

# ISSUES OF MERIT

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the U.S. Merit Systems  
Protection Board,  
Office of Policy  
and Evaluation

## DIRECTOR'S PERSPECTIVE

### *Issues of Merit* Retrospective

*Welcome to our special issue!*

As the Merit Systems Protection Board (MSPB) celebrates our 45th anniversary, it is an opportune time to examine the enduring human resources (HR) issues that have shaped and continue to influence Federal workforce management. To that end, this special *Issues of Merit* edition presents excerpts from previous newsletter articles that highlight key topics the Board has studied over the years and plans to update, as we have previously identified in the MSPB Research Agenda. While these topics are not exhaustive, they represent areas of critical importance that have consistently emerged in our examination of Federal workforce practices and continue to serve as challenges to the protection of merit systems. MSPB's research, as summarized in these articles, has provided a robust set of findings and recommendations that are still valid and useful in dealing with today's workforce challenges.

To start, we look at Federal hiring. The hiring process continues to be a challenge, particularly for critically important technical occupations where the Government must compete to recruit and hire employees with the necessary skillsets. Artificial intelligence, cybersecurity, data analysis, information management, and many other technical skills are in high demand, and the value proposition of having a career in Government needs continual reinforcement. Reforming Federal hiring is not simply a quest for new laws and regulations but an effort to creatively redesign processes of how we market our jobs, assess candidates to ensure they meet our needs, and use partnerships to maximize hiring efficiency. There are things agencies can do now, but they will require time and attention.

MSPB's seminal research on employee engagement demonstrated the link between how engaged employees are at work and the performance of their organization. As such, Federal employee engagement has become critical to how we understand, resource, and manage all aspects of the employee lifecycle. MSPB's research highlights actionable recommendations to improve employee engagement and promote agency mission accomplishment.

The first and second merit system principles concern ensuring Federal hiring is based solely on merit and ensuring Federal employees are fairly and equitably treated. In that regard, MSPB has studied employee perceptions regarding fair and equitable treatment over the last 30+ years. Our 2010 study reported good news but also identified areas for

## WHAT'S INSIDE

**Director's  
Perspective**  
Page 1

**Improving Hiring**  
Page 3

**Employee Engagement**  
Page 4

**Fair & Equitable Treatment**  
Page 5

**Probationary Period**  
Page 6

**Prohibited Personnel  
Practices**  
Page 7

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### Our Mission

The MSPB Office of Policy and Evaluation conducts studies to assess the health of Federal merit systems and to ensure they are free from prohibited personnel practices.

### Issues of Merit

We offer insights and analyses on topics related to Federal human capital management, particularly findings and recommendations from our independent research.

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improvement. Practices around hiring and promotion remain areas where the Federal Government needs to demonstrate its prioritization of workforce diversity, equity, and inclusion practices, and where MSPB's research-based recommendations stand the test of time.

As the Federal Government continues to look at how agencies can improve how they deal with employees who are not able to perform their vital tasks, the probationary period is a critical tool that historically has been underused. We provided recommendations that will help agencies improve implementation of the probationary period to achieve a workforce where the right people are in the right jobs, without the need for new laws or regulations.

Finally, MSPB is statutorily responsible for studying whether Federal workforce practices are free of prohibited personnel practices (PPPs) to ensure that employees are being adequately protected. Our most recent study on PPPs shows that the Government is headed in the right direction, but there are issues that continue to need monitoring. In particular, the hiring process remains one of the greatest opportunities to ensure a merit-based civil service.

