

FISCAL YEAR 2019  
CONGRESSIONAL BUDGET JUSTIFICATION  
*—and—*  
PERFORMANCE BUDGET GOALS



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# PART 1 – EXECUTIVE SUMMARY

The U.S. Office of Special Counsel (OSC) is an independent Federal investigative and prosecutorial agency that promotes accountability, integrity, fairness, and efficiency in the Federal workplace. OSC's primary mission is to investigate allegations of prohibited personnel practices (PPP), especially agency retaliation against whistleblowers. OSC also provides a safe and secure channel for Government whistleblowers to report waste, fraud, abuse, law-breaking, and threats to public health and safety. OSC protects veterans and service members from job discrimination under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Finally, OSC enforces the Hatch Act, which keeps partisan political activity out of the Federal workplace.

To continue to promote good Government and eliminate wasteful programs, OSC requires a modest increase in funding. OSC respectfully requests a funding level of **\$26,252,000**, which is \$1,670,077 above the FY 2018 continuing resolution (CR) level<sup>1</sup>. The requested funding level supports adding 13 FTEs to OSC's current staffing level. The additional staff are necessary to address the agency's single biggest challenge—a ballooning backlog due to an ever-increasing number of new complaints received.

Fiscal years 2015 through 2017 marked a new epoch for OSC. As word of OSC's success in protecting Federal whistleblowers and providing relief for victims of prohibited personnel practices spread, most notably in response to many high-profile Department of Veterans Affairs (VA) cases,<sup>2</sup> the agency's caseload exploded. During FY 2015 – 2017, OSC received 18,058 new matters—shattering the previous record by more than 3,500 additional cases. Looking back even further, the average number of new cases received in the past three years (6,019) is 52 percent higher than the number of new cases OSC received in FY 2010 (3,950). Simply put, the demand for OSC's services has increased substantially over the last three years.

OSC has taken measures to proactively manage and reduce its rapidly swelling caseload. The agency is currently working on completing and rolling out an electronic Case Management System (eCMS) which will allow OSC staff to efficiently automate work flows while streamlining the process of filing a complaint with OSC. The agency also launched an Efficiency and Effectiveness Working Group which is using data to examine OSC's work processes, and will make recommendations to leadership on how to improve them. Finally, OSC has embarked on an ambitious cross-training program that will allow us to strategically shift personnel to work on the most pressing caseloads as needed.

Despite efforts to increase efficiency, the surging demand for OSC's services has resulted in an ever-increasing caseload. In FY 2017, OSC's case backlog passed the 2,500 mark for the first time, and without an influx of attorneys to process cases, we project it will pass 3,000 cases in FY 2018 and 3,500 cases in FY 2019. With 88 percent of our budget directed to salaries, benefits, and rent, our agency has clearly reached the point where we are unable to effectively address our caseload by internally shifting resources; without an influx of new personnel dedicated to casework, our backlog will continue increasing and Federal whistleblowers will be unable to get the timely help they need. Whistleblowers are a vital resource to ensuring agencies act as good stewards of taxpayer dollars.

Despite this challenge, OSC achieved significant results in FY 2017. The agency closed more than 5,500 cases for the third year in a row. Of these cases, 1,793 were whistleblower disclosures, the second highest number ever processed and closed by OSC. OSC also set two agency records by achieving 320 favorable actions in response to PPP complaints—261 of which were specifically related to whistleblowing retaliation.

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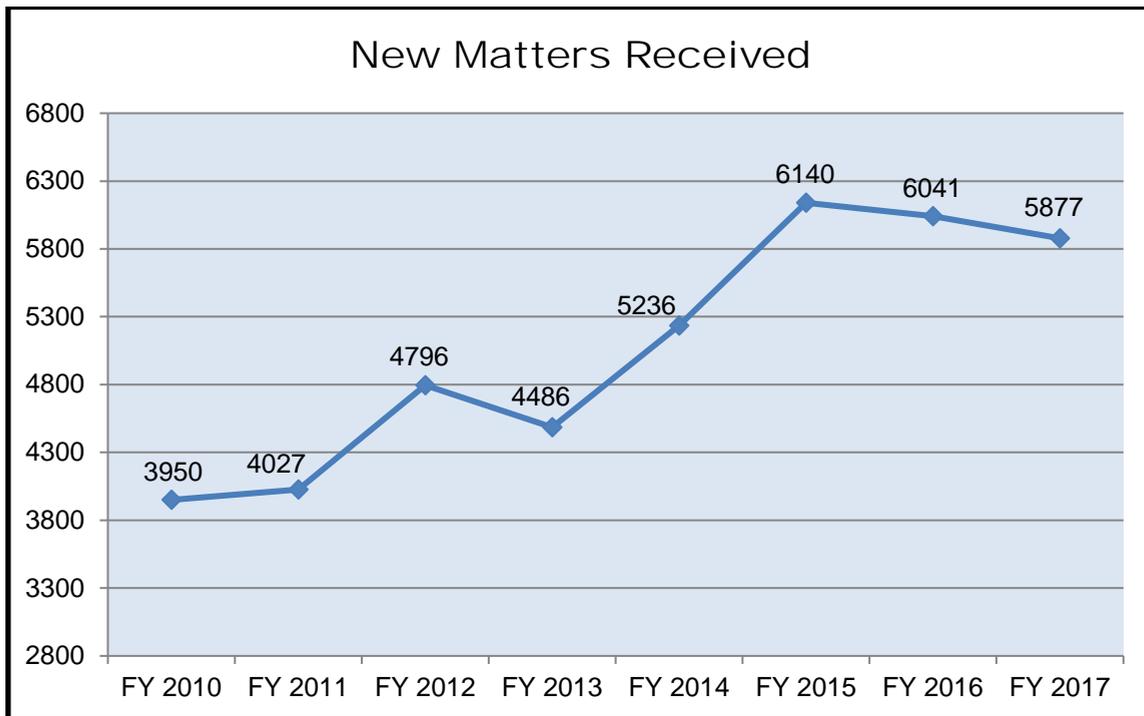
<sup>1</sup> A full-year 2018 appropriations for OSC was not enacted at the time this report was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2018 (P.L. 115-56), The amount included for 2018 reflects the annualized level provided by the continuing resolution.

<sup>2</sup> In FY 2017, as in years past, OSC received more cases from the Department of Veterans Affairs than from any other agency. In FY 2017, OSC received 1,824 complaints from VA employees, meaning 31% of all new complaints OSC received came from VA. See the chart on page 8 for the breakdown of casework received by agency.

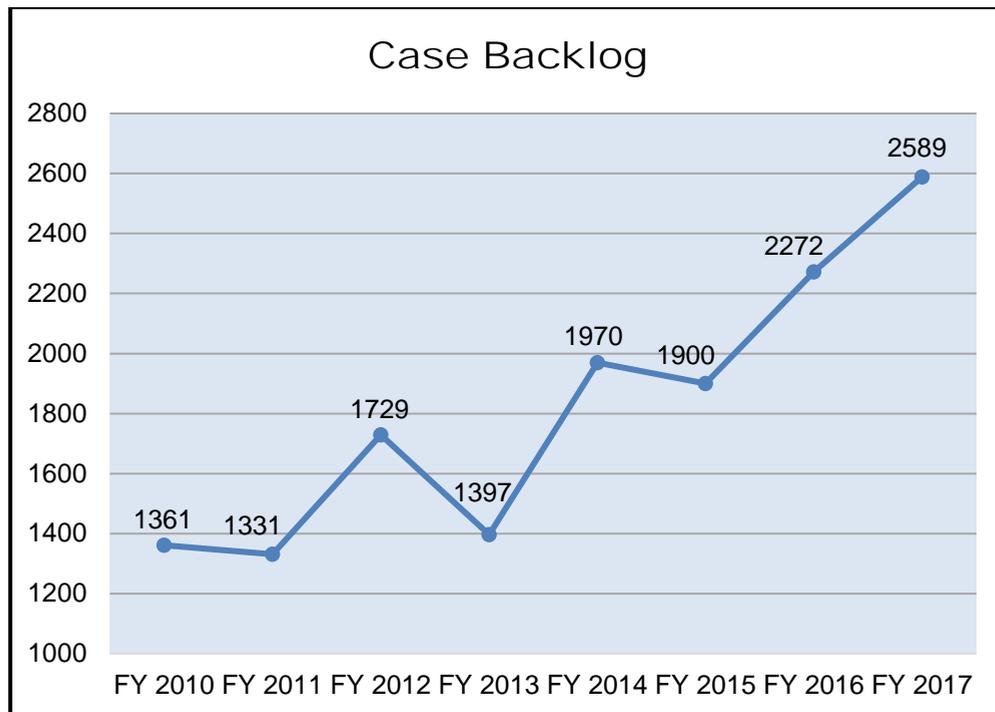
As a result, an investment in OSC can have a disproportionately high return on investment in improving Government for the American taxpayer. OSC has one of the smallest budgets of any Federal law enforcement agency, yet our impact is far-reaching and the demands on OSC have never been greater. With the Congress's continuing support, OSC will be able to perform its statutory mission of ensuring a more accountable and efficient Government.

## Summary of Request

During the past few years, OSC has experienced an unprecedented rise in its caseload. In FY 2017, for the third year in a row, OSC received more than 5,800 new matters. (See chart below.) OSC has received its most new matters ever during the past three years, increasing 24 percent over the prior three-year period. Caseloads are now double what they averaged seven years ago. Despite the challenge of an overflowing docket, OSC has continued to deliver results. For example, during FY 2017, OSC achieved more than 300 favorable actions in response to PPP complaints and whistleblower retaliation complaints for the first time in agency history. Simply put, OSC is working harder, smarter, and producing better results than ever before.



As the Federal workforce's awareness of and confidence in OSC's ability to obtain corrective actions has grown, the demand for OSC's services has hit record levels as has our case backlog. OSC's case backlog surpassed 2,500 cases for the first time ever in FY 2017, a 14 percent increase over FY 2016 levels and a whopping 85 percent increase over FY 2013 levels.



OSC’s budget request is geared toward meeting the rising demand for the agency’s services among the Federal workforce and reducing our case backlog. OSC is requesting a FY 2019 budget of **\$26,252,000**, which includes funding for the salaries and benefits of 144 FTEs, a modest increase over OSC’s current staffing levels of 131 FTEs.

Funding OSC at our requested level will help ensure that we meet our statutory mission to root out 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, 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, \$26,252,000.

*Note.—A full-year 2018 appropriation for this account was not enacted at the time the budget was prepared; therefore, the budget assumes this account is operating under the Continuing Appropriations Act, 2018 (Division D of P.L. 115–56, as amended). The amounts included for 2018 reflect the annualized level provided by the continuing resolution.*

## About the Office of Special Counsel

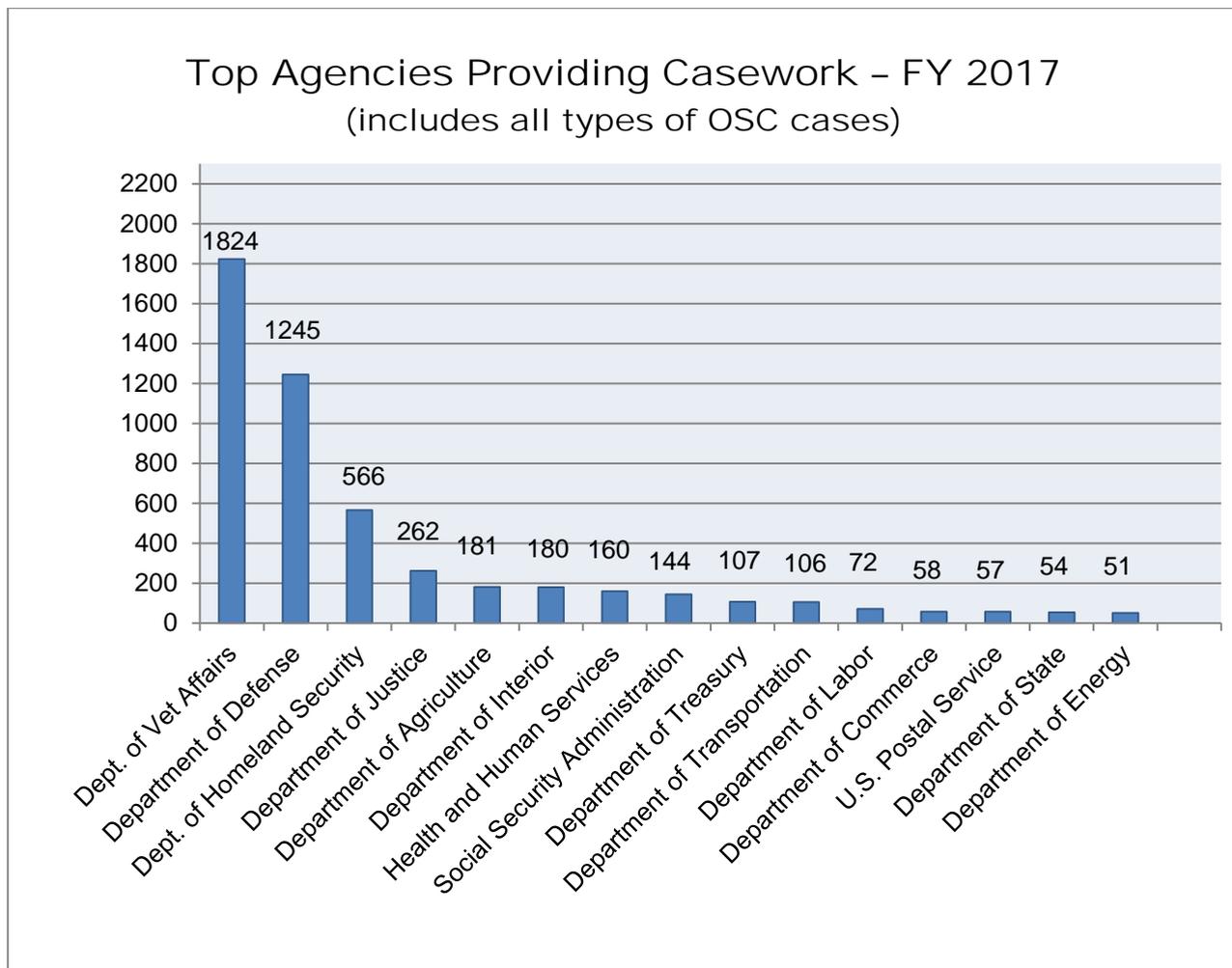
OSC promotes Government accountability, integrity, fairness, and efficiency by providing a safe and secure channel for Federal employees to come forward with evidence of waste, fraud, abuse, law-breaking, or threats to public health or safety, and it protects these employees from retaliation.

When Federal Aviation Administration 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 of wrongdoing. 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.

OSC is an effective investment of taxpayers' money. OSC returns substantial sums to the Federal Government by pressing for corrective actions 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 2017. Since FY 2015, we received more cases from VA employees than from any other agency and we expect this trend to continue into FY 2019 as well.



## Prohibited Personnel Practices

OSC is addressing a substantial and steady surge in the number of Federal employees alleging PPPs, most notably retaliation for whistleblowing. With the passage of the Whistleblower Protection Enhancement Act of 2012 (WPEA), 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 remain high going forward. FY 2017 saw OSC receive over 3,800 new PPP complaints for the third year in a row, a first in agency history. Protecting employees from PPPs is critical to ensuring an efficient, accountable, and fair Federal service.

## Whistleblower Disclosures

Whistleblower disclosures are a substantial portion of OSC's caseload, now comprising almost a third of the agency's new matters. OSC received over 1,700 new disclosures in FY 2017 for the third year in a row, an agency record. These disclosures, which involve employee reports of gross mismanagement, waste, fraud, abuse, and illegality, are expected to remain high again this year.

## Retaliation and Disclosure Unit (RDU)

This unit, established in FY 2016, handles hybrid cases alleging both a whistleblower disclosure and retaliation, providing complainants a single point of contact. RDU performs the full range of actions in these cases, including the referral of whistleblower disclosures to agencies, and the investigation and prosecution of related retaliation claims, where appropriate. Because this unit is relatively new to OSC, we are currently developing metrics to better track its casework and overall performance.

## Hatch Act

The Hatch Act ensures that Government service is not tainted by partisan political influences. Hatch Act complaints typically increase around election cycles. During FY 2017, OSC received over 250 new complaints, our most in the last four years. Because the impact of the 2016 presidential election year carried over so strongly in FY 2017, we expect this trend to continue in FY 2018.

## USERRA

Under USERRA, a claimant alleging a violation by a Federal executive agency may file a complaint with the Department of Labor (DOL). DOL investigates and attempts to resolve the complaint, but if that is not successful, the claimant may ask DOL to refer the matter to OSC for possible representation before the Merit Systems Protection Board (MSPB). If OSC concludes the claimant is entitled to relief, it may act as the claimant's attorney and initiate an action at the MSPB.

## Strategic Goals

The Office of Special Counsel has three 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 B*), and are further detailed in the Goal Table section for each budget program.

### OSC's FY 2019 Strategic Goals and Costs per Goal

1. Protect and promote the integrity and fairness of the Federal workplace. Cost: \$16,601,600
2. Ensure Government accountability. Cost: \$4,866,690
3. Achieve organizational excellence. Cost: \$4,784,210

\*Numbers derived from percentage costs based on projected budget totals.

# Office of Special Counsel's Efficiencies and Successes

OSC improves the efficiency and accountability of Government. Over the last few years, the agency has handled record numbers of disclosures from Federal whistleblowers, many of which resulted in direct financial returns to the Government, and even greater indirect benefits in harm avoided or reduced. OSC not only ensures that disclosures are properly considered, but it also protects whistleblowers who bring them forward.

## Prohibited Personnel Practices

The volume of PPP complaints is substantial and growing: In FY 2016 and FY 2017, OSC received more than 7,939 new cases, a new agency record.

OSC plays a unique role in fostering a productive Federal workplace by handling allegations of prohibited personnel practices, such as whistleblower retaliation, nepotism, 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.

For some of these cases, mediation offers a timely and mutually beneficial outcome, and OSC has been very successful at achieving settlements through mediation. During FY 2017, 86 percent of mediations completed by OSC resulted in settlements. Mediation significantly reduces the amount of time and money required to investigate and resolve a case, and provides a streamlined settlement option, resulting in a win-win for parties to the dispute.

However, not all meritorious PPP cases can be settled in mediation. Where appropriate, OSC seeks corrective, systemic, and disciplinary action through informal resolutions and/or litigation before the MSPB. OSC is achieving an unprecedented number of favorable actions. During FY 2017, OSC achieved a record 320 favorable actions in its cases. 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 2017, 236 involved reprisal for whistleblowing, another agency record. OSC negotiated 43 stays with agencies to protect employees from premature or improper personnel actions. Seventeen stays or stay extensions were also obtained from the MSPB. OSC also achieved 16 disciplinary actions, upholding accountability and sending a clear message to supervisors that Federal agencies do not tolerate prohibited practices.

## Hatch Act

The number of Hatch Act complaints filed with OSC has significantly decreased since the Hatch Act Modernization Act (HAMA) took effect in December 2012. 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. FY 2017 witnessed a spike in complaints and advisory opinions issued as a carryover from the previous presidential election year. OSC obtained four disciplinary actions in Hatch Act cases from the MSPB in FY 2017.

## USERRA

OSC receives referrals of USERRA cases for prosecution from DOL, which investigates these cases. OSC gained corrective actions for four complainants in FY 2017. OSC also provided technical assistance to both DOD and the Peace Corps in modifying USERRA-related regulations.

