

**ANNUAL REPORT
TO CONGRESS
—*for*—
FISCAL YEAR 2016**



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The Special Counsel

The Honorable Michael R. Pence
President of the Senate
Washington, D.C. 20510

The Honorable Paul D. Ryan
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit the Report to Congress for fiscal year 2016 from the U.S. Office of Special Counsel. A copy of this report will also be posted on our website.

Sincerely,

A handwritten signature in black ink that reads "Adam Miles". The signature is written in a cursive style with a long horizontal stroke at the end.

Adam Miles

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THE SPECIAL COUNSEL

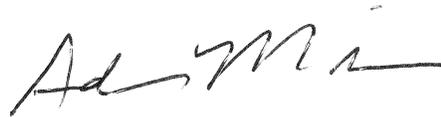
Carolyn N. Lerner served as Special Counsel from 2011 to 2017. Her term as Special Counsel encompasses the period of coverage for OSC's FY 2016 Annual Report.

On June 14, 2017, President Trump designated Adam Miles, OSC's Deputy Special Counsel for Policy and Congressional Affairs, to serve as Acting Special Counsel, pursuant the Vacancies Reform Act (5 U.S.C. § 3345(a)).

Henry Kerner has been nominated by President Trump to serve as Special Counsel. As of this writing, his nomination is pending before the Senate.

A MESSAGE FROM ACTING SPECIAL COUNSEL ADAM MILES

This report highlights the U.S. Office of Special Counsel's successes in Fiscal year (FY) 2016, the final full year of Carolyn N. Lerner's tenure as Special Counsel. In FY2016, OSC continued to improve its efficiency and productivity, meeting or exceeding prior benchmarks in nearly all statistical categories. For example, OSC secured 276 favorable outcomes for whistleblowers and other victims of prohibited personnel practices. Through these victories, OSC helped to restore the careers of courageous public servants who protect the taxpayers and improve public safety. As OSC transitions from one leadership team to the next, I am confident that this office will build on its prior successes, protect whistleblowers, curb waste, and keep improper partisan politics out of the government workplace.

A handwritten signature in black ink that reads "Ad Miles". The signature is written in a cursive style with a long horizontal stroke at the end.

PART 1 – INTRODUCTION TO OSC

Statutory Background

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC at first operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB or the Board). Congress directed that OSC would: (1) receive and investigate complaints from Federal employees alleging prohibited personnel practices; (2) receive and investigate complaints regarding the political activity of Federal employees and covered state and local employees, and provide advice on restrictions imposed by the Hatch Act on political activity by covered Government employees; and (3) receive disclosures from Federal whistleblowers about Government wrongdoing. Additionally, OSC, when appropriate, filed petitions for corrective and or disciplinary action with the Board in prohibited personnel practices and Hatch Act cases.

In 1989, Congress enacted the Whistleblower Protection Act (WPA). Under the WPA, OSC became an independent agency within the executive branch with continued responsibility for the functions described above. The WPA also enhanced protections for employees who alleged reprisal for whistleblowing and strengthened OSC's ability to enforce those protections.

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to Federal and District of Columbia Government employees.^a

In 1994, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA protects the civilian employment and reemployment rights of those who serve or have served in the Armed Forces, including the National Guard and Reserve, and other uniformed services. It prohibits employment discrimination based on military service, requires prompt reinstatement in civilian employment upon return from military service, and prohibits retaliation for exercising USERRA rights. Under USERRA, OSC may seek corrective action for service members whose rights have been violated by Federal agency employers.^b

OSC's 1994 Reauthorization Act expanded protections for Federal employees and defined new responsibilities for OSC and other Federal agencies. For example, the 1994 Reauthorization Act 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 or exists. The Reauthorization Act also extended protections to approximately 60,000 employees

^aPublic Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.

^bUnless noted otherwise, all references after this to prohibited personnel practice complaints or cases handled by OSC include matters that alleged other violations of law also within the agency's jurisdiction under 5 U.S.C. § 1216, except violations of the Hatch Act.

of what is now the Department of Veterans Affairs, and whistleblower reprisal protections were afforded to employees of specified Government corporations. The 1994 Reauthorization Act also broadened the scope of personnel actions covered under these provisions and required that Federal agencies inform employees of their rights and remedies under the WPA.^a

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),^b which created the Transportation Security Administration (TSA). Under the ATSA, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. However, approximately 45,000 security screeners in TSA could not pursue retaliation complaints at OSC or the Board. OSC's efforts led to a memorandum of understanding (MOU) with TSA, under which OSC would review whistleblower retaliation complaints from security screeners and recommend corrective or disciplinary action to TSA when warranted. The MOU, however, did not provide for OSC enforcement actions before the Board.

In November 2012, Congress enacted the Whistleblower Protection Enhancement Act (WPEA), which extended whistleblower protections to TSA screeners. It also overturned court decisions that had narrowed protections for Government whistleblowers, and enabled OSC to seek disciplinary actions against supervisors who retaliated against whistleblowers.

In December 2012, Congress passed the Hatch Act Modernization Act, which created a more flexible penalty structure for violations of the Hatch Act by Federal employees and lifted the ban on state and local Government employees running for partisan political office in most cases. The new act allowed state and local employees to run as long as their salary was not fully funded by the Federal Government.

Mission

OSC's mission is to safeguard employee rights and hold the government accountable. To achieve this mission and promote good government in the federal executive branch, OSC's obligations are, broadly speaking: (1) to uphold the merit system by protecting federal employees, applicants, and former employees from prohibited personnel practices, curbing prohibited political activities in the workplace, and preserving the civilian jobs of federal employees who are reservists and National Guardsmen; and (2) to provide a safe channel for federal employees, applicants, and former employees to disclose wrongdoing at their agencies. These two responsibilities work in tandem to maintain the integrity and fairness of the federal workplace and to make the government more accountable.

^aAn individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action, pending investigation of the action by OSC. If the Special Counsel has reasonable grounds to believe that the action resulted from a prohibited personnel practice, OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, OSC may then ask the MSPB to stay the action.

^bPublic Law No. 107-71 (2001).

PART 2 – OVERVIEW OF OPERATIONS

Internal Organization

OSC is headquartered in Washington, D.C., and has three field offices located in Dallas, Texas; Detroit, Michigan; and Oakland, California. The agency includes a number of program and support units.

Immediate Office of Special Counsel (IOSC)

The Special Counsel and the IOSC staff are responsible for policy-making and overall management of OSC. This includes management of the agency's congressional liaison and public affairs activities.

Complaints Examining Unit (CEU)

This unit is the first level review for all complaints alleging prohibited personnel practices. In FY 2016, CEU screened a record 4,111 complaints. 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 qualifying matters for alternative dispute resolution (ADR) to the ADR Unit or to the Investigation and Prosecution Division (IPD) for further investigation, possible settlement, or prosecution. In some cases, unit staff obtain favorable resolutions, including stays and corrective action. Matters not otherwise resolved or that do not qualify for referral to ADR or IPD are closed.

Investigation and Prosecution Division (IPD)

If ADR is unable to resolve a matter, it is referred to IPD, which is comprised of the headquarters and three field offices, and is responsible for conducting investigations of prohibited personnel practices. IPD attorneys determine whether the evidence is sufficient to establish that a violation has occurred. If it is not, the matter is closed. If the evidence is sufficient, IPD decides whether the matter warrants corrective action, disciplinary action, or both. If a meritorious case cannot be resolved through negotiation with the agency involved, IPD may bring an enforcement action before the MSPB.

Disclosure Unit (DU)

This unit receives and reviews disclosures of wrongdoing from Federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the relevant agency to conduct an investigation and to report its findings to the Special Counsel, or closure without further action. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness; the Special Counsel then sends her determination, the report, and any comments by the whistleblower to the President and responsible congressional oversight committees, and these are posted to an online public file.

Retaliation and Disclosure Unit (RDU)

This unit reviews related prohibited personnel practice complaints and disclosures submitted by the same complainant. The assigned RDU attorney serves as the single OSC point of contact for both filings, performing a similar function to the CEU, IPD, and DU attorneys. Where

appropriate, attorneys investigate prohibited personnel practice complaints, obtain corrective or disciplinary actions, and refer disclosures for investigation. RDU attorneys also refer cases to ADR.

Hatch Act Unit (HAU)

OSC investigates and resolves complaints of unlawful political activity by Government employees under the Hatch Act, and we may seek corrective and disciplinary action informally as well as before the MSPB. In addition, OSC is responsible for providing advisory opinions on the Hatch Act to Government employees and the public at large. OSC's outreach and education make employees and agencies aware of their rights and responsibilities under the Hatch Act.

USERRA Unit

OSC enforces the Uniformed Services Employment and Reemployment Rights Act for civilian Federal employees. OSC may seek corrective action for violations of USERRA and provides outreach and education to veterans and agencies on their rights and responsibilities under USERRA.

Alternative Dispute Resolution Unit (ADR)

This unit supports OSC's operational program units. CEU, RDU, IPD, and the USERRA Unit refer matters that are appropriate for mediation. Once referred, an OSC ADR specialist contacts the affected employee and agency. If both parties agree, OSC conducts a mediation session, led by OSC-trained mediators, who have experience in Federal personnel law.

Diversity Outreach and Training Unit

The Diversity, Outreach, and Training Unit facilitates coordination with and assistance to agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that Federal agencies inform their workforces, in consultation with the OSC, about the rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the Whistleblower Protection Act. OSC designed and implements a five-step educational program, the 2302(c) Certification Program, which is mandatory for agencies to complete under the White House Second National Action Plan. Unit staff also provide related training Government-wide. OSC provides formal and informal outreach sessions, including making materials available on the agency website. This unit also helps develop and implement training programs for OSC's internal staff, in order to meet compliance requirements.

Office of General Counsel

This office provides legal advice and support in connection with management and administrative matters, defense of OSC interests in litigation filed against the agency; management of the agency's Freedom of Information Act, Privacy Act, and ethics programs; and policy planning and development.

Administrative Services Division

Component units in the Administrative Services Division include the Finance and Budget Office, the Human Capital Office, the Administrative Services Office, the Office of the Clerk, and the Information Technology Branch.

FY 2016 Budget and Staffing

During FY 2016 OSC operated with budget authority of \$24,119,000, all of which was from appropriated funds. The agency operated with a staff of approximately 129 full-time equivalent (FTE) employees.

FY 2016 Case Activity and Results

During FY 2016, OSC received 6,019^a new matters and carried over 1,902 matters, for a total of 7,921. During this time OSC resolved 5,582 matters, as shown in the charts below. In addition, OSC received 1,641 requests for Hatch Act advisory opinions. **Table 1**, below, summarizes overall OSC case intakes and dispositions in FY 2016, with comparative data for the previous six fiscal years. More detailed data can be found in **Tables 2-7**, relating to the four specific components of OSC's mission—prohibited personnel practice cases, Hatch Act matters, whistleblower disclosures, and USERRA cases.

^a Each year, OSC receives a number of cases that are inadvertently filed by Federal employees as disclosures of wrongdoing but properly should have been filed as prohibited personnel practice complaints. In order to process these cases, OSC must open a disclosure file, review the information provided, and determine that the individual is only seeking relief to address a possible prohibited personnel practice, and not separately making a disclosure of wrongdoing. Where OSC determines that the case was improperly filed as a disclosure, OSC's Disclosure Unit forwards the case to OSC's Complaints Examining Unit, which reviews the claim as a prohibited personnel practice complaint. In 2016, the number of these misfiled disclosure cases made up 31 percent of all whistleblower disclosures filed with OSC. OSC is in the process of modernizing its online complaint filing system to make it more user-friendly. OSC anticipates that the changes to the online system will be completed by the end of FY 2017. The changes should diminish the problem of wrongly-filed disclosure forms. In doing so, the changes will make OSC's Disclosure Unit more efficient, by reducing the administrative costs to review, close, and re-direct improperly filed cases, while also enhancing the user experience. By diminishing the number of wrongly filed disclosure cases, the new system will also provide a more accurate, but lower number of actual disclosure cases received in FY 2018 and beyond.