The Federal Government faces many workforce challenges now and in the future. As MSPB moves forward with our research agenda, we will identify new ways to help agencies address these and other issues, and we will reach out to our stakeholders and readers to ensure that our research products and services continue to meet your needs and expectations. ❖

*Tiffany J. Lightbourn, Ph.D.*

Director, Policy and Evaluation

## Selected MSPB Research Related to the Excerpted *Issues of Merit* Articles

### Employee Engagement

The Power of Federal Employee Engagement

Managing for Engagement: Communication, Connection, and Courage

### Hiring

Reforming Federal Hiring: Beyond Faster and Cheaper

The Impact of Recruitment Strategy on Fair and Open Competition for Federal Jobs

### Prohibited Personnel Practices

Perceptions of Prohibited Personnel Practices: An Update

Perceived Incidences of Prohibited Personnel Practices

### Fair and Equitable Treatment

Fair and Equitable Treatment: Progress Made and Challenges Remaining

### Probationary Period

The Probationary Period: A Critical Assessment Opportunity

Improving Federal Leadership Through Better Probationary Practices

*All of our publications can be found at [www.mspb.gov/studies](http://www.mspb.gov/studies)*

# Improving Federal Hiring



*Excerpted from July 2008*

*Agencies can do a lot to improve their hiring process without changing existing rules and regulations.*

As people are well aware, the Federal Government is preparing for increased retirements and striving to address evolving mission needs and changing skill requirements. Recruitment and hiring plays a key role in ensuring that the Government is able to maintain a high-quality workforce capable of meeting the needs of the American public. However, competition for high-quality talent among American employment sectors is getting more intense...As the demand for these skills increases and the supply of candidates with these skills decreases, competition will be fierce. Therefore, the use of good recruitment and assessment practices becomes that much more important.

MSPB's research has identified a set of key challenges the Federal Government faces in terms of recruiting and selecting the next generation of Federal employees. These challenges include the length and complexity of the hiring process, the Government's ability to market its jobs to attract high-quality applicants, the ability of Government assessments to distinguish the most qualified candidates, and the capacity of [HR] staffs and supervisors to adequately carry out Federal hiring programs.

With respect to the length of the hiring process...[t]he longer the process takes, the more applicant attrition is likely to occur. A second barrier to effectively recruiting and selecting a high-quality workforce is the complexity of the process. Decentralization has added to the complexity because there is no standard application and no uniform assessment processes. Applicants often must submit different applications and other required forms to each agency with which they seek employment. A third issue of concern regarding the Federal Government's ability to hire a high-quality workforce is how Federal employers assess the relative qualifications of job applicants. The assessment tools many agencies use are simply not effective predictors of success on the job. Finally, the Federal Government often fails to market itself effectively as an employer of choice. MSPB's research shows that Federal vacancy announcements are often poorly written, difficult to understand, and filled with jargon and unnecessary information. Consequently, many announcements can actually discourage potential applicants from applying for Federal jobs.

There are a number of ways to address these issues and reform and improve the Federal hiring process. First, agencies should manage hiring as a critical business process, not an administrative function that is relegated solely to the HR staff. This means integrating discussions of hiring needs, methods, and outcomes into the agency's business planning process. Additionally, agencies should evaluate their own internal hiring practices to identify barriers to high-quality, timely, and cost-effective hiring decisions. Many agencies may be surprised to see that many of the barriers they face are self-imposed. Agencies should also review their candidate assessment processes and, whenever possible, employ rigorous assessment strategies that emphasize selection quality, not just cost and speed. In particular, agencies should use assessment instruments that have a relatively good ability to predict future performance. Finally, agencies should implement sound marketing practices and better recruitment strategies, improve their vacancy announcements, and communicate more effectively with applicants. These reforms may well encourage applicants to wait longer for a final decision rather than abandon the Federal job search in favor of employment elsewhere.