# 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 2017, CEU screened 3,828 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 a matter merits further investigation and does not qualify for ADR, or ADR is unable to resolve a matter, it is referred to IPD. This unit is comprised of IPD headquarters and three field offices, and it 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 his determination, the report, and any comments by the whistleblower to the President and responsible congressional oversight committees, and these are posted online.

## Retaliation and Disclosure Unit (RDU)

This unit handles hybrid cases in which a single complainant alleges both a whistleblower disclosure and retaliation. RDU performs the full range of action in these cases, including the referral of whistleblower disclosures to agencies and the investigation and prosecution of related retaliation claims, where appropriate.

## 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 makes 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. DOL investigates and attempts to resolve the complaint but if that is not successful, the claimant may ask DOL to refer the matter to OSC for possible representation before the MSPB. OSC may seek corrective action for violations

of USERRA before the MSPB. OSC also provides outreach and education to veterans and agencies on their rights and responsibilities under USERRA.

#### Alternative Dispute Resolution Unit (ADR)

This unit supports OSC's operational program units. CEU, 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 one or more mediation sessions, led by OSC-trained mediators, who have experience in Federal personnel law.

#### Diversity, Outreach and Training

The Diversity, Outreach and Training Unit facilitates coordination with and assistance to agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that Federal agencies inform their workforces, in consultation with 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

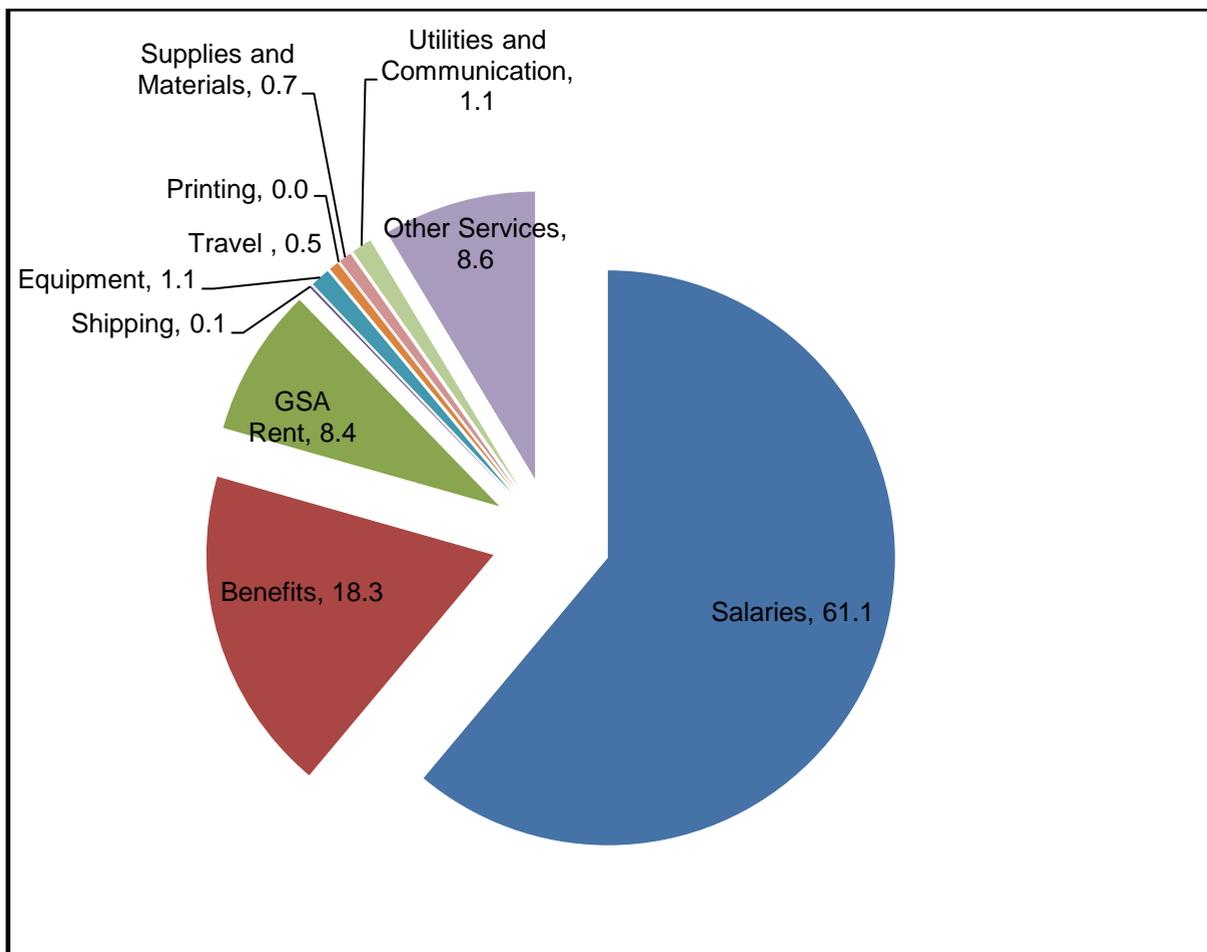
This office provides legal advice and support in connection with management and administrative matters, defense of OSC interests in litigation filed against the agency, management of the agency's ethics programs, and policy planning and development.

#### Administrative Services Division

Components of this unit are Finance, Human Capital, Administrative Services, Office of the Clerk, and Information Technology.

# Components of Budget Request

The following chart estimates how the FY 2019 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>						
<b>Program</b>	<b>FY 2018 Estimate (CR Level)</b>		<b>FY 2019 Estimate</b>		<b>Increase/Decrease</b>	
	<b>Amount (in 1000s)</b>	<b>FTE</b>	<b>Amount (in 1000s)</b>	<b>FTE</b>	<b>Amount (in 1000s)</b>	<b>FTE</b>
<b>Investigation and Prosecution of Prohibited Personnel Practices</b>	\$12,885	68.7	\$13,478	73.3	\$593	4.6
<b>Retaliation and Disclosure Unit</b>	\$1,365	7.3	\$1,458	8.0	\$93	0.7
<b>Hatch Act Unit</b>	\$683	3.6	\$729	4.0	\$46	0.4
<b>Whistleblower Disclosure Unit</b>	\$3,019	16.1	\$3,521	20.0	\$502	3.9
<b>USERRA Unit</b>	\$189	1.0	\$189	1.0	(\$0)	0.0
<b>Alternative Dispute Resolution</b>	\$555	3.0	\$592	3.3	\$38	0.3
<b>Immediate Office of the Special Counsel</b>	\$1,024	5.5	\$1,093	6.0	\$70	0.5
<b>Office of General Counsel</b>	\$555	3.0	\$592	3.3	\$38	0.3
<b>Diversity, Outreach and Training</b>	\$384	2.0	\$410	2.3	\$26	0.2
<b>Office of the COO – Information Technology / Budget / Human Resources / Procurement / Office of the Clerk / Admin. Services</b>	\$3,924	20.9	\$4,189	23.0	\$265	2.1
<b>Totals</b>	\$24,582	131.1	\$26,252	144.2	\$1,670	13.1

# PART 2 – FY 2019 BUDGET REQUEST – ADDITIONAL INFORMATION

OSC is requesting \$26,252,000 to fund 144 FTEs and related non-personnel costs for FY 2019. This number of FTEs is necessary to manage and process the agency’s rising caseload, particularly prohibited personnel practice complaints and whistleblower disclosures. OSC expects to see increases in its backlog due to continued high caseloads, even with this level of funding. Providing funding to support 144 FTEs will allow OSC to more effectively address rising caseloads and improve efficiency of programs and processes. Our requested funding level will also enable OSC to execute critical IT projects in FY 2019 to enhance operations and improve cyber security.

Primary Driver of the FY 2019 increase:

## Costs for Current Salaries and Benefits

Total personnel compensation costs will increase, primarily due to operating with an increased number of FTEs. We anticipate the agency will have 144 FTEs in FY 2019, an increase of 13 FTEs versus the FY 2018 staffing level while operating under the Continuing Resolution (CR) levels. Salaries and benefits will be approximately 79 percent of OSC’s total costs in FY 2019, up four percent from 75 percent five years ago. Further, the impact of pay raises, step increases, and career ladder promotions are significant in an agency in which up to 79 percent of the budget funds salaries and benefits, as well as employee awards.

## FY 2019 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’s 2017-2019, see Budget Table 1 below.

<b>Budget Table 1 – Budget Object Classification of Obligations: FY 2017–2019</b>			
<i>(in thousands of dollars)</i>			
<b>Budget Object Classification of Obligations</b>	<b>FY 2017 (actual)</b>	<b>FY 2018 (projected, CR level)</b>	<b>FY 2019 (projected)</b>
<b>11.0 Personnel compensation</b>	15,103	15,483	16,039
<b>12.0 Civilian Personnel Benefits</b>	4,524	4,722	4,805
<b>21.0 Travel and transportation of persons</b>	101	47	143
<b>22.0 Transportation of things</b>	38	15	32
<b>23.1 Rental payments to GSA</b>	2,129	2,163	2,192
<b>23.3 Communications, utilities and misc. charges</b>	265	265	299
<b>24.0 Printing and reproduction</b>	12	6	17
<b>25.0 Other services</b>	2,133	1,801	2,250
<b>26.0 Supplies and materials</b>	105	45	186
<b>31.0 Equipment</b>	232	35	289
<b>32.0 Leasehold improvements</b>	0	0	0
<b>Total</b>	<b>24,642</b>	<b>24,582</b>	<b>26,252</b>

## Notes Concerning the Above BOC Line Items:

### Object Class 11.0 Personnel Compensation Costs:

As projected, overall personnel compensation will increase in FY 2019 as compared to FY 2018, because OSC will be supporting 144 FTEs in FY 2019 versus 135 in FY 2017 and 131 in FY 2018 at the CR level. The primary driver of increased staffing levels is OSC's ever-increasing caseload. OSC has seen or will see:

- record levels of incoming cases, projected to again be more than 6,000 cases in FY 2018 and beyond;
- a 58 percent increase in new matters in FY 2017 over the historical case average, with similar elevated case levels expected in future years;
- an average pay raise of 2.29 percent for the agency in FY 2018 including locality pay, which will be sustained (not increased) in FY 2019; and
- approximately 92 within-grade salary increases and career ladder promotions projected in FY 2019.

### Object Class 12.0 Civilian Personnel Benefits Costs:

These costs are for employee benefits, including Medicare, Federal Employees' Group Life Insurance (FEGLI), health benefit contributions, old age survivors and disability insurance, and retirement plan contributions. Total benefits costs in FY 2019 are increasing primarily due to the addition of new staff.

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

During FY 2019, we expect travel to be conducted at the full and appropriate levels required for OSC's investigations and mediations. OSC curtailed travel in FY 2018 due to the constrained funding level.

### 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 \$2.16 million for FY 2018 and \$2.19 million for FY 2019, based on GSA projections. The agency's headquarters lease is being re-competed, and we project significant relocation and buildout costs in FYs 2019 and 2020 if we don't stay at the current location.

### Object Class 23.3 Communications and Utilities:

This category reflects the cost to sustain the agency's telephone and high-speed internet connections in FY 2019 for the headquarters and field office locations, as well as to meet additional compliance requirements.

### Object Class 25.0 Other Services:

OSC outsources its accounting services, financial and procurement systems, payroll services, travel services, and procurement services. The agency began to modernize our IT infrastructure in earlier years and that effort will continue into FY 2019, including improvements in the case management system and electronic case filing.

Also, beginning in FY 2018 and continuing into FY 2019, OSC will implement multiple projects that will greatly enhance our IT security posture in FY 2019, 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 Federal Information Security Management Act (FISMA) audit services
- mobile device management tools
- electronic records management
- IT unified management – across on-premises, service provider and Microsoft Azure environments

Object Class 31.0 Equipment:

OSC experienced moderate levels of equipment purchases (servers, computers, switches and routers, teleconferencing equipment, and copiers) in FY 2017 in order to refresh its IT infrastructure and support modernization projects. These costs will be reduced significantly in FY 2018 at the CR funding levels. However, we expect these costs to increase in FY 2019 as a refresh of certain equipment will be required.

## Analysis of Resources – Fiscal Year’s 2017- 2019

For a high level summary of resources during FY’s 2017-2019, see Budget Table 2 below.

<b>Budget Table 2 – Analysis of Resources</b> <b>FY 2017-2019</b> <i>(in thousands of dollars)</i>				
Description		FY 2017 (Actual)	FY 2018 (Projected, CR level)	FY 2019 (Projected)
Budget authority	Direct	24,750	24,582	26,252
	Reimbursable	28	0	0
	<b>Total</b>	24,778	24,582	26,252
<b>Outlays</b>		24,210	24,420	25,705
Employment	Direct-full time equivalent	135	131	144
	Reimbursable-full time equivalent	0	0	0
	<b>Total</b>	135	131	144

# PART 3 – BUDGET PROGRAMS AND PERFORMANCE PLAN

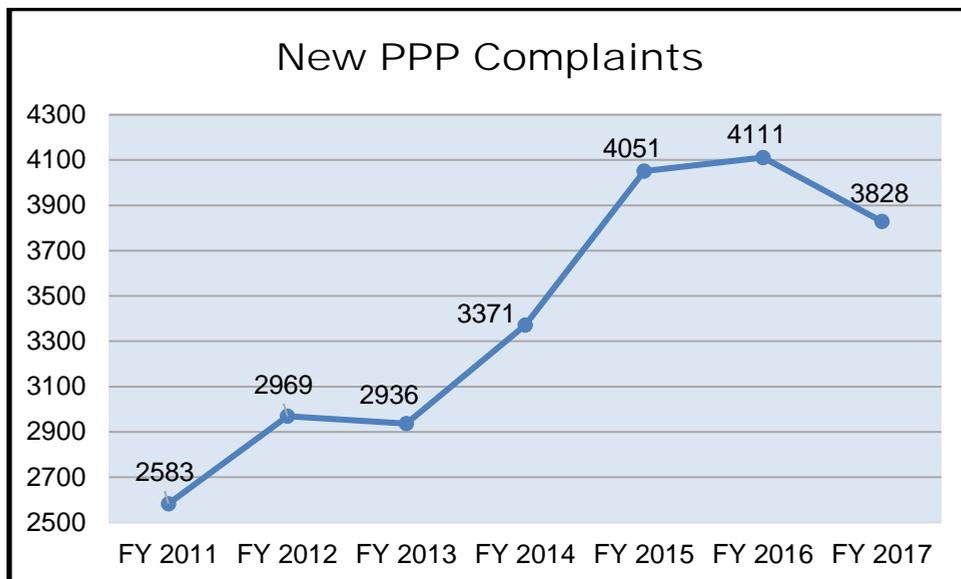
## FY 2017 Case Activity and Results – All Programs

During FY 2017, OSC received 5,877 new matters throughout all of its program areas, as well as 1,325 requests for Hatch Act formal advisory opinions. Table 1 below summarizes overall OSC case intake and dispositions in FY 2017 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 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Matters<sup>3</sup> pending at start of fiscal year</b>	1,357	1,320	1,744	1,399	1,967	1,901	2,271
<b>New matters received</b>	4,027	4,796	4,486	5,236	6,140	6,041	5,877
<b>Matters closed</b>	4,051	4,374	4,833	4,666	6,208	5,661	5,560
<b>Matters pending at end of fiscal year</b>	1,331	1,729	1,397	1,970	1,900	2,272	2,589
<b>Hatch Act advisory opinions issued</b>	3,110	3,448	1,767	1,382	1,023	1,641	1,325

## Investigation and Prosecution of Prohibited Personnel Practices

OSC’s largest program is devoted to handling PPP complaints. Of the 5,877 new matters OSC received during FY 2017, 3,828 (or 35 percent) were new PPP complaints. (See chart below and Table 2 on the following page.)



<sup>3</sup> “Matters” in this table includes prohibited personnel practice cases, whistleblower disclosures, and USERRA cases.

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 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 OSC receives a complaint, 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 2017, CEU referred 273 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 one or more mediation sessions, 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 to IPD for further investigation. IPD investigations typically include information requests to the agency and interviews of the complainant, witnesses, and subject officials. IPD then applies the law to the facts to determine whether the matter warrants corrective action, disciplinary action, or both.

If 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 findings and recommendations for corrective action. Only after the employing 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 2018, IPD, RDU, and CEU, which together have jurisdiction over most prohibited personnel practices, will use approximately 72 FTE at a cost of approximately \$13,568,000. During FY 2019, we estimate the cost of the PPP program will be approximately \$13,809,000 with 77 FTE assigned.

**TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing<sup>4</sup>**

	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	
<b>Pending complaints carried over from prior fiscal year</b>	863	934	1,152	1,045	1,414	1,406	1,658	
<b>New complaints received<sup>5</sup></b>	2,583	2,969	2,936	3,371	4,051	4,111	3,828	
<b>Total complaints</b>	3,446	3,903	4,088	4,416	5,465	5,517	5,486	
<b>Complaints referred by CEU for investigation by IPD</b>	270	252	255	274	264	213	273	
<b>Complaints processed by IPD</b>	190	274	266	278	307	253	201	
<b>Complaints pending in IPD at end of fiscal year</b>	331	325	316	316	284	265	346	
<b>Total complaints processed and closed (CEU and IPD combined)</b>	2,508	2,750	3,041	3,003	4,058	3,870	3,512	
<b>Complaint processing times</b>	<b>Within 240 days</b>	2,327	2,570	2,594	2,577	3,381	3,307	2,716
	<b>Over 240 days</b>	175	439	440	422	665	554	782
<b>Percentage processed within 240 days</b>	92%	88%	85%	85%	83%	85%	77%	

Table 3 below provides information regarding the numbers of corrective actions obtained in prohibited personnel practice cases.

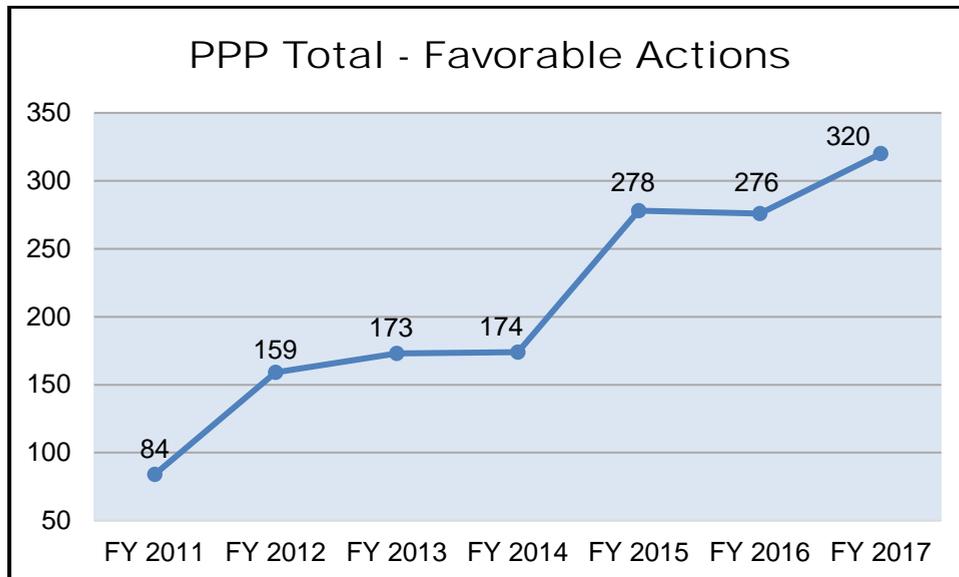
<sup>4</sup> Complaints frequently contain more than one type of allegation. This table, however, records all allegations received in a complaint as a single matter.  
<sup>5</sup> “New complaints received” includes a few re-opened cases each year, as well as prohibited personnel practice cases referred by the MSPB for possible disciplinary action.

