PERFORMANCE
—*and*—
ACCOUNTABILITY REPORT
—*for*—
FISCAL YEAR 2023

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MESSAGE FROM ACTING SPECIAL COUNSEL KAREN GORMAN

It is my pleasure to present the Office of Special Counsel's (OSC) Performance and Accountability Report for fiscal year (FY) 2023. OSC's mission is to protect federal workers by safeguarding the merit system. This report marks the conclusion of Special Counsel Henry Kerner's six-year leadership tenure at OSC, In FY 2023, as in past years, OSC continued its unparalleled success on behalf of federal employees and whistleblowers.

OSC provides a safe channel for federal employees to report fraud, waste, mismanagement, abuse, and dangers to public health and safety, and censorship related to scientific research. 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 OSC will continue to work 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 2023, OSC achieved 418 favorable outcomes for federal employees subjected to retaliation and other prohibited personnel practices (PPPs). This figure is the second highest in agency history and is roughly 13 percent higher than the average number of favorable outcomes for PPPs in the previous five years. At the same time, OSC has prioritized the timely review of whistleblower disclosures to ensure that waste, fraud, abuse, and illegality are identified and remedied quickly. For FY 2023, OSC's whistleblower disclosure work resulted in 44 substantiated instances of wrongdoing. For example, one case alone discovered overspending of $20 million in taxpayer funds over a five-year period related to the misclassification of positions and the improper provision of law enforcement benefits.

OSC also continues to attain impressive results in its enforcement of the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act (USERRA) cases. OSC's Hatch Act Unit issued more than 600 advisory opinions and obtained three disciplinary actions for Hatch Act violations. In addition, the USERRA Unit worked to defend veterans' employment rights in 14 cases during FY 2023.

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. For instance, in FY 2023, OSC received over 4,600 new cases, an increase of 21 percent over the pandemic-related years (FY 2020-FY 2022). This has slightly impacted the case backlog reduction of over 50 percent that OSC achieved from the end of FY 2018 through FY 2022. Despite this, OSC has still been able to focus its efforts on achieving favorable actions and positive results for the American taxpayers.

In addition, FY 2023 marked the nineteenth 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. I am proud of the successes we have achieved so far and look forward to building upon those successes in FY 2024.

Sincerely,

Karen Gorman

Karen Gorman
Acting Special Counsel

PART 1: MANAGEMENT DISCUSSION AND ANALYSIS

I. About the Office of Special Counsel

OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. Through this mission, OSC helps to create and promote a more efficient, accountable, and responsible federal government.

When whistleblowers allege that the FAA failed to provide oversight of helicopter and aircraft operators, when the ATF overpays agents by millions of dollars due to job misclassifications, or when management at a VA facility disregards regulations designed to minimize contamination risk, 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, wrongdoing 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, since then, OSC has maintained a small, physical office in Oakland for Field Office leadership, and both Dallas and Detroit continued to operate successfully as virtual Field Offices.[1]

The agency includes several program and support units described below:

Immediate Office of the Special Counsel (IOSC). The Special Counsel and their 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.

[1] OSC staff, both at Headquarters and in the Field Offices, began full-time telework as a result of the pandemic on March 16, 2020. Since May 2022, OSC Headquarters staff have returned for in-office work at least 2 days per week.

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

Case Review Division (CRD). This unit serves as the initial intake point for all PPP and disclosure cases. CRD screens all new allegations to ensure that PPPs and disclosures are directed to the appropriate OSC component. CRD also closes allegations that are duplicative, filed with MSPB, outside of OSC's jurisdiction, or untimely. Additionally, the prior Clerk's Office functional areas are now within CRD, including Freedom of Information Act (FOIA), Privacy Act, Controlled Unclassified Information, and records management.

Investigation and Prosecution Division (IPD). IPD is comprised of attorneys and investigators at OSC's headquarters and in the field. IPD receives PPP cases from CRD and investigates the allegations to determine whether the evidence is sufficient to establish that a violation has occurred. If it is not, the matter is closed. If the evidence indicates a reasonable basis to believe a violation occurred, IPD may seek corrective action and/or disciplinary action. IPD works closely with OSC's Alternative Dispute Resolution (ADR) Unit in appropriate cases. If a meritorious case cannot be resolved through negotiation with the agency involved, IPD may bring an enforcement action before the MSPB.

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

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, and administrative needs. Component units are the Budget and Finance Office, Human Capital Office, Administrative Services Office, and Information Technology Office. Procurement operations as well as travel are included under the Budget and Finance Office.

IV. Performance Highlights

OSC received 4,611 new cases in FY 2023. That number represents a 21 percent increase over the average of the previous three fiscal years. All the while, OSC continued to provide outsize results for the American taxpayers yet again with a significant number of favorable actions in FY 2023.

Specifically, OSC achieved 418 favorable actions in FY 2023, second-best in agency history, and continued progress made during the pandemic (FY 2020 – FY 2022) where the agency averaged 407 favorable actions annually. On the Hatch Act front, OSC resolved 277 Hatch Act cases, and has successfully reduced the unit's case backlog by 59 percent from the end of FY 2020. In addition, OSC issued 41 warning letters and successfully obtained disciplinary action in three cases against federal employees who committed Hatch Act violations. OSC also experienced success in its USERRA cases. OSC assisted 14 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 continue to rise in the post-pandemic era.

Whistleblower disclosures of wrongdoing have led to immense success in ensuring identified problems are addressed and corrected. Specifically, in FY 2023, OSC worked with whistleblowers to identify millions of dollars in wasteful spending and to prevent further waste. For instance, one case alone found overspending of taxpayer funds amounting to $20 million over a five-year period related to the misclassification of positions and the improper provision of law enforcement benefits.

A core tenet of OSC's leadership is ensuring that agencies receive robust training to prevent PPP and Hatch Act violations and increase awareness of whistleblower protections. OSC expanded its rigorous training program in FY 2023, and conducted 335 trainings during the fiscal year, nearly tripling trainings conducted in FY 2022. The increase was driven in part by the commitment of federal agencies to educate personnel on prohibited employment activities including retaliation for whistleblowing and prohibited political activity under the Hatch Act. Several agencies, including the State Department and Customs and Border Protection, requested multiple trainings for staff located domestically and abroad. OSC also increased the number of tailored trainings focused on topics like helping managers to avoid pitfalls during the hiring process and social media's impact on PPPs.

Further, to promote increased understanding and knowledge of the areas of law within OSC's jurisdiction, OSC unveiled a new series of videos aimed at educating federal agencies and non-federal organizations on prohibited personnel practices, the Uniformed Services Employment and Reemployment Rights Act, the Hatch Act, whistleblower disclosures, and alternative dispute resolution. Additionally, OSC revamped its annual statutorily required training for supervisors on responding to violations of whistleblower protections.

Lastly, OSC certified an additional 23 agencies under its Section 2302(c) Certification Program and registered 11 agencies for certification. The certification program requires agencies to take specific steps to train supervisors in order to prevent violations of the 14 PPPs, and to inform employees about PPPs, including whistleblower protections.

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

OSC received 3,101 new PPP cases in FY 2023, which represents a 36 percent increase compared to FY 2022. With this large increase in PPP cases received year-over-year, along with an average of nearly 4,000 new PPP complaints that OSC received annually from FY 2015 until the pandemic, OSC anticipates new PPP complaints increasing closer back to the pre-pandemic levels in FY 2024 and beyond.

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 2023, OSC achieved 418 favorable actions in PPP cases. This is the second highest in agency history, only trailing the 424 favorable actions achieved in FY 2022. Additionally, the 418 favorable actions in FY 2023 represent a 33 percent increase above the level from 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 2023, OSC negotiated 45 informal stays with agencies, and obtained 10 formal stays or stay extensions from MSPB, to protect employees from premature or improper personnel actions. OSC also achieved 35 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, a language instructor, alleged retaliation for having filed earlier OSC whistleblower retaliation complaints and successful appeals to the MSPB. He alleged that the agency non-selected him in retaliation for his whistleblowing activity. The MSPB referred this case to OSC following a full hearing, in which the AJ found that complainant had suffered a retaliatory non-selection. OSC facilitated intensive settlement negotiations that resulted in the complainant retiring in exchange for over $500,000 in damages and $60000 in attorney's fees. The agency also agreed to PPP training for its employees and a reprimand for the official who retaliated against the whistleblower.

- Complainant, a Safety Manager, was placed under the wrong retirement code. The agency had placed him under FERS, contributing 0.8% of his salary to the pension system, when they should have placed him under FERS-FRAE, contributing 4.4% of his salary to the pension system. The agency recently discovered the retirement code error and reported it to the National Finance Center. The agency billed complainant almost $24,000 because he underpaid into the pension system due to this error. After OSC completed an investigation, the agency agreed to waive complainant's $24,000 bill. OSC's investigation revealed that this was a systemic problem throughout the agency, as over 700 employees had been placed under the wrong retirement code and were over- or under-billed for several years. The agency agreed to increase the frequency of auditing and improve the auditing process for retirement errors. This included writing a new Job Aid for auditors. The agency also agreed to conduct an internal retirement coding training for human resources employees.

- Complainant, an Environmental Protection Specialist, alleged that the agency violated due process by proposing his removal for being AWOL even though his absence from the workplace was caused by the agency's debarment order. That order was based on a criminal conviction that had been overturned and expunged from complainant's record. The agency therefore based its proposed removal on the debarment order rather than the alleged criminal conduct for which he had been found legally innocent. OSC determined that complainant had been denied notice and an opportunity to challenge the merits underlying his proposed removal. OSC facilitated a settlement in which the agency agreed to pay complainant $50,000, restore 200 hours of leave, rescind the debarment order, and give complainant a clean record. Additionally, complainant voluntarily transferred to a different agency.

