

**ANNUAL REPORT
TO CONGRESS**
—for—
FISCAL YEAR 2017



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The Special Counsel

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

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

Dear Mr. President and Mr. Speaker:

I respectfully submit the Report to Congress for fiscal year 2017 from the U.S. Office of Special Counsel. A copy of this report will also be posted on our website.

Sincerely,

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

Henry J. Kerner

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THE SPECIAL COUNSEL

Carolyn N. Lerner served as Special Counsel from 2011 to 2017. On June 14, 2017, President Trump designated Adam Miles, OSC's Deputy Special Counsel for Policy and Congressional Affairs, to serve as Acting Special Counsel, pursuant to the Vacancies Reform Act (5 U.S.C. § 3345(a)). After serving at the agency for 90 days as Principal Deputy Special Counsel, Tristan Leavitt became Acting Special Counsel on September 16, 2017. Their terms as Special Counsel encompass the period of coverage for OSC's fiscal year 2017 Annual Report.

Henry J. Kerner was sworn in to serve as Special Counsel on October 30, 2017.

A MESSAGE FROM SPECIAL COUNSEL HENRY J. KERNER

It is my pleasure to present the Office of Special Counsel's (OSC) Annual Report for fiscal year (FY) 2017. This report marks the beginning of my leadership tenure at OSC, which has the important mission of protecting Federal workers and holding government accountable.

OSC provides a safe channel for Federal employees to report fraud, serious waste, mismanagement and abuse, as well as dangers to public health and safety. The agency safeguards the employment rights of Federal employees and returning members of the uniformed services. Overall, OSC protects the public, stands up for taxpayers, and increases the confidence of the public and the Federal community in their government. Ensuring accountability is a job I do not take lightly, and I will be working diligently within OSC and with the Federal community, Congress, and all stakeholders towards accomplishing this goal.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner". The signature is fluid and cursive, with a prominent initial "H" and "K".

Henry J. Kerner

June 12, 2018

PART 1 – INTRODUCTION TO OSC

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 prohibited personnel practices (PPPs); (2) receives and investigates complaints regarding the political activity of Federal employees and covered state and local employees, and provides advisory opinions under 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 Department of Veterans Affairs (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 permits state or local Government employees to run for partisan political office unless the employee's salary is entirely funded by the Federal Government. Lastly, it changed the status of District of Columbia government employees by treating them as state and local employees rather than as Federal employees.

In October 2017, the Dr. Chris Kirkpatrick Whistleblower Protection Act was signed into law. The Act created a new PPP, the accessing of 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 experiencing a personnel action by the employee's agency in response to that disclosure. 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 granted stays of personnel actions by the MSPB.

In December 2017, OSC's reauthorization was signed into law as part of the National Defense Authorization Act for Fiscal Year 2018, reauthorizing OSC through 2023. The reauthorization (Section 1097) reaffirmed the original intent of 5 USC § 1212 that Federal agencies may not withhold information and documents from OSC by asserting common law privileges when complying with OSC's information requests. OSC's reauthorization 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.

Mission

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

PART 2 – OVERVIEW OF OPERATIONS

Internal Organization

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

Immediate Office of Special Counsel (IOSC)

The Special Counsel and the IOSC staff are responsible for policy-making and overall management of OSC. This 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 (PPP). In FY 2017, CEU processed 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. In some cases, CEU staff may obtain stays or corrective action before referring or closing a case.

Investigation and Prosecution Division (IPD)

If a PPP matter merits further investigation, it is referred to IPD. This unit is composed of IPD headquarters and three field offices, and is responsible for conducting investigations of PPPs. 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 sends his ultimate determination, the report, and any comments by the whistleblower to the President and responsible congressional oversight committees. OSC then posts the documents 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 USERRA for civilian Federal employees. The Department of Labor (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, which 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, RDU and the USERRA Unit refer matters that are appropriate for mediation. Once referred, ADR 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 Unit

The Diversity, Outreach, and Training Unit facilitates coordination with and assistance to agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that Federal agencies consult with OSC to inform their workforces about the rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the WPA. 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 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

This division is composed of various administrative units: Finance, Human Capital, Administrative Services, Office of the Clerk, and Information Technology.

