



## **FY2007 Performance and Accountability Report**

**November 15, 2007**

### **U.S. OFFICE OF SPECIAL COUNSEL**

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# TABLE OF CONTENTS

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Page

Message from the Special Counsel	3
<hr/>	
Part 1: Management Discussion and Analysis	4
<hr/>	
I. Agency at a Glance	4
II. Statutory Background	4
III. The Mission of the U.S. Office of Special Counsel	5
IV. Organizational Structure of OSC	6
V. Performance Goals and Results	8
VI. OSC's Systems, Controls, and Legal Compliance	10
VII. Future Effects of Known Demands, Risks, Uncertainties, Events, Conditions and Trends	12
VIII. Comments on Final FY 2007 Financial Statements	13
Part 2: Performance	16
<hr/>	
Goals: Prohibited Personnel Practices .....	17
Goals: Hatch Act.....	22
Goals: Whistleblower Disclosures .....	25
Goals: USERRA .....	33
Part 3: Financial Section	37
<hr/>	
CFO Letter .....	38
Independent Auditor's Report.....	39



## A Message from the Special Counsel



It is my pleasure to present the Office of Special Counsel's Performance and Accountability Report for Fiscal Year 2007.

This agency has a proud history of serving the federal workforce and the public through its tenacious defense of the merit system principles that continue to safeguard the integrity of the executive branch agencies of the United States.

Fiscal Year 2007 marks only the fourth year the Office of Special Counsel was required to have a financial audit. I am happy to report once again the agency's strong results, which include no reportable conditions and no material weaknesses.

To all of those who rely on our counsel, our service, and our protection, be assured that we will continue striving for excellence. Thank you for your continued trust and confidence.

Sincerely,

A handwritten signature in black ink, which appears to be "Scott J. Bloch".

Scott J. Bloch  
Special Counsel

## **Part 1: Management Discussion and Analysis**

### **I. Agency at a Glance**

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment, by protecting employees and applicants from prohibited personnel practices (PPPs), especially reprisal for whistleblowing. In addition, the agency operates a secure channel for federal whistleblower disclosures of violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. Finally, OSC enforces federal employment rights secured by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

OSC currently has approximately 110 FTE.

### **II. Statutory Background**

OSC was first established on January 1, 1979.<sup>1</sup> From then until 1989, it operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (“the Board”). By law, OSC received and investigated complaints from current and former federal employees, and applicants for federal employment, alleging prohibited personnel practices by federal agencies; provided advice on restrictions imposed by the Hatch Act on political activity by covered federal, state, and local government employees; and received disclosures from federal whistleblowers (current and former employees, and applicants for employment) about wrongdoing in government agencies. The office also enforced restrictions against prohibited personnel practices and political activity by filing, where appropriate, petitions for corrective and/ or disciplinary action with the Board.

In 1989, Congress enacted the Whistleblower Protection Act. The law made OSC an independent agency within the Executive Branch, with continued responsibility for the functions described above. It also enhanced protections against reprisal for employees who disclose wrongdoing in the federal government, and strengthened OSC’s ability to enforce those protections.<sup>2</sup>

The Congress passed legislation in 1993 that significantly amended Hatch Act provisions applicable to federal and District of Columbia (D.C.) government employees, and enforced by OSC.<sup>3</sup> Provisions of the act enforced by OSC with respect to certain state and local government employees were unaffected by the 1993 amendments.

In 1994, the Uniformed Services Employment and Reemployment Rights Act became law. It defined employment-related rights of persons in connection with military service, prohibited discrimination against them because of that service, and gave OSC new authority to pursue remedies for violations by federal agencies.<sup>4</sup>

OSC's 1994 reauthorization act expanded protections for federal employees, and defined new responsibilities for OSC and other federal agencies. It provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred, exists, or is to be taken. The act extended the protections of certain legal provisions enforced by OSC to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under these provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the Whistleblower Protection Act, and directed agencies to consult with OSC in that process.<sup>5</sup>

In November of 2001, Congress enacted the Aviation and Transportation Security Act,<sup>6</sup> which created the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the MSPB.

OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. The MOU did not (and could not), however, provide for OSC enforcement action before the MSPB, or for individual right of action (IRA) appeals by security screeners to the MSPB.

### **III. The Mission of the U.S. Office of Special Counsel**

OSC's mission is to protect current and former federal employees, and applicants for federal employment, especially whistleblowers, from prohibited employment practices; promote and enforce compliance by government employees with legal restrictions on political activity, and facilitate disclosures by federal whistleblowers about government wrongdoing. OSC carries out this mission by:

- investigating complaints of prohibited personnel practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
- providing advisory opinions on, and enforcing Hatch Act restrictions on political activity;
- operating an independent and secure channel for disclosures of wrongdoing in federal agencies;
- protecting reemployment and antidiscrimination rights of veterans under the USERRA; and

- promoting greater understanding of the rights and responsibilities of federal employees under the laws enforced by OSC.

## IV. Organizational Structure of OSC

OSC maintains its headquarters office in Washington, D.C. Four field offices are located in Dallas, Oakland, Detroit, and Washington, D.C.

Agency components during FY2007 include the Immediate Office of the Special Counsel (IOSC), five operating units/divisions and several supporting offices explained in detail below.

**Immediate Office of the Special Counsel.** The Special Counsel and staff in IOSC are responsible for policymaking and overall management of OSC. They also manage the agency's congressional liaison and public affairs activities, and its outreach program, which includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

**Complaints Examining Unit.** This unit is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction.<sup>7</sup> This unit is responsible for screening approximately 1,700 prohibited personnel practice cases per year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation.<sup>8</sup>

**Disclosure Unit.** This unit is responsible for receiving and reviewing disclosures received from federal whistleblowers. It advises the Special Counsel on the appropriate disposition of the information disclosed (including possible referral to the head of the agency involved for an investigation and report to OSC; referral to an agency Inspector General; or closure). The unit also reviews agency reports of investigation, to determine whether they appear to be reasonable and in compliance with statutory requirements before the Special Counsel sends them to the President and appropriate congressional oversight committees.

**Investigation and Prosecution Division.** The Investigation and Prosecution Division (IPD) is comprised of four field offices. The IPD conducts field investigations of matters referred after preliminary inquiry by the Complaints Examining Unit. Division attorneys conduct a legal analysis after investigations are completed to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. Investigators work with attorneys in evaluating whether a matter warrants corrective action, disciplinary action, or both.

If meritorious cases cannot be resolved through negotiation with the agency involved, division attorneys represent the Special Counsel in litigation before the Merit Systems Protection Board. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, division investigators and attorneys also

sometimes investigate alleged violations of the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act, though most Hatch Act and USERRA work is handled by the Hatch Act Unit and the USERRA Unit, respectively.

**Hatch Act Unit.** This unit issues advisory opinions to individuals seeking information about Hatch Act restrictions on political activity by federal, and certain state and local, government employees. The unit is also responsible for enforcing the act. It reviews complaints alleging a Hatch Act violation and, when warranted, investigates and prosecutes the matter (or refers the matter to the Investigation and Prosecution Division for further action). It will also oversee Hatch Act matters farmed out to the IPD.

**USERRA Unit.** This unit handles USERRA cases that are referred to OSC for prosecution by the Department of Labor. In addition, this unit handles the new special project assigned by P.L. 108-454 that requires OSC to investigate the re-employment rights of military service members under USERRA, which involves new functions, increased caseload, and new personnel.

## **SUPPORTING UNITS:**

**Alternative Dispute Resolution Program.** In selected cases referred by the Complaints Examining Unit for further investigation, the agency contacts the complainant and the agency involved, and invites them to participate in OSC's voluntary Mediation Program. If mediation resolves the complaint, the parties execute a written and binding settlement agreement; if not, the complaint is referred for further investigation.

The mediation program for Alternative Dispute Resolution has been reorganized. Rather than have a single ADR specialist under the leadership of an SES employee, the agency has expanded the program through cross-training multiple individuals from each of OSC's operating units. As a result the agency now has a broad pool of trained mediators with different legal areas of expertise.

**Legal Counsel and Policy Division.** This division provides general counsel and policy services to OSC, including legal advice and support on management and administrative matters; legal defense of OSC in litigation filed against the agency; policy planning and development; and management of the agency ethics program.

**Management and Budget Division.** This division provides administrative and management support services to OSC, in furtherance of program, human capital, and budget decisions. This division also includes the Information Technology Branch, Human Resources Branch, Document Control Branch and Budget and Procurement branch. The purpose of this division is to put the administrative support functions under one authority.

**Training Office.** A training office has been created to train all new employees, cross train existing employees, and develop specialized training in areas such as litigation skills.

Specifically, the Training Office will cross train attorneys and investigators to enable them to traverse organizational boundaries within the agency. They will develop sufficient expertise in several areas of the law, giving management the ability to detail employees to address any potential backlogs that could form in the various units.

## **IV. Performance Goals and Results**

A high priority item in recent Performance and Accountability Reports has been the status of backlogs at OSC. The chronic backlogs of Prohibited Personnel Practice (PPP) cases, Hatch Act cases and Disclosure Unit cases were essentially eliminated two years ago through tremendous effort by the entire agency. The good news to report in this year's request is that the agency, again through hard work and diligence, has been successful in avoiding a recurrence of any of the three types of backlog. The streamlined processes and logically reorganized organizational structure put into place with the agency reorganization during FY 2005 continue to contribute to the agency's ability to defy resurgent backlogs.

### **OSC'S SUCCESSES IN FY 2007**

- 1) **OSC recommends disciplinary action against the head of the General Services Administration.** In June 2007, OSC concluded that the GSA Administrator had violated the Hatch Act in a meeting with her subordinates. In January 2007, about 35 GSA political appointees, including the Administrator, gathered in a GSA meeting room during work hours for a political briefing with a member of the White House staff. Following the briefing, the GSA Administrator was alleged to have asked, "How can we help our candidates?" A complaint was filed with OSC, prompting an investigation. OSC found that the Administrator's conduct, including her behavior during the course of the investigation, was a violation of the Hatch Act. The Special Counsel recommended to the President that she "be disciplined to the fullest extent..." A final decision is pending.
- 2) **Commerce IG resigns after OSC substantiates two counts of whistleblower retaliation.** In June 2007, OSC found that the Inspector General for the Department of Commerce had illegally retaliated against two individuals. The Deputy IG had lodged objections with the IG regarding his travel schedule, prompting him to demote and reassign the Deputy elsewhere within the agency. The IG claimed that he had other reasons for reassigning the Deputy, but an OSC investigation showed that the Deputy's whistleblowing was the overriding factor. The IG also improperly reassigned his counsel. The Special Counsel referred this case to the President with the recommendation that appropriate action be taken against the IG. The Inspector General announced his retirement shortly after this referral, and corrective action for the whistleblowers is pending.

