# PERFORMANCE

*—and—*

# ACCOUNTABILITY REPORT

*—for—*

# FISCAL YEAR 2015


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

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# A MESSAGE FROM SPECIAL COUNSEL CAROLYN N. LERNER

I am pleased to present the Performance and Accountability Report for fiscal year (FY) 2015 for the U.S. Office of Special Counsel (OSC).

OSC is responsible for promoting accountability, integrity, and fairness in the federal workplace and upholding the federal merit system. OSC makes a real difference in the lives of the American people by saving taxpayers millions of dollars, protecting public health and safety, and increasing the confidence of the public and the federal community in their government.

OSC is experiencing an extraordinary rise in demand for its services, with back-to-back years of double digit growth. Quality of care and access to care at Department of Veterans Affairs (VA) hospitals and reprisals against VA whistleblowers were the primary drivers of increasing caseloads. This past year OSC received 6,141 new matters, a 17 percent increase over FY 2014, and the first time the agency's caseload exceeded 6,000.[1] The 4,056 new prohibited personnel practice (PPP) complaints (an increase of 20 percent) and 1,965 whistleblower disclosures about wrongdoing in government (a 26 percent increase) were both at record levels.

More significantly, OSC set new records in achieving favorable results in PPP cases, mediated settlements, and whistleblower disclosures. In Hatch Act cases, the agency obtained more disciplinary actions in this past two years than any other similar period. OSC has taken the lead in working with whistleblowers and the new leadership at the VA to identify quality of care issues and improper scheduling practices at VA health facilities, helping the government make good on its solemn commitment to veterans. OSC has also worked on behalf of service members and reservists returning to civilian life, achieving numerous favorable results under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

In FY 2014 and 2015, more than a dozen whistleblowers came forward to OSC to disclose widespread abuse of "administratively uncontrollable overtime" in the U.S. Department of Homeland Security

[1] Each year, OSC receives a number of cases that are inadvertently filed by federal employees as disclosures of wrongdoing, and properly should have been filed as prohibited personnel practice complaints. In order to process these cases, OSC must open a disclosure file, read the information provided, and determine that the individual is only seeking relief to address a possible prohibited personnel practice, and not separately making a disclosure of wrongdoing. After making a determination that the case was improperly filed as a disclosure, OSC's Disclosure Unit forwards the case to OSC's Complaints Examining Unit, which reviews the claim as a prohibited personnel practice complaint. In 2014, the number of these misfiled disclosure cases increased by an estimated 9% over the historical average because of changes in OSC's online complaint filing system. OSC is in the process of modernizing its online complaint filing system to make it more user-friendly and intuitive. OSC anticipates that the changes to the online system will be completed by the start of FY 2016. The changes will address not only the current, elevated number of misfiled disclosure cases, but, with the smarter, more user-friendly interface for federal employees, will greatly diminish the historical problem of wrongly-filed disclosure forms. This will make OSC's Disclosure Unit more efficient, by reducing the administrative costs to review, close, and re-direct improperly filed cases, while also enhancing the user-experience. By diminishing the number of wrongly filed disclosure cases, the new system will also provide a more accurate, but lower number of actual disclosure cases received in FY 2016 and beyond.

(DHS). As a result of these cases, the DHS ultimately prohibited employees from earning undue overtime payments, saving $83.7 million. Congress then adopted a new pay system in December 2014 for Border Patrol agents, which the Congressional Budget Office estimates will save $100 million every year.

In other groundbreaking work this past year, OSC has protected federal employees against sexual orientation and gender identity discrimination and has worked with three other agencies to issue a resource guide for federal employees on this issue.

OSC is fulfilling its mission. However, successfully managing the dramatic increase in demand for OSC's services poses a significant challenge. In effect, OSC is a victim of its own success. As the agency's reputation for delivering results grows, so too does its caseload. While Congress moderately increased OSC's appropriation this past fiscal year, the demand for our services continues to outpace the growth in our resources.

That said, I am pleased to report very strong results, which include a clean FY 2015 audit opinion with no material weaknesses. I am confident that the financial and performance data presented in this report are complete, reliable, and accurate. Achieving a strong financial footing is critical to the agency being able to perform its mission.

OSC's management team and staff are dedicated to uprooting waste and fraud, protecting the employment rights of federal employees and returning members of the uniformed services, ensuring accountability, upholding the merit system, and standing up for taxpayers. We look forward to continuing our important work in the next year.

Sincerely,

Carolyn Lerner

Carolyn N. Lerner
November 16, 2015

# PART 1: MANAGEMENT DISCUSSION AND ANALYSIS

## I. About OSC

Carolyn N. Lerner, the eighth permanent Special Counsel, was confirmed by the Senate on April 14, 2011, and was sworn in on June 14, 2011. On October 5, 2015 Ms. Lerner was nominated for reappointment to continue as Special Counsel for another five years.

OSC's mission helps implement "The Accountable Government Initiative" from the President's Performance Management Agenda. OSC promotes government accountability, integrity, fairness, and efficiency by providing a safe channel for federal employees to come forward with evidence of waste, fraud, abuse, law-breaking, or threats to public health or safety, and it protects these employees from retaliation.

When Department of Homeland Security agents report massive abuses of overtime pay, Federal Aviation Administration air traffic controllers witness dangerous flight practices, Department of Veterans Affairs professionals observe unsafe practices in hospitals, or when Defense Department procurement officers find huge irregularities in government contracts, OSC acts to ensure that the whistleblowers' claims are heard and acted upon. OSC also protects federal employees from retaliation for making disclosures, and from other prohibited personnel practices. In addition, through enforcement of the Hatch Act, OSC guards the integrity of the civil service by keeping partisan influences out of the federal workplace. Finally, OSC defends returning service members and reservists against employment discrimination by enforcing their rights under USERRA.

By assisting whistleblowers, OSC saves the federal government substantial money in uncovered waste and fraud. OSC's prophylactic effect is every bit as significant: By providing a safe channel for whistleblower disclosures, OSC prevents waste and potentially catastrophic disasters from occurring in the first place, thereby saving the government tens of millions of dollars.

## II. Statutory Background

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB or the Board). Pursuant to the CSRA, OSC: (1) receives and investigates complaints from federal employees alleging prohibited personnel practices; (2) receives and investigates complaints regarding the political activity of federal employees and covered state and local employees and provides advice on restrictions imposed by the Hatch Act on the political activity of covered federal, state, and local government employees; and (3) receives disclosures from federal whistleblowers about government wrongdoing. Additionally, when appropriate, OSC files petitions for corrective and or disciplinary action with the Board in prohibited personnel practice and Hatch Act cases. In 1989, Congress enacted the Whistleblower Protection Act (WPA). Under the WPA, OSC became an independent agency within the executive branch, with continued responsibility for the functions described above. The WPA also enhanced protections for employees who allege reprisal for whistleblowing and strengthened OSC's ability to enforce those protections.

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to federal and District of Columbia government employees.[1] The 1993 Amendments to the Hatch Act did not affect covered state and local government employees.

In 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted. USERRA protects the civilian employment and reemployment rights of those who serve or have served in the Armed Forces, including the National Guard and Reserve, and other uniformed services. It prohibits employment discrimination based on past, present, or future military service, requires prompt reinstatement in civilian employment upon return from military service, and, prohibits retaliation for exercising USERRA rights. Under USERRA, OSC may seek corrective action for service members whose rights have been violated by federal agencies (*i.e.*, where a federal agency is the civilian employer).[2]

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the 1994 Reauthorization Act provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred or exists. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and whistleblower reprisal protections were extended to employees of listed government corporations. 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 Whistleblower Protection Act in consultation with OSC.[3]

The Whistleblower Protection Enhancement Act (WPEA) was signed into law in November 2012 and strengthens the WPA. This law overturns legal precedents that narrowed protections for government whistleblowers, provides whistleblower protections to employees who were not previously covered, including Transportation Security Administration officers, restores the Office of Special Counsel's ability to seek disciplinary actions against supervisors who retaliate, and holds agencies accountable for retaliatory investigations, among other improvements.

The Hatch Act Modernization Act (HAMA) was signed into law in December 2012. HAMA modified the penalty provision of the Act to provide a range of possible disciplinary actions for federal employees. It also permits state or local government employees to run for partisan political office unless the employee's salary is entirely funded by the federal government. Lastly, it changed the status of District of Columbia government employees by including them in the prohibitions on state and local employees rather than treating them as federal employees.

# III. Organizational Structure of OSC

OSC maintains a headquarters office in Washington, D.C., and has three field offices located in Dallas, Detroit, and Oakland. The agency includes a number of program and support units.

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

Complaints Examining Unit (CEU). This unit is the intake point for all complaints alleging prohibited personnel practices. CEU received approximately 4,000 such complaints in FY 2015. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction and, if so, whether further investigation is warranted. The unit refers qualifying matters for alternative dispute resolution (ADR) or to the Investigation and Prosecution Division (IPD) for further investigation, possible settlement, or prosecution. Matters that do not qualify for referral to ADR or IPD are closed.

Investigation and Prosecution Division (IPD). If ADR is unable to resolve a matter, it is referred to IPD, which is comprised of a headquarters operation and three field offices and is responsible for investigating and prosecuting prohibited personnel practices. IPD attorneys determine whether the evidence is sufficient to establish that a violation occurred. If not, the matter is closed. If the evidence is sufficient, IPD decides whether the matter warrants corrective action, disciplinary action, or both. If a meritorious case cannot be resolved through negotiation with the agency involved, IPD may bring an enforcement action before the MSPB.

Hatch Act Unit (HAU). This unit enforces and investigates complaints of unlawful political activity by government employees under the Hatch Act, and represents OSC in seeking disciplinary actions before the MSPB. In addition, the HAU is responsible for providing legal advice on the Hatch Act to federal, D.C., state and local employees, as well as the public at large.

USERRA Unit. This unit enforces the Uniformed Services Employment & Reemployment Rights Act of 1994 for civilian federal employees.

Alternative Dispute Resolution Unit (ADR). This unit supports OSC's operational program units. Matters are received from IPD and the USERRA Unit that are appropriate for mediation. Once referred, an OSC ADR specialist contacts the affected employee and agency to propose mediation. If both parties agree, OSC conducts a mediation session, led by OSC-trained mediators who have experience in federal personnel law.

Disclosure Unit (DU). This unit receives and reviews disclosures of wrongdoing from federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the relevant agency to conduct an investigation and to report its findings to the Special Counsel, or closure without further action. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness; the Special Counsel then sends her determination, the report, and any comments by the whistleblower to the President and responsible congressional oversight committees, and these are posted to an online public file.

Outreach and Education Unit. The Outreach and Education Unit facilitates coordination with and assistance to agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that federal agencies inform their workforces, in consultation with the OSC, about the rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the Whistleblower Protection Act. OSC designed, created and implements a five-step educational program, the 2302(c) Certification Program. Unit staff provides 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, and enhance professionalism, knowledge and the efficiency of OSC's personnel.

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

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

# IV. Performance Highlights

Following the trend of recent years, FY 2015 was an especially busy year for the U.S. Office of Special Counsel due in large part to the extraordinary increase in the number of new cases. OSC received approximately 6,000 new matters for the first time in agency history, an increase of 1,000 over FY 2014 levels and 37 percent more than FY 2013.[2] OSC experienced a substantial rise in new whistleblower disclosures and retaliation cases, many of which involve the scheduling and patient care revelations at the Department of Veterans Affairs. OSC has skillfully managed a modest increase in resources, to enhance accountability, integrity, and fairness in the federal workplace.

OSC responded to the historic rise in caseloads and received approximately 6,000 matters in FY 2015. This was a new agency record and an increase of almost one/third over FY 2014. OSC has managed its rising caseload by increasing productivity across its multiple units. In FY 2015, OSC resolved a record number of prohibited personnel practice complaints, setting new records for the number of total favorable actions in response to PPPs and whistleblower disclosures. Meanwhile OSC's Hatch Act Unit successfully obtained several disciplinary actions while it reduced its backlog of pending complaints, and the USERRA Unit helped 19 service-members with employment and reemployment. Finally, the ADR Unit achieved a record 81 percent success rate in mediated settlements.

As important as favorable case results, OSC was highly active assisting the federal community with training in order to prevent problems from occurring in the first place. OSC conducted 118 outreach events at other federal agencies during FY 2015. OSC certified 27 agencies under its 2302(c) program, which requires those agencies to take steps to inform their managers and employees about whistleblower protections and prohibited personnel practices.

OSC is meeting its duties as an independent investigative and enforcement agency, bringing greater integrity and efficiency to the federal government. OSC is also working harder, smarter, and with better results than at any time in its history. FY 2014 and 2015 have been banner years for the agency; during that two-year period, OSC resolved more new cases, achieved more favorable actions in response to PPP complaints and whistleblower reprisals, and settled more cases through mediation than in any other two-year period in OSC's history. The same is true for the number of whistleblower disclosures processed and the number of OSC referrals of disclosures to federal agency heads.

## The following is a brief summary of results by program area:

<u>Prohibited Personnel Practices (PPPs).</u> OSC's strategic goal is to significantly reduce the number of PPPs across the federal government. To do so, OSC aims to: (1) increase its capacity to protect federal employees against whistleblower retaliation; (2) provide outreach and advice; (3) seek disciplinary action against federal employees responsible for persistent or egregious PPPs; and (4) achieve mutually satisfactory and speedier solutions through mediation. OSC identified performance indicators to measure our success in achieving each of the three goals. In FY 2015, OSC met its percentage goal for obtaining corrective actions in referred cases while handling its largest total number of PPP complaints ever, resolving over 1,000 cases more than the previous year. A stunning 278 favorable actions were received this year, quadrupling historical agency levels.

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[2] See footnote 1.

Alternative Dispute Resolution (ADR). ADR receives matters from CEU, IPD and the USERRA Unit. The ADR program's goal is to resolve these cases more quickly and efficiently, while obtaining satisfactory results for both agencies and employees. In FY 2015 ADR achieved an overall settlement rate of 81 percent of its cases, a new record.

Whistleblower Disclosures. OSC provides a safe and secure channel for whistleblowers to disclose waste, fraud, abuse, illegality, and dangers to public health and safety. OSC understands that whistleblowers are often in the best position to detect wrongdoing on the job. To support their efforts, OSC sent a record 72 disclosure reports to the President and Congress in FY 2015.

Hatch Act. OSC has two annual goals to reduce instances of federal employees engaging in prohibited job-related political activities: (1) Effect disciplinary action against federal employees for persistent or egregious impermissible job-related political activities; and (2) Achieve cessation of ongoing violations and deter future unlawful conduct by warning and educating employees. To achieve these goals, OSC obtained ten Hatch Act corrective actions and nine disciplinary actions, either by negotiation or MSPB orders. Also, OSC accepted 100 percent of training requests it received from other government agencies to educate their personnel and avoid violations.

USERRA. OSC continues to assist reservists and members of the National Guard who face obstacles returning to their civilian jobs in the federal sector, obtaining a very high favorable resolution rate in over 25 percent of all USERRA cases OSC handled in FY 2015.

Outreach and Education. OSC's goal is to provide government-wide training to inform federal workers of their rights under the whistleblower protection and prohibited personnel practice provisions of the Whistleblower Protection Act. OSC improves federal workers' knowledge of their rights by conducting formal information sessions at federal agencies and by providing information and resources on OSC's website. To this end, OSC completed 118 outreach events in FY 2015.

# V. Office of Special Counsel's Cost Savings to Government and Other Successes

OSC improves the efficiency and accountability of government in many ways, and it returns large sums of money to the U.S. Treasury. The agency is handling record numbers of disclosures from federal whistleblowers annually, many of which result in enormous 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, it protects whistleblowers who bring them forward.