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

		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>Total favorable actions negotiated with agencies (all PPPs)</b>	<b>No. of actions<sup>6</sup></b>	84	159	173	174	278	276	320
	<b>No. of matters</b>	65	128	124	142	212	217	261
<b>Total favorable actions negotiated with agencies (reprisal for whistleblowing)</b>	<b>No. of actions</b>	64	112	104	138	233	218	236
	<b>No. of matters</b>	50	95	91	112	175	174	202
<b>Disciplinary actions negotiated with agencies</b>		6	19	27	23	9	18	16
<b>Stays negotiated with agencies</b>		12	27	28	21	62	40	43
<b>Stays obtained from MSPB</b>		4	8	5	2	3	7	6
<b>Stay extensions obtained from MSPB</b>		1	1	7	0	1	4	9
<b>Corrective action petitions filed with the MSPB</b>		1	0	2	0	0	0	0
<b>Disciplinary action complaints filed with the MSPB</b>		0	0	0	3	0	0	0

## Goals and Results – Prohibited Personnel Practices

In FY 2017, OSC received 3,828 new PPP complaints, the third most in agency history. OSC achieved a record 320 favorable actions in FY 2017, the most in agency history and a 16 percent increase from FY 2016.



In FY 2016 OSC finalized a new Strategic Plan for fiscal years 2017 – 2022. (See Appendix B for the new Strategic Plan.) OSC’s Strategic Goal 1 under this new plan is to protect and promote the integrity and fairness of the Federal

<sup>6</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.

workforce through investigation and prosecution of prohibited personnel practice cases. New goal tables were developed to track agency performance against the Strategic Plan and can be found in *Appendix C*.

## Prohibited Personnel Practice Successes

### Whistleblower Retaliation

- Complainant, a supervisory law enforcement officer, alleged that the agency subjected him to an unwarranted investigation, removed him from his supervisory position, and suspended and reassigned him after he disclosed security concerns about a subordinate employee. With OSC's assistance, the parties settled the matter wherein the agency agreed to destroy all copies of the investigation, remove any references to it from the complainant's performance appraisal and personnel materials, adjust the complainant's performance appraisal to reflect actual work, and promise not to consider the investigation or its findings in any future personnel actions.
- Complainant alleged he received a lowered appraisal and was placed on administrative duties after reporting administratively uncontrollable overtime abuse to OSC. OSC sent a detailed letter, akin to a PPP report, requesting that the agency take appropriate action. With OSC's assistance, the parties entered into a settlement agreement, which included compensatory damages, back pay, attorney's fees, rescission of letters of counseling, and an increased performance appraisal rating.
- Complainant, a supervisor, alleged that she was subjected to a hostile work environment, suffered a reduction in responsibilities, and received a lowered performance appraisal in retaliation for her disclosures of widespread corruption and mismanagement at the agency where she worked. With OSC's assistance, the parties agreed to full corrective action for complainant as well as disciplinary action in the form of a seven-day suspension for one subject official and a five-day suspension and a demotion for another subject official.
- Complainant, a former director of finance, alleged that she was removed from employment in retaliation for disclosures she made about the agency's board members' travel reimbursement documentation and contacts with foreign nations. With OSC's assistance, the parties entered into a settlement agreement wherein the agency agreed to rescind the complainant's removal, change her personnel record to reflect that she resigned, provide her a neutral reference, and pay her back pay, attorney's fees, and compensatory damages.
- Complainant, a FOIA/Privacy Act officer, alleged that the agency proposed her removal in retaliation for her association with a known whistleblower. Complainant had previously processed numerous FOIA requests by that whistleblower who used information obtained through FOIA requests to make disclosures to the press and Congress. With OSC's assistance, the parties reached a settlement for full corrective action, including performance awards, attorney's fees, and compensatory damages.
- Complainant, a procurement and acquisitions chief, alleged that the agency reassigned him to a position that is not consistent with his previous position or professional experience in retaliation for his disclosures to the OIG and others about the improper use of funds. With OSC's assistance, the parties entered into a settlement agreement, which included a lump sum payment to the complainant.
- Complainant alleged that she disclosed that her agency falsified appointment wait times for its new patients. After she received notice of a demotion based on a planned management action to dismantle her program, OSC obtained evidence that the agency's decision to dismantle her program and demote her lacked reasonable grounds. In the settlement agreement, the agency agreed to maintain the complainant's position in her program and to provide substantial compensatory damages.
- Complainant alleged that after she reported treatment errors and the misuse of vendor provided services for personal gain, the agency subjected her to a hostile work environment and threatened her with a performance

improvement plan. Based on OSC's intervention, the agency agreed to provide the employee with a clean record, a lump sum payment of \$49,000, and new supervision.

- Complainant alleged that after reporting that the agency where he worked wasted more than \$200,000 by sending lab work to contractors for analysis that ultimately delayed the diagnosis of patient medical conditions, the agency interfered with his ability to perform his professional duties. With OSC's assistance, the parties settled the matter wherein the agency agreed to pay a lump sum payment of \$10,400, restore the complainant's work privileges, change his supervisors, pay him \$54,224 in attorney's fees, and provided him with training opportunities.
- Complainant alleged that after she reported concerns about the inadequate screening of certain travelers at her airport, the agency subjected her to an internal investigation for misconduct that resulted in a suspension. After OSC investigated the matter, the agency agreed to rescind the suspension and remove derogatory information from her personnel file.
- Complainant alleged that he was removed because he declined to accept a directed reassignment after first having disclosed his belief that a local tribe had entered into improper oil and gas lease agreements. Complainant also disclosed that the agency failed to fulfill its oversight responsibilities in the matter. After OSC issued a PPP report, the parties settled the case. In the settlement agreement, the agency agreed to give the complainant a lump sum payment of approximately \$70,000, which included full back pay and compensatory damages, place him in a new position, restore his benefits, including 162 hours of annual leave and 108 hours of sick leave, and provide him with a clean employment record.
- Complainant, a union official, alleged that he received a proposed termination after helping other union members file grievances. After finding evidence that the agency proposed his termination based on allegations previously disproved by an internal investigation, OSC concluded that the proposal could not be sustained. In a settlement agreement, the agency agreed to rescind the proposed termination, pay compensatory damages, and reassign him to a new position.
- Complainant, a program director, internally disclosed potential contract fraud and discrimination by a senior agency official. Shortly thereafter, the official proposed the complainant's demotion and suspended her for five days for alleged misconduct and then placed her on a detail with highly reduced duties. OSC negotiated a stay, returning the complainant back to her original position and, in the course of its investigation, uncovered certain evidence of whistleblower retaliation. OSC brokered a settlement agreement in which the agency reduced the proposed demotion and five-day suspension to a letter of reprimand, to be removed from complainant's file in six months. The agency also agreed to provide leadership training and to facilitate conciliation sessions between the complainant and fellow employees.
- Complainant, a manager, disclosed potential abuses of authority by his supervisors to the OIG. Shortly thereafter, the complainant's supervisors—who were aware of his disclosures and had made statements of animus—informed him that he would lose his supervisory role pursuant to a reorganization that had taken place nearly four years prior. Although OSC's investigation revealed that the plan to reassign the complainant may have predated the whistleblowing at issue, OSC also learned that the complainant had continued to do the same supervisory work for approximately a year and a half after his "reassignment" even though he had lost the title and pay. In a settlement agreement, the agency agreed to pay the complainant a year and a half of back pay for the time he performed supervisory duties without appropriate compensation, put him on a one-year detail with a mutually agreeable supervisor, and guarantee that the complainant would never work under certain leadership for the remainder of his time at the agency.

## Improper Selection Practices and Other Violations

- OSC received a referral involving allegations of several possible recruitment violations at an agency. Before the case was referred to OSC, an audit revealed that the agency attempted to use improper criteria to hire only attorneys for six separate non-attorney positions. As agency leaders expressed confusion about how their actions were improper and questions remained about the guidance they received, OSC issued a PPP report to clarify the standards applicable to this type of hiring manipulation. The agency accepted OSC's findings and agreed to training. OSC published the redacted PPP report in this case to educate the Federal community.
- Complainant, a branch head, alleged that his former supervisor influenced him to withdraw from competition for a position at a higher grade level in a different division at the same agency. The supervisor valued the complainant's work and did not want to lose him to the other division. In exchange for the withdrawal, the supervisor promised that, based on the work the complainant was performing, he would promote him. But the complainant was not promoted as promised. OSC issued a PPP report to the agency requesting corrective action. In a settlement agreement, the agency agreed to award the complainant a promotion and provide him with back pay.
- Complainant, an equal employment opportunity (EEO) specialist, alleged that his supervisor granted an unauthorized advantage to a favored applicant to improve the applicant's prospects for selection. OSC determined that the supervisor, a member of an interview panel, actively prepared the applicant for the panel interview by providing the panel's questions and offering sample best answers to advance the applicant's prospects. Because the supervisor accepted responsibility for his actions, OSC approved the agency's 14-day suspension of him.
- Complainant, an officer, alleged discrimination when she was removed from her probationary supervisory position after telling her supervisor she was pregnant. With OSC's assistance, the parties entered into a settlement agreement that included the complainant's voluntary return to a non-supervisory position and a performance award.
- Two complainants alleged that their agency hired and promoted employees without regard to required experience standards. After OSC's investigation, the agency corrected this systemic problem by implementing a new plan to bring all existing employees into compliance with applicable qualification standards and to ensure that job-specific requirements would be satisfied in the future.
- Complainant alleged that the subject official, a GS-15 supervisor, engaged in nepotism when she participated in personnel actions involving family members. At the conclusion of OSC's investigation, the parties agreed that the subject official would move to a non-supervisory GS-14 position and not seek or accept a position involving supervisory duties with the Federal Government for one year.
- Complainant alleged that she was discharged because her agency concluded she had failed to maintain her nursing license. OSC showed, however, that the licensing state had a grace period and that she renewed her license within the applicable period. Based on OSC's investigation, the agency reinstated the employee, removed derogatory information from its records, paid back pay of approximately \$195,000, reimbursed her for tuition expenses she incurred for training, forgave debts accrued because of the discharge, provided her with orientation training, and issued a letter attesting to her employment status at the facility.
- Complainant, a manager, alleged that a member of the agency's human resources department gave him inaccurate information about his EEO and MSPB appeal rights: namely, that he could only appeal to one, and not both. OSC obtained systemic corrective action wherein the agency agreed to train the relevant human resources division on EEO and MSPB appeal rights.

## Stays of Personnel Actions

- Complainants, two deputy assistant directors, alleged that agency officials met with them and asked if they would withdraw from competition for two assistant director positions. After the complainants did not withdraw, the agency re-announced the vacancies with new qualification requirements that the complainants did not possess. OSC sought a formal stay from the MSPB to prevent the agency from moving forward with the hiring actions pending OSC's investigation. The MSPB granted OSC's request and another request to extend the stay. OSC issued a PPP report finding that agency officials improperly asked the complainants to withdraw from competition and recommended the selection of a non-veteran in violation of a veterans' preference requirement. The agency took action consistent with OSC's recommendation; officials were disciplined, and OSC conducted PPP training at the agency. OSC also published the redacted PPP report in this case to educate the Federal community.
- Complainant, a utility systems operator and union steward, alleged that his tour of duty was changed in retaliation for assisting a coworker with filing claims and complaints with, among others, OSHA, the Department of Labor, and the OIG against their supervisor. OSC filed a formal stay with the MSPB to stay the change in the complainant's tour of duty. The MSPB granted OSC's request and another request to extend the stay.
- Complainant alleged that after she reported that management secretly allowed a single employee to complete mandatory on-line training for others and falsified training records, she was subjected to a hostile work environment and eventually fired. OSC obtained a formal stay from the MSPB to return the employee to work. The agency later agreed to stay the termination indefinitely until it completed an internal investigation of the training irregularities. The agency eventually provided back pay to the complainant for lost wages and removed documentation of the termination from her personnel file.
- Complainant alleged that he was removed during his probationary period after disclosing to OSHA inadequate fall-protection measures and non-compliance with OSHA's reporting requirements at the agency where he worked. The complainant told OSHA in one case that an employee was hospitalized after suffering an unreported fall. OSC obtained a formal stay from the MSPB that helped the employee avoid the foreclosure of his home.
- Complainant, a physician, alleged that he was terminated during his probationary period in retaliation for reporting patient care concerns to management and the OIG. OSC obtained a formal stay from the MSPB of the termination and obtained extensions of the formal stay while OSC completed its investigation.
- Complainant alleged that she reported an agency official to management and to the OIG for suspected theft. OSC's investigation determined that the official demoted the complainant to the lowest position available in retaliation for her disclosures. OSC obtained a formal stay of the complainant's demotion from the MSPB. The agency ultimately agreed to provide the complainant with full corrective action including reinstatement, back pay, and compensatory damages. Based on OSC's investigation and PPP report, the agency decided to suspend the agency official for 14 days and reassign her. In lieu of accepting the discipline, the official resigned from service.
- Complainant, a law enforcement officer, alleged the agency suspended his law enforcement authority and proposed his removal in retaliation for emails to high-level officials disclosing alleged mismanagement and waste. The proposed removal cites the complainant's inability to maintain a Government credit card—a requirement for his position—but the agency appears to have some discretion regarding how to deal with such situations. OSC obtained an informal stay of the proposed removal while it investigates the matter.

- Complainant, an assistant chief of human resources, alleged that the agency proposed her removal in retaliation for disclosing that the chief financial officer and other high-level officials repeatedly pressured her to qualify the chief financial officer's husband for a position. OSC obtained an informal stay of the proposed removal and a new supervisor for the complainant.
- Complainant, a senior scientist, alleged that agency management attempted to discredit and suppress his research in response to pressure from industry lobbying efforts and a pending lawsuit. Several weeks after he filed an internal scientific integrity complaint, management advised him that he would lose the supervisory role he held for approximately 14 years. OSC obtained an informal stay of the reassignment pending the conclusion of the investigation. The agency also agreed to further investigate the complainant's disclosure that management took actions to improperly influence his research.

Mediation – see Alternative Dispute Resolution section

## USERRA Unit

USERRA protects the civilian employment and reemployment rights of those who serve the nation in the U.S. 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. The 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.

Under USERRA, a claimant alleging a violation by a Federal executive agency may either file an appeal with the MSPB or a complaint with DOL's Veterans' Employment and Training Service (VETS). If the claimant chooses to file a complaint with VETS, VETS must investigate and attempt to resolve the complaint. If it cannot resolve the matter, the claimant may direct VETS to refer the complaint to OSC for possible representation before the MSPB. 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.

## Resource Estimates

During FY 2018, OSC will use approximately one FTE at a cost of \$189,000 on USERRA enforcement, while during FY 2019, OSC estimates the program will use one FTE at a cost of \$189,000.

## Goals and Results – USERRA Unit

<b>TABLE 4 Summary of USERRA Referral and Litigation Activity<sup>7</sup></b>							
	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Pending referrals carried over from prior fiscal year</b>	12	17	11	6	7	4	5
<b>New referrals received from VETS during fiscal year</b>	36	24	7	14	18	16	17
<b>Referrals closed</b>	31	30	12	13	21	15	19
<b>Referrals closed with corrective action</b>	2	4	2	2	2	0	4
<b>Referrals closed with no corrective action</b>	29	26	10	11	19	15	15
<b>Referrals pending at end of fiscal year</b>	17	11	6	7	4	5	3
<b>Litigation cases carried over from prior fiscal year</b>	1	0	0	0	0	0	0
<b>Litigation cases closed</b>	1	0	0	0	0	0	0
<b>Litigation closed with corrective action</b>	1	0	0	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>	0	0	0	0	0	0	0

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 in receiving documents or interviewing witnesses that are beyond OSC’s control. Cases also vary in complexity.

OSC conducted three USERRA outreach events during FY 2017, satisfying every agency request received. OSC expects to satisfy all outreach requests again in FY 2018.

OSC’s Strategic Goal 1 under its new Strategic Plan is to protect and promote the integrity and fairness of the Federal workforce, including through investigation and prosecution of USERRA cases. (*See Appendix B for the new Strategic Plan.*) New goal tables were developed to track agency performance against the Strategic Plan and can be found in *Appendix C*.

### USERRA Successes

OSC plays 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>7</sup> This table has been reorganized with some categories and figures changed from prior reports to correct discrepancies and more clearly present relevant information.

## Negotiated Resolutions

- A Federal air marshal recalled to Air Force Reserve duty for almost two years did not receive the same pay raises and performance awards as his co-workers. He was also unable to use his paid military leave to cover part of that service, instead being forced to use vacation time. With OSC's assistance, the reservist received two retroactive pay raises, a cash award, and three weeks of restored vacation time.
- A U.S. Postal Service (USPS) postmaster recalled to active duty as a Navy reservist for three months did not receive a performance award like her peers. OSC intervened on the reservist's behalf and persuaded the USPS to issue her a retroactive award in the same amount she would have received had she not been absent for military duty.
- A police officer for the U.S. Army had to use 36 hours of annual leave (instead of his paid military leave) to attend military training with the National Guard. After OSC explained to the Army that service members are permitted under USERRA to choose what (if any) paid leave to use to cover military service, the agency agreed to restore his annual leave.
- A Federal Emergency Management Agency (FEMA) employee was deployed with the Navy Reserve for almost one year. During her absence, FEMA continued charging her premiums for her Federal employee health insurance benefits, even though she had elected military healthcare coverage. When she was unable to resolve the issue on her own, she filed a USERRA complaint, which was referred to OSC. At OSC's request, FEMA agreed to fully reimburse her for the mischarged premiums.

## Alternative Dispute Resolution

In many prohibited personnel practice cases, 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 2017, 91 cases were referred to the ADR Unit. In 75 cases, mediation was accepted by the complainants and, from those cases, agencies accepted mediation in 67 cases. The new emphasis on mediation has yielded some outstanding results: 86 percent of completed mediations resulted in settlements during FY 2017, thus proving an efficient use of resources. (*See Table 6.*)

**TABLE 6 ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints & USERRA Complaints<sup>8</sup>**

	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Number of cases in which mediation offered after referral from CEU, IPD, RDU, or USERRA<sup>9</sup></b>	31	129	107	80	83	71	91
<b>Mediation offers accepted by complainants</b>	20	82	75	56	59	59	75
<b>Mediation offers accepted by agencies and by complainants</b>	15	59	52	39	17	41	67
<b>Number of mediations conducted by OSC<sup>10</sup></b>	13	40	50 <sup>11</sup>	39	26	25	40
<b>Number of mediations withdrawn by either OSC or the agency after acceptance</b>	2	10	6	8	13	18	30
<b>Number of mediations withdrawn after at least one mediation session</b>	*	0	2	1	0	3	3
<b>Number of completed mediations</b>	*	30	47	38	26	22	37
<b>Number of completed mediations that yielded settlement</b>	10	18	29	30	21	16	32
<b>Percentage of completed mediations that resulted in settlement</b>	77	60	62	79 <sup>12</sup>	81	73	86
<b>Cases in process<sup>13</sup> – Carryover from previous FY</b>	N/A	5	15	10	12	17	18
<b>Carryover to next FY – In process</b>	N/A	15	10	12	17	18	20
<b>Carryover to next FY – Offer pending<sup>14</sup></b>	N/A	20	7	4	2	3	1
<b>Carryover to next FY – Pending review</b>	N/A	N/A	10	10	0	1	10

## Resource Estimates

During FY 2018, the ADR Unit will use approximately three FTEs at a cost of approximately \$555,000. During FY 2019, we estimate the cost of the program will be approximately \$592,000 with three FTEs assigned.

OSC’s Strategic Goal 1 under its new Strategic Plan is to protect and promote the integrity and fairness of the

<sup>8</sup> Although OSC’s ADR team still mediates USERRA cases after receiving case referrals from the USERRA Unit, in FY 2017, ADR received no such referrals and subsequently did not conduct any USERRA-related mediations.