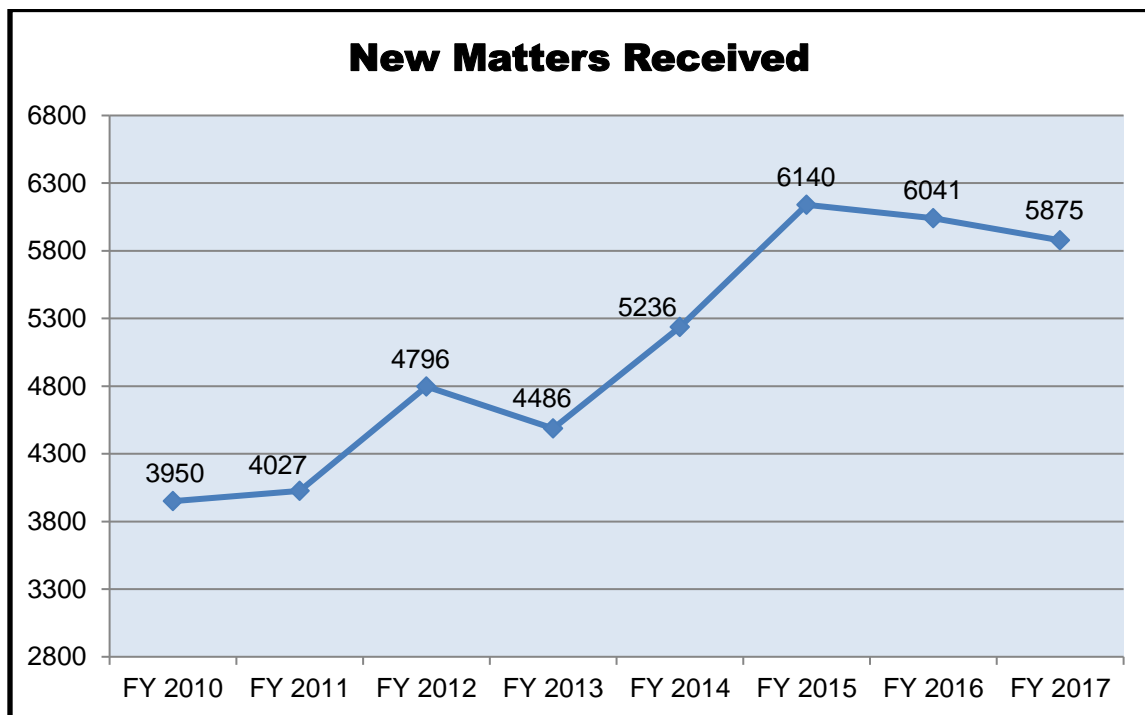
FY 2017 Budget and Staffing

For FY 2017, OSC operated with a budget authority of \$24,750,000, all of which was from appropriated funds. The agency operated with a staff of approximately 131 full-time equivalent (FTE) employees.

FY 2017 Case Activity and Results

During FY 2017, OSC received 5,875 new matters, and carried over 2,270 matters from the previous fiscal year—a total of 8,145 matters. In FY 2017 OSC resolved 5,560 matters, as shown in the charts below. In addition, OSC received 1,325 requests for Hatch Act advisory opinions.

Table 1, below, summarizes overall OSC case intakes and dispositions in FY 2017, with comparative data for the previous six fiscal years. More detailed data can be found in **Tables 2-7**, relating to the four specific components of OSC’s mission—PPP cases, Hatch Act matters, whistleblower disclosures, and USERRA cases.



