



U.S. Merit Systems Protection Board

**Annual Performance Report (APR)
for
Fiscal Year (FY) 2022**

and

**Annual Performance Plan (APP)
for
FY 2023 (Final) & FY 2024 (Proposed)**

March 13, 2023

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Foreword

The U.S. Merit Systems Protection Board (MSPB) submits this Annual Performance Report and Annual Performance Plan (APR-APP) for fiscal years (FYs) 2022-2024, which combines the final APR for FY 2022 with the APP for FY 2023 (final) and FY 2024 (proposed), as required by the Government Performance and Results Act Modernization Act of 2010 (GPRAMA). It also contains information about cases involving whistleblowers pursuant to the Whistleblower Protection Enhancement Act of 2012 (WPEA, see Appendix A), appeals processing as required by Title 5 of the United States Code (U.S.C.) § 7701(i)(1) (see Appendix B), and, in accordance with the 21st Century Integrated Digital Experience Act (Pub. L. 115-336), our *Modernization of Public-facing Digital Services Report* (see Appendix C).

The APR-APP contains information about MSPB, including its origins in civil service history; role and functions; scope of responsibility; organization and structure; how it brings value to the merit systems, Federal agencies, the workforce, and the public; and information about merit system principles (MSPs) and prohibited personnel practices (PPPs). The APR-APP is based on the MSPB Strategic Plan for FY 2022-2026, compares annual performance results for FY 2022 to performance targets defined in March 2022, and includes prior year results for comparative purposes. It also contains final performance goals (PGs), measures, and targets for FY 2023 and proposed goals, measures, and targets for FY 2024, along with explanatory information on changes; a summary of the external trends and internal management challenges that may affect MSPB's work; means and strategies; and information about performance measurement and program evaluation.

The APR-APP has been prepared in accordance with GPRAMA and guidance provided by the Office of Management and Budget (OMB) and other sources. Additional information about MSPB's activities can be found in the Annual Report (AR) for FY 2022, pursuant to 5 U.S.C. § 1206. MSPB's APRs, APR-APPs, and ARs are available on MSPB's website at www.mspb.gov.

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

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U.S. Merit Systems Protection Board

APR-APP for FY 2022-2024

Introduction

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

Restoration of Board Quorum

On March 4, 2022, MSPB's quorum was restored with the swearing-in of Raymond A. Limon and Tristan L. Leavitt as Board members. On June 1, 2022, Cathy A. Harris was sworn in as the third Board member, providing a full complement of Board members for the first time since March 1, 2015. Ms. Harris was designated as Vice Chairman and is now Acting Chairman.¹ Between March 1, 2019 and March 3, 2022, MSPB operated in accordance with its continuity of operations plan (COOP), under which MSPB's General Counsel served as the agency's Acting Chief Executive and Administrative Officer.² Throughout the lack of quorum, MSPB continued to process initial appeals and issue decisions in the RO/FOs, processed appeals at HQ and prepared draft decisions awaiting Board review and voting, and conducted other statutory and administrative functions where possible without a quorum. Restoration of a quorum allowed MSPB to resume issuing decisions on petitions for review (PFRs) and other decisions from HQ and to resume issuing reports of merit systems studies. Most recently, Member Leavitt departed MSPB after fulfilling his term which ended on February 28, 2023. However, Acting Chairman Harris and Member Limon represent a quorum of Board members, and MSPB remains fully operational. More information about the effects of the restoration of the quorum is included later in this document.

Summary of FY 2022 Performance Results

In FY 2022, MSPB met five of nine strategic and management objectives, including those for adjudication of initial appeals in the regional and field offices (RO/FOs), adjudication of headquarters (HQ) cases, review of Office of Personnel Management (OPM) regulations and significant actions, and the two management support objectives for human capital (HC) and for information technology (IT) modernization. MSPB partially met two of nine objectives, including

¹ On June 24, 2021, President Biden nominated Cathy A. Harris to be a Member and Chairman of the MSPB and Raymond A. Limon to be a Member of the MSPB with the designation of Vice Chairman. On September 13, 2021, President Biden nominated Tristan L. Leavitt as the third Member of the MSPB. On September 22, 2021, the Senate Committee on Homeland Security and Governmental Affairs held a nomination hearing for the three nominees. On October 6, 2021, the nominees were reported favorably out of committee, and the nominations were placed on the Senate calendar. On January 3, 2022, the Senate returned Ms. Harris's nominations to the President, and she was renominated on January 4, 2022. On February 4, 2022, her nominations were reported favorably out of committee and placed on the Senate calendar. On March 1, 2022, the Senate confirmed the nominations of Mr. Limon and Mr. Leavitt. Ms. Harris' nomination as a Member was confirmed by the Senate on May 25, 2022. Her nomination as Chairman was returned to the President at the end of the 117th Congress. On January 3, 2023, the President renominated her as Chairman, and her nomination was referred to the Senate Committee on Homeland Security and Governmental Affairs.

² MSPB was without a quorum of Board members for five years (from January 8, 2017, through March 3, 2022) and without any presidentially appointed, Senate-confirmed Board members between March 1, 2019, and March 3, 2022.

those for enforcement case processing and for merit systems studies. MSPB exceeded two of nine objectives, including those for outreach and for educational and informational materials. MSPB committed to assessing and resolving several PG and measurement issues during FY 2022. Selected MSPB offices were involved in assessing PG statements and performance measures relevant to their office's work. A working group was formed to consider issues and potential changes in the HQ adjudication PGs and measures. Most of these issues were resolved and are noted in this document. Performance targets are updated for FY 2023. Most FY 2024 performance targets are to be determined (TBD) based on FY 2023 results. Detailed information is provided in the section on [Comprehensive Performance Results and Plans](#).

About MSPB

A Merit-based U.S. Civil Service. A brief review of the history of our Federal civil service helps explain the origin and purpose of MSPB. Until the early 1880s, the Federal civil service was a patronage or “spoils” system in which the president’s administration appointed Federal workers based on their political beliefs and support of his campaign rather than on the employee’s suitability and qualifications to perform particular Federal jobs.³ Over time, this practice contributed to an unstable Government workforce lacking the necessary qualifications to perform its work, which in turn adversely affected the efficiency and effectiveness of the Government and its ability to serve the American people.

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

During the following decades, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate employee appeals. Concern over the inherent or perceived conflict of interest in the CSC’s role as both the rule-maker and adjudicator of those same rules was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA).⁴ The CSRA replaced the CSC with three new agencies: MSPB as the successor to the Commission;⁵ OPM as the president’s agent for Federal workforce policy and procedure; and the Federal Labor Relations Authority to oversee Federal labor-management relations.

³ Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, *Journal of the Federal Circuit Historical Society*, Vol. 4, 2010, pages 109-110.

⁴ Ibid. page 113.

⁵ Ibid. page 114.

Current Organization

MSPB HQ, located in Washington, D.C., has eight offices that are responsible for conducting its statutory and support functions. These are the Office of Appeals Counsel (OAC), Clerk of the Board (OCB), Equal Employment Opportunity (EEO), Financial and Administrative Management (FAM), General Counsel (OGC), Information Resources Management (IRM), Policy and Evaluation (OPE), and Regional Operations (ORO). The EEO Director reports directly to the Chairman, and the directors of the other offices report to the Chairman 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. More information about MSPB's role; functions and scope of responsibilities; organizational structure; and how it brings value to the merit systems, the Federal workforce, and the public is contained in Appendix D.

Summary of Changes in this APR-APP

This APR-APP includes final FY 2022 performance results and performance targets for FY 2023 (final) and FY 2024 (proposed). MSPB revised the FY 2023 targets from those contained in the [FY 2023 APP](#) (published in March 2022) based on restoration of the full Board, results of assessing various PGs and measures, and other changes in external and internal factors. The sections on internal challenges and external factors affecting our work, performance measurement and program evaluation, and means and strategies for achieving our objectives also have been updated.

Linking this Plan to Other Agency Documents

This APR-APP aligns with MSPB's [Strategic Plan for FY 2022-2026](#). Individual performance plans for MSPB's senior executives are linked to appropriate agency annual performance and management goals, as required. MSPB compares program performance results to performance targets in accordance with the GPRAMA and OMB guidance. The goals and targets for FY 2023 (final) and 2024 (proposed) are in line with MSPB's proposed budgets for those years.⁶ MSPB's plans and reports are posted on MSPB's website at www.mspb.gov.

⁶ MSPB does not define agency priority goals, does not have low-priority program activities, and does not have a specific role in achieving Federal cross-agency priority goals. MSPB does not have any duplicative, overlapping, or fragmented programs as referenced in Executive Order (EO) 13576, "Delivering an Efficient, Effective, and Accountable Government," dated June 13, 2011. MSPB also has not identified any unnecessary agency plans and reports as referenced in GPRAMA (Pub. L. 111-352 § 1125).

MSPB Performance Framework

Mission

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

Vision

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

Organizational Values

- Excellence:** We will base our decisions on statutes, regulations, and legal precedents; use appropriate scientific research methods to conduct our studies and make practical recommendations for improvement; and develop and use appropriate processes to oversee the regulations and significant actions of OPM. We will interact with our customers and stakeholders in a professional, respectful, and courteous manner. We will strive to be a model merit-based organization by applying the lessons we learn in our work to the internal management of MSPB.
- Fairness:** We will conduct our work in a fair, unbiased, and objective manner. We will be inclusive in considering the various perspectives and interests of stakeholders in our work and in our external and internal interactions with individuals and organizations.
- Timeliness:** We will issue timely decisions in accordance with our performance goals and targets.⁷ We will issue timely reports on the findings and recommendations of our merit systems studies. We will respond promptly to inquiries from customers and stakeholders.
- Transparency:** We will make our regulations and procedures easy to understand and follow. We will communicate with our customers and stakeholders using clear language. We will make our decisions, merit systems studies, and other materials easy to understand and widely available and accessible on our website. We will enhance the understanding of our processes and the impact of our products through outreach efforts.

⁷ In FY 2023 and FY 2024, MSPB will focus on measures related to reducing the inventory of cases at HQ rather than average processing time.

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, MSPs, and 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 IT to support agency mission and administrative functions.

Comprehensive Performance Results and Plans

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

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

Strategic Objective 1A-RO: Provide understandable, high-quality resolution of initial appeals in the RO/FOs, supported by fair and efficient adjudication and ADR processes.

This objective was MET. MSPB exceeded the target for timeliness of initial appeals processing with an average of 96 days, more than 10% fewer days than the target. The new measure for quality of initial decisions (IDs) is the percentage of reviewed IDs that meet Quality Review Team (QRT) standards. The QRT includes rotating members who review a sample of IDs to determine, among other things, whether the IDs were well organized and readable, and considered and analyzed material legal and factual issues, controlling case law, and statutory and regulatory authorities. This measure focuses on all IDs, not just those for which a PFR is filed. The PG statement for ADR is to ensure use of ADR processes, and the measure is the percentage of appeals referred to the Mediation Appeals Program (MAP).

The FY 2023 target for initial appeals quality is to have 85% of reviewed decisions meet QRT standards. The FY 2023 target for ADR is to refer 6% or more of appeals to MAP. The FY 2023 target for average processing time for initial appeals remains 120 days or fewer. The FY 2024 targets for all PGs are TBD based on FY 2023 results.

Performance Goal 1A-RO-1: Ensure quality of initial decisions.	
Measure: Percentage of reviewed IDs that meet QRT standards.	
Current Performance Year	
FY 2022 Result	New measure was defined as stated above. Regional Directors have reviewed 91% of all IDs issued, excluding settlements and withdrawals; ORO has reviewed 10% of such decisions, providing written feedback when not in compliance with law, regulation, or policy.
FY 2022 Target	No numeric target set. Assess processes and available data and determine an appropriate measure for ID quality.
Future Targets	
FY 2023	85% of decisions reviewed meet QRT standards.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2021	New measure in FY 2022 to be implemented in FY 2023.

Performance Goal 1A-RO-2: Ensure processing timeliness for IDs (including addendum appeals).	
Measure: Average case processing time for initial appeals (including addendum appeals).	
Current Performance Year	
FY 2022 Result	96 days
FY 2022 Target	120 days or fewer.
Future Targets	
FY 2023	120 days or fewer.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	See Interim Indicator below.
FY 2018	102 days
FY 2019	105 days
FY 2020	102 days
FY 2021	105 days

Interim Indicator for Initial Appeals Processing:

1A-4a: In FY 2017, this indicator was redefined as the percentage of cases closed that were filed prior to October 1, 2016. Discontinued in FY 2018.

FY 2017 Target	65%	(closure of 2,030 cases filed before October 1, 2016)
FY 2017 Result	98%	(1,989/2,030)

Performance Goal 1A-RO-3: Ensure use of ADR processes.	
Measure: Percentage of appeals referred to MAP.	
Current Performance Year	
FY 2022 Result	MAP process changes have improved timeliness of MAP case processing, and a new PG statement and measure are defined above.
FY 2022 Target	No numeric target set. Consider and determine new goal and measure for the ADR process.
Future Targets	
FY 2023	6% or higher.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2021	New PG and measure in FY 2022 to be implemented in FY 2023.

