

**ANNUAL REPORT  
TO CONGRESS  
—*for*—  
FISCAL YEAR 2021**

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

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**The Special Counsel**

The Honorable Kamala D. Harris  
President of the Senate  
Washington, D.C. 20510

The Honorable Nancy P. Pelosi  
Speaker of the House of Representatives  
Washington, D.C. 20515

Dear President and Speaker:

I respectfully submit the Report to Congress for fiscal year 2021 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, appearing to read "Henry J. Kerner".

Henry J. Kerner

cc: The Honorable Charles Schumer, United States Senate Majority Leader

The Honorable Steny Hoyer, United States House of Representatives Majority Leader

The Honorable Mitch McConnell, United States Senate Minority Leader

The Honorable Kevin McCarthy, United States House of Representatives Minority Leader

The Honorable Gary Peters, United States Senate Committee on Homeland Security & Governmental Affairs Chairman

The Honorable Carolyn Maloney, United States House of Representatives Committee on Oversight and Reform Chair

The Honorable Rob Portman, United States Senate Committee on Homeland Security & Governmental Affairs Ranking Member

The Honorable James Comer, United States House of Representatives Committee on Oversight and Reform Ranking Member

The Honorable Patrick Leahy, United States Senate Committee on Appropriations Chairman

The Honorable Rosa DeLauro, United States House of Representatives Committee on Appropriations Chair

The Honorable Richard Shelby, United States Senate Committee on Appropriations Vice Chairman

The Honorable Kay Granger, United States House of Representatives Committee on Appropriations Ranking Member

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## **THE SPECIAL COUNSEL**

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

Mr. Kerner graduated from Harvard Law School and spent his first 18 years after graduation working as a career prosecutor, mostly in Compton, California. In 2011, he joined the staff of the House Committee on Oversight and Government Reform, the chief investigative committee of the United States House of Representatives. Under Chairman Darrell Issa, and later, Chairman Jason Chaffetz, he led investigations of the federal bureaucracy and advocated on behalf of whistleblowers to protect American taxpayers. Mr. Kerner was also the staff director and chief counsel under Ranking Member Senator John McCain of the Senate's Permanent Subcommittee on Investigations, the lead investigative committee of the Senate. He left the Hill in early 2016 and joined Cause of Action Institute as assistant vice president for investigations. Cause of Action is a nonpartisan oversight group committed to exposing waste, fraud, and abuse in the federal government. It has worked with whistleblowers and good government groups throughout the country. Mr. Kerner was nominated by President Trump in June of 2017 and unanimously confirmed by the Senate in October of that same year.

Since coming to OSC, Special Counsel Kerner has implemented new processes and procedures to dramatically increase OSC's responsiveness to whistleblower complaints and focus on customer service. For example, OSC has prioritized meeting a 45-day statutory deadline to determine whether there is a "substantial likelihood" of wrongdoing in whistleblower disclosure cases. Furthermore, Kerner oversaw a significant restructuring of OSC's programmatic units to streamline the handling of prohibited personnel practice investigations. This reorganization involved combining units with overlapping responsibilities to make OSC's processes more efficient. Over the last two fiscal years, despite unprecedented challenges, OSC has set new agency records for the number of favorable actions achieved on behalf of whistleblowers.

## **A MESSAGE FROM SPECIAL COUNSEL HENRY J. KERNER**

It is my pleasure to provide an overview of the work of the U.S. Office of Special Counsel (OSC) in fiscal year (FY) 2021, through OSC's Annual Report. The COVID-19 pandemic has made each of the past two years historically challenging for all Americans. Nonetheless, OSC continued to achieve significant successes on behalf of federal employees and whistleblowers, while prioritizing the health and safety of its employees.

OSC has one of the smallest budgets of any federal investigative and prosecutorial agency with government-wide jurisdiction. Yet the agency continues to provide outsized returns for the federal government and achieve exceptional results for complainants. In FY 2021, OSC achieved 393 favorable actions in PPP cases, close second to the previous agency record of 405 set in FY 2020, and 25 percent above the level in FY 2018—the last year that operations across federal departments and agencies were neither impacted by a government shutdown nor the COVID-19 pandemic. Simultaneously, OSC focused its efforts on addressing whistleblower disclosures in a timely manner, thereby ensuring that fraud, waste, abuse, and violations of law were identified and remedied quickly. For FY 2021, OSC's whistleblower disclosure work resulted in 53 substantiated instances of wrongdoing and the collection of millions of dollars of debts owed to the federal government. The 53 substantiated whistleblower disclosures achieved in FY 2021 represent a small increase over the previous five-year average, despite a 40-percent decrease in disclosures received in FY 2021, largely due to the COVID-19 pandemic.

OSC also continues to attain impressive results in its enforcement of the Hatch Act and the Uniformed Service Employment and Reemployment Rights Act (USERRA). In FY 2021, OSC's Hatch Act Unit issued more than 1,000 advisory opinions and obtained seven disciplinary actions for violations of the Hatch Act. In addition, the USERRA unit worked to defend employment and reemployment rights for veterans in 17 cases during FY 2021.

Additionally, I am pleased that our employees reported very high levels of satisfaction with their working conditions at OSC. The agency again received high marks on the FY 2021 Federal Employee Viewpoint Survey, demonstrating that even under extraordinarily difficult circumstances, our employees have persevered and even excelled.

The agency's many successes continue to increase awareness of OSC among federal employees. As employees see the positive results, they feel encouraged to avail themselves of OSC as a preferred route to remedy wrongdoing. Whistleblowers and federal employees who come forward to OSC do so confidently, knowing that we are here to stand up for them and defend them from unjust personnel actions. While OSC strives to address every complaint filed as quickly, accurately, and efficiently as possible, the agency's limited resources will likely be unable to keep pace with the increased demand from whistleblowers and complainants in future years. Although OSC has seen an overall decrease in filings in both FY 2020 and FY 2021, during the coronavirus pandemic, the agency expects the number of complaints filed to rebound when more federal employees physically return to their offices.

I look forward to maintaining our collaborative relationship with Congress to identify how OSC can perform its vital mission even better. OSC represents one of the most cost-effective methods of promoting good government, safeguarding the merit system, and protecting taxpayers. When

OSC succeeds, good government and taxpayers are the true winners. With the continued support of Congress, OSC will be able to keep pace with its rising caseload in future non-pandemic years and continue to promote a better and more accountable government. As our track record demonstrates, a relatively small investment in OSC pays huge dividends in curbing fraud, waste, and abuse.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner", followed by a stylized flourish.

Henry J. Kerner  
June 21, 2022



# **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 activities 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, when appropriate, OSC 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 extended protections to approximately 60,000 employees at the Department of Veterans Affairs (VA) and extended whistleblower retaliation protections 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 (Act) was signed into law. The Act created a new PPP: accessing medical records in furtherance of another PPP. The Act requires agencies to notify OSC if an agency employee commits suicide after experiencing an adverse personnel action imposed in response to the employee's protected disclosure. The Act also requires agencies to train supervisors how to handle complaints of whistleblower retaliation and mandates disciplinary action for supervisors who violate specific sections of the WPEA. Finally, the Act requires agencies to prioritize the transfer requests of employees who have been 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 U.S.C § 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 Guard members; and (2) to provide a safe channel for federal employees, applicants, and former employees to disclose wrongdoing at their agencies. In addition, through its Hatch Act enforcement role, OSC helps secure public trust in government by upholding the nonpolitical nature of the civil service and federal programs. These 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. The agency also has a significant staffing presence in

Dallas, Detroit, and Oakland, the sites of three physical offices whose leases OSC decided not to continue in FY 2021, following an efficiency review. As a result, in FY 2021, OSC started maintaining a small, physical office in Oakland for Field Office leadership, and the staff of Dallas and Detroit began operating as virtual Field Offices.<sup>1</sup>

The agency includes several program and support units described below:

### **Immediate Office of Special Counsel (IOSC)**

The Special Counsel and his immediate staff are responsible for policymaking and the overall management of OSC, including supervision of each of OSC's program areas. This office encompasses management of the agency's congressional liaison and public affairs activities.

### **Office of General Counsel (OGC)**

This office provides legal advice and support on a variety of issues, including management and administrative matters, ethics, appropriations, fiscal law, privacy, disclosure of information, employment, equal opportunity, proposed legislation, and other matters. OGC provides legal review of agency policy statements and directives, Interagency Memoranda of Understanding, and revisions to regulations. OGC also handles defense of OSC interests in litigation filed against the agency.

### **Case Review Division (CRD)**

This division serves as the initial intake point for all PPP and disclosure cases. CRD screens all new allegations to ensure that PPPs and disclosures are directed to the appropriate OSC component. CRD also closes allegations that are duplicative, filed with MSPB, outside of OSC's jurisdiction, or untimely.

### **Investigation and Prosecution Division (IPD)**

IPD is comprised of attorneys and investigators at OSC's headquarters and in the field. IPD receives PPP cases from CRD and investigates the allegations to determine whether the evidence is sufficient to establish that a violation has occurred. If it is not, the matter is closed. If the evidence indicates a reasonable basis to believe a violation occurred, IPD may seek corrective action and/or disciplinary action. IPD works closely with OSC's Alternative Dispute Resolution (ADR) Unit in appropriate cases. 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 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 report its findings to the Special Counsel, informal referral to the Office of Inspector General (OIG) or general counsel of the agency involved, or closure without further action. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness. The Special Counsel then sends the report, along with any comments by the whistleblower, to the president and appropriate congressional oversight committees. OSC also posts the report and whistleblower comments in its public file.

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<sup>1</sup> OSC staff, both at Headquarters and in the Field Offices, began full-time telework as a result of the pandemic on March 16, 2020. OSC Headquarters staff began working one day per week in the office in March 2022, and began working two-three days per week in the office in May 2022.

**Retaliation and Disclosure Unit (RDU)**

This unit reviews related PPP 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 IPD and DU attorneys. Where appropriate, RDU attorneys investigate PPP complaints, obtain corrective or disciplinary actions, and refer disclosures for investigation. RDU attorneys also refer cases to ADR.

**Hatch Act Unit (HAU)**

This unit enforces and investigates complaints of unlawful political activities by government employees under the Hatch Act of 1939 and represents OSC in seeking disciplinary actions before the MSPB. In addition, HAU is responsible for providing advisory opinions on the Hatch Act to federal, state, and local employees, as well as to the public at large.

**Uniformed Services and Employment and Reemployment Rights Act Unit (USERRA)**

OSC enforces USERRA for civilian federal employees. OSC may seek corrective action for violations of USERRA and provides outreach and education to veterans and agencies on their rights and responsibilities under USERRA.

**Alternative Dispute Resolution Unit (ADR)**

This unit supports OSC's program units, mediating appropriate matters where both the affected employee and agency consent to ADR. ADR is equipped to negotiate global settlements of OSC and other claims, for example resolving PPP and Title VII discrimination claims stemming from the same personnel action.

