders and the public by developing and sharing informational and educational materials and guidance.

## Management Objectives

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

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

Over the next five years, MSPB will use the following means and strategies to accomplish its objectives. Means and strategies may be adjusted and may be emphasized in specific years, or they may be used over the entire period. Strategies may be carried out by one or more MSPB offices.

### Strategic Goal 1

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

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

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

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

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

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

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

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

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

## Strategic Goal 2

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

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

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

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

## Management Objectives

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

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

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

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

## Assessing Achievement of MSPB Strategic and Management Objectives

The following PGs are used to assess achievement of MSPB's objectives. Detailed information about the PGs, including measures and yearly targets for each PG, are contained in the APPs.

### Strategic Goal 1

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

**1A-RO:** Provide understandable, high-quality resolution of initial appeals in the regional and field offices, supported by fair and efficient adjudication and ADR processes.

##### Performance Goals:

- 1A-RO-1 Ensure quality of initial decisions (IDs).
- 1A-RO-2 Ensure processing timeliness for IDs (including addendum appeals).
- 1A-RO-3 New performance goal for ADR to be determined (TBD).

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

##### Performance Goals:

- 1A-HQ-1 Ensure quality of PFR decisions.
- 1A-HQ-2 Ensure processing timeliness for PFRs.
- 1A-HQ-3 Reduce the backlog of HQ cases (TBD, one or more new PGs).

#### 1B. Enforce timely compliance with MSPB decisions.

##### Performance Goals:

- 1B-1 Ensure processing timeliness of compliance cases in the RO/FOs.
- 1B-2 Ensure processing timeliness of compliance cases at HQ.

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

##### Performance Goals:

- 1C-1 Publish *Issues of Merit* newsletters or other articles.
- 1C-2 Publish MSPB study reports, briefs, or other documents.
- 1C-3 Conduct surveys of Federal employees to assess and report on the health of the merit systems.

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

##### Performance Goals:

- 1D-1 Review OPM regulations.
- 1D-2 Review and report on OPM significant actions.

## Strategic Goal 2

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

#### Performance Goal:

2A-1 Conduct effective outreach and engagement.

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

#### Performance Goals:

2B-1 Develop and share informational and educational materials and guidance about merit, the MSPs, and the PPPs.

2B-2 Track the scope of references to MSPB's work and work products.

## Management Objectives

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

#### Performance Goals:

M1-1 Ensure MSPB's workforce has the competencies needed to perform its mission.

M1-2 Ensure positive perceptions of workforce diversity by MSPB employees.

M1-3 Ensure positive perceptions of workplace inclusion by MSPB employees.

M1-4 Ensure positive employee engagement.

### M2. Modernize IT to support agency mission and administrative functions.

#### Performance Goals:

M2-1 Ensure reliability of MSPB IT systems, hardware, and applications.

M2-2 Ensure satisfaction with internal IT support and services

M2-3 Continuously enhance cybersecurity.

M2-4 Improve efficiency of adjudication case processing systems.

M2-5 Deploy and maintain effective, secure cloud-based services.



## Trends and Challenges that May Affect Agency Performance

A number of significant external trends and internal challenges are likely to affect MSPB's mission through FY 2026. This section lists these trends and challenges and their potential effect on the agency. MSPB studies, newsletters, decisions, and other information and products may help inform Congress and other stakeholders about the potential impacts on merit and the Federal workforce of various actions and external trends. Otherwise, the external trends described here are beyond MSPB's influence. Additional narrative information about these trends and challenges can be found in MSPB's Annual Performance Reports (APRs) and APP documents.

### External Trends

- Changes in law, jurisdiction, court precedent, policy, authorities, and flexibilities (e.g., National Defense Authorization Acts (NDAA) for FY 2020, 2021, and 2022; court decisions in *Hessami v. MSPB*, 979 F.3d 1361 (Fed. Cir. 2020), *Santos v. National Aeronautics and Space Administration (NASA)*, 990 F.3d 1355 (Fed. Cir. 2020), *Bostock v. Clayton County, GA*, 140 S. Ct. 1731 (2020), *Connor v. Department of Veterans Affairs (VA)*, 8 F.4th 1319 (Fed. Cir. 2021), and *Rodriguez v. VA*, 8 F.4th 1290 (Fed. Cir. 2021).
  - Increased adjudication workload, expanded jurisdiction, increased numbers of employees who can file appeals with MSPB, implementation of statutory time constraints on certain appeals processing, increased case complexity, fewer cases resolved through ADR leading to an increased proportion of cases requiring full hearings, and expanded case tracking, coding, and reporting requirements.
  - Increased need for and complexity in studying the Federal merit systems, Federal management, and reviewing OPM rules, regulations, and significant actions to ensure the workforce is managed in accordance with the MSPs and free from PPPs.
  - Increased need to promote merit and educate Federal managers, employees, policymakers, other stakeholders, and the public about Federal merit systems, MSPs, and PPPs.
- The COVID-19 pandemic (e.g., effects on MSPB processes, the MSPB workforce, the Federal workforce, and the merit systems).
  - Governmentwide policy and process changes such as telework eligibility, reentry policies, safety and security protocols, accountability for health and safety behaviors, and potential sharing of health information could affect merit-based management, increase PPPs, and increase appeals.
  - Adverse effects on MSPB employees' work, work-life balance, and stress due to prolonged uncertainty, considerable change, and health worries.
- Administration priorities (e.g., EOs, the President's Management Agenda, presidential memoranda, and related OMB guidance on external and internal equity, workforce diversity and inclusion, accessibility, tribal engagement, climate change, customer service, and improving trust through use of evidence and data).
  - Efficiently and effectively assess and comply with action plans and submissions that are required for MSPB or that most impact our work.
  - Consider and implement changes to agency planning documents and identify and implement improvements to agency operations, functions, and processes in response to these priorities, as appropriate.
- Federal budgets, Governmentwide reform, and workforce reshaping (e.g., U.S. Postal Service (USPS) reorganization, Department of Homeland Security expansion of appeal rights for Transportation Security Officers, and potential fiscal constraints following the pandemic).