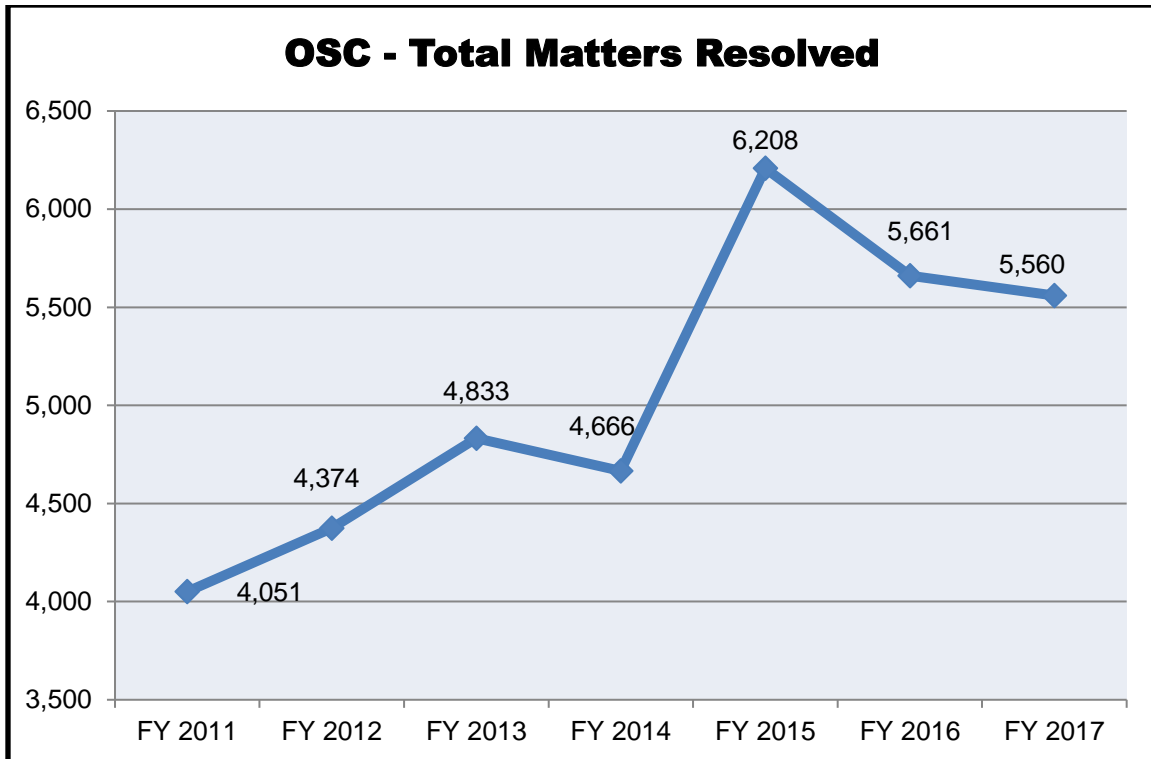
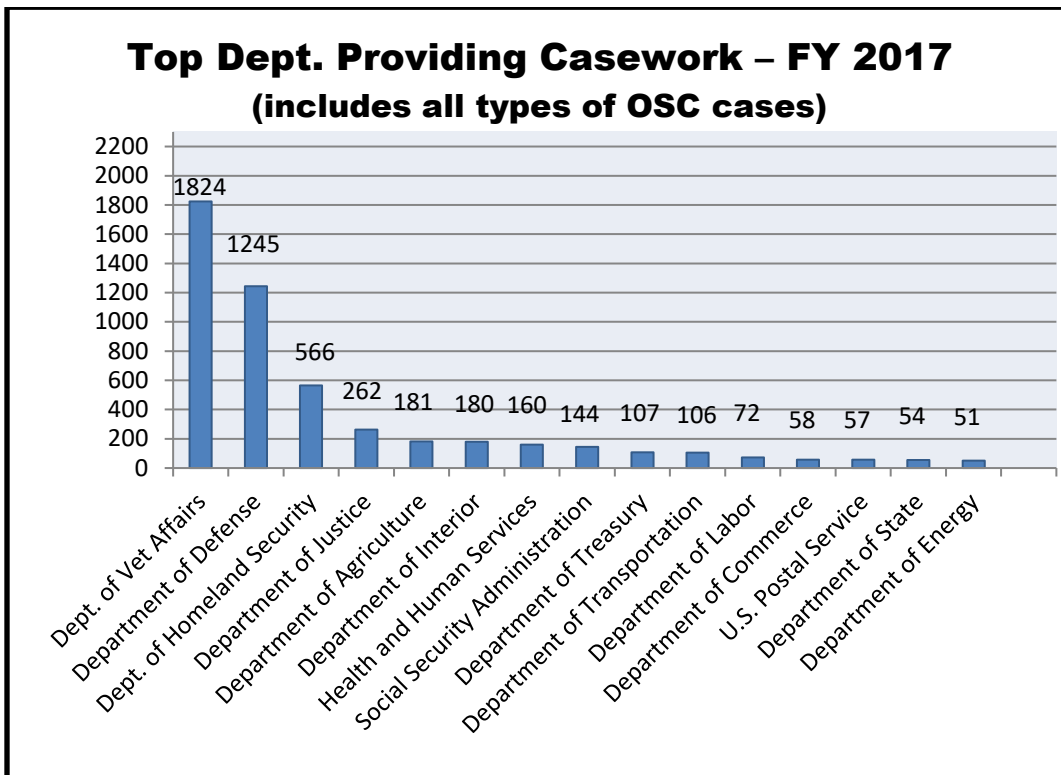


TABLE 1 Summary of All OSC Case Activity

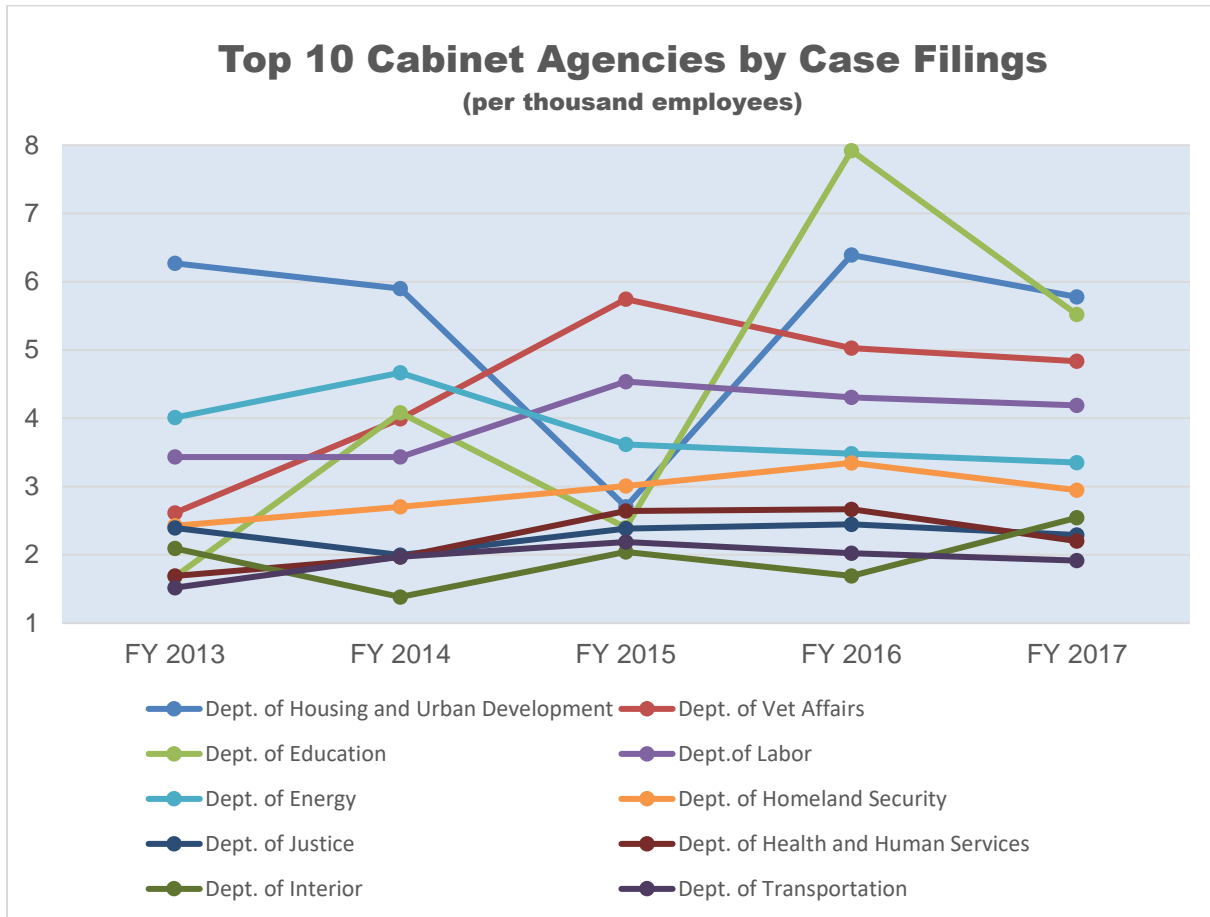
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Matters¹ pending at start of fiscal year	1,357	1,320	1,744	1,399	1,967	1,901	2,270
New matters received	4,027	4,796	4,486	5,236	6,140	6,041	5,875
Matters resolved	4,051	4,374	4,833	4,666	6,208	5,661	5,560
Matters pending at end of fiscal year	1,331	1,729	1,397	1,970	1,900	2,272	2,588
Hatch Act advisory opinions issued	3,110	3,448	1,767	1,382	1,023	1,641	1,325

¹ “Matters” in this table includes PPP cases, whistleblower disclosures, Hatch Act complaints and USERRA cases.

OSC cases come from across the Federal Government. The chart below shows the 15 agencies that were the major sources of our cases in FY 2017, and the second chart shows the 15 cabinet agencies and their cases filed per 1,000 employees.



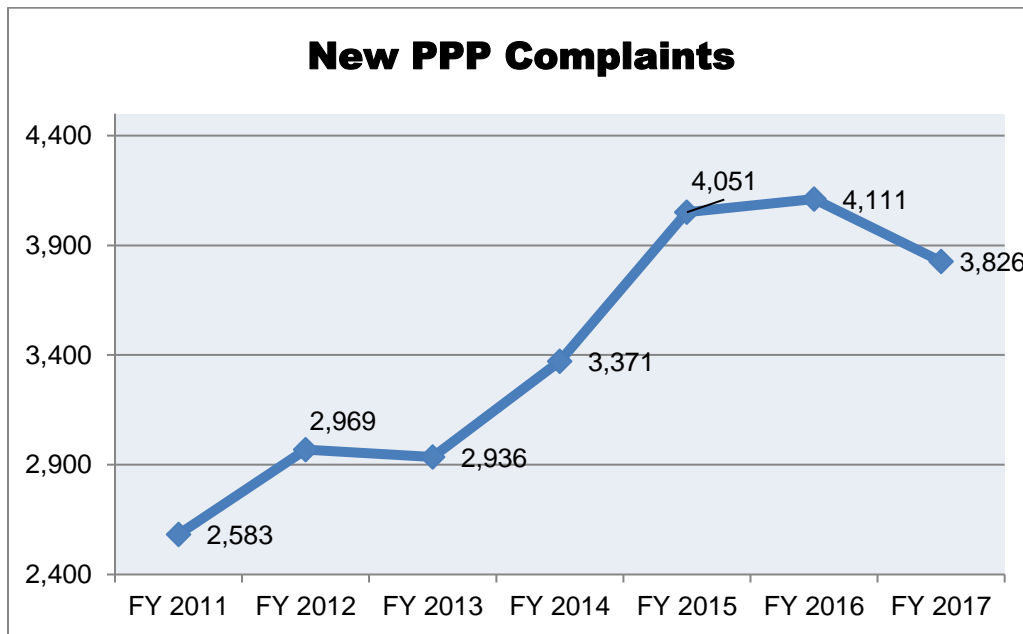
The chart below shows the trend lines for FY 2013 through FY 2017 for the top ten cabinet agencies with the most filings in terms of the number of cases filed per 1,000 employees.