**Diversity, Outreach and Training Unit (DOT)**

DOT manages the government-wide 5 U.S.C. § 2302(c) Certification Program, which allows federal agencies to meet the statutory obligations of section 2302(c), the Dr. Chris Kirkpatrick Whistleblower Protection Act, and the Office of Special Counsel Reauthorization Act of 2017. DOT maintains OSC's Equal Employment Opportunity Program and is charged with meeting all EEO program requirements and ensuring that all employees and supervisors are aware of protections provided by the statutes prohibiting discrimination and encouraging inclusion. DOT administers a nationwide program that provides training to federal and nonfederal entities on all the statutes over which OSC has jurisdiction. In addition, DOT coordinates the agency's DEIA initiatives along with OGC and IOSC.

**Operations Division**

The Operations Division manages OSC's budget and financial operations and oversees the agency's technical, analytical, records, and administrative needs. Component units are the Budget and Finance Office, Human Capital Office, Administrative Services Office, Information Technology Office, and Office of the Clerk. Functional areas under the Office of the Clerk include the Freedom of Information Act (FOIA), Privacy Act, Controlled Unclassified Information, and records management. Procurement operations as well as travel are included under the Budget and Finance Office.

## FY 2021 Budget and Staffing

During FY 2021, OSC operated with a budget authority of \$29,500,000, all of which was from appropriated funds. The agency operated with a staff of approximately 138 full-time equivalent (FTE) employees.

## FY 2021 Case Activity and Results<sup>2</sup>

OSC received 3,518 new cases in FY 2021. While this is nearly 22 percent below the level of cases received in FY 2020, and approximately 38 percent below the average caseload level received from FY 2016 to FY 2020, OSC attributes this decrease largely to the COVID-19 pandemic and the resulting alterations to the operations of most federal agencies during much of FY 2021. OSC expects a return to pre-pandemic caseload levels in future fiscal years, barring additional, unforeseen circumstances.

Despite the pandemic, and the resulting impact on caseload numbers, OSC continued to bring accountability, integrity, and fairness to the federal workplace in FY 2021. Specifically, OSC achieved an impressive number of favorable outcomes, in total and across OSC's multiple programmatic units. For example, OSC achieved 393 favorable actions on PPP cases, the second highest number on record, and approximately 20 percent above the prior five-year average. On the Hatch Act front, OSC resolved 375 Hatch Act cases, which is approximately 64 percent above the average of the five prior years. In addition, OSC issued 62 warning letters and successfully obtained disciplinary actions in seven cases against officials who committed Hatch Act violations. OSC also experienced success in its USERRA cases. OSC assisted 17 service members in asserting their employment and reemployment rights. As OSC aims to build upon this established pattern of success, future increases in resources will be necessary, as caseloads across OSC are expected to return to pre-pandemic levels.

Whistleblower disclosures of wrongdoing have led to immense success in ensuring identified problems are addressed and corrected. Specifically, in FY 2021, OSC worked with whistleblowers to identify millions of dollars in wasteful spending and to prevent further waste. For example, a case from FY 2020 pertaining to Treasury's failure to collect over \$90 million in debts owed to OSHA, continued to pay dividends in FY 2021 as Treasury collected over \$8 million of the outstanding debt. Treasury also confirmed that an additional 12 agencies were affected by this same issue, and is currently completing an audit to address any uncollected debts held by other agencies.

In addition to receiving 3,518 new matters in FY 2021, OSC carried over 1,736 matters from the previous fiscal year, giving the agency a total of 5,254 matters in-house. In FY 2021, OSC resolved 3,711 matters, as shown in the charts below. In addition, OSC issued 1,043 Hatch Act advisory opinions. **Table 1**, below, summarizes overall OSC case intakes and dispositions in FY 2021, with comparative data for the previous five 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.

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<sup>2</sup> OSC deployed a new electronic case management system (eCMS) in August 2019, which required data to be transferred from the prior case management system. As a result, some of the FY 2019 data in eCMS may differ slightly from what is shown in this report.

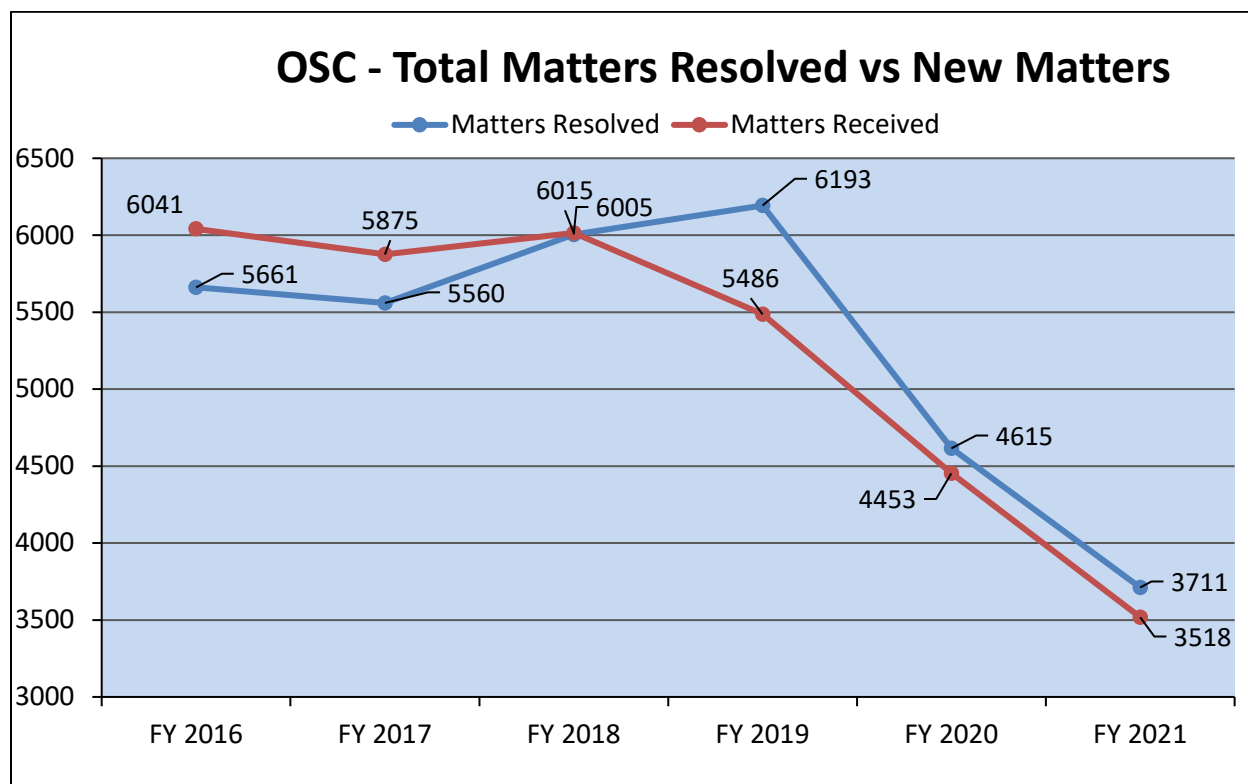


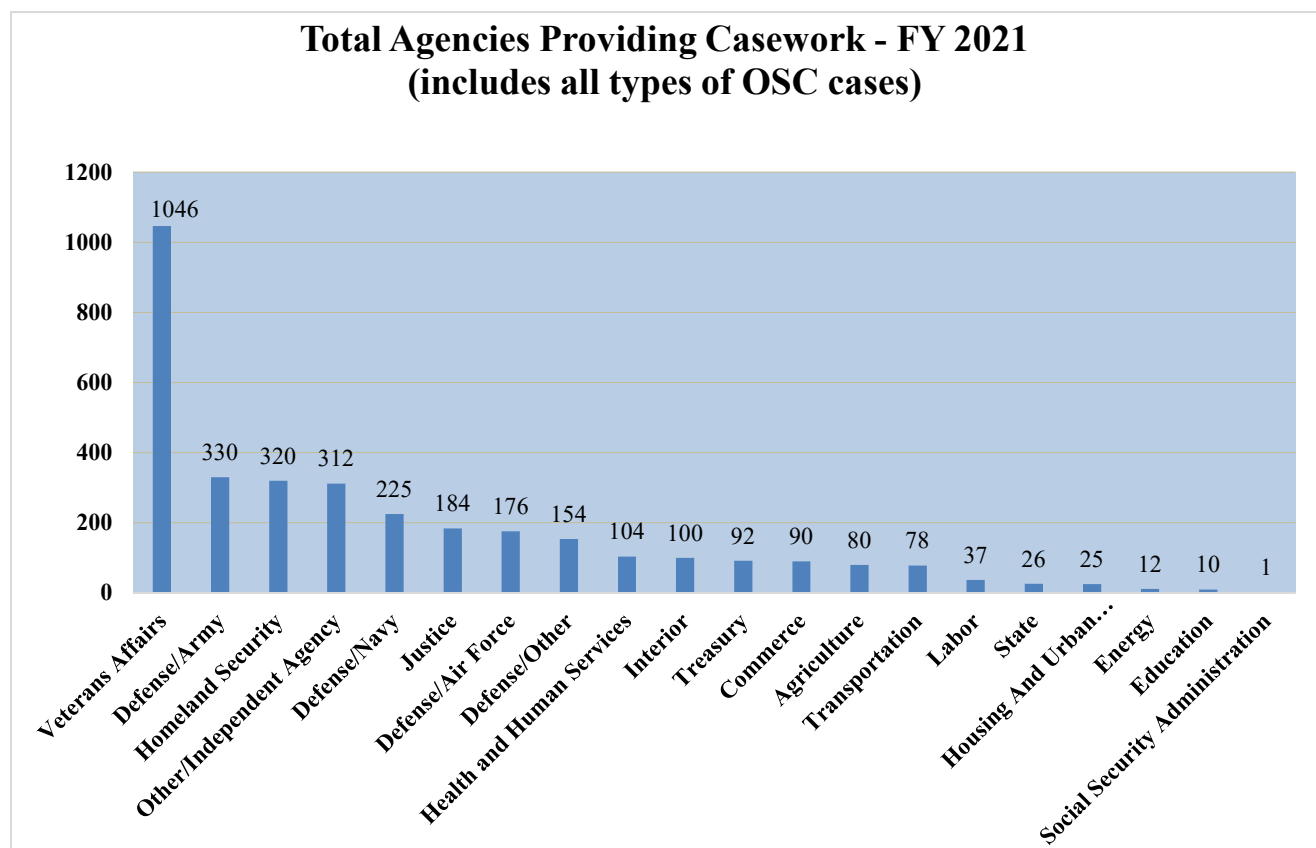
TABLE 1 - Summary of All OSC Case Activity						
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>Matters<sup>3</sup> pending at start of fiscal year</b>	1,901	2,271	2,592	2,616	1,888	1,736
<b>New matters received</b>	6,041	5,875	6,015	5,486	4,453	3,518
<b>Matters closed<sup>4</sup></b>	5,661	5,560	6,005	6,193	4,615	3,711
<b>Matters pending at end of fiscal year</b>	2,272	2,590	2,607	1,909	1,732	1,551
<b>Hatch Act advisory opinions issued</b>	1,641	1,325	1,386	1,111	1,461	1,043

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

<sup>4</sup> OSC resolved more matters than the agency received in FY 2021, thereby reducing the agency’s open case inventory by 193 cases.