- Increases in the number of appeals due to the use of reductions in force (RIFs), actions taken in lieu of or in preparation for RIFs, furloughs, Voluntary Early Retirement Authority, and Voluntary Separation Incentive Payments.
- Continued need to conduct merit systems studies and make recommendations on how to protect the MSPs and avoid PPPs during these workforce changes.

### **Internal Management Challenges**

- 5-year lack of Board quorum.
  - The lack of quorum between January 2017 and March 4, 2022 has prevented MSPB from issuing HQ decisions, leading to a backlog of 3,465 cases as of the end of FY 2021. The Board will work as expeditiously as possible to adjudicate PFRs, but the 5-year lack of quorum has significantly delayed resolution and finality for the parties of these appeals.
  - The 5-year lack of quorum also has prevented MSPB from issuing merit systems studies reports or interpretive precedential decisions in response to legislative changes, as well as from promulgating substantive regulations.
  - MSPB also was unable to set agency targets or measure progress for FY 2018 through FY 2021 for the PGs related to quality of initial decisions, average PFR processing time, enforcement case processing time, publication of merit systems study reports, and review of OPM regulations.
- IT operations and modernization.
  - MSPB required contractor support to develop requirements, design, and configure the new e-adjudication system, including enhanced e-filing capability, automated workflows, electronic case files, and other changes needed to move to 100% electronic adjudication.
  - The legacy Information Technology Service Management (ITSM) application is at end of life and will be replaced by an off-the-shelf ITSM solution capable of expanding to include inventory/asset management and workflow management. MSPB will review the PGs for ITSM operations and our e-filing system when these new applications are fully implemented.
  - Obtaining and ensuring the resources and expertise needed to support MSPB's operations, including cloud-based services.
- Human capital issues.
  - Although the numbers are improving, a high proportion of MSPB employees in key positions continues to be retirement-eligible, including AJs and their managers, and employees in critical, one-deep positions.
  - Sustaining staff resources sufficient to reduce the backlog while simultaneously processing new HQ cases, process initial appeals (including quality reviews of decisions and adjudicating remands by the new Board), publish merit systems studies, conduct other MSPB functions, and ensure adequate training and employee development.
  - A continuous SHCP process is critical to assessing and developing an agency and workforce structure to ensure MSPB successfully serves its constituencies in the future.

## Program Evaluation and Performance Measurement

### Program Evaluation

MSPB programs broadly affect Federal merit systems and Federal management, and they generate significant value for Federal agencies and the public. Program evaluation is critical to ensuring that MSPB continues to achieve its mission effectively and efficiently to provide value now and in the future. Emphasis on program evaluation has increased in recent years. The Evidence Act and the Federal Data Strategy are also relevant to agency program evaluation and performance measurement.<sup>11</sup>

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

### Performance Measurement: Verifying and Validating Performance Information

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

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

<sup>11</sup> Public Law (Pub. L.) [115-435](#), and see <https://strategy.data.gov>.

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

**Results and Status of Program Evaluation Activity**

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

**Program Evaluation Status**

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

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

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

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

## Governmentwide Contextual Indicators of a Strong Merit-based Civil Service

MSPB cannot achieve its mission to protect and promote a strong merit-based civil service on its own. Federal policymakers and other stakeholders must do their part to establish and implement merit-based policies and must apply these policies to the everyday practice of merit in the workplace. A strong merit-based civil service also requires the cooperation and commitment of every agency leader, manager, supervisor, and employee. If everyone does their part, we will have a stable, highly qualified, diverse workforce managed under MSPs and free from PPPs, able to provide superior services to the American people. The indicators below focus on a strong merit system which is the context in which Federal employees work to serve the public. Thus, the indicators are also relevant to the President's Management Agenda priorities as they relate to the Federal workforce and delivering service to the public.<sup>12</sup>

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

- ✓ Greater Governmentwide employee engagement and improved organizational management leading to higher organizational performance.
- ✓ A stable (with constructive turnover), competent, diverse, and inclusive workforce.
- ✓ Perceived increases in adherence to merit in the workplace.
- ✓ Decrease in the actual or perceived occurrence of PPPs, or in the perception of the adverse effects of PPPs, as reported by Federal employees.
- ✓ Increase in the perception that agencies monitor the performance and conduct of their employees, supervisors, managers, and leaders and take effective and efficient actions for improvement or discipline, when appropriate.
- ✓ Increase in the percentage of Federal employees, supervisors, managers, and leaders who understand the basis of the Federal merit systems, the MSPs, and the PPPs.
- ✓ Increase in the percentage of employees who agree they have confidence in the Federal merit systems appeals process.
- ✓ Increase in reported level of public trust in Federal civil servants.