- Complainant, a Management Analyst for the Department of the Army's European Command (EUCOM), alleged obstruction of competition, unauthorized preference, discrimination, and other prohibited practices based on his non-selection for two positions he applied for at Department of Army's Africa Command (AFRICOM) in summer 2021. Both hiring actions had the same deciding official, a Director of an AFRICOM directorate. After investigation and with OSC's assistance, the parties executed a settlement agreement, whereby AFRICOM agreed to pay complainant a lump sum of $45,000, including back pay, consequential damages, and nonpecuniary compensatory damages. AFRICOM also offered complainant a position to remedy his non-selection, but complainant declined.

Notable FY 2023 Amicus Curiae Briefs

- OSC filed an amicus brief in *Jindal v. Merit Systems Protection Board* (MSPB), a whistleblower retaliation appeal in the U.S. Court of Appeals for the Federal Circuit. Jindal alleged that the Department of Defense took several personnel actions in retaliation for his protected disclosures. The MSPB found, at the jurisdictional stage, that Jindal could not establish that his disclosures were a contributing factor in the agency's actions because he had withdrawn them as part of a Last Chance Agreement before the personnel actions occurred. OSC argued in its brief that a withdrawn protected disclosure can still be a contributing factor in subsequent personnel actions, and that the MSPB's contrary conclusion is inconsistent with the plain text of the statute, precedent, and congressional intent. OSC further argued that the MSPB's finding, if allowed to stand, would create an unwarranted gap in whistleblower protections, discourage whistleblowing, hinder legitimate oversight efforts, and disincentivize whistleblowers from engaging in settlement.

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 OSC received fewer disclosures during the pandemic, the agency is beginning to experience an increase in disclosures received. For example, OSC received 33 percent more disclosures in FY 2023 than just one year prior. Additionally, OSC sent 70 whistleblower disclosure reports to the President and Congress in FY 2023, which is a 2 percent increase over the previous five-year average.

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.

2. Notable Successes

OSC is authorized to refer to the head of an agency for investigation whistleblower disclosures of wrongdoing in six areas: (1) violations of a law, rule, or regulation; (2) gross mismanagement;

(3) gross waste of funds; (4) abuse of authority; (5) substantial and specific danger to public health or safety; and (6) censorship related to research, analysis, or technical information. In FY 2023, examples of OSC successes involving whistleblower disclosures include the following:

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

Contamination in Sterile Processing Service at VA Facility. OSC referred to the Secretary of Veterans Affairs allegations of wrongdoing at the Veterans Healthcare System of the Ozarks (VHSO), Gene Taylor Community Based Outpatient Clinic (CBOC), Springfield, Missouri. The whistleblowers, employees in the CBOC's Sterile Processing Service (SPS), disclosed that VHSO and CBOC management violated Occupational Safety and Health Administration regulations and Veterans Health Administration directives on environmental controls, risk assessments, and safety thereby placing SPS patients and staff at risk. They alleged the following: the SPS decontamination and reprocessing rooms did not consistently meet temperature, humidity, and air turnover requirements; the SPS did not have an anteroom where staff could put on and remove personal protective equipment (PPE), which created a contamination risk; improper risk assessments eliminated the need for an emergency shower in the SPS; and the SPS reprocessing room was improperly labeled as a decontamination room, requiring SPS staff to wear PPE in that room.

The agency substantiated that the SPS decontamination and reprocessing rooms did not consistently meet temperature, humidity, and air turnover requirements. The investigation substantiated that the SPS area did not have an anteroom, but concluded an anteroom was not required. The investigation also concluded that the SPS workflow in the decontamination and reprocessing rooms presented a high-risk of cross-contamination due to room configuration, equipment location, and the non-linear workflow of employee movement. Consequently, the reports recommended several corrective actions, which the CBOC is implementing. The CBOC also suspended endoscopy procedures and SPS operations while these areas undergo a redesign and renovation to address the above cross-contamination risks. Further, VHSO quality management clinically reviewed all endoscopy procedures performed while the suite was operational and followed all patients for 30-days post-procedure. None of the procedures resulted in any complications, infections, or other negative impacts to patients. The Special Counsel determined the agency findings appeared reasonable.

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

Widespread Misclassification of Positions and Improper Payment of Law Enforcement Benefits. OSC referred to the Attorney General allegations of wrongdoing at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in Washington, D.C. The whistleblowers, employees in ATF's Office of Human Resources and Professional Development, alleged violations of laws, rules, and regulations; a gross waste of funds; and gross mismanagement arising from ATF's long-standing practice and policy of systematically and intentionally misclassifying upper-level non-law-enforcement jobs as law-enforcement positions and recruiting and filling these coveted, primarily supervisory jobs with only special agents or Industry Operations Investigators (IOIs) in furtherance of its Career Plans for Special Agents and IOIs. The whistleblowers further alleged that despite not performing law enforcement functions, the individuals selected for these positions retained the benefits specific to law enforcement personnel, including enhanced retirement benefits and Law Enforcement Availability Pay (LEAP). In paying LEAP to persons not actively occupying primary or secondary law enforcement roles, the whistleblowers alleged that the agency failed to comply with the annual certification and legal and policy requirements for payment of LEAP.

The agency substantiated the allegations, finding long-standing misclassification of upper-level jobs, which resulted in ATF overpaying agents by up to $20 million over a five-year period. That cost could be much higher given that the unlawful job classifications had been common practice at ATF far longer than the five-year timeframe reviewed by investigators. In response to these findings, OPM suspended ATF's authority to classify federal law enforcement positions. ATF has also begun the process of updating position descriptions to accurately reflect job duties. As of March 2023, 36 of the employees who held misclassified positions had been reassigned and another 14 had retired. ATF's Internal Affairs Division is currently investigating the circumstances surrounding the implementation of the illegal policies and practices. The Special Counsel determined that the agency report appears reasonable.

- **Violation of law, rule, or regulation; gross mismanagement, abuse of authority, substantial and specific danger to public safety**

Failure to Provide Oversight of Helicopter and Aircraft Operators. OSC referred to the Secretary of Transportation allegations of wrongdoing at the Federal Aviation Administration (FAA) Flight Standards District Office (FSDO), Honolulu, Hawaii. The whistleblower, a principal operations inspector at the Honolulu FSDO, alleged that FSDO management failed to provide proper safety oversight of helicopter and aircraft operators as required by Federal Aviation Regulations (FAR) 14 C.F.R. parts 91 and 135. The agency partially substantiated the allegations finding that in 2018, FSDO management improperly removed operational restrictions on Novictor Aviation, LLC, improperly granted check airman authority to its owner/operator, and improperly approved Aviation Concepts Inc.'s training program. The investigation also found that maintenance inspections were contributing factors in two aircraft accidents.

The agency corrective actions taken and underway included updating guidance in FAA Order 8900.1, Vol. 2, Ch. 2, Sec. 3 – *Evaluate Part 121/135 Management Personnel*, which should be completed in September 2023. The Special Counsel determined that the report meets all statutory requirements and the findings appear reasonable.

- **Substantial and specific danger to public health or safety**

Operating Room Closure Adversely Effects Patient Care. OSC referred to the Secretary of Veterans Affairs (VA) allegations of wrongdoing at the Phoenix VA Health Care System (Phoenix VAHCS), Phoenix, Arizona. The whistleblower alleged a substantial and specific danger to public health due to the closure of the operating room (OR) at the Phoenix VAHCS since July 2021. The agency substantiated the allegations and confirmed that on July 23, 2021, the agency halted SPS and OR operations pending a full review of instruments, infrastructure, and processes in response to persistent oily residue and black particles appearing on operating instruments returned by the SPS. In the interim, Phoenix VAHCS transferred all patients needing surgery to nearby hospitals. After extensive troubleshooting, the agency determined that the persistence of black particles on instruments suggested that the problem may be due to the water hardness in the region. The agency then began a process to "passivate," or make less reactive, the stainless-steel surgical instruments. On October 14, 2021, the OR began performing emergency surgeries. By November 15, 2021, the agency determined that there was a sufficient supply of appropriately sterilized equipment to begin performing elective surgeries. The investigation further found that limited bed capacity, the COVID-19 pandemic, and high transmission of the West Nile virus in Maricopa County resulted in longer than usual times to transfer patients to local hospitals. The investigation identified three cases where there were significant delays, one of which likely contributed to the patient's clinical deterioration.

The agency conducted an external clinical review of the care those three patients received and addressed regional transfer concerns with local public health organizations. The investigation also found that MSAs played an important role in tracking and coordinating the transfers to area hospitals by arranging calls, transport ambulances, and transportation consultants. However, in at least one case, the MSA did not document efforts to transfer the patient. In addition, the investigation identified concerns about leadership's communication with staff about why the OR closed and any reopening plans. In response to the investigation, the agency aligned the Chief of the Emergency Department (ED) under the facility's Chief of Staff, in compliance with VHA Directive 1101.05(2), *Emergency Medicine*. Further, the agency initiated a review process for metrics related to the ED transfer process and consulted with the Emergency Medicine Program Office regarding ED flow, quality metrics, transfer policies, and operations. The Special Counsel determined that the report appears reasonable and meets all statutory requirements.

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 2023, OSC responded to over 600 requests for advice, issued 41 warning letters, and obtained 19 corrective actions and three 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 prevailed in a case that had been pending before the MSPB since 2017. The case involved a U.S. Department of Commerce National Oceanic and Atmospheric Administration (NOAA) employee who ran for the U.S. House of Representatives 8th Congressional District in Washington State numerous times. In January 2017, an MSPB administrative law judge (ALJ) concluded that the employee violated the Hatch Act and should be removed from his federal employment as a penalty for his violations. The employee appealed, and because of a lack of quorum at the MSPB, the employee maintained his employment with NOAA and continued to run for the same partisan political office every two years. In January 2023, the MSPB affirmed the ALJ's decision and ordered the employee removed.