## OSC's Docket

In addition to HAU and USERRA cases, OSC is responsible for addressing whistleblower complaints and PPPs from nearly every sector of the federal government. The chart below depicts the agencies whose employees file the most cases with OSC. We continue to receive far more cases from VA employees than any other agency.



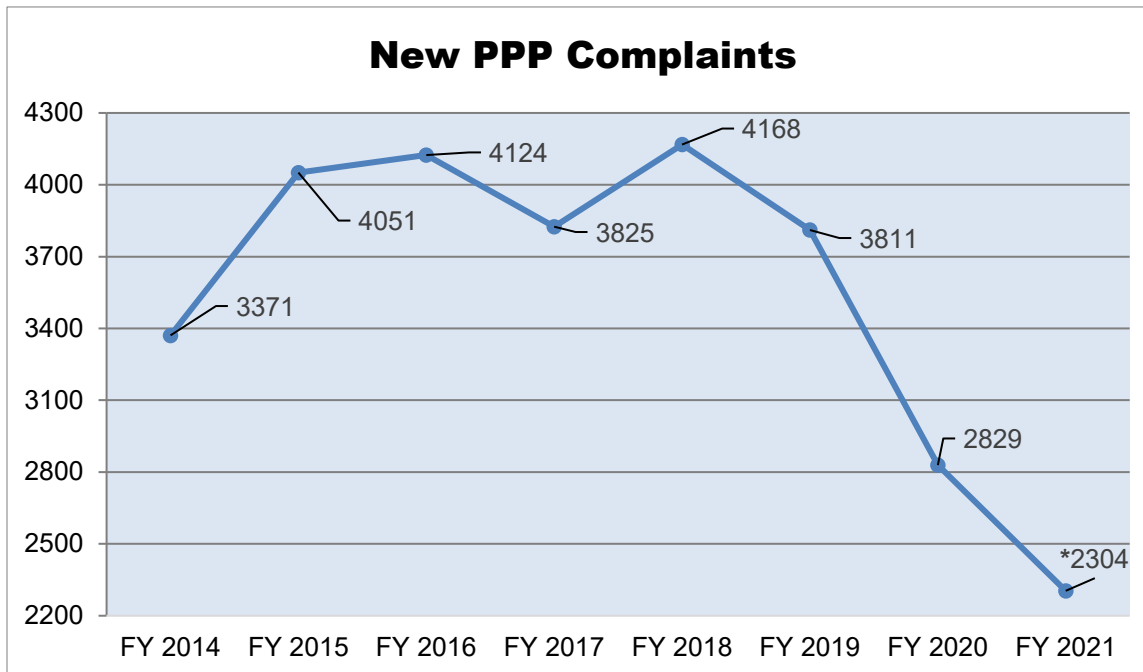
## **PART 3 – PROHIBITED PERSONNEL PRACTICES**

### **Summary of Workload, Activity, Costs, and Results**

OSC received an average of nearly 3,800 new PPP complaints per year from FY 2016 to FY 2020, a level unseen prior to FY 2015. While the number of PPP complaints OSC received in FY 2021 decreased to 2,304, the agency attributes much of this decrease in new PPP cases to the COVID-19 pandemic, and its impact on the operations of federal departments and agencies. OSC expects PPP cases received in future, non-pandemic years to increase closer to levels experienced between FY 2015 and FY 2020. OSC resolved 2,390 PPP cases in FY 2021. The cost for the agency to resolve a PPP matter in FY 2021 was \$7,153. This information is being reported as required by OSC's reauthorization.

Cost of Resolving a PPP matter:	<b>\$7,153</b>
Note - This was the average cost for resolving a PPP matter in FY 2021, including direct costs and a proportionate share of overhead costs.	

Based on the data trend from the past four non-pandemic years, OSC expects the receipt of new PPP complaints to return to close to 4,000 new cases per year, as employees return to the office following the pandemic. PPP cases are the most time- and resource-intensive cases for the agency. PPP cases also represent a critical route through which OSC builds whistleblower confidence by ensuring whistleblowers are protected from retaliation.



\*OSC experienced a decrease in the number of PPP cases received, likely due to the continued COVID-19 pandemic in FY 2021. The agency expects that the number of PPP cases will reach nearly 4,000 again in future, non-pandemic years.

## Receipts and Investigations

**Table 2**, below, contains FY 2021 summary data (with comparative data for the seven 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 Processing<sup>5</sup>**

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>Pending complaints carried over from prior fiscal year</b>	1,045	1,414	1,405	1,657	1,969	2,057	1,409	1,147
<b>New complaints received<sup>6</sup></b>	3,371	4,051	4,124	3,825	4,168	3,811	2,829	2,304
<b>Total complaints</b>	4,416	5,465	5,529	5,482	6,137	5,868	4,238	3,451
<b>Total complaints processed and closed</b>	3,003	4,058	3,870	3,512	4,073	4,447	3,096	2,390
<b>Complaint processing times</b>	<b>Within 240 days</b>	2,577	3,380	3,307	2,716	3,100	2,476	1,883
	<b>Over 240 days</b>	422	665	554	782	967	788	499
<b>Percentage processed within 240 days</b>	85%	83%	85%	77%	76%	82%	80%	79%

**Table 3** contains summary data for FY 2021 (with comparative data for the seven previous fiscal years) on all favorable actions obtained in connection with OSC’s processing of whistleblower reprisal and other prohibited personnel practice complaints.

As seen on **Table 3**, OSC continues to provide complainants with positive outcomes, having achieved 393 favorable actions for PPP complaints in FY 2021, the second highest total in agency history (OSC achieved an agency record in FY 2020). The 393 favorable actions achieved represent approximately a 20 percent increase from OSC’s prior five-year average. Of the favorable actions in FY 2021, 304 involved instances of whistleblower retaliation. OSC negotiated 38 stays with agencies to protect employees from premature or improper personnel actions. OSC also achieved 33 disciplinary actions, upholding merit system principles and sending a strong message that retaliation and other misconduct will not be tolerated.

<sup>5</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>6</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**

		<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019 7</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Total favorable actions negotiated with agencies (all PPPs)</b>	<b>No. of actions<sup>8</sup></b>	177	277	273	324	314	319	405	393
	<b>No. of matters</b>	144	212	216	264	249	259	323	295
<b>Total favorable actions negotiated with agencies (reprisal for whistleblowing)</b>	<b>No. of actions</b>	138	233	215	244	236	234	317	304
	<b>No. of matters</b>	114	175	173	209	196	192	265	233
<b>Disciplinary actions negotiated with agencies</b>		23	9	15	16	22	27	13	33
<b>Stays negotiated with agencies</b>		23	62	40	45	47	31	54	38
<b>Stays obtained from MSPB</b>		2	3	7	7	2	1	0	0
<b>Stay extensions obtained from MSPB</b>		0	1	4	10	10	1	0	0
<b>Corrective action petitions filed with the MSPB</b>		0	0	0	0	1	0	0	0
<b>Disciplinary action complaints filed with the MSPB</b>		3	0	0	0	0	0	0	0

## Subpoenas

OSC’s recent reauthorization requires the agency to report on the number of subpoenas issued during the fiscal year. During FY 2021, no subpoenas were issued by OSC.

Subpoenas issued - FY 2021	<b>0</b>
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<sup>7</sup> Due to OSC’s move to the new electronic case management system (eCMS) in August 2019, and the subsequent data migration process, some FY 2019 figures may differ slightly from previous reporting. The new case management system provides more accurate and detailed reporting, so there are slight variances when statistics are reported.

<sup>8</sup> The “number of actions” refers to the total number of favorable actions that were obtained; the “number of matters” refers to the total number of cases (or matters) from which the favorable actions were derived (e.g., one case/matter may have multiple favorable actions).

## Re-opened PPP Cases<sup>9</sup>

OSC's recent reauthorization also requires the agency to report on the number of instances in which OSC reopened a PPP case after an initial determination had been made and the actions that resulted from the reopened investigation.

Total PPP cases that were requested to be reopened in FY 2021 <sup>10</sup>	<b>32</b>
• Status – Request to Reopen Denied (Previous determination was upheld)	<b>19</b>
• Status – Cases Reopened	<b>36</b>
○ Status – Reopened Cases Closed	<b>23</b>
○ Status - No determination yet/case status still open	<b>11</b>

## PPP Cases Resolved by an Agreement

Another requirement of OSC's recent reauthorization is for the agency to provide a list of PPP complaints that were resolved by an agreement between the individual and the agency, organized by agency and agency component.<sup>11</sup>

<b>Total PPP Cases Resolved by an Agreement in FY 2021 (86)</b>	
<b>Department/Agency</b>	<b>Count of Case Title (Case)</b>
Agriculture	1
Commerce	4
Defense/Air Force	8
Defense/Army	10
Defense/Navy	6
Defense/Other	3
Energy	1
Health and Human Services	4
Homeland Security	3
Interior	3
Justice	5
Labor	1
Other/Independent Agency	6
State	1
Veterans Affairs	30

<sup>9</sup> In August 2019, OSC transitioned to a new electronic case management system (eCMS). Since then, OSC has made incremental improvements to the system, and as a result, slight data discrepancies may potentially exist.

<sup>10</sup> These numbers may not match because some cases are still in "reopen" status following a request for reopening in the prior fiscal year. Further, some cases are reopened without a request for reopening.

<sup>11</sup> Due to OSC's move to the new electronic case management system in August 2019, and the continued development of the system, the data for FY 2021 will continue to be provided at the department/agency level.

## 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.

- Complainant, an industrial hygienist, alleged he was issued a letter of reprimand in retaliation for his discussion on the COVID-19 hotline. Complainant contacted the COVID-19 hotline regarding officials not requiring mask or face coverings in an indoor control room, despite direction by his supervisor to not contact the hotline. Pursuant to OSC's investigation, the parties entered into a settlement agreement resolving the complaint. The agency agreed to rescind the letter of reprimand, pay complainant's attorney's fees, and conduct OSC training for the human resource representatives.
- Complainant, a supervisory civil engineer, alleged that the agency proposed his removal in retaliation for his disclosing that his supervisor violated contract regulations and for successfully appealing the agency's denial of his step increase. With OSC's assistance, the agency withdrew and expunged the proposed removal, improved three years of performance evaluations, modified complainant's chain of command, and paid complainant \$37,500.
- Complainant, a regional solicitor, alleged retaliation for disclosing that her supervisor was abusing his authority when he engaged in settlement negotiations to offer a corporate defendant a "sweetheart" deal. Complainant alleged the agency reassigned her from her regional solicitor position in Los Angeles to the position of regional administrator in Chicago, and initiated an internal harassment investigation. At OSC's request, the agency agreed to delay complainant's reassignment for 30 days. The parties negotiated and executed a settlement agreement in which the agency agreed to rescind complainant's reassignment and removal and reinstate her as regional solicitor; restore 100 hours of complainant's sick leave, pay \$200,000 for back pay, compensatory damages, and attorney's fees, and not to take any adverse actions against the complainant because of the internal harassment investigation.
- Complainant, an administrative officer, alleged that the agency proposed her removal in retaliation for her disclosing a hostile work environment and violations of agency rules at her department. After an investigation, OSC requested corrective actions and facilitated a settlement agreement. Under the agreement, the agency agreed to pay complainant \$180,000, rescind the proposed removal, provide a letter of recommendation, and issue an outstanding performance rating for fiscal year 2020. Complainant agreed to resign and withdraw all her pending claims against the agency.
- Complainant, a police officer, alleged that his agency suspended him and proposed his removal in retaliation for disclosing numerous instances of abuse of authority by the chief of police and other senior officers to his chain of command, a member of Congress, and Office of Inspector General. Complainant accepted a position elsewhere before a final decision on the removal was issued. In a global settlement, the agency also agreed to pay him \$100,000 in compensatory damages, \$20,000 in attorney's fees, and restore over 200 hours of leave.

In other whistleblower retaliation and prohibited personnel practice cases, OSC achieved numerous additional corrective actions on behalf of federal employees including stays of personnel actions, reinstatements, reassignments, backpay, damages and fees, neutral references, restoration of leave, reinstatement of duties, expungements of improper letters of reprimand and unlawful suspensions; upgrade of performance ratings, Quality Step Increase (QSI) awards, and training. OSC also achieved disciplinary action for officials engaged in wrongdoing, such as demotions and suspensions. Lastly, OSC provided training in response to claims of whistleblower retaliation and obstruction of an employee's right to compete.

## Amicus Curiae Briefs

In FY 2021, OSC filed one amicus curiae brief to clarify the scope of whistleblower protections for federal employees.

- OSC filed an *amicus curiae* brief with the Merit Systems Protection Board in a petition for review that concerned the evidence necessary to establish the causation element—i.e., “contributing factor”—in whistleblower retaliation cases filed under the Whistleblower Protection Act (WPA). In the initial decision, the administrative judge dismissed the appellant's case after finding that he had failed to show that the agency had knowledge of his protected activity, even though there was other record evidence that linked this activity to the personnel action at issue. In its brief, OSC argued that the WPA and its legislative history confirm that a showing of knowledge or motive on the agency's part is not necessary. Rather, the statute and its broad remedial purpose—along with well-established precedent—show that adjudicators should consider all record evidence of causation in assessing whether an employee's protected activity played a role in the resulting personnel action.

## 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:

***Note: Mediations at OSC are conducted pursuant to the ADR Act of 1996 and we therefore cannot provide identifying information about mediation cases.***

- Complainant, a program specialist, alleged that in retaliation for reporting that a proposed office reorganization was improper, their supervisors significantly changed complainant's duties, lowered his/her performance appraisal, and issued a reprimand. The parties reached an agreement that included restoration of sick and annual leave, a payment to the complainant, attorney's fees, rescission of the letter of reprimand, modifying complainant's performance evaluation, and the agency issued a letter to complainant acknowledging complainant's dedication and commitment to the agency's mission and values.
- Complainant alleged that in retaliation for filing EEO and OSC complaints, agency management created a hostile work environment and significantly changed his/her work

duties. During the mediation process, the agency agreed to make changes to address the alleged hostile work environment. Subsequently, complainant reported that the changes helped to foster a better working environment. Through mediation, the parties agreed to terms including a voluntary early retirement package and compensatory damages.

- Complainant, a Human Resources manager, alleged that after s/he disclosed hiring and classification violations to officials within and outside the agency, their supervisors lowered his/her performance appraisal, issued a letter of caution, and reassigned them to substantially different duties. The parties discussed all their disputed issues in mediation and were able to reach a mutually agreeable solution that included a realignment for complainant's job, restoration of leave, and a monetary payment that complainant could use for career-enhancing training.
- Complainant reported several alleged violations of law, rule, or regulations to the Office of Inspector General and notified his/her supervisor of the disclosures. The complainant alleged that in retaliation for the disclosures, s/he received negative performance evaluations, was not selected for promotions, and experienced a significant change in duties when complex and specialized assignments were replaced with more basic ones. The parties reached a settlement agreement that provided the complainant step increases and associated backpay, reinstated leave, a performance award, and attorney's fees.

**Table 4 - ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints**

	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Cases Reviewed for Mediation</b>	188	174	70	60	39
<b>Mediations Offered</b>	92	86	58	57	39
<b>Mediations Conducted</b>	65	39	39	40	30
<b>Cases Withdrawn Before Mediation Completed</b>	27	11	2	10	3
<b>Completed Mediations</b>	38	28	37	30	28
<b>Completed Mediations Resulting in Settlement</b>	31	21	24	23	16 + 1 case closed in ADR*
<b>Percentage of Completed Mediations Resulting in Settlement</b>	82%	75%	65%	77%	57%
<b>Cases Resolved Without Need for Mediation</b>	1	1	0	2	1
<b>Carryover to Next FY – Mediations in Process</b>	20	19	18	22	17
<b>Carryover to Next FY – Cases in Review</b>	11	2	4	1	2

*\*This means that after discussion in ADR the party withdrew his/her case*

## **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. Specifically, in FY 2021, OSC received 906 disclosures. Additionally, OSC sent 76 whistleblower disclosure reports to the President and Congress, and agencies substantiated wrongdoing in 53 of those cases. OSC processed 87 percent of whistleblower disclosures within the statutorily required 45-day timeframe in FY 2021, a significant increase from the 59 percent achieved in FY 2018.

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 serious 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 six areas: (1) violations of a law, rule, or regulation; (2) gross mismanagement; (3) gross waste of funds; (4) abuse of authority; (5) substantial and specific danger to public health or safety; and (6) censorship related to research, analysis, or technical information. The following are examples of OSC successes in FY 2021 involving whistleblower disclosures:

- **Violation of law, rule, or regulation; gross mismanagement; a gross waste of funds**

***Treasury Department's Failure to Collect Debts Owed to Government Agencies.*** OSC referred to the Secretary of the Treasury and the Secretary of Labor allegations that Treasury's Bureau of Fiscal Service and Labor's Occupational Safety and Health Administration (OSHA) failed to act on debts OSHA transferred to Treasury for collection. The Treasury and Labor investigations substantiated the allegations, determining that an uncorrected software error prevented Treasury from collecting approximately \$91.5 million in debts owed to OSHA. Treasury immediately corrected the software error, updated policies and procedures, and began collecting OSHA's outstanding debts. To date, Treasury has collected over \$8 million of the debts owed to OSHA.

Additionally, Treasury confirmed that 12 other agencies were also affected by this error and is completing an audit to address any uncollected debts held by other agencies. Treasury will provide OSC with an additional report upon completion of its audit, which was expected to begin early in calendar year 2022. The audit will include a breakdown of the monetary value of any outstanding debts owed to the 12 additional agencies affected by the software error.

The Special Counsel determined that the findings of the initial reports appeared reasonable, and the reports met all statutory requirements.

- **Violation of law, rule, or regulation, and substantial and specific danger to public safety**

***Violation of Firearms Safety Protocols in Rapid-Response Drills.*** OSC transmitted to the President and relevant congressional oversight committees a report detailing allegations of wrongdoing at the Butler Healthcare Center Police Service (Police Service) in Butler, Pennsylvania. The whistleblower disclosed that the Police Service leadership ran active-threat training without providing police officers advance notice, and while the responding officers were on-duty and carrying loaded-duty weapons. The whistleblower also alleged that this dangerous practice had been reported to the facility's Associate Director of Operations, but no corrective action had been taken.

The agency substantiated the allegations finding that Police Service supervisors were conducting rapid-response drills (RRDs) in a manner that simulated an actual duty call, in other words, live-action, scenario-based training exercises rather than RRDs. It is a violation of firearms safety protocols to conduct live-action, scenario-based training exercises with on-duty, armed officers. In response to the investigation, the Police Service suspended all RRDs pending revision of the relevant standard operating procedures. The updated standard operating procedures were issued on April 13, 2020. In addition, the VA Office of Security and Law Enforcement and the Veterans Health Administration are conducting a comprehensive review of security and law enforcement programs and functions to evaluate the need for a centralized management entity across the Department. The Special Counsel determined that the report contained the information required by statute and the findings appeared reasonable.

- **Gross mismanagement**

***Failure to Reimburse Veterans and Bill for Medical Services.*** OSC referred to the Secretary of Veterans Affairs (VA) allegations that employees at the VA Salt Lake City Health Care System (VA Salt Lake), Salt Lake City, Utah, engaged in conduct that may constitute a gross mismanagement. The whistleblower disclosed that patients were not reimbursed for eligible services and claims from as late as 2016 had yet to be processed, which resulted in patients not receiving reimbursement. The whistleblower further alleged that these issues were due to leadership's failure to train Health Administration Service (HAS) staff how to process claims for reimbursement.

The agency partially substantiated the allegations. The investigation found that patients were not reimbursed for some services because those services were not eligible for reimbursement. However, the investigation determined that VA Salt Lake personnel failed to identify and inform dual-eligible veterans about the impact of their benefit election on their costs. As a result, the investigation concluded that VA Salt Lake lost revenue on 127 unbilled Integrated Disability Evaluation System (IDES) and Line of Duty (LOD) encounters from as early as 2016, which totaled approximately \$89,000, as the agency failed to bill and collect for encounters.



The report did not substantiate that leadership failed to train HAS staff on how to process claims for reimbursement, but concluded that leadership failed to follow up and oversee TRICARE billing. As a result of the investigation, the agency implemented several corrective measures, including verifying that billers and accounts receivable personnel were trained on TRICARE benefits, and able to explain those benefits to dual-eligible veterans. The agency recommended that internal controls and performance standards for billers and accounts receivable staff be established and monitored, and that Fiscal Services document and convey performance expectations to personnel and require that managers regularly assess staff to ensure that they are equipped to perform their duties. The Special Counsel determined that the report appeared reasonable and met all statutory requirements.

- **Violation of law, rule, or regulation; gross mismanagement; abuse of authority**

***Failure to Inform Widowed Spouses of Options with Survivors Benefits Claims.*** In FY 2021, OSC alerted the President and the Congress that the Social Security Administration (SSA) developed a detailed plan to review and reimburse, where appropriate, over 20,000 widow(er) beneficiaries, after SSA failed to adequately inform them of their survivor benefit options. The corrective action resulted from a whistleblower disclosure to OSC that SSA failed to inform survivors that they could delay, or withdraw and resubmit, their benefits applications until they reached full retirement age (FRA), resulting in a significant loss to beneficiaries over their lifetimes.

Additionally, the SSA also plans to implement new training and control measures to ensure employees accurately inform widow(er) claimants of their options going forward.

In addition to these cases, OSC also referred allegations of the following in FY 2021: the failure to follow prescription drug policy at a VA Healthcare System leading to unsafe practices; mismanagement of a VA Medical Center Home Telehealth Program; failure to properly disinfect and clean a VA Medical Center emergency room; and the improper management of food inventory at a Federal Detention Center. These are just a few of the many cases in which OSC substantiated allegations and effectuated remediation of government wrongdoing.

**Table 5**, below, contains FY 2021 summary data (with comparative data for the seven previous fiscal years) on the receipt and disposition of whistleblower disclosure cases.

<b>TABLE 5 – Summary of Whistleblower Disclosure Activity – Receipts and Dispositions<sup>12</sup></b>								
	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Pending disclosures carried over from prior fiscal year</b>	193	433	449	497	493	421	317	264
<b>New disclosures received</b>	1,554	1,965	1,717	1,781	1,559	1,374	1,160	906
<b>Total disclosures</b>	1,747	2,398	2,166	2,278	2,052	1,795	1,477	1,170
<b>Disclosures referred to agency heads for investigation and report</b>	92	62	40	59	139	73	81	65

<sup>12</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.

Referrals to agency IGs		0	0	0	1	0	0	0	0
Agency head reports sent to President and Congress		26	72	78	66	41	64	89	76
Results of agency investigations and reports	Disclosures substantiated in whole or in part	25	63	68	50	36	43	62	53
	Disclosures unsubstantiated	1	9	10	15	5	21	27	23
Disclosure processing times	Within 15 days	731	830	654	733				
	Over 15 days	584	1,117	1,015	1,056				
	Within 45 days <sup>13</sup>					968	1,188	1,042	809
	Over 45 days					656	291	171	117
Percentage of disclosures processed within 15 days		55%	42%	39%	40%				
Percentage of disclosures processed within 45 days						59%	80%	86%	87%
Disclosures processed and closed		1,315	1,947	1,669	1,789	1,624	1,479	1,213	929

## **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 issued over 1,000 advisory opinions, issued 62 warning letters, and obtained four corrective actions and seven disciplinary actions, either by negotiation or MSPB orders.

### **Advisory Opinions**

The Hatch Act Unit (HAU) has the unique responsibility of providing Hatch Act information and advice to the White House; congressional offices; federal employees; some state and local government employees; the public at large; and the news media. HAU advises individuals on whether they are covered by the Hatch Act and whether their political activities are permitted. In FY 2021, OSC responded to 1,043 requests for advisory opinions, including 28 formal written advisory opinions.

### **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:

<sup>13</sup> The FY 2018 National Defense Authorization Act altered disclosure processing time standards from 15 to 45 days. OSC started to use 45 days as a metric beginning in FY 2018.

### MSPB Litigation

- OSC filed a complaint charging a Federal Aviation Administration (FAA) employee with violating the Hatch Act's prohibitions against using one's official authority to affect the result of an election, engaging in political activity while on duty or in the federal workplace, and knowingly soliciting political contributions. OSC alleged that the employee approached subordinate employees while on duty and in the workplace to request that they make financial contributions to a union's political action committee (PAC). The individual knew that the subordinates had previously declined to make contributions to the union's PAC and approached them at work specifically to discuss their reluctance to do so. In a settlement agreement, the employee agreed to accept a 30-day unpaid suspension as disciplinary action for his Hatch Act violations.
- OSC filed a complaint against a U.S. Department of Housing and Urban Development (HUD) regional administrator, charging them with violating the Hatch Act's prohibition against using their official authority or influence to affect an election. OSC alleged that the employee leveraged one of the relationships they had made, in their official capacity, with a New York City Housing Authority (NYCHA) resident to recruit participants to film a video that would air at the Republican National Convention. In the video, the NYCHA residents explained how their standard of living had improved under the Trump administration. The employee left federal service after OSC filed the complaint. In a settlement agreement, the employee admitted that they engaged in conduct that violated the Hatch Act's use of official authority prohibition and agreed to accept a 48-month debarment from federal employment and pay a \$1,000 civil fine.
- OSC filed a complaint charging a U.S. Postal Service (USPS) employee with violating the Hatch Act's prohibitions against using their official authority or influence to affect an election and engaging in political activity while on duty and in the workplace when they intentionally discarded more than 60 pieces of political mail over the course of a single week in August 2020. The case is pending.

### Cases Involving High-Level Presidential Appointees

- OSC investigated allegations that the Secretary of the U.S. Department of Agriculture (USDA) violated the Hatch Act by engaging in political activity in their official capacity and while on official travel. OSC found evidence that the Secretary made comments directed at the electoral success of a presidential candidate during an official USDA event and concluded that they needed to reimburse the Treasury for the costs of that political activity.
- On February 12, 2021, OSC transmitted a report to President Joseph R. Biden finding that a former U.S. Ambassador to the Kingdom of Denmark, violated the Hatch Act on several occasions when she used her official Twitter account to engage in political activity, including by soliciting political contributions.
- OSC investigated allegations that numerous high-level White House and cabinet appointees violated the Hatch Act during the 2020 presidential election. Many of the alleged violations

occurred when officials engaged in political activity during official media appearances, and some occurred during the Republican National Convention. Those cases are still pending.<sup>14</sup>

#### Disciplinary Action Obtained through Settlement Negotiations

- OSC settled a case against a Food and Drug Administration employee who solicited political contributions despite receiving advice from OSC that the Hatch Act prohibited them from engaging in that activity. The employee authorized the creation of a social media page featuring their name and image that was used several times to solicit political contributions, including at least one solicitation that the employee admitted to personally posting. The employee also co-hosted a fundraiser for a candidate for partisan political office and allowed their name to be used in connection with two other political fundraising events, all in violation of the Hatch Act. The employee agreed to a 120-day suspension without pay.
- OSC settled a case against a National Institutes of Health employee who, while at work and despite have significant knowledge of the Hatch Act, made multiple Facebook and Twitter postings over a period of several months that were directed at the success or failure of candidates and political parties. The partisan political social media posts violated the Hatch Act's prohibition against engaging in political activity while in a federal room or building, and the employee agreed to a 30-day suspension without pay as disciplinary action for their violations.
- OSC settled a case against a USDA employee who, while on duty, posted numerous partisan political messages to their personal Facebook account expressing opposition towards presidential candidates and a political party. The employee had knowledge of the Hatch Act and knew their conduct violated the law. They had also previously been disciplined twice for posting on social media while on duty. In a settlement agreement, the employee agreed to serve a 30-day unpaid suspension.

**Table 6**, below, contains FY 2021 summary data (with comparative data for the seven previous fiscal years) on OSC's Hatch Act enforcement activities.

<b>TABLE 6 – Summary of Hatch Act Complaint and Advisory Opinion Activity</b>								
	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Formal written advisory opinion requests received</b>	64	64	45	26	52	46	60	23
<b>Formal written advisory opinions issued</b>	60	60	43	24	46	52	56	28
<b>Total advisory opinions issued<sup>15</sup></b>	1,382	1,023	1,641	1,325	1,155	1,111	1,461	1,043

<sup>14</sup> The Annual Report is a point-in-time document. These cases were still pending at the end of FY 2021. OSC completed its investigations of these cases in FY 2022, found that at least thirteen senior administration officials violated the Hatch Act during the 2020 presidential election cycle, and issued a public report documenting its findings.

<sup>15</sup> All oral, e-mail, and written advisory opinions issued by OSC.

<b>New complaints received<sup>16</sup></b>		151	106	197	253	263	281	440	289
<b>Complaints processed and closed</b>		182	131	98	234	286	245	280	375
<b>Warning letters issued</b>		44	28	21	37	49	49	34	62
<b>Corrective actions taken by cure letter recipients</b>	<b>Withdrawal from partisan races</b>	7	8	4	6	5	4	2	4
	<b>Resignation from covered employment</b>	0	3	1	2	2	2	0	0
	<b>Other</b>	1	0	5	2	3	5	10	0
	<b>Total</b>	8	11	10	10	10	11	12	4
<b>Disciplinary action complaints filed with MSPB</b>		1	2	3	0	2	0	4	3
<b>Disciplinary actions obtained (by negotiation or ordered by MSPB)</b>		15	9	5	4	6	5	8	7
<b>Complaints pending at end of fiscal year</b>		65	40	139	156	133	168	323	236

## **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 U.S. Department of Labor (DOL), which investigates these cases. OSC received 19 new cases in FY 2021. Also, one case involving litigation was pending at the end of the fiscal year.

### **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:

- An Air Traffic Controller (ATC) trainee left his position within a federal civilian agency for long-term active duty in the U.S. Navy in 2010 after giving proper notice to his agency. When he notified his former manager that he wished to return to the agency after concluding his Navy service in early 2015, the manager told him she could not assist him despite his entitlement to prompt reemployment under USERRA. The agency's Human Resources Office then erroneously told him he would have to apply for open positions listed on the "USAJOBS" website. After submitting multiple applications, he eventually received a tentative job offer as an ATC in early 2016, a year after he first requested reemployment. However, before he onboarded into his new position, the agency medically disqualified him to perform ATC duties based on information in his Naval medical records. He appealed the disqualification but had to work in part-time and temporary jobs to pay his bills while his

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<sup>16</sup> Includes cases that were reopened.

appeal was pending. After OSC received his USERRA complaint and intervened on his behalf, his agency expedited the appeals process, which was decided in his favor, and restored him to duty as an ATC, four years after his original request. OSC and the agency are currently negotiating compensation for lost wages and benefits from 2015-2019.

- A Security Guard at a U.S. Army Garrison in New York was not given proper credit toward his seniority due to his absence while performing service in the Marine Corps Reserve. As a result, his within-grade salary increase was delayed several months, leading to a loss of pay. At OSC's request, the Army agreed to adjust his seniority, make his pay increase retroactive, and award him all corresponding back pay.
- A Supervisory Information Technology Specialist with the U.S. Navy returned from duty in the Navy Reserve to find that he was re-employed at a lower-status job than the one he had prior to his departure, which was violation of USERRA. Namely, the employee went from overseeing over 100 employees to five. After several disputed workplace incidents, the Navy subsequently suspended his access to classified information and placed him on indefinite suspension without pay. Lacking income, he was forced to seek additional employment over the next several months. He also appealed his suspension, and the appeal was ultimately decided in his favor after more than two years. Not wishing to return to civilian employment with the Navy, he agreed to a settlement whereby he received several months' worth of back pay and paid leave in exchange for his resignation.
- A civilian contractor supporting the U.S. Department of Defense (DOD) left in May 2018 to perform Reserve duty. When he attempted to return to work in July 2018 after his service, DOD prevented him from doing so, asserting that he was no longer eligible for the position. While he eventually found another job, he was unemployed for several months. At OSC's request, DOD agreed to compensate the Reservist for his lost wages while he was unemployed.

In addition to resolving individual USERRA cases, OSC also provides outreach and technical assistance to help federal agencies better comply with USERRA, often in conjunction with DOL. OSC also maintains telephonic and email hotlines to answer USERRA questions from service members and employers nationwide. Lastly, OSC reports its compliance with timeliness requirements for processing USERRA cases to Congress, DOL, and the Departments of Defense and Justice on a quarterly basis.

**Table 7**, below, contains FY 2021 summary data with comparative data and disposition of USERRA referral cases.

**TABLE 7 – Summary of USERRA Referral and Litigation Activity<sup>17</sup>**

	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Pending referrals carried over from prior fiscal year</b>	6	7	4	5	3	6	5	3
<b>New referrals received from VETS during fiscal year</b>	14	18	16	17	25	21	24	19
<b>Referrals closed</b>	13	21	15	19	22	22	26	17
<b>Referrals closed with corrective action</b>	2	2	0	3	2	2	3	0
<b>Referrals closed with no corrective action</b>	11	19	15	16	20	20	23	17
<b>Referrals pending at end of fiscal year</b>	7	4	5	3	6	5	3	5
<b>Litigation cases carried over from prior fiscal year</b>	0	0	0	0	0	1	1	1
<b>Litigation cases closed</b>	0	0	0	0	0	0	0	0
<b>Litigation closed with corrective action</b>	0	0	0	0	0	0	0	0
<b>Litigation closed with no corrective action</b>	0	0	0	0	0	0	0	0
<b>Litigation pending at end of fiscal year</b>	0	0	0	0	1	1	1	1

## **PART 7 – DIVERSITY, OUTREACH, & TRAINING**

### **Overview**

OSC’s outreach and education program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c) and separately provides training to federal entities and stakeholders in each of the areas within OSC’s jurisdiction: PPPs under the Civil Service Reform Act, the Hatch Act, whistleblower disclosures, and USERRA. OSC designed and created a five-step educational program, the 2302(c) Certification Program, in FY 2002. This program gives guidance to agencies and provides easy-to-use methods and training resources to assist agencies in fulfilling their statutory obligation, including an online training quiz. The 2302(c) Certification Program was reinvigorated in 2014 primarily based on the new obligation that required all federal agencies to develop a plan for completing OSC’s 2302(c) Certification Program.

One of the primary goals of OSC’s 2302(c) Certification Program is to ensure that federal agencies inform their workforces, in consultation with OSC, about the rights and remedies available to them under the whistleblower protection and PPP provisions of the Civil Service Reform Act. Another primary goal of the program is training supervisors to prevent violations of the statutes. Agencies that complete the program receive a certificate of compliance from OSC. As of the end of FY 2021, 100 agencies and agency components are either certified or registered for certification. As noted above, OSC also conducts formal and informal training/outreach

<sup>17</sup> This table has been reorganized with some categories and figures changed from prior reports to correct discrepancies and more clearly present relevant information.

presentations to educate the federal workforce in each of the areas within OSC's jurisdiction, as well as train supervisors on their obligations under the relevant statutes. OSC conducted **207** training presentations in FY 2020, followed by **178** presentations in FY 2021.

OSC significantly transformed its training procedures in FY 2020 in response to the COVID-19 pandemic. These changes allowed for trainings to be conducted in a virtual environment. As a result, OSC was able to maintain a rigorous training schedule in FY 2021 by providing nearly 100 percent of its trainings in a virtual environment once again. In fact, by offering mostly virtual trainings, OSC exceeded its targeted level of training for FY 2021.

In late 2017, two statutes were signed into law that highlighted the importance of the Certification Program: the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 and OSC's Reauthorization Act, part of the National Defense Authorization Act of Fiscal Year 2018. These statutes, in part, imposed new education requirements on agencies. OSC drafted new information sheets and posters and continues to answer questions and provide guidance to the federal sector in order to assist agencies with meeting the new requirements.

Finally, OSC has continued its policy of issuing press releases when it files a significant litigation petition, achieves significant corrective or disciplinary action through settlement, or publicly issues a PPP report. Many of these cases generate considerable press coverage, which contributes to federal employees' and managers' awareness of the prohibitions under, for instance, the Hatch Act or whistleblower protection laws. In addition, both training and press coverage serve to educate federal employees about their ability to make disclosures, which can save lives and billions of taxpayer dollars as well as hold managers accountable for wrongdoing.

OSC's Strategic Goal 1 under its 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. The Strategic Plan, and the goal tables that were developed to track agency performance against the Strategic Plan can be found on OSC's website (<https://osc.gov/Reports>).

## **Annual Survey Program**

Each year as per our statutory authorization requirement, OSC surveys people who have contacted the agency for assistance during the previous fiscal year.

OSC updated its statutory survey in FY 2020 based on lessons learned from the agency's FY 2019 pilot project survey. OSC distributed the updated survey by email to target populations of individuals who had filed complaints with, or requested advisory opinions from, OSC during FY 2021.

The results of this survey are in Appendix 2.



## **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](mailto: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-14, which is available online (<https://osc.gov/Documents/Resources/Forms/OSC%20Form-14.pdf>) and can be filled out online, printed, and mailed or faxed to the address above.<sup>18</sup>

### *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-14 can be used to file a disclosure with OSC. The form is available online (<https://osc.gov/Documents/Resources/Forms/OSC%20Form-14.pdf>) 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](mailto:hatchact@osc.gov)

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<sup>18</sup> OSC suspended the acceptance of paper Form 14 documents temporarily during the COVID-19 pandemic, due to a majority of the agency's employees teleworking. While this suspension is still currently in place, OSC expects to accept paper forms again as employees return to the office. In place of accepting paper forms, OSC allows complainants to file Form 14 via email, by submitting completed forms to [info@osc.gov](mailto:info@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-14. The form is available online (<https://osc.gov/Documents/Resources/Forms/OSC%20Form-14.pdf>) 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](mailto:userra@osc.gov)

### *Diversity, Outreach and 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](mailto: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.*

## **Appendix 1**

# **2021 OSC FEVS Core Survey Results**

OSC's reauthorization in the 2018 National Defense Authorization Act required the agency to publish the results of its Federal Employee Viewpoint Survey (FEVS) in the Annual Report.

OSC employees reported very high job satisfaction on the 2021 FEVS Core Survey, despite the continued challenges brought about by the pandemic. On questions that allowed for a positive or negative response, OSC employees replied with an average positive response rate of 86.9 percent. This high positive response rate is nearly the same as the 87.0 percent average positive response rate on the 2020 survey. OSC will continue to assess FEVS scores in future years to ensure the continuation of very high levels of employee job satisfaction.

Question 1; N=84						
I am given a real opportunity to improve my skills in my organization.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
82.9%	46.4%	36.5%	6.1%	5.7%	5.2%	10.9%

Note- "N" is the number of respondents to the question

Question 2; N=83						
I feel encouraged to come up with new and better ways of doing things.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
83.0%	41.4%	41.7%	9.3%	6.2%	1.5%	7.7%

Question 3; N=85						
My work gives me a feeling of personal accomplishment.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
90.3%	43.3%	47.0%	1.9%	3.9%	3.9%	7.7%

Question 4; N=85						
I know what is expected of me on the job.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
94.8%	60.7%	34.2%	3.6%	0.0%	1.6%	1.6%

Question 5; N=86						
My workload is reasonable.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
80.4%	39.1%	41.4%	13.9%	4.7%	0.9%	5.7%

Question 6; N=84						
My talents are used well in the workplace.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
78.2%	28.5%	49.7%	12.2%	5.0%	4.6%	9.6%

Question 7; N=85						
I know how my work relates to the agency's goals.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
97.8%	70.7%	27.1%	2.2%	0.0%	0.0%	0.0%

Question 8; N=84						
I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
76.8%	44.4%	32.3%	16.7%	1.0%	5.6%	6.6%

Question 9; N=86						
The people I work with cooperate to get the job done.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
94.6%	68.0%	26.6%	1.0%	2.9%	1.5%	4.4%

Question 10; N=59						
In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
69.2%	41.2%	28.0%	18.4%	6.8%	5.6%	12.4%

Question 11; N=53				
In my work unit poor performers usually:				
Remain In Work Unit And Improve Over Time	Remain In Work Unit And Continue To Underperform	Leave Work Unit - Removed or Transferred	Leave Work Unit - Quit	No Poor Performers In Work Unit
21.8%	13.8%	9.9%	1.5%	53.0%

Question 12; N=72						
In my work unit, differences in performance are recognized in a meaningful way.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
65.2%	32.1%	33.1%	25.4%	5.3%	4.2%	9.4%

Question 13; N=86						
My work unit has the job-relevant knowledge and skills necessary to accomplish organizational goals.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
97.5%	72.1%	25.5%	2.5%	0.0%	0.0%	0.0%

Question 14; N=81						
Employees in my work unit meet the needs of our customers.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
97.3%	53.5%	43.8%	2.7%	0.0%	0.0%	0.0%

Question 15; N=85						
Employees in my work unit contribute positively to my agency's performance.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
95.9%	74.5%	21.4%	4.1%	0.0%	0.0%	0.0%

Question 16; N=84						
Employees in my work unit produce high-quality work.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
97.4 %	75.2%	22.1%	2.6%	0.0%	0.0%	0.0%

Question 17; N=83						
Employees in my work unit adapt to changing priorities.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
94.2%	74.5%	19.7%	5.8%	0.0%	0.0%	0.0%

Question 18; N=85						
Employees in my work unit successfully collaborate.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
90.1%	72.8%	17.3%	8.8%	1.0%	0.0%	1.0%



Question 19; N=85						
Employees in my work unit achieve our goals						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
97.4%	68.5%	28.9%	2.6%	0.0%	0.0%	0.0%

Question 20; N=87						
Employees are recognized for providing high quality products and services.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
84.0%	51.2%	32.8%	7.7%	6.2%	2.0%	8.2%

Question 21; N=86						
Employees are protected from health and safety hazards on the job.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
88.5%	70.9%	17.7%	3.0%	5.6%	2.9%	8.5%

Question 22; N=87						
My agency is successful at accomplishing its mission.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
95.5%	63.9%	31.5%	4.5%	0.0%	0.0%	0.0%

Question 23; N=88						
I recommend my organization as a good place to work.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
86.8%	58.0%	28.7%	2.9%	6.8%	3.5%	10.3%

Question 24; N=82						
I believe the results of this survey will be used to make my agency a better place to work.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
75.6%	41.9%	33.7%	13.4%	6.3%	4.8%	11.1%

Question 25; N=86						
My supervisor supports my need to balance work and other life issues.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
96.7%	76.6%	20.1%	1.8%	0.0%	1.5%	1.5%

Question 26; N=84						
My supervisor is committed to a workforce representative of all segments of society.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
94.3%	72.4%	21.9%	2.6%	1.6%	1.5%	3.1%

Question 27; N=86						
Supervisors in my work unit support employee development.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
85.2%	69.2%	16.0%	11.1%	2.2%	1.5%	3.7%

Question 28; N=86						
My supervisor listens to what I have to say.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
93.7%%	74.1%	19.6%	3.9%	2.4%	0.0	2.4%

Question 29; N=86						
My supervisor treats me with respect.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
93.2%	75.1%	18.1%	3.3%	2.0%	1.5%	3.4%

Question 30; N=86						
I have trust and confidence in my supervisor.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
86.3%	70.3%	16.0%	8.3%	2.4%	3.0%	5.4%

Question 31; N=86						
Overall, how good a job do you feel is being done by your immediate supervisor?						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
90.8%	69.8%	21.0%	6.3%	2.9%	0.0%	2.9%

Question 32; N=87						
In my organization, senior leaders generate high levels of motivation and commitment in the workforce.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
77.9%	43.4%	34.5%	12.6%	2.5%	7.0%	9.5%

Question 33; N=86						
My organization's senior leaders maintain high standards of honesty and integrity.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
86.3%	51.5%	34.8%	3.5%	3.6%	6.6%	10.1%

Question 34; N=87						
Managers communicate the goals of the organization.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
87.7%	47.1%	40.6%	7.8%	0.0%	4.5%	4.5%

Question 35; N=87						
Managers promote communication among different work units (for example, about projects, goals, needed resources).						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
75.2%	36.9%	38.3%	13.8%	5.0%	6.1%	11.1%

Question 36; N=80						
Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
88.1%	60.7%	27.4%	7.1%	4.7%	0.0%	4.7%

Question 37; N=88						
I have a high level of respect for my organization's senior leaders.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
77.7%	49.6%	28.1%	13.9%	3.9%	4.5%	8.4%

Question 38; N=87						
Senior leaders demonstrate support for Work-Life programs.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
88.3%	58.3%	30.0%	6.8%	1.4%	3.4%	4.9%

Question 39; N=88						
How satisfied are you with your involvement in decisions that affect your work?						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
75.8%	30.9%	44.9%	16.3%	5.9%	2.0%	7.9%

Question 40; N=88						
How satisfied are you with the information you receive from management on what's going on in your organization?						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
82.4%	37.8%	44.6%	10.6%	3.5%	3.5%	7.0%

Question 41; N=88						
How satisfied are you with the recognition you receive for doing a good job?						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
82.5%	42.1%	40.4%	9.2%	6.4%	2.0%	8.4%

Question 42; N=88						
Considering everything, how satisfied are you with your job?						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
83.3%	47.2%	36.1%	6.4%	8.2%	2.0%	10.2%



Question 43; N=87						
Considering everything, how satisfied are you with your pay?						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
66.1%	33.1%	33.0%	16.0%	13.9%	4.1%	18.0%

Question 44; N=88						
Considering everything, how satisfied are you with your organization?						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
84.0%	47.3%	36.7%	7.6%	6.4%	2.0%	8.4%

Question 45; N=88					
Since the last OPM FEVS (September and October 2020), on average what percentage of your work time have you been physically present at your agency worksite?					
100% of my work time	At least 75% but less than 100%	At least 50% but less than 75%	At least 25% but less than 50%	Less than 25%	I have not been physically present at my agency worksite during the pandemic
5.7%	2.9%	1.5%	1.1%	35.3%	53.4%

Question 46; N= 88	
Please select the response that best describes your current teleworking schedule.	
I telework everyday	81.4%
I telework 3 or 4 days per week	9.9%
I telework 1 or 2 days per week	7.1%
I telework, but only about 1 or 2 days per month	0.0%

I telework very infrequently, on an unscheduled or short-term basis	0.0%
I do not telework because I have to be physically present on the job	0.0%
I do not telework because of technical issues	0.0%
I do not telework because I did not receive approval to do so, even though I have the kind of job where I can telework	1.5%
I do not telework because I choose not to telework	0.0%

Question 47; N=88			
How has your organization supported you during the COVID-19 pandemic?			
Support Area			
Expanded telework	88.3%	3.9%	7.8%
Expanded work schedule flexibilities	85.3%	4.5%	10.2%
Expanded leave policies	62.4%	7.8%	29.8%
Clear guidance on COVID-19 vaccination protocols	86.7%	5.1%	8.2%
Appropriate physical health resources at my agency worksite	35%	5.9%	59.1%
Timely communication about possible COVID-19 exposure at my agency worksite	66.7%	8.4%	24.9%
Social distancing in my agency worksite	54.5%	8.4%	37.1%
Encouraged use of personal protective equipment or other safety equipment in my agency worksite	59.7%	5.9%	34.4%
Cleaning and sanitizing performed regularly in my agency worksite to reduce risk of COVID-19 illness	52.4%	4.9%	42.7%
A well-ventilated worksite	43.9%	15.0%	41.1%
Clear guidance on quarantine requirements after	54.2%	6.0%	39.8%

any COVID-19 exposure			
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Question 48; N=87						
My organization's senior leaders demonstrate commitment to employee health and safety.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
89.0%	64.9%	24.1%	4.0%	2.5%	4.4%	6.9%

Question 49; N=87						
My organization's senior leaders support policies and procedures to protect employee health and safety.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
90.3%	67.3%	23.0%	3.4%	1.9%	4.4%	6.3%

Question 50; N=87						
My organization's senior leaders provide effective communications about what to expect with the return to the physical worksite.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
87.5%	64.1%	23.4%	7.4%	1.1%	4.0%	5.1%

Question 51; N=83						
My supervisor shows concern for my health and safety.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
96.0%	84.1%	11.9%	1.5%	0.9%	1.5%	2.4%

Question 52; N=84						
My supervisor supports my efforts to stay healthy and safe while working.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
94.5%	81.2%	13.3%	3.1%	0.9%	1.5%	2.4%

Question 53; N=83						
My supervisor creates an environment where I can voice my concerns about staying healthy and safe.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
90.1%	79.4%	10.7%	6.5%	0.9%	2.5%	3.4%

Question 54; N=87		
Does the type of work you do require you to be physically present at a worksite?		
Yes	No	Other
0.0%	95.5%	4.5%

Question 55; N=87						
My agency's leadership updates employees about return to the worksite planning.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
98.0%	70.4%	27.6%	2.0%	0.0%	0.0%	0.0%

Question 56; N=87						
In plans to return more employees to the worksite, my organization has made employee safety a top priority.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
86.0%	66.8%	19.2%	5.0%	5.1%	4.0%	9.1%

Question 57; N=87						
Based on my organization's handling of the COVID-19 pandemic, I believe my organization will respond effectively to future emergencies.						
Percent Positive %	Strongly Agree/ Very Good/ Very Satisfied %	Agree/ Good/ Satisfied %	Neither Agree nor Disagree/ Fair/ Neither Satisfied nor Dissatisfied %	Disagree/ Poor/ Dissatisfied %	Strongly Disagree/ Very Poor/ Very Dissatisfied %	Percent Negative %
88.0%	62.5%	25.5%	6.1%	1.5%	4.4%	5.9%

## Appendix 2: Results of OSC's FY2021 Annual Complainant Survey

The following pages contain the results from OSC's FY 2021 Annual Survey of case filers. The results are broken down by responses per unit, and are listed in the following order: PPP, Whistleblower Disclosure, Hatch Act, and USERRA.

### 2021 ANNUAL SURVEY QUESTIONS: PPP/RDU

345  
Responses

06:49  
Average time to complete

Closed  
Status

1. Did the agency against which you filed your OSC complaint inform you about your rights and responsibilities regarding prohibited personnel practices?

Yes.	105
No.	191
I am not a federal employee.	7
I do not recall.	41



2. What was the primary issue involved in your OSC complaint? (Check all that apply)

Retaliation for whistleblowing ...	231
Illegal hiring or selection pract...	105
Discrimination	124
Other	105

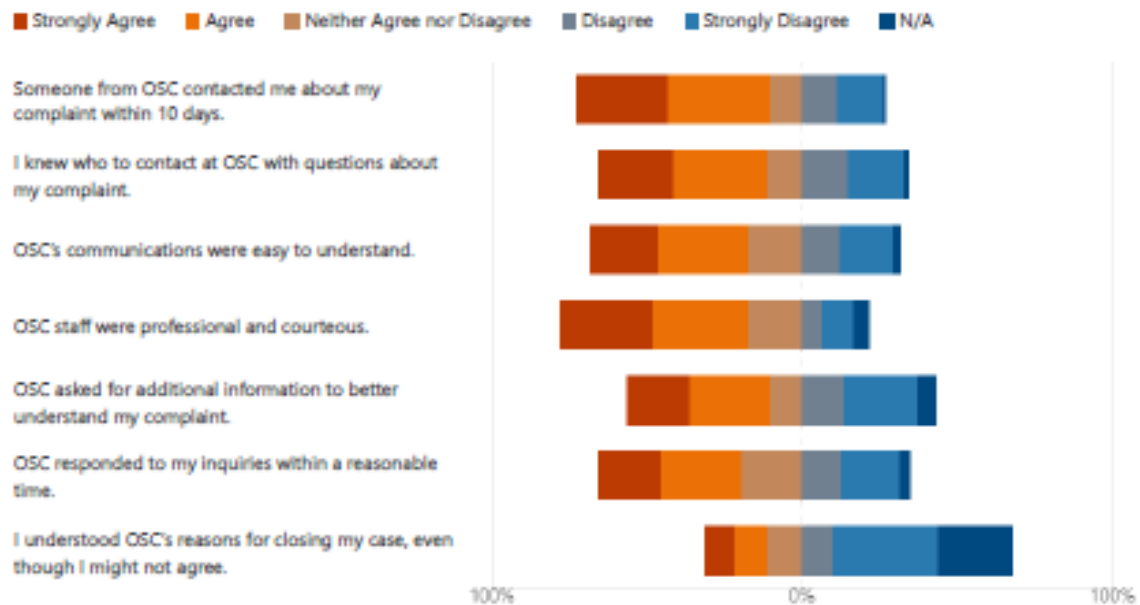


3. Please identify the stage of review or investigation of your OSC complaint.

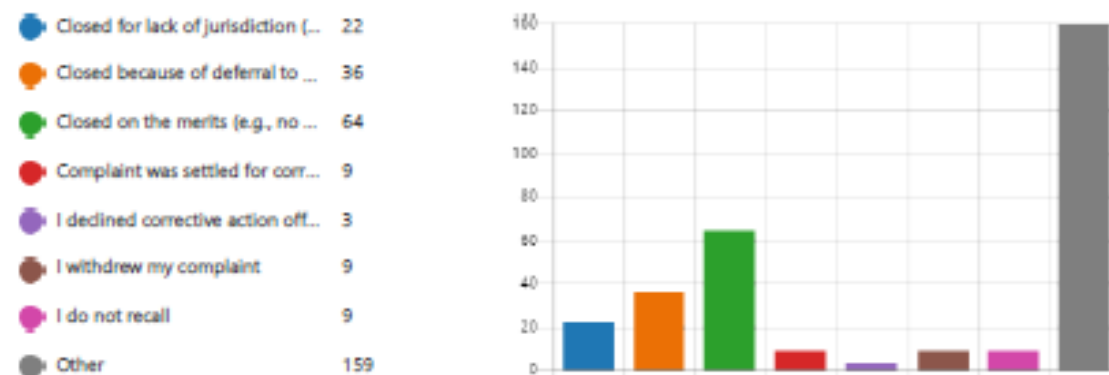
OSC received my complaint	71
OSC is working on my compla...	59
OSC is trying to resolve or me...	9
OSC anticipates closing or has...	203



4. Please indicate the level of agreement with each of the following statements about your experience with OSC.



5. How was your OSC complaint resolved?

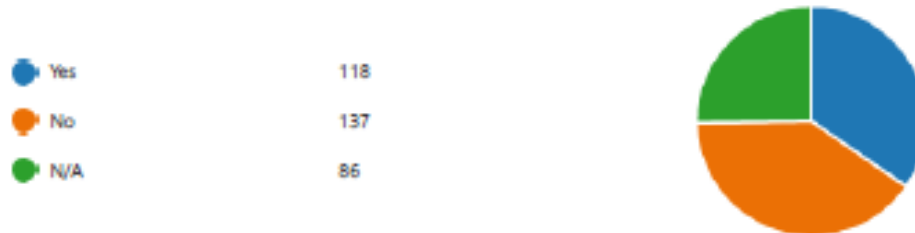


6. If other please write below

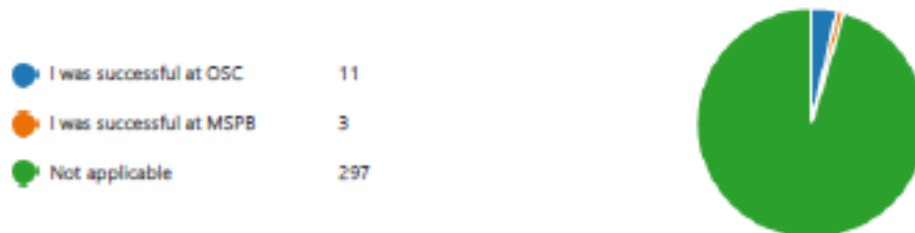
241  
Responses

Latest Responses  
*"Still pending resolution."*  
*"As far as I am aware, the complaint is open and James Booker is the ..."*  
*"Still being investigated"*

7. After filing your complaint with OSC, did you (or do you intend to) file a complaint with the Merit Systems Protection Board (MSPB) regarding the same matter?