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<sup>12</sup> <https://www.whitehouse.gov/omb/management/pma>.

## Appendix A: The Merit System Principles and the Prohibited Personnel Practices

### The Merit System Principles: Title 5 U.S.C. § 2301<sup>13</sup>

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

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

### The Prohibited Personnel Practices: Title 5 U.S.C. § 2302<sup>14</sup>

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

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

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<sup>13</sup> [5 U.S.C. § 2301.](#)

<sup>14</sup> [5 U.S.C. § 2302.](#)

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

- (C) any disclosure to Congress (including any committee of Congress) by any employee of an agency or applicant for employment at an agency of information described in subparagraph (B) that is--
- (i) not classified; or
  - (ii) if classified--
    - (I) has been classified by the head of an agency that is not an element of the intelligence community (as defined by section 3 of the National Security Act of 1947 (50 U.S.C. 3003)); and
    - (II) does not reveal intelligence sources and methods.
- (9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of--
- (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation--
    - (i) with regard to remedying a violation of paragraph (8); or
    - (ii) other than with regard to remedying a violation of paragraph (8);
  - (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);
  - (C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
  - (D) for refusing to obey an order that would require the individual to violate a law, rule, or regulation;
- (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;
- (11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or
- (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;
- (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;
- (13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement--
- (A) does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."; or



- (B) prohibits or restricts an employee or applicant for employment from disclosing to Congress, the Special Counsel, the Inspector General of an agency, or any other agency component responsible for internal investigation or review any information that relates to any violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection; or
- (14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).

This subsection<sup>15</sup> shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D)<sup>16</sup> may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

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<sup>15</sup> 5 U.S.C. § 2302(b).

<sup>16</sup> 5 U.S.C. § 2302(a)(2)(D).

## Appendix B: More about MSPB

### MSPB's Jurisdiction under Other Federal Laws

**Performance and retirement cases:** The CSRA gave MSPB jurisdiction to adjudicate adverse actions (under 5 U.S.C. chapter 75), performance-based cases (under 5 U.S.C. chapter 43), and retirement cases under the Civil Service Retirement System, in addition to several other lesser-used jurisdictional authorities. Since then, Congress has given MSPB jurisdiction to hear cases and complaints filed under a variety of other laws.<sup>17</sup> The Federal Employee Retirement System (FERS) Act authorized MSPB to hear FERS appeals and interpret FERS and issues arising from it.<sup>18</sup>

**Cases involving veterans:** Under the Uniformed Services Employment and Reemployment Rights Act, a person entitled to the rights and benefits provided by 38 U.S.C. chapter 43 may file an appeal with the Board alleging that a Federal agency or OPM failed or refused, or is about to fail or refuse, to comply with a provision of that chapter, such as a denying reemployment rights following a period of uniformed (military) service or discrimination based on a person's uniformed service.<sup>19</sup> This prohibition applies to initial employment, reemployment, retention in employment, promotion, or any benefit of employment. The Veterans Employment Opportunity Act (VEOA) provides preference eligible veterans with a means to seek redress before MSPB for alleged veterans' preference violations, such as those concerning non-selections for vacant Federal positions. VEOA also provides certain veterans a means of redress before MSPB when they have been denied the right to compete under certain vacancy announcements.<sup>20</sup>

**Employees in other merit systems:** Additionally, MSPB hears appeals from employees covered by merit systems established under other statutes. For example, MSPB has jurisdiction over certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3); RIF actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a; and cases involving preference eligible veterans in the USPS and Postal Regulatory Commission under 5 U.S.C. § 7511(a)(1)(B)(ii).

**Whistleblowers and new PPPs:** Under the WPA, MSPB exercises jurisdiction over claims made by whistleblowers in two types of appeals. An individual right of action (IRA) appeal is authorized by 5 U.S.C. § 1221(a) with respect to personnel actions that are allegedly threatened, proposed, taken, or not taken because of the appellant's whistleblowing activities.<sup>21</sup> If the action is not otherwise appealable directly to MSPB, the appellant first must seek corrective action from OSC. An otherwise appealable action (OAA) is a direct appeal to MSPB under laws, rules, or regulations other than 5 U.S.C. § 1221(a). The appellant may choose either to seek corrective action from OSC before appealing to MSPB or appeal directly to MSPB.<sup>22</sup> That choice determines the scope of review applicable to the appeal.