- After OSC filed a complaint against a U.S. Department of Veterans Affairs employee who ran for governor, the ALJ granted partial summary adjudication and found that the employee violated the Hatch Act's prohibitions against being a candidate for partisan political office and soliciting political contributions. In November 2022, a hearing was held to determine the penalty for the employee's violations, and the decision is still pending.

- OSC filed complaints against two U.S. Department of Veterans Affairs employees, a husband and wife who share and operate a joint Facebook account. The complaints alleged that the employees solicited political contributions and engaged in political activity while on duty using their Facebook account. In April 2023, OSC settled the case against the wife, who agreed to accept a three-day unpaid suspension as a penalty for violating the Hatch Act. The case against the husband is scheduled for a hearing in December 2023.

Cases Involving High-Level Presidential Appointees

- In May 2023, OSC sent a report to President Biden detailing how Rachael Rollins, former U.S. Attorney for the District of Massachusetts, willfully violated the Hatch Act on multiple occasions. Ms. Rollins's first violation arose in July 2022 when, in disregard of legal advice from her own agency, and in violation of the Hatch Act, she attended a political party fundraiser in her official capacity. Her second violation occurred throughout August and September 2022, when she repeatedly attempted to sabotage the campaign of a political candidate by leaking non-public U.S. Department of Justice (DOJ) information to the media to plant a story that the candidate she opposed was facing a DOJ investigation. OSC's report concluded that Ms. Rollins's intentional violations of the Hatch Act warranted disciplinary action. Ms. Rollins resigned from her position as U.S. Attorney.

Disciplinary Action Obtained through Settlement Negotiations

- OSC settled a case against a Department of Labor political appointee who, while on duty and acting in her official capacity during a teleconference with employees from a private organization, asked one of the employees which candidate they were supporting in the upcoming gubernatorial election in that employee's home state. She then expressed her support for one of the candidates. In response to OSC's charges of Hatch Act violations, the appointee agreed to serve a 10-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 10 new cases in FY 2023 and closed 14 cases. One of the 14 closed cases 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, as illustrated in the case examples below.

- A Letter Carrier for the U.S. Postal Service (USPS) in Auburn, Maine, was called to active duty with the Maine Air National Guard following the September 11, 2001, terrorist attacks. Until his honorable discharge in December 2015, he served almost continuously in direct support of the Global War on Terrorism. During that time, he regularly provided copies of his orders to USPS, maintained his employment benefits (including making retirement contributions and paying his union dues), and repeatedly expressed his desire to return to his postal job once his service ended. USPS gave him no indication that it would not reemploy him and even sent him letters thanking him for his service and a debit card to purchase his postal uniform. However, when he notified USPS that he wished to return to his Letter Carrier position, USPS told him it would not reinstate him because he had "abandoned" his civilian employment, despite his USERRA reemployment rights. OSC represented him before the MSPB, and after a five-year legal battle, won him reinstatement at USPS, with full back pay and benefits, retroactive to January 2016.

- An Air Traffic Controller (ATC) with the Federal Aviation Administration (FAA) left his position for active duty in the U.S. Navy. As his Navy service was ending, he notified his former manager that he wished to return to the FAA to resume his civilian career. After the manager refused to assist him, he contacted the FAA's Human Resources, which incorrectly advised him he would have to apply for open positions like any new hire, despite the FAA's obligation to promptly reinstate him under USERRA. He subsequently sent several applications to various FAA regions but was not offered a position for over a year. While he was onboarding to his new position, the FAA medically disqualified him, forcing him to work in much lower-paying jobs for three years while he appealed his disqualification. OSC received his USERRA complaint and immediately contacted the FAA, which granted his medical appeal and reinstated him, but at a significantly lower salary level than he would have attained had he been properly reinstated four years earlier. He also lost out on substantial pay, benefits, and seniority due to the delay, setting his career back and costing him and his family significant income. OSC negotiated with the FAA on his behalf, and it agreed to compensate him four years' worth of lost wages, fully restore his seniority and retirement credit, and raise his pay to reflect reinstatement at the time of his honorable discharge from the Navy.

- A Registered Nurse at the Department of Veterans Affairs (VA) failed to receive a performance bonus due to her absence for service in the U.S. Army Reserve. OSC intervened on her behalf and the VA agreed to retroactively award her the bonus.

- A Foreign Affairs Officer with the State Department alleged that his performance rating was downgraded following his absence for active duty in the U.S. Navy Reserve. OSC contacted the agency and it agreed to upgrade his rating for the period in question.

OSC also promotes USERRA awareness and compliance by conducting training sessions for other federal agencies. Most recently, OSC has provided USERRA training to the Army Intelligence & Security Command, Central Intelligence Agency's Office of Inspector General, Social Security Administration, and the Department of Veterans Affairs. Last, OSC provides technical assistance about USERRA to veterans, service members, and employers nationwide via its telephonic and email hotlines.

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 2023, reviews were completed on the following agency administrative operations:

Financial Audit. OSC underwent its nineteenth annual financial audit in FY 2023. The FY 2023 audit addresses the financial statements and accounting processes, almost all of which were conducted by the Department of Interior/Interior Business Center (IBC) 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 2023, 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 2023, with IBC also providing some contracting operations support to OSC.

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 service 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 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 Interconnection 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, 2023, 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 2023 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.

Sincerely,

Karen Gorman

Karen Gorman
Acting Special Counsel

VIII. Management Challenges

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

A. Staffing

Despite lower levels of new case filings during the COVID-19 pandemic (FY 2020 – FY 2022), OSC experienced a much higher caseload level comparatively speaking in FY 2023. During this same time (FY 2020 – FY 2023), OSC achieved its top-four years of favorable actions in agency history, with the favorable actions achieved in FY 2022 and FY 2023 representing the two highest years in agency history, respectively.

Given the case successes that OSC has seen in recent years, coupled with the resulting, higher caseload levels that OSC expects to continue in the post-pandemic era, OSC's staffing levels represent a growing concern for the agency. For instance, with the lower caseload levels, OSC was able to reduce its case backlog by over 50 percent from the end of FY 2018 to FY 2022. However, with caseload levels rising significantly in FY 2023, OSC's case backlog increased for the first time since the end of FY 2018. This shows that OSC has exceeded the limit of new cases that it can resolve in a fiscal year, given the current staffing levels. Further, if cases continue rising above the FY 2023 levels, then OSC's staffing resources will be even more stretched, which will lead to case processing delays, and compromise OSC's ability to address governmental inefficiencies.

Therefore, it is paramount that OSC's funding levels keep up with the continued rise in caseload levels. OSC is already operating with the utmost efficiency, but salaries and benefits costs can represent nearly 85 percent of the agency's budget in any given year, so additional funding will allow the agency to hire more staff to address new cases in a timely manner and continue providing the level of service and results that OSC's customers and stakeholders have come to expect.

B. Technology

Technology presents both tools for success and challenges for OSC. First, OSC is among the agencies that successfully transitioned to remote work during the COVID-19 pandemic, due to our smart preparation and quick actions. OSC staff largely teleworked for two years (March 2020-March 2022), because OSC had technology already in place to do so. The agency then successfully transitioned back to a hybrid work model with headquarters employees now in the office every Tuesday and Wednesday.

During the pandemic and now with the hybrid work model, OSC utilizes our supporting Information Technology tools and infrastructure, including Microsoft Teams and other collaborative technology, and our electronic case management system (eCMS) for case processing. As a result, processes and information-exchange between OSC employees and managers have operated efficiently throughout. For instance, in FY 2022 and FY 2023, OSC achieved its two highest years of favorable actions in agency history.

Nevertheless, due to budgetary and staffing constraints, OSC is not able to keep pace with the current state of technological modernization. OSC does invest in essential IT infrastructure, with the continued development of eCMS, which was deployed in late FY 2019. However, OSC does not have the resources necessary to pursue projects that will increase the efficiency and availability of information and services offered to the public, such as the modernization of OSC.gov (OSC's only public facing website), or migration of remaining, physical IT servers to the cloud.

Ultimately, OSC's end goal is to make its work processes and operations as efficient as possible, in order to reduce case processing times. As OSC can fund and implement many of these IT modernization efforts, which will make the agency more efficient, OSC will have the ability to shift available resources to other areas, which will likewise yield productivity gains.

To summarize, since OSC's funding is primarily consumed by personnel salaries and benefits, OSC has not had sufficient resources to invest in necessary technological enhancements. Therefore, OSC remains challenged to meet the agency's technological and modernization needs.

C. 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. Additionally, in FY 2023, OSC formally moved the Clerk's Office under CRD, following a successful pilot project aimed at assessing the viability and effects of such a move.

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, OSC continues to leverage the assisted acquisition services from other Federal agencies to procure contracts. For FY 2023, OSC utilized the assisted acquisition services of the General Services Administration (GSA) and the Department of Interior/Interior Business Center (DOI/IBC), 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 2023 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.