- 3) **OSC issues warning letter to the head of NASA in Hatch Act case.** In January 2007, OSC rebuked the Administrator of NASA, for comments that seemed to endorse the reelection of a Congressman. In March 2006, the Administrator appeared with, and introduced, Rep. Tom DeLay (R-TX) at an event. In his introductory comments, the Administrator spoke of Mr. DeLay's friendship to NASA and said "we've got to keep him there." A complaint was filed with OSC, who found that while the remarks were not a clear-cut violation of the Hatch Act, they were cause for concern.
- 4) **OSC finds new evidence in FAA case involving cover-ups of aircraft near-misses and whistleblower retaliation.** In July 2007, citing new evidence of cover-ups and retaliation disclosed by Anne Whiteman, OSC's 2005 Public Servant Award recipient, OSC has directed the U.S. Department of Transportation to conduct an investigation of alleged underreporting of air traffic control errors at Dallas-Fort Worth International Airport (D/FW) Ms. Whiteman had disclosed similar problems at D/FW in 2003, leading to an investigation by the USDOT Inspector General. OSC is also consulting with a new confidential whistleblower with further information about the problems within the FAA system. In addition to calling for the new investigation, OSC is seeking corrective action by the agency for the violations committed against Ms. Whiteman.
- 5) **OSC Special Task Force continues review of possible violations by administration officials.** In April 2007, OSC announced that it would be reviewing the briefings by officials of the White House Office of Political Affairs to political appointees within executive branch agencies. OSC is also conducting a series of investigations regarding specific alleged violations of the Hatch Act and other statutes at every level within the government.
- 6) **OSC continues outreach aided by high-profile cases.** In this decade, OSC's intensified efforts at outreach and publicity have contributed to an enhanced understanding of its role by its neighbors within the federal community, and workers generally. This year, OSC's visibility has taken another quantum leap forward with the broad attention paid towards recent high-profile cases. Media organizations that have spotlighted OSC in recent months include the Washington Post, the Los Angeles Times, CNN, and NBC Nightly News. It is believed that this visibility will enhance the awareness of federal employees of their rights and responsibilities, deter them from violating the law, and lead to a more secure merit system.
- 7) **The Special Counsel's willingness to prosecute federal agencies for violations of the law again achieved strong results.** Prior Special Counsels had never filed any USERRA enforcement actions with the U.S. Merit Systems Protection Board (since USERRA was passed in 1994). In FY 2005 and FY 2006, OSC set precedent by filing four USERRA cases, receiving full corrective action in all four cases, including one in which the U.S. Department of Labor told the claimant that his case had no merit. In FY 2007, OSC filed yet another USERRA enforcement action with the MSPB. The case is still pending. Several of these cases stem from the demonstration project created by the Veterans Benefits Improvement Act of 2004, under which OSC has responsibility to investigate and resolve certain federal sector USERRA cases. This willingness to prosecute USERRA violations also causes more corrective action settlements prior to litigation. OSC achieved a record 43 USERRA corrective actions in Demonstration Project cases during FY 2007.

- 8) **OSC continues to enhance its resources for conducting mediations.** Instead of having one full time mediator, seven people from different parts of the agency have received training in conducting mediations. OSC now has a cadre of professionals with varied skills and legal expertise in multiple areas from which to draw.
- 9) **OSC continues to operate under its totally re-designed Performance Goals.** OSC's performance goals are now measurable, finite, and directly aligned with the four statutory missions of the agency. They deal with timeliness, quality, and outreach (where applicable) for each enforcement mission. The Senate Appropriations Committee expressed their satisfaction with the changes and they appeared for the first time in the FY 2008 Congressional Budget Justification. OSC will continue to work with OMB throughout FY 2008 to improve its performance goals, ensuring that they are challenging and include sufficiently ambitious targets necessary to drive a results-oriented performance culture.

Although the elimination of backlogged cases has helped OSC achieve its strategic goals of protecting federal employees from PPPs, protecting the merit system, and guarding the public interest through its Disclosure Unit, there are other important ways in which the agency must gauge its success. OSC made progress on improving the timeliness to review PPP cases (94% processed in less than 240 days during FY 2007, a 5% improvement above the FY 2006 result). OSC's percentage of whistleblower disclosures handled in less than 15 days improved to 61% in FY 2007 (up from 42% in FY 2006). Timely settlements and processing of cases are very important. OSC will review its timeliness goals for future years to ensure they are challenging.

## **V. OSC's Systems, Controls, and Legal Compliance**

Management control activities carried out by OSC include periodic reviews of agency administrative and program elements to assure that obligations and costs comply with applicable laws; funds, property and other assets are safeguarded; revenues and expenditures are properly recorded and accounted for; and programs are efficiently and effectively carried out in accordance with law and management policy. During FY 2007, reviews were completed on the following agency administrative operations:

1. Information Security Program. OSC's Chief Information Officer conducts an annual security review. The results of this review were summarized in the agency's Federal Information Security Management Act (FISMA) Report, submitted to OMB in early October, 2007. The review found no material weaknesses in the agency's information technology policies, procedures, or practices. Further, there were no security incidents affecting critical agency information systems.
2. GAO Correspondence. In February of 2007, GAO produced a correspondence entitled "Office of Special Counsel Needs to Follow Structured Life Cycle Management Practices for its Case Tracking System". The report recommended that OSC develop an SDLC approach for its case tracking system, OSC2000. OSC's case tracking

system has never had any data reliability problems during its seven years of constant use by the agency. But in order to acknowledge that a recommendation had been made, OSC spent considerable man-hours developing the SDLC documentation for the system, which was completed in August of 2007. The report also recommended that OSC establish a standardized method of querying its database. OSC launched a project to create the standardized queries and completed the project in July of 2007.

3. The Veterans Benefits Improvement Act of 2004, Pub. L. No. 108-454, § 204, 118 Stat. 3606, requires DOL and OSC to carry out a three-year demonstration program under which certain federal sector claims under USERRA are to be referred to OSC for initial investigation and resolution. Near the end of the original term of the demonstration project, GAO issued a report in July 2007 entitled “Military Personnel: Improved Quality Controls Needed Over Servicemembers’ Employment Rights Claims at DOL”. The report analyzes how OSC and DOL carry out their responsibilities under the USERRA demonstration project. Rather than focus on results achieved on behalf of veterans, the report focused primarily on process details, and recommended many changes at DOL.
4. Financial Audit. OSC is undergoing its fourth financial audit. The agency’s first audit was in FY 2004. The auditors reported no material weaknesses in FY 2004, FY 2005, or FY 2006. The FY 2007 audit addresses the financial statements and accounting processes, almost all of which were accomplished by the National Business Center (NBC) at the Department of Interior under an interagency outsourcing agreement. In the event that any material control weaknesses are identified during this year’s audit, they will be discussed in the next FMFIA/IG Act report.
5. OSC Capitalization Policy. In November of FY 2005, OSC created a capitalization policy for assets with a purchase price over \$50,000. This policy is in place and reviewed quarterly, to determine if OSC has additional assets to capitalize.
6. HSPD-12. To comply with the security requirements of directive HSPD-12, OSC signed an agreement for HSPD-12 services with the Department of Interior for the issuance of PIV cards to OSC employees. OSC met the October 2006 deadline to have a process in place and at least one card issued. The Department of Interior has recently pulled out of the business of providing HSPD-12 services, so OSC will now use the General Services Administration to fulfill its obligations under this directive.

In FY 2007, several OSC financial management activities including budget accounting, financial accounting, reporting accounting, and procurement systems software were provided by NBC. OSC personnel and payroll data entry transactions were processed by the Department of Agriculture’s (USDA’s) National Finance Center (NFC). Travel services were provided by the Bureau of Public Debt (BPD) during FY 2007. These operations were administered under cross-servicing agreements. For information on any significant management control issues related to services provided under these agreements, OSC relies on information received from NBC, BPD, and NFC, and any audits or other reviews issued by the Treasury and USDA OIGs, their Offices of the Chief Financial Officer (OCFO), and the General Accounting Office (GAO).

In May of 2007, there was a GAO Correspondence entitled “Managerial Cost Accounting Practices at the Department of Interior”, which pointed out perceived managerial accounting deficiencies in various divisions of the Department of Interior. However, GAO states that the deficiencies affect the way NBC sets pricing and makes managerial decisions. There is no effect on the accounting they do for OSC, other than the possibility that NBC’s pricing could be slightly lower or higher than it would be with a better activity based costing system, which could spread costs evenly among clients according to effort expended on the individual clients.

Reports on NFC operations have identified internal control or other problems detailed in USDA OIG and/or OCFO reports required by law to be submitted to the President and Congress. These include OIG Report No. 11401-20-FM, “Fiscal Year 2004- Review of the National Finance Center General Controls”. The report identifies eleven technical control issues. However, OSC transactions processed by NFC during FY 2007, however, do not appear to have been affected by the problems reported. OSC will, however, follow up on findings when warranted.

## **VI. Future Effects of Known Demands, Risks, Uncertainties, Events, Conditions, and Trends**

In the past several years, the agency has experienced an increase in caseload level. For example, in FY 2007, OSC’s caseload increased 6.0%. There are a number of factors which have contributed to this level of complaint filings with OSC:

- In recent years, OSC has had a large number of high-profile whistleblower cases, leading to increased national press coverage of OSC. FY 2007 accelerated this trend. There is now a very heightened awareness of the Hatch Act among Federal employees. The number of Hatch Act complaints received in FY 2006 exceeded the number received previously in any year. Hatch Act complaints in FY 2008 are projected to be the highest number yet, due to the upcoming presidential election.
- Congress passed a statute intended to improve results and decrease the processing time for USERRA complainants from members of our armed forces. Under the pilot program created by Congress, which commenced in February of 2005, OSC began processing half of the USERRA cases that would typically be processed by the Department of Labor, thereby increasing OSC’s USERRA caseload considerably. OSC is confident that this pilot program is improving results for members of our military who are being denied rights under USERRA. In FY 2007, OSC achieved a record 43 corrective actions in USERRA cases, which represented 35% of all USERRA cases processed by OSC. Now that the original duration of the demonstration project is over, it is possible that Congress will ask OSC to take on the responsibility of investigating all Federal USERRA cases.
- OSC continues to investigate whistleblower retaliation complaints from Transportation Security Agency (TSA) security screeners under OSC’s Memorandum of Understanding (MOU) with TSA. This MOU remains viable despite the Merit System Protection Board’s

decision that the Board does not have jurisdiction to adjudicate these matters.