<sup>9</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>10</sup> Includes cases completed or withdrawn after at least one mediation session.

<sup>11</sup> “Percentage of completed mediations that resulted in settlement” omits cases withdrawn before mediation was completed.

<sup>12</sup> “Percentage of completed mediations that resulted in settlement” omits cases withdrawn before mediation was completed.

<sup>13</sup> “In process” means parties have agreed to mediate and mediation is scheduled or ongoing with more than one session.

<sup>14</sup> “Offer pending” means cases in which OSC will offer or is in the process of offering mediation to the parties.

Federal workforce, including by obtaining timely and effective relief in ADR cases. (See *Appendix B for the new Strategic Plan.*) New goal tables were developed to track agency performance against the Strategic Plan and can be found in *Appendix C*.

## ADR Successes

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

- Complainant alleged significant retaliation for disclosing that the agency was not adhering to applicable audit standards. Through mediation, the parties agreed to place the complainant in a new position, which filled a critical agency need and utilized complainant's skills and expertise. The agency also provided full corrective action, which included raising the complainant's performance rating, removing the letter of counseling and performance improvement plan from the personnel file, restoring the leave taken during the alleged retaliatory period, providing a quality step increase, paying a lump sum, and providing training to all agency supervisors. Additionally, the agency agreed to create a working group to revise the agency's internal grievance policy.
- Complainant alleged that after making disclosures to management regarding unpaid overtime, abuse of authority, and several employee safety issues, the agency terminated the complainant during the probationary period. Through mediation, the parties agreed to change the complainant's termination to a resignation, and to provide back pay and a monetary payment to assist with the complainant's relocation expenses related to obtaining a new position.
- Complainant, a law enforcement officer, alleged that after raising concerns to management regarding investigations initiated without following agency procedures, the agency removed the complainant's supervisory duties, lowered the performance evaluation, and geographically reassigned the complainant. Through mediation, the parties identified a new position for the complainant. The agency agreed to issue a favorable announcement of the reassignment to help rehabilitate the complainant's reputation at the agency. The agency also agreed to pay attorney's fees, restore leave taken during the retaliatory period, and extend the deadline for the complainant to challenge the performance evaluation through the regular agency process.
- Complainant alleged that after providing testimony in an OIG investigation and disclosing regulatory violations to senior management, the agency substantially changed the complainant's duties and issued a reassignment, lowered two performance ratings, and issued a letter of counseling. Through mediation, the parties agreed to reassign the complainant to a preferred position, increase the performance ratings, restore leave, remove negative documents from the personnel record, pay attorney's fees, and provide compensatory damages.
- Complainant, a senior healthcare professional, alleged that the agency changed the job duties and issued a proposed termination in retaliation for raising health and safety concerns and filing a complaint with OSC. Through mediation, the parties agreed to terms allowing for retirement and reasonable attorney's fees. Given the complexity of the issues, the quick resolution helped the parties avoid lengthy litigation and move forward without further distractions.

## Whistleblower Disclosure Program

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 (DU) and the Retaliation and Disclosure Unit (RDU) are 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 has occurred or is occurring. (RDU was a new Unit in FY 2017, so its output is not reflected in the chart and table below.) 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 must then review the report in order to determine whether the report 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 2017, the unit referred 59 matters to agency heads for investigation under § 1213(c). (See Table 7.)

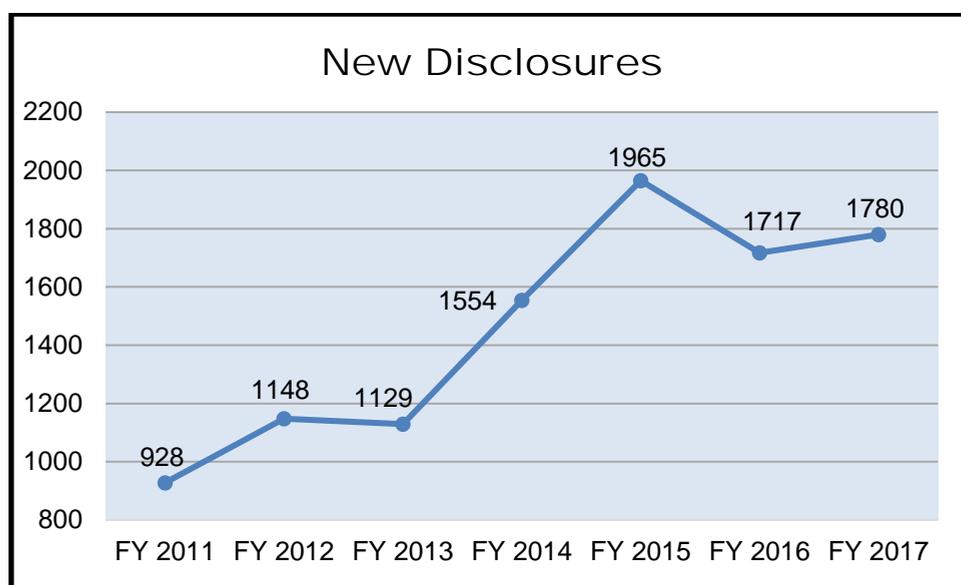
OSC's more complex disclosure cases are very labor-intensive and often require the attention of more than one attorney. These cases can take more than a year to fully complete for a number of reasons—agencies routinely request additional time to conduct the investigation and write the report, whistleblowers request additional time to prepare their comments, and DU and RDU 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.

## Resource Estimates

During FY 2018, we estimate the program, including the Disclosure Unit and a portion of RDU, will use 20 FTEs at a cost of \$3,701,000. During FY 2019, we estimate the program will use 24 FTEs at a cost of \$4,129,000.

## Goals and Results – Whistleblower Disclosures

OSC's Strategic Objective 2 is to ensure Government accountability 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 cases have risen dramatically in recent years. In FY 2017, the unit received 1,780 disclosures, 15 percent higher than just three years earlier, FY 2014. Consequently, the Unit's backlog remains a challenge.



**TABLE 7 Summary of Whistleblower Disclosure Activity – Receipts and Dispositions<sup>15</sup>**

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	
<b>Pending disclosures carried over from prior fiscal year</b>	83	132	225	193	433	449	497	
<b>New disclosures received</b>	928	1,148	1,129	1,554	1,965	1,717	1,780	
<b>Total disclosures</b>	1,011	1,280	1,354	1,747	2,398	2,166	2,277	
<b>Disclosures referred to agency heads for investigation and report</b>	47	39	51	92	62	40	59	
<b>Referrals to agency IGs</b>	5	6	2	0	0	0	1	
<b>Agency head reports sent to President and Congress</b>	22	36	54	26	72	78	66	
<b>Results of agency investigations and reports</b>	<b>Disclosures substantiated in whole or in part</b>	21	31	49	25	63	61	50
	<b>Disclosures unsubstantiated</b>	1	5	5	1	9	17	15
<b>Disclosure processing times</b>	<b>Within 15 days</b>	555	583	575	731	830	654	733
	<b>Over 15 days</b>	315	470	585	584	1,117	1,015	1,060
<b>Percentage of disclosures processed within 15 days</b>	63%	55%	49%	55%	42%	39%	40%	
<b>Disclosures processed and closed</b>	870	1,053	1,160	1,315	1,947	1,669	1,793	

OSC’s Strategic Goal 2 under its new Strategic Plan is to ensure Government accountability by providing an effective and efficient channel to report Government wrongdoing through whistleblower disclosures. (See *Appendix B for the new Strategic Plan.*) New goal tables were developed to track agency performance against the Strategic Plan and can be found in *Appendix C*.

## Whistleblower Disclosure Successes

OSC is authorized to refer whistleblower disclosures of wrongdoing in five areas: (1) violations of a law, rule, or regulation; (2) gross mismanagement; (3) gross waste of funds; (4) abuse of authority; and (5) substantial and specific danger to public health or safety. In FY 2017, examples of OSC successes involving whistleblower disclosures include the following:

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

- Failure to Properly Manage Dental Consultations for Veterans. OSC referred to the Secretary of VA allegations that the chief of Dental Services at VA Montana Health Care System, Billings, Montana, required dentists to use paper forms to refer veterans to non-VA dental providers and failed to enter consultations into the Computerized Patients Records System (CPRS) in violation of VA policies and directives. He also disclosed that, because the chief denied non-VA dental consultations for remote veterans, they were often required to travel great distances to receive care. The VA substantiated the whistleblower’s allegations. In response to the findings, the VA confirmed that dentists no longer use unapproved paper consult forms and enter all referrals into CPRS. The VA also confirmed that all dental providers received training regarding the non-VA dental care consultation requirements, an Administrative Investigation Board (AIB) was convened to review payments for dental procedures, and that an audit of consultations was conducted. Finally, the chief stepped down from his supervisory role.

<sup>15</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.

- Understaffing, Inadequate Patient Care, and Manipulation of Patient Wait Times. OSC referred to the VA Secretary allegations that the Cheyenne VA Medical Center, including the Fort Collins and Greeley Multi-Specialty Outpatient Clinics (MSOC) in Colorado, was critically understaffed and unable to provide adequate care to patients; the Fort Collins and Greeley facilities did not properly schedule patient appointments in several clinics and manipulated patient appointments to reflect misleading wait times; numerous telehealth carts were purchased but left unused for several months; and employees changed patient appointment data before an internal VA investigation to conceal the scheduling improprieties. The VA substantiated three of the allegations. First, the VA found that the Fort Collins MSOC was critically short-staffed, but determined there was no evidence of inadequate or delayed patient care. The VA recommended the Fort Collins MSOC maintain appropriate staffing levels, which it has since March 2016. Second, the VA found that management directed manipulation of patient-desired appointment dates, which resulted in misleading wait time data, and patients experienced long wait times for initial evaluations at the Audiology Clinic. In response, the VA educated and trained medical staff and randomly audits appointments. In the Audiology Clinic, an audiologist now reviews all consults and directs the medical staff on appropriate scheduling; the clinic also hired a fifth audiologist and reduced the wait time for an audiology appointment. Third, the VA concluded that it had purchased numerous telehealth carts that went unused for several months. A comprehensive inventory review resulted in the distribution of excess carts to other VA locations. The VA confirmed that it is now following the appropriate policy for receiving, inspecting, and processing nonexpendable equipment.

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

- Understaffing at Medical Facility and Risks to Patients. OSC referred to the VA Secretary allegations that the Martinsburg, West Virginia-based Martinsburg VA Medical Center—including the Fort Detrick Community Based Outpatient Clinic (CBOC), in Frederick, Maryland—had chronic deficiencies in support staffing that impeded patients’ access to care and that primary care providers used templates to generate clinic notes that included false and misleading information. The VA substantiated that leadership failed to address chronic staffing deficiencies at the CBOC, which adversely affected patients’ access to care and resulted in risks to patients. The VA confirmed that the staffing levels at the CBOC did not comply with VA requirements and were inadequate. The VA also substantiated that one provider had documented examinations for a patient that had not occurred. In response to the findings, the VA took extensive corrective actions and confirmed that the staffing levels are now in compliance with VA requirements.
- Inadequate Training for Veterans Crisis Line Personnel. OSC referred to the VA Secretary allegations that the Canandaigua VA Medical Center, in Canandaigua, New York, retained 35 unqualified Veterans Crisis Line responders and that newly-hired employees were not properly trained before they are allowed to interact with veterans in crisis. The VA substantiated both allegations, but asserted that due to prior experience, extensive training, and quality assurance monitoring, there was no substantial and specific danger to public health or safety. However, the whistleblowers noted that the VA’s conclusions were disputed by several VA OIG investigations and reports that indicated that the training and quality assurance monitoring relied upon by the VA to justify these actions is seriously deficient. OSC determined that while the reports meet all statutory requirements, the findings appear unreasonable.
- Failure to Follow Regulations on Proper Transport of Ammunition. OSC referred to the Secretary of the Army allegations that shipping records, including the weight of ammunition transported on vehicles, were not properly maintained at the Army Directorate of Training Sustainment, Supply and Service Division, Ammunition Branch, in Fort Benning, Georgia, resulting in a potential risk of harm from the overloading of transport vehicles. The Army substantiated the allegations that transport vehicles carrying ammunition were routinely overloaded and that the Army was not retaining or recording physical shipping papers in accordance with Federal regulations. In response, the Army instituted new policies, training programs, additional safeguards, and internal control measures to ensure vehicles transporting live ammunition throughout Fort Benning are not overloaded.

- Failure to Process Request for VA Benefits. OSC referred to the VA Secretary allegations that the Veterans Benefits Administration, Oakland VA Regional Office, failed to properly process a large number of informal requests for benefits and formal benefits applications, dating back to the mid-1990s. The VA did not find evidence of a backlog of informal claims. However, the VA noted that a previous OIG investigation had substantiated similar allegations, and confirmed that staff had not processed a “substantial amount” of claims dating back to the mid-1990s. The VA noted that because of management’s poor recordkeeping, it could not verify the existence or location of documents, such as a log or spreadsheet, demonstrating the specific number of unprocessed claims, nor could it locate a significant concentration of these files in storage cabinets. Notwithstanding, the VA concluded that veterans did not receive accurate or timely benefit payments due to poor management oversight and inadequate training. The VA reported that staff were trained in December 2015 and quality control reviews were finished in May 2016. Because the VA did not find evidence of malfeasance or intent to cause harm, no disciplinary actions were taken. OSC determined that the report met all statutory requirements; however, the corrective actions were found to be unreasonable in light of the serious instances of mismanagement detailed at the VA.

Violation of Law, Rule or Regulation and Abuse of Authority

- Improper Access of Employee Medical Records. OSC referred to the VA Secretary allegations that VA employees at the VA Pacific Islands Health Care Center in Honolulu, Hawaii, improperly accessed medical records. The VA partially substantiated the allegations, finding that six of the 16 accesses identified by the whistleblower were determined to have been improper. In response, the VA determined the improper accesses to be “breaches,” as defined by HIPAA, and reported them to HHS. In addition, the VA took appropriate instructional, administrative, and disciplinary action. Four employees and their supervisors were required to complete Privacy and Information Security Training, and one employee was suspended for three days. The VA also initiated a VistA Access Enhancement project, the goal of which is to mitigate anonymous accesses by enhancing middleware security.

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

- Gross Mismanagement of Technology Service. OSC referred to the Administrator of the General Services Administration (GSA) allegations that the agency grossly mismanaged the Technology Transformation Service (TTS), a subcomponent that provides technology and software solutions to Federal agencies, by improperly drawing funds from the Acquisition Services Fund without appropriate controls to facilitate legally mandated reimbursement to the fund. According to the whistleblower, TTS has accrued a cumulative net loss of \$31.66 million and has not generated any appreciable profit from the technology services it developed. GSA substantiated the allegations in part, concluding that TTS leadership engaged in gross mismanagement and violated the Economy Act. GSA noted that TTS financial forecast models reflected an established pattern of overestimating revenue projections and willfully disregarding losses. Excessive TTS staffing levels also generated significant costs. Specifically, TTS and its predecessor entity continued to accelerate hiring despite the lack of revenue to support the new hires. Staffing levels increased more than 500 percent after the entity’s inception in 2014, with almost 80 percent of the employees hired at the GS-14 and GS-15 level. OSC determined that the agency response was unreasonable, as it did not contemplate placing additional management controls on TTS to prevent ongoing mismanagement.
- Intentional Manipulation of Patient Data. OSC referred to the VA Secretary allegations that management at the Louis A. Johnson VA Medical Center in Clarksburg, West Virginia, directed employees in the Emergency Department to intentionally manipulate patient data to artificially reduce reported wait times and the volume of patient visits. The VA concluded that over the last seven years, a Primary Care clinic manager attempted to inappropriately influence nursing staff to place emergency patients in two unofficial clinics used to improperly reduce reported emergency wait times and the number of patient encounters. Affected patients were also improperly coded for medical billing purposes. The VA reported that 602 veterans were charged an incorrect co-

payment, resulting in a total lost revenue of \$21,070 for the clinic. The creation of these unofficial clinics violated VA directives, prevented an accurate analysis of staff workload, and falsely inflated the clinic's demand for services. In response, the VA immediately discontinued the practice, developed a process for clinic approvals, and educated leadership and staff on the requirements contained in VA directives. The VA is currently determining how to recoup lost payments. In addition, the Primary Care clinic manager responsible for the creation of these improper clinics received a written counseling for her inappropriate conduct.

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

- Delay in Radiology Examinations. OSC referred to the VA Secretary allegations that the William Hefner VA Hospital in Salisbury, North Carolina, had approximately 3,300 patients waiting for radiology exams, some dating back to 2007. The VA substantiated that there was a backlog of approximately 3,300 pending orders for radiology exams. The VA determined that 34 percent of the appointments in this backlog violated VA policies that require the completion of appointments within 30 days of a provider's order. The VA concluded that while 15 patients died while waiting for exams, their medical records indicated that no death or adverse clinical outcomes resulted from delays in radiology appointments. In response, the VA reviewed pending radiology exam orders to ensure that patients waiting for care were properly scheduled, and began prioritizing urgent orders for scanning to make unscheduled immediate orders a priority. The VA also ensured that the facility developed a plan to address existing demand for radiology exams, including procuring additional scanning equipment and staff, to ensure that future patients receive timely care.
- Delay in Scheduling Specialty Care Appointments. OSC referred to the VA Secretary allegations that the Phoenix VA Health Care System engaged in widespread misconduct with respect to patient scheduling, resulting in patient deaths while waiting for specialty care appointments. The VA substantiated the allegations in part. The VA reported that on a daily basis, an average of 1,100 patients waited longer than 30 days for appointments. The VA explained that there were especially significant wait times for psychotherapy appointments, with patients waiting an average of 75 days. The VA stated that while leadership did not approve the improper cancellation of backlogged appointments, the VA cancelled 3,862 patient appointments across all service lines. The VA explained that 12 of the 59 patients may have experienced a delay in care that could have caused possible or actual harm. After reviewing the allegations concerning patients who died waiting for specialty consultations, the VA OIG concluded that in 62 of the 294 consultations, care was improperly delayed. Of these 62 consultations, delays in receiving requested care may have caused patient harm in one instance, where a patient never received an appointment for a cardiology exam that could have prompted further definitive testing and interventions "that could have forestalled his death." In response, the VA updated its consultation policies, communicated and developed review processes to ensure the proper management of consultations, evaluated the care of patients who died waiting for appointments, and made appropriate disclosures to families.
- Inadequate Training of Mental Health Counselors and Failure to Staff Emergency Room Positions. OSC referred to the VA Secretary allegations that the Phoenix VA Health Care System failed to monitor and provide suitable care and treatment for veterans presenting to the emergency room with suicidal ideation; failed to provide adequate training for mental health counselors and social workers managing veterans with suicidal ideation; failed to monitor patients presenting to the emergency room after 4:00 pm while under the influence of drugs or alcohol, particularly those with substance abuse problems; failed to adequately staff social work positions in the Emergency Department; required employees to work excessive overtime; provided inadequate support to staff to handle patient deaths; discontinued a counseling program without providing follow-up services to participants; and improperly accessed an employee's medical records. The VA substantiated some of the allegations. For example, the VA found that it had failed to adequately monitor and provide suitable care and treatment for veterans who presented to the emergency room with suicidal ideation. The VA further found that some patients had eloped as a result of its failure. The VA notes that prior to OSC's referral, it had redesigned both the physical space and facility practices to reduce the elopement of patients with suicidal ideation. In addition, patients now

dress in hospital gowns or pajamas instead of their own clothing, and each suicidal patient has a 1:1 observer. The VA also found that one employee's medical records had been improperly accessed, but the improper access was inadvertent, and management took appropriate action upon learning of the access, including advising all employees of appropriate medical record access procedures.