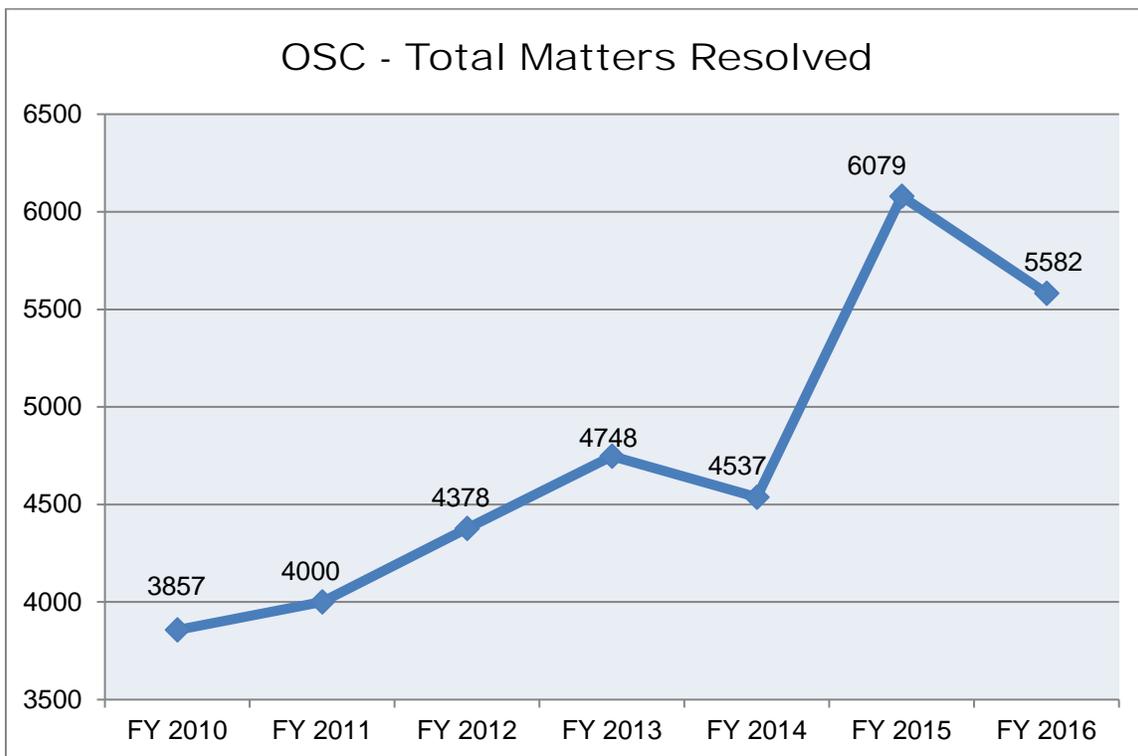
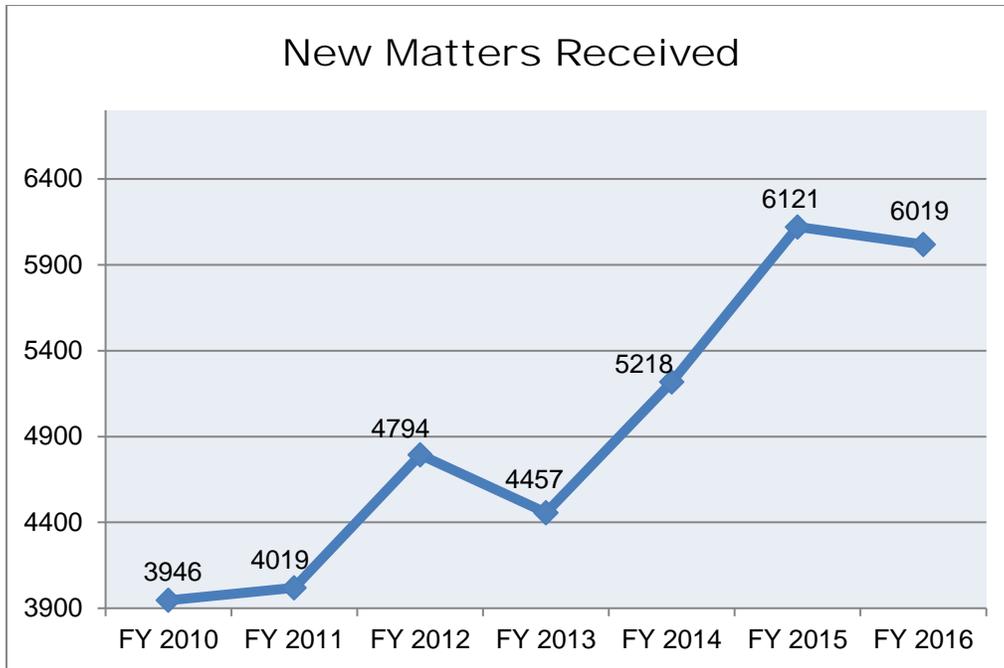
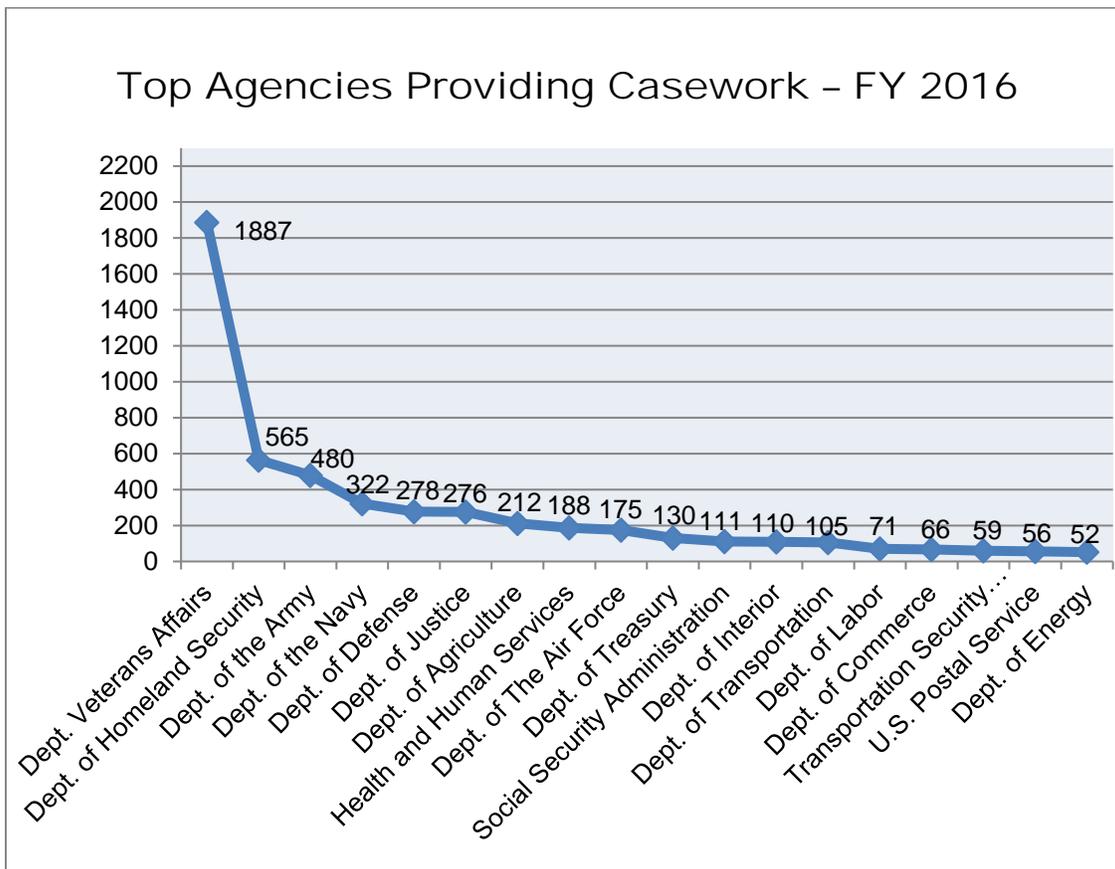


TABLE 1 Summary of All OSC Case Activity

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Matters^a pending at start of fiscal year	1,322	1,357	1,331	1,744	1,399	1,971	1,902
New matters received	3,946	4,019	4,794	4,457	5,218	6,121	6,019
Matters resolved	3,857	4,000	4,378	4,748	4,537	6,079	5,582
Matters pending at end of fiscal year	1,408	1,369	1,743	1,446	2,067	1,993	2,316
Hatch Act advisory opinions issued	4,320	3,110	3,448	1,767	1,382	1,023	1,641

OSC cases come from across the Federal Government. The chart below shows the 18 agencies that were the major sources of our cases in FY 2016.



^a “Matters” in this table includes prohibited personnel practice cases, whistleblower disclosures, and USERRA cases.

PART 3 – PROHIBITED PERSONNEL PRACTICE COMPLAINTS

Summary of Workload, Activity, and Results

OSC's largest program is devoted to handling PPP complaints. Of the 6,019 new matters OSC received during FY 2016 (not including requests for advisory opinions on the Hatch Act), 4,111 or 68 percent were new PPP complaints. Complaints involving allegations of reprisal for whistleblowing—OSC's highest priority—accounted for the largest number of complaints resolved and favorable actions (stays, corrective actions, and disciplinary actions) obtained by OSC during FY 2016.

Receipts and Investigations

OSC is responsible for investigating complaints alleging prohibited personnel practices.^a

As the initial examination unit for all prohibited personnel practice complaints filed with OSC, CEU reviewed new matters to determine whether they merited further investigation. If so, these matters were then referred to IPD for investigation and possible corrective action, or to ADR. In some cases, CEU staff obtained stays or corrective action resolving the matters before referral to IPD. Matters referred to IPD during FY 2016 included whistleblower retaliation, due process violations, and violations of law, rule, or regulations in personnel actions.

Table 2, below, contains FY 2016 summary data (with comparative data for the six previous fiscal years) on OSC's receipt and processing of all prohibited personnel practice complaints handled by CEU and IPD.

^aThe 13 prohibited personnel practices are: (1) discrimination based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation (allegations of discrimination, except discrimination based on marital status or political affiliation, are generally deferred by OSC to EEO processes, consistent with 5 C.F.R. § 1810.1); (2) soliciting or considering improper employment recommendations; (3) coercion of political activity; (4) deceiving or willfully obstructing anyone from competing for employment; (5) influencing anyone to withdraw from competition to improve or injure the employment prospects of another; (6) giving an unauthorized preference or advantage to improve or injure the employment prospects of another; (7) nepotism; (8) reprisal for whistleblowing; (9) reprisal for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or an Inspector General; or refusing to obey an order that would require one to violate a law; (10) discrimination based on personal conduct that does not adversely affect job performance; (11) violating veterans' preference requirements; (12) violating a law, rule or regulation implementing or directly concerning merit system principles set forth at 5 U.S.C. § 2301; and (13) imposing any nondisclosure policy, form, or agreement without informing employees of their whistleblower rights. It should be noted that these are general descriptions of the prohibited personnel practices defined at 5 U.S.C. § 2302(b). That section should be consulted for fuller descriptions of the elements of each of these violations.

TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing^a

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	
Pending complaints carried over from prior fiscal year	777	868	937	1,154	1,046	1,413	1,409	
New complaints received^b	2,431	2,583	2,969	2,935	3,371	4,049	4,111	
Total complaints	3,208	3,451	3,906	4,089	4,417	5,462	5,520	
Complaints referred by CEU for investigation by IPD	220	270	253	255	275	265	213	
Complaints processed by IPD	181	190	276	267	278	308	254	
Complaints pending in IPD at end of fiscal year	252	333	330	318	318	282	264	
Total complaints processed and closed (CEU and IPD combined)	2,342	2,508	2,750	3,041	3,003	4,058	3,870	
Complaint processing times	Within 240 days	2,185	2,327	2,425	2,594	2,577	3,381	3,307
	Over 240 days	155	175	320	440	422	665	554
Percentage processed within 240 days	93%	92%	88%	85%	85%	83%	85%	

Table 3, below, contains summary data for FY 2016 (with comparative data for the six previous fiscal years) on all favorable actions obtained in connection with OSC’s processing of whistleblower reprisal and other prohibited personnel practice complaints.

^a Complaints frequently contain more than one type of allegation. This table, however, records all allegations received in a complaint as a single matter.

