

**FISCAL YEAR 2017**  
**CONGRESSIONAL BUDGET JUSTIFICATION**  
*—and—*  
**PERFORMANCE BUDGET GOALS**



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# **PART 1 – EXECUTIVE SUMMARY**

The caseload at the Office of Special Counsel (OSC) hit an all-time high in fiscal year (FY) 2015, surpassing 6,000 new matters for the first time in agency history, 17 percent above FY 2014 levels. This dramatic rise was driven by a record number of new prohibited personnel practice complaints (over 4,000 for the first time in agency history) and new whistleblower disclosures (nearly 2,000<sup>1</sup> received, 74 percent more than just two years prior). OSC rose to this challenge, achieving both a record number of favorable results and unsurpassed productivity. We anticipate caseload pressures will rise even more in FY 2016, driven in part by a presidential election year surge in Hatch Act complaints. Simply put, OSC's continuing success will require that its resources keep pace with our fast rising caseload.

For FY 2017, OSC requests a funding level of \$26,535,000, a modest increase of \$2,416,000 above FY 2016 levels to address staffing shortages and critical infrastructure needs. With 87 percent of our budget allocated for salaries, benefits, and rent, OSC has consistently demonstrated that it manages its limited resources wisely. But to stay atop the rising caseload tide, we will need an appropriation that enables our staffing to rise from 140 FTE to 155 FTE. Our requested budget level will also enable OSC to complete mandated initiatives to better secure our infrastructure and data.

When OSC succeeds, good government and taxpayers are the real winners. Over the past two years, OSC has obtained relief for dozens of employees at VA health facilities who blew the whistle on dangerous patient care and improper scheduling practices. For example, after a food services manager at a VA facility disclosed violations of VA sanitation policies and other problems, his supervisor reassigned him to janitorial duties in the facility's morgue. OSC's investigation resulted in a settlement between the VA and the whistleblower, who received compensatory damages. In another case, the VA fired an employee during his probationary period after he contacted Congress seeking assistance with his VA benefits claims folder, which his facility had lost. OSC investigated and submitted its findings to the VA. Our investigations resulted in a settlement between the VA and the employee that reemployed the employee and provided back pay and compensatory damages.

OSC's efforts extend well beyond the VA. We have worked with whistleblowers throughout the government to ensure public health and safety and save taxpayers money. For example, OSC intervened on behalf of air traffic controllers who blew the whistle on safety risks posed by having conflicting flight plans filed for the same flight. After the whistleblowers disclosed their concerns to OSC, Federal Aviation Administration (FAA) reforms were implemented. At the Navy Yard in Washington, D.C., two whistleblowers revealed shortcomings in security protocols at a highly sensitive facility. Their disclosures were confirmed by the Navy Inspector General and resulted in tighter security practices. OSC also worked with Department of Homeland Security whistleblowers to correct abuses in overtime compensation, resulting in an estimated \$100 million in annual savings to the Treasury. These were among the hundreds of corrective actions sparked by disclosures or retaliation complaints to OSC, some of which are described in more detail in the narrative sections of this justification. In addition, OSC promotes accountability by securing disciplinary actions against employees who commit prohibited personnel practices, including those who retaliate against whistleblowers. Over the last five years, OSC has secured disciplinary action against 84 employees in prohibited personnel practice investigations. This is nearly a three-fold increase from the preceding five-year period, when OSC secured 30 disciplinary actions.

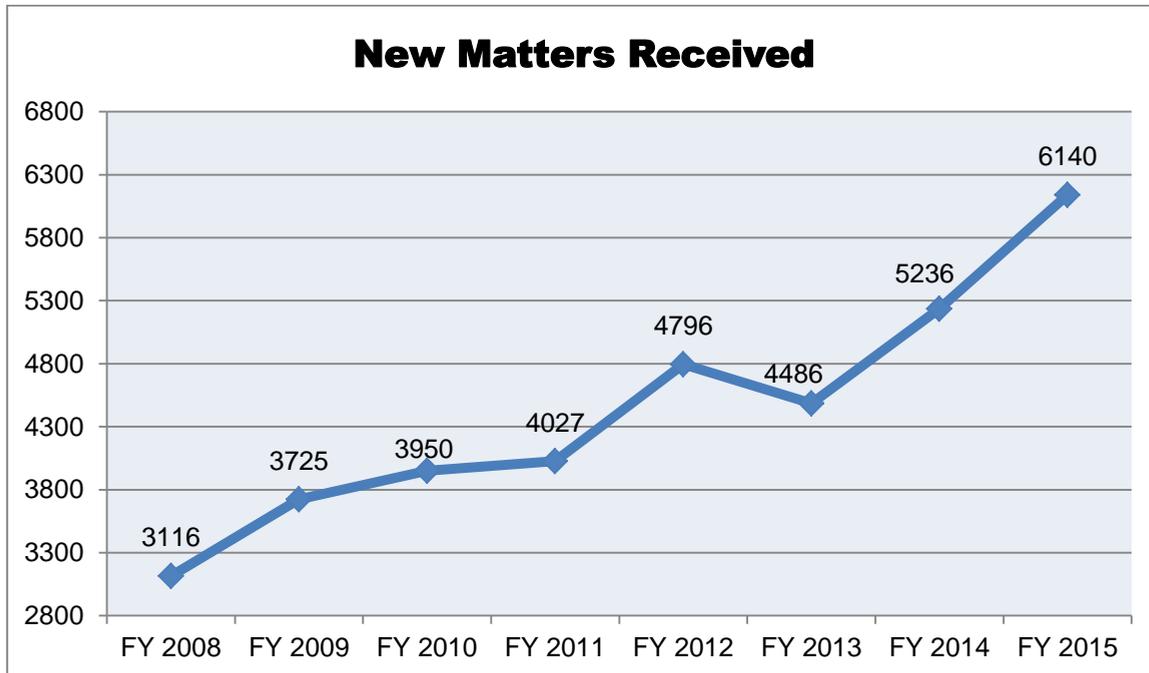
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<sup>1</sup> Each year, OSC receives a number of cases that are inadvertently filed by federal employees as disclosures of wrongdoing, and properly should have been filed as prohibited personnel practice complaints. In order to process these cases, OSC must open a disclosure file, read 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. After making a determination 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 2014, the number of these misfiled disclosure cases increased by an estimated 9 percent over the historical average because of changes in OSC's online complaint filing system. OSC is in the process of modernizing its online complaint filing system to make it more user-friendly and intuitive. OSC anticipates that the changes to the online system will be completed by mid-year FY 2016. The changes will address not only the current, elevated number of misfiled disclosure cases, but, with the smarter, more user-friendly interface for federal employees, will greatly diminish the historical problem of wrongly-filed disclosure forms. This 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 2016 and beyond.

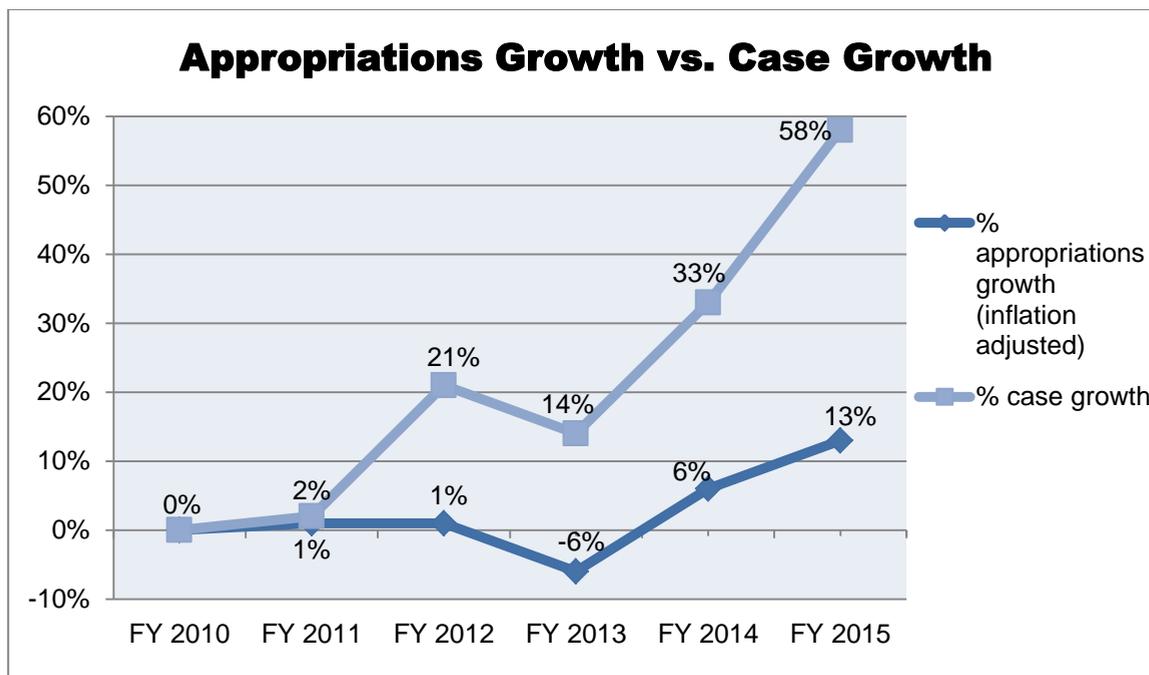
OSC has one of the smallest budgets of any federal law enforcement agency with government-wide jurisdiction, yet the demands on our agency have never been greater. With Congress' support, OSC will be able to keep pace with its rising caseload, and continue to promote better and more accountable government. As our track record demonstrates, a relatively small investment in OSC pays huge dividends in curbing waste, fraud and abuse. We are grateful for your consideration.

## Summary of Request

During the past few years, OSC has experienced an unprecedented rise in its caseload. In FY 2015, OSC received over 6,000 new matters, an all-time high. (See chart below.) This surge is a 17 percent increase over FY 2014's totals and a 37 percent increase from just two years before. Caseloads are now double what they averaged just seven years ago. Despite the challenge of a burgeoning caseload, OSC has continued to deliver results. For example, OSC achieved 452 favorable actions for prohibited personnel practice (PPP) complaints during FY 2014 and FY 2015, by far the highest total for any two-year period in OSC history. Simply put, OSC is working harder, smarter, and producing better results than ever before.



As the federal workforce's confidence in OSC's ability to obtain corrective actions has grown, the demand for OSC's services has hit record levels. This demand, however, has not been matched by a corresponding increase in resources, as the chart below indicates. In the past five years, OSC's caseload has risen four times as fast as resources. With Congress's support, OSC's budget has risen by 13 percent in real terms since 2010 (inflation adjusted); however, the caseload has jumped a staggering 58 percent. (See chart below.) If fully funded, OSC's FY 2017 request will work to bridge this gap.



OSC is requesting a FY 2017 budget of **\$26,535,000**, which includes funding for the salaries and benefits for 155 FTE, an increase of 15 FTE over OSC's FY 2016 appropriation.

This request is largely driven by the increase in OSC's caseload, and most notably, the unprecedented number of cases brought by VA employees. Further, OSC must implement substantial improvements to our cybersecurity posture. The request for FY 2017 of \$26.535 million represents a ten percent increase over OSC's FY 2016 budget.

Based on our projections, OSC will receive nearly 2,500 VA cases in FY 2016, comprising 38 percent of OSC's total cases. To put this in perspective, OSC anticipates receiving more cases from the VA alone in FY 2016 than the total number of cases we received from all agencies just over a decade ago. These trends will continue into FY 2017. Even without the surge in VA cases, OSC's case levels are at all-time highs and projected to continue rising in FY 2017.

Funding OSC at our requested level will help ensure that we meet our critical challenges to uproot waste, mismanagement, and fraud; to protect veterans and federal employees; to ensure accountability, integrity, and fairness in the federal workplace; and to restore and maintain public confidence in the federal merit system.

# Appropriations Language

## OFFICE OF SPECIAL COUNSEL *FEDERAL FUNDS* SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Special Counsel pursuant to Reorganization Plan Numbered 2 of 1978, the Civil Service Reform Act of 1978 (Public Law 95–454), the Whistleblower Protection Act of 1989 (Public Law 101–12) as amended by Public Law 107–304, the Whistleblower Protection Enhancement Act of 2012 (Public Law 112–199), and the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103–353), including services as authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms in the District of Columbia and elsewhere, and hire of passenger motor vehicles; [\$24,119,000: ] \$26,535,000.

*(Financial Services and General Government Appropriations Act, 2016.)*

## About the Office of Special Counsel

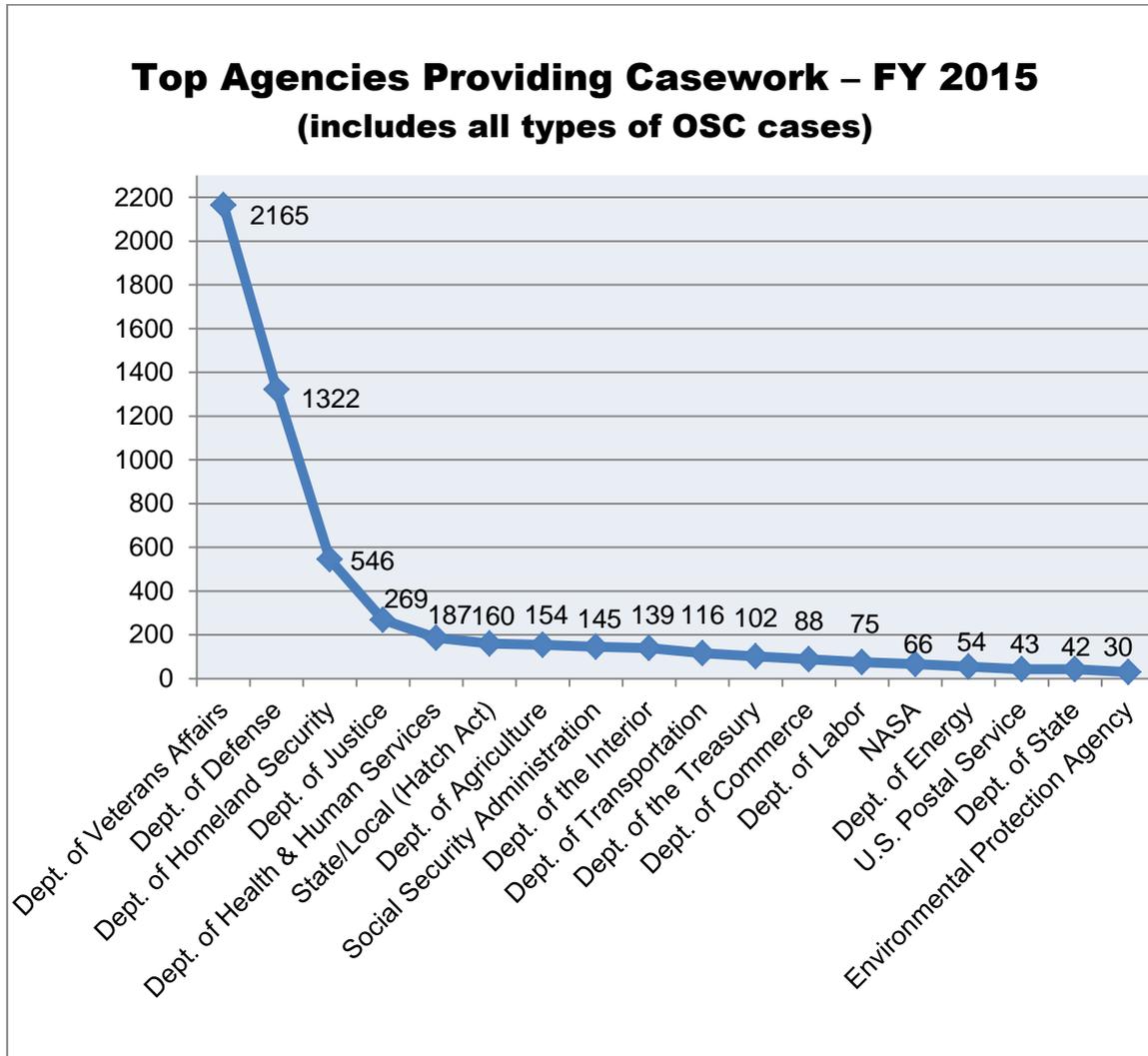
OSC promotes government accountability, integrity, fairness, and efficiency by providing a safe channel for federal employees to come forward with evidence of waste, fraud, abuse, law-breaking, or threats to public health or safety, and it protects these employees from retaliation.

When FAA air traffic controllers witness dangerous flight protocols, when VA professionals observe unsafe practices in hospitals and clinics, or when Pentagon procurement officers find significant irregularities in government contracts, OSC acts to ensure that the whistleblowers' claims are heard and acted upon. OSC also protects federal employees from prohibited personnel practices, such as retaliation for making disclosures. By enforcing the Hatch Act, OSC preserves the integrity of the civil service system, ensuring that federal employees are not coerced by their superiors into partisan political activity and that employees do not engage in partisan politics while on duty. OSC also defends returning service members and reservists against employment discrimination by enforcing their rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

OSC does not just spend taxpayers' money. It returns substantial sums to the federal government by pressing for corrective action to remedy waste and fraud. Indeed, by providing a safe channel for whistleblowers and their disclosures, OSC prevents wasteful practices and disasters from ever occurring, saving the government millions of dollars.

# OSC's Docket

OSC receives cases from throughout the federal government. The chart below shows the agencies and departments whose employees filed the most cases with OSC during the last full fiscal year, FY 2015. In both FY 2014 and FY 2015, we received more cases from the Department of Veterans Affairs employees than from any other agency. An increasing proportion of OSC's cases received in FY 2015 were from the VA, and we expect this trend to continue into FY 2016 and FY 2017 as well.