PART 3 – PROHIBITED PERSONNEL PRACTICES

Summary of Workload, Activity, and Results

OSC’s largest program is devoted to handling PPP complaints. Of the 5,875 new matters OSC received during FY 2017 (not including requests for advisory opinions on the Hatch Act), 3,826, or 65 percent, were new PPP complaints. This represents the third largest amount of PPP cases ever received by the agency and a substantial increase over the FY 2014 level. Complaints involving allegations of reprisal for whistleblowing—OSC’s highest priority—accounted for the largest number of complaints resolved and favorable actions (stays, corrective actions, and disciplinary actions) obtained by OSC during FY 2017.



Receipts and Investigations

Table 2, below, contains FY 2017 summary data (with comparative data for the six previous fiscal years) on OSC’s receipt and processing of all PPP complaints.

TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing²

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	
Pending complaints carried over from prior fiscal year	863	934	1,152	1,045	1,414	1,406	1,663	
New complaints received³	2,583	2,969	2,936	3,371	4,051	4,111	3,826	
Total complaints	3,446	3,903	4,088	4,416	5,465	5,517	5,489	
Total complaints processed and closed	2,508	2,750	3,041	3,003	4,058	3,870	3,512	
Complaint processing times	Within 240 days	2,327	2,570	2,594	2,577	3,381	3,307	2,716
	Over 240 days	175	439	440	422	665	554	782
Percentage processed within 240 days	92%	88%	85%	85%	83%	85%	77%	

In FY 2017, OSC achieved 323 favorable actions, an agency record and a 16 percent increase over FY 2016 levels. 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, 241 involved instances of whistleblower retaliation. OSC negotiated 44 stays with agencies to protect employees from premature or improper personnel actions. OSC also obtained 15 stays or stay extensions from the MSPB and achieved 16 disciplinary actions, upholding accountability and sending a warning about unacceptable conduct.

Table 3, on the following page, contains summary data for FY 2017 (with comparative data for the six previous fiscal years) on all favorable actions obtained in connection with OSC’s processing of whistleblower reprisal and other prohibited personnel practice complaints.

² Complaints frequently contain more than one type of allegation. This table, however, records all allegations received in a complaint as a single matter.

³ “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
Total favorable actions negotiated with agencies (all PPPs)	No. of actions⁴	84	159	173	174	278	276	323
	No. of matters	65	128	124	142	212	217	264
Total favorable actions negotiated with agencies (reprisal for whistleblowing)	No. of actions	64	112	104	138	233	218	241
	No. of matters	50	95	91	112	175	174	207
Disciplinary actions negotiated with agencies		6	19	27	23	9	18	16
Stays negotiated with agencies		12	27	28	21	62	40	44
Stays obtained from MSPB		4	8	5	2	3	7	6
Stay extensions obtained from MSPB		1	1	7	0	1	4	9
Corrective action petitions filed with the MSPB		1	0	2	0	0	0	0
Disciplinary action complaints filed with the MSPB		0	0	0	3	0	0	0

Performance Highlights

In FY 2017, OSC has continued to see elevated levels of new cases. For the third year in a row, OSC received around 6,000 new matters, a substantial portion of which concerned scheduling and patient care revelations at the VA. While operating with just a modest increase in resources to perform its mission, OSC has skillfully enhanced accountability, integrity, and fairness in the Federal workplace.

The more the Federal community learns about and gains confidence in OSC, the more it turns to OSC for assistance. The agency’s success in gaining corrective and disciplinary actions receives media attention, and OSC also shares information about its achievements via press releases, its website, and social media. In addition, OSC is increasingly gaining the attention of the Federal community due to the substantial training OSC conducts under the Section 2302(c) Certification Program. As a result of its efforts, OSC is continuing to see elevated case levels.

OSC continues to set records in achieving favorable results. In PPP cases this past year, OSC achieved 323 favorable actions, more than triple the number in an average year. Over FY 2016-17, OSC obtained favorable results in 459 whistleblower retaliation actions, which is also triple the rate of an average two-year span. Further, OSC achieved a record 47 systemic corrective

⁴ 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.

actions in FY 2017, which will result in significant policy changes or larger training efforts to proactively prevent future violations at the agencies involved.

Finally, OSC filed four *amicus curiae* briefs to clarify the scope of whistleblower protections for Federal employees.

Amicus Curiae Briefs

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

Prohibited Personnel Practice Successes

OSC protects Federal employees and applicants for Federal employment from PPPs. The following are examples of recent successes in resolving PPP complaints filed with OSC:

Whistleblower Retaliation

- Complainant alleged that she reported an agency official to management and to the Office of Inspector General (OIG) for suspected theft. OSC obtained from the MSPB a formal stay of the complainant's demotion. OSC's investigation determined that the official demoted the complainant to the lowest position available in retaliation for her disclosures. 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. However, the official first resigned from service.
- Complainant, an assistant chief of human resources, alleged that her 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 supervisory law enforcement officer, alleged that his 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 his 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 her agency. 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 her 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 Freedom of Information Act (FOIA)/Privacy Act officer, alleged that her 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 his 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 a 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 misuse of vendor-provided services for personal gain, her 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, and new supervision.
- Complainant alleged that after reporting that his agency 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, restore the complainant's work privileges, change his supervisors, pay his attorney's fees, and provide him with training opportunities. The agency also agreed to PPP training for its employees.
- Complainant alleged that after she reported concerns about the inadequate screening of certain travelers at her airport, her 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, which included full back pay and compensatory damages, place him in a new position, restore his benefits, 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 complainant's demotion and five-day suspension for alleged misconduct, 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 complainant may have predated the whistleblowing at issue, OSC also learned that 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 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

- 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 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, including disciplining officials, and OSC conducted PPP training at the agency. OSC published the redacted PPP report in this case.

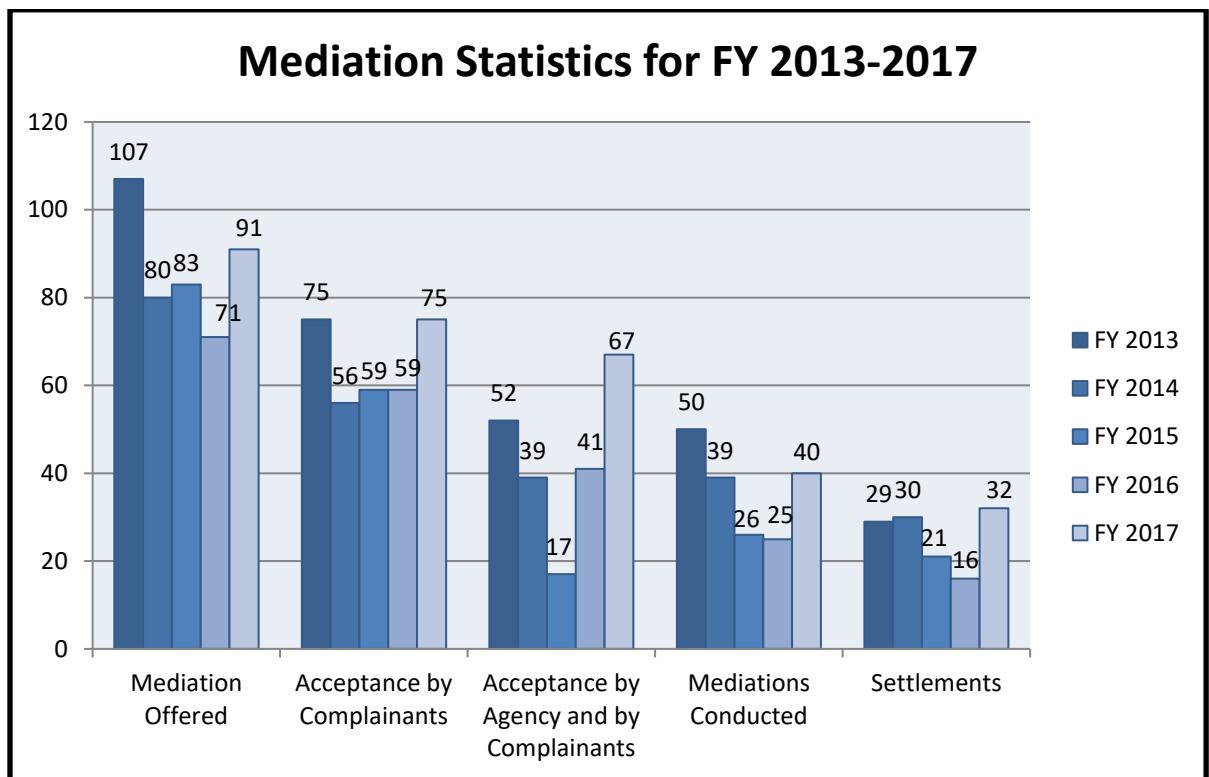
- OSC received a referral involving allegations of several possible recruitment violations at an agency. Before the case was referred to OSC, an audit revealed that the agency attempted to use improper criteria to hire only attorneys for six separate non-attorney positions. As agency leaders expressed confusion about how their actions were improper, 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. To educate the Federal community, OSC published the redacted PPP report in this case.
- 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. However, 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. The supervisor accepted responsibility for his actions, and OSC approved the agency's decision to suspend the supervisor for 14 days.
- 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.

Mediation Successes

Mediation reduces the amount of time and money required to investigate, litigate, and otherwise resolve a case. Parties value mediation because they have a direct hand in discussing the dispute with each other and creating resolutions with provisions beyond what a court could provide. The following are some examples of recent OSC case resolutions through mediation:

- Complainant alleged significant retaliation for disclosing that the agency was not adhering to applicable audit standards. Through mediation, the parties agreed to place complainant in a new position, which filled a critical agency need and utilized the complainant's skills and expertise. The agency also provided full corrective action, which included raising the complainant's performance rating, removing a letter of counseling and performance improvement plan from the complainant's 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 providing testimony in an OIG investigation and disclosing regulatory violations to senior management, the agency substantially changed complainant's duties and issued a reassignment, lowered two performance ratings, and issued a letter of counseling. Through mediation, the parties agreed to reassign 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.
- After disclosing a supervisor's misconduct and misrepresentations to the OIG, a law enforcement employee filed a reprisal complaint with OSC. The OIG substantiated the complainant's allegations and, thereafter, the complainant experienced retaliation in the form of a retaliatory investigation, a reassignment, a lower performance evaluation, and missed promotion opportunities. The parties entered into a settlement agreement that included a revised performance evaluation, damages related to the retaliatory investigation and lost wages, and reasonable attorney fees.
- Complainant, an analyst, alleged that after disclosing to leadership and the OIG that an evaluation of an agency program was not undertaken in accordance with policy and regulation, the complainant was verbally counseled, reassigned, subjected to a hostile work environment, and the complainant's promotion was delayed. Through mediation, the agency agreed to backdate the complainant's promotion, restore leave taken due to the retaliation and hostile work environment, arrange a meeting between the complainant and leadership to discuss the office's promotion policy and process, and provide whistleblower and management trainings to all supervisors in the office.
- 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 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 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 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, 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.



PART 4 – WHISTLEBLOWER DISCLOSURES

Overview

OSC provides a safe and secure channel for whistleblowers, who are often in the best position to detect wrongdoing on the job and disclose waste, fraud, abuse, illegality, and dangers to public health and safety. Through this process, OSC contributes to improving the efficiency and accountability of government.

Over the last few years, OSC has handled record numbers of disclosures from Federal whistleblowers. OSC received nearly 3,500 whistleblower disclosures in FY 2016 and FY 2017 combined. In FY 2017 specifically, OSC sent 66 whistleblower disclosure reports to the President and Congress. In 50 of those cases, agencies substantiated wrongdoing referred by OSC.

Many substantiated disclosures result in enormous and direct financial returns to the government. However, the real measure of OSC's financial contribution is preventive. By providing a safe channel for whistleblower disclosures, OSC helps address threats to public health and safety that pose the very real risk of catastrophic harm to the public and huge remedial and liability costs for the government.

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. The following are examples of OSC successes in FY 2017 involving whistleblower disclosures:

- **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 had accrued a cumulative net loss of \$31.66 million and had 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% after the entity's inception in 2014, with almost 80% 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.

- 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 subject matter expert's concerns and utilize their expertise, particularly with respect to the assessment of the flood barrier height for Oconee Nuclear Station.
- 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 Properly Manage Dental Consultations for Veterans. OSC referred to the VA Secretary 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. The whistleblower 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 was convened to review payments for dental procedures, and an audit of consultations was conducted. Finally, the chief stepped down from his supervisory role.
- 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 carts with excess carts redistributed to other VA locations. The VA confirmed that it is now following the appropriate policy for receiving, inspecting, and processing nonexpendable equipment.

- 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 agency report met all statutory requirements, the findings were unreasonable.
- 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.

- 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 copayment, 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.
- 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.
- 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.

- **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 narcotics 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.

Table 4, below, contains FY 2017 summary data (with comparative data for the six previous fiscal years) on the receipt and disposition of whistleblower disclosure cases.

TABLE 4 Summary of Whistleblower Disclosure Activity – Receipts and Dispositions								
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	
Pending disclosures carried over from prior fiscal year	83	132	225	193	433	449	498	
New disclosures received	928	1,148	1,129	1,554	1,965	1,717	1,780	
Total disclosures	1,011	1,280	1,354	1,747	2,398	2,166	2,278	
Disclosures referred to agency heads for investigation and report	47	39	51	92	62	40	59	
Referrals to agency IGs	5	6	2	0	0	0	1	
Agency head reports sent to President and Congress	22	36	54	26	72	78	66	
Results of agency investigations and reports	Disclosures substantiated in whole or in part	21	31	49	25	63	61	50
	Disclosures unsubstantiated	1	5	5	1	9	17	15
Disclosure processing times	Within 15 days	555	583	575	731	830	654	733
	Over 15 days	315	470	585	584	1,117	1,015	1,060
Percentage of disclosures processed within 15 days	63%	55%	49%	55%	42%	39%	40%	
Disclosures processed and closed	870	1,053	1,160	1,315	1,947	1,669	1,793	

PART 5 – HATCH ACT

Overview

OSC aims to reduce prohibited political activities by: (1) educating and warning employees about unlawful partisan political activity; and (2) bringing disciplinary actions against Federal employees who violate the Hatch Act. To achieve these goals, this year OSC responded to over 1,300 requests for advisory opinions, issued 37 warning letters, and obtained ten corrective actions and four disciplinary actions, either by negotiation or MSPB orders. OSC also fulfilled 100 percent of training requests it received from other government agencies to educate their personnel and avoid violations.

Advisory Opinions

The Hatch Act Unit has the unique responsibility of providing Hatch Act information and advice to the White House; congressional offices; Federal employees, as well as some state and local government employees; the public at large; and the news media. The HAU advises individuals on whether they are covered by the Hatch Act and whether their political activities are permitted. In FY 2017, OSC responded to 1,325 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.

Hatch Act Unit Successes

OSC protects Federal employees from political coercion in the workplace, safeguards against improper political activity by agency officials, and ensures that Federal programs are administered in a nonpartisan fashion. Examples of recent OSC successes under the Hatch Act include the following:

- 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 USPS take corrective action to neutralize this bias and asked USPS to devise a corrective action plan. On July 19, 2017, Chairman Ron Johnson of the U.S. Senate Committee on Homeland Security and Governmental Affairs convened a hearing 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.

- 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. OSC informed the White House Counsel’s Office about its 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.
- 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 political 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 the agreement, and the case is closed.
- 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.
- 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 comply with the law. An MSPB administrative law judge concluded the employee’s violations warranted removal from Federal service. The employee appealed the decision to the Board, where it is still pending.

Table 5, below, contains FY 2017 summary data (with comparative data for the six previous fiscal years) on OSC’s Hatch Act enforcement activities.

TABLE 5 Summary of Hatch Act Complaint and Advisory Opinion Activity								
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	
Formal written advisory opinion requests received	283	257	107	64	64	45	26	
Formal written advisory opinions issued	335	262	129	60	60	43	24	
Total advisory opinions issued⁵	3,110	3,448	1,767	1,382	1,023	1,641	1,325	
New complaints received⁶	451	503	277	151	106	197	252	
Complaints processed and closed	635	449	465	182	131	98	234	
Warning letters issued	164	142	150	44	28	21	37	
Corrective actions taken by cure letter recipients	Withdrawal from partisan races	23	5	5	7	8	4	6
	Resignation from covered employment	16	2	2	0	3	1	2
	Other	5	4	4	1	0	5	2
	Total	44	11	11	8	11	10	10
Disciplinary action complaints filed with MSPB	3	0	2	1	2	3	0	
Disciplinary actions obtained (by negotiation or ordered by MSPB)	5	4	7	15	9	5	4	
Complaints pending at end of fiscal year	233	286	96	65	40	139	155	

⁵ All oral, email, and written advisory opinions issued by OSC.

⁶ Includes cases that were reopened.

PART 6 – USERRA ENFORCEMENT PROGRAM

Overview

OSC continues to assist reservists and National Guard members who face obstacles in their Federal civilian jobs due to their military service. OSC receives referrals of USERRA cases for prosecution from the Department of Labor, which investigates these cases. OSC received 17 new cases in FY 2017 and negotiated corrective actions for four complainants. OSC also provided technical assistance to both the Department of Defense and the Peace Corps in modifying incompatible USERRA-related regulations.

USERRA Successes

OSC protects the civilian employment rights of Federal workers who are veterans or serve in the National Guard and Reserves by enforcing USERRA. Examples of recent OSC successes under USERRA include the following case 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 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.

Table 6 below contains FY 2017 summary data with comparative data and disposition of USERRA referral cases

TABLE 6 Summary of USERRA Referral and Litigation Activity⁷							
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Pending referrals carried over from prior fiscal year	12	17	11	6	7	4	5
New referrals received from VETS during fiscal year	36	24	7	14	18	16	17
Referrals closed	31	30	12	13	21	15	19
Referrals closed with corrective action	2	4	2	2	2	0	4
Referrals closed with no corrective action	29	26	10	11	19	15	15
Referrals pending at end of fiscal year	17	11	6	7	4	5	3
Litigation cases carried over from prior fiscal year	1	0	0	0	0	0	0
Litigation cases closed	1	0	0	0	0	0	0
Litigation closed with corrective action	1	0	0	0	0	0	0
Litigation closed with no corrective action	0	0	0	0	0	0	0
Litigation pending at end of fiscal year	0	0	0	0	0	0	0

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

PART 7 – DIVERSITY, OUTREACH & TRAINING

Diversity, Outreach, and Training Program

The Diversity, Outreach, and Training Unit assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c) to inform their workforces about the rights, remedies, and avenues of redress available to them under the Civil Service Reform Act and relevant whistleblower laws under OSC's jurisdiction. 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.

OSC's 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.

Annual Survey Program

Each year, OSC surveys people who have contacted the agency for assistance during the previous fiscal year.⁸

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

In FY 2017 the reauthorization language required OSC to stop work on the current survey effort in order to focus on the creation of a pilot for the new survey. OSC has assembled a working group in order to achieve this task.

⁸ Pursuant to 5 U.S.C. § 1212 *note*.

FURTHER INFORMATION

Prohibited Personnel Practices

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

Telephone: (800) 872-9855
(202) 804-7000
Email: info@osc.gov

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

Whistleblower Disclosures

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

Telephone: (800) 872-9855
(202) 804-7000

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

Hatch Act

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

Telephone: (800) 85-HATCH
(800) 854-2824
(202) 804-7002
Email: hatchact@osc.gov

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

USERRA

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

Telephone: (202) 804-7022

Email: userra@osc.gov

Diversity, Outreach, & Training Program

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

Telephone: (202) 804-7093

Email: certification@osc.gov

For callers with hearing and/or speech disabilities, all OSC telephone numbers listed in this section may be accessed using TTY by dialing the Federal Relay Service at: 1 (800) 877-8339.