^b “New complaints received” includes a few re-opened cases each year, as well as prohibited personnel practice cases referred by the MSPB for possible disciplinary action.

TABLE 3 Summary of All Favorable Actions – Prohibited Personnel Practice Complaints

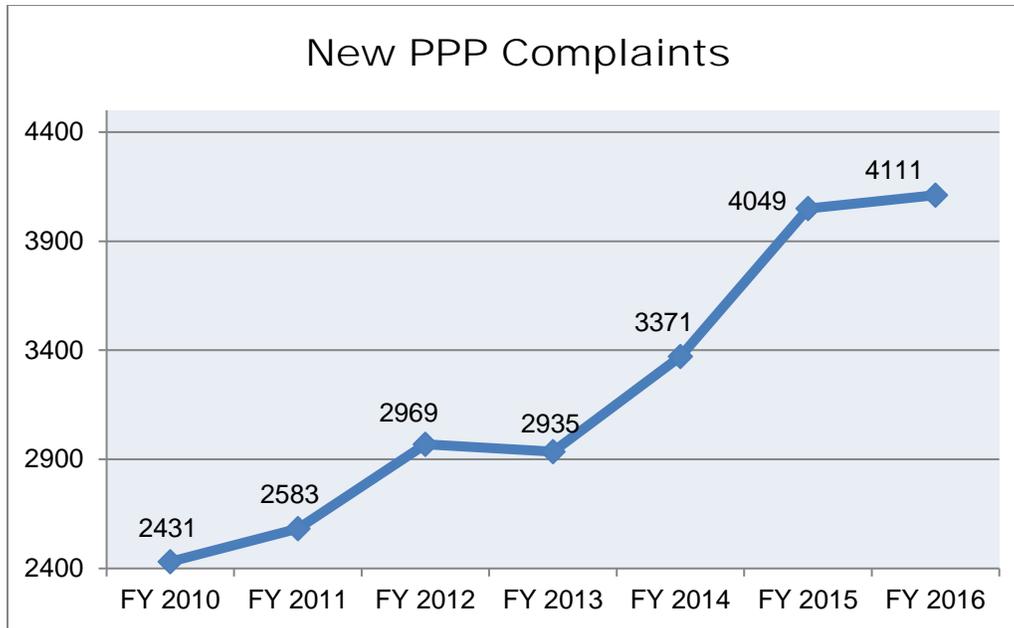
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Total favorable actions negotiated with agencies (all PPPs)	No. of actions^a	95	86	176	189	201	277	276
	No. of matters	76	67	139	140	165	211	217
Total favorable actions negotiated with agencies (reprisal for whistleblowing)^b	No. of actions	65	66	130	121	165	232	222
	No. of matters	55	52	107	107	135	174	177
Disciplinary actions negotiated with agencies		13	6	18	26	23	9	18
Stays negotiated with agencies		13	12	27	29	21	62	39
Stays obtained from MSPB		1	4	8	5	2	3	7
Stay extensions obtained from MSPB		N/A	1	1	7	0	1	4
Corrective action petitions filed with the MSPB		0	1	0	1	0	0	0
Disciplinary action complaints filed with the MSPB		0	0	0	0	3	0	0

Prohibited Personnel Practice Successes

In FY 2016, OSC once again obtained a large number of corrective actions on behalf of employees who were victims of a prohibited personnel practice, such as whistleblower retaliation. In many cases, OSC negotiates informally with Federal agencies to obtain corrective action for employees and disciplinary action against responsible officials. If informal relief or disciplinary action is not attainable through negotiation, OSC may seek relief or disciplinary action through its formal statutory process. Generally, that process requires OSC to issue a report to the head of the responsible agency setting forth findings of prohibited personnel practices and recommendations for corrective and/or disciplinary action. In the vast majority of cases where OSC issues a formal report of findings, the employing agency accepts OSC’s findings and recommendations and takes appropriate corrective and/or disciplinary action. When an employing agency declines, however, OSC is authorized to seek an appropriate remedy before the MSPB.

^a The number of actions refers to how many corrective actions are applied to the case; the number of matters consists of how many individuals were involved in the original case.

^b Some of these cases were handled by the Retaliation Disclosure Team (RDT), a pilot project that worked cases in which one person has filed both a retaliation complaint and a whistleblower disclosure. RDT was made permanent in FY 2016 and is now referred to as the Retaliation Disclosure Unit (RDU).



Litigation

- OSC filed a petition for review with the MSPB in a case where a senior executive service human resources manager allegedly participated in a scheme to grant unauthorized preferences or advantages to three applicants for employment. OSC filed the petition for review after the administrative law judge ruled that the human resources manager had not committed a prohibited personnel practice. The MSPB affirmed the ALJ's decision.
- OSC filed an opposition to a petition for review with the MSPB in a case that OSC had earlier settled. OSC and the respondent, a then-GS-15 supervisory human resources manager, had entered into a settlement agreement whereby respondent was demoted to a lower graded non-supervisory position. OSC and the respondent submitted the settlement agreement to the MSPB for enforcement. The MSPB issued an initial decision, which later became final, accepting the terms of the settlement agreement. More than one year after the MSPB's initial decision became final, the respondent filed a petition for review. The MSPB ruled in OSC's favor and dismissed the respondent's petition for review.

Amicus Curiae

- OSC filed an *amicus* brief with the Court of Appeals for the Tenth Circuit in a case where a purchasing agent was removed from employment after he made disclosures to his supervisor about improper expenditures. OSC argued that the law imposing an additional evidentiary burden on complainants who make disclosures in the normal course of duties is not applicable in the case. OSC argued that Congress intended for the additional burden to apply only to a subset of cases where courts have found that investigating and reporting wrongdoing is an integral part of a Federal employee's everyday job duties,

such as investigators and auditors. The Tenth Circuit vacated and remanded in part, but did not reach the issue addressed in OSC's *amicus* brief. (Amicus Working Group)

- OSC filed an *amicus* brief with an MSPB administrative judge in a case where a teacher was removed from employment after she made disclosures that staff members were abusive to students. OSC argued that the law imposing an additional evidentiary burden on complainants who make disclosures in the normal course of duties is not applicable in the case. Similar to the issue in Tenth Circuit case above, OSC argued that Congress meant for this provision to be narrowly applied in cases where regularly investigating and reporting wrongdoing is an integral part of the employee's everyday job duties, such as investigators and auditors. We are awaiting the administrative judge's decision. (Amicus Working Group)
- OSC filed an *amicus* brief with the MSPB in a case where a motor vehicle operator supervisor received a notice of unacceptable performance, was placed on a performance improvement plan, and was subsequently removed from employment for failing the performance improvement plan. In its brief, OSC proffered the appropriate standard that should be used when evaluating the law that imposes an additional evidentiary burden for disclosures made in the normal course of duties. OSC argued that the appropriate standard is "contributing-factor-plus," that this standard is consistent with the WPEA, and it is fair and workable. We are awaiting the MSPB's decision. (Amicus Working Group)
- OSC filed an *amicus* brief with the MSPB in a case where the administrative judge concluded that an appellant's disclosure was not protected because although he was an employee when the retaliation occurred, he was a contractor when he disclosed the alleged wrongdoing. OSC argued that the law does not require a whistleblower to be an employee or applicant at the time of the disclosure, that non-precedential Federal Circuit cases suggesting otherwise are distinguishable, and that the administrative judge's decision creates an unnecessary gap in whistleblower protections for those in unique positions to observe and report Government wrongdoing. We are awaiting the MSPB's decision. (Amicus Working Group)

Negotiated Resolutions for Whistleblower Retaliation

A few examples of negotiated corrective action that OSC obtained for whistleblower retaliation include:

- OSC obtained disciplinary actions (14, 10, and 5-day suspensions) for three officials who participated in the removal of a whistleblower. The whistleblower, a maintenance worker, disclosed gross mismanagement and abuses of authority. His removal was reversed by the MSPB, which referred the case to OSC.
- Complainant, a manager, was reassigned to a non-supervisory position after disclosing a potential danger to public health and safety. OSC negotiated a resolution with the agency

that returned complainant to his former position. The agency also agreed to provide training on prohibited personnel practices.

- Complainant, a technology manager, was suspended for seven days and charged with workplace violence after disclosing a network security concern. The agency cleared complainant of the violence charge, yet continued to restrict his building access and ability to work. After OSC's investigation uncovered evidence of retaliation, the agency agreed to rescind the suspension and provide complainant with back pay, compensatory damages, and a lump sum in exchange for his retirement. The agency also agreed to provide training on prohibited personnel practices.
- Complainant was reassigned and suffered other actions because, OSC's investigation found, she reported Anti-Deficiency Act violations to the Inspector General. The parties settled and the agency agreed to correct two of complainant's performance appraisals, restore sick and annual leave, provide compensatory damages, and reimburse complainant for attorney's fees. The agency also agreed to reprimand the subject official.
- Complainants, four employees at the same facility, alleged retaliation after disclosing safety issues and testifying during an investigation. OSC brokered a settlement agreement which, among other things, rescinded the suspensions of two complainants and expunged all negative material from all four complainants' personnel files.
- A technical enforcement officer alleged the agency improperly inserted a security clearance requirement into his position description after he had disclosed an abuse of authority, and then proposed his removal. OSC's investigation revealed that the insertion of the security clearance requirement was unexplained and unaccompanied by the usual documentation. The agency maintained the requirement was legitimate, but agreed to transfer complainant to a lateral position that did not require a clearance and to compensate the complainant \$5,000.
- Complainant, a research biologist, alleged the agency failed to renew his term appointment because he disclosed gross mismanagement and the failure to issue him a performance evaluation. While OSC could establish a prima facie case of whistleblower retaliation, the agency had a possible defense for nonrenewal because the demand for complainant's services had dropped significantly. In settlement, the agency agreed to renew complainant's term appointment for one last six-month extension on top of the nine months that the agency held complainant's nonrenewal in abeyance pending OSC's investigation.
- A police officer alleged that because of his disclosures of mismanagement and unsafe conditions in his police force he was not selected for more than 15 positions for which he had applied over the course of five years. Finally, he received an offer of promotion to a police instructor position, but only days after he left his agency to accept a job at a different agency. He wanted the promotion, so he resigned his new appointment to accept

the offer, only to learn his promotion had been rescinded. After OSC's investigation uncovered evidence that the rescission was retaliatory, the agency agreed to promote him to the instructor position.

- Complainant, a nurse manager, alleged that after her disclosures of a hostile work environment and patient safety concerns, the agency issued her an admonishment, investigated her use of overtime, placed her on administrative leave, and began to remove her from employment. OSC obtained an informal stay of her removal. OSC's investigation established a prima facie case of retaliation, in particular the differing treatment of complainant from non-whistleblowers. In settlement, the agency agreed to pay complainant a lump sum of \$50,000, to forego seeking an offset for income she earned while on administrative leave, to expunge all negative references in her personnel folder, and to seek no recovery for approximately \$18,000 in overtime payments she received during her employment. Complainant resigned voluntarily from the agency.
- An air traffic control specialist alleged threats and harassment by employees after he disclosed safety concerns to agency officials, media outlets, and OSC. OSC obtained a settlement agreement in which the agency agreed to complainant's request for a transfer to another facility of his preference.
- Complainant, a healthcare worker, was suspended after reporting a significant danger to public health and safety and gross mismanagement. As a result of OSC's involvement, the agency rescinded the suspension and provided back pay.
- Complainant, a technology employee, alleged removal after disclosing abuse of authority and gross mismanagement at the agency. OSC negotiated a resolution that included supervisory training, a lump sum payment, a clean record including the successful completion of probationary period, a neutral job reference, and whistleblower training for management.
- A public affairs supervisor was given a reprimand and negative performance evaluation, placed on a performance improvement plan, reassigned, and threatened with demotion after reporting gross mismanagement and abuse of authority. OSC obtained a settlement that rescinded these personnel actions. OSC also obtained reassignment for complainant to a new chain of command and attorneys' fees.
- Complainant, a psychologist, alleged that after he made disclosures about management's financial improprieties, waste, and fraud, his manager took steps to prevent him from achieving the same pay level as similarly situated employees and subjected him to a hostile work environment. The employee alleged that his manager also declined to give him performance appraisals and bonuses like those given to his peers. The employee made additional disclosures to the agency Office of Inspector General (OIG) regarding time and attendance fraud and preferential treatment by his manager, which were ultimately substantiated by the OIG. A month after making those disclosures, the employee deployed to Afghanistan with the Air Force Reserve. Upon his return to the agency, less than one year later, the employee was coerced by his manager to take a

different position doing administrative and technical support work unrelated to psychology. To settle the claim, the agency agreed to provide the employee compensatory damages, adjust his pay level, and take other actions to make him whole.

