

ANNUAL REPORT
TO CONGRESS
—*for*—
FISCAL YEAR 2013



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
www.osc.gov



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

The Honorable Joseph R. Biden, Jr.
President of the Senate
Washington, D.C. 20510

The Honorable John A. Boehner
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit the Report to Congress for fiscal year 2013 from the U.S. Office of Special Counsel. A copy of this report will also be posted on our website.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Lerner".

Carolyn N. Lerner

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THE SPECIAL COUNSEL



Carolyn N. Lerner was named U.S. Special Counsel by President Obama and confirmed unanimously by the U.S. Senate. She began her five-year term in June 2011. Ms. Lerner brings over twenty years of legal expertise to the office. Prior to her appointment, she was a partner in the Washington, D.C., civil rights and employment law firm of Heller, Huron, Chertkof, Lerner, Simon & Salzman, where she represented individuals in discrimination and employment matters, and nonprofits on a wide variety of matters, including best employment practices.

Ms. Lerner taught mediation as an adjunct professor at The George Washington University School of Law. She was also a mediator for the U.S. District Court for the District of Columbia.

Prior to her appointment, Ms. Lerner served on various boards, including chairing the board of the Center for WorkLife Law, a non-profit which advocates for workers with family responsibilities, the WAGE Project, which works to end discrimination against women in the workplace, and the Council for Court Excellence.

Ms. Lerner earned her undergraduate degree from the honors program at the University of Michigan with high distinction and was selected to be a Truman Scholar. She earned her law degree from New York University (NYU) School of Law, where she was a Root-Tilden-Snow public interest scholar. After law school, she served for two years as a law clerk to the Honorable Julian Abele Cook, Jr., Chief U.S. District Court Judge for the Eastern District of Michigan.

A MESSAGE FROM SPECIAL COUNSEL

CAROLYN N. LERNER

In FY 2013, the U.S. Office of Special Counsel (OSC) continued to build on its FY 2012 record successes to fulfill its mission of promoting accountability, integrity, and fairness in the federal workplace. The agency established new productivity records in FY 2013, resolving nearly 5,000 matters, a remarkable 68 percent increase over five years ago. OSC also settled nearly ten times as many complaints through mediation in FY 2013 than in FY 2010. And, in the two-year period of FY 2012-13, OSC achieved 332 favorable actions correcting prohibited personnel practices, an unprecedented 84 percent increase over the prior two-year period.

OSC is also doing its job on behalf of taxpayers by providing federal employees a safe, effective channel for disclosures of waste, fraud, and abuse. In FY 2013, OSC referred 54 separate whistleblower disclosures for agency investigation and remedial action, most notably, the systemic misuse of Administratively Uncontrollable Overtime at the Department of Homeland Security, which is costing the U.S. Treasury tens of millions of dollars annually. OSC also continued to achieve positive results in securing the employment rights of returning veterans and reservists under the Uniformed Services Employment and Reemployment Rights Act (USERRA) Demonstration Project, including a 100 percent success rate in mediated matters. Finally, after being instrumental in promoting legislative reform to the Hatch Act through the Hatch Act Modernization Act of 2012, OSC continued its pivotal role as the primary source of advice and enforcement regarding this good government law.

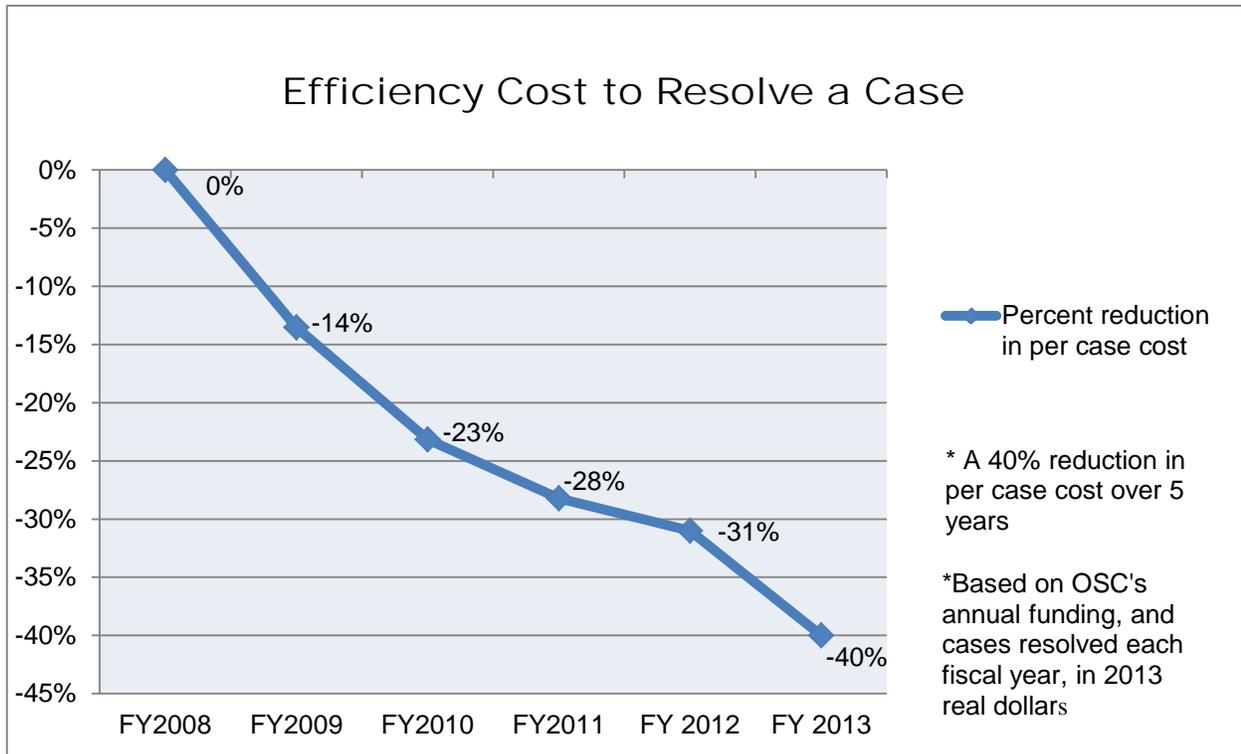
OSC makes real differences in the lives of the American people. For example, OSC worked with whistleblowers to improve the quality of care at VA facilities throughout the country. In Jackson, Mississippi, several whistleblowers disclosed violations of law and threats to patient safety that were only addressed after OSC stepped in. OSC also successfully championed whistleblower disclosures revealing improper record-handling procedures that were harming veterans seeking medical assistance in western New York. At OSC's direction, an agency investigation substantiated the disclosures and resulted in an improvement plan to remedy the problem. OSC also played a role in making air travel safer by bringing forward a whistleblower disclosure that technicians were repairing aircraft improperly. These and other cases have increased public awareness of OSC, and driven up the demand for our services to record levels.