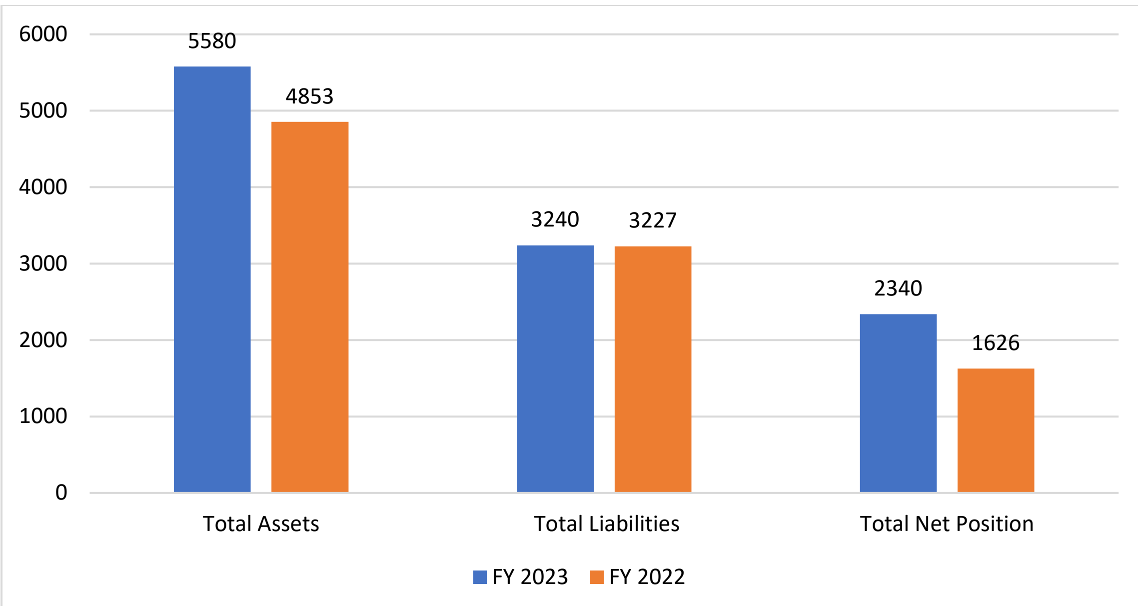
OSC's balance sheet shows total assets of $5,579,839 at the end of FY 2023. This is an increase of $727,206 compared to OSC's total assets of $4,852,633 as of fiscal year end (FYE) 2022. Fund Balance with Treasury comprises approximately 83 percent of OSC's assets.

Total Liabilities for OSC increased by $13,065, or approximately 0.4 percent, from $3,226,954 at FYE 2022 to $3,240,019 at FYE 2023. The three largest components of Total Liabilities are

Unfunded Leave ($1,599,694), Accrued Funded Payroll ($1,055,943), and Employer Contributions and Payroll Taxes Payable ($245,732).

The Net Position is the sum of Unexpended Appropriations and the Cumulative Results of Operations. OSC's Net Position was $2,339,820 at FYE 2023, an increase of $714,141 from Net Position at FYE 2022 of $1,625,679. This increase is largely driven by the increase in OSC's Unexpended Appropriations.

U.S. 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 2023, OSC received a $31,904,000 appropriation, which is an increase of approximately five percent over the appropriation OSC received in FY 2022. OSC ended FY 2023 with approximately a 1 percent, or $239,048, decrease in total budgetary resources compared to FY 2022.

Statement of Changes in Net Position

The 2023 Consolidated Statement of Changes in Net Position shows the change in the net position for both FY 2023 and FY 2022 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 $1,625,679 at FYE 2022 to $2,339,820 at FYE 2023. As mentioned above, this increase in Net Position is largely driven by the increase in OSC's Unexpended Appropriations in FY 2023.

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 $600,976, with accumulated depreciation of $580,218 and a 2023 net book value of $20,758. (Note 4 to Principal Financial Statements).

OSC's Total New Obligations and Upward Adjustments were $31,953,095 in FY 2023. Total New Obligations and Upward Adjustments decreased by $403,081, or approximately 1 percent, in FY 2023, from $32,356,176 in FY 2022 (Note 10 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 $503,784, from $938,508 in FY 2022 to $1,442,292 in FY 2023. 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

Goal Tables, Strategic Plan, FY 2022 - 2026

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.

- **Goal Table 1A** details the data points and performance metrics for OSC's work investigating, litigating, and resolving PPP complaints.

Goal Table 1A: Goals 1-10									
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									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
1	Percent of complaints closed within 240 days.	Baseline/ datapoint	85%	Baseline/ datapoint		Baseline/ datapoint			
2	Number of complaints mediated.	30	26	30		30			
3	Number of complaints mediated resulting in settlement.	20	21	20		20			

4	Number of formal stays obtained.	0	10	5		5			
5	Number of informal stays obtained.	25	45	30		30			
6	Number of individual corrective actions obtained.	220	237	225		225			
7	Number of systemic corrective actions obtained.	50	91	55		60			
8	Number of disciplinary actions obtained.	15	35	20		20			
9	Number of cases filed with MSPB	1	0	1		1			
10	Number of total favorable actions obtained (i.e., formal stay, informal stay, individual corrective action, systemic corrective action, and disciplinary action).	Baseline	418	300		305			

- **Goal Table 1B** details the data points and performance metrics for OSC's work investigating, litigating, and resolving Hatch Act complaints.

Goal Table 1B: Goals 11-17									
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									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
11	Percent of cases closed within 240 days.	65%	77%	65%		70%			
12	Number of cases filed with MSPB.	2	1[12]	3		3			
13	Percent of successful prosecutions before MSPB	100%	100%	100%		100%			
14	Number of warning letters issued.	30	41	50		50			
15	Number of corrective actions obtained.	10	19	15		20			
16	Number of disciplinary actions obtained.	5	3	5		5			

17	Number of total favorable actions obtained (i.e., corrective action and disciplinary action).	15	22	20		25			

GOAL Table 1B explanatory notes:

[12:] The Hatch Act Unit sent two reports to the President concerning Hatch Act violations by presidential appointees with Senate (PAS) confirmation. For PAS, pursuant to 5 U.S.C. 1215(b), the Hatch Act Unit's only mechanism for pursuing disciplinary action against PAS is to send such a report. The MSPB does not have jurisdiction over them, thus explaining why this result fell slightly short of the target.

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

Goal Table 1C: Goals 18-19									
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									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
18	Percent of referrals closed within 60 days.	80%	78.57%	80%		80%			
19	Number of corrective actions obtained (formally and informally).	3	1	3		3			

- **Goal Table 2** details OSC's efforts to enhance its strategic enforcement authority, as it relates to the third objective under Strategic Goal 1.

Goal Table 2: Goals 20-21									
Goal 1: Protect and promote the integrity and fairness of the federal workplace									
Objective 3: Enhance strategic use of enforcement authority									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
20	Number of PPP reports published on website.	2	0	2		2			
21	Number of amicus curiae briefs and interventions filed.	2	1	2		2			

- **Goal Table 3** details the Hatch Act advisory opinions provided by OSC, pursuant to OSC's fourth objective under Strategic Goal 1.

Goal Table 3: Goals 22-24									
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									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
22	Percent of informal telephonic advisory opinions issued within 3 days of inquiry.	98%	97%	98%		98%			
23	Percent of informal email advisory opinions issued within 5 days of inquiry.	95%	99%	95%		95%			

24	Percent of formal written advisory opinions issued within 60 days of inquiry.	75%	82%	75%		75%			

- **Goal Table 4** details OSC's training and outreach efforts pursuant to OSC's fifth objective under Strategic Goal 1.

Goal Table 4: Goals 25-26									
Goal 1: Protect and promote the integrity and fairness of the federal workplace									
Objective 5: Expand training and outreach efforts nationwide									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
25	Number of agencies/components certified and recertified for the 2302(c) Certification Program.	10	23	12		15			
26	Number of trainings conducted.[26]	140	335	125		200			

Goal Table 4 explanatory notes:

[26]: Number of trainings will increase and decrease in each fiscal year based on a number of factors, including, for instance, (1) the increase in Hatch Act trainings we have observed during election years; and (2) the increase and/or decrease in Section 2302(c) trainings depending upon when agencies are due for recertification at the end of the three-year training cycle, creating a "lumpy forecast." In addition, certain presentations include more than one training, such as, PPP training and Annual Supervisory training.

- **Goal Table 5** details OSC's communications with stakeholders and the public, consistent with the sixth objective under Strategic Goal 1.

Goal Table 5: Goals 27-29									
Goal 1: Protect and promote the integrity and fairness of the federal workplace									
Objective 6: Effectively and innovatively communicate with stakeholders and the public									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
27	Number of press releases issued.	25	12	25		20			
28	Types and frequency of digital platforms used to share information.	275	448	275		275			
29	Types and frequency of website views and activity on digital platforms.	Baseline	140,029 (1,571 twitter engagements and 138,458 unique website views)	Baseline		Baseline			

Strategic Goal 2, Goal Tables 6-7 – Ensure government accountability.

Strategic Goal 2 has two objectives, which relate to OSC's investigations of whistleblower disclosures:

Objective 1: Provide employees with an effective, efficient, and safe channel to report government wrongdoing.
Objective 2: Ensure agencies provide timely and appropriate outcomes for referred whistleblower disclosures.

- **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.

Goal Table 6: Goals 30-31									
Goal 2: Ensure government accountability									
Objective 1: Provide employees with an effective and efficient safe channel to report government wrongdoing									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
30	Number of referrals of whistleblower disclosures to agencies for investigation.	70	19	60		25			
31	Percent of referrals of whistleblower disclosures to agencies for investigation made within 45 days.	90%	99.8%	90%		90			

- **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.

Goal Table 7: Goals 32-33									
Goal 2: Ensure government accountability									
Objective 2: Ensure agencies provide timely and appropriate outcomes for referred whistleblower disclosures									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
32	Number of favorable outcomes—both corrective and disciplinary actions—achieved through referrals of	70 corrective actions & 10 disciplinary actions	117 corrective actions & 3 disciplinary actions	50 corrective actions & 5 disciplinary actions		50 corrective actions & 5 disciplinary actions			

	whistleblower disclosures.								
33	Number of days between the date a case can be closed, and the date of transmission to the President and Congress.[33]	120 days	134 days	120 days		120 days			

33: The description of this goal has been updated. Data points used to determine when a case can be closed include receipt of whistleblower comments; whistleblower consent or declination to include comments on the agency report and or any supplemental report in OSC's public file; receipt of redacted agency reports; and receipt of agency updates.