- Complainant alleged that he was subjected to a retaliatory investigation and detailed to another position for making protected disclosures. OSC helped to facilitate a corrective action settlement, which included an end to the investigation.
- Complainant, a former Deputy Inspector General, alleged that he was demoted and reassigned in reprisal for participating in an OSC investigation. OSC helped to facilitate a corrective action settlement, which included restoring the complainant to his position.

Whistleblower/EEO Complaint Resolution

- A program manager alleged that because she disclosed abuse of authority and filed an Equal Employment Opportunity complaint, she suffered a variety of personnel actions, including a 14-day suspension for allegedly making a false statement to Government officials. OSC's investigation showed that complainant likely did not make a false statement and that the agency deviated from its ordinary practices in investigating and disciplining her. In settlement, the agency agreed to pay complainant \$150,000 as compensatory damages and for attorney's fees, rescinded her suspension, provided back pay for that suspension, restored all benefits she lost due to the suspension, restored 47.5 hours of annual leave and 164 hours of sick leave, reassigned her to a new supervisor, and provided her a salary increase of approximately \$8,000.

Improper Selection Practices

- Complainant, a human resources director in the Senior Executive Service, disclosed a hostile work environment and improper favoritism leading to non-merit hiring practices. Less than one month after an administrative investigation partially substantiated complainant's claims, management reassigned complainant to a new position with no assigned duties and without the required notice. Complainant also received a lower evaluation and bonus. In settlement, the agency agreed to provide complainant with a corrected evaluation, an increased bonus, and compensatory damages. Complainant chose not to rescind the reassignment. The agency conducted a further inquiry and disciplined a subject official.
- OSC investigated a case alleging unauthorized preferences or advantages in a number of recruitment actions. In one of the cases, OSC found that a division director engineered an overly restrictive selective placement factor to improve the employment prospects of a temporary employee who was already performing the job. The division director received a letter of reprimand and later retired from Federal service.

Discrimination and Harassment

- Complainant, a former physical evaluation board liaison officer, alleged that a coworker sexually harassed her for more than two years and that her supervisor was aware of the harassment but took no steps to stop it. OSC's investigation established the complainant's harassment, including the use of sexually charged language, over a period of several years and that complainant's supervisor should have been aware of this pattern of inappropriate behavior and done more to correct it. In settlement, the agency paid complainant \$25,000.

Due Process

- An agency terminated a health technician's term appointment without proper due process. To resolve the matter, the agency agreed to compensate complainant for the maximum amount of extension terms available for the position she previously held.

Nepotism

- Complainant, a law enforcement officer, alleged acts of nepotism at his agency. OSC did not substantiate the allegation, but found reasonable grounds to recommend systemic training for the agency to educate officials and other agency employees on nepotism and other PPPs.

Subpoenas

- Complainant reported that his duties and working conditions had been significantly changed after he disclosed violations of law, rule, or regulation and gross waste of funds to OSC. An agency official did not cooperate with OSC's request for an interview. After OSC issued a subpoena for the official's testimony, he appeared and testified in compliance with the subpoena.

Stays of Personnel Actions

- Complainants, two senior-level disabled veteran employees, were denied promotions after refusing to withdraw from competition when asked by the agency's hiring officials. OSC obtained a formal stay of the two proposed promotion appointments from the MSPB. OSC is still completing its investigation in this matter.
- A physician received a proposed removal after disclosing concerns about patient safety and controlled substances to management and the OIG. OSC obtained a formal stay of the proposed removal from the MSPB. OSC is still completing its investigation in this matter.
- Complainants, two program analysts, received proposed removals after disclosing improper hiring practices at their agency. One complainant also alleged retaliation for disclosing information to Congress and OSC. The agency granted an informal stay of both proposed removals while OSC investigates the allegations.

- Complainant, a physician and service line director, received a proposed demotion after meeting with the Inspector General regarding patient care issues. The agency granted an informal stay of the proposed demotion while OSC investigates the allegations.
- A director of logistics alleged he was reassigned after disclosing unfair hiring and promotion practices within the agency. The agency granted an informal stay of the reassignment while OSC investigates the allegations.
- OSC filed a formal stay request with the MSPB based on evidence showing that the agency proposed a removal action against a complainant in reprisal for disclosures concerning conflicts of interests related to grant initiatives. The MSPB granted a 45-day stay of the proposed removal.
- After an agency denied OSC's request for an informal stay, OSC filed a formal stay with the MSPB based on evidence showing that the agency proposed a removal action against a complainant in reprisal for disclosures to Congress and to the Council of the Inspectors General on Integrity and Efficiency concerning gross mismanagement. Before the MSPB issued an order, the agency contacted OSC and agreed to informally stay the proposed removal action if OSC agreed to withdraw its stay request from the MSPB. OSC agreed.
- An agency granted OSC an informal stay of a proposed removal based on evidence showing that the personnel action was initiated in reprisal for filing union grievances and making disclosures concerning time and attendance fraud, favoritism, harassment, and a hostile work environment.
- An agency granted OSC an informal stay of a proposed removal based on evidence showing that the personnel action was initiated in reprisal for filing a lawsuit in Federal District Court and for making disclosures to the OIG concerning the placement of an illegal recording device in a police control room.
- An agency granted OSC an informal stay of a proposed removal based on evidence showing that the personnel action was initiated in reprisal for disclosures concerning travel fraud and numerous unlawful hiring practices.
- An agency granted OSC an informal stay of a proposed removal based on evidence showing that the personnel action was initiated in reprisal for the complainant's participation in OIG investigations and disclosures concerning harassment, a hostile work environment, nepotism, and unlawful hiring practices.
- An agency granted OSC an informal stay of a 14-day suspension based on evidence showing that the personnel action was initiated in reprisal for disclosures to the OIG concerning contract violations, inappropriate purchase card use, excessive overtime, and issues with the agency's preventative maintenance program.

- An agency granted OSC an informal stay of a ten-day suspension based on evidence showing that the personnel action was initiated in reprisal for disclosures to the OIG concerning violations of regulatory physical security procedures.
- An agency granted OSC an informal stay of a geographical reassignment based on evidence showing that the personnel action was initiated in reprisal for disclosures concerning gross mismanagement of an agency's information network system.

PART 4 – USERRA ENFORCEMENT

Overview

USERRA protects the civilian employment and reemployment rights of those who serve in the Armed Forces, including the National Guard and Reserves, and other uniformed services. USERRA is intended to encourage non-career military service and to minimize the disruption to the lives of those who serve by ensuring that such persons: (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty, with full benefits and seniority, as if they had never left; and (3) are not discriminated against in employment (including initial hiring, promotion, retention, or any benefit of employment) based on past, present, or future uniformed service. The law applies to Federal, state, local, and private employers.

Congress intends for the Federal Government to be a “model employer” under USERRA, and OSC is committed to helping fulfill that goal. In furtherance of that effort, OSC plays an important role in enforcing USERRA by providing representation, when warranted, before the MSPB and the U.S. Court of Appeals for the Federal Circuit to service members whose complaints involve Federal executive agencies. OSC also endeavors to informally resolve USERRA complaints. Finally, OSC provides USERRA outreach and training to the Federal community and technical assistance to employers and employees with USERRA questions via telephone and email hotlines.

Under USERRA, a claimant alleging a violation by a federal executive agency may either file an appeal with the MSPB or a complaint with the Department of Labor, Veterans’ Employment and Training Service (VETS). If the claimant chooses to file a complaint with VETS, VETS must investigate and attempt to resolve the complaint. If it cannot resolve the matter, the claimant may direct VETS to refer the complaint to OSC for possible representation before the MSPB. In FY 2016, OSC received 16 such referrals from VETS. If, after reviewing the complaint and investigative file, OSC is reasonably satisfied that the person is entitled to relief under USERRA, OSC may act as his or her attorney and initiate an action before the MSPB.

Summary of Workload, Activity, and Results

Corrective Action

There were no referrals in FY 2016 that resulted in corrective action taken.

Referrals Pending at End of Fiscal Year

The number of pending referrals decreased 42 percent from FY 2015 levels.

USERRA Unit Successes

OSC is playing a key role in ensuring that the Federal Government upholds its responsibility to be a model employer under USERRA, especially with so many military personnel returning from overseas deployment. Examples of recent USERRA successes include:

Negotiated Resolutions

- Complainant, an Air Force Reservist, alleged that the Air Force denied his request for reemployment and stated that his Maintenance Supervisor position at a large domestic Air Force base had been abolished during his 13-month deployment. As a result, complainant suffered financial hardship and a period of unemployment. OSC intervened and explained to the agency that it was obligated under USERRA to reemploy complainant in an alternate position for at least one year upon his return. As a result of OSC's efforts, the agency agreed to compensate complainant the equivalent of one year's salary.
- Complainant, a Marine Corps Reservist, alleged that he received a tentative employment offer as a U.S. Customs and Border Patrol (CBP) agent and began the onboarding process. During that time, he was recalled to active duty for one year. When complainant returned, he was placed back into the onboarding process but not actually hired for several more years. As a result of the tardy hiring and related lost seniority, he had to commute a long distance from his home and work the least desirable shifts. Citing USERRA's goal of minimizing disadvantages to the civilian careers of service members, OSC convinced CBP to provide complainant with a retroactive hiring date for seniority purposes to the time he most likely would have been hired had he not been recalled to active duty.

Technical Assistance

- OSC provided technical assistance to the Department of Defense (DOD) regarding modifications to a regulation that made an unnecessary distinction between "career" and "non-career" military service. At OSC's urging, DOD agreed to amend the regulatory provision and related guidance so that Federal agencies could not use the language to improperly deny reemployment to certain service members.
- OSC provided technical assistance to the Peace Corps when that agency sought to revise its regulations regarding the eligibility requirements for Peace Corps volunteers. OSC worked with the Peace Corps to amend the requirements to ensure that Reserve members would not be excluded from participation.

Outreach and Education

During FY 2016, OSC worked to ensure that the Federal Government is a "model employer" under USERRA by (1) conducting USERRA training for Federal agencies and at national conferences; (2) briefing veterans service organizations about OSC's USERRA program; and (3) providing technical assistance to service members and their employers through USERRA's

telephone and email information hotlines.

Table 4 below contain FY 2016 summary data with comparative data and disposition of USERRA referral cases, and Demonstration Project cases, respectively.

TABLE 4 Summary of USERRA Referral and Litigation Activity^a							
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Pending referrals carried over from prior fiscal year	7	12	17	11	6	7	4
New referrals received from VETS during fiscal year	32	36	24	7	14	18	16
Referrals closed	27	31	30	12	13	21	15
Referrals closed with corrective action	0	2	4	2	2	2	0
Referrals closed with no corrective action	27	29	26	10	11	19	15
Referrals pending at end of fiscal year	12	17	11	6	7	4	5
Litigation cases carried over from prior fiscal year	1	1	0	0	0	0	0
Litigation cases closed	1	1	0	0	0	0	0
Litigation closed with corrective action	1	0	0	0	0	0	0
Litigation closed with no corrective action	0	1	0	0	0	0	0
Litigation pending at end of fiscal year	1	0	0	0	0	0	0

PART 5 – ALTERNATIVE DISPUTE RESOLUTION

OSC offers alternative dispute resolution, including mediation, in appropriate cases as an alternative to investigation. If OSC’s ADR Unit finds that a complaint is appropriate for its consideration, an OSC ADR specialist contacts the parties to discuss the process and offers mediation. If accepted, pre-mediation discussions are conducted in an effort to help the parties form realistic expectations and well-defined objectives for the mediation process. If mediation resolves the complaint, the parties execute a written, binding settlement agreement. These can result in a range of outcomes, such as a corrective personnel action including reinstatement, an

^a This table has been reorganized with some categories and figures changed from prior reports to correct discrepancies and more clearly present relevant information.

apology, a letter of recommendation, a revised performance appraisal, and monetary recoveries, including attorneys' fees reimbursement and lump sum payments. If mediation cannot resolve the complaint, it is referred to IPD or RDU for further investigation.