These are all steps that agencies can take without having to change existing rules and regulations. Implementing these recommendations should help agencies ensure that they are hiring qualified employees in a timely manner from all segments of society after fair and open competition while treating applicants fairly and equitably. ❖

**Why is this still important?** The Federal Government continues to struggle with implementing hiring processes that support merit and result in a workforce with the necessary skillsets. OPM is working with agencies to modernize hiring practices—including by providing guidance and tools to improve the hiring experience and increasing pooled and skill-based hiring—but there are still steps agencies can take to improve their ability to reach high-quality candidates. MSPB encourages agencies to continue assessing their internal processes to look for improvement opportunities. Given the importance of this topic, MSPB has identified several studies on our research agenda around recruitment and hiring, including studies on job announcement quality and challenges to fair and open competition.

# Employee Engagement: The Missing Link to Federal Results?

*Excerpted from February 2009*

*MSPB finds that employee engagement is more than a buzzword—it matters to your bottom line.*

In our [2009] report, *The Power of Federal Employee Engagement*, we defined employee engagement as a heightened connection between employees and their work, their organization, or the people they work for or with. Why should agencies spend their time and energy attempting to improve the engagement levels of their employees? Because it could affect their bottom line. Using the engagement scale we developed from the 2005 Merit Principles Survey, [MSPB] found a significant relationship between an agency's level of employee engagement and certain desirable agency outcomes.

First, we found that agencies with the most engaged employees produced better programmatic results than agencies with the least engaged employees. To measure these results, we used the Office of Management and Budget's Program Assessment Rating Tool (PART). This tool assesses the results of Federal programs to determine if they are meeting long-term and annual performance goals, how well the programs compare to other similar programs, and how effective the programs are based on independent evaluations. The most engaged agencies achieved an average rating of 65 (out of 100) on the results/accountability portion of the PART, while the least engaged agencies only achieved an average of 37.

Second, we found that engaged agencies reported that employees used less sick leave. Employees in the most engaged agencies used an average of 9 days of sick leave in 2005, while employees in the least engaged agencies used an average of 12 days.

Third, employee engagement appears to be linked to equal employment opportunity (EEO) complaints. Of the workforce in the most engaged agencies, 0.47 percent filed EEO discrimination complaints in 2005, while 1.04 percent of the workforce in the least engaged agencies filed such complaints.

Finally, there were fewer cases of work-related injury or illness in agencies with more-engaged employees. The case rate of employees missing work time in these situations was 0.73 (per 100 employees), while employees in the least-engaged agencies missed work time at triple that rate (2.15 cases per 100 employees).

We cannot claim that employee engagement definitely causes these positive results, but we know that there is a relationship between engagement and these outcomes. By establishing this relationship, we hope to focus attention on the management practices that can improve employee engagement in agencies.

[O]ur report makes a strong business case for maintaining a clear focus on these practices. Methods that agencies can use to improve their employees' engagement include:

- Ensuring a good person-to-job fit by improving the marketing of job vacancies, better assessing job candidates, and rotating employees to different jobs where practical.
- Using effective performance management techniques throughout the annual rating cycle.
- Recruiting and selecting supervisors to supervise instead of simply promoting the best technical specialists to supervisory positions.
- Using a competency-based approach to enhance an employee's career by affording them the opportunity to develop existing, and acquire new, competencies that will be valuable to the organization. ❖

**Why is this still important?** As MSPB's original research demonstrates, employee engagement can help agencies achieve better results for organizations and the public. It has become a driver of how organizations measure their success, including through tracking results in the Federal Employee Viewpoint Survey (FEVS) and the Best Places to Work in the Federal Government rankings. To continue on this path, agencies should continue to monitor employee engagement and examine the impact of engagement on organizational health, as indicated by our research. MSPB plans to continue monitoring the impact of employee engagement and has included the topic of creating a culture of engagement to drive performance and mission success on our research agenda.

# Fair and Equitable Treatment in the Federal Government: Are We There Yet?

*Excerpted from February 2010*

*MSPB report finds both progress and opportunity in achieving fair and equitable treatment in the Federal workforce.*



In the [2010 MSPB] report, *Fair and Equitable Treatment: Progress Made and Challenges Remaining*, we examined trends in the composition and opinions of the Federal workforce. We compared these trends to those published in our 1996 fair and equitable treatment report. Overall, we found that progress has been made toward achieving a workforce consistent with the ideals of the merit system principles.

As an example, the Federal workforce has become more diverse, corresponding to changes in the U.S. population. Additionally, a growing percentage of Federal employees believe they have been treated fairly, while fewer perceive discrimination based on ethnicity, race, gender, and age.

However, as the report title indicates, challenges remain. First, the Federal Government has yet to achieve a workforce “representative of all segments of American society.” For example, African American, Hispanic, and American Indian employees do not hold higher-graded, or supervisory positions at rates comparable to their representation in the overall Federal workforce. Similarly, the Federal Government has few Asian/Pacific Islanders at the senior executive level, despite their comparatively high employment in professional occupations.

Second, although survey data indicates that employees perceive that overt race-based discrimination occurs less often than reported in the previous study, employees do not believe that the Federal Government is blind to ethnicity and race, or is free of discrimination. Nearly one in four employees still believe that their ethnicity/race is a liability in terms of career advancement.

While fewer employees reported that they were personally discriminated against than in the previous study, over half of African American employees reported “great” or “moderate” discrimination against African Americans on the job. Such perceptions can hinder efforts to recruit a diverse workforce, discourage high-performing employees from seeking advancement, and deprive agencies—and the American public—of Federal employees’ full talents and best efforts.

Third, the Federal Government needs to do more to allocate opportunities—as well as positions—equitably. Employees in ethnic/racial minority groups were less likely to have received career-building opportunities, such as acting supervisor assignments or high-profile, critical projects. That matters because such roles can afford employees valuable experience, high visibility, and an “inside track” on future promotions.

Finally, agencies need to devote more attention to the “merit” in their merit systems. Employees of all ethnic/racial groups expressed concern that personal connections inappropriately influence personnel decisions. Over 70 percent of employees reported that some supervisors practiced favoritism. When we asked employees the reasons they thought people were promoted in their organization, the most popular response by far was “who you know” at 72 percent—not competence (40 percent) or hard work (36 percent).

Although much has been achieved, much remains to be done. Fortunately, much can be done. ❖

**Why is this still important?** Fair and equitable treatment of employees remains a key priority for the Federal Government. MSPB’s research has shown continued improvements, particularly related to overall workforce representation and perceptions of discrimination. However, there are plenty of opportunities to enhance the Government’s performance. OPM’s DEIA 2022 annual report showed similar workforce trends to those identified above, in terms of representation in higher-level Federal positions. Agencies should continue to monitor and improve their approaches to employee recruitment, development, advancement, and treatment at all levels of their workforce. MSPB looks forward to updating our research on fair and equitable treatment as part of our current research agenda.



# Making Better Use of the Probationary Period

*Excerpted from May 2018*

*Improving use of the probationary period starts with improving communication.*



When a hiring manager selects a new employee, is that the end of the hiring process? In many cases, no. Most employees who are new to Federal service or new to supervisory or management positions have to serve a probationary period, during which the employee can be removed from the position if performance [or conduct] is not satisfactory. Therefore, MSPB has long viewed the probationary period as an extension of the applicant assessment process.

MSPB's research has shown that the probationary period is not used extensively to separate employees who are not able to perform in their new positions. We have also identified a number of barriers that make it difficult to use the probationary period fully. However, there are many steps agencies can take to improve their ability to use the probationary period. A good place to start is by communicating with probationers and their supervisors about the process. Many of these steps were discussed in MSPB's prior research. . . The good news for agencies is that these steps do not actually require legislation—agencies can integrate them into their probation programs today.

**Communicate with probationers:** Before they accept a job, candidates need to understand that they will be required to serve a probationary period, what they need to do to succeed, and the consequences for failing. This communication should occur through job opportunity announcements, job offer documentation, and discussions with the [HR] staff.

