

FISCAL YEAR 2021  
CONGRESSIONAL BUDGET JUSTIFICATION  
*—and—*  
PERFORMANCE BUDGET GOALS



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## PART 1 – EXECUTIVE SUMMARY

The Office of Special Counsel (OSC) acts as the premier channel for whistleblowers and federal workers seeking redress for violations of their civil service protections, as well as safeguards the nonpartisan ethos at the core of the federal workforce. OSC's ability to fulfill its responsibilities depends on OSC's employees and the resources provided by Congress. As a small agency, OSC's labor costs represent more than 80 percent of the agency's expenditures. As salaries and benefits continue to increase, including through much-deserved raises, outside of OSC's control, the agency's labor costs have continued to go up. As a result, OSC faces tough decisions each year on how to fund necessary updates to critical Information Technology (IT) infrastructure and enhancing IT security, ensure timely processing of ever-increasing filings from across the federal government, along with all of the other needs associated with maintaining a fully functioning and high-performing agency.

While federal employees continue to seek out OSC for assistance at historic levels, resource limitations have forced OSC to become nimbler and more creative in stretching every appropriated dollar provided to meet the needs of the estimated 2.1 million federal workers. To achieve this new agile structure, OSC has reorganized units, redoubled its focus to better meeting complainant and whistleblower needs, and reevaluated what resources are necessary to serve both whistleblowers and the American taxpayer. Coupled with Congress providing additional resources, OSC has been able to continue to achieve record results across all areas—from reducing agency backlog, to meeting statutory time requirements, to increasing the number of favorable actions for whistleblowers and complainants.

Despite a government shutdown lasting 35 days, in fiscal year (FY) 2019, OSC received 5,486 new matters and resolved more than 6,100 cases, bringing closure to aggrieved federal employees and whistleblowers. In large part through a crucial increase in the number of attorneys and staff at the agency, OSC was able to capitalize on the unusual downtick in filings and closed an unprecedented nearly 700 additional cases from prior years. FY 2019 represented an atypical year for the federal workforce; OSC anticipates that new matters received in FY 2020 will once again reach close to the 6,000 cases seen in recent fiscal years. The anticipated return to the recent trend of 6,000 new filings will mean that OSC will likely need additional staff to continue its outstanding progress.

OSC's reorganization of key units and redoubled focus on meeting whistleblower needs, coupled with an increase in staffing levels, has multiplied the agency's ability to bring closure to whistleblowers and complainants. But closure means more than merely closing the case; it means achieving favorable outcomes—either monetarily or in career status—for those federal workers who seek out OSC's help. In the past year, OSC has achieved a record number of positive outcomes for whistleblowers—329 favorable actions—more than double its historical averages. This is not an anomaly; OSC now routinely receives favorable outcomes for whistleblowers at levels four times those obtained in 2009. More staff means smaller caseloads per OSC attorney, which in turn means each attorney can devote a greater amount of time and attention to meritorious cases, which can require a significant investment of time and resources to achieve favorable outcomes.

Concurrent with OSC's efforts to bring closure to complainants and whistleblowers, OSC has also marshalled its resources to more promptly address reports by whistleblowers of government wrongdoing. OSC's effort has meant that waste, fraud, and abuse are identified quickly, and steps are taken in a timely manner to remedy problems, and, if possible, recover taxpayer resources. For example, in FY 2019, a whistleblower within the U.S. Army Materiel Command reported to OSC that the Army had lost possession of six government-purchased fuel trucks worth \$1.34 million, primarily because of improper contracting procedures. OSC promptly evaluated and referred the allegations to the Army for investigation, and the Army investigation confirmed that a contracting officer's inaction had contributed to the agency's inability to quickly uncover and correct the error. As a result of OSC's work, the Army is now working to recover the more than \$1 million of equipment paid for with taxpayer

dollars. Absent the necessary staff to quickly assess and address whistleblower allegations, OSC will likely be unable to act quickly enough to protect taxpayer resources in such situations in the future.

Increases in staffing costs have continued at levels that outpace OSC's funding. In FY 2020 alone, costs associated with salary and benefits increases rose by \$825,000. By FY 2021, using an estimated 1 percent raise to salary costs, OSC's total salary and benefits costs will have grown by more than \$1.2 million. Coupled with increased costs associated with contracts necessary for OSC's operations, and the fact that OSC's rent costs will increase by approximately \$1.4 million in FY 2021 as a result of the expiration of a rent credit in FY 2020, OSC's total cost increase for FY 2021 is approximately \$2.6 million.

Pursuant to the Office of Management and Budget's Passback authorization, OSC is requesting funding of **\$27,435,000** for FY 2021. The authorized budget request, however, will require OSC to reduce staff and limit other mission critical spending, negatively affecting OSC's ability to serve whistleblowers and carry out enforcement of its core statutory authorities.

## Summary of Request

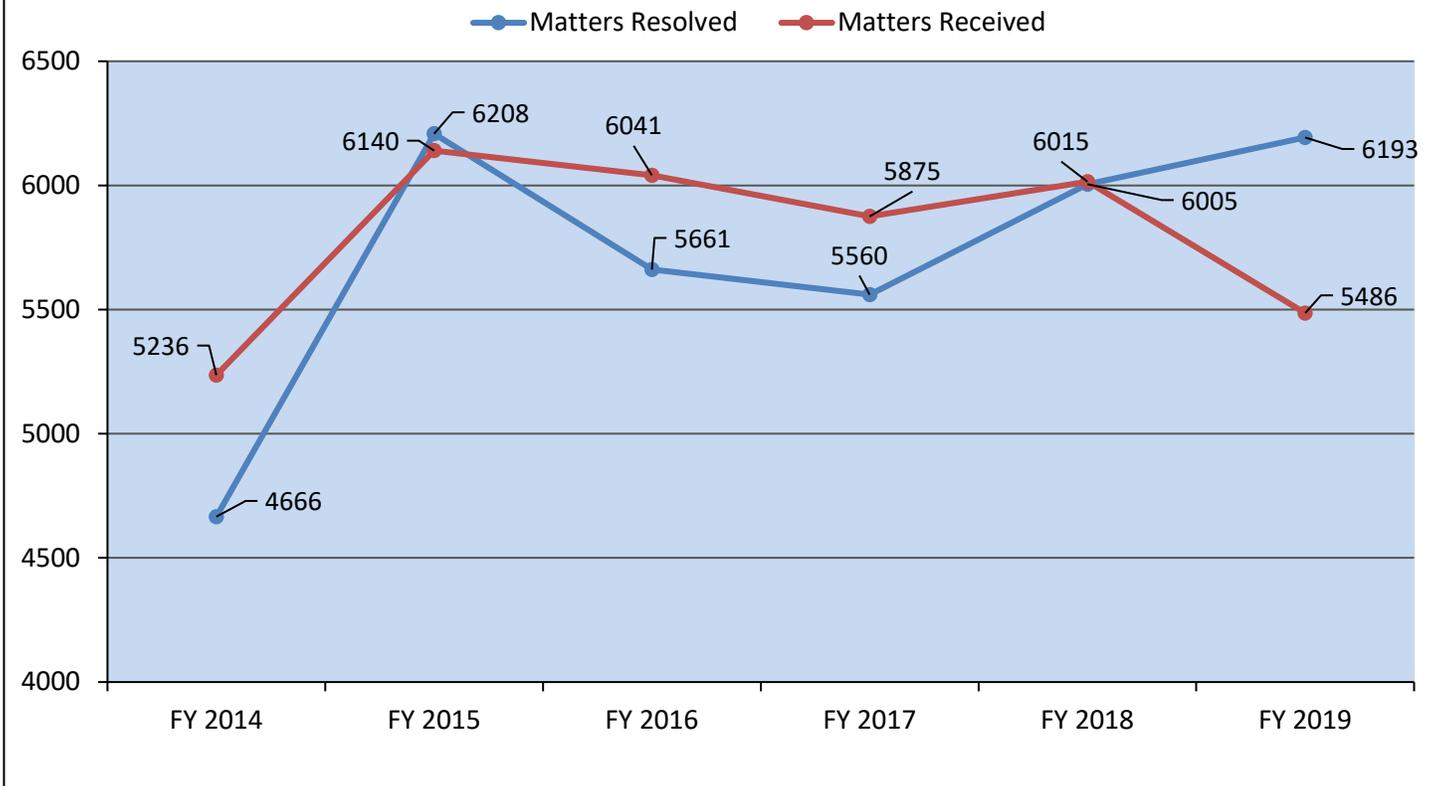
**For FY 2021, OSC's authorized request is \$27,435,000.** This amount is a 0.2 percent decrease from the FY 2020 appropriation of \$27,500,000 contained in the Consolidated Appropriations Act, 2020, P.L. 116-93. The decrease, coupled with rising costs for salaries and benefits outside of OSC's control, will require OSC to reduce its total personnel in FY 2021. Assuming OSC continues to fund non-personnel related costs at existing levels, the \$27,435,000 request will force OSC to reduce its current staffing levels from 141 FTEs in FY 2020 to 126 FTEs in FY 2021, resulting in a net loss of 15 FTEs. At that level, OSC does not believe it would be able to adequately carry out its mission, which will result in an inability to close all newly filed cases and prevent further progress on reducing its backlog. As a result, OSC projects that its backlog, which was reduced by nearly 700 cases in FY 2019, will again grow, potentially canceling out the FY 2019 progress.

OSC anticipates a growth in its case backlog because the reduced staffing levels will leave OSC unable to resolve incoming cases in the statutorily-required timeframes, resulting in cases carrying over to the next fiscal year. Additionally, because of increased workloads and cases being delayed, OSC will likely achieve fewer favorable actions and outcomes in the cases it is able to resolve. As a result, OSC's ability to perform its fundamental mission, and address whistleblower and PPP claims in a timely manner, will be greatly diminished.

OSC is already fully utilizing available resources by working harder, smarter, and more effectively than at any time in its history. However, OSC needs resources to hire additional staff to expand upon its already efficient case processing. As seen below, increases in the number of cases closed have occurred in tandem with increases in OSC funding levels. The correlation shows that OSC is marshaling those additional resources in an efficient manner and utilizing them to achieve greater results for whistleblowers and complainants.

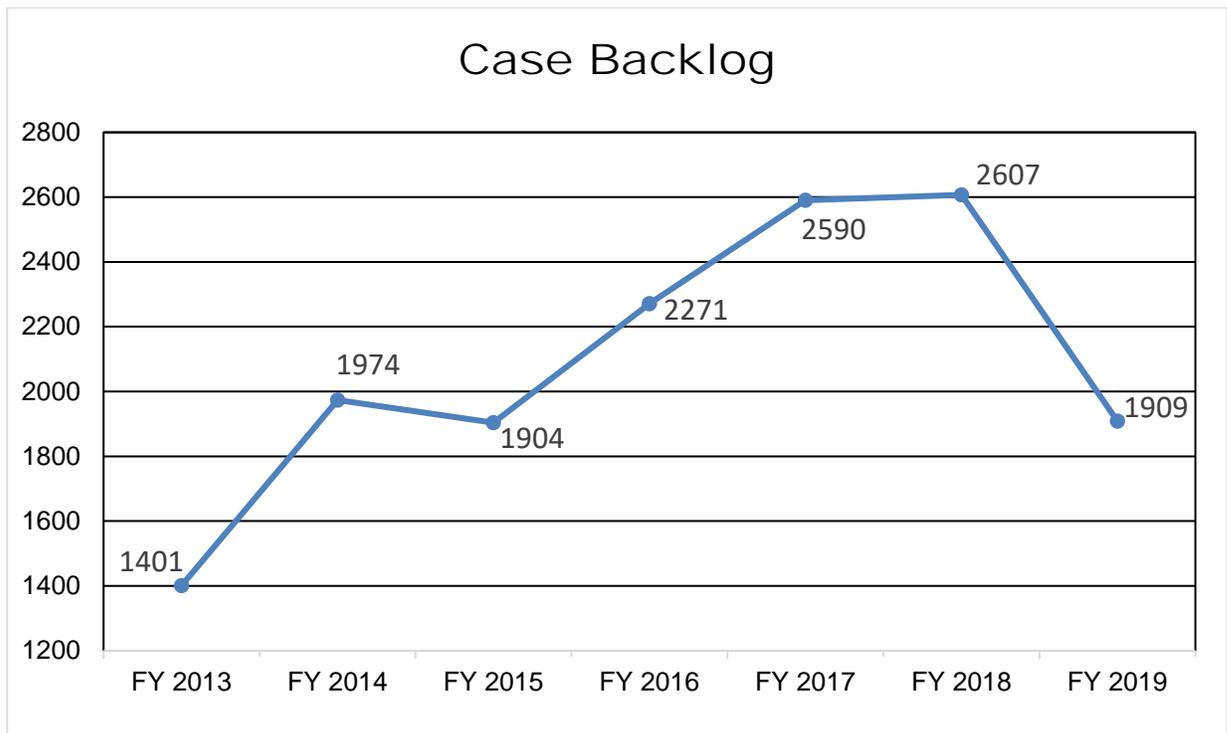
However, OSC has accomplished much more than simply closing cases. For instance, in FY 2019, OSC surpassed its high-water mark in terms of favorable actions obtained in PPP cases, setting an agency record with 329 favorable actions, an increase of over 130 percent from the historical average since FY 2001.

## OSC - Total Matters Resolved vs New Matters



The federal workforce's growing confidence in OSC's ability to obtain corrective action drives demand for OSC's services. Although OSC has received increased resources in previous appropriations packages, the growth in OSC's caseload and increases in personnel costs have far outpaced its budget.

OSC employees are proud of and enthusiastic about their work, but they have been burdened by exceedingly high caseloads. Due to the complex nature of many of OSC's cases, the extremely high caseloads are untenable for the long-term success of the agency, and result in frustration for whistleblowers and other stakeholders alike. This gap between resources and demand, which has resulted in the current backlog (as shown in the table below), must be closed for OSC to successfully fulfill its mission.



OSC’s approved budget request will not allow us to meet the rising demand for the agency’s services among the federal workforce and further reduce our case backlog. The FY 2021 budget request of **\$27,435,000**, includes funding for the salaries and benefits of **126** FTEs, a significant decrease from OSC’s FY 2020 projected staffing level of 141 FTEs. This staffing decrease will be necessary for OSC to operate within its funding level, as the agency is faced with rising salaries and benefits costs, and a return to regular rent costs in FY 2021, due to the expiration of its FY 2020 headquarters rent rebate.

Funding OSC at the authorized level will adversely impact the agency’s ability to fulfill our statutory mission to root out waste, mismanagement, and fraud; to protect veterans and federal employees; to ensure accountability, integrity, and fairness in the federal workplace; and to restore and maintain public confidence in the federal merit system.

# Appropriations Language

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

For necessary expenses to carry out functions of the Office of Special Counsel, including services as authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms in the District of Columbia and elsewhere, and hire of passenger motor vehicles; \$27,435,000.

(Financial Services and General Government Appropriations Act, 2020.)

## About the Office of Special Counsel

OSC is a critical resource for whistleblowers to report evidence of waste, fraud, abuse, law-breaking, or threats to public health or safety, as well as the main avenue to protect federal employees from prohibited personnel practices (PPPs), such as retaliation for whistleblowing. In addition, OSC promotes a fair and unbiased federal government through its enforcement of the Hatch Act of 1939, which prohibits federal employees from engaging in partisan political activity while on duty.

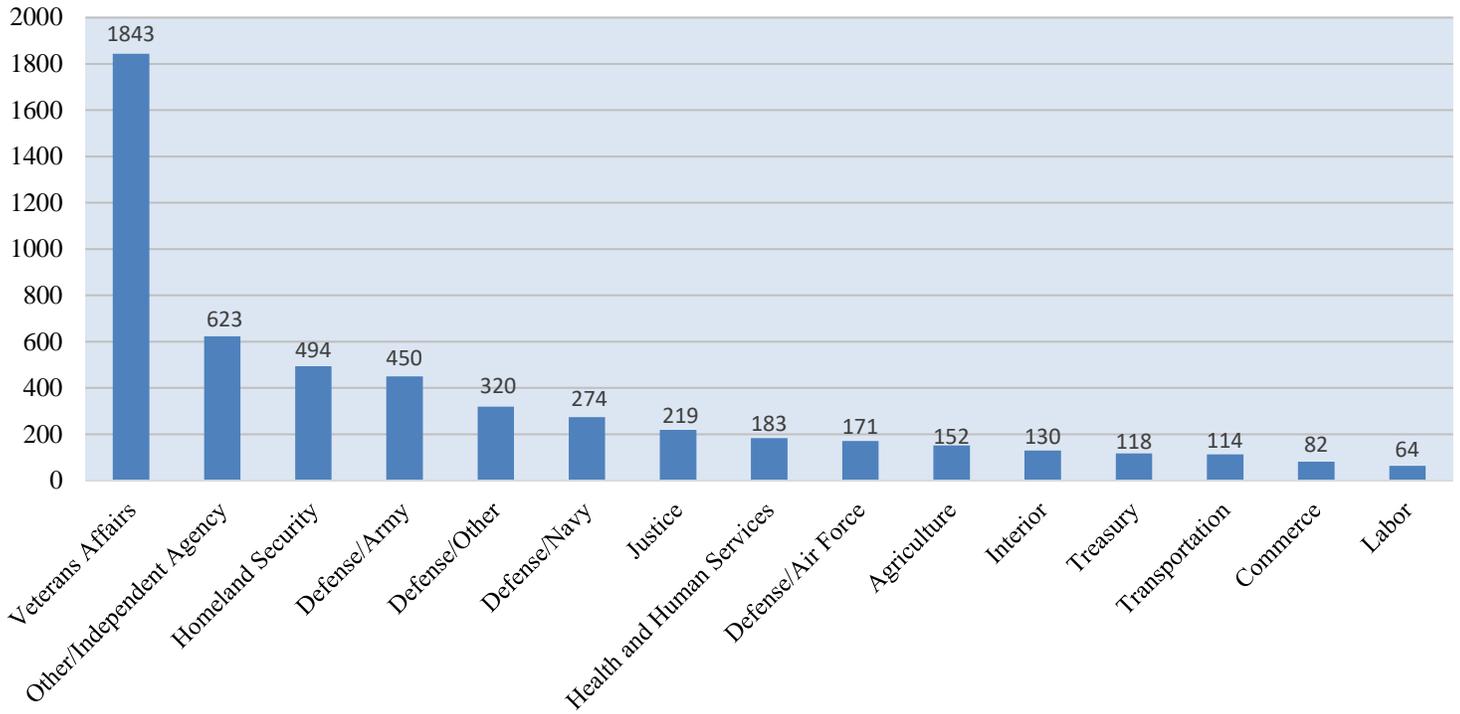
When a federal whistleblower identifies waste, fraud, abuse, or other wrongdoing at a federal agency, OSC makes sure the whistleblower's concerns are heard and, where warranted, investigated fully and addressed. OSC also protects federal employees from prohibited personnel practices, such as retaliation for making disclosures of wrongdoing. By enforcing the Hatch Act, OSC preserves the integrity of the civil service system, ensuring that federal employees are not coerced by their superiors into partisan political activity and that employees do not engage in partisan politics while on duty. OSC also defends returning service members and reservists against employment discrimination by enforcing their rights under the Uniformed Services Employment and Reemployment Rights Act of 1994.