Strategic Goal 3, Goal Tables 8-10 – Achieve organizational excellence.

Strategic Goal 3 has three objectives, which relate to the OSC's continual goal of achieving organizational excellence:

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

- **Goal Table 8** covers 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.

Goal Table 8: Goals 34-36									
Goal 3: Achieve Organizational Excellence									
Objective 1: Recruit, develop, and retain a highly talented, engaged, and diverse workforce.									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
34	Develop and maintain up-to-date Human Capital Plan and reassess regularly.	Met	Met	Met		Met			
35	Develop Individual Development Plans (IDP) in support of professional development across the workforce consistent with annual training budget allocation.	Met	Met	Met		Met			
36	Investigate different approaches to measure employee feedback on the effectiveness of OSC's internal programs such as IT, HR, facilities, training, and EEO.	Met	Met	Met		Met			

- **Goal Table 9** 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.

Goal Table 9: Goals 37-41									
Goal 3: Achieve organizational excellence									
Objective 2: Improve the use of existing technology and deploy new Information Technology (IT) systems to enhance organizational operations.									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
37	Periodic assessment and reassessment of agency technology requirements.	Met	Met	Met		Met			
38	Deploy enhancements and reporting capabilities of the current electronic case management system, annually.	Met	Met	Met		Met			
39	Develop and deploy phased approach for adopting zero-trust network security framework.	Met	Met	Met		Met			
40	Develop and implement plan to reduce uncategorized	Met	Unmet	Met		Met			

	data and labeling.								
41	Ensure that IT staffing remains at 5% of the agency's workforce.	Met	Met	Met		Met			

- **Goal Table 10**, 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.

Goal Table 10: Goals 42-43									
Goal 3: Achieve organizational excellence									
Objective 3: Monitor, evaluate, and improve the efficiency and effectiveness of programs and processes.									
Target #	**Description**	**FY 2023 Target**	**FY 2023 Result**	**FY 2024 Target**	**FY 2024 Result**	**FY 2025 Target**	**FY 2025 Result**	**FY 2026 Target**	**FY 2026 Result**
42	Hold monthly or regular meetings to evaluate programs and processes and implement any learned best practices.	Met	Met	Met		Met			
43	Continue to issue and review results of annual survey regarding customer satisfaction with programs and processes and assess potential changes to programs and processes based	Met	Met	Met		Met			

	on customer feedback.								

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, 2023

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.

This year our financial auditor noted one significant deficiency in internal control over financial reporting. Specifically, internal controls related to the preparation and review of the notes to our financial statements did not properly prevent, detect, or correct errors and omissions. As such, OSC did not report all required information on several notes, in accordance with OMB Memo A-136. When this was identified by our auditors, OSC made corrections as appropriate on the notes to our FY 2023 financial statements. Additionally, corrective action will be taken to ensure that OSC's internal controls properly prevent, detect, or correct errors and omissions on notes to our financial statements in future years.

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,

Anthony Eleftherion

Anthony Eleftherion
Acting Chief Financial Officer
U.S. Office of Special Counsel

U.S. OFFICE OF SPECIAL COUNSEL
AUDIT REPORT
SEPTEMBER 30, 2023

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

U.S. OFFICE OF SPECIAL COUNSEL
AUDIT REPORT
SEPTEMBER 30, 2023

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Independent Auditor's Report

Special Counsel
U.S. Office of Special Counsel:

Report on the Financial Statements

Opinion

Pursuant to the Accountability of Tax Dollars Act of 2002, we have audited the accompanying financial statements of the Office of Special Counsel (OSC), which comprise the balance sheets as of September 30, 2023 and 2022; the related statements of net cost, changes in net position, and budgetary resources for the fiscal year then ended; and the related notes to the financial statements (hereinafter referred to as the financial statements).

In our opinion, OSC's financial statements present fairly, in all material respects, OSC's financial position as of September 30, 2023, and 2022, 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.

Basis for Opinion

We conducted our audits in accordance with U.S. generally accepted auditing standards (GAAS); 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. 24-01, *Audit Requirements for Federal Financial Statements*. Our responsibilities under those standards and OMB Bulletin No. 24-01 are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the OSC and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence that we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for (1) the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; (2) preparing, measuring, and presenting Required Supplementary Information (RSI) in accordance with U.S. generally accepted accounting principles; (3) preparing and presenting other information included in OSC's Performance and Accountability Report and ensuring the consistency of that information with the audited financial statements and the RSI; and (4) designing, implementing, and maintaining effective 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 Responsibilities for the Audit of the Financial Statements

Our objectives are to (1) obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and (2) to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS, generally accepted government auditing standards (GAGAS), and OMB Bulletin No. 24-01 will always detect a material misstatement or material weakness when it exists.

The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered to be material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, GAGAS, and OMB Bulletin No. 24-01, we exercise professional judgment and maintain professional skepticism throughout the audit, identify and assess risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures that are responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements in order to obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. In addition, in making those risk assessments, we obtain an understanding of internal control relevant to an audit 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 OSC's internal control over financial reporting. 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 evaluating the overall presentation of the financial statements, and performing other procedures we consider necessary in the circumstances. We are required to communicate with those charged with governance regarding, among other matters, the planned scope of and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the financial statement audit.

Required Supplementary Information (RSI)

U.S. generally accepted accounting principles issued by the Federal Accounting Standards Advisory Board (FASAB) require that the information in the RSI be presented to supplement the financial statements. Such information is the responsibility of management and, although not a part of the financial statements, is required by FASAB, which considers it to be an essential part of financial reporting for placing the financial statements in appropriate operational, economic, or historical context.

We have applied certain limited procedures to the RSI in accordance with U.S. generally accepted government auditing standards. These procedures consisted of (1) inquiring of management about the methods used to prepare the RSI and (2) comparing the RSI for consistency with management's responses to our inquiries, the financial statements, and other knowledge we obtained during the audit of OSC's financial statements, in order to report omissions or material departures from FASAB guidelines, if any, identified by these limited procedures. We did not audit and we do not express an opinion or provide any assurance on the RSI because the limited procedures we applied do not provide sufficient evidence to express an opinion or provide any assurance.

Other Information

OSC's other information contains a wide range of information, some of which is not directly related to the financial statements. This information is presented for purposes of additional analysis and is not a required part of the financial statements or the RSI. Management is responsible for the other information included in OSC's Performance Accountability Report. The other information comprises the *Management and Discussion Analysis (MD&A)* and *Performance* sections but does not include the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exist between the other information and the financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Report on Internal Control over Financial Reporting

In connection with our audits of OSC's financial statements, we considered OSC's internal control over financial reporting, consistent with the auditor's responsibilities discussed below.

Results of Our Consideration of Internal Control over Financial Reporting

Our consideration of internal control was for the limited purpose described below, and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies[2] or to express an opinion on the effectiveness of OSC's internal control over financial reporting. Given these limitations, during our 2023 audit, we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that have not been identified.

During our fiscal year 2023 audit, we identified a deficiency in OSC's internal control over financial reporting that we consider to be a significant deficiency. The deficiency is described in the accompanying Exhibit I, *Findings and Recommendations*, to this report. We considered this significant deficiency in determining the nature, timing, and extent of our audit procedures on OSC's fiscal year 2023 financial statements. Although the significant deficiency in internal control did not affect our opinion on OSC's fiscal year 2023 financial statements, misstatements may occur in unaudited financial information reported internally and externally by OSC because of this significant deficiency.

Basis for Results of Our Consideration of Internal Control over Financial Reporting

We performed our procedures related to OSC's internal control over financial reporting in accordance with U.S. generally accepted government auditing standards and OMB audit guidance.

Responsibilities of Management for Internal Control over Financial Reporting

OSC management is responsible for designing, implementing, and maintaining effective internal control over financial reporting relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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[2] 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, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, 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 over financial reporting that is less severe than a material weakness, yet important enough to merit the attention by those charged with governance.

Auditor's Responsibilities for Internal Control over Financial Reporting

In planning and performing our audit of OSC's financial statements as of and for the fiscal year ended September 30, 2023, in accordance with U.S. generally accepted government auditing standards, we considered OSC's internal control relevant to the financial statement audit 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 OSC's internal control over financial reporting. Accordingly, we do not express an opinion on OSC's internal control over financial reporting. We are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses. We did not consider all internal controls relevant to operating objectives, such as those controls relevant to preparing performance information and ensuring efficient operations.

Definition and Inherent Limitations of Internal Control over Financial Reporting

An entity's internal control over financial reporting is a process effected by those charged with governance, management, and other personnel, the objectives of which are to provide reasonable assurance that (1) transactions are properly recorded, processed, and summarized to permit the preparation of financial statements in accordance with U.S. generally accepted accounting principles, and assets are safeguarded against loss from unauthorized acquisition, use, or disposition, and (2) transactions are executed in accordance with provisions of applicable laws, including those governing the use of budget authority, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements. Because of its inherent limitations, internal control over financial reporting may not prevent, or detect and correct, misstatements due to fraud or error.

Intended Purpose of Report on Internal Control over Financial Reporting

The purpose of this report is solely to describe the scope of our consideration of OSC's internal control over financial reporting and the results of our procedures, and not to provide an opinion on the effectiveness of OSC's internal control over financial reporting. This report is an integral part of an audit performed in accordance with U.S. generally accepted government auditing standards in considering internal control over financial reporting. Accordingly, this report on internal control over financial reporting is not suitable for any other purpose.

Report on Compliance with Laws, Regulations, Contracts, and Grant Agreements

In connection with our audits of OSC's financial statements, we tested compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements consistent with our auditor's responsibilities discussed below.