Once candidates accept the position, regular communication between probationers and their supervisors is critical to effectively using probationary periods. Probationers need to understand how they are doing throughout the process and what the agency will do to help them succeed in the new position. Therefore, supervisors need to establish clear performance standards, set benchmarks for successful performance, assess and strive to meet training needs, evaluate performance, and regularly communicate with probationers to let them know how they are doing.

**Prepare probationers' supervisors:** Probationers' supervisors have the primary responsibility for administering the probationary period. Therefore, they should be properly prepared to carry out their responsibilities. Supervisors should receive training regarding their role during the probationary period, how to manage probationers' performance, and the process for finalizing probationers' selections at the end of the period.

**Establish probationary period touchpoints:** HR should have a consistent process to notify supervisors (1) when a new hire is required to serve a probationary period, (2) at the midpoint of the probationary period, and (3) when the probationary period is coming to an end. Although the supervisor should be keeping track of this information already, timely communication from HR will support the supervisor's efforts.

**Require certification of successful completion:** Per current regulations, probationers' appointments are automatically finalized unless supervisors or HR staffs take specific action to intervene. To ensure that underperforming probationers do not slip through the cracks, agencies can institute internal processes that require supervisors to proactively certify that probationers have met the requirements of probation before the end of the period. This step would create more accountability for the decision whether to keep the new employee. Just keep in mind that because regulations do not require certification, lack of certification is not grounds for termination. Therefore, the agency must keep on top of the process. ❖

**Why is this still important?** The probationary period is a critical time during which the performance of new employees and new supervisors should be monitored and assessed. If they are not performing to expectations, they should be removed from the position to ensure that the agency has the workforce with the skills necessary to perform its mission. MSPB research has shown that the probationary period is not being used to its full potential. The Federal community has discussed changes to different aspects of the probationary period that are in line with MSPB's recommendations, and our research agenda includes a look at how agencies are currently using the probationary period to ensure employees meet standards for retention.

# Prohibited Personnel Practices: Patterns of Perceptions

*Excerpted from May 2023*

*MSPB report identifies key areas of concern related to PPPs.*

The 14 prohibited personnel practices (PPPs)...are a set of behaviors that agency officials are not permitted to engage in when they take (or fail to take) personnel actions. Every few years, [MSPB] conducts a survey to ask Federal employees about their perceptions of the workplace, including whether PPPs have occurred. In 2010, 34 percent of Merit Principles Survey respondents reported that they either observed or experienced one or more of the PPPs itemized in that survey. That figure rose to 46 percent in 2016 but decreased to 29 percent in 2021.

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

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

This is employee perception data—we cannot use it to state what actually happened. However, as the Supreme Court has stated, “it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.”<sup>1</sup>

## PPPs with an Increase in Perceived Occurrences

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

As shown in our [2023] report, *Perceptions of Prohibited Personnel Practices: An Update*, perception levels for these political PPPs varied greatly by agency, with some agencies having rates two or three times higher than the rates in other agencies. Over half a million Federal employees work at agencies where the perception rate for political affiliation discrimination approached or exceeded 10 percent of survey respondents. Therefore, agencies should look more closely at available survey and workforce data and take seriously the effect that these perceptions can have on their workforce and mission. See our report for more information on these effects and how to address them. ❖

<sup>1</sup>U.S. Civil Service Commission v. National Association of Letter Carriers, AFL-CIO, 413 U.S. 548, 565, (1973).

**Why is this still important?** Adherence to merit system principles and avoidance of PPPs are critical to ensuring a merit-based, nonpartisan Federal workforce. MSPB is charged with studying whether the public interest in a civil service free of PPPs is being adequately protected. This article demonstrates that there is much good news in terms of whether employees feel their agencies are avoiding PPPs, but it is important to remain vigilant and take seemingly slight changes in perceptions seriously. MSPB will continue to monitor how agencies prevent and redress PPPs.