- During FY 2007, OSC continued to certify more agencies through its outreach program. As agencies implement the certification process, agency employees who might previously have been unaware of their rights and remedies through OSC are becoming informed.
- In addition to OSC's certification program, OSC continues to provide outreach programs to agencies requesting them, or as part of OSC settlements in particular matters. Outreaches explaining the twelve Prohibited Personnel Practices can precipitate new cases being filed with OSC, because employees learn more about what a PPP is, and sometimes realize that one may have been committed against them. But in the long run, continued outreaches should diminish actual violations by raising awareness.

The Special Counsel continues to stress the importance of further development of OSC's agency-wide cross training program. This is an important initiative, which provided for unprecedented efficiency at OSC by developing many of the agency's employees to the point where they have sufficient expertise to operate in more than one of OSC's highly specialized units, and can therefore cross organizational boundaries to address the case backlogs in their initial stage.

## VII. Comments on Final FY 2007 Financial Statements

- OSC's Asset Capitalization Policy has been in place for three years. It pertains to assets with an initial purchase price over \$50,000. The agency's phone system was the first item to be placed on the list of capitalized assets. The videoconferencing equipment and certain leasehold improvements were subsequently added to the list.
- An ongoing trend is that salaries, benefits, rent and utility payments tend to take precedence over major productivity-enhancing Information Technology projects. Salaries, benefits, rent and utility payments are over 90% of the agency's expenditures. Any increases such as pay raises or rent increases have an impact on the agency's ability to fund the IT projects. OSC continues to find ways to implement IT enhancements at low costs. However, in the near future, investments in certain systems must be made, for projects such as the upgrade of OSC's case tracking system to a web-based platform.
- The Accrued Leave Liability on the Balance Sheet Notes at the end of FY 2007 was \$763,892, an 8.4% increase over the already high accrued leave liability amount at the end of FY 2006. This liability stems from the diligent effort given by the OSC employees to accomplish the missions of the agency in a timely manner without the resurgence of backlogs, and to handle the increased responsibilities of the mostly unfunded USERRA demonstration project.
- **Limitations of the Financial Statements:** The principal financial statements have been prepared to report the financial position and results of operations of OSC, pursuant to the requirements of 31 U.S.C. 3515 (b).

The statements have been prepared from the books and records of the Review Commission in accordance with generally accepted accounting principles (GAAP) for Federal entities and formats prescribed by the Office of Management and Budget (OMB). The statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These statements should be read with the realization that they are for a component of the United States Government, a sovereign entity.

## Endnotes

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<sup>1</sup> Reorganization Plan Number 2 of 1978. See 5 U.S.C.A. App.1, § 204. The Civil Service Reform Act of 1978 (Public Law No. 95-454, 92 Stat. 1111) enlarged OSC's functions and powers.

<sup>2</sup> Public Law No. 101-12 (1989). Provisions setting forth OSC authorities and responsibilities were codified at 5 U.S.C. § 1211, *et seq.*

<sup>3</sup> Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.

<sup>4</sup> Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, *et seq.* The Veterans' Employment Opportunities Act of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The act made it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veterans' preference requirement. See 5 U.S.C. § 2302(b)(11). (The former § 2302(b)(11) was re-designated as § 2302(b)(12).).

<sup>5</sup> Public Law No. 103-424 (1994), codified in various sections of title 5 of the U.S. Code. The provision making federal agencies responsible, in consultation with OSC, for informing their employees of rights and remedies under the Whistleblower Protection Act appears at 5 U.S.C. § 2302(c).

<sup>6</sup> Public Law 107-71 (2001).

<sup>7</sup> Unless noted otherwise, all references after this to prohibited personnel practice complaints include complaints alleging other violations of civil service law, rule, or regulation listed at 5 U.S.C. § 1216, except for alleged violations of the Hatch Act.

<sup>8</sup> When the Complaints Examining Unit makes a preliminary determination to close a complaint without further investigation, it must by law provide complainants with a written statement of reasons, to which they may respond. On the basis of the response, if any, the unit decides whether to close the matter, or refer it to the Investigation and Prosecution Division.

**Part 2: Performance Section**

**OSC Statutory Missions:  
PPP ENFORCEMENT MISSION**

<b>Goal 1: TO PROTECT THE MERIT SYSTEM THROUGH TIMELY CASE PROCESSING</b>	
<b>PPP Enforcement Mission</b>	<b>PROHIBITED PERSONNEL PRACTICES CASES</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: Percentage of cases processed in less than 240 days.</b>
<b>FY 2006 TARGET</b>	85%
<b>FY 2006 RESULTS</b>	89%
<b>FY 2007 TARGET</b>	92% <sup>a</sup>
<b>FY 2007 RESULTS</b>	94%
<b>FY 2008 TARGET</b>	92%
<b>FY 2008 RESULTS</b>	
<b>FY 2009 TARGET</b>	92%
<b>FY 2009 RESULTS</b>	

Comments for Goal #1:

1. Indicator A: PPP Cases.

This timeliness indicator measures the combined effectiveness of both OSC’s Complaints Examining Unit (CEU) and OSC’s Investigation and Prosecution Division (IPD).

OSC receives complaints of Prohibited Personnel Practices into the CEU. If, after initial screening, investigation, and legal analysis, a complaint meets the requirements for merit, it is internally referred to the IPD for further investigation. If the IPD investigates and determines the case does indeed have merit, the IPD either seeks relief for the claimant through mediation, settlement, or prosecution.

The reason the target is less than 100% is because in some cases the settlement process can take a considerable amount of time. In cases involving litigation, the time frame for events is no longer driven by the speed of work of OSC attorneys and investigators. To strive for 100% would carry the implicit assumption that OSC would not litigate any cases.

<sup>a</sup> The FY 2007 target for PPPs processed in under 240 days was lowered slightly from 95% to 92%. The reason was that OSC had several high priorities in FY 2007 that necessitated the reallocation of resources from both the units that handle PPPs (the Complaints Examining Unit and the

Investigation and Prosecution Division). Several IPD attorneys were on detail to the Hatch Act Unit, because of the high number of Hatch Act cases. The agency did not want to risk development of a Hatch Act backlog. Two CEU attorneys and one IPD attorney were on detail to the USERRA Unit, to assist with handling the high number of USERRA cases. In addition, an IPD investigator took a position in the USERRA unit on a permanent basis. In a small agency, reallocation of resources to assist with high priority initiatives has an effect. The effect in this case was that 92% became an aggressive target for the agency to reach in terms of processing PPPs in less than 240 days.

OSC exceeded the FY 2007 target by 2%, improving 5% over the previous fiscal year.

<b>Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS</b>	
<b>PPP Enforcement Mission</b>	<b>Prohibited Personnel Practices Cases</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# successful mediations + # of settlements achieved + # of successful litigations) / (# meritorious cases)</b>
<b>FY 2006 TARGET</b>	99%
<b>FY 2006 RESULTS</b>	100%
<b>FY 2007 TARGET</b>	99%
<b>FY 2007 RESULTS</b>	100%
<b>FY 2008 TARGET</b>	100%
<b>FY 2008 RESULTS</b>	
<b>FY 2009 TARGET</b>	100%
<b>FY 2009 RESULTS</b>	

Comments for Goal #2

1. Performance Indicator A

A meritorious case is one in which the Office of Special Counsel is satisfied that claimant is entitled to relief. In certain meritorious cases, OSC may endeavor to use mediation to secure relief for the claimant. If mediation was not appropriate or did not succeed, OSC may exercise its prosecutorial authority and file for corrective or disciplinary action before the MSPB. As prosecutor, OSC seeks to obtain full corrective action on behalf of claimants either by settlements with the involved federal employer or via litigation.

Typically, OSC will prosecute cases it believes are meritorious but where the involved agency is unwilling to resolve them voluntarily. OSC is confident of its ability to prosecute successfully cases warranting corrective action.

OSC maintained the same high standard of 100% of meritorious PPP cases being enforced.

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>	
<b>PPP Enforcement Mission</b>	<b>PROHIBITED PERSONNEL PRACTICES CASES</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: # of new Federal agencies certified in the 2302 (c) Program by OSC.</b>
<b>FY 2006 TARGET</b>	5
<b>FY 2006 RESULTS</b>	6
<b>FY 2007 TARGET</b>	5
<b>FY 2007 RESULTS</b>	3
<b>FY 2008 TARGET</b>	5
<b>FY 2008 RESULTS</b>	
<b>FY 2009 TARGET</b>	5
<b>FY 2009 RESULTS</b>	

#### Comments for Goal #3

OSC has statutory authority to administer the 2302(c) Program, which recognizes the federal sector's need for awareness of Prohibited Personnel Practices and training in avoidance of committing them. However, OSC cannot force any agency to apply for certification. There are no statutory penalties for not being certified. This annual numeric target is not overly aggressive because 1) OSC cannot force compliance, and 2) the number of Federal agencies that may seek certification is limited by the number of agencies in existence. OSC already has 32 certified agencies, including most of the major ones.

Other outreach activities:

Additionally, members of the Investigation and Prosecution Division and the Complaints Examining Unit regularly accept invitations to provide outreach services designed to educate Federal personnel on these issues so that agencies comply with the law. Employees from OSC were able to educate employees of many agencies during a presentation at the Federal Dispute Resolution Conference (FDR).

- OSC maintains a telephonic hot line for answering PPP-related questions from members of the Federal workforce.
- OSC's web site provides a wealth of information regarding PPPs and is a valuable and constantly improving resource for educating the Federal workforce on this subject. Every year the web site statistics for user sessions increase, with an average increase in activity of 15% over the previous year.

- The Go Learn project is a new initiative that will bring OSC expertise to thousands of Federal workers. OSC does not have responsibility for this project, other than providing expert content.