OSC's successes during FY 2013 were achieved despite the difficult fiscal environment and sequestration. Due to reduced resources, OSC lost over 12 FTE, and remaining staff members were required to take furlough days. Furloughs were necessary despite trimming virtually all non-essential expenditures, such as agency travel and various employee benefits. OSC was able to further reduce its operating costs by awarding mandatory contracts on a competitive basis.

OSC has been creative in meeting its staffing challenges, enhancing cross-training of program staff, and increasing recruitment of Presidential Management Fellows and interns. By emphasizing alternative dispute resolution (ADR) for prohibited personnel practice and USERRA complaints, employees are getting faster results, agencies are able to more quickly escape the cloud of legal conflict, and OSC is able to process cases more economically. OSC also places a premium on outreach to educate federal employees and agencies on rights and responsibilities: The best way to address violations is to prevent them from ever occurring in the first place.

OSC has achieved a stunning 40 percent reduction in its cost to resolve a case in the past five years. Yet this increased efficiency has sacrificed results. Favorable actions in whistleblower and other merit system cases are at the highest level in the agency’s 35-year history.

OSC is doing its part to address government-wide fiscal challenges. Our budget is among the smallest of any federal law enforcement agency, yet we have jurisdiction over more than 2 million federal employees. We know the critical role our agency plays in ensuring accountability, integrity, and fairness in the executive branch, and we have diligently reduced our costs, while producing excellent results for the federal community and taxpayers.



OSC has also greatly stepped up its use of alternative dispute resolution to better serve the federal community. Mediation often avoids lengthy and costly investigations, while producing win-win outcomes for agencies and employees, and thus represents significant cost savings for all parties involved. During FY 2013, OSC successfully resolved 61 percent more cases through mediation than it did in FY 2012.

OSC also revamped its outreach and education program to prevent unlawful actions from occurring in the first place and save taxpayers’ money. During FY 2013, OSC employees spoke at over 64 events nationwide. Further, OSC’s increased presence in the news media and through press releases has raised awareness of the agency and its mission among federal employees.

I am proud to say that OSC is achieving more positive results on behalf of federal employees, agencies, and the merit system than at any point in its history. Despite these successes, OSC continues to face the daunting challenge of claim backlogs in the face of a fast-growing caseload and federal belt-tightening.

As Special Counsel, I look forward to working with Congress to identify how OSC can perform its important mission even better. A strong OSC makes for a more efficient, accountable, and fair federal government.



PART 1 – INTRODUCTION TO OSC

Statutory Background

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC at first operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB or the Board). Congress directed that OSC would: (1) receive and investigate complaints from federal employees alleging prohibited personnel practices; (2) receive and investigate complaints regarding the political activity of federal employees and covered state and local employees, and provide advice on restrictions imposed by the Hatch Act on political activity by covered government employees; and (3) receive disclosures from federal whistleblowers about government wrongdoing. Additionally, OSC, when appropriate, filed petitions for corrective and or disciplinary action with the Board in prohibited personnel practices and Hatch Act cases.

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

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to federal and District of Columbia government employees.¹

In 1994, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (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 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 agency employers.²

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the 1994 Reauthorization Act provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred or exists. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what is now the Department of Veterans Affairs (VA), and whistleblower reprisal protections were afforded to employees of specified government corporations. The 1994 Reauthorization Act also broadened the scope of personnel actions covered under these provisions and required that federal agencies inform employees of their rights and remedies under the WPA.³

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),⁴ which created the Transportation Security Administration (TSA). Under the ATSA, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. However, approximately 45,000 security screeners in TSA could not pursue retaliation complaints at OSC or the Board. OSC's efforts led to the signing of a memorandum of understanding (MOU) with TSA, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. The MOU, however, did not provide for OSC enforcement action before the Board.