OSC is a critical pillar in the federal government's efforts to ensure that taxpayer dollars are well-managed and government functions are executed in a safe, effective, and efficient manner. By providing a safe channel for whistleblowers and their disclosures, OSC not only remedies situations where wrongdoing occurs, but also helps to prevent wasteful practices and disasters from ever occurring. Investing funds and resources in OSC and its mission not only makes sense from a good government perspective, but also provides taxpayers real returns on their dollars.

## OSC's Docket

OSC is responsible for addressing whistleblowers and PPPs from nearly every sector of the federal government. The chart below depicts the organizations with employees that file the most cases with OSC. We continue to receive far more cases from Department of Veterans Affairs (VA) employees than any other agency, including the Department of Defense (DoD), even though the VA employs roughly half the number of civilian employees as DoD.

**Total Agencies Providing Casework - FY 2019  
(includes all types of OSC cases)<sup>1</sup>**



<sup>1</sup>“Other/Independent Agency” includes the following major agency casework counts for FY 2019: Social Security Administration – 118 cases; General Services Administration – 33 cases; Environmental Protection Agency – 24 cases; Office of Personnel Management – 20 cases.

## Prohibited Personnel Practices

With the passage of the Whistleblower Protection Enhancement Act of 2012 (WPEA) and the corresponding expansion in the number of employees covered due to the closing of loopholes that prevented many claims, the number of complaints in this area continues to rise. In FY 2019, OSC received 3,811 new PPP complaints—approximately 45 percent higher than historical average levels since FY 2001. This figure would likely be even higher, if not for the unprecedented partial government shutdown that occurred in FY 2019. Addressing PPP cases is a key component of OSC’s mission and remains critical to promoting confidence and security among whistleblowers and federal employees.

## Whistleblower Disclosures

OSC is an important pathway for whistleblowers to report instances of waste, fraud, abuse, or other wrongdoing at federal agencies. Whistleblower disclosures are a significant portion of OSC’s caseload, now comprising almost 25 percent of the agency’s new matters. OSC received 1,373 new disclosures in FY 2019, approximately 42 percent higher than the historical average since FY 2001. OSC likely would have received even more disclosures in FY 2019, if not for the unprecedented, partial government shutdown that occurred that fiscal year.

## 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, attorneys investigate PPP complaints, obtain corrective or disciplinary actions, and refer disclosures for investigation. RDU attorneys also refer cases to the ADR Unit.

## Hatch Act Unit

The Hatch Act Unit ensures that government service is not tainted by partisan political influences. Hatch Act complaints typically increase around election cycles.

## USERRA

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) establishes rights and responsibilities for uniformed service members and their employers. A claimant employed by a federal executive agency within OSC’s purview may allege a violation of USERRA by filing a complaint with the Department of Labor (DOL). DOL investigates and attempts to resolve the complaint, but if that is not successful, the claimant may ask DOL to refer the matter to OSC for possible representation before the Merit Systems Protection Board (MSPB). If OSC concludes the claimant is entitled to relief, it may act as the claimant’s attorney and initiate an action at the MSPB.

## Strategic Goals

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

### OSC's FY 2021 Strategic Goals and Costs\* per Goal

1. Protect and promote the integrity and fairness of the federal workplace. \$16,922
2. Ensure government accountability. \$4,915
3. Achieve organizational excellence. \$5,598

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

## Office of Special Counsel's Efficiencies and Successes

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

### Prohibited Personnel Practices

The volume of PPP complaints is substantial and growing: In FY 2019, OSC received 3,811 new PPP complaints—fifth-most in agency history. This level of cases likely would have been much higher, if not for the unprecedented, partial government shutdown that occurred in FY 2019.

OSC plays a unique role in fostering a productive federal workplace by handling allegations of PPPs, such as whistleblower retaliation, nepotism, and violations of merit systems principles. These cases are typically resolved by negotiation, mediation, and settlement rather than by prosecution, thereby ensuring fairness and due process to employees, while preventing paralyzing stalemates and disruptions to the conduct of government business.

For some of these cases, mediation offers a timely and mutually beneficial outcome, and OSC has been very successful at achieving settlements through mediation. During FY 2019, 65 percent of mediations completed by OSC resulted in settlements. Mediation significantly reduces the amount of time and money required to investigate and resolve a case and provides a streamlined settlement option, resulting in a win-win for parties to the dispute.

However, not all meritorious PPP cases can be settled in mediation. Where appropriate, OSC seeks corrective, systemic, and/or disciplinary action through informal resolutions and/or litigation before the MSPB. OSC is achieving an unprecedented number of favorable actions. During FY 2019, OSC obtained a record 329 favorable

actions in its cases. This translates into improved accountability and fairness in government, as well as jobs saved, whistleblowers protected, and rights restored.

Furthermore, OSC negotiated 31 stays with agencies to protect employees from premature or improper personnel actions. OSC also achieved 27 disciplinary actions, upholding accountability and sending a clear message to supervisors that Federal agencies do not tolerate prohibited practices.

### Hatch Act

The number of Hatch Act complaints filed with OSC has significantly decreased since the Hatch Act Modernization Act (HAMA) took effect in December 2012. HAMA has enhanced the efficiency and effectiveness of OSC's enforcement efforts and allowed OSC to better direct its resources toward investigations of federal employees and serious state and local misconduct. In FY 2019, OSC received 281 new Hatch Act complaints and resolved 245 cases. OSC also issued over 1,100 advisory opinions in FY 2019, both formal and informal. The agency also issued 49 warning letters, and 11 corrective actions were taken. OSC obtained 5 disciplinary actions in Hatch Act cases (by negotiation or ordered by MSPB) in FY 2019.

### USERRA

OSC receives referrals of USERRA cases for prosecution from DOL, which investigates these cases. OSC received 21 referrals in FY 2019, and closed 22 cases, two of which involved corrective action.

# Office of Special Counsel's Internal Organization

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

## Immediate Office of Special Counsel (IOSC)

The Special Counsel and his immediate staff are responsible for policy-making and the overall management of OSC, including supervision of each of OSC's program areas. This encompasses management of the agency's congressional liaison and public affairs activities, as well as coordination of its outreach program. The latter includes promoting federal agencies' compliance with the employee information requirement at 5 U.S.C. § 2302(c).

## Office of General Counsel

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

## Case Review Division (CRD)

The Case Review Division, which commenced operations on October 1, 2018, serves as the initial point of intake for all PPP and disclosure allegations. This unit screens all new allegations to ensure that PPPs and disclosures are directed to the appropriate units. CRD also closes out certain categories of PPP allegations under the new authorities OSC received in the Reauthorization Act of 2017: those which are duplicative (5 U.S.C. § 1214(a)(6)(A)(i)(I)), filed with the MSPB (§ 1214(a)(6)(A)(i)(II)), outside of OSC's jurisdiction (§ 1214(a)(6)(A)(ii)), or more than three years old (§ 1214(a)(6)(A)(iii)).

## Investigation and Prosecution Division (IPD)

The Investigation and Prosecution Division is comprised of attorneys and investigators at OSC's headquarters and three field offices. IPD receives PPP allegations from the Case Review Division and determines whether the evidence is sufficient to establish that a violation has occurred. If the evidence is insufficient, the matter is closed. If the evidence is sufficient, IPD decides whether the matter warrants corrective action, disciplinary action, or both. IPD works closely with OSC's Alternative Dispute Resolution 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.

## 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, 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 activity by government employees under the Hatch Act of 1939 and represents OSC in seeking disciplinary actions before the MSPB. In addition, the Hatch Act Unit is responsible for providing advisory opinions on the Hatch Act to federal, state, and local employees, as well as to the public at large.

## USERRA Unit

OSC enforces the Uniformed Services Employment and Reemployment Rights Act of 1994 (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 operational 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

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

## Operations Division

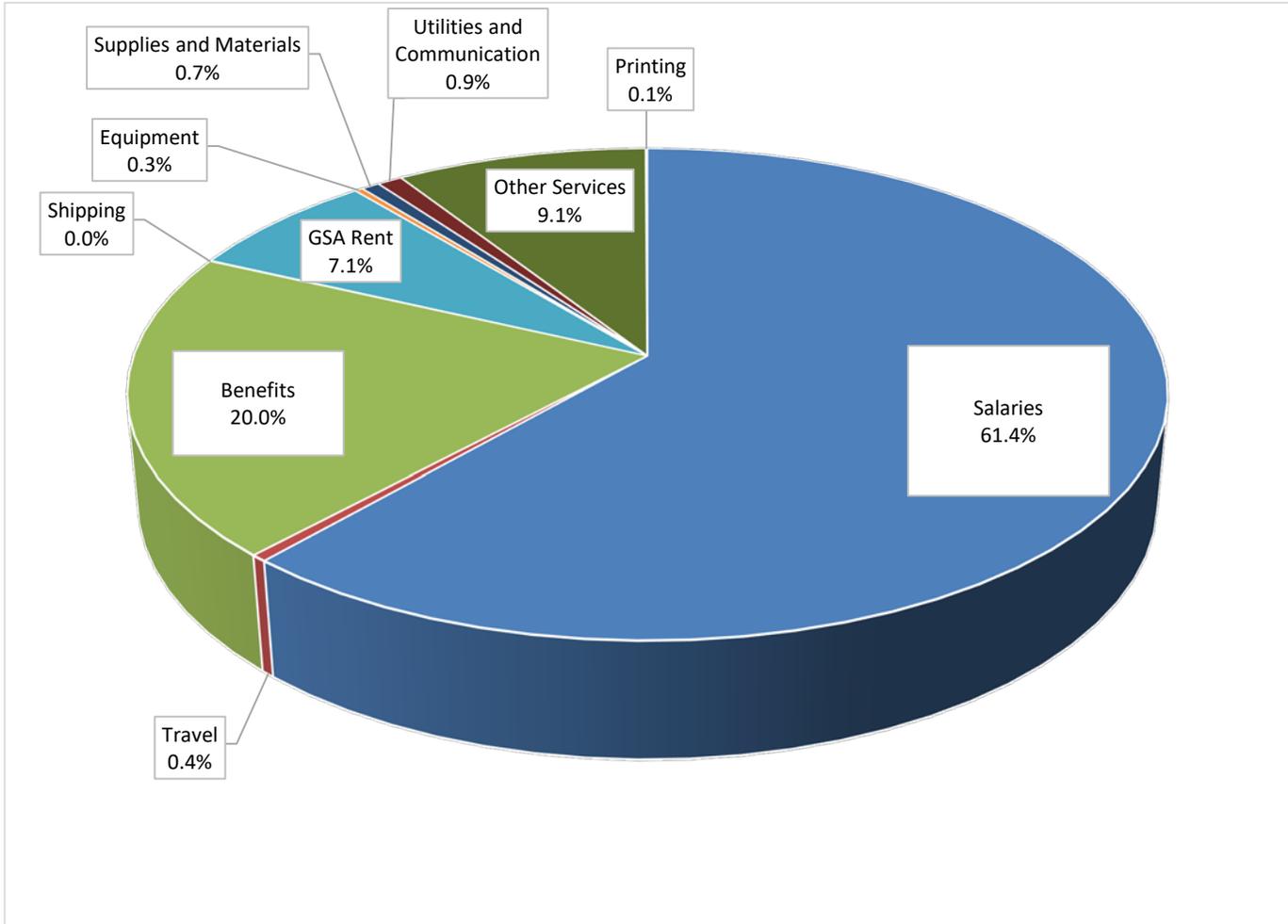
This division manages OSC's budget and financial operations and oversees the agency's technical, analytical, records, and administrative needs. Component units are the Budget and Finance Branch, Human Capital Office, Administrative Services Office, Information Technology Office, and the Office of the Clerk.

The Clerk's Office leads several functional areas, including Freedom of Information Act (FOIA), Privacy Act, Controlled Unclassified Information, and records management. In FY 2019, the Clerk's Office processed 194 FOIA closures, which resulted in a FOIA backlog reduction of 63 percent from FY 2018. In addition, the Clerk's Office received only 8 appeals on their FOIA cases, which is a 61 percent reduction from FY 2018. Furthermore, in FY 2019, the FOIA team also successfully transferred approximately 33,000 cases to the National Archives and Records Administration (NARA) for the preservation and documentation of government records.

In FY 2020, the division name was changed from the Administrative Services Division to the Operations Division.

# Components of Budget Request

The following chart estimates how the FY 2021 request will be distributed on a percentage basis. Shipping, at \$13,000 annually, rounds downward to 0.0%.



## Budget by Program

The following table provides an estimate of the FTE and budgetary resources for each program of the agency, during fiscal year 2020 and 2021.

<b>Budget by Program – Full Agency Request</b>						
	<b><u>FY 2020<sup>1</sup> Estimate</u></b>		<b><u>FY 2021<sup>2</sup> Estimate</u></b>		<b>Increase/Decrease</b>	
<b>Program</b>	<b>Amount (in 1000s)</b>	<b>FTE</b>	<b>Amount (in 1000s)</b>	<b>FTE</b>	<b>Amount (in 1000s)</b>	<b>FTE</b>
<b>Case Review Division</b>	\$1,883	9	\$1,811	8	(\$72)	-1
<b>Investigation and Prosecution of Prohibited Personnel Practices</b>	\$12,256	66	\$12,017	56	(\$239)	-10
<b>Retaliation Disclosure Unit</b>	\$1,529	8	\$1,454	7	(\$75)	-1
<b>Hatch Act Unit</b>	\$999	5	\$1,070	5	\$71	0
<b>Whistleblower Disclosure Unit</b>	\$2,796	14	\$2,661	12	(\$134)	-2
<b>USERRA Unit</b>	\$263	1	\$302	1	\$39	0
<b>Alternative Dispute Resolution</b>	\$920	4	\$658	3	(\$261)	-1
<b>Immediate Office of the Special Counsel</b>	\$1,385	6	\$1,509	6	\$124	0
<b>Office of General Counsel</b>	\$745	3	\$796	3	\$51	0
<b>Diversity, Outreach and Training</b>	\$304	1	\$329	1	\$25	0
<b>Operations Division</b>	\$4,421	24	\$4,829	24	\$408	0
<b>Totals</b>	\$27,500	141	\$27,435	126	(\$65)	-15

<sup>1</sup> The FY 2020 Estimate is based upon OSC's FY 2020 Appropriation.

<sup>2</sup> The numbers may not total exactly due to rounding.

# PART 2 – FY 2021 BUDGET REQUEST – ADDITIONAL INFORMATION

OSC's approved request is **\$27,435,000** to fund **126 FTEs** and related non-personnel costs for FY 2021. This number of FTEs is 15 below the estimated FY 2020 FTE level, and will have a deleterious effect on OSC's ability to provide services to whistleblowers and complainants. As a result, OSC expects to see increases in its backlog due to the record number of complaints outpacing staffing resources. Providing funding to support **126 FTEs** will not allow OSC to effectively address rising caseloads and improve efficiency of programs and processes. This funding level will also impact OSC's ability to execute critical IT projects in FY 2021 to enhance operations and improve cybersecurity.

## Primary Driver of the FY 2021 increase:

### Costs for Current Salaries and Benefits

As a result of a dramatic reduction in the number of FTEs, from 141 in FY 2020 to 126 in FY 2021, total personnel compensation costs will decrease, but the cost per employee will increase. We anticipate the agency will only be able to support 126 FTEs in FY 2021, a decrease of 15 FTEs versus the estimated FY 2020 staffing level. Salaries and benefits will be approximately 81 percent of OSC's total costs in FY 2021, an increase of 5 percent from just three years ago. Further, the impact of pay raises, step increases, and career ladder promotions are significant in an agency in which over three-quarters of the budget funds salaries, benefits, and the OMB-directed increase in employee awards in FY 2021. Therefore, the average cost per FTE has increased in FY 2021, versus FY 2020 and FY 2019.

### Resumption of HQ Rent Costs

After receiving a free rent credit for FY 2020 as part of our HQ lease renewal, lease costs resume fully in FY 2021, resulting in a \$1.4 million increase in costs.

## FY 2020 Budget Request by Budget Object Class

Below is a detailed projection of the expenditures that will be required in each Budget Object Class (BOC) during FY 2021, along with the actuals for FY 2019 and the projection for the current year, FY 2020.