The results for the number of certifications fell below the previously set target of five agencies to be certified during FY 2007.

**OSC Statutory Missions:  
HATCH ACT MISSION**

<b>Goal 1: TO DEFEND THE MERIT SYSTEM BY ENFORCING THE HATCH ACT – THROUGH TIMELY CASE PROCESSING</b>			
<b>HATCH ACT MISSION</b>	<b>HATCH ACT WRITTEN ADVISORY OPINIONS See comment 1.</b>	<b>HATCH ACT ORAL &amp; EMAIL ADVISORY OPINIONS See comment 2</b>	<b>HATCH ACT COMPLAINTS</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: Percentage of formal written advisory opinions issued in less than 120 days.</b>	<b>Indicator B: Percentage of oral and e-mail advisory opinions issued in less than five days</b>	<b>Indicator C: Percentage of matters resolved in less than 365 days.</b>
<b>FY 2006 TARGET</b>	75%	99%	60%
<b>FY 2006 RESULTS</b>	93%	100%	84%
<b>FY 2007 TARGET</b>	80%	99%	70%
<b>FY 2007 RESULTS</b>	91%	99%	92%
<b>FY 2008 TARGET</b>	80%	99%	70%
<b>FY 2008 RESULTS</b>			
<b>FY 2009 TARGET</b>	80%	99%	75%
<b>FY 2009 RESULTS</b>			

Comments for Goal #1:

1. Performance Indicator A: written advisory opinions

These are the requests for an advisory opinion that come in to OSC’s Hatch Act Unit that are very complex and require significant analysis before answering.

2. Performance Indicator B: oral or e-mail advisory opinions

If an oral or e-mail advisory opinion were to take longer than five days, generally it would be treated as a formal written advisory request and be captured by Indicator A.

The Hatch Act Unit exceeded two of its three timeliness targets for FY 2007, and met its third timeliness target.

<b>Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS</b>	
<b>HATCH ACT MISSION</b>	<b>HATCH ACT CASES</b> See comment 1.
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: % favorable outcomes in meritorious cases</b>
<b>FY 2006 TARGET</b>	90%
<b>FY 2006 RESULTS</b>	97%
<b>FY 2007 TARGET</b>	90%
<b>FY 2007 RESULTS</b>	97%
<b>FY 2008 TARGET</b>	90%
<b>FY 2008 RESULTS</b>	
<b>FY 2009 TARGET</b>	90%
<b>FY 2009 RESULTS</b>	

Comments for Goal #2

1. Meritorious cases

A meritorious Hatch Act case is a case in which OSC finds a violation of the Hatch Act. A favorable outcome in a Hatch Act case is either (1) successful litigation of the case; (2) successful settlement of the case; or (3) successful corrective action (individual corrected his violation after receiving notice from OSC, for example, by withdrawing his candidacy or resigning from his employment).

The results achieved by the Hatch Act Unit for Goal 2 exceeded the target by 7% for FY 2007.

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>		
<b>HATCH ACT MISSION</b>	<b>HATCH ACT OUTREACH VISITS</b>	<b>HATCH ACT SECTION OF OSC WEBSITE</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: (# of HA trainings and outreaches given) / (# of invitations to provide HA training or outreach, where the inviter sponsors OSC)</b>	<b>Indicator B: Number of new advisory complex opinions added every month to the website.</b>
<b>FY 2006 TARGET</b>	90%	One
<b>FY 2006 RESULTS</b>	96%	One
<b>FY 2007 TARGET</b>	90%	One
<b>FY 2007 RESULTS</b>	100%	One
<b>FY 2008 TARGET</b>	90%	One
<b>FY 2008 RESULTS</b>		
<b>FY 2009 TARGET</b>	90%	One
<b>FY 2009 RESULTS</b>		

Comments for Goal #3

1. Results:

Indicator A: The outreach results for FY 2007 exceed the set target by 10%.

Indicator B: An average of one complex advisory opinion has been posted each month since these goals were established in February 2006.

2. Outreach DVD

In addition to the performance of outreach visits and the web site enhancement described above, OSC has produced both a Federal Hatch Act DVD and a State & Local Hatch Act DVD that explains the basics of the Hatch Act. OSC is now able to mail the appropriate DVD to certain requestors who require a basic tutorial overview of the Hatch Act.

## **OSC Statutory Missions: USERRA MISSION**

### Explanatory Comments about the Four Types of USERRA Cases

OSC receives four types of USERRA cases—RE, DP-OD, DP-MX, and DP-TSA—each of which are explained in detail below. Given the different nature of such cases, different performance indicators apply.

#### **1. RE Cases**

Under USERRA, certain federal sector claims are investigated by U.S. Department of Labor, Veterans' Employment and Training Service (VETS). Pursuant to 38 U.S.C. § 4324, in the event that VETS is unable to resolve such a claim, a claimant has a right to have his or her claim referred to OSC for a determination on whether OSC will represent the claimant before the U.S. Merit Systems Protection Board (MSPB). Such cases are identified by OSC as "RE cases."

RE cases have already been investigated by VETS and reviewed by a DOL Office of Regional Solicitor (RSOL). The USERRA Unit receives the VETS investigative file and a legal memorandum from RSOL indicating whether RSOL recommends that OSC represent the claimant. USERRA Unit reviews the information and make a "de novo" determination.

Where the USERRA Unit disagrees with an RSOL determination that OSC should represent the claimant, the unit sends the RSOL a report setting forth the factual and legal basis of the unit's preliminary determination not to represent the claim and invites the RSOL to respond. The unit considers any response received from the RSOL in making a final representation determination. The RSOL is typically given two weeks to respond to the report.

It is to be noted that while RE cases have already been investigated by VETS, OSC has found that: further investigation is often warranted, e.g., key witnesses need interviewing; important documents need to be obtained; too much time lapsed between alleged initial violations and their referral to OSC. In such cases, the USERRA Unit will always contact the agency and relevant witnesses to obtain the information necessary to allow it to make a well-reasoned determination regarding the prosecutorial merit of a given claim.

The need and extent of any supplemental investigation affects the processing time of RE cases and is reflected in the performance indicator.

#### **2. DP-OD cases**

In late 2004, Congress expanded OSC's role in enforcing USERRA and protecting the employment rights of federal employees and applicants. Pursuant to a demonstration project established by section 204 of the Veterans Benefits Improvement Act of 2004 (VBIA), P.L. 108-454, OSC was given the

exclusive authority to investigate federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit. Under the demonstration project, OSC also investigates all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction regardless of the person's social security number (so-called "mixed claims"). VETS' investigative authority was limited to federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit and who do not allege a prohibited personnel practice. Pursuant to section 204(d)(1) of VBIA, OSC shall administer the demonstration project and DOL shall cooperate with OSC in carrying out the demonstration project. The demonstration project began on February 8, 2005, and ended on September 30, 2007. It has since been extended to November 16th, 2007, and may be extended further.

Given the new, additional investigative responsibilities Congress assigned to OSC with the passing of the demonstration project and the Special Counsel's desire to revitalize OSC's enforcement of USERRA during his term, Special Counsel Bloch established the USERRA Unit as part of the January 6, 2005, directive reorganizing the agency. The USERRA Unit is the in-take, investigative, and prosecutorial unit for all matters pertaining to USERRA and veteran-related employment issues. The Unit is responsible for investigating USERRA claims to determine whether prosecution is warranted.

DP-OD cases are federal sector USERRA claims filed by persons having an odd-numbered social security number. DP-OD cases typically come from two sources: 1) from VETS, where a claimant files a USERRA Form 1010 (i.e., a USERRA complaint form) with VETS and 2) directly from the claimant, where the claimant files with OSC the OMB approved form OSC-14 "Complaint of Possible violation of USERRA."

The USERRA Unit conducts an investigation of DP-OD cases and determines whether OSC will represent the claimant in an USERRA action before the MSPB. The performance indicator reflects the time reasonably expected to investigate such cases.

### **3. DP-MX cases**

As stated above, OSC is responsible for investigating all federal sector USERRA claims where the claimant, regardless of his or her social security number, also alleges a prohibited personnel practice over which OSC has jurisdiction.

The USERRA Unit conducts an investigation of DP-MX cases and determines whether OSC will represent the claimant in a USERRA or prohibited personnel practice action before the MSPB.

The processing time of DP-MX cases is affected by 1) additional complexity of such cases and 2) the USERRA Unit's adoption of OSC's practice in prohibited personnel practice cases of granting a claimant 13 days to respond to OSC's preliminary determination regarding prohibited personnel practice allegations. The performance indicator incorporates those factors.

#### **4. DP-TSA cases**

On June 9, 2005, the MSPB held in *Spain v. Department of Homeland Security* (MSPB Docket # PH-0353-04-0361-I-1) that USERRA does not apply to Transportation Security Administration (TSA) Security Screeners or TSA Supervisory Security Screeners and, therefore, the MSPB does not recognize jurisdiction over such cases. Consequently, OSC is unable to prosecute USERRA actions involving TSA Security Screeners or TSA Supervisory Security Screeners.

Notwithstanding the Spain decision, TSA voluntarily permits OSC to investigate USERRA claims and reports its findings and recommendations for corrective action to TSA management officials (akin to the manner in which OSC is permitted to investigate and report on allegations of whistleblower reprisal).

The performance indicator for these types of cases reflects the MSPB's decision in the Spain case.

<b>Goal 1: TO ENFORCE THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT THROUGH TIMELY CASE PROCESSING</b>				
<b>USERRA MISSION</b>	<b>USERRA A: RE Cases</b>	<b>USERRA B: DP-OD Cases</b>	<b>USERRA C: DP-MX Cases</b>	<b>USERRA D: DP-TSA Cases</b>
				See Comment 5.
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A:</b> Average number of days in which the case is settled, closed or a decision to litigate is made.	<b>Indicator A:</b> Average number of days in which the case is settled, closed or a decision to litigate is made.	<b>Indicator A:</b> Average number of days in which the case is settled, closed or a decision to litigate is made.	<b>Indicator A:</b> Average number of days in which a “no merit” determination is made or a request for voluntary corrective action is sent to TSA.
<b>FY 2006 TARGET</b>	90%	80%	80%	80%
<b>FY 2006 RESULTS</b>	50%	62%	74%	33%
<b>FY 2007 TARGET</b>	75 days	160 days	160 days	160 days
<b>FY 2007 RESULTS</b>	33 days	107 days	171 days	90 days
<b>FY 2008 TARGET</b>	75 days	140 days	160 days	140 days
<b>FY 2008 RESULTS</b>				
<b>FY 2009 TARGET</b>	75 days	NA	NA	NA
<b>FY 2009 RESULTS</b>				

**Indicator A:** In FY 2006, there were ten RE cases referred from DOL. Five of them were resolved in less than 75 days and five were resolved in greater than 75 days. The number of RE cases that are transferred varies widely, sometimes as high as 30 and sometimes as low as 4. In addition, the complexity of the cases varies widely. On these RE cases, to treat the servicemember fairly, OSC must re-investigate the entire case that is transferred from DOL VETS. Using the FY 2006 data, and due to the complexity of these cases, we determined that 75 days would be the target average. OSC achieved an average of 33 days in FY 2007. But since FY 2008 results could easily be over 100 days due to the complexity of the cases, we are keeping the 75 days as the target for now.