In 2012, Congress enacted significant changes to whistleblower protections in the WPEA.<sup>23</sup> This legislation amended the WPA to: (1) expand the scope of protected disclosures and activities; (2) eliminate or narrow some exclusions from coverage; (3) add to the covered actions over which MSPB has appellate jurisdiction; (4) extend protections to all Transportation Security Administration

<sup>17</sup> Also including [5 U.S.C. chapter 43](#), and all those set out at [5 C.F.R. part 1201.3](#).

<sup>18</sup> [5 U.S.C. § 8461\(e\)](#), enacted by Pub. L. [99-335](#), title I, § 101, 100 Stat. 571 (1986).

<sup>19</sup> Pub. L. [103-353](#), codified at 38 U.S.C. §§ 4301-4335.

<sup>20</sup> [5 U.S.C. § 3330a-c](#).

<sup>21</sup> IRA appeals involve personnel actions listed in [5 C.F.R. § 1209.4\(a\)](#).

<sup>22</sup> Examples of such OAAs are listed in [5 C.F.R. §§ 1201.3](#) (a)(1)-(a)(19).

<sup>23</sup> Pub. L. [112-199](#).

employees; (5) authorize MSPB to impose disciplinary action in some retaliation cases; (6) expand MSPB's authority to award compensatory and other damages; and (7) require MSPB to include whistleblowing case processing data in its APRs. The WPEA, as amended, also suspended, for five years, the exclusive jurisdiction of the U.S. Court of Appeals for the Federal Circuit (CAFC) over MSPB whistleblower cases. This provision subsequently lapsed for several months. On July 7, 2018, President Trump signed the All Circuit Review Act.<sup>24</sup> This law reinstated (retroactive to November 26, 2017) and made 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 the CAFC). The WPEA also added a 13<sup>th</sup> PPP, which involves appropriate enforcement of nondisclosure agreements. The WPEA enhanced whistleblower protections and gave MSPB more responsibility and authority in whistleblowing cases, which has added to MSPB's workload and case complexity.<sup>25</sup> GAO issued a report on the WPEA in November 2016.<sup>26</sup> As discussed above, MSPB changed its processes for recording and reporting WPEA data in response to recommendations made in that report.

The Follow the Rules Act, which was signed into law on June 14, 2017, expanded the right-to-disobey provision of the WPEA.<sup>27</sup> Originally, this provision protected covered employees from retaliation for refusing to obey an order that would require the individual to violate a law only.<sup>28</sup> This law now permits an employee to refuse to obey an order that would require him or her to violate a law, rule, or regulation. This includes agency-specific rules and regulations.

On October 26, 2017, the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 was signed into law.<sup>29</sup> This law creates a 14<sup>th</sup> PPP prohibiting access to medical records of another employee or an applicant for employment as a 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 are found to have committed a PPP; (2) provides certain whistleblower protections to probationary Federal employees; (3) provides guidelines to encourage Federal employee awareness of Federal whistleblower protections; and (4) enhances access to information by OSC.

On December 12, 2017, the FY 2018 NDAA was signed into law.<sup>30</sup> Section 1097 of this law reauthorized OSC. The most significant provision of this law relevant to whistleblower protection is section 1097(d), which 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 Senior Executive Service performance appraisals. The provision also requires agencies to report annually to Congress the number of performance appraisals that determine that an agency supervisor failed to meet these standards. Another provision of this law, § 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 FY 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 by the

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<sup>24</sup> Pub. L. [115-195](#).

<sup>25</sup> The updated text for the eight sections of the statute changed by the WPEA is available on the MSPB website at <http://www.mspb.gov/appeals/uscode.htm>.

<sup>26</sup> Government Accountability Office, Whistleblower Protection: Additional Actions Would Improve Recording and Reporting of Appeals Data ([GAO-17-110](#)), November 2016.

<sup>27</sup> Pub. L. [115-40](#).

<sup>28</sup> [5 U.S.C. § 2302\(b\)\(9\)\(D\)](#).

<sup>29</sup> Pub. L. [115-73](#).

<sup>30</sup> Pub. L. [115-91](#).

agency head, an administrative law judge, the MSPB, OSC, a judge of the United States, or the agency's Inspector General to have committed a PPP.<sup>31</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.

Section 5721 of the FY 2020 NDAA amended the PPP in 5 U.S.C. § 2302(b)(8) to specifically protect disclosures to Congress.<sup>32</sup> Clarifying that protected disclosures can include those made to Congress could increase the number of appeals involving whistleblowing. In addition, significant to MSPB's adjudication workload is the CAFC's recent decision in *Hessami v. MSPB*, No. 19-2221, in which the court clarified that a nonfrivolous allegation of protected whistleblowing must be determined based on just the appellant's claims, without consideration of contradictory agency evidence at the jurisdictional stage.

Sections 1131 to 1138 of the NDAA for FY 2021<sup>33</sup> enacted the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, which substantially upgraded the incentive process in whistleblower cases and allows, and in certain cases requires, legal representation for whistleblowers.

**Hatch Act cases and other issues involving OSC:** MSPB also processes cases brought by OSC related to the behavior of public employees alleged to be in violation of political conduct prohibited by the Hatch Act. The Hatch Act Modernization Act of 2012, which was signed into law on December 28, 2012, broadens the scope of permissible political activities for State, local, and Federal employees, and affects MSPB's jurisdiction and processing of such cases. The Act expands the range of penalties MSPB may apply for Federal employees who violate the prohibitions in the Act, and, in some cases, permits retroactive application of these penalty provisions for Federal employees. In another area related to OSC, Congress authorized any remaining MSPB Board member, appointed by the president and with the advice and consent of the Senate, in circumstances in which the Board lacks a quorum, to extend the period of any OSC stay granted under 5 U.S.C. § 1214(b)(1)(A).<sup>34</sup>

Section 1137 of the FY 2021 NDAA for FY 2021<sup>35</sup> amended the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 Amendments by requiring Federal agencies to track discrimination complaints from start to finish and allowing the Equal Employment Opportunity Commission (EEOC) to refer to OSC discrimination cases in which an agency failed to take appropriate action.

**Title 5 employees who work in specific agencies:** The FY 2016 NDAA made several changes to the HR authorities used to manage Department of Defense (DOD) civilian employees. The changes included lengthening the probationary period for new DOD employees, making employee performance the most important factor in determining retention standing of DOD employees in a RIF, delaying a within-grade increase (WGI) for the period of time the employee is not performing at an acceptable level of competence, and clarifying removals related to suitability determinations.<sup>36</sup> Due to the lack of a quorum between January 2017, and March 4, 2022, no precedent has yet issued

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<sup>31</sup> 5 U.S.C. § 7515(b).

<sup>32</sup> Pub. L. 116-92, enacted December 20, 2019.

<sup>33</sup> Pub. L. 116-283, enacted January 1, 2021.

<sup>34</sup> Pub. L. 115-42, enacted June 27, 2017.

<sup>35</sup> Pub. L. 116-283, enacted January 1, 2021.

<sup>36</sup> The FY 2016 NDAA, Pub. L. 114-92, § 1101 (RIF), § 1105 (probationary period), § 1106 (delay of WGI), § 1086 (suitability adverse actions).

addressing these changes in the law. The NDAA for FY 2022 repealed the two-year probationary period defined in 10 U.S.C. Section 1599e, leaving most probationary periods for DOD employees at one year.<sup>37</sup> The lack of precedent complicates adjudication of appeals related to these provisions.

The FY 2017 NDAA made additional changes in the management of DOD employees. This law added MSPB appeal rights for up to 11,500 National Guard military technicians for various actions taken against them when they are not in a military pay status,<sup>38</sup> or when the issue does not involve fitness for duty in the reserve component.<sup>39</sup> The law also repealed the waiver of the 180-day period after retirement before retired members of the armed forces may be appointed to DOD civilian positions.<sup>40</sup> The Senate Report for the repeal of the 180-day waiver cites MSPB's report on hiring veterans entitled, "[\*Veteran Hiring in the Civil Service: Practices and Perceptions\*](#)."<sup>41</sup>

The VA Accountability and Whistleblower Protection Act of 2017 was enacted on June 23, 2017.<sup>42</sup> This law essentially replaced the Veterans Access, Choice, and Accountability Act of 2014<sup>43</sup> for purposes of SES appeals and changed the requirements for appeals of adverse actions taken against VA employees, including how MSPB processes those appeals. The new law: (1) provides that misconduct-based and performance-based actions be taken under 38 U.S.C. § 714, and that the procedures of chapter 43 of title 5 shall not apply; (2) lowers the standard of proof for all VA adverse actions from preponderance of the evidence to substantial evidence; (3) disallows mitigation of the agency's selected penalty by MSPB; (4) imposes a 180-day time limit for MSPB to issue an initial decision; and (5) requires that actions against SES members be grieved in an internal process so that they are no longer appealable to MSPB.

The CAFC recently issued precedential decisions in *Connor v. VA*, 8 F.4th 1319 (Fed. Cir. 2021) and *Rodriguez v. VA*, 8 F.4th 1290 (Fed. Cir. 2021), that affect these VA cases. In *Connor*, the CAFC held that MSPB's review of VA decisions taken under 38 U.S.C. § 714 must include a complete penalty analysis including consideration of the *Douglas* factors.<sup>44</sup> If the Board determines that the VA did not consider the relevant *Douglas* factors or that the selected penalty is unreasonable, the matter must be remanded to the VA for a new penalty determination. In *Rodriguez*, the CAFC further held that the burden of proof to be applied by the VA in taking an action under 38 U.S.C. § 714 is preponderant evidence, not substantial evidence.

**Administrative leave:** The Administrative Leave Act of 2016 (section 1137 of the FY 2017 NDAA) limited the length of time an agency can place an employee on paid administrative leave to 10 work days in a calendar year. It added three new categories of paid leave: "notice leave," "investigative leave," and "weather and safety leave."<sup>45</sup> For purposes of 5 U.S.C., chapter 12, subchapter II and section 1221 (whistleblower reprisal cases), placing an employee on investigative leave for a period of not less than 70 work days shall be a personnel action under paragraph (8) or

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<sup>37</sup> Pub. L. [117-81](#).

<sup>38</sup> Pub. L. [114-328](#) § 512.

<sup>39</sup> Based on information provided to MSPB by the National Guard.

<sup>40</sup> Pub. L. [114-328](#) § 1111.

<sup>41</sup> S. Rep. 114-255, <https://www.congress.gov/congressional-report/114th-congress/senate-report/255/1>.

<sup>42</sup> Pub. L. [115-41](#).

<sup>43</sup> The Veterans Access, Choice, and Accountability Act of 2014, Pub. L. [113-146](#). On May 9, 2017, the CAFC found portions of the law relating to SES appeals to be unconstitutional. See *Helman v. VA*, 856 F.3d 920 (Fed. Cir. 2017).

<sup>44</sup> *Douglas v. VA*, 5 M.S.P.R. 280, 305-06 (1981)

<sup>45</sup> FY 2017 NDAA, Pub. L. [114-328](#) § 1138.

(9) of § 2302(b), adding to the possible grounds on which an employee might file an appeal based on the PPPs related to whistleblowing.<sup>46</sup>

**Investigations of former employees:** The FY 2017 NDAA also expanded MSPB’s jurisdiction to include a new type of appeal. When an employee who is the subject of an investigation resigns before the investigation is completed, and the investigation results in an adverse finding as to 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). The former employee is entitled to notice of, and an opportunity to challenge, the adverse finding. If the agency upholds the adverse finding, the former employee is entitled to appeal to MSPB the agency’s decision to place a notation of the adverse finding in their OPF. The OPF provisions became effective upon enactment of the NDAA.<sup>47</sup> The notation in the OPF, and the right to appeal it, assumed added significance throughout the Government because Congress also created a requirement for agencies to check the OPF of any former employee before making hiring decisions.<sup>48</sup>

**LGBT employment rights.** In *Bostock v. Clayton County, GA*, 140 S. Ct. 1731 (2020), the Supreme Court held that taking action against employees because of their sexual identity or transgender status constitutes sex discrimination. The Court ruled that discrimination on the basis of sexual orientation or gender identity is sex-based discrimination as prohibited by Title VII of the Civil Rights Act of 1964. This decision affirmed the EEOC’s 2015 analysis (as described in its ruling in *Baldwin v. Foxxx*), holding that discrimination on the basis of sexual orientation was “because of sex” as prohibited by Title VII, thus expanding the definition of sex-based discrimination and establishing statutory protection on these additional bases.

**Performance-based actions.** In *Santos v. NASA*, 990 F.3d 1355 (Fed. Cir. 2021), the CAFC significantly expanded the potential scope of admissible evidence and discovery in performance-based actions taken under 5 U.S.C § 4302. The court held that when an agency predicates removal on an employee’s failure to satisfy obligations imposed by a performance improvement period (PIP), the agency must further demonstrate that the employee’s performance justified imposition of a PIP in the first instance.

## MSPB’s Scope of Impact

Through its adjudication and merit systems studies, MSPB affects almost every Federal employee, and through those employees, it affects the quality of the services provided to the American people. Under various statutes, MSPB provides an independent, third-party review authority for over two million Federal civilian employees, applicants for Federal civilian jobs, and selected categories of the almost 575,000 employees of the USPS and 1.4 million uniformed military service members. MSPB’s adjudication function covers individuals in almost every Federal cabinet level department, small and independent agencies, Government boards, and other executive branch organizations.

MSPB’s studies function provides findings and recommendations that are applicable to and can improve Federal merit systems policies and practices in all Federal executive branch organizations. Because these study findings and recommendations focus in part on improving public management in support of fundamental public service values, they also may provide useful information and guidance for the management of Federal legislative branch and judicial branch employees and public employees at the State and local levels. Through MSPB’s authority to review and act on OPM rules,

<sup>46</sup> 5 U.S.C. § 2302(b)(8) provides protections for whistleblowing, and (b)(9) provides protections for the exercise of or participation in an appeal, complaint, or grievance procedure, or refusing to obey an order that would require violation of law.

<sup>47</sup> FY 2017 NDAA, Pub L. [114-328](#) § 1140.

<sup>48</sup> 5 U.S.C. § 3330(e).

regulations and significant actions, MSPB protects the Federal merit systems and helps ensure that Federal employees are managed in accordance with MSPs and free from PPPs. This broad authority includes all employees in the agencies for which OPM sets policy, beyond the specific individual employees who may file appeals with MSPB challenging actions their agencies have taken against them.

### **How MSPB Serves the Merit Systems, the Federal Workforce, and the Public**

Considering MSPB's relatively small size and budget, it provides enormous value to the Federal workforce, Federal agencies, and American taxpayers. MSPB's effective and efficient adjudication of appeals, enforcement of its decisions, objective merit systems studies, and review of OPM regulations and significant actions adds value and saves money by improving the quality of the workforce providing service to the public, strengthening adherence to MSPs, and preventing PPPs.

**Value added through efficient and effective adjudication and enforcement.** MSPB adds value by providing superior adjudication of employee appeals, including the use of ADR, which ensures due process and decisions that are based in law, regulation, and legal precedent and not on non-merit factors. MSPB's adjudication process is guided by reason and legal analysis, which are hallmarks of both our nation's legal system and our merit systems. The quality of MSPB's decisions is evidenced by the high affirmance rate of its decisions by the CAFC. As a neutral, independent third party, MSPB's adjudication of employee appeals improves the fairness and consistency of the appeals process and resulting decisions, and it is more efficient and less cumbersome than having each agency adjudicate its own employees' appeals. The body of legal precedent generated through adjudication, and the transparency and openness of the adjudication process, collectively support better adherence to MSPs and prevent PPPs by guiding agencies and employees on proper behavior and the ramifications of improper behavior. This adjudication information (shared through outreach and extensive materials on [MSPB's website](#)) also improves the effectiveness and efficiency of the adjudication process by helping parties understand the law and how to prepare and present thorough, well-reasoned cases. Strong enforcement of MSPB decisions ensures timely, effective resolution of current disputes and encourages more timely compliance with future MSPB decisions. Together, MSPB's decisions concerning the merits of disputes and their enforcement comprise a body of knowledge that provides educational information to stakeholders about the merit systems and their function in the workplace.

**Value added through merit systems studies and review of OPM regulations and significant actions.** MSPB's high-quality, objective merit systems studies provide value by assessing current management policies and practices, identifying innovative, efficient, and effective merit-based management policies and practices, and making recommendations for improvements. For example, MSPB's research has shown that effective and efficient hiring and selection, improved merit-based management, and greater employee engagement contribute to a highly qualified Federal workforce, improved organizational performance, and better service to the public. These factors also help reduce the occurrence and costs of PPPs that negatively affect agency and employee performance. Results, findings, and recommendations from MSPB's merit systems studies are published in reports, newsletters, research briefs, and other articles posted to our website, and further communicated 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. MSPB's review of OPM rules, regulations, and significant actions protects the integrity and viability of the merit systems and civil service and improves adherence to MSPs and provides benefits similar to its merit systems studies. These reviews improve the understanding of the merit system and its operation, and thus help to reduce costs in terms of fewer PPPs, less employee misconduct, fewer adverse actions, and fewer unsubstantiated appeals. This benefits American

taxpayers by decreasing Governmentwide costs and increasing confidence that the Government is doing its job and appropriately managing the workforce.

### **MSPB's Customers, Partners, and Stakeholders**

MSPB has a range of customers, partners, and stakeholders beyond the President and Congress who receive our reports on Federal merit systems studies and on OPM significant actions, and who look to MSPB as a key component of a healthy civil service. Adjudication customers include those who appear before us, such as appellants, their representatives, and agency representatives. Legal stakeholder groups include bar associations, attorney associations focused on Federal employment law, employee unions, management associations, veterans and military organizations, and other people and groups interested in our decisions and legal precedents. Customers and stakeholders primarily interested in our merit systems studies and OPM review functions include agency leaders, chief HC officers, human resources (HR) directors, EEO directors, HR and EEO specialists, academicians, good Government groups (e.g., the National Academy of Public Administration, etc.), and affinity groups (e.g., Federally Employed Women, Blacks in Government, the Society of American Indian Government Employees, etc.). This also includes other Government and non-profit organizations that do work similar to MSPB's studies function, such as GAO and the Partnership for Public Service.

MSPB partners include those organizations with which it has formal statutory or functional relationships, such as OPM, OSC, EEOC, and the CAFC. In particular, an MSPB Board member may request an advisory opinion from the OPM Director concerning the interpretation of any rule, regulation, or other policy directive promulgated by OPM. The OPM Director may request reconsideration of an MSPB decision when the Director determines that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

OSC prosecutes cases before MSPB that involve PPPs and violations of the Hatch Act and can seek corrective action. Further, if MSPB determines there is reason to believe that a current Federal employee may have committed a PPP, it must refer the matter to OSC to investigate and take appropriate action. MSPB and EEOC each review mixed cases that involve issues concerning both Federal MSPs and anti-discrimination principles as applied to Federal employees. Usually, MSPB and EEOC agree on the outcome of such cases. However, when the two agencies do not agree, the case is decided by a Special Panel as established by the CSRA.

The CAFC hears appeals of final Board decisions in which no issue of discrimination was raised to, or decided by, the Board, or when a discrimination issue was abandoned on judicial review. Whistleblower appeals may be filed with any U.S. Circuit Court of Appeals, and mixed cases may be appealed to Federal district courts or to EEOC.<sup>49</sup> MSPB applies precedents established by the courts in adjudicating initial appeals and PFRs, although it has not yet comprehensively addressed how it will apply the whistleblower law of the other numbered circuits to the extent it may differ from the CAFC's holdings.