#### Gross Mismanagement and Substantial and Specific Danger to Public Health or Safety

- Mismanagement Resulting in Excessive Delay of Joint Replacement Procedures. OSC referred to the VA Secretary allegations that management at the Memphis VA Medical Center failed to send patients needing full-joint replacement to private providers on a fee basis, resulting in a year-long wait time for joint replacement procedures, and that patients were placed on prescription drugs for pain management, which had a negative effect on their health. The VA substantiated the allegation that there was a year-long wait for joint replacements in the past, but found that the current wait time for these procedures is appropriate (six to eight weeks). The VA did not substantiate that the prior extended wait times were a result of the facility's failure to send patients to private providers on a fee basis. While the VA substantiated the allegation that patients waiting for total joint replacements receive prescriptions for pain management, it found that patients are also referred to their primary care manager for additional pain treatment, which is standard medical practice. In response to these findings, the VA retrained staff on the use of electronic wait lists, improved notification to patients on their healthcare options, and increased its staffing at the facility.

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

- Failure to Follow Procedures for Narcotic Prescription Refills. OSC referred to the VA Secretary allegations that the Ambulatory Care Department, Sam Rayburn Memorial Veterans Center in Bonham, Texas, routinely prescribed and refilled narcotic prescriptions without following proper procedures. Although the VA did not substantiate the allegations, the investigation resulted in significant corrective action. For example, the VA reviewed the electronic health records of patients of two providers who were prescribed opioids and benzodiazepines concomitantly, and revised a memorandum to conform to VA directives requiring completion of a signature consent form. The VA also is in the process of developing a comprehensive pain management and long-term opioid use program that includes an opioid oversight process.
- Failure to Address Flood Risks at Nuclear Power Plants. OSC referred to the Chairman of the Nuclear Regulatory Commission (NRC) allegations that the agency failed to require the Oconee Nuclear Station in South Carolina and 18 other nuclear power stations to take appropriate measures to protect against the risk of flooding in the event of upstream dam failures. NRC found that it had acted appropriately and within the scope of its oversight authority to ensure that the public is adequately protected from the risk of flooding at nuclear power plants located downstream from dams. NRC concluded that the risks to public health and safety from dam-related flooding are very small. NRC found that at each of the 19 sites identified, plants are implementing strategies to mitigate the effects of potential external floods. Despite NRC's assurances, the whistleblower and other subject matter experts concurring with him remained concerned about the investigative findings, including NRC's assessment of the risk of flooding at nuclear power plants located downstream from dams. OSC found the report reasonable, but recommended that NRC carefully consider the whistleblower's and his subject matter expert's concerns and utilize their expertise, particularly with respect to the assessment of the flood barrier height for Oconee Nuclear Station.

## 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 the 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 Federal, 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. In FY 2017, OSC closed 234 complaints.

## 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 2017, OSC issued 1,325 total advisory opinions, including 24 formal written advisory opinions.

## Resource Estimates

During FY 2018, OSC estimates the Hatch Act program will cost \$683,000, employing three FTEs. In FY 2019, OSC estimates the cost of this program to be \$729,000, employing four FTEs.

## Outreach and Training

To further its advisory role, OSC is very active in training and outreach efforts. In FY 2017, OSC fulfilled 100 percent of training requests it received. OSC also conducted 34 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.

## Goals and Results – Hatch Act Unit

OSC's caseload began to decrease during FY 2013 in response to legislative reform and the agency began reducing its Hatch Act staffing accordingly. Nonetheless, OSC processed and closed complaints at a near-record rate, allowing OSC to significantly decrease its case backlog for several years. During FY 2017, the backlog increased somewhat due to the carry-over from the election year and corresponding increase in complaints and advisory opinion requests.

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

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	
<b>Formal written advisory opinion requests received</b>	283	257	107	64	64	45	26	
<b>Formal written advisory opinions issued</b>	335	262	129	60	60	43	24	
<b>Total advisory opinions issued<sup>16</sup></b>	3,110	3,448	1,767	1,382	1,023	1,641	1,325	
<b>New complaints received<sup>17</sup></b>	451	503	277	151	106	197	252	
<b>Complaints processed and closed</b>	635	449	465	182	131	98	234	
<b>Warning letters issued</b>	164	142	150	44	28	21	37	
<b>Corrective actions taken by cure letter recipients</b>	<b>Withdrawal from partisan races</b>	23	5	5	7	8	4	6
	<b>Resignation from covered employment</b>	16	2	2	0	3	1	2
	<b>Other</b>	5	4	4	1	0	5	2
	<b>Total</b>	44	11	11	8	11	10	10
<b>Disciplinary action complaints filed with MSPB</b>	3	0	2	1	2	3	0	
<b>Disciplinary actions obtained (by negotiation or ordered by MSPB)</b>	5	4	7	15	9	5	4	
<b>Complaints pending at end of fiscal year</b>	233	286	96	65	40	139	155	

OSC’s Strategic Goal 1 under its new Strategic Plan is to protect and promote the integrity and fairness of the Federal workforce, including by providing timely and quality Hatch Act advisory opinions and guidance. (*See Appendix B for the new Strategic Plan.*) New goal tables were developed to track agency performance against the Strategic Plan and can be found in *Appendix C*.

## Hatch Act Successes

### Political Activity in the Workplace and Use of Official Authority

- OSC conducted an extensive investigation into allegations that U.S. Postal Service (USPS) officials violated the Hatch Act by colluding with the National Association of Letter Carriers (NALC) to endorse and support certain candidates during the 2016 election. Although OSC found no evidence that USPS officials worked with NALC to choose candidates to endorse, OSC identified systemic Hatch Act violations at USPS that resulted in an institutional bias in favor of NALC’s endorsed candidates. Specifically, USPS allowed carriers to use “union official” Leave Without Pay—which was almost always granted—for campaign activities, which in turn conferred a special benefit on NALC’s endorsed candidates. Further, a USPS headquarters official disseminated lists of participating carriers down to field office managers, who interpreted the communication as a directive to release the carriers, even on short notice and despite operational concerns from local managers. In a July 14, 2017 report, OSC recommended that USPS take corrective action to neutralize this bias and asked USPS to devise a corrective action plan. Chairman Ron Johnson of the U.S. Senate Committee on Homeland Security and Governmental Affairs convened a hearing on July 19, 2017, at which the then-Acting Special Counsel testified. USPS provided a timely corrective action plan, and OSC will continue working with USPS as it implements the plan.

<sup>16</sup> All oral, e-mail, and written advisory opinions issued by OSC.

<sup>17</sup> Includes cases that were reopened.

- OSC investigated allegations that a White House employee violated the Hatch Act when, in his official capacity, he posted a political tweet to his personal Twitter account. The tweet at issue called for the defeat of a candidate in a partisan primary election and, thus, constitutes political activity under the Hatch Act. Because the employee's personal account almost exclusively contained tweets and photographs about the official activities of the President and the Vice President, it gave the impression that he was acting in his official capacity when he used this account to post the tweet at issue. OSC concluded that the employee violated the Hatch Act when he posted the tweet on an account that repeatedly invoked his official position at the White House. We informed the White House Counsel's Office about our findings and advised that the employee should not tweet about official matters on his personal account and that he should remove the pictures that created the impression that his personal account was an official one. In response, the employee promptly removed the content that raised Hatch Act concerns.

### Political Activity in the Workplace and Solicitation

- OSC filed a disciplinary action complaint with the MSPB alleging that a Department of Commerce employee violated the Hatch Act when he sent several partisan political emails while on duty and assisted candidates running for local and state office. He also invited more than 100 individuals to attend an annual Republican Party fundraiser and asked them to send him a check if they wanted to attend. OSC and the employee subsequently reached a settlement agreement whereby the employee agreed to accept a 50-day suspension without pay. An MSPB administrative law judge approved of the agreement, and the case is closed.

### Political Activity in the Workplace

- OSC entered into a settlement agreement with a Secret Service employee who violated the Hatch Act by tweeting at least 12 partisan political messages during a three-month period while on duty and in the Federal workplace. The employee engaged in this prohibited political activity despite receiving guidance regarding the Hatch Act and its application to social media use. As part of the settlement, the employee agreed to accept a 10-day suspension without pay.
- OSC settled a case involving a VA employee who, on at least 14 occasions over a seven-month period, sent partisan political emails to her VA coworkers. She engaged in this activity while she was on duty and in her VA workplace, and she admitted that she engaged in this activity despite being aware of the Hatch Act and receiving periodic Hatch Act reminders from the VA. As a penalty for her violations, the employee agreed to accept a five-day suspension without pay.
- OSC entered into a settlement agreement with a Tennessee Valley Authority (TVA) employee who violated the Hatch Act by sending two partisan political emails to employees who were under his technical supervision. The employee engaged in this activity while on duty and in the Federal workplace. As part of the settlement, the employee agreed to accept a three-day suspension without pay.

### Candidacy

- OSC filed a disciplinary action complaint with the MSPB alleging that a National Oceanic and Atmospheric Administration (NOAA) employee violated the Hatch Act when he ran as a candidate in the 2014 and 2016 elections for a seat in the U.S. House of Representatives. Despite OSC and NOAA's repeated warnings that the Hatch Act prohibited him from being a candidate in a partisan election while he is a Federal employee,

he refused to come into compliance. An MSPB administrative law judge concluded that the employee's violations warranted removal from Federal service. The employee appealed the decision to the Board, where it is still pending.

## Advisory Opinions

- OSC responded to more than 1,300 requests for advisory opinions under the Hatch Act— many related to whether Federal employees could engage in certain types of political activity during the 2016 presidential election cycle. OSC also proactively issued formal Hatch Act guidance on the status of whether President Trump is a candidate for the 2020 presidential election to better inform Federal agencies and workers on their rights and responsibilities in the Federal workplace.

## Retaliation and Disclosure Unit (RDU)

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

## Goals and Results—RDU

In FY 2017, RDU resolved approximately 150 matters; obtained 14 corrective actions and two disciplinary actions; issued two prohibited personnel practice reports; referred two 1213(c) disclosures and informally referred four disclosures. RDU operated with an average staff of six full-time attorneys during this period.

RDU's caseload continues to increase. The unit currently has over 250 pending matters (roughly 125 disclosures and 125 PPP matters). In the first quarter of FY 2018, RDU obtained seven corrective actions and three disciplinary actions, and referred one disclosure. RDU continues to perform at a high level given its lean staff and heavy caseload.

OSC's case tables are currently reported by case type, PPP cases, and whistleblower disclosures, for example. With the advent of RDU, a hybrid unit that handles both types of cases, their cases are currently reported in the PPP and DU case tables<sup>18</sup>. In the future with the implementation of the new electronic case management system, OSC plans to segregate out the cases RDU handles so they can be distinctly reported.

## Resource Estimates

During FY 2018, RDU will use approximately seven FTEs at a cost of approximately \$1,365,000. During FY 2019, we estimate the cost of the program will be approximately \$1,458,000 with eight FTEs assigned. The portions of these resources that cover PPPs and disclosures have been included with those programs.

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<sup>18</sup> Therefore, RDU's results can be found in Case Tables 2, 3 and 7. In the future, RDU's results will be reported in a case table that is unique just for RDU. OSC is currently implementing a new electronic Case Management System (eCMS) which will provide this reporting capability.

## Retaliation and Disclosure Unit Successes

- Complainant, a law enforcement employee, alleged that he was denied an extension of his overseas tour of duty in retaliation for disclosures of corruption and financial violations. OSC intervened and obtained a stay of his removal from his overseas post, pending OSC's investigation. OSC ultimately facilitated a resolution of the matter through OSC's ADR unit.
- Complainant, a senior scientist, alleges that management attempted to discredit and suppress his research in response to pressure from industry lobbying efforts and a pending lawsuit. Several weeks after the complainant filed an internal scientific integrity complaint against a member of agency management, management advised him that he would lose the supervisory role he had held for approximately 14 years. OSC requested a stay of the complainant's reassignment pending the conclusion of its investigation and the agency agreed. The agency also agreed to order or oversee further investigation into the complainant's disclosure that management took actions to improperly influence his science. OSC's investigation is ongoing.
- Complainant, a program director, internally disclosed potential contract fraud and discrimination by a member of senior management. Several months later, that manager proposed the complainant's demotion and suspended her for five days for alleged misconduct; immediately thereafter, the agency placed the complainant on a detail with highly reduced duties. OSC negotiated a stay, returning the complainant back to her original position, and, in the course of its investigation, uncovered certain evidence of whistleblower retaliation. OSC brokered a settlement agreement in which the agency reduced the proposed demotion and five-day suspension to a letter of reprimand, to be removed from the complainant's file in 6 months; the agency agreed to provide leadership training and to facilitate conciliation sessions between the complainant and fellow employees.
- Complainant, a manager, disclosed potential abuses of authority by his supervisors to the Office of Inspector General. Shortly thereafter, the complainant's supervisors—who were aware of his disclosures and had made statements of animus—informed him that he would lose his supervisory role pursuant to a reorganization that had taken place nearly four years prior. OSC's investigation revealed that the plan to reassign the complainant may have predated his whistleblowing. However, OSC also learned that the complainant had continued to do the same supervisory work for approximately a year-and-a-half after his "reassignment" even though he had lost the title and pay. The agency agreed to pay Complainant a year-and-a-half of back pay for the time he performed supervisory duties without appropriate compensation, put the complainant on a one-year detail with a mutually agreeable supervisor, and guaranteed that the complainant would never work under certain leadership for the remainder of his time at the agency; the complaint agreed to take a senior, non-supervisory position at a certain later date.
- Complainant, a manager, alleged that a member of the agency's human resources department gave him inaccurate information about his EEO and MSPB appeal rights: namely, that he could only appeal to one, and not both. OSC obtained systemic corrective action, wherein the agency agreed to train the relevant human resources division, on EEO and MSPB appeal rights.

## OSC's Diversity, Outreach and Training Program

The Diversity, Outreach and Training Unit assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(d) 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. The training and information provisions of

OSC's Certification Program are now required by two pieces of legislation signed into law by the President in late 2017.

The 2302(d) 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 publicly available on OSC's website.

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 2017, OSC conducted 148 outreach events at Federal agencies 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.

OSC's Strategic Goal 1 under its new Strategic Plan is to protect and promote the integrity and fairness of the Federal workforce, including by expanding training efforts nationwide and effectively communicating with stakeholders and the public. (*See Appendix B for the new Strategic Plan.*) New goal tables were developed to track agency performance against the Strategic Plan and can be found in *Appendix C*.

## Resource Estimates

During FY 2018, we estimate the program will use two FTEs at a cost of \$384,000. During FY 2019, we estimate the program will use two FTEs at a cost of \$410,000.

# 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 has addressed gaps concerning specific skills in its program areas through internal development, upward mobility positions, legal internships, and in-house mission-specific training. OSC has also taken the initiative of 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 interview questionnaires; senior managers use this information 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 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 robust telework program.

## Improved Financial Performance

OSC has continued its success in receiving unqualified audit opinions with the receipt of another clean opinion for fiscal year 2017. A competitively selected audit firm evaluated OSC's financial statements for FY 2017. 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. In addition to having no material weaknesses, OSC had zero control deficiencies. OSC has now received unqualified opinions for all 14 of its audits since the inception of formal Financial Statement Audits in FY 2004.

As mentioned above, OSC contracts out certain services, including accounting, 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 provides 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.

IBC, in collaboration with OSC, continues efforts to modernize the financial system, including implementing upgrades to the latest releases of Oracle Federal Financials. In addition, we are now in the process of upgrading the reporting system that interacts with Oracle Financials. This project will run through FY 2018 and into FY 2019.

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 A-123 audits, A-123 Accounting Transactions testing, SAS70 Type II audits, and Financial Statements Audits. Furthermore, it conducts IT Audits, including FISMA and Internal Controls Reviews.

OSC has established a Risk Management Council as part of the path to achieve the objectives of the new Enterprise Risk Management (ERM) and Internal Control Directives. The Council has actively developed a risk profile and inventory, and work is continuing toward meeting the requirements of OMB Memorandum M-16-17 and the updated A-123 Guidance. The Council is now conducting quarterly risk reporting.

OSC has met its requirements for the “Do Not Pay” listing and Improper Payments (IPERA) reporting. The agency has been working with its shared service provider toward implementing the DATA Act. OSC has met the initial requirements.

## Expanded Electronic Government and Other Information Technology Initiatives

OSC is committed to leveraging modern technology to streamline operations and increase the effectiveness of its IT 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 2019 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. The IT infrastructure modernization projects successfully completed from FY 2014 to FY 2016 helped prepare the OSC network for future initiatives. In fact, DHS has selected OSC as one of the first agencies to implement CDM as part of Group F consisting of over 45 small agencies. OSC conducted a CDM kick-off meeting in February 2017, and designed architecture and integrated systems in the spring of 2017 with the goal of deploying full CDM Phase 1 starting spring 2018. Phase 2 of the project was determined to be cost prohibitive and will not be implemented.
- **More efficient case management.** OSC’s case system modernization began in FY 2015 and will go live in FY 2018. It leverages existing commercial out-of-the-box solutions deployed in a Fed-RAMP approved Cloud, and will enable OSC to increase workflow integration as well as system interoperability, flexibility, and customization. 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.
- **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 to make the improvements required by OMB M-12-18 mandates.
- **Infrastructure modernization.** The agency is taking steps to increase the resiliency and availability of the OSC.gov website 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.

- **Electronic Management of Permanent Records.** In FY 2018 OSC will initiate a pilot program to enable electronic records keeping and efficient management of permanent records, with the goal of full implementation in FY 2019 and beyond.
- **Public Website Enhancements.** In FY 2018 OSC will begin assessing the feasibility of implementing major public website enhancements and interactivity improvements. OSC will also conduct market research and a feasibility study for making the public website not only human readable but also machine readable.

The majority of above IT initiatives began in FY 2015 and will continue into FY 2019 and beyond. They will advance OSC's ability to deliver better services by leveraging industry best practices, standards and commercial-off-the-shelf products and services.

OSC's substantial IT modernization efforts over the past several years have positioned the agency to adapt quickly to new IT security challenges and help it respond more effectively to ongoing advances in technology. The concrete improvements must be sustained to maintain forward momentum and preserve cost-saving measures already in place.

As a small agency, OSC strives to implement the appropriate technology to focus on its core mission and reduce administrative overhead. Our upgrades to infrastructure deliver higher quality services, resulting in sound enterprise technology architecture that connects the agency to its customers and improves 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. OSC increased the training opportunities offered in FY 2017, through more on-site courses and through access to web-based learning portals that offer a myriad of relevant courses. Additionally, OSC management encouraged participation in the Federal Employee Viewpoint Survey in 2017. Management is actively taking steps to improve employee engagement and satisfaction. OSC management has established a study group to further assess employee engagement and to refine and update an action plan to address concerns and needed improvements. In addition, OSC offers transit and parking benefits to eligible employees and established a Respite Room for headquarters employees. OSC employees also attended an agency-wide all hands training meeting in Washington, D.C., in 2016, and is planning a similar meeting in FY 2018 with the new Special Counsel's team.

## 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 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. The SEP team also encourages safe operation through the identification, evaluation, and resolution of threats and vulnerabilities and the ongoing assessment of OSC's capabilities and readiness, and assists OSC in adhering to Governmental guidelines, rules and regulations that promote COOP best practices.

