

**PERFORMANCE**  
*—and—*  
**ACCOUNTABILITY REPORT**  
*—for—*  
**FISCAL YEAR 2021**

---



---

U.S. OFFICE OF SPECIAL COUNSEL  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
[www.osc.gov](http://www.osc.gov)

*This page has intentionally been left blank*

# TABLE OF CONTENTS

---

<b>A Message from the Special Counsel</b>	<b>4</b>
<b>Part 1: Management Discussion and Analysis Section</b>	<b>6</b>
I. About OSC	6
II. Statutory Background	6
III. Organizational Structure	8
IV. Performance Highlights	10
V. OSC's Notable Successes	11
VI. Systems, Controls, and Legal Compliance	21
VII. Management Assurances	22
VIII. Management Challenges	23
IX. Comments on Final FY 2021 Financial Statements	26
<b>Part 2: Performance Section</b>	<b>28</b>
FY 2017-2022 Current Strategic Plan and Corresponding Goals	28
Goal 1, Tables 1-5 – Protect and Promote Integrity and Fairness of the Federal Workplace	29
Goal 2, Tables 6-8 – Ensure Government Accountability	37
Goal 3, Tables 9-11 – Achieve Organizational Excellence	42
<b>Part 3: Financial Section</b>	<b>48</b>
CFO Letter	48
Independent Auditor's Report	49
FY 2021 Financial Statements	54
Notes to Principal Financial Statements	59
<b>Appendices</b>	<b>71</b>
Appendix I: Current Strategic Plan	71
Appendix II: New Strategic Plan	92
Appendix III: OSC Organizational Chart	107

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

It is my pleasure to present the Office of Special Counsel's (OSC) Performance and Accountability Report for fiscal year (FY) 2021. This report marks the start of the fifth year of my leadership tenure at OSC, the agency whose noble mission is to protect federal workers by safeguarding the merit system. Like last year, FY 2021 was a historically challenging year for all Americans. Nonetheless, OSC continued with full-time, mandatory telework and achieved unparalleled successes on behalf of federal employees and whistleblowers, all while prioritizing the health and safety of its own 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, while working to maintain a federal workforce free of partisan political influence. In doing so, OSC protects the public, stands up for taxpayers, and increases the confidence of both 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 2021, OSC achieved 393 favorable outcomes for federal employees subjected to retaliation and other prohibited personnel practices (PPPs), roughly 20 percent higher than the average number of favorable outcomes for PPPs 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 2021, OSC's whistleblower disclosure work resulted in 53 substantiated instances of wrongdoing and the initiation of collections on 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 1,000 advisory opinions and obtained seven disciplinary actions for violations of the Hatch Act. In addition, the USERRA unit worked to defend employment and reemployment rights for veterans in 17 cases during FY 2021.

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 only 3,518 cases in FY 2021 due largely to the continued pandemic, OSC averaged over 5,000 cases per year in

the last five fiscal years. Even with this past year's reduction in new case filings, which may very well be temporary, 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 completely eliminate the agency's case backlog, which currently stands at over 1,550 cases. Recognizing the need to address these backlogged cases, I focused our efforts in the last three fiscal years on enhancing the efficiency and effectiveness of how the agency uses its resources. These efforts, along with the decrease in cases received during the pandemic, resulted in a reduction of the backlog by approximately 40 percent from the beginning of FY 2019 to the end of FY 2021. Despite this success, much work remains to be done. OSC will require additional resources in future fiscal years to continue to chip away at the backlog, especially since we anticipate an increase in new case filings to pre-pandemic levels as COVID subsides.

In addition, FY 2021 marked the seventeenth 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 presents our program outcomes and achievements in pursuit of our mission. As I enter my fifth year at the helm of this vital agency, I am proud of the successes we have achieved so far and am looking forward to building upon those successes in FY 2022 and beyond.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner", with a stylized flourish at the end.

Henry J. Kerner  
November 15, 2021

## **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 VA staff witness violations of firearm safety protocols at a Healthcare Police Service facility, or when Social Security Administration employees raise concerns over the agency's failure to inform widowed spouses of their survivor benefit options, 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. It also 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. In addition, the Act 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, similar to FY 2021, in FY 2022, 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.<sup>1</sup>

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 office encompasses management of the agency's congressional liaison and public affairs activities.

Office of General Counsel. This office provides legal advice and support in connection with

---

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



management and administrative matters, defense of OSC interests in litigation filed against the agency, ethics programs, policy planning, and development.

Case Review Division (CRD). The Case Review Division, which commenced operations on October 1, 2018, serves as the initial point of intake for all PPP and disclosure allegations. This unit screens all new allegations to ensure that PPPs and disclosures are directed to the appropriate units. CRD can also close out certain categories of PPP allegations under the new authorities OSC received in the Reauthorization Act of 2017.

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 Office, Human Capital Office, Administrative Services Office, Information Technology Office, and Office of the Clerk. Functional areas under the Office of the Clerk include the Freedom of Information Act (FOIA), Privacy Act, Controlled Unclassified Information, and records management. Procurement operations as well as travel are included under the Budget and Finance Office.

#### **IV. Performance Highlights**

OSC received 3,518 new cases in FY 2021. While this is nearly 22 percent below the level of cases received in FY 2020, and approximately 38 percent below the average caseload level received from FY 2016 to FY 2020, OSC attributes this decrease largely to the continued COVID-19 pandemic and the resulting alterations to the operations of most federal departments and agencies during FY 2021. 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.

Even with fewer incoming cases in FY 2021, OSC still achieved an impressive number of favorable actions. For example, OSC achieved 393 favorable actions in PPP cases, the second highest number on record for OSC, and approximately 20 percent above the prior five-year

average. On the Hatch Act front, OSC resolved 375 Hatch Act cases, which is approximately 64 percent above the average of the five prior years. In addition, OSC issued 62 warning letters and successfully obtained disciplinary action in seven cases against agency employees who committed Hatch Act violations. OSC also experienced success in its USERRA cases. OSC assisted 17 service members in asserting their employment and reemployment rights. For OSC to continue to build upon this established pattern of success, future increases in resources will be necessary, as caseloads return to pre-pandemic levels.

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

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 2021, and conducted 178 outreach events during the fiscal year, adding to the 207 outreach events conducted in FY 2020. Further, OSC certified an additional 19 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 2021, continuing its recent, downward trend, primarily due to the pandemic. OSC received 2,304 new PPP complaints in FY 2021. While this figure is lower than the number of new PPP complaints received in FY 2020, OSC attributes this reduction primarily to the effects of the continued pandemic in FY 2021, which has disrupted the standard operations of most federal departments and agencies. 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 departments and agencies 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 2021, OSC achieved 393 favorable actions in PPP cases. This nearly eclipsed the previous agency record of 405 set in FY 2020, and is 25 percent above the level in FY 2018, the last year that operations across federal departments and agencies were neither impacted by a government shutdown nor the COVID-19 pandemic. 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 2021, OSC negotiated 38 informal stays with agencies to protect employees from premature or improper personnel actions. OSC also achieved 33 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 industrial hygienist, alleged he was issued a letter of reprimand in retaliation for his discussion on the COVID-19 hotline. Complainant contacted the COVID-19 hotline regarding officials not requiring mask or face coverings in an indoor control room, despite direction by his supervisor to not contact the hotline. Pursuant to OSC's investigation, the parties entered into a settlement agreement resolving the complaint. The agency agreed to rescind the letter of reprimand, pay complainant's attorney's fees, and conduct OSC training for the human resource representatives.
- Complainant, a supervisory civil engineer, alleged that the agency proposed his removal in retaliation for his disclosing that his supervisor violated contract regulations and for successfully appealing the agency's denial of his step increase. With OSC's assistance, the agency withdrew and expunged the proposed removal, improved three years of performance evaluations, modified complainant's chain of command, and paid complainant \$37,500.

- Complainant, a regional solicitor, alleged retaliation for disclosing that her supervisor was abusing his authority when he engaged in settlement negotiations to offer a corporate defendant a “sweetheart” deal. Complainant alleged the agency reassigned her from her regional solicitor position in Los Angeles to the position of regional administrator in Chicago. Complainant also alleged that the agency initiated an internal harassment investigation against her as further retaliation. At OSC’s request, the agency agreed to delay complainant’s reassignment for 30 days. When the stay expired, the agency proposed complainant’s removal after she refused to accept the reassignment. OSC contacted the agency to schedule a settlement conference to present its preliminary findings and discuss resolution. After OSC offered to present its preliminary findings, the parties engaged in direct negotiations and executed a settlement agreement in which the agency agreed to rescind complainant’s reassignment and removal, and reinstate her as regional solicitor. The agency also agreed to restore 100 hours of complainant’s sick leave, pay a \$200,000 lump sum for back pay, compensatory damages, and attorney’s fees, and not to take any adverse actions against the complainant because of the internal harassment investigation.
- Complainant, an administrative officer, alleged that the agency proposed her removal in retaliation for her disclosing a hostile work environment and violations of agency rules at her department. After an investigation, OSC requested corrective actions and facilitated a settlement agreement. Under the agreement, the agency agreed to pay complainant \$180,000, rescind the proposed removal, provide a letter of recommendation, and issue an outstanding performance rating for fiscal year 2020. Complainant agreed to resign and withdraw all her pending claims against the agency.
- Complainant, a police officer, alleged that his agency suspended him and proposed his removal in retaliation for disclosing numerous instances of abuse of authority by the chief of police and other senior officers to his chain of command, a member of Congress, and Office of Inspector General. Complainant accepted a position elsewhere before a final decision on the removal was issued. In a global settlement, the agency also agreed to pay him \$100,000 in compensatory damages, \$20,000 in attorney’s fees, and restore over 200 hours of leave.

In other whistleblower retaliation and prohibited personnel practice cases, OSC achieved numerous additional corrective actions on behalf of federal employees including stays of personnel actions, reinstatements, reassignments, backpay, appropriate damages and fees, neutral references, restoration of leave, reinstatement of duties, expungements of improper letters of reprimand and unlawful suspensions; upgrade of performance ratings, Quality Step Increase (QSI) awards, and training. OSC also achieved disciplinary action for officials engaged in wrongdoing including the demotion of a 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 2021 Amicus Curiae Brief***

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

## **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.

In the five-year span prior to the pandemic, OSC was handling an average of nearly 1,700 disclosures from federal whistleblowers each year. While the number of disclosures has decreased during the pandemic, the agency expects disclosures to return to pre-pandemic levels when COVID subsides. Additionally, despite receiving approximately 40 percent fewer cases in FY 2021 from the previous five-year average, OSC sent 76 whistleblower disclosure reports to the President and Congress, which is a 12 percent increase over the average for the same time period.

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 2021, OSC was instrumental in highlighting allegations from employees at the Butler Healthcare Center Police Service that leadership was violating firearms safety protocols by conducting live-action, scenario-based training exercises with on-duty, armed officers. An investigation of these practices led to the cessation of these training exercises and updated standard operating procedures to ensure safe training practices in the future.

### **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 2021, examples of OSC successes involving whistleblower disclosures include the following:

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

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

Additionally, 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 will provide OSC with an additional report upon completion of its audit, which is expected in the fall of 2021. The audit will include a breakdown of the monetary value of any outstanding debts owed to the 12 additional agencies affected by the software error. The Special Counsel determined that the findings of the reports appeared reasonable, and the reports met all statutory requirements.

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

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

The agency substantiated the allegations finding that Police Service supervisors were conducting rapid-response drills (RRDs) in a manner that simulated an actual duty call, in other words, live-action, scenario-based training exercises rather than RRDs. It is a violation of firearms safety protocols to conduct live-action, scenario-based training exercises with on-duty, armed officers. In response to the investigation, the Police Service suspended all RRDs pending revision of the relevant standard operating procedures. The updated standard

operating procedures were issued on April 13, 2020. In addition, the VA Office of Security and Law Enforcement and the Veterans Health Administration are conducting a comprehensive review of security and law enforcement programs and functions to evaluate the need for a centralized management entity across the Department. The Special Counsel determined that the report contained the information required by statute and the findings appeared reasonable.

- **Gross mismanagement**

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

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

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

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

***Failure to Inform Widowed Spouses of Options with Survivors Benefits Claims.*** In FY 2021, OSC alerted the President and the Congress that the Social Security Administration (SSA) developed a detailed plan to review and reimburse, where appropriate, over 20,000



widow(er) beneficiaries, after SSA failed to adequately inform them of their survivor benefit options. The corrective action resulted from a whistleblower disclosure to OSC that SSA failed to inform survivors that they could delay, or withdraw and resubmit, their benefits applications until they reached full retirement age (FRA), resulting in a significant loss to beneficiaries over their lifetimes.

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

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

## **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 2021, OSC responded to 1,043 requests for advice, issued 62 warning letters, and obtained four corrective actions and seven 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 filed a complaint charging a Federal Aviation Administration (FAA) employee with violating the Hatch Act's prohibitions against using one's official authority to affect the result of an election, engaging in political activity while on duty or in the federal workplace, and knowingly soliciting political contributions. OSC alleged that the employee approached subordinate employees while on duty and in the workplace to request that they make

financial contributions to a union's political action committee (PAC). The individual knew that the subordinates had previously declined to make contributions to the union's PAC and approached them at work specifically to discuss their reluctance to do so. In a settlement agreement, the employee agreed to accept a 30-day unpaid suspension as disciplinary action for his Hatch Act violations.

- OSC filed a complaint against a U.S. Department of Housing and Urban Development (HUD) regional administrator, charging them with violating the Hatch Act's prohibition against using their official authority or influence to affect an election. OSC alleged that the employee leveraged one of the relationships they had made, in their official capacity, with a New York City Housing Authority (NYCHA) resident to recruit participants to film a video that would air at the Republican National Convention. In the video, the NYCHA residents explained how their standard of living had improved under the Trump administration. The employee left federal service after OSC filed the complaint. In a settlement agreement, the employee admitted that they engaged in conduct that violated the Hatch Act's use of official authority prohibition and agreed to accept a 48-month debarment from federal employment and pay a \$1,000 civil fine.
- OSC filed a complaint charging a U.S. Postal Service (USPS) employee with violating the Hatch Act's prohibitions against using their official authority or influence to affect an election and engaging in political activity while on duty and in the workplace when they intentionally discarded more than 60 pieces of political mail over the course of a single week in August 2020. The case is pending.

#### Cases Involving High-Level Presidential Appointees

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

### Disciplinary Action Obtained through Settlement Negotiations

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

### **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 19 new cases in FY 2021, and closed 17 cases. None of the 17 cases closed had sufficient evidence for OSC to pursue corrective actions for the 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 left his position within a federal civilian agency for long-term active duty in the U.S. Navy in 2010 after giving proper notice to his agency. When he notified his former manager that he wished to return to the agency after concluding his Navy service in early 2015, the manager told him she could not assist him despite his entitlement to prompt reemployment under USERRA. The agency's Human Resources Office then erroneously told him he would have to apply for open positions listed on the "USAJOBS" website. After submitting multiple applications, he eventually received a tentative job offer as an ATC in early 2016, a year after he first requested reemployment. However, before he onboarded into his new position, the agency medically disqualified him to perform ATC duties based on information in his Naval medical records. He appealed the disqualification but had to work in part-time and temporary jobs to pay his bills while his appeal was pending. After OSC received his USERRA complaint and intervened on his behalf, his agency expedited the appeals process, which was decided in his favor, and restored him to duty as an ATC, four years after his original request. OSC and the agency are currently negotiating compensation for lost wages and benefits from 2015-2019.
- A Security Guard at a U.S. Army Garrison in New York was not given proper credit toward his seniority due to his absence while performing service in the Marine Corps Reserve. As a result, his within-grade salary increase was delayed several months, leading to a loss of pay. At OSC's request, the Army agreed to adjust his seniority, make his pay increase retroactive, and award him all corresponding back pay.
- A Supervisory Information Technology Specialist with the U.S. Navy returned from duty in the Navy Reserve to find that he was re-employed at a lower-status job than the one he had prior to his departure, which was violation of USERRA. Namely, the employee went from overseeing over 100 employees to five. After several disputed workplace incidents, the Navy subsequently suspended his access to classified information and placed him on indefinite suspension without pay. Lacking income, he was forced to seek additional employment over the next several months. He also appealed his suspension, and the appeal was ultimately decided in his favor after more than two years. Not wishing to return to civilian employment with the Navy, he agreed to a settlement whereby he received several months' worth of back pay and paid leave in exchange for his resignation.
- A civilian contractor supporting the U.S. Department of Defense (DOD) left in May 2018 to perform Reserve duty. When he attempted to return to work in July 2018 after his service, DOD prevented him from doing so, asserting that he was no longer eligible for the position. While he eventually found another job, he was unemployed for several months. At OSC's request, DOD agreed to compensate the Reservist for his lost wages while he was unemployed.

In addition to resolving individual USERRA cases, OSC also provides outreach and technical assistance to help federal agencies better comply with USERRA, often in conjunction with the

U.S. Department of Labor (DOL). OSC also maintains telephonic and email hotlines to answer USERRA questions from service members and employers nationwide. Lastly, OSC reports its compliance with timeliness requirements for processing USERRA cases to Congress, and the Departments of Labor, Defense, and Justice on a quarterly basis.

## **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 2021, reviews were completed on the following agency administrative operations:

OSC Reconstitution Plan (COVID-19 Response Plan): In FY 2020, as a result of the 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.

As a result of the continued pandemic, and the emergence of new strains of the coronavirus, OSC has delayed its transition back to the office until early January 2022. OSC continues to review and implement updated guidance from the current Administration regarding health and safety measures for the workplace in its current *Covid-19 Workplace Safety Plan* and will continue to monitor local conditions as calendar year 2022 approaches.

Security National Assessments Program Review. A review of OSC's personnel position designations, and personnel security background investigation program, conducted in accordance with joint Office of Personnel Management and Office of the Director of National Intelligence guidance, showed that OSC is complying with all federal standards related to personnel security.

Financial Audit. OSC underwent its seventeenth annual financial audit in FY 2021. The FY 2021 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, and developed a risk register to catalogue and track risks to the agency. In FY 2021, 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 2021, 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 monitored on a continuous 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 a Service Organization Controls (SOC) 1 Type 2 report 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, 2021, 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 2021 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.

A handwritten signature in black ink, appearing to read "Henry J. Kerner", with a stylized flourish at the end.

Henry J. Kerner  
November 15, 2021

## **VIII. Management Challenges**

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

### **A. Staffing**

OSC considers the continued reduction in new case filings in FY 2021 to be an effect of the COVID-19 pandemic. In non-pandemic years, OSC experienced a dramatic rise in caseloads, which may be attributed to increased interest in OSC, resulting from the agency'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 3,518 new matters in FY 2021, we strongly believe this is primarily due to the continued pandemic. We received an annual average of 5,668 cases from FY 2015 through FY

2020.<sup>2</sup> Historically, OSC's staffing and budget have not kept pace with the increased case filings.

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.<sup>3</sup> For example, PPP cases, which can take a significant amount of time to investigate and resolve, have increased significantly in recent years. While the continued pandemic resulted in 2,304 new PPP cases in FY 2021, OSC's five-year average from FY 2017 through FY 2021 is still nearly 3,400 new PPP cases per year. Again, OSC's staffing and resources have not kept pace with the rise in caseloads in non-pandemic years. It is likely that OSC would have received even more PPP cases, if not for the continued pandemic, which has greatly impacted the operations of agencies and departments across the federal government from FY 2020 onward.

Under Special Counsel Kerner's leadership, OSC made significant efforts, and achieved considerable success in reducing our backlog by over 1,000 cases since the end of 2018. Nevertheless, the case backlog remains at approximately 1,551 cases. OSC is cognizant of the fact that whistleblowers and complainants become frustrated by the longer processing times driven, in part, by the backlog. Further, OSC strongly believes the taxpayers will be harmed if complainant disclosures are not addressed in a timely manner, and government inefficiencies go unchecked, as a result. Therefore, because of the expected return to pre-pandemic caseload levels in future fiscal years, as well as rising operational costs, OSC will need additional resources to provide staffing to continue reducing the backlog. It is notable that mandatory pay raises impact OSC's budget significantly, as salaries and benefits make up approximately 84 percent of the agency's costs.

## **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 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 has maintained high levels of productivity -- notably achieving the second highest number of favorable actions in PPP cases in agency history in FY 2021.

---

<sup>2</sup> OSC expects that, assuming no other unforeseen circumstances, normal operations at federal departments and agencies will resume during FY 2022, and new case figures will start to revert back to the recent historical averages.

<sup>3</sup> Although Congress increased OSC's appropriation in recent years, OSC's ability to hire new staff has been impacted by continued, yearly increases in mandatory personnel-related costs.



OSC also quickly implemented a COVID-19 safety plan, which outlined a phased return to work and kept our employees safe while increasing our productivity. As we monitor pandemic conditions, we will continue to assess and revise our COVID-19 Workplace Safety 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 will 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 MSBP 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 the necessary number of Board members limits OSC's ability to seek formal stays in appropriate cases. Lastly, the lack of a Board also impacts OSC's cases due to not receiving precedential decisions from MSPB.

### **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 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 2021, OSC continued to leverage the assisted acquisition services from other Federal agencies to procure contracts. For FY 2021, 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 2021 Financial Statements**

### **Financial Highlights**

#### **Consolidated Balance Sheet**

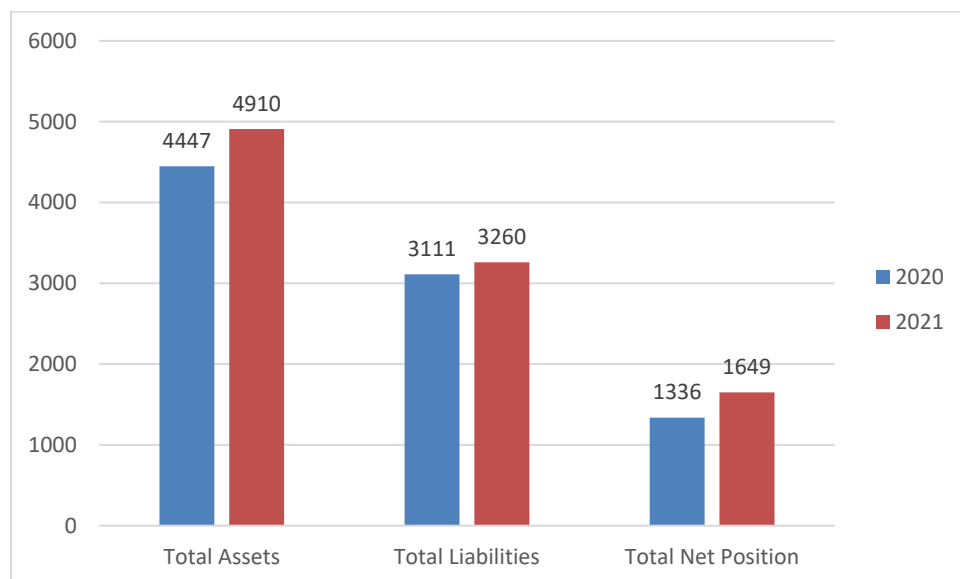
The Consolidated Balance Sheet presents amounts that are owned or managed by OSC (assets); amounts owed (liabilities); and the net position (assets minus liabilities) of the agency divided between the cumulative results of operations and unexpended appropriations.

OSC's balance sheet shows total assets of \$4,909,798 at the end of FY 2021. This is an increase of \$462,620 compared to OSC's total assets of \$4,447,178 as of fiscal year end (FYE) 2020. Fund Balance with Treasury comprises approximately 98 percent of OSC's assets.

Total Liabilities for OSC increased by \$149,303, or approximately five percent, from \$3,111,047 at FYE 2020 to \$3,260,350 at FYE 2021. The three largest components of Total Liabilities are Unfunded Leave (\$1,746,116), Accrued Funded Payroll (\$1,035,822), and Accounts Payable (\$348,295).

The Net Position is the sum of Unexpended Appropriations and the Cumulative Results of Operations. OSC's Net Position was \$1,649,448 at FYE 2021, an increase of \$313,317 from Net Position at FYE 2020 of \$1,336,131. This increase is largely driven by the increase in OSC's Unexpended Appropriations.

### 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 2021, OSC received a \$29,500,000 appropriation, which is an increase of approximately seven percent over the appropriation OSC received in FY 2020. OSC ended FY 2021 with a five percent, or \$1,563,611, increase in total budgetary resources compared to FY 2020.

### Statement of Changes in Net Position

The 2021 Consolidated Statement of Changes in Net Position shows the change in the net position for both FY 2021 and FY 2020 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 an increase in Total Net Position from \$1,336,131 at FYE 2020 to \$1,649,448 at FYE 2021. As mentioned above, this increase in Net Position is largely driven by the increase in OSC's Unexpended Appropriations in FY 2021.

## **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 \$733,957, with accumulated depreciation of \$670,040 and a 2021 net book value of \$63,917. (Note 4 to Principal Financial Statements).

OSC's Total New Obligations and Upward Adjustments were \$29,533,683 in FY 2021. Total New Obligations and Upward Adjustments increased by \$1,645,885, or approximately 6 percent, in FY 2021, from \$27,887,798 in FY 2020. (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 increased by \$117,281, from \$790,137 in FY 2020 to \$907,418 in FY 2021. Assets and Liabilities relating to these benefits are the responsibility of the Office of Personnel Management.

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 2021 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 2021, OSC successfully met or partially met 53 out of 63 goals, or 84 percent of its goals this year. This is a successful performance for OSC in FY 2021, as the agency achieved these results amidst difficult circumstances. For instance, these results were achieved by OSC, despite the continued pandemic, which drastically altered the operations of federal agencies and departments, including that of OSC, for the entire fiscal year. Further, OSC achieved these results in FY 2021, 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 timely and high-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 2021, OSC met six 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
<b>1</b>	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	Met	
<b>2</b>	Number of PPP complaints received	Data-point	4,112	Data-point	3,824	Data-point	2,829	Data-point	2,304	Data-point	

3	Number of whistleblower retaliation complaints received	Data-point	1,861	Data-point	1,925	Data-point	2,073	Data-point	1,675	Data-point	
4	Number of whistleblower retaliation complaints closed within 240 days	Baseline	1,667	Baseline	1,917	Baseline	1,773	Baseline	1,371	Data-point	
5	Average age of PPP complaints at closure	Baseline	166	Baseline	142.97	Baseline	166.79	Baseline	177.01	Baseline	
6	Number of PPP complaints filed with MSPB	1	1	1	0	1	0	1	0	1	
7	Number of successful PPP prosecutions before MSPB	1	0	1	0	1	0	1	0	1	
8	Number of PPP complaints mediated	33	29	33	37	33	30	33	29	30	
9	Number of PPP complaints mediated resulting in settlement	20	22	20	24	20	23	20	17 <sup>9</sup>	20	
10	Number of informal stays obtained	25	47	25	29	25	53	25	38	25	
11	Number of formal stays and related extensions obtained	4	12	8	2	8	0	0	0	0	
12	Total favorable PPP actions <sup>12</sup>	206	309	206	211	275	398	206	393	215	
13	Number of systemic corrective actions obtained	30	57	32	60	32	72	45	83	45	
14	Number of disciplinary actions obtained	15	19	15	27	15	13	15	33	15	

**Goal Table 1A Explanatory Notes**

<sup>9</sup>: One case was closed in the ADR unit, meaning that after discussion with ADR, the respective party withdrew his/her case.

<sup>12</sup>: 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 five out of six goals in FY 2021. 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	289	Data-point	
16	Percent of Hatch Act complaints closed within 240 days	Baseline	65%	Baseline	75%	60%	83%	65%	75%	65%	
17	Number of Hatch Act complaints filed with MSPB	1	3	1	0	1	4	1	3	1	
18	Percent of successful Hatch Act prosecutions before MSPB	100%	100%	100%	N/A	100%	100%	100%	100%	100%	
19	Number of Hatch Act warning letters issued	20	49	22	49	25	34	25	62	25	
20	Number of corrective actions obtained	10	10	10	11	10	11	10	4	10	
21	Number of disciplinary actions obtained	5	6	5	5	5	8	5	7	5	

C. **Goal Table 1C** details the data points and performance metrics for OSC's work investigating, litigating, and resolving USERRA complaints. During FY 2021, OSC met two



out of three metrics. OSC completed 88 percent of USERRA legal reviews within 60 days and obtained zero 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	19	25	
23	Number of USERRA merit referrals	Data-point	4	Data-point	6	Data-point	3	Data-point	4	5	
24	Number of USERRA non-merit referrals	Data-point	21	Data-point	15	Data-point	21	Data-point	15	20	
25	Percent of USERRA referrals closed within 60 days	80%	86%	75%	83%	80%	87%	80%	88%	80%	
26	Number of USERRA offers of representation before MSPB	1	1	1	0	1	0	1	1	1	
27	Number of USERRA corrective actions obtained (formally and informally)	3	3	3	3	3	3	3	0	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 two out of three goals in FY 2021.

**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	2	
29	Number of amicus curiae briefs and interventions filed	2	5	2	2	2	2	2	1	2	
30	Number of inter-agency efforts involving systemic improvements to the federal workplace	4	10	4	15	4	10	8	24	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 2021, 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	Baseline	100%	Baseline	97%	98%	100%	98%	99%	98%	

	issued within 3 days of inquiry										
32	Percent of informal email advisory opinions issued within 5 days of inquiry	95%	99.9%	95%	87%	98%	97%	95%	100%	95%	
33	Number/percent of formal written advisory opinions issued within 60 days of inquiry	Baseline	89%	Baseline	83%	75%	85%	75%	64%	75%	
34	Revised Hatch Act regulations by FY 2018	Met	Partially Met	Met	Partially Met	Met	Partially Met	Met	Partially 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 2021.

<b>Goal Table 4</b> <b>Goal 1: Protect and promote the integrity and fairness of the federal workplace</b> <b>Objective 5: Expand training and outreach efforts nationwide</b>											
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	140	
36	Number of agencies/components registered for the 2302(c) Certification Program	Baseline	21	20	33	15	24	15	15	15	
37	Number of agencies/components certified and recertified for the	Baseline	23	20	24	15	26 <sup>37</sup>	15	19	10	

	2302(c) Certification Program										
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	11 months	10 months	
39	Number of training and outreach activities, broken down by program area and geographic location	Baseline	198	150	188	165	207	165	178 <sup>39</sup>	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	Met	

**Goal Table 4 Explanatory Notes**

<sup>37</sup>: Number of agencies and agency components certifying/recertifying for the Section 2302(c) Certification Program will vary in response to the three-year recertification cycle. For example, due to increased certifications in FY 2019 and FY 2020, we expect that a smaller number of agencies will be due for recertification in FY 2021 and FY 2022, based on the three-year cycle.

<sup>39</sup>: Number of trainings will increase and decrease in each fiscal year based on a number of factors, including, for instance, (1) the almost 75 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 continue implementing a significant transformation to meet the needs of this virtual environment and transition all OSC training to virtual training.

Program Area	Total	Outside Beltway*
PPP**	115	1
HA	14	1
DU***	45	0
USERRA	3	0
ADR	1	0

\* Almost the entire year of training was conducted virtually. Thus, most 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 2021. OSC issued a total of 23 press releases in FY 2021.

## 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	23	30	
42	Types and frequency of digital media used to share information	275	211	275	221	275	327	275	363	250	
43	Number of meetings with stakeholder groups	4	52	10	56	10	54	30	49 <sup>43</sup>	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	Met	

#### Goal Table 5 Explanatory Notes

<sup>43</sup>: In FY 2021, OSC had 49 meetings with stakeholder groups, including the following:

- 10 meetings for general OSC outreach
- 24 meetings with congressional staff and representatives
- 7 meetings with agency officials, including secretaries and general counsels
- 8 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 2021, OSC received 906 new whistleblower disclosures. OSC met three out of three goals in FY 2021.

## 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 <sup>45</sup>	Met	Met	Met	Met	Met	
46	Number of whistleblower disclosures received	Data-point	1,554	Data-point	1,374	Data-point	1,160	Data-point	906	Data-point	
47	Number of whistleblower disclosures that also allege related retaliation	Data-point	492	Data-point	N/A <sup>47</sup>	Data-point	330	Data-point	285	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	65 formal/ 43 informal	70	

49	Working group for assessment and improvement of whistleblower reporting experiences (including use of new electronic form) by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met	Met	Met	
----	---	-----	-----	-----	-----	-----	-----	-----	-----	-----	--

**Goal Table 6 Explanatory Notes**

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

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

- A.** **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 2021.

**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 <sup>50</sup>	Data-point	71% formal/63% informal	Data-point	70% formal/62% informal	Data-point	

51	Number of cases with favorable outcomes—both corrective and disciplinary actions—achieved through formal and informal resolution of whistleblower disclosures	Baseline	6 disciplinary / 47 corrective	Baseline	16 disciplinary / 72 corrective	Baseline	16 disciplinary / 104 corrective	Baseline	20 disciplinary/ 94 corrective <sup>51</sup>	Baseline	
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	101 days	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	Met	Met	Met	Met	Met	Met	Met	Met	Met	



or recovered, by FY 2017, and reassess regularly											
---	--	--	--	--	--	--	--	--	--	--	--

#### **Goal Table 7 Explanatory Notes**

<sup>50</sup>: 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.

<sup>51</sup>: FY 2021 Formal referrals with disciplinary action – 17  
FY 2021 Informal referrals with disciplinary action – 3  
FY 2021 Formal referrals with corrective action – 60  
FY 2021 Informal referrals with corrective action – 34

- 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 2021.

<b>Goal Table 8</b>											
<b>Goal 2: Ensure government accountability</b>											
<b>Objective 3: Enhance awareness of outcomes of referred whistleblower disclosures</b>											
<b>Description of Target</b>		<b>FY 2018 Target</b>	<b>FY 2018 Result</b>	<b>FY 2019 Target</b>	<b>FY 2019 Result</b>	<b>FY 2020 Target</b>	<b>FY 2020 Result</b>	<b>FY 2021 Target</b>	<b>FY 2021 Result</b>	<b>FY 2022 Target</b>	<b>FY 2022 Result</b>
<b>54</b>	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	Met	
<b>55</b>	Number of times that favorable outcomes of whistleblower disclosures are disseminated via press releases, social media, etc.	12	42	40	52	40	44	40	50	40	
<b>56</b>	Number of training and outreach events that	Baseline	105	90	158	95	109	95	115	85	

	address whistleblower disclosures										
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	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 mission 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. In addition, OSC hosts a “Wellness Wednesdays” series of ongoing meetings that help employees by addressing various topics regarding mental health and physical well-being.

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, it takes complaints from throughout the federal government; handles cases from all over the country; and its authority to act derives from several different federal statutes. OSC will undertake a comprehensive and transparent evaluation of the most efficient approach for safeguarding employee rights and holding the government accountable. The evaluation will identify best practices and areas of improvement. This will be part of a

vigilant process of continual evaluation of OSC's existing program areas and new programs to ensure the most effective delivery of services. To accomplish these goals, OSC will give federal employees and other stakeholders a greater opportunity to provide input into shaping its work.

- A. Goal Table 9** 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 2021.

<b>Goal Table 9</b>											
<b>Goal 3: Achieve organizational excellence</b>											
<b>Objective 1: Recruit, develop, and retain a highly talented, engaged, and diverse workforce</b>											
<b>Description of Target</b>		<b>FY 2018 Target</b>	<b>FY 2018 Result</b>	<b>FY 2019 Target</b>	<b>FY 2019 Result</b>	<b>FY 2020 Target</b>	<b>FY 2020 Result</b>	<b>FY 2021 Target</b>	<b>FY 2021 Result</b>	<b>FY 2022 Target</b>	<b>FY 2022 Result</b>
<b>58</b>	Human Capital Plan by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met	Met	Met	
<b>59</b>	Honors Program by FY 2017 and reassess regularly	Met	Met	Met	Met	Met	Met	Met	Met	Met	
<b>60</b>	Improved and standardized onboarding process by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met	Met	Met	
<b>61</b>	Staff training plan by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met	Met	Met	
<b>62</b>	Mentorship program by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met	Met	Met	Met	
<b>63</b>	Ongoing internal cross-training opportunities	Met	Met	Met	Met	Met	Met	Met	Met	Met	

	by FY 2017, and reassess regularly										
64	Ongoing employee engagement efforts, and reassess regularly	Met	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	Met	

- B.** **Goal Table 10** relates to the second objective under Strategic Goal 3 and details OSC's efforts to improve the use of existing technology and deploy new IT systems to enhance organizational operations. For Goal Table 10, OSC met six out of six goals in FY 2021.

### 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 <sup>66</sup>	Met	Met	Met	Met	Met	
67	100% deployment of mobile	Met	Met	Met	Met <sup>67</sup>	Met	Met <sup>67</sup>	Met	Met	Met	

	access to network program resources by FY 2017, 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 <sup>68</sup>	Met	Met <sup>68</sup>	Met	Met	Met	
69	Ongoing semi-annual assessment of IT needs, and reassess regularly	Met	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	Met	
71	Ongoing maintenance of IT staff of 5% of agency work force, and reassess regularly	Met	Not Met	Met	Not Met <sup>71</sup>	Met	Partially Met <sup>71</sup>	Met	Met	Met	

**Goal Table 10 Explanatory Notes**

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

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

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

<sup>71</sup>: In FY 2019, OSC did not meet the goal of maintaining IT staff at 5 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 FTEs. 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 2021.

<b>Goal Table 11</b> <b>Goal 3: Achieve organizational excellence</b> <b>Objective 3: Monitor, evaluate, and improve efficiency and effectiveness of programs and processes</b>											
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	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	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	Met	
75	Enhanced method for determining customer satisfaction with programs and processes by FY 2017, and reassess regularly	Met	Met	Met	Met	Met	Met <sup>75</sup>	Met	Met	Met	
76	Evaluation and use of customer satisfaction data to improve efficiency and	Met	Met	Met	Met	Met	Met	Met	Met	Met	

	effectiveness of programs and processes by FY 2018, and reassess regularly										
--	--	--	--	--	--	--	--	--	--	--	--

**Goal Table 11 Explanatory Notes**

<sup>75</sup>: The 2018 OSC reauthorization as found in section 1097 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA) requires OSC to establish a survey pilot program to collect information and improve service at various stages of case review. OSC formed a working group to design and establish a survey, 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 15, 2021

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 2021 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, 2021**



**ALLMOND & COMPANY, LLC  
Certified Public Accountants  
7501 Forbes Blvd., Suite 200  
Lanham, Maryland 20706**

## **Independent Auditors' Report**

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, 2021 and 2020, 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 2021 and 2020 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. 21-04, *Audit Requirements for Federal Financial Statements*. Those standards and OMB Bulletin No. 21-04 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 2021 and 2020, 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, 2021, 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. 21-04. 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 2021 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 two additional matters 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 2021 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. 21-04. 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. 21-04.

### **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, 2021

The following table provides the fiscal year (FY) 2021 status of all recommendations included in the Independent Auditors' Report on the Office of Special Counsel's FY 2020 Financial Statements (November 12, 2020).

FY 2020 finding	FY 2020 Recommendations	FY Status
Imputed Cost Computation (2020-01)	OSC review the journal entry and supporting worksheet that are used to record and calculate imputed cost, respectively, to ensure that the rate factors used to compute imputed costs are current and accurate. In addition, we recommend that OSC make any necessary updates to the Imputed Cost Calculation worksheet to ensure appropriate tracking of adjustments.	Closed

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

**Fiscal Year 2021  
Financial Statements**



Office of Special Counsel  
Balance Sheet  
As of September 30, 2021 and 2020  
(in dollars)

	2021	2020
<b>Assets</b>		
<b>Intragovernmental</b>		
Fund Balance With Treasury (Note 2)	\$ 4,828,704	\$ 4,237,749
Advances and Prepayments (Note 12)	\$ 13,087	112,418
<b>Total Intragovernmental</b>	<u>\$ 4,841,791</u>	<u>\$ 4,350,167</u>
<b>Assets With the Public</b>		
Accounts Receivable, Net (Note 3)	4,090	249
General Property, Plant, and Equipment, Net (Note 4)	63,917	96,762
<b>Total Assets</b>	<u>\$ 4,909,798</u>	<u>\$ 4,447,178</u>
<b>Liabilities</b>		
<b>Intragovernmental</b>		
Accounts Payable	\$ -	\$ -
Benefit Program Contributions Payable		
Employer Contributions and Payroll Taxes Payable	219,408	174,041
Unfunded FECA Liability (Note 5)	15,079	24,740
Other Liabilities (without reciprocals)		
Employer Contributions and Payroll Taxes Payable	106,772	107,576
<b>Total Intragovernmental</b>	<u>341,257</u>	<u>306,357</u>
<b>Liabilities With the Public</b>		
Accounts Payable	22,117	93,546
Federal Employee and Veteran Benefits Payable		
Employer Contributions and Payroll Taxes Payable	47,071	38,544
Unfunded Leave (Note 5)	1,746,116	1,698,960
Actuarial FECA Liability (Note 5)	67,967	130,443
Other Liabilities		
Accrued Funded Payroll and Leave	1,035,822	843,197
<b>Total Liabilities</b>	<u>\$ 3,260,350</u>	<u>\$ 3,111,047</u>
<b>Net Position</b>		
Unexpended Appropriations - Other Funds	3,410,603	3,093,263
Cumulative Results of Operations - Other Funds	(1,761,155)	(1,757,132)
<b>Total Net Position</b>	<u>\$ 1,649,448</u>	<u>\$ 1,336,131</u>
<b>Total Liabilities And Net Position</b>	<u>\$ 4,909,798</u>	<u>\$ 4,447,178</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, 2021 and 2020  
(in dollars)**

	<b>2021</b>	<b>2020</b>
Gross costs	\$ 29,873,197	\$ 28,396,284
Less: Total Earned Revenue	-	-
<b>Net Cost of Operations</b>	<b>\$ 29,873,197</b>	<b>\$ 28,396,284</b>

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, 2021 and 2020**  
(in dollars)

	<u>2021</u>	<u>2020</u>
<b>Unexpended Appropriations:</b>		
Beginning Balances	\$ 3,093,263	\$ 3,190,329
Beginning Balances, as Adjusted	3,093,263	3,190,329
<b>Budgetary Financing Sources:</b>		
Appropriations Received	29,500,000	27,500,000
Appropriations Used	(28,961,756)	(27,403,083)
Other Adjustments	(220,904)	(193,983)
Total Budgetary Financing Resources	317,340	(97,066)
Total Unexpended Appropriations	\$ 3,410,603	\$ 3,093,263
<b>Cumulative Results of Operations:</b>		
Beginning Balances	\$ (1,757,132)	\$ (1,554,068)
Beginning Balances, as Adjusted	(1,757,132)	(1,554,068)
<b>Budgetary Financing Sources:</b>		
Appropriations Used	28,961,756	27,403,083
<b>Other Financing Sources (Non Exchange):</b>		
Imputed Financing (Note 8)	907,418	790,137
Total Financing Sources	29,869,174	28,193,220
Net Cost of Operations	(29,873,197)	(28,396,284)
Net Change	(4,023)	(203,064)
Cumulative Results of Operations	\$ (1,761,155)	\$ (1,757,132)
Net Position	\$ 1,649,448	\$ 1,336,131

The accompanying notes are an integral part of these statements.

**Office of Special Counsel**  
**Statements of Budgetary Resources**  
**For the Years Ended September 30, 2021 and 2020**  
(in dollars)

	2021	2020
<b>Budgetary resources:</b>		
Unobligated balance from prior year budget authority, net	\$ 548,123	\$ 984,512
Appropriations (discretionary and mandatory)	29,500,000	27,500,000
Total budgetary resources	<u>\$ 30,048,123</u>	<u>\$ 28,484,512</u>
<b>Status of budgetary resources:</b>		
New obligations and upward adjustments (total) (Note 9):	\$ 29,533,683	\$ 27,887,798
Unobligated balance, end of year:		
Apportioned, unexpired accounts	90,668	101,046
Unexpired unobligated balance, end of year (Note 2)	90,668	101,046
Expired unobligated balance, end of year (Note 2)	423,772	495,668
Unobligated balance, end of year (total)	514,440	596,714
Total budgetary resources	<u>\$ 30,048,123</u>	<u>\$ 28,484,512</u>
<b>Outlays, Net and Disbursements, Net</b>		
Outlays, net (total) (discretionary and mandatory)	28,688,142	27,162,727

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, 2021 and 2020**

# **Office of Special Counsel**

## **Notes to Principal Financial Statements**

### **as of and for the Years Ended September 30, 2021 and 2020**

#### **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 140 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 2021 and 2020 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, 2021 and 2020 were:

<b>Fund Balance:</b>	<b>2021</b>	<b>2020</b>
Appropriated Funds (general)	\$ 4,828,704	\$ 4,237,749
<b>Total Fund Balance with Treasury</b>	<b>\$ 4,828,704</b>	<b>\$ 4,237,749</b>

### **Status of Fund Balance with Treasury**

Unobligated Balance:		
Available	\$ 90,668	\$ 101,046
Unavailable	423,772	495,668
Obligated Balance Not Yet Disbursed	4,314,264	3,641,035
<b>Total Status of Fund Balance with Treasury</b>	<b>\$ 4,828,704</b>	<b>\$ 4,237,749</b>

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, 2021 and 2020 were as follows:

	2021	2020
<b>Accounts Receivable from the Public:</b>		
Billed:		
Current	\$ 4,090	\$ 249
<b>Total Accounts Receivable</b>	<b>4,090</b>	<b>249</b>
<b>Accounts Receivable from the Public, Net</b>	<b>\$ 4,090</b>	<b>\$ 249</b>

### NOTE 4. GENERAL PROPERTY, PLANT AND EQUIPMENT

Property, Plant and Equipment account balances as of September 30, 2021 and 2020 were as follows:

	Service Life	Acquisition Value	Accumulated Depreciation	2021 Net Book Value
Office Equipment	5 yrs	\$ 245,632	\$ (245,632)	\$ -
Leasehold Improvements	10 yrs	488,325	(424,408)	63,917
<b>Total</b>		<b>\$ 733,957</b>	<b>\$ (670,040)</b>	<b>\$ 63,917</b>

	Service Life	Acquisition Value	Accumulated Depreciation	2020 Net Book Value
Office Equipment	5 yrs	\$ 370,632	\$ (359,367)	\$ 11,265
Leasehold Improvements	10 yrs	488,325	(402,828)	85,497
<b>Total</b>		<b>\$ 858,957</b>	<b>\$ (762,195)</b>	<b>\$ 96,762</b>

### NOTE 5. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities on OSC's Balance Sheet as of September 30, 2021 and 2020 include liabilities not covered by budgetary resources, which are liabilities for which congressional action is needed before budgetary resources can be provided. Although future appropriations to fund these liabilities are likely and anticipated, it is not certain that appropriations will be enacted to fund these liabilities.

**A. Intragovernmental and Public Liabilities**

	2021	2020
Intragovernmental:		
Unfunded FECA Liability	\$ 15,079	\$ 24,740
Total Intragovernmental	15,079	24,740
Public Liabilities:		
Estimated Future FECA	67,967	130,443
Unfunded Annual Leave	1,746,116	1,698,960
Contingent Liabilities	-	-
Total Liabilities Not Covered by Budgetary Resources	\$ 1,829,162	\$ 1,854,143
Total Liabilities Covered by Budgetary Resources	1,431,188	1,256,904
Total Liabilities	\$ 3,260,350	\$ 3,111,047

**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 2021 and 2020 were approximately \$15,079 and \$24,740 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 2021 and 2020 were approximately \$67,967 and \$130,443 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 a lease agreement in Washington DC, that is accounted for as an operating lease. 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.

Fiscal Year	Total
2022	1,665,105
2023	1,688,476
2024	1,711,994
2025	1,737,536
2026	1,763,844
Total Future Lease Payments	\$ 8,566,955

#### **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, 2021, OSC is not subject to pending cases where an adverse outcome is probable; as of September 30, 2020, OSC also was not subject to pending cases where an adverse outcome was probable.

##### **Reasonably Possible Likelihood of an Adverse Outcome**

As of September 30, 2021 OSC is subject to pending cases where an adverse outcome is reasonably possible, and potential losses were assessed at \$496,000. As of September 30, 2020 OSC was subject to pending cases where an adverse outcome was reasonably possible, and potential losses were assessed at \$495,000.

#### **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, 2021 and 2020, respectively, imputed financing from OPM were approximately \$907,418 and \$790,137.

#### **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, 2021 and 2020 consisted of the following:

Category B	\$ 29,533,683	\$ 27,887,798
Total New Obligations and		
Upward Adjustments	\$ 29,533,683	\$ 27,887,798

#### **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 FY21 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2022 and can be found at the OMB website: <http://www.whitehouse.gov/omb>. The 2021 Budget of the United States Government, with the actual column completed for 2020, 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, 2021 and 2020, undelivered orders amounted to:

	2021	2020
<b>Unpaid:</b>		
Federal	\$ 2,657,688	\$ 1,573,418
Non-Federal	225,388	810,713
<b>Paid:</b>		
Non-Federal	13,087	112,418
<b>Totals</b>	<b>\$ 2,896,163</b>	<b>\$ 2,496,549</b>

## NOTE 12. ADVANCES AND PREPAYMENTS

The Advances and Prepayments for OSC is \$13,087 as of September 30, 2021. The Advances and Prepayments for OSC were \$112,418 as of September 30, 2020.

## 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, 2021

	Intragovernmental	With the public	Total FY 2021
<b>Net Operating Cost (SNC)</b>	\$ 10,250,565	\$ 19,622,632	\$ 29,873,197
<b>Net Cost</b>			
<b>Outlays:</b>			
Property, plant, and equipment depreciation	-	(32,845)	(32,845)
<b>Increase/(decrease) in assets:</b>			
Accounts receivable	-	3,842	3,842
Advances and prepayments	(99,331)	-	(99,331)
<b>Increase/(decrease) in liabilities:</b>			
Accounts payable	-	71,429	71,429
Salaries and benefits	(44,560)	(201,151)	(245,711)
Other liabilities (Unfunded leave, Unfunded FECA, Actuarial FECA)	9,660	15,319	24,979
<b>Other financing sources:</b>			
Federal employee retirement benefit costs paid by OPM and imputed to the agency	(907,418)	-	(907,418)
<b>Net Outlays</b>	<b>\$ 9,208,916</b>	<b>\$ 19,479,226</b>	<b>\$ 28,688,142</b>

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

	<b>Intragovernmental</b>	<b>With the public</b>	<b>Total FY 2020</b>
<b>Net Operating Cost (SNC)</b>	\$ 8,222,241	\$ 20,174,043	\$ 28,396,284
<b>Net Cost</b>			
<b>Outlays:</b>			
Property, plant, and equipment depreciation	-	(44,110)	(44,110)
<b>Increase/(decrease) in assets:</b>			
Accounts receivable	-	(7,882)	(7,882)
Advances and prepayments	(116,790)	-	(116,790)
<b>Increase/(decrease) in liabilities:</b>			
Accounts payable	-	45,372	45,372
Salaries and benefits	(100,493)	(168,444)	(268,937)
Other liabilities (Unfunded leave, Unfunded FECA, Actuarial FECA)	36,716	(187,789)	(151,073)
<b>Other financing sources:</b>			
Federal employee retirement benefit costs paid by OPM and imputed to the agency	(790,137)	-	(790,137)
<b>Net Outlays</b>	\$ 7,251,537	\$ 19,811,190	\$ 27,062,727

**APPENDIX I: OSC Strategic Plan FY 2017-2022**

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



U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, DC.20036-4505

\*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.

## Table of Contents

Introduction.....	73
About OSC.....	74
<i>Background</i>	
<i>Mission and Responsibilities</i>	
<i>Organizational Structure</i>	
Strategic Planning Process.....	77
Mission, Vision, Strategic Goals, and Core Values.....	80
Strategic Goals, Objectives, Strategies, Data Points, and Metrics.....	81
1. <i>Protect and promote the integrity and fairness of the federal workplace.</i>	
2. <i>Ensure government accountability.</i>	
3. <i>Achieve organizational excellence.</i>	
Factors Affecting Achievement of Strategic Plan.....	90
Appendices.....	92
<i>Appendix II – Draft Strategic Plan FY 2022 – FY 2026</i>	
<i>Appendix III – OSC Organizational Chart</i>	



# **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:**

**NEW DRAFT STRATEGIC PLAN  
(FY 2022-2026)**



**4 June 2021 - DRAFT**

U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, DC 20036-4505

## Table of Contents

Message from the Special Counsel.....	94
Introduction.....	95
About OSC.....	96
<i>Background</i>	
<i>Mission and Responsibilities</i>	
<i>Organizational Structure</i>	
Strategic Planning Process.....	98
Mission, Vision, Strategic Goals, and Core Values.....	100
Strategic Goals, Objectives, Strategies, Data Points, and Metrics.....	101
1. <i>Protect and promote the integrity and fairness of the federal workplace.</i>	
2. <i>Ensure government accountability.</i>	
3. <i>Achieve organizational excellence.</i>	
Factors Affecting Achievement of Strategic Plan.....	106

It is my pleasure to present the U.S. Office of Special Counsel's Strategic Plan for Fiscal Years 2022-2026. This plan builds on our proven strategies for carrying out OSC's statutory mandate while being responsible stewards of our appropriated funds. The recently implemented streamlining of our internal processes and reorganization of our programmatic units have benefitted OSC, our stakeholders, and American taxpayers over the last several years. This strategic plan lays out a carefully considered roadmap for continued success.

Guided by our mission to safeguard the merit system and hold the government accountable, OSC is an independent federal agency that protects the rights of roughly 2.1 million federal employees, including service members' employment rights. OSC provides a safe channel for federal employees to make disclosures of agency wrongdoing and, importantly, protects them from retaliation once they speak up. Through enforcement of the Hatch Act, OSC is also charged with preventing partisan politics from infiltrating federal agencies.

As a small federal investigative and civil prosecutorial agency with government-wide jurisdiction, OSC consistently provides outsized returns for the federal government and achieves exceptional results for complainants. We do this with an emphasis on old-style customer service and an intentional and determined focus on the strategies, goals, and metrics identified in our strategic plan. In short, we are clear about our purpose and our vision for achieving excellence in fulfilling it. Our results reflect that dedication to mission. In turn, we strengthen the federal merit system.

This new strategic plan continues OSC's efforts to achieve organizational excellence and a more efficient allocation of our limited resources. Since the release of the previous plan, OSC has combined two units with overlapping responsibilities into one, so that a single attorney generally handles each prohibited personnel practice (PPP) case from the start of the investigation through closure of the case, allowing OSC to process PPP complaints more efficiently. In the new strategic plan, our goals are clear: to build on the efficiencies we have recently achieved, while maintaining an agile, well-functioning organization.

The COVID-19 pandemic has introduced historic challenges for all Americans. The federal workforce, including at OSC, is no different. Nonetheless, OSC has achieved unparalleled success in obtaining favorable outcomes for whistleblowers and other complainants. Our core values – Commitment; Excellence; Independence; Integrity; Vigilance – guide us in meeting these challenges. As we move forward, this new strategic plan sets our course. We are committed to fostering a model workplace with respect for employees and stakeholders and acting fairly, without bias, to honor and uphold the merit system.

With this new strategic plan, OSC is prepared to build on past successes and meet future challenges. Our dedicated staff of 139 employees is located nationwide and, most recently, comprises an almost completely remote workforce. This plan equips our staff with a long-term template for success in a challenging and dynamic environment. Together, we look forward to continuing to achieve excellent results for our stakeholders, whistleblowers, and the American people.

## **Introduction**

The U.S. Office of Special Counsel (OSC) vigorously enforces 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.

As an agency with a modest budget but a critical mission, OSC has been strategic in effectively and efficiently addressing our workload. OSC has met these challenges, achieving a record number of positive results in recent years. In FY 2020, for example, OSC achieved 405 favorable outcomes for federal employees subjected to retaliation and other prohibited personnel practices (PPPs)—an agency record and roughly 32% higher than its average success rate in the previous five years. During the same time period, OSC’s work resulted in 61 substantiated instances of wrongdoing disclosed by whistleblowers, and the identification of millions of dollars of uncollected debts owed to the federal government. OSC also issued more than 1,400 Hatch Act advisory opinions and obtained favorable outcomes for several service members who brought claims under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

In addition, OSC has provided education and outreach to the federal community with the goal of preventing and deterring violations of civil-service laws. OSC has also published reports of its investigative findings (in redacted format) when doing so may serve an educational purpose, and has filed more than a dozen *amicus curiae* briefs aimed at clarifying whistleblower protections. Equally important, OSC has improved communication with its federal stakeholders—both 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 2017, Congress passed the Dr. Chris Kirkpatrick Whistleblower Protection Act, which created a new PPP for the improper accessing of medical records and required agencies to notify OSC if an employee committed suicide after potentially being subjected to whistleblower retaliation. This law also required agencies to train their supervisors on how to handle complaints of whistleblower retaliation and mandate disciplinary action for supervisors who have violated certain provisions. That same year, Congress passed the OSC Reauthorization Act, which significantly clarified that agencies may not withhold information during OSC investigations by asserting common law privileges. The legislation also promoted greater efficiency and accountability within OSC, improved protections against retaliatory investigations and other forms of whistleblower retaliation, and required managers across the federal government to respond appropriately to disclosures of fraud, waste, and abuse.

While OSC’s recent achievements are significant, broad challenges remain and new ones continue to develop. By building on the successes already attained 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 Whistleblower Protection Enhancement Act (WPEA); the Hatch Act; and USERRA.

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

In 1989, Congress passed the WPA, making OSC an independent agency within the federal executive branch. The WPA also strengthened protections against retaliation for employees who disclose government wrongdoing and enhanced OSC's ability to enforce those protections. Ensuing legislation, such as the WPEA and the OSC Reauthorization Act, significantly strengthened the agency's enforcement responsibilities by, for example, clarifying OSC's access to privileged agency materials during its investigations and permitting OSC to file amicus curiae briefs in whistleblower retaliation cases in the federal courts of appeals.

### ***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 that are designed to ensure that personnel decisions are made based on merit. PPPs are banned employment-related actions that violate the merit system through employment discrimination, retaliation, improper hiring practices or failure to adhere to the laws, rules, or regulations directly concerning merit system principles. OSC has the authority to investigate and prosecute violations of the 14 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, substantial and specific dangers to public health and safety, and censorship related to scientific research. Through its oversight of government investigations of whistleblower disclosures, OSC



regularly reins in waste, fraud, abuse, illegality, and threats to public health and safety that pose the risk of both catastrophic harm to the public, and large liability costs to the government.

### Hatch Act

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

### USERRA

USERRA, passed in 1994, protects military service members and veterans from employment discrimination because 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 by the Department of Labor.

### ***Organizational Structure***

OSC is headquartered in Washington, D.C. It continues to have a significant staffing presence in three other locations where OSC previously had physical offices: Dallas, Texas; Detroit, Michigan; and Oakland, California (where OSC still maintains a small, physical presence). The agency includes the following components:

- Immediate Office of Special Counsel (IOSC). The Special Counsel and IOSC are responsible for policymaking and overall management of OSC. This responsibility encompasses supervision of the agency's congressional liaison and public affairs activities.
- Case Review Division (CRD). This division serves as the initial intake point for all PPP and disclosure allegations. CRD screens all new allegations to ensure that PPPs and disclosures are directed to the appropriate OSC component. CRD also closes allegations that are duplicative, filed with MSPB, outside of OSC's jurisdiction, or untimely.
- Investigation and Prosecution Division (IPD). This division is comprised of the headquarters office and three virtual field offices, and is primarily responsible for investigating, prosecuting, and otherwise resolving 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 between the agency and complainant, IPD may bring an enforcement action before the MSPB.
- 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 the responsible congressional oversight committees.
- Retaliation and Disclosure Unit (RDU). This unit handles hybrid cases where a complainant alleges both whistleblower disclosures and retaliation. RDU performs the full range of action in these cases, including the referral of whistleblower disclosures to agencies and the investigation and prosecution of related retaliation claims, where appropriate.

- Hatch Act Unit (HAU). 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 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.
- 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 workforce about whistleblower rights and remedies. The unit also provides external education and outreach sessions regarding the laws that OSC enforces, as well as develops and implements internal Equal Employment Opportunity and skills-based training programs for OSC's staff.
- Office of General Counsel. This office provides legal advice regarding management, policy, and administrative matters, including under the Freedom of Information Act, the Privacy Act, and various ethics programs. This office also defends OSC's interests in litigation filed against the agency.
- Operations Division. This division manages OSC's budget and financial operations, and meets 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) Office.

### **Strategic Planning Process**

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

In 2016 OSC undertook a comprehensive process to develop the agency's FY 2017- FY 2022 Strategic plan. With input from employees, congressional oversight and appropriations committee parties, OMB and other stakeholders, the plan was completed. OSC feels the outcomes and results of the plan were successful by all measures - record results were achieved in all program areas during the intervening years, and metrics in the plan were met with an overall average of 82% success rate, with an increased success rate nearly every successive year. Thus we feel the plan was a good guidebook. to help direct agency efforts and resources.

In 2021, OSC engaged in efforts to review its programs and services and reassess its strategic goals, objectives, strategies, and metrics. After making appropriate revisions and adjustments, OSC presented an updated strategic plan to the Office of Management and Budget, staff from the agency's congressional oversight and appropriations committees, and stakeholders. We believe this plan, which is more of a

refinement as opposed to an overhaul, will build on the success of the previous plan. On \_\_\_\_\_, OSC's final strategic plan was approved by the Special Counsel.

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

**Mission:** *Safeguarding employee rights, holding the 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 the 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 a 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 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.

*Each year, OSC receives thousands of complaints, particularly from federal employees alleging whistleblower retaliation. To effectively remedy wrongs and hold agencies accountable, OSC applies 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 to better serve its stakeholders.*

#### Strategies:

- Handle cases in a fair and unbiased manner.
- Maximize effective use of ADR and other resolution methods in cases.

#### Metrics:

##### PPP Enforcement

- Percent of complaints closed within 240 days.
- Number of complaints mediated.
- Number of complaints mediated resulting in settlement.
- Number of formal stays obtained.
- Number of informal stays obtained.
- Number of individual corrective actions obtained.
- Number of systemic corrective actions obtained.
- Number of disciplinary actions obtained.
- Number of total favorable actions obtained (i.e., formal stay, informal stay, individual corrective action, systemic corrective action, and disciplinary action).

##### Hatch Act Enforcement

- Percent of complaints closed within 240 days.
- Number of warning letters issued.
- Number of corrective actions obtained.
- Number of disciplinary actions obtained.
- Number of total favorable actions obtained (i.e., corrective action and disciplinary action).

##### USERRA Enforcement

- Percent of referrals closed within 60 days.
- 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 disciplinary action for PPPs, Hatch Act violations, 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 to 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 PPP reports that serve educational purposes, as appropriate.
- Furnish expert technical assistance to aid governmental bodies with formulating policy and precedent.

Metrics:

- Number of PPP reports published on website.
- Number of *amicus curiae* briefs and interventions filed.

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, District of Columbia, 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 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.

Metrics:

- Percent of informal telephonic advisory opinions issued within 3 days of inquiry.
- Percent of informal email advisory opinions issued within 5 days of inquiry.
- Percent of formal written advisory opinions issued within 60 days of inquiry.

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 certified under section 2302(c). 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 continue 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.*

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.
- Continue to certify and recertify more agencies/components through the 2302(c) Certification Program.

Metrics:

- 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.

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, listserves, infographics, webinars, etc.).

Metrics:

- Number of press releases issued.
- Types and frequency of digital media used to share information.

**Strategic Goal #2 – Ensure government accountability.**

Objective #1: Provide employees with an effective, efficient, and 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. To ensure that this safe channel remains effective in promoting change and accountability, OSC developed a 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, and may be downloaded and completed privately. It may be submitted electronically and immediately routed and processed. The user need not establish an account. OSC will work vigorously to review and assess the whistleblower reporting experience to ensure that OSC can better ensure government accountability by providing a safe channel for whistleblowers and their disclosures.*

Strategies:

- Use improved, dynamic form to better receive and process whistleblower disclosures and other allegations, such as whistleblower retaliation.
- Ensure timely and appropriate referrals of whistleblower disclosures to agencies for investigation.

Metrics:

- Number of referrals of whistleblower disclosures to agencies for investigation.
- Percent of referrals of whistleblower disclosures to agencies for investigation made within 45 days.

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 also continue to improve communication with other agencies concerning their statutorily mandated reports, including their content and timeliness.*

Strategies:

- Ensure effective agency investigations by engaging agencies at the time that whistleblower disclosures are referred.
- Maintain communications with agencies before, during, and after agencies' investigations of referred whistleblower disclosures, as appropriate.
- Monitor whistleblower disclosures and referrals to agencies to identify trends or systemic challenges.

Metrics:

- Number of favorable outcomes—both corrective and disciplinary actions—achieved through referrals of whistleblower disclosures.
- Number of days between date of receiving whistleblower's comments on agency investigation report (or any update to report) and date of communication to President and Congress.

**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, recognition of strong performance, and other initiatives that will keep employees engaged and equip them to achieve the mission.*

Strategies:

- Maintain a current Human Capital Plan that includes effective recruitment, staffing, and retention strategies for attracting, developing, and keeping talent from diverse sources.
- Facilitate training and professional development opportunities to ensure that the agency remains agile and responsive to changing organizational needs.
- Support and evaluate various employee engagement efforts based on Federal Employee Viewpoint Survey results, including consistent communication, constructive mentorship, and effective recognition of staff performance.
- Continue to emphasize work/life balance and other related benefits.

Metrics:

- Develop and maintain up-to-date Human Capital Plan and reassess regularly.
- Fulfill employee training requests, per annual training budget allocation.

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 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 off-the-shelf IT solutions to meet agency 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.
- Phase out IPv4 use for all current IT systems by meeting the milestones in M-21-07, to include at least 80% of IP-enabled assets operating in IPv6-only network environment.

Metrics:

- Ongoing assessment and modernization of current electronic case management system and reassess regularly.
- Adopt zero-trust network security framework and reassess regularly.
- Phase out IPv4 use for all IT systems by meeting milestones in M-21-07 by FY 2025.

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

*While OSC is a small agency, it receives complaints from throughout the federal government, handles cases from all over the country, and derives its authority from several different federal statutes. OSC will regularly conduct informal evaluations of its programs and processes to ensure that it is using effective and efficient approaches for safeguarding employee rights and holding the government accountable. Evaluations will seek to identify best practices and areas of improvement. This vigilant effort of continual introspection and review will help OSC achieve greater efficiencies and customer service in the agency's programs and processes. In addition, OSC will give federal employees a more meaningful opportunity to provide input into shaping its work through an enhanced customer satisfaction survey.*

Strategies:

- Identify and implement best practices and address areas of improvement identified in informal evaluations of programs and processes.
- Continue to improve methods for determining customer satisfaction with programs and processes and evaluate data to improve efficiency and effectiveness.

Metrics:

- Hold monthly or regular meetings to evaluate programs and processes and implement any learned best practices.
- Complete and review annual survey regarding customer satisfaction with programs and processes, and assess potential changes to programs and processes based off customer feedback.

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

While OSC is committed to achieving its mission and vision, there are several internal and external factors that will likely affect the agency's ability to achieve the goals set forth in this Strategic Plan. The primary issues of concern revolve around persistent budget uncertainty and significant technological challenges—amplified by the recent global pandemic. For a small-sized, resource-constrained agency with a substantial mandate to safeguard employee rights and hold myriad government entities accountable, these factors can present serious challenges to fulfilling OSC's important statutory obligations.

The agency has made difficult choices to ensure balance among its investigative and prosecutorial responsibilities with training and outreach efforts critical to preventing whistleblower retaliation and other unlawful practices. While caseloads fluctuated in FY 2020—largely due to pandemic-related operational changes at federal agencies—OSC expects a return to higher, pre-pandemic caseloads in future years. That being said, the pandemic did not affect OSC's Hatch Act work, which usually increases significantly during presidential-election years and did so in FY 2020. Budget uncertainty remains a significant challenge to OSC's ability to carry out its myriad responsibilities.

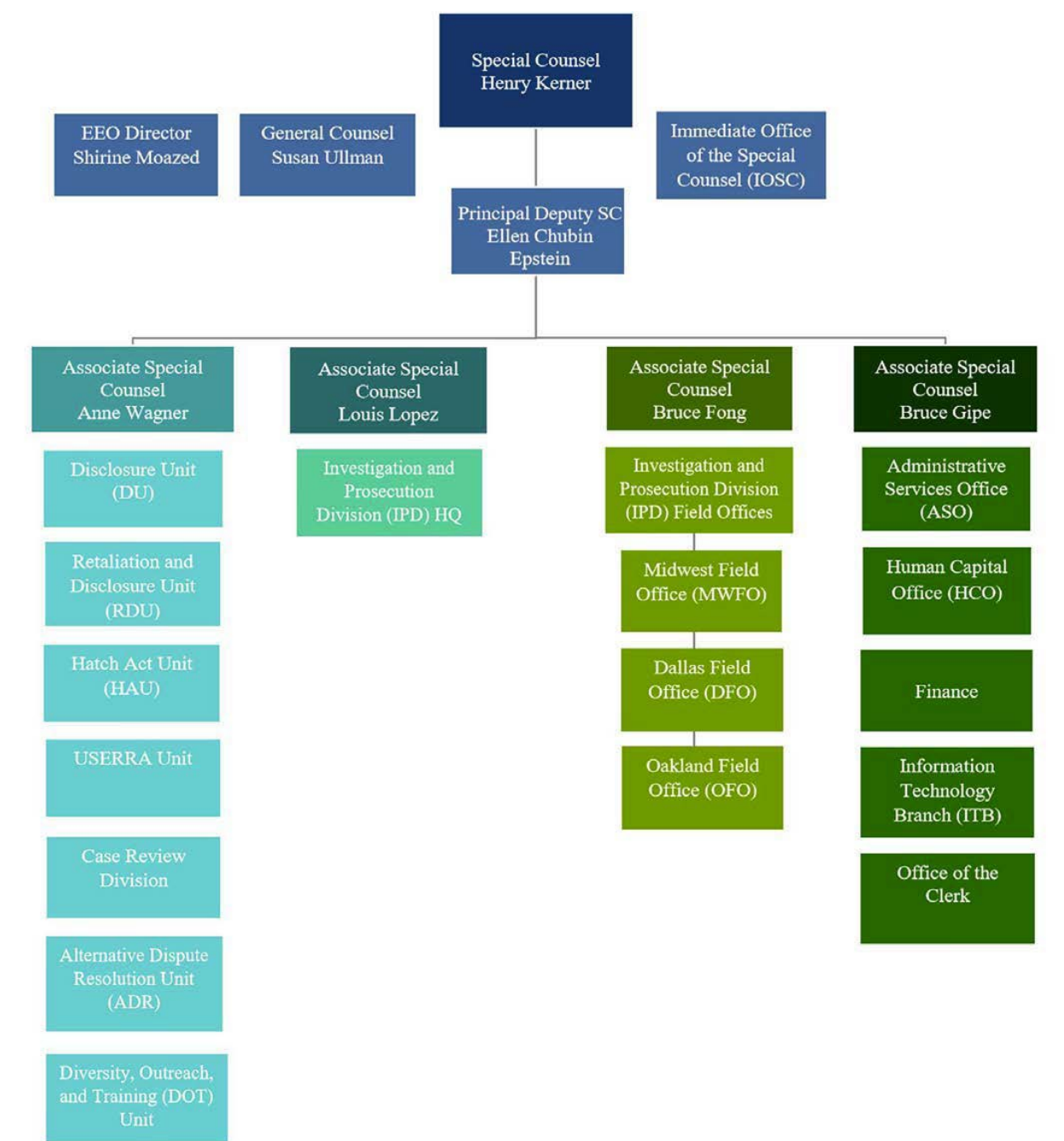
Additionally, OSC has experienced an increased need for long-term improvements in technology, while grappling with limited funding and investment abilities. The remote working arrangements for OSC's employees required by the pandemic highlighted these challenges. OSC will be called upon to ensure that 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.

In response to these challenges, OSC must carefully prioritize and allocate resources to remain efficient, fair, and effective in maintaining the high levels of success achieved in recent years. Accordingly, the agency implemented a reorganization to improve the timeliness and customer service experience in our case processing procedures. OSC is also being proactive in seeking early resolution of meritorious cases, as well as implementing innovative approaches to achieve efficiencies in cases involving both whistleblower disclosures and related retaliation claims. A better funded and more efficient OSC will result in greater stewardship of taxpayer dollars and more effective accountability throughout government.

As an independent agency, OSC must remain agile and focused on upholding the merit system fairly and without bias. In doing so, OSC will continue to emphasize education and outreach and highlight cases with significant educational value or that promote accountability. Through these efforts, OSC can improve federal government culture and remain a steady accountable and transparent presence capable of withstanding administration and leadership changes.

OSC's Strategic Plan contemplates confronting these challenges directly over the next few years to ensure its success. When OSC succeeds, good government and the general public are the ones who truly benefit.

## **APPENDIX III: OSC Organizational Chart**



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

**1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
202-804-7000  
or  
1-800-872-9855**

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.

**Internet Web Site:**

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