MSPB employees and the MSPB Professional Association, which represents MSPB's non-supervisory attorneys, are also key stakeholders because they carry out MSPB's work. Federal civilian employees, Federal annuitants and their beneficiaries, applicants for Federal civilian jobs, and selected categories of USPS employees and military service members are also stakeholders. This is because the precedents MSPB sets through adjudication, the findings and recommendations of our studies, and our review of OPM rules, regulations, and significant actions affect how well these

<sup>49</sup> See *Perry v. MSPB*, 137 S. Ct. 1975 (2017).



employees are managed and how any potential appeals they may file are processed and decided. Several foreign governments also have used MSPB and the U.S. merit systems as models for establishing similar agencies and systems in their own countries. Finally, the public is a stakeholder because a successful MSPB helps ensure healthy merit systems and a high-quality workforce able to provide effective and efficient services to the American people.

## Appendix C: More about the New Strategic Plan

### Updates and Stakeholder Consultation

MSPB consulted with its employees, external stakeholders, subscribers to our listservs, and the public in the spring and early summer of 2021. Several themes emerged from the input we received. They included comments on the backlog of cases at HQ; the need to emphasize quality over speed or quantity in the adjudication process; improving the balance of focus on appellants and Federal employees as well as agencies in outreach; improving external communication, outreach, stakeholder engagement and merit systems training; and increasing resources for adjudication and studies. Other common themes included IT and IT modernization, HC management, and the lack of quorum. The comments affected the wording of some strategic and management objectives, plans to assess and make changes in various PGs and measures during FY 2022, and changes in our means and strategies to focus on these stakeholder concerns. The single comment from Congress acknowledged the need for input from new Board members when they arrive and expressed interest in any assessment of telework that MSPB undertakes. This comment did not require changes in the SP as the SP already makes clear the need to consult with the new Board and an assessment of telework was already included in our program evaluation plans.

There also have been many new policies and initiatives by the current Administration including those involving external equity; tribal engagement; the Federal workforce and internal diversity, equity, inclusion and accessibility; improving trust through the use of science, evidence, and data; customer service, and climate change. In response to stakeholder comments and Administration policies, we made changes in the wording of certain objectives and PGs, and in the sections on means and strategies, external and internal challenges, and program evaluation.

### Links to Other MSPB Plans and Reports

This SP provides the foundation for MSPB's work for the next several years. It defines our purpose and lays out the long-term outcomes we hope to achieve. In accordance with GPRAMA, MSPB's APPs include one or more program PGs for each strategic objective in the SP. Each PG has a performance measure and annual performance targets designed to move the agency incrementally toward achieving its strategic goals, strategic objectives, and management objectives. MSPB reports program performance results as compared to the APP PGs, measures, and targets in the APR. The combined APR-APP is published in February each year. The APR-APP presents information about MSPB's performance results and performance plans in a coherent and straightforward manner and minimizes the duplication and redundancy that would occur by publishing the APR and APP separately.

In accordance with MSPB's statute (5 U.S.C. § 1206), MSPB also publishes an Annual Report (AR) containing information about MSPB's significant actions for that year. The AR contains case processing statistics, summaries of significant Board decisions, court opinions relevant to MSPB's work, merit systems studies activities, a review of the significant actions of OPM and the degree to which those actions uphold merit and prevent PPPs, and other information of interest to MSPB's stakeholders. MSPB's SPs, APR-APPs, and ARs are posted on MSPB's website at [www.mspb.gov](http://www.mspb.gov).

## List of Abbreviations and Acronyms

### List of Common Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
AJ	Administrative Judge
APP	Annual Performance Plan
APR	Annual Performance Report
AR	MSPB Annual Report
CAFC	Court of Appeals for the Federal Circuit
COOP	Continuity of Operations Plan
CSC	Civil Service Commission
CSRA	Civil Service Reform Act of 1978
DOD	Department of Defense
EEO	MSPB's Office of Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EO	Executive Order
FERS	Federal Employee Retirement System
FEVS	Federal Employee Viewpoint Survey
FO	MSPB Field Office
FTE	Full-time equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GPRAMA	GPRM Modernization Act of 2010
HC	Human Capital
HQ	Headquarters
HR	Human Resources
ID	Initial Decision
IRA	Individual Right of Action (type of whistleblower appeal)
IRM	MSPB's Office of Information Resources Management
IS	Internal Survey
IT	Information Technology
ITSM	Information Technology Service Management
MSP	Merit System Principles
MSPB	Merit Systems Protection Board
NASA	National Aeronautics and Space Administration
NDAA	National Defense Authorization Act
OAA	Otherwise Appealable Action
OMB	Office of Management and Budget
OPF	Official Personnel
OPM	Office of Personnel Management
ORO	MSPB's Office of Regional Operations

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OSC	Office of Special Counsel
PFR	Petition for Review of an Initial Decision
PG	Performance Goal
PIO	Performance Improvement Officer
PIP	Performance Improvement Period
PPP	Prohibited Personnel Practices
Pub. L.	Public Law
RIF	Reduction in Force
RO	Regional Office
RO/FO	Regional Office/Field Office
SEC	Securities and Exchange Commission
SHCP	Strategic Human Capital Plan
SP	Strategic Plan
TBD	To be determined
U.S.C.	United States Code
VA	Department of Veterans Affairs
VEOA	Veterans Employment Opportunity Act
WGI	Within-in Grade Increase
WPA	Whistleblower Protection Act
WPEA	Whistleblower Protection Enhancement Act of 2012



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