

PERFORMANCE
—and—
ACCOUNTABILITY REPORT
—for—
FISCAL YEAR 2020



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A MESSAGE FROM SPECIAL COUNSEL HENRY KERNER

It is my pleasure to present the Office of Special Counsel's (OSC) Performance and Accountability Report for fiscal year (FY) 2020. This report marks the start of the fourth year of my leadership tenure at OSC, the agency whose noble mission is to protect federal workers by safeguarding the merit system. FY 2020 has been a historically challenging year for all Americans. Nonetheless, OSC managed to transition to full-time, mandatory telework and achieve unparalleled successes on behalf of federal employees and whistleblowers, while prioritizing the health and safety of its employees.

OSC provides a safe channel for federal employees to report fraud, waste, mismanagement, abuse, and dangers to public health and safety. The agency also safeguards and protects the rights of federal employees and returning members of the uniformed services. In doing so, OSC protects the public, stands up for taxpayers, and increases the confidence of the public and the federal community in their government. Ensuring accountability is a job I do not take lightly, and I will continue working diligently within OSC and with the federal community, Congress, and stakeholders towards that goal.

OSC continues to provide outsized returns for the federal government and to achieve exceptional results for complainants. In FY 2020, OSC achieved 398 favorable outcomes for federal employees subjected to retaliation and other prohibited personnel practices (PPPs), roughly 32 percent higher than its average success rate in the previous five years. At the same time, OSC focused its efforts on timely addressing whistleblower disclosures and ensuring that waste, fraud, abuse, and violations of law are identified and remedied quickly. For FY 2020, OSC's whistleblower disclosure work resulted in 61 substantiated instances of wrongdoing and the identification of millions of dollars of uncollected debts owed to the federal government, including \$91.5 million in outstanding debts owed to the Department of Labor's Occupational Safety and Health Administration (OSHA) through the Treasury Department.

OSC also continues to attain impressive results in its handling of Hatch Act and Uniformed Service Employment and Reemployment Rights Act Enforcement (USERRA) cases. OSC's Hatch Act unit issued more than 1,400 advisory opinions and obtained eight disciplinary actions for violations of the Hatch Act. The USERRA unit obtained favorable outcomes for the complainants in three cases in FY 2020.

Over the past decade, OSC has been able to significantly raise its profile among federal workers. As employees see the positive results achieved by OSC for their colleagues, they are encouraged to avail themselves of OSC as a route to remedy wrongdoing. Despite receiving 4,459 cases in FY 2020 largely due to the pandemic, OSC averaged over 5,600 cases per year for the last six fiscal years. In spite of this likely temporary reduction in new case filings, OSC continues to contend with a substantial backlog of cases. While we appreciate recent increases in our budget, OSC still lacks the necessary staffing to eliminate the agency's case backlog, which currently

stands at nearly 1,770 cases. Recognizing the need to address these backlogged cases, I focused our efforts in the last two fiscal years on enhancing the efficiency and effectiveness of how the agency uses its resources. These efforts resulted in a reduction of the backlog by over 32 percent from the beginning of FY 2019 to the end of FY 2020. Despite this success in FY 2020, much work remains to be done, and OSC will require additional resources in future fiscal years to sustain and build upon our current successes.

FY 2020 marked the sixteenth year OSC has conducted a financial audit. I am confident that the financial and performance data presented in this report are complete, reliable, and accurate.

Achieving solid financial footing is foundational to the agency's success. This report also presents our program outcomes and achievements in pursuit of our mission. As I enter my fourth year at the helm of this vital agency, I am proud of the successes we have achieved so far, and looking forward to building upon those successes in FY 2021 and beyond.

Sincerely,

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

Henry J. Kerner
November 16, 2020

PART 1: MANAGEMENT DISCUSSION AND ANALYSIS

I. About the Office of Special Counsel

OSC's core mission is to protect federal whistleblowers by providing a safe and secure channel for whistleblowers to identify waste, fraud, abuse, violations of law, and threats to public health and safety. OSC also acts as a crucial backstop to ensure that whistleblowers are safe from retaliation when they disclose these problems. By doing so, OSC helps to create and promote a more efficient, accountable, and responsible federal government.

When Treasury Department officials observe a failure to collect over \$90 million in debts owed to federal agencies, when Department of Veterans Affairs (VA) officials raise concerns over a specific facility not reimbursing transportation costs associated with veterans' appointments, or when Customs and Border Protection (CBP) officers are wrongfully directed to deny asylum seekers admission into a port of entry, OSC acts to ensure that each whistleblower disclosure is heard and, when warranted, acted upon. OSC also protects federal employees from prohibited personnel practices (PPPs), such as retaliation for revealing wrongdoing.

Through its enforcement of the Hatch Act, OSC preserves the integrity of the civil service system, ensuring that federal employees do not engage in partisan politics while on duty and are not coerced by their superiors into partisan political activity. OSC also enforces the Uniformed Services Employment and Reemployment Rights Act (USERRA) to protect returning service members and reservists against employment discrimination and retaliation in their federal jobs.

OSC's status as an avenue for federal employees to report waste, fraud, and abuse ensures that when federal agencies are not handling tax dollars properly, it is quickly identified and corrected. By doing so, OSC creates a real return for taxpayers from every dollar invested in the agency. Indeed, by providing a safe channel for whistleblowers and their disclosures, OSC can prevent wasteful and/or fraudulent practices from reoccurring.

II. Statutory Background

The Civil Service Reform Act of 1978 (CSRA) established OSC on January 1, 1979. Under the CSRA, OSC operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB or Board). Pursuant to the CSRA, OSC: (1) received and investigated complaints alleging PPPs; (2) received and investigated complaints regarding the political activity of federal employees and covered state and local employees and provided advice on restrictions imposed by the Hatch Act on the political activity of covered federal, state, and local government employees; and (3) received disclosures from federal whistleblowers about government wrongdoing. Additionally, OSC, when appropriate, filed petitions for corrective or disciplinary action with the Board in PPP and Hatch Act cases.

A decade later, Congress enacted the Whistleblower Protection Act of 1989 (WPA). Under the WPA, OSC became an independent agency within the executive branch, with continued responsibility for the functions described above. The WPA also enhanced protections for employees who allege reprisal for whistleblowing and strengthened OSC's ability to enforce those protections.

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to federal and District of Columbia government employees to enable them to have expanded roles in political campaigns. The 1993 amendments to the Hatch Act did not affect covered state and local government employees.

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

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

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

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

government. Lastly, it changed the status of District of Columbia government employees by including them in the prohibitions on state and local employees rather than treating them as federal employees.

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

The National Defense Authorization Act (NDAA) for FY 2018 was signed into law on December 12, 2017. Included in the NDAA was legislation reauthorizing OSC through 2023. Section 1097 of the NDAA clarifies that when complying with OSC's information requests, federal agencies may not withhold information and documents from OSC by asserting common law privileges such as attorney-client privilege. The reauthorization measure reasserts OSC's ability to obtain needed information and documents. The reauthorization also promotes greater efficiency and accountability within OSC, improves protections against retaliatory investigations and other forms of reprisal for whistleblowing, and requires managers across the federal government to respond appropriately to disclosures of fraud, waste, and abuse.

III. Organizational Structure

OSC is headquartered in Washington, D.C. We also have a significant staffing presence in Dallas, Detroit, and Oakland, the sites of three physical offices whose leases OSC decided not to continue in FY 2021 following an efficiency review. As a result, in FY 2021, OSC will maintain a small, physical office in Oakland for Field Office leadership, and both Dallas and Detroit will continue to operate as virtual Field Offices.¹

The agency includes several program and support units described below:

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

¹ OSC staff, both at Headquarters and in the Field Offices, began full-time telework as a result of the pandemic on March 16, 2020.

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

Case Review Division (CRD). CRD began operating on October 1, 2018, and serves as the initial intake point for all PPP and disclosure allegations. This unit screens all new allegations to ensure that PPPs and disclosures, respectively, are directed to the appropriate unit. CRD also performs the function of closing out PPP allegations under the new authorities OSC received in the FY 2018 NDAA: those which are duplicative (5 U.S.C. 1214(a)(6)(A)(i)(I)), filed with the MSPB (1214(a)(6)(A)(i)(II)), outside of OSC's jurisdiction (1214(a)(6)(A)(ii)), or more than three years old (1214(a)(6)(A)(iii)).

Investigation and Prosecution Division (IPD). IPD is comprised of attorneys and investigators at OSC's headquarters and three field offices. IPD receives PPP allegations from CRD, and opens a case to determine whether the evidence is sufficient to establish that a violation has occurred. If it is not, the matter is closed.

However, if the evidence is sufficient, IPD decides whether the matter warrants corrective action, disciplinary action, or both. IPD works closely with OSC's Alternative Dispute Resolution (ADR) Unit in appropriate cases. If a meritorious case cannot be resolved through negotiation with the agency involved, IPD may bring an enforcement action before the MSPB.

Disclosure Unit (DU). This unit receives and reviews disclosures from federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the relevant agency to conduct an investigation and report its findings to the Special Counsel, informal referral to the Office of Inspector General (OIG) or general counsel of the agency involved, or closure without further action. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness. The Special Counsel then sends the report, along with any comments by the whistleblower, to the President and appropriate congressional oversight committees. OSC also posts the report and whistleblower comments in its public file.

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

Hatch Act Unit (HAU). This unit enforces and investigates complaints of unlawful political activity by government employees under the Hatch Act of 1939 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, state, and local employees, as well as to the public at large.

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

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

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

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

IV. Performance Highlights

OSC received 4,459 new cases in FY 2020. While this is nearly 19 percent below the level of cases received in FY 2019, and approximately 25 percent below the average caseload level received from FY 2015 to FY 2019, OSC attributes this decrease largely to the COVID-19 pandemic and the resulting alterations to the operations of most federal agencies during much of FY 2020. OSC fully expects a return to pre-pandemic caseload levels in future fiscal years, barring additional unforeseen circumstances. Despite the continued COVID-19 crisis, OSC continued to enhance its efforts to bring accountability, integrity, and fairness to the federal workplace.

Despite a decrease in incoming cases in FY 2020 caused by the pandemic, the number of favorable outcomes which OSC achieved significantly increased, in total and across OSC's

multiple program units. For example, OSC achieved an agency-record 398 favorable actions on PPP cases, approximately 32 percent above the prior five-year average. On the Hatch Act front, OSC resolved 280 Hatch Act cases, which is approximately 114 percent above the level resolved just five years prior and is the second-highest level resolved in the prior seven fiscal years. In addition, OSC issued 34 warning letters and successfully obtained eight disciplinary actions against agency officials who committed Hatch Act violations. OSC also experienced increased success in its USERRA cases. OSC assisted 24 service members in asserting their employment and reemployment rights. As OSC aims to build upon this established pattern of success, future increases in resources will be necessary, as caseloads across OSC are expected to return to pre-pandemic levels.

Whistleblower disclosures of wrongdoing have led to immense success in ensuring identified problems are addressed and corrected. Specifically, in FY 2020, OSC worked with whistleblowers to identify millions of dollars in wasteful spending and to prevent further waste. For example, OSC referred to the Secretary of the Treasury and the Secretary of Labor allegations that the Treasury Department's Bureau of Fiscal Service (BFS) and the Labor Department's Occupational Safety and Health Administration (OSHA) failed to take action on debts OSHA transferred to Treasury for collection. The Treasury and Labor department investigations substantiated the allegations and led to BFS correcting a software error which had prevented the collection of approximately \$91.5 million in debts owed to OSHA. As a result, BFS is beginning to collect OSHA's outstanding debts.

A core tenet of my leadership at OSC is ensuring that agencies receive robust training to prevent PPPs and Hatch Act violations before they can occur. OSC expanded its rigorous training program in FY 2020, and conducted 207 outreach events during the fiscal year, building upon the 188 outreach events conducted in FY 2019. Further, OSC certified an additional 26 agencies under its Section 2302(c) Certification Program, which requires agencies to take specific steps to inform their managers and employees about whistleblower protections and PPPs.

Overall, OSC is performing at unprecedented levels in carrying out its role as an independent investigative and enforcement agency, bringing greater integrity and efficiency to the federal government. OSC is also working harder and smarter, and with better results than at any time in its history.

V. OSC's Notable Successes

OSC has four primary statutory enforcement programs: (1) investigating, prosecuting, and resolving PPPs, including whistleblower retaliation; (2) serving as a safe and secure channel for whistleblower disclosures; (3) advising, investigating, litigating, and resolving improper political activity violations of the Hatch Act; and (4) litigating and resolving matters under USERRA.

A. PPPs

1. Program Overview

The volume of PPP complaints received by OSC decreased in FY 2020 compared to recent years. OSC received 2,829 new complaints in FY 2020. While this figure is lower than the number of new PPP complaints received in FY 2019, OSC attributes this reduction primarily to the pandemic in FY 2020, which disrupted the standard operations of most federal agencies and departments. Given the average of nearly 4,000 new PPP complaints received each year from FY 2015 to FY 2019, OSC anticipates receiving similarly high levels of PPP complaints once the pandemic ends and federal agencies and departments return to standard operations.

Where appropriate, OSC seeks corrective action, disciplinary action, and systemic relief through informal resolutions or litigation before the MSPB and is currently achieving an unprecedented number of favorable actions. For some cases, mediation may offer the timeliest and most mutually beneficial outcome. In FY 2020, OSC achieved 398 favorable actions in PPP cases. This shattered the previous agency record and is approximately 71 percent over the agency's historical average since 2011. Achieving large numbers of favorable actions translates into improved accountability and fairness in government, as well as jobs saved, whistleblowers protected, and rights restored. Of the favorable actions achieved in FY 2020, OSC negotiated 53 informal stays with agencies to protect employees from premature or improper personnel actions. OSC also achieved 13 disciplinary actions, upholding accountability, and serving as a warning against unacceptable conduct.

2. Notable Successes

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

- Complainant, an environmental officer, alleged that the agency investigated and removed him because he disclosed that the agency employed an abnormal review process in reviewing a mineral license in violation of the National Environmental Protection Act. OSC concluded that the investigation and resulting removal were retaliatory prohibited personnel practices and issued a formal statutory report to the agency. After the agency failed to act on OSC's report and recommendations for corrective action, OSC petitioned the MSPB for corrective action and an indefinite stay of his removal, pending a decision. MSPB granted the stay and, at OSC's request, approved a settlement agreement for full corrective action, which included reinstatement, full back pay and benefits, a clean record, a retroactive promotion, a modified chain-of-command to protect the complainant from future retaliatory action, a time-off award, upgraded performance ratings, a two-year priority consideration for any qualified

vacancy at the agency, \$180,000 in compensatory and consequential damages, and \$20,000 in attorney's fees.

- Complainant, a program manager, alleged that the agency issued her a lowered performance appraisal, denied her a bonus, subjected her to a change in duties, reprimanded her, and proposed her removal from employment in retaliation for disclosing to the Office of Inspector General (OIG) and others violations of pay regulations and gross waste and mismanagement of disaster relief funds. Complainant also alleged that her supervisor accessed her medical records in furtherance of her proposed removal. Additionally, a charge in complainant's proposed removal specifically referenced her threats to take legal action against her supervisor, including a grievance, complaint, and civil action. The agency agreed to remove the facially retaliatory charge from its disciplinary table of penalties. With OSC's assistance, the parties also entered into a settlement agreement. Among other provisions, the agency agreed to make a lump sum payment of \$80,000 and convert over 600 hours of leave without pay to paid on-duty administrative leave. In return, complainant withdrew her OSC and Equal Employment Opportunity (EEO) complaints.
- Complainant, a former utility systems operator and union steward, alleged that his tour of duty was changed in retaliation for assisting a coworker with filing claims and complaints with a number of entities, including OIG. Additionally, alleged retaliatory personnel actions included a letter of reprimand, AWOL charges, a two-day suspension, and a seven-day suspension. OSC sent a PPP report to the agency recommending both corrective and disciplinary action. In a settlement agreement, the agency agreed to pay appropriate damages and fees, and to expunge the unlawful disciplinary actions, in resolution of the complaint.
- Recently, IPD resolved several COVID-19 cases. In one case, complainant, a Senior Executive Service (SES) director, alleged retaliation after reporting to her chain of command and OIG that the agency failed to provide adequate training and PPE to a team of employees assisting with the COVID-19 pandemic. Complainant further reported that members of the team entered a quarantined area, and then moved freely about the community in hotels and on commercial flights. Complainant had also previously raised concerns about an improper hiring action and had filed an EEO complaint. She alleged that in retaliation for her protected disclosures and activities, she received a directed reassignment to a newly created position outside of her area of expertise and which has no supervisory authority. In a settlement agreement, the agency agreed to rescind the reassignment, return her to her previous position, and pay a total of \$40,000 in attorney's fees.
- In another case, the Complainant alleged that in retaliation for disclosing contracting improprieties, he was detailed to work in a COVID-19 screening tent. Complainant had lung issues from his service as a 9/11 first responder and his wife had a chronic lung condition. At OSC's request, the agency agreed to move Complainant to a non-COVID related detail located in an administrative area off-site. In yet another case, medical support assistant

alleged that in retaliation for filing an EEO complaint and disclosing a hostile work environment, she was not allowed to telework and had to use sick leave while self-quarantining due to COVID-19. At OSC's request, the agency agreed to change complainant's sick leave to Families First Coronavirus Response Act (FFCRA) leave.

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

Notable FY 2020 Amicus Curiae Briefs

- OSC filed an amicus brief in a petition for review before the MSPB, in which an employee alleged that she was terminated at least in part for disclosing improper private banking practices that she discovered as part of her job. The initial MSPB decision declined to consider her disclosures about non-governmental wrongdoing as part of her whistleblower retaliation claim. OSC's amicus brief argues that the Whistleblower Protection Act (WPA), as amended, protects a whistleblower's disclosure without any limitation based on the entity alleged to have committed the wrongdoing, particularly where—as in this case—the wrongdoing is uncovered as part of the whistleblower's federal employment.
- OSC filed an amicus brief in a petition for review to the MSPB in which the appellant claimed retaliation in part for reporting a possible computer security violation to the agency's Computer Security Incident Response Center, which an administrative judge found not to be a protected activity. In its brief, OSC argued that this decision misinterpreted the new amendment to 5 U.S.C. § 2302(b)(9)(C) by creating an unwarranted distinction between agency components that investigate or review “the agency” and those that investigate or review “internal complaints and issues.” To assist the MSPB in adjudicating these types of cases, OSC also proposes a fair and workable standard for identifying components of an agency with such investigation or review responsibilities.
- OSC filed an amicus brief in support of an appellant's petition for review at the MSPB involving an allegation that an agency terminated an employee in retaliation for refusing to obey an unlawful order. Although the Follow the Rules Act (FRA) protects federal employees from this type of retaliation, it was not enacted until after the personnel actions in this case occurred. The initial decision analyzed the claim under the law as it existed at the time of the events at issue, holding that the FRA did not apply retroactively to the appellant's

termination. In its amicus brief, OSC argued that the initial decision erroneously misinterpreted the FRA: congressional intent clearly indicates that it should be applied retroactively to include personnel actions that occurred prior to June 14, 2017.

- OSC filed an amicus brief in an appeal to the U.S. Court of Appeals for the Federal Circuit, in which an employee alleged that she faced retaliation for making protected disclosures and for engaging in protected activities. In the initial decision, the MSPB administrative judge dismissed the case for lack of jurisdiction based on a failure to make protected disclosures – without addressing the employee’s allegations of retaliation for engaging in protected activities, including her OSC disclosure filing, an internal whistleblower retaliation complaint, an unfair labor practice, and her testimony in coworkers’ MSPB and EEO proceedings. OSC’s amicus brief argues that the plain language and legislative history of the WPA, and its subsequent amendments, indicate that the protection against retaliation for employees who make whistleblower disclosures is separate and distinct from the protection against retaliation for employees who engage in protected activities.

B. Whistleblower Disclosures

1. Program Overview

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

Over the last few years, the agency has handled near-record numbers of disclosures from federal whistleblowers. OSC received over 4,000 whistleblower disclosures from FY 2018 through FY 2020 combined. Additionally, in FY 2020 specifically, OSC sent 90 whistleblower disclosure reports to the President and Congress, an increase of over 40 percent from FY 2019.

Substantiated disclosures can often result in direct financial returns to the government. However, a fuller measure of OSC’s financial contribution is preventive; by providing a safe channel for whistleblower disclosures, OSC helps address threats to public health and safety that pose the very real risk of catastrophic harm to the public and huge remedial and liability costs for the government. For example, in FY 2020, OSC was instrumental in highlighting allegations from employees at the Greater Los Angeles (LA) Healthcare System that the VA failed to investigate and remediate serious patient care concerns at Community Residential Care Facilities (CRCs), which led the VA to implement a number of policy changes to strengthen its CRC oversight.

2. Notable Successes

OSC is authorized to refer whistleblower disclosures of wrongdoing in five areas: (1) violations of a law, rule, or regulation; (2) gross mismanagement; (3) gross waste of funds; (4) abuse of authority; and (5) substantial and specific dangers to public health or safety. In FY 2020, examples of OSC successes involving whistleblower disclosures include the following:

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

Treasury’s Failure to Collect Over \$91.5 million in Debts Owed to Government Agencies. OSC referred to the Secretary of the Treasury and the Secretary of Labor allegations that Treasury’s Bureau of Fiscal Service and Labor’s Occupational Safety and Health Administration (OSHA) failed to take action on debts OSHA transferred to Treasury for collection. The Treasury and Labor investigations substantiated the allegations, determining that an uncorrected software error prevented Treasury from collecting approximately \$91.5 million in debts owed to OSHA. Treasury confirmed that an additional 12 agencies were affected by this error and is completing an audit to address any uncollected debts held by other agencies. Treasury immediately corrected the software error, updated policies and procedures, and began collecting OSHA’s outstanding debts.

•Violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public health and safety

Securing Reimbursement for Veterans Medical Transportation. OSC referred to the Secretary of Veterans Affairs allegations that the Texas Valley Coastal Bend Health Care System (VCB HCS), Harlingen, Texas, engaged in wrongdoing by failing to pay private ambulatory companies and municipalities that transported veterans to VCB HCS and failing to reimburse veterans who paid for the transport themselves. The agency substantiated that VCB HCS failed to reimburse private ambulance providers and municipalities for the cost of special mode transportation (SMT), and did not reimburse veterans where vendors billed veterans directly due to delays in VA processing the vendors’ claims. The agency attributed the failure to make the payments to confusion around the entity responsible for the payments. The VCB HCS instructed vendors and staff that the Financial Service Center would receive and pay invoices going forward. In response to these findings, the report recommended that all SMT claims from the date following the conclusion of the pilot program be reviewed and processed in a timely manner and that VCB HCS contact SMT vendors to verify that any veterans who paid vendor bills for SMT be reimbursed upon payment from the VA to the vendors. The agency did not substantiate the allegation that VCB HCS lacked a processing system to receive invoices and dispense payments for emergency transportation.

In July 2020, the VA provided an update on the report’s recommendations which confirmed that all invoices had been paid and new invoices were being paid in fewer than 14 days. Further,

VCB HCS implemented training on SMT processing and payment procedures and all Beneficiary Travel staff had completed training as of February 2020.

VA's Failure to Oversee Community Residential Care (CRC) Facilities. OSC referred to the Secretary of Veterans Affairs allegations that employees at the Greater Los Angeles (LA) Healthcare System placed patients at risk by failing to investigate and remediate serious patient care concerns at a number of approved CRCs. The agency investigation substantiated the allegation of compromised patient care. In response, the agency took immediate action to cease transfers to California Villa and to transfer veterans residing there to other facilities. The agency also highlighted LA staff's failure to communicate CRC concerns to upper management, and acknowledged ongoing concerns regarding approved CRC facilities' administration and documentation of Veteran-resident prescriptions. In response to these findings, VA implemented a number of *policy* changes to strengthen its CRC oversight, including establishment of a Veterans Integrated Service Networks (VISN) level ongoing workgroup to monitor VA-approved CRC facilities, California Department of Social Services inspections, and CRC medication management plans on a quarterly basis.

•Violation of Law, Rule or Regulation

CBP's Improper Denial of Entry to Asylum Seekers. OSC referred to the Secretary of Homeland Security allegations of misconduct at the Customs and Border Protection (CBP), Tecate Port of Entry in California, specifically, that CBP managers directed officers to deny aliens seeking asylum entry into the U.S. at the Tecate Port of Entry. The whistleblower also disclosed that no record or physical documentation of asylum seekers was generated by CBP officers at the Tecate Port of Entry when they encounter asylum seekers, contrary to the requirements of agency policy. The agency substantiated several of the allegations. However, the agency also concluded that certain metering practices used at the Tecate Port of Entry, and other U.S. ports of entry, were permissible. The constitutionality of these practices is currently under review by federal courts.

In addition to these cases, OSC referred allegations of the following: VA violations of federal health and sterility standards regarding sterile compound rooms; VA misconduct, including excessive backlog and wait times at the Orlando VA Medical Center; Custom and Border Protection's failure to collect DNA samples from criminal detainees in violation of federal law; and serious deficiencies in Federal Aviation Administration (FAA) Aviation Safety Inspector (ASI) training and certifications. These are just a few of the many cases in which OSC substantiated allegations and effectuated remediation of government wrongdoing.

C. Hatch Act

1. *Program Overview*

OSC aims to reduce prohibited political activities by: (1) educating and warning employees about unlawful partisan political activity, and (2) bringing disciplinary actions against federal employees who violate the Hatch Act. To achieve these goals, in FY 2020, OSC responded to 1,405 requests for advice, issued 34 warning letters, and obtained 11 corrective actions and eight disciplinary actions, either by negotiation or through MSPB orders.

2. *Notable Successes*

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

MSPB Litigation

- OSC litigated a case against a U.S. Department of Justice immigration judge who violated the Hatch Act when she promoted then-Presidential candidate Hillary Clinton's plan for immigration reform during a deportation hearing over which she presided in March 2016. The individual at the immigration hearing was facing deportation and a subsequent ten-year bar on reentry into the United States, which the judge called "a pretty harsh thing" that Clinton intended to change, provided "the Senate becomes a Democratic body and there's some hope that they can actually pass immigration legislation." The judge said the Republicans, on the other hand, "aren't going to do anything" about immigration "if they can help it," other than to "try to deport everybody." The Administrative Law Judge (ALJ) found the judge's actions merited "a considerable sanction given the public nature of her position" and imposed a fine of \$1,000, the maximum possible civil penalty, along with a 30-month debarment from federal service because the judge had since retired. The decision is final.
- OSC litigated a case against a VA doctor who violated the Hatch Act by running for the U.S. Senate in Tennessee, using the VA logo in campaign materials, including on campaign business cards, encouraging fellow VA employees to campaign for him and view his campaign website and video, and having a patient provide a testimonial for his campaign video. OSC charged the employee with 15 different Hatch Act violations. The ALJ found that OSC proved 11 of the 15 charges and imposed the maximum available penalty: a civil fine of \$1,000 and a five-year debarment from federal service. Removal was not an option because the employee left federal employment after OSC filed the complaint. The employee filed a petition for review with the MSPB, which is pending.

- OSC filed a complaint charging a Navy civilian employee with violating the Hatch Act's prohibitions against engaging in political activity while on duty or in the federal workplace and knowingly soliciting political contributions. OSC alleged that the employee, an elected party chairman in Hawaii, used social media to solicit contributions for political candidates and used federal agency computers to compose, review, and edit party-related materials, such as a "social media strategy" directed toward the success or failure of partisan political candidates. In addition, the employee sent dozens of emails soliciting political contributions, composed and published several online articles soliciting party contributions, and used agency computers to update a party Facebook account during the workday. The employee retired after OSC filed the complaint and, in a settlement agreement, agreed to pay a civil fine of \$1,000 and to accept a three-year debarment from federal employment.

Disciplinary Action Obtained through Settlement Negotiations

- After filing a complaint with the MSPB, OSC settled a case against a Department of Energy employee who used her position to provide a guided tour of a federal facility to a candidate seeking a partisan political office. The purpose of the tour, which was not open to the general public, was to provide the candidate with information to be used for the campaign. For example, photographs taken during the tour were posted to the campaign's social media pages. As disciplinary action for her violation, the employee agreed to resign from her job and accept a three-year debarment from future federal employment.
- OSC entered into a settlement agreement with a Defense Logistics Agency employee who violated the Hatch Act on numerous occasions by sending partisan political emails and making political Facebook posts while at work. The employee also used Facebook to solicit political contributions nearly two dozen times in violation of the Hatch Act. During OSC's investigation, the employee admitted he was aware of the Hatch Act and that his supervisor had counseled him about the Act prior to engaging in the prohibited activity. In a settlement agreement, the employee agreed to a 90-day suspension without pay.
- OSC entered into a settlement agreement with another Defense Logistics Agency employee who violated the Hatch Act by displaying the words "Vote Republican" on a PowerPoint presentation he gave while on duty and in the federal workplace. The employee had received extensive Hatch Act training and was explicitly told prior to giving the presentation that certain images he planned to use, including the "Vote Republican" image, would be problematic. In a settlement agreement, the employee agreed to a 30-day suspension without pay for his violation.

- OSC settled a case against a Food and Drug Administration employee who solicited political contributions despite receiving advice from OSC that the Hatch Act prohibited him from engaging in that activity. The employee authorized the creation of a social media page featuring his name and image that was used several times to solicit political contributions, including at least one that the employee admitted he posted personally. The employee also co-hosted a fundraiser for a candidate for partisan political office and allowed his name to be used in connection with two other political fundraising events, all in violation of the Hatch Act. The employee agreed to a 120-day suspension without pay.

D. USERRA Enforcement Program

1. Program Overview

OSC continues to assist reservists and National Guard members who face obstacles in their federal civilian jobs due to their military service. OSC receives referrals of USERRA cases for prosecution from the Department of Labor, which investigates these cases. OSC received 24 new cases in FY 2020, and negotiated corrective actions for three complainants.

Notable Successes

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

- An Air Traffic Controller (ATC) trainee for the FAA left his position for long-term active duty in the U.S. Navy in 2010 after giving proper notice to FAA. When he notified his former FAA manager that he wished to return to FAA after concluding his Navy service in early 2015, the FAA manager told him she could not assist him despite his entitlement to prompt reemployment under USERRA. The FAA Human Resources Office then erroneously told him he would have to apply for open positions listed on the “USA Jobs” website. After submitting multiple applications, he eventually received a tentative job offer as an ATC in early 2016, over a year after he first requested reemployment. However, before he onboarded into his new position, FAA medically disqualified him to perform ATC duties based on information in his Naval medical records. He appealed FAA’s disqualification but had to work in part-time and temporary jobs to pay his bills while his appeal was pending. After OSC received his USERRA complaint and intervened on his behalf, FAA expedited the appeals process, which was decided in his favor, and restored him to duty as an ATC. OSC and FAA are currently negotiating compensation for lost wages due to FAA’s failure to promptly reemploy him and/or to find alternative employment for him while his appeal was pending.

- A Security Guard at the U.S. Army Garrison in Fort Hamilton, New York, was not given proper credit toward his seniority due to his absence while performing service in the Marine Corps Reserve. As a result, his within-grade salary increase was delayed several months, leading to a loss of pay. At OSC's request, the Army agreed to adjust his seniority, make his pay increase retroactive, and award him all corresponding back pay.
- A Supervisory Information Technology Specialist with the U.S. Navy returned from duty in the Navy Reserve to find that he was reemployed at a lower-status job than the one he had prior to his departure, which was violation of USERRA. Namely, the employee went from overseeing over 100 employees to five. After several disputed workplace incidents, the Navy subsequently suspended his access to classified information and placed him on indefinite suspension without pay. Lacking income, he was forced to seek additional employment over the next several months. He also appealed his suspension, and the appeal was ultimately decided in his favor after more than two years. Not wishing to return to civilian employment with the Navy, he agreed to a settlement whereby he received several months' worth of back pay and paid leave in exchange for his resignation.

VI. 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 and 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 management policy. During FY 2020, reviews were completed on the following agency administrative operations:

Operations Division: In FY 2020, as part of OSC's continued goal to evaluate the efficiency and effectiveness of the agency, OSC completed a comprehensive review of the various units within OSC's Operations Division, including Information Technology (IT), Human Capital, Finance, Administrative Services, and the Clerk's Office. This review recognized the existing best practices, as well as the current needs, of these units. Further, the review highlighted certain best practices that the program units implemented in the course of the review, and provided recommendations for further improvement in the various Operations Division units, some of which were implemented before the end of FY 2020. Going forward, OSC will work towards improved organizational excellence by continuing to highlight areas of necessary improvement across the agency, and implementing corresponding best practices to bring about necessary change.

OSC Reconstitution Plan (COVID-19 Response Plan): In FY 2020, as a result of the global pandemic, OSC convened a staff taskforce representing various programmatic and operational

units throughout the agency to provide a roadmap for a safe, methodical, and careful transition for employees to return to combined in-office and telework schedules. The Plan described the health-and-safety-related steps OSC took to make returning to the office space as safe as practicable, including implementing Centers for Disease Control and Prevention (CDC) and other agencies' guidance for an office setting. The Plan provides that OSC's return to the office will be carried out in four phases, so that OSC can ascertain the efficacy of all aspects of the Plan and adjust, as necessary, before everyone is back in the office. As of the end of FY 2020, OSC was still in the first phase of our Plan and will continue to evaluate the situation in FY 2021.

Financial Audit. OSC underwent its sixteenth annual financial audit in FY 2020. The FY 2020 audit addresses the financial statements and accounting processes, almost all of which were conducted by the Interior Business Center (IBC) at the Department of Interior under an interagency outsourcing agreement.

Risk Management Program. OSC established an agency risk management council in FY 2017, as well as developed a risk charter, profile, and risk register. In FY 2020, OSC conducted quarterly council meetings to review the agency's risks and took steps to mitigate those risks.

OSC outsources many of its financial management and administrative activities to the IBC, including financial accounting and reporting, invoice payment, contracting operations, financial and procurement systems software and hosting, and travel services. The General Services Administration (GSA) conducted the majority of OSC's contracting operations in FY 2020, and will continue to do so going forward.

OSC personnel and payroll data entry transactions are processed by the Department of Agriculture's National Finance Center (NFC). These operations are administered under cross-servicing agreements with 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.

The Oracle Federal Financials Major Application is reviewed on a continuous monitoring basis in conformance with National Institute of Standards and Technology (NIST) guidelines, and is authorized through September of 2023. IBC certified the system in September of 2013, in accordance with Office of Management and Budget (OMB) Circular A-130, Appendix III, and approved the system for continued operation. NFC's Payroll System was also certified in September 2013, and has operated with a continuous monitoring program since then. Also, an annual Statement on Standards for Attestation Engagements (SSAE) 18 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 Risk Management, Internal Controls, and Internal Control over Financial Reporting

OSC's management is responsible for managing risks, as well as 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 Enterprise Risk Management and Internal Control." Based on the results of this evaluation, OSC can provide reasonable assurance that, as of September 30, 2020, its internal controls over the effectiveness and efficiency of operations were compliant with applicable laws and regulations. Further, OSC certifies that the appropriate policies and controls are in place 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 18 report from IBC, as well as the year-end roll forward assertion letter, and reviews them to assist in assessing internal controls over financial reporting. OSC has not identified any significant issues or deviations in its financial reporting during FY 2020 and thus 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.



Henry Kerner
Special Counsel
November 12, 2020

VIII. Management Challenges

Despite OSC's strong record of performance, the agency continues to experience certain challenges.

A. Staffing

OSC considers the aforementioned dip in new case filings in FY 2020 to be an anomaly. In recent years, OSC has seen a dramatic rise in average caseloads, which can be attributed to increased interest in OSC resulting from OSC's success in achieving significant favorable outcomes for federal employees. Assuming caseloads return to levels seen in FY 2019 and prior years, OSC will lack sufficient staffing and other resources to meet the demand for our services from federal employees. While OSC received a comparatively low number of 4,459 new matters in FY 2020, we strongly believe this is primarily due to the pandemic. We received an annual average of 5,668 cases from FY 2015 through FY 2020.² This annual average represents *double* the case levels from FY 2006, including a very large number of filings from VA employees. Yet, OSC's staffing and budget have not reflected a corresponding increase.

At current funding levels, and assuming regular, non-pandemic case levels, OSC is at the limit of its ability to process all new cases in the same year in which they are received.³ For example, PPP cases, which can take a significant amount of time to investigate and resolve, have increased significantly in recent years. While the pandemic resulted in 2,829 new PPP cases in FY 2020, OSC's six-year average from FY 2015 through FY 2020 is nearly 3,800 new PPP cases per year. The number of new PPP cases in FY 2020 still represents an increase of approximately 28 percent over OSC's historical average of new PPP cases from FY 2001 through FY 2014. Again, OSC's staffing and resources have not kept pace with this increase. It is likely that OSC would have received even more PPP cases, if not for the continued global pandemic, which greatly impacted the operations of agencies and departments across the federal government in FY 2020.

Under Special Counsel Henry J. Kerner's leadership, OSC made significant efforts, and achieved considerable success in reducing our backlog by over 800 cases since 2018. Nevertheless, the case backlog remains at approximately 1,770 cases. OSC is cognizant of the fact that whistleblowers and complainants become frustrated by the longer processing times driven, in part, by the backlog. This frustration can in turn lead whistleblowers and complainants to avoid filing with OSC. OSC strongly believes the taxpayers will be harmed if government inefficiencies go unchecked because federal workers stop coming to OSC with their disclosures and other complaints. Therefore, because of the expected return to pre-pandemic caseload levels

² OSC expects that, assuming no other unforeseen circumstances, normal operations at federal departments and agencies will resume in FY 2022, and new cases will again resemble the recent historical averages.

³ Although Congress increased OSC's appropriation from FY 2019 to FY 2020, OSC was not able to expand its personnel base to meet the expected demand for OSC's services, due to the continued, mandatory personnel-related cost increases.

in future fiscal years, as well as rising operational costs, OSC will need additional resources to provide staffing to continue reducing the backlog.

B. Technology

Technology presents both tools for success as well as challenges for OSC. First, OSC is among the agencies that successfully assimilated to telework due to our smart preparation and quick actions during the COVID-19 pandemic. OSC staff have largely teleworked since March 2020, more than half the fiscal year, because OSC had technology already in place to allow an agency-wide transition to mandatory, precautionary telework. OSC leveraged and expanded our supporting Information Technology, using Microsoft Teams and other collaborative technology, and our modernized electronic case processing system. Processes and information exchange between and among employees, managers, and members of the respective units have been refined as well. Through it all, OSC maintained high levels of productivity -- notably shattering the prior record of favorable actions in PPP cases.

OSC also quickly implemented our Reconstitution Plan, which outlines a phased return to work and keeps our employees safe while increasing our productivity. As we monitor pandemic conditions, we will continue to assess and revise our Reconstitution Plan.

Nevertheless, due to budgetary and staffing constraints, OSC's technological modernization continues at a slower than optimal rate. OSC continues to invest in essential IT infrastructure, with the continued development of the electronic case management system (eCMS), which was deployed in late FY 2019. The continued development of eCMS should make it easier for the public to submit cases to OSC and allow our attorneys to share information and work together more efficiently.

OSC's end goal is to automate as many work processes as possible to reduce overall case processing times. Moreover, as these IT projects move past development, and into the operational and maintenance phases, OSC will be able to strategically shift limited resources to other areas, which will likewise yield productivity gains.

To summarize, while COVID-19 has NOT had a significantly negative impact on agency operations, OSC remains challenged to meet our technological and modernization needs.

C. Lack of MSPB Quorum

The challenges faced by OSC extend beyond the internal borders of the agency. Much of OSC's authority is tied directly to the MSPB. OSC relies on the Board to adjudicate claims of violations of personnel practices, the Hatch Act, and USERRA. However, as it currently stands, the MSPB lacks a quorum necessary to issue final opinions and is besieged by a backlog of its own. The absence of a quorum at the MSPB limits OSC's ability to proceed in cases and provide timely

resolution for complainants. Furthermore, the absence of any Board members limits OSC's ability to seek formal stays in appropriate cases.

D. Notable Results

Recognizing these challenges, OSC continuously seeks new strategies and creative methods to improve our work processes and efficiencies. Despite the resource challenges OSC faces, the agency is committed to maximizing the effectiveness of every dollar provided to OSC and exploring every opportunity to increase OSC's efficiency in handling cases.

At the start of Special Counsel Henry J. Kerner's term, and at his direction, OSC initiated an internal review of its processing of complaints. In FY 2019, following the completion of that internal review, OSC combined two units with overlapping responsibilities for PPP complaints into one: the Investigations and Prosecution Division (IPD). As a result, a single IPD attorney handles each PPP case from the start of the investigation through closure of the case. This process eliminated duplicative review and has allowed OSC to continue reaping the benefits of processing PPP complaints effectively.

The internal review of OSC's complaint processing also led to the creation of a new unit to screen all new PPP and disclosure filings. This unit, the Case Review Division (CRD), filters out cases that can be closed quickly in CRD and swiftly refers complaints meriting further review to the appropriate investigative unit. CRD helps maximize OSC's scarce resources to ensure focused and timely resolution of cases.

OSC continues to conduct periodic reviews of our case processing data to identify weaknesses, improve performance, and get results. OSC understands that data-driven, periodic reviews of our internal business processes and program performance is a necessary step toward improving our efficiency and saving taxpayer dollars, as are analyzing the results, asking tough questions, and proposing improvements.

Additionally, in FY 2020, OSC continued to leverage the assisted acquisition services from other Federal agencies to procure contracts. For FY 2020, OSC primarily utilized the assisted acquisition services of the General Services Administration (GSA), which has allowed OSC to implement many mission-critical contracts in an efficient and effective manner.

Regardless of the challenges that lie ahead, OSC remains committed to identifying opportunities to improve our work processes and operate more efficiently and effectively. We believe this will allow us to successfully fulfill our mission by better streamlining government; reducing waste, fraud, and abuse; promoting public health and safety; and saving valuable taxpayer dollars.

IX. Comments on Final FY 2020 Financial Statements

Financial Highlights

Consolidated Balance Sheet

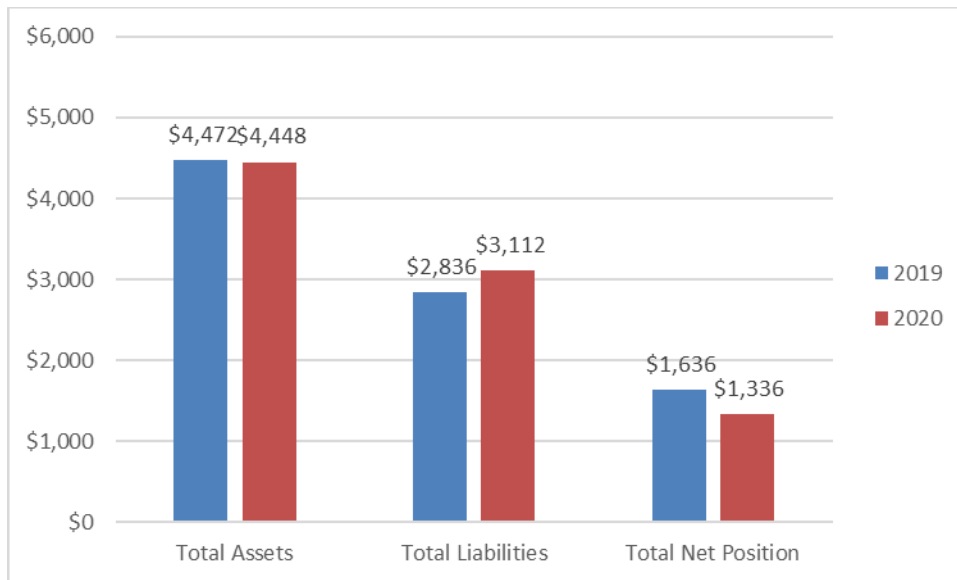
The Consolidated Balance Sheet presents amounts that are owned or managed by OSC (assets); amounts owed (liabilities); and the net position (assets minus liabilities) of the agency divided between the cumulative results of operations and unexpended appropriations.

OSC's balance sheet shows total assets of \$4,448,000 at the end of FY 2020. This is a decrease of \$24,000 compared to OSC's total assets of \$4,472,000 as of fiscal year end (FYE) 2019. Fund Balance with Treasury comprises approximately 95 percent of OSC's assets.

Total Liabilities for OSC increased by \$276,000, or approximately 10 percent, from \$2,836,000 at FYE 2019 to \$3,112,000 at FYE 2020. The three largest components of Total Liabilities are Unfunded Leave (\$1,699,000), Accrued Funded Payroll (\$843,000), and Accounts Payable (\$375,000).

The Net Position is the sum of Unexpended Appropriations and the Cumulative Results of Operations. OSC's Net Position was \$1,336,000 at FYE 2020, a decrease of \$300,000 from Net Position at FYE 2019 of \$1,636,000. This decrease is largely driven by the decrease in OSC's Cumulative Results of Operations. While OSC's Net Position decreased over 2020, Net Position at FYE 2020 is still 95 percent higher than it was at FYE 2017 (\$685,000).

US Office of Special Counsel Balance Sheet



Statement of Budgetary Resources

The Statement 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 2020, OSC received a \$27,500,000 appropriation, which is an increase of approximately 4 percent over the appropriation OSC received in FY 2019. OSC ended FY 2020 with a 4 percent, or \$1,177,000, increase in total budgetary resources compared to FY 2019.

Statement of Changes in Net Position

The 2020 Consolidated Statement of Changes in Net Position shows the change in the net position for both FY 2020 and FY 2019 from the cost of operations, appropriations received and used, net of rescissions, and the financing of some costs by other government agencies. This statement shows a decrease in Total Net Position from \$1,636,000 at FYE 2019 to \$1,336,000 at FYE 2020. As mentioned above, this decrease in Net Position is largely driven by the decrease in OSC's Cumulative Results of Operations in FY 2020.

Other Financial Information

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 \$859,000, with

accumulated depreciation of \$762,000 and a 2019 net book value of \$97,000. (Note 4 to Principal Financial Statements).

OSC's Total New Obligations and Upward Adjustments were \$27,888,000 in FY 2020. Total New Obligations and Upward Adjustments increased by \$1,528,000, or approximately 6 percent, in FY 2020, from \$26,360,000 in FY 2019. (Note 9 to Principal Financial Statements)

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 \$359,000, from \$1,149,000 in FY 2019 to \$790,000 in FY 2020. Assets and Liabilities relating to these benefits are the responsibility of the Office of Personnel Management.

For consistency with the Financial Statements, the dollar amounts listed above are rounded to the nearest thousand.

Percentages are rounded 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).

PART 2: PERFORMANCE SECTION

I. FY 2017-2022 Strategic Plan and Corresponding Goals

The Performance Section presents detailed information on the annual performance results of programs related to OSC's primary statutory enforcement responsibilities.

OSC developed a new Strategic Plan that became effective in FY 2017. According to the Strategic Plan, OSC's mission is to safeguard employee rights and hold government accountable. To do so, OSC identified three overarching strategic goals:

- (1) Protect and promote the integrity and fairness of the federal workplace.
- (2) Ensure government accountability.
- (3) Achieve organizational excellence.

Each goal has three to six specific objectives aimed at implementing the larger strategic goals. Each objective, in turn, relates to one of OSC's enforcement authorities or programs or improving OSC as an organization. Specific performance metrics are provided to measure OSC's success in the identified areas. A complete copy of OSC's Strategic Plan for FY 2017 – FY 2022 can be found in Appendix I.

Below are OSC's performance results showing the agency's results against the targets in our Strategic Plan. In some cases—particularly for new or revised metrics—OSC needs to establish a baseline of data in order to set realistic targets for future years. Some items on the table are indicated as data points to assist in showing data trends as they impact performance outcomes. Data points are not performance metrics as OSC does not control the outcomes.

Below are Goal Tables listing each of OSC's Performance Measures for the FY 2020 goals. The metrics they contain correspond to the appropriate Budget-Related Goals. Several of the metrics have explanatory notes that follow the Goal Tables, and these notes are assigned the same number that correspond to its respective metric number listed in the table.

In FY 2020, OSC successfully met or partially met 54 out of 63 goals, or 86 percent of its goals this year. This is a successful performance for OSC in FY 2020, as the agency achieved these results amidst difficult circumstances. For instance, these results were achieved by OSC, despite the pandemic, which drastically altered the operations of federal agencies and departments, including that of OSC, for much of FY 2020. Further, OSC achieved these results in FY 2020, despite the MSPB still not having a quorum to render decisions on important cases, which impacted OSC's ability to fully meet some of its goal targets.

II. Strategic Goal 1, Tables 1-5 – Protect and promote the integrity and fairness of the federal workplace.

Strategic Goal 1 has six objectives:

- Objective 1: Fairly and promptly investigate and prosecute cases.
- Objective 2: Obtain timely and effective relief in cases.
- Objective 3: Enhance strategic use of enforcement authority.
- Objective 4: Provide time and quality Hatch Act advisory opinions and guidance.
- Objective 5: Expand training and outreach efforts nationwide.
- Objective 6: Effectively and innovatively communicate with stakeholders and the public.

Goal Tables 1A, 1B, and 1C relate to the first two objectives regarding OSC's investigations of alleged PPPs, Hatch Act violations, and USERRA complaints, respectively.

- A. Goal Table 1A** details the data points and performance metrics for OSC's work investigating, litigating, and resolving PPP complaints. In FY 2020, OSC met five out of ten goals.

Upon the creation of OSC's Strategic Plan in FY 2017, the agency contemplated a standing working group designed to improve efficiency in handling the various case types OSC receives, such as PPP cases, Whistleblower Disclosure cases, Hatch Act cases, and USERRA cases. This working group was given a broad mandate to review intake, workflow, investigative, prosecutive, and resolution processes within each of OSC's units that receive cases. The working group initially focused on finding efficiencies in the processes involved in handling PPP cases. The group gathered data on OSC efficiency and effectiveness in the several years prior to their review and identified innovation that correlated with improved efficiencies. The working group also considered both internal and external factors, including OSC statistical data on workload and performance, organizational and operational changes, leadership, budget, public perception, and legislative changes. OSC used the working group's findings to reorganize several of the agency's units in FY 2019. This reorganization has already resulted in increased efficiency for OSC when processing PPP cases.

After completing the review of PPP case processing procedures, the working group split into several working groups, which are now tasked with reviewing the work processes related to handling the other case types that OSC receives. The work of these newly formed working groups is currently ongoing, and OSC expects to receive the benefit of increased efficiency related to the processing of the agency's other case types in future years.

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

Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
1	Formation of working group to improve efficiency of case handling procedures in FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
2	Number of PPP complaints received	Data-point	4,112	Data-point	3,824	Data-point	2,829	Data-point		Data-point	
3	Number of whistleblower retaliation complaints received	Data-point	1,861	Data-point	1,925	Data-point	2,073	Data-point		Data-point	
4	Number of whistleblower retaliation complaints closed within 240 days	Baseline	1,667	Baseline	1,917	Baseline	1,773	Baseline		Data-point	
5	Average age of PPP complaints at closure	Baseline	166	Baseline	142.97	Baseline	166.79	Baseline		Baseline	
6	Number of PPP complaints filed with MSPB	1	1	1	0	1	0	1		1	
7	Number of successful PPP prosecutions before MSPB	1	0	1	0	1	0	1		1	

8	Number of PPP complaints mediated	33	29	33	37	33	30	33		30	
9	Number of PPP complaints mediated resulting in settlement	20	22	20	24	20	23	20		20	
10	Number of informal stays obtained	25	47	25	29	25	53	25		25	
11	Number of formal stays and related extensions obtained	4	12	8	2	8	0	0		0	
12	Total favorable PPP actions ¹²	206	309	206	211	275	398	206		215	
13	Number of systemic corrective actions obtained	30	57	32	60	32	72	45		45	
14	Number of disciplinary actions obtained	15	19	15	27	15	13	15		15	

Goal Table 1A Explanatory Notes

¹²: This metric was revised in OSC's Strategic Plan to reflect the number of individual corrective actions obtained, instead of total favorable PPP actions. This is reflected in the results for FY 2019, as well as the targets for FY 2021 and FY 2022.

- B.** **Goal Table 1B** details the data points and performance metrics for OSC's work investigating, litigating, and resolving Hatch Act complaints. OSC met six out of six goals in FY 2020. Metric 15 is a datapoint.

Goal Table 1B: Goals 15-21

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

Objective 1: Fairly and promptly investigate and prosecute cases

Objective 2: Obtain timely and effective relief in cases

Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
15	Number of Hatch Act complaints received	Data-point	263	Data-point	281	Data-point	440	Data-point		Data-point	
16	Percent of Hatch Act complaints closed within 240 days	Baseline	65%	Baseline	75%	60%	83%	65%		65%	
17	Number of Hatch Act complaints filed with MSPB	1	3	1	0	1	4	1		1	
18	Percent of successful Hatch Act prosecutions before MSPB	100%	100%	100%	N/A	100%	100%	100%		100%	
19	Number of Hatch Act warning letters issued	20	49	22	49	25	34	25		25	
20	Number of corrective actions obtained	10	10	10	11	10	11	10		10	
21	Number of disciplinary actions obtained	5	6	5	5	5	8	5		5	

C. Goal Table 1C details the data points and performance metrics for OSC's work investigating, litigating, and resolving USERRA complaints. During FY 2020, OSC met two out of three metrics. OSC completed 87 percent of USERRA legal reviews within 60 days and obtained three corrective actions.

Goal Table 1C: Goals 22-27 Goal 1: Protect and promote the integrity and fairness of the federal workplace Objective 1: Fairly and promptly investigate and prosecute cases Objective 2: Obtain timely and effective relief in cases											
Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
22	Number of USERRA referrals received	Data-point	25	Data-point	21	Data-point	24	Data-point		25	
23	Number of USERRA merit referrals	Data-point	4	Data-point	6	Data-point	3	Data-point		5	
24	Number of USERRA non-merit referrals	Data-point	21	Data-point	15	Data-point	21	Data-point		20	
25	Percent of USERRA referrals closed within 60 days	80%	86%	75%	83%	80%	87%	80%		80%	
26	Number of USERRA offers of representation before MSPB	1	1	1	0	1	0	1		1	
27	Number of USERRA corrective actions obtained (formally and informally)	3	3	3	3	3	3	3		3	

- D.** **Goal Table 2** details OSC's efforts to enhance its strategic enforcement authority, as it relates to the third objective under Strategic Goal 1. OSC met three out of three goals in FY 2020.

Goal Table 2**Goal 1: Protect and promote the integrity and fairness of the federal workplace****Objective 3: Enhance strategic use of enforcement authority**

Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
28	Number of PPP reports published on website	2	2	2	2	2	4	2		2	
29	Number of amicus curiae briefs and interventions filed	2	5	2	2	2	2	2		2	
30	Number of inter-agency efforts involving systemic improvements to the federal workplace	4	10	4	15	4	10	8		8	

E. Goal Table 3 details the Hatch Act advisory opinions provided by OSC, pursuant to OSC's fourth objective under Strategic Goal 1. In FY 2019, OSC met or partially met three out of four goals.

Goal Table 3**Goal 1: Protect and promote the integrity and fairness of the federal workplace****Objective 4: Provide timely and quality Hatch Act advisory opinions and guidance**

Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
31	Number/percent of informal telephonic advisory opinions issued within 3 days of inquiry	Baseline	100%	Baseline	97%	98%	100%	98%		98%	
32	Percent of informal email advisory opinions issued within 5 days of inquiry	95%	99.9%	95%	87%	98%	97%	95%		95%	

33	Number/percent of formal written advisory opinions issued within 60 days of inquiry	Baseline	89%	Baseline	83%	75%	85%	75%		75%	
34	Revised Hatch Act regulations by FY 2018	Met	Partially Met	Met	Partially Met	Met	Partially Met	Met		Met	

F. **Goal Table 4** details OSC's training and outreach efforts pursuant to OSC's fifth objective under Strategic Goal 1. OSC met five out of six goals in FY 2020.

Goal Table 4 Goal 1: Protect and promote the integrity and fairness of the federal workplace Objective 5: Expand training and outreach efforts nationwide											
Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
35	Number of agencies/components contacted regarding the 2302(c) Certification Program	35	164	70	165	100	160	140		140	
36	Number of agencies/components registered for the 2302(c) Certification Program	Baseline	21	20	33	15	24	15		15	
37	Number of agencies/components certified and recertified for the 2302(c) Certification Program	Baseline	23	20	24	15	26 ³⁷	15		10	
38	Average time for agencies/components to complete the certification after registration for the 2302(c) Certification Program	6 months	10.17 months	9 months	9.55 months	8 months	10 months	9 months		10 months	
39	Number of training and outreach activities, broken down by program area and geographic location	Baseline	198	150	188	165	207 ³⁹	165		130	

40	Methods to survey effectiveness of training and outreach activities by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
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Goal Table 4 Explanatory Notes

³⁷: Number of agencies and agency components certifying/recertifying for the Section 2302(c) Certification Program will vary in response to the three-year recertification cycle. For example, due to increased certifications in FY 2019 and FY 2020, we expect that a smaller number of agencies will be due for recertification in FY 2021, based on the three-year cycle.

³⁹: Number of trainings will increase and decrease in each fiscal year based on a number of factors, including, for instance, (1) the almost 75 percent increase in Hatch Act trainings we have observed during election years; and (2) an increase in Section 2302(c) trainings based on years in which a higher percentage of agencies are due for recertification at the end of the three-year cycle, creating a “lumpy forecast.” Despite the cessation of all in-person training due to COVID-19, OSC was able to implement a significant transformation to meet the needs of this virtual environment and transition all OSC training to virtual training. In fact, OSC exceeded its FY 2020 target and met its highest level of training and outreach, outperforming all prior fiscal years.

Program Area	Total	Outside Beltway*
PPP	109	12
HA	51	6
DU**	44	0
USERRA	2	0
ADR	1	0

Trainings held outside the D.C. area include trainings held in California, Georgia, Maryland, New York, South Carolina, Texas, and Virginia. Please note that after the transition to virtual training, employees taking the training were located across the country and overseas.

* Some PPP trainings are held in conjunction with the annual statutory training and counted separately.

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

- G.** **Goal Table 5** details OSC’s communications with stakeholders and the public, consistent with the sixth objective under Strategic Goal 1. OSC met three out of four goals in FY 2020. OSC issued a total of 27 press releases in FY 2020.

Goal Table 5

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

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

Description of Target	FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
41 Number of press releases issued	25	46	40	18	40	27	30		30	

42	Types and frequency of digital media used to share information	275	211	275	221	275	327	275		250	
43	Number of meetings with stakeholder groups	4	52	10	56	10	54 ⁴³	30		30	
44	Proposal for the establishment of a regularly-held conference on whistleblowing in the federal workplace by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	

Goal Table 5 Explanatory Notes

⁴³: In FY 2020, OSC had 54 meetings with stakeholder groups, including the following:

- 11 meetings for general OSC outreach
- 24 meetings with congressional staff and representatives
- 12 meetings with agency officials, including secretaries and general counsels
- 7 meetings with inspector general offices

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

Strategic Goal 2 has three objectives:

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

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

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

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

- A. **Goal Table 6** relates to the first objective under Strategic Goal 2 and details OSC's efforts to ensure government accountability by providing a safe, confidential and secure reporting channel for stakeholders and the public. In FY 2020, OSC received 1,160 new whistleblower disclosures. OSC met three out of three goals in FY 2020.

Goal Table 6 Goal 2: Ensure government accountability Objective 1: Provide employees with an effective and efficient safe channel to report government wrongdoing											
Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
45	New electronic form by FY 2017, and refine as appropriate	Met	Not Met	Met	Met ⁴⁵	Met	Met	Met		Met	
46	Number of whistleblower disclosures received	Data-point	1,554	Data-point	1,374	Data-point	1,160	Data-point		Data-point	
47	Number of whistleblower disclosures that also allege related retaliation	Data-point	492	Data-point	562	Data-point	330	Data-point		Data-point	
48	Number of whistleblower disclosures referred to agencies for investigation	50	139 formal/ 22 informal	50	72 formal/ 59 informal	75	81 formal/ 52 informal	70		70	
49	Working group for assessment and improvement of whistleblower reporting experiences (including use of new electronic form) by FY 2017, and	Met	Met	Met	Met	Met	Met	Met		Met	

	reassess regularly										
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Goal Table 6 Explanatory Notes

⁴⁵: New electronic form was implemented in FY 2019.

- B.** **Goal Table 7** relates to the second objective under Strategic Goal 2 and details OSC's efforts to ensure government accountability by providing timely and appropriate outcomes for referred whistleblower disclosures. For Goal Table 7, OSC met its one goal in FY 2020.

Goal Table 7

Goal 2: Ensure government accountability

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

Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
50	Percentage of referred whistleblower disclosures that are substantiated by agencies	Data-point	76% formal / 46% informal	Data-point	N/A ⁵⁰	Data-point	71% formal/63% informal	Data-point		Data-point	
51	Number of cases with favorable outcomes—both corrective and disciplinary actions—achieved through formal and informal resolution of	Baseline	6 disciplinary / 47 corrective	Baseline	16 disciplinary / 72 corrective	Baseline	16 disciplinary / 104 corrective ⁵¹	Baseline		Baseline	

	whistleblower disclosures										
52	Timeliness of OSC's communication to the President and Congress after receiving an agency investigation report and whistleblower's comments	Baseline	71 days	Baseline	116 days	Baseline	162 days	Baseline		Baseline	
53	Implementation of measurement to capture scope of benefits to government resulting from outcomes of whistleblower disclosures, such as significant changes to agency operations to promote safety or security and/or tax dollars saved or recovered, by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	

Goal Table 7 Explanatory Notes

⁵⁰: Because of the implementation of OSC's new electronic case management system (eCMS) in the fourth quarter of FY 2019, some FY 2019 data could not be reported on at that time.

⁵¹: FY 2020 Formal referrals with disciplinary action – 8
FY 2020 Informal referrals with disciplinary action – 8
FY 2020 Formal referrals with corrective action – 78
FY 2020 Informal referrals with corrective action – 26

- C. **Goal Table 8** related to the third objective under Strategic Goal 2 and details OSC's efforts to enhance awareness of outcomes of referred whistleblower disclosures. For Goal Table 8, OSC met four out of four goals in FY 2020.

Goal Table 8 Goal 2: Ensure government accountability Objective 3: Enhance awareness of outcomes of referred whistleblower disclosures											
Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
54	Revamped online public file of whistleblower disclosure cases on website by FY 2017, and reassess regularly	Met	Not Met	Met	Met	Met	Met	Met		Met	
55	Number of times that favorable outcomes of whistleblower disclosures are disseminated via press releases, social media, etc.	12	42	40	52	40	44	40		40	
56	Number of training and outreach events that address whistleblower disclosures	Baseline	105	90	158	95	109	95		85	
57	Plan to enhance the profile of OSC's Public Servant Award by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	

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

Strategic Goal 3 has three objectives:

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

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

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

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

- A. **Goal Table 9** tacks the first objective under Strategic Goal 3 and details OSC's efforts to achieve organizational excellence by recruiting, developing, and retaining a highly talented, engaged, and diverse workforce. For Goal Table 9, OSC met eight out of eight goals in FY 2020.

Goal Table 9**Goal 3: Achieve organizational excellence****Objective 1: Recruit, develop, and retain a highly talented, engaged, and diverse workforce**

Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
58	Human Capital Plan by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
59	Honors Program by FY 2017 and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
60	Improved and standardized onboarding process by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
61	Staff training plan by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
62	Mentorship program by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
63	Ongoing internal cross-training opportunities by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
64	Ongoing employee engagement efforts, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	

65	Ongoing work/life balance and other related benefits, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
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- B.** **Goal Table 10** relates to the second objective under Strategic Goal 3 and details OSC's efforts to improve the use of existing technology and deploy new IT systems to enhance organizational operations. For Goal Table 10, OSC met or partially met six out of six goals in FY 2020.

Goal Table 10 Goal 3: Achieve organizational excellence Objective 2: Improve the use of existing technology and deploy new IT systems to enhance organizational operations											
Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
66	Transition to electronic case management system by FY 2017, and reassess regularly; Going live with the records in the eCMS by FY 2018; Incorporate business process by FY 2019	Met	Not Met	Met	Met ⁶⁶	Met	Met	Met		Met	
67	100% deployment of mobile access to network program resources by FY 2017,	Met	Met	Met	Met ⁶⁷	Met	Met ⁶⁷	Met		Met	

	and reassess regularly										
68	100% data encryption by FY 2017, and reassess regularly; A – encryption of data at rest B – encryption of data in transit	Met	A – Met B - Not Met	Met	Met ⁶⁸	Met	Met ⁶⁸	Met		Met	
69	Ongoing semi-annual assessment of IT needs, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
70	Ongoing semi-annual assessment of the effectiveness of IT services, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
71	Ongoing maintenance of IT staff of 5% of agency work force, and reassess regularly	Met	Not Met	Met	Not Met ⁷¹	Met	Partially Met ⁷¹	Met		Met	

Goal Table 10 Explanatory Notes

⁶⁶: OSC successfully deployed eCMS at the end of FY 2019.

⁶⁷: OSC continues to monitor and assess mobile access to OSC network resources.

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

⁷¹: In FY 2019, OSC did not meet the goal of maintaining IT staff at 5 percent of agency workforce, as a result of OSC IT staff undergoing a complete turnover and operating with minimal resources. At the end of FY2019, IT staff consisted of three FTE. During FY 2020, OSC was able to hire IT staff to meet this metric. However, due to IT staff departures late in the fiscal year, OSC was unable to rehire staff in time to meet this requirement by fiscal year-end.

- C. **Goal Table 11**, consistent with the third objective under Strategic Goal 3, details OSC's efforts to monitor, evaluate, and improve efficiency and effectiveness of programs and processes. For Goal Table 11, OSC met five out of five goals in FY 2020.

Goal Table 11 Goal 3: Achieve organizational excellence Objective 3: Monitor, evaluate, and improve efficiency and effectiveness of programs and processes											
Description of Target		FY 2018 Target	FY 2018 Result	FY 2019 Target	FY 2019 Result	FY 2020 Target	FY 2020 Result	FY 2021 Target	FY 2021 Result	FY 2022 Target	FY 2022 Result
72	Creation and implementation of institutional approach to evaluate programs and processes by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
73	Completion of first evaluation of program(s) or process(es) to identify best practices and areas of improvement by FY 2018, and proceed with evaluation of additional programs and processes regularly thereafter	Met	Met	Met	Met	Met	Met	Met		Met	
74	Implementation of best practices and responses to areas of improvement identified in first evaluation of program(s) or process(es) by FY 2019, and reassess regularly	Met	Met	Met	Met	Met	Met	Met		Met	
75	Enhanced method for determining customer satisfaction with programs and processes by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met ⁷⁵	Met		Met	
76	Evaluation and use of customer satisfaction data to improve efficiency and	Met	Met	Met	Met	Met	Met	Met		Met	

	effectiveness of programs and processes by FY 2018, and reassess regularly										
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Goal Table 11 Explanatory Notes

⁷⁵: The 2018 OSC reauthorization as found in section 1097 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA) requires OSC to establish a survey pilot program to collect information and improve service at various stages of case review. OSC formed a working group to design and establish a survey, sought appropriate external approvals for the collection of information, and implemented the survey in Fiscal Year 2019. In FY 2020, specifically, the survey was sent to approximately 4,473 complainants with open or closed cases. OSC received a total of 763 responses.

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 16, 2020

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 2020 that were considered significant.

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

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,

A handwritten signature in black ink that reads "Karl P. Kammann".

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

**U.S. OFFICE OF SPECIAL COUNSEL
AUDIT REPORT
SEPTEMBER 30, 2020**



**ALLMOND & COMPANY, LLC
Certified Public Accountants
7501 Forbes Blvd., Suite 200
Lanham, Maryland 20706
(301) 918-8200**

**U.S. OFFICE OF SPECIAL COUNSEL
AUDIT REPORT
SEPTEMBER 30, 2020**

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Special Counsel
U.S. Office of Special Counsel:

Report on the Financial Statements

We have audited the accompanying financial statements of the Office of Special Counsel (OSC), which comprise the balance sheets as of September 30, 2020 and 2019, the related statements of net cost, changes in net position, and budgetary resources for the fiscal years then ended, and the related notes to the financial statements (hereinafter referred to as the financial statements).

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this responsibility includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on the fiscal year 2020 and 2019 financial statements of OSC based on our audits. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 19-03, *Audit Requirements for Federal Financial Statements*. Those standards and OMB Bulletin No. 19-03 require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion.

An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of significant accounting estimates made by management, as well as the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Office of Special Counsel as of September 30, 2020 and 2019, and its net costs, changes in net position, and budgetary resources for the fiscal years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

U.S. generally accepted accounting principles require that the information in the *Message from the Special Counsel*, *Management Discussion and Analysis*, and *CFO Letter* sections of this report is presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Federal Accounting Standards Advisory Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of OSC's financial statements. However, we did not audit this information and, accordingly, we express no opinion on it.

Other Reporting Required by Government Auditing Standards

Internal Control over Financial Reporting

In planning and performing our audit of OSC's financial statements as of and for the year ended September 30, 2020, in accordance with generally accepted government auditing standards, we considered OSC's internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion of the effectiveness of OSC's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of OSC's internal control over financial reporting. We limited internal control testing to those necessary to achieve the objectives described in OMB Bulletin No. 19-03. We did not test all internal control relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982.

A 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 material weakness is a deficiency, or combination of deficiencies, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency or a combination of deficiencies, in internal control that is less severe than a material weakness yet important enough to merit the attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose as described in the first paragraph of this section, and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies and therefore material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our fiscal year 2020 audit we did not identify any deficiencies in internal control over financial reporting that we considered to be a material weakness, as defined above. However, material weaknesses may exist that have not been identified.

However, we noted an additional matter that we will report to OSC management in a separate letter.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether OSC's fiscal year 2020 financial statements are free of material misstatements, we performed tests of OSC's compliance with certain provisions of applicable laws, regulations, contracts, and grant agreements, which noncompliance could have a direct and material effect on the determination of material amounts and disclosures in OSC's financial statements, and certain provisions of other laws specified in OMB Bulletin No. 19-03. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

The results of our tests of compliance as described in the preceding paragraph, disclosed no instances of noncompliance or other matters that are required to be reported herein under *Government Auditing Standards* or OMB Bulletin No. 19-03.

Purpose of the Other Reporting Required by Government Auditing Standards

The purpose of the communication described in the Other Reporting Required by Government Auditing Standards section is solely to describe the scope of our testing of internal control and compliance with selected provision of applicable laws, regulations, contracts, and grant agreements, and the results of that testing, and not to provide an opinion on the effectiveness of OSC's internal control or on compliance. This communication is an integral part of an audit performed in accordance with U.S. generally accepted government auditing standards in considering internal controls and compliance with laws, regulations, contracts, and grant agreements which could have a material effect on OSC's financial statements. Accordingly, this communication is not suitable for any other purpose.

Allmond & Company, LLC

Lanham, MD

November 12, 2020

U.S. OFFICE OF SPECIAL COUNSEL

**Fiscal Year 2020
Financial Statements**



**Office of Special Counsel
Balance Sheet
As of September 30, 2020 and 2019
(dollars in thousands)**

	<u>2020</u>	<u>2019</u>
Assets		
Intragovernmental		
Fund Balance With Treasury (Note 2)	4,238	4,094
Advances and Prepayments (Note 12)	113	229
Total Intragovernmental	<u>\$ 4,351</u>	<u>\$ 4,323</u>
Assets With the Public		
Accounts Receivable, Net (Note 3)	-	8
General Property, Plant, and Equipment, Net (Note 4)	97	141
Total Assets	<u>\$ 4,448</u>	<u>\$ 4,472</u>
Liabilities		
Intragovernmental		
Other		
Employer Contributions and Payroll Taxes Payable	282	181
Unfunded FECA Liability (Note 5)	25	61
Total Intragovernmental	<u>307</u>	<u>242</u>
Liabilities With the Public		
Accounts Payable	94	239
Federal Employee and Veteran Benefits (Note 5)	130	337
Accrued Funded Payroll	843	681
Employer Contributions and Payroll Taxes Payable	39	32
Unfunded Leave (Note 5)	1,699	1,295
Contingent Liabilities (Note 5, 7)	-	10
Total Liabilities	<u>\$ 3,112</u>	<u>\$ 2,836</u>
Net Position		
Unexpended Appropriations - Other Funds	3,093	3,190
Cumulative Results of Operations - Other Funds	(1,757)	(1,554)
Total Net Position	<u>\$ 1,336</u>	<u>\$ 1,636</u>
Total Liabilities And Net Position	<u>\$ 4,448</u>	<u>\$ 4,472</u>

The accompanying notes are an integral part of these statements.

**Office of Special Counsel
Statement of Net Cost
For the Years Ended September 30, 2020 and 2019
(dollars in thousands)**

	<u>2020</u>	<u>2019</u>
Gross costs	\$ 28,396	\$ 27,649
Net Cost of Operations	<u>\$ 28,396</u>	<u>\$ 27,649</u>

The accompanying notes are an integral part of these statements.

Office of Special Counsel
Statement of Changes in Net Position
For the Years Ended September 30, 2020 and 2019
(dollars in thousands)

	<u>2020</u>	<u>2019</u>
Unexpended Appropriations:		
Beginning Balances	\$ 3,190	\$ 3,786
Beginning Balances, as Adjusted	3,190	3,786
Budgetary Financing Sources:		
Appropriations Received	27,500	26,535
Appropriations Used	(27,403)	(26,552)
Other Adjustments	(194)	(579)
Total Budgetary Financing Resources	(97)	(596)
Total Unexpended Appropriations	\$ 3,093	\$ 3,190
Cumulative Results of Operations:		
Beginning Balances	\$ (1,554)	(1,606)
Beginning Balances, as Adjusted	(1,554)	(1,606)
Budgetary Financing Sources:		
Appropriations Used	27,403	26,552
Imputed Financing (Note 8)	790	1,149
Total Financing Sources	28,193	27,701
Net Cost of Operations	(28,396)	(27,649)
Net Change	(203)	52
Cumulative Results of Operations	\$ (1,757)	\$ (1,554)
Net Position	\$ 1,336	\$ 1,636

The accompanying notes are an integral part of these statements.

**Office of Special Counsel
Statement of Budgetary Resources
For the Years Ended September 30, 2020 and 2019
(dollars in thousands)**

	2020	2019
Budgetary resources:		
Unobligated balance from prior year budget authority, net	985	773
Appropriations (discretionary and mandatory)	27,500	26,535
Total budgetary resources	<u>\$ 28,485</u>	<u>\$ 27,308</u>
Status of budgetary resources:		
New obligations and upward adjustments (total) (Note 9):	\$ 27,888	\$ 26,360
Unobligated balance, end of year:		
Apportioned, unexpired accounts	101	463
Unexpired unobligated balance, end of year (Note 2)	101	463
Expired unobligated balance, end of year (Note 2)	496	485
Unobligated balance, end of year (total)	597	948
Total budgetary resources	<u>\$ 28,485</u>	<u>\$ 27,308</u>
Budget Authority and Outlays, Net		
Outlays, net (total) (discretionary and mandatory)	27,163	26,214
Agency outlays, net (discretionary and mandatory)	<u>\$ 27,163</u>	<u>\$ 26,214</u>

The accompanying notes are an integral part of these statements.

* Represents a line number that is unique to the SBR. Further information on the descriptions and composition of these lines can be found in OMB Circular No. A-11, Appendix F.

‡ Not applicable for the fourth quarter

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

**Notes to Principal Financial Statements As
of and for the Years Ended September 30,
2020 and 2019**

Office of Special Counsel
Notes to Principal Financial Statements
as of and for the Years Ended September 30, 2020 and 2019

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 134 employees to carry out its government-wide responsibilities in the headquarters office in Washington, D.C., a small physical office in San Francisco, as well as a sizeable remote employee presence in the Dallas, San Francisco, and Detroit areas.

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, 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:

<u>Description</u>	<u>Useful Life (years)</u>
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.

OSC currently uses the Department of Interior, Interior Business Center, Acquisitions Directorate as a Contracting Shared Services Provider. All payments provided to them are collected as advance payments, as provided for under their authority with their Interior Franchise Fund.

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 2020 and 2019 to the extent required by generally accepted accounting principles.

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 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.

U. Classified Activities

Accounting standards require all reporting entities to disclose that accounting standards allow certain presentations and disclosures to be modified, if needed, to prevent the disclosure of classified information.

NOTE 2. FUND BALANCE WITH TREASURY

Fund Balance with Treasury account balances as September 30, 2020 and 2019 were:

(dollars in thousands)

Fund Balance:	2020		2019	
Appropriated Funds (general)	\$	4,238	\$	4,094
Total Fund Balance with Treasury	\$	4,238	\$	4,094

Status of Fund Balance with Treasury

Unobligated Balance:

Available	\$	101	\$	463
Unavailable		496		485
Obligated Balance Not Yet Disbursed		3,641		3,146
Total Status of Fund Balance with Treasury	\$	4,238	\$	4,094

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, 2020 and 2019 were as follows:

(dollars in thousands)	2020		2019	
Accounts Receivable from the Public:				
Billed:				
Current	\$	-	\$	8
Total Accounts Receivable		-		8
Accounts Receivable from the Public, Net	\$	-	\$	8

NOTE 4. GENERAL PROPERTY, PLANT AND EQUIPMENT

Property, Plant and Equipment account balances as of September 30, 2020 and 2019 were as follows:

(dollars in thousands)	Service Life	Acquisition Value	Accumulated Depreciation	2020 Net Book Value
Office Equipment	5 yrs	\$ 371	\$ (359)	\$ 12
Leasehold Improvements	10 yrs	488	(403)	85
Total		\$ 859	\$ (762)	\$ 97

(dollars in thousands)	Service Life	Acquisition Value	Accumulated Depreciation	2019 Net Book Value
Office Equipment	5 yrs	\$ 471	\$ (437)	\$ 34
Leasehold Improvements	10 yrs	488	(381)	107
Total		\$ 959	\$ (818)	\$ 141

NOTE 5. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities on OSC's Balance Sheet as of September 30, 2020 and 2019 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.

(dollars in thousands)	A. Intragovernmental and Public Liabilities			
	2020		2019	
Intragovernmental:				
Unfunded FECA Liability	\$	25	\$	61
Total Intragovernmental		25		61
Public Liabilities:				
Federal Employee and Veteran Benefits		130		337
Unfunded Annual Leave		1,699		1,295
Contingent Liabilities		-		10
Total Liabilities Not Covered by Budgetary Resources	\$	1,854	\$	1,703
Total Liabilities Covered by Budgetary Resources		1,258		1,133
Total Liabilities	\$	3,112	\$	2,836

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 2020 and 2019 were approximately \$25 thousand and \$61 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 2020 and 2019 were approximately \$130 thousand and \$337 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 OSC DC HQ lease was renewed and took effect on October 26, 2019 and expires on October 25, 2029, with an additional 5-year option period. On May 26, 2020 OSC gave 120 day written notice to GSA to close all of its field offices (Detroit, Dallas and Oakland). As of September 30, 2020, all of the OSC field offices are closed and OSC has no further rent obligations on them. Lease payments are increased annually based on the adjustments for operating cost and real estate tax escalations.

OSC's HQ leased property is subject to real estate tax assessments which are variable, dependent upon economic conditions as well as tax rate determinations made by state/local governments.

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

(dollars in thousands)		
Fiscal Year		Total
2021		1,576
2022		1,735
2023		1,759
2024		1,782
2025		1,808
Total Future Lease Payments	\$	8,660

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 un-asserted 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.

Probable Likelihood of an Adverse Outcome

As of September 30, 2020, OSC is not subject to pending cases where an adverse outcome is probable. As of September 30, 2019, OSC was subject to pending cases where an adverse outcome was probable; \$10 thousand was booked on the balance sheet for these contingent liabilities.

Reasonably Possible Likelihood of an Adverse Outcome

As of September 30, 2020 OSC is subject to pending cases where an adverse outcome is reasonably possible, and potential losses were assessed at \$495 thousand. As of September 30, 2019 OSC was subject to pending cases where an adverse outcome was reasonably possible, and potential losses were assessed at \$501 thousand.

NOTE 8. INTER-ENTITY COSTS

Goods and services are received from other federal entities at no cost or at a cost less than the full cost to the providing federal entity. Consistent with accounting standards, certain costs of the providing entity that are not fully reimbursed [by the component reporting entity] are recognized as imputed cost [in the Statement of Net Cost], and are offset by imputed revenue [in the Statement of Changes in Net Position]. Such imputed costs and revenues relate to business-type activities (if applicable), employee benefits, and claims to be settled by the Treasury Judgement Fund. However, unreimbursed costs of goods and services other than those identified above are not included in our financial statements.

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, 2020 and 2019, respectively, imputed financing from OPM were approximately \$790 thousand and \$1,149 thousand.

NOTE 9. APPORTIONMENT CATEGORIES OF NEW OBLIGATIONS AND UPWARD ADJUSTMENTS

New obligations and upward adjustments reported on the Statement of Budgetary Resources for the years ended September 30, 2020 and 2019 consisted of the following:

(dollars in thousands)		2020		2019	
Direct Obligations:					
Category B	\$	27,888	\$	26,360	
Total New Obligations and					
Upward Adjustments	\$	27,888	\$	26,360	

NOTE 10. 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 FY20 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2021 and can be found at the OMB website: <http://www.whitehouse.gov/omb>. The 2020 Budget of the United States Government, with the actual column completed for 2019, has been reconciled to the Statement of Budgetary Resources and there were no material differences.

NOTE 11. 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, 2020 and 2019, undelivered orders amounted to:

	2020		2019	
Unpaid:				
Federal	\$	1,573	\$	700
Non-Federal		811		1,313
Paid:				
Non-Federal		112		229
Totals	\$	2,496	\$	2,242

NOTE 12. ADVANCES AND PREPAYMENTS

The Advances and Prepayments for OSC is \$113 thousand as of September 30, 2020. The Advances and Prepayments for OSC were \$229 thousand as of September 30, 2019.

NOTE 13. RECONCILIATION OF NET COST TO NET OUTLAYS

The reconciliation, referred to as the Budget and Accrual Reconciliation (BAR), requires a reconciliation of the net outlays on a budgetary basis and the net cost of operations during the period.

Reconciliation of Net Cost to Net Outlays As of September 30, 2020

(dollars in thousands)

	Intragovernmental		With the public		Total FY 2020
Net Operating Cost (SNC)	\$	8,222	\$	20,174	\$ 28,396
Net Cost					
Outlays:					
Property, plant, and equipment depreciation		-	(44)		(44)
Increase/(decrease) in assets:					
Accounts receivable		-	(8)		(8)
Advances and prepayments		(117)	-		(117)
Increase/(decrease) in liabilities:					
Accounts payable		-	145		145
Salaries and benefits		(100)	(168)		(268)
Other liabilities (Unfunded leave, Unfunded FECA, Actuarial FECA)		37	(188)		(151)
Other financing sources:					
Federal employee retirement benefit costs paid by OPM and imputed to the agency		(790)	-		(790)
Net Outlays	\$	7,252	\$	19,911	\$ 27,163

Reconciliation of Net Cost to Net Outlays As of September 30, 2019

(dollars in thousands)

	<u>2019</u>	Intragovernmental	With the public	Total FY		
Net Operating Cost (SNC)	\$	9,771	\$	17,878	\$	27,649
Net Cost						
Outlays:						
Property, plant, and equipment depreciation		-	(44)			(44)
Increase/(decrease) in assets:						
Accounts receivable		-	7			7
Advances and prepayments		(217)	-			(217)
Increase/(decrease) in liabilities:						
Accounts payable		-	(31)			(31)
Salaries and benefits		(10)	(80)			(90)
Other liabilities (Unfunded leave, Unfunded FECA, Actuarial FECA)		33	56			89
Other financing sources:						
Federal employee retirement benefit costs paid by OPM and imputed to the agency		(1,149)	-			(1,149)
Net Outlays	\$	8,428	\$	17,786	\$	26,214

STRATEGIC PLAN* **(FY 2017-2022)**



**U.S. Office of Special Counsel
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*Note- this document was developed at a given point in time, and will be updated as needed. As such information contained in the plan may be outdated or superseded.

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Appendix I: Strategic Plan

Introduction

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

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

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

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

the status of D.C. government employees from federal employees to state and local government employees.

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

About OSC

Background

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

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

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

Mission and Responsibilities

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

CSRA – Prohibited Personnel Practices

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

CSRA – Whistleblower Disclosures

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

Hatch Act

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

USERRA

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

Organizational Structure

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

- Immediate Office of Special Counsel (IOSC). The Special Counsel and IOSC are responsible for policy-making and overall management of OSC. This responsibility encompasses supervision of the agency's congressional liaison and public affairs activities.
- Complaints Examining Unit (CEU). This unit receives complaints alleging PPPs. CEU reviews and examines each PPP complaint to determine if it is within OSC's

jurisdiction and, if so, whether the matter can be resolved at that stage or should be referred for mediation, further investigation, or prosecution.

- *Investigation and Prosecution Division (IPD)*. This division is comprised of the headquarters office and three field offices, and is primarily responsible for investigating and prosecuting PPPs. IPD determines whether the evidence is sufficient to establish that a violation has occurred and, if so, whether the matter warrants corrective action, disciplinary action, or both. If a meritorious case cannot be resolved informally, IPD may bring an enforcement action before the MSPB.
- *Hatch Act Unit (HAU)*. This unit investigates and resolves complaints of unlawful political activity under the Hatch Act, and may seek corrective and disciplinary action informally as well as before the MSPB. HAU also provides advisory opinions under the Hatch Act.
- *USERRA Unit*. This unit reviews and resolves USERRA complaints by federal employees referred by the Department of Labor. The unit also may represent service members in USERRA appeals before the MSPB.
- *Alternative Dispute Resolution (ADR) Unit*. This unit supports OSC's other program units by providing mediation and other forms of ADR services to resolve appropriate cases. Where the parties agree to mediation, the unit conducts mediation sessions seeking creative and effective resolutions.
- *Disclosure Unit (DU)*. This unit reviews whistleblower disclosures of government wrongdoing. DU may refer a whistleblower disclosure to the agency to investigate and report its findings to OSC. For referred whistleblower disclosures, DU reviews each agency report for sufficiency and reasonableness, and then OSC sends the determination, the agency report, and any comments by the whistleblower to the President and responsible congressional oversight committees.
- *Retaliation and Disclosure Unit (RDU)*. This unit handles hybrid cases in which a single complainant alleges both whistleblower disclosures and retaliation. OSC created RDU to streamline its processes and provide a single point of contact for complainants with multiple claims. RDU performs the full range of action in these cases, including the referral of whistleblower disclosures to agencies and the investigation and prosecution of related retaliation claims, where appropriate.
- *Diversity, Outreach, and Training Unit*. This unit facilitates coordination with and assistance to agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c), which requires that agencies inform their workforces about whistleblower rights and remedies. The unit also provides external education and outreach sessions for the laws that OSC enforces, as well as develops and implements internal Equal Employment Opportunity and other skill-based training programs for OSC's staff.
- *Office of General Counsel*. This office provides legal advice regarding management, policy, and administrative matters, including FOIA, the Privacy Act, and the ethics

programs. The office also defends OSC's interests in litigation filed against the agency.

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

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

Strategic Planning Process

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

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

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

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

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

OSC received several comments regarding its investigation and prosecution functions. Some comments lauded OSC's efforts to apply consistent standards of review and investigative

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

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

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

OSC also received several comments regarding its role of providing a safe channel to report government wrongdoing, primarily with respect to the timeliness of the process. OSC is striving to reduce the amount of time it takes between referral of whistleblower disclosures to an agency for investigation and the publication of the results of that investigation. Timeliness is difficult to assess in a standardized way because it depends on a variety of factors. For example, many whistleblower disclosures are complex and technical in nature and, by statute, whistleblowers may review and comment on the agency's report. Throughout the process, OSC communicates with the whistleblower and the agency and thoroughly analyzes the agency's report and the whistleblower's comments to ensure the agency's findings are reasonable and

contain all of the required information. OSC will seek to continue to streamline the process without sacrificing quality and complete reports on referred whistleblower disclosures.

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

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

Mission, Vision, Strategic Goals, and Core Values

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

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

Strategic Goals:

- 1. Protect and promote the integrity and fairness of the federal workplace.*
- 2. Ensure government accountability.*
- 3. Achieve organizational excellence.*

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

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

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

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

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

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

Strategic Goals, Objectives, Strategies, and Metrics

Strategic Goal 1 – Protect and promote the integrity and fairness of the federal workplace.

Objective 1: Fairly and promptly investigate and prosecute cases.

Objective 2: Obtain timely and effective relief in cases.

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

Strategies:

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

Data Points and Metrics:

General

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

PPP Enforcement

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

Hatch Act Enforcement

- Number of complaints received.
- Number/percent of complaints closed within 240 days.

- Number of complaints filed with MSPB.
- Number of successful prosecutions before MSPB.
- Number of warning letters issued.
- Number of corrective actions obtained.
- Number of disciplinary actions obtained.

USERRA Enforcement

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

Objective 3: Enhance strategic use of enforcement authority.

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

Strategies:

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

Data Points and Metrics:

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

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

OSC is in a unique position to provide Hatch Act advice to federal, D.C., state, and local employees and officials, as well as the general public. It is important for OSC to provide consistent, well-reasoned opinions in a timely fashion so that individuals can make appropriate decisions about their political activities. OSC recognizes the importance of revising and updating the Hatch Act regulations and will continue to pursue its efforts to

partner with OPM, the agency responsible for promulgating the regulations, to achieve this goal.

Strategies:

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

Data Points and Metrics:

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

Objective 5: Expand training and outreach efforts nationwide.

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

Strategies:

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

Data Points and Metrics:

- Number of agencies/components contacted regarding the 2302(c) Certification Program.

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

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

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

Strategies:

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

Data Points and Metrics:

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

Strategic Goal 2 – Ensure government accountability.

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

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

Strategies:

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

Data Points and Metrics:

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

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

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

Strategies:

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

Data Points and Metrics:

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

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

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

Strategies:

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

Data Points and Metrics:

- Revamped online public file of whistleblower disclosure cases on website by FY 2017, and reassess regularly.

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

Strategic Goal 3 – Achieve organizational excellence.

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

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

Strategies:

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

Data Points and Metrics:

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

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

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

Strategies:

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

Data Points and Metrics:

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

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

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

Strategies:

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

Data Points and Metrics:

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

Factors Affecting Achievement of Strategic Plan

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

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

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

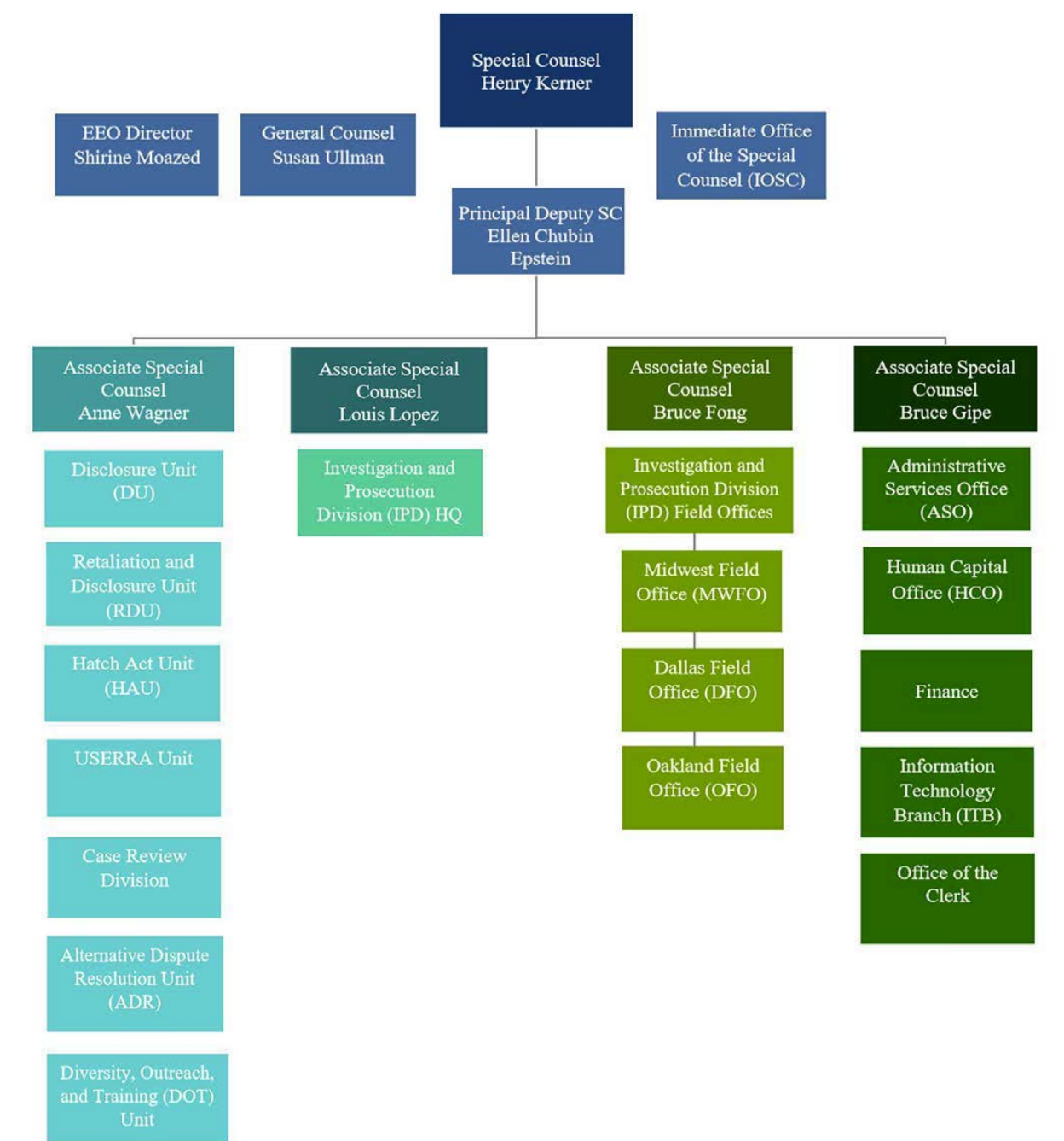
Additionally, OSC has had limited ability to invest in, but increased need for, long-term improvements in technology. OSC will be called upon to ensure that the technological environment in which it conducts its work is modern and secure. By proactively assessing the information security needs and the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

While OSC's establishment as an independent government oversight agency insulates it from political influences on its work, transitions in administration and leadership throughout the federal government will necessarily impact OSC's ability to safeguard employee rights and hold the government accountable. Specifically, staffing changes at all levels in the agencies over which OSC has jurisdiction will require that OSC remain agile and focused on honoring the merit system fairly and without bias. These challenges will require that OSC continue to

prioritize education and outreach, and to highlight cases with significant educational value or that promote accountability. Through these efforts, OSC can improve the culture within the federal government and remain a steady accountability and transparency presence that can withstand administration and leadership changes.

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

Appendix II: OSC Organizational Chart



Appendix III: OSC Strategic Planning Team

Chair

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

Members

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

Patrick Boulay, *Chief, USERRA Unit*

Ginny Castle, *Program Assistant, Oakland Field Office*

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

Greg Giaccio, *Senior Examiner, Complaints Examining Unit*

Bruce Gipe, *Chief Operating Officer, Administrative Services Division*

Sheryl Golkow, *Attorney, Dallas Field Office*

Karen Gorman, *Chief, Retaliation and Disclosure Unit*

Jane Juliano, *Chief, Alternative Dispute Resolution Unit*

Page Kennedy, *Senior Legal Counsel, Immediate Office of the Special Counsel*

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

Ana Galindo-Marrone, *Chief, Hatch Act Unit*

Catherine McMullen, *Chief, Disclosure Unit*

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

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Chris Tall, *Chief, Detroit Field Office*

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

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www.osc.gov