In November 2012, Congress passed and President Obama signed into law the Whistleblower Protection Enhancement Act (WPEA), which expressly extends whistleblower protections to TSA screeners. It also overturns court decisions that had narrowed protections for government whistleblowers, and enables OSC to seek disciplinary actions against supervisors who retaliate against whistleblowers.

In December 2012, Congress, with OSC's support, passed the Hatch Act Modernization Act, which created a more flexible penalty structure for violations of the Hatch Act by federal employees and lifted the ban on state and local government employees running for partisan political office in most cases. The new act allows state and local employees to run as long as their salary is not entirely provided by the federal government.

Mission

OSC is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system by protecting employees from prohibited personnel practices, especially reprisal for whistleblowing. The agency also provides employees a secure channel for disclosing wrongdoing in government agencies, enforces and provides advice on Hatch Act restrictions on political activity by government employees, and enforces employment rights under USERRA for federal employees who serve or served in the uniformed services.

PART 2 – OVERVIEW OF OPERATIONS

Internal Organization

OSC is headquartered and has one of its field offices in Washington, D.C., and three additional field offices located in Dallas, TX; Detroit, MI; and Oakland, CA. The agency includes a number of program and support units.

Immediate Office of the Special Counsel (IOSC)

The Special Counsel and her immediate staff are responsible for policy-making and the overall management of OSC, including supervision of each of OSC's program areas. This encompasses management of the agency's congressional liaison and public affairs activities, and coordination of its outreach program, which promotes government-wide compliance with agencies' statutory obligation to inform employees about their rights under whistleblower protection laws.

Complaints Examining Unit (CEU)

This unit is the intake point for all complaints alleging prohibited personnel practices. CEU normally screens approximately 2,500 such complaints each year, but last year that number spiked to almost 3,000. Attorneys and personnel-management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction and, if so, whether further investigation is warranted. The unit refers qualifying matters for alternative dispute resolution (ADR) to the ADR Unit or to the Investigation and Prosecution Division (IPD) for further investigation, possible settlement, or prosecution. Matters that do not qualify for referral to ADR or IPD are closed.

Investigation and Prosecution Division (IPD)

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

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 or closure without further action. If a disclosure is referred, the Special Counsel reviews the agency's investigative report to determine whether it is complete and appears reasonable. She then forwards her determination, the report itself, and any comments by the whistleblower to the President and responsible congressional oversight committees.

Hatch Act Unit (HAU)

This unit investigates complaints of unlawful political activity by government employees under the Hatch Act, and represents OSC in seeking disciplinary actions before the MSPB. In addition, the HAU is responsible for providing legal advice on the Hatch Act to the public at large.

USERRA Unit

This unit resolves employment discrimination complaints by veterans, returning National Guard members and reservists, and members of the uniformed services under the Uniformed Services Employment & Reemployment Rights Act. This unit also reviews USERRA cases referred by the Department of Labor (DOL) for prosecution and represents claimants before the MSPB. Under a second, three-year Demonstration Project, the USERRA Unit also investigates more than half the federal USERRA cases filed with DOL.

Alternative Dispute Resolution Unit (ADR)

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

Office of General Counsel

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

Administrative Services Division

This division manages OSC's budget and financial operations, and accomplishes the technical, analytical, and administrative needs of the agency. Component units are the Budget, Finance and Procurement Branch, Human Resources and Document Control Branch, and the Information Technology Branch.

FY 2013 Budget and Staffing

During FY 2013, OSC operated with budget authority of \$18,621,000, of which \$17,980,000 was from appropriated funds, and \$641,000 from reimbursement agreements. The agency operated with a staff of approximately 104 full-time equivalent (FTE) employees.

FY 2013 Case Activity and Results

During FY 2013, OSC received 4,486 new matters and resolved a record 4,833, as shown in the above chart. In addition, OSC received 1,767 requests for Hatch Act advisory opinions. **Table 1** below summarizes overall OSC case intake and dispositions in FY 2013, with comparative data for the previous five fiscal years. More detailed data can be found in **Tables 2-7**, in sections below relating to the four specific components of OSC’s mission—prohibited personnel practice cases, Hatch Act matters, whistleblower disclosures, and USERRA cases.