**Indicators B, C, and D:** FY 2006 results served as a baseline for setting targets for these indicators. The average processing times in FY 2006 were 115 days, 123 days, and 161 days, respectively, for OD, MX, and TSA cases. Given that the unit was a startup and the unit's staffing was in flux, OSC set the FY 2007 targets at 160 days for each of these indicators. In FY 2007, OSC achieved two out of three of these targets, in the OD and TSA categories. Given these encouraging yet mixed results, we are considering lowering the target to 140 days for OD and TSA cases. OSC will work with OMB in the coming months to OSC to solidify its USERRA targets and ensure they are sufficiently ambitious.

Comments for Goal #1:

1. For RE cases, resolution was made in an average of 33 days, much improved over the FY 2006 result.
2. For the DP-OD cases, average resolution was made in 107 days, well below the 160 day target.
3. For DP-MX cases, the average number of days to resolve the cases was 171, so the USERRA Unit failed to meet the FY 2007 target. DP-MX cases contain both USERRA and Prohibited Personnel Practice (PPP) allegations (whereas DP-OD cases contain only USERRA allegations). Therefore, because DP-MX cases contain more allegations and are more complex, they generally take longer to investigate and resolve than DP-OD cases.
4. For DP-TSA cases, resolution was made in an average of 90 days, well below the goal of 160 days.

<b>Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS</b>		
<b>USERRA MISSION</b>	<b>USERRA CASES</b>	
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# successful meditations + # of settlements achieved + # of successful litigations) / (# meritorious cases)</b>	<b>Indicator B: # of “test cases” filed</b>
<b>FY 2006 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2006 RESULTS</b>	100%	0
<b>FY 2007 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2007 RESULTS</b>	100%	1
<b>FY 2008 TARGET</b>	95%	Inappropriate to set a specific target
<b>FY 2008 RESULTS</b>		
<b>FY 2009 TARGET</b>	99%	Inappropriate to set a specific target
<b>FY 2009 RESULTS</b>		

Comments for Goal #2

1. Performance Indicator A

Where the Office of Special Counsel is satisfied that claimant is entitled to relief, then it may exercise its prosecutorial authority and represent the claimant before the MSPB and, in certain circumstances, the U.S. Court of Appeals for the Federal Circuit. See 38 U.S.C. §§ 4324(a)(2)(A) and (d)(2). As prosecutor, OSC seeks to obtain full corrective action on behalf of claimants either by settlements with the involved federal employer or via litigation.

Typically, OSC will prosecute cases it believes are meritorious but where the involved agency is unwilling to resolve them voluntarily. OSC is confident of its ability to prosecute successfully cases warranting corrective action. “Meritorious cases” under this performance indicator are to be distinguished from the “test cases” found under Performance Indicator B.

## 2. Performance Indicator B

It is foreseeable that OSC will desire to file cases where the law is not clear (e.g., novel legal issues requiring “test cases” to define the bounds of the law) but will establish legal precedent benefiting all service members, if the litigation is successful. The outcomes of these types of cases do not depend on OSC’s skill in weighing of the evidence, applying of law, and trying the case. Instead, the cases involve questions of law.

It is difficult to define a performance goal that accurately reflects “success” or “failure” of OSC’s identification of cases that are fertile for expanding the law. The mere fact of filing test litigation with an eye toward expanding the law, however, seems appropriate. Performance Indicator B captures this concept. OSC will track how often it files this type of case. However, a target can not be identified because OSC cannot determine how often appropriate “test cases” will come into the agency from claimants.

OSC filed one USERRA test case during FY 2007, which is currently pending at the MSPB.

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>		
<b>USERRA MISSION</b>	<b>USERRA CASES</b>	
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where inviting agency sponsors OSC})</b>	<b>Indicator B: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where OSC pays expenses})</b>
<b>FY 2006 TARGET</b>	90%	50%
<b>FY 2006 RESULTS</b>	NA	100%
<b>FY 2007 TARGET</b>	90%	50%
<b>FY 2007 RESULTS</b>	100%	100%
<b>FY 2008 TARGET</b>	90%	50%
<b>FY 2008 RESULTS</b>		
<b>FY 2009 TARGET</b>	90%	50%
<b>FY 2009 RESULTS</b>		

Comments for Goal #3

OSC recognizes the federal sector’s need for USERRA training although it has no statutory obligation to provide it. Thus, the USERRA Unit regularly accepts invitations to provide outreach services designed to educate federal personnel on USERRA issues so that agencies comply with the law, including presentations conducted at national events such as the Federal Dispute Resolution conference. In individual USERRA cases where OSC believes an agency would benefit from such training, OSC requests that the agency sponsor OSC-conducted USERRA training at agency expense. Additionally, the USERRA unit maintains telephonic and e-mail “hot lines” for answering USERRA-related questions from the public and private sectors.

**OSC Statutory Missions:  
WHISTLEBLOWER DISCLOSURE MISSION**

<b>Goal 1: TO RECEIVE AND RESOLVE WHISTLEBLOWER DISCLOSURES WITH TIMELY PROCESSING</b>	
<b>WHISTLEBLOWER DISCLOSURE MISSION</b>	<b>DISCLOSURES</b> See comment 1.
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: Percentage of disclosures resolved within the statutory 15 day time frame</b>
<b>FY 2006 TARGET</b>	50%
<b>FY 2006 RESULTS</b>	42%
<b>FY 2007 TARGET</b>	50%
<b>FY 2007 RESULTS</b>	61%
<b>FY 2008 TARGET</b>	50%
<b>FY 2008 RESULTS</b>	
<b>FY 2009 TARGET</b>	50%
<b>FY 2009 RESULTS</b>	

Comments for Goal #1:

1. Performance Indicator A: Timely Disclosure Processing

Pursuant to § 1213(b), when the Special Counsel receives any disclosure of information by a federal employee, former federal employee or applicant for federal employment which the [employee] reasonably believes evidences: a violation of law, rule or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, the Special Counsel must review the information within 15 days and determine whether there is a substantial likelihood that the information discloses one or more of the above categories of wrongdoing.

OSC handles these whistleblower disclosures under 5 U.S.C. § 1213 in one of three ways. If the Special Counsel makes a positive determination, he must transmit the information to the appropriate agency head, and require the agency head to conduct an investigation and submit a written report on the findings of the investigation. These referrals under § 1213 represent a small percentage of the total number of disclosures resolved by OSC in any fiscal year.

If the Special Counsel does not make a positive determination, the matter is closed. These closures make up the vast majority of the total number of cases resolved by OSC in any fiscal year.

If the Special Counsel is unable to make the substantial likelihood determination on the basis of the

information supplied by the whistleblower, the matter may be informally referred to the Inspector General (IG) for the agency involved, with a request that the IG assist OSC in making a substantial likelihood determination.

OSC's Disclosure Unit exceeded its timeliness goal by 11% for FY 2007.

<b>Goal 2: TO PROMOTE JUSTICE AND PROTECT THE MERIT SYSTEM THROUGH THE QUALITY OF DETERMINATIONS AND REFERRALS</b>	
<b>WHISTLEBLOWER DISCLOSURE MISSION</b>	<b>DISCLOSURES</b>  See comment 1.
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: % Percentage of disclosures referred to agency head, pursuant to 5 U.S.C. § 1213, or under the informal IG referral process.</b>
<b>FY 2006 TARGET</b>	7%
<b>FY 2006 RESULTS</b>	8%
<b>FY 2007 TARGET</b>	7%
<b>FY 2007 RESULTS</b>	10%
<b>FY 2008 TARGET</b>	7%
<b>FY 2008 RESULTS</b>	
<b>FY 2009 TARGET</b>	7%
<b>FY 2009 RESULTS</b>	

Comments for Goal #2

1. Indicator A: Whistleblower referrals:

The U.S. Office of Special Counsel does not have investigative or enforcement authority under 5U.S.C. § 1213. As such, the Indicator for Goal #2 reflects a quality measure based on the number of cases referred under §1213, regardless of the outcome of the referral. The percentage of cases referred out of the total number of cases received in a fiscal year is a relatively low number historically, and as such, the FY 2006 and FY 2007 targets are low. Because OSC’s Disclosure Unit processes nearly 500 disclosures annually, this percentage can be seen as an indicator of the average relative height of the “substantial likelihood” bar in a given year.

The Indicator for Goal #2 reflects only one way of measuring quality as defined in Goal #2, to “promote justice and protect the merit system.” **Because the statutory mandate of §1213 contemplates that OSC make a determination whether there is a substantial likelihood that the information discloses wrongdoing, a negative determination under the statute, resulting in a closure, is as quality driven as a positive determination resulting in a referral.** OSC’s analysis of a whistleblower disclosure may result in a determination not to burden an agency with an inappropriate referral, thus promoting justice and protecting the merit system. Notwithstanding this difficulty in identifying a measure of quality, the individual whistleblower who initiates the disclosure, thus accessing the statutory protections, is more inclined to measure quality by whether or not his or her disclosure is referred. As such, the Indicator for Goal #2 for now reflects this single measurement.

The target for this goal was exceeded for FY 2007.