## **Prohibited Personnel Practices (PPPs)**

OSC is addressing a substantial and steady surge in the number of federal employees alleging PPPs, such as retaliation for whistleblowing. With the passage of the Whistleblower Protection Enhancement Act (WPEA) in 2012, which expanded the number of employees covered and closed loopholes that prevented many claims, the number of complaints in this area has increased and is expected to continue to rise going forward. FY 2015 brought a new record for PPPs, with the agency seeing over 4,000 cases for the first time. Employees' protection from PPPs is critical to ensuring an efficient, accountable, and fair federal service.

## **Whistleblower Disclosures**

Whistleblower disclosures are a growing portion of OSC's caseload, now comprising almost a third of the agency's new matters. A record 1,965 new disclosures were filed in FY 2015. These disclosures, which involve employee reports of gross mismanagement, waste, fraud, abuse, illegality, are expected to reach record levels again this year.

## **Hatch Act**

The Hatch Act ensures that government service is not tainted by partisan political influences. Hatch Act complaints typically increase around election cycles. With the Hatch Act Modernization Act's passage in 2012, which OSC endorsed, the number of state and local cases has decreased significantly. However, because 2016 is a presidential election year, we expect Hatch Act case numbers to rise.

## **USERRA**

This program protects the employment rights of returning service members and reservists. A number of government agencies have roles in the education and enforcement of USERRA. OSC receives cases from the Department of Labor that may be appropriate for litigation. These are cases in which a federal employer is believed to have violated USERRA but the issue could not be resolved by the Department of Labor. These cases are referred to OSC at the claimant's request once the claimant has exhausted the Department of Labor's process. The Department of Labor will inform claimants of their right of referral to OSC at the end of its own investigation.

## Strategic Goals

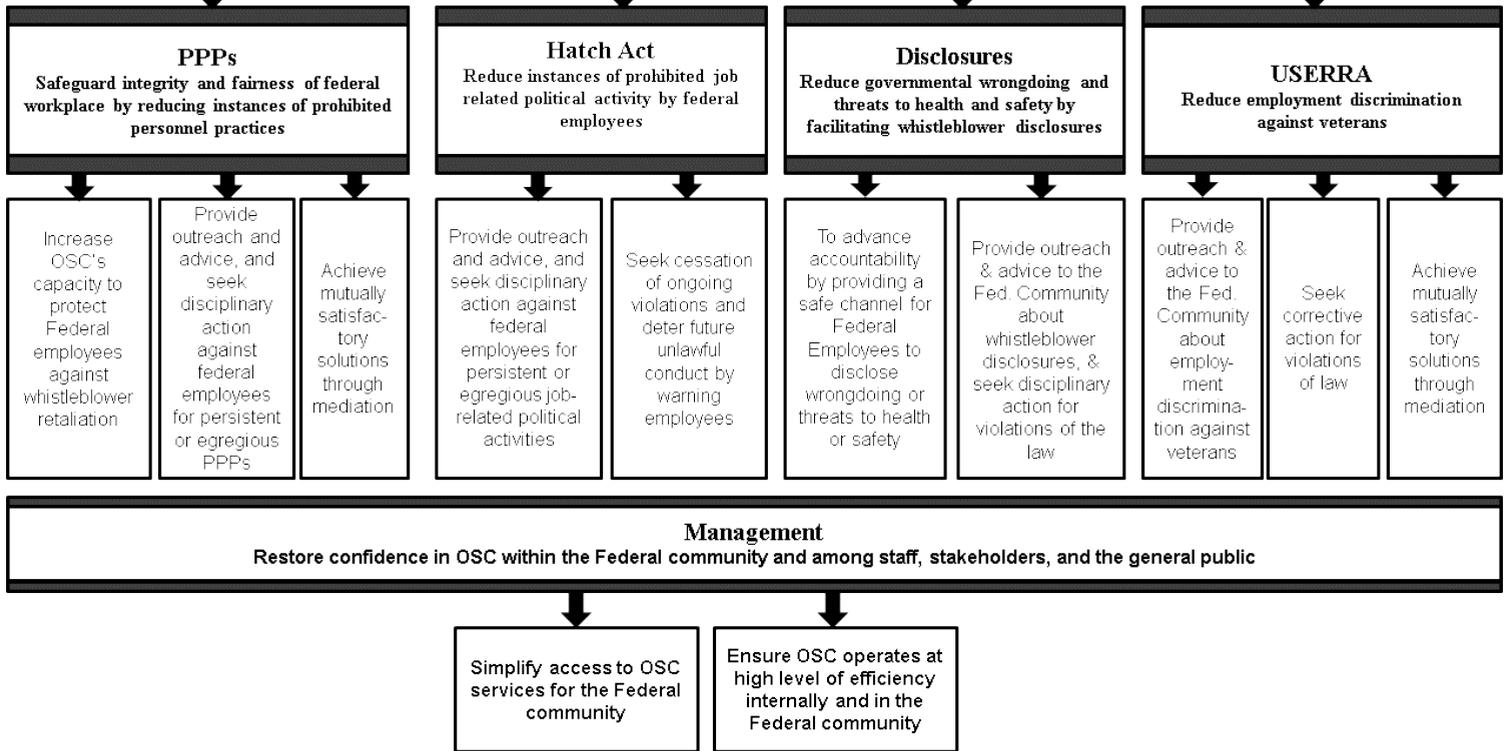
The Office of Special Counsel currently has five strategic goals, enumerated below, each of which is supported by a series of operational objectives. These operational objectives are described in the Strategic Plan (*Appendix A*), and further detailed in the Goal Table section for each budget program.

### **OSC's FY 2017 Strategic Goals and Costs per Goal**

1. Safeguard the integrity and fairness of the federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices. Cost: \$17,818,600
2. Advance the public interest and good government by providing a safe channel for federal employees to disclose wrongdoing or threats to health or safety, in order to effect positive corrective action. Cost: \$4,431,847
3. Strengthen the civil service through outreach and advice to the federal community about prohibited personnel practices, employment discrimination against veterans, and job-related political activity. Cost: \$1,875,395
4. Advance accountability in government by seeking disciplinary action against federal employees for persistent or egregious prohibited personnel practices or unlawful political activities. Cost: \$2,409,158
5. Restore confidence in OSC within the federal community and among staff, stakeholders, and the general public. (Overarching management goal.)

## Chart of OSC's Budget-Related Goals for FY 2016 - 2017

**Mission: OSC's primary mission is to promote accountability, integrity and fairness in the Federal workplace.**



# **Office of Special Counsel's Cost Savings to Government, Efficiencies, and other Successes**

OSC improves the efficiency and accountability of government in many ways, and it returns large sums of money to the Treasury. The agency is handling record numbers of disclosures from federal whistleblowers annually, many of which result in direct financial returns to the government, and even greater benefits in terms of harm avoided or reduced. The agency may handle upwards of 2,000 disclosures in this fiscal year. OSC not only ensures that disclosures are properly considered, it protects the whistleblowers who bring them forward.

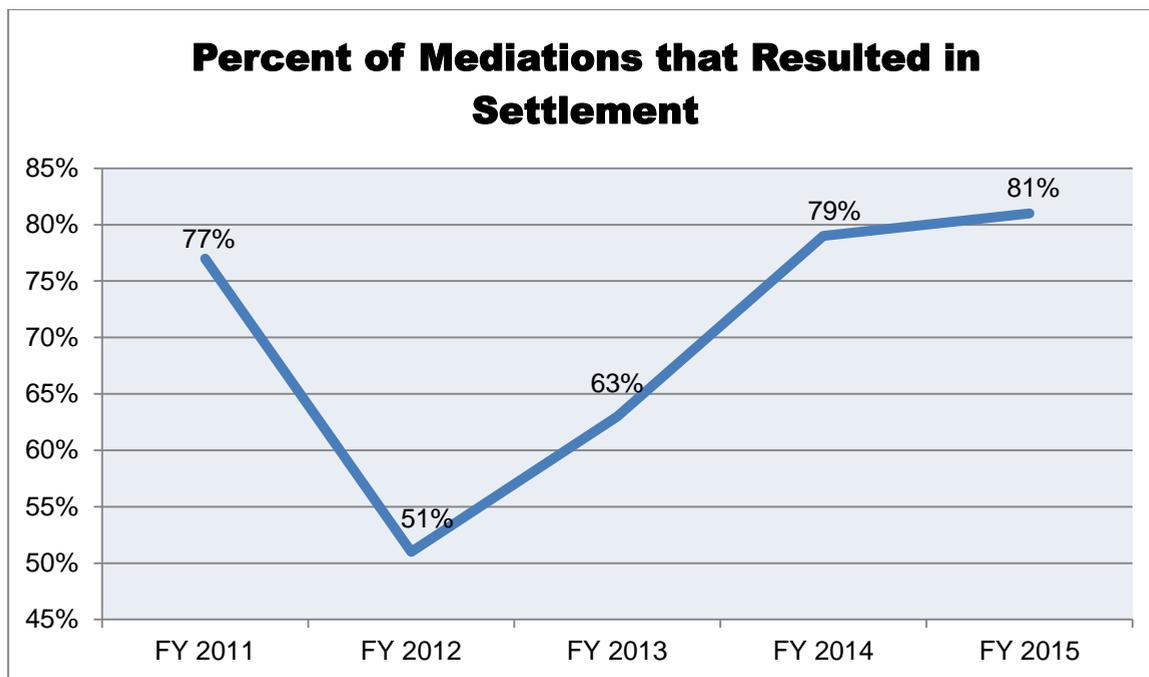
## **Cost Savings**

The real measure of OSC's financial contribution is preventative: By providing a safe channel for whistleblower disclosures, OSC addresses threats to public health and safety that pose the very real risk of catastrophic harm to the public and huge remedial and liability costs for the government. For example, OSC played a central role in highlighting VA employee disclosures of patient scheduling protocols, causing significant risks to the health of our nation's veterans. OSC also substantiated allegations that Department of Defense (DoD) Commissary workers improperly inspected meat and poultry, posing a danger to public health and safety. Also this past year, OSC obtained relief for TSA whistleblowers who disclosed aviation security risks and violations of safety rules. We confirmed information security vulnerabilities that whistleblowers identified at the Navy Yard. Over the past decade, OSC has handled dozens of disclosures from courageous FAA employees who blew the whistle on systemic failures in air traffic control and the oversight of airline safety.

In 2015, OSC reported its findings to the President and Congress on efforts to address widespread misuse of millions of taxpayer dollars within the Department of Homeland Security (DHS). In response to whistleblower disclosures about long-standing abuses of overtime, Congress and DHS took action last year to reform and largely replace DHS's outdated administratively uncontrollable overtime (AUO) system. For example, in 2014, by removing employees' eligibility for AUO payments, Customs and Border Protection reduced its biweekly overtime payment by \$3.2 million—an annualized savings of \$83.7 million. In addition, in December 2014, Congress passed the Border Patrol Agent Pay Reform Act. According to the Congressional Budget Office, this will save an estimated \$100 million a year, an amount roughly four times the size of OSC's budget.

## **Mediation**

Harmonious relations between managers and employees are critical to the effectiveness and efficiency of government. OSC plays a unique role in fostering a healthy federal workplace by handling allegations of prohibited personnel practices, such as nepotism, discrimination, retaliation, and violations of merit systems principles. These cases are typically resolved by negotiation, mediation, and settlement, rather than by prosecution, thereby ensuring fairness and due process to employees, while preventing paralyzing stalemates and disruptions to the conduct of government business. OSC has been very successful achieving settlement through mediation, and has ramped up its Alternative Dispute Resolution program accordingly. During FY 2015, 81 percent of mediations that OSC completed resulted in settlement. (*See chart below.*) OSC mediation provides a streamlined settlement option, a win-win for parties in the dispute, and it significantly reduces the amount of time and money required to investigate and resolve a case.



### Prohibited Personnel Practices

The volume of complaints is substantial and growing: In FY 2015, OSC received over 4,000 new cases, a substantial increase over the 3,300 complaints filed with OSC in FY 2014. Almost eight percent of these complaints were referred for full investigation. For many of these types of cases, mediation offers the most timely and mutually beneficial outcomes, but not all meritorious PPP cases can be settled in mediation. When appropriate, OSC seeks corrective and even disciplinary action through litigation before the MSPB.

OSC has ramped up its focus on prohibited personnel practices. With a record 278 favorable actions achieved in FY 2015, OSC increased favorable actions by 57 percent over FY 2014 levels and by 231 percent over FY 2011 levels. OSC has set new records for favorable actions four years in a row. This translates into improved accountability and fairness in government, as well as jobs saved, whistleblowers protected, and rights restored.

Of the favorable actions in FY 2015, 232 involved reprisal for whistleblowing. OSC negotiated 62 stays with agencies to protect employees from premature or improper personnel actions, and nine disciplinary actions, upholding accountability and sending a warning about unacceptable conduct.

### Hatch Act

The number of Hatch Act complaints filed with OSC has significantly decreased since the Hatch Act Modernization Act (HAMA), signed into law by President Obama in December 2012. HAMA narrowed the restriction on state or local government employees running for partisan political office to those employees whose entire salary is federally funded. HAMA also modified the penalty provision of the Hatch Act to provide a range of possible disciplinary actions for federal employees. Lastly, it changed the status of District of Columbia government employees by treating them as state and local rather than as federal employees. After HAMA went into effect, the Hatch Act Unit issued a series of advisory opinions informing employees of the changes to the law and advising them on HAMA's application. HAMA has enhanced the efficiency and effectiveness of OSC's enforcement efforts and allowed OSC to better direct its resources toward investigations of federal employees and serious state and local misconduct. Indeed, OSC obtained more disciplinary actions in Hatch Act cases from the MSPB in FY 2014 and FY 2015 than during any other two-year period in the agency's history.

## **USERRA**

For many years, the Department of Labor has investigated, and OSC has prosecuted, claims of discrimination under USERRA. Due to OSC's excellent performance in a prior USERRA Demonstration Project, in which OSC not only investigated half of the complaints as required, but also prosecuted all of the federal complaints, Congress tapped OSC for a second three-year USERRA Demonstration Project. The project began in August 2011 and ended in August 2014. OSC continued to work on remaining Demonstration Project cases in FY 2015, and successfully closed 51 Demonstration Project cases.

## **Office of Special Counsel's Internal Organization**

OSC is headquartered in Washington, D.C. It 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 encompasses management of the agency's congressional liaison and public affairs activities.

### **Complaints Examining Unit (CEU)**

This unit is the intake point for all complaints alleging prohibited personnel practices. In FY 2015, CEU screened a record 4,051 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. Matters 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.

### **Hatch Act Unit (HAU)**

OSC investigates and resolves complaints of unlawful political activity by government employees under the Hatch Act, and 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 may provide 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. IPD and the USERRA Unit refer matters that are appropriate for mediation. Once referred, an OSC ADR specialist will contact 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.

## **Outreach and Education Unit**

The Outreach and Education 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. Unit staff provide government-wide training related to 2302(c). 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**

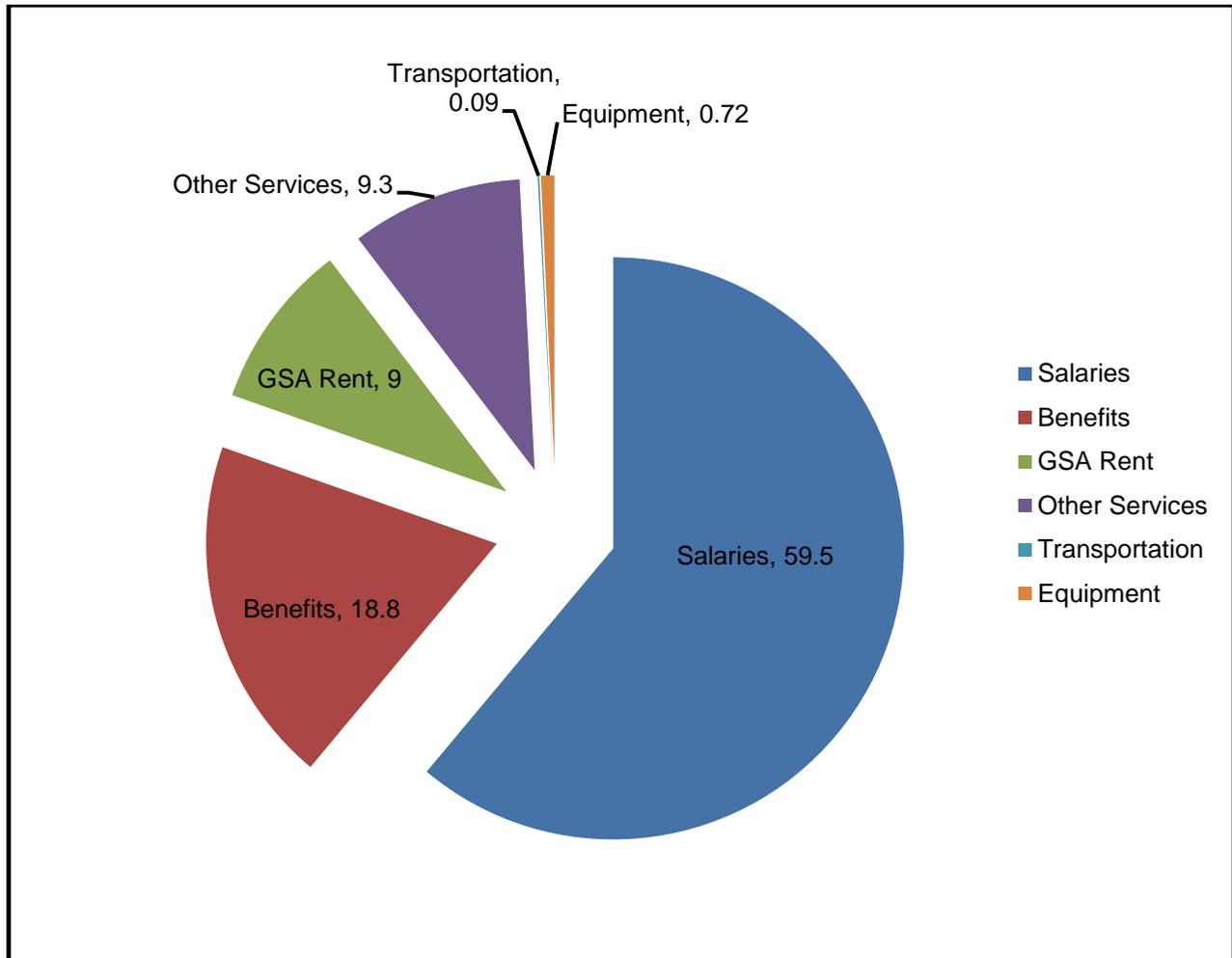
This office provides legal advice and support in connection with management and administrative matters, defense of OSC interests in litigation filed against the agency, management of the agency's Freedom of Information Act, Privacy Act and ethics programs, and policy planning and development.

## **Administrative Services Division**

Component units are Finance, Human Capital, Administrative Services and Document Control, and Information Technology.

## Components of Budget Request

The following chart estimates how the FY 2017 request will be distributed on a percentage basis.



## Budget by Program

The following table provides an estimate of the FTE and budgetary resources for each program of the agency.

<b>Budget by Program – Agency Request</b>						
Program	FY 2016 Estimate		FY 2017 Estimate		Increase/Decrease	
	Amount (in 1000s)	FTE	Amount (in 1000s)	FTE	Amount (in 1000s)	FTE
<b>Investigation and Prosecution of Prohibited Personnel Practices</b>	\$14,097	81	\$14,761	87	\$664	6
<b>Hatch Act Unit</b>	\$585	3	\$395	2	(\$190)	-1
<b>Whistleblower Disclosure Unit</b>	\$3,473	20	\$4,007	25	\$534	5
<b>USERRA Unit</b>	\$225	1	\$266	1	\$41	0
<b>Alternative Dispute Resolution</b>	\$545	3	\$766	4	\$221	1
<b>Immediate Office of the Special Counsel</b>	\$1,402	7	\$1,524	7	\$122	0
<b>Office of the Agency General Counsel</b>	\$1,102	6	\$1,331	7	\$229	1
<b>Outreach and Education</b>	\$240	1	\$430	2	\$190	1
<b>Office of the CFO - Management / Information Technology / Budget / Human Resources / Procurement / Document Control / Planning / Analysis / Facilities</b>	\$2,450	18	\$3,055	20	\$605	2
<b>Totals</b>	\$24,119	140	\$26,535	155	\$2,416	15

## **PART 2 – FY 2017 BUDGET REQUEST – ADDITIONAL INFORMATION**

OSC's budget request is for \$26,535,000 to fund 155 FTE and related non-personnel costs for FY 2017. This number of FTE is necessary to manage and process the agency's skyrocketing caseload, particularly prohibited personnel practice complaints and whistleblower disclosures. OSC anticipates it may see moderate increases in its backlog due to continuously increasing case levels, even with more funding. Providing funding to support 155 FTE will allow OSC to better keep pace with the number of cases filed. Our request level will also enable OSC to execute several information technology projects in FY 2017 to improve security.

### **Primary Driver of the FY 2017 increase:**

#### **Costs for Current Salaries and Benefits Operating with an Increased Number of FTE**

We anticipate the agency will have 155 FTE in FY 2017, up from 140 in FY 2016. Salaries and benefits will be approximately 82 percent of OSC's total costs in FY 2017, up from 75 percent just five years ago. The impact of pay raises, step increases, and career ladder promotions are significant in an agency in which up to 82 percent of the budget funds salaries and benefits.

#### **General Services Administration Rental Costs**

OSC operates out of its headquarters location in Washington, D.C., along with its three off-site field offices in Detroit, Dallas, and Oakland. Rental costs for our four GSA leases are the agency's biggest cost component, after salaries and benefits, and will comprise approximately nine percent of OSC's budget in FY 2017. OSC may need a space expansion at our current headquarters location and within our current lease in order to accommodate the additional FTE.

# FY 2017 Budget Request by Budget Object Class

For a detailed projection of the expenditures that will be required in each Budget Object Class (BOC) during FY 2017, see Budget Table 1 below.

<b>Budget Table 1 – Budget Object Classification of Obligations: FY 2015–2017</b>			
<i>(in thousands of dollars)</i>			
<b>Budget Object Classification of Obligations</b>	<b>FY 2015 (actual)</b>	<b>FY 2016 (projected)</b>	<b>FY 2017 (projected)</b>
<b>11.0 Personnel compensation</b>	13,886	14,782	15,785
<b>12.0 Civilian Personnel Benefits</b>	4,025	4,283	4,977
<b>21.0 Travel and transportation of persons</b>	165	177	178
<b>22.0 Transportation of things</b>	21	20	24
<b>23.1 Rental payments to GSA</b>	1,980	2,069	2,382
<b>23.3 Communications, utilities and misc. charges</b>	228	275	289
<b>24.0 Printing and reproduction</b>	15	22	20
<b>25.0 Other services</b>	1,883	2,100	2,493
<b>26.0 Supplies and materials</b>	140	140	195
<b>31.0 Equipment</b>	488	250	192
<b>32.0 Leasehold improvements</b>	0	0	0
<b>Total</b>	<b>22,831</b>	<b>24,119</b>	<b>26,535</b>

## **Notes Concerning the Above BOC Line Items:**

### **Object Class 11.0 Personnel Compensation Costs:**

Overall personnel compensation will increase in FY 2017 as compared to FY 2016, since OSC will be supporting 155 FTE in FY 2017 versus 140 in FY 2016. Increased caseloads and added responsibilities are driving the need for higher staffing levels. OSC has seen or will see:

- record levels of incoming cases, projected to again be over 6,000 cases in FY 2016 and beyond;
- this past year, a 43 percent-increase in new matters over recent historical case averages, with steady increases expected in future years;
- a pay raise of 1.6 percent for FY 2017;
- expected 92 within-grade salary increases and career ladder promotions projected in FY 2016;
- a similar number of promotions in FY 2017.

### **Object Class 12.0 Civilian Personnel Benefits Costs:**

These costs are for employee benefits, including Medicare, Federal Employees Group Life Insurance, health benefits contributions, old age survivors and disability insurance, and retirement plan contributions. Total benefits costs in FY 2017 are increasing primarily due to the new personnel added to the agency.

### **Object Class 21.0 Travel and Transportation of People:**

During FY 2016 and FY 2017, we expect travel to be conducted at the full and appropriate levels required for OSC's investigations and mediations.

### **Object Class 23.1 Rental Payments to GSA:**

This category reflects the lease costs of the agency's headquarters facility and OSC field offices along with rent and tax escalations. OSC estimates that total agency rent will be approximately \$2.069 million for FY 2016 and \$2.382 million for FY 2017, based on projections provided by GSA. OSC will need an expansion of our space footprint at the headquarters location and within the current lease in order to accommodate the additional FTE. We have exceeded the capacity of our current space.

### **Object Class 23.3 Communications and Utilities:**

In FY 2015, OSC began a project to increase the internet bandwidth to its field office locations, in response to problems with gaining and keeping connectivity. This category reflects the cost to sustain the improved connections in FY 2016 and FY 2017, as well as to meet additional compliance requirements and the costs to support additional FTE.

### **Object Class 25.0 Other Services:**

OSC outsources its accounting services, financial and procurement systems, payroll services, travel services, and procurement services. Certain efforts to modernize our information technology infrastructure began in FY 2014 and have continued into FY 2016, including moving email services to the cloud. Improvements in the case management and electronic case filing are planned for FY 2016. Also, beginning in FY 2016 and continuing into FY 2017, OSC will need to implement the Data Act, migrate to a new phone system, upgrade our network, and make progress towards electronic records management directives.

Importantly, OSC will implement multiple projects that will greatly enhance our IT security posture in FY 2017, including:

- multi-factor authentication
- data encryption
- migration away from legacy systems to more secure architectures
- enhanced backup and data recovery capability
- implementation of risk management and asset management tools
- continuation of FISMA audit services
- mobile device management tools

**Object Class 31.0 Equipment:**

OSC experienced moderate levels of equipment purchases (servers, computers, switches and routers, teleconferencing equipment, and copiers) in FY 2015 in order to refresh its information technology equipment and support modernization projects. These costs will begin to drop in FY 2016, and following the move to the cloud and hosting service providers, we expect continued decreases in FY 2017.

<b>Budget Table 2 – Analysis of Resources: FY 2015-2017</b>				
<i>(in thousands of dollars)</i>				
<b>Description</b>		<b>FY 2015 (Actual)</b>	<b>FY 2016 (Projected)</b>	<b>FY 2017 (Projected)</b>
<b>Budget authority</b>	<b>Direct</b>	22,939	24,119	26,535
	<b>Reimbursable</b>	0	0	0
<b>Total</b>		22,939	24,119	26,535
<b>Outlays</b>		21,498	22,376	24,725
<b>Employment</b>	<b>Direct-full time equivalent</b>	129	140	155
	<b>Reimbursable-full time equivalent</b>	0	0	0
	<b>Total</b>	129	140	155

# **PART 3 – BUDGET PROGRAMS AND PERFORMANCE PLAN**

## **FY 2015 Case Activity and Results – All Programs**

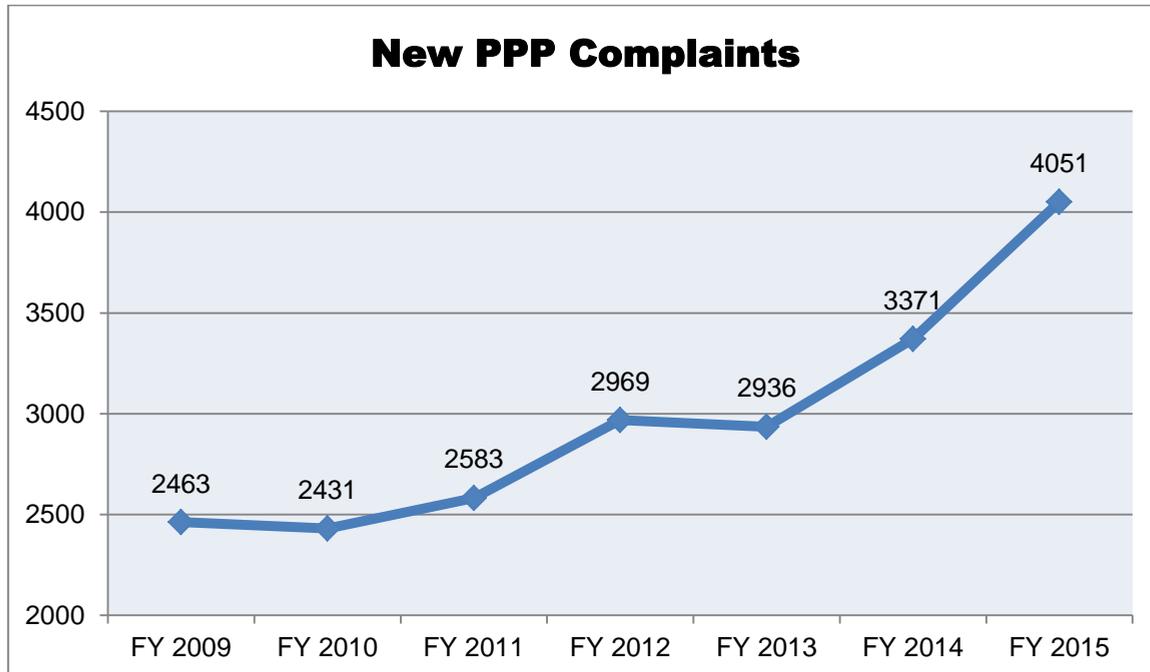
During FY 2015, OSC received 6,140 new matters throughout all of its program areas, as well as 64 requests for Hatch Act formal advisory opinions. Table 1 below summarizes overall OSC case intake and dispositions in FY 2015 with comparative data for the previous six fiscal years. More detailed data can be found in Tables 2 to 8, in sections below relating to the four specific components of OSC’s mission—prohibited personnel practice cases, Hatch Act matters, whistleblower disclosures, and USERRA cases.

<b>TABLE 1 Summary of All OSC Case Activity</b>							
	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
<b>Matters<sup>2</sup> pending at start of fiscal year</b>	943	1,326	1,357	1,320	1,744	1,399	1,967
<b>New matters received</b>	3,725	3,950	4,027	4,796	4,486	5,236	6,140
<b>Matters closed</b>	3,337	3,912	4,051	4,374	4,833	4,666	6,208
<b>Matters pending at end of fiscal year</b>	1,324	1,361	1,331	1,729	1,397	1,970	1,900
<b>Hatch Act advisory opinions issued</b>	3,733	4,320	3,110	3,448	1,767	1,382	1,023

<sup>2</sup> “Matters” in this table includes prohibited personnel practice cases, whistleblower disclosures, and USERRA cases.

# Investigation and Prosecution of Prohibited Personnel Practices

OSC's largest program is devoted to handling PPP complaints. Of the 6,140 new matters OSC received during FY 2015, 4,051 or 66 percent were new PPP complaints. (See chart below and Table 2 on the following page.)



Unlike many other investigative entities or agencies, OSC *must* conduct an inquiry of all jurisdictionally sound complaints alleging the commission of a prohibited personnel practice. The nature of OSC's inquiry ranges from a screening at intake by the CEU to an IPD field investigation. Complaints received by OSC can and often do involve multiple allegations, some of which involve more than one prohibited personnel practice.

After a complaint is received by OSC, CEU attorneys and personnel-management specialists conduct an initial review to determine whether it is within OSC's jurisdiction and whether further investigation is warranted. CEU refers matters stating a viable claim to IPD for further investigation. In FY 2015, CEU referred 264 cases for full IPD investigation. The ADR Unit reviews most of these matters prior to a full-scale investigation to determine if mediation is appropriate.

If a case is a good candidate for mediation, OSC contacts the complainant and the employing agency to invite them to participate in OSC's voluntary ADR program. If both parties agree, OSC conducts a mediation session, led by OSC-trained mediators who have experience in federal personnel law. When mediation resolves the complaint, the parties execute a binding written settlement agreement. If mediation does not resolve the complaint, it is referred back to IPD for further investigation, including complainant, witness, and subject interviews. IPD then applies the law to the facts to determine whether the matter warrants corrective action, disciplinary action, or both.

If, upon completion of its investigation, OSC concludes a prohibited personnel practice was committed, it informs the responsible agency of its findings. Most often, the matter is then successfully resolved through negotiations. If negotiations do not resolve the matter, OSC may initiate an enforcement proceeding seeking corrective action (relief intended to make an aggrieved employee whole) at the MSPB. Before doing so, however, the Special Counsel must formally report her findings and recommendations for corrective action. Only after the agency has had reasonable time to remedy the situation and has failed to do so may OSC petition the MSPB for corrective action. If OSC determines that disciplinary action (the imposition of discipline on an employee who has committed a violation) is

warranted, OSC can file a complaint directly with the MSPB. (The agency may agree to take appropriate disciplinary action on its own initiative, thereby avoiding an MSPB proceeding.)

OSC litigation before the MSPB—whether by enforcement actions seeking to obtain corrective and/or disciplinary action, as an *amicus*, or by otherwise intervening in matters filed by others—often has the benefit of clarifying and expanding existing law. It also brings greater public attention to OSC’s mission and work, which can increase the deterrent effect of its efforts.

## Resource Estimates

During FY 2016, IPD and CEU, which together have jurisdiction over prohibited personnel practices, will use approximately 81 FTE at a cost of approximately \$14,097,000. During FY 2017, we estimate the cost of the program will be approximately \$14,761,000 with 87 FTE assigned.

<b>TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing<sup>3</sup></b>								
	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	
<b>Pending complaints carried over from prior fiscal year</b>	474	769	863	934	1,152	1,045	1,414	
<b>New complaints received<sup>4</sup></b>	2,463	2,431	2,583	2,969	2,936	3,371	4,051	
<b>Total complaints</b>	2,937	3,200	3,446	3,903	4,088	4,416	5,465	
<b>Complaints referred by CEU for investigation by IPD</b>	169	220	270	252	255	274	264	
<b>Complaints processed by IPD</b>	150	179	190	274	266	278	307	
<b>Complaints pending in IPD at end of fiscal year</b>	201	250	331	325	316	316	284	
<b>Total complaints processed and closed (CEU and IPD combined)</b>	2,173	2,341	2,508	2,750	3,041	3,003	4,058	
<b>Complaint processing times</b>	<b>Within 240 days</b>	2,045	2,185	2,327	2,570	2,594	2,577	3,381
	<b>Over 240 days</b>	127	154	175	439	440	422	665
<b>Percentage processed within 240 days</b>	94%	93%	92%	88%	85%	85%	83%	

<sup>3</sup> Complaints frequently contain more than one type of allegation. This table, however, records all allegations received in a complaint as a single matter.

<sup>4</sup> “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 below provides information regarding the numbers of corrective actions obtained in prohibited personnel practice cases.

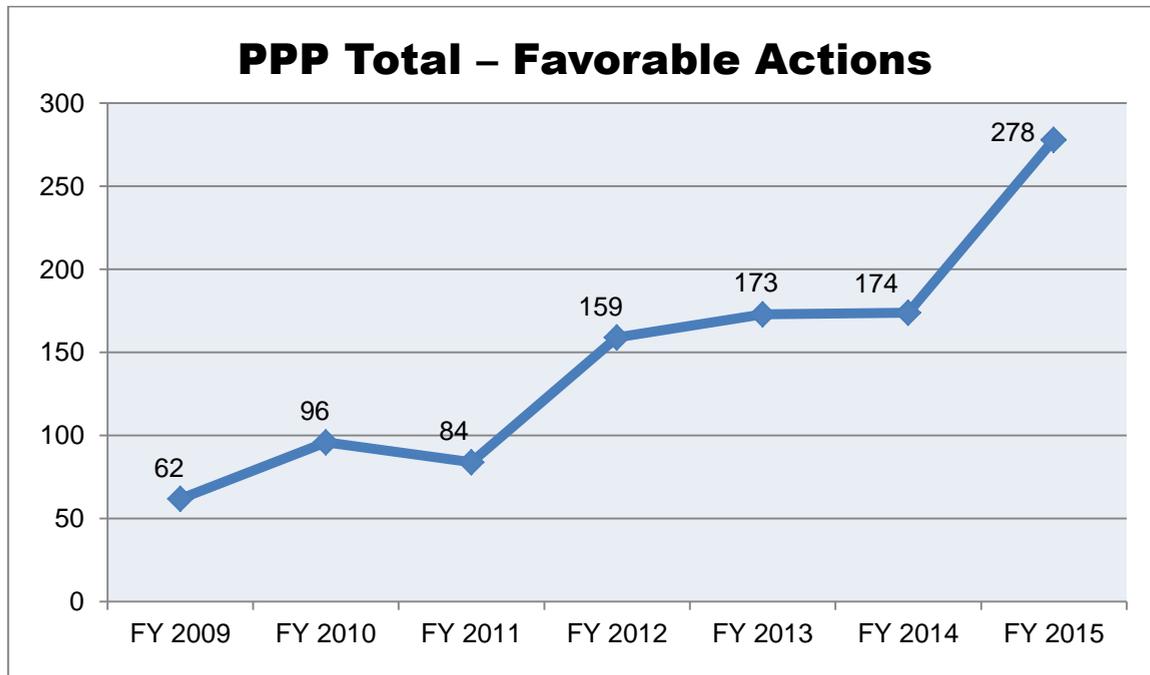
<b>TABLE 3 Summary of All Favorable Actions – Prohibited Personnel Practice Complaints</b>								
		<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
<b>Total favorable actions negotiated with agencies (all PPPs)</b>	<b>No. of actions<sup>5</sup></b>	62	96	84	159	173	174	278
	<b>No. of matters</b>	53	76	65	128	124	142	212
<b>Total favorable actions negotiated with agencies (reprisal for whistleblowing)</b>	<b>No. of actions</b>	35	66	64	112	104	138	233
	<b>No. of matters</b>	29	55	50	95	91	112	175
<b>Disciplinary actions negotiated with agencies</b>		5	13	6	19	27	23	9
<b>Stays negotiated with agencies</b>		9	13	12	27	28	21	62
<b>Stays obtained from MSPB</b>		1 <sup>6</sup>	2	4	8	5	2	3
<b>Stay extensions obtained from MSPB</b>		N/A	N/A	1	1	7	0	1
<b>Corrective action petitions filed with the MSPB</b>		0	0	1	0	2	0	0
<b>Disciplinary action complaints filed with the MSPB</b>		0	0	0	0	0	3	0

<sup>5</sup> 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.

<sup>6</sup> A revised query now correctly shows this quantity to be one, not zero as previously reported.

## Goals and Results – Prohibited Personnel Practices

In FY 2015, OSC received 4,051 new PPP complaints, an agency record and a 20 percent increase over FY 2014 levels. Once again, OSC achieved a record number of favorable actions, 278, in FY 2015, a 60 percent increase from the prior year.



OSC’s Strategic Objective 1 is to protect the merit system and promote justice in the federal workforce through investigation and prosecution of prohibited personnel practice cases. The following tables describe the three performance goals supporting this strategic objective.

## Goal Table 1 Safeguard Integrity and Fairness of Federal Workplace by Reducing Instances of Prohibited Personnel Practices

Description of Target		FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
1	Number of corrective actions obtained by IPD	140	130	130	150	150	267	200		200	
2	Percent of corrective actions obtained per number of cases closed	5%	4%	5%	5%	5%	7%	5%		5%	
3	Number of cases referred for investigation directly to IPD	83	87	87	114	95	111	95		100	
4	Number of informal stays requested	30	17	20	21	20	60	20		25	
5	Percent of informal stays obtained	N/A	N/A	N/A	100%	100%	100%	100%		100%	
6	Number of formal initial stays requested <sup>7</sup>	10	2	5	2	5	3	5		4	
7	Percent of formal initial stays obtained	100%	100%	100%	100%	100%	100%	100%		100%	
8	Number of corrective actions obtained in cases referred for investigation directly from CEU to IPD	31	50	50	58	50	92	50		65	
9	Percent of corrective actions obtained per number of cases referred for investigation directly from CEU to IPD	45%	57%	50%	51%	50%	83%	50%		50%	
10	Number of initial examinations completed by CEU within 120 days	1,801	1,576	1,600	1,645	1,700	2,251	1,600		1,600	
11	Percent of initial examinations completed by CEU within 120 days	66%	57%	57%	63%	60%	62%	60%		60%	
12	Number of CEU cases more than 240 days old	120	256	140	244	200	468	200		200	
13	Percent of CEU cases more than 240 days old <sup>8</sup>	4%	9%	10%	9%	10%	13%	10%		10%	
14	Number of staff allocated to whistleblower retaliation and other PPPs	65	59	65	62	65	62	65		65	
15	Percent of total staff allocated to whistleblower retaliation and other PPPs	52%	53%	55%	53%	55%	58%	55%		55%	
16	Number of staff training programs in whistleblower retaliation and other PPPs	4	4	4	5	4	10	4		7	
17	Percent of cases qualifying for full investigation referred to ADR Unit for review	89%	56%	65%	74%	65%	53%	65%		65%	

<sup>7</sup> Formal stays are only filed when an agency declines the initial informal stays offered.

<sup>8</sup> Due to the sharp increase in PPP caseload, an increase in the number of aged cases will occur. The FY 2014 and FY 2015 targets were adjusted upward to reflect this reality.

## Goal Table 2 Provide Outreach and Advice; Seek Disciplinary Action against Federal Employees for Persistent or Egregious Prohibited Personnel Practices

Description of Target		FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
18	Number of recommendations to agencies to take disciplinary action	6	19	12	23	18	14	18		18	
19	Number of disciplinary action complaints filed	1	0	1	3	1	0	1		1	
20	Number of disciplinary actions resolved pre-litigation through negotiated settlement	20	27	27	23	23	9	23		15	
21	Total number of successful disciplinary prosecutions	1	0	1	0	1	2	1		1	
22	Percent of successful disciplinary prosecutions	100%	N/A	100%	N/A	100%	100%	100%		100%	
23	Upon receipt of a complaint, clearly explain the OSC review process and when action can be expected	99%	99%	99%	97%	99%	96%	99%		99%	
24	Provide complainants status updates at defined intervals and when significant new developments occur <sup>9</sup>	99%	80%	90%	93%	92%	90%	92%		92%	
25	If OSC declines to refer a case for investigation, clearly inform complainant of the reason(s) why <sup>10</sup>	100%	82%	100%	87%	100%	100%	100%		100%	

<sup>9</sup> Provide complainant's status updates at defined intervals and when significant new developments occur. The IT system is coded to generate this information. Since we cannot dedicate additional resources to maintain a higher result, we feel that target levels of 92 percent provide substantial compliance with this goal.

<sup>10</sup> If OSC declines to refer a case for investigation, clearly inform complainant of the reasons why. Target: The CEU Chief will meet with examiners to identify the information that should be included in preliminary determination and closure letters. CEU Chief will provide senior management a list of the files (by case number and name) lacking this information.

## Prohibited Personnel Practice Successes

### Litigation

- In 2014, OSC filed three complaints for disciplinary action with the MSPB, alleging political discrimination and unauthorized preference when human resources officials manipulated the selection process to hire preferred candidates into career positions. OSC settled two of these complaints, with two human resources employees receiving one-grade demotions to non-supervisory positions and being debarred from a higher graded position for a specified time period. In the third complaint, tried before an administrative law judge, OSC did not prevail. In December 2015, OSC filed a petition for review with the MSPB to overturn the administrative law judge's decision. The case is pending.

### Amicus Curiae

- In 2014, OSC filed its first *amicus curiae* brief in the U.S. Supreme Court in *Dep't. of Homeland Security v. MacLean*. In that case, the appellant, a U.S. Air Marshal, was fired after his agency learned he had disclosed to the media (as well as to management and DHS-OIG) its controversial decision to cancel protection services on all domestic long-haul flights for a set time period in the midst of alerts on elevated terrorism on air carriers. The appellant believed the decision created a risk to public safety, and his disclosure led to public and congressional pressure to reinstate protective services on long-haul domestic flights. The agency defended the appellant's termination on grounds that he made an unauthorized disclosure of sensitive information in violation of its own regulations. In its brief, OSC argued that the appellant's disclosure—which involved a threat to public safety—was a proper subject of whistleblower protection and not exempt from the WPA. In January 2015, the Court agreed in a 7-2 decision and remanded the case for further hearings, at which point the appellant and the agency reached a settlement that included back pay and reinstatement.

### Retaliation

- A management official received a proposed termination after he made a series of disclosures to the press regarding improper use of funds and reductions of funding in areas necessary for public safety. OSC obtained an indefinite stay of the complainant's termination. After concluding that the complainant was retaliated against for making the disclosures, OSC negotiated a settlement, which included a lump sum payment and the complainant agreed to retire.
- A manager was terminated after disclosing to the OIG that one of his supervisors created a hostile work environment and improperly disciplined an employee. He also testified on behalf of a terminated coworker in a matter pending before the MSPB. After its investigation found evidence that the agency retaliated against the complainant, OSC reached a settlement in which the agency reinstated him and provided full back pay.
- An electrician was fired in retaliation for disclosing that a supervisor, working under the influence of alcohol, deliberately sabotaged a test of the power plant's electrical system, which could have caused severe injury or death. OSC issued a PPP report, which resulted in a monetary settlement. By separate report, OSC negotiated suspensions for the two officials responsible for the retaliatory termination.
- A consumer safety inspector disclosed violations of the Humane Methods of Slaughter Act in the rendering unconscious of animals before their slaughter. Subsequently, the agency relieved the inspector of her duties and proposed her removal. OSC obtained a stay of the removal and negotiated a settlement on her behalf that included a lump sum payment for back pay and other damages.

- A special agent was fired after he testified, under a subpoena, in support of a defense motion to suppress a federal wiretap. He gave his testimony as a citizen, not as a representative of his agency, which was not involved in the underlying prosecution. Based solely on his testimony, his agency fired him. OSC concluded that his First Amendment rights to free speech were violated. OSC obtained from the MSPB an indefinite stay of his removal and filed a corrective action complaint with the Board. Soon after, the Supreme Court issued its decision in *Lane v. Franks*, a case involving similar facts, which affirmed First Amendment rights for public employees who give testimony under oath in criminal trials. Subsequently, OSC settled its case with the agency. Complainant, who by now had reached retirement age, retired with a monetary settlement and a clean employment record.
- Complainant, a GS-5 probationary employee, was terminated immediately after the agency became aware that he had contacted a U.S. Senator for assistance with compensation related to his status as a veteran. OSC's investigation showed that the agency's reasons for the termination were pretextual and that agency officials demonstrated retaliatory animus. OSC issued a PPP report (published in redacted form on OSC's website) finding that the agency terminated complainant for contacting Congress and requested full corrective action. The agency agreed to reinstate complainant to a similar position and provide him with back pay and compensatory damages. OSC is also negotiating appropriate disciplinary action for the agency officials.

## **Discrimination**

- A quality assurance specialist who began the gender transition process was subjected to harassment, including not being able to use the restroom associated with her gender identity and being repeatedly called by the wrong name and pronouns. After completing its investigation, OSC issued its first PPP report (published in redacted form on OSC's website) finding that the agency had engaged in gender identity discrimination. OSC also negotiated a resolution that led to institutional changes at the agency regarding the treatment of transgender employees. OSC provided training to supervisors and employees regarding diversity and cultural competency on sexual orientation and gender identity employment issues.
- A complainant was terminated because of her high-risk pregnancy. In its investigation, OSC learned that agency officials knew of her pregnancy and discussed terminating her in lieu of ordering her a maternity uniform. Additionally, while she was in labor, agency officials asked her to ignore her physician's instructions and delay going to the hospital so that they could stop at her residence to pick up her credentials. After OSC's investigation, the agency agreed to pay her a lump sum payment, rescind her termination, and expunge the removal and related documents from her personnel file. The agency also agreed to issue a revised SF-50 reflecting her voluntary resignation, rescind a letter of counseling for sick leave abuse, provide complainant with a copy of her personnel file, and limit employment reference responses to her job title, time of service, duty station, pay band, and job description.

## **Subpoena**

- A complainant reported that her supervisor was creating a hostile work environment and appeared to have a substance abuse problem. Her allegations resulted in a formal investigation against her by the agency. She was notified by her supervisor approximately two weeks after the investigation began that her overseas tour was being curtailed. After the agency refused to cooperate with the request for information, OSC issued a subpoena to obtain the documents.

## Stays

- A complainant received a proposed removal after reporting improper infection control and prevention. An agency investigation determined that proper protocols were not being followed and patient care was substandard. At OSC's request, the agency agreed to informally stay the complainant's proposed removal during OSC's investigation.
- A complainant received a proposed removal after reporting that his supervisor abused her authority, harassed employees, yelled at staff in front of patients, monitored employees by hiding behind curtains, allowed unsafe working conditions due to inadequate staffing, refused to grant leave and charged employees with AWOL despite documentation, terminated employees who spoke up regarding conditions, and created a hostile work environment. There was no fact-finding investigation conducted into her alleged misconduct and there were no statements taken from any of the patients. The agency subsequently mitigated her proposed removal to a 14-day suspension. OSC requested that the agency informally stay the 14-day suspension, pending OSC's investigation, and the agency agreed.

## USERRA Unit

USERRA protects the civilian employment and reemployment rights of those who serve the nation in the Armed Forces, including the National Guard and Reserves, by prohibiting employment discrimination due to uniformed service (including initial hiring, promotion, retention, or any benefit of employment) and providing for prompt reemployment of service members in their civilian jobs after they return from military duty. Congress intends for the federal government to be a "model employer" under USERRA.

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 USERRA complaints involve federal executive agencies.

## USERRA Referral Cases

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. (*See below "USERRA Demonstration Project" for OSC's enhanced role in investigations.*) If it cannot resolve the matter, the claimant may direct VETS to refer the complaint to OSC for possible representation before the MSPB. If, after reviewing the complaint and investigative file, and conducting any necessary follow-up investigation, OSC is reasonably satisfied that the claimant is entitled to relief under USERRA, it may act as the claimant's attorney and initiate an action before the MSPB.

## USERRA Demonstration Projects

From 2005-2007, Congress mandated a USERRA Demonstration Project whereby OSC directly received half of all federal USERRA cases for investigation, resolution, and possible prosecution. OSC obtained significant relief for veterans during the project, prompting Congress to establish a second Demonstration Project, which began on August 9, 2011 and expired on August 9, 2014. The Office received similarly significant results during the second Demonstration Project.

## Resource Estimates

During FY 2016, OSC will use approximately one FTE at a cost of \$225,000 on USERRA enforcement, while during FY 2017 OSC, estimates the program will use one FTE at a cost of \$266,000. These costs address USERRA referrals from DOL only and do not take into account future Demonstration Project work or USERRA investigations that OSC may be awarded.

## Goals and Results – USERRA Unit

The recent USERRA Demonstration Project added 464 USERRA cases to OSC’s total workload during the span of the three-year project. Unlike the referral cases, OSC investigated as well as enforced the Demonstration Project cases. OSC received an average 26 percent corrective action rate during this Demonstration Project. (See Table 5.) In the prior Demonstration Project, OSC achieved similar results.

<b>TABLE 4 Summary of USERRA Referral and Litigation Activity<sup>11</sup></b>							
	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
<b>Pending referrals carried over from prior fiscal year</b>	5	7	12	17	11	6	7
<b>New referrals received from VETS during fiscal year</b>	41	32	36	24	7	14	18
<b>Referrals closed</b>	39	27	31	30	12	13	21
<b>Referrals closed with corrective action</b>	4	0	2	4	2	2	2
<b>Referrals closed with no corrective action</b>	35	27	29	26	10	11	19
<b>Referrals pending at end of fiscal year</b>	7	12	17	11	6	7	4
<b>Litigation cases carried over from prior fiscal year</b>	1	1	1	0	0	0	0
<b>Litigation cases closed</b>	0	1	1	0	0	0	0
<b>Litigation closed with corrective action</b>	0	1	1	0	0	0	0
<b>Litigation closed with no corrective action</b>	0	0	0	0	0	0	0
<b>Litigation pending at end of fiscal year</b>	1	1	0	0	0	0	0

<sup>11</sup> This table has been reorganized with some categories and figures changed from prior reports to correct discrepancies and more clearly present relevant information.

**TABLE 5 Summary of USERRA Demonstration Project Activity**

	FY 2012	FY 2013	FY 2014	FY 2015
Pending cases carried over from previous fiscal year	28	88	69	62
New cases opened	152	137	146	0
Cases closed	92	154	153	51
Closed cases where corrective action was obtained	24	38	37	16
Closed cases where no corrective action was obtained	68	116	116	35
Pending cases at end of fiscal year	88	71	62	11

**Goal Table 6 Provide Outreach and Advice to the Federal Community about Employment Discrimination Against Veterans**

Description of Target		FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
37	Number of staff allocated	3	3	3	3	3		3	
38	Percent of staff allocated	50%	50%	50%	50%	50%		100%	

## Goal Table 7 Seek Disciplinary or Corrective Action for Violations of Law

Description of Target		FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
39	Number of favorable resolutions	35	39	12 <sup>12</sup>	19	6		6	
40	Percentage of favorable resolutions	24%	23%	24% <sup>13</sup>	26%	N/A		N/A	
41	Number of investigations within 90 days	60	84	20 <sup>14</sup>	10	N/A		N/A	
42	Percentage of investigations within 90 days	50%	57%	50% <sup>15</sup>	47%	N/A		N/A	
43	Number of legal reviews within 60 days	32	16	18 <sup>16</sup>	25	18		18	
44	Percent of legal reviews within 60 days	76%	80%	76% <sup>17</sup>	95%	76%		76%	
45	Customer service exit survey findings	50%	48%	N/A <sup>18</sup>	N/A	N/A		N/A	
46	Percent of cases received by USERRA Unit referred to ADR Unit for review	50%	21%	N/A <sup>19</sup>	N/A	N/A		N/A	

<sup>12</sup> This target was reduced for 2015 and 2016 to reflect that OSC stopped receiving new USERRA Demonstration Project cases on August 9, 2014, when the project ended. Accordingly, OSC will have a fewer number of cases in subsequent fiscal years (including USERRA Referral cases).

<sup>13</sup> This target was maintained for 2015 but eliminated for 2016 due to the USERRA Demonstration Project ending on August 9, 2014. In 2015, OSC will still be completing a smaller number of remaining USERRA Demonstration Project cases. In 2016, however, most if not of all those cases will be completed, leaving only a small number of USERRA Referral cases, for which it is not feasible to set a target for the percentage of favorable resolutions (in part because such cases are referred to OSC from DOL at the claimant's request, not based on merit).

<sup>14</sup> This target was reduced for 2015 and eliminated for 2016 due to the USERRA Demonstration Project ending on August 9, 2014. Accordingly, this target will only be applicable for a small number of remaining Demonstration Project cases in 2015, and not applicable at all in 2016 (it does not apply to USERRA Referral cases, which are subject to a 60-day time limit).

<sup>15</sup> This target was reduced for 2015 and eliminated for 2016 due to the USERRA Demonstration Project ending on August 9, 2014. Accordingly, this target will only be applicable to a small number of remaining Demonstration Project cases in 2015, and not applicable at all in 2016 (it does not apply to USERRA Referral cases, which are subject to a 60-day time limit).

<sup>16</sup> This target was reduced for 2015 and 2016 to reflect that OSC stopped receiving new USERRA Demonstration Project cases on August 9, 2014, when the project ended. However, OSC will continue to receive a smaller number of USERRA referral cases which are subject to a 60-day time limit.

<sup>17</sup> This target was maintained for 2015 and 2016 since OSC will continue to receive USERRA Referral cases which are subject to a 60-day time limit.

<sup>18</sup> This target was eliminated for 2015 and 2016 due to the USERRA Demonstration Project ending on August 9, 2014. Accordingly, OSC is no longer conducting a customer satisfaction survey for USERRA Demonstration Project cases.

<sup>19</sup> This target was eliminated for 2015 and 2016 due to the USERRA Demonstration Project ending on August 9, 2014.

## Goal Table 8 Achieve Mutually Satisfactory Solutions through USERRA Referral for Mediation

Description of Target		FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
47	Number of USERRA cases referred to ADR unit for review <sup>20</sup>	47	30	3	7	3		3	
48	Percent of cases referred by USERRA to the ADR Unit for review in which mediation was offered	65%	53%	66%	29%	66%		66%	
49	Percent of cases in which both parties agreed to mediate	75%	50%	100%	50%	75%		75%	
50	Number of cases withdrawn prior to mediation	5	N/A	1	0	0		0	
51	Number of cases mediated	11	7	11	1	2		2	
52	Percent of cases successfully mediated	100%	75%	82%	50%	50%		50%	

USERRA requires that complaints be investigated and the claimant be notified of the results within 90 days, unless the claimant grants an extension. Such investigations may include obtaining information from the claimant, requesting and reviewing documents from the agency, interviewing witnesses, and conducting legal research and analysis. All the information gathered must then be synthesized to make a determination about whether the complaint is meritorious. In some cases, there are delays that are beyond OSC's control in receiving documents or interviewing witnesses. Cases also vary in depth and complexity. Thus, in certain cases, it is not feasible to complete investigations and make a determination within 90 days. Accordingly, OSC has targeted a 63 percent rate of completing USERRA Demonstration Project investigations within 90 days, or in almost two-thirds of complaints.

OSC conducted five USERRA outreach events during FY 2015, satisfying every agency request. OSC expects to again satisfy all outreach requests in FY 2016.

### USERRA 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:

<sup>20</sup> The ADR Unit reviewed cases under the USERRA Demonstration Project from May 2012 through August 2014. Due to the expiration of the Demonstration Project in August 2014, there will be no new Demonstration Project cases for OSC to refer to the ADR Unit in FY 2016 and FY 2017, so targets for these categories have been greatly scaled back.

## **Reemployment**

- An Army National Guard member was refused reemployment as a contractor with the Air Force following his return from active duty. As a result, he was unemployed for several months before finding a new job. OSC argued that the Air Force improperly interfered with the member's reemployment rights, and negotiated a resolution where the Air Force paid him lost wages for the period of his unemployment.

## **Discrimination and Retaliation**

- An Air Force reservist received a lower rating on his performance appraisal and a significantly smaller cash award bonus after returning from deployment to his civilian position at the U.S. Marshals Service. After OSC concluded that the adverse actions were taken because of the reservist's military status, the agency retroactively upgraded the reservist's rating, granted him a time-off award, and gave him additional hours of paid leave to approximate the cash award bonus he should have received.
- An Army National Guard member, upon returning from a one-year deployment, was denied a regularly-scheduled promotion in his Army civilian police officer position at the same time as all of his coworkers (who were not deployed). This caused the member to miss an additional promotional opportunity because he lacked the necessary time-in-grade requirements. OSC investigated and persuaded the agency to offer the member full relief, including a retroactive promotion, corresponding back pay, and reconsideration for the promotional opportunity.

## **Alternative Dispute Resolution**

In select prohibited personnel practice cases referred by CEU to IPD, OSC offers mediation as an alternative to investigation and potential litigation. Under OSC's program, once a case has been identified as appropriate for mediation, an OSC alternative dispute resolution specialist contacts the parties to discuss the process. Pre-mediation discussions are designed to help the parties form realistic expectations and well-defined objectives regarding the mediation process. Among the factors that determine mediation-appropriate cases are the complexity of the issues, the nature of the personnel action, and the relief sought by the complainant.

## **Goals and Results**

During FY 2015, 83 cases were referred to the ADR Unit. In 59 cases, mediation was accepted by the complainants, and, from those cases, agencies accepted mediation in 17 cases. The new emphasis on mediation has yielded some outstanding results: Mediations that resulted in settlements again reached a record 51 combined over FY 2014 and FY 2015, and 81 percent of mediations resulted in settlement, thus proving an efficient use of resources. (*See Table 6.*)

**TABLE 6 ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints & USERRA Complaints**

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Number of cases in which mediation offered after referral from CEU or USERRA plus cases referred from IPD <sup>21</sup>	28	26	31	129	107	80	83
Mediation offers accepted by complainants	17	11	20	82	75	56	59
Mediation offers accepted by agencies and by complainants	15	6	15	59	52	39	17
Number of mediations conducted by OSC <sup>22</sup>	11	6	13	40	50 <sup>23</sup>	39	26
Number of mediations withdrawn by either OSC or the agency after acceptance	3	0	2	10	6	8	13
Number of mediations withdrawn after at least one mediation session	*	*	*	0	2	1	0
Number of completed mediations	*	*	*	30	47	38	26
Number of completed mediations that yielded settlement	4	3	10	18	29	30	21
Percentage of completed mediations that resulted in settlement	36%	50%	77%	60%	62%	79% <sup>24</sup>	81%
Cases in process <sup>25</sup> – Carryover from previous FY	N/A	N/A	N/A	5	1	0	0
Carryover to next FY – In process	N/A	N/A	N/A	15	10	12	17
Carryover to next FY – Offer pending <sup>26</sup>	N/A	N/A	N/A	20	7	4	2
Carryover to next FY – Pending review	N/A	N/A	N/A	N/A	10	10	0

## Resource Estimates

During FY 2016 the ADR Unit will use approximately three FTE at a cost of approximately \$545,000. During FY 2017, we estimate the cost of the program will be approximately \$766,000 with four FTE assigned.

## ADR Successes

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

- A manager alleged that his proposed termination during a probationary period was in retaliation for whistleblowing. The complainant reported that a health care worker was impaired while on duty and was promoted partially based on false documentation. These disclosures were partially substantiated. After discussions related to the mediation process, the complainant decided to resign from the agency and pursue

<sup>21</sup> 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.

<sup>22</sup> Includes cases completed or withdrawn after at least one mediation session.

<sup>23</sup> “Percentage of completed mediations that resulted in settlement” omits cases withdrawn before mediation was completed.

<sup>24</sup> “Percentage of completed mediations that resulted in settlement” omits cases withdrawn before mediation was completed.

<sup>25</sup> “In process” means parties have agreed to mediate and mediation is scheduled or ongoing with more than one session.

<sup>26</sup> “Offer pending” means cases in which OSC will offer or is in the process of offering mediation to the parties.

other work. The agency agreed to convert the proposed termination into a resignation and provide him a clean record, restore his leave, and pay him a monetary settlement.

- An employee alleged that after he made disclosures of improper agency investigations, he was subjected to a hostile environment from his superiors and some of his colleagues. In mediation, he and the agency explored several possible job changes and ultimately agreed to a new position in a job series and at a location the complainant desired.
- A senior manager alleged that as a result of raising numerous concerns involving the handling of hazardous material, his duties were substantially changed and he was denied a promotion. The parties reached agreement in mediation. The agency agreed to give the complainant the training he desired, the opportunity to meet with a senior regional official, and membership in a safety working group that was tasked with studying and addressing the public safety concerns he disclosed.
- An agency analyst alleged retaliation for disclosing that a senior official had claimed improper locality pay. The improper pay was substantiated and the complainant claimed that, in retaliation, his assignments were substantially changed, he was moved to another duty location, and he was denied telework. A full and productive discussion in mediation led to a repair of working relationships. The parties mutually agreed to new duties for the complainant, a change in office space, restored telework privileges, and a new supervisor for purposes of performance ratings.
- A complainant alleged that after disclosing mismanagement issues, he was retaliated against when his duties were significantly altered and he was issued a five-day suspension. As a result of mediation, the agency converted part of his suspension to leave without pay (with no disciplinary record); the remaining days were converted to pay days, provided he receives no disciplinary action during the next two years. The agency also agreed to present an award from a management official to the employee acknowledging his contributions. The agency further agreed to provide a neutral reference if the complainant decides to seek a position elsewhere and to conduct training for managers on the Whistleblower Protection Enhancement Act.

## Goal Table 6 Achieve Mutually Satisfactory Solutions through Mediation

Description of Target		FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
26	Number of cases reviewed by the ADR Unit from all sources	185	132 <sup>27</sup>	200	143	200		150	
27	Percentage of cases reviewed in which mediation is offered from all sources	65%	61%	65%	58%	60%		60%	
28	Number of cases mediated (including cases withdrawn after one or more sessions)	50	39	45	26	35		35	
29	Percentage of all mediations completed that resulted in settlement	62%	79%	62%	87%	62%		62%	

## Whistleblower Disclosure Program

In addition to its investigative and prosecutorial mission, OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may, under 5 U.S.C. § 1213(a), disclose information they reasonably believe evidences a violation of law, rule, or regulation, or gross mismanagement, a gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. The Disclosure Unit is responsible for reviewing the information submitted by whistleblowers and advising the Special Counsel whether it shows there is a substantial likelihood that the type of wrongdoing described in § 1213(a) has occurred or is occurring. If so, the Special Counsel must transmit the disclosure to the head of the relevant agency. The agency is required to conduct an investigation and submit a report to OSC describing its findings and the steps taken in response. Under § 1213(e), the whistleblower is also provided with a copy of the report for comment. The Special Counsel is then required to review the report in order to determine whether it meets the requirements of the statute and its findings appear reasonable. The report is then forwarded to the President and appropriate congressional oversight committees.

During FY 2015, the unit referred 62 matters to agency heads for investigation under § 1213(c). (*See Table 7.*)

The Disclosure Unit's more complex cases are very labor-intensive and often require the attention of more than one attorney. These cases can take more than a year to fully complete for a number of reasons—agencies routinely request additional time to conduct the investigation and write the report, whistleblowers request additional time to prepare their comments, and Disclosure Unit attorneys and the Special Counsel must review the report to verify it contains the information required by statute, determine whether its findings appear reasonable, and prepare any comments the Special Counsel may have on the report.

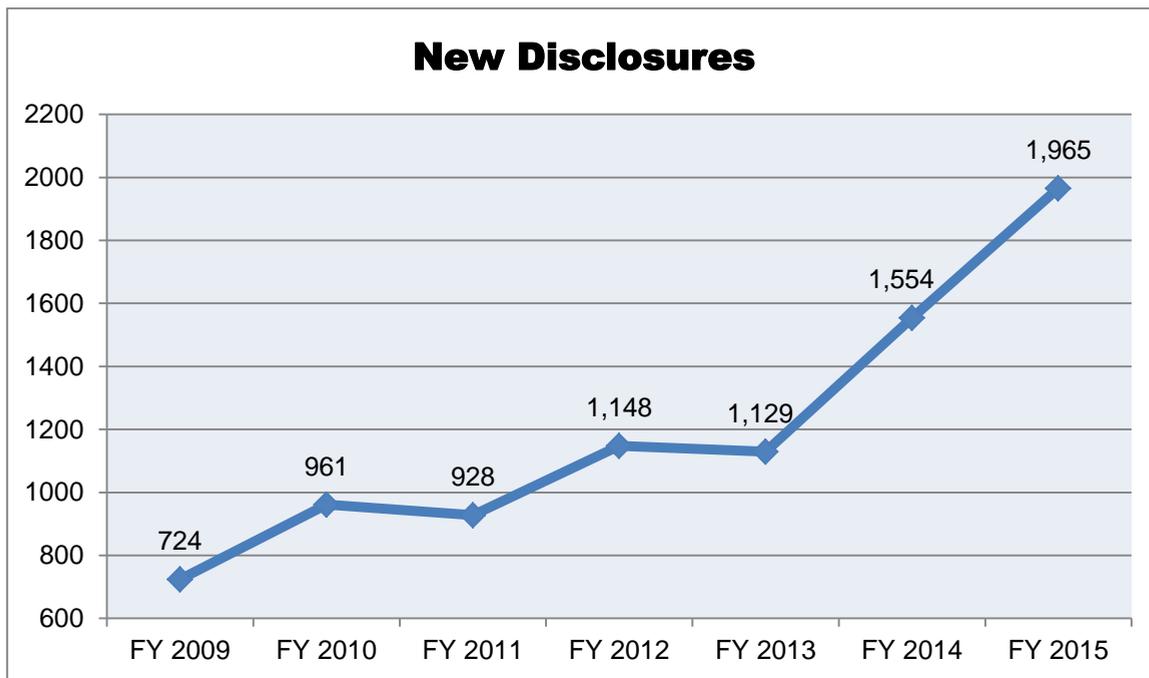
<sup>27</sup> CEU and USERRA units referred fewer cases to ADR in FY 2014.

## Resource Estimates

During FY 2016, we estimate the program will use 20 FTE at a cost of \$3,473,000. During FY 2017, we estimate the program will use 25 FTE at a cost of \$4,007,000.

## Goals and Results – Whistleblower Disclosures

OSC’s Strategic Objective 2 is to promote public safety and efficiency by acting as a channel for whistleblowers in the federal workforce to disclose information. The following tables describe the two operational goals supporting this strategic objective. Disclosure Unit cases have more than doubled in the last six years. In FY 2015, the unit received 1,965 Disclosures, 26 percent higher than in FY 2014 and 74 percent higher than in FY 2013. As a consequence, the Unit’s backlog remains a challenge.



**TABLE 7 Summary of Whistleblower Disclosure Activity – Receipts and Dispositions<sup>28</sup>**

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	
Pending disclosures carried over from prior fiscal year	128	125	83	132	225	193	433	
New disclosures received	724	961	928	1,148	1,129	1,554	1,965	
<i>Total disclosures</i>	852	1,086	1,011	1,280	1,354	1,747	2,398	
Disclosures referred to agency heads for investigation and report	46	24	47	39	51	92	62	
Referrals to agency IGs	10	2	5	6	2	0	0	
Agency head reports sent to President and Congress	34	67	22	36	54	26	72	
Results of agency investigations and reports	Disclosures substantiated in whole or in part	30	62	21	31	49	25	63
	Disclosures unsubstantiated	4	5	1	5	5	1	9
Disclosure processing times	Within 15 days	394	555	555	583	575	731	830
	Over 15 days	333	451	315	470	585	584	1,117
Percentage of disclosures processed within 15 days	54%	55%	63%	55%	49%	55%	42%	
Disclosures processed and closed	727	1,006	870	1,053	1,160	1,315	1,947	

**Goal Table 7 Reduce Governmental Wrongdoing and Threats to Health and Safety by Facilitating Whistleblower Disclosures**

Description of Target	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
30 Total number of outreach activities undertaken including dissemination of whistleblower information	5	14	10	11	10		10	
31 Success in prompting thorough agency investigations of referred disclosures	77%	88%	77%	45%	77%		77%	
32 Number of whistleblower disclosures prompting effective corrective action and accountability <sup>29</sup>	33	25 <sup>23</sup>	33	48	33		33	

<sup>28</sup> 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.

<sup>29</sup> The number of whistleblower disclosures prompting effective corrective action and accountability dropped because the Disclosure Unit had to shift its focus to the increased referral workload that emerged in the second half of FY 2014.

## Goal Table 8 Provide Outreach and Advice to the Federal Community about Whistleblower Disclosures; Seek Corrective Action

Description of Target		FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
33	Number of whistleblower disclosures referred by OSC to agency head for investigation	50	90	60	62	60		60	
34	Percent of whistleblower disclosures submitted to OSC referred to agency head for investigation	6%	7%	6%	3%	3%		3%	
35	Number of whistleblower disclosures either closed or referred within 15 day statutory timeline	580	742	600	835	600		600	
36	Percent of whistleblower disclosures closed or referred within 15 day statutory deadline	50%	56%	53%		53%		53%	

### Disclosure Unit Successes

#### Violation of Law, Rule or Regulation, Gross Waste of Funds, and Gross Mismanagement

Systemic Violation of Federal Regulations Governing AUO. Over the past two years, OSC referred approximately one dozen disclosure cases to the Secretary of DHS alleging widespread systemic abuse of the pay authority known as administratively uncontrollable overtime (AUO). Whistleblowers at facilities in Laredo, Houston, and El Paso, Texas; San Ysidro, El Centro, and Bakersfield, California; Glynco, Georgia; Herndon and Reston, Virginia; Washington, D.C.; and, Chattanooga, Tennessee, made this complaint. The whistleblowers alleged that managers approved AUO for work that employees did not perform or work that should not have qualified. DHS investigated and initiated significant reforms, including drafting a department-wide AUO directive to ensure the lawful

administration of overtime pay in each of DHS's component agencies and a review of eligibility assessments resulting in the de-authorization of AUO for 2,300 employees. In addition, in response to these investigations, Congress adopted a new pay system for Border Patrol agents to replace the outdated AUO system. Collectively, the reforms generated in response to these disclosures will result in an estimated \$100 million in annual cost savings to the government, according to the Congressional Budget Office. *Referred during 2013 and 2014; transmitted to the President and congressional oversight committees and closed March 2015.*

## **Violation of Law, Rule, or Regulation, and Substantial and Specific Danger to Public Health**

Violation of Scheduling Protocols for VA patients. OSC referred to the VA Secretary allegations that employees at the Fort Collins Outpatient Clinic in Fort Collins, Colorado, failed to follow proper protocols when scheduling patient appointments. The VA substantiated the whistleblowers' allegation that patient appointments at Fort Collins were not scheduled according to agency policy. Specifically, the Clinic "blind scheduled" appointments for veterans after an initial appointment had been canceled, in violation of VA policy. In addition, the Clinic manipulated the "desired date" for appointments to show falsely that veterans waited for care for shorter periods of time than actually was the case. However, the agency determined that no patients were harmed due to the delay in care within the Cheyenne VAMC system, of which the Fort Collins Outpatient Clinic is a part. The VA has taken the recommended corrective actions to improve its scheduling practices, including disciplining six individuals responsible for the misconduct. Nevertheless, the Special Counsel determined that the agency's ultimate conclusion that the improper scheduling practices did not pose a danger to patient health or safety was unsupported and thus was not reasonable. *Referred October 2013; transmitted to the President and congressional oversight committees and closed July 2015.*

Failure to Inspect Meat and Poultry in Accordance with Federal Regulations. OSC referred to DoD allegations received from an employee of the Defense Commissary Agency (DeCA), Ord Community Commissary (OCC), Presidio of Monterey, California, that OCC employees engaged in conduct that constituted a violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public health and safety. The whistleblower alleged that the operations of the OCC Meat Department failed to meet the standards of the governing DeCA directive. The agency substantiated the majority of the allegations, finding that OCC employees improperly repacked meat, falsified date labels, excessively marked up sales prices, mislabeled products, and poorly managed inventory. The investigation did not substantiate the allegation that poultry was improperly processed in the Meat Department or that meat being sold was no longer fresh. In response to the DeCA OIG findings and recommendations, DeCA took significant disciplinary action against the responsible OCC employees: The agency removed the store director from federal service; suspended the store manager for seven days; demoted the Meat Department manager from a supervisory position to a meat cutter position; issued a letter of reprimand to the assistant store director; and issued a letter of counseling to the zone director. In addition, the agency revised the DeCA directive and re-published an accompanying manual, DeCA Manual 40-3.1. The agency trained zone managers and developed a mandatory checklist for key operations for all zone managers during store visits, to be kept as a matter of record for use during audits. Finally, the agency launched a pilot program for centralized meat cutting in 2013. The Special Counsel determined that the agency report contained all the information required by statute and that the findings appeared to be reasonable. *Referred July 2012; transmitted to the President and congressional oversight committees and closed July 2015.*

## **Substantial and Specific Danger to Public Health and Safety**

Legionella Eradication at VA Facility in Colorado. OSC referred to the VA Secretary allegations based on disclosures made by a former industrial controls technician at the Grand Junction VA Medical Center, Grand Junction, Colorado. The whistleblower disclosed that Grand Junction VAMC management failed to properly address unsafe conditions within the facility that posed health and safety hazards to patients and staff, including the failure to conduct proper testing, eradication, and maintenance to prevent and eliminate *Legionella* bacteria from the facility's water system. The investigation substantiated that environmental testing detected *Legionella* in Grand Junction

VAMC's water system in February 2013, and despite initiating eradication efforts in March 2013, the facility did not conduct *Legionella* eradication procedures in compliance with VA requirements until October 2013. The VA concluded that Grand Junction VAMC did not fully address unsafe conditions that could pose health and safety hazards to patients and staff. Nevertheless, because the investigation did not reveal any evidence of clinical consequences resulting from the presence of *Legionella* in the water system, the VA concluded there was not a substantial and specific danger to public health or safety. The Special Counsel determined that the VA's reports met all of the statutory requirements. However, the Special Counsel did not find reasonable the VA's conclusion that there was no substantial and specific danger to public health or safety, noting that this conclusion reflects the "harmless error" approach often taken by the VA with respect to patient health and safety. *Referred September 2013; transmitted to the President and congressional oversight committees and closed March 2015.*

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

Failure to Report Allegations of Sexual Assault. OSC referred to the VA Secretary allegations based on disclosures of wrongdoing at the Syracuse VA Medical Center. The whistleblower alleged that managers in the Inpatient Behavioral Health Care unit failed to report an alleged sexual assault in violation of Veterans Health Administration protocol; staff engaged in actions that compromised patient health and safety; and managers were frequently absent without excuse. The agency partially substantiated the allegations concluding that a patient's sexual assault allegations were not properly reported, and that the nurse manager and assistant nurse manager of the unit were frequently absent during required working hours. The report recommended administrative action for employees who failed to report the alleged sexual assault and training on reporting requirements for staff in the unit. The agency issued a proposed 14-day suspension to the nurse manager and a letter of reprimand to the assistant nurse manager for time and attendance violations. The agency provided OSC with an update indicating that it issued a notice of proposed removal for the nurse manager and an additional reprimand or proposed suspension to the assistant nurse manager for their failure to properly report sexual assault allegations. The update also confirmed that all employees received and were tested on newly developed sexual assault reporting procedures. The Special Counsel determined that the report meets all statutory requirements and that the findings appear to be reasonable. *Referred July 2014; transmitted to the President and congressional oversight committees and closed June 2015.*

### **Violation of Law, Rule, or Regulation; Gross Mismanagement; Abuse of Authority; and Substantial and Specific Danger to Public Health and Safety**

Improper Filling of Prescriptions at VA Facility. OSC referred to the VA Secretary allegations based on disclosures of wrongdoing at the Beckley VA Medical Center in West Virginia. The whistleblower disclosed that Beckley VAMC clinical pharmacy specialists routinely and improperly reject providers' prescriptions in favor of less expensive medications, and pharmacists working in Beckley VAMC clinics exceed the scope of their practice. The agency partially substantiated the whistleblower's allegations, concluding that Beckley VAMC encouraged providers to switch patients to older, less expensive medications, based on a pharmacy cost-savings goal for FY 2013 related to atypical antipsychotic medications. In addition, the report acknowledged that the facility imposed a blanket restriction on continued therapy with aripiprazole or ziprasidone, without any appropriate clinical determination regarding changes to patients' drug regimens. The report recommended that the facility immediately stop this practice. The facility committed to conducting a clinical care review of the conditions and medical records of all patients who were discontinued from medications without review. The report did not substantiate the whistleblower's allegation that pharmacists improperly prescribe medications in clinics. The Special Counsel determined that the report meets all statutory requirements and that the findings appear to be reasonable. During OSC's final review of this matter, the whistleblower disclosed additional allegations suggesting that related wrongdoing may still be occurring at Beckley VAMC. The Special Counsel requested a supplemental report addressing these allegations. That report was due May 2015 and the VA requested an extension of time. Accordingly, this matter was closed conditionally, pending the receipt of the agency's supplemental report. *Referred July 2014; transmitted to the President and congressional oversight committees and closed April 2015.*

## **Hatch Act Unit**

Enforcement of the Hatch Act—which protects the civil service system from coerced or inappropriate partisan political activity—is another critical OSC mission. OSC 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 in December 2012. This legislation removed OSC’s jurisdiction over most state and local government employees who run for partisan political office. This important reform has enabled OSC to enforce the Hatch Act more efficiently and focus on serious political misconduct in the federal and state and local governments.

### **Investigations**

OSC investigates allegations to determine whether the evidence of a Hatch Act violation supports corrective and disciplinary action. If a determination is made that a violation has occurred, OSC 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. As a result, OSC closed 131 complaints in FY 2015.

### **Advisory Opinions**

OSC 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 Hatch Act and whether their political activities are permitted. During FY 2015, OSC issued 1,023 total advisory opinions, including 60 formal written advisory opinions.

### **Training and Outreach**

To further its advisory role, OSC is very active in training and outreach efforts. In FY 2015, OSC conducted 25 training and outreach presentations to various federal agencies and employees concerning the rights and responsibilities under the Hatch Act. Many of these programs involved high-level agency officials.

### **Resource Estimates**

During FY 2017, OSC estimates the cost of this program to decrease to \$395,000 while employing two FTE, augmented by IPD staff as demand increases during the 2016 election cycle.

## Goals and Results – Hatch Act Unit

Between FY 2008 and 2012, the number of complaints and requests for advisory opinions on the Hatch Act were at historic levels. OSC’s caseload began to decrease during FY 2013 in response to legislative reform. Nonetheless, OSC processed and closed complaints at a near-record rate, allowing OSC to significantly decrease its case backlog.

**TABLE 8 Summary of Hatch Act Complaint and Advisory Opinion Activity**

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	
<b>Formal written advisory opinion requests received</b>	227	351	283	257	107	64	64	
<b>Formal written advisory opinions issued</b>	226	320	335	262	129	60	60	
<b>Total advisory opinions issued<sup>30</sup></b>	3,733	4,320	3,110	3,448	1,767	1,382	1,023	
<b>New complaints received<sup>31</sup></b>	496	526	451	503	277	151	106	
<b>Complaints processed and closed</b>	388	535	635	449	465	182	131	
<b>Warning letters issued</b>	132	163	164	142	150	44	28	
<b>Corrective actions taken by cure letter recipients</b>	<b>Withdrawal from partisan races</b>	15	28	23	5	5	7	8
	<b>Resignation from covered employment</b>	6	26	16	2	2	0	3
	<b>Other</b>	3	1	5	4	4	1	0
	<b>Total</b>	24	55	44	11	11	8	11
<b>Disciplinary action complaints filed with MSPB</b>	10	7	3	0	2	1	2	
<b>Disciplinary actions obtained (by negotiation or ordered by MSPB)</b>	5	10	5	4	7	15	9	
<b>Complaints pending at end of fiscal year</b>	430	422	233	286	96	65	40	

<sup>30</sup> All oral, e-mail, and written advisory opinions issued by OSC.

<sup>31</sup> Includes cases that were reopened.

## Goal Table 9 Provide Outreach and Advice; Seek Disciplinary Action Against Federal Employees for Persistent or Egregious Job-Related Political Activity

Description of Target		FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
53	Number of Hatch Act updates to OSC website or Listserv messages <sup>32</sup>	10	10	10	9	10		10	
54	Percent of cases obtaining corrective action <sup>33</sup>	90%	73%	75%	100%	75%		75%	
55	Percent of appropriate cases resolved thru negotiation <sup>34</sup>	100%	93%	90%	100%	90%		90%	
56	Number of successful prosecutions	1	2	1	1	1		1	
57	Percent of successful prosecutions	100%	100%	100%	100%	100%		100%	

<sup>32</sup> Message/Update Records: The Hatch Act Program will keep track of how many messages and updates we complete each year.

<sup>33</sup> Calculating corrective actions: OSC will keep track of cases where staff try to achieve corrective action but are unsuccessful. We will then compare that number to the total number of corrective actions achieved. For example, if OSC achieves 40 corrective actions and is unsuccessful in two attempts, it would calculate the percentage as  $40/42 = 95$  percent successful.

<sup>34</sup> Calculating successful negotiations: OSC will keep track of the number of unsuccessful attempts at settlements and compare that number to the total number of negotiated disciplinary actions achieved.

## Goal Table 10 Reduce Instances of Prohibited Job-Related Political Activity by Federal Employees

Description of Target		FY 2014	FY 2014	FY 2015	FY 2015	FY 2016	FY 2016	FY 2017	FY 2017
		Target	Result	Target	Result	Target	Result	Target	Result
58	Number of warning letters issued <sup>35</sup>	75	44	50	28	50		30	
59	Percent of Hatch Act outreach/training requests accepted <sup>36</sup>	98%	100%	98%	100%	98%		98%	
60	Percent of oral and email advisories issued within 5 business days of receipt of complaint <sup>37</sup>	95%	99%	95%	100%	95%		95%	
61	Percent of formal written advisories issued within 120 days	95%	100%	95%	100%	95%		95%	
62	Percent of formal written advisory requests responded to <sup>38</sup>	98%	100%	98%	100%	98%		98%	

## Hatch Act Successes

### Litigation

- In 2014, OSC filed a disciplinary complaint with the MSPB alleging that an employee at the U.S. Army Corps of Engineers (USACE) violated the Hatch Act when he ran as a candidate in a partisan election for sheriff despite being advised by USACE regional counsel and OSC that he was prohibited from doing so. OSC gave the employee an opportunity to come into compliance by resigning his employment or withdrawing from the election, but the employee rejected this opportunity. In 2015, an administrative law judge issued a decision ordering USACE to remove the employee, which the MSPB affirmed.

<sup>35</sup> In FY 2014, warning letters decreased (compared to FY 2013) by 70 percent. The primary cause of this decrease was the Hatch Act Modernization Act of 2012, which narrowed the criteria for Hatch Act violations at the state and local level. OSC expects this trend to continue into the future. After FY 2016, OSC will reassess the effects of the new legislation on complaints received and warning letters issued in order to provide a more accurate assessment for FY 2016, a presidential election year, in which we expect the numbers to rise.

<sup>36</sup> HA outreach records: The Outreach Coordinator retains a record of requests that are accepted and declined each year. In FY 2015, the OSC achieved a 100 percent mark, a rate we hope to sustain going forward.

<sup>37</sup> Oral and Email advisories: Hatch Act Unit attorneys will keep track of the number of oral and email advisories that take longer than five days to issue and compare that number to the total number for the year, to come up with the percentage. As of FY 2015 results, which were comprised of four fiscal years, OSC is seeing very little variation in the numbers.

<sup>38</sup> Advisories: Compares intakes with number of advisories issued for fiscal year.

- In 2015, OSC filed a disciplinary complaint with the MSPB, alleging that a career senior executive service official at U.S. Department of Agriculture violated the Hatch Act when he solicited two subordinate employees to donate to a political action committee for President Obama's 2012 reelection campaign. The official implied or promised career advancement opportunities in exchange for the donations. Shortly after OSC filed its complaint, the official retired from federal employment. The MSPB dismissed the case without prejudice, allowing OSC to refile within five years if the official returns to federal service.

## **Other Resolutions**

- An employee at the Federal Emergency Management Agency hosted a partisan political fundraiser and solicited political contributions, sometimes while he was at work. He also recruited campaign volunteers, planned candidate events, and posted partisan messages to Facebook while at work. Despite being warned by his supervisor about engaging in prohibited political activity, the employee continued to violate the Hatch Act. OSC completed its investigation and negotiated a resolution whereby the employee agreed to accept a 112-day suspension without pay.
- An employee at the FAA sent an email while at work to four subordinate employees, endorsing a candidate for U.S. Senate. He also included two links to the candidate's campaign website. Shortly after sending the email, he followed up with one of the employees to advise that he had sent the email and the subordinate should take a look at it. OSC completed its investigation and negotiated a resolution whereby the employee agreed to accept a 15-day suspension without pay.

## **OSC's Outreach Program**

The Outreach Program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c) to inform their workforces about the rights, remedies, and avenues of redress available to them under the Civil Service Reform Act and relevant 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 and Whistleblower training quiz that will be made publicly available 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 2015, OSC's subject matter experts spoke at 118 events nationwide.

OSC also informs the news media and issues 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.

## **PART 4 – ENHANCEMENT OF OPERATIONS**

### **Strategic Management of Human Capital**

OSC's human capital strategy is aligned with its mission, goals, and organizational objectives. It is integrated into the budget and strategic plans, and is consistent with human capital guidance from the Office of Personnel Management and the Office of Management and Budget. OSC has internal accountability systems to ensure effective merit-based human resource management as described below.

The agency is addressing gaps concerning specific skills in its program areas through internal development, upward mobility positions, legal internships, in-house mission-specific training, and by hiring additional personnel. OSC has also taken the initiative of hiring several unpaid interns and hosting Presidential Management Fellows from other agencies to help reduce full-time staff workloads and improve agency efficiency. Furthermore, OSC promotes cross-training programs to enable employees to learn new skills and participate in the work of several units. OSC also captures valuable information and ideas from departing employees through exit interviews. This information is used by senior managers to refine and improve our work environment and processes. OSC has developed a performance management system that will allow managers to differentiate between high and low performers through the use of appropriate incentives and accountability measures. Performance plans that are linked to the agency's mission and strategic goals are in place or being fashioned for senior executive service members and managers. OSC will implement appropriate, measurable performance goals for each employee. OSC uses personnel flexibilities and tools, including leave flexibilities, alternative work schedules, and a liberal telework program.

In terms of training provided to its employees, both internally and externally, FY 2014 and FY 2015 were the two best years in OSC history.

OSC implemented a new electronic Time and Attendance system in FY 2015 to improve efficiency, and is going live with an electronic Official Personnel Folder (eOPF) in FY 2016.

### **Improved Financial Performance**

OSC has continued its success in receiving unqualified audit opinions with the receipt of another clean opinion this fiscal year. A competitively selected audit firm evaluated OSC's financial statements for FY 2015. The auditor spent time at OSC headquarters and with the Department of Interior's Internal Business Center (IBC) in Denver, Colorado, which currently performs the accounting, payments, travel system operations, and financial system operations and maintenance functions for OSC. OSC has received unqualified opinions for all twelve of its audits since the inception of formal Financial Statement Audits in FY 2004.

As mentioned above, OSC contracts out certain work under an interagency agreement. OSC was involved in the effort to design the processes used for its accounting system and to design specific customized reports that reflect the information most helpful to OSC funds management. Contracting out these functions has provided OSC with more specialized expertise at a lower cost than could be accomplished internally. IBC provides financial reports and a detailed financial review to OSC every quarter. IBC also provides current financial information on day-to-day operations for payroll, procurement, and travel, as needed by OSC.

As a small agency without an Inspector General, OSC relies on audits and other reviews of IBC operations by IBC's office of the chief financial officer, IBC's OIG, and other information received directly from IBC about significant issues relating to the services provided to OSC. IBC has a formal Management and Control and Compliance program, including OMB Circular A123 audits, A123 Accounting Transactions testing, SAS70 Type II audits, and

Financial Statements Audits. Furthermore, it conducts Information Technology Audits, including Federal Information Security Management Act and Internal Controls Reviews.

OSC has met its requirements for the “Do Not Pay” listing and Improper Payments (IPERA) reporting. The agency plans to meet the Data Act reporting requirements in FY 2016 and FY 2017.

## **Competitive Sourcing**

OSC is a small agency with a highly specialized, inherently governmental mission. Eighty-two percent of its FTE perform inherently governmental work whereas 18 percent of its FTE are considered commercial in nature. These 18 percent are spread across multiple functions, with no more than six FTE in any one given function. According to OMB Circular A-76 and supplemental guidance issued by OMB, government performance of commercial functions is permitted under certain circumstances. The relevant criteria for OSC are that the commercial functions are considered core capabilities and that each function has fewer than ten FTE.

The interagency agreement with the IBC includes the following services: procurement, procurement system hosting, budget accounting and budget execution, accounting services, and travel management. OSC will review IBC interagency agreements annually to confirm the agreement is meeting OSC’s needs. OSC also has an interagency agreement with the National Finance Center of the Department of Agriculture to perform payroll/personnel processing functions.

## **Expanded Electronic Government and Other Information Technology Initiatives**

OSC is committed to leveraging technology to streamline operations and increase the effectiveness of its information technology programs. The agency has made significant progress in the past several years in modernizing and securing its technological systems, and we will continue to fund those efforts and to make new investments to optimize processes for information security, case management, electronic filing, records management, and internal processes and procedures.

OSC’s FY 2017 budget request will enable a number of key IT projects that will improve our capabilities, including:

- **Better information security.** OSC is enhancing its cyber security posture by procuring and implementing modern security tools to monitor and mitigate internal and external system vulnerabilities, and provide management and technical oversight of threats and risks to operations. OSC actively participates in DHS’s Continuous Diagnostics and Mitigation (CDM) program and will continue to look for appropriate areas to expand this program into in FY 2016 and FY 2017.

- **More efficient case management.** OSC's case system modernization began this past year and will go live in FY 2016. It will enable OSC to increase workflow integration, system interoperability, flexibility, and customization of the system. The new system will provide the features, security, and adaptability to meet the agency's requirements to improve new and existing complaints intake, case and resolution tracking, searching, reporting, and archiving functions. As with any new system, continued improvements, enhancements, and refinements will be required into FY 2017.
- **New e-filing capabilities.** This will help streamline the complaint filing process, making it easier to confidentially submit complaints to OSC.
- **Improved records management.** OSC is upgrading its records management platform, processes, and procedures in order to meet OMB M-12-18 mandates.
- **Infrastructure modernization.** The agency is taking steps to increase the resiliency and availability of the OSC.gov website, phone and email systems, and communications infrastructure, and to enable on-demand web, video, and audio conferencing capabilities to support case investigations anywhere in the country.
- **Enhanced telework and staff support.** OSC is consolidating and improving on-site IT services while providing secure always-on access to agency resources to support OMB mandates and modern work environments.

The above IT initiatives began in FY 2015 and will continue into FY 2017 and beyond. They will advance OSC's ability to deliver better services by leveraging industry standards and commercial-off-the-shelf products and services. The entire range of services forms a basis for sound enterprise technology architecture that connects OSC to its customers and improves the OSC's response to important cases.

## **Improving Employee Satisfaction and Wellness**

Over the past several years, OSC has implemented several key programs and initiatives to enhance employee satisfaction and wellness. For example, we re-established a student loan repayment program in order to retain talented employees; offered a cost share (50/50) program for gym membership to encourage employees to have a healthier lifestyle and stay fit; made available on-site flu vaccinations and blood pressure checks; offered an Employee Assistance Program (EAP); organized a blood donor drive; conducted a health benefits information session; and instituted a program to pay for professional credentials (bar membership dues) for attorneys. OSC increased the training opportunities offered in FY 2015, through more on-site courses and through access to web-based learning portals that offer myriad relevant courses. Additionally, the management administered the Federal Employee Viewpoint Survey in 2015. Management recognizes a dip in employee satisfaction, and is actively taking steps to improve employee engagement and satisfaction. OSC management has commissioned a study group to further assess the results and needed improvements, and to develop an action plan to address concerns.

## **Telework**

OSC has complied with the requirements of the Telework Enhancement Act by establishing criteria for determining eligibility of employees to participate in telework, notifying employees of their eligibility, and indicating under what conditions they may telework. OSC's telework program is designed to benefit employees, managers, and the community by decreasing work-trip vehicle miles, traffic/parking congestion, energy consumption, and air pollution, while improving the quality of work life and performance, and improving morale by assisting employees in balancing work and family demands. OSC updated its telework policy in FY 2016.

OSC has a robust information technology network setup that supports telework via a complete Citrix environment. OSC continues to improve our Citrix environment to facilitate telework and streamline business processes. OSC has also expanded its Bring Your Own Device program to accommodate staff needs. Furthermore, OSC plans to expand our Voice over Internet Protocol (VoIP) and Skype over Internet Protocol (SIP) capabilities so that employees, from anywhere, will have secure access to all of the corporate resources, including telephone and video teleconferencing (VTC) services, from their smart devices. OSC remains committed to improving its telework program and the infrastructure necessary to support it.

## **Continuity of Operations**

Continuity of Operations (COOP), mandated by Presidential Decision Directive 67, requires each federal agency to be capable of performing essential functions within 12 hours of a threat or the occurrence of a debilitating event. To accomplish these goals, OSC established a Security and Emergency Preparedness (SEP) team to manage and oversee this program. The team provides OSC with a security and emergency preparedness capability that (1) ensures security and emergency preparedness are addressed during all phases of operation, including the hiring and training of personnel, the procurement and maintenance of equipment, and the development of policies, rules, and procedures; (2) encourages safe operation through the identification, evaluation, and resolution of threats and vulnerabilities and the ongoing assessment of OSC's capabilities and readiness; and (3) assists OSC in adhering to governmental guidelines and rules and regulations that promote COOP best practices.

OSC must safeguard vital records and databases, establish an alternate operating site, and validate capability through tests, training, and exercises. OSC will continue to evaluate alternate methodologies to connect OSC's headquarters and field offices. As part of the IT strategic plan, OSC has begun to move infrastructure to the Cloud, starting with its email system. The built-in redundancies in the Cloud environment will provide additional safety and faster recovery time in the event of a debilitating event; as a result, OSC will further safeguard agency functions and vital records. These efforts will continue into FY 2016 and FY 2017.

## **Management**

OSC adopted a management goal to "restore confidence within the federal community and among staff, stakeholders, and the general public." This is a two-part goal that includes ensuring OSC operates at a high level of efficiency internally and in the federal community, and simplifying access to OSC services for the federal community. Our management goals are overarching goals, which when met, contribute to the overall success of the agency and all its programs. During FY 2015, OSC fully or partially met ten goals in the Management area for which targets had been set, did not meet three goals, and one was NA.

## Goal Table 11 Ensure OSC Operates at a High Level of Efficiency Internally and in the Federal Community

Description of Target		FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
62	Establish Individual Development Plans (IDPs) for all employees to identify skills and gaps	Start pilot project by building templates for HR	Met	Build templates and implement IDPs	Partially Met	Build templates and implement IDPs		Build templates and implement IDPs	
63	Identify targeted training to mitigate skills gaps	Conduct Annual Survey	Met	Conduct Annual Survey	Met	Conduct Annual Survey		Conduct Annual Survey	
64	Percent of employees using telework and alternative schedule options; to provide employees with flexibility	70%	85%	70%	93%	70%		70%	
65	Percent of employees that participate in the annual Federal Employee Viewpoint Survey on their job satisfaction	90%	85%	90%	61%	90%		90%	
66	Improve the functionality of the case tracking system	See footnote <sup>39</sup>	Met	See footnote <sup>39</sup>	Met	See footnote <sup>39</sup>		See footnote <sup>39</sup>	
67	Number of congressional staff or member contacts to strengthen covered laws and improve oversight and accountability	40	40	40	50	40		40	
68	Number of <i>amicus</i> briefs, SOI interventions, or other submissions concerning the scope or contours of the laws that OSC enforces	2	3	2	0	2		2	
69	Expand federal agency compliance by invigorating the Certification Program under Section 2302c.	Develop and redesign training materials	N/A	Train agencies on redesigned materials	Met/14 <sup>40</sup>	Train agencies on redesigned materials		Train agencies on redesigned materials	
70	Survey of attendees at outreach events	Develop survey	N/A	Survey 500 attendees	N/A	Survey 250 attendees		Survey 300 attendees	

<sup>39</sup> IT supported 30 system change requests in FY 2014. OSC's case tracking system and its canned reports are constantly being improved upon and updated. The improvements made to the functionalities in the case tracking system are often the result of change requests and new requirements from the program offices. Additional change requests have been completed on the legacy case management system in FY 2015, concurrent with the progress towards a new system. A plan has been developed to modernize the case management system. In FY 2014 a contract was let for the new case management system requirements. In FY 2015 significant work has been completed on the implementation of a modernized electronic system, to include requirements completion and prototype development, with expected go-live in FY 2016.

<sup>40</sup> Major strides were made with the Section 2302(c) program, including certification of the VA. This number also reflects training in which OSC's policy and process regarding whistleblower disclosures was covered.

## Goal Table 12 Simplify Access to OSC Services for the Federal Community

Description of Target		FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result	FY 2017 Target	FY 2017 Result
71	Upgrade look, feel, and user friendliness of website and keep it current.	Launch redesigned website	Met	Maintain and update for improvements	Met	Maintain and update for improvements		Maintain and update for improvements	
72	Survey user community to gauge strengths and weaknesses of website	See footnote <sup>41</sup>	Partially met	See footnote <sup>41</sup>	Partially met	See footnote <sup>41</sup>		See footnote <sup>41</sup>	
73	Issue press releases on major agency activities and results in cases; maintain dialogue with news media	See footnote <sup>42</sup>	Met	See footnote <sup>42</sup>	Met	See footnote <sup>42</sup>		See footnote <sup>42</sup>	
74	Make use of Twitter and social media	See footnote <sup>43</sup>	Met	See footnote <sup>43</sup>	Met	See footnote <sup>43</sup>		See footnote <sup>43</sup>	
75	Conduct biannual surveys of federal community to gauge OSC name and mission recognition	Conduct survey; implement changes based on survey findings	Unmet	Conduct survey; implement changes based on survey findings	Unmet	Conduct survey; implement changes based on survey findings		Conduct survey; implement changes based on survey findings	

<sup>41</sup> Narrative: OSC invited various stakeholders to give OSC feedback on its old website, which was overhauled in FY 2014. We reached out to numerous nonprofits, unions, management organizations and veterans' organizations, as well as internal stakeholders, and incorporated their feedback into our website goals and specifications. We will continue this outreach and incorporate feedback into website improvements. Target for FY 2015 – OSC will seek to get feedback from GSA's DigitalGov User Experience program and make further improvements to its website. Results for FY 2015 – Made further improvements to its website and obtained feedback from OSC staff and external users, but not from GSA. Target for FY 2016 and 2017 – OSC will seek feedback from GSA or other federal government user experience group and make further improvements to its website.

<sup>42</sup> Narrative: OSC currently issues between 15 to 30 press releases a year, depending on the activity, caseload, and what cases warrant a news release. These releases are tweeted, posted on the website, and e-mailed to reporters as well as to stakeholder organizations, such as nonprofits, management organizations, veterans' groups and labor unions. OSC's Communications Specialist speaks with members of the news media on a regular basis. Target for FY 2015 – Issue 30-35 press releases and seek to improve partnerships with the press to better educate the federal workforce on prohibited personnel practices and OSC's role. Results for FY 2015 – OSC issued 26 press releases, up from FY 2014. Slightly fewer phone calls and media requests were fielded than in FY 2014. The media's focus on Department of Veterans Affairs whistleblowing continued to account for a large proportion of OSC's engagement with the press. OSC's public affairs staff coordinated with OSC program staff to begin a new initiative to publish redacted reports of prohibited personnel practices to better educate the federal workforce and to help meet OSC's obligations under the White House's second Open Government National Action Plan. Two redacted reports were published in FY 2015 and received widespread media interest. Target for FY 2016 and 2017 – Issue 25-30 press releases, use social media, and continue partnership with the press to better educate the federal workforce on prohibited personnel practices and OSC's role.

<sup>43</sup> Narrative: OSC uses Twitter to push out information over social media, especially information on OSC's activities and educational materials. Target for FY 2015 – Expand number of Twitter followers by more than 300 to a total of 600+, with a special focus on expanding the number of employment attorneys, reporters, public policy experts, and stakeholders who follow OSC. Tweet 120 times – especially by pushing out more educational content. Review OSC's videos and seek to improve the quality of OSC's shareable multimedia content. Seek partnerships, including with other federal agencies, to more widely distribute OSC's educational material through their social media networks to better reach the federal workforce. Results for FY 2015 – OSC tweeted 160 times and gained 247 new followers—a big increase over the last year. EEOC's Office of Federal Programs is a regular re-tweeter of OSC content. The VA re-tweeted an OSC news release. Coordinated with EEOC, OPM, and MSPB on a general media strategy as well as a social media strategy to roll out a guide on remedies to LGBT discrimination in the federal workplace. Experimented with creating some video clips relevant to OSC's work and distributed one. Target for FY 2016 and 2017 – Continue to expand number of Twitter followers, with a special focus on expanding the number of employment attorneys, reporters, public policy experts, and stakeholders who follow OSC. Tweet 120 times—especially by pushing out more educational content. Review OSC's videos and seek to improve the quality of OSC's shareable multimedia content. Seek partnerships, including with other federal agencies, to more widely distribute OSC's educational material through their social media networks to better reach the federal workforce.

# **APPENDIX A**

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## **STATUTORY BACKGROUND**

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (the Board). Pursuant to the CSRA, OSC: (1) receives and investigates complaints from federal employees alleging prohibited personnel practices; (2) receives and investigates complaints regarding the political activity of federal employees and covered state and local employees and provides advice on restrictions imposed by the Hatch Act on the political activity of covered federal, state, and local government employees; and (3), receives disclosures from federal whistleblowers about government wrongdoing. Additionally, OSC, when appropriate, files 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 allege 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.<sup>1</sup> The 1993 Amendments to the Hatch Act did not affect covered state and local government employees.

In 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted. 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 past, present, or future 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 agencies (i.e., where a federal agency is the civilian employer).<sup>2</sup>

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. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and whistleblower reprisal protections were extended to employees of listed government corporations. The Reauthorization Act also broadened the scope of personnel actions covered under these provisions. Finally, the Reauthorization Act required that federal agencies inform employees of their rights and remedies under the Whistleblower Protection Act in consultation with OSC.<sup>3</sup>

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),<sup>4</sup> 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 Merit Systems Protection Board. The approximately 45,000 security screeners in TSA however, could not pursue such complaints at OSC or the Board. OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to

TSA when warranted. The MOU did not (and could not), however, provide for OSC enforcement action before the Board.

In November 2012 Congress passed the Whistleblower Protection Enhancement Act which overturned past legal precedents that had narrowed protections for government whistleblowers and extended whistleblower protections to the 45,000 TSA screeners previously denied it. The WPEA also empowered OSC to file *amicus* briefs in federal appellate courts and gave effect to OSC's authority to seek disciplinary actions against supervisors who retaliate against whistleblowers.

In December 2012 Congress passed the Hatch Act Modernization Act which removed the previous ban on state and local government employees running for political office if part of their job was connected to federal funding. The new act allows such candidates to run as long as their salary is not entirely funded by the federal government while upholding the ban on local and state government employees using coercion or their government positions to advance partisan politics.

# **APPENDIX B: STRATEGIC PLAN**

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## **FISCAL YEARS**

### **2012 – 2016**

## **INTRODUCTION**

The U.S. Office of Special Counsel (OSC) has as its primary mission the safeguarding of the merit system in federal employment by protecting employees and applicants from prohibited personnel practices (PPPs), especially reprisal for whistleblowing. The agency also operates a secure channel for federal whistleblower disclosures of violations of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. In addition, OSC issues advice on the Hatch Act and enforces its restrictions on political activity by government employees. Finally, OSC protects the civilian employment and reemployment rights of military service members under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

OSC is committed to enhancing government accountability and performance by the realization of a diverse, inclusive federal workplace where employees embrace excellence in service, uphold merit system principles, are encouraged to disclose wrongdoing, and are safeguarded against reprisals and other unlawful employment practices.