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

This objective was MET. The PG for quality of Board decisions involves actions taken by the Court of Appeals for the Federal Circuit (CAFC) on all MSPB decisions filed with the Court. MSPB decisions filed with the Court may include decisions issued by HQ or initial appeals decisions issued in the RO/FOs. Because this measure includes HQ decisions, it is considered an HQ case processing PG. Naturally, during the lack of quorum when no HQ decisions were being issued, the proportion of HQ decisions filed with the Court decreased. Under the current calculation for quality of Board decisions, 87% of cases were *left unchanged* by the CAFC, which is within 10% of the target of 92% or greater. A new measure for quality of Board decisions, implemented in FY 2023, is defined as the percentage of cases *affirmed* of the cases decided by CAFC on the merits of the Board’s decision. This is a change from the prior measure, designed to focus on a more precise affirmance rate. (Note that prior year results are for the previous measure of cases left unchanged by the Court.) MSPB did not set a numeric target for cases decided at HQ because we began the year without a quorum. However, between restoration of a quorum in early March 2022 and the end of FY 2022, MSPB decided 528 cases at HQ. MSPB will eliminate the timeliness measure for HQ cases for at least FY 2023 and FY 2024. Given the unique circumstances of the 5-year loss of quorum, average processing time will not be meaningful in the short term and will not be a useful indicator for managing the process of reducing the unprecedented inventory of pending cases the new Board inherited. Rather, MSPB will adopt two new PGs and measures to track reduction of the inventory of cases at HQ. These two new measures are the total number of HQ cases decided during the year and the percentage of oldest cases (as identified at the beginning of the FY) decided by the end of the FY. These two PGs, in combination, reflect the Board’s desire to reduce the overall inventory with a focus on closing older cases.

For FY 2023, the target for Board case quality is 82% or higher of Board cases affirmed by the CAFC. The FY 2023 targets for inventory reduction PGs are to issue decisions in 1,000 or more HQ cases and to issue decisions in 75% (750) or more of the oldest 1,000 cases (as identified at the beginning of the FY). The FY 2024 targets for all HQ adjudication measures are TBD based on FY 2023 results.

Performance Goal 1A-HQ-1: Ensure quality of Board decisions.	
Measure: Percentage of MSPB decisions affirmed of the cases decided on the merits by the CAFC.	
Current Performance Year	
FY 2022 Result	87% (using current calculation); new measure for affirmance rate is stated above.
FY 2022 Target	92% or more using the current calculation (unless this measure or its calculation is changed in FY 2022).
Future Targets	
FY 2023	82% or higher.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	94%
FY 2018	92%
FY 2019	86%
FY 2020	94%
FY 2021	83%

Performance Goal 1A-HQ-2: Ensure processing timeliness for PFRs. Beginning in FY 2023, this performance goal is eliminated. HQ case processing will be measured by performance goals focused on HQ case inventory processing.	
Measure: Average case processing time for PFRs of initial appeals (including PFRs of addenda). PG and measure eliminated beginning in FY 2023.	
Current Performance Year	
FY 2022 Result	MSPB eliminated this PG and measure for at least FY 2023 and FY 2024. It is unlikely that any computation on timeliness would assist in managing the PFR process or convey any positive or meaningful results in the early years of inventory reduction. The focus should be on more specific inventory reduction PGs.
FY 2022 Target	No numeric target set. Consult new Board to determine appropriate measure and target.
Future Targets	
FY 2023	Beginning in FY 2023, this performance goal is eliminated.
FY 2024	Not applicable.
Past Results	
FY 2017	Not rated, no quorum.
FY 2018	No target set, not rated, no quorum.
FY 2019	No target set, not rated, no quorum.
FY 2020	No target set, not rated, no quorum.
FY 2021	No target set, not rated, no quorum.

Performance Goal 1A-HQ-2: Reduce the total inventory of HQ cases.	
Measure: Total number of cases decided at HQ.	
Current Performance Year	
FY 2022 Result	New measure was defined as stated above.
FY 2022 Target	No numeric target set. Define PG and measure depending on new Board's approach to the inventory.
Future Targets	
FY 2023	Decide 1,000 cases or more.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2021	New PG and measure in FY 2022.

Performance Goal 1A-HQ-3: Reduce the inventory of the oldest HQ cases.	
Measure: The percentage of oldest cases (as identified at the beginning of the FY) decided.	
Current Performance Year	
FY 2022 Result	New measure was defined as stated above.
FY 2022 Target	No numeric target set. Define PG and measure depending on new Board's approach to the inventory (if needed).
Future Targets	
FY 2023	Decide 75% or more of the oldest 1,000 cases.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2021	New PG and measure in FY 2022.

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

This objective was PARTIALLY MET. MSPB exceeded the average processing time for compliance case addenda in the RO/FOs, with an average processing time of 89 days, more than 10% fewer days than the target of 120 days. MSPB began the assessment of compliance case processing at HQ and determined that this assessment must be continued through FY 2023 to consider the nuances and details of the process and the resources needed to perform this function, and to coordinate with new agency leaders.

In FY 2023, MSPB will consider appropriate measures and numeric targets for processing compliance addenda in the RO/FOs to ensure we encourage resolution of these cases in ways that support long-term efficiency and effectiveness. FY 2024 targets for both measures are TBD based on FY 2023 results.

Performance Goal 1B-1: Ensure processing timeliness of compliance cases in the RO/FOs.	
Measure: Average processing time for compliance case addenda in the RO/FOs. A new measure may be defined in FY 2023.	
Current Performance Year	
FY 2022 Result	89 days
FY 2022 Target	120 days or fewer.
Future Targets	
FY 2023	Consider appropriate measures and numeric targets to ensure we encourage resolution of compliance cases in ways that support long-term efficiency and effectiveness.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	122 days*
FY 2018	95 days
FY 2019	104 days

FY 2020	94 days
FY 2021	93 days
* The results for FY 2017 were affected by the processing of furlough cases. See PG 1A-RO-2 (on the timeliness of initial appeals) above.	

Performance Goal 1B-2: Ensure processing timeliness of compliance cases at HQ. A new PG statement may be defined in FY 2023.	
Measure: Work on defining a new measure for HQ compliance case processing will continue in FY 2023.	
Current Performance Year	
FY 2022 Result	Assessment of this PG statement and measure must be continued through FY 2023 to consider the process and resources needed to perform this function and to coordinate with new agency leaders.
FY 2022 Target	No numeric target set. Assess compliance case processing at HQ and determine appropriate measure for this PG.
Future Targets	
FY 2023	Define new measure for this function based on continued assessment of the process and resources required and coordination with new agency leaders.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	No target set, not rated, no quorum.
FY 2018	No target set, not rated, no quorum.
FY 2019	No target set, not rated, no quorum.
FY 2020	No target set, not rated, no quorum.
FY 2021	No target set, not rated, no quorum.

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

This objective was PARTIALLY MET. MSPB achieved the newsletter target by publishing three *Issue of Merit (IoM)* editions covering eight of nine MSPs and three PPPs. Newsletter topics included workplace aggression, reforming Federal hiring, hiring students and recent graduates, transitioning back to the office, using retirement to retain talent, the effect of competencies on agency culture, what has changed in the human resources (HR) field, stay interviews, using subject matter experts to prevent perceptions of favoritism, recruitment apps, post-survey action planning, creating an ethical work environment, identifying why Federal employees want to quit, rehiring retired employees, and college recruitment. MSPB published one of the targeted two studies reports or documents: MSPB’s [Research Agenda for 2022-2026](#). An additional report on sexual harassment was drafted and submitted to the Board for review and approval.⁸ MSPB achieved the survey target by preparing a survey on the Federal HR workforce and posting the 2021 Merit Principles Survey (MPS) data on [Data.gov](#) and on the MSPB [website](#).

The FY 2023 targets are to publish three *IoM* editions, publish two study documents, and design or implement a focused interagency studies survey. The FY 2024 targets are TBD based on FY 2023 results.

⁸ In December 2022, MSPB published [Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem](#).

Performance Goal 1C-1: Publish <i>IoM</i> newsletter or other articles.	
Measure: Number and scope of <i>IoM</i> editions or other articles published.	
Current Performance Year	
FY 2022 Result	Published 3 <i>IoM</i> editions covering 8 of 9 MSPs and 3 PPPs.
FY 2022 Target	Publish 3 <i>IoM</i> editions.
Future Targets	
FY 2023	Publish 3 <i>IoM</i> editions.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Published 3 <i>IoM</i> editions and 2 online articles, <i>Addressing Misconduct in the Federal Civil Service: Management Perspectives</i> and <i>MSPs: Keys to Managing the Federal Workforce</i> (all MSPs & PPPs).
FY 2018	Published 3 <i>IoM</i> editions and 4 articles or briefs, <i>Building Blocks for Effective Performance Management: The Role of Feedback, Autonomy, and Meaningfulness in Employee Performance Behaviors</i> ; <i>Update on Sexual Harassment in the Federal Workplace</i> ; and <i>Improving Federal Hiring Through Better Assessment</i> (all MSPs and 3 PPPs).
FY 2019	Published 3 <i>IoM</i> editions and 4 research briefs, <i>Improving Federal Leadership Through Better Probationary Practices</i> ; <i>The Perceived Incidence of Prohibited Personnel Practices</i> ; <i>Remedying Unacceptable Employee Performance in the Federal Civil Service</i> ; and <i>Managing Employees to Perform Emotionally Laborious Work</i> (8 MSPs and 3 PPPs).
FY 2020	Published 3 <i>IoM</i> editions covering 8 of 9 MSPs.
FY 2021	Published 3 <i>IoM</i> editions covering 7 MSPs and 3 PPPs.
Beginning in FY 2020, additional articles and research briefs were included in 1C-2.	

Performance Goal 1C-2: Publish MSPB study reports, briefs, or other documents.	
Measure: Number and scope (percentage of the workforce, agencies, or policy areas impacted) of merit systems study reports, briefs, and other documents published each year.	
Current Performance Year	
FY 2022 Result	Published the <i>U.S. Merit Systems Protection Board Research Agenda 2022-2026</i> .
FY 2022 Target	Publish 2 or more study documents.
Future Targets	
FY 2023	Publish 2 or more study documents.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Not rated, no quorum.
FY 2018	No target set, not rated, no quorum.

FY 2019	No target set, not rated, no quorum. Took significant steps to prepare a new merit system studies research agenda for review/approval by the new Chairman.
FY 2020	Published research brief, <i>The State of Federal HR Workforce: Changes and Challenges</i> . Prepared for publication and awaiting approval by new Board: <i>MSPB Research Agenda for Merit Systems Studies</i> ; <i>Sexual Harassment in the Federal Workplace: Understanding and Addressing the Problem</i> ; and <i>The Importance of Job Fit for Federal Agencies and Employees</i> .
FY 2021	Published 5 research briefs, <i>The Importance of Job Fit for Agencies and Employees</i> ; <i>Direct-Hire Authority Under 5 U.S.C. § 3304: Usage and Outcomes</i> ; <i>Determining Acceptable Level of Competence for Step Increases</i> ; <i>Agency Leader Responsibilities Related to Prohibited Personnel Practices</i> ; and <i>Confidence in Ability to Perform Successfully</i> .

Performance Goal 1C-3: Conduct surveys of Federal employees to assess and report on the health of the Federal merit systems.	
Measure: Conduct periodic Governmentwide and focused surveys of Federal employees and others (including interrogatories directed to agencies), as appropriate.	
Current Performance Year	
FY 2022 Result	Posted 2021 MPS data and data documentation to Data.gov and on the MSPB website . Prepared a survey of the Federal HR Workforce.
FY 2022 Target	Design or implement a focused interagency studies survey.
Future Targets	
FY 2023	Design or implement a focused interagency studies survey.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Analyzed MPS data and prepared study reports on selected topics, conducted after-action review of the survey process, prepared data for the National Archives and Records Administration, and proactively posted MPS data on our website. Began working with OPM to renew the memorandum of understanding for use of Enterprise Human Resource Integration (EHRI) data.
FY 2018	Continued to analyze 2016 MPS data and draft reports and other documents. The next MPS will include content from a new research agenda (awaiting input from a new Chairman) and a secure web-based survey capability. Began defining requirements for a new survey capability. MSPB has obtained EHRI data from OPM for FY 2016 and 2017 and is negotiating with OPM for continued access to EHRI data.
FY 2019	Procured a new web-based, Federal Risk and Authorization Management Program (FedRAMP)-certified survey application. Survey data is a critical source of information for topics on the new research agenda. Two interrogatories were sent to agencies for responses.
FY 2020	Content of next Governmentwide MPS nearly completed. After two extensions of OPM's Federal Employee Viewpoint Survey (FEVS), the MPS is tentatively scheduled to be administered in the 2 nd quarter of FY 2021.
FY 2021	Successfully administered the 2021 MPS to more agencies than the 2010 and 2016 MPSs and in less than half the time to go from approval of final survey content to survey launch than in 2016. 2021 MPS data will support at least three research projects, and data were being prepared for public release. Also fielded two surveys to gather input on strategic planning from external stakeholders.

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

This objective was MET. MSPB determined that there are too few cases requesting review of OPM regulations to use a numeric measure for this PG. Beginning in FY 2023, the measure is defined as including relevant information about requests to review OPM regulations in the MSPB AR. This will support recognition of this important statutory function in the APR-APP and ensure that information about review of OPM regulations and significant actions are presented in the same document, simplifying stakeholder access to this information. In FY 2022, MSPB published the review of OPM actions in FY 2021 in the MSPB 2021 AR and decided to retain the measure for review of OPM significant actions.

The FY 2023 target for review of OPM regulations is to include relevant information about FY 2022 cases in the FY 2022 AR. The target for review of OPM significant actions is to maintain the scope and publish the review of OPM significant action in the FY 2022 AR. The FY 2024 target for both PGs is TBD based on FY 2023 results.

Performance Goal 1D-1: Review OPM Regulations.	
Measure: Include relevant information about cases requesting review of OPM regulations in the MSPB AR.	
Current Performance Year	
FY 2022 Result	New measure was defined as stated above.
FY 2022 Target	No target set; reassess how to measure this statutory function with input from new Board members.
Future Targets	
FY 2023	Publish relevant information about FY 2022 cases involving review of OPM regulation in the FY 2022 AR.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2021	New measure in FY 2023.

Performance Goal 1D-2: Review and report on OPM significant actions.	
Measure: Number and scope (e.g., percentage of the workforce, agencies, or policy areas impacted) of OPM significant actions that are reviewed and reported.	
Current Performance Year	
FY 2022 Result	Published MSPB's FY 2021 AR, including review of OPM significant actions. Within the context of OPM leadership changes, the mandated study of OPM, and the COVID-19 pandemic, OPM's FY 2021 significant actions related to previous EOs, the Presidential transition, and streamlining Federal hiring. MSPB will retain the current measure for review of OPM significant actions.
FY 2022 Target	Publish review of OPM significant actions in the FY 2021 AR; reassess how to measure this statutory function with input from new Board members.
Future Targets	
FY 2023	Maintain scope; publish review of OPM significant action in the FY 2022 AR.
FY 2024	TBD based on FY 2023 results.