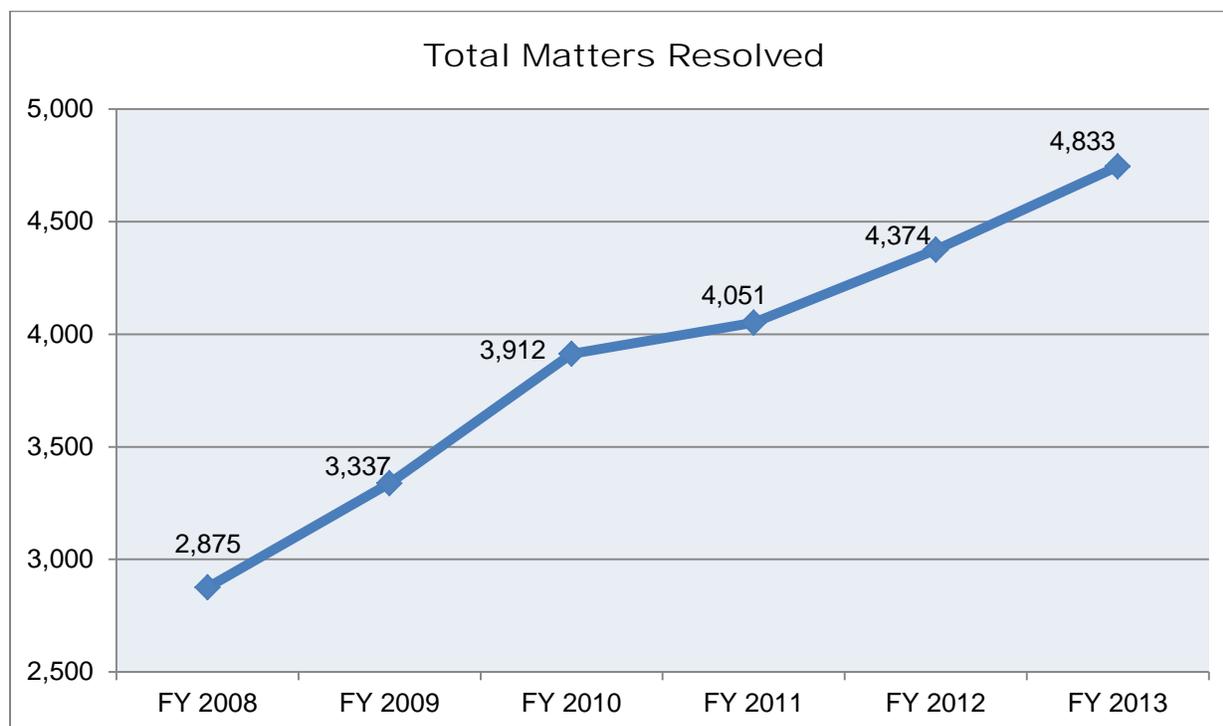
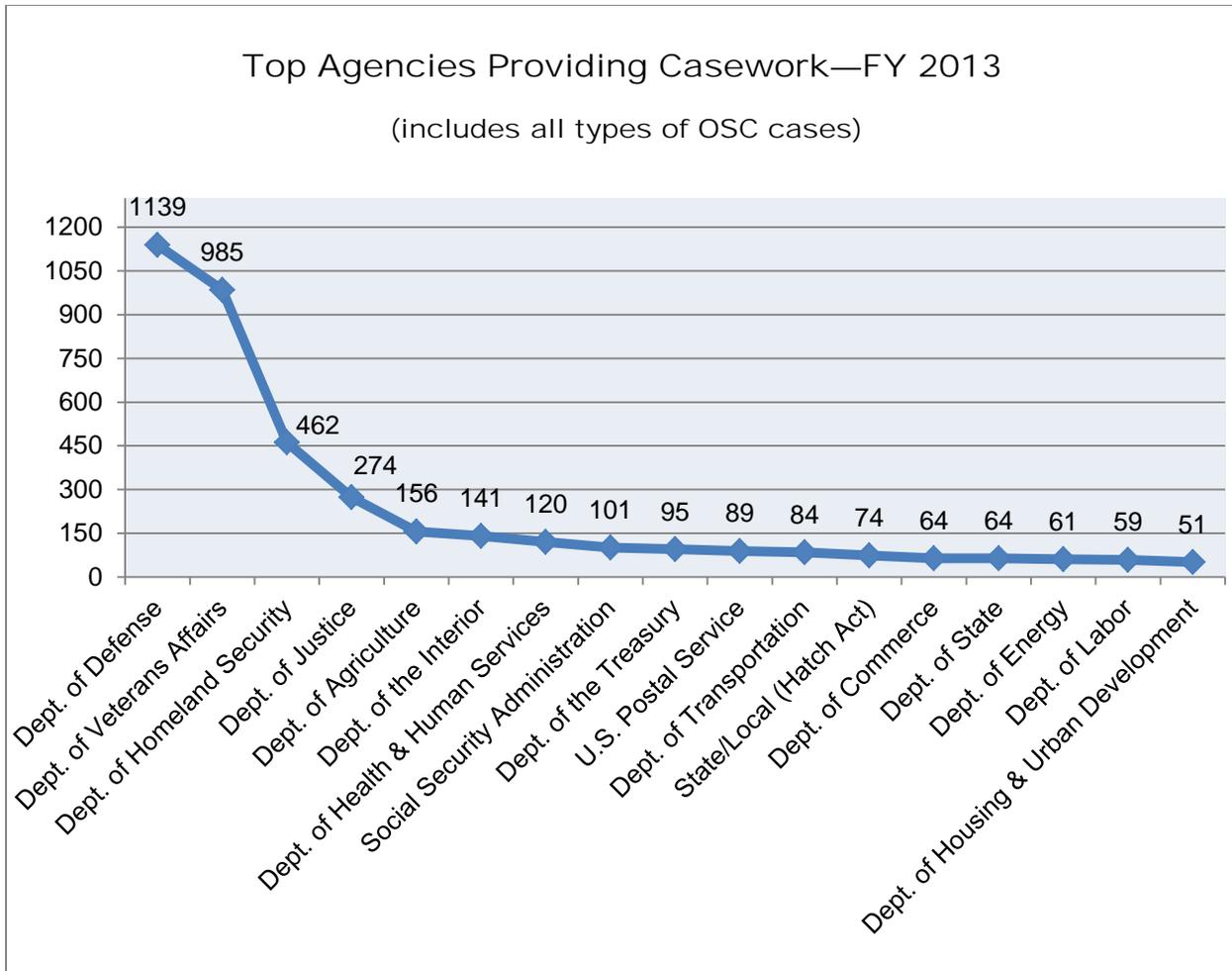


TABLE 1 – Summary of All Case Activity

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Matters ^a pending at start of fiscal year	700	943	1,326	1,357	1,320	1,744
New matters received	3,116	3,725	3,950	4,027	4,796	4,486
Matters resolved	2,875	3,337	3,912	4,051	4,374	4,833
Matters pending at end of fiscal year	937	1,324	1,361	1,331	1,729	1,397
Hatch Act advisory opinions issued	3,991	3,733	4,320	3,110	3,448	1,767

^a “Matters” in this table includes prohibited personnel practice cases (including TSA matters), Hatch Act complaints, whistleblower disclosures, and USERRA cases. “Matters” does not include Hatch Act advisory opinions issued.