### **About OSC**

In 1883, Congress passed the Pendleton Act, creating the Civil Service Commission, which was intended to help ensure a stable, highly qualified federal workforce, free from partisan political pressure. In 1978, Congress enacted the Civil Service Reform Act which replaced the Civil Service Commission with the Merit Systems Protection Board (MSPB).

During hearings on the CSRA, the role and functions of MSPB were described by various members of Congress: “. . . [MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with insuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”<sup>44</sup>

The Office of Special Counsel was born on January 1, 1979 as the investigative and prosecutorial arm of the MSPB. OSC was authorized to receive complaints from applicants for federal service, as well as current and former employees, alleging prohibited personnel practices by federal agencies. It was also conceived as a safe channel to receive disclosures from federal whistleblowers about wrongdoing in government agencies. In addition, Congress assigned OSC responsibility for offering advice and enforcing restrictions on political activity by government employees covered under the Hatch Act.

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<sup>44</sup> Legislative History of the Civil Service Reform Act of 1978. Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. 2., (pp 5-6).

OSC remained a part of the MSPB for ten years. In 1989, Congress enacted the Whistleblower Protection Act (WPA), making OSC an independent agency within the executive branch. The WPA also strengthened protections against reprisals for employees who disclose wrongdoing in the government and enhanced OSC's ability to enforce those protections, but it otherwise left OSC's mission intact.

In 1994, Congress enacted USERRA, and gave OSC enforcement authority in cases against federal agencies. USERRA prohibits employment discrimination against persons in connection with their military service and provides for their reemployment upon return from military duty. Congress also reauthorized the Office of Special Counsel in 2004, setting out new responsibilities for OSC and expanding protections for federal employees. In addition, federal agencies were made responsible for informing their employees of available rights and remedies under the WPA, and directed agencies to consult with OSC in that process.

Demand for OSC services has risen dramatically in recent years even as staffing levels have remained virtually fixed. During FY 2015, OSC received over 6,000 cases for the first time in agency history, and since FY 2009, OSC's caseload has grown 65%. Based on experience and the recent trends of increased PPP complaints and whistleblower disclosures, OSC conservatively projects an annual growth in caseload in the 6% to 8% range for the foreseeable future.

Given the challenging fiscal environment, OSC recognizes that it must prioritize clear strategic goals and objectives that are ambitious yet realistic, and work creatively and efficiently toward achieving them.

On June 17, 2011, Carolyn Lerner was sworn in as the eighth permanent Special Counsel. Ms. Lerner took office following a prolonged and challenging period at OSC. The prior Special Counsel had been abruptly removed from office in 2008 by the President<sup>45</sup> and subsequently charged with contempt of Congress, disgracing the agency and demoralizing both staff and stakeholders. He was replaced in 2008 by interim, career leadership who performed a stabilizing, caretaker role until Ms. Lerner took office.

Ms. Lerner has acted quickly to transform the public reputation and morale of OSC. In consort with staff and stakeholders, she has reinvigorated the agency, bringing renewed focus on the OSC's critical merit system principles mission. She has also undertaken a substantial review of OSC's strategic priorities in order to ensure that its resources are properly aligned with agency goals and objectives.

## **Strategic Plan and Cross-Cutting Documents**

This Strategic Plan provides the pathway for OSC's work for the next five years. It sets forth OSC's Mission, Vision, Values, Goals and Objectives, Performance Measures and Validation Methods, and internal and external challenges to fulfilling this Strategic Plan.

In accordance with Government Performance and Results Act (GPRA) as amended by the GPRA Modernization Act of 2010, OSC's Annual Performance Plans (APPs) include program performance goals, measures, and annual performance targets designed to move the agency incrementally to achieve its strategic goals. The APPs are published as part of the Performance Budget provided to the Office of Management and Budget (OMB) and in the Congressional Budget Justification submitted to Congress. OSC reports program performance results as compared to its APPs, along with financial accountability results, in the annual Performance and Accountability Report (PAR). The Strategic Plan, APPs, and PARs are posted on OSC's public website.

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<sup>45</sup> Under 5 U.S.C. Section 1211(b), a Special Counsel may only be removed for "inefficiency, neglect of duty, or malfeasance in office."

# Mission – Vision – Values

## OSC Mission

Promote accountability, integrity, and fairness in the federal workplace.

## OSC Vision

A diverse and inclusive federal workplace, where employees embrace excellence in service, uphold merit system principles, are encouraged to disclose wrongdoing, and are safeguarded against reprisals and other unlawful employment practices.

## OSC Values

**Accountability** We will act in accordance with merit system principles, communicate in plain English with customers and stakeholders, make our findings and determinations easy to understand and widely accessible, and take responsibility for our decisions and actions.

**Professionalism** We will conduct our work in a dignified, courteous, respectful, and reliable manner, fairly and without bias, attentive to legal standards and authorities, and conscious of various perspectives and interests of customers and stakeholders.

**Quality** We will strive to provide excellent service to our customers, due care and thoroughness in the substance and timeliness of our work, and produce work products worthy of pride.

**Independence** We value the trust and responsibility invested in us as an independent investigative and prosecutorial agency, and will always exercise that independence in a manner that honors the letter and spirit of the merit system.

## Strategic Goals

1. Safeguard the integrity and fairness of the federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices.
2. Advance the public interest and good government by providing a safe channel for federal employees to disclose wrongdoing or threats to health or safety, in order to effect positive corrective action.
3. Strengthen the civil service through outreach and advice to the federal community about prohibited personnel practices, employment discrimination against veterans, and job-related political activity.
4. Advance accountability in government by seeking disciplinary action against federal employees for persistent or egregious prohibited personnel practices or unlawful political activities.
5. Restore confidence in OSC within the federal community and among staff, stakeholders, and the general public.

## Goals and Objectives

### Performance Metrics and Means to Accomplish Goals

#### **Strategic Goal 1: Safeguard the integrity and fairness of the federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices.**

##### **Objective 1: Increase OSC's capacity to protect federal employees against whistleblower retaliation and other PPPs.**

###### Performance Metrics and Means to Accomplish Goals:

- Number of staff allocated to whistleblower retaliation and other PPPs
- Percent of total staff allocated to whistleblower retaliation and other PPPs
- Number of staff training programs in whistleblower retaliation and other PPPs
- Compare results to prior years

##### **Objective 2: Achieve mutually satisfactory solutions for employees and agencies through mediation of PPP and USERRA matters.**

###### Performance Metrics and Means to Accomplish Goals for PPP cases:

- Number of cases referred to mediation from examination unit
- Percent of cases referred for mediation from examination unit
- Percent of cases in which both parties agree to mediation on referral from examination unit

- Percent of cases referred from examination unit successfully resolved in mediation
- Number of cases referred to mediation from investigation/prosecution unit
- Percent of cases referred for mediation from investigation/prosecution unit
- Percent of cases in which both parties agree to mediate referral from investigation/prosecution unit
- Percent of cases referred from investigation/prosecution unit successfully resolved in mediation

Performance Metrics and Means to Accomplish Goals for USERRA cases:

- Number of cases referred to mediation
- Percent of cases referred for mediation
- Percent of cases in which both parties agree to mediate referral from USERRA unit
- Percent of cases referred successfully resolved in mediation

Performance Metrics and Means to Accomplish Goals for both PPP and USERRA cases:

- Complainant and agency exit survey findings
- Compare results to prior years

**Objective 3: Keep complainants informed as to the status of their cases and detail the bases for OSC actions.**

Performance Metrics and Means to Accomplish Goals:

- Upon the receipt of a complaint, clearly explain the OSC review process and when action can be expected
- Provide complainants status updates at defined intervals and when significant new developments occur
- If OSC declines to refer a case for investigation, clearly inform complainant of the reason(s) why

**Objective 4: Achieve timely resolution of cases and corrective actions.**

Performance Metrics and Means to Accomplish Goals for PPP cases:

- Number of corrective actions obtained
- Percent of corrective actions obtained per number of cases received
- Number of cases referred for investigation
- Number of informal stays requested
- Number of informal stays obtained
- Number of formal stays requested
- Percent of formal stays obtained
- Number of corrective actions obtained per number cases referred for investigation
- Percent of corrective actions obtained per number cases referred for investigation
- Number of initial examinations completed within 120 days
- Percent of initial examinations completed within 120 days
- Number of cases more than 240 days old
- Percent of cases more than 240 days old

Performance Metrics and Means to Accomplish Goals for USERRA cases:

- Number of settlements obtained
- Percent of settlements obtained per number of cases received
- Number of investigations completed within 90 days
- Percent of investigations completed within 90 days
- Number of legal reviews completed within 60 days
- Percent of legal reviews completed within 60 days
- Number of corrective actions obtained
- Percent of corrective actions obtained

**Strategic Goal 2: Advance the public interest and good government by providing a safe channel for federal employees to disclose wrongdoing or threats to health or safety, in order to effect positive corrective action and ensure accountability.**

**Objective 1: Provide federal employees a secure means to disclose covered wrongdoing.**

Performance Metrics and Means to Accomplish Goals:

- Number of whistleblower disclosures referred by OSC to agency head for investigation
- Percent of whistleblower disclosures submitted to OSC referred to agency head for investigation
- Number of whistleblower disclosures either closed or referred within 15-day statutory timeline
- Percent of whistleblower disclosures closed or referred within 15-day statutory timeline

**Objective 2: Motivate agencies to take prompt action to investigate and redress whistleblower disclosures.**

Performance Metrics and Means to Accomplish Goals:

- Success in prompting thorough agency investigations of referred disclosures
- Success in prompting effective corrective action and accountability
- Amount of financial and other benefits to government resulting from corrective action

**Strategic Goal 3: Strengthen the civil service through outreach and advice to the federal community about prohibited personnel practices, whistleblower disclosures, employment discrimination against veterans, and unlawful, job-related political activity.**

**Objective 1: Ensure that the federal community is aware of the Office of Special Counsel, its mission and services, by engaging in outreach to, and training for, federal employees and agencies about rights and responsibilities under covered laws.**

Performance Metrics and Means to Accomplish Goals:

- Total number of outreach activities undertaken
- Number of outreach activities by program area
- Survey of attendees at outreach events
- Conduct biannual surveys of federal community to gauge OSC name and mission recognition among federal community

- Expand federal agency compliance with provisions of the Whistleblower Protection Act by invigorating the Certification Program under Section 2302(c)

**Objective 2: Provide timely and quality advice to individuals seeking authoritative opinions about the application of the Hatch Act.**

Performance Metrics and Means to Accomplish Goals:

- Number of oral and email advisories issued within 5 business days of receipt of complaint
- Percent of oral and email advisories issued within 5 business days of receipt of complaint
- Number of formal written advisories issued within 120 days of receipt of complaint
- Percent of formal written advisories issued within 120 days of receipt of complaint
- Number of new complex advisory opinions issued per month

**Objective 3: Furnish OSC expertise to assist legislative, administrative and the judicial bodies in formulating policy and precedent.**

Performance Metrics and Means to Accomplish Goals:

- Number of legislative contacts to improve covered laws
- Number of *amicus* and Statement of Interest interventions on key issues of law

**Strategic Goal 4: Advance accountability in government by seeking disciplinary action against federal employees for persistent or egregious prohibited personnel practices or unlawful, job-related political activities.**

**Objective 1: Provide warning letters to employees that continued or repeated Hatch Act non-compliance, or aggravated violations of the Hatch Act, could result in disciplinary action.**

Performance Metrics and Means to Accomplish Goals:

- Number of warning letters issued
- Number of statements of compliance by agency or offending employee

**Objective 2: Bring disciplinary actions in appropriate PPP and Hatch Act cases to punish and deter wrongdoing.**

Performance Metrics and Means to Accomplish Goals in PPP Cases:

- Number of recommendations to agencies to take disciplinary action
- Number of disciplinary action complaints filed
- Number of disciplinary action complaints resolved pre-litigation through negotiated settlement
- Number of disciplinary prosecutions
- Total number of successful disciplinary prosecutions
- Percent of successful disciplinary prosecutions

Performance Metrics and Means to Accomplish Goals in Hatch Act Cases:

- Number of recommendations to agencies to take disciplinary action
- Number of disciplinary action complaints filed
- Number of disciplinary action complaints resolved pre-litigation through negotiated settlement
- Number of prosecutions
- Total number of successful prosecutions
- Percent of successful prosecutions

**Strategic Goal 5: Restore confidence in OSC within the federal community and among staff, stakeholders, and the general public.**

**Objective 1: Simplify access to OSC services for the federal community.**

Performance Metrics and Means to Accomplish Goals:

- Revise complaint form and other forms to make them easier to understand and use by customers

**Objective 2: Establish OSC as a “model employer,” recognizing that a high level of staff morale and engagement translate into improved performance.**

Performance Metrics and Means to Accomplish Goals:

- Develop Human Capital Management Plan, including a workforce assessment to gauge skills and gaps
- Develop targeted training to mitigate skills gaps
- Provide ongoing cross training to further the staffs’ professional development and enhance performance and flexibility
- Ensure that effective performance reviews are conducted on a timely basis, including for members of the Senior Executive Service
- Use telework and alternate schedule options to provide employees with flexibility
- Survey employees at regular intervals on their job satisfaction

**Objective 3: Ensure that OSC operates at a high level of efficiency and efficacy both internally and within the federal community.**

Performance Metrics and Means to Accomplish Goals:

- Move toward a “paperless office” model for purposes of electronic data storage
- Improve the functionality of the case-tracking system
- Improve the capabilities of the document management system
- Ensure audit compliance, timely submission of budget and performance reports, and that OSC is on sound financial footing
- Ensure compliance with EEO responsibilities
- Participate in relevant inter-agency working groups
- Align individual employee performance to strategic goals, objectives and measures
- Develop plan for staff succession
- Ensure that emergency planning is up-to-date and operational

# Challenges to Agency Performance

OSC undertakes this ambitious agenda in a very difficult fiscal environment: We are projecting substantially greater demand for our agency's services without a corresponding increase in resources to match this demand. This will require OSC to prioritize carefully, and allocate resources and deploy staff wisely, in order to ensure that the Office's most critical responsibilities are effectively and efficiently performed. To that end, since Special Counsel Lerner's arrival in June 2011, OSC has undertaken a top to bottom review of priorities to ensure a sustainable agency going forward.

We do not underestimate the challenge before us. First, the caseload trend lines across our program areas – PPPs, Whistleblower Disclosures, Hatch Act and USERRA – are on a steady, upward rise. In addition, success creates its own quandaries: Ms. Lerner's leadership has quickly moved to restore confidence in OSC within the federal community and among stakeholders. The result of this renewed confidence is a substantial uptick in caseload, including high-priority, time-consuming matters, that are at the heart and soul of OSC's mission. Moreover, the Whistleblower Protection Enhancement Act has removed jurisdictional hurdles to many PPP claims and has already resulted in a further growth in OSC's caseload. Given that even at current docket levels OSC faces a daunting case backlog, the projected, substantial increase in workload will strain the resources and capacity of the agency.

Budget constraints, if not handled adroitly, could also crush morale among OSC employees, just as pride in the agency is reviving. Larger caseloads, poor prospects for advancement, and salary freezes add up to a future fraught with prospects for professional frustration and demoralization. OSC leadership will be called upon to find creative incentives and opportunities, such as professional development and cross training, telework and flexible work schedules, and early retirement, to free up resources to retain and sustain high performing employees.

The difficult federal fiscal environment also takes an indirect toll on OSC. Strapped agencies may be less able to devote the necessary resources to properly investigate whistleblower disclosures of waste, fraud, and abuse referred by OSC. Squeezed budgets may also limit agencies' discretion to settle monetary claims and take other corrective action. The overall effect would be to undermine the federal community's confidence in OSC's ability to make a difference, resulting in renewed cynicism, employee demoralization, falling performance, and even destructive behavior.

OSC will be called upon to work ever more smartly and make tough judgment calls to ensure that mission critical goals and objectives are met. The agency's human capital planning aims to use opportunities presented by attrition and early retirement to better align professional skill sets with staffing needs and budget realities. OSC's priorities, however, are not wholly within its control. Starting in the second half of 2011 and continuing at least into 2014, Congress has tasked OSC with handling half the investigatory docket of federal sector USERRA claims brought by returning service men and women, some 180 new cases a year.

In response to funding challenges and the rising caseload, OSC is being proactive; seeking early resolution of cases through stepped up ADR and settlement efforts in order to preserve resources; ensuring that matters having the broadest and most substantial impact are prioritized; and cross-training staff to improve agency flexibility, efficiency and performance.

By identifying and preventing waste, fraud, abuse, and health and safety challenges, OSC is an agency that returns many times its budget in direct and indirect financial benefits to the federal government. But OSC can only do so if its resources are adequate to its mission. While OSC is putting in place long-term plans to work more efficiently, absent needed resources, there is a point at which a diminished OSC will result in less accountability in government.

Maintaining adequate funding for OSC is a critical challenge to the agency achieving its mission and, as a consequence, to the overall prospects of good government.

## ENDNOTES

- 1 Public Law No. 103-94 (1993), codified in Titles 5 and 12 of the United States Code.
- 2 Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, *et. seq.* The Veterans' Employment Opportunities Act (VEOA) of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The VEOA makes it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veterans' preference requirement. See 5 U.S.C. § 2302(b)(11). (The former section 2302(b)(11) was re-designated as section 2302(b)(12).)
- 3 5 U.S.C. § 2302(c).
- 4 Public Law 107-71 (2001).