ADR Successes

Below are some significant case summaries from our ADR Unit. Note that mediation settlement agreements are confidential unless otherwise agreed upon.

- Complainant, a medical professional in an intern program, refused to record what she considered to be false inventory numbers as directed by her supervisor. Thereafter, she claims, her supervisor substantially changed her duties and eventually terminated her during her probationary period. Complainant and agency officials worked with OSC mediators to reinstate complainant into the intern program in a location acceptable to her. The agency also provided back pay and a monetary payment to assist with relocation and miscellaneous expenses.
- A senior employee disclosed improper hiring practices to senior management. As a result, she alleges, the agency removed her supervisory responsibilities, lowered her performance evaluation, denied her permission to telework, and significantly changed her duties. Through mediation the agency and complainant agreed upon a new position for her. The agency also raised complainant's performance rating, and restored the leave that she took during the alleged retaliatory period.
- A medical professional claimed retaliation and a hostile environment after he disclosed that the staff at a mental health facility was failing to properly triage patients. In addition, complainant alleged that he received a lowered performance rating, was improperly put on administrative leave, and was investigated. The complainant and the agency agreed to let the medical professional return to a position in a different facility where he would be able to engage in programs about which he is passionate. The agency also restored leave, removed disciplinary personnel records, raised his performance rating, and paid a lump sum for compensatory damages and attorneys' fees.
- Complainant, a trade worker, alleged he was retaliated against for whistleblowing on Occupational Safety and Health Administration violations, when his supervisor assigned him tasks he could not perform due to his disability. With OSC's help, the parties agreed to a settlement that included cooperation with complainant's application for a disability retirement, agreement to refrain from making disparaging or adverse comments pertaining to the complainant for a time certain, and a monetary payment for compensatory damages.
- An agency revoked the complainant's job offer when it learned that she was a debtor in a Chapter 13 bankruptcy process, indicating she should re-apply after her bankruptcy was complete. OSC helped both parties communicate and review Federal law that prohibits discrimination against debtors on the basis of their status as a debtor in a Federal bankruptcy proceeding. The agency again offered the position to the complainant and agreed to destroy earlier records indicating she was previously denied the position.

- A Government physician alleged that the agency retaliated against her for disclosing that medical staff were not properly supervising surgeries, her medical facility engaged in improper hiring practices, and that the work environment was hostile. As a result, she alleges, she was given a lowered performance appraisal, investigated, moved to another facility and her duties were substantially altered. Through mediation the complainant received training and increased privileges, support for a promotion, a monetary payment, and attorneys' fees. The agency agreed to train its staff on whistleblower protection, EEO laws and medical certifications.
- A midlevel employee disclosed contracting improprieties overseas, age discrimination, and bullying. He alleges that he was retaliated against when he was reassigned, his duties were significantly changed, he was unable to work overtime, and his performance evaluation was reduced from prior years. As a result of an OSC mediation, the complainant received a reassignment, an increased performance evaluation ranking with added language documenting performance achievements, a monetary sum, and a performance bonus.

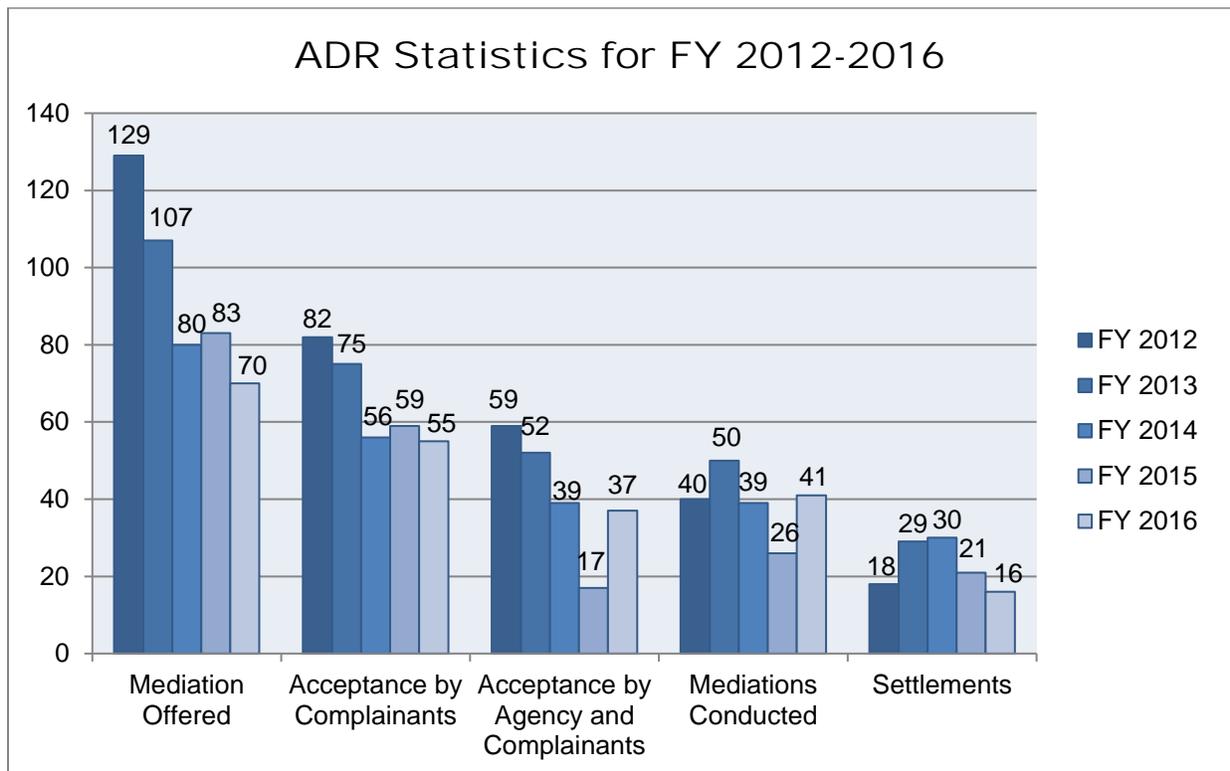


Table 6, below, contains summary data for FY 2016 (with comparative data for the six previous fiscal years) on all mediations OSC offered and completed in response to prohibited personnel practice complaints.

TABLE 6 ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints & USERRA Complaints							
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Number of cases in which mediation offered after referral from CEU or USERRA plus cases referred from IPD^a	26	31	129	107	80	83	70
Mediation offers accepted by complainants	11	20	82	75	56	59	55
Mediation offers accepted by agencies and by complainants	6	15	59	52	39	17	37
Number of mediations conducted by OSC^b	6	13	40	50 ^c	39	26	41
Number of mediations withdrawn by either OSC or the agency after acceptance	0	2	10	6	8	13	16
Number of mediations withdrawn after at least one mediation session	*	*	0	2	1	0	3
Number of completed mediations	*	*	30	47	38	26	24
Number of completed mediations that yielded settlement	3	10	18	29	30	21	16
Percentage of completed mediations that resulted in settlement	50%	77%	60%	62%	79% ^d	81%	67%
Cases in process^e - carryover from previous FY	N/A	N/A	5	1	0	0	0
Carryover to next FY – In process	N/A	N/A	15	10	12	17	18
Carryover to next FY – Offer pending^f	N/A	N/A	20	7	4	2	3
Carryover to next FY – Pending review	N/A	N/A	N/A	10	10	0	1

^a Category includes complaints settled through mediation by OSC (including “reverse-referrals,” cases referred back to ADR program staff by IPD after investigation had begun due to the apparent potential for a mediated resolution). Category also includes complaints that entered the initial OSC mediation process and were then resolved by withdrawal of the complaint or through mediation by an agency other than OSC.

^b Includes cases completed or withdrawn after at least one mediation session.

^c “Number of completed mediations that resulted in settlement” omits cases withdrawn before mediation was completed.

^d Percentage of completed mediations that resulted in settlement” omits cases withdrawn before mediation was completed.

^e “In process” means parties have agreed to mediate and mediation is scheduled or ongoing with more than one session.

^f “Offer pending” means cases in which OSC will offer or is in the process of offering mediation to the parties.

PART 6 – WHISTLEBLOWER DISCLOSURES

Overview

OSC provides a safe channel through which Federal employees, former Federal employees, or applicants for Federal employment may disclose violations of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. Many disclosures involve complex and highly technical matters unique to an agency's or whistleblower's duties, such as disclosures about aviation safety, engineering issues, or impropriety in Federal contracting.

Upon receipt of a disclosure, Disclosure Unit (DU) attorneys review the information to evaluate whether there is a "substantial likelihood" that the information discloses one or more of the categories of wrongdoing described in 5 U.S.C. § 1213. If it does, the Special Counsel is required by § 1213(c) to send the information to the head of the agency for an investigation. If the whistleblower consents, his or her name is provided to the agency as the source of the information. If the whistleblower does not consent, the agency is notified that the whistleblower has chosen to keep his or her identity confidential. (The Special Counsel may also make discretionary referrals to the heads of agencies in certain circumstances.)

Upon receipt of a § 1213(c) referral from the Special Counsel, the agency head is required to conduct an investigation and promptly issue a report to the Special Counsel describing the agency's findings. The whistleblower has the right to review and comment on the report. OSC reviews the report to determine whether the agency's findings appear to be reasonable. The Special Counsel then sends the agency report, any comments by the whistleblower, and any appropriate comments or recommendations, to the President and congressional oversight committees for the agency involved. A copy of the agency report and any comments on the report are placed in OSC's public file.

Summary of Workload, Activity, and Results

The number of reports sent to the President and Congress increased by eight percent (from 72 to 78) between FY 2015 and FY 2016. Examples of disclosures that OSC referred for further action are highlighted below.

Disclosure Unit Successes

Violation of Law, Rule or Regulation, Gross Mismanagement and Substantial and Specific Danger to Public Health

Improvements in staffing at VA facility. OSC referred to the Secretary of the Department of Veterans Affairs allegations that employees at Southern Arizona VA Health Care System (SAVHCS), Sterile Processing Service (SPS), in Tucson, Arizona, failed to follow proper procedures in the handling of reusable medical equipment. The whistleblower also alleged the

SPS was grossly understaffed and that SPS managers falsified education and training documents to satisfy VA recordkeeping requirements and pass periodic inspections. The investigation concluded that SPS was understaffed, but did not substantiate that SPS staff failed to follow proper procedures in the handling of reusable medical equipment or that SPS management emphasized speed over compliance with standard operating procedures and competencies. Nevertheless, the investigation recommended significant corrective action to address shortcomings identified by the investigation, including improving SPS staff communication; SPS team building; hiring and training of vacant medical supply technician positions; continued monitoring of SPS quality indicators for trends and appropriate response; and a VHA review of the requirements that mandate SOPs on each piece of reusable medical equipment. The report also recommended that an Administrative Investigation be convened to determine whether the SPS Chief completed training for a subordinate employee and whether disciplinary action was warranted. The agency later confirmed that following the AI, the SPS Chief received a five-day suspension and the SPS Evening Supervisor received a three-day suspension. *Referred August 19, 2015; transmitted to the President and congressional oversight committees and closed on September 1, 2016.*

Enhancements to National Institute on Aging study. OSC referred to the Secretary of the Department of Health and Human Services allegations regarding the implementation and management of the National Institutes of Health, National Institute on Aging (NIA), Baltimore Longitudinal Study on Aging (BLSA) filed by a former staff clinician in the NIA Clinical Unit. The whistleblower alleged that NIA research staff violated standard operating procedures and failed to follow good clinical practices in the administration of the BLSA. Specifically, the whistleblower alleged that BLSA participants were not timely informed of abnormal medical test results, and that the notification participants did receive was inadequate because it did not include information required by the BLSA protocol, such as an explanation of the medical test results. The investigation did not substantiate any violation of law, rule or regulation or find there was a substantial and specific danger to public health or safety, but did conclude that some corrective actions were warranted. In response, the agency took significant steps to improve its processes related to the administration of the BLSA, including the review of information on protocols and informed consent provided to participants. *Referred November 22, 2013; transmitted to the President and congressional oversight committees and closed on June 9, 2016.*

Review of staffing qualifications and backlog of laboratory reports. OSC referred to the Secretary of Veterans Affairs allegations of wrongdoing at the Philadelphia VA Medical Center (VAMC), Pathology and Laboratory Medicine Service (P&LMS). The whistleblower alleged that the Director of the Electron Microscopy Unit (EM) was not an American Board of Pathology (Board) certified anatomic pathologist and, therefore, was not qualified to serve as EM Director and not in compliance with P&LMS procedures and requirements in the Veterans Health Administration Handbook. The whistleblower also alleged that the EM routinely failed to issue written reports on specimens transmitted for EM study within ten working days using the Veterans Health Information Systems and Technology Architecture (VistA), as required by the Handbook. The whistleblower asserted that the absence of written reports on EM studies in VistA deprived clinicians of the results, which negatively affected patient treatment.

The agency investigation substantiated the allegation that the Director was not Board certified and, therefore, not qualified to serve as director of a diagnostic electron microscopy program, but

determined that EM was a non-diagnostic program. The agency also found that EM did not routinely issue written reports on specimens accessed for EM study within ten working days using VistA. However, because the EM program is not a diagnostic program, neither P&LMS procedures nor the Handbook was violated nor was patient treatment negatively affected. Nonetheless, the VA acknowledged that EM's lack of closure of accessions, even for quality control, education, and research purposes created the misperception of unfinished diagnostic work. In response, the VA recommended that EM close the open accessions within VistA, use existing paper records to reflect the actual date of completion, and establish a practice of closing accessions when the final dispositions are determined. The VA also recommended that the Veterans Health Administration (VHA) review accession closure practices at the other seven diagnostic EM facilities to ensure that they are closing out accessions as required by the Handbook. In July 2016, the VA provided an update to OSC that Philadelphia VAMC has electronically closed all of its open EM accessions within VistA and established a practice of closing all accessions as the final dispositions are determined. The VA also stated that the VHA National Diagnostic EM Program has reviewed the practices at the seven VA EM facilities, all of which are in the process of closing out all accessions in accordance with the Handbook. *Referred September 28, 2015; transmitted to the President and congressional oversight committees and closed on August 29, 2016.*

Gross Mismanagement and Substantial and Specific Danger to Public Health

Ensuring adequate VA staffing for the distribution of medications to high-risk patients. OSC referred to the Secretary of Veterans Affairs allegations that the processing and filling of prescriptions for mental health patients at the Greater Los Angeles Healthcare System (GLAHCS), Community Based Outpatient Clinic (CBOC), in Santa Maria, California, was grossly delayed causing harm to patients. The whistleblower alleged the delay was caused by understaffing at the CBOC, which employed one full-time pharmacist to process thousands of mental health patient prescriptions. The investigation substantiated the allegations and confirmed that an unreasonable delay existed in the processing and delivery of prescriptions through the Santa Maria CBOC. The agency also confirmed that this delay had the potential to cause patient harm and determined that VA management was largely unaware of the backlog of prescriptions at the Santa Maria CBOC, and did not properly log or report the backlog to the Veterans Integrated Support Network, which violated VA policy. The agency also determined that the VA was not in compliance with several prescription processing and staffing-related regulations. However, because of the hiring of additional pharmacists to service multiple GLAHCS CBOCs, the prescription wait time does not currently exceed seven days. OSC also confirmed that the VA is hiring additional pharmacy staff, and establishing pharmacy workload metrics related to prescription processing and staffing, which the VA's Acting Chief of Pharmacy will review and report on quarterly. *Referred August 25, 2015; transmitted to the President and congressional oversight committees and closed on August 30, 2016.*

Violation of Law, Rule or Regulation, Gross Mismanagement, Gross Waste of Funds, and Substantial and Specific Danger to Public Health

Failure to properly test aircraft fueling equipment and jet fuel. OSC referred to the Secretary of the Navy allegations of wrongdoing at the Department of the Navy, Fleet Readiness Center (FRC) East, in Cherry Point, North Carolina. The whistleblower alleged that employees at FRC East failed to properly test aircraft fueling equipment and fuel, and improperly and hazardously disposed of jet fuel. The investigation substantiated the allegations, explaining that FRC East did not properly test aircraft fueling equipment or jet fuel, thereby creating a serious life-safety risk. In addition, the report stated that FRC East wasted Government resources when it unnecessarily discarded thousands of gallons of usable jet fuel based on the mistaken belief that it was contaminated. In response, the agency implemented an extensive variety of corrective actions. FRC East has also discontinued the improper practice of discarding unused jet fuel, achieving an approximate cost savings of \$71,200 per year. The agency did not substantiate the allegation that employees hazardously disposed of jet fuel by dumping it into a wooded area on the base. *Referred August 31, 2015; transmitted to the President and congressional oversight committees and closed on February 23, 2016.*

Improper cancellation of patient appointments. OSC referred to the Secretary of Veterans allegations of wrongdoing at the Phoenix VA Health Care System. The whistleblower alleged that Medical Support Assistants at the Southeast Community Based Outpatient Clinic (SE CBOC) engaged in misconduct with respect to patient scheduling procedures. The investigation substantiated that some schedulers in the SE CBOC rescheduled and cancelled appointments through a prohibited practice known as blind scheduling. In addition, the report found that the Phoenix VA Health Care System was not using the most recent VA policy guidance on scheduling processes, and that SE CBOC employees had not been trained on these revised procedures. The report did not substantiate that patients presenting at the SE CBOC during mental health crises were inappropriately triaged, but acknowledged that proper standard operating procedures were not implemented to assist with this process. The report also substantiated additional allegations disclosed during an interview with investigators that a psychiatrist failed to examine an admitted patient or implement a treatment plan within 24 hours of admission, in violation of agency policy. In response, the agency provided training and education updates for employees on scheduling policies, and continued to conduct scheduling audits. The report recommended the initiation of a Focused Professional Practice Evaluation to determine if the psychiatrist's conduct was below an acceptable standard. The evaluation concluded that the psychiatrist was a skilled and thorough physician, notwithstanding the incident. The VA provided additional information that the physician subsequently resigned on June 9, 2016. *Referred November 3, 2015; transmitted to the President and congressional oversight committees and closed on August 2, 2016.*

Violation of Law, Rule or Regulation, Gross Mismanagement, and Substantial and Specific Danger to Public Health and Safety

Failure to follow proper sanitation procedures and maintain food safety. OSC referred to the Secretary of Veterans Affairs allegations of wrongdoing at the Washington D.C. VA Medical Center (Medical Center), Nutrition and Food Services Program (NFS). The whistleblower alleged that NFS management and employees failed to maintain proper sanitation and food safety at the Medical Center, and that NFS management failed to address his reports of misconduct.

The agency investigation substantiated many of the allegations, finding violations of VA and Veterans Health Administration policies and a substantial and specific danger to public health and safety at the Medical Center. The investigation found a general lack of cleanliness in the main food preparation area, including evidence of a cockroach infestation as well as built-up food debris and dust. In addition, the investigation substantiated the allegation that NFS employees did not properly inspect, label, and store food items. The agency partially substantiated the allegation that NFS employees did not comply with personal hygiene requirements, finding that employees failed to wear beard restraints and remove jewelry in the food preparation area. The investigation did not substantiate that the Medical Center lacks food safety policies or a Hazard Analysis Critical Control Point (HACCP) plan, but determined that the Medical Center's current HACCP plan did not meet the requirements in the VHA Handbook. Nor did the investigation substantiate that NFS management failed to take appropriate action to ensure employee compliance with sanitation standards. Investigators determined that the current NFS Chief had taken ten personnel actions, including reprimands and terminations, and sent one staff member home for an untidy uniform during her tenure for violations such as failure to follow sanitation guidelines and failure to follow supervisory instructions.

In response, the Medical Center updated the NFS staffing plan, filled the vacant Assistant Chief position, and posted job vacancy announcements for seven new full-time employee positions within NFS. Second, NFS and Environmental Management Services signed a Memorandum of Understanding on March 24, 2016, to assign responsibilities, assist NFS with maintaining safe and sanitary conditions, and ensure the coordination of efforts to eradicate pests. Third, the NFS Chief updated the HACCP plan, which went into effect on April 30, 2016, to ensure it complies with the required standards. Fourth, NFS management established a monthly training calendar and a SharePoint site to make upcoming training, NFS policies, and the HACCP plan readily accessible to NFS employees; started provided training to NFS staff on best inventory and labeling practices and uniform requirements; established a training log to record all training activities to ensure requirements are met for all NFS staff; and ensured that NFS supervisors are ServSafe certified. Finally, the VHA NFS Program Office conducted an unannounced site visit to the Medical Center in May 2016 and confirmed that the NFS Chief and Administrative Section Chief are participating in the VHS NFS mentoring program. *Referred August 19, 2015; transmitted to the President and congressional oversight committees and closed on June 9, 2016.*

Violation of Law, Rule or Regulation, Gross Mismanagement and an Abuse of Authority

Failure to properly secure protected employee information. OSC referred to the Attorney General allegations of wrongdoing at the Department of Justice (DOJ), U.S. Marshals Service (USMS), Tactical Operations Division (TOD), Arlington, Virginia. The whistleblower alleged that TOD employees failed to follow appropriate procedures for safeguarding and disposing of Personally Identifiable Information (PII) in violation of the Privacy Act of 1974 and DOJ orders.

The agency substantiated the allegations, finding that PII was not appropriately protected on TOD shared drives. In response, TOD took immediate steps to archive or remove PII from

shared drives, limit or restrict access to PII, and actively engaged with the USMS Information Technology Division to implement training and protocols for managing PII. In addition, the agency developed a plan to protect PII within the agency, and purchased a scanning tool that will routinely search for PII not contained in protected folders. Under agency procedures, DOJ's Computer Emergency Readiness Team and Department Security Officer were notified, and a risk assessment conducted to determine the appropriateness of employee notification. The assessment, which was completed in March 2016, determined that there was no evidence that any vulnerable information was used to commit identity theft, no general knowledge of the accessibility of the information, or any known instances of misuse or unauthorized use; therefore, no employee notification was warranted. *Referred July 16, 2015; transmitted to the President and congressional oversight committees and closed on June 7, 2016.*

Violation of Law, Rule, or Regulation, Gross Mismanagement, and an Abuse of Authority

Improper creation of medical accounts and violation of patient privacy. OSC referred to the Secretary of Veterans Affairs disclosures of wrongdoing at the VA G.V. "Sonny" Montgomery VA Medical Center in Jackson, Mississippi (Jackson VAMC). The whistleblower alleged that Jackson VAMC managers violated patient privacy by directing staff to create MyHealtheVet (MHV) accounts for patients without their permission. The whistleblower also disclosed that Jackson VAMC managers failed to notify patients of the improper creation of the MHV accounts and violated patient privacy by allowing the improper storage of patient billing information and other personally identifiable information at the Veterans Integrated Service Network, 16 Consolidated Fee Unit (CFU), in Pearl, Mississippi.

The agency substantiated the allegation that the employees violated veterans' privacy by directing staff to create MHV accounts for veterans without their permission. The agency further substantiated that management failed to notify veterans of the improper creation of MHV accounts and allowed the improper storage of patient billing information. However, the agency was unable to conclude that the paper records were improperly secured or that veterans' privacy was violated by temporary storage practices at the CFU. The agency took significant corrective and disciplinary actions against responsible employees, including two removals, a reassignment and suspension, and two additional suspensions. *Referred April 3, 2014; transmitted to the President and congressional oversight committees and closed on October 7, 2016.*

Table 7, below, contains FY 2016 summary data (with comparative data for the six previous fiscal years) on the receipt and disposition of whistleblower disclosure cases.