OSC must safeguard vital records and databases. This is accomplished through having alternate operating sites (our field offices) and Cloud-based technology that allows our employees to continue to work from home if any of OSC's

offices are unavailable for any reason. This capability is validated through tests, training, and exercises. OSC continues to implement new strategies to connect OSC's headquarters and field offices including an agency-wide rollout of Skype for Business in FY 2017. As part of the IT strategic plan, OSC has transferred the bulk of its IT infrastructure to the Cloud. The built-in redundancies in the Cloud environment provide additional safety and faster recovery time in response to a debilitating event, and serve as a further safeguard of agency functions and vital records.

# APPENDIX A

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## STATUTORY BACKGROUND

The Civil Service Reform Act of 1978 (CSRA) established OSC on January 1, 1979. Under the CSRA, OSC operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB or Board). Pursuant to the CSRA, OSC: (1) receives and investigates complaints alleging PPPs; (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 PPP and Hatch Act cases.

A decade later, Congress enacted the Whistleblower Protection Act of 1989 (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. The 1993 amendments to the Hatch Act did not affect covered state and local Government employees.

The following year, Congress enacted the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA protects the civilian employment and reemployment rights of those who serve or have served in the Armed Forces, including the National Guard and Reserve, and other uniformed services. It prohibits employment discrimination based on 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).

OSC's 1994 Reauthorization Act expanded protections for Federal employees and defined new responsibilities for OSC and other Federal agencies. For example, the 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, exists, or that action is to be taken. Also, the Reauthorization Act extended protections to approximately 60,000 employees at the VA, and whistleblower retaliation protections were extended to employees of listed Government corporations. Further, the Reauthorization Act 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 WPA in consultation with OSC.

The Whistleblower Protection Enhancement Act of 2012 (WPEA) was signed into law in November 2012 and strengthened the WPA. This law overturned legal precedents that narrowed protections for Government whistleblowers; provided whistleblower protections to employees who were not previously covered, including Transportation Security Administration (TSA) officers; restored OSC's ability to seek disciplinary actions against supervisors who retaliate; and held agencies accountable for retaliatory investigations.

That same year, Congress passed the Hatch Act Modernization Act of 2012 (HAMA). HAMA modified the penalty provision of the Hatch Act to provide a range of possible disciplinary actions for Federal employees. It also permitted state or local Government employees to run for partisan political office unless the employee's salary was entirely funded by the Federal Government. Lastly, it changed the status of District of Columbia Government

employees by including them in the prohibitions on state and local employees rather than treating them as Federal employees.

In October 2017, the Dr. Chris Kirkpatrick Whistleblower Protection Act was signed into law. The Act creates a new PPP for accessing medical records in furtherance of another PPP. The Act requires agencies to notify OSC if an agency employee committed suicide after making a protected disclosure and experienced a personnel action by the employee's agency in response. The Act also requires agencies to train supervisors on how to handle complaints of whistleblower retaliation, and mandates disciplinary action for supervisors who have violated specific sections of the WPEA. Finally, the Act requires agencies to give priority to the transfer requests of employees who have been granted stays of personnel actions by the MSPB.

In December 2017 OSC's reauthorization was signed as part of the National Defense Authorization Act for Fiscal Year 2018; this law reauthorizes OSC through 2023. The reauthorization (Section 1097) clarifies that when complying with OSC's information requests, Federal agencies may not withhold information and documents from OSC by asserting common law privileges such as attorney-client privilege. The reauthorization measure also promotes greater efficiency and accountability within OSC, improves protections against retaliatory investigations and other forms of reprisal for whistleblowing, and requires managers across the Federal Government to respond appropriately to disclosures of waste, fraud, and abuse.

APPENDIX B:  
STRATEGIC PLAN  
—for—  
FISCAL YEARS  
2017 – 2022

**Introduction**

Over the past five years, the U.S. Office of Special Counsel (OSC) has vigorously enforced its mandate to protect Federal employees, applicants, and former employees from various unlawful employment practices, including retaliation for whistleblowing, and to hold the Government accountable by providing a safe and secure channel for whistleblower disclosures. OSC has worked to restore confidence in OSC within the Federal community and among stakeholders. The success stories and statistics paint a clear picture: the positive outcomes and impact that OSC has obtained far surpass the agency's performance in past periods.

As the Federal workforce's trust in OSC's ability to obtain corrective action has grown, the demand for OSC's services has hit record levels. Since 2010, the agency's workload has risen 58 percent with significant increases across all program areas, especially prohibited personnel practice complaints. Accordingly, OSC has had to be strategic in addressing the burgeoning workload. OSC has met these challenges, achieving a record number of favorable results. For example, in direct response to a dramatic surge in cases involving risks to the health and safety of patients at medical facilities in the Department of Veterans Affairs, OSC initiated a holistic approach that resulted in quicker and better resolutions. These cases have shed light on and helped correct systemic challenges at medical facilities across the country. They have also provided much-needed corrective action for victims of whistleblower retaliation. Moreover, OSC has augmented Government accountability by securing disciplinary action against scores of officials at various agencies for violations of civil service laws.

In addition, OSC has boosted efforts to increase education and outreach to the Federal community with the goal of preventing and deterring violations of civil service laws in the first instance. Most significantly, OSC recently reinvigorated the 2302(c) Certification Program, which agencies may use to provide statutorily mandated training on whistleblower rights and remedies to their employees. OSC also has started to publish reports of its investigatory findings (in redacted format) when doing so may serve an educational purpose. For example, in 2014, the agency published a report on a case of first impression, finding that an agency violated civil service laws when it unlawfully discriminated against a transgender employee. Equally important, OSC has improved communication with all of its Federal stakeholders through its revamped website and enhanced use of social media.

Finally, OSC has worked with partners in Congress to modernize the laws it enforces, allowing OSC to be more effective in its role as a watchdog and guardian of employee rights. For example, in 2012, Congress passed the Whistleblower Protection Enhancement Act (WPEA), which overturned several legal precedents that had narrowed protections for Federal whistleblowers, provided whistleblower protections to employees who were not previously covered, and restored OSC's ability to seek disciplinary actions against agency officials who retaliate against whistleblowers. That same year, Congress passed the Hatch Act Modernization Act (HAMA), which modified the law to provide a range of possible disciplinary actions for Federal employees, permitted state and local Government employees to run for partisan political office unless the employee's salary is entirely funded by the Federal Government, and changed the status of DC Government employees from Federal employees to state and local Government employees.

While OSC's recent achievements are significant, broad challenges remain and new ones have developed. Building on the successes already obtained over the last five years, OSC stands ready to meet these challenges.

## **About OSC**

### ***Background***

OSC is an independent Federal investigative and prosecutorial agency. Its basic enforcement authorities come from several Federal statutes: The Civil Service Reform Act (CSRA), as amended by the Whistleblower Protection Act (WPA); the Hatch Act; and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

OSC's roots lie in the reform efforts of Gilded Age America. 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. Nearly a century later, in the wake of the Watergate scandal and well-publicized allegations of retaliation by agencies against employees who had blown the whistle on wasteful defense spending and revelations of partisan political coercion in the Federal Government, Congress enacted sweeping reform of the civil service system in 1978. As a result, the CSRA replaced the Civil Service Commission with the Office of Personnel Management (OPM), the Federal Labor Relations Authority, and the Merit Systems Protection Board (MSPB), with OSC serving as the investigative and prosecutorial arm of the MSPB for the next decade.

In 1989, Congress passed the WPA, making OSC an independent agency within the Federal executive branch. The WPA also strengthened protections against retaliation for employees who disclose Government wrongdoing and enhanced OSC's ability to enforce those protections. Ensuing legislation such as the WPEA and HAMA—both passed in 2012—has significantly affected the agency's enforcement responsibilities.

### ***Mission and Responsibilities***

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

#### **CSRA – Prohibited Personnel Practices**

The Federal merit system refers to laws and regulations designed to ensure that personnel decisions are made based on merit. Prohibited personnel practices (PPPs) are employment-related activities that are banned because they violate the merit system through some form of employment discrimination, retaliation, improper hiring practices, or failure to adhere to laws, rules, or regulations that directly concern the merit system principles. OSC has the authority to investigate and prosecute violations of the 13 PPPs in the CSRA, as amended.

#### **CSRA – Whistleblower Disclosures**

In addition to protecting whistleblowers from retaliation, the CSRA created OSC as a safe channel for most Federal workers to disclose information about violations of laws, gross mismanagement or waste of funds, abuse of authority, and substantial and specific dangers to public health and safety. Through its oversight of Government investigations of these whistleblower disclosures, OSC regularly reins in waste, fraud, abuse, illegality, and threats to public health and safety that pose the risk of catastrophic harm to the public and large remedial and liability costs for

the Government.

### Hatch Act

The Hatch Act, passed in 1939, limits certain political activities of Federal employees, as well as some state, DC, and local Government employees who work in connection with Federally funded programs. The law was intended to protect Federal employees from political coercion, to ensure that Federal employees are advanced based on merit rather than political affiliation, and to make certain that Federal programs are administered in a non-partisan fashion. OSC has the authority to investigate and prosecute violations of, and to issue advisory opinions under, the Hatch Act.

### USERRA

USERRA, passed in 1994, protects military service members and veterans from employment discrimination based on their service, and allows them to regain their civilian jobs following a period of uniformed service. OSC has the authority to litigate and otherwise resolve USERRA claims by Federal employees referred from the Department of Labor.

### *Organizational Structure*

OSC is headquartered in Washington, DC. It has three field offices located in Dallas, Texas; Detroit, Michigan; and Oakland, California. The agency includes the following components:

Immediate Office of Special Counsel (IOSC). The Special Counsel and IOSC are responsible for policy-making and overall management of OSC. This responsibility encompasses supervision of the agency's congressional liaison and public affairs activities.

Complaints Examining Unit (CEU). This unit receives complaints alleging PPPs. CEU reviews and examines each PPP complaint to determine if it is within OSC's jurisdiction and, if so, whether the matter can be resolved at that stage or should be referred for mediation, further investigation, or prosecution.

Investigation and Prosecution Division (IPD). This division is comprised of the headquarters office and three field offices, and is primarily responsible for investigating and prosecuting PPPs. IPD determines whether the evidence is sufficient to establish that a violation has occurred and, if so, whether the matter warrants corrective action, disciplinary action, or both. If a meritorious case cannot be resolved informally, IPD may bring an enforcement action before the MSPB.

Hatch Act Unit (HAU). This unit investigates and resolves complaints of unlawful political activity under the Hatch Act and may seek corrective and disciplinary action informally as well as before the MSPB. HAU also provides advisory opinions under the Hatch Act.

USERRA Unit. This unit reviews and resolves USERRA complaints by Federal employees referred by the Department of Labor. The unit also may represent service members in USERRA appeals before the MSPB.

Alternative Dispute Resolution (ADR) Unit. This unit supports OSC's other program units by providing mediation and other forms of ADR services to resolve appropriate cases. Where the parties agree to mediation, the unit conducts mediation sessions seeking creative and effective resolutions.

Disclosure Unit (DU). This unit reviews whistleblower disclosures of Government wrongdoing. DU may refer a whistleblower disclosure to the agency to investigate and report its findings to OSC. For referred whistleblower disclosures, DU reviews each agency report for sufficiency and reasonableness, and then OSC sends the determination, the agency report, and any comments by the whistleblower to the President and responsible

congressional oversight committees.

Retaliation and Disclosure Unit (RDU). This unit handles hybrid cases in which a single complainant alleges both whistleblower disclosures and retaliation. OSC created RDU to streamline its processes and provide a single point of contact for complainants with multiple claims. RDU performs the full range of action in these cases, including the referral of whistleblower disclosures to agencies and the investigation and prosecution of related retaliation claims, where appropriate.

Diversity, Outreach, and Training Unit. This unit facilitates coordination with and assistance to agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c), which requires that agencies inform their workforces about whistleblower rights and remedies. The unit also provides external education and outreach sessions for the laws that OSC enforces, as well as develops and implements internal Equal Employment Opportunity and other skill-based training programs for OSC's staff.

Office of General Counsel. This office provides legal advice regarding management, policy, and administrative matters, including the Freedom of Information Act, the Privacy Act, and the ethics programs. The office also defends OSC's interests in litigation filed against the agency.

Administrative Services Division. This division manages OSC's budget and financial operations, and accomplishes the technical, analytical, and administrative needs of the agency. Component units include the Finance Branch, the Human Capital Office, the Administrative Services Office, and the Information Technology (IT) Branch.

An organizational chart for OSC may be found in Appendix D.

### **Strategic Planning Process**

Congress requires that Executive Branch agencies develop and post strategic plans on their public websites. The strategic planning process offers an opportunity for an agency to reflect on its statutory mission and mandates, reassess prior goals and objectives, and identify new goals and objectives that will enable the agency to fulfill its mission and vision. This process—and the resulting strategic plan—also serves to notify Congress and stakeholders of major factors that may affect the agency's ability to meet its statutory obligations.

In April 2016, Special Counsel Carolyn N. Lerner launched the strategic planning process for OSC. To be successful, this strategic planning effort sought input from OSC employees as well as key stakeholders from outside the agency. Accordingly, Ms. Lerner assembled a Strategic Planning Team that is diverse and representative of the entire agency to work on this project. She also tasked Associate Special Counsel Louis Lopez with leading the agency's efforts to develop the new strategic plan. A full list of participants may be found in Appendix E.

This Strategic Planning Team met regularly over six-months to conduct an organizational review of OSC's programs and services, and then identify new strategic goals, objectives, strategies, and metrics for the strategic plan. OSC also set up a page on its intranet to provide all agency personnel with information and to solicit feedback during the strategic planning process.

In August 2016, OSC posted a draft of the strategic plan on OSC's intranet and external website for public comment by employees and stakeholders. The agency also delivered the draft strategic plan to OSC's oversight and appropriations committees in Congress. OSC held meetings regarding the draft strategic plan with its employees, the Office of Management and Budget, staff from the agency's congressional oversight and appropriations committees, and stakeholders.

OSC received 12 substantive comments from internal and external stakeholders in writing as well as during the scheduled meetings: five submissions from employees, and seven submissions from good Government groups, a

Federal management association, a public-sector union, and a private citizen. Comments that went beyond the scope of the draft strategic plan were reviewed and considered generally.

OSC received several comments regarding its investigation and prosecution functions. Some comments lauded OSC's efforts to apply consistent standards of review and investigative procedure to our cases involving PPPs, the Hatch Act, and USERRA. Of course, OSC utilizes a different statutory scheme for agency investigations and reports of referred whistleblower disclosures. Generally, comments expressed support for OSC's proposed working group charged with improving the efficiency of case handling procedures, including looking for ways to be more responsive to complainants and agency representatives during OSC's investigation process. OSC has already undertaken some efforts in this area. For example, OSC currently obtains early resolution in appropriate cases without a formal referral from CEU to IPD and without a formal written settlement agreement (instead opting to memorialize these resolutions in letters to the parties). In its press releases, annual reports, and performance and accountability reports, OSC also provides case narratives showcasing the qualitative results in successful resolutions. OSC will engage stakeholders on how the agency can share more data and related case information in the future to provide a better context within which to evaluate its performance.

Some comments suggested OSC provide more information regarding its use of ADR and litigation to resolve cases. The agency currently provides mediation information on its website, during training and outreach presentations, and in meetings with parties interested in early dispute resolution of their cases. OSC also will soon release a video explaining how mediation fits into its overall case processing system. In the same vein, OSC—like most parties to legal disputes—seeks to resolve meritorious cases without resorting unnecessarily to lengthy, expensive, and protracted litigation. To balance its roles of effective enforcer of the merit system and efficient steward of tax-payer dollars, OSC will continue to look for strategic ways to enhance public enforcement and development of the law through publicized PPP reports, *amicus curiae* briefs filed with the MSPB and the Federal courts, and litigation in cases that do not achieve voluntary resolution by the parties.

Some comments applauded OSC's efforts to expand training and outreach efforts nationwide and offered specific suggestions for OSC's 2302(c) Certification Program. In response to the comments, OSC notes that it currently posts a list of 2302(c)-certified agencies on its website, which provides an incentive for agencies to provide the mandated training on whistleblower rights, including those related to scientific integrity. However, OSC has no authority to penalize agencies for non-compliance. OSC's current training and outreach programs also emphasize the important role that Federal employees can play in reporting Government waste, fraud, and abuse. If there are developments in the Federal employee whistleblower laws, OSC will consider appropriate changes to its 2302(c) Certification Program. Finally, while OSC's training and outreach programs offer in-depth and interactive exercises to agencies, OSC looks forward to receiving ongoing feedback from stakeholders to evaluate and improve these efforts.

OSC also received several comments regarding its role of providing a safe channel to report Government wrongdoing, primarily with respect to the timeliness of the process. OSC is striving to reduce the amount of time it takes between referral of whistleblower disclosures to an agency for investigation and the publication of the results of that investigation. Timeliness is difficult to assess in a standardized way because it depends on a variety of factors. For example, many whistleblower disclosures are complex and technical in nature and, by statute, whistleblowers may review and comment on the agency's report. Throughout the process, OSC communicates with the whistleblower and the agency and thoroughly analyzes the agency's report and the whistleblower's comments to ensure the agency's findings are reasonable and contain all of the required information. OSC will seek to continue to streamline the process without sacrificing quality and complete reports on referred whistleblower disclosures.

Finally, OSC received a limited number of comments regarding its internal operations and efforts at achieving organizational excellence. In response to these comments, the agency expanded its strategy to identify best practices from all agency programs, as opposed to only from certain ones. One submission suggested OSC consider having an ombudsperson to handle internal and external stakeholder disputes. In recent years, OSC has implemented

several mechanisms to communicate better with employees, keep staff engaged, and resolve workplace disputes. These efforts have been well received. In addition, OSC has been successful in working closely with external Governmental and non-Governmental stakeholders on the agency's work, including promptly responding to concerns brought to OSC's attention. Nevertheless, the agency will consider this recommendation as it moves forward with the implementation of the strategic plan.

On September 27, 2016, OSC's final strategic plan was approved by the Special Counsel. Implementation of the new strategic plan began October 1, 2016.

### **Mission, Vision, Strategic Goals, and Core Values**

**Mission:** *Safeguarding employee rights, holding Government accountable.*

**Vision:** *Fair and effective Government inspiring public confidence.*

#### **Strategic Goals:**

*Protect and promote the integrity and fairness of the Federal workplace.*

*Ensure Government accountability.*

*Achieve organizational excellence.*

*OSC's Mission states: "Safeguarding Employee Rights, Holding Government Accountable." Strategic Goals 1 and 2, which focus on the agency's substantive program areas, work closely together to achieve a more responsible and merit-based Federal Government. Strategic Goal 3, which focuses on OSC's efforts to achieve organizational excellence, has the building blocks to make the agency a more agile, better-functioning organization. Collectively, all three Strategic Goals will help OSC to realize its Vision, which is "Fair and Effective Government Inspiring Public Confidence."*

#### **Core Values:**

*Commitment: We are dedicated to seeking justice through the enforcement of laws that OSC is charged with prosecuting and to being a safe channel for whistleblowers.*

*Excellence: We foster a model workplace with respect for employees and stakeholders, and provide clear, high-quality, and timely work product in our programs and services.*

*Independence: We conduct our work free from outside influence. We act fairly and without bias to honor the merit system.*

*Integrity: We adhere to the highest legal, professional, and ethical standards to earn and maintain the public's trust.*

*Vigilance: We aim for proactive and constant improvement of both our own processes and of the merit system. We strive to identify innovative and effective ways to address and prevent Government wrongdoing.*

### **Strategic Goals, Objectives, Strategies, and Metrics**

#### **Strategic Goal 1 – Protect and promote the integrity and fairness of the Federal workplace.**

Objective 1: Fairly and promptly investigate and prosecute cases.

Objective 2: Obtain timely and effective relief in cases.