<b>Budget Table 1 – Budget Object Classification of Obligations: FY 2019–2021</b>			
<i>(in thousands of dollars)</i>			
<b>Budget Object Classification of Obligations</b>	<b>FY 2019 (Actual)</b>	<b>FY 2020* (Projected)</b>	<b>FY 2021 (Projected)</b>
<b>11.0 Personnel compensation</b>	15,953	17,936	16,721
<b>12.0 Civilian Personnel Benefits</b>	4,921	5,820	5,633
<b>21.0 Travel and transportation of persons</b>	120	100	120
<b>22.0 Transportation of things</b>	14	12	13
<b>23.1 Rental payments to GSA</b>	2,174	621	1,935
<b>23.3 Communications, utilities and misc. charges</b>	273	228	249
<b>24.0 Printing and reproduction</b>	11	12	17
<b>25.0 Other services</b>	2,654	2,568	2,485

<b>26.0</b>	<b>Supplies and materials</b>	208	119	181
<b>31.0</b>	<b>Equipment</b>	30	83	80
<b>32.0</b>	<b>Leasehold improvements</b>	0	0	0
	<b>Total</b>	26,357	27,500	27,435

*\*Note: As a result of potential budgetary shortfalls stemming from operating under a CR for the first quarter of FY 2020, OSC undertook a full review of spending in all categories. The result was reduced spending in the majority of OSC's discretionary categories.*

## Notes Concerning the Above BOC Line Items:

### Object Class 11.0 Personnel Compensation Costs:

Overall personnel compensation will decrease in FY 2021 as compared to FY 2020, because OSC will only be able to support 126 FTEs in FY 2021, versus an estimated 141 in FY 2020, and 133 in FY 2019. The primary driver of OSC's decreased staffing levels (in addition to OSC's resumption of rent costs in FY 2021) is a significant rise in salaries and benefits costs, due to OMB-directed increases in agency benefits contributions, a 3.52 percent pay raise in CY 2020, and an OMB-directed 1 percent pay raise budgeted for CY 2021.

### Object Class 12.0 Civilian Personnel Benefits Costs:

These costs are for employee benefits, including Medicare, Federal Employees' Group Life Insurance (FEGLI), health benefit contributions, old age survivors and disability insurance, and retirement plan contributions. Total benefits costs in FY 2021 are increasing on an FTE basis primarily due to an increase in agency retirement system contributions, going up by 3.6% from FY 2019 to FY 2021.

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

During FY 2021, OSC expects travel to be conducted at the full and appropriate levels required for the agency's investigations and mediations. This represents an increase from FY 2020, where OSC operated under a CR for the first quarter of the year and restricted travel.

### Object Class 23.1 Rental Payments to GSA:

This category reflects the lease costs of the agency's headquarters facility and OSC field offices along with rent and tax escalations. OSC estimates that total agency rent will be approximately \$1.9 million for FY 2021 as compared to \$0.5 million for FY 2020. OSC's headquarters lease was recently re-competed, and as part of the negotiations and its 10-year awarded lease, OSC received a rent rebate in FY 2020, while remaining at the current location. This renewed lease saves OSC significant money and avoids the cost and disruption of a move.

### Object Class 23.3 Communications and Utilities:

This category reflects the cost to sustain the agency's telephone and high-speed internet connections in FY 2021 for the headquarters and field office locations.

### Object Class 25.0 Other Services:

OSC outsources its accounting services, financial and procurement systems, payroll services, travel services, and procurement services, which all fit under the Services BOC. The agency began to modernize our IT infrastructure in earlier years and that effort will continue into FY 2021, including continued improvements in the new electronic case management system.

**Object Class 31.0 Equipment:**

In FY 2019, OSC had minimal levels of equipment purchases, (servers, computers, switches and routers, teleconferencing equipment, and copiers) however, in FY 2020 and FY 2021, OSC expects to experience moderate levels of equipment purchases, and thus increased costs, in order to refresh portions of our IT infrastructure and support modernization projects.

**Analysis of Resources – Fiscal Years 2019-2021**

For a high-level summary of resources during FY’s 2019-2021, see Budget Table 2 below.

<b>Budget Table 2 – Analysis of Resources</b>				
<b>FY 2019-2021</b>				
<i>(in thousands of dollars)</i>				
<b>Description</b>		<b>FY 2019 (Actual)</b>	<b>FY 2020 (Projected)</b>	<b>FY 2021 (Projected)</b>
<b>Budget authority</b>	<b>Direct</b>	26,535	27,500	27,435
	<b>Reimbursable</b>	0	0	0
<b>Total</b>		26,535	27,500	27,435
<b>Outlays</b>		23,883	26,125	26,063
<b>Employment</b>	<b>Direct-full time equivalent</b>	133	141	126
	<b>Reimbursable-full time equivalent</b>	0	0	0
<b>Total</b>		133	141	126

# PART 3 – BUDGET PROGRAMS AND PERFORMANCE PLAN

## FY 2019 Case Activity and Results – All Programs

Word of OSC's effectiveness in achieving positive results for the federal community is spreading. The number of new cases before the agency has risen dramatically in concert with OSC's success. OSC's efficiency and effectiveness at resolving cases has risen just as dramatically. In FY 2019, for example, OSC resolved 6,193 cases, the highest level the agency's history, and a 60 percent increase over agency historical levels since FY 2001 levels. However, despite OSC's best efforts, absent additional resources, the backlog of cases will likely increase under the FY 2021 Budget request level. Given the expected increase in case numbers for whistleblower disclosure and PPP cases, as well as Hatch Act and USERRA matters, OSC's expected staffing level under the FY 2021 Budget will make it difficult for OSC to maintain the agency's record of success.

During FY 2019, OSC received 5,486 new matters across its program areas. **Table 1** below summarizes overall OSC case intake and dispositions in FY 2019, with comparative data for the previous four fiscal years. More detailed data can be found in **Tables 2-7**, in sections below relating to the four specific components of OSC's mission—PPP cases, Hatch Act matters, whistleblower disclosures, and USERRA cases.

The case levels OSC has seen in the past five years are unprecedented and have required the agency to adjust its approach to executing its mission. From FY 2015 to FY 2019, OSC has received an average of nearly 6,000 cases a year. This average is a **76 percent increase over OSC's historical average from FY 2001 to FY 2014**.

In FY 2019, the VA accounted for 34 percent of OSC's cases - more than one-third of OSC's work - up from approximately 19 percent of the caseload just six years ago. Through resolution and processing of these cases, OSC has played a critical role in reestablishing trust in the VA and encouraging employees to identify and address chronic threats to patient care.

As OSC's experience with the VA underscores, when an agency is experiencing crisis and tumult or government downsizes, OSC's workload grows. With efforts underway to overhaul the Civil Service and to restructure agencies throughout the government, OSC will likely see further increases in its case filings.

Agencies' required participation in OSC's Section 2302(c) Certification Program is an excellent opportunity to conduct training for a growing number of federal employees and promote adherence to the law. Twenty-three (23) agencies were certified in FY 2018 and an additional twenty-four (24) in FY 2019. However, managing this program and handling the increasing number of cases that result from greater awareness of OSC requires additional resources.

Additionally, OSC conducted an agency record 198 outreach events in FY 2018, and 188 outreach events in FY 2019. The primary focus of these efforts is prevention of Hatch Act and PPP violations. These efforts also inform the federal workforce that OSC is a secure channel to disclose evidence of waste, fraud, and abuse.

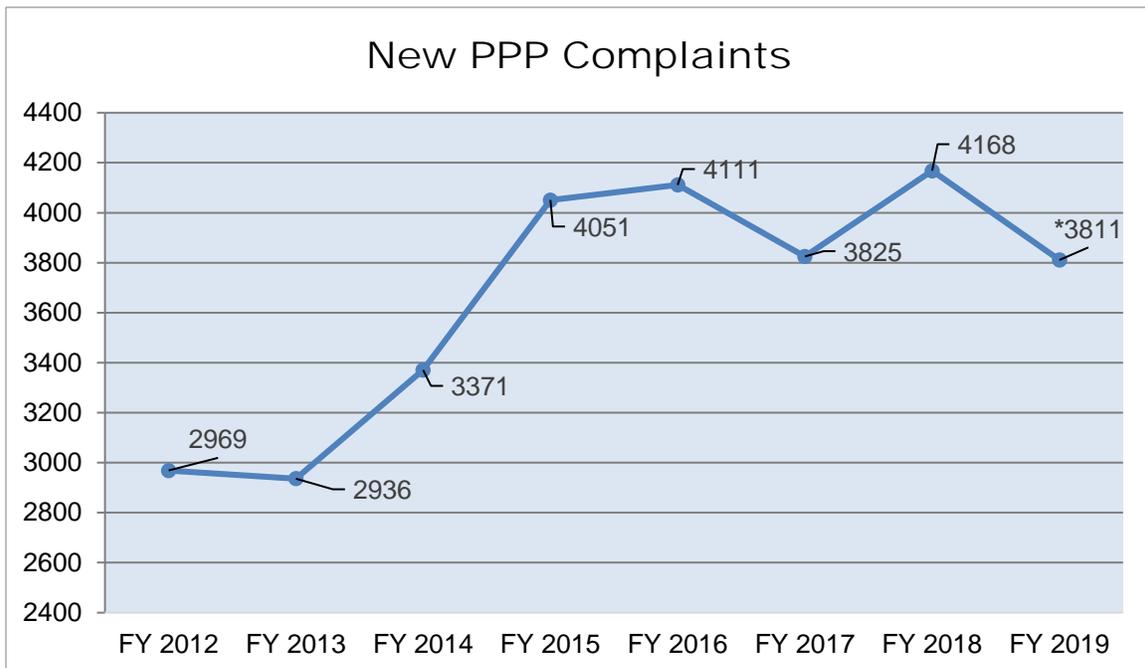
As a result of OSC's success and outreach efforts, OSC's profile among federal employees has increased significantly, resulting in increased awareness of OSC as an avenue for disclosing wrongdoing and seeking redress from PPP actions. As a result, OSC expects to receive significantly high levels of cases going forward, and will likely struggle to keep up with the new case filings under the projected FY 2021 staffing levels, thereby eliminating the backlog reduction of over 700 cases in FY 2019.

TABLE 1 - Summary of All OSC Case Activity					
	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Matters <sup>3</sup> pending at start of fiscal year	1,967	1,901	2,271	2,592	2,616
New matters received	6,140	6,041	5,875	6,015	5,486
Matters closed	6,208	5,661	5,560	6,005	6,193
Matters pending at end of fiscal year	1,900	2,272	2,590	2,607	1,909
Hatch Act advisory opinions issued	1,023	1,641	1,325	1,386	1,111

## Investigation and Prosecution of Prohibited Personnel Practices

- OSC experienced a 13.1 percent growth in new PPP matters from FY 2014 to FY 2019, and we project new case levels to remain high. In FY 2020, OSC expects to receive over 4,000 new PPP matters, given that OSC received 3,811 new matters in FY 2019, despite an unprecedented partial government shutdown.
- New PPP complaints now regularly surpass 3,800 cases each year, a level unheard of just six years ago. PPP cases are the most time- and resource-intensive cases for OSC. PPP cases also represent a critical route through which OSC builds whistleblower confidence by ensuring whistleblowers are protected from retaliation for a disclosure.

(See chart below and Table 2: Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing)



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

Figure 1\*: OSC experienced an unprecedented, partial government shutdown in FY 2019, which impacted the total number of PPP complaints the agency would have likely received during a standard fiscal year.

- Strains on resources, particularly limited staffing, in conjunction with an increased demand for OSC’s services negatively affect OSC’s ability to meet statutory deadlines in resolving cases. The percentage of PPP complaints processed within 240 days is only 82 percent, and while this is an increase over FY 2017 and FY 2018 (77 and 76 percent, respectively), it is still 5 percent below the average rate from FY 2011 – FY 2016.
- OSC is also struggling to meet statutory deadlines for whistleblower disclosures. Congress took action during the first quarter of FY 2018 to extend from 15 days to 45 days the statutory timeframe within which OSC is required to make a determination on whether to refer disclosures to the appropriate agencies or close them without action. While OSC closed 37 percent of cases in the 15-day statutory time frame in FY 2017—an all-time low during the past decade—extending the time frame to 45 days has only resulted in the requirement being met in 80 percent of the cases in FY 2019.

## Resource Estimates

During FY 2021, OSC’s Case Review Division will use approximately 8 FTE at a cost of \$1,811,000. During FY 2020, we estimate the program will require 9 FTE at a cost of \$1,883,000.

During FY 2021, OSC’s Investigation and Prosecution Division will use approximately 56 FTE at a cost of \$12,017,000. During FY 2020, we estimate the program will require 66 FTE at a cost of \$12,256,000.

During FY 2021, OSC’s Retaliation and Disclosure Unit will use approximately 7 FTE at a cost of \$1,454,000. During FY 2020, we estimate the program will require 8 FTE at a cost of \$1,529,000.

<b>TABLE 2 - Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing<sup>4</sup></b>						
	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	
<b>Pending complaints carried over from prior fiscal year</b>	1,414	1,405	1,657	1,969	2,057	
<b>New complaints received<sup>5</sup></b>	4,051	4,124	3,825	4,168	3,811	
<b>Total complaints</b>	5,465	5,529	5,482	6,137	5,868	
<b>Total complaints processed and closed</b>	4,058	3,870	3,512	4,073	4,447	
<b>Complaint processing times</b>	<b>Within 240 days</b>	3,380	3,307	2,716	3,100	3,659
	<b>Over 240 days</b>	665	554	782	967	788
<b>Percentage processed within 240 days</b>	83%	85%	77%	76%	82%	

<sup>4</sup> Complaints frequently contain more than one type of allegation. This table, however, records all allegations received in a complaint as a single matter.

<sup>5</sup> “New complaints received” includes a few re-opened cases each year, as well as prohibited personnel practice cases referred by the MSPB for possible disciplinary action.

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

<b>TABLE 3 - Summary of All Favorable Actions – Prohibited Personnel Practice Complaints</b>						
		<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
<b>Total favorable actions negotiated with agencies (all PPPs)</b>	<b>No. of actions<sup>6</sup></b>	277	273	324	314	329
	<b>No. of matters</b>	212	216	264	249	N/A <sup>7</sup>
<b>Total favorable actions negotiated with agencies (reprisal for whistleblowing)</b>	<b>No. of actions</b>	233	215	244	236	N/A <sup>8</sup>
	<b>No. of matters</b>	175	173	209	196	N/A <sup>9</sup>
<b>Disciplinary actions negotiated with agencies</b>		9	15	16	22	27
<b>Stays negotiated with agencies</b>		62	40	45	47	31
<b>Stays obtained from MSPB</b>		3	7	7	2	1
<b>Stay extensions obtained from MSPB</b>		1	4	10	10	1
<b>Corrective action petitions filed with the MSPB</b>		0	0	0	1	0
<b>Disciplinary action complaints filed with the MSPB</b>		0	0	0	0	0

## Goals and Results – Prohibited Personnel Practices

In FY 2019, OSC received 3,811 new PPP complaints, the fifth-most in agency history. This figure likely would have been much higher, if not for the unprecedented, partial government shutdown in FY 2019.

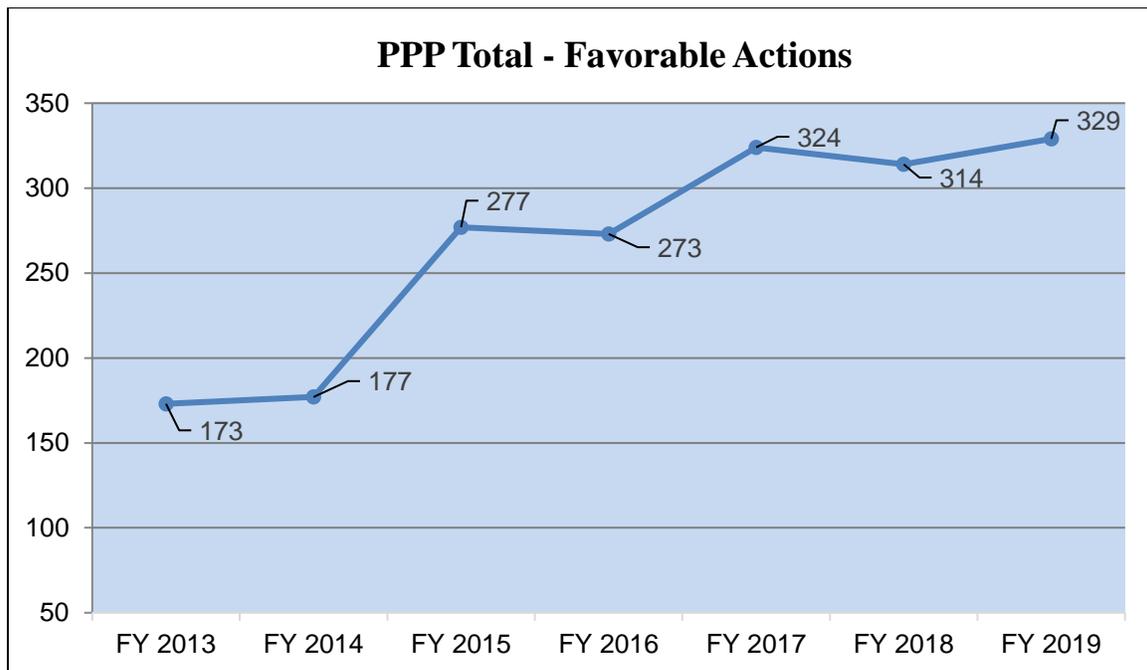
Despite the shutdown, however, OSC still achieved 329 favorable actions in FY 2019, the most in agency history and a 135 percent increase over the historical average since FY 2001.

<sup>6</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).

<sup>7</sup> OSC deployed a new electronic case management system (eCMS) in the 4th quarter of FY 2019, and has worked diligently to establish its data reporting capability in the new environment. However, some FY 2019 case data is unable to be reported at this time, and is therefore represented with an N/A.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.



In FY 2016 OSC finalized a new Strategic Plan for fiscal years 2017 – 2022. (See Appendix B for the new Strategic Plan.) OSC’s Strategic Goal 1 under this new plan is to protect and promote the integrity and fairness of the federal workforce through investigation and prosecution of prohibited personnel practice cases. New goal tables were developed to track agency performance against the Strategic Plan and can be found in Appendix C.

## Notable FY 2019 Case Summaries

- Complainant, an HR director, alleged that Navy-OIG suspended and debarred him in retaliation for disclosures regarding gross mismanagement and abuse of authority. OSC reviewed a voluminous record and interviewed the Navy Inspector General, who was an Admiral, as well as the General Counsel and several other high-level officials. After multiple attempts to resolve the case, including a settlement conference involving the Navy Deputy General Counsel, the parties ultimately agreed to settle. The Navy agreed to pay \$200,000 for damages and fees, and to provide a clean record, in exchange for complainant’s resignation from federal service.
- Complainant, an Assistant HR Chief, alleged that VA proposed her removal in retaliation for disclosing that the CFO and other high-level officials repeatedly pressured her to qualify the CFO’s husband for a VA position (for which he was not qualified). OSC obtained an informal stay of the proposed removal and a new supervisor for complainant. After conducting an onsite investigation, we presented our findings to VA and the parties agreed to a settlement. VA agreed to pay \$55,000 in a lump sum and \$38,000 in attorney’s fees, and to rescind the proposed removal (complainant has since moved to another job). VA also sought to remove the CFO for committing PPPs, but she resigned from federal service.
- MSPB referred its findings that USDA retaliated against a lead forestry technician after he made disclosures about mistreatment by his supervisor and violated his due process rights in removing him from federal service. After reviewing the record and discussing potential resolution with USDA, OSC sent an informal PPP report seeking disciplinary action. USDA issued proposed suspensions for both subject officials and a letter of reprimand for the consulting HR specialist. Both suspensions were mitigated to some extent based on the exemplary performance records of the subject officials, among other considerations.

- Complainant, a criminal investigator, alleged he was issued a letter of reprimand, suspended for one day, and geographically reassigned after he disclosed potentially fraudulent representations by his superiors concerning a failure to get firearms recertification, as well as retaliation for filing an agency grievance. With OSC's assistance, the parties executed a settlement agreement in which the agency agreed to expunge the letter of reprimand; expunge the suspension and provide the Complainant with back pay; reassign the Complainant to his original duty location with the option to telework; provide the Complainant a separate workspace or work area from his former second-level supervisor; provide compensatory damages and attorney's fees; and agreed that his former first and second-level supervisors will not serve in his supervisory chain of command. In exchange, the Complainant agreed to withdraw his OSC complaint.
- Complainant, a cybersecurity specialist, alleged the agency changed his duties and threatened to terminate him from employment in reprisal for disclosing contracting violations and mishandling of classified information. The Complainant left his employment voluntarily and the agency withdrew its proposed termination and agreed to pay him a lump sum. The agency also agreed to counsel the involved officials to prevent recurrence.
- Complainant, a security manager, alleged that the agency denied leave requests, suspended telework, suspended him for five days, and significantly changed his duties, responsibilities, and working conditions in reprisal for his protected disclosures and his refusal to obey an order that would violate a law. The agency and complainant executed a settlement agreement, whereby the agency agreed to pay appropriate damages and fees, to expunge disciplinary actions and related records, to restore certain leave, to reinstate Complainant's duties and responsibilities as specified in the position description, and to realign his chain of command.
- Complainant, a program manager, alleges that she was issued a lowered performance appraisal, denied a bonus, subjected to a change in duties, reprimanded, and proposed for removal from employment in reprisal for disclosing to the Office of Inspector General and others, violations of pay regulations and gross waste and mismanagement of disaster relief funds. Complainant also alleged that her supervisor accessed her medical records in furtherance of her proposed removal. Additionally, a charge in the Complainant's proposed removal specifically referenced her threats to take legal action against her supervisor, including a grievance, complaint, and civil action. In settlement, the agency agreed to rescind the proposed removal and expunge other materials. The agency also agreed to take systemic corrective actions to include removing language from its Table of Penalties that are inconsistent with merit system principles, and to receive PPP training.
- Complainant, a human resources manager, alleged that the agency denied him awards and bonuses and twice investigated him, resulting in a recommendation to terminate his employment, in reprisal for disclosing hiring and other irregularities. In settlement, the agency agreed to expunge retaliatory personnel actions and related documents, to pay appropriate damages and fees, to restore certain leave, and to take other corrective actions consistent with the WPA.
- Complainant, a law enforcement officer, alleged that the agency failed to give her in-band pay increases, awards, and recognize her as a senior officer after she disclosed to the Office of Inspector General and others, instances of gross mismanagement, and violations of laws and regulations. In settlement, the agency agreed to provide recompense for pay increased and awards, and to appropriately recognize the officer's senior status.
- In a referral from the MSPB, OSC established that a managing and a supervising physician retaliated against an employee who credibly alleged public corruption and threats to patient health and safety. Upon the

presentation of OSC's findings to the agency, the agency agreed to propose the removals of the offending physicians.

- Complainant, a safety specialist, alleged that he was fired during the probationary period in retaliation for disclosing fall hazards and failure to follow OSHA reporting requirements. After OSC provided a report of its findings, the agency provided complainant with \$150,000 in backpay, compensatory damages and other monetary considerations.
- A Council of the Inspectors General on Integrity and Efficiency (CIGIE) referral to OSC contained allegations that an Inspector General directed staff to place the Complainant, a special agent, on administrative leave after she reported the IG's alleged political bias to OSC and CIGIE, and later to propose her removal. The agency rescinded the proposed removal, and agreed to pay appropriate damages and fees.
- Complainant, a contract specialist, was terminated from his VRA appointment in the excepted service as a probationary employee without the protections of 5 U.S.C § 7511(a)(1)(B). Complainant alleged that the agency should have him treated as an "employee" under section 7511(a)(1)(B) entitled to the Section's procedural safeguards, such as a written explanation of the reasons for the termination and the right to respond. OSC concurred and the agency agreed to pay back pay from the time of the termination to the date the Complainant acquired new employment and to change his termination to a resignation.

#### Notable FY 2019 Amicus Curiae Briefs

- OSC filed an amicus brief in a petition for review before the Merit Systems Protection Board, in which an employee alleged that she was terminated at least in part for disclosing improper private banking practices that she discovered as part of her job. The initial decision declined to consider her disclosures about non-governmental wrongdoing as part of her whistleblower retaliation claim. OSC's amicus brief argues that the WPA, as amended, protects a whistleblower's disclosure without any limitation based on the entity alleged to have committed the wrongdoing, particularly where—as in this case—the wrongdoing is uncovered as part of the whistleblower's federal employment.
- OSC participated in oral argument as an amicus brief before the U.S. Court of Appeals for the Ninth Circuit in a case where the Merit Systems Protection Board found that an Appellant failed to exhaust administrative remedies before OSC with respect to certain disclosures about nepotism. OSC argued that the MSPB's requirement that individuals provide the "precise" details of each element of their whistleblower retaliation claims is contrary to the statute and Congress's clear intent to provide whistleblowers with strong protections backed by effective remedies. OSC also argued that the Board's approach fails to recognize that most whistleblowers do not have attorneys during the administrative process, and they lack access to agency information needed to provide the "precise" details. Additionally, OSC argued that the MSPB's approach undermines administrative efficiency.
- OSC filed an amicus brief in support of an appellant's petition for review at the Merit Systems Protection Board involving an allegation that an agency terminated an employee in retaliation for refusing to obey an unlawful order. Although the Follow the Rules Act (FRA) protects federal employees from this type of retaliation, it was not enacted until after the personnel actions in this case occurred. The initial decision analyzed the claim under the law as it existed at the time of the events at issue, holding that the FRA did not apply retroactively to the appellant's termination. In its amicus brief, OSC argued that the initial decision erroneously misinterpreted the FRA: congressional intent clearly indicates that it should be applied retroactively to include personnel actions that occurred prior to June 14, 2017.

## Improper Selection Practices and Other Violations

- Complainant, an ethics official, alleged that a supervisor submitted a subordinate's performance appraisal that he knew had been ghost written by the subordinate's spouse, who also was a supervisor at the agency. With OSC's permission, the agency suspended the supervisor who permitted the ghost-written appraisal for seven days.
- A referral from an Office of Inspector General contained allegations that that an agency official allowed a job applicant to edit the position description for a position to which he applied. The agency agreed to remove the responsible official from federal employment.
- A stakeholder group complaint alleged that an agency displayed certain anti-leak posters that violated section 2302(b)(13). The posters, which were part of the agency's Insider Threat Program, featured the slogan "Every Leak Makes Us Weak," but did not contain any mention of whistleblower protections. The agency agreed to remove the posters and to not use them in any of their publications. An unrelated agency that created the poster and distributed it government-wide also agreed to remove the poster from its website and added language asking all organizations to discontinue its use. That agency also agreed to receive PPP training. Lastly, OSC updated its public guidance on non-disclosure agreements.
- A referral from OPM to OSC contained allegations that an agency gave a Schedule C political appointee an unlawful preference when it selected him for a competitive service position. OSC's investigation found that the agency created a public affairs specialist competitive service position for the political appointee. At his supervisor's request, the political appointee modified the position description to add many of his then-duties to the competitive service position. Thereafter, the agency issued a vacancy announcement and selected the political appointee for the competitive service position. The employee primarily responsible for the violation is no longer in federal service and other involved employees are no longer with the agency. The agency agreed to receive prohibited personnel practice training.

## Stays of Personnel Actions

- Complainant, a secretary, alleged that she received a proposed termination because she disclosed that the agency improperly responded to sexual assault allegations, falsified an employment survey, and conducted illegal hiring and because she filed an IG complaint. At OSC's request, the agency agreed to stay the removal while OSC investigated.

## USERRA Unit

OSC protects the civilian employment rights of federal workers who are veterans or serve in the National Guard and Reserves by enforcing USERRA. USERRA provides for prompt reemployment of service members in their civilian jobs after they return from military duty. Approximately 170,000 (20 percent) of Guard and Reserve members are federal civilian employees, and Congress intends for the federal government to be a "model employer" under USERRA.

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

representation before the MSPB. If, after reviewing the complaint and investigative file and conducting any necessary follow-up investigation, OSC is reasonably satisfied that the claimant is entitled to relief under USERRA, it may act as the claimant’s attorney and initiate an action before the MSPB. OSC may also provide representation, when warranted, before the U.S. Court of Appeals for the Federal Circuit. During the course of the past two fiscal years, OSC has received 38 of these cases and obtained corrective actions in six cases during that time. OSC currently also has one USERRA case in litigation.

In addition to resolving and litigating individual USERRA cases, OSC also provides training and technical assistance to help federal agencies better comply with USERRA. For example, OSC has worked with DoD to ensure that its administration of the “key employee” program does not violate USERRA and conducted USERRA training for employees of the Federal Emergency Management Agency (FEMA) and the State Department. OSC also maintains telephonic and email hotlines to answer USERRA questions from service members and employers.

## Resource Estimates

During FY 2021 the USERRA program will have 1 FTE at a cost of approximately \$302,000. During FY 2020, we expect the USERRA program will have 1 FTE at a cost of \$263,000.

## Goals and Results – USERRA Unit

<b>TABLE 4 - Summary of USERRA Referral and Litigation Activity<sup>10</sup></b>					
	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
<b>Pending referrals carried over from prior fiscal year</b>	7	4	5	3	6
<b>New referrals received from VETS during fiscal year</b>	18	16	17	25	21
<b>Referrals closed</b>	21	15	19	22	22
<b>Referrals closed with corrective action</b>	2	0	3	2	2
<b>Referrals closed with no corrective action</b>	19	15	16	20	20
<b>Referrals pending at end of fiscal year</b>	4	5	3	6	5
<b>Litigation cases carried over from prior fiscal year</b>	0	0	0	0	1
<b>Litigation cases closed</b>	0	0	0	0	0
<b>Litigation closed with corrective action</b>	0	0	0	0	0
<b>Litigation closed with no corrective action</b>	0	0	0	0	0
<b>Litigation pending at end of fiscal year</b>	0	0	0	1	1

<sup>10</sup> This table has been reorganized with some categories and figures changed from prior reports to correct discrepancies and more clearly present relevant information.

USERRA requires that complaints be investigated, and the claimant be notified of the results within 90 days, unless the claimant grants an extension. Such investigations may include obtaining information from the claimant, requesting and reviewing documents from the agency, interviewing witnesses, and conducting legal research and analysis. All the information gathered must then be synthesized to make a determination about whether the complaint is meritorious. In some cases, there are delays in receiving documents or interviewing witnesses that are beyond OSC's control. Cases also vary in complexity.

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

## USERRA Successes

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

### Notable FY 2019 Case Summaries

- In April 2019, OSC won a favorable decision from the MSPB in a USERRA appeal it filed on behalf of a USPS letter carrier and Lieutenant Colonel (Ret.) in the Maine Air National Guard (MANG). After the September 11, 2001, terror attacks, the Lieutenant Colonel served continuously with the MANG for approximately 14 years in support of the Global War of Terror. During his absence, the Lieutenant Colonel regularly provided copies of his military orders to USPS, maintained his employee benefits, and told USPS officials and co-workers that he intended to return to work there once his service ended. However, after he was released from duty and requested reemployment, USPS refused to reemploy the Lieutenant Colonel, asserting that he "abandoned" his civilian job in favor of a military career. OSC believed that because he satisfied all statutory requirements, the Lieutenant Colonel was entitled to reemployment under USERRA, and represented him before the MSPB. In its ruling, the MSPB found that USPS violated the Lieutenant Colonel's USERRA rights, and ordered it to reinstate him with back pay. USPS has since appealed that ruling.
- A disabled U.S. Navy veteran working for the Department of Veterans Affairs in Durham, North Carolina, applied for a promotion in July 2017 and, following interviews, was ranked second among the eight finalists referred to the selecting official. Nevertheless, the selecting official twice bypassed the veteran to select lower-ranked candidates because she believed the veteran had "skipped the line" based on her disabled veteran status, despite her strong qualifications. After OSC found that the Department of Veterans Affairs' actions likely violated USERRA, it sought relief on the veteran's behalf. The Department of Veterans Affairs agreed to retroactively promote the veteran to the higher-graded position, effective July 2017, with all associated back pay, and to pay her an additional \$35,000 in damages to resolve her USERRA complaint.
- A U.S. Army Reservist working for the Department of Labor in Phoenix, Arizona, as a GS-11 investigator believed he was not promoted to the GS-12 level as quickly as his co-workers due to his Reserve duty. In January 2017, his first-level supervisor allegedly promised him a GS-12 promotion in the coming months. However, at a meeting with his first- and second-level supervisors in June 2017, his second-level supervisor stated that his "military duty has impeded his progress" and that he would not be promoted. After an investigation corroborated the Reservist's allegations, OSC requested relief on his behalf, and the agency

agreed to retroactively promote him to the GS-12 level, as of April 2017, with corresponding back pay and pay raises.

## Alternative Dispute Resolution

Effective relations in the workplace are critical to Federal government success. OSC plays a unique role in fostering a healthy federal workplace by investigating and prosecuting alleged PPPs, such as retaliation for whistleblowing or other protected activity, unauthorized preferences in employment, nepotism, and other violations of merit systems principles. OSC offers a high performing ADR program to provide additional options for resolving such complaints.

Among the factors that determine mediation-appropriate cases are the complexity of the issues, the nature of the personnel action, and the relief sought by the complainant. Once a case has been identified as appropriate for mediation, an OSC ADR specialist contacts the parties to discuss the voluntary program and process. Pre-mediation discussions are designed to help the parties form realistic expectations and well-defined objectives regarding the mediation process.

Altogether, OSC's ADR program has averaged a 74 percent rate of successful settlement during the past 5 years. This translates to large savings of time and money to the government, as the government avoids the more costly investigation and prosecution process.

## Goals and Results

During FY 2019, 58 cases were offered for mediation by OSC after referral to the ADR Unit. OSC completed 37 mediations, of which 24 settled. OSC mediation provides a streamlined resolution option that gives both sides the opportunity to create a resolution tailored to their needs. Mediation can end paralyzing stalemates between employees and managers in the Federal workplace. Federal government agencies, as well as OSC, achieve greater efficiencies by reducing the time necessary to reach a resolution. (*See Table 6.*)

**Table 6 - ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints**

	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
<b>Cases Reviewed for Mediation</b>	143	101	188	174	70
<b>Mediations Offered</b>	80	71	92	86	58
<b>Mediations Conducted</b>	37	40	65	39	39
<b>Cases Withdrawn Before Mediation Completed</b>	12	16	27	11	2
<b>Completed Mediations</b>	25	24	38	28	37
<b>Completed Mediations Resulting in Settlement</b>	20	16	31	21	24
<b>Percentage of Completed Mediations Resulting in Settlement</b>	80%	67%	82%	75%	65%
<b>Cases Resolved Without Need for Mediation</b>	1	0	1	1	0
<b>Carryover to Next FY – Mediations in Process</b>	17	18	20	19	18
<b>Carryover to Next FY – Cases in Review</b>	2	4	11	2	4

## Resource Estimates

During FY 2021, the ADR program will have 3 FTE at a cost of approximately \$658,000. During FY 2019, we expect the ADR program will have 4 FTE at a cost of \$920,000.

OSC’s Strategic Goal 1 under its new Strategic Plan is to protect and promote the integrity and fairness of the federal workforce, including by obtaining timely and effective relief in ADR cases. (*See Appendix B for the new Strategic Plan.*) New goal tables were developed to track agency performance against the Strategic Plan and can be found in *Appendix C*.

## Notable FY 2019 Case Summaries

Below are some significant case summaries from our ADR Unit. Due to confidentiality requirements of federal government alternative dispute resolutions, OSC will use “he” or “his” for all ADR notable case summaries.

- Complainant, a scientist, alleged that he was reassigned to a lower tiered position for disclosing a hostile work environment. Through mediation, the agency agreed to reassign Complainant, provide restored leave, provide a monetary payment to offset a pay band change, and arrange in-person whistleblower training for agency staff.
- Complainant, an accountant, disclosed disparate time and attendance treatment for allegedly favored employees. In retaliation, Complainant claims that the agency reassigned him and failed to select him for another position. In mediation the parties worked through their concerns and differences. As a result, the agency agreed to reassign Complainant to a mutually agreeable alternative position.
- Complainant, a program manager, made disclosures of improper management processes. He alleged that in retaliation, agency management proposed a suspension, issued a negative performance evaluation,

significantly changed his duties and finally issued a proposed termination. After a thorough airing of each parties' perspectives on the issues, they came to an agreement that provided for Complainant to be transferred to a desired new position, to retire several years into the future and a monetary payment for attorney's fees.

- Complainant, a program specialist, alleged discrimination and retaliation for whistleblowing when he complained about agency decision-making policies in processing claims. Complainant claimed that in retaliation, the agency reassigned him. Through mediation, the parties were able to resolve their differences. The agency agreed to restore some of Complainant's leave, conduct a desk audit to determine whether Complainant was at the proper pay level, make a monetary payment and pay attorney's fees.
- Complainant, a firefighter, alleged that in retaliation for making disclosures, he was denied training, received a letter of counseling and oral admonishment, and the agency changed his working conditions, duties, responsibilities, and pay. The parties had a full discussion of viewpoints and issues during mediation and in follow up discussions were able to reach an agreement for both individual and systemic corrective action. The agency agreed to provide Complainant priority consideration for a future position, provide a monetary payment and attorney's fees. The agency also agreed to WPA training for all employees within Complainant's department.
- Complainant alleged that after making disclosures regarding irregularities in a care referral program, he was subjected to a retaliatory investigation, detailed to a different position, and experienced a significant change in duties. Through mediation, the agency agreed to reassign the complainant to a telework-eligible position that would allow him to fulfill his family obligations and career goals, and accommodate health issues exacerbated by the stress of the alleged retaliation. In addition, the agency provided restoration of sick and annual leave, a payment of compensatory damages and attorney's fees.

## Whistleblower Disclosure Program

The vast size of the American government means that agencies are not always able to identify and address wrongdoing or wasteful spending. Whistleblowers, and by extension OSC, therefore represent a vital resource for agencies to ensure that they act as good stewards of resources provided to them. Over the past year, OSC has worked with many whistleblowers to help agencies identify waste and achieve significant cost savings.

Under 5 U.S.C. §1213(a), federal employees, former federal employees, or applicants for federal employment may disclose information they reasonably believe evidences a violation of law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. OSC reviews the information submitted by whistleblowers and advises the Special Counsel whether there is a substantial likelihood that the type of wrongdoing described in § 1213(a) has occurred or is occurring. When the Special Counsel makes a substantial likelihood determination, OSC transmits the disclosure to the head of the relevant agency for action. The agency is required to conduct an investigation and submit a report to OSC describing the results of the investigation and the steps taken in response to the investigative findings. Under § 1213(e), the whistleblower is also provided with a copy of the report for comment. The Special Counsel is required to review the report in order to determine whether it meets the requirements of the statute and its findings appear reasonable. OSC forwards the report to the President and appropriate congressional oversight committees. (An alternative process is available by statute for OSC to refer matters to agencies for investigation without the Special Counsel making a substantial likelihood determination.)

OSC has worked with whistleblowers to identify millions of dollars in mismanaged or wasteful spending at

agencies. For example, a whistleblower recently came forward alleging that the Army lost possession of six government-purchased fuel trucks, valued at approximately \$1.34 million. Following OSC's referral, the Army concurred with the allegation, and determined that the error was caused mainly by improper contracting procedures. The Army is currently working to reacquire the fuel trucks. This is just one of many cases where OSC's work with whistleblowers identified direct savings for federal agencies.

Although OSC provides a direct avenue for achieving cost savings throughout the government, the true value of OSC's work is in providing a process to identify problems before they become too costly. By providing a safe channel for whistleblower disclosures, OSC regularly reins in waste, fraud, abuse, and threats to public health and safety that pose the very real risk of catastrophic harm to the public and potentially huge remedial and liability costs for the government. For example, an investigation resulting from OSC's work with a whistleblower determined that the VA wasted over \$223 million on unnecessary transportation services and delayed payments for veteran's medical bills in FY 2017. As a result of the investigation, the VA is taking steps to ensure that a similar gross waste of taxpayer funds will not occur in the future.

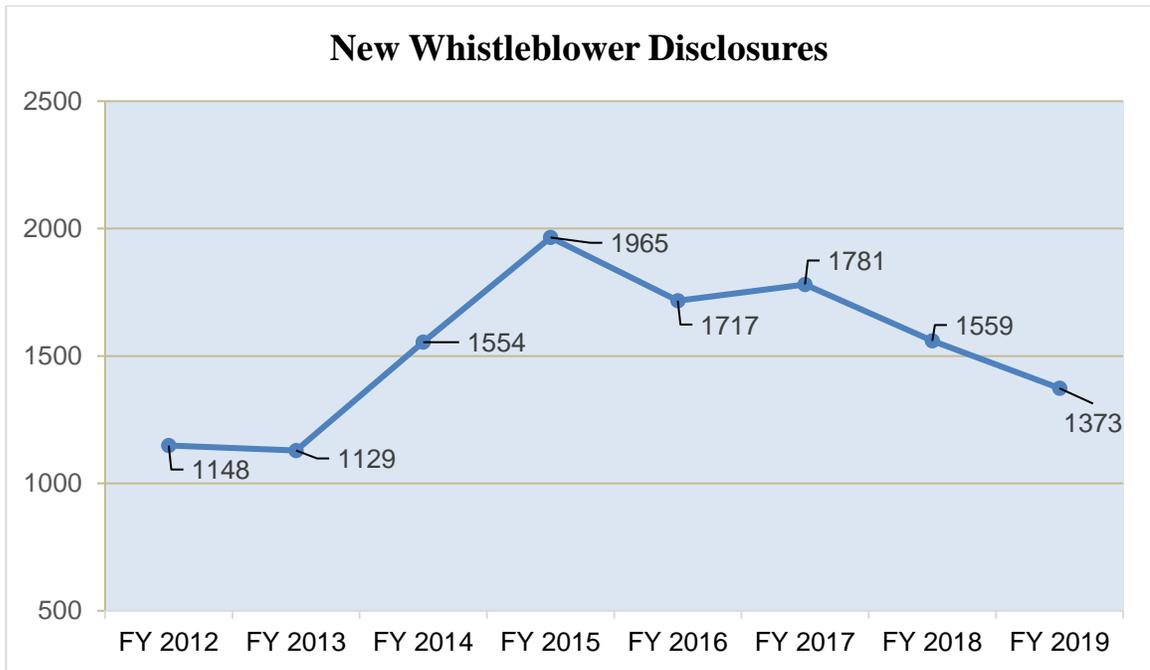
Despite express statutory time limits for resolving disclosures, some cases take more than a year to fully complete, if agencies demonstrate a need for additional time to conduct their investigation and write their report, or the whistleblowers request additional time to prepare their comments. OSC must also diligently review the agency report to determine whether it contains the information required by statute, decide whether its findings appear reasonable, and prepare any comments the Special Counsel may have on the report.

## Resource Estimates

During FY 2021, OSC's disclosure program will use approximately 12 FTE at a cost of \$2,661,000. During FY 2020, we estimate the program will require 14 FTE at a cost of \$2,796,000.

## Goals and Results – Whistleblower Disclosures

OSC's Strategic Objective 2 is to ensure government accountability by acting as a channel for whistleblowers in the federal workforce to disclose information. The following tables describe the two operational goals supporting this strategic objective. Disclosure cases have risen dramatically in recent years. From FY 2015 to FY 2018, the unit has received disclosures at levels ranging from 50 to 100 percent higher than the levels seen earlier in the decade. The number of disclosures received in FY 2019 decreased from prior year levels. However, this number was impacted by the unprecedented, partial government shutdown, and OSC expects to receive disclosures at levels similar to FY 2015 through FY 2018 in future years. Consequently, the Unit's backlog remains a challenge.



**TABLE 7 - Summary of Whistleblower Disclosure Activity – Receipts and Dispositions<sup>11</sup>**

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	
<b>Pending disclosures carried over from prior fiscal year</b>	193	433	449	497	493	421	
<b>New disclosures received</b>	1,554	1,965	1,717	1,781	1,559	1,373	
<b>Total disclosures</b>	1,747	2,398	2,166	2,278	2,052	1,794	
<b>Disclosures referred to agency heads for investigation and report</b>	92	62	40	59	139	73	
<b>Referrals to agency IGs</b>	0	0	0	1	0	0	
<b>Agency head reports sent to President and Congress</b>	26	72	78	66	41	64	
<b>Results of agency investigations and reports</b>	<b>Disclosures substantiated in whole or in part</b>	25	63	68	50	36	43
	<b>Disclosures unsubstantiated</b>	1	9	10	15	5	21
<b>Disclosure processing times</b>	<b>Within 15 days</b>	731	830	654	733		
	<b>Over 15 days</b>	584	1,117	1,015	1,056		
	<b>Within 45 days<sup>12</sup></b>					968	1,188
	<b>Over 45 days</b>					656	291
<b>Percentage of disclosures processed within 15 days</b>	55%	42%	39%	40%			
<b>Percentage of disclosures processed within 45 days</b>					59%	80%	
<b>Disclosures processed and closed</b>	1,315	1,947	1,669	1,789	1,624	1,479	

<sup>11</sup> Many disclosures contain more than one type of allegation. This table, however, records each whistleblower disclosure as a single matter, even if multiple allegations were included.

<sup>12</sup> The FY 2018 National Defense Authorization Act altered disclosure processing time standards from 15 to 45 days. OSC began using 45 days as a metric in FY 2018.

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

## Notable FY 2019 Case Summaries

OSC is authorized to refer whistleblower disclosures of wrongdoing in five areas: (1) violations of a law, rule, or regulation; (2) gross mismanagement; (3) gross waste of funds; (4) abuse of authority; and (5) substantial and specific danger to public health or safety. In FY 2019, examples of OSC successes involving whistleblower disclosures include the following:

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

- **Mismanagement of Navy Software Program Leading to Vulnerabilities.** On December 19, 2018, the Special Counsel transmitted to the President and Congress a Department of the Navy (Navy) report based on disclosures of wrongdoing at the Naval Air Warfare Center Weapons Division (NAWCWD), China Lake, California. The whistleblower disclosed that software known as KILSWITCH/APASS, developed and widely distributed by the Navy's Digital Precision Strike Suite had significant security vulnerabilities that could render it vulnerable to unauthorized intrusion.

The investigation substantiated the allegations, finding that the software had significant cybersecurity vulnerabilities making it susceptible to hacking. The investigation further found that starting in 2012, the software was impermissibly distributed to a wide variety of special operations units across multiple branches of the U.S. military and potentially to U.S. allies, who used it in operational and combat settings. In response to these findings, the Navy directed the Chief of Naval Operations and the Commandant of the Marine Corps to ensure the software is only used with appropriate security measures in place. Additional inquiries by OSC prompted the distribution of notice across the U.S. Special Operations Command, which required commanders to notify any foreign non-U.S. military personnel to mitigate potential cybersecurity vulnerabilities. Despite these corrective actions, significant concerns remain relating to the extensive and apparently unregulated distribution of the software, and the circulation of notice concerning its shortcomings.

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

- **Improper Backlog of Patients for Follow-Up Endoscopy Procedures.** On March 28, 2019 the Special Counsel transmitted to the President and Congress, a matter involving the Department of Veterans Affairs (VA) Eastern Kansas Health Care System. The whistleblower disclosed that the Dwight D. Eisenhower and Colmery-O'Neil VA Medical Centers (Eisenhower and O'Neil VAMCs, respectively) had a combined improper backlog of approximately 7,000 patients who did not receive a timely follow-up endoscopy procedure.

The agency substantiated that between the two VAMCs 1,107 patients had not received timely follow-up endoscopies. The VA found that while the Eisenhower VAMC had availability for new clinic appointments, the O'Neil VAMC did not. The agency also found that the GI clinics did not notify patients of their endoscopy results timely, per VA policy, consistently remind patients to schedule follow-up appointments, or monitor the quality of colonoscopies as mandated by VHA Directive-1-O-15. Thus, the VA is implementing

several recommendations including that these VAMC's GI clinics receive a consultative site visit from the National GI Program Office, continue to refer new consults to Community Care while decreasing the backlog and wait times, audit staff training files and retrain as needed, monitor the quality of colonoscopies per VA policy, update and reissue relevant local policies, and appropriately staff the GI clinics. The Special Counsel determined that the agency report met the statutory requirements and the findings appear reasonable.

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

- **Fraudulently Obtaining Travel Reimbursements.** A whistleblower alleged that a FEMA logistics manager based in the New York metropolitan area falsified documents to fraudulently obtain significant government travel reimbursements and that FEMA managers were aware of this fraud. The agency fully substantiated the allegations and determined that officials generated false documents to ensure travel reimbursement for an employee during FEMA's disaster response to Hurricane Irene. The falsified documents created the appearance that the employee met agency reimbursement eligibility requirements. As a result of this deception, the employee received approximately \$31,500 in reimbursed temporary duty location expenses. The agency investigation concluded that the repayment was improper.

In response, the agency carried out a variety of disciplinary and corrective actions, including the issuance of notices of termination for several employees. This matter was also presented to the Department of Justice for criminal prosecution, but prosecution was declined. FEMA indicated that it will pursue civil action with the Department of the Treasury to recoup the improper payments. FEMA is also in the process of updating its travel manual to include specific reimbursement compliance requirements.

#### Gross Mismanagement

- **Gross Mismanagement of Home Healthcare Consults.** An investigation substantiated gross mismanagement of home healthcare consults at the Indianapolis VA, which resulted in significant delays in veteran care. One veteran required a below-the-knee leg amputation as a result of the delay. The Medical Center updated and implemented the home health care consult standard operating procedures, including processes for monitoring consults and post-discharge follow-ups. In addition, the Medical Center made personnel changes to the Social Work Service leadership team.
- **Improper Storage of Medications.** An investigation substantiated that VA facilities failed to ensure medications for home-based patients were stored at appropriate temperatures during transit. The VA developed new guidelines and training, and purchased new transport coolers and thermometers.

## Hatch Act Unit

The Hatch Act of 1939 aims to insulate the merit system from improper partisan political influence. In FY 2018, OSC received 263 new Hatch Act complaints, and in FY 2019 received 281 complaints. Both years represent record levels of cases received since the passage of the Hatch Act Modernization Act of 2012. We believe this increase reflects a growing awareness of the Hatch Act and vigilance for apparent violations. OSC strongly expects this trend will continue in both FY 2020, a presidential election year, and in future fiscal years.

OSC enforces compliance with the Hatch Act by investigating allegations to determine whether the evidence supports a determination that a violation has occurred. If so, OSC will issue a warning letter to the subject, attempt to informally resolve the violation, negotiate a settlement, or prosecute the case before the MSPB.

OSC also provides federal, state, and local (including Washington, D.C.) government employees, as well as the public at large, with advisory opinions and advice on the Hatch Act, enabling individuals to determine whether they are covered by the Act and whether their contemplated activities are permitted under the Act. In this role, OSC regularly advises the White House, cabinet members, and other senior management officials throughout the federal government, as well as state and local government officials and the media.

## Investigations

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

As anticipated, the Hatch Act Modernization Act resulted in a substantial reduction in the number of allegations of Hatch Act violations related to state and local political campaigns, and fewer requests for advisory opinions. OSC resolved 245 Hatch Act complaints in FY 2019. (*See Table 8.*)

## Advisory Opinions

OSC has the unique responsibility of providing Hatch Act information and advice to the White House and congressional offices, cabinet members and other senior management officials, as well as state and local (including Washington, D.C.) Government employees, the public at large, and the news media. OSC advises individuals on whether they are covered by the Hatch Act and whether their political activities are permitted. During FY 2019, OSC issued 1,111 total advisory opinions, including 52 formal written advisory opinions.

## Resource Estimates

During FY 2021, the Hatch Act program will use approximately 5 FTE at a cost of approximately \$1,070,000. During FY 2020, we estimate the cost of this program to be \$999,000 with 5 FTE.

## Outreach and Training

To further its advisory role, OSC is very active in training and outreach efforts. In FY 2019, OSC conducted 25 training and outreach presentations to various Federal agencies and employees concerning the rights and responsibilities under the Hatch Act. Many of these programs involved high-level agency officials.

## Goals and Results – Hatch Act Unit

OSC's caseload began to decrease during FY 2013 in response to legislative reform and the agency began reducing its Hatch Act staffing accordingly. Nonetheless, OSC processed and closed complaints at a near-record rate, allowing OSC to significantly decrease its case backlog for several years. In recent years, OSC has been efficient at resolving cases, even with a smaller Hatch Act Unit staff.

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

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	
<b>Formal written advisory opinion requests received</b>	64	64	45	26	52	46	
<b>Formal written advisory opinions issued</b>	60	60	43	24	46	52	
<b>Total advisory opinions issued<sup>13</sup></b>	1,382	1,023	1,641	1,325	1,155	1,111	
<b>New complaints received<sup>14</sup></b>	151	106	197	253	263	281	
<b>Complaints processed and closed</b>	182	131	98	234	286	245	
<b>Warning letters issued</b>	44	28	21	37	49	49	
<b>Corrective actions taken by cure letter recipients</b>	<b>Withdrawal from partisan races</b>	7	8	4	6	5	4
	<b>Resignation from covered employment</b>	0	3	1	2	2	2
	<b>Other</b>	1	0	5	2	3	5
	<b>Total</b>	8	11	10	10	10	11
<b>Disciplinary action complaints filed with MSPB</b>	1	2	3	0	2	0	
<b>Disciplinary actions obtained (by negotiation or ordered by MSPB)</b>	15	9	5	4	6	5	
<b>Complaints pending at end of fiscal year</b>	65	40	139	156	133	132	

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

## Notable FY 2019 Case Summaries

### Litigation

- OSC litigated a case against a U.S. Department of Justice (DOJ) immigration judge who violated the Hatch Act by promoting then-presidential candidate Hillary Clinton’s plan for immigration reform during a deportation hearing over which she presided in March 2016. The administrative law judge found that the employee’s actions merited “a considerable sanction given the public nature of her position” and, because the employee retired before the decision was issued, imposed a fine of \$1,000, the maximum possible civil penalty, along with a 30-month debarment from federal service. The administrative law judge also concluded, however, that the employee’s violation warranted a 120-day suspension, which would have been the ordered penalty had she not already retired.
- OSC litigated a case against a U.S. Postal Service (USPS) employee who twice ran as a candidate for partisan political office despite receiving guidance and warnings from OSC about her Hatch Act violation. OSC filed

<sup>13</sup> All oral, e-mail, and written advisory opinions issued by OSC.

<sup>14</sup> Includes cases that were reopened.

a motion for default judgment after the employee failed to file an answer to the complaint or respond to the Merit Systems Protection Board judge's order. The judge concluded that the employee violated the Hatch Act and ordered her removal from her USPS employment.

#### Disciplinary Action Obtained through Settlement Negotiations

- OSC entered into a settlement agreement with a DLA employee who violated the Hatch Act on numerous occasions by sending partisan political emails and making political Facebook posts while at work. The employee also used Facebook to solicit political contributions nearly two dozen times in violation of the Hatch Act. During OSC's investigation, the employee admitted he was aware of the Hatch Act and that his supervisor had counseled him about the Act prior to engaging in the prohibited activity. In a settlement agreement, the employee agreed to a 90-day suspension without pay.
- OSC settled a case involving another DLA employee who violated the Hatch Act by displaying the words "Vote Republican" on a PowerPoint presentation that he gave while on duty and in the federal workplace. The employee had received extensive Hatch Act training and was explicitly told prior to giving the presentation that certain images he planned to use, including the "Vote Republican" image, would be problematic. In a settlement agreement, the employee agreed to a 30-day suspension without pay for his violation.
- OSC engaged in settlement discussions with a Department of Veterans Affairs (VA) employee who sent multiple emails to VA colleagues, while on duty and in the federal workplace, soliciting volunteers for partisan political efforts. The employee admitted that she knew about the Hatch Act prior to sending the emails. OSC, VA, and the employee agreed to settle the case for a 14-day unpaid suspension, but the employee ultimately resigned before serving the suspension.
- OSC entered into a settlement agreement with a USPS employee who violated the Hatch Act by being a candidate in the 2018 partisan election for the U.S. House of Representatives. There was evidence that the employee knew about the Hatch Act's prohibitions before becoming a candidate. As disciplinary action for his violation, the employee agreed to accept a letter of reprimand.
- OSC investigated and substantiated allegations that a U.S. Army Corps of Engineers (USACE) employee, while at work, solicited coworkers to sign a candidacy petition in support of her friend's campaign for mayor. After the investigation, OSC engaged in settlement negotiations with the employee and USACE to reach an agreement in which the employee would receive significant disciplinary action for her Hatch Act violations. In the middle of those discussions, the employee opted to retire from her USACE employment.

#### Investigations Involving High-Level Officials

- In June 2019, OSC sent an investigative report to President Donald J. Trump finding that Counselor to the President, Kellyanne Conway, violated the Hatch Act during ten television interviews in which she appeared in her official capacity and by engaging in political activity on her Twitter account, which she also uses for official purposes. In the media interviews, Conway advocated against the Democratic Party's presidential candidates and for President Trump's reelection. Conway engaged in prohibited political activity, despite receiving significant Hatch Act training and being subject to a similar disciplinary action recommendation in March 2018. OSC sent a report to the President, because some presidentially appointed White House employees, such as Conway, fall under the President's authority to discipline for Hatch Act violations.

- OSC investigated numerous allegations that White House employees violated the Hatch Act by engaging in political activity on their official social media accounts. While OSC found in several cases that the evidence did not support a conclusion that the employees violated the Hatch Act, OSC also found that at least seven employees had violated the Hatch Act and issued those employees warning letters.
- OSC investigated allegations that a high-level presidential appointee violated the Hatch Act when he wore socks depicting President Donald Trump and the campaign slogan “Make America Great Again!” to an official event. The appointee later posted a picture of his socks to an official Twitter account. Although the tweet was removed, OSC concluded that the appointee violated the Hatch Act and issued him a warning letter.
- OSC investigated several additional allegations of prohibited political activity by cabinet and other high-level officials. The allegations involved, for example, use of official travel for political purposes and use of official position to support a candidate. After investigating those allegations, OSC determined that the evidence did not support a conclusion that the appointees violated the Hatch Act, and OSC closed the cases.

## Outreach and Education Program

The Outreach and Education Program assists agencies with meeting the statutory mandate of 5 U.S.C. § 2302(c) and provides training to federal entities and stakeholders in each of the areas within OSC’s jurisdiction: PPPs under the Civil Service Reform Act, Hatch Act, whistleblower disclosures, and USERRA.

OSC developed a five-step educational program, the 2302(c) Certification Program (Certification Program), in FY 2002. This program offers guidance to agencies and provides easy-to-use methods and training resources to assist agencies with fulfilling their statutory obligations. OSC developed new supervisory training to meet the new annual training requirement mandated under the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017.

Two of the primary goals of OSC’s Certification Program are 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, and to train 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 2019, 156 agencies and agency components were either certified or registered for certification.

As noted above, OSC also conducts formal and informal training/outreach presentations to educate the federal workforce in each of the areas within OSC’s jurisdiction, as well as train supervisors on their particular obligations under the relevant statutes. OSC conducted 198 training presentations in FY 2018, and 188 presentations in FY 2019. One hundred and eighteen (118) of these FY 2019 presentations focused on prohibited personnel practices.

Several agencies, including the Federal Aviation Administration, the Federal Highway Administration, and the Department of Veterans Affairs, asked OSC to conduct multiple training presentations over a period of weeks to maximize attendance for compliance with the program’s supervisory training requirement. At the request of the Department of the Army, OSC provided in-person training for over 100 supervisors and managers at the Army’s Material Command Continuing Legal Education Program, in Huntsville, Alabama on PPPs, including whistleblower protections. OSC also implemented the new annual supervisory training mandated by the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, conducting over 20 in-person trainings.

Finally, OSC has continued its policy of issuing press releases when OSC 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 new Strategic Plan is to protect and promote the integrity and fairness of the Federal workforce, including by expanding training efforts nationwide and effectively communicating with stakeholders and the public. (*See Appendix B for the new Strategic Plan.*) New goal tables were developed to track agency performance against the Strategic Plan and can be found in *Appendix C*.

## Resource Estimates

During FY 2021, we estimate the Outreach and Education program will use 1 FTE at a cost of \$329,000. During FY 2020, we estimate the program will use 1 FTE at a cost of \$304,000.

## PART 4 – ENHANCEMENT OF OPERATIONS

### Strategic Management of Human Capital

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

The agency is addressing gaps concerning specific skills in its program areas through internal development, upward mobility positions, legal internships, in-house mission-specific training, contracted training, and by hiring additional personnel. We have also updated position descriptions for existing jobs in the agency. At peak periods, OSC has also hired approximately 40 staff to augment its workforce, including Presidential Management Fellows (on rotational assignment), legal fellows, and unpaid interns annually to help augment staff workloads and improve agency efficiency. Furthermore, OSC promotes cross-training programs to enable employees to learn new skills and participate in the work of several units. OSC also captures valuable information and ideas from the annual Federal Employee Viewpoint Survey (FEVS), which management uses to refine and improve our work. We have developed performance plans for SES employees that link to the agency's mission and strategic goals. OSC has implemented appropriate, measurable performance goals for each employee and uses personnel flexibilities and tools, including leave flexibilities, alternative work schedules, and a liberal telework program. OSC also has a strong awards program it has used to help incentivize and reward performance.

### Improved Financial Performance

OSC has continued its success in improving its financial foundation. An independent accounting firm evaluated OSC's financial statements for the last 16 years of audited financial statements. The auditors spent time at OSC headquarters, and in Denver with personnel from the Department of Interior's Interior Business Center (IBC), which has performed the accounting, payments, travel system operations, and financial system operations and maintenance functions for OSC. OSC has been audited since the inception of formal Financial Statement Audits as required by the Accountability for Tax Dollars Act (ATDA) of 2002, and OSC received an unqualified opinion during the FY 2019 financial audit.

As mentioned above, OSC contracts outsource certain work under an interagency agreement, which allows OSC to obtain specialized expertise at a lower cost than it could internally. OSC was involved in the effort to design the processes used for its accounting system and to design specific customized reports that reflect exactly the information most helpful to OSC funds management. IBC routinely provides financial reports to OSC and a detailed financial review every quarter. IBC also provides current financial information on day-to-day operations for payroll, procurement, and travel as needed.

As a small agency without an OIG, OSC relies on audits and other reviews of IBC operations by IBC's OIG and the Office of the Chief Financial Officer, as well as information we receive directly from IBC, for information about any significant issues relating to the services provided to OSC. IBC has a formal management and control and compliance program, including OMB Circular A-123 audits, A-123 Accounting Transactions testing, SAS70 Type II audits, and financial statements audits. Furthermore, it conducts IT audits, including Federal Information Security Management Act (FISMA) and internal controls reviews.

During FY 2017, OSC implemented within its financial system the capabilities and reporting required by the Digital Accountability and Transparency Act of 2014. OSC met the requirements of the DATA Act, working in

cooperation with IBC and other participants. In FY 2019, OSC continued to perform quarterly DATA Act reporting on a timely basis.

## Competitive Sourcing

OSC is a small agency with a highly specialized, inherently government-focused mission. 82 percent of its FTEs perform inherently governmental work. 18 percent of its FTEs are considered commercial in nature, spread across multiple activities. According to OMB Circular A-76 and supplemental guidance issued by OMB, government performance of commercial functions is permitted when, as is the case at OSC, it totals 10 FTEs or fewer positions in one activity.

## Maximizing Efficiencies through use of Shared Service Providers

As a smaller federal agency with limited resources, OSC has been strategic about maximizing its operational efficiency while limiting the size and cost of its administrative personnel. A key piece of OSC's strategy is the use of third-party shared service providers to perform highly technical operational procedures in areas such as accounting and contracting, which would require the hiring of significant staff at higher GS levels if OSC were to perform them internally. This strategy is in line with recent government trends in which the White House has encouraged agencies to maximize their use of shared service providers to achieve operational efficiency while limiting costs.

OSC currently has interagency agreements with the U.S. Department of Agriculture's National Finance Center to conduct payroll and personnel processing and with the IBC to perform procurement, procurement system hosting, budget accounting, budget execution, accounting, and travel management services for OSC. In FY 2019, OSC moved to the SmartPay 3 charge card program, utilizing the GSA shared pool vehicle in order to save costs and reduce administrative burden. Also, in FY 2019, OSC utilized the Program Support Center at the Department of Health and Human Services primarily for acquisition services, as well as for transit services.

However, OSC was given notice by its two procurement providers that they are terminating services. Therefore, OSC had to analyze its available options, and determined that moving to GSA's assisted acquisition services in FY 2020 would be the most cost effective and efficient. OSC has since made that transition. However, in the interim period in FY 2019, OSC partnered with a sister agency, MSPB, as a stopgap measure to bridge the procurement transition. Overall, OSC will continue to look for areas in which the value equation makes sense to move functions to Shared Services.

To promote best in-class purchasing for micro purchases, OSC has pursued a three-pronged strategy of 1) limiting the number of authorized purchase-holders within the agency 2) providing regular training for purchase cardholders stressing the need for proper documentation, and 3) periodic auditing of purchase cardholders' transactions, and purchase logs, to ensure compliance with agency policy. In order to promote best in-class purchasing for other purchases, OSC uses GSA schedules, quotes from vendors, and Requests for Information to successfully complete market research and get an accurate cost for the good(s) or service(s) required. Part of the market research process includes exploring all procurement sources, both governmental and non-governmental, for obtaining the good(s) or service(s) required. If the good(s) or service(s) can be obtained from another federal agency at a reduced cost, OSC enters into an inter-agency agreement with the government supplier. On the other hand, if the private sector can provide more competitive pricing, OSC works with its contracting team to create a Request for Proposal (RFP) and encourage multiple vendors to bid, thereby ensuring the agency receives the most competitive price. OSC has achieved significant cost savings through this approach. In FY 2019, for example, OSC implemented an electronic case management system (eCMS) that it had procured earlier, and

which is based on off-the shelf software. By utilizing this approach to implement eCMS, instead of developing a custom case management system in-house, OSC has potentially saved millions of dollars.

OSC will continue to evaluate where shared service providers may be able to save additional costs. The analysis will include all areas of administrative support, human resources operations, and IT helpdesk functions, as well as other operations that may be appropriate. OSC also recently entered into an inter-agency agreement with the Department of Interior to perform our FISMA audit. In addition, OSC will continue to consult with its contracting shared service providers to discuss planning and procurement methods that will best leverage existing government vehicles and contracts to achieve greater savings and efficiencies.

## IT Modernization Initiatives

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

### *Electronic Case Management System (eCMS)*

OSC has tried for many years to replace the existing complex legacy case management system to support the agency's need to move towards eCMS. In FY 2019, OSC launched eCMS utilizing FedRAMP-approved cloud technology. Utilizing agile project management, the initial release of this system will allow the Information Technology Office to decommission the legacy system running outdated technology. This will help strengthen OSC's cybersecurity posture. OSC will continue to modernize and improve eCMS to align with the President's Management Agenda and IT-related OMB Memoranda, including M-19-21 for the electronic management of permanent records.

### *Electronic Filing of Complaints – OSC Form 14*

With the launch of eCMS, OSC can also decommission their legacy e-filing system. As a result, OSC released a new Complaint and Disclosure Form (OSC Form-14), which streamlined the gathering of information for complaints. This new fillable PDF form allows complainants to file with OSC without having to log-in to a system and can file Hatch Act, Prohibited Personnel Practice, and Disclosures Complaints using one form. The form is interactive allowing for questions to be asked based on user's responses.

### *Public Website Enhancements*

The OSC.gov website has been rebranded and republished in a new cloud-based environment. The site was developed in accordance with digital.gov guidance. The focus of the website is to provide the public with information on the services OSC provides, and to streamline complaint filings. In addition, the site hosts training materials for all Federal agencies to support education on and awareness of the Hatch Act.

### *Continuous Diagnostics and Migration (CDM)*

In FY 2019, OSC worked diligently with the Department of Homeland Security to deploy Phase 1 of the CDM program. The CDM program is designed to fortify the cybersecurity of government networks and systems, and Phase 1 specifically includes the deployment of clients that enable hardware and software asset management and vulnerability scanning capabilities.

## IT Goals for FY 2020 – 2021:

1. Continue to enhance OSC's new, cloud-based, eCMS, to provide the agency with tools for managing cases effectively in support of paper reduction and IT modernization.
2. Refresh OSC IT equipment to include desktops and laptops across the enterprise.
3. Reduce the impact of cybersecurity risks by safeguarding IT systems, sensitive data, and networks by implementing cutting edge cybersecurity capabilities and implementing Security Operations Center as a Service.
4. Continue working with DHS to implement Phase 2 of the CDM program to allow OSC to know who is on the network.

The above IT initiatives and operational strategies will advance OSC's ability to deliver better services by leveraging industry standards and commercial-off-the-shelf products and services. The entire range of services forms a basis for sound enterprise technology architecture that connects OSC to its customers and improves the agency's response to important cases.

## Improving Employee Satisfaction and Wellness

Over the past several years, OSC has implemented several key initiatives to enhance employee satisfaction and wellness: OSC has offered a cost share program (the agency pays half of the costs, up to \$35 maximum) for employee gym memberships to encourage employees to have a healthier lifestyle and stay fit; made available on-site, no-fee flu vaccinations and blood pressure checks; organized a blood donor drive; conducted retirement benefits information sessions; and instituted a program to pay for professional credentials (bar membership fees) for attorneys. Additionally, OSC has provided various CLE courses at no charge to enhance professional development and help staff meet bar credential requirements. OSC has also continued to administer the FEVS. Management was actively engaged in addressing employee awareness and participation through email, meetings, an internal electronic newsletter, promotions, and feedback sessions.

## Telework Initiative

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

OSC has a robust IT network setup that supports telework. OSC continues to improve our environment to facilitate telework and streamline business processes. OSC is working to update our existing VoIP capabilities from the Skype for Business platform that will no longer be supported in the next year. This upgrade will continue to provide our telework-ready employees with access to VoIP capabilities, as well as video conferencing. In order to protect federal data, OSC is making efforts to secure connections to OSC through a compliant and user-friendly method. OSC remains committed to improving its telework program and the infrastructure necessary to support it.

# Continuity of Operations

Continuity of Operations (COOP) planning, mandated by Presidential Decision Directive 67, requires each federal agency to be capable of performing essential functions within 12 hours of a threat or the occurrence of a debilitating event. OSC established a Security and Emergency Preparedness team to manage and oversee low-level threats. We also created a Disaster Recovery Team (DRT) to ensure the continuous performance of OSC's mission-essential functions in the event of a building-specific, city-wide, catastrophic, or pandemic event affecting OSC personnel and/or facilities. The DRT is comprised of a number of the agency's senior leaders, including a recent hire, an information security specialist whose expertise is in IT disaster recovery.

OSC must safeguard vital records and databases, establish an alternate operating site, and validate capability through tests, training, and exercises. OSC will continue to evaluate alternate methodologies to connect OSC's headquarters and field offices. Following the government-wide direction, OSC has moved to a cloud-computing approach. For example, in FY 2019, OSC's case management system moved to the cloud, along with our SharePoint environment. OSC's cloud approach will provide additional safety and faster recovery time in the event of a debilitating event; agency functions and vital records will be further safeguarded. The new enterprise architecture will provide redundancy, along with automatic failover and enhancements in performance.

## Management – Risk Management and Program Evaluation

Like many agencies, OSC has struggled to undertake large, complex initiatives to provide new programs and services and to adapt and improve ongoing programs in a rapidly changing environment.

As we implement the Program Management Improvement and Accountability Act of 2015, OSC is working to increase efficiency, reduce costs, and address high-risk areas via Enterprise Risk Management (ERM) efforts. More specifically, OSC has implemented a structured program review process that will enable us to more consistently and efficiently achieve mission goals, save taxpayer dollars, and enhance service delivery. The new "Program Evaluation at the OSC: Guidelines and Framework" is attached in MAX Community. OSC is focused on dedicating more time to gaining program efficiencies and effectively handling complex change initiatives.

Efforts in program evaluation and review will be on a continuum, beginning with smaller functions and moving to programs and functions of increasing size and complexity. OSC has also implemented an ERM Charter and maintains and updates an ERM Profile via the ERM Working Group. The ERM Working Group meets quarterly to address agency risks. The overarching goal is to highlight any underlying weaknesses, provide feasible mitigation strategies, and spur organizational improvement. The ERM documents are attached in MAX Community.

# APPENDIX A

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## STATUTORY BACKGROUND

The Civil Service Reform Act of 1978 (CSRA) established OSC on January 1, 1979. Under the CSRA, OSC operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB or Board). Pursuant to the CSRA, OSC: (1) received and investigated complaints alleging PPPs; (2) received and investigated complaints regarding the political activity of federal employees and covered state and local employees and provided advice on restrictions imposed by the Hatch Act on the political activity of covered federal, state, and local government employees; and (3) received disclosures from federal whistleblowers about government wrongdoing. Additionally, OSC, when appropriate, filed petitions for corrective 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 to enable them to have expanded roles in political campaigns. The 1993 amendments to the Hatch Act did not affect covered state and local government employees.

The following year, Congress enacted the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA protects the civilian employment and reemployment rights of those who serve or have served in the Armed Forces, including the National Guard and Reserve, and other uniformed services. It prohibits employment discrimination based on past, present, or future military service; requires prompt reinstatement in civilian employment upon return from military service; and prohibits retaliation for exercising USERRA rights. Under USERRA, OSC may seek corrective action for service members whose rights have been violated by federal agencies (*i.e.*, where a federal agency is the civilian employer).

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the Reauthorization Act provided that within 240 days after receiving a PPP complaint, OSC should determine whether there are reasonable grounds to believe that a PPP has occurred, exists, or is to be taken. Also, the Reauthorization Act extended protections to approximately 60,000 employees at the VA, and whistleblower retaliation protections were extended to employees of listed government corporations. Further, the Reauthorization Act broadened the scope of personnel actions covered under these provisions. Finally, the Reauthorization Act required that federal agencies inform employees of their rights and remedies under the WPA in consultation with OSC.

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

That same year, Congress passed the Hatch Act Modernization Act of 2012 (HAMA). HAMA modified the

penalty provision of the Hatch Act to provide a range of possible disciplinary actions for federal employees. It also permitted state or local government employees to run for partisan political office unless the employee's salary was entirely funded by the federal government. Lastly, it changed the status of District of Columbia government employees by including them in the prohibitions on state and local employees rather than treating them as federal employees.

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

On December 12, 2017 legislation reauthorizing OSC was signed. The legislation, included in the National Defense Authorization Act for Fiscal Year 2018, reauthorizes OSC through 2023. Section 1097 of the bill clarifies that when complying with OSC's information requests, federal agencies may not withhold information and documents from OSC by asserting common law privileges such as attorney-client privilege. The reauthorization measure re-asserts OSC's ability to obtain needed information and documents. The 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.

# APPENDIX B: STRATEGIC PLAN —for— FISCAL YEARS

2017 – 2022

## Introduction

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

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

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

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

political office unless the employee's salary is entirely funded by the federal government, and changed the status of DC government employees from federal employees to state and local government employees.

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

## About OSC

### *Background*

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

OSC's roots lie in the reform efforts of Gilded Age America. In 1883, Congress passed the Pendleton Act, creating the Civil Service Commission, which was intended to help ensure a stable, highly qualified Federal workforce free from partisan political pressure. Nearly a century later, in the wake of the Watergate scandal and well-publicized allegations of retaliation by agencies against employees who had blown the whistle on wasteful defense spending and revelations of partisan political coercion in the Federal Government, Congress enacted sweeping reform of the civil service system in 1978. As a result, the CSRA replaced the Civil Service Commission with the Office of Personnel Management (OPM), the Federal Labor Relations Authority, and the Merit Systems Protection Board (MSPB), with OSC serving as the investigative and prosecutorial arm of the MSPB for the next decade.

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

### *Mission and Responsibilities*

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

### CSRA – Prohibited Personnel Practices

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

## CSRA – Whistleblower Disclosures

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

## Hatch Act

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

## USERRA

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

## *Organizational Structure*

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Strategic Planning Process**

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

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

This Strategic Planning Team met regularly over six-months to conduct an organizational review of

OSC's programs and services, and then identify new strategic goals, objectives, strategies, and metrics for the strategic plan. OSC also set up a page on its intranet to provide all agency personnel with information and to solicit feedback during the strategic planning process.

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

OSC received 12 substantive comments from internal and external stakeholders in writing as well as during the scheduled meetings: five submissions from employees, and seven submissions from good Government groups, a Federal management association, a public-sector union, and a private citizen. Comments that went beyond the scope of the draft strategic plan were reviewed and considered generally.

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

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

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

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

Finally, OSC received a limited number of comments regarding its internal operations and efforts at achieving organizational excellence. In response to these comments, the agency expanded its strategy to identify best practices from all agency programs, as opposed to only from certain ones. One submission suggested OSC consider having an ombudsperson to handle internal and external stakeholder disputes. In recent years, OSC has implemented several mechanisms to communicate better with employees, keep staff engaged, and resolve workplace disputes. These efforts have been well received. In addition, OSC has been successful in working closely with external Governmental and non-Governmental stakeholders on the agency's work, including promptly responding to concerns brought to OSC's attention. Nevertheless, the agency will consider this recommendation as it moves forward with the implementation of the strategic plan.

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

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

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

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

#### **Strategic Goals:**

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

*Ensure Government accountability.*

*Achieve organizational excellence.*

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

#### **Core Values:**

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

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

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

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

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

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

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

Objective 1: Fairly and promptly investigate and prosecute cases.

Objective 2: Obtain timely and effective relief in cases.

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

#### Strategies:

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

#### Data Points and Metrics:

##### General

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

##### PPP Enforcement

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

- Number of disciplinary actions obtained.

#### Hatch Act Enforcement

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

#### USERRA Enforcement

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

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

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

#### Strategies:

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

#### Data Points and Metrics:

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

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

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

#### Strategies:

- Provide timely and appropriate Hatch Act advice and information.

- Work closely with OPM to revise the Hatch Act regulations.

Data Points and Metrics:

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

Objective 5: Expand training and outreach efforts nationwide.

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

Strategies:

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

Data Points and Metrics:

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

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

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

input, feedback, and collaboration from stakeholders.

Strategies:

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

Data Points and Metrics:

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

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

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

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

Strategies:

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

Data Points and Metrics:

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

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

*OSC returns substantial sums to the Federal Government by pressing for appropriate action to remedy waste and fraud disclosed by whistleblowers. Through its oversight of agency reports on referred whistleblower disclosures,*

*OSC uncovers individual and systemic violations of Federal law and evaluates the reasonableness of agency responses, encourages cost savings occasioned by the identification and cessation of Government waste, and resolves serious health and safety threats. A key objective is to improve the timeliness and outcomes of agency reports. OSC will improve communication with agencies concerning their statutorily-mandated reports, including their content and timeliness, as well as seek alternative resolutions of whistleblower disclosures.*

Strategies:

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

Data Points and Metrics:

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

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

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

Strategies:

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

Data Points and Metrics:

- Revamped online public file of whistleblower disclosure cases on website by FY 2017, and reassess regularly.
- Number of times that favorable outcomes of whistleblower disclosures are disseminated via press

releases, social media, etc.

- Number of training and outreach events that address whistleblower disclosures.
- Plan to enhance the profile of OSC's Public Servant Award by FY 2017, and reassess regularly.

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

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

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

##### Strategies:

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

##### Data Points and Metrics:

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

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

*OSC will be a good steward of tax-payer dollars through the strategic use of IT systems to help the agency better accomplish its mission. OSC will regularly assess the needs of its stakeholders and employees, and in response will employ cutting-edge information technology solutions to improve efficiency and the stakeholder experience. OSC will deploy mobile access to network programs in compliance with directives that move the Government*

*toward a virtual work environment, while ensuring continuity of operations in times of work interruption and providing greater flexibility to employees. OSC will also employ IT security solutions to safeguard its information systems with the purpose of protecting the privacy of employees and those seeking assistance from OSC.*

Strategies:

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

Data Points and Metrics:

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

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

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

Strategies:

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

Data Points and Metrics:

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

- Evaluation and use of customer satisfaction data to improve efficiency and effectiveness of programs and processes by FY 2018, and reassess regularly.

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

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

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

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

Additionally, OSC has had limited ability to invest in, but increased need for, long-term improvements in technology. OSC will be called upon to ensure that the technological environment in which it conducts its work is modern and secure. By proactively assessing the information security needs and the technological requirements of employees and stakeholders, OSC plans to improve efficiency, security, and the customer experience. Continuous assessment of information technology requisites against available resources will help ensure that OSC achieves organizational excellence despite these challenges.

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

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

# Appendix C: Goal Tables for New Strategic Plan Fiscal Years 2017-2022<sup>15</sup>

**Goal Table 1A: Goals 1-14**  
**Goal 1 - Protect and promote the integrity and fairness of the federal workplace**  
**Objective 1: Fairly and promptly investigate and prosecute cases**  
**Objective 2: Obtain timely and effective relief in cases**

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
<b>1</b> Formation of working group to improve efficiency of case handling procedures in FY 2017, and reassess regularly	Met		Met							
<b>2</b> Number of PPP complaints received	Data-point	3,784	Data-point	4,112	Data-point	3,824	Data-point		Data-point	
<b>3</b> Number of whistleblower retaliation complaints received	Data-point	1,899	Data-point	1,861	Data-point	1,925	Data-point		Data-point	
<b>4</b> Number of whistleblower retaliation complaints closed within 240 days	Baseline	1,305	Baseline	1,667	Baseline	1,917	Baseline		Baseline	
<b>5</b> Average age of PPP complaints at closure	Baseline	131	Baseline	166	Baseline	142.97	Baseline		Baseline	
<b>6</b> Number of PPP complaints filed with MSPB	1	0	1	1	1	0	1		1	
<b>7</b> Number of successful PPP prosecutions before MSPB	1	0	1	0	1	0	1		1	
<b>8</b> Number of PPP complaints mediated	30	37	33	29	33	37	33		33	

<sup>15</sup> The statistical results cited for the FY 2019 Strategic Goals should be considered alongside two significant factors; First, the unprecedented partial government shutdown resulted in a halt to almost all agency operations. Thus, the FY 2019 results may appear lower than previous fiscal years in certain instances. Second, OSC deployed a new electronic case management system (eCMS) in the 4th quarter of FY 2019, and is working diligently to establish its full data reporting capability in the new environment. Thus, some FY 2019 case data is unable to be reported at this time, and other FY 2019 case data may differ slightly when eCMS reporting is fully established.

<b>9</b>	Number of PPP complaints mediated resulting in settlement	18	32	20	22	20	24	20		20	
<b>10</b>	Number of informal stays obtained	25	34	25	47	25	29	25		25	
<b>11</b>	Number of formal stays and related extensions obtained	4	16	4	12	8	2	8		0	
<b>12</b>	Total favorable PPP actions <sup>12</sup>	203	190	206	309	206	211	275		206	
<b>13</b>	Number of systemic corrective actions obtained	28	47	30	57	32	60	32		45	
<b>14</b>	Number of disciplinary actions obtained	15	16	15	19	15	27	15		15	

**Goal Table 1A Explanatory Notes**

<sup>12</sup>: This metric was revised in the new Strategic Plan to reflect individual corrective actions obtained, instead of total favorable PPP actions. This is reflected in the results for FY 2019, as well as the target for FY 2021.

- A.** **Goal Table 1B** details the data points and performance metrics for OSC’s work investigating, litigating, and resolving Hatch Act complaints. OSC met three out of five goals in FY 2019. Metric 15 is a datapoint and the baseline is being established for metric 16.

## Goal Table 1B: Goals 15-21

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

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

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

Description of Target		FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
15	Number of Hatch Act complaints received	Data-point	253	Data-point	263	Data-point	281	Data-point		Data-point	
16	Percent of Hatch Act complaints closed within 240 days	Baseline	63%	Baseline	65%	Baseline	75%	60%		65%	
17	Number of Hatch Act complaints filed with MSPB	1	0	1	3	1	0	1		1	
18	Percent of successful Hatch Act prosecutions before MSPB	100%	N/A	100%	100%	100%	N/A	100%		100%	
19	Number of Hatch Act warning letters issued	25	37	20	49	22	49	25		25	
20	Number of corrective actions obtained	10	10	10	10	10	11	10		10	
21	Number of disciplinary actions obtained	5	4	5	6	5	5	5		5	

**B. Goal Table 1C** details the data points and performance metrics for OSC’s work investigating, litigating, and resolving USERRA complaints. During FY 2019, OSC met two out of three metrics. OSC completed 83% of USERRA legal reviews within 60 days and obtained 3 corrective actions.

## Goal Table 1C: Goals 22-27

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

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

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

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
22 Number of USERRA referrals received	Data-point	17	Data-point	25	Data-point	21	Data-point		Data-point	
23 Number of USERRA merit referrals	Data-point	7	Data-point	4	Data-point	6	Data-point		Data-point	
24 Number of USERRA non-merit referrals	Data-point	10	Data-point	21	Data-point	15	Data-point		Data-point	
25 Percent of USERRA referrals closed within 60 days	80%	79%	80%	86%	75%	83%	80%		80%	
26 Number of USERRA offers of representation before MSPB	1	0	1	1	1	0	1		1	
27 Number of USERRA corrective actions obtained (formally and informally)	3	6	3	3	3	3	3		3	

C. **Goal Table 2** details OSC's efforts to enhance its strategic enforcement authority, as it relates to the third objective under Strategic Goal 1. OSC met three out of three goals in FY 2019.

## Goal Table 2

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

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

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
28 Number of PPP reports published on website	2	3	2	2	2	2	2		2	
29 Number of amicus curiae briefs and interventions filed*	2	3	2	5	2	2	2		2	
30 Number of inter-agency efforts involving systemic improvements to the federal workplace	4	10	4	10	4	15	4		8	

**D. Goal Table 3** details the Hatch Act advisory opinions provided by OSC, pursuant to OSC’s fourth objective under Strategic Goal 1. In FY 2019, OSC met or partially met one out of two goals.

<b>Goal Table 3</b>										
<b>Goal 1: Protect and promote the integrity and fairness of the federal workplace</b>										
<b>Objective 4: Provide timely and quality Hatch Act advisory opinions and guidance</b>										
<b>Description of Target</b>	<b>FY 2017 Target</b>	<b>FY 2017 Result</b>	<b>FY 2018 Target</b>	<b>FY 2018 Result</b>	<b>FY 2019 Target</b>	<b>FY 2019 Result</b>	<b>FY 2020 Target</b>	<b>FY 2020 Result</b>	<b>FY 2021 Target</b>	<b>FY 2021 Result</b>
<b>31</b> Number/percent of informal telephonic advisory opinions issued within 3 days of inquiry	Baseline	100%	Baseline	100%	Baseline <sup>31</sup>	97%	98%		98%	
<b>32</b> Percent of informal email advisory opinions issued within 5 days of inquiry	95%	100%	95%	99.9%	95%	87%	98%		95%	
<b>33</b> Number/percent of formal written advisory opinions issued within 60 days of inquiry	Baseline	75%	Baseline	89%	Baseline <sup>33</sup>	83%	75%		75%	
<b>34</b> Revised Hatch Act regulations by FY 2018	N/A	N/A	Met	Partially Met	Met	Partially Met	Met		Met	

**Goal Table 3 Explanatory Notes**

<sup>31, 33</sup> For these metrics, the baseline is being established.

**E. Goal Table 4** details OSC’s training and outreach efforts pursuant to OSC’s fifth objective under Strategic Goal 1. OSC met five out of six goals in FY 2019.

<b>Goal Table 4</b>										
<b>Goal 1: Protect and promote the integrity and fairness of the federal workplace</b>										
<b>Objective 5: Expand training and outreach efforts nationwide</b>										
<b>Description of Target</b>	<b>FY 2017 Target</b>	<b>FY 2017 Result</b>	<b>FY 2018 Target</b>	<b>FY 2018 Result</b>	<b>FY 2019 Target</b>	<b>FY 2019 Result</b>	<b>FY 2020 Target</b>	<b>FY 2020 Result</b>	<b>FY 2021 Target</b>	<b>FY 2021 Result</b>
<b>35</b> Number of agencies/components contacted regarding the 2302(c) Certification Program	70	127	35	164	70	165	100		140	
<b>36</b> Number of agencies/components registered for the 2302(c) Certification Program	Baseline	24	Baseline	21	20	33	15		15	

37	Number of agencies/components certified and recertified for the 2302(c) Certification Program	Baseline	43	Baseline	23	20	24 <sup>37</sup>	15		15	
38	Average time for agencies/components to complete the certification after registration for the 2302(c) Certification Program	9 months	8.35 months	6 months	10.17 months	9 months	9.55 months	8 months		9 months	
39	Number of training and outreach activities, broken down by program area and geographic location	Baseline	148	Baseline	198	150	188 <sup>39</sup>	165		165	
40	Methods to survey effectiveness of training and outreach activities by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	

**Goal Table 4 Explanatory Notes**

<sup>37</sup>: Number of agencies and agency components certifying/recertifying for the Section 2302(c) Certification Program will vary in response to the three-year recertification cycle. For example, due to increased certifications in FY 2019, we expect that a smaller number of agencies will be due for recertification in FY 2020, based on the three-year cycle.

<sup>39</sup>: Number of trainings will increase and decrease in each fiscal year based on a number of factors, including, for instance, (1) the almost 75% increase in Hatch Act trainings we have observed during election years; and (2) an increase in Section 2302(c) trainings based on years in which a higher percentage of agencies are due for recertification at the end of the three-year cycle, creating a “lumpy forecast.” Despite the government shutdown, OSC exceeded its FY 2019 target and almost met its highest level of training and outreach conducted in FY 2018, which was based on a full twelve-month training cycle.

Program Area	Total	Outside Beltway*
PPP	118	26
HA	25	5
DU**	41	4
USERRA	1	0
ADR	3	1

\*Trainings held outside the D.C. area include trainings held in Alabama, California, Colorado, Florida, Georgia, Kansas, Maryland, New York, Texas, and Virginia.

\*\*Most whistleblower disclosure trainings (DU) are held in conjunction with PPP trainings and counted separately.

F. **Goal Table 5** details OSC’s communications with stakeholders and the public, consistent with the sixth objective under Strategic Goal 1. OSC met two out of four goals in FY 2019. OSC issued a total of 18 press releases in FY 2019.

Goal Table 5										
Goal 1: Protect and promote the integrity and fairness of the federal workplace										
Objective 6: Effectively and innovatively communicate with stakeholders and the public										
Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
41	Number of press releases issued	25	20	25	46	40	18	40		30

42	Types and frequency of digital media used to share information	250	153	275	211	275	221	275		275	
43	Number of meetings with stakeholder groups	4	10	4	52	10	56 <sup>43</sup>	10		30	
44	Proposal for the establishment of a regularly-held conference on whistleblowing in the federal workplace by FY 2017, and reassess regularly	Met	Partially Met	Met	Met	Met	Met	Met		Met	

**Goal Table 5 Explanatory Notes**

<sup>43</sup>: In FY 2019, OSC had 56 meetings with stakeholder groups, including the following:

- 34 meetings with congressional representatives and staff
- 11 meetings with agency officials, including secretaries and general counsels
- 5 meetings with good government groups
- 4 meetings with inspector general offices
- 1 Whistleblower Summit on Capitol Hill
- 1 meeting with the European Ombudsman

**I. Strategic Goal 2, Goal Tables 6-8 – Ensure government accountability.**

Strategic Goal 2 has three objectives:

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

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

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

These objectives directly relate to OSC’s investigations of whistleblower disclosures. Similar to prior fiscal years, OSC continues to receive historically high numbers of new disclosures. OSC will continue its commitment to providing a safe, confidential channel for federal employees to report evidence of fraud, waste, abuse, or threats to public safety. OSC developed and deployed a new electronic filing form in FY 2019 that is designed to improve convenience and enhance the whistleblower reporting experience.

- A. Goal Table 6** relates to the first objective under Strategic Goal 2 and details OSC’s efforts to ensure government accountability by providing a safe, confidential and secure reporting channel for stakeholders and the public. In FY 2019, OSC received 1,374 new whistleblower disclosures. OSC met three out of three goals in FY 2019.

<b>Goal Table 6</b>											
<b>Goal 2: Ensure government accountability</b>											
<b>Objective 1: Provide employees with an effective and efficient safe channel to report government wrongdoing</b>											
Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	
45	New electronic form by FY 2017, and	Met	Not Met	Met	Not Met	Met	Met <sup>45</sup>	Met		Met	

	refine as appropriate										
46	Number of whistleblower disclosures received	Data-point	1,777	Data-point	1,554	Data-point	1,374	Data-point		Data-point	
47	Number of whistleblower disclosures that also allege related retaliation	Data-point	81	Data-point	492	Data-point	N/A <sup>47</sup>	Data-point		Data-point	
48	Number of whistleblower disclosures referred to agencies for investigation	50	59 formal / 10 informal	50	139 formal / 22 informal	50	72 formal / 59 informal	75		70	
49	Working group for assessment and improvement of whistleblower reporting experiences (including use of new electronic form) by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	

**Goal Table 6 Explanatory Notes**

<sup>45</sup>: New electronic form was implemented in FY 2019.

<sup>47</sup>: As noted at the beginning of the Performance Section, because of the implementation of OSC’s new electronic case management system (eCMS) in the 4<sup>th</sup> quarter of FY 2019, some data cannot be reported on at this time. OSC is working diligently to solidify its eCMS reporting capability, and will report on this data at the next available opportunity.

**B. Goal Table 7** relates to the second objective under Strategic Goal 2 and details OSC’s efforts to ensure government accountability by providing timely and appropriate outcomes for referred whistleblower disclosures. For Goal Table 7, OSC met its one goal in FY 2019.

**Goal Table 7**  
**Goal 2: Ensure government accountability**  
**Objective 2: Ensure agencies provide timely and appropriate outcomes for referred whistleblower disclosures**

Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result
50 Percentage of referred whistleblower disclosures that are	Data-point	59% formal / 50% informal	Data-point	76% formal / 46% informal	Data-point	N/A <sup>50</sup>	Data-point		Data-point	

	substantiated by agencies										
51	Number of cases with favorable outcomes—both corrective and disciplinary actions—achieved through formal and informal resolution of whistleblower disclosures	Baseline	10 disciplinary / 58 corrective	Baseline	6 disciplinary / 47 corrective	Baseline	16 disciplinary / 72 corrective <sup>51</sup>	Baseline		Baseline	
52	Timeliness of OSC’s communication to the President and Congress after receiving an agency investigation report and whistleblower’s comments	Baseline	148 days	Baseline	71 days	Baseline	116 days	Baseline		Baseline	
53	Implementation of measurement to capture scope of benefits to government resulting from outcomes of whistleblower disclosures, such as significant changes to agency operations to promote safety or security and/or tax dollars saved or recovered, by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	

**Goal Table 7 Explanatory Notes**

<sup>50</sup>: As noted at the beginning of the Performance Section, because of the implementation of OSC’s new electronic case management system (eCMS) in the 4<sup>th</sup> quarter of FY 2019, some data cannot be reported on at this time. OSC is working diligently to solidify its eCMS reporting capability, and will report on this data at the next available opportunity.

<sup>51</sup>: FY 2019 Formal referrals with disciplinary action – 11  
FY 2019 Informal referrals with disciplinary action – 5  
FY 2019 Formal referrals with corrective action – 50  
FY 2019 Informal referrals with corrective action – 22

- C. **Goal Table 8** related to the third objective under Strategic Goal 2 and details OSC’s efforts to enhance awareness of outcomes of referred whistleblower disclosures. For Goal Table 8, OSC met four out of four goals in FY 2019.

<b>Goal Table 8</b>										
<b>Goal 2: Ensure government accountability</b>										
<b>Objective 3: Enhance awareness of outcomes of referred whistleblower disclosures</b>										
<b>Description of Target</b>	<b>FY 2017 Target</b>	<b>FY 2017 Result</b>	<b>FY 2018 Target</b>	<b>FY 2018 Result</b>	<b>FY 2019 Target</b>	<b>FY 2019 Result</b>	<b>FY 2020 Target</b>	<b>FY 2020 Result</b>	<b>FY 2021 Target</b>	<b>FY 2021 Result</b>
54	Revamped online public file of whistleblower disclosure cases on website by FY 2017, and reassess regularly	Met	Not Met	Met	Not Met	Met	Met	Met		Met
55	Number of times that favorable outcomes of whistleblower disclosures are disseminated via press releases, social media, etc.	12	10	12	42	40	52	40		40
56	Number of training and outreach events that address whistleblower disclosures	Baseline	86	Baseline	105	90	158	95		95
57	Plan to enhance the profile of OSC’s Public Servant Award by FY 2017, and reassess regularly	Met		Met						

**II. Strategic Goal 3, Goal Tables 9-11 – Achieve organizational excellence.**

Strategic Goal 3 has three objectives:

- Objective 1: Recruit, develop, and retain a highly talented, engaged, and diverse workforce.
- Objective 2: Improve the use of existing technology and deploy new IT systems to enhance organizational operations.
- Objective 3: Monitor, evaluate, and improve efficiency and effectiveness of programs and processes.

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

OSC will be a good steward of taxpayer dollars through the strategic use of IT systems to help the agency better accomplish its mission. OSC will regularly assess the needs of its stakeholders and employees, and in response will employ cutting-edge information technology solutions to improve efficiency and the stakeholder experience. OSC will also employ IT security solutions to safeguard its information systems with the purpose of protecting the privacy of employees and those seeking assistance from OSC.

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

- A. **Goal Table 9** tracks the first objective under Strategic Goal 3 and details OSC’s efforts to achieve organizational excellence by recruiting, developing, and retaining a highly talented, engaged, and diverse workforce. For Goal Table 9, OSC met eight out of eight goals in FY 2019.

<b>Goal Table 9</b>											
<b>Goal 3: Achieve organizational excellence</b>											
<b>Objective 1: Recruit, develop, and retain a highly talented, engaged, and diverse workforce</b>											
<b>Description of Target</b>	<b>FY 2017 Target</b>	<b>FY 2017 Result</b>	<b>FY 2018 Target</b>	<b>FY 2018 Result</b>	<b>FY 2019 Target</b>	<b>FY 2019 Result</b>	<b>FY 2020 Target</b>	<b>FY 2020 Result</b>	<b>FY 2021 Target</b>	<b>FY 2021 Result</b>	
<b>58</b> Human Capital Plan by FY 2017, and reassess regularly	Met		Met								
<b>59</b> Honors Program by FY 2017 and reassess regularly	Met		Met								
<b>60</b> Improved and standardized onboarding process by FY 2017, and reassess regularly	Met		Met								
<b>61</b> Staff training plan by FY 2017, and reassess regularly	Met	Met <sup>61</sup>	Met	Met	Met	Met	Met	Met		Met	
<b>62</b> Mentorship program by FY 2017, and reassess regularly	Met	Met <sup>62</sup>	Met	Met	Met	Met	Met	Met		Met	
<b>63</b> Ongoing internal cross-training opportunities by FY 2017, and reassess regularly	Met		Met								

64	Ongoing employee engagement efforts, and reassess regularly	Met		Met							
65	Ongoing work/life balance and other related benefits, and reassess regularly	Met		Met							

**B. Goal Table 10** relates to the second objective under Strategic Goal 3 and details OSC’s efforts to improve the use of existing technology and deploy new IT systems to enhance organizational operations. For Goal Table 10, OSC met or partially met five out of six goals in FY 2019.

<b>Goal Table 10</b>											
<b>Goal 3: Achieve organizational excellence</b>											
<b>Objective 2: Improve the use of existing technology and deploy new IT systems to enhance organizational operations</b>											
Description of Target	FY 2017 Target	FY 2017 Result	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	
66 Transition to electronic case management system by FY 2017, and reassess regularly; Going live with the records in the eCMS by FY 2018; Incorporate business process by FY 2019	Met	Partially Met	Met	Not Met	Met	Met <sup>66</sup>	Met		Met		
67 100% deployment of mobile access to network program resources by FY 2017, and reassess regularly	Met	Partially Met	Met	Met	Met	Met <sup>67</sup>	Met		Met		
68 100% data encryption by FY 2017, and reassess regularly; A – encryption of data at rest	Met	A – Met B - Not Met	Met	A – Met B - Not Met	Met	Met <sup>68</sup>	Met <sup>68</sup>		Met		

	B – encryption of data in transit										
69	Ongoing semi-annual assessment of IT needs, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
70	Ongoing semi-annual assessment of the effectiveness of IT services, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
71	Ongoing maintenance of IT staff of 5% of agency work force, and reassess regularly	Met	Met	Met	Not Met	Met	Not Met <sup>71</sup>	Met		Met	

**Goal Table 10 Explanatory Notes**

<sup>66</sup>: OSC successfully deployed eCMS at the end of FY 2019.

<sup>67</sup>: OSC continues to monitor and assess mobile access to OSC network resources.

<sup>68</sup>: OSC utilizes Microsoft Office 365 (O365) for storing its data as well as for e-mail transmission. With O365, OSC data is encrypted at rest and in transit. OSC IT staff will continue to assess and monitor data encryption technics to continue to enhance the security of OSC data.

<sup>71</sup>: In FY 2019, OSC did not meet the goal of maintaining IT staff at 5% of agency workforce, as a result of OSC IT staff undergoing a complete turnover and operating with minimal resources. At the end of FY2019, IT staff consisted of 3 FTE. However, in FY 2020, OSC is on track to meet this goal.

- C. **Goal Table 11**, consistent with the third objective under Strategic Goal 3, details OSC’s efforts to monitor, evaluate, and improve efficiency and effectiveness of programs and processes. For Goal Table 11, OSC met five out of five goals in FY 2019.

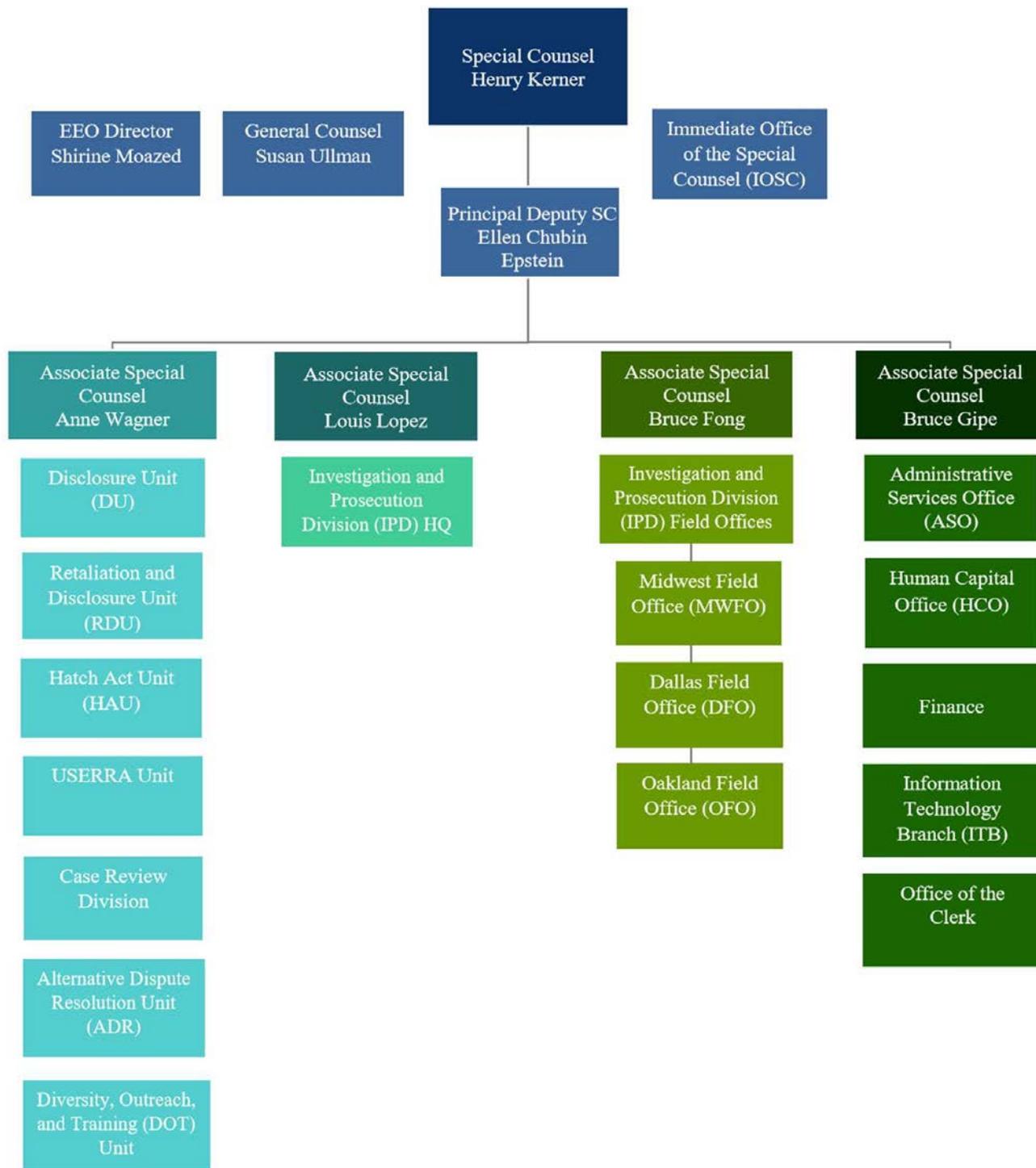
<b>Goal Table 11</b>											
<b>Goal 3: Achieve organizational excellence</b>											
<b>Objective 3: Monitor, evaluate, and improve efficiency and effectiveness of programs and processes</b>											
<b>Description of Target</b>		<b>FY 2017 Target</b>	<b>FY 2017 Result</b>	<b>FY 2018 Target</b>	<b>FY 2018 Result</b>	<b>FY 2019 Target</b>	<b>FY 2019 Result</b>	<b>FY 2020 Target</b>	<b>FY 2020 Result</b>	<b>FY 2021 Target</b>	<b>FY 2021 Result</b>
72	Creation and implementation of institutional approach to evaluate programs and processes by FY 2017, and reassess regularly	Met		Met							
73	Completion of first evaluation of program(s) or process(es) to identify best practices and areas of improvement by FY 2018,	Met		Met							

	and proceed with evaluation of additional programs and processes regularly thereafter										
<b>74</b>	Implementation of best practices and responses to areas of improvement identified in first evaluation of program(s) or process(es) by FY 2019, and reassess regularly	N/A	N/A	Met	Met	Met	Met	Met		Met	
<b>75</b>	Enhanced method for determining customer satisfaction with programs and processes by FY 2017, and reassess regularly	Met	N/A <sup>75</sup>	Met	Met	Met	Met <sup>75</sup>	Met		Met	
<b>76</b>	Evaluation and use of customer satisfaction data to improve efficiency and effectiveness of programs and processes by FY 2018, and reassess regularly	N/A	N/A	Met	Met	Met	Met	Met		Met	

**Goal Table 11 Explanatory Notes**

<sup>75</sup>: The 2018 OSC reauthorization as found in section 1097 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA) requires OSC to establish a survey pilot program to collect information and improve service at various stages of case review. OSC formed a working group to design and establish a survey, seek appropriate external approvals for the collection of information, and implement the survey in Fiscal Year 2019. As a result, an approved OMB collection on information was sent to approximately 4,400 complainants with open or closed cases. OSC received a total of 763 responses.

# Appendix D: OSC Organizational Chart



## **U.S. Office of Special Counsel**

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

**Agency Web Site:**

**[www.osc.gov](http://www.osc.gov)**