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>	
<b>WHISTLEBLOWER DISCLOSURE MISSION</b>	NA
<b>PERFORMANCE INDICATORS</b>	NA
<b>FY 2006 TARGET</b>	NA
<b>FY 2006 RESULTS</b>	NA
<b>FY 2007 TARGET</b>	NA
<b>FY 2007 RESULTS</b>	NA
<b>FY 2008 TARGET</b>	NA
<b>FY 2008 RESULTS</b>	NA
<b>FY 2009 TARGET</b>	NA
<b>FY 2009 RESULTS</b>	

Comments for Goal #3

1. Disclosure outreach:

OSC's Disclosure Unit does not have a statutorily defined mandate to perform compliance outreach, and as such does not regularly provide training or outreach to other government entities, with the exception of informational presentations to foreign delegations.

OSC continues to provide free Whistleblower Disclosure Act posters to requesting agencies, if the quantity requested is less than ten. If the quantity requested exceeds ten, the interested agency can obtain extra copies from the Government Printing Office.

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## **Part 3: Financial Section**



**U.S. OFFICE OF SPECIAL COUNSEL**  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
202-254-3600

**CFO Letter**

November 15, 2007

While the U.S. Office of Special Counsel does not currently have a formal Chief Financial Officer, the Director of Management and Budget fulfills the role of the CFO in the agency.

This letter pertains to the recommendations made by the auditor concerning the findings of the audit of the financial statements of the U.S. Office of Special Counsel for the year ending September 30, 2007.

The auditor recommended taking steps to ensure that all form SF-50s are filed in the personnel files in a timely manner. The Director of Human Resources of OSC has discussed the importance of the timely placement of these forms in the official personnel files after completion of each payroll cycle with the Human Resources Specialists of the agency. This action should resolve the issue.

The auditor also noted that four of OSC's bills were paid late and interest payments were not made on OSC's behalf by the National Business Center (NBC). These four payment issues were associated with the transition of accounting service providers from BPD to NBC, and should not be a recurring occurrence. Nevertheless, we have instructed NBC to always pay interest in the future, if there is ever again a late payment of an invoice to OSC. We believe this issue to be fully resolved.

Sincerely,

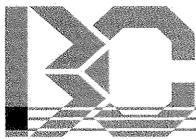
A handwritten signature in black ink that reads "Roderick Anderson". The signature is written in a cursive style with a large initial "R".

Roderick Anderson  
Director, Management and Budget Division  
U.S. Office of Special Counsel

**U.S. OFFICE OF SPECIAL COUNSEL  
FINANCIAL STATEMENTS  
AND  
INDEPENDENT AUDITOR'S REPORT**

**FOR THE YEARS ENDED  
SEPTEMBER 30, 2007 AND 2006**





**INDEPENDENT AUDITOR'S REPORT ON THE FINANCIAL STATEMENTS**

U.S. Office of Special Counsel  
Washington, D.C.

We have audited the accompanying balance sheet of the U.S. Office of Special Counsel (OSC) as of September 30, 2007 and the related statements of net cost, changes in net position, and budgetary resources for the year then ended. These financial statements are the responsibility of OSC's management. Our responsibility is to express an opinion on these financial statements based on our audits. The financial statements of OSC as of September 30, 2006 were audited by other auditors whose report dated November 2, 2006, expressed an unqualified opinion on those statements. We have considered internal control over financial reporting in place as of September 30, 2007; and we have examined compliance with selected provision of laws and regulations.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in U.S. Government Auditing Standards, issued by the Comptroller General of the United States; and, Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*. Those standards and OMB Bulletin No. 07-04 require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the U.S. Office of Special Counsel as of September 30, 2007 and 2006, and its net costs, changes in net position, and budgetary resources for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with U.S. Government Auditing Standards and OMB Bulletin No. 07-04, we have also issued a report dated November 2, 2007 on our consideration of OSC's internal control and its compliance with provisions of laws and regulations. Those reports are an integral part of an audit performed in accordance with U.S. Government Auditing Standards and should be read in conjunction with this report in considering the results of our audit.

The information in "Management's Discussion & Analysis" is presented for the purpose of additional analysis and is required by OMB Circular No. A-136, revised *Financial Reporting Requirements*. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the supplementary information. However, we did not audit the information and, accordingly, express no opinion on it.

Largo, Maryland  
November 2, 2007



**INDEPENDENT AUDITOR'S REPORT ON  
INTERNAL CONTROL**

U.S. Office of Special Counsel  
Washington, D.C.

We have audited the financial statements of the U.S. Office of Special Counsel (OSC) as of and for the year ended September 30, 2007 and have issued our report thereon dated November 2, 2007. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; and the standards applicable to financial audits contained in U.S. Government Auditing Standards, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*.

In planning and performing our audit, we considered OSC's internal control over financial reporting by obtaining an understanding of OSC's internal control, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 07-04. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982, such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide an opinion on internal control and therefore, we do not express an opinion on internal control.

Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be a significant deficiency. Under standards issued by the American Institute of Certified Public Accountants and OMB Bulletin No. 07-04, Significant Deficiency is a deficiency in internal control, or a combination of deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be a Material Weakness. Material Weakness is a significant deficiency, or combination of significant deficiencies, that result in a more than remote likelihood that a material misstatement of the financial statements will not be prevented or detected. Because of inherent limitations in internal controls, misstatements, losses, or non-compliance may nevertheless occur and not be detected. However, we noted no matters involving the internal control and its operation that we considered to be material weaknesses as defined above.

In addition, with respect to internal control objective related to the performance measures included in the "Management's Discussion & Analysis," we obtained an understanding of the design of internal controls relating to the existence and completeness assertions, and determined whether they have been placed in operation as required by OMB Bulletin No. 07-04. Our procedures were not designed to provide opinion on internal control over reported performance measures, and, accordingly, we do not express an opinion on such controls.





**INDEPENDENT AUDITOR'S REPORT ON  
COMPLIANCE WITH LAWS AND REGULATIONS**

U.S. Office of Special Counsel  
Washington, D.C.

We have audited the financial statements of the U.S. Office of Special Counsel (OSC) as of and for the year ended September 30, 2007, and have issued our report thereon dated November 2, 2007. We conducted our audit in accordance with auditing standards generally accepted in the United States of America, and the standards applicable to financial audits contained in U.S. Government Auditing Standards, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*.

The management of OSC is responsible for complying with laws and regulations applicable to OSC. As part of obtaining reasonable assurance about whether OSC's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 07-04. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to OSC.

The results of our tests of compliance disclosed that OSC has not fully complied with Prompt Pay Act of 1982. OSC failed to pay a few of its vendors on time and also failed to pay interest to those vendors on late payments as required by Prompt Pay Act. We recommend that OSC pay vendors on time and pay the proper interest on late payments. However, the noncompliance does not have a material effect on the financial statements.

Providing an opinion on compliance with certain provisions of laws and regulations was not an objective of our audit, and, accordingly, we do not express such an opinion. However, we noted no noncompliance with laws and regulations, which could have a direct and material effect on the determination of financial statement amounts.

This report is intended solely for the information and use of the management of OSC, OMB, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Largo, Maryland  
November 2, 2007

**U.S. OFFICE OF SPECIAL COUNSEL  
BALANCE SHEET  
AS OF SEPTEMBER 30, 2007 AND 2006**

	<b>2007</b>	<b>2006</b>
<b>ASSETS</b>		
Intragovernmental-Fund Balance with Treasury (Note 2)	\$ 3,413,269	\$ 2,999,701
Accounts Receivable	10,499	11,171
Total Intragovernmental	3,423,768	3,010,872
General Property, Plant and Equipment (Note 3)	331,182	397,878
<b>TOTAL ASSETS</b>	<b>\$ 3,754,950</b>	<b>\$ 3,408,750</b>
<b>LIABILITIES</b>		
Intragovernmental Liabilities (Note 4)	\$ 497,084	\$ 191,804
Accounts Payable (Note 4)	61,309	67,931
Other Liabilities (Note 4)	1,169,584	1,081,307
<b>TOTAL LIABILITIES</b>	<b>\$ 1,727,977</b>	<b>\$ 1,341,042</b>
<b>NET POSITION:</b>		
Unexpended Appropriations	\$ 2,617,602	\$ 2,461,486
Cumulative Results of Operations	(590,630)	(393,778)
<b>TOTAL NET POSITION</b>	<b>2,026,973</b>	<b>2,067,708</b>
<b>TOTAL LIABILITIES AND NET POSITION</b>	<b>\$ 3,754,950</b>	<b>\$ 3,408,750</b>

The accompanying notes are an integral part of these statements.

**U.S. OFFICE OF SPECIAL COUNSEL  
STATEMENT OF NET COST  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

	<u>2007</u>	<u>2006</u>
<b>PROGRAM COST</b>		
Program Costs	\$ 17,483,748	\$ 16,068,378
Less: Revenue Earned	<u>(250,060)</u>	<u>(325,277)</u>
Net Program Cost	<u>17,233,689</u>	<u>15,743,101</u>
<b>NET COST OF OPERATIONS (Note 7)</b>	<u>\$ 17,233,689</u>	<u>\$ 15,743,101</u>

The accompanying notes are an integral part of these statements.

**U.S. OFFICE OF SPECIAL COUNSEL  
STATEMENT OF CHANGES IN NET POSITION  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

	<u>2007 Cumulative Results of Operations</u>		<u>2007 Unexpended Appropriations</u>		<u>2006 Cumulative Results of Operations</u>		<u>2006 Unexpended Appropriations</u>
<b>Net Position - Beginning of Period</b>	\$ (393,777)	\$	2,461,486	\$	(645,948)	\$	2,683,745
<b>Budgetary Financing Sources:</b>							
Appropriations Received			15,524,186				15,325,000
Appropriations Used	15,368,069		(15,368,069)		15,284,585		(15,284,585)
<b>Other Financing Sources:</b>							
Imputed Financing	1,668,767				710,686		
Permanently Not Available							(262,674)
Total Financing Sources	<u>17,036,836</u>		<u>156,117</u>		<u>15,995,271</u>		<u>(222,259)</u>
Net Cost of Operations	<u>(17,233,689)</u>				<u>(15,743,101)</u>		
Net Change	<u>(196,853)</u>		<u>156,117</u>		<u>252,170</u>		<u>(222,259)</u>
<b>Ending Balances</b>	<u>\$ (590,630)</u>	\$	<u>2,617,602</u>	\$	<u>(393,778)</u>	\$	<u>2,461,486</u>

The accompanying notes are an integral part of these statements.