*OSC faces an increasing number of cases each year, particularly from Federal employees alleging whistleblower*

*retaliation. To effectively remedy wrongs and hold agencies accountable, OSC will apply consistent standards of review and investigative procedure to each matter. Some cases will demand more time and resources than others, and will require a variety of investigative strategies and techniques to resolve. Applying broadly uniform procedures but handling each matter as the facts demand will allow OSC to remain efficient, fair, and effective. OSC will continue to use ADR and other dispute resolution methods to increase case-processing efficiency and better serve its stakeholders.*

Strategies:

- Handle cases in a fair and unbiased manner.
- Form working group to improve efficiency of case handling procedures.
- Maximize effective use of ADR and other resolution methods in cases.

Data Points and Metrics:

General

- Formation of working group to improve efficiency of case handling procedures in FY 2017, and reassess regularly.

PPP Enforcement

- Number of complaints received.
- Number/percent of whistleblower retaliation complaints received.
- Number/percent of whistleblower retaliation complaints closed within 240 days.
- Average age of complaints at closure.
- Number of complaints filed with MSPB.
- Number of successful prosecutions before MSPB.
- Number of informal stays obtained.
- Number of formal stays obtained.
- Number of complaints mediated.
- Number of complaints mediated resulting in settlement.
- Number of individual corrective actions obtained.
- Number of systemic corrective actions obtained.
- Number of disciplinary actions obtained.

Hatch Act Enforcement

- Number of complaints received.
- Number/percent of complaints closed within 240 days.
- Number of complaints filed with MSPB.
- Number of successful prosecutions before MSPB.
- Number of warning letters issued.
- Number of corrective actions obtained.
- Number of disciplinary actions obtained.

USERRA Enforcement

- Number of referrals received.
- Number of merit referrals.
- Number of non-merit referrals.
- Number/percent of referrals closed within 60 days.
- Number of offers of representation before MSPB.
- Number of corrective actions obtained (formally and informally).

### Objective 3: Enhance strategic use of enforcement authority.

*As a small agency responsible for safeguarding the merit system in a broad sector of the Federal community, OSC strives to maximize the impact of its enforcement actions and deter future violations. In addition to seeking corrective and/or disciplinary action for PPPs, Hatch Act, and USERRA complaints, OSC may issue PPP reports and provide technical assistance for policy and legislative changes affecting the laws it enforces. The WPEA also authorized OSC to file amicus curiae briefs in cases involving whistleblower rights and intervene in cases before the MSPB. OSC will use these authorities to advance its mission of safeguarding employee rights by educating the Federal community, working for systemic changes, and helping shape and clarify the law.*

#### Strategies:

- Publish more PPP reports that serve educational purposes, as appropriate.
- Furnish expert technical assistance to aid Governmental bodies with formulating policy and precedent.
- Collaborate and strategize with other agencies to make systemic improvements to the Federal workplace.

#### Data Points and Metrics:

- Number of PPP reports published on website.
- Number of *amicus curiae* briefs and interventions filed.
- Number of inter-agency efforts involving systemic improvements to the Federal workplace.

### Objective 4: Provide timely and quality Hatch Act advisory opinions and guidance.

*OSC is in a unique position to provide Hatch Act advice to Federal, DC, state, and local employees and officials, as well as the general public. It is important for OSC to provide consistent, well-reasoned opinions in a timely fashion so that individuals can make appropriate decisions about their political activities. OSC recognizes the importance of revising and updating the Hatch Act regulations and will continue to pursue its efforts to partner with OPM, the agency responsible for promulgating the regulations, to achieve this goal.*

#### Strategies:

- Provide timely and appropriate Hatch Act advice and information.
- Work closely with OPM to revise the Hatch Act regulations.

#### Data Points and Metrics:

- Number/percent of informal telephonic advisory opinions issued within 3 days of inquiry.
- Number/percent of informal email advisory opinions issued within 5 days of inquiry.
- Number/percent of formal written advisory opinions issued within 60 days of inquiry.
- Revised Hatch Act regulations by FY 2018.

### Objective 5: Expand training and outreach efforts nationwide.

*OSC is well-suited to safeguard employee rights by educating the Federal community and others about PPPs, whistleblower disclosures, the Hatch Act, and USERRA through its training and outreach programs. Since 2002, OSC has had a formal program to ensure compliance with 5 U.S.C. § 2302(c), which requires Federal agencies to inform employees about their rights and remedies under the whistleblower protections and related laws. In 2014, the White House mandated that Federal agencies become section 2302(c)-certified. OSC also has longstanding training programs on the Hatch Act and USERRA, as well as resources available through its website. While many agencies in the Washington, DC area have received OSC training and certification, OSC will endeavor to expand its efforts nationwide to better reach agencies and components that may have less familiarity with the whistleblower protections and other laws that OSC enforces. OSC will also monitor, evaluate, and reassess the effectiveness of its training and outreach activities.*

Strategies:

- Increase awareness of, and provide expert technical assistance to agencies/components on, the 2302(c) Certification Program and other OSC-related training needs.
- Develop procedures to facilitate registration, certification, and recertification rates of agencies/components under the 2302(c) Certification Program.
- Certify and recertify more agencies/components through the 2302(c) Certification Program.
- Create training and outreach plan to reach agencies beyond the Washington, DC area.
- Collaborate with agencies to develop OSC-related web-based and other training, e.g., advanced training quiz, topical videos, etc.
- Improve methods to survey effectiveness of training and outreach activities.

Data Points and Metrics:

- Number of agencies/components contacted regarding the 2302(c) Certification Program.
- Number of agencies/components registered for the 2302(c) Certification Program.
- Number of agencies/components certified and recertified for the 2302(c) Certification Program.
- Average time for agencies/components to complete the certification after registration for the 2302(c) Certification Program.
- Number of training and outreach activities, broken down by program area and geographic location.
- Methods to survey effectiveness of training and outreach activities by FY 2017, and reassess regularly.

Objective 6: Effectively and innovatively communicate with stakeholders and the public.

*OSC understands the necessity of effectively communicating with stakeholders and the general public about its efforts to safeguard employee rights and hold the Government accountable. By appropriately publicizing enforcement outcomes through traditional and non-traditional media, OSC can help to educate the Federal workforce about their rights and responsibilities and deter future wrongdoing. OSC will use a wide variety of communication methods to disseminate timely, accurate information and will provide regular opportunities for input, feedback, and collaboration from stakeholders.*

Strategies:

- Issue press releases on major activities and key developments.
- Increase use of digital media as appropriate (e.g., website, social media, listservs, infographics, webinars, etc.).
- Enhance coordination with Governmental and non-Governmental stakeholder groups.
- Develop proposal for the establishment of a regularly-held conference on whistleblowing in the Federal workplace.

Data Points and Metrics:

- Number of press releases issued.
- Types and frequency of digital media used to share information.
- Number of meetings with stakeholder groups.
- Proposal for the establishment of a regularly-held conference on whistleblowing in the Federal workplace by FY 2017, and reassess regularly.

**Strategic Goal 2 – Ensure Government accountability.**

Objective 1: Provide employees with an effective and efficient safe channel to report Government wrongdoing.

*OSC promotes Government accountability, integrity, 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.*

*With an overall increasing trend in the number of whistleblower disclosures for the last five years, OSC must continue to ensure that this safe channel remains confidential, secure, and effective in promoting change and accountability. OSC is currently developing a new and dynamic combined form for reporting Government wrongdoing, whistleblower retaliation and other PPPs, and Hatch Act violations. The form is designed to be confidential, secure, and convenient for the user. It can be downloaded and completed privately. It may be submitted electronically and immediately routed and processed, and the user need not establish an account. OSC will work vigorously to review and assess the whistleblower reporting experience to ensure that, by providing a safe channel for whistleblowers and their disclosures, OSC can better ensure Government accountability.*

Strategies:

- Implement new electronic complaint/disclosure form.
- Form working group aimed at developing actionable methods to assess and improve whistleblower reporting experiences.

Data Points and Metrics:

- New electronic complaint/disclosure form by FY 2017, and refine as appropriate.
- Number of whistleblower disclosures.
- Number/percent of whistleblower disclosures that also allege related retaliation.
- Number/percent of whistleblower disclosures referred to agencies for investigation.
- Working group for assessment and improvement of whistleblower reporting experiences (including use of new electronic form) by FY 2017, and reassess regularly.

Objective 2: Ensure agencies provide timely and appropriate outcomes for referred whistleblower disclosures.

*OSC returns substantial sums to the Federal Government by pressing for appropriate action to remedy waste and fraud disclosed by whistleblowers. Through its oversight of agency reports on referred whistleblower disclosures, OSC uncovers individual and systemic violations of Federal law and evaluates the reasonableness of agency responses, encourages cost savings occasioned by the identification and cessation of Government waste, and resolves serious health and safety threats. A key objective is to improve the timeliness and outcomes of agency reports. OSC will improve communication with agencies concerning their statutorily-mandated reports, including their content and timeliness, as well as seek alternative resolutions of whistleblower disclosures.*

Strategies:

- Engage agencies in the development of effective investigation plans of referred whistleblower disclosures.
- Maintain communications with agencies before, during, and after agencies' investigations of referred whistleblower disclosures, as appropriate.
- Provide alternate means to achieve resolutions of whistleblower disclosures.
- Expand efforts to capture scope of benefits to Government resulting from outcomes of whistleblower disclosures.
- Monitor all whistleblower disclosures and referrals to agencies to identify trends or systemic challenges.

Data Points and Metrics:

- Percentage of referred whistleblower disclosures that are substantiated by agencies.
- Number of favorable outcomes—both corrective and disciplinary actions—achieved through formal and informal resolution of whistleblower disclosures.
- Timeliness of OSC's communication to the President and Congress after receiving an agency investigation report and whistleblower's comments.
- Implementation of measurement to capture scope of benefits to Government resulting from outcomes of whistleblower disclosures, such as significant changes to agency operations to promote safety or security and/or tax dollars saved or recovered, by FY 2017, and reassess regularly.

### Objective 3: Enhance awareness of outcomes of referred whistleblower disclosures.

*For OSC's work to have the greatest impact on Federal Government operations, particularly in cases involving systemic abuses or practices likely to occur across Government agencies, it must have a robust and continuous presence within the Federal community and before the general public. OSC's public reporting requirements for investigated whistleblower disclosures make it even more imperative that Federal employees, taxpayers, and other stakeholders have prompt, accurate, and easy access to information about referred whistleblower disclosures. The implementation of a variety of new technologies offers the agency the opportunity to more effectively disseminate information about the financial and other qualitative benefits to the Government from the outcomes of referred whistleblower disclosures, thus ensuring accountability broadly throughout the Government.*

#### Strategies:

- Revamp online public file of whistleblower disclosures on website.
- Increase dissemination of favorable outcomes of whistleblower disclosures via press releases, social media, etc.
- Enhance training and outreach aimed at increasing awareness and deterrence of underlying Government wrongdoing.
- Develop plan to enhance the profile of OSC's Public Servant Award.

#### Data Points and Metrics:

- Revamped online public file of whistleblower disclosure cases on website by FY 2017, and reassess regularly.
- Number of times that favorable outcomes of whistleblower disclosures are disseminated via press releases, social media, etc.
- Number of training and outreach events that address whistleblower disclosures.
- Plan to enhance the profile of OSC's Public Servant Award by FY 2017, and reassess regularly.

### **Strategic Goal 3 – Achieve organizational excellence.**

#### Objective 1: Recruit, develop, and retain a highly talented, engaged, and diverse workforce.

*To accomplish its mission with excellence, OSC must use targeted recruitment methods that attract talented employees who believe in the work of the agency. A diverse workforce from various backgrounds will help OSC tackle problems from different perspectives and find optimal solutions. OSC is committed to retaining this skilled and diverse workforce through work-life balance strategies, career and skills development, cross-training, recognition of strong performance, and other initiatives that will keep employees engaged and equip them to achieve the mission.*

#### Strategies:

- Create and maintain a Human Capital Plan that includes effective recruitment strategies for attracting talent from diverse sources and appropriate succession planning.
- Establish an Honors Program for hiring attorneys from law schools or clerkships.
- Improve and standardize new employee initial onboarding processes, as appropriate.
- Create and maintain a staff training plan for all employees that regularly assesses training needs and delivers training programs.
- Implement a voluntary mentorship program.
- Continue to facilitate internal cross-training opportunities through details, rotations, reassignments, and other tools aimed at ensuring that the agency remains agile and responsive to changing organizational needs, and that staff develop professionally within the agency.
- Continue to increase employee engagement efforts through Employee Engagement Working Group, Federal Employee Viewpoint Survey participation and analysis, consistent communication, and effective recognition

of staff performance.

- Continue to emphasize work/life balance and other related benefits.

Data Points and Metrics:

- Human Capital Plan by FY 2017, and reassess regularly.
- Honors Program by FY 2017, and reassess regularly.
- Improved and standardized onboarding process by FY 2017, and reassess regularly.
- Staff training plan by FY 2017, and reassess regularly.
- Mentorship program by FY 2017, and reassess regularly.
- Ongoing internal cross-training opportunities, and reassess regularly.
- Ongoing employee engagement efforts, and reassess regularly.
- Ongoing work/life balance and other related benefits, and reassess regularly.

Objective 2: Improve the use of existing technology and deploy new IT systems to enhance organizational operations.

*OSC will be a good steward of tax-payer dollars through the strategic use of IT systems to help the agency better accomplish its mission. OSC will regularly assess the needs of its stakeholders and employees, and in response will employ cutting-edge information technology solutions to improve efficiency and the stakeholder experience. OSC will deploy mobile access to network programs in compliance with directives that move the Government toward a virtual work environment, while ensuring continuity of operations in times of work interruption and providing greater flexibility to employees. OSC will also employ IT security solutions to safeguard its information systems with the purpose of protecting the privacy of employees and those seeking assistance from OSC.*

Strategies:

- Identify, procure, and deploy commercial off-the-shelf IT solutions to meet the agency's needs.
- Assess and address on a continual basis the IT needs of staff and customers.
- Recruit and retain highly-skilled IT experts.
- Provide excellent IT customer service.
- Assess effectiveness of IT services and respond to stakeholder needs.

Data Points and Metrics:

- Transition to electronic case management system by FY 2017, and reassess regularly.
- 100% deployment of mobile access to network program resources by FY 2017, and reassess regularly.
- 100% data encryption by FY 2017, and reassess regularly.
- Ongoing semi-annual assessment of IT needs, and reassess regularly.
- Ongoing semi-annual assessment of the effectiveness of IT services, and reassess regularly.
- Ongoing maintenance of IT staff of 5% of agency work force, and reassess regularly.

Objective 3: Monitor, evaluate, and improve efficiency and effectiveness of programs and processes.

*While OSC is a small agency, it takes complaints from throughout the Federal Government; it handles cases from all over the country; and its authority to act derives from several different Federal statutes. OSC will undertake a comprehensive and transparent evaluation of the most efficient approach for safeguarding employee rights and holding the Government accountable. The evaluation will identify best practices and areas of improvement. This will be part of a vigilant process of continual evaluation of OSC's existing program areas and new programs to ensure the most effective delivery of services. To accomplish these goals, OSC will give Federal employees and other stakeholders a greater opportunity to provide input into shaping its work.*

### Strategies:

- Create and execute an institutional approach to evaluate OSC's programs and processes, including special projects and initiatives, to identify best practices and areas of improvement.
- Implement best practices and address areas of improvement identified in evaluations of OSC's programs and processes.
- Initiate an enhanced method for determining customer satisfaction with OSC's programs and processes, and evaluate data to improve efficiency and effectiveness.

### Data Points and Metrics:

- Creation and implementation of institutional approach to evaluate programs and processes by FY 2017, and reassess regularly.
- Completion of first evaluation of program(s) or process(es) to identify best practices and areas of improvement by FY 2018, and proceed with evaluation of additional programs and processes regularly thereafter.
- Implementation of best practices and responses to areas of improvement identified in first evaluation of program(s) or process(es) by FY 2019, and reassess regularly.
- Enhanced method for determining customer satisfaction with programs and processes by FY 2017, and reassess regularly.
- Evaluation and use of customer satisfaction data to improve efficiency and effectiveness of programs and processes by FY 2018, and reassess regularly.

### **Factors Affecting Achievement of Strategic Plan**

While OSC is committed to achieving its mission and vision, there are internal and external factors that will likely affect the agency's ability to achieve all of the goals and objectives in this strategic plan. The primary issues of concern revolve around persistent budget uncertainty, a steadily increasing workload, and significant technological challenges. For a small-sized, resource-constrained agency with a substantial mandate to safeguard employee rights and hold Government accountable, these factors can present serious challenges to fulfilling OSC's important statutory obligations.

Historically, OSC has had limited funding to effectively execute its mission and support functions. The agency has had to make difficult choices to ensure that it balances its investigative and prosecution responsibilities with the training and outreach efforts critical to deterring whistleblower retaliation and other unlawful practices. In FY 2015, OSC's caseload hit an all-time high, surpassing 6,000 new matters for the first time in agency history. The dramatic rise was driven by restored confidence in OSC's ability to safeguard the merit system. OSC's continuing success in achieving favorable results through mediation and negotiation, particularly in high-priority matters, also contributed to the increased number of complaints filed. With an expected surge in Hatch Act complaints driven by the 2016 presidential election, OSC anticipates continued growth in its caseload. Budget uncertainty remains a significant challenge to OSC's ability to carry out its myriad responsibilities.

In response to these funding challenges and rising caseloads, OSC must carefully prioritize and allocate resources to remain efficient, fair, and effective in maintaining the high levels of success it has achieved in recent years. Accordingly, the agency is putting into place long-term plans to improve the efficiency of case handling procedures; is being proactive, seeking early resolution of cases through stepped up ADR and settlement efforts; is implementing innovative approaches to achieve efficiencies in cases involving both whistleblower disclosures and related retaliation claims; and is improving cross-training of staff. A better funded and more efficient OSC will result in greater cost-saving and more effective accountability throughout Government.

Additionally, OSC has had limited ability to invest in, but increased need for, long-term improvements in technology. OSC will be called upon to ensure that the technological environment in which it conducts its work is modern and secure. By proactively assessing the information security needs and the technological requirements of employees and

stakeholders, OSC plans to improve efficiency, security, and the customer experience. Continuous assessment of information technology requisites against available resources will help ensure that OSC achieves organizational excellence despite these challenges.

While OSC's establishment as an independent Government oversight agency insulates it from political influences on its work, transitions in administration and leadership throughout the Federal Government will necessarily impact OSC's ability to safeguard employee rights and hold the Government accountable. Specifically, staffing changes at all levels in the agencies over which OSC has jurisdiction will require that OSC remain agile and focused on honoring the merit system fairly and without bias. These challenges will require that OSC continue to prioritize education and outreach, and to highlight cases with significant educational value or that promote accountability. Through these efforts, OSC can improve the culture within the Federal Government and remain a steady accountability and transparency presence that can withstand administration and leadership changes.

OSC's strategic plan contemplates confronting all of these challenges directly over the next few years to ensure its success. And when OSC succeeds, good Government and the general public are the real winners.