8. If your OSC complaint is closed, please check all that apply.





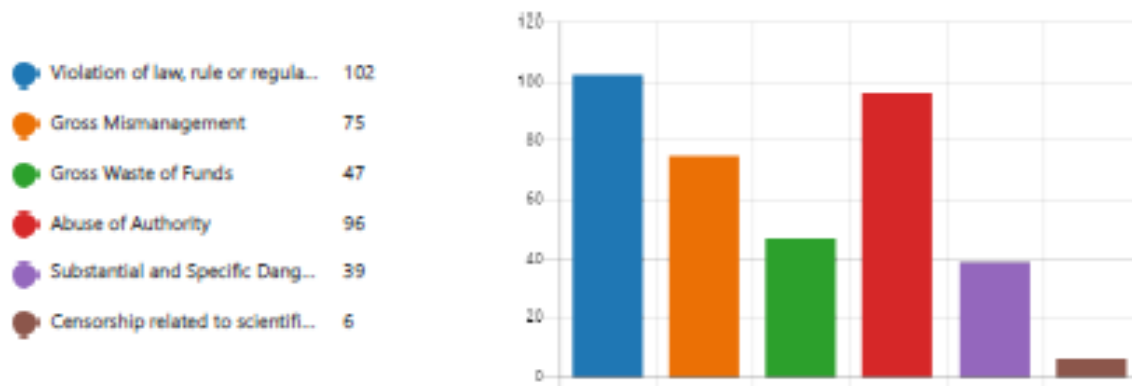
## 2021 ANNUAL SURVEY QUESTIONS: Disclosure Unit

137  
Responses

15:04  
Average time to complete

Closed  
Status

1. Which of the following allegations did you allege in your disclosure? (Select all that apply).



2. How did an OSC staff member first contact you in order to substantively discuss your claims?



3. If you contacted OSC during the pendency of your disclosure, approximately how many days passed before an OSC staff member responded?

Same day	8
Next day	11
1-3 days	47
Over 3 days	49
I did not receive a response	15



4. When speaking with OSC staff member(s) about your disclosure, did you understand the information provided to you?

Yes	91
No	17
I understood some, but not all...	26



5. Please Explain

56  
Responses

Latest Responses  
"N/A"

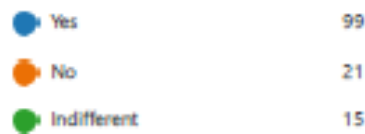
*\*The written response I received back didn't make sense, because majo...*

6. During the pendency of your matter could you (or can you) reach the OSC staff member assigned to your disclosure by email or telephone?

Yes	103
No	25
I do not recall	9



7. Did you understand the written communications (i.e., e-mail, letter) you received from OSC?



8. When you received a letter regarding the determination on your disclosure, did you take the opportunity to ask OSC staff member(s) questions about it?



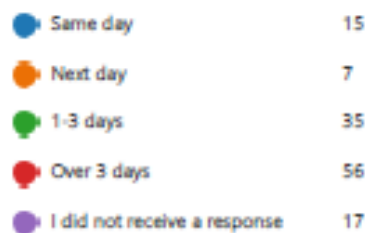
9. Why or why not?

107  
Responses

Latest Responses

"The disclosure letter stated that someone would contact me "  
 "If talking to the representative on the phone the first time went so ba...  
 "Determination has not yet been reached. "N/A" is a better answer but—

10. Approximately how many days passed before the OSC staff member responded to your inquiry about the determination in your disclosure?



11. Please rate your overall experience with OSC. 1 is the lowest score and 5 is the highest score.

137  
Responses

2.66  
Average Number

12. Please let us know how well we did or how we can improve.

108

Responses

Latest Responses

*"If I ever reach out again, it will all be in email form. Basically you've t...*

*"My interactions have been professional and thorough. I have no sugg...*

## 2021 ANNUAL SURVEY QUESTIONS: Hatch Act

29

Responses

09:01

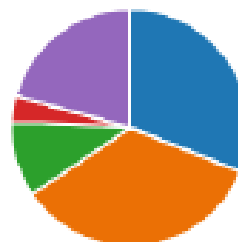
Average time to complete

Closed

Status

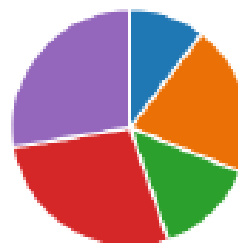
1. OSC acknowledged receipt of my Hatch Act advisory request or complaint in a timely fashion.

Strongly Agree	9
Agree	10
Neither Agree nor Disagree	3
Disagree	1
Strongly Disagree	6



2. While my advisory request or complaint was pending, the assigned OSC employee sufficiently communicated with me about my matter.

Strongly Agree	3
Agree	6
Neither Agree nor Disagree	4
Disagree	8
Strongly Disagree	8








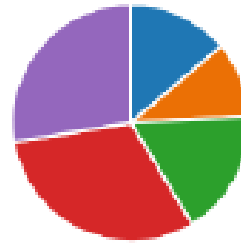
3. The communications I received from OSC about my advisory request or complaint were clear and easy to understand.

Strongly Agree	5
Agree	10
Neither Agree nor Disagree	5
Disagree	2
Strongly Disagree	7








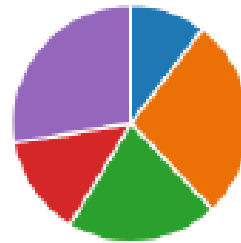
4. I received my requested Hatch Act advisory opinion or resolution of my complaint in a timely fashion.

 Strongly Agree	4
 Agree	3
 Neither Agree nor Disagree	5
 Disagree	9
 Strongly Disagree	8



5. My experience with OSC's Hatch Act Unit was satisfactory.

 Strongly Agree	3
 Agree	8
 Neither Agree nor Disagree	6
 Disagree	4
 Strongly Disagree	8



## 2021 ANNUAL SURVEY QUESTIONS: USERRA

3  
Responses

01:43  
Average time to complete

Closed  
Status

1. After requesting that DOL-VETS refer your USERRA case to OSC, did you receive an acknowledgment letter or email from OSC confirming it had received your case file?

Yes	3
No	0
I do not recall	0



2. What was (were) the primary issue(s) involved in your USERRA case referred to OSC? (Please check all that apply)

Discrimination	1
Reemployment	3
Retaliation	0
Other	0



3. Please identify the current status of your USERRA case referred to OSC:

OSC is reviewing my case	0
OSC is trying to resolve my ca...	0
OSC has closed my case	3
OSC is representing me befor...	0
I do not know	0

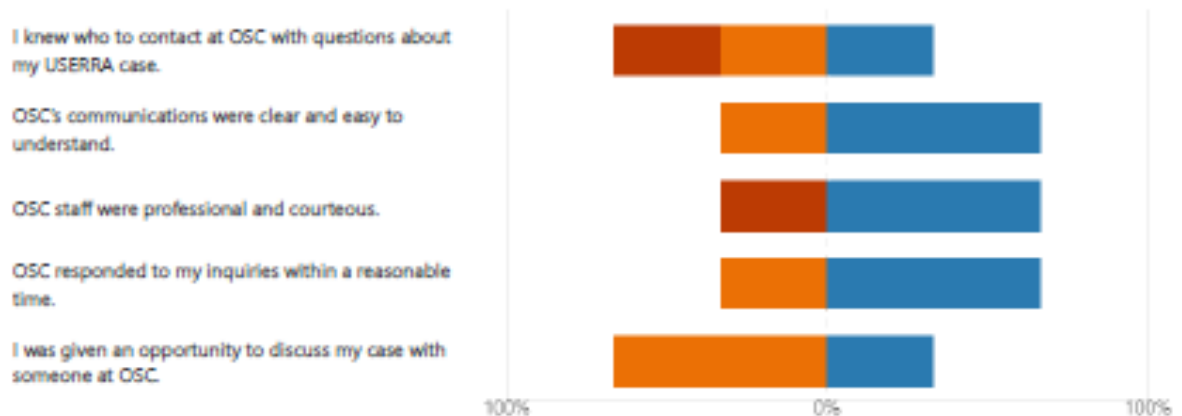


4. Within 60 days of receiving your USERRA case from DOL-VETS, did OSC either: (1) notify you that it was closing your USERRA case, or (2) request an extension of time to further review/resolve your USERRA case?

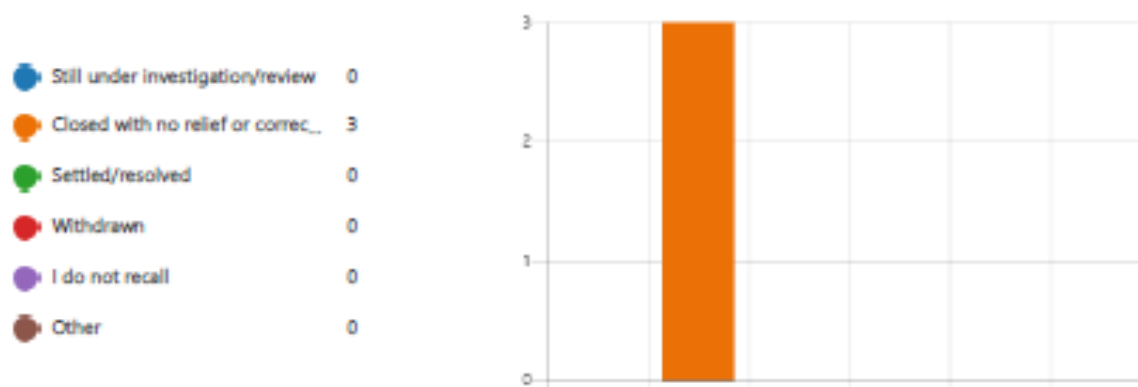


5. What is your level of agreement with each of the following statements about your experience with OSC?

Agree Disagree Neutral N/A



6. Please provide the outcome of your USERRA case referred to OSC:





7. If OSC closed your USERRA case, did you (or do you intend to) file an appeal with the MSPB?



8. If you filed an appeal with the MSPB in your USERRA case, what is the current status?