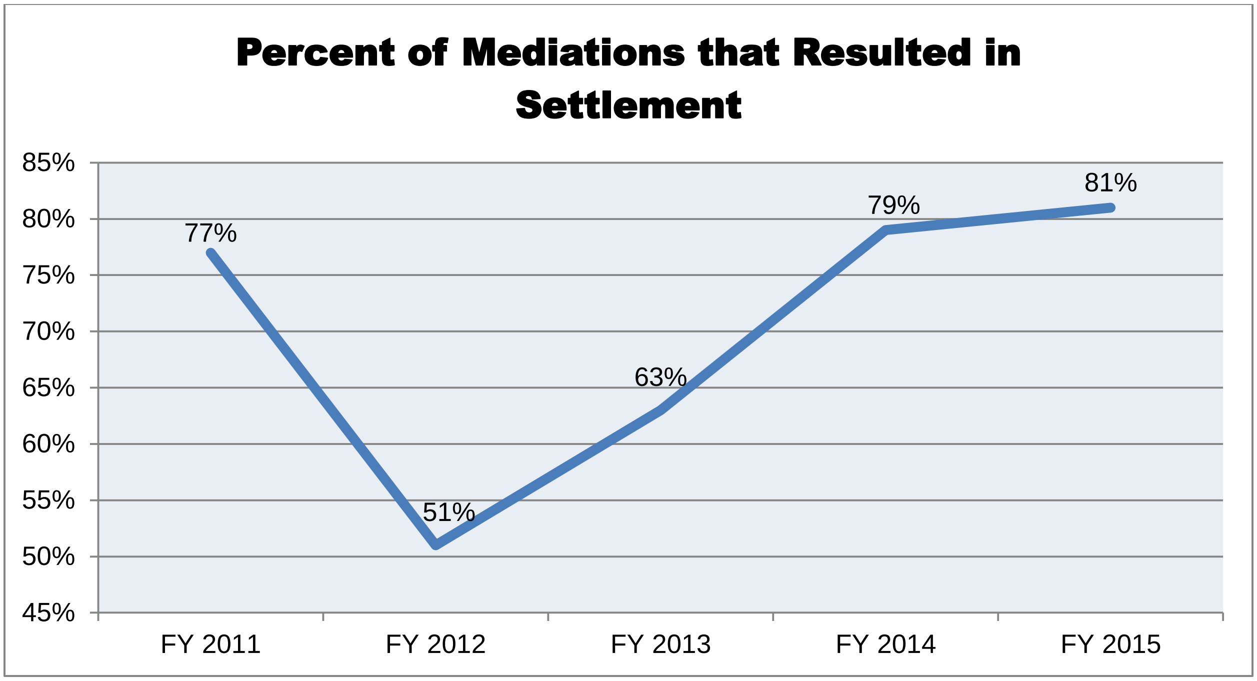
## Cost Savings

The real measure of OSC's financial contribution is preventative: By providing a safe channel for whistleblower disclosures, OSC addresses threats to public health and safety that pose the very real risk of catastrophic harm to the public and huge remedial and liability costs for the government. For example, OSC played a central role in highlighting VA employee disclosures of patient scheduling protocols, causing significant risks to the health of our nation's veterans. OSC also substantiated allegations that DoD Commissary workers improperly inspected meat and poultry, posing a danger to public health and safety. Over the past decade, OSC has handled dozens of disclosures from courageous FAA employees who blew the whistle on systemic failures in air traffic control and the oversight of airline safety.

In the past few years, OSC has received numerous disclosures from Department of Homeland Security (DHS) employees who identified violations of administratively uncontrollable overtime (AUO) at locations nationwide. The whistleblowers alleged that managers approved AUO for work that employees did not perform or for work that should not have qualified. As a result of a new law passed to address improper use of AUO, the Congressional Budget Office estimates that, once the law goes into effect in 2016, $100 million will be saved annually, an amount roughly four times the size of OSC's budget.

## Mediation

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




## Prohibited Personnel Practices

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

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

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

## USERRA Unit

For many years, the Department of Labor investigated, and OSC prosecuted, claims of discrimination under USERRA**.** In addition, Congress tapped OSC for a second three-year USERRA Demonstration Project, which began in August 2011 and ended August 2014. The Demonstration Project added hundreds of cases to OSC's docket, a number of which were resolved in FY 2015.

### Increased Effectiveness Resulting in Increased Workload

OSC's effectiveness in achieving positive results for the federal community is creating greater awareness of and confidence in the agency. As a result, the number of new cases before the agency continues to rise, as does OSC's success in resolving matters. In FY 2015, OSC resolved 33 percent more cases than it did the year prior. However, in terms of productivity increases, OSC is reaching the point of diminishing returns. Despite its best efforts, the backlog of cases is projected to increase substantially in future years. Given the sharply increasing numbers of whistleblower disclosure and PPP cases, and an anticipated increase in Hatch Act matters due to the upcoming presidential election year, OSC will need substantial increases in resources to sustain and improve upon the agency's record of success.

## Notable FY 2015 Prohibited Personnel Practice Case Summaries

### Litigation Cases

- In FY 2014, OSC filed three complaints for disciplinary action with the MSPB. OSC settled two of these complaints, with two employees receiving one-grade demotions to nonsupervisory positions and being debarred from a higher graded position for a specified time period. In the third complaint, tried before an administrative judge in FY 2015, OSC did not prevail.

### Whistleblower Retaliation Cases

- A management official received a proposed termination after he made a series of disclosures and statements to the press regarding improper use of funds and reductions of funding in areas that necessary for public safety. OSC obtained from the agency an indefinite stay of the complainant's termination to investigate the complaint. During our investigation, we uncovered evidence of retaliation against the complainant for his disclosures. The parties agreed to settle the case: The complainant received, among other things, a lump sum payment, and agreed to retire.

- After disclosing concerns related to patient care at his facility and improper conduct by the director of the facility, a GS-6 employee received a detail to another position and a proposed removal that was later mitigated to a three-day suspension. The evidence OSC gathered showed that two days after a reporter called the facility's director to comment on a story about the director's conduct, the facility issued the complainant a notice of proposed removal. The complainant had an unblemished disciplinary history before the proposed removal and suspension. The parties agreed to settle the retaliation claim. The complainant's suspension was repealed, he returned to his position of record, and he received compensatory damages. An investigation related to possible disciplinary action is pending.

- A manager was terminated from employment after disclosing to the Office of Inspector General that one of his supervisors created a hostile work environment and improperly disciplined an employee. The complainant also testified on behalf of a terminated coworker in a matter pending before the MSPB. OSC found evidence that the agency retaliated against the complainant during the course of its investigation. Thereafter, the parties mutually agreed to settle the retaliation claim. The agency reinstated the complainant and provided full back pay.

## Other Cases

- A GS-5 probationary employee was terminated from employment immediately after the agency became aware that he had contacted a U.S. Senator for assistance with compensation related to his status as a veteran. OSC's investigation showed that the agency's reasons for the termination were pretextual. OSC issued a formal prohibited personnel practice report finding that the agency violated 5 U.S.C. § 2302(b)(12), and requested full corrective action. The agency agreed to reinstate the complainant to a similar position and provide him with back pay and compensatory damages. The agency is also considering whether disciplinary action is appropriate for the agency officials.

- A psychiatrist was verbally counseled and issued a counseling/probationary warning letter and a performance evaluation with negative comments for disclosing her sexual orientation. OSC investigated to determine whether the agency's actions violated 5 U.S.C. § 2302(b)(10), which prohibits discrimination based on conduct that does not affect job performance. At the conclusion of OSC's investigation, which concluded that the agency did violate § 2302(b)(10) in discriminating against the complainant, we facilitated a settlement between the parties. The agency agreed to, among other things, pay the complainant a lump sum, expunge any negative documents from the complainant's personnel files, and amend her performance evaluation to remove references related to complaints about her sexual orientation. OSC also provided training to all managers and human resources staff at the facility, and the facility issued a letter to staff informing them they are not required to conceal their sexual orientation.

## Amicus

- A Federal Air Marshal was fired after his agency learned he had disclosed to the media its controversial decision to cancel protection services on all domestic long-haul flights for a set period of time in the midst of elevated terrorism alerts. The appellant believed the decision created a risk to public safety given that a special terrorism alert had been issued about an elevated hijacking threat to air carriers. Having first tried to influence his management and the OIG to reevaluate the cancellation decision, he disclosed this information to the media, which widely disseminated it. His disclosure then led to public and congressional pressure to reinstate protective services on long-haul domestic flights. The agency later learned that the appellant was the source and fired him for making an unauthorized disclosure of sensitive information under its own regulations. OSC filed its first amicus brief in the U.S. Supreme Court in the case, *Dep't. of Homeland Security v. MacLean*, arguing that the appellant's disclosure—which touched on a threat to public safety—was a proper subject of whistleblower protection and not exempt from the WPA. In a 7-2 decision, the Court agreed and remanded the case for further hearings, at which point the appellant and the agency reached a settlement that included back pay and reinstatement.

## Retaliation

- OSC issued a PPP report finding that an agency fired an electrician in retaliation for disclosing that a supervisor, working while under the influence of alcohol, deliberately sabotaged a test of the power plant's electrical system, which could have caused severe injury or death. The electrician received a monetary settlement. By separate report, OSC requested, and the agency agreed to suspend two officials responsible for the retaliatory discharge.

- A consumer safety inspector disclosed violations of the Humane Methods of Slaughter Act in the rendering unconscious of animals before their slaughter. Subsequently, the agency relieved the inspector of her duties and proposed her removal. OSC obtained a stay of the removal and negotiated a settlement on her behalf that included a lump sum payment for back pay and other damages.

- A human resources specialist reported widespread hiring violations to management and the Inspector General. After her disclosures, the agency placed her on a performance improvement plan and proposed her removal. OSC obtained a settlement that provided the employee with a clean record and a lump sum payment and attorney's fees.

- A special agent was fired after he testified, under a subpoena, in support of a defense motion to suppress a federal wiretap. He gave his testimony as a citizen, not as a representative of his agency, which was not involved in the underlying prosecution. Based solely on his testimony, his agency fired him. OSC concluded that his First Amendment rights to free speech were violated. OSC obtained from the MSPB an indefinite stay of his removal and filed a corrective action on his behalf before the Board. Soon after, the Supreme Court issued its decision in *Lane v. Franks*, a case involving similar facts, which affirmed First Amendment rights for public employees who give testimony under oath in criminal trials. Subsequently, OSC settled its case with the agency. The complainant, who by now had reached retirement age, retired with a monetary settlement and a clean employment record.

- A nurse supervisor who disclosed various wrongdoing suffered a hostile work environment and a retaliatory investigation. The complainant was denied a compressed work schedule, a bonus, and step increase, and received a lower performance evaluation, a reassignment, and a proposed seven-day suspension. The complainant had reported to the OIG that agency management officials were allowing the erroneous reporting of medical appointments for patients, misusing travel benefits, and that two community nursing agencies were being given inappropriate access to the medical facility. OSC gained a stay of the suspension. After OSC's investigation, the agency agreed to expunge the complainant's Official Personnel File (OPF) of the proposed suspension and any related documentation leading up to the proposed action, pay the complainant a lump sum and attorneys' fees. In return, the complainant agreed to withdraw her complaints against the agency.

- A complainant was detailed and then permanently reassigned because she reported that the team responsible for a facility's emergency response was routinely failing safety drills and intentionally not reporting the failures in performance reports. As a result, the facility was grossly unprepared to respond to a nuclear emergency or an accident. After OSC's investigation, the agency agreed to place the complainant in a more desirable position, expunge from her OPF all documents related to any adverse or disciplinary action recommended, approved or taken against her, and remove a negative comment from her 2015 mid-year performance review. In return, the complainant agreed to withdraw her OSC complaint.

## Discrimination

- In OSC's first PPP report of transgender discrimination, we determined that an agency had harassed and permitted harassment against a quality assurance specialist who was undergoing gender transition. OSC's investigation and report led to institutional changes at the agency regarding the treatment of transgender employees. Supervisors and employees have since undergone diversity and sensitivity training on sexual orientation and gender identity to increase awareness and to reinforce the protections for LGBT employees.

- A complainant was terminated because of her high-risk pregnancy. Agency officials testified that they did not know about the complainant's pregnancy until February 2013. Nevertheless, OSC learned through email evidence that, in fact, agency officials knew of the complainant's pregnancy in October 2012. At that time, they discussed terminating her in lieu of ordering her a maternity uniform. OSC's investigation also showed that while the complainant was in labor, agency officials asked her to ignore her physician's instructions and delay going to the hospital so that they could stop at her residence to pick up her credentials. After OSC's investigation, the agency agreed to pay the complainant a lump sum, rescind her termination, remove from her OPF and local personnel file all documents related to or that referenced her termination. The agency also agreed to issue a SF-50 reflecting the complainant's voluntary resignation, rescind a letter of counseling for sick leave abuse, provide the complainant with a copy of her OPF and local personnel file, and limit employment reference responses to the complainant's job title, time of service, duty station, pay band and job description. In return, the complainant agreed to withdraw her complaints against the agency.

## Subpoena

- A complainant reported that her supervisor was creating a hostile work environment and appeared to have a substance abuse problem. The complainant's allegations resulted in a formal investigation against her by the agency. The complainant was notified by her supervisor approximately two weeks after the investigation began that her overseas tour was being curtailed. The agency refused to cooperate with OSC's CFR 5.4 request for documents, so we served a subpoena on the agency to obtain the documents.

## Stays

- A complainant reported improper infection control and prevention. An agency investigation determined that proper protocols were not being followed and patient care was substandard. The complainant subsequently received a proposed removal based on unsubstantiated allegations of privacy violations. At OSC's request, the agency agreed to informally stay the complainant's proposed removal during OSC's investigation.

- A complainant received a proposed removal for reporting that his supervisor abused her authority, harassed employees, yelled at staff in front of patients, monitored employees by hiding behind curtains, allowed unsafe working conditions due to inadequate staffing, refused to grant leave and charged employees with AWOL despite documentation, terminated employees who spoke up regarding conditions, and created a hostile work environment. There was no fact-finding investigation conducted into the complainant's alleged misconduct and there were no statements taken from any of the patients. The agency subsequently mitigated the complainant's proposed termination to a 14-day suspension. OSC requested that the agency informally stay the 14-day suspension, pending OSC's investigation, and the agency agreed.

## Notable FY 2015 Alternative Dispute Resolution Case Summaries

### Prohibited Personnel Practice Mediation Cases

- A mid-level manager alleged that his proposed termination during a probationary period was retaliation for whistleblowing. The complainant reported that a health care worker was impaired while on duty and was promoted partially based on false documentation; the disclosures were partially substantiated. After discussions leading up to and during the mediation process, the complainant decided to resign from the agency and pursue other work. The agency agreed to convert the proposed termination into a resignation and provide him a clean record, restore his leave, and pay him a monetary settlement.

- A mid-level employee alleged that after he made disclosures of improper agency investigations, he was subjected to a hostile environment from his superiors and some of his colleagues. In mediation, he and the agency explored several desired job changes and ultimately agreed to a new position in a job series and a location the complainant desired.

- A senior agency official alleged that he was retaliated against for raising deficiencies in his supervisors' management of the division work assignments. As a result, he received a lower performance evaluation than in previous years and a lower bonus than other comparable employees. As a result of OSC's mediation, the complainant received a monetary sum that included the allegedly denied bonus, attorneys' fees, and a meeting with a senior agency official to discuss his mismanagement concerns.

- A senior manager alleged that as a result of raising numerous concerns involving the handling of hazardous material, his duties were substantially changed and he was denied a promotion. The parties reached agreement in mediation. The agency agreed to give the complainant the training he desired, the opportunity to meet with a senior regional official, and membership in a safety working group that was tasked with studying and addressing the public safety concerns he disclosed.

- An agency analyst claimed retaliation for disclosing that a senior official claimed improper locality pay. The improper pay was substantiated and the complainant claimed that in retaliation, his assignments were substantially changed, he was moved to another duty location, and denied telework. A full and productive discussion in mediation led to a repair of working relationships. The parties mutually agreed to new duties for the complainant, a change in office space, restored telework privileges, and a new supervisor for purposes of performance ratings.

- A complainant alleged that after disclosing mismanagement issues, he was retaliated against when his duties were significantly altered and he was issued a five-day suspension. As a result of mediation, the agency partially converted his suspension to leave without pay with no disciplinary record and had the remaining days converted to pay days, provided he received no disciplinary action during the next two years. The agency also agreed to present an award to the employee from a management official acknowledging his contributions at a regular management team meeting. The agency further agreed to arrange for training on the Whistleblower Protection Enhancement Act for managers and provide a neutral reference if the complainant decided to secure a position elsewhere.

### USERRA Mediation Cases

- A trade worker alleged discrimination and violation of USERRA when he was denied military leave for weekend drills, overtime and travel opportunities that his colleagues obtained, and a promotion. After a thorough discussion with management officials in mediation, the parties agreed to the following: The complainant was given two awards that contained monetary payments, the opportunity for a travel assignment, and regular meetings with a mentor to assist him in obtaining his desired promotion. In addition, the management official arranged for OSC-provided USERRA training for all his supervisors and managers.

- A National Guardsman alleged that his federal agency threatened him with termination because his military service made him "unreliable," and also denied him other benefits of employment, including overtime, temporary overseas duty assignments, promotion, and training. OSC mediated the case, resulting in the parties mutually agreeing to a plan to overcome past missed opportunities and pave the way for promotion. As a result, the Guardsman agreed to withdraw his USERRA claim in exchange for both monetary and time off awards (increasing his chances for promotion), an assigned mentor to help prepare him for advancement, and the opportunity for a temporary overseas duty assignment. The agency also agreed to conduct USERRA training for supervisors and managers to reduce the risk of future violations.

- Another Guardsman alleged that his federal agency violated USERRA's reemployment requirements when it assigned him to a different geographical region upon his return from a deployment, resulting in a loss of status and pay. OSC mediated a settlement whereby the Guardsman was reassigned back to his pre-deployment position and group, making him whole under USERRA.

- A federal employee and Navy Reservist filed a claim that his agency violated USERRA by failing to reemploy him in his original position when he returned from an overseas deployment. The claimant was informed that his work unit would be closing and, until that time, he was to work alongside his temporary replacement. Subsequently, the claimant's position was abolished but the temporary employee was to remain until the office closed. Since the claimant lost his job prior to the completion of his one-year probationary period, he was offered no severance pay. Through mediation, the agency agreed to a later termination date that allowed claimant to satisfy the requirements of his probationary period and obtain permanent employee status with associated pay and employment benefits. The agency paid the claimant severance pay and agreed to place the claimant on a Reemployment Priority List.

## Notable FY 2015 Disclosure Unit Case Summaries

OSC received around 3,500 disclosures in FY 2014 and FY 2015, by far the largest amount during any two-year period in the agency's history. As a result, the government substantially saved taxpayer funds through the elimination of waste, mismanagement, and fraud. Disclosures already processed by OSC have also resulted in improved aviation safety, protection of patients at VA hospitals, safer workplaces, and lives saved. Here are some of the highlights.

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

Systemic Violation of Federal Regulations Governing AUO. Over the past two years, OSC referred approximately one dozen disclosure cases to the Secretary of DHS alleging widespread systemic abuse of the pay authority known as administratively uncontrollable overtime (AUO). Whistleblowers at facilities in Laredo, Houston, and El Paso, Texas; Houston, Texas; San Ysidro, El Centro, and Bakersfield, California; Glynco, Georgia; El Centro, California; Herndon and Reston, Virginia; El Paso, Texas; Glynco, Georgia; Washington, D.C.; and, Chattanooga, Tennessee; and Bakersfield, California made this complaint. The whistleblowers alleged that managers approved AUO for work that employees did not perform or for work that should not have qualified. DHS investigated and initiated significant reforms, including drafting a department-wide AUO directive to ensure the lawful administration of overtime pay in each of DHS's component agencies and a review of eligibility assessments which resulted in the de-authorization of AUO for 2,300 employees. In addition, in response to these investigations, Congress adopted a new pay system for Border Patrol agents to replace the outdated AUO system. Collectively, the reforms generated in response to these disclosures will result in an estimated $100 million in annual cost savings to the government, according to the Congressional Budget Office. *Referred during 2013 and 2014; transmitted to the President and congressional oversight committees and closed March 2015.*

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

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

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

## Violation of Law, Rule, or Regulation, and Abuse of Authority

Improper Use of Federal Funds. OSC referred to the Department of Health and Human Services allegations from an employee of the Indian Health Service (IHS), Portland Service Area, Portland, Oregon, that IHS Purchased/Referred Care (PRC) funds were improperly approved to pay for federal salaries, vendor payments, and other inappropriate expenditures, in violation of federal law and agency policy. The investigation did not substantiate employees in the Portland Service Area violated federal law, but did find that the expenditure of PRC funds to pay for drugs through a Department of Veterans Affairs program was not specifically authorized by IHS policy. IHS conducted an evaluation to determine whether the permissible uses of PRC funds should be updated or clarified and whether additional training was needed. The matter was conditionally closed on May 29, 2014, pending the outcome of that review.

The agency provided an update to OSC on March 18, 2015, outlining planned revisions to its PRC policies. The update acknowledged that the agency issued policies governing the use of PRC separately over a period of years, contributing to confusion about the appropriate use of PRC funds. IHS is updating the PRC chapter of the Indian Health Manual to include approved uses for PRC funds and also plans to require area offices and service units to seek approval for legally permissible uses of PRC funds that exceed the revised policy limits. The Special Counsel found that the reports meet all statutory requirements and that the agency head's findings appear reasonable. *Referred November 2013; transmitted to the President and congressional oversight committees and closed April 2015.*

## Substantial and Specific Danger to Public Health and Safety

*Legionella* Eradication at VA Facility in Colorado. OSC referred to the VA Secretary allegations based on disclosures made by a former industrial controls technician at the Grand Junction VA Medical Center, Grand Junction, Colorado. The whistleblower disclosed that Grand Junction VAMC management failed to properly address unsafe conditions within the facility that posed health and safety hazards to patients and staff, including the failure to conduct proper testing, eradication, and maintenance to prevent and eliminate *Legionella* bacteria from the facility's water system. The investigation substantiated that environmental testing detected *Legionella* in Grand Junction VAMC's water system in February 2013, and despite initiating eradication efforts in March 2013, the facility did not conduct *Legionella* eradication procedures in compliance with VA requirements until October 2013. The VA concluded that Grand Junction VAMC did not fully address unsafe conditions that could pose health and safety hazards to patients and staff. Nevertheless, because the investigation did not reveal any evidence of clinical consequences resulting from the presence of *Legionella* in the water system, the VA concluded there was not a substantial and specific danger to public health or safety.

The Special Counsel determined that the VA's reports met all of the statutory requirements. However, the Special Counsel did not find reasonable the VA's conclusion that there was no substantial and specific danger to public health or safety, noting that this conclusion reflects the "harmless error" approach often taken by the VA with respect to patient health and safety. *Referred September 2013; transmitted to the President and congressional oversight committees and closed March 2015.*

*Legionella* Eradication at VA Facility in Pittsburgh. OSC referred to the VA Secretary allegations based on disclosures made by a heating, ventilation, and air conditioning inspector/mechanic at the Pittsburgh VA Medical Center, Pittsburgh, Pennsylvania. The whistleblower disclosed that management neglected the maintenance of critical infrastructure; conducted improper *Legionella* eradication procedures following an outbreak of Legionnaires' disease at the facility; failed to address other unsafe conditions that posed health and safety hazards to patients and staff; and did not adequately manage construction projects performed by contractors to prevent interference with patient care. The investigation, while confirming several factual allegations, did not substantiate that Pittsburgh VA management engaged in wrongdoing, or that their actions or inaction created a substantial and specific danger to the health and safety of employees and patients. Nevertheless, the Office of the Medical Inspector (OMI) made several recommendations for corrective actions and improvements in facility maintenance, construction, and remediation. The Special Counsel determined that the reports contained all of the information required by statute and that the findings appeared to be reasonable. However, the Special Counsel noted that some of the corrective actions that Pittsburgh VA and OMI agreed upon were yet to be made, one of which is not slated for commencement until late fiscal year 2017. *Referred July 2013; transmitted to the President and congressional oversight committees and closed June 2015.*

## Violation of Law, Rule or Regulation

Failure to Safeguard Sensitive Information. OSC referred to the Attorney General allegations based on disclosures of wrongdoing at the United States Marshals Service (USMS), Investigative Operations Division (IOD), Alexandria, Virginia, that agency officials engaged in conduct that may constitute a violation of law, rule, or regulation. Specifically, the whistleblower asserted that IOD employees failed to follow appropriate procedures for safeguarding and disposing personally identifiable information (PII) and protected health information, in violation of the Privacy Act of 1974, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and DOJ orders. The agency substantiated the allegations, confirming that large amounts of unsecured PII was stored on IOD shared hard drives in violation of the Privacy Act, DOJ orders, and USMS policy directives. The agency did not find evidence of willful or criminal violations of the Privacy Act, and attributed the unsecured information to administrative error. The agency took immediate measures to correct the problem by removing PII from the shared drive and limiting access within the division. In addition, the agency developed a written protocol for the national use of shared drives. The Special Counsel determined that the investigative report contains all the information required by statute and the findings appear to be reasonable. *Referred April 2014; transmitted to the President and congressional oversight committees and closed January 2015.*

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

Failure to Maintain Construction Equipment and Provide Safety Training to Employees. OSC referred to the Secretary of the Smithsonian allegations based on disclosures of wrongdoing at the Center for Astrophysics, Fred Lawrence Whipple Observatory (FLWO), Amado, Arizona. The whistleblower, the former FLWO facility manager, alleged that agency officials failed to take proper safety precautions in violation of agency policy and Occupational Safety and Health Administration regulations at a Smithsonian Telescope facility in New Mexico. Specifically, the whistleblower alleged that FLWO lacked a required safety coordinator, and that management failed to provide necessary training to employees, maintain heavy equipment, and keep accident records. The agency substantiated the majority of the allegations. The investigation determined that FLWO lacked a permanent safety coordinator, did not provide complete or adequate fall protection and heavy equipment training, and did not maintain front-end loader maintenance and inspection records. The report did not confirm deficiencies in the training or certification of mobile crane operators, or that accident reports were not completed. In response, the agency hired a new safety coordinator in November 2014, provided employees with fall protection training, instituted heavy equipment training, and required FLWO to follow all established maintenance procedures for heavy equipment. The Special Counsel determined that the report meets all statutory requirements and that the findings appear to be reasonable. *Referred July 2014; transmitted to the President and congressional oversight committees and closed February 2015.*

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

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

Improper Filling of Prescriptions at VA Facility. OSC referred to the VA Secretary allegations based on disclosures of wrongdoing at the Beckley VA Medical Center in Beckley, West Virginia. The whistleblower disclosed that Beckley VAMC clinical pharmacy specialists routinely and improperly reject providers' prescriptions in favor of less expensive medications, and pharmacists working in Beckley VAMC clinics exceed the scope of their practice. The agency partially substantiated the whistleblower's allegations, concluding that Beckley VAMC encouraged providers to switch patients to older, less expensive medications, based on a pharmacy cost-savings goal for fiscal year 2013 related to atypical antipsychotic medications. In addition, the report acknowledged that a blanket restriction was imposed on continued therapy with aripiprazole or ziprasidone, without any appropriate clinical determination regarding changes to patients' drug regimens. The report recommended that the facility immediately stop this practice. The facility committed to conducting a clinical care review of the conditions and medical records of all patients who were discontinued from medications without review. The report did not substantiate the whistleblower's allegation that pharmacists improperly prescribe medications in clinics. The Special Counsel determined that the report meets all statutory requirements and that the findings appear to be reasonable.

During OSC's final review of this matter, the whistleblower disclosed additional allegations suggesting that related wrongdoing may still be occurring at Beckley VAMC. The Special Counsel requested a supplemental report addressing these allegations. That report was due May 2015 and the VA requested an extension of time. Accordingly, this matter was closed conditionally, pending the receipt of the agency's supplemental report. *Referred July 2014; transmitted to the President and congressional oversight committees and closed April 2015.*

## Notable FY 2015 USERRA Unit Case Summaries

- In one USERRA case, an Army Reservist sustained injuries during military service, rendering him unable to perform his former duties as a Federal Air Marshal after his discharge. OSC intervened and negotiated a settlement whereby the agency agreed to place the Reservist on paid light duty for approximately six months while his disability retirement application was processed, and permitted him to remain in San Diego rather than having to relocate to Los Angeles with his colleagues.

- In another case, the Air Force refused to allow the reemployment of an Army National Guard member as a contractor following his return from active duty. As a result, he was unemployed for several months before finding a new job. OSC argued that the Air Force might be found liable under USERRA for improperly interfering with the Guardsman's reemployment rights, even though he was not a government employee, and convinced the Air Force to pay him in lost wages for the period of his unemployment.

- OSC also assisted a Guardsman who received a "minimally satisfactory" rating and negative comments in his performance appraisal upon returning to his job at the Federal Bureau of Prisons after a three-month tour of duty. OSC investigated and determined that the rating was lowered because of the Guardsman's active duty commitment. OSC negotiated an agreement in which the agency agreed to upgrade his rating to "fully successful" and remove the negative comments from his appraisal, improving his chances for promotion.

- While working as a deputy U.S. Marshal, an Air Force Reservist was deployed for several months in support of Operation Enduring Freedom. After returning to his civilian employment, he received a lower-than-usual performance rating, resulting in a significantly smaller performance bonus than he had received in the past, and which he was told was due to his absence for military duty. OSC intervened and explained to the agency that, under USERRA, service members are not to be disadvantaged in their civilian employment due to their service. As a result, the agency agreed to retroactively upgrade the Reservist's performance rating, grant him a time-off award, and give him additional hours of paid leave to approximate the cash award he should have received.

- After a year-long call-up to active duty with his National Guard unit, an Army civilian police officer alleged that he was not promoted to the next higher grade level at the same time as his co-workers (who were not deployed), which also caused him to miss out on a promotional opportunity because he lacked the necessary time-in-grade. OSC investigated and persuaded the agency to offer the Guardsman full relief, including a retroactive promotion, corresponding back pay, and reconsideration for the promotional opportunity.

- Finally, OSC's efforts on a behalf of a Reservist resulted in restoration of 40 hours of paid leave he was improperly charged during the government shutdown in October 2013, when he was on military orders. When the Reservist returned to work, he found that a co-worker who had been on vacation during the same time period had her paid leave restored, but the agency refused to do the same for him. After OSC became involved, the agency agreed to award him 40 hours of restored annual leave, resolving his complaint.

## Notable FY 2015 Hatch Act Unit Successes

### Disciplinary Action Obtained through Settlement Negotiations

OSC successfully resolved eight cases through settlement negotiations this fiscal year. All of the cases involved federal employees who engaged in significant prohibited political activity, and the settlements resulted in the employees receiving disciplinary action for their violations.

- OSC investigated allegations involving a GS-15 Federal Emergency Management Agency employee who hosted a partisan political fundraiser and used his personal email account to invite others to attend and make a contribution. The employee also forwarded fundraising invitations for other candidates, sometimes while he was at work. He also recruited campaign volunteers, planned candidate events, and posted partisan messages to Facebook while at work. In addition to the Hatch Act information his agency provided him, his supervisor specifically warned him about engaging in prohibited political activity. Despite this warning, the employee continued to engage in activity that violated the Hatch Act. As disciplinary action for his admitted violations, the employee agreed to accept a 112-day suspension without pay.
- OSC also investigated allegations that, while at work, a Federal Aviation Administration employee sent an email to four employees, one of whom was his immediate subordinate and three of whom were second-level subordinates, in which he endorsed a candidate for U.S. Senate. He also included two links to the candidate's campaign website. Shortly after sending it, he followed up with one of the second-level subordinates to advise that he had sent the email and the subordinate should take a look at it. As disciplinary action for his violation he agreed to accept a 15-day suspension without pay.

- In addition, OSC settled several other cases involving federal employees who ran for partisan political office, engaged in political activity while at work, or solicited political contributions in violation of the Hatch Act. These cases settled for penalties ranging from a letter of reprimand to a five-day suspension without pay.

## Merit Systems Protection Board Litigation

- The Hatch Act Unit filed two cases with the MSPB this fiscal year. One case involved a U.S. Army Corps of Engineers (USACE) employee who was a candidate in a partisan election for sheriff despite being advised by USACE regional counsel and OSC that he was prohibited from running. OSC gave the employee an opportunity to come into compliance with the law by resigning his employment or withdrawing from the election, but the employee rejected this opportunity. After a hearing before an administrative law judge (ALJ), the ALJ issued a decision ordering USACE to remove the employee. The employee filed a petition for review with the MSPB, which is pending.

- In the other case, filed in January 2015, OSC's complaint alleged that in September 2011 a career SES official at USDA approached a subordinate and outlined the official's proposal to establish a political action committee (PAC) in support of President Barack Obama's 2012 reelection campaign. The official told the subordinate that the official hoped to obtain a political appointment by contributing a large sum of money to President Obama's campaign and that if the subordinate contributed to the official's proposed PAC and the official received a political appointment, the official would help the subordinate obtain a career SES position. OSC alleged that the official asked the subordinate for a $2,400 contribution and twice in October 2011 suggested that the subordinate contribute their performance bonus to the proposed PAC. The official solicited the subordinate again in January 2012. OSC also alleged that in September 2011, the official informed another USDA coworker of the proposed PAC, asked the coworker to contribute $2,000, and told the coworker that donating to PACs is how federal employees advance their careers. Shortly after OSC filed its complaint, the USDA official retired from federal employment. The MSPB dismissed the case without prejudice, allowing OSC to refile within five years if the official returns to federal service.

# VI. OSC's Systems, Controls, and Legal Compliance

Management control activities carried out by OSC include periodic reviews of agency administrative and program elements to ensure that obligations and costs comply with applicable laws, funds; property and other assets are safeguarded; revenues and expenditures are properly recorded and accounted for; and programs are efficiently and effectively carried out in accordance with law and management policy. During FY 2015, reviews were completed on the following agency administrative operations:

1. Information Security Program. OSC's Chief Information Officer reports the state of compliance and progress of cybersecurity metrics and initiatives at OSC. The results of this review are summarized in the agency's Federal Information Security Management Act (FISMA) Report, submitted to OMB in November 2015. This years' report is more comprehensive than prior years as the FISMA requirements have been expanded. Importantly, this year OSC is submitting the IG section for the first time, which has intensified the review we have performed. Following this expanded review, OSC will be prioritizing needed improvements, and developing and executing a plan of action and milestones in the year ahead. In addition, this past year OSC established a formal agreement with DHS's Continuous Diagnostic & Monitoring program and has fully participated in their weekly Cyber Hygiene program to monitor Internet-facing services.

2. Financial Audit. OSC underwent its eleventh annual financial audit in FY 2015. The auditors reported no material weaknesses this year or in any prior fiscal years. The FY 2015 audit addresses the financial statements and accounting processes, almost all of which were accomplished by the Interior Business Center (IBC) at the Department of Interior under an interagency outsourcing agreement.

3. HSPD-12. To comply with the security requirements of directive HSPD-12, OSC has an agreement for HSPD-12 services with the General Services Administration. OSC has met all deadlines so far for the accomplishment of HSPD-12 milestones, has issued PIV cards to all OSC employees, and is now working on expanding its program to include two-factor HSPD-12 authentication for securing each employee's computer.

OSC has outsourced many of its financial management and administrative activities to the Interior Business Center, including financial accounting and reporting, invoice payment, contracting operations, financial and procurement systems software and hosting, and travel services. OSC personnel and payroll data entry transactions have been processed by the Department of Agriculture's National Finance Center (NFC). All these operations are administered under cross-servicing agreements with these certified shared services providers. For information on any significant management control issues related to services provided under these agreements, OSC relies on information received from IBC and NFC, and any audits or reviews issued by the Inspectors General and Chief Financial Officers of the Departments of Treasury and Agriculture, and the Government Accountability Office (GAO). IBC conducts multiple internal and external reviews on its operations, which are captured in the Annual Assurance statement on Internal Controls provided yearly to OSC.

In September of 2012, IBC certified its Oracle Federal Financials Major Application, in accordance with OMB Circular A-130, Appendix III, approving the system for continued operation. In FY 2013, FY 2014 and again in FY 2015 the system has been reviewed on a continuous monitoring basis in conformance with NIST guidelines. NFC's Payroll System was certified on September 2013, and in FY 2014 and FY 2015 operated with a continuous monitoring program. Also, an annual SSAE 16 evaluation was conducted this year on the Oracle Federal Financials Major Application, as well as on NFC's Payroll System. OSC has updated Interconnect Security Agreements previously in place with IBC and NFC to cover the travel, financial and payroll systems.

# VII. Management Assurances

## Annual Assurance Statement on Internal Controls and Internal Control over Financial Reporting

OSC's management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). OSC conducted its assessment of internal controls over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, "Management's Responsibility for Internal Control." Based on the results of this evaluation, OSC can provide reasonable assurance that, as of September 30, 2015, its internal controls over the effectiveness and efficiency of operations were compliant with applicable laws and regulations, and no material weaknesses were found. Further, OSC certifies that the appropriate policies and controls are in place or corrective actions have been taken to mitigate the risk of fraud and inappropriate charge card practices.

For its financial reporting needs, OSC works with the Interior Business Center (IBC). OSC obtains the SSAE 16 report from IBC, and reviews it to assist in assessing internal controls over financial reporting. OSC has not discovered any significant issues or deviations in its financial reporting during FY 2015 and, therefore, concludes that the agency's internal controls over financial reporting are sufficiently strong.

OSC has no in-house financial system. OSC has chosen to use Oracle Federal Financials in an environment hosted by IBC, a shared service provider. Because of the rigorous testing that IBC undergoes, OSC considers its financial system to be reliable and effective.

Carolyn N. Lerner
Special Counsel
November 16, 2015

# VIII. Management Challenges

The primary challenge OSC faces is managing its success: The agency's rapidly increasing caseload exceeds our resource capacity, resulting in a mounting backlog. Absent an appropriation that keeps pace with this ongoing, rising demand, OSC anticipates that our case backlog will continue to grow, threatening both the agency's mission and the confidence of the federal community.

VA cases in particular have risen sharply in the last few years. OSC's signal success in helping reform VA scheduling practices and improve medical care for veterans has encouraged hundreds of VA whistleblowers to come forward. As more and more VA cases get prominently profiled in the news media, more people come to OSC. This is precisely the process of institutional renewal and self-correction that whistleblower protection laws are intended to foster. But this renewal will only be sustained if OSC has the resources to ensure prompt, effective attention to employee concerns.

We note, in this regard, our significant concerns about pending legislation that would likely result in a flood of new complaints to OSC. Legislation passed in the House and pending in the Senate provides the Secretary of Veterans Affairs with new authority to remove or demote VA employees based on their performance or misconduct. This proposed law would prohibit the Secretary from using the new expedited disciplinary authority if an employee has a complaint pending with OSC. We understand the intent of this provision is to ensure that any expedited removal or demotion is not retaliatory. However, this provision may have the unintended consequence of encouraging a massive surge in claims filed with OSC by VA employees, further burdening our already over-extended resources. This additional burden will make it that much more difficult for OSC to manage our caseload effectively, and to separate meritorious whistleblower cases from complaints filed primarily to stall an anticipated disciplinary action.

To be clear, OSC accepts the challenge of managing its caseload efficiently. We are keenly aware that a large backlog would tarnish the agency's hard-won reputation by lengthening case processing times, increasing federal workers' frustration and isolation, and discouraging whistleblowers and complainants from coming forward. It would also sap the morale of OSC employees: Mushrooming dockets, poor prospects for advancement, and merely nominal salary adjustments is a recipe for professional frustration and demoralization. Thus, OSC's leadership is constantly seeking creative means, such as professional development and cross training, and telework and flexible work schedules to free up resources to retain and sustain high performing employees. The agency's human capital planning team continues to maximize opportunities presented by attrition and early retirement to better align professional skill sets with staffing needs and budget realities.

OSC is also proactively reducing case processing times by seeking quick favorable actions in our PPP intake unit, and by promoting ADR to achieve expedited settlements. ADR has proven successful in gaining win-win outcomes for agencies and employees, and it reduces the amount of time and resources OSC must devote to a specific case. The agency is also currently designing a new e-case management system and e-filing system which will automate and streamline many case-processing procedures and improve efficiency. New technology, more efficient case processing procedures, and a judicious use of resources will help enable OSC to continue to achieve a record number of favorable actions and case resolutions, and successfully manage its case backlog.

OSC faces additional technology and budgetary challenges in updating our IT infrastructure and cyber security capabilities. The high-profile federal data breaches have imposed new security mandates on OSC. The agency is continually reviewing its Information Assurance program to protect our data, systems and information technology assets.  These new mandates do not always come with associated funding, imposing added budgetary pressures on OSC. Another urgent technology challenge is the mandate of a wholly electronic records management system by 2019. This is a critical but costly undertaking, especially for a small agency like OSC, one that burdens our IT budget in an irregular way not that is not fully accounted for in annual appropriations.

# IX. Comments on Final FY 2015 Financial Statements

**Financial Highlights**

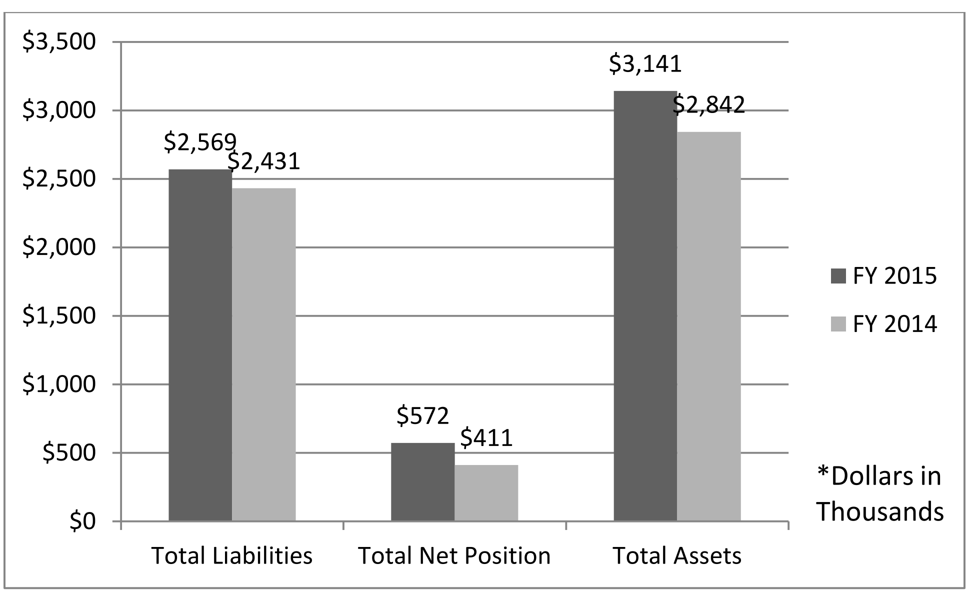
**Consolidated Balance Sheet**

The Consolidated Balance Sheet presents amounts that are owned or managed by OSC (assets); amounts owed (liabilities); and the net position (assets minus liabilities) of the agency divided between the cumulative results of operations and unexpended appropriations.

OSC's balance sheets show total assets of $3,141,000 at the end of FY 2015. This is an increase of $299,000 or approximately 11 percent, compared to OSC's total assets of $2,842,000 for FY 2014. Fund Balances with Treasury comprise 91 percent of OSC's assets.

Total Liabilities for OSC increased by $138,000 from $2,431,000 in FY 2014 to $2,569,000 in FY 2015, an increase of 6 percent. The four largest components of Total Liabilities are Unfunded Leave ($1,189,000), Federal Employee and Veteran Benefits ($446,000), Accrued Funded Payroll ($417,000), and Accounts Payable ($303,000), which all saw increases in FY 2015.

**US Office of Special Counsel Balance Sheet**



The Net Position is the sum of Unexpended Appropriations and the Cumulative Results of Operations. At the end of FY 2015, OSC's Net Position on its Balance Sheets and the Statement of Changes in Net Position was $572,000, an increase of $161,000 above the FY 2014 ending Net Position of $411,000. This increase is due primarily to an increase in Total Unexpended Appropriations for FY 2015.

**Combined Statements of Budgetary Resources**

The Combined Statements of Budgetary Resources shows how budgetary resources were made available and the status of those resources at the end of the fiscal year. In FY 2015, OSC received a $22,939,000 appropriation. OSC ended FY 2015 with an increase in total budgetary resources of $1,865,000, or 9 percent, above FY 2014. Most of this change is attributable to a $2,300,000 increase in the amount of appropriations OSC received in FY 2015.

**Consolidated Statement of Changes in Net Position**

The Consolidated Statement of Changes in Net Position represent the change in the net position for FY 2015 and FY 2014 from the cost of operations, appropriations received and used, net of rescissions, and the financing of some costs by other government agencies. The Consolidated Statement of Changes in Net Position increased last year by $161,000 above FY 2014.

**Other Financial information**

In FY 2015 OSC capitalized $112,000 in leasehold improvements, which is currently in Construction in Progress Status. (OSC's capitalization policy has a threshold of capitalizing individual assets greater than $50,000.) OSC's total Property, Plant and Equipment acquisition value stood at $1,171,000, with accumulated depreciation of $883,000 and a 2015 Net Book value of $288,000. (Note 4 to Principal Financial Statements)

OSC had $1,673,000 more in Current Year Total Obligations this year; $22,902,000 in FY 2015 as compared to $21,229,000 in FY 2014. (Note 10 to Principal Financial Statements) This was due to OSC having a higher appropriation base to obligate against.

OSC recognizes Imputed Financing sources and corresponding expense to represent its share of the cost to the federal government of providing accrued pension and post-retirement health and life insurance benefits. These benefit expenses for current employees decreased by $66,000 (-66,000), from $878,000 in FY 2014 to $812,000 in FY 2015. Assets and Liabilities relating to these benefits are the responsibility of the Office of Personnel Management.

- The dollar amounts listed above are rounded to the nearest thousand, in accordance with the rounding on the Financial Statements.

- Percentages are rounded off to the nearest whole percentage.

- **Limitations of the Financial Statements:** The principal financial statements have been prepared to report the financial position and results of operations of OSC, pursuant to the requirements of 31 U.S.C. 3515 (b).

- The statements have been prepared from the books and records of the Review Commission in accordance with generally accepted accounting principles (GAAP) for federal entities and formats prescribed by the Office of Management and Budget (OMB). The statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These statements should be read with the realization that they are for a component of the United States Government, a sovereign entity.

## X. Endnotes

[1]Public Law No. 103-94 (1993), codified in Titles 5 and 12 of the United States Code.

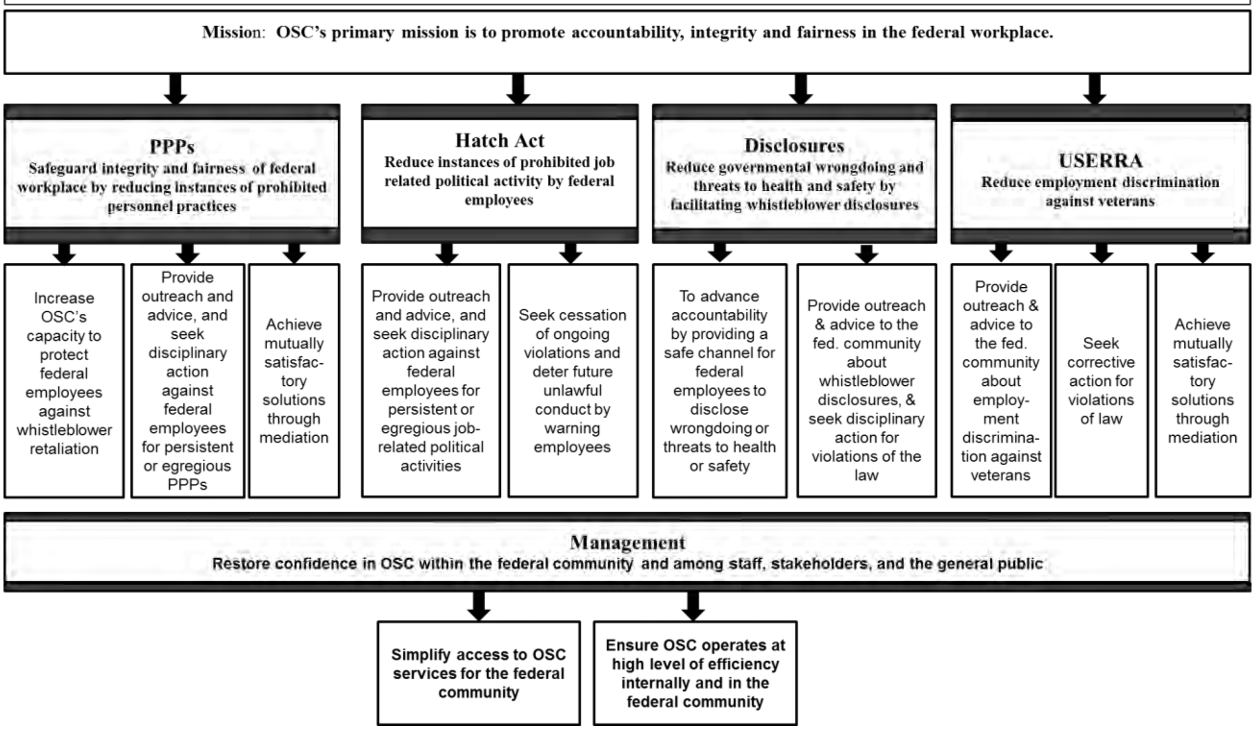
[2]Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, et. seq. The Veterans' Employment Opportunities Act (VEOA) of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The VEOA makes it a prohibited personnel practice to knowingly take, recommend, or approve (or fail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

[3]5 U.S.C. § 2302(c).

# Part 2: Performance Section

The Performance Results Section presents detailed information on the annual performance results of programs related to OSC's four statutory responsibilities. A chart is provided for each performance goal showing OSC's results against the targets, along with the highlights for each objective.

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




## Strategic Plan Government Performance and Results Act Goals

Following the arrival of OSC's new Special Counsel in 2011, the agency developed a new strategic plan in FY 2012, updating its Mission Statement, Strategic Goals and Performance Measures. The rising levels of caseloads to come were not yet foreseeable, nor were their impacts on operations. Three years later in FY 2015, OSC successfully met or partially met 50 out of 75 goals, or 67 percent of its goals; 3 goals were not applicable this year. Given the FY 2015 environment of continuously rising caseloads, we consider this to be a successful performance. OSC has had to make difficult resource allocation decisions and will recalibrate its goals to reflect these resource challenges.

Below are tables listing each of OSC's Performance Measures. The metrics they contain correspond to the appropriate Budget-Related Goals found in the preceding chart.[3]

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[3] Each year, OSC receives a number of cases that are inadvertently filed by federal employees as disclosures of wrongdoing, and properly should have been filed as prohibited personnel practice complaints. In order to process these cases, OSC must open a disclosure file, read the information provided, and determine that the individual is

## Prohibited Personnel Practices

OSC received its highest level ever of PPP cases in FY 2015. The 4,052 complaints received represent a 20 percent increase over FY 2014 levels.

As the caseload has risen, OSC has continued to deliver results; FY 2015 saw OSC achieve 267 corrective actions, the highest total obtained in agency history and a 78 percent increase over FY 2014 levels.

OSC also achieved a 100 percent success rate in its percentage of initial formal stays obtained and in its percentage of successful disciplinary prosecutions.

In FY 2015 OSC successfully met or exceeded 17 out of its 25 stated PPP goals.

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only seeking relief to address a possible prohibited personnel practice, and not separately making a disclosure of wrongdoing. After making a determination that the case was improperly filed as a disclosure, OSC's Disclosure Unit forwards the case to OSC's Complaints Examining Unit, which reviews the claim as a prohibited personnel practice complaint. In 2014, the number of these misfiled disclosure cases increased by an estimated 9% over the historical average because of changes in OSC's online complaint filing system. OSC is in the process of modernizing its online complaint filing system to make it more user-friendly and intuitive. OSC anticipates that the changes to the online system will be started during FY2016. The changes will address not only the current, elevated number of misfiled disclosure cases, but, with the smarter, more user-friendly interface for federal employees, will greatly diminish the historical problem of wrongly-filed disclosure forms. This will make OSC's Disclosure Unit more efficient while also enhancing the user-experience. By diminishing the number of wrongly filed disclosure cases, the new system will also provide a more accurate, but lower number of actual disclosure cases received in FY2016 and beyond.

## Goal Table 1 Safeguard integrity and fairness of federal workplace by reducing instances of prohibited personnel practices

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

6. Formal stays are only filed when an agency declines the initial informal stays offered.

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

## Goal Table 2 Provide outreach and advice; seek disciplinary action against federal employees for persistent or egregious prohibited personnel practices*

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

*Some of these cases were handled by the new pilot project called Retaliation Disclosure Team

18. The VA Projects bypasses IPD, cases are not reviewed for disciplinary actions; the team is set up to handle cases separately, which caused the number of recommendations for disciplinary action to decrease.

23. Upon receipt of a complaint, clearly explain the OSC review process and when action can be expected:

Target: OSC will prepare an attachment for the acknowledgment letter explaining the complaint review process, and expected time for CEU to make a determination on the complaint. All acknowledgment letters should include the attachment. CEU Chief will provide senior management a list of files that do not include the attachment.

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

25. If OSC declines to refer a case for investigation, clearly inform complainant of the reasons why:

Target: The CEU Chief will meet with examiners to identify the information that should be included in preliminary determination and closure letters. CEU Chief will provide senior management a list of the files (by case number and name) lacking this information.

## Alternative Dispute Resolution

FY 2015 showed an 8 percent increase in the percentage of mediations completed that resulted in settlement over FY 2014 levels. The 87 percent result was new agency record.

In FY 2015 the ADR Unit successfully met or exceeded 1 out of its 4 stated goals.

### Goal Table 3 Achieve mutually satisfactory solutions through mediation

| Description of Target | | FY 2013 Target | FY 2013 Result | FY 2014 Target | FY 2014 Result | FY 2015 Target | FY 2015 Result | FY 2016 Target | FY 2016 Result | FY 2017 Target | FY 2017 Result |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **26** | Number of cases reviewed by the ADR Unit from all sources | 190 | 155 | 185 | 132[26] | 200 | 143 | 150 | | 150 | |
| **27** | Percentage of cases reviewed in which mediation is offered from all sources | 63% | 69% | 65% | 61% | 65% | 58% | 60% | | 60% | |
| **28** | Number of cases mediated (including cases withdrawn after one or more sessions) | 50 | 49 | 50 | 39 | 45 | 26 | 35 | | 35 | |
| **29** | Percentage of all mediations completed that resulted in settlement | 58% | 62% | 62% | 79% | 62% | 87% | 62% | | 62% | |

26. CEU and USERRA units referred fewer cases to ADR in FY 2014.

## Whistleblower Disclosures

OSC received almost 2,000 new whistleblower disclosures in FY 2015, a 45 percent increase over the amount received just two years prior. Despite the rising workload, the Disclosure Unit had a 12 percent increase in the number of disclosures reviewed within 15 days. In addition, OSC once again surpassed its goal for total number of outreach events undertaken.

In FY 2015 the Disclosure Unit successfully met or exceeded 4 out of its 7 stated goals.

| Goal table 4 | Reduce governmental wrongdoing and threats to health and safety by facilitating whistleblower disclosures* | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Description of Target | | FY 2013 Target | FY 2013 Result | FY 2014 Target | FY 2014 Result | FY 2015 Target | FY 2015 Result | FY 2016 Target | FY 2016 Result | FY 2017 Target | FY 2017 Result |
| **30** | Total number of outreach activities undertaken including dissemination of whistleblower information | 9 | 2 | 5 | 14 | 10 | 11 | 10 | | 10 | |
| **31** | Success in prompting thorough agency investigations of referred disclosures | 68% | 77% | 77% | 88% | 77% | 45% | 77% | | 77% | |
| **32** | Number of whistleblower disclosures prompting effective corrective action and accountability | 32 | 31 | 33 | 25[32] | 33 | 48 | 33 | | 33 | |

*Some of these cases were handled by the new pilot project called Retaliation Disclosure Team

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

| Goal Table 5 | Provide outreach and advice to the federal community about whistleblower disclosures; seek corrective action | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Description of Target** | | **FY 2013 Target** | **FY 2013 Result** | **FY 2014 Target** | **FY 2014 Result** | **FY 2015 Target** | **FY 2015 Result** | **FY 2016 Target** | **FY 2016 Result** | **FY 2017 Target** | **FY 2017 Result** |
| **33** | Number of whistleblower disclosures referred by OSC to agency head for investigation | 41 | 51 | 50 | 90 | 60 | 62 | 60 | | 60 | |
| **34** | Percent of whistleblower disclosures submitted to OSC referred to agency head for investigation | 6% | 4% | 6% | 7% | 6% | 3% | 3% | | 3% | |
| **35** | Number of whistleblower disclosures either closed or referred within 15 day statutory timeline | 590 | 578 | 580 | 742 | 600 | 835 | 600 | | 600 | |
| **36** | Percent of whistleblower disclosures closed or referred within 15 day statutory deadline | 55% | 49% | 50% | 56% | 53% | 42% | 53% | | 53% | |

## USERRA Enforcement

In addition to handling USERRA Referral cases, OSC's USERRA Unit received 464 additional USERRA cases under a Demonstration Project mandated by Congress from August 2011 to August 2014. Unlike the referral cases, which OSC has statutory authority to prosecute; OSC was given the added responsibility to investigate Demonstration Project cases. OSC stopped receiving new cases under the Demonstration Project on August 9, 2014. With the expiration of the Demonstration Project, OSC's USERRA workload dramatically decreased during FY 2015.

During FY 2015, the OSC continued to work the USERRA cases it had previously received under the Demonstration Project. The USERRA Unit completed a record 95 percent of legal reviews within 60 days and likewise increased its percentage of favorable resolutions achieved to 26 percent.

The USERRA Unit successfully met or exceeded 10 out of 15 stated goals in FY 2015, while three goals were NA this year.

| Goal Table 6 Provide outreach and advice to the federal community about employment discrimination against veterans | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Description of Target** | | **FY 2013 Target** | **FY 2013 Result** | **FY 2014 Target** | **FY 2014 Result** | **FY 2015 Target** | **FY 2015 Result** | **FY 2016 Target** | **FY 2016 Result** | **FY 2017 Target** | **FY 2017 Result** |
| **37** | Number of staff allocated | 3 | 3 | 3 | 3 | 3 | 3 | 1 | | 1 | |
| **38** | Percent of staff allocated | 37% | 37% | 50% | 50% | 50% | 50% | 100% | | 100% | |

## Goal Table 7 Seek disciplinary or corrective action for violations of law

| | Description of Target | FY 2013 Target | FY 2013 Result | FY 2014 Target | FY 2014 Result | FY 2015 Target | FY 2015 Result | FY 2016 Target | FY 2016 Result | FY 2017 Target | FY 2017 Result |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 39 | Number of favorable resolutions | 30 | 40 | 35 | 39 | 12[39] | 19 | 6[39] | | 6[39] | |
| 40 | Percentage of favorable resolutions | 24% | 24% | 24% | 23% | 24%[40] | 26% | N/A[40] | | N/A[40] | |
| 41 | Number of investigations within 90 days | 60 | 59 | 60 | 84 | 20[41] | 10 | N/A[41] | | N/A[41] | |
| 42 | Percentage of investigations within 90 days | 63% | 42% | 50% | 57% | 50%[42] | 47% | N/A[42] | | N/A[42] | |
| 43 | Number of legal reviews within 60 days | 33 | 30 | 32 | 16 | 18[43] | 25 | 18[43] | | 18[43] | |
| 44 | Percent of legal reviews within 60 days | 76% | 83% | 76% | 80% | 76%[44] | 95% | 76%[44] | | 76%[44] | |
| 45 | Customer service exit survey findings | 47% | 50%[45] | 50% | 48% | N/A[45] | N/A[45] | N/A[45] | | N/A[45] | |
| 46 | Percent of cases received by USERRA Unit referred to ADR Unit for review | 50% | 34% | 50% | 21% | N/A[46] | N/A[46] | N/A[46] | | N/A[46] | |

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

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

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

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

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

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

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

46. This target was eliminated for 2015 and 2016 due to the USERRA Demonstration Project ending on August 9, 2014.

| Goal Table 8 | | Achieve mutually satisfactory solutions through USERRA referral for mediation | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Description of Target** | | **FY 2013 Target** | **FY 2013 Result** | **FY 2014 Target** | **FY 2014 Result** | **FY 2015 Target** | **FY 2015 Result** | **FY 2016 Target** | **FY 2016 Result** | **FY 2017 Target** | **FY 2017 Result** |
| **47** | Number of USERRA cases referred to ADR unit for review.[47] | 58 | 47 | 47 | 30 | 3 | 7 | 3 | | 3 | |
| **48** | Percent of cases referred by USERRA to the ADR Unit for review in which mediation was offered | 60% | 66% | 65% | 53% | 66% | 29% | 66% | | 66% | |
| **49** | Percent of cases in which both parties agree to mediate | 50% | 48% | 50% | 75% | 50% | 100% | 75% | | 75% | |
| **50** | Number of cases withdrawn prior to mediation | n/a | 5 | n/a | 1 | 0 | 3 | 0 | | 0 | |
| **51** | Number of cases mediated | 17 | 11 | 7 | 11 | 1 | 3 | 2 | | 2 | |
| **52** | Percent of cases successfully mediated | 58% | 100% | 75% | 82% | 50% | 100% | 50% | | 50% | |

47. The ADR Unit reviewed cases under the USERRA Demonstration Project from May 2012 through August 2014. Due to the expiration of the Demonstration Project in August 2014, there will be no new Demonstration Project cases for OSC to refer to the ADR Unit in FY 2015 and FY 2016, so targets for these categories have been greatly scaled back.

## Hatch Act

In FY 2015, the Hatch Act Unit continued to experience decreases in complaints received and requests for advisory opinions which resulted in fewer complaints processed and advisory opinions issued. This trend can be attributed to the December 2012 Hatch Act Modernization Act, which narrowed the criteria for Hatch Act violations by state and local officials. This trend notwithstanding, the Hatch Act Unit obtained corrective action in 100 percent of its cases and was successful in 100 percent of the case prosecutions.

The Hatch Act Unit successfully met 8 out of its 10 goals in FY 2015.

**Goal Table 9 Provide outreach and advice; seek disciplinary action against federal employees for persistent or egregious job-related political activity**

| Description of Target | | FY 2013 Target | FY 2013 Result | FY 2014 Target | FY 2014 Result | FY 2015 Target | FY 2015 Result | FY 2016 Target | FY 2016 Result | FY 2017 Target | FY 2017 Result |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **53** | Number of Hatch Act updates to OSC website or Listserv messages[53] | 10 | 10 | 10 | 10 | 10 | 9 | 10 | | 10 | |
| **54** | Percent of cases obtaining corrective action[54] | 95% | 92% | 90% | 73% | 75% | 100% | 75% | | 75% | |
| **55** | Percent of appropriate cases resolved thru negotiation [55] | 100% | 100% | 100% | 93% | 90% | 100% | 90% | | 90% | |
| **56** | Number of successful prosecutions | 1 | 1 | 1 | 2 | 1 | 1 | 1 | | 1 | |
| **57** | Percent of successful prosecutions | 100% | 100% | 100% | 100% | 100% | 100% | 100% | | 100% | |

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

54. Calculating corrective actions: Hatch Act Program attorneys will keep track of cases where staff try to achieve corrective action but are unsuccessful. The Unit will then compare that number to the total number of corrective actions achieved. For example, if the Unit achieves 40 corrective actions and are unsuccessful in two attempts, it would calculate the percentage as 40/42 = 95 percent successful. The FY

2014 target for the number of warning letters issued was reduced from 95 to 90, due to the Hatch Act Modernization Act of 2012, which narrowed the criteria for Hatch Act violations at the state and local level. OSC anticipates a reduction in the number of Hatch Act complaints received and warning letters issued as a result of these changes. After FY 2015, the Hatch Act Program will reassess the effects of the new legislation on complaints received and warning letters issued in order to provide an accurate estimate for FY 2016.

55. Calculating disciplinary actions: Hatch Act Program attorneys will keep track of the number of unsuccessful attempts at settlements and compare that number to the total number of negotiated disciplinary actions achieved.

## Goal Table 10 Reduce instances of prohibited job-related political activity by federal employees

| Description of Target | | FY 2013 Target | FY 2013 Result | FY 2014 Target | FY 2014 Result | FY 2015 Target | FY 2015 Result | FY 2016 Target | FY 2016 Result | FY 2017 Target | FY 2017 Result |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **58** | Number of warning letters issued[58] | 142 | 150 | 75[58] | 44 | 50 | 28 | 30 | | 30 | |
| **59** | Percent of Hatch Act outreach/training requests accepted[59] | 98% | 100% | 98% | 100% | 98% | 100% | 98% | | 98% | |
| **60** | Percent of oral and email advisories issued within 5 business days of receipt of complaint[60] | 95% | 98% | 95% | 99% | 95% | 100% | 95% | | 95% | |
| **61** | Percent of formal written advisories issued within 120 days | 95% | 95% | 95% | 100% | 95% | 100% | 95% | | 95% | |
| **62** | Percent of formal written advisory requests responded to[62] | 98% | 98% | 98% | 100% | 98% | 100% | 98% | | 98% | |

58. In FY 2014, the result (compared to FY 2013) suffered a 70 percent decrease. The primary cause of this decrease was the Hatch Act Modernization Act of 2012, which narrowed the criteria for Hatch Act violations at the state and local level. OSC expects this trend to continue into the future. After FY 2015, the Hatch Act Program will reassess the effects of the new legislation on complaints received and warning letters issued in order to provide a more accurate estimate for FY 2016, a presidential election year in which we expect the numbers to rise.

59. HA outreach records: The Outreach Coordinator retains a record of requests that are accepted and declined each year. One outreach request was denied in FY 2012 due to a shortage of resources. In addition, starting in FY 2013, the Hatch Act Program Assistant will maintain a record of this information. In FY 2014, having achieved the 100 percent mark, the best the Unit can do from now on is to maintain this perfect percentage.

60. Oral and Email advisories: Hatch Act Program attorneys will keep track of the number of oral and email advisories that take longer than five days to issue and compare that number to the total number for the year, to come up with the percentage. As of FY 2014 results, which comprise three fiscal years of results, OSC sees very little variation in the high results the Unit has been achieving.

62. Advisories: Compares intakes with number of advisories issued for fiscal year.

## Management

The OSC adopted a management goal to "restore confidence within the federal community and among staff, stakeholders, and the general public." This is a two-part goal that includes ensuring OSC operates at a high level of efficiency internally and in the federal community, and that access to OSC services for the federal community be simplified. Our management goals are overarching goals, which when met contribute to the overall success of the agency and all its programs.  In the Management goals area for FY 2015, OSC successfully met or partially met 10 out of 14 goals.

| Goal Table 11 Ensure OSC operates at a high level of efficiency internally and in the federal community | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Description of Target** | | **FY 2014 Target** | **FY 2014 Result** | **FY 2015 Target** | **FY 2015 Result** | **FY 2016 Target** | **FY 2016 Result** | **FY 2017 Target** | **FY 2017 Result** |
| **63** | Establish Individual Development Plans (IDPs) for all employees to identify skills and gaps | Start Pilot Project by Building Templates for HR | Met | Build Templates and Implement IDPs | Partially Met | Build Templates and Implement IDPs | | Build Templates and Implement IDPs | |
| **64** | Identify targeted training to mitigate skills gaps | Conduct Annual Survey | Met | Conduct Annual Survey | Met | Conduct Annual Survey | | Conduct Annual Survey | |
| **65** | Percent of employees using telework and alternative schedule options; to provide employees with flexibility | 70% | 85% | 70% | 93% | 70% | | 70% | |
| **66** | Percent of employees that participate in the annual Federal Employee Viewpoint Survey on their job satisfaction | 90% | 85% | 90% | 61% | 90% | | 90% | |
| **67** | Improve the functionality of the case tracking system | See Footnote[67] | Met | See Footnote[67] | Met | See Footnote[67] | | See Footnote[67] | |
| **68** | Number of congressional staff or member contacts to strengthen covered laws and improve oversight and accountability | 40 | 40 | 40 | 50 | 40 | | 40 | |
| **69** | Number of amicus briefs, SOI inter-ventions, or other submissions concerning the scope or contours of the laws that OSC enforces. | 2 | 3 | 2 | 0 | 2 | | 2 | |
| **70** | Expand federal agency compliance by invigorating the Certification Program under Section 2302c. | Develop and redesign training materials | n/a | Train agencies on redesigned materials | Met/14[70] | Train agencies on redesigned materials | | Train agencies on redesigned materials | Train agencies on redesigned materials |
| **71** | Survey of attendees at outreach events | Develop survey | n/a | Survey 500 attendees | n/a | Survey 250 attendees | | Survey 300 attendees | |

67. IT supported 30 system change requests in FY 2014. OSC's case tracking system and its canned reports are constantly being improved upon and updated. The improvements made to the functionalities in the case tracking system are often the result of change requests and new requirements from the program offices. Additional change requests have been completed on the legacy case management system in FY 2015, concurrent with the progress towards a new system.

A plan has been developed to modernize the case management system. In FY 2014 a contract was let for the new case management system requirements. In FY 2015 significant work has been completed on the implementation of a modernized electronic system, to include requirements completion and prototype development, with expected go-live in FY 2016.

70. Major strides were made with the 2302(c) program, to successfully include VA certification. This number also reflects training in which OSC's policy and process regarding whistleblower disclosures was covered.

## Goal Table 12 Simplify access to OSC services for the federal community

| | Description of Target | FY 2014 Target | FY 2014 Result | FY 2015 Target | FY 2015 Result | FY 2016 Target | FY 2016 Result | FY 2017 Target | FY 2017 Result |
|---|---|---|---|---|---|---|---|---|---|
| **72** | Upgrade look, feel, and user friendliness of website and keep it current. | Launch redesigned website | Met | Maintain and update for improve-ments[72] | Met | Maintain and update for improve-ments[72] | | [9]Maintain and update for improve-ments | |
| **73** | Survey user community to gauge strengths and weaknesses of website | See footnote[73] | Partially met | See footnote[73] | Partially met | See footnote[73] | | See footnote[73] | |
| **74** | Issue press releases on major agency activities and results in cases; maintain dialogue with news media | See footnote[74] | Met | See footnote[74] | Met | See footnote[74] | | See footnote[74] | |
| **75** | Make use of Twitter and social media | See footnote[75] | Met | See footnote[75] | Met | See footnote[75] | | See footnote[75] | |
| **76** | Conduct biannual surveys of federal community to gauge OSC name and mission recognition | Conduct survey; Implement changes based on survey findings | Unmet | Conduct survey; Implement changes based on survey findings | Unmet | Conduct survey; Implement changes based on survey findings | | Conduct survey; Implement changes based on survey findings | |

72 and 73. Target for FY 2014 – Will conduct survey of users and hope to put website through some kind of external, possibly GSA, test or survey as well.

Results for FY 2014 – Obtained feedback from numerous individual OSC employees and external users, but no survey has been conducted yet.

Target for FY 2015 – OSC will seek to get feedback from GSA's DigitalGov User Experience program and make further improvements to its website.

Results for FY 2015 – Made further improvements to its website and obtained feedback from OSC staff and external users, but not from GSA.

Target for FY 2016 – OSC will seek to get feedback from GSA or other federal government user experience group and make further improvements to its website.

74: Narrative: OSC currently issues between 15 to 30 press releases a year, depending on the activity, caseload, and what cases warrant a news release. These releases are tweeted, posted on the website, and emailed to reporters as well as to stakeholder organizations and people, such as nonprofits, management organizations, veterans' groups and labor unions. OSC's Communications Specialist speaks with members of the news media on a regular basis.

Target for FY 2014 – 30 Tweets, 100 followers, and 550 media calls fielded; will look for areas of improvement beyond above.

Results for FY 2014 – OSC issued 25 press releases, up from 14 in FY 2013. About 300 media calls were fielded, twice the amount from FY 2013. The media's focus on Department of Veterans Affairs whistleblowing accounted for a large proportion of OSC's engagement with the press with prominent coverage in The New York Times, The Washington Post, Wall Street Journal, USA Today, Los Angeles Times, Boston Globe, CNN, CBS, NBC, and numerous other media outlets.

Target for FY 2015 – Issue 30-35 press releases and seek to improve partnerships with the press to better educate the federal workforce on prohibited personnel practices and OSC's role.

Results for FY 2015 – OSC issued 26 press releases, up slightly from FY 2014. Slightly fewer phone calls and media requests were fielded than in FY 2014. The media's focus on Department of Veterans Affairs whistleblowing continued to account for a large proportion of OSC's engagement with the press. OSC's public affairs staff coordinated with OSC program staff to begin a new initiative to publish redacted reports of prohibited personnel practices to better educate the federal workforce and to help meet OSC's obligations under the White House's second Open Government National Action Plan. Two redacted reports were published in FY 2015 and received widespread media interest.

Target for FY 2016 – Issue 25-30 press releases, use social media, and continue partnership with the press to better educate the federal workforce on prohibited personnel practices and OSC's role.

75: Narrative: OSC uses Twitter to push out information over social media, especially information on OSC's activities and educational materials.

Target for FY 2014 – Same as FY 2013 target –Look for better ways to reach out and increase amount of traffic.
Results for FY 2014 – On Twitter, OSC tweeted 31 times and gained 166 followers.

Target for FY 2015 – Expand number of Twitter followers by more than 300 to a total of 600+, with a special focus on expanding the number of employment attorneys, reporters, public policy experts, and stakeholders who follow OSC. Tweet 120 times – especially by pushing out more educational content. Review OSC's videos and seek to improve the quality of OSC's shareable multimedia content. Seek partnerships, such as with other federal agencies, to more widely distribute OSC's educational material through their social media networks to better reach the federal workforce.

Results for FY 2015– OSC tweeted 160 times and gained 247 new followers – a huge increase over the last year. EEOC's Office of Federal Programs is a regular re-tweeter of OSC content. The VA re-tweeted an OSC news release. Coordinated with EEOC, OPM, and MSPB on a general media strategy as well as a social media strategy to roll out a guide on remedies to LGBT discrimination in the federal workplace. Experimented with creating some video clips relevant to OSC's work and distributed one.

Target for FY 2016 – Continue to expand number of Twitter followers, with a special focus on expanding the number of employment attorneys, reporters, public policy experts, and stakeholders who follow OSC. Tweet 120 times – especially by pushing out more educational content. Review OSC's videos and seek to improve the quality of OSC's shareable multimedia content. Seek partnerships, such as with other federal agencies, to more widely distribute OSC's educational material through their social media networks to better reach the federal workforce.

# Part 3:  Financial Section

**U.S. OFFICE OF SPECIAL COUNSEL**
**1730 M Street, N.W., Suite 218**
**Washington, D.C. 20036-4505**
**202-254-3600**

**CFO Letter**

November 13, 2015

This letter usually addresses any recommendations for improvement made by the auditor concerning deficiencies in internal controls which may have an effect on the auditor's ability to express an opinion on the financial statements. I am pleased to report that there were no such matters noted by the auditor in FY 2014 that were considered significant.

The auditor also did not note any noncompliance with laws or regulations which would have an effect on the financial statements.

We believe the minor recommendations pointed out during the FY 2014 audit have been addressed.

Thank you for the opportunity to comment on the audit report. The U.S. Office of Special Counsel is committed to continuous improvement of our internal controls, processes, and the quality of our financial reporting.

Sincerely,

Karl P. Kammann

Karl Kammann
Chief Financial Officer
U.S. Office of Special Counsel

**U.S. OFFICE OF SPECIAL COUNSEL**
**AUDIT REPORT**
**SEPTEMBER 30, 2015**

**ALLMOND & COMPANY, LLC**
**Certified Public Accountants**
**8181 Professional Place, Suite 250**
**Landover, Maryland 20785**
**(301) 918-8200**

**U.S. OFFICE OF SPECIAL COUNSEL**
**AUDIT REPORT**
**SEPTEMBER 30, 2015**

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A/C

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# Independent Auditors' Report

Special Counsel
U.S. Office of Special Counsel

We have audited the accompanying consolidated balance sheet of the U.S. Office of Special Counsel (OSC) as of September 30, 2015 and 2014, and the related consolidated statements of net cost, changes in net position, and combined statement of budgetary resources for the year then ended (hereinafter referred to as "consolidated financial statements"). The objective of our audits was to express an opinion on the fair presentation of these consolidated financial statements. In connection with our fiscal year 2015 audit, we also considered OSCs' internal controls over financial reporting and tested OSCs' compliance with certain provisions of applicable laws and regulations that could have a direct and material effect on these consolidated financial statements.

## Summary

As stated in our opinion of the consolidated financial statements, we concluded that OSC consolidated financial statements as of and for the years ended September 30, 2015 and 2014, are presented fairly, in all material respects, in conformity with U.S. generally accepted accounting principles.

We did not identify any deficiencies in internal control over financial reporting we considered to be a material weakness or significant deficiency as defined in the *Consideration of Internal Control* section of this report.

Our test of compliance with certain provisions of laws and regulations did not disclose any instances of non compliance.

The following sections discuss our opinion on OSC consolidated financial statements; our considerations of OSC internal control over financial reporting; our tests of OSC compliance with certain provisions of applicable laws and regulations; and management's and our responsibilities.

## Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of OSC as of September 30, 2015 and 2014, and related consolidated statements of net costs and changes in net position, and combined statements of budgetary resources for the years then ended.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of OSC as of September 30, 2015 and 2014, and its net costs, changes in net position, and budgetary resources for the year then ended in conformity with U.S. general accepted accounting principles.

The information in the *Management and Discussion Analysis* section of this report is not a required part of the basic financial statements, but is supplementary information required by U.S. generally accepted accounting principles. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of this information. However we did not audit this information and, accordingly, we express no opinion on it.

## Consideration of Internal Control

A control deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatement on a timely basis. A significant deficiency is a control deficiency or a combination of control deficiencies, that adversely affects OSCs' ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the OSC's financial statements that is more than inconsequential will not be prevented or detected. A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected.

Our consideration of internal control over financial reporting was for the limited purpose described in the *Responsibilities* section of this report and was not designed to identify all deficiencies in internal control over financial reporting that might be a control deficiency, significant deficiency, or material weakness. In our fiscal year 2015 audit, we did not identify any deficiencies in internal control over financial reporting that we considered to be a material weakness or significant deficiency, as defined above.

We noted certain additional matters that we have reported to OSC management in a separate letter dated November 16, 2015.

## Compliance with Applicable Laws and Regulations

The results of our tests of compliance as described in the Responsibilities section of this report, disclosed no instances of noncompliance or other matters that are required to be reported herein under Government Auditing Standards or OMB Bulletin No. 15-02.

## Responsibilities

**Management Responsibilities:** Management is responsible for the consolidated financial statements; establishing and maintaining effective internal control over financial reporting; and complying with laws and regulations applicable to OSC.

**Auditors' Responsibilities:** Our responsibility is to express an opinion on the fiscal year 2015 and 2014 consolidated financial statements of OSC based on our audits. We conducted our audit in accordance with *Government Auditing Standards*, auditing standards generally accepted in the United States, and OMB Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes the consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for expressing an opinion on the effectiveness of OSC internal control over financial reporting. Accordingly, we express no such opinion.

An audit also includes:

- Examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements.
- Assessing the accounting principles used and significant estimates made by management; and
- Evaluating the overall financial statement presentation.

We believe that our audits provide a reasonable basis for our opinion.

In planning and performing our fiscal year 2015 audit, we considered OSC's internal control over financial reporting by obtaining an understanding of OSC's internal control, determining whether internal control had been placed in operation, assessing control risk, and performing tests of control to determine auditing procedures for the purpose of expressing our opinion on the consolidated financial statements, but not to provide an opinion on the effectiveness of OSC internal control over financial reporting. Accordingly we do not express an opinion on OSC's internal controls over financial reporting. We limited internal control testing to those necessary to achieve the objectives described in OMB Bulletin No. 15-02. We did not test all internal control relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982.

As part of obtaining reasonable assurance about whether OSCs' fiscal year 2015 consolidated financial statements are free of material misstatements, we performed test of OSCs' compliance with certain provisions of laws and regulations, which noncompliance with could have a direct and material effect on the determination of the consolidated financial statement amounts, and certain provisions of other laws specified in OMB Bulletin 15-02.

This report is intended solely for the information of OSC management, OMB, and Congress. This report is not intended to be and should not be used by anyone other than these specified parties.

Allmond & Company, LLC

November 16, 2015

## U.S. OFFICE OF SPECIAL COUNSEL

**Fiscal Year 2015**
**Financial Statements**

## Office of Special Counsel
## Balance Sheet
## As of September 30, 2015 and 2014
## (dollars in thousands)

| | 2015 | 2014 |
|---|---|---|
| **Assets** | | |
| **Intragovernmental** | | |
| Fund Balance with Treasury (Note 2) | $ 2,848 | $ 2,544 |
| **Total Intragovernmental** | $ 2,848 | $ 2,544 |
| **Assets With the Public** | | |
| Accounts Receivable, Net (Note 3) | 5 | 3 |
| General Property, Plant, and Equipment, Net (Note 4) | 288 | 295 |
| **Total Assets** | $ 3,141 | $ 2,842 |
| **Liabilities** | | |
| **Intragovernmental** | | |
| Accounts Payable | - | 225 |
| Employer Contributions and Payroll Taxes Payable (Note 5) | 122 | 87 |
| Unfunded FECA Liability (Note 5) | 89 | 73 |
| **Total Intragovernmental** | 211 | 385 |
| **Liabilities With the Public** | | |
| Accounts Payable | 303 | 63 |
| Federal Employee and Veteran Benefits (Note 5) | 446 | 371 |
| Accrued Funded Payroll (Note 5) | 417 | 415 |
| Employer Contributions and Payroll Taxes Payable (Note 5) | 3 | 15 |
| Unfunded Leave (Note 5) | 1,182 | 1,182 |
| **Total Liabilities** | $ 2,562 | $ 2,431 |
| **Net Position** | | |
| Unexpended Appropriations-Other Funds | 2,004 | 1,740 |
| Cumulative Results of Operations-Other Funds | (1,432) | (1,329) |
| **Total Net Position** | $ 572 | $ 411 |
| **Total Liabilities And Net Position** | $ 3,134 | $ 2,842 |

*The accompanying notes are an integral part of these financial statements*

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**Office of Special Counsel**
**Statement of Net Cost**
**For the Years Ended September 30, 2015 and 2014**
**(dollars in thousands)**

| | 2015 | 2014 |
|---|---|---|
| Gross costs (Note 9) | $ 23,345 | $ 21,529 |
| Less: Total Earned Revenue | 41 | 552 |
| **Net Cost of Operations** | $ 23,304 | $ 20,977 |

*The accompanying notes are an integral part of these financial statements*

3

**Office of Special Counsel**
**Statement of Changes in Net Position**
**For the Years Ended September 30, 2015 and 2014**
**(dollars in thousands)**

| | 2015 | 2014 |
|---|---|---|
| **Cumulative Results of Operations:** | | |
| Beginning Balances | (1,329) | (1,495) |
| Beginning Balances, as Adjusted | (1,329) | (1,495) |
| | | |
| **Budgetary Financing Sources:** | | |
| Appropriations Used | 22,389 | 20,265 |
| **Other Financing Sources (Non Exchange):** | | |
| Imputed Financing (Note 8) | 812 | 878 |
| Total Financing Sources | 23,201 | 21,143 |
| Net Cost of Operations | (23,304) | (20,977) |
| Net Change | (103) | 166 |
| **Cumulative Results of Operations** | $ (1,432) | $ (1,329) |
| | | |
| **Unexpended Appropriations:** | | |
| Beginning Balances | 1,740 | 1,471 |
| Beginning Balances, as Adjusted | 1,740 | 1,471 |
| | | |
| **Budgetary Financing Sources:** | | |
| Appropriations Received | 22,939 | 20,639 |
| Appropriations Used | (22,389) | (20,265) |
| Other Adjustments | (286) | (105) |
| Total Budgetary Financing Resources | 264 | 269 |
| Total Unexpended Appropriations | $ 2,004 | $ 1,740 |
| **Net Position** | $ 572 | $ 411 |

*The accompanying notes are an integral part of these financial statements*

4

**Office of Special Counsel**
**Statement of Budgetary Resources**
**For the Years Ended September 30, 2015 and 2014**
**(dollars in thousands)**

| | 2015 | 2014 |
|---|---|---|
| **Budgetary resources:** | | |
| Unobligated balance brought forward, October 1 | $ 690 | $ 395 |
| Unobligated balance brought forward, October 1, as adjusted | 690 | 395 |
| Recoveries of prior year unpaid obligations | 350 | 433 |
| Other changes in unobligated balance | (283) | (105) |
| Unobligated balance from prior year budget authority, net | 757 | 723 |
| Appropriations (discretionary and mandatory) | 22,939 | 20,639 |
| Spending authority (discretionary and mandatory) | 88 | 557 |
| Total budgetary resources | $ 23,784 | $ 21,919 |
| **Status of budgetary resources:** | | |
| Obligations incurred (Note 10): | $ 22,902 | $ 21,229 |
| Unobligated balance, end of year: | | |
| Apportioned | 245 | 190 |
| Unapportioned | 637 | 500 |
| Total unobligated balance, end of year | 882 | 690 |
| Total status of budgetary resources | $ 23,784 | $ 21,919 |
| **Change in obligated balance:** | | |
| **Unpaid obligations:** | | |
| Unpaid obligations, brought forward, October 1 (gross) | $ 1,856 | $ 1,477 |
| Adjustment to obligated balance, start of year (net) | | |
| Obligations incurred | 22,902 | 21,229 |
| Outlays (gross) | (22,440) | (20,417) |
| Actual transfers, unpaid obligations (net) | | |
| Recoveries of prior year unpaid obligations | (350) | (433) |
| Unpaid obligations, end of year (gross) | 1,968 | 1,856 |
| **Uncollected payments:** | | |
| **Memorandum (non-add) entries:** | | |
| Obligated balance, start of year | $ 1,856 | $ 1,477 |
| Obligated balance, end of year | $ 1,968 | $ 1,856 |
| **Budget Authority and Outlays, Net** | | |
| Budget authority, gross (discretionary and mandatory) | $ 23,027 | $ 21,196 |
| Actual offsetting collections (discretionary and mandatory) | (88) | (557) |
| Budget authority, net (discretionary and mandatory) | $ 22,939 | $ 20,639 |
| Outlays, gross (discretionary and mandatory) | $ 22,440 | $ 20,419 |
| Actual offsetting collections (discretionary and mandatory) | (557) | (557) |
| Outlays, net (discretionary and mandatory) | 21,883 | 19,862 |
| Agency outlays, net (discretionary and mandatory) | $ 21,883 | $ 19,862 |

*The accompanying notes are an integral part of these financial statements*

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# OFFICE OF SPECIAL COUNSEL
## Washington, D.C.

# Notes to Principal Financial Statements
## As of and for the Years Ended
## September 30, 2015 and 2014

# Office of Special Counsel
# Notes to Principal Financial Statements
# As of and for the Years Ended September 30, 2015 and 2014

## NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### A. Reporting Entity

The Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. OSC's authority comes from four federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniform Services Employment and Reemployment Rights Act. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices. OSC receives, investigates, and prosecutes allegations of prohibited personnel practices, with an emphasis on protecting federal government whistleblowers.

OSC is headed by the Special Counsel, who is appointed by the President, and confirmed by the Senate. At full strength, the agency employs approximately 135 employees to carry out its government-wide responsibilities in the headquarters office in Washington, D.C., and in the Dallas, San Francisco, and Detroit field offices.

OSC has rights and ownership of all assets reported in these financial statements. There are no non-entity assets.

### B. Basis of Presentation

The financial statements have been prepared to report the financial position, net cost of operations, changes in net position, and status and availability of budgetary resources of the OSC. The statements are a requirement of the Chief Financial Officers Act of 1990, the Government Management Reform Act of 1994, the Accountability of Tax Dollars Act of 2002 and the Office of Management and Budget (OMB) Circular A-136, Financial Reporting Requirements. They have been prepared from, and are fully supported by, the books and records of OSC in accordance with the hierarchy of accounting principles generally accepted in the United States of America, standards approved by the principals of the Federal Accounting Standards Advisory Board (FASAB), OMB Circular A-136, and OSC Accounting policies which are summarized in this note. These statements, with the exception of the Statement of Budgetary Resources, are different from financial management reports, which are also prepared pursuant to OMB directives that are used to monitor and control OSC's use of budgetary resources.

The statements consist of the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, and the Statement of Budgetary Resources. In accordance with OMB Circular A-136, the financial statements and associated notes are presented on a comparative basis.

### C. Basis of Accounting

Transactions are recorded on both an accrual accounting basis and a budgetary basis. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. These financial statements were prepared following accrual accounting. Budgetary accounting facilitates compliance with legal requirements on the use of federal funds. Balances on these statements may therefore differ from those on financial reports prepared pursuant to other OMB directives that are primarily used to monitor and control OSC's use of budgetary resources.

**D. Taxes**

OSC, as a Federal entity, is not subject to Federal, State, or local income taxes, and, accordingly, no provision for income taxes has been recorded in the accompanying financial statements.

**E. Fund Balance with Treasury**

The U. S. Treasury processes cash receipts and disbursements. Funds held at the Treasury are available to pay agency liabilities. OSC does not maintain cash in commercial bank accounts or foreign currency balances.

**F. Accounts Receivable**

Accounts receivable consists of amounts owed to OSC by other Federal agencies and the public. Amounts due from Federal agencies are considered fully collectible. Accounts receivable from the public include reimbursements from employees. An allowance for uncollectible accounts receivable from the public is established when either (1) based upon a review of outstanding accounts and the failure of all collection efforts, management determines that collection is unlikely to occur considering the debtor's ability to pay, or (2) an account for which no allowance has been established is submitted to the Department of the Treasury for collection, which takes place when it becomes 180 days delinquent.

**G. General Property, Plant and Equipment, Net**

OSC's property and equipment is recorded at original acquisition cost and is depreciated using the straight-line method over the estimated useful life of the asset. Major alterations and renovations are capitalized, while maintenance and repair costs are charged to expense as incurred. OSC's capitalization threshold is $50,000 for individual purchases. Applicable standard governmental guidelines regulate the disposal and convertibility of agency property, plant and equipment. The useful life classifications for capitalized assets are as follows:

| Description | Useful Life (years) |
|---|---|
| Leasehold Improvements | 10 |
| Office Equipment | 5 |
| Hardware | 5 |
| Software | 2 |

### H. Advances and Prepaid Charges

Advance payments are generally prohibited by law. There are some exceptions, such as reimbursable agreements, subscriptions and payments to contractors and employees. Payments made in advance of the receipt of goods and services are recorded as advances or prepaid charges at the time of prepayment and recognized as expenses when the related goods and services are received.

### I. Liabilities

Liabilities covered by budgetary or other resources are those liabilities for which Congress has appropriated funds or funding is otherwise available to pay amounts due.

Liabilities not covered by budgetary or other resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The liquidation of liabilities not covered by budgetary or other resources is dependent on future Congressional appropriations or other funding. Intragovernmental liabilities are claims against OSC by other Federal agencies. Additionally, the government, acting in its sovereign capacity, can abrogate liabilities.

Accrued liabilities for OSC are comprised of program expense accruals, payroll accruals, and annual leave earned by employees. Program expense accruals represent expenses that were incurred prior to year-end but were not paid. Similarly, payroll accruals represent payroll expenses that were incurred prior to year-end but were not paid.

### J. Accounts Payable

Accounts payable consists of amounts owed to other Federal agencies and the public.

### K. Annual, Sick, and Other Leave

Annual leave is accrued as it is earned, and the accrual is reduced as leave is taken. The balance in the accrued leave account is adjusted to reflect current pay rates. Liabilities associated with other types of vested leave, including compensatory, restored leave, and sick leave in certain circumstances, are accrued at year-end, based on latest pay rates and unused hours of leave. Sick leave is generally non-vested. Funding will be obtained from future financing sources to the extent that current or prior year appropriations are not available to fund annual and other types of vested leave earned but not taken. Non-vested leave is expensed when used.

### L. Accrued Workers' Compensation

A liability is recorded for actual and estimated future payments to be made for workers' compensation pursuant to the Federal Employees' Compensation Act (FECA). The actual costs incurred are reflected as a liability because OSC will reimburse the Department of Labor (DOL) two years after the actual payment of expenses. Future appropriations will be used for the reimbursement to DOL. The liability consists of (1) the net present value of estimated future payments calculated by the DOL, and (2) the unreimbursed cost paid by DOL for compensation to recipients under the FECA.

### M. Retirement Plans

OSC employees participate in either the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). The employees who participate in CSRS are beneficiaries of OSC's matching contribution, equal to seven percent of pay, distributed to their annuity account in the Civil Service Retirement and Disability Fund.

FERS went into effect on January 1, 1987. FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees hired prior to January 1, 1984 elected to join either FERS, Social Security, or remain in CSRS. FERS offers a savings plan to which OSC automatically contributes one percent of pay and matches any employee contribution up to an additional four percent of pay. For FERS participants, OSC also contributes the employer's matching share of Social Security.

FERS employees and certain CSRS reinstatement employees are eligible to participate in the Social Security program after retirement. In these instances, OSC remits the employer's share of the required contribution.

OSC recognizes the imputed cost of pension and other retirement benefits during the employees' active years of service. Office of Personnel Management (OPM) actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future and communicate these factors to OSC for current period expense reporting. OPM also provides information regarding the full cost of health and life insurance benefits. OSC recognized the offsetting revenue as imputed financing sources to the extent these expenses will be paid by OPM.

OSC does not report on its financial statements information pertaining to the retirement plans covering its employees. Reporting amounts such as plan assets, accumulated plan benefits, and related unfunded liabilities, if any, is the responsibility of the OPM.

### N. Net Position

Net position is the residual difference between assets and liabilities and is comprised of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative result of operations is the net result of OSC's operations since inception.

### O. Imputed Costs/Financing Sources

Federal government entities often receive goods and services from other Federal government entities without reimbursing the providing entity for all the related costs. In addition, Federal government entities also incur costs that are paid in total or in part by other entities. An imputed financing source is recognized by the receiving entity for costs that are paid by other entities. OSC recognized imputed costs and financing sources in fiscal years 2015 and 2014 to the extent directed by OMB.

**P. Revenues & Other Financing Resources**

Congress enacts annual and multi-year appropriations to be used, within statutory limits, for operating and capital expenditures. Additional amounts are obtained from service fees and reimbursements from other government entities and the public.

Appropriations are recognized as a financing source when expended. Revenues from service fees associated with reimbursable agreements are recognized concurrently with the recognition of accrued expenditures for performing the services.

OSC recognizes as an imputed financing source the amount of accrued pension and post-retirement benefit expenses for current employees paid on our behalf by (OPM).

**Q. Contingencies**

Liabilities are deemed contingent when the existence or amount of the liability cannot be determined with certainty pending the outcome of future events. OSC recognizes contingent liabilities, in the accompanying Balance Sheet and Statement of Net Cost, when it is both probable and can be reasonably estimated. OSC discloses contingent liabilities in the notes to the financial statements when the conditions for liability recognition are not met or when a loss from the outcome of future events is more than remote. In some cases, once losses are certain, payments may be made from the Judgment Fund maintained by the U.S. Treasury rather than from the amounts appropriated to OSC for agency operations. Payments from the Judgment Fund are recorded as an “Other Financing Source” when made.

**R. Expired Accounts and Cancelled Authority**

Unless otherwise specified by law, annual authority expires for incurring new obligations at the beginning of the subsequent fiscal year. The account in which the annual authority is placed is called the expired account. For five fiscal years, the expired account is available for expenditure to liquidate valid obligations incurred during the unexpired period. Adjustments are allowed to increase or decrease valid obligations incurred during the unexpired period but not previously reported. At the end of the fifth expired year, the expired account is cancelled.

**S. Use of Estimates**

The preparation of financial statements in conformity with Generally Accepted Accounting Principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**T. Comparative Data**

The financial statements and footnotes present comparative data for the prior fiscal year, in order to provide an understanding of changes in OSC’s financial position and operations.

## NOTE 2. FUND BALANCE WITH TREASURY

Fund Balance with Treasury account balances as of September 30, 2015 and 2014 were:

(dollars in thousands)

| **Fund Balance:** | **2015** | **2014** |
|---|---|---|
| Appropriated Funds (general) | $ 2,848 | $ 2,544 |
| **Total Fund Balance with Treasury** | $ 2,848 | $ 2,544 |

| | | |
|---|---|---|
| **Status of Fund Balance with Treasury** | | |
| Unobligated Balance: | | |
| Available | $ 245 | $ 190 |
| Unavailable | 637 | 500 |
| Obligated Balance Not Yet Disbursed | 1,966 | 1,854 |
| **Total Status of Fund Balance with Treasury** | $ 2,848 | $ 2,544 |

Unobligated unavailable fund balance represents the amount of appropriations for which the period of availability for obligation has expired. These balances are available for upward adjustments of obligations incurred only during the period for which the appropriation was available for obligation or paying claims attributable to the appropriations.

## NOTE 3. ACCOUNTS RECEIVABLE

A summary of accounts receivable from the public as of September 30, 2015 and 2014 were as follows:

| (dollars in thousands) | **2015** | **2014** |
|---|---|---|
| **Accounts Receivable from the Public:** | | |
| Billed: | | |
| Current | $ 5 | $ 3 |
| Total Accounts Receivable | 5 | 3 |
| Accounts Receivable from the Public, Net | $ 5 | $ 3 |

## NOTE 4. GENERAL PROPERTY, PLANT AND EQUIPMENT

Property, Plant and Equipment account balances as of September 30, 2015 and 2014 were as follows:

| (dollars in thousands) | Service Life | Acquisition Value | 2015 Accumulated Depreciation | 2015 Net Book Value |
|---|---|---|---|---|
| CIP | | $ 112 | $ - | $ 112 |
| Office Equipment | 5 yrs | 627 | (613) | 14 |
| Leasehold Improvements | 10 yrs | 432 | (270) | 162 |
| **Total** | | $ 1,171 | $ (883) | $ 288 |

| (dollars in thousands) | Service Life | Acquisition Value | 2014 Accumulated Depreciation | 2014 Net Book Value |
|---|---|---|---|---|
| CIP | | $ - | $ - | $ - |
| Office Equipment | 5 yrs | 627 | (599) | 28 |
| Leasehold Improvements | 10 yrs | 498 | (231) | 267 |
| **Total** | | $ 1,125 | $ (830) | $ 295 |

## NOTE 5. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities on OSC's Balance Sheet as of September 30, 2015 and 2014 include liabilities not covered by budgetary resources, which are liabilities for which congressional action is needed before budgetary resources can be provided. Although future appropriations to fund these liabilities are likely and anticipated, it is not certain that appropriations will be enacted to fund these liabilities.

### A. Intragovernmental and Public Liabilities

| (dollars in thousands) | 2015 | 2014 |
|---|---|---|
| Intragovernmental: | | |
| Unfunded FECA Liability | $ 89 | $ 73 |
| Total Intragovernmental | $ 89 | $ 73 |
| | | |
| Public Liabilities: | | |
| Federal Employee and Veteran Benefits | $ 446 | $ 371 |
| Unfunded Annual Leave | 1,189 | 1,182 |
| Total Liabilities Not Covered by Budgetary Resources | $ 1,724 | $ 1,626 |
| Total Liabilities Covered by Budgetary Resources | 845 | 805 |
| Total Liabilities | $ 2,569 | $ 2,432 |

**B. Other Information**

Unfunded Payroll Liabilities consists of workers' compensation claims payable to the Department of Labor, which will be funded in a future period, and an unfunded estimated liability for future workers' compensation claims based on data provided from the DOL. Unfunded FECA liabilities for 2015 and 2014 were approximately $89 thousand and $73 thousand respectively. The actuarial calculation is based on benefit payments made over 12 quarters, and calculates the annual average of payments. The actuarial FECA liabilities for 2015 and 2014 were approximately $446 thousand and $371 thousand respectively. For medical expenses and compensation, this average is then multiplied by the liability-to-benefit paid ratio for the whole FECA program.

Unfunded Leave represents a liability for earned leave and is reduced when leave is taken. At year end, the balance in the accrued leave account is adjusted to reflect the liability at current pay rates and leave balances. Accrued leave is paid from future funding sources and, accordingly, is reflected as a liability not covered by budgetary resources. Sick and other leave is expensed as taken.

All other liabilities are considered to be covered by budgetary resources.

**NOTE 6. OPERATING LEASES**

OSC occupies office space under lease agreements in Washington DC, Dallas, Oakland, and Detroit that are accounted for as operating leases. The DC lease term began on October 26, 2009 and expires on October 25, 2019. The Dallas lease term began on December 9, 2002 and expires on December 8, 2017; at lease renewal a 4% increase is estimated. The current Oakland lease was renewed in February 2011 for a period of 10 years through June 2021, with a market rate reset occurring on July 2016, estimated at a 4% increase in the first year and 1% thereafter. The Detroit lease is through November 2020; lease rates will reset to market rates on November 2015, estimated at a 4% increase in the first year and 1% thereafter.

Lease payments are increased annually based on the adjustments for operating cost and real estate tax escalations. Escalation cost estimates for Oakland and Dallas for market rate resets and lease renewals have been factored in.

Below is a schedule of future payments for the terms of all the leases.

(dollars in thousands)

| Fiscal Year | Total |
|---|---|
| 2016 | 2,069 |
| 2017 | 2,097 |
| 2018 | 2,124 |
| 2019 | 2,150 |
| 2020 | 2,182 |
| Total Future Lease Payments $ | 10,622 |

## NOTE 7. CONTINGENCIES

A contingency is an existing condition, situation or set of circumstances involving uncertainty as to possible payment by OSC. The uncertainty will ultimately be resolved when one of more future events occur or fail to occur. For pending, threatened or unasserted litigation, a liability/cost is recognized when a past transaction or event has occurred, a future outflow or other sacrifice of resources is probable, and the related future outflow or sacrifice of resources can be reasonably estimated.

There are numerous legal actions pending against the United States in Federal courts in which claims have been asserted that may be based on action taken by OSC. Management intends to vigorously contest all such claims. Management believes, based on information provided by legal counsel, that losses, if any, for the majority of these cases would not have a material impact on the financial statements.

## NOTE 8. IMPUTED FINANCING SOURCES

OSC recognizes as imputed financing the amount of accrued pension and post-retirement benefit expenses for current employees. The assets and liabilities associated with such benefits are the responsibility of the administering agency, the Office of Personnel Management. For the fiscal years ended September 30, 2015 and 2014, respectively, imputed financing from OPM were approximately $812 thousand and $878 thousand.

## NOTE 9. IMPUTED FINANCING SOURCES

Intragovernmental costs represent goods and services exchange transactions made between two reporting entities within the Federal government, and are in contrast to those with non-federal entities (the public). Such costs are summarized as follows:

(dollars in thousands)

| | 2015 | 2014 |
|---|---|---|
| **Investigations and Enforcements** | | |
| Intragovernmental Costs | $ 7,722 | $ 8,587 |
| Public Costs | 15,622 | 12,942 |
| **Total Investigations and Enforcements** | $ 23,344 | $ 21,529 |
| | | |
| Intragovernmental Earned Revenue | $ 41 | $ 552 |
| **Total Intragovernmental Earned Revenue** | $ 41 | $ 552 |

## NOTE 10. APPORTIONMENT CATEGORIES OF OBLIGATIONS INCURRED

Obligations incurred reported on the Statement of Budgetary Resources for the years ended September 30, 2015 and 2014 consisted of the following:

| (dollars in thousands) | 2015 | 2014 |
|---|---|---|
| Direct Obligations: | | |
| Category B | $ 22,902 | $ 21,229 |
| Total Obligations Incurred | $ 22,902 | $ 21,229 |

## NOTE 11. EXPLANATION OF DIFFERENCES BETWEEN THE SBR AND THE BUDGET OF THE U.S. GOVERNMENT

Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, calls for explanations of material differences between amounts reported in the Statement of Budgetary Resources (SBR) and the actual balances published in the Budget of the United States Government (President's Budget). However, the President's Budget that will include FY 2015 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2016 and can be found at the OMB website: http://www.whitehouse.gov/omb. The 2016 Budget of the United States Government, with the actual column completed for 2014, has been reconciled to the Statement of Budgetary Resources and there were no material differences.

## NOTE 12. UNDELIVERED ORDERS AT THE END OF THE PERIOD

Beginning with FY06, the format of the Statement of Budgetary Resources has changed and the amount of undelivered orders at the end of period is no longer required to be reported on the face of the statement. Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, states that the amount of budgetary resources obligated for undelivered orders at the end of the period should be disclosed. For the years ended September 30, 2015 and 2014, undelivered orders amounted to approximately $1,122 thousand and $1,049 thousand respectively.

## NOTE 13. RECONCILIATION OF NET COST OF OPERATIONS (PROPRIETARY) TO BUDGET (FORMERLY THE STATEMENT OF FINANCING)

In fiscal year 2006 this reconciliation was presented as a fifth statement, the Statement of Financing. In accordance with OMB Circular A-136, revised June 2007, presentation requirement for this information is now a footnote disclosure. Details of the relationship between budgetary resources obligated and the net costs of operations for the fiscal years ending September 30, 2015 and 2014 are as follows:

**Reconciliation of Net Cost of Operations (Proprietary) To Budget**
**For the Years Ended September 30, 2015 and 2014**
(dollars in thousands)

| | 2015 | 2014 |
|---|---|---|
| **Resources Used to Finance Activities:** | | |
| Obligations Incurred | $ 22,902 | $ 21,229 |
| Spending Authority From Offsetting Collections | | |
| Earned | | |
| Collected | (89) | (557) |
| Recoveries of Prior Year Unpaid Obligations | (351) | (433) |
| Offsetting Receipts | - | - |
| Net Obligations | | |
| **Other Financing Resources** | | |
| Imputed Financing Sources | 812 | 878 |
| **Total Resources Used to Finance Activity** | 23,274 | 21,117 |
| **Resources Used to Finance Items Not Part of the Net Cost of Operations** | | |
| **Budgetary Obligations and Resources Not in the Net Cost of Operations** | | |
| Change in Undelivered Orders | (73) | 29 |
| Current Year Capitalized Purchases | (46) | (225) |
| **Components of Net Costs which do not Generate or Use Resources in the Reporting Period** | | |
| **Revenues without Current Year Budgetary Effect** | | |
| Change in Non-Federal Receivables | (2) | - |
| Other Financing Sources Not in the Budget | (812) | (878) |
| **Costs without Current Year Budgetary Effect** | | |
| Depreciation and Amortization | 54 | 98 |
| Future Funded Expenses | 24 | 84 |
| Imputed Costs | 812 | 878 |
| Other Expenses Not Requiring Budgetary Resources | 73 | (126) |
| **Net Cost of Operations** | $ 23,304 | $ 20,977 |

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