Results of Our Tests for Compliance with Laws, Regulations, Contracts, and Grant Agreements

Our tests for compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements disclosed no instances of noncompliance for fiscal year 2023 that would be reportable under U.S. generally accepted government auditing standards. However, the objective of our tests was not to provide an opinion on compliance with laws, regulations, contracts, and grant agreements applicable to OSC. Accordingly, we do not express such an opinion.

Basis for Results of Our Tests for Compliance with Laws, Regulations, Contracts, and Grant Agreements

We performed our tests of compliance in accordance with U.S. generally accepted government auditing standards.

Responsibilities of Management for Compliance with Laws, Regulations, Contracts, and Grant Agreements

OSC management is responsible for complying with laws, regulations, contracts, and grant agreements applicable to OSC.

Auditor's Responsibilities for Tests of Compliance with Laws, Regulations, Contracts, and Grant Agreements

Our responsibility is to test compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements applicable to OSC that have a direct effect on the determination of material amounts and disclosures in OSC's financial statements, and to perform certain other limited procedures. Accordingly, we did not test compliance with all laws, regulations, contracts, and grant agreements applicable to OSC**.** We caution that noncompliance may occur and not be detected by these tests.

Intended Purpose of Report on Compliance with Laws, Regulations, Contracts, and Grant Agreements

The purpose of this report is solely to describe the scope of our testing of compliance with selected provisions of applicable laws, regulations, contracts, and grant agreements, and the results of that testing, and not to provide an opinion on compliance. This report is an integral part of an audit performed in accordance with U.S. generally accepted government auditing standards in considering compliance. Accordingly, this report on compliance with laws, regulations, contracts, and grant agreements is not suitable for any other purpose.

OSC's Response to Findings

OSC's responses to the findings identified during our audit are described immediately following the auditors' recommendations in Exhibit I. OSC's responses were not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

Allmond & Company, LLC

Lanham, MD
November 10, 2023

Improvements Needed in Financial Statement and Footnotes Review Process

CONDITION

The Office of Special Counsel (OSC) receives financial management support services from the Department of Interior, Interior Business Center (DOI IBC). Under the service level agreement between the parties, the DOI IBC is required to prepare and submit OSC's financial statements and notes in accordance with generally accepted accounting principles (GAAP) and Federal government financial reporting requirements; however, it is OSC's responsibility to review and approve all work products produced by the service provider to ensure that OSC's financial statements, footnotes, and other required submissions are compliant with GAAP and other financial reporting requirements.

Internal controls related to the preparation and review of the financial statements and footnotes were not properly designed and implemented to prevent, detect, or correct errors and omissions. Specifically, we noted the following during our interim and year-end review of OSC's financial statements and footnotes:

Interim

1. OSC's June 30, 2023 omitted the "Other Liabilities" note disclosure from the financial statement note disclosures.

Year-end

2. OSC omitted the fiscal year 2024 future lease payment amount from the September 30, 2023 Note 7 "Operating Leases" note disclosure, misstating the total balance by approximately $1,705,407.
3. OSC omitted the disclosure of material differences noted between the FY 2022 Statement of Budgetary Resources and the FY 2022 actual column of the 2023 Budget of the U.S. Government from the September 30, 2023 Note 11 "Explanation of Differences Between the SBR and the Budget of the U.S. Government." The material difference amounted to approximately $3,000,000 in Total Budgetary Resources, and approximately $1,000,000 in Net Outlays.

The disclosures outlined in items 1 ,2 and 3 above are required by The Office of Management and Budget (OMB) Circular A-136, *Financial Reporting Requirements*.

CRITERIA

U.S. Government Accountability Office GAO-14-704G, *Standards for Internal Control in the Federal Government* (or "Green Book"), September 2014 revision, Section OV4.01 states, "Management may engage external parties to perform certain operational processes for the entity, such as accounting and payroll processing……. Management, however, retains responsibility for the performance of processes assigned to service organizations."

Office of Management and Budget (OMB) Circular A-136, *Financial Reporting Requirements*, revised and effective on May 19, 2023, Section I.3, states, "Entities subject to the Chief Financial Officer's Act of 1990 (CFO Act) and the Accountability of Tax Dollars Act of 2002 (ATDA) must comply with Sections I, II, and III of this Circular".

OMB Circular A-136, section II.8.18 *Note 18: Other Liabilities* states, “To support the preparation of the Government-wide statements, the Other Liabilities shown below **must** be disclosed and any immaterial amounts for the numbered line titles in the Balance Sheet Template **must** also be disclosed.”

Section II.3.8.25 *Note 25: Statement of Budgetary Resources subpart G* states, “Agencies should explain, pursuant to SFFAS 7, paragraph 79(g), material differences that exist between the SBR and the Budget of the U.S. Government, including: 1. The budgetary resources, new obligations, upward adjustments (total), and net outlay amounts from the prior year (i.e., FY 2022) SBR and the actual amounts from “Detailed Budget Estimates by Agency” found in the Appendix of the Budget (i.e., the FY 2022 amounts in the FY 2024 Budget).”

Section II.3.8.19 *Note 19: Leases* states that agencies are to “Disclose future lease payments by major asset category for all noncancelable leases with terms longer than one year.”

CAUSE

OSC’s service provider failed to appropriately disclose certain items in the preparation of the FY 2023, Financial Statement Note Disclosures, as required by OMB Circular A-136. OSC’s internal control procedures surrounding the financial statement and notes review process were unable to prevent, detect and correct the omissions.

EFFECT

OSC did not fulfill the financial reporting requirements, as required by OMB Circular A-136 for FY 2023, as a result, a required note disclosure was omitted, and two note disclosures were materially misstated.

RECOMMENDATION

We recommend that OSC management:

- Verify that current OMB financial reporting requirements and other authoritative guidance is obtained and followed during the preparation and review of the financial statements and footnotes, including all mandatory and presumptively mandatory provisions, as defined in those sources.
- Implement a checklist that details all applicable footnotes and complete the checklist for the interim and year-end financial statement packages, ensuring that all required disclosures are included and properly stated.
- Review the “Summary of Changes” table included in the updated OMB Circular A-136 for applicable changes and ensure that the implemented checklist is updated accordingly.

MANAGEMENT RESPONSE

Management concurs with condition and corrective action will be taken and completed in the current fiscal year.

AUDITOR RESPONSE

We will perform follow up procedures during FY 2024 to determine if corrective action has been fully implemented.

U.S. OFFICE OF SPECIAL COUNSEL

Fiscal Year 2023
Financial Statements

Office of Special Counsel
Balance Sheet
As of September 30, 2023 and 2022
(in dollars)

	2023	2022
Assets		
Intra-governmental		
Fund Balance With Treasury (Note 2)	$ 4,638,747	$ 4,809,342
Advances and Prepayments (Note 13)	912,590	-
Total Intra-governmental	5,551,337	4,809,342
Other Than Intra-governmental		
Accounts Receivable, Net (Note 3)	7,744	953
Property, Plant, and Equipment, Net (Note 4)	20,758	42,338
Total Other Than Intra-governmental	28,502	43,291
Total Assets	$ 5,579,839	$ 4,852,633
Stewardship PP&E		
Liabilities:		
Intra-governmental		
Other Liabilities		
Other Liabilities (without reciprocals)		
Employer Contributions and Payroll Taxes Payable (Note 6)	$ 135,978	$ 88,924
Other Current Liabilities - Benefit Contributions Payable		
Employer Contributions and Payroll Taxes Payable (Note 6)	245,732	245,478
Unfunded FECA Liability (Note 5, Note 6)	10,346	16,007
Total Intra-governmental	392,056	350,409
Other Than Intra-governmental		
Accounts Payable	101,064	98,455
Federal Employee and Veteran Benefits Payable		
Employer Contributions and Payroll Taxes Payable	49,798	49,165
Unfunded Leave (Note 5)	1,599,694	1,622,199
Actuarial FECA Liability (Note 5)	41,464	65,977
Other Liabilities		
Accrued Funded Payroll and Leave (Note 6)	1,055,943	1,040,749
Total Other Than Intra-governmental	2,847,963	2,876,545
Total Liabilities	$ 3,240,019	$ 3,226,954
Net Position:		
Unexpended Appropriations - Funds from other than Dedicated Collections	$ 3,962,823	$ 3,286,571
Cumulative Results of Operations - Funds from other than Dedicated Collections	(1,623,003)	(1,660,892)
Total Net Position	2,339,820	1,625,679
Total Liabilities And Net Position	$ 5,579,839	$ 4,852,633

The accompanying notes are an integral part of these statements.

Office of Special Counsel
Statement of Net Cost
For the Years Ended September 30, 2023 and 2022
(in dollars)

	2023	2022
Gross Costs	$ 32,418,717	$ 31,138,936
Less: Earned Revenue	221,070	78,034
Net Cost of Operations	$ 32,197,647	$ 31,060,902

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, 2023 and 2022
(in dollars)

	2023	2022
Unexpended Appropriations:		
Beginning Balances	$ 3,286,571	$ 3,410,603
Beginning Balances, as Adjusted	3,286,571	3,410,603
Appropriations Received	31,904,000	30,385,000
Other Adjustments	(434,504)	(286,375)
Appropriations Used	(30,793,244)	(30,222,657)
Net Change in Unexpended Appropriations	676,252	(124,032)
Total Unexpended Appropriations - Ending	$ 3,962,823	$ 3,286,571
Cumulative Results of Operations:		
Beginning Balances	$ (1,660,892)	$ (1,761,155)
Beginning Balances, as Adjusted	(1,660,892)	(1,761,155)
Appropriations Used	30,793,244	30,222,657
Imputed Financing (Note 9)	1,442,292	938,508
Net Cost of Operations	(32,197,647)	(31,060,902)
Net Change in Cumulative Results of Operations	37,889	100,263
Cumulative Results of Operations - Ending	(1,623,003)	(1,660,892)
Net Position	$ 2,339,820	$ 1,625,679

The accompanying notes are an integral part of these statements.

Office of Special Counsel
Statements of Budgetary Resources
For the Years Ended September 30, 2023 and 2022
(in dollars)

		2023	2022
	Budgetary resources:		
1071 *	Unobligated balance from prior year budget authority, net (discretionary and mandatory)	$ 485,771	$ 2,374,359
1290 *	Appropriations (discretionary and mandatory)	31,904,000	30,385,000
1890 *	Spending authority from offsetting collections (discretionary and mandatory)	228,084	97,544
1910	Total budgetary resources	$ 32,617,855	$ 32,856,903
	Status of budgetary resources:		
2190	New obligations and upward adjustments (total) (Note 10):	$ 31,953,095	$ 32,356,176
	Unobligated balance, end of year		
2204 *	Apportioned, unexpired accounts	279,113	100,717
2412	Unexpired unobligated balance, end of year	279,113	100,717
2413	Expired unobligated balance, end of year (Note 2)	385,647	400,010
2490	Unobligated balance, end of year (total)	664,760	500,727
2500	Total budgetary resources	$ 32,617,855	$ 32,856,903
	Outlays, Net and Disbursements, Net		
4190	Outlays, net (total) (discretionary and mandatory)	31,640,090	30,117,987
4210 *	Agency outlays, net (discretionary and mandatory)	$ 31,640,090	$ 30,117,987

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.

OFFICE OF SPECIAL COUNSEL
Washington, D.C.

Notes to Principal Financial Statements
As of and for the Years Ended
September 30, 2023 and 2022

Office of Special Counsel
Notes to Principal Financial Statements
as of and for the Years Ended September 30, 2023 and 2022

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

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:

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

H. Advances and Prepaid Charges

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

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 2023 and 2022 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 of September 30, 2023 and 2022 were:

Fund Balance:	**2023**	**2022**
Appropriated Funds (general)	$ 4,638,747	$ 4,809,342
Total Fund Balance with Treasury	$ 4,638,747	$ 4,809,342

Status of Fund Balance with Treasury		
Unobligated Balance:		
Available	$ 252,591	$ 100,717
Unavailable	385,647	400,010
Obligated Balance Not Yet Disbursed	4,000,509	4,308,615
Total Status of Fund Balance with Treasury	$ 4,638,747	$ 4,809,342

There are no discrepancies between the Fund Balance reflected on the Balance Sheet and the balances in the Treasury accounts. Available unobligated balances represent amounts that were apportioned and/or allotted for obligation in the current fiscal year reduced by unfilled customer orders.

Unobligated unavailable fund balance represents the amounts that are not apportioned for obligation during the current fiscal year and 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. Obligated balances not yet disbursed include unpaid delivered and undelivered orders.

NOTE 3. ACCOUNTS RECEIVABLE

A summary of accounts receivable from the public as of September 30, 2023 and 2022 were as follows:

		2023		2022
Accounts Receivable from the Public:				
Billed:				
Current	$	7,744	$	953
Total Accounts Receivable		7,744		953
Accounts Receivable from the Public, Net	$	7,744	$	953

NOTE 4. PROPERTY, PLANT AND EQUIPMENT

Property, Plant, and Equipment account balances as of September 30, 2023 and 2022 were as follows:

	Service Life		Acquisition Value		Accumulated Depreciation		2023 Net Book Value
Office Equipment	5 yrs	$	112,651	$	(112,651)	$	-
Leasehold Improvements	10 yrs		488,325		(467,567)		20,758
Total		$	600,976	$	(580,218)	$	20,758

	Service Life		Acquisition Value		Accumulated Depreciation		2022 Net Book Value
Office Equipment	5 yrs	$	112,651	$	(112,651)	$	-
Leasehold Improvements	10 yrs		488,325		(445,987)		42,338
Total		$	600,976	$	(558,638)	$	42,338

NOTE 5. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities on OSC's Balance Sheet as of September 30, 2023 and 2022 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. Intra-governmental and Other Than Intra-governmental Liabilities:

	2023	2022
Intra-governmental:		
Unfunded FECA Liability	$ 10,346	$ 16,007
Total Intra-governmental	10,346	16,007
Other Than Intra-governmental Liabilities:		
Actuarial FECA	41,464	65,977
Unfunded Annual Leave	1,599,694	1,622,199
Total Liabilities Not Covered by Budgetary Resources	$ 1,651,504	$ 1,704,183
Total Liabilities Covered by Budgetary Resources	1,588,515	1,522,771
Total Liabilities	$ 3,240,019	$ 3,226,954

B. Other Information

Unfunded FECA 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 2023 and 2022 were approximately $10,346 and $16,007 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 2023 and 2022 were approximately $41,464 and $65,977 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. OTHER LIABILITES

Other liabilities consisted of the following as of September 30, 2023 and 2022:

		2023		2022
Intra-governmental:				
Other Liabilities				
Other Liabilities (without reciprocals)				
Employer Contributions and Payroll Taxes Payable	$	135,978	$	88,924
Other Current Liabilities - Benefit Contributions Payable				
Employer Contributions and Payroll Taxes Payable		245,732		245,478
Unfunded FECA Liability		10,346		16,007
Total Intra-governmental		392,056		350,409
Other Than Intra-governmental:				
Other Liabilities				
Accrued Funded Payroll and Leave		1,055,943		1,040,749
Total Other Than Intra-governmental		1,055,943		1,040,749
Total Other Liabilities	$	1,447,999	$	1,391,158

NOTE 7. 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
2024		1,705,407
2025		1,715,788
2026		1,763,844
2027		1,790,941
2028		1,818,852
2029 and beyond		1,847,599
Total Future Lease Payments	$	10,642,431

NOTE 8. COMMITMENTS AND 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, 2023, OSC is not subject to pending cases where an adverse outcome is probable; as of September 30, 2022, 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, 2023 OSC is subject to pending cases where an adverse outcome is reasonably possible, and potential losses were assessed at possibly being between $5,000 and $65,000. As of September 30, 2022 OSC was subject to pending cases where an adverse outcome was reasonably possible, and potential losses were assessed at possibly being between $5,000 and $10,000.

NOTE 9. 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, 2023 and 2022, respectively, imputed financing from OPM were approximately $1,442,292 and $938,508.

NOTE 10. 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, 2023 and 2022 consisted of the following:

	2023	2022
Direct Obligations:		
Category B	$ 31,953,095	$ 32,356,176
Total New Obligations and Upward Adjustments	$ 31,953,095	$ 32,356,176

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

Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, calls for explanations of material differences between amounts reported in the Statement of Budgetary Resources (SBR) and the actual balances published in the Budget of the United States Government (President's Budget). However, the President's Budget that will include FY23 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2024 and can be found at the OMB website: http://www.whitehouse.gov/omb. The 2023 Budget of the United States Government, with the actual column completed for 2022, has been reconciled to the Statement of Budgetary Resources. A $3 million difference existed between Budgetary Resources because the President's budget did not include $2.3 million unobligated balance from prior year budget authority and $98 thousand spending authority from offsetting collections. A $1 million dollar difference existed in Net Outlays because the President's budget did not include $618 thousand offsetting collections.

NOTE 12. UNDELIVERED ORDERS AT THE END OF THE PERIOD

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, 2023 and 2022, undelivered orders amounted to:

	2023	2022
Unpaid:		
Federal	$ 1,955,116	$ 2,378,386
Non-Federal	456,880	426,966
Paid:		
Federal	912,590	-
Totals	$ 3,324,586	$ 2,805,352

NOTE 13. ADVANCES AND PREPAYMENTS

The Advances and Prepayments for OSC were $912,590 as of September 30, 2023. There were no Advances and Prepayments for OSC as of September 30, 2022.

NOTE 14. 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.

Office of Special Counsel
As of September 30, 2023
(In dollars)

Budget and Accrual Reconciliation
For the period ended September 30, 2023

	Intragovernmental	With the public	FY 2023
Net Operating Cost (SNC)	11,058,962	21,138,685	32,197,647
Components of Net Operating Cost Not Part of the Budgetary Outlays			
Property, plant, and equipment depreciation	-	(21,580)	(21,580)
Increase/(decrease) in assets:			
Accounts receivable	-	6,791	6,791
Advances and Prepayments	912,590	-	912,590
(Increase)/decrease in liabilities:			
Accounts payable	-	(2,609)	(2,609)
Salaries and benefits	(47,307)	(15,827)	(63,134)
Other liabilities (Unfunded leave, Unfunded FECA, Actuarial FECA)	5,660	47,017	52,677
Other financing sources:			
Federal employee retirement benefit costs paid by OPM and imputed to the agency	(1,442,292)	-	(1,442,292)
NET OUTLAYS (Calculated Total)	10,487,613	21,152,477	31,640,090

For the period ended September 30, 2022

	Intragovernmental	With the public	FY 2022
Net Operating Cost (SNC)	10,641,017	20,419,885	31,060,902
Components of Net Operating Cost Not Part of the Budgetary Outlays			
Property, plant, and equipment depreciation	-	(21,580)	(21,580)
Increase/(decrease) in assets:			
Accounts receivable	-	(3,138)	(3,138)
Advances and Prepayments	(13,087)	-	(13,087)
(Increase)/decrease in liabilities:			
Accounts payable	-	(76,338)	(76,338)
Salaries and benefits	(8,223)	(7,022)	(15,245)
Other liabilities (Unfunded leave, Unfunded FECA, Actuarial FECA)	(927)	125,908	124,981
Other financing sources:			
Federal employee retirement benefit costs paid by OPM and imputed to the agency	(938,508)	-	(938,508)
NET OUTLAYS (Calculated Total)	9,680,272	20,437,715	30,117,987

APPENDIX I – STRATEGIC PLAN (FY 2022 - FY 2026):

STRATEGIC PLAN
(FY 2022-2026)

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

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Message from the Special Counsel

It is my pleasure to present the U.S. Office of Special Counsel's (OSC) 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 under the Uniformed Services Employment and Reemployment Rights Act (USERRA). 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 compromising the integrity of the merit civil service system.