Past Results	
FY 2017	Published MSPB's FY 2016 AR, including review of OPM significant actions. Significant actions in FY 2016 included evolution of OPM structure and finances, guidance on placement of political appointees in the career service during the 2016 presidential transition, strengthening the Senior Executive Service (SES), and closing mission-critical skills gaps.
FY 2018	Published MSPB's FY 2017 AR, including review of OPM significant actions. Significant FY 2017 actions included the final rule regarding the Annual Employee Survey (AES) requirement and the 2017 FEVS, reforming the Federal Government and reshaping the Federal civilian workforce, a framework for continuing development of Federal senior executives, and a Governmentwide survey of Federal work-life programs.
FY 2019	Published MSPB's FY 2018 AR, including review of OPM significant actions. Significant FY 2018 actions included a review of themes of previous reviews, such as OPM's purpose, funding, focus, and activities.
FY 2020	Published MSPB's FY 2019 AR, including review of OPM significant actions. Significant FY 2019 actions included agency HC programs, hiring, workforce shaping, work-life programs, and employee performance management and rewards.
FY 2021	Published MSPB's FY 2020 AR, including review of OPM significant actions. Significant FY 2020 actions were related to the COVID-19 pandemic, improving applicant assessment, HC reviews, and guidance on the appointment of political appointees into the career service during the election period.

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

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

This objective was EXCEEDED. MSPB conducted 112 outreach events, or over 10% more than the targeted value of 90 events or more. Outreach events were conducted on topics such as merit systems and merit-based management; Federal disciplinary policies; MSPB regulations, procedures, results, and legal precedent; and results of merit systems studies. Events were conducted with Federal executive branch departments or agencies, congressional organizations, Federal court organizations, Federal Executive Boards, good-government and affinity groups, a variety of legal groups (Bar and other attorney associations, national institutes, and law schools), and major legal and research conferences. In trying to improve the balance of outreach events, MSPB identified outreach process issues that must be resolved to effectively balance events and target specific groups. MSPB will retain the measure of total number of outreach events.

The FY 2023 target is to conduct 90 events, update the outreach calendar and guidance, and consider issues and methods to target outreach and engagement to specific groups. The FY 2024 target is TBD based on FY 2023 results.

Performance Goal 2A-1: Conduct effective outreach and engagement.	
Measure: Number and scope of MSPB contacts with practitioners and stakeholders focused on improving the understanding or practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace.	
Current Performance Year	
FY 2022 Result	Conducted 112 outreach events and identified outreach process issues that need resolution to balance events and target specific groups. MSPB will continue to measure the number of outreach events.
FY 2022 Target	Conduct 90 or more outreach events and improve the audience balance in events; assess past outreach events and the outreach process and determine how to target events to key audiences and measure outreach success.

Future Targets	
FY 2023	Conduct 90 outreach events; adjust the outreach calendar, update guidance on outreach, and consider issues and methods for targeting outreach and engagement to specific groups.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Conducted 138 outreach events and implemented the new outreach calendar, which improves the collection of outreach data, including type of audience feedback collected at events.
FY 2018	Conducted 134 outreach events. Consideration of methods to collect customer feedback on events to continue in FY 2019.
FY 2019	Conducted over 130 outreach events; given the low rate of events early in the FY, we decided that improvements in collection of customer feedback at outreach events will be reconsidered in the future in conjunction with agency priorities and available resources.
FY 2020	Conducted 76 outreach events.
FY 2021	Conducted 138 outreach events.

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

This objective was EXCEEDED. MSPB exceeded the target for providing educational and information documents by publishing at least 25 documents, more than triple the targeted number of eight or more new or updated documents. Documents included eight Federal Register (FR) notices; three press releases; more than nine documents related to the arrival of Board members and relevant changes or updates to adjudication information; five studies documents; and more than seven agency annual reports, plans, or results from employee survey data. MSPB clarified the informational and educational documents appropriate for this PG in the statement of the measure. MSPB work was cited in 113 different sources, exceeding the scope of sources reported in the previous year by more than 10%. Notable citations include MSPB studies work cited in Government Accountability Office (GAO) reports on [direct hiring in future emergencies](#) and on [sexual harassment in the Department of Veterans Affairs](#) (VA); four academic articles in public policy journals citing use of 2016 MPS data or published merit systems study reports; and the Partnership for Public Service’s [Trustworthy: Increasing Civil Servants’ Trust at Work](#), citing four separate study reports. In FY 2022, MSPB began using Google Scholar alerts to improve notification of references to MSPB’s work in research and academic sources and decided to retain the measure for tracking the scope of external references to our work.

The FY 2023 target for publishing informational or educational documents is to publish six or more documents, including the AR and studies documents. The FY 2023 target for tracking references to our work is to maintain the scope of references and consider updates to the external references database and ways to improve access to automated tools for tracking references. The FY 2024 targets for both goals are TBD based on FY 2023 results.

Performance Goal 2B-1: Develop and share informational and educational materials and guidance about merit, MSPs, and PPPs.	
Measure: Number of new or updated informational or educational documents that contain information about the civil service and its history, the merit systems, MSPs, PPPs, and our process and outcomes made available electronically or on MSPB's website.	
Current Performance Year	
FY 2022 Result	Published 8 press releases (end of maximum telework, release of the 2021 Annual Report, arrival of new Board members and senior executives (4), PFR mediation pilot, and new research agenda); 3 FR notices (reasonable accommodation, civil monetary penalty inflation adjustment, and service contract inventory); several documents related to the restoration of a quorum and the adjudication process (Board members biographies, update to frequently asked questions (FAQs) on a quorum, ratification orders for MSPB Administrative Judge (AJ) and contract Administrative Law Judge (ALJ) appointments, recommended approach to reducing the backlog, update on Clerk's authority for PFR withdrawal, explanation of docket number construction, several new precedential decisions, and reports of pending HQ cases); studies documents, including 3 editions of <i>IoM</i> , new MSPB research agenda, and release of 2021 MPS data; and several agency plans and reports, including the new Strategic Plan, the APR-APP for 2021-2023, the FY 2021 AR, the FY 2021 Annual Financial Report (AFR), the FY 2022 Congressional Budget Justification (CBJ), Freedom of Information Act (FOIA) reports, and 2021 AES data (from the 2021 FEVS). Clarification of documents appropriate for this measure is provided in the statement of the measure above.
FY 2022 Target	Post or distribute electronically 8 new or updated informational or educational products; review and assess the scope and type materials and guidance and determine how to measure and establish appropriate targets for this PG.
Future Targets	
FY 2023	Post or distribute electronically 6 new or updated informational or educational products.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Published interactive versions of the <i>Adverse Action</i> report and <i>MSPs: Use in Guiding Fair and Effective Management of the Workforce</i> ; two external reviews of MSPB's IT systems; an annotated illustration of current avenues of review or appeal for a Federal adverse action; designation of the new Vice Chairman Mark A. Robbins; guidance on lack of quorum; and the 2016 MPS data. Updated/reorganized the e-FOIA Reading Room web page and created a new Privacy Act Program webpage.
FY 2018	Posted 4 articles or briefs, 3 <i>IoM</i> editions, and 1 radio and 1 video interview. Added links to Board member nominations, updated Acting Chairman Robbins's biography, and added pages for recent Board members and their lengths of service. Updated information for appellants seeking judicial review of whistleblower claims, VA appeals under 38 U.S.C. § 714, PFR withdrawal policy, lack of quorum FAQs, Information Quality Guidelines, and 2017 FOIA logs.
FY 2019	Posted 3 <i>IoM</i> editions and 4 research briefs; 3 FR notices and 5 press releases; the FY 2018 AR; other agency reports, plans, and budget documents; the 2018 FEVS results; updated FAQs on MSPB functions given the lack of Board members; updated history of Board member service; and changes to the AJ Handbook.

FY 2020	Created a COVID-19 webpage and guidance pursuant to EO 13891 and OMB Memorandum M-20-02. Published our Data Governance Body’s charter in accord with the Federal Data Strategy (FDS). Published a new merit systems studies fact sheet, a research brief entitled <i>The State of Federal HR Workforce: Changes and Challenges</i> , and 3 <i>IoM</i> editions. Updated the accessibility and PPP webpages. Published policy for prohibited conduct and the Zoom for Government privacy act statement and rules of behavior for external users. Published the MSPB Strategic Plan for FY 2020-2024, the APR-APP for FY 2019-2021, the CBJ for FY 2021, the FY 2019 AR, the FY 2019 AFR, and an information sheet on reductions in force (RIFs). Posted updated figures on PFR processing, Federal Activities Inventory Reform (FAIR) Act inventory, 2019 AES/FEVS results, and Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act data.
FY 2021	Posted over 20 documents in 12 categories, including: 5 research briefs; 3 <i>IoM</i> editions; 5 agency documents (APR-APP, AFR, APR, CBJ, and AR); 2020 AES/FEVS results; 2 FR notices; 8 press releases; 3 Privacy Impact Assessments; 2 No FEAR Act updates; monthly reports on pending cases at HQ; and MSPB case reports.

Performance Goal 2B-2: Track the scope of references to MSPB’s work and work products.	
Measure: Scope (location or identity of citing organization) of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, Federal legislation, professional literature, EOs, the media, or other sources.	
Current Performance Year	
FY 2022 Result	MSPB’s work was cited over 550 times in 113 sources. Notable citations include MSPB studies work cited in GAO reports on direct hiring in future emergencies and on sexual harassment in the VA ; 4 academic articles in public policy journals citing use of 2016 MPS data or study reports on merit systems or managing the federal workforce; and the Partnership for Public Service’s <i>Trustworthy: Increasing Civil Servants’ Trust at Work</i> , citing 4 separate study reports. MSPB will continue to measure the scope of references to MSPB’s work.
FY 2022 Target	Report scope of references; reassess how to measure this function with input from new Board members.
Future Targets	
FY 2023	Maintain the scope of references; consider updates to the external references database and ways to improve access to tools for tracking external references.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	MSPB’s work was cited over 600 times in 150 different sources. Several MSPB study reports were cited in the OMB Memorandum M-17-22 on Reforming the Federal Government and in testimony at a Senate hearing on empowering Federal managers. MSPB’s report on veterans hiring was cited in a report by the Congressional Research Service (CRS), and reports on engagement and SES training were cited in a new Federal management handbook published by the American Society for Personnel Administration. Additionally, the 2017 National Defense Authorization Act (NDAA) provision to repeal the 180-day waiver for hiring people with previous military experience used MSPB’s veterans’ hiring report.
FY 2018	MSPB’s work was cited 610 times in 136 different sources. Sources of particular import include 2 GAO reports; OPM’s unlocktalent.gov website; posts and letters by selected senators and representatives; the National Academy of Science, Engineering, and Medicine; the National Academy of Public Administration (NAPA); the American Psychological Association; and a book on health care management.

FY 2019	MSPB's work was cited 714 times in 129 different sources. Notable citations include a letter from the House VA Committee to the Secretary of the VA; a CRS Report entitled Merit Systems Protection Board (MSPB): A Legal Overview ; and the publication Report: Symposium on the Federal Workforce for the 21st Century by the MITRE Corporation.
FY 2020	MSPB's work was cited 453 times in 119 sources. Notable citations for policymakers include references to MSPB's studies on sexual harassment in GAO's report and testimony about sexual harassment at VA; a bipartisan, bicameral congressional letter to VA about sexual harassment; references to sexual harassment studies and case law in a briefing report by the U.S. Commission on Civil Rights; and an MSPB studies report on Adverse Actions cited in the CAFC decision in <i>Sayers v. VA</i> .
FY 2021	MSPB's work was cited 520 times in 92 sources. Notable citations include MSPB studies work cited in OPM's final regulations on Probation, Performance-Based Reduction in Grade, and Removal Actions; testimony by Anne Joseph O'Connell to the House Subcommittee on Government Operations; NAPA's report on the review of OPM; GAO reports on sexual harassment, employee engagement, and gender pay differences; and a letter from the House Committee of Oversight and Reform to President Biden calling for nominations of MSPB Board members.

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.

This objective was MET. The result for inclusion was exceeded, with an average of 81%, or more than 10% above the target of 70% or higher. The results for competencies, diversity, and engagement were 73%, 68%, and 74% respectively, all within 10% of the target.

The FY 2023 targets for all PGs are for average percent positive to be 70% or higher. The FY 2024 targets for all PGs are TBD based on FY 2023 results.

Performance Goal M1-1: Ensure MSPB's workforce has the competencies needed to perform its mission.	
Measure: Percentage of employees who report (on the FEVS or internal survey (IS)) that they and others in the workforce have the appropriate competencies needed to perform MSPB's mission.	
Current Performance Year	
FY 2022 Result	Competency average = 73%.
FY 2022 Target	Competency average = 70% or higher.
Future Targets	
FY 2023	Competency average = 70% or higher.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Competency average = 71%.
FY 2018	Competency average = 71%.
FY 2019	Competency average = 75%.
FY 2020	Competency average = 80% (derived from the IS due to the FEVS delay).
FY 2021	Competency average = 73% (derived from the IS due to the FEVS delay).

Performance Goal M1-2: Ensure positive perceptions of workforce diversity by MSPB employees.	
Measure: Average percentage agreement on FEVS (or IS) diversity questions.	
Current Performance Year	
FY 2022 Result	Diversity average = 68% (derived from the IS due to FEVS changes).
FY 2022 Target	Diversity average = 70% or higher.
Future Targets	
FY 2023	Diversity average = 70% or higher.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Diversity average = 66%.
FY 2018	Diversity average = 61%.
FY 2019	Diversity average = 72%.
FY 2020	Diversity average = 75% (derived from the IS due to the FEVS delay).
FY 2021	Diversity average = 76% (derived from the IS due to the FEVS delay).