OSC cases come from across the federal government. The chart below shows the 16 agencies that were the source of the most cases, as well as Hatch Act matters concerning state and local employees, in fiscal year 2013.



PART 3 – PROHIBITED PERSONNEL PRACTICE COMPLAINTS

Summary of Workload, Activity, and Results

OSC's largest program is devoted to handling PPP complaints. Of the 4,486 new matters OSC received during FY 2013 (not including requests for advisory opinions on the Hatch Act), 2,936 or 65 percent were new PPP complaints. Complaints involving allegations of reprisal for whistleblowing—OSC's highest priority—accounted for the highest number of complaints resolved and favorable actions (stays,⁵ corrective actions, and disciplinary actions) obtained by OSC during FY 2013. CEU referred 255 cases for full IPD investigation in FY 2013, a 16 percent increase from just three years earlier.

Receipts and Investigations

OSC is responsible for investigating complaints alleging prohibited personnel practices defined by law.⁶

As the intake unit for all prohibited personnel practice complaints filed with OSC, CEU reviewed new matters to determine whether they merited further investigation. If so, these matters were referred to IPD for mediation or field investigation. Matters referred during FY 2013 included whistleblower retaliation, due process violations, and violations of law, rule or regulations in personnel actions.

Table 2, below, contains FY 2013 summary data (with comparative data for the six previous fiscal years) on OSC’s receipt and processing of all prohibited personnel practice complaints handled by CEU and IPD.

TABLE 2 – Summary Prohibited Personnel Practice Complaints Activity – Receipts and Processing ^a								
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	
Pending complaints carried over from prior fiscal year	386	358	474	769	863	934	1,152	
New complaints received ^b	1,970	2,089	2,463	2,431	2,583	2,969	2,936	
<i>Total complaints</i>	<i>2,356</i>	<i>2,447</i>	<i>2,937</i>	<i>3,200</i>	<i>3,446</i>	<i>3,903</i>	<i>4,088</i>	
Complaints referred by CEU for investigation by IPD	125	135	169	220	270	252	255	
Complaints processed by IPD	151	88 ^c	150	179	190	274	266	
Complaints pending in IPD at end of fiscal year	136	185	201	250	331	325	316	
Total complaints processed and closed (CEU and IPD combined)	1,996	1,971	2,173	2,341	2,508	2,750	3,041	
Complaint processing times	Within 240 days	1,874	1,889	2,045	2,185	2,327	2,570	2,594
	Over 240 days	121	80	127	154	175	439	440
Percentage processed within 240 days	94%	95%	94%	93%	92%	88%	85%	

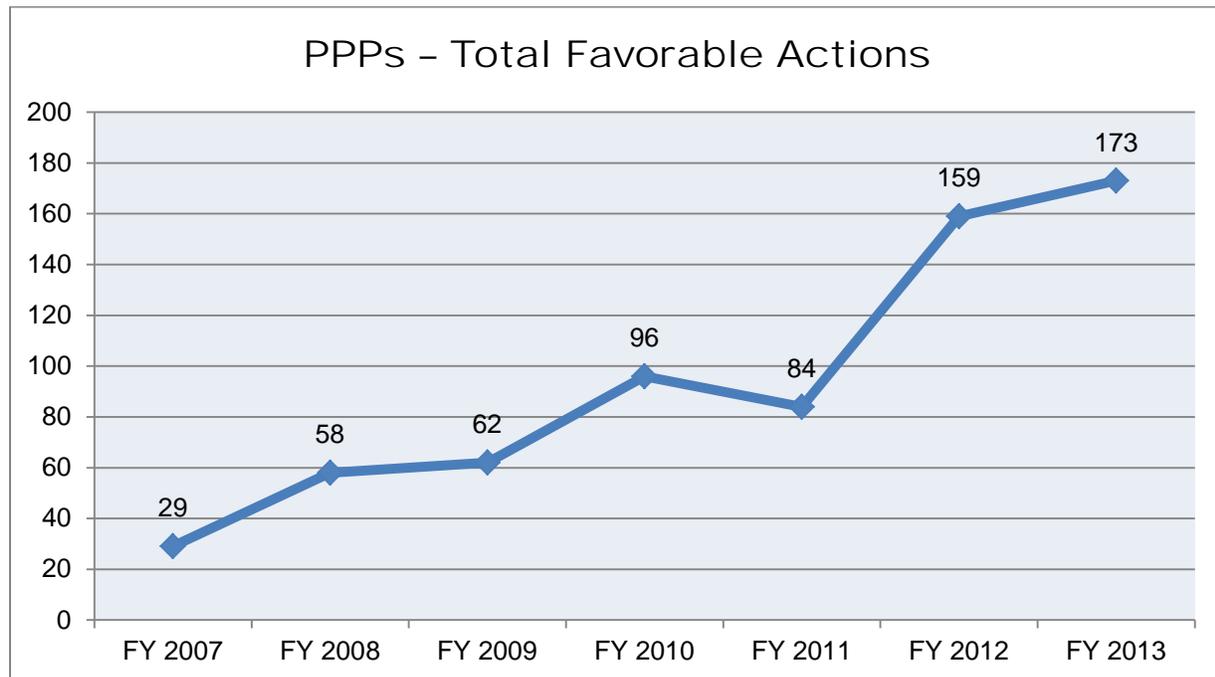
^a Category includes complaints settled through mediation by OSC (including “reverse-referrals”—i.e., cases referred back to ADR program staff by IPD after investigation had begun, due to the apparent potential for a mediated resolution). Category also includes complaints that entered the initial OSC mediation process, and were then resolved by withdrawal of the complaint, or through mediation by an agency other than OSC.