**U.S. OFFICE OF SPECIAL COUNSEL  
STATEMENT OF BUDGETARY RESOURCES  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

	<b>2007</b>	<b>2006</b>
<b>BUDGETARY RESOURCES:</b>		
Budget Authority - Appropriations (Net or Rescission)	\$ 15,524,186	\$ 15,325,000
Unobligated Balance Brought Forward, October 1	983,875	782,260
Spending Authority from Donations	250,084	325,277
Adjustments:		
Net Results of Foreign Currency Adjustment PY Obligations	25,943	317,261
Permanently Not Available	(76,384)	(262,674)
<b>TOTAL BUDGETARY RESOURCES (Note 9)</b>	<b>\$ <u>16,707,704</u></b>	<b>\$ <u>16,487,124</u></b>
<b>STATUS OF BUDGETARY RESOURCES:</b>		
Obligations Incurred	\$ 14,949,510	\$ 15,503,249
Unobligated Balance Available:	956,525	313,331
Unobligated Balance Not Available:	801,669	670,544
<b>TOTAL STATUS OF BUDGETARY RESOURCES (Note 9)</b>	<b>\$ <u>16,707,704</u></b>	<b>\$ <u>16,487,124</u></b>
<b>RELATIONSHIP OF OBLIGATIONS TO OUTLAYS</b>		
Obligated Balance, Net - Beginning of Period	\$ 2,015,827	\$ 2,542,799
Obligations Incurred	14,949,510	15,503,249
Recoveries of Prior Years Obligations	(25,943)	(317,261)
Obligated Balance, Net - End of Period		
Accounts Payable	(545,607)	0
Undelivered Orders	(1,033,084)	(2,015,826)
<b>TOTAL OUTLAYS</b>	<b>\$ <u>15,360,702</u></b>	<b>\$ <u>15,712,961</u></b>
<b>NET OUTLAYS:</b>		
Disbursements	\$ 15,360,702	\$ 15,712,961
Collections/Refunds	(250,084)	(325,277)
<b>Net outlays (Note 9)</b>	<b>\$ <u>15,110,619</u></b>	<b>\$ <u>15,387,684</u></b>

The accompanying notes are an integral part of these statements.

**OFFICE OF SPECIAL COUNSEL  
NOTES TO PRINCIPAL FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

**NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**A. Reporting Entity**

The Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. OSC's authority comes from four federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniform Services Employment and Reemployment Rights Act. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices. OSC receives, investigates, and prosecutes allegations of prohibited personnel practices, with an emphasis on protecting federal government whistleblowers.

OSC is headed by the Special Counsel, who is appointed by the President, and confirmed by the Senate. As of September 30, 2007 the agency employs approximately 109 employees to carry out its government-wide responsibilities in the headquarters office in Washington, D.C., and in the Dallas, San Francisco, and Detroit field offices.

OSC has rights and ownership of all assets reported in these financial statements. There are no non-entity assets.

**B. Basis of Presentation**

The financial statements have been prepared to report the financial position, net cost of operations, changes in net position, status and availability of budgetary resources, and the reconciliation between proprietary and budgetary accounts of the OSC. The statements are a requirement of the Chief Financial Officers Act of 1990, the Government Management Reform Act of 1994, the Accountability of Tax Dollars Act of 2002 and the Office of Management and Budget (OMB) Circular A-136, Financial Reporting Requirements. They have been prepared from, and are fully supported by, the books and records of OSC in accordance with the hierarchy of accounting principles generally accepted in the United States of America, standards approved by the principals of the Federal Accounting Standards Advisory Board (FASAB), OMB Circular A-136, and OSC Accounting policies which are summarized in this note. These statements, with the exception of the Statement of Budgetary Resources, are different from financial management reports, which are also prepared pursuant to OMB directives that are used to monitor and control OSC's use of budgetary resources.

The statements consist of the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, and Statement of Budgetary Resources. In accordance with OMB Circular A-136, the financial statements and associated notes are presented on a comparative basis.

**C. Basis of Accounting**

Transactions are recorded on both an accrual accounting basis and a budgetary basis. Under the accrual method, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. These financial statements were prepared following accrual accounting. Budgetary accounting facilitates compliance with legal requirements on the use of federal funds. Balances on these statements may therefore differ from those on financial reports prepared pursuant to other OMB directives that are primarily used to monitor and control OSC's use of budgetary resources.

**OFFICE OF SPECIAL COUNSEL  
NOTES TO PRINCIPAL FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

**D. Revenues & Other Financing Resources**

Congress enacts annual and multi-year appropriations to be used, within statutory limits, for operating and capital expenditures. Additional amounts are obtained from service fees and reimbursements from other government entities and the public.

Appropriations are recognized as a financing source when expended. Revenues from service fees associated with reimbursable agreements are recognized concurrently with the recognition of accrued expenditures for performing the services.

OSC recognizes as an imputed financing source the amount of accrued pension and postretirement benefit expenses for current employees paid on our behalf by the Office of Personnel Management (OPM).

**E. Taxes**

OSC, as a Federal entity, is not subject to Federal, State, or local income taxes, and, accordingly, no provision for income taxes has been recorded in the accompanying financial statements.

**F. Fund Balance with Treasury**

The U. S. Treasury processes cash receipts and disbursements. Funds held at the Treasury are available to pay agency liabilities. OSC does not maintain cash in commercial bank accounts or foreign currency balances.

**G. Accounts Receivable**

Accounts receivable consists of amounts owed to OSC by other Federal agencies and the public. Amounts due from Federal agencies are considered fully collectible. Accounts receivable from the public include reimbursements from employees. An allowance for uncollectible accounts receivable from the public is established when either (1) based upon a review of outstanding accounts and the failure of all collection efforts, management determines that collection is unlikely to occur considering the debtor's ability to pay, or (2) an account for which no allowance has been established is submitted to the Department of the Treasury for collection, which takes place when it becomes 180 days delinquent.

**H. General Property, Plant, and Equipment, Net**

OSC's property and equipment is recorded at original acquisition cost and is depreciated using the straight-line method over the estimated useful life of the asset. Major alterations and renovations are capitalized, while maintenance and repair costs are charged to expense as incurred. OSC's capitalization threshold is \$50,000 for individual purchases. Applicable standard governmental guidelines regulate the disposal and convertibility of agency property, plant and equipment. The useful life classifications for capitalized assets are as follows:

<u>Description</u>	<u>Useful Life (years)</u>
Leasehold Improvements	10
Office Equipment	5
Hardware	5
Software	2

**OFFICE OF SPECIAL COUNSEL  
NOTES TO PRINCIPAL FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

**I. Advances and Prepaid Charges**

Advance payments are generally prohibited by law. There are some exceptions, such as reimbursable agreements, subscriptions and payments to contractors and employees. Payments made in advance of the receipt of goods and services are recorded as advances or prepaid charges at the time of prepayment and recognized as expenses when the related goods and services are received.

**J. Liabilities**

Liabilities covered by budgetary or other resources are those liabilities for which Congress has appropriated funds or funding is otherwise available to pay amounts due.

Liabilities not covered by budgetary or other resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The liquidation of liabilities not covered by budgetary or other resources is dependent on future Congressional appropriations or other funding. Intragovernmental liabilities are claims against OSC by other Federal agencies. Liabilities not covered by budgetary resources on the Balance Sheet are equivalent to amounts reported as Components requiring or generating resources on the Statement of Financing. Additionally, the Government, acting in its sovereign capacity, can abrogate liabilities.

**K. Accounts Payable**

Accounts payable consists of amounts owed to other Federal agencies and the public.

**L. Annual, sick, and Other Leave**

Annual leave is accrued as it is earned, and the accrual is reduced as leave is taken. The balance in the accrued leave account is adjusted to reflect current pay rates. Liabilities associated with other types of vested leave, including compensatory, restored leave, and sick leave in certain circumstances, are accrued at year-end, based on latest pay rates and unused hours of leave. Sick leave is generally nonvested. Funding will be obtained from future financing sources to the extent that current or prior year appropriations are not available to fund annual and other types of vested leave earned but not taken. Nonvested leave is expensed when used.

**M. Accrued Workers' Compensation**

A liability is recorded for actual and estimated future payments to be made for workers' compensation pursuant to the Federal Employees' Compensation Act (FECA). The actual costs incurred are reflected as a liability because OSC will reimburse the Department of Labor (DOL) two years after the actual payment of expenses. Future appropriations will be used for the reimbursement to DOL. The liability consists of (1) the net present value of estimated future payments calculated by the DOL, and (2) the unreimbursed cost paid by DOL for compensation to recipients under the FECA.

**N. Retirement Plans**

OSC employees participate in either the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). The employees who participate in CSRS are beneficiaries of OSC's matching contribution, equal to seven percent of pay, distributed to their annuity account in the Civil Service Retirement and Disability Fund.

**OFFICE OF SPECIAL COUNSEL  
NOTES TO PRINCIPAL FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

FERS went into effect on January 1, 1987. FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees hired prior to January 1, 1984 elected to join either FERS, Social Security, or remain in CSRS. FERS offers a savings plan to which OSC automatically contributes one percent of pay and matches any employee contribution up to an additional four percent of pay. For FERS participants, OSC also contributes the employer's matching share of Social Security.

FERS employees and certain CSRS reinstatement employees are eligible to participate in the Social Security program after retirement. In these instances, OSC remits the employer's share of the required contribution.

OSC recognizes the imputed cost of pension and other retirement benefits during the employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future and communicate these factors to OSC for current period expense reporting. OPM also provides information regarding the full cost of health and life insurance benefits. OSC recognized the offsetting revenue as imputed financing sources to the extent these expenses will be paid by OPM.

OSC does not report on its financial statements information pertaining to the retirement plans covering its employees. Reporting amounts such as plan assets, accumulated plan benefits, and related unfunded liabilities, if any, is the responsibility of the OPM.

**O. Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**P. Net Position**

Net position is the residual difference between assets and liabilities and is comprised of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative result of operations is the net result of OSC's operations since inception.

**Q. Imputed Costs/Financing Sources**

Federal Government entities often receive goods and services from other Federal Government entities without reimbursing the providing entity for all the related costs. In addition, Federal Government entities also incur costs that are paid in total or in part by other entities. An imputed financing source is recognized by the receiving entity for costs that are paid by other entities. OSC recognized imputed costs and financing sources in fiscal years 2007 and 2006 to the extent directed by OMB.