Performance Goal M1-3: Ensure positive perceptions of workplace inclusion by MSPB employees.	
Measure: Average percentage agreement on IS workplace inclusion questions.	
Current Performance Year	
FY 2022 Result	Inclusion average = 81%.
FY 2022 Target	Inclusion average = 70% or higher.
Future Targets	
FY 2023	Inclusion average = 70% or higher.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Inclusion average = 76%.
FY 2018	Inclusion average = 81%.
FY 2019	Inclusion average = 84%.
FY 2020	Inclusion average = 83%.
FY 2021	Inclusion average = 86%.

Performance Goal M1-4: Ensure positive employee engagement.	
Measure: Average percentage agreement on FEVS (or IS) engagement questions.	
Current Performance Year	
FY 2022 Result	Engagement Index = 74%.
FY 2022 Target	Engagement Index = 70% or higher.
Future Targets	
FY 2023	Engagement Index = 70% or higher.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Engagement Index = 70%.
FY 2018	Engagement Index = 66%.
FY 2019	Engagement Index = 72%.
FY 2020	Engagement Index = 80%.
FY 2021	Engagement Index = 82% (derived from the IS due to the FEVS delay).

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

This objective was MET. MSPB achieved its results for IT reliability and internal customer service with averages of 74% and 68%, respectively, both within 10% of the target of 70% or higher. MSPB exceeded its cybersecurity target, with 94% of assets scanned, more than 10% above the target of 75%. MSPB met the target for improving the efficiency of adjudication processing. Results for percentage of initial appeals and percentage of pleadings filed electronically were 85% and 95%, respectively, slightly higher than the 2021 results and the highest results since we began tracking in 2012. MSPB also completed four separate test sprints, each including user acceptance testing, and two production data test migrations. MSPB completed training and communication plans; acquired external development, technical writing, and communications resources; and designated internal training and communication resources to support “go-live” in late FY 2023. MSPB met the cloud-based services target by defining a new measure for the PG as the percentage of new IT investments that replace legacy on-premises technologies with Government-approved cloud service providers.

The FY 2023 targets for the IT reliability and internal IRM customer service measures are an average percent positive of 70% or higher. The FY 2023 for cybersecurity is to scan 90% or more of assets. The FY 2023 target for modernizing the adjudication system is to implement the new system. The FY 2023 target for cloud-based services is that 75% of new IT investments that replace legacy systems are cloud-based. The FY 2024 targets for all PGs are TBD based on FY 2023 results.

Performance Goal M2-1: Ensure reliability of MSPB IT systems, hardware, and applications.	
Measure: Average percentage agreement on relevant IS questions.	
Current Performance Year	
FY 2022 Result	IT reliability average = 74%.
FY 2022 Target	IT reliability average = 70% or higher.
Future Targets	
FY 2023	IT reliability average = 70% or higher.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	IT reliability average = 55%.
FY 2018	IT reliability average = 61%.
FY 2019	IT reliability average = 65%.
FY 2020	IT reliability average = 77%.
FY 2021	IT reliability average = 82%.

Performance Goal M2-2: Ensure satisfaction with internal IT support and services.	
Measure: Average percentage agreement on relevant IS questions.	
Current Performance Year	
FY 2022 Result	IT internal support = 68%.
FY 2022 Target	Average agreement = 70% or higher.
Future Targets	
FY 2023	Average agreement = 70% or higher.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Average agreement = 52%.
FY 2018	Average agreement = 72%.
FY 2019	Average agreement = 72%.
FY 2020	Average agreement = 80%.
FY 2021	Average agreement = 78%.

Performance Goal M2-3: Continuously enhance cybersecurity.	
Measure: Percentage of IT assets (any MSPB-owned items with IP addresses) scanned through the Department of Homeland Security’s Continuous Diagnostics and Mitigation program.	
Current Performance Year	
FY 2022 Result	94% assets scanned; 100% receiving some scanning.
FY 2022 Target	75% of assets scanned.
Future Targets	
FY 2023	90% of assets scanned.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2020	New goal in FY 2021.
FY 2021	Measure and FY 2022 target developed.

Performance Goal M2-4: Improve efficiency of adjudication case processing.	
Measure: Modernize core adjudication applications; proportion of cases processed entirely electronically.	
Current Performance Year	
FY 2022 Result	Interim indicators: 85% of initial appeals and 95% of pleadings filed electronically. Completed pilot releases 2.1 through 2.4, including user acceptance testing for each sprint, and 2 production data test migrations (including case media). Completed training and communication plans; acquired external development, technical writing, and communication resources; and designated internal training and communication resources to support “go-live” in late FY 2023.
FY 2022 Target	Substantially complete the new system.
Future Targets	
FY 2023	Implement the new system.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2017	Interim indicators: 61% of initial appeals and 82% of pleadings filed electronically. Arranged 2 vendor demonstrations of appeals workflow solutions. Completed significant work on e-Appeal release 9.7, a new enhanced version of the Quick Case application, and a new Document Management System Upload Application (for litigation cases); and essentially completed a new application to automate the completion of electronic case files (ECFs) (for courts, Department of Justice, Equal Employment Opportunity Commission (EEOC), etc.). Partnered with OMB’s Office of the Federal Chief Information Officer (CIO) for weekly calls or meetings regarding this goal.
FY 2018	Interim indicators: 69% of initial appeals and 89% of pleadings filed electronically. Completed requirements development for new core business applications, including those to support electronic adjudication (e-adjudication), and issued the request for proposal.

FY 2019	Interim indicators: 69% of initial appeals and 89% of pleadings filed electronically. Awarded contract for new core business applications and began configuring electronic filing (e-filing) and initial appeals processing components.
FY 2020	Interim indicators: 77% of initial appeals and 93% of pleadings filed electronically, an increase from FY 2019 and the highest MSPB has experienced since 2013; significantly expanded ECFs to allow for use in any FY 2020 appeal and in any FY 2019 case in RO/FOs where the electronic record is complete as an ECF. Continued development of initial appeal process on new application platform. Further modernization progress delayed due to the COVID-19 pandemic.
FY 2021	Interim indicators: 84% of initial appeals and 94% of pleadings filed electronically. Wireframes for new application completed, and pilot release 1 completed for next-generation adjudication system.

Performance Goal M2-5: Deploy and maintain effective, secure, cloud-based services.	
Measure: Percentage of new IT investments that replace legacy on-premises technologies with Government-approved cloud service providers.	
Current Performance Year	
FY 2022 Result	All Azure.gov services transferred to Azure.com cloud. Enhancements (single sign-on for Azure Active Directory and Qualtrics) made to improve the confidentiality, integrity, and availability of all Microsoft cloud services. A new measure beginning in FY 2023 is included above.
FY 2022 Target	No numeric target. Review these services and determine how to best measure this goal.
Future Targets	
FY 2023	75% of new IT investments that replace legacy systems are cloud-based.
FY 2024	TBD based on FY 2023 results.
Past Results	
FY 2021	New PG and measure effective in FY 2023.

Means and Strategies Needed to Accomplish MSPB's Objectives

MSPB will use the following means and strategies to accomplish its objectives. These may be adjusted, emphasized in specific years, and 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. Implement fair approaches (e.g., policies and processes, adjudication systems, case management, the order in which cases are voted) to reducing the inventory of PFRs and other cases at HQ while ensuring that each matter receives accurate and due consideration; track and measure success in reducing HQ case inventory; and include appropriate PGs, measures, and targets in MSPB's APPs to ensure transparency in accomplishing this important objective.
2. Issue regulations as necessary to implement changes in statute, regulation, policy, or case law.
3. Consider and implement requests for additional HC (e.g., additional full-time equivalents (FTE)) and other resources; and use all flexibilities (e.g., details, temporary hires) to ensure that MSPB has sufficient adjudication staff to reduce the inventory of cases at HQ, maintain Board case quality, and effect high-quality and timely adjudication of initial appeals, including remands on PFR.
4. Define and implement measures for adjudication quality in the ROs/FOs and at HQ to ensure a 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 (i.e., the Board on PFR or the courts). Ensure an appropriate focus and measurement on adjudication quality and accuracy and adjudication quantity and speed.
5. Modernize MSPB's core adjudication business applications, including its e-filing platform, case management, document management, and document assembly capabilities as MSPB transitions from paper to 100% 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)). Consider hiring a Chief Data Officer.
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. Update adjudication staff performance management plans and processes 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. Report compliance timeliness separately for HQ and the RO/FOs and ensure measures encourage long-term efficiency and effectiveness. Consider reporting data by agency, as appropriate.
2. Consider internal processes and resources needed for timely and complete compliance with MSPB decisions and orders, especially at HQ. Consider external approaches to improve complete timely compliance, such as 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 HC management issues.

1. Ensure timely publication of reports of merit systems studies. 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, *IoM* articles) 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. Given the high rate of retirement eligibility of MSPB studies research staff (63% between now and the end of FY 2024) and the 2-3 years it takes to achieve journey-level expertise, 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. Measure success in processing cases involving the review of OPM regulations and make all OPM review information easily available to stakeholders by reporting relevant information about OPM regulation review cases in MSPB ARs.
2. Ensure results of MSPB review of OPM significant actions are distributed to all appropriate recipients through the publication of MSPB ARs.

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 working with agencies involved in merit systems or Federal management (OPM, the Office of Special Counsel (OSC), EEOC, the Office of Government Ethics, etc.) to increase, within available resources, outreach opportunities designed to improve the practice and understanding of merit, MSPs, and PPPs by Federal employees, policymakers, key stakeholders, and the public.
2. Assess and resolve issues to ensure that we can solicit and conduct targeted outreach and engagement, including for those on both sides of the adjudication process and other key stakeholder groups (e.g., affinity groups, Federal employee and management groups, legal groups, researchers), to improve knowledge of MSPB's work and its role in protecting merit and 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 the 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, MSPs, and 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 notify stakeholders and the public about information related to 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 stakeholders to establish requirements or standards for periodic merit systems training for all Federal employees similar to the requirements for the No FEAR Act. Consider ways to encourage implementation of these standards in education programs for Federal employees and the public, such as 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. Ensure 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, promoting leadership development and succession planning, improving management of critical one-deep positions, and leveraging hiring and assessment policies and processes and the use of personnel flexibilities.
2. Ensure that 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 inventory of HQ cases while simultaneously performing other adjudication work, conducting studies, and filling other key 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 an effective and ongoing employee orientation program, 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 FEVS and MSPB's 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) to enable flexible work options that support mission performance, workforce and workplace health and safety during emergencies, and hiring and retaining talented employees.

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) 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, cloud-based survey capability that is certified by FedRAMP, with flexible survey design and administration to support deployment of secure, cloud-based, Governmentwide surveys for merit systems studies, program evaluation, and internal and external customer surveys.

Trends and Challenges that May Affect Agency Performance

Internal Management Challenges

The most significant internal issue that affected MSPB was the restoration of a quorum and the installation of a full slate of Board members. In addition, MSPB appointed new Directors in OPE and ORO, a new General Counsel, and, in early FY 2023, a new, permanent Executive Director. While bolstered by the arrival of these important senior leaders, MSPB nonetheless faces significant internal challenges that could affect the agency's ability to carry out its mission, including challenges related to HC and the agency's IT modernization. (The COVID-19 pandemic is an external factor, and the internal challenges it creates are discussed in the external factors section.)

Restoration of the Full Board. As discussed in the introduction, MSPB's quorum was restored on March 4, 2022, and the full Board was in place on June 1, 2022. Prior to March 4, 2022, MSPB had been without a quorum for five years and without any presidentially appointed, Senate-confirmed Board members for three years. The lack of quorum, which prevented the issuance of HQ decisions, led to a large inventory of cases pending at HQ—totaling nearly 3,800 cases by the time a quorum was restored. The lack of quorum also prevented MSPB from releasing reports of merit systems studies, promulgating substantive regulations to accompany congressional or other changes to our jurisdiction and processes, and impeded our review of OPM significant actions.

Having a quorum permits issuance of decisions at HQ, publication of merit systems studies reports, and updates to regulations, among other priorities. MSPB is committed to effectively and efficiently performing these functions and responsibilities and exercising the full authority of the Board under our statute and other relevant laws. We made significant progress in resuming these agency functions and expect operational efficiency and effectiveness will improve over time. It should also be noted that MSPB expects there to be a short lag in production (primarily in adjudication, with possible impacts on broader systems and functions) when the new, modernized electronic appeals system is implemented. More details about resuming the adjudication process at HQ and publication of merit systems studies documents is included below.

Resuming the functions that support voting and issuance of HQ decisions involves staff in many offices, including OAC, OCB, OGC, Board members' offices, and IRM. Much of the work began before new Board members arrived, when career staff prepared thousands of recommended decisions that awaited members' review and voting. Once a quorum was restored, the initial priority was onboarding Board members and providing initial briefings on MSPB programs (including adjudication). In addition to this onboarding process, the Board members had to staff their offices, which was done by either detailing attorney and paralegal employees from OAC, OGC, and ORO or hiring new employees. Career MSPB employees briefed and trained new members (and their staffs, as necessary) on the overall HQ case and decision review process and the electronic case processing applications. These applications included a new electronic voting application that was developed during the lack of quorum period to enable Board members to work more efficiently in a hybrid environment. The members also had to reach agreement on case processing priorities. Once these initial activities were accomplished, the Board members could focus their efforts on reviewing recommended decisions and voting on cases prepared during the lack of quorum period.

Reducing the HQ case inventory to a manageable level will require that the voting and issuance process operate more efficiently than for any previous Board. The Board member review process requires each member to see and approve the proposed edits of the other members so that final votes are taken on the same version of the decision. Once voting is complete, decisions are

transferred to OCB, where they undergo final quality review and are issued to the parties and posted to MSPB's website. As the Board members review and edit cases, OAC must continue to learn the priorities and styles of each Board member to minimize decision rewrites and continue the pace of preparing recommended decisions for Board review. In addition, new Board decisions are changing precedent, with over 30 new precedential decisions issued in FY 2022. This requires OAC staff to reword and alter a significant number of recommended decisions in the inventory to incorporate new precedent while simultaneously preparing recommended decisions in newly filed cases. Additionally, the new precedential decisions must be considered in the adjudication of initial appeals conducted by AJs in the RO/FOs. Also, for the first time in five years, the RO/FOs are receiving remands and reversals of their IDs from the Board in PFR cases. AJs, many of whom were not MSPB employees when decisions were last issued at HQ in early 2017, must simultaneously adjudicate and issue decisions in new initial appeals, incorporate new Board precedent, and process remands effectively and efficiently. Notably, in FY 2022, MSPB decided 528 HQ cases, including over 30 precedential decisions that will affect other pending HQ cases and the processing of initial appeals in the RO/FOs.

Publication of merit systems studies reports and other documents involves review, input, and approval by Board members. Studies documents serve a different purpose—and are intended for a wider range of MSPB stakeholders—than the HQ decisions reviewed and voted on by Board members. Studies documents are intended to share MSPB's rationale, results, findings, and recommendations on myriad topics related to improving management under MSPs, avoiding PPPs, and managing a merit-based Federal workforce. MSPB has continued to conduct merit systems studies research and prepare documents for review. However, just as Board members faced a learning curve with respect to the adjudication process, they required time to gain familiarity and understanding of the studies program and its products. Further, MSPB researchers must learn the priorities and interests of the Board members to ensure the design and execution of a review and approval process for studies documents that is efficient and effective. During FY 2022, MSPB appointed a new OPE Director, oriented new Board members to the studies process and products, and received approval to publish an *IoM* edition and the new MSPB Research Agenda for 2022-2026.

Human Capital Challenges. MSPB now has a full complement of Board members, three new office directors, and a permanent Executive Director. However, MSPB continues to face challenges with leadership and staff vacancies and retirement eligibility in several agency programs. As of October 2022, approximately 27 percent of all MSPB employees, including almost 30 percent of AJs and adjudication managers involved with processing initial appeals, are eligible to retire between now and the end of 2024. The current level of retirement eligibility for AJs and their managers reflects the departures of many senior AJs and managers and the hiring of new, non-retirement eligible staff since the 2019-2021 APR-APP, in which retirement eligibility through 2022 was reported at 47%. Additionally, 63% of merit systems studies research analysts/psychologists are eligible to retire between now and the end of 2024. It takes 2-3 years for new attorneys and researchers to reach journey-level expertise. Also, in relation to other agency functions, ensuring continued expertise is a challenge when employees in critical, one-deep positions, especially those performing Governmentwide functions (e.g., IT and administrative functions required by all agencies), depart the agency through retirement or transfer.

MSPB has been facing considerable change, including a return to in-office work and a bevy of future-of-work considerations, the arrival of new Board members and new office directors, the resumption of MSPB functions precluded under the lack of quorum, the ongoing development of a modernized electronic appeals system, and the continued effects of the pandemic. A changing

environment, even one with at least some anticipated net-positive effects, often induces increased employee stress and less positive perceptions of workplace issues and functions in the short term. As reported here, results from the 2022 FEVS and 2022 IS showed that MSPB's FY 2022 performance targets for perceptions (percent positive) of employee competencies, diversity, and engagement were achieved, and the perceptions of inclusion were exceeded. These survey results were even greater than what OPM defines as a strength on the FEVS. However, employee perceptions of these issues in FY 2022 decreased in comparison to FY 2021.

In addition to surveys, MSPB periodically assesses employee exit interview information to detect trends. Also, per the guidelines for barrier analysis set forth by EEOC, MSPB's recent annual data reports on diversity representation indicate that MSPB is among the more diverse agencies in the Executive branch. However, these statistics are limited to a few of the civil rights categories under EEOC's authority (Hispanic ethnicity, race, sex, and disability) which are less expansive than the numerous diversity characteristics and measures described by OPM. MSPB is committed to assessing results from employee surveys and considering additional information where needed (e.g., exit interviews and barrier analyses) to define actions that can be taken (e.g., changes in policies and procedures and improved communication) to 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.

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

The success of any SHCP depends on continued, stable funding for FY 2024 and beyond. This funding is necessary to retain expertise, improve competencies, improve and sustain employee engagement, improve our processes and IT systems, and simultaneously perform our statutory and support functions. Sustained resources are necessary to have sufficient staff to reduce the HQ inventory while simultaneously processing new cases at HQ; process initial appeals including remands from the Board; ensure sufficient research staff to conduct merit systems research and publish studies reports; and ensure adequate agency-wide training and employee development.

IT Modernization. MSPB is committed to transitioning to 100% e-adjudication to process cases more efficiently and improve service to our customers. In addition, e-adjudication will support MSPB's efforts to comply with Governmentwide initiatives to improve efficiency, effectiveness, accountability, and customer service; paperwork reduction requirements; and records management directives, including OMB Memorandum M-19-21,⁹ requiring that agencies convert records to electronic format. MSPB also is focused on ensuring that it has the IT infrastructure and expertise to execute its mission and modernize its systems, including implementing e-adjudication and supporting its FedRAMP-certified, web-based survey capability.

⁹ OMB Memorandum M-19-21, Transition to Electronic Records, June 28, 2019, at <https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-21.pdf>.

Beginning in FY 2017, MSPB pivoted away from continually customizing its existing legacy business applications that are nearing end-of-life. In FY 2018, MSPB developed comprehensive requirements to identify the “next generation” of MSPB’s core business application to fully enable e-adjudication of MSPB appeals (while retaining the option for paper processing when necessary). This includes replacing systems for case management, document management and document assembly, and e-Appeal Online; and integrating the new application with our public-facing website, the extranet, and our intranet. In FY 2019, MSPB selected a contractor to design and implement the new core business application and began configuring the e-filing and initial appeal processing components. Progress on this project was delayed in FY 2020 due to the pandemic. In FY 2021, mock-ups of user interfaces representing each functional step of the adjudication business process were delivered, and user pilot testing for initial functionality was successfully conducted. In FY 2021, MSPB also transitioned to new laptops for all employees and implemented a new cloud-based website. In FY 2022, additional pilot functionality was delivered for the new core business application and successfully user tested; legacy data was prepared for transfer to the new system; and external and internal resources were identified and plans were created to handle the training, communication, and documentation required to go live in late FY 2023. As reported earlier in this document, the FY 2022 PGs for IT reliability and internal customer services were achieved; however, the results were less robust than in FY 2021. It is likely that operational reliability and internal customer service are impacted because many of our operational legacy systems are at end-of-life. MSPB anticipates that these results will improve once the new systems are implemented and employees become adept at using them. This multi-year modernization effort requires a significant investment of resources but will yield important improvements in infrastructure, systems, productivity, efficiency, and customer service.

External Trends

Among the external trends that affect MSPB’s ability to carry out its mission are the COVID-19 pandemic; changes in law, jurisdiction, and appeals processes; and Government reform, budget challenges, and workforce reshaping. Any of these external trends—or other, not-yet-evident external trends—could require additional resources to ensure a prompt and thorough response by the agency. However, even if such external trends do not change MSPB’s workload or adjudication complexity, the agency still will require stable and sufficient resources in future years to perform its statutory functions effectively and efficiently, especially given the significant inventory of HQ cases.

Changes in Law, Jurisdiction, and Appeals Processes. There was no legislation enacted in FY 2022 that had significant impact on merit-based management or on MSPB functions or operations. However, on December 23, 2022, the James. M. Inhofe NDAA for FY 2023 ([Pub. L. 117-263](#)) was enacted into law, providing an avenue for Federal Bureau of Investigation (FBI) employees to make whistleblower reprisal claims to MSPB, which previously were exclusively subject to an internal FBI appeals process. Section 5304 of the NDAA provides an FBI employee who alleges reprisal for protected whistleblower activities with the right to appeal a final determination or corrective action order to MSPB under 5 U.S.C. § 1221. It also allows for an appeal to MSPB under § 1221, if no final determination or corrective action order has been made or issued within one-hundred eighty (180) days of the FBI being notified of the allegation of reprisal. This change, by expanding MSPB’s whistleblowing jurisdiction to include employees not previously eligible to file appeals under 5 U.S.C. § 1221, will likely increase the number of such complex cases adjudicated by the Board.

Further on December 29, 2022, President Biden signed the Consolidated Appropriations Act for Fiscal Year 2023 ([Pub. L. 117-328](#)) which contained two provisions potentially impacting MSPB as

an employer – the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act. The PWFA adopts the same meaning of “reasonable accommodation” and “undue burden” as used in the Americans with Disabilities and Rehabilitation Acts (the latter of which applies to Federal employees) and describes employer obligations in responding to requests based on a physical or mental condition related to pregnancy, childbirth, and associated medical conditions. It also provides that an employer cannot require an employee to take paid or unpaid leave as an accommodation if another reasonable accommodation is available. As under the Rehabilitation Act, under the PWFA, employers are not required to provide employees with the desired accommodation where an alternative reasonable accommodation is available. The PUMP for Nursing Mothers Act expands existing obligations under the Fair Labor Standards Act to provide nursing employees with reasonable break times to express breast milk for a year after the child’s birth and describes specific requirements for lactation rooms. The PUMP for Nursing Mothers Act covers all employees, not just exempt employees. This new legislation will affect Federal management practices; disputes arising from these provisions could become material elements in appeals and mixed EEO complaints.

In addition, recent court decisions and changes in law and regulation summarized in previous reports continue to affect Federal management or the appeals process. For example, the CAFC decision in *Santos v. National Aeronautics and Space Administration* requires agencies to prove an employee’s performance was unacceptable before imposition of a performance improvement plan. The decisions in *Connor v. VA* and *Rodriguez v. VA* require the VA to apply the *Douglas* factors in determining penalties and use preponderant evidence as the standard in actions taken under 38 U.S.C. § 714. In general, these changes may increase appeals to MSPB or add complexity to the adjudication of these appeals. They also have required a significant number of remands from the Board to AJs and to the VA.

Settlement of cases leading to a settlement agreement between the parties is an essential and efficient process for resolving cases filed with MSPB. EO 13839 (May 25, 2018) significantly affected this process because it prohibited agencies from entering into settlement agreements that “erase, remove, alter, or withhold from another agency any information about a civilian employee’s performance or conduct in that employee’s official personnel records[.]” President Biden revoked EO 13839 on January 22, 2021 (via EO 14003) and directed OPM to revisit regulations arising from EO 13839. On January 4, 2022, OPM published proposed rules to implement changes to the use of such agreements ([87 F.R. 200](#)). On November 10, 2022, OPM published the final rules, to take effect December 12, 2022 ([87 F.R. 67765](#)). Before these rules were promulgated, MSPB was constrained in its ability to accept these types of settlement agreements, requiring more cases to be fully adjudicated on the merits instead of settled. MSPB will continue to track legislative and regulatory changes and court precedent that may affect our adjudicatory function or emphasize a need to study the changes to determine their effect on merit-based Federal workforce management.

Administration Initiatives. MSPB will continue to support, as appropriate, memoranda and EOs delineating the administration’s priorities regarding external equity; the Federal workforce (addressing internal diversity, equity, inclusion, and accessibility; gender policy; customer service; and tribal consultation); climate change; the COVID-19 pandemic; and building trust through the use of science and evidence. The EOs and memoranda related to the Federal workforce could complicate the adjudication of affirmative defenses based on discrimination when appellants believe their agency has not complied with the letter or intent of these directives, or if they believe that the directives themselves are unlawful. MSPB will assess and comply with actions and submissions that are required or that most impact our work. In addition, strong merit-based studies and OPM review functions can

help ensure that these initiatives do not affect Federal merit-based management in adverse ways. MSPB has implemented changes to agency planning documents and embedded improvements into agency operations, functions, and processes in response to new priorities, as appropriate.

Federal Budgets, Government Reform, and Workforce Reshaping. There is little evidence of significant budget reductions in Federal agencies in the near term. In fact, the programs and budgets of some Federal agencies are increasing or changing to address new priorities. When such changes lead to workforce reshaping, there are potential merit-based effects on Federal employees. Many agency actions such as furloughs, RIFs, and some cases involving Voluntary Early Retirement Authority or Voluntary Separation Incentive Payments are appealable to MSPB. Workforce reshaping also may affect workforce management, employee engagement, and employee effectiveness. Maintaining MSPB's strong merit systems studies and OPM review functions helps ensure adherence to MSPs and avoidance of PPPs.

The COVID-19 Pandemic and Reentry. Agencies quickly developed new operational policies during the pandemic. The effect on employees of telework eligibility determinations, reentry and post-reentry policies, safety and security protocols, accountability for health and safety behaviors, vaccine mandates, and sharing health-related information, as examples, could affect merit-based management and increase PPPs. The Administration's Federal employee vaccine mandate is on hold and pending in the 5th Circuit Court of Appeals. New vaccines continue to be introduced, including the new bivalent vaccine. If the vaccine mandate is reinstated, refusal to comply with it could result in removal, which would increase appeals filed with MSPB. Another possibility is an increase in whistleblowing (e.g., whistleblowing disclosures may include allegations regarding Government actions affecting the health and safety of the public) and claims of retaliation for whistleblowing related to the pandemic. MSPB already has received appeals on actions taken against employees that were related to the pandemic. In the longer term, MSPB must be prepared to ensure its studies function is able to assess potential impacts of the pandemic on merit-based management and the occurrence of PPPs, among other potential effects.

MSPB is fortunate to have a strong telework program and a significant portion of work that can be performed remotely or in a hybrid environment. However, some functions either cannot be performed remotely or cannot be performed as efficiently remotely as they could be in the office. Notably, a large portion of appellants and agencies use our e-filing system, especially for initial appeals, and in late FY 2021, MSPB mandated that all new appeals be processed electronically within MSPB. However, nearly half of the cases in the HQ inventory are in paper form. Further, while MSPB benefits from the availability of Zoom for Government for both internal and external meetings—and conducted most hearings virtually during the height of the pandemic—in-person hearings are an important part of the adjudication process, and MSPB began resuming them early in FY 2023. For all its benefits, working in a virtual environment also has challenges, especially for functions such as onboarding and initial training for new employees, through which frequent discussions between new and more experienced employees enhance and expedite knowledge transfer. Additionally, a virtual environment can make impromptu substantive exchanges about work-related issues more challenging. While MSPB expects adjudication processes to become easier and more efficient for all parties when our new e-adjudication system is implemented and plans to continue to leverage telework, the agency anticipates in-person hearings and adjudication in the RO/FOs to continue and a continued need for other agency in-office work, including for HQ adjudication.

MSPB's leaders have continued to track the health and safety risks and Centers for Disease Control and Prevention (CDC) and Administration guidelines (including the [Safer Federal Workforce Task Force](#)) and incorporate that information in the policies and processes that protect the workforce and

support the continued work of the agency. Beginning on October 4, 2021, MSPB employees reentered MSPB offices with 25% maximum occupancy, given high community transmission rates at that time. Additional staff returned to the office in support of the new Board members' arrival in March 2022. In April and May 2022, remaining MSPB staff returned as needed to achieve their work. At that time, in-office staffing levels for the RO/FOs and HQ adjudication offices (OAC, OCB, and the Board members' offices) largely returned to levels comparable to those prior to the pandemic. Agency policies related to COVID-19 and consideration of the future-of-work issues continue to be important to the agency and to agency employees. MSPB is committed to working with its employees to provide appropriate flexibility in work arrangements and supply the tools needed to perform work in a hybrid environment to support the continued performance of the agency's work.

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

Performance Measurement and Program Evaluation

Performance Measurement: Verifying and Validating Performance Information

Most quantitative measures of MSPB's adjudication performance (case processing in the RO/FOs and our case HQ, and compliance case processing) 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, and verification and validation of performance data in this system using controlled user access, limitations in field data entry, operating guides, and processes for cross-checking and correcting data throughout and at the end of the FY. Data fields to support new adjudication PGs or measures may be added to management system, and new processes and training provided to users, as necessary.

Results for the PGs related to merit systems studies, review of OPM regulations and significant actions, and educational/informational 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. 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 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 intranet. 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.

In FY 2022, MSPB implemented its new data integrity policy. In addition to WPEA data, this policy applies to certifying performance data reported in MSPB's APR-APPs and ARs. MSPB will expand this policy to other adjudication and performance data, as appropriate. Data integrity, the transformation to 100% e-adjudication, and new core business applications continually underscore the importance of continuous improvement in 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. Governmentwide emphasis on program evaluation has increased in recent years. The Evidence Act and the Federal Data Strategy also are relevant to agency program evaluation and performance measurement.¹⁰

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 the public. If internal

¹⁰ Public Law (Pub. L.) [115-435](#), and see <https://strategy.data.gov>.

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 or 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.

Results and Status of Program Evaluation Activity

Data integrity and assessment of processing WPEA cases at MSPB. The GAO’s 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. In FY 2022, MSPB implemented a data integrity policy and review process for WPEA data, including certification of adjudication data included in MSPB’s external reports, and issued updated user guidance. Both of GAO’s recommendations are closed.

Program Evaluation Status

MSPB Program Evaluation Status		
Program/ System to Evaluate	Evaluation Start Year	Status
Case processing and data integrity in the RO/FOs	FY 2017	Complete. In FY 2022, MSPB implemented a new data integrity policy and certification process for WPEA and other adjudication and performance data and issued updated user guidance.

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.

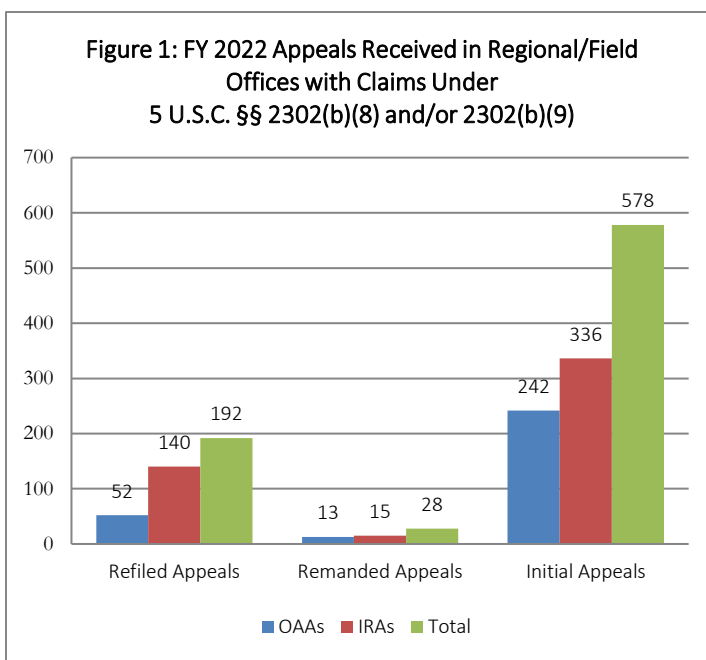
Program/Performance Measurement System	Evaluation Start Year (FY)
Implementation of SHCP process	2023
Assess agency future of work	2023

Appendix A: WPEA Data for FY 2022

In accordance with the WPEA, MSPB is providing this information about whistleblower appeals in FY 2022. This report reflects cases processed from October 1, 2021, through September 30, 2022, and includes data on receipts and outcomes of initial appeals, and receipts of PFRs¹¹ in which violations of 5 U.S.C. § 2302(b)(8) and/or 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D) were alleged.¹² Adjudicating appeals is an ongoing process, and appeals are often closed in a different year than they were received. Therefore, the figures for cases received (i.e., Figure 1 for initial appeals and Figure 9 for PFRs) and outcomes of cases processed (i.e., Figures 3, 6, and 10) in any given year will not be comparable.

There generally are two types of appeals that can involve claims of reprisal under §§ 2302(b)(8) and (b)(9). An otherwise appealable action (OAA) appeal involves an action that is directly appealable to the Board, such as a removal, demotion, or suspension of more than 14 days. In such an appeal, MSPB will review both the appealable action and the claim of reprisal for engaging in protected activity as an affirmative defense. An individual right of action (IRA) appeal—which may be based on either an action that could have been appealed directly to the Board or on a less severe action that is not directly appealable—is limited to the issue of whether the action was taken because of protected activity. In this kind of case, the individual can appeal the claim of reprisal to the Board only if they first file a complaint with OSC, and OSC does not seek corrective action on the individual’s behalf.¹³

Figure 1 displays data on the number and types of appeals that MSPB received in FY 2022 in which violations of 5 U.S.C. §§ 2302(b)(8) and/or (b)(9) were alleged. Appeals received by RO/FOs fall into three categories: initial appeals, remanded appeals, and refiled appeals. Initial appeals are new appeals filed by an appellant for the first time and thus represent new cases alleging reprisal. Remanded appeals are appeals that were previously adjudicated by a RO/FO but which have been remanded on PFR by the Board at HQ, or by a Federal circuit court on appeal of a final Board decision. Refiled appeals are appeals that are refiled—by the appellant or on the AJ’s own

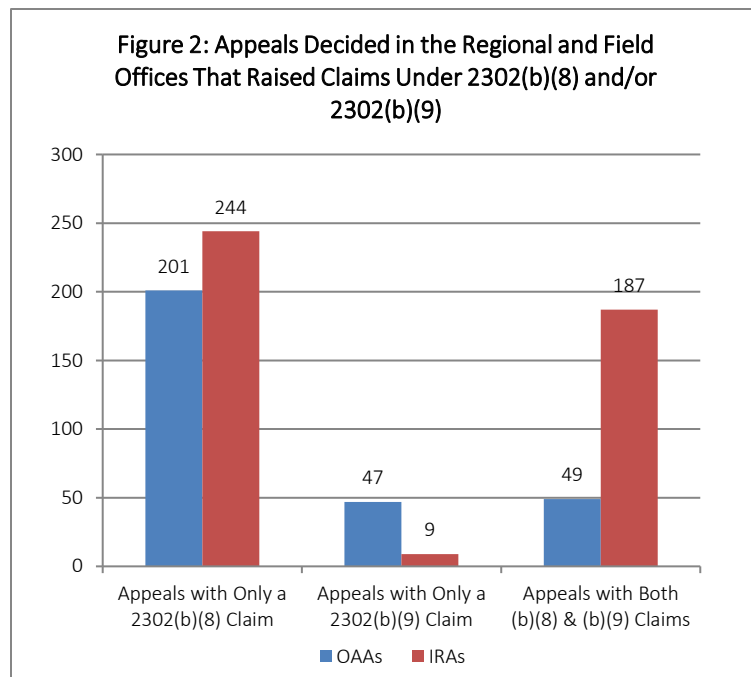


¹¹ The Board lacked a quorum between January 7, 2017, and March 3, 2022, and thus was unable to issue decisions on PFRs during that time. However, the Board resumed issuing decisions on PFRs after the quorum was restored in March 2022. Thus, Figure 10 reflects the outcomes of PFR decisions in FY 2022 issued after the quorum was restored.

¹² This report generally refers to claims raised under 5 U.S.C. § 2302(b)(9); however, this report does not include claims raised under § 2302(b)(9)(A)(ii), as 5 U.S.C. § 1221(a) allows appellants to seek corrective action from MSPB as a result of prohibited personnel practices described only in § 2302(b)(8) or § 2302(b)(9)(A)(i), (B), (C), or (D).

¹³ Complaints in IRA appeals go first to OSC for review and, if warranted, OSC conducts an investigation. According to OSC, it is during this process that agencies often choose to take corrective action or settle an issue informally before OSC files a case with MSPB. MSPB adjudicates IRA appeals that have had the chance to be resolved while at OSC but for which OSC did not seek corrective action.

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



An appellant can file an appeal alleging a violation of § 2302(b)(8) only, a violation of § 2302(b)(9) only, or a violation of both.¹⁴ Figure 2 depicts the number of appeals, both OAA appeals and IRA appeals, that were decided in FY 2022 in the RO/FOs and whether the appeal contained (a) a claim(s) under § 2302(b)(8) only; (b) a claim(s) under § 2302(b)(9) only; or (c) claims under both §§ 2302(b)(8) and (b)(9).

Figure 3 breaks down the totals displayed in Figure 2 for OAA appeals by depicting the outcomes of OAA appeals decided in the RO/FOs in which violations of §§ 2302(b)(8) and/or (b)(9) were alleged. It is important to note that the outcome of an OAA *appeal* is separate from the

outcome of a § 2302(b)(8) or (b)(9) *claim*.¹⁵ An OAA appeal can be dismissed for a variety of reasons that have nothing to do with the merits of any reprisal claim raised therein. For example, the appeal may be untimely filed, the action or the appellant might be outside the Board’s appellate jurisdiction, or the appellant might have made a binding election to challenge the action in another forum (such as through negotiated grievance or arbitration procedures). This figure includes appeals that were withdrawn and appeals that were DWOP.¹⁶ Cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

¹⁴ Sections 2302(b)(8) and (b)(9) prohibit reprisal against an employee or applicant for employment based on different types of protected activity. Section 2302(b)(8) prohibits reprisal because of any disclosure that the employee or applicant reasonably believes evidences certain enumerated categories of wrongdoing. Employees who allege a violation of (b)(8) are typically referred to as alleging “reprisal for whistleblowing.” Section 2302(b)(9)(A)(i) prohibits reprisal because of the exercise of any appeal, complaint, or grievance right with regard to a violation of § 2302(b)(8). Section 2302(b)(9)(B) prohibits reprisal because of testifying for or otherwise assisting any individual in the exercise of any right under § 2302(b)(9)(A)(i) or (ii). Section 2302(b)(9)(C) prohibits reprisal because of cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency or OSC. Section 2302(b)(9)(D) prohibits reprisal for refusing to obey an order that would require the individual to violate a law, rule, or regulation.

¹⁵ The WPEA requires MSPB to report outcomes of appeals; however, when possible, MSPB also reports and summarizes the outcomes of claims.

¹⁶ Note that DWOP cases are listed here for completeness, but they do not reflect the final outcomes of whistleblower issues. DWOP cases can be refiled for final review of these issues.

Figure 3: Outcomes in OAA Appeals Decided in Regional/ Field Offices						
Types of Claim(s) Raised	DWOP	Settled	Withdrawn	Dismissed (other than DWOP)	Adjudicated on the Merits	Total
Section 2302(b)(8) Only	26	26	14	104	31	201
Section 2302(b)(9) Only	6	9	1	25	6	47
Both Sections 2302(b)(8) and (b)(9)	7	13	3	10	16	49

In a case in which an appellant raises both §§ 2302(b)(8) and (b)(9) claims, the outcomes of those claims may differ.¹⁷ Therefore, we are reporting the outcome of both (b)(8) and (b)(9) claims for cases in which both claims were raised and the OAA appeal was adjudicated on the merits, as depicted in Figures 4 and 5 below.

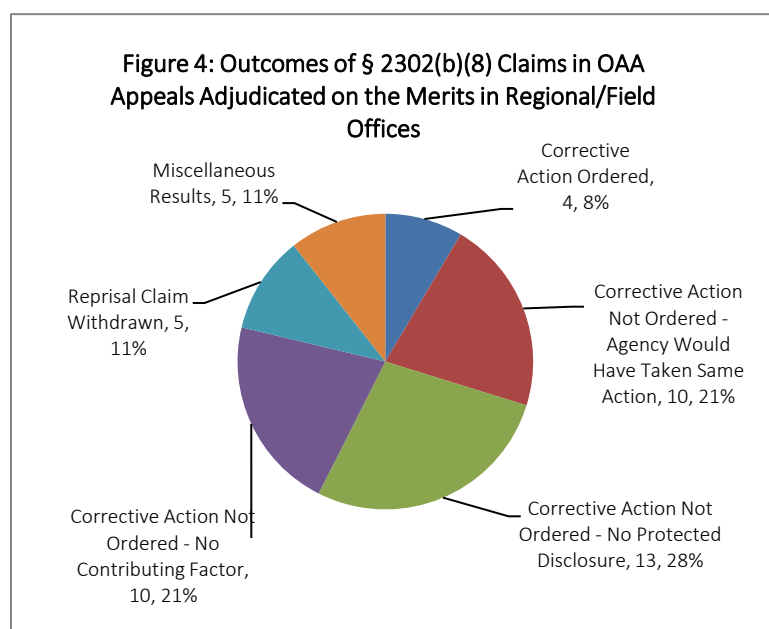


Figure 4 displays the resolution of § 2302(b)(8) claims within the 47 OAA appeals adjudicated on the merits in the RO/FOs.^{18 19} It includes both the 31 OAA appeals adjudicated on the merits with a § 2302(b)(8) claim only and the 16 OAA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in Figure 3.²⁰

The fact that corrective action is not ordered in an OAA appeal does not necessarily mean that the appellant obtained no relief. For example, in a removal appeal in which the appellant alleges reprisal, the Board

could reverse the removal action because the agency failed to prove that the appellant committed the charged misconduct, or it could mitigate the removal penalty, while also finding that the appellant failed to establish reprisal. In any appeal involving a reprisal claim, the Board shall order corrective action for the reprisal claim if the appellant has demonstrated that: (1) they made a

¹⁷ For example, an appellant may allege that they were removed in violation of § 2302(b)(8) for disclosing to their supervisor their belief that a practice at the agency endangered public health. In the same appeal, they also may allege that they were removed in violation of § 2302(b)(9) for testifying in a coworker’s MSPB appeal which involved remedying a violation of § 2302(b)(8). In such a case, the appellant may decide to withdraw their § 2302(b)(9) claim but prevail on their (b)(8) claim. Under that scenario, the outcome of the (b)(9) claim would be “Withdrawn,” whereas the outcome of the (b)(8) claim would be “Corrective Action Ordered.”

¹⁸ Percentages have been rounded up to the next whole number.

¹⁹ Figure 4 also includes a category of “Miscellaneous Results,” which represents OAA appeals that were adjudicated on the merits but wherein the § 2302(b)(8) claims in those cases were not adjudicated on the merits. An AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. For example, an AJ may strike a reprisal claim as a sanction for an appellant’s repeated failure to comply with the AJ’s orders or determine that the Board is precluded from considering the reprisal claim because a security clearance determination is at issue.

²⁰ In FY 2022, there were no OAA appeals adjudicated on the merits in which a section 2302(b)(8) claim was raised and corrective action was not ordered because there was no personnel action; thus, Figure 4 does not include a category for “Corrective Action Not Ordered – No Personnel Action.”

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

Figure 5 depicts the resolution of § 2302(b)(9) claims within the 22 OAA appeals adjudicated on the merits in the RO/FOs. This figure includes the 6 OAA appeals adjudicated on the merits with a § 2302(b)(9) claim only and the 16 OAA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in

Figure 5: Outcomes of § 2302(b)(9) Claims in OAA Appeals Adjudicated on the Merits in Regional/Field Offices				
Corrective Action Ordered	Corrective Action Not Ordered	Claim Withdrawn	Miscellaneous Results	Total
4	17	1	0	22

Figure 3. Figure 4 divides the outcomes of § 2302(b)(8) claims within OAA appeals adjudicated on the merits into subcategories of “Corrective Action Not Ordered” (i.e., no contributing factor, no protected disclosure, and the agency would have taken the same action). However, Figure 5 displays the outcomes of § 2302(b)(9) claims within OAA appeals adjudicated on the merits only in the broader categories of “Corrective Action Ordered,” “Corrective Action Not Ordered,” “Claim Withdrawn,” and “Miscellaneous Results.”²¹ Additionally, the “Corrective Action Not Ordered” category in Figure 5 includes OAA appeals in which the § 2302(b)(9) claim was not reached. As explained above with respect to Figure 4, an AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. As previously noted, the outcome of an *appeal* is separate from the outcome of a §§ 2302(b)(8) or (b)(9) *claim*.

Figure 6: Outcomes in IRA Appeals Decided in Regional/Field Offices							
Type of Claim(s)	DWOP	Settled	Withdrawn	Dismissed, Failure to Exhaust	Dismissed, Other Grounds	Adjudicated on Merits	Total
Section 2302(b)(8) Only	63	43	10	12	84	32	244
Section 2302(b)(9) Only	1	1	0	0	5	2	9
Both Sections 2302(b)(8) and (b)(9)	46	41	10	10	48	32	187

Figure 6 breaks down the totals displayed in Figure 2 for IRA appeals by depicting the outcomes of those cases decided in the RO/FOs in which violations of §§ 2302(b)(8) and/or (b)(9) were alleged. In an IRA appeal, an appellant “shall seek corrective action from OSC before seeking corrective action from the Board.”²² If an IRA appeal is dismissed for “failure to exhaust” (i.e., because the appellant failed to first seek corrective action from OSC), the appellant can file a new IRA appeal after fulfilling the administrative exhaustion requirement.²³ Figure 6 also includes IRA appeals that

²¹ The “Miscellaneous Results” category represents OAA appeals that were adjudicated on the merits but for which the § 2302(b)(9) claims in those cases were not adjudicated on the merits.

²² 5 U.S.C. § 1214(a)(3).

²³ In Figure 6, within the category of “Dismissed, Other Grounds,” the 5 IRA appeals in which a violation of only § 2302(b)(9) was alleged include IRA appeals that were dismissed for failure to exhaust.

were dismissed without prejudice.²⁴ In addition, as in OAA appeals, cases can be settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

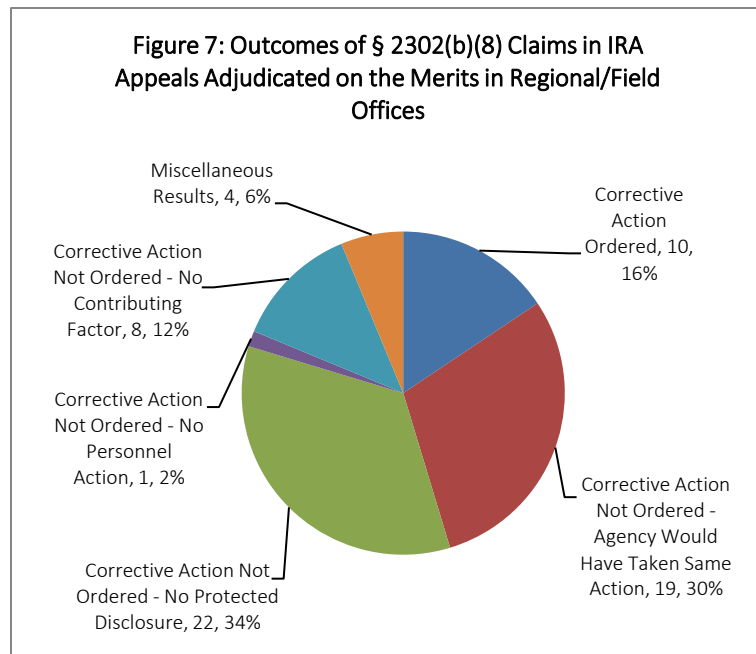


Figure 7 depicts the resolution of § 2302(b)(8) claims within the 64 IRA appeals adjudicated on the merits in the RO/FOs.²⁵ It includes the outcomes of the 32 IRA appeals adjudicated on the merits with a § 2302(b)(8) claim only and the 32 IRA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in Figure 6. Just as in an OAA appeal, the Board shall order corrective action for the reprisal claim in an IRA appeal if the appellant has demonstrated that: (1) they made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against them; and (3) their protected disclosure was a

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

Figure 8 depicts the resolution of § 2302(b)(9) claims within the 34 IRA appeals adjudicated on the merits in RO/FOs. This includes the outcomes of the 2 IRA appeals adjudicated on the merits with a § 2302(b)(9) claim only and the 32 IRA appeals adjudicated on the merits with both §§ 2302(b)(8) and (b)(9) claims, as referenced in Figure 6.

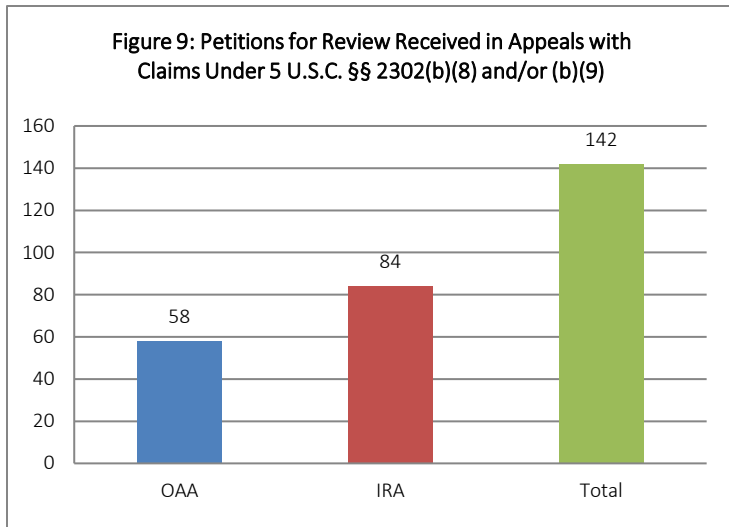
Figure 8: Outcomes of § 2302(b)(9) Claims in IRA Appeals Adjudicated on the Merits in Regional/Field Offices

Corrective Action Ordered	Corrective Action Not Ordered	Claim Withdrawn	Miscellaneous Results	Total
6	26	1	1	34

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

²⁴ Note that DWOP cases are listed here for completeness, but they do not reflect the final outcomes of whistleblower issues. DWOP cases can be refiled for final review of these issues.

²⁵ Percentages have been rounded up to the next whole number.



An appellant or an agency dissatisfied with an AJ’s initial decision on an OAA or IRA appeal may file a PFR with the full Board at MSPB headquarters. Figure 9 shows the number of PFRs the Board received (on both OAA and IRA appeals) involving §§ 2302(b)(8) and/or (b)(9) claims. No Board decisions were issued on PFRs during the Board’s lack of quorum between January 7, 2017, and March 3, 2022. However, in FY 2022, the Board’s quorum was restored,²⁶ and the Board began issuing decisions on PFRs in March 2022.

In addition, on June 22, 2022, Member Raymond Limon, Member Tristan Leavitt, and Vice Chairman and Acting Chairman Cathy Harris signed an updated policy stating that the Clerk of the Board may exercise the delegated authority to grant a withdrawal of a PFR when requested by a petitioner if there is no apparent untimeliness of the petition and if no other party objects to the withdrawal.²⁷ In FY 2022, the Office of the Clerk of the Board granted 2 requests to withdraw PFRs in cases that involved §§ 2302(b)(8) and/or (b)(9) claims.

Figure 10 shows the outcomes of PFR cases involving §§2302(b)(8) and/or (b)(9) claims. It is important to note that PFR outcomes are the decisions of the Board relative to the initial decision issued by the AJ, not relative to the initial action taken by the agency. Under 5 C.F.R. § 1201.115, the Board may issue a decision that denies or grants the PFR and affirms, reverses, or vacates, in whole or in part, the initial decision. Whether a PFR is denied or granted may have nothing to do with the reprisal claim. If the Board’s decision is final, it will include an appropriate notice of appeal rights to the appellant. Alternatively, the Board may remand the appeal to the AJ for further proceedings, in which case the Board’s decision is not yet final and no appeal rights are due. The Board vacates an initial decision when it issues a final decision that reaches a different outcome from that reached in the initial decision.

Figure 10: Outcomes of Petitions for Review in Cases with Claims Under 5 U.S.C. §§ 2302(b)(8) and/or (b)(9)

Settled	Dismissed	Affirmed	Remanded to Regional/Field Office	Reversed	Vacated	Withdrawn	Total
27	5	64	27	1	2	1	127

During FY 2022, the Board issued decisions on 127 PFRs of appeals that involved §§2302(b)(8) and/or (b)(9) claims. Twenty-seven of these appeals were remanded. In OAA appeals, the

scope of the remand may or may not pertain to the reprisal claim. Therefore, when a PFR in an OAA appeal is remanded to the RO/FO, it may present an opportunity for reprisal claims within

²⁶ Member Raymond Limon and Member Tristan Leavitt were confirmed by the Senate on March 1, 2022, and sworn into their duties as members of the Board on March 4, 2022. Acting Chairman Cathy Harris was confirmed by the Senate on May 25, 2022, and sworn into her duties on June 1, 2022.

²⁷ See https://mspb.gov/appeals/files/Policy_Regarding_Withdrawal_of_a_Petition_for_Review_1515773.pdf. This policy was issued following a similar policy that was signed on May 11, 2018, by former Vice Chairman Mark A. Robbins.

the case to be re-evaluated. In IRA appeals, the only issue before the Board is whether a personnel action was taken in reprisal for engaging in protected activity. Settlements at the PFR level are voluntary and are reached at the discretion of the parties. The settlement agreements contain terms that are acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

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

In accordance with 5 U.S.C. § 7701(i)(1) and (2), MSPB provides FY 2022 case processing information. In FY 2022, MSPB processed 5,014 total cases (not including ALJ cases). Of the 4,486 IDs and addendum cases processed in the RO/FOs, 75 percent were processed in 120 days or less.²⁸

MSPB's quorum was restored on March 4, 2022. Because we began the year without a quorum, we did not set a timeliness target for FY 2022. In fact, MSPB will eliminate the HQ timeliness target for FY 2023 and FY 2024 because average processing time for HQ will be extremely high in the early years of inventory reduction, will not convey helpful or information about HQ case processing or inventory reduction, and will not be useful in managing the process. Therefore, although MSPB decided 528 cases at HQ in FY 2022, we are not reporting timeliness information for those cases. Of note, in FY 2022, 15 PFR cases were withdrawn by order of the Clerk of the Board under a policy effected in May 2018. These cases did not involve a decision issued by the Board, so are not included in any case processing statistics.

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

²⁸ In June 2017, Congress set a 180-day limit for MSPB AJs to issue decisions in VA adverse action cases (38 U.S.C. § 714(d)).

Appendix C: Modernization of Public-facing Digital Services Report²⁹



U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Chairman
1615 M Street, N.W.
Washington, DC 20419

Phone: (202) 254-4400; Fax: (202) 653-7208; Email: Alicia.Horton@MSPB.GOV

Acting Chairman

January 12, 2023

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

RE: Modernization of Public-facing Digital Services Report

Dear Director Young,

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

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

In FY 2019, MSPB contracted with Tyler Technologies, a FedRAMP-certified provider of case management software and IT services, to begin this effort. To date we have wireframed the entire application and completed development sprints covering 95% of our adjudicatory business processes, including a public-facing electronic filing portal that will replace the existing e-Appeal Online. We currently are finishing a series of six functionally specific user acceptance testing sessions which will culminate in a pilot of the entire adjudicatory application beginning May 2023. We anticipate full implementation to begin in late FY 2023. The projected cost for the modernization of our electronic filing portion of the application is \$900,000.

MSPB began modernizing its agency website in FY 2019 with the goal of adopting U.S. Web Design Standards, improving search functionality using Search.gov, leveraging the General Services Administration's Digital Analytics Program, and providing an updated, consistent appearance across devices, including mobile. The new website was released to agency employees for testing during FY 2020 and again in FY 2021 with public release in July 2021. The new website fully complies with all eight elements in

²⁹ In accordance with the 21st Century Integrated Digital Experiences Act, (Pub. L. 115-336).

section 3(a) of 21st Century IDEA. The cost for the MSPB website was \$57,000. Cloud hosting for the public site is an additional \$7,500 per year.

We are pleased with our progress in modernizing these public-facing digital services, and we look forward to implementing the new adjudicatory application with a new electronic filing system in late FY 2023. Should you or your staff have any questions about this report, please contact Craig Thomas, Acting Chief Information Officer, at 202-254-4429 or craig.thomas@mspb.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy Harris", with a long horizontal flourish extending to the right.

Cathy A. Harris
Acting Chairman

Appendix D: More Information about MSPB

MSPB's Role, Functions, and Scope of Responsibilities

During congressional hearings on the CSRA before it was passed in 1978, various members of Congress testified and described the role and functions of MSPB, stating that “[MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with insuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”³⁰ MSPB inherited CSC’s adjudication functions and provides due process to employees as an independent, third-party adjudicatory authority for employee appeals including adverse actions (such as removals, furloughs, and certain suspensions) and retirement decisions. For matters within its jurisdiction, MSPB was granted the statutory authority to develop its adjudicatory processes and procedures, issue subpoenas, call witnesses, and enforce compliance with MSPB decisions. Congress also granted MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and Federal HC management issues to ensure that employees are managed under MSPs and free from PPPs. In addition, Congress granted MSPB the authority and responsibility to review the rules, regulations, and significant actions of OPM. After the CSRA, Congress expanded MSPB’s jurisdiction to hear appeals under a variety of other laws, giving it authority over a wide range of appeals.³¹ Under various statutes, MSPB serves as an independent, third-party adjudicatory authority for over two million Federal civilian employees in almost every Federal department and agency, applicants for Federal civilian jobs, and certain U.S. Postal Service employees and uniformed military service members.³²

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

³⁰ Legislative History of the Civil Service Reform Act of 1978, Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. 2, pages 5-6.

³¹ Beyond those included in 5 U.S.C. chapters 43 and 75, and all those set out at 5 C.F.R. Part 1201.3; the Federal Employee Retirement System Act of 1986, 5 U.S.C. § 8461(e), (Pub. L. 99-335), Title I, §§ 101, 100 Stat. 571 (1986); the Uniformed Services Employment and Reemployment Rights Act, (Pub. L. 103-353), codified at 38 U.S.C. §§ 4301-4335; whistleblower appeals including IRA appeals involving personnel actions listed in 5 C.F.R. § 1209.4(a) and OAAs are listed in 5 C.F.R. §§ 1201.3 (a)(1) through (a)(11), and as amended by the WPEA (Pub. L. 112-199); the Hatch Act Modernization Act of 2012; the VA Accountability and Whistleblower Protection Act, (Pub. L. [115-41](#)), enacted on June 23, 2017; the Follow the Rules Act (Pub. L. [115-40](#)), enacted on June 14, 2017; the authority for a single Board member to extend OSC stay requests (Pub. L. [115-42](#)); the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 (Pub L. [115-73](#)), enacted on October 26, 2017; and most recently, section 5721 of the NDAA of FY 2020 (Pub. L. [116-92](#)), enacted on December 20, 2019.

³² This includes most Federal employees under 5 U.S.C. and others such as certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3) and RIF actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a.

MSPB Offices and Their Functions

MSPB is headquartered in Washington, D.C. and has six ROs and two FOs located throughout the United States. The agency is authorized up to 235 FTE employees to conduct and support its statutory duties. Other Federal agencies also perform many support functions for MSPB through interagency agreements.

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

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

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

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

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

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

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

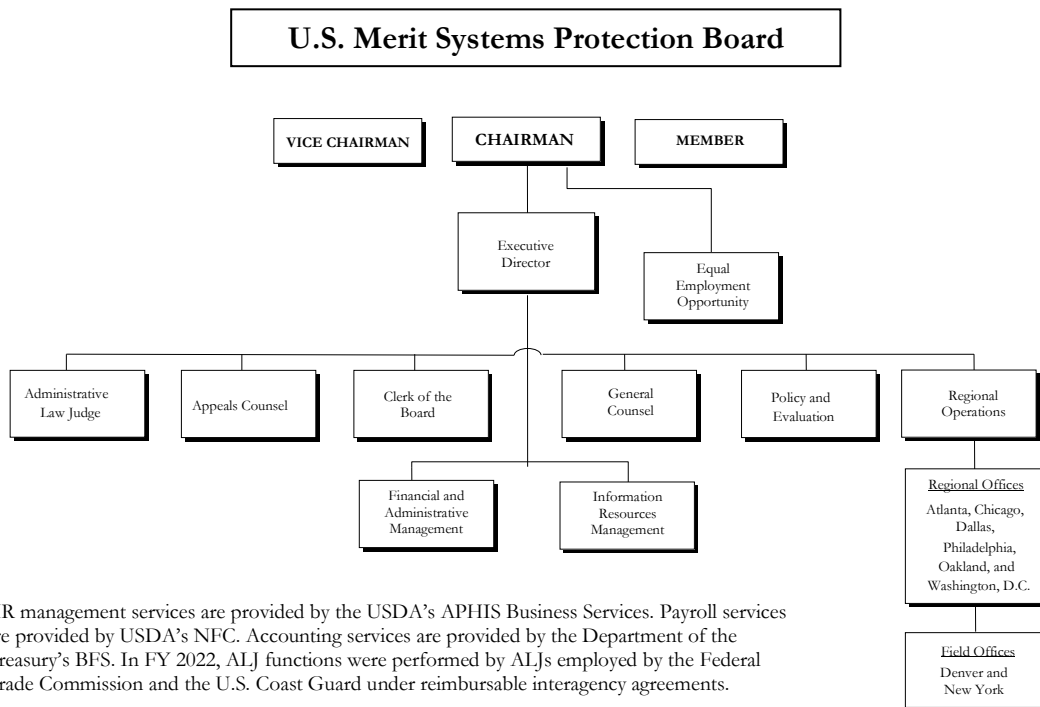
order, in response to requests to review OPM regulations, and for other assigned cases; conducts the agency’s PFR settlement program; and coordinates the agency’s legislative policy and congressional relations functions. The office also drafts regulations, conducts MSPB’s ethics program, and performs the inspector general function, including planning and directing audits and investigations.

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

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

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

MSPB Organizational Chart



HR management services are provided by the USDA’s APHIS Business Services. Payroll services are provided by USDA’s NFC. Accounting services are provided by the Department of the Treasury’s BFS. In FY 2022, ALJ functions were performed by ALJs employed by the Federal Trade Commission and the U.S. Coast Guard under reimbursable interagency agreements.

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

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

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

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

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

The Merit System Principles and Prohibited Personnel Practices

The CSRA codified for the first time the values of the merit systems as MSPs and delineated specific actions and personnel practices that are PPPs because they are contrary to merit system values.³³ MSPs include the values of fair and open competition for positions, with equal opportunity to achieve a workforce from all segments of society; merit-based selection for jobs; advancement and retention based on qualifications and job performance; fair and equitable treatment in all aspects of management; equal pay for work of equal value; and training that improves organizational and individual performance. MSPs also include protection from arbitrary action, favoritism, or coercion for political purposes; and protection against reprisal for lawful disclosure of violations of law and waste, fraud, and abuse. MSPs further state that the workforce should be used effectively and efficiently and that all employees should maintain high standards of integrity, conduct, and concern for the public interest.

PPPs state that employees shall not take or influence others to take personnel actions that: discriminate for or against an individual or applicant on the bases of race, color, religion, sex, national origin, age, disabling (handicapping) condition, marital status, or political affiliation; consider information beyond the person's qualifications, performance, or suitability for public service; or coerce political activity or commit reprisal for refusal to engage in political activity. These actions also may not deceive or willfully obstruct an individual's rights to compete for employment; influence a person to withdraw from competition to affect the prospects of another; or grant preference beyond that provided by law. The actions also may not be based on or create nepotism; in retaliation or reprisal for whistleblowing—the lawful disclosure of a violation of law, rule or regulation, gross mismanagement or gross waste of funds, abuse of authority, or danger to public health or safety; in retaliation or reprisal for an employee's exercise of his or her rights and legal protections, or assistance to another in the person's exercise of his or her rights; or based on past conduct that does not adversely affect the job. The actions also must not knowingly violate veterans' preference requirements; violate MSPs; or implement or enforce a nondisclosure policy, form, or agreement, which lacks a specific statement that its provisions are consistent with and do not supersede applicable statutory whistleblower protections. On October 26, 2017, Congress created a 14th PPP, which prohibits access of medical records as part of, or to further, any conduct related to, any other PPP.³⁴ On December 20, 2019, section 5721 of the NDAA for FY 2020 expanded the definition of disclosure under 5 U.S.C. § 2302(b)(8) to include disclosures to Congress.³⁵

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

³⁴ The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, (Pub. L. [115-73](#)), amends 5 U.S.C. § 2302(b) to add "(14) access to the medical records of another employee or applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13)."

³⁵ The NDAA for FY 2020, (Pub. L. [116-92](#)).

List of Common Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
AES	Annual Employee Survey
AFR	Annual Financial Report
AJ	Administrative Judge
ALJ	Administrative Law Judge
APHIS	USDA’s Animal and Plant Health Inspection Service
APR-APP	Annual Performance Report and Annual Performance Plan
AR	MSPB Annual Report
BFS	Department of the Treasury’s Bureau of Fiscal Service
CAFC	Court of Appeals for the Federal Circuit
CBJ	Congressional Budget Justification
CIO	Chief Information Officer
COOP	Continuity of Operations Plan
CRS	Congressional Research Service
CSC	Civil Service Commission
CSRA	Civil Service Reform Act of 1978
DWOP	Dismissal Without Prejudice
e-Adjudication	Electronic Adjudication
e-Filing	Electronic Filing
ECF	Electronic Case Files
EEO	MSPB’s Office of Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EHRI	Enterprise Human Resources Integration
EO	Executive Order
FAIR	Federal Activities Inventory Reform
FAM	MSPB’s Office of Financial and Administrative Management
FAQs	Frequently Asked Questions
FBI	Federal Bureau of Investigation
FDS	Federal Data Strategy
FedRAMP	Federal Risk and Authorization Management Program
FEVS	Federal Employee Viewpoint Survey
FO	MSPB Field Office
FOIA	Freedom of Information Act
FR	Federal Register
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GPRAMA	Government Performance and Results Act Modernization Act of 2010
HC	Human Capital
HR	Human Resources
HQ	Headquarters

ID	Initial Decision
<i>IoM</i>	MSPB's <i>Issues of Merit</i> newsletter
IRA	Individual Right of Action (type of whistleblower appeal)
IRM	MSPB's Office of Information Resources Management
IS	MSPB's Internal Survey
IT	Information Technology
MAP	MSPB's Mediation Appeals Program
MPS	MSPB's Merit Principles Survey
MSP	Merit System Principles
MSPB	Merit Systems Protection Board
NAPA	National Academy of Public Administration
NDAA	National Defense Authorization Act
NFC	USDA's National Finance Center
No FEAR	Notification and Federal Employee Antidiscrimination and Retaliation
OAA	Otherwise Appealable Action (type of whistleblower appeal)
OAC	MSPB's Office of Appeals Counsel
OCB	MSPB's Office of the Clerk of the Board
OGC	MSPB's Office of General Counsel
OMB	Office of Management and Budget
OPE	MSPB's Office of Policy and Evaluation
OPM	Office of Personnel Management
ORO	MSPB's Office of Regional Operations
OSC	Office of Special Counsel
PFR	Petition for Review of an Initial Decision
PG	Performance Goal
PIO	Performance Improvement Officer
PPP	Prohibited Personnel Practices
Pub. L.	Public Law
QRT	Quarterly Review Team
RIF	Reduction in Force
RO	MSPB Regional Office
SES	Senior Executive Service
SHCP	Strategic Human Capital Plan
SORN	System of Records Notice [NOT USED, so omit?]
TBD	To Be Determined
U.S.C.	United States Code
USDA	U.S. Department of Agriculture
VA	Department of Veterans Affairs
WPEA	Whistleblower Protection Enhancement Act of 2012



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