TABLE 7 Summary of Whistleblower Disclosure Activity Receipts and Dispositions^a								
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	
Pending disclosures carried over from prior fiscal year	126	85	137	227	195	438	449	
New disclosures received	961	928	1,148	1,129	1,555	1,965	1,714	
Total disclosures	1,087	1,013	1,285	1,356	1,750	2,403	2,163	
Disclosures referred to agency heads for investigation and report	24	49	39	53	92	62	40	
Referrals to agency IGs	2	5	6	2	0	0	0	
Agency head reports sent to President and Congress	67	22	36	54	26	72	78	
Results of agency investigations and reports	Disclosures substantiated in whole or in part	62	21	31	48	25	51	61
	Disclosures unsubstantiated	5	1	5	6	1	21	17
Disclosure processing times	Within 15 days	555	558	583	575	731	830	654
	Over 15 days	451	317	473	585	584	1,117	1,014
Percentage of disclosures processed within 15 days	55%	63%	55%	49%	55%	42%	39%	
Disclosures processed and closed^b	1,006	875	1,056	1,160	1,315	1,947	1,668	

^a Many disclosures contain more than one type of allegation. This table, however, records each whistleblower disclosure as a single matter, even if multiple allegations were included.

^b Some of these cases were handled by the Retaliation Disclosure Team (RDT), a pilot project that works cases in which one person has filed both a retaliation complaint and a whistleblower disclosure. RDT was made permanent in FY 2016 and is now referred to as the Retaliation Disclosure Unit (RDU).

PART 7 – RETALIATION AND DISCLOSURE

CASES

The Retaliation and Disclosure Unit reviews related prohibited personnel practice complaints and disclosures submitted close in time by the same complainant. Cases are identified as possible related matters at an early stage in DU and CEU, and are then transferred to RDU for consolidated review. Staff in DU, CEU, and RDU work closely together to identify appropriate cases for transfer to RDU, based on objective criteria that identifies the matter as one alleging both a disclosure of wrongdoing and a claim of retaliation for whistleblowing or engaging in protected activity.

The assigned RDU attorney serves as the single OSC point of contact for both filings, performing a similar function to the CEU, IPD, and DU attorneys. Where appropriate, attorneys investigate prohibited personnel practice complaints, obtain corrective or disciplinary actions, and refer disclosures for investigation. RDU attorneys also refer cases to ADR.

Summary of Workload, Activity, and Results

OSC's case tables are currently reported by case type, PPP cases, and Whistleblower Disclosures for example. Cases handled in RDU are currently reported in the PPP and DU case tables, respectively.^a In the future with the implementation of the new electronic case management system, OSC plans to segregate out the cases RDU handles so they can be distinctly reported.

In its first full fiscal year, FY 2016, RDU resolved 100 matters, obtained 25 corrective actions; referred six 1213(c) disclosures, informally referred three disclosures, and obtained significant corrective and disciplinary action in one informal disclosure. RDU operated with an average staff of five full-time attorneys during this period. RDU's caseload has steadily increased as the unit matures. RDU continues to perform at a high level given its lean staff and heavy caseload, and more information on its successes will be reported in the next fiscal year.

Retaliation and Disclosure Unit (RDU) Successes

Abuse of Authority and Gross Mismanagement

A whistleblower disclosed evidence to OSC that the Department of Commerce (DOC) failed to act on proposed adverse actions for several employees in a reasonable amount of time. Instead, DOC allowed the proposals in question to linger for lengthy periods. After OSC reviewed the

^a Therefore, RDU's results can be found in Case Tables 2 (page 23), 3 (page 24), and 7 (page 39). In the future, RDU's results will be reported in a case table that is unique just for RDU. OSC is currently implementing a new electronic Case Management System (eCMS) which will provide this reporting capability. The eCMS system is scheduled to go live in September 2017.

whistleblower's information and presented its concerns to the DOC, the agency acted on the pending disciplinary actions and took steps to avoid similar delays in the future. The DOC took corrective and disciplinary action as a result of its review. In addition, the DOC issued a revised policy to require review and justification for any use of administrative leave in disciplinary or investigative situations, and to limit administrative leave to 30 days. Any decision to extend administrative leave would require additional review and approval, with extensions in increments of no more than 30 days.

Complainant, a laboratory manager, was placed on a performance improvement plan and given a lower performance rating that criticized the complainant for raising concerns about laboratory procedures to individuals other than her direct supervisor. The complainant's supervisor also issued a document directing the complainant to bring all concerns directly to the supervisor. After OSC intervened, citing a potential violation of section 2302(b)(13), the agency agreed to clear the complainant's record, restore the rating, and rescind the improper written directive.

Complainant, a supervisory criminal investigator, was investigated and detailed to another position because he was suspected of making a protected disclosure to the press. OSC assisted with negotiating a settlement agreement which, among other things, ended the investigation of the complainant and reassigned him to another position in the agency.

PART 8 – HATCH ACT MATTERS

Overview

Enforcement of the Hatch Act, which protects the civil service system from coerced or inappropriate partisan political activity, is another important component of OSC's mission. The agency's Hatch Act Unit (HAU) investigates complaints, issues advisory opinions, responds to requests, and engages in training and outreach to the Federal community.

OSC worked with Congress to obtain passage of the Hatch Act Modernization Act (HAMA) in December 2012. This legislation removed OSC's jurisdiction over most state and local Government employees who run for partisan political office, an important reform that has enabled OSC to enforce the Hatch Act more efficiently and focus on the Federal community.

Summary of Workload, Activity, and Results

The HAU investigates allegations to determine whether there is evidence of a Hatch Act violation and, if so, whether disciplinary action is appropriate. If a determination is made that a violation has occurred, the HAU can issue a warning letter to the subject, attempt to informally resolve the violation, negotiate a settlement, or prosecute the case before the MSPB.

As anticipated, the Hatch Act Modernization Act resulted in a substantial reduction in the number of allegations of Hatch Act violations related to state and local political campaigns and fewer requests for advisory opinions. In FY 2016, the Hatch Act Unit received 195 new complaints while resolving 98 new or existing claims.

Advisory Opinions

The HAU has the unique responsibility of providing Hatch Act information and advice to the White House and congressional offices, cabinet members and other senior management officials, as well as state and local (including Washington, D.C.) Government employees, the public at large, and the news media. OSC advises individuals on whether they are covered by the Act and whether their political activities are permitted. During FY 2016, the HAU issued 1,641 total advisory opinions, including 43 formal written advisory opinions.

Hatch Act Unit Successes

Some of OSC's significant enforcement results for the year are highlighted below:

Litigation

- OSC had received a final resolution from the MSPB in a case involving a U.S. Army Corps of Engineers (USACE) employee who was a candidate in a partisan election for sheriff, despite USACE Regional Counsel and OSC advising him that he was prohibited from running. After a hearing, the MSPB administrative law judge issued a decision ordering USACE to remove the employee. The employee filed a petition for review with the MSPB and OSC filed an opposition. The MSPB denied the petition and affirmed the removal.
- OSC filed a complaint for disciplinary action with the MSPB alleging that an employee with the National Oceanic and Atmospheric Administration (NOAA) in Washington state unlawfully ran as a candidate in the 2014 and 2016 partisan elections for the U.S. House of Representatives despite repeated warnings from both NOAA and OSC that the Hatch Act prohibited him from doing so while he is a Federal employee. The case is pending.
- OSC filed a complaint for disciplinary action with the MSPB alleging that an employee of the U.S. Postal Service (USPS) violated the Hatch Act by being a candidate in a 2014 partisan election for county commissioner in Tennessee despite OSC and the USPS's warnings against doing so. The case is pending.

- OSC filed a complaint for disciplinary action with the MSPB alleging that an employee at the Department of Commerce sent several emails, while on duty, in support of the Montgomery County, Maryland, Republican Party and to assist candidates running for local and state office. He sent these emails in his role as an official of the Party. He also invited more than 100 individuals to attend an annual “Lincoln and Reagan” Republican Party fundraiser and asked them to send him a check if they wanted to attend. The case is pending.

Negotiated Resolutions

- OSC reached a settlement with a USPS vehicle maintenance facility manager who violated the Hatch Act by sending six partisan political emails while she was on duty and in a USPS facility. As disciplinary action for her admitted violations, the employee received a five-day suspension without pay.
- OSC entered into a settlement agreement with a USPS letter carrier who displayed a congressional candidate’s campaign sign in his USPS vehicle while delivering the mail in the district where the candidate was running. As part of the settlement, the employee admitted that he violated the Hatch Act’s prohibitions by using his official authority to affect the result of an election and engaging in political activity while on duty, in a Government vehicle, and while wearing his official uniform. As a penalty, the employee was suspended for five days without pay.
- OSC reached a settlement with a Department of Labor (DOL) wage and hour investigator after investigating allegations that the employee had circulated a nominating petition for a mayoral candidate at work and obtained three signatures from coworkers. In addition, the employee retweeted one of the candidate’s requests for political contributions. In the settlement agreement, the employee admitted that she violated the Hatch Act and was suspended for three days without pay and received a letter of reprimand.

Report to the President

- OSC sent a report to the President, finding that Secretary of Housing and Urban Development Julián Castro violated the Hatch Act during a press interview. In the report, OSC concluded that Secretary Castro’s statements impermissibly mixed his personal political views with official agency business.

Hatch Act Unit Outreach

The Hatch Act Unit is very active in OSC's outreach program. The Unit conducted approximately 64 outreach presentations this fiscal year to various Federal agencies and employee groups concerning Federal employees' rights and responsibilities under the Act. Many of these programs involved high-level agency officials.

Table 8, below, contains FY 2016 summary data (with comparative data for the six previous fiscal years) on OSC's Hatch Act enforcement activities.

TABLE 8 Summary of Hatch Act Complaint and Advisory Opinion Activity								
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	
Formal written advisory opinion requests received	349	283	257	107	64	63	45	
Formal written advisory opinions issued	321	336	262	129	60	60	43	
Total advisory opinions issued^a	4,320	3,110	3,448	1,767	1,382	1,023	1,641	
New complaints received^b	526	451	501	277	151	106	195	
Complaints processed and closed	535	635	449	465	182	131	98	
Warning letters issued	163	164	142	150	44	28	21	
Corrective actions taken by cure letter recipients	Withdrawal from partisan races	26	23	14	5	7	8	4
	Resignation from covered employment	26	16	12	2	0	3	1
	Other	1	5	8	4	1	0	5
	Total	53	44	34	11	8	11	10
Disciplinary action complaints filed with MSPB	6	3	0	2	1	2	3	
Disciplinary actions obtained (by negotiation or ordered by MSPB)	10	5	4	6	15	9	5	
Complaints pending at end of fiscal year	416	233	287	97	65	40	137	

^a All oral, email, and written advisory opinions issued by OSC.

^b Includes cases that were reopened.

PART 9 – DIVERSITY, OUTREACH & TRAINING

Diversity, Outreach, and Training Program

The Outreach Program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c) to inform their employees about the rights, remedies, and avenues of redress available to them under the Civil Service Reform Act and whistleblower laws under OSC’s jurisdiction. A February 2014 White House memorandum and the White House’s Second Open Government National Action Plan require that all Federal agencies participate in OSC’s 2302(c) Certification Program.

The 2302(c) Certification Program is a five-step program that provides guidance, training resources, and easy-to-use methods to assist agencies in fulfilling their statutory obligation and the White House requirements. Agencies that complete the program receive a certificate of compliance from OSC. To further its education efforts, in FY 2016 OSC developed a “Prohibited Personnel Practice/Whistleblower Disclosure Training Quiz” that went live on OSC’s website in early 2016.

In addition, OSC provides formal and informal outreach sessions regarding all of its program areas, including prohibited personnel practices, whistleblower disclosures, the Hatch Act, and USERRA. During FY 2016, OSC’s subject matter experts spoke at 190 events nationwide, which is a new agency record.

OSC also informs the public and media through press releases when it closes an important whistleblower disclosure matter, files a significant litigation petition, or achieves significant corrective or disciplinary action through settlement. Many of these cases generate considerable press coverage, which contributes to Federal employees and managers’ awareness about the merit system protections enforced by OSC.

Annual Survey Program

Each year, OSC surveys people who have contacted the agency for assistance during the previous fiscal year.^a Complainants in prohibited personnel practice cases closed during FY 2016, claimants in USERRA referral matters closed during FY 2016, recipients of formal Hatch Act advisory opinions during that year, and whistleblowers in Disclosure Unit and RDU cases were invited to participate in the survey.