**R. Contingencies**

Liabilities are deemed contingent when the existence or amount of the liability cannot be determined with certainty pending the outcome of future events. OSC recognizes contingent liabilities, in the accompanying balance sheet and statement of net cost, when it is both probable and can be reasonably

**OFFICE OF SPECIAL COUNSEL  
NOTES TO PRINCIPAL FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

estimated. OSC discloses contingent liabilities in the notes to the financial statements when the conditions for liability recognition are not met or when a loss from the outcome of future events is more than remote. In some cases, once losses are certain, payments may be made from the Judgment Fund maintained by the U.S. Treasury rather than from the amounts appropriated to OSC for agency operations. Payments from the Judgment Fund are recorded as an "Other Financing Source" when made.

**S. Reclassifications**

Statement of Budgetary Resources -The presentation used for the Statement of Budgetary Resources (SBR) prior to FY06 has been revised to reflect a new format required pursuant to the Office of Management and Budget (OMB) Circular A-136, Financial Reporting Requirements. Circular A-136 requires agencies to present both FY06 and FY05 SBR in the same format. Accordingly, certain reclassifications were made to the previously issued FY05 SBR to conform to the new format.

Other -Certain fiscal year 2005 balances have been reclassified, retitled, or combined with other financial statement line items for consistency with the current year presentation. Due to a change in the accrual process, certain balances in Other Accrued Liabilities for fiscal year 2005 have been reclassified to Accounts Payable for consistency with the current year presentation.

**T. Expired Accounts and Cancelled Authority**

Unless otherwise specified by law, annual authority expires for incurring new obligations at the beginning of the subsequent fiscal year. The account in which the annual authority is placed is called the expired account. For five fiscal years, the expired account is available for expenditure to liquidate valid obligations incurred during the unexpired period. Adjustments are allowed to increase or decrease valid obligations incurred during the unexpired period but not previously reported. At the end of the fifth expired year, the expired account is cancelled.

**NOTE 2. FUND BALANCE WITH TREASURY**

Fund balance with Treasury account balances as of September 30, 2007 and 2006 were:

	2007	2006
<b>Fund Balances:</b>		
Appropriated Funds	3,413,269	2,999,701
 <b>Status of Fund Balance with Treasury:</b>		
Unobligated Balance		
Available	969,129	\$313,331
Unavailable	865,449	670,544
Obligated Balance not yet Disbursed	1,578,691	2,015,826
Total	3,413,269	2,999,701

Restricted unobligated fund balance represents the amount of appropriations for which the period of availability for obligation has expired. These balances are available for upward adjustments of obligations incurred only during the period for which the appropriation was available for obligation or paying claims attributable to the appropriations.

**OFFICE OF SPECIAL COUNSEL  
NOTES TO PRINCIPAL FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

**NOTE 3. GENERAL PROPERTY, PLANT, AND EQUIPMENT**

Property, plant and equipment account balances as of September 30, 2007 and 2006 were as follows:

Description	Acquisition Cost	Accumulated Depreciation	Net Book Value
<u>September 30, 2007</u>			
Office Equipment	\$ 197,216	(111,309)	\$ 85,907
Leasehold Improvements	\$ 272,528	(27,253)	\$ 245,275
<b>Total</b>	<b>\$ 469,744</b>	<b>(138,562)</b>	<b>\$ 331,182</b>
<u>September 30, 2006</u>			
Office Equipment	\$ 469,744	\$ (71,866)	\$ 397,878

**NOTE 4. LIABILITIES**

The accrued liabilities for OSC are comprised of program expenses accruals, payroll accruals, and annual leave (funded and unfunded) earned by employees. Program expense accruals represent expenses that were incurred prior to year-end but were not paid. Similarly, payroll accruals represent payroll expenses that were incurred prior to year-end but were not paid.

	September 30	
	2007	2006
Intragovernmental:		
Accounts Payable-Federal-GL 211001	11,023	5,518
Employer Contribution & Payroll Tax Pay-GL 221301	67,583	88,055
Actuarial FECA Liability-GL 265001	320,082	-
Unfunded FECA Liability-GL 222501	98,396	98,231
<b>Total intragovernmental</b>	<b>\$ 497,084</b>	<b>\$ 191,804</b>
Accounts Payable-Non Federal-GL 211001	61,309	67,931
Accrued Funded Payroll & Leave-GL 221001	379,711	350,745
Employer Contribution & Payroll Tax Pay-GL 221301	25,981	25,967
Unfunded Leave-GL 222001	763,892	704,595
<b>Total Other Liabilities</b>	<b>1,230,893</b>	<b>1,149,238</b>
<b>Total Liabilities</b>	<b>1,727,977</b>	<b>1,341,042</b>

**NOTE 5. OPERATING LEASES**

OSC occupies office space under lease agreements in Washington, DC, Dallas, Oakland, and Detroit that are accounted for as operating leases. The DC lease term began on October 26, 1999 and expires on

**OFFICE OF SPECIAL COUNSEL  
NOTES TO PRINCIPAL FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

October 25, 2009. The Dallas lease term began on December 9, 2002 and expires on December 8, 2007. The Oakland lease term began on March 1, 2000 and expired on February 28, 2005. A new 60-month lease was entered into during FY05 for the Oakland office commencing on February 1, 2006 and expiring on January 31, 2011. This lease was modified in FY06 with the period commencing on July 1, 2006 and expiring June 30, 2011. The Detroit lease began on March 20, 2005 and will expire on March 31, 2010.

Lease payments are increased annually based on the adjustments for operating cost and real estate tax escalations. Below is a schedule of future payments for the terms of all the leases.

Fiscal Year	Totals
2008	1,027,790
2009	1,031,021
2010	153,141
2011	98,477
Total Future Payments	\$ 2,310,429

The operating lease amount does not include estimated payments for leases with annual renewal options.

**NOTE 6. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES**

The liabilities on OSC's Balance Sheet as of September 30, 2007 and 2006 include liabilities not covered by budgetary resources, which are liabilities for which congressional action is needed before budgetary resources can be provided. Although future appropriations to fund these liabilities are likely and anticipated, it is not certain that appropriations will be enacted to fund these liabilities. Intragovernmental liabilities not covered by budgetary resources consist entirely of FECA liabilities. Unfunded FECA liabilities are \$98,396 and \$98,231 as of September 30, 2007 and 2006, respectively. Other liabilities not covered by budgetary resources consist entirely of unfunded leave. Unfunded leave balances are \$763,892 and \$704,595 as of September 30, 2007 and 2006, respectively.

**NOTE 7. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE**

Intragovernmental costs represent goods and services exchange transactions made between two reporting entities within the Federal government, and are in contrast to those with non-federal entities (the public). Such costs are summarized as follows:

	2007	2006
Investigations and Enforcements		
Intragovernmental Cost	\$ 5,589,395	\$ 5,240,996
Public Costs	11,894,353	10,827,382
Total investigations and Enforcements Costs	\$ 17,483,748	\$ 16,068,378
Intragovernmental Earned Revenue	\$ (250,060)	\$ (325,277)
Public Earned Revenue	-	-
Total investigations and Enforcements Costs	\$ (250,060)	\$ (325,277)

**OFFICE OF SPECIAL COUNSEL  
NOTES TO PRINCIPAL FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

**NOTE 8. UNDELIVERED ORDERS AT THE END OF THE PERIOD**

Beginning with FY06, the format of the Statement of Budgetary Resources has changed and the amount of undelivered orders at the end of period is no longer required to be reported on the face of the statement. Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling budgetary and Financial Accounting, states that the amount of budgetary resources obligated for undelivered orders at the end of the period should be disclosed. For the years ended September 30, 2007 and 2006, Undelivered Orders amounted to \$1,033,084 and \$1,477,612.

**NOTE 9. BUDGETARY RESOURCE COMPARISONS TO THE BUDGET OF THE UNITED STATES GOVERNMENT**

Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling budgetary and Financial Accounting, calls for explanations of material differences between amounts reported in the Statement of Budgetary Resources (SBR) and the actual balances published in the Budget of the United States Government (President's budget). However, the President's Budget that will include FY06 actual budgetary execution information has not yet been published. The President's budget is scheduled for publication in February 2008 and can be found at the OMB website: <http://whitehouse.gov/omb>. The 2008 Budget of the United States Government, with the Actual Column completed for 2006, has been reconciled, and there were no material differences.

**NOTE 10. IMPUTED FINANCING SOURCES**

OSC recognizes as imputed financing the amount of accrued pension and post-retirement benefit expenses for current employees. The assets and liabilities associated with such benefits are the responsibility of the administering agency, the Office of Personnel Management (OPM). For the fiscal years ended September 30, 2007 and 2006, respectively, imputed financing from OPM were \$1,668,767 and \$710,686.

**NOTE 11. CONTINGENCIES**

A contingency is an existing condition, situation or set of circumstances involving uncertainty as to possible payment by OSC. The uncertainty will ultimately be resolved when one of more future events occur or fail to occur. For pending, threatened or unasserted litigation, a liability/cost is recognized when a past transaction or event has occurred, a future outflow or other sacrifice of resources is probable, and the related future outflow or sacrifice of resources can be reasonably estimated.

There are numerous legal actions pending against the United States in Federal courts in which claims have been asserted that may be based on action taken by OSC. Management intends to vigorously contest all such claims. Management believes, based on information provided by legal counsel, that losses, if any, for the majority of these cases would not have a material impact on the financial Statements. As of October 5, 2007, the legal response in connection with Fiscal Year 2007 Financial Statement Audit of the U.S. Office of Special Counsel states that the likelihood of an unfavorable outcome requiring payment by OSC is remote in each pending legal action.

**OFFICE OF SPECIAL COUNSEL  
NOTES TO PRINCIPAL FINANCIAL STATEMENTS  
FOR THE YEARS ENDED SEPTEMBER 30, 2007 AND 2006**

**NOTE 12. RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET**

Resources Used to Finance Activities: Budgetary Resources Obligated	Program Costs		
Net obligations	\$14,673,483	Gross Costs	\$17,483,748
Net other resources used to finance activities	1,668,767		
Total resources used to finance activities	16,342,250		
Total resources used to finance items not part of the net cost of operations	764,774	Less: Earned Revenue	250,059
Total resources used to finance the net cost of operations	17,107,024		
Total components of net cost of operations that will not require or generate resources	126,665		
<b>Net Cost of Operations</b>	<b>\$17,233,689</b>		<b>\$17,233,689</b>