# Appendix C: Goal Tables for New Strategic Plan Fiscal Years 2017-2022

## Goal Table 1A: Goals 1-14

Goal 1 - Protect and promote the integrity and fairness of the Federal workplace

Objective 1: Fairly and promptly investigate and prosecute cases

Objective 2: Obtain timely and effective relief in cases

Description of Target		FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
1	Formation of working group to improve efficiency of case handling procedures in FY 2017, and reassess regularly	Met	Met	Met		Met					
2	Number of PPP complaints received	Data-point	3,784	Data-point		Data-point					
3	Number of whistleblower retaliation complaints received	Data-point	1,899	Data-point		Data-point					
4	Number of whistleblower retaliation complaints closed within 240 days	Baseline	1,305	Baseline		Baseline					
5	Average age of PPP complaints at closure	Baseline	131	Baseline		Baseline					
6	Number of PPP complaints filed with MSPB	1	0	1		1					
7	Number of successful PPP prosecutions before MSPB	1	0	1		1					
8	Number of PPP complaints mediated	30	37	33		33					
9	Number of PPP complaints mediated resulting in settlement	18	32	20		20					
10	Number of informal stays obtained	25	34	25		25					
11	Number of formal stays and related extensions obtained	4	16	4		8					
12	Number of individual corrective actions obtained	203	190	206		206					
13	Number of systemic corrective actions obtained	28	47	30		32					
14	Number of disciplinary actions obtained	15	16	15		15					

**Goal Table 1A Explanatory Notes**

8: This amount represents the number of completed mediations out of a total of 66 cases that entered mediation in FY 2017.

12: This metric was revised. Total favorable actions in PPP cases include informal stays, formal stays (including extensions), individual and systemic corrective actions, as well as disciplinary actions. OSC’s historical average for total favorable actions in PPP cases is 186. The recent favorable action average for the past three years is higher at 251, with OSC obtaining 276 favorable actions in FY 2016. The FY 2017 and FY 2018 targets for Metric 12 (individual corrective actions obtained) of the new strategic plan are therefore revised to 203 and 206 respectively. This revision reflects the more accurate and appropriate targets of 275 anticipated total favorable actions in FY 2017 and 276 in FY 2018, and is consistent with OSC’s historical trends for PPP cases.

**Goal Table 1B: Goals 15-21**

**Goal 1: Protect and promote the integrity and fairness of the Federal workplace**

**Objective 1: Fairly and promptly investigate and prosecute cases**

**Objective 2: Obtain timely and effective relief in cases**

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
15 Number of Hatch Act complaints received	Data-point	253	Data-point		Data-point					
16 Percent of Hatch Act complaints closed within 240 days	Baseline	63%	Baseline		Baseline					
17 Number of Hatch Act complaints filed with MSPB	1	0	1		1					
18 Percent of successful Hatch Act prosecutions before MSPB	100%	N/A	100%		100%					
19 Number of Hatch Act warning letters issued	25	37	20		22					
20 Number of corrective actions obtained	10	10	10		10					
21 Number of disciplinary actions obtained	5	4	5		5					

## Goal Table 1C: Goals 22-27

### Goal 1: Protect and promote the integrity and fairness of the Federal workplace

#### Objective 1: Fairly and promptly investigate and prosecute cases

#### Objective 2: Obtain timely and effective relief in cases

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
22 Number of USERRA referrals received	Data-point <sup>19</sup>	17	Data-point <sup>57</sup>		Data-point					
23 Number of USERRA merit referrals	Data-point <sup>57</sup>	7	Data-point <sup>57</sup>		Data-point					
24 Number of USERRA non-merit referrals	Data-point <sup>57</sup>	10	Data-point <sup>57</sup>		Data-point					
25 Percent of USERRA referrals closed within 60 days	80%	79%	80%		75%					
26 Number of USERRA offers of representation before MSPB	1	0	1		1					
27 Number of USERRA corrective actions obtained (formally and informally)	3	6	3		3					

## Goal Table 2

### Goal 1: Protect and promote the integrity and fairness of the Federal workplace

#### Objective 3: Enhance strategic use of enforcement authority

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
28 Number of PPP reports published on website	2	3	2		2					
29 Number of amicus curiae briefs and interventions filed	2	3	2		2					
30 Number of inter-agency efforts involving systemic improvements to the Federal workplace	4	10	4		4					

<sup>19</sup> Goals 22-24 represent data points rather than actual performance targets.

### Goal Table 3

#### Goal 1: Protect and promote the integrity and fairness of the Federal workplace

##### Objective 4: Provide timely and quality Hatch Act advisory opinions and guidance

Description of Target		FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
31	Percent of informal telephonic advisory opinions issued within 3 days of inquiry	Baseline	100%	Baseline		Baseline					
32	Percent of informal email advisory opinions issued within 5 days of inquiry	95%	100%	95%		95%					
33	Percent of formal written advisory opinions issued within 60 days of inquiry	Baseline	75%	Baseline		Baseline					
34	Revised Hatch Act regulations by FY 2018	N/A	N/A	Met		Met					

### Goal Table 4

#### Goal 1: Protect and promote the integrity and fairness of the Federal workplace

##### Objective 5: Expand training and outreach efforts nationwide

Description of Target		FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
35	Number of agencies/components contacted regarding the 2302(c) Certification Program	70	127	35		70					
36	Number of agencies/components registered for the 2302(c) Certification Program	Baseline	24	Baseline		20					
37	Number of agencies/components certified and recertified for the 2302(c) Certification Program	Baseline	43	Baseline		20					
38	Average time for agencies/components to complete the certification after registration for the 2302(c) Certification Program	9 months	8.35 months	6 months		9 months					
39	Number of training and outreach activities, broken down by program area and geographic location	Baseline	148	Baseline		150					
40	Methods to survey effectiveness of training and outreach activities by FY 2017, and reassess regularly	Met	Met	Met		Met					

**Goal Table 4 Explanatory Notes**

35: 2017 result equals the number of agencies and agency components contacted regarding the Section 2302(c) Certification Program. The total number of communications to these agencies or components equals 892 calls or emails, which illustrates the high volume of our outreach efforts.

37: Number of agencies and agency components certifying/recertifying for the Section 2302(c) Certification Program will vary in response to the three-year recertification cycle. For example, we expect lower figures in FY 2018, because most agencies have already certified and are not yet due for recertification. Thus, we anticipate increased numbers in FY 2019 due to agencies recertifying at the end of the three-year cycle.

39: Number of trainings will increase and decrease in each fiscal year based on a number of factors, including, for instance, (1) the almost 75% increase in Hatch Act trainings we have observed during election years; and (2) an increase in Section 2302(c) trainings based on years in which a higher percentage of agencies are due for recertification at the end of the three-year cycle, creating a “lumpy forecast.” Whistleblower disclosure trainings are held in conjunction with PPP trainings and counted separately.

Program Area	Total	Inside DC Area	Outside DC Area*
PPP	86	57	29
Whistleblower Disclosures	25	23	2
Hatch Act	34	17	17
USERRA	3	2	1

\* Trainings held outside the D.C. area occurred in Idaho, Virginia, Florida, South Carolina, Maryland, Georgia, New York, Minnesota, Missouri, Louisiana, Kentucky, and Macedonia.

## Goal Table 5

### Goal 1: Protect and promote the integrity and fairness of the Federal workplace

#### Objective 6: Effectively and innovatively communicate with stakeholders and the public

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
41 Number of press releases issued	25	20	25		25					
42 Types and frequency of digital media used to share information	250	153	275		275					
43 Number of meetings with stakeholder groups	4	10	4		TBD					
44 Proposal for the establishment of a regularly-held conference on whistleblowing in the Federal workplace by FY 2017, and reassess regularly	Met	Partially Met	Met		Met					

#### **Goal Table 5 Explanatory Notes**

44: Building on the successes of past Whistleblower Retaliation Roundtable discussions, OSC representatives met with stakeholders and began brainstorming ideas for the proposal of the establishment of a regularly-held conference on whistleblowing in the Federal workplace. We paused our efforts at developing a formal proposal for budgetary reasons. When OSC is able to identify appropriate funds to establish a regular conference, OSC will resume such efforts.

## Goal Table 6

### Goal 2: Ensure Government accountability

#### Objective 1: Provide employees with an effective and efficient safe channel to report Government wrongdoing

Description of Target		FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
45	New electronic form by FY 2017, and refine as appropriate	Met	Not Met	Met		Met					
46	Number of whistleblower disclosures	Data-point	1,777	Data-point		Data-point					
47	Number of whistleblower disclosures that also allege related retaliation	Data-point	81	Data-point		Data-point					
48	Number of whistleblower disclosures referred to agencies for investigation	50	59 formal/ 10 informal	50		50					
49	Working group for assessment and improvement of whistleblower reporting experiences (including use of new electronic form) by FY 2017, and reassess regularly	Met	Met	Met		Met					

### Goal Table 6 Explanatory Notes

45: New electronic form will be implemented and released in FY 2018.

## Goal Table 7

### Goal 2: Ensure Government accountability

#### Objective 2: Ensure agencies provide timely and appropriate outcomes for referred whistleblower disclosures

Description of Target		FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
50	Percentage of referred whistleblower disclosures that are substantiated by agencies	Data-point	59% formal / 50% informal	Data-point		Data-point					
51	Number of favorable outcomes—both corrective and disciplinary actions—achieved through formal and informal resolution of whistleblower disclosures	Baseline	10 disciplinary / 58 corrective	Baseline		Baseline					
52	Timeliness of OSC’s communication to the President and Congress after receiving an agency investigation report and whistleblower’s comments	Baseline	148 days	Baseline		Baseline					
53	Implementation of measurement to capture scope of benefits to Government resulting from outcomes of whistleblower disclosures, such as significant changes to agency operations to promote safety or security and/or tax dollars saved or recovered, by FY 2017, and reassess regularly	Met	Met	Met		Met					

### Goal Table 7 Explanatory Notes

51: FY 2017 Formal referrals with disciplinary action – 10  
 FY 2017 Informal referrals with disciplinary action – 0  
 FY 2017 Formal referrals with corrective action – 54  
 FY 2017 Informal referrals with corrective action – 4

## Goal Table 8

### Goal 2: Ensure Government accountability

#### Objective 3: Enhance awareness of outcomes of referred whistleblower disclosures

Description of Target		FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
54	Revamped online public file of whistleblower disclosure cases on website by FY 2017, and reassess regularly	Met	Not Met	Met		Met					
55	Number of times that favorable outcomes of whistleblower disclosures are disseminated via press releases, social media, etc.	12	10	12		12					
56	Number of training and outreach events that address whistleblower disclosures	Baseline	86	Baseline		90					
57	Plan to enhance the profile of OSC's Public Servant Award by FY 2017, and reassess regularly	Met	Met	Met		Met					

### Goal Table 8 Explanatory Notes

56: Includes individual presentations covering whistleblower retaliation and/or whistleblower disclosures under 5 U.S.C. § 1213.

## Goal Table 9

### Goal 3: Achieve organizational excellence

#### Objective 1: Recruit, develop, and retain a highly talented, engaged, and diverse workforce

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
58 Human Capital Plan by FY 2017, and reassess regularly	Met	Met	Met		Met					
59 Honors Program by FY 2017	Met	Met	Met		Met					
60 Improved and standardized onboarding process by FY 2017, and reassess regularly	Met	Met	Met		Met					
61 Staff training plan by FY 2017, and reassess regularly	Met	Met	Met		Met					
62 Mentorship program by FY 2017, and reassess regularly	Met	Met	Met		Met					
63 Ongoing internal cross-training opportunities by FY 2017, and reassess regularly	Met	Met	Met		Met					
64 Ongoing employee engagement efforts, and reassess regularly	Met	Met	Met		Met					
65 Ongoing work/life balance and other related benefits, and reassess regularly	Met	Met	Met		Met					

### Goal Table 9 Explanatory Notes

59: Honors Program was drafted and approved by the former Special Counsel, but OSC has not put it into action due to questions about our ability to hire Honors Program employees under current fiscal constraints.

61: OSC has developed training plan and policy.

62: The OSC Mentoring Program was developed in response to OSC's 2016 FEVS results. The official program commenced in May 2017. The overall objective was to establish a formal mentoring program within OSC to promote an employee's development and ensure positive developmental and organizational outcomes. The program was also designed to allow for a smooth transition for new employees into the OSC; promote an employee's professional development; share different perspectives; and, encourage a more personal style of leadership within the agency.

The OSC Program stresses the following team operating principles:

- **Simplicity**—Strive to accomplish very challenging and complex work with as simple and straightforward an approach as possible.
- **Balance Employee and Organization Needs**—Do what is right for team and for the agency long-term, while considering employee needs.
- **Sustainability**—Develop an engaged and sustainable team action plan and execute with excellence.
- **Customer Focus**—Gather input from both mentors and mentees and key stakeholders; collaborate with all members to ensure early input, alignment and support for the program, and to facilitate gaining and maintaining support from organization leaders.

The COO provides visibility and advocacy for team members and provides guidance on direction and priorities.

## Goal Table 10

### Goal 3: Achieve organizational excellence

#### Objective 2: Improve the use of existing technology and deploy new IT systems to enhance organizational operations

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
66 Transition to electronic case management system by FY 2017, and reassess regularly	Met	Partially Met	Met		Met					
67 100% deployment of mobile access to network program resources by FY 2017, and reassess regularly	Met	Partially Met	Met		Met					
68 100% data encryption by FY 2017, and reassess regularly; A – encryption of data at rest B – encryption of data in transit	Met	A – Met B – Not Met	Met		Met					
69 Ongoing semi-annual assessment of IT needs, and reassess regularly	Met	Met	Met		Met					
70 Ongoing semi-annual assessment of the effectiveness of IT services, and reassess regularly	Met	Met	Met		Met					
71 Ongoing maintenance of IT staff of 5% of agency work force, and reassess regularly	Met	Met	Met		Met					

### Goal Table 10 Explanatory Notes

67: OSC is currently at 75% deployment of mobile access to network program resources.

68: FY 2017 target was partially met. Data was encrypted on tablets and laptops, but not on e-mail transmissions. This result was limited by budget resources. OSC plans to implement encryption on data in transit by FY 2018. Achieving this target is contingent on available budget resources.

71: In fiscal year 2017, OSC has met the goal of maintaining IT staff of 5% of agency workforce. This includes two contractors that the agency utilized while searching for permanent employees. Meeting this target in future fiscal years will be contingent on availability of budgetary resources.

## Goal Table 11

### Goal 3: Achieve organizational excellence

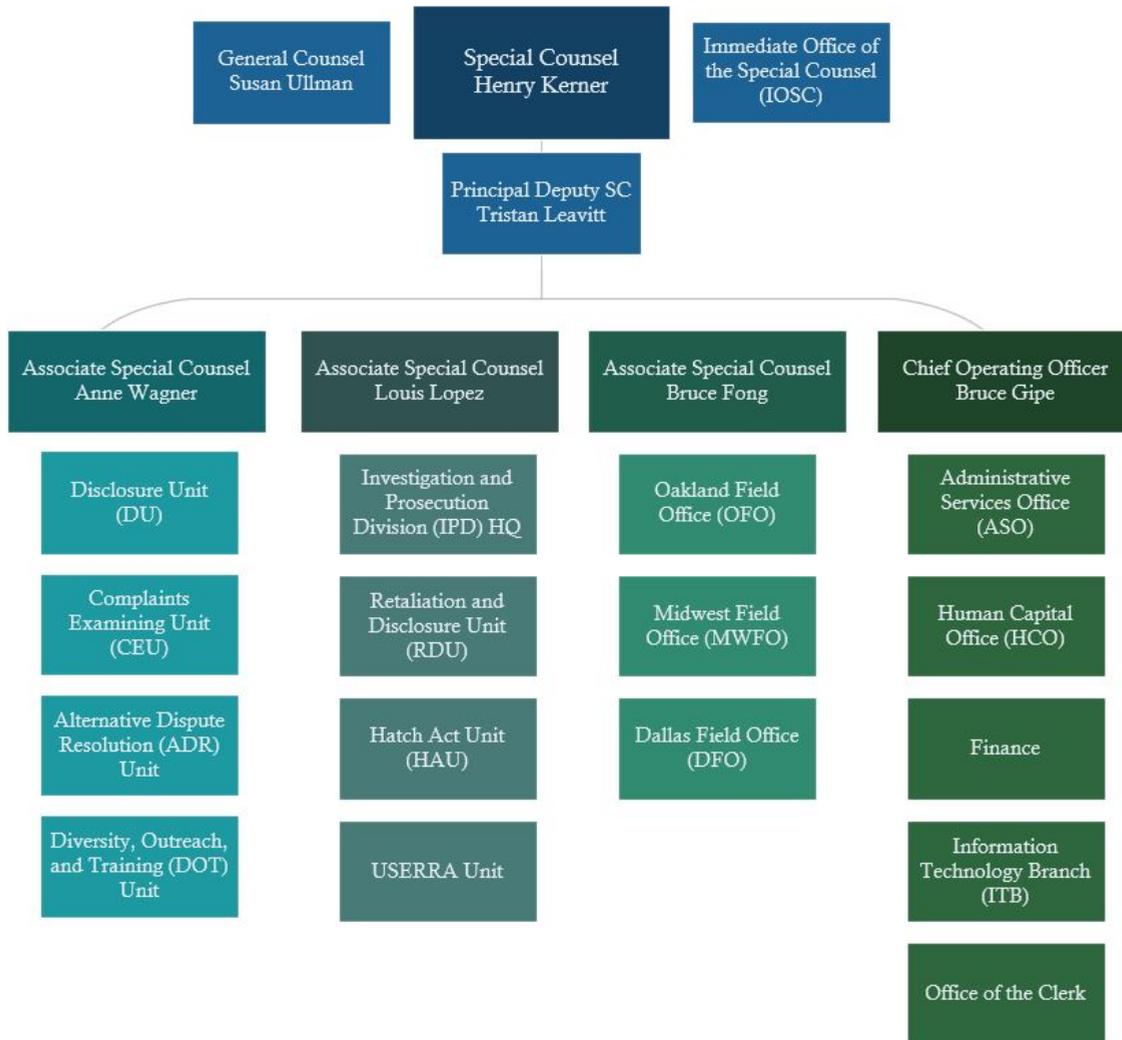
#### Objective 3: Monitor, evaluate, and improve efficiency and effectiveness of programs and Processes

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
72 Creation and implementation of institutional approach to evaluate programs and processes by FY 2017, and reassess regularly	Met	Met	Met		Met					
73 Completion of first evaluation of program(s) or process(es) to identify best practices and areas of improvement by FY 2018, and proceed with evaluation of additional programs and processes regularly thereafter	Met	Met	Met		Met					
74 Implementation of best practices and responses to areas of improvement identified in first evaluation of program(s) or process(es) by FY 2019, and reassess regularly	N/A	N/A	N/A		Met					
75 Enhanced method for determining customer satisfaction with programs and processes by FY 2017, and reassess regularly	Met	N/A	Met		Met					
76 Evaluation and use of customer satisfaction data to improve efficiency and effectiveness of programs and processes by FY 2018, and reassess regularly	N/A	N/A	Met		Met					

#### Goal Table 11 Explanatory Notes

75: This metric was not applicable in FY 2017 due to pending legislative changes.

# Appendix D: OSC Organizational Chart



## Appendix E: OSC Strategic Planning Team

### Chair

Louis Lopez, *Associate Special Counsel, Investigation and Prosecution Division, Headquarters*

### Members

Eric Bachman, *Deputy Special Counsel for Litigation and Legal Affairs, Immediate Office of the Special Counsel*

Patrick Boulay, *Chief, USERRA Unit*

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Bruce Fong, *Associate Special Counsel, Investigation and Prosecution Division, Field Offices*

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Sheryl Golkow, *Attorney, Dallas Field Office*

Karen Gorman, *Chief, Retaliation and Disclosure Unit*

Jane Juliano, *Chief, Alternative Dispute Resolution Unit*

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Jennifer Li, *Chief Information Officer, Information Technology Branch*

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Clarissa Pinheiro, *Chief, Investigation and Prosecution Division, Headquarters*

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The U.S. Office of Special Counsel (OSC) is an independent investigative and prosecutorial agency and operates as a secure channel for disclosures of whistleblower complaints and abuse of authority. Its primary mission is to safeguard the merit system by protecting Federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing. OSC also has jurisdiction over the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act.

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