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

^c In FY 2008, IPD handled 88 PPP complaints, 17 USERRA demonstration project cases, and one Hatch Act case.

Prohibited Personnel Practice Case Success Stories

In FY 2013, OSC obtained a record number of corrective actions on behalf of employees who were victims of a prohibited personnel practice, such as whistleblower retaliation, and historic numbers of disciplinary actions against officials who commit PPPs. In many cases, OSC negotiates informally with federal agencies to obtain both corrective action for employees and disciplinary action against responsible officials. When informal relief or disciplinary action is not attainable through negotiation, OSC seeks to obtain relief and disciplinary action through its formal statutory process. Generally, that process requires OSC to issue a report to the head of the responsible agency setting forth findings of prohibited personnel practices and recommendations for corrective and/or disciplinary action. In the vast majority of cases where OSC issues a formal report of findings, the employing agency accepts OSC's findings and recommendations and takes appropriate corrective and/or disciplinary action. When an employing agency declines, however, OSC is authorized to seek an appropriate remedy before the Merit Systems Protection Board.



Protecting Employees from Retaliation for Whistleblowing

OSC obtained corrective action on behalf of a whistleblower who reported improper interference in an agency determination. The whistleblower alleged that a political appointee inappropriately pressured career employees to make a favorable decision on behalf of a nongovernmental customer. An investigation by the agency's Inspector General confirmed the unethical conduct and the political appointee resigned from government service. Subsequently, the whistleblower received a directed reassignment to a different city. When the whistleblower refused to move for personal reasons, the agency required the whistleblower to accept a demotion to a lower graded position. To resolve the OSC complaint, the agency agreed to provide the whistleblower a significant lump sum payment in return for the whistleblower's agreement to retire from service.

OSC obtained corrective action on behalf of a whistleblower who reported to an Inspector General improper government expenditures by the head of a federal agency and other high-level agency officials. Subsequently, the agency proposed the whistleblower's removal from service for misconduct and subpar performance. OSC obtained an informal stay of the proposed removal. At the conclusion of the investigation, OSC negotiated a settlement in which the parties agreed to provide the employee with a clean employment record and a neutral job recommendation. The whistleblower received a retroactive, within-grade increase, agency contributions to a private annuity, and reimbursement for attorneys' fees. The agency also agreed to provide the whistleblower with professional training to enable the employee to maintain professional credentialing.

OSC helped achieve a global settlement in a matter stemming from a whistleblower's report to management that a coworker had violated security protocol regarding classified documents. Subsequent to the disclosure, the agency caused criminal charges to be brought against the whistleblower for alleged time and attendance fraud. After a court dismissed the charges with prejudice, the agency fired the whistleblower based on the same underlying allegations. That removal action was reversed by the MSPB. On the day the whistleblower was reinstated, the agency gave notice that it planned to place the employee on indefinite suspension pending a new security clearance review. The whistleblower then filed an OSC complaint alleging retaliation for whistleblowing and the exercise of appeal rights. The complaint was resolved when the agency reinstated the whistleblower's security clearance, returned the whistleblower to work and removed all references to the suspension and proposed removal from the whistleblower's personnel files. The whistleblower also received payment of damages and attorneys' fees associated with their ordeal.

A whistleblower disclosed that a nonprofit corporation that raised funds to finance a government entity had engaged in gross mismanagement of the funds. This disclosure angered the nonprofit board of directors which persuaded the employing federal agency to intervene. The agency proposed to demote and geographically reassign the whistleblower. OSC negotiated a stay of these actions with the agency while it conducted its investigation. At the conclusion of the investigation, OSC assisted in negotiating a settlement in which the whistleblower would serve two years as a visiting professor at a well-known college under the Intergovernmental Personnel

Act and then retire from service. The agency also agreed to reimburse the whistleblower for attorneys' fees, rescind the orders of demotion and reassignment, and provide the whistleblower with a clean record.

OSC filed an amicus brief before the MSPB in support of a whistleblower's attempt to have portions of Whistleblower Protection Enhancement Act of 2012 applied retroactively to his pending appeal. The case concerned whether restrictive decisions by the Federal Circuit that barred certain recurring whistleblower claims from review should be applied to pending cases or only to cases filed after the WPEA's enactment. OSC urged that the statute should be applied retroactively to pending cases. In its decision, *Day v. Department of Homeland Security*^a, the MSPB agreed with OSC and ordered that the WPEA's provision to overturn restrictive court decisions applied retroactively. Under this decision, previously barred whistleblower claims may now be reviewed by OSC and the MSPB.