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 to efficiently allocate our precious 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 is located nationwide and, because of the continued COVID-19 pandemic, currently 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 vigorously enforces its mandates 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 relatively modest budget and 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 61substantiated 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 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 *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 mandated 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 employment rights of federal employees who are service members; 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 are administered in a nonpartisan fashion. OSC has the authority to investigate and prosecute violations and issue advisory opinions under the Hatch Act.

Uniformed Services Employment and Reemployment Rights 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: 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 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 manages OSC's 2302(c) certification program, including assisting agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). The unit also provides external education and outreach sessions regarding the laws that OSC enforces. Additionally, the Chief of this unit serves as the Equal Employment Opportunity (EEO) Director, who reports directly to the Special Counsel on the health and effectiveness of OSC's EEO program. The unit answers questions, handles complaints, and ensures access to Equal Employment Opportunity and Anti-Harassment policies and materials.

- *Office of General Counsel.* This office provides legal advice regarding management, policy, and administrative matters, including 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, records, and administrative needs of the agency. Component units include the Budget and Finance Office, the Human Capital Office, the Administrative Services Office, the Information Technology Office (ITO), and the 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. The Information Technology Office maintains the electronic case management system (eCMS) used to process OSC cases, store case-related documents, and generate reporting metrics. In addition, ITO is responsible for the maintenance and compliance of all modern technology platforms used by the agency.

An organizational chart for OSC may be found in Appendix F (Appendix III of this document).

Strategic Planning Process

Congress requires Executive Branch agencies to develop and post updated four-year strategic plans on their public websites on an overall timeline that aligns to presidential terms. 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, the Office of Management and Budget (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, the plan successfully guided agency efforts and resources.

In 2021, OSC reviewed its programs and services and reassessed its strategic goals, objectives, strategies, and metrics. After making appropriate revisions and adjustments, OSC presented an updated strategic plan to OMB, staff from the agency's congressional oversight and appropriations committees, and stakeholders. We believe this plan--more of a refinement than an overhaul--will build on the success of the previous plan. On March 28, 2022, the Special Counsel approved OSC's final strategic plan.

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, encompasses 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 cases filed with MSPB
- 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 cases closed within 240 days.
- Number of cases filed with MSPB.
- Percent of successful prosecutions before MSPB
- 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, USERRA, and ADR through its training and outreach programs. Since 2002, OSC has had a voluntary program to ensure compliance with 5 U.S.C. § 2302(c), which requires federal agencies to inform employees about their rights and remedies under whistleblower protection and related laws and prevent violations of PPPs. 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.
- Number of trainings conducted.

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, including retaliation. 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 platforms as appropriate (e.g., website, social media).
- Use available analytics to assess effectiveness of communications.

Metrics:

- Number of press releases issued.
- Types and frequency of digital platforms used to share information.
- Types and frequency of website views and activity on digital platforms.

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, threats to public health or safety, or censorship related to research, analysis, or technical information. 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:

- Continue to 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, and in coordination with whistleblowers, 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, resolves serious health and safety threats, and evaluates claims of censorship related to scientific research. A key objective is to improve the timeliness and outcomes of agency reports. OSC will continue to coordinate with whistleblowers toward this objective. 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 when OSC refers the whistleblower disclosures.
- 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 and other methods to capture employee feedback, including consistent communication, constructive mentorship, and effective recognition of staff performance.
- Evaluate a number of internal programs, including the EEO program.
- Continue to emphasize work/life balance and other related benefits.

Metrics:
- Develop and maintain up-to-date Human Capital Plan and reassess regularly.
- Develop Individual Development Plans in support of professional development across the workforce consistent with annual training budget allocation.
- Investigate different approaches to measure employee feedback on the effectiveness of OSC's internal programs such as IT, HR, facilities, training, and EEO.

Objective #2: Improve the use of existing technology and deploy new Information Technology (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 IT 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.*

<u>Strategies</u>:

- Engage with agency staff and Federal partners to assess and implement the technology requirements to support the agency mission and strategic goals.
- Implement data governance and management of OSC data.
- Recruit and retain highly skilled IT staff.
- Meet the Federal strategic goals as outlined in Cybersecurity Executive Order 14028 – Improving the Nation's Cybersecurity.

- Continue modernizing OSC's legacy enterprise architecture with a focus on full cloud enterprise architecture.
- Maintain IT hardware using industry lifecycles to include endpoints (computer), network edge appliances, and core network infrastructure.

<u>Metrics</u>:

- Periodic assessment and reassessment of agency technology requirements.
- Deploy enhancements and reporting capabilities of the current electronic case management system, annually.
- Develop and deploy phased approach for adopting zero-trust network security framework.
- Develop and implement plan to reduce uncategorized data and labeling.
- Ensure that IT staffing remains at 5% of the agency's workforce.

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

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 meaningful opportunity to provide input into shaping its work through its annual customer satisfaction survey.

<u>Strategies</u>:

- 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.

<u>Metrics</u>:

- Hold monthly or regular meetings to evaluate programs and processes and implement any learned best practices.

- Continue to issue and review results of annual survey regarding customer satisfaction with programs and processes and assess potential changes to programs and processes based on 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 budget uncertainty and significant technological challenges—amplified by the recent pandemic. For a small-sized 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.

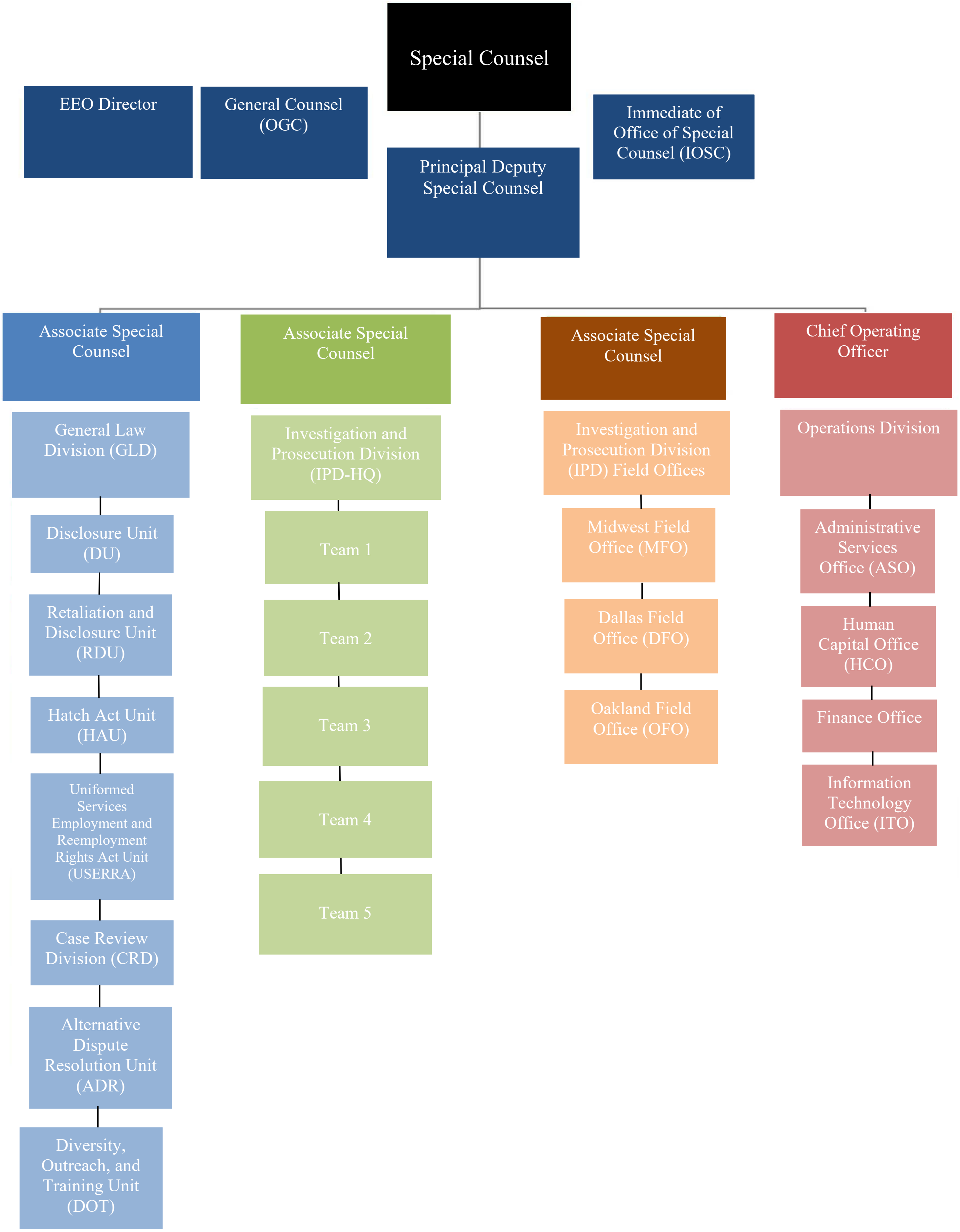
Additionally, OSC has experienced an increased need for long-term improvements in technology, while grappling with limited funding. The remote working arrangements for OSC's employees required by the pandemic highlighted these challenges. OSC will be called upon to ensure that the technological environment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



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

Internet Web Site:

www.osc.gov