The prohibited personnel practice, disclosure, and USERRA surveys sought the following information: (1) whether the respondent was fully apprised of their rights; (2) if their claim was successful at OSC or at the MSPB; and (3) successful or not, if they were satisfied with the

^a Pursuant to 5 U.S.C. § 1212 *note*.

service received from OSC.

Due to the low response rate, typically ten percent, and lack of geographic diversity among respondents, these results may not be representative samples. OSC is considering ways to improve our response rates and measure nonresponse bias in order to increase the utility of the survey.

Compared to the 2015 rate of returned surveys, which was eleven percent, the FY 2016 rate of return was 10 percent. For both year's survey OSC used the Survey Monkey platform. The number of surveys distributed decreased by 10 percent, from 5,249 in FY 2015 to 4,709 in FY 2016, due to the decrease in cases resolved. The overall survey results were comparable with prior years' results. Also following the pattern from the prior years', the service from the Hatch Act Unit received the highest ratings.

FURTHER INFORMATION

Prohibited Personnel Practices

Individuals with questions about prohibited personnel practices not answered on the agency website can contact the Officer of the Week at:

Complaints Examining Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: 1 (800) 872-9855
(202) 254-3630
Fax: (202) 653-5151

There are two ways to file a prohibited personnel complaint with OSC, on paper or electronically. A complaint can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). Alternatively, a complaint may be filed on paper, using Form OSC-11, which is available online (<https://osc.gov/Pages/Resources-OSCFORMS.aspx>) and can be filled out online, printed, and mailed or faxed to the address above.

ADR

Questions about mediation under OSC's ADR Unit not answered on the agency website should be directed to:

Alternative Dispute Resolution Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: (202) 254-3600

Email: adr@osc.gov

Hatch Act

Our website has additional information about the Hatch Act, including frequently asked questions by Federal, state and local Government employees, and selected OSC advisory opinions on common factual situations. Requests for other advice about the Hatch Act can be made by contacting:

Hatch Act Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: 1 (800) 85-HATCH
 1 (800) 854-2824
 (202) 254-3650
Fax: (202) 653-5151
Email: hatchact@osc.gov

A Hatch Act complaint can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). Alternatively, complaints alleging a violation of the Hatch Act can be made by using Form OSC-13. The form is available online (<https://osc.gov/Pages/Resources-OSCFORMS.aspx>) and can be filled out online, printed, and mailed or faxed to the address above.

Whistleblower Disclosure

Information about reporting a whistleblower disclosure to OSC in confidence is available on the agency website, or at:

Disclosure Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: 1 (800) 572-2249
 (202) 254-3640
Fax: (202) 653-5151

A disclosure can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). Alternatively, Form OSC-12 can be used to file a disclosure with OSC. The form is available online (<https://osc.gov/Pages/Resources-OSCFORMS.aspx>) and can be filled out online, printed, and mailed or faxed to the address above.

Retaliation Disclosure Unit

Individuals whose cases are assigned to the Retaliation and Disclosure Unit will be contacted by the assigned case attorney after the cases are filed and processed at OSC. Individuals wishing to both report wrongdoing and file a claim of retaliation should follow the above instructions for filing each type of complaint. Questions about filing Disclosures can be directed to the Disclosure Unit, and questions about filing a Complaint of Prohibited Personnel Practices can be directed to the Complaints Examining Unit.

Retaliation and Disclosure Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: (202) 254-3600

USERRA

A USERRA complaint can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). The OSC website has additional information about USERRA, including a link to the complaint form issued by VETS for use by claimants. Questions not answered on the web site about OSC's role in enforcing the act may be directed to:

USERRA Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: (202) 254-3600
Email: userra@osc.gov

Diversity, Outreach & Training Program

Many OSC forms and publications are available in the "Resources" section of the agency website. Questions not answered on the agency website about the 2302(c) Certification Program and OSC diversity, outreach, and training activities should be directed to:

Director of Outreach

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: (202) 254-3600
Fax: (202) 653-5151

Policy and Congressional Affairs

This report and other OSC reports to Congress are available in the “Resources” section of the agency website. Subject to availability, copies of these reports can be requested by writing or contacting:

Office of Policy and Congressional Affairs

U.S. Office of Special Counsel

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

Telephone: (202) 254-3600

Fax: (202) 653-5161

For callers with hearing and/or speech disabilities, all OSC telephone numbers listed in this section may be accessed using TTY by dialing the Federal Relay Service at:

1 (800) 877-8339

APPENDICES

APPENDIX A

SURVEY TOTALS —*and*— RESPONSE SOURCES FY 2016

SURVEY TOTALS

FY 2016	
Number mailed.	4,709
Number returned.	482
Response rate.	10%

Response Source by Type of Matter at OSC

1. What was the nature of your correspondence to OSC? (Please choose only one)	
	FY 2016
<u>Response options</u>	
You filed a complaint concerning a prohibited personnel practice.	294
You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity).	13
Your case involved a USERRA complaint.	12
You filed a whistleblower disclosure case (OSC Form 12)	155

APPENDIX B

PPP COMPLAINTS SURVEY RESPONSES

—*for*—
FY 2016

1. Did the agency against which you filed the complaint inform you about your rights and responsibilities with regard to prohibited personnel practices?	
	FY 2016
<u>Response options</u>	
Yes.	66
No.	178
Do not recall.	43
Never employed by a Federal agency.	0

2. Did you obtain the result that you wanted from OSC?	
	FY 2016
<u>Response options</u>	
Yes.	16
No.	270

3. Did your complaint include any allegation of reprisal for whistleblowing?	
	FY 2016
<u>Response options</u>	
Yes.	151
No.	119

4. What reason did OSC give for closing any reprisal for whistleblowing allegation in your complaint without obtaining the result that you desired? (Check all that apply.)	
	FY 2016
<u>Response options</u>	
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.	26
No personnel action taken by the agency involved.	20
Information that you disclosed did not appear to be a legally protected disclosure.	7
Your disclosure occurred after the personnel action involved in your complaint.	3
Insufficient proof that the agency official (who took the personnel action against you) knew about your disclosure.	6
Insufficient proof of connection between your disclosure and the personnel action involved in your complaint.	25
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	11
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation.	30
You or OSC settled the matter with the agency involved.	2
You declined corrective action offered by the agency involved.	0
You notified OSC that you had filed or would file an Individual Right of Action (IRA) or other appeal with the Merit Systems Protection Board (MSPB).	6
You withdrew your complaint.	1
Other.	73
Do not recall.	12

5. Did you file an Individual Right of Action or other appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?	
	FY 2016
<u>Response options</u>	
Yes.	64
No.	169
Have not decided whether to file.	31

6. Did you ask for the same relief that you sought from OSC?	
	FY 2016
<u>Response options</u>	
Yes.	51
No.	8
Do not recall.	3

7. Were you successful at the MSPB in obtaining the same result that you sought from OSC?	
	FY 2016
<u>Response options</u>	
Yes.	3
Partially.	7
No.	26
Appeal pending.	15

8. If the answer to the previous question was “yes” or “partially,” how did you obtain the result?	
	FY 2016
<u>Response options</u>	
Settlement.	8
Decision after hearing.	1
Other.	1

9. What reason did OSC give for closing your complaint without obtaining the result that you desired? (Check all that apply)	
	FY 2016
<u>Response Options</u>	
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.	43
No personnel action taken by the agency involved.	20
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	25
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation.	72
You or OSC settled the matter with the agency involved.	1
You declined corrective action offered by the agency involved.	1
You withdrew your complaint.	5
OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action.	2
OSC obtained a decision in the corrective action proceeding filed with the MSPB.	2
Closed for further action on discrimination allegations through EEO processes.	16
Resolved through OSC's Mediation Program.	0
Other.	112
Do not recall.	31

10. How would you rate the service provided by OSC in the following areas?					
	FY 2016				
<u>Response Options</u>	Very satisfied	Satisfied	No opinion /inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	16	29	38	45	143
Clarity of oral communications.	18	31	42	51	127
Clarity of written communications.	19	38	31	53	127
Timeliness.	17	35	37	47	131
Results.	10	6	11	41	199

APPENDIX C

FORMAL HATCH ACT ADVISORY OPINIONS SURVEY RESPONSES *—for—* FISCAL YEAR 2016

1. As a result of our written advisory opinion given to you concerning the proposed political activity, what was the impact?	
	FY 2016
<u>Response Options</u>	
The OSC opinion advised that the person in question was free to carry out his or her planned political activity.	4
The OSC opinion advised that the person in question should not continue his or her planned political activity.	3
The OSC opinion was in response to a general question concerning the application of the Hatch Act.	0
Other.	6

2. How would you rate the service provided by OSC in the following areas?					
	FY 2016				
<u>Response Options</u>					
	Very satisfied	Satisfied	No opinion/ Inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	8	1	0	1	3
Clarity of written communications.	8	2	0	0	3
Timeliness.	7	1	2	0	3
Results.	8	2	0	0	3

APPENDIX D

USERRA UNIT
SURVEY RESPONSES
—*for*—
FISCAL YEAR
2016

1. Did the agency against which you filed the complaint inform you about your rights and remedies with regard to USERRA?	
	FY 2016
<u>Response options</u>	
Yes.	2
No.	10
Do not recall.	0
Never employed by a Federal agency.	0

2. Did you obtain the result that you wanted from OSC?	
	FY 2016
<u>Response options</u>	
Yes.	1
No.	11

3. What reason did OSC give for closing your USERRA case? (Check all that apply.)	
	FY 2016
<u>Response options</u>	
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.	2
Insufficient evidence that the personnel action involved in your complaint violated USERRA.	2
You or OSC settled the matter with the agency involved.	1
You declined corrective action offered by the agency involved.	0
You withdrew your complaint.	0
Other.	5
Do not recall.	1

4. Did you file a USERRA appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?	
	FY 2016
<u>Response options</u>	
Yes.	3
No.	6
Do not recall.	2

5. Did you ask for the same relief that you sought from OSC?	
	FY 2016
<u>Response options</u>	
Yes.	3
No.	0
Do not recall.	0

6. Were you successful at the MSPB in obtaining the same result that you sought from OSC?	
	FY 2016
<u>Response options</u>	
Yes.	0
Partially.	0
No.	2
Appeal pending.	1

7. If the answer to the previous question was “yes” or “partially,” how did you obtain the result?	
	FY 2016
<u>Response options</u>	
Settlement.	0
Decision after hearing.	0
Other.	0

8. How would you rate the service provided by OSC in the following areas?					
	FY 2016				
<u>Response Options</u>	Very satisfied	Satisfied	No opinion /inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	1	2	2	1	6
Clarity of oral communications.	1	2	2	1	6
Clarity of written communications.	1	2	1	2	6
Timeliness.	1	2	1	2	6
Results.	1	1	0	1	9

APPENDIX E

DISCLOSURE UNIT SURVEY RESPONSES

—*for*—

FISCAL YEAR

2016

1. Did the agency against which you filed the disclosure inform you about your right to make whistleblower disclosures, and the channels for making such disclosures?	
	FY 2016
<u>Response options</u>	
Yes.	41
No.	93
Do not recall.	11
Never employed by a Federal agency.	6

2. Did you obtain the action that you wanted from OSC?	
	FY 2016
<u>Response options</u>	
Yes.	15
No.	136

3. What reason did OSC give for closing your disclosure matter? (Check all that apply.)	
	FY 2016
<u>Response options</u>	
No OSC Jurisdiction over agency involved, your position, or agency official involved in your disclosure	17
Insufficient evidence of a violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety	31
You withdrew your disclosure	2
You resolved the matter with the agency involved	3
Your disclosure was referred to the agency involved for a report to the OSC on the agency's inquiry into the matter	8
Other	66
Do not recall	8

4. Did you agree with the reason OSC gave for closing your disclosure matter?	
	FY 2016
<u>Response options</u>	
Yes.	4
No.	120
I don't know	11

5. How would you rate the service provided by OSC in the following areas?					
	FY 2016				
<u>Response Options</u>	Very satisfied	Satisfied	No opinion /inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	15	14	22	20	75
Clarity of oral communications.	7	19	23	33	64
Clarity of written communications.	14	27	16	28	61
Timeliness.	7	21	24	22	72
Results.	5	9	10	16	106