As it did in the *Day* case, OSC filed an amicus brief in the U.S. Court of Appeals for the Ninth Circuit on behalf of a whistleblower whose claim had been rejected by a district court that relied on the Federal Circuit's restrictive rulings. In *Kerr v. Salazar*^b, the Ninth Circuit reversed the district court and allowed the retaliation claim, but it did so by rejecting the criticized Federal Circuit decisions and finding that the whistleblower's disclosures were protected by the Whistleblower Protection Act of 1989.

Protecting Employees in their Right to Due Process

OSC filed an amicus brief before the U.S. Court of Appeals for the Federal Circuit to support two employees who suffered adverse actions after their agencies had found them ineligible to occupy positions that were categorized as noncritical sensitive. See *Kaplan v. Conyers*^c. After a Federal Circuit panel held that the MSPB was prohibited from reviewing national security determinations concerning the eligibility of employees to occupy a "sensitive" position, the Federal Circuit, sitting en banc, agreed to rehear the appeal. On rehearing, OSC urged the court to respect the due process rights of federal employees by allowing the MSPB and OSC to review adverse personnel actions based on security determinations, especially in whistleblower cases. The court held that the employees could not appeal these adverse actions against them based on the national security concerns. The decision reserved for another day the question of whether a whistleblower might be allowed to appeal a personnel action under the MSPB's individual right of action appeal authority if the action is based on an adverse security determination.

In an enforcement action that had systemic impact, OSC issued a PPP report that concluded that an agency's procedure to indefinitely suspend employees whose personal reliability certifications had been revoked or suspended constituted a violation of due process. In this case, an employee's certification was temporarily revoked pending an administrative review. During the review, which lasted 13 months, the employee was placed on suspension and denied any salary. At the conclusion of the long review process, the agency determined that the employee's certification should not be revoked and returned him to duty, but without back pay. Because

^a 119 M.S.P.R. 589 (2013)

^b Doc. No. 12-35084

^c 2013 U.S. App. LEXIS 17278 (Aug. 20, 2013)

more than a year had elapsed since the employee had last been certified, the agency required the employee to submit to recertification before returning to work. During the second certification process, the agency failed the employee again. This led to another indefinite suspension while the agency completed its administrative review. At that point, the employee filed a complaint for relief with OSC. Based on clear evidence that the agency's procedures failed to provide any meaningful opportunity for relief, OSC issued a report that recommended a change in the agency's procedures so that revocation of the personal reliability certification did not result automatically in loss of pay. The agency agreed to change its policy to add this protection and it agreed to provide back pay to the employee. Under the amended policy, employees whose certifications are revoked or suspended will be placed on administrative leave pending administrative review.

Protecting the Merit System from Abusive Personnel Practices

Another enforcement area in which OSC is particularly engaged involves the protection of the merit system and the promotion of merit system principles in hiring decisions. In conjunction with Inspectors General and the U.S. Office of Personnel Management, OSC investigates and initiates corrective and disciplinary action for prohibited personnel practices that strike at the heart of the merit system.

Based on a referral from an Inspector General, OSC obtained a suspension against an official who granted an unauthorized preference to the son of a personal friend after he manipulated a competitive examination in order to select the applicant.

Based on a referral from an Inspector General, OSC approved agency-initiated disciplinary actions under the anti-nepotism statute against three officials for failing to prevent a pattern and practice of appointing family members of agency staff for temporary positions. The disciplined officials included the chief of human resources, who received a 50-day suspension and was reassigned to a nonsupervisory position, a deputy director, who was suspended for four days, and a SES-level director, who was reprimanded. The principals who facilitated the hiring of relatives all left the agency through resignations, retirements, or transfers.

Another OSC investigation determined that an official had influenced a subordinate applicant to withdraw from competition for a promotion. OSC issued a PPP report containing its findings. The agency agreed to suspend the offending official for 10 days for his conduct.

Temporary Relief for Whistleblowers

One of the specific remedies available to employees through the OSC complaint process is temporary relief from the immediate consequences of a prohibited personnel practice. OSC has authority to seek stays of personnel actions from the MSPB. While we exercise this authority when required, OSC is often able to obtain agreements to stay personnel actions through informal negotiations with federal agencies.

For the first time, OSC sought stays on behalf of six former employees of a federal agency based on a theory of post-employment harassment. The employees claimed that they had been constructively discharged by their agency after jointly disclosing to the agency ombudsman that their supervisor had altered sensitive health records, breached confidentiality protocols, and abused management discretion by mistreating staff. None of the whistleblowers wanted to return to their old jobs. However, each wanted relief from what they asserted was post-employment harassment. The agency pressed the employees for reimbursement of previously paid relocation bonuses. OSC requested an order from the MSPB to protect these former employees from this debt-collection practice. In an unprecedented decision, the MSPB granted the request in part by ordering the agency to refrain from further seeking repayment of the bonuses. But it protected only the four whistleblowers who could show they were either current federal employees or current applicants for federal employment.

For the first time, OSC intervened on behalf of an employee who faced retaliation for refusing to obey an order that would have required a violation of law. At issue was an agency's decision to place an employee on a six-month geographic detail out of the country, a decision that was certain to cause the employee personal hardship. OSC obtained an order from the MSPB to stay the detail, after which the agency agreed to discontinue it. The employee's refusal followed an order for the employee to enter classified information into a computer network that the employee knew was not sufficiently secured. The employee alleged that his geographic detail was in retaliation for his failure to follow the order.

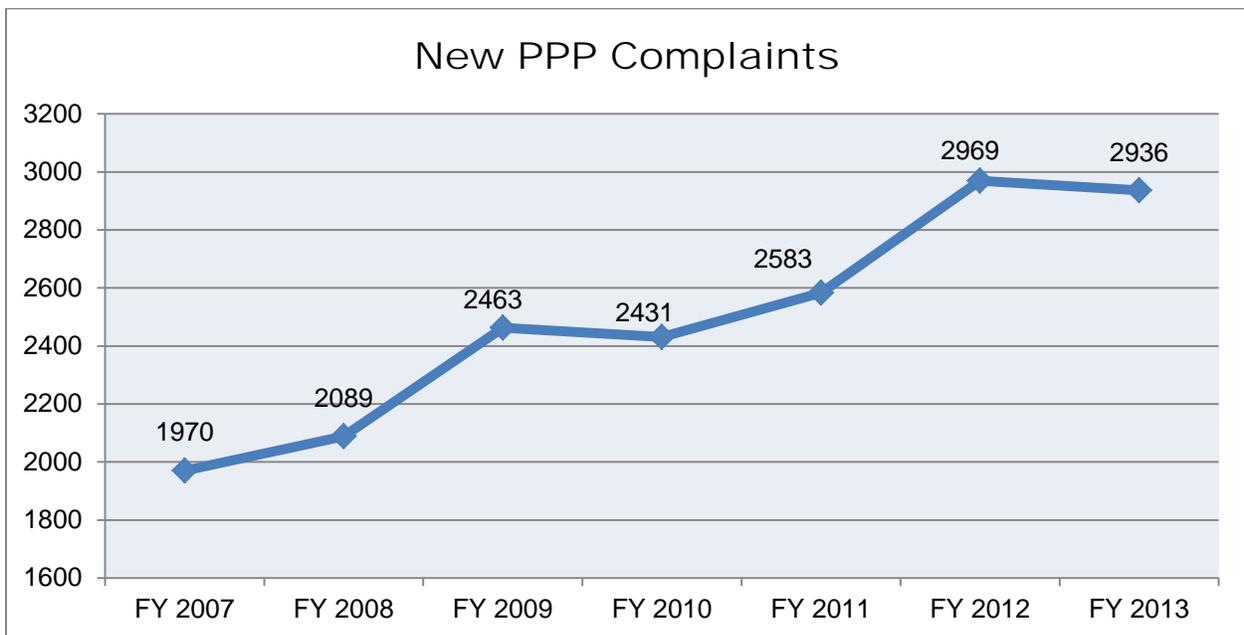


Table 3, below, contains summary data for FY 2012 (with comparative data for the five previous fiscal years) on all favorable actions obtained in connection with OSC’s processing of whistleblower reprisal and other prohibited personnel practice complaints.

TABLE 3 Summary of All Favorable Actions – Prohibited Personnel Practice Complaints ^a								
		FY 2007	FY 2008 ^b	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Total favorable actions negotiated with agencies (all PPPs)	No. of actions ^c	29	58	62	96	84	159	173
	No. of matters	29	33	53	76	65	128	124
Total favorable actions negotiated with agencies (reprisal for whistleblowing)	No. of actions	21	44	35	66	64	112	104
	No. of matters	21	20	29	55	50	95	91
Disciplinary actions negotiated with agencies		5	3	5	13	6	19	27
Stays negotiated with agencies		7 ^d	4 ^e	9	13	12	27	28
Stays obtained from MSPB		3	0	1 ^f	2	4	8	5
Stay extensions obtained from MSPB		N/A	N/A	N/A	N/A	1	1	7
Corrective action petitions filed with the MSPB		1	0	0	0	1	0	2
Disciplinary action complaints filed with the MSPB		0	3	0	0	0	0	0

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

^b In FY 2008, IPD handled 88 PPP complaints, 17 USERRA demonstration project cases, and one Hatch Act case.

^c The number of actions refers to how many corrective actions are applied to the case; the number of matters consists of how many individuals were involved in the original case.

^d Incorrectly reported as 4 in OSC’s FY 2007 report to Congress due to an administrative error.

^e Represents two stays obtained in each of two cases.

^f A revised query now shows this quantity to be one, not zero as previously reported.

PART 4 – ALTERNATIVE DISPUTE RESOLUTION

OSC offers alternative dispute resolution, including mediation, in appropriate cases as an alternative to investigation. Under OSC's Alternative Dispute Resolution Unit, an OSC ADR specialist contacts the parties to discuss the process and offers of mediation. If accepted, pre-mediation discussions are conducted in an effort to help the parties form realistic expectations and well-defined objectives for the mediation process. If mediation resolves the complaint, the parties execute a written, binding settlement agreement. These can result in a range of outcomes, such as an apology, a letter of recommendation, a revised performance appraisal, retroactive promotions, and monetary recoveries, including attorneys' fees reimbursement and lump sum payments. If mediation cannot resolve the complaint, it is referred back to IPD for further investigation.

Mediated Settlements

For the first time, OSC is providing case summaries from our ADR Unit.

Reprisal Complaint after Public Disagreement

A former employee of a government agency alleged a significant change in duties and proposed disciplinary action after publicly expressing disagreements about environmental policies with other senior officials. OSC successfully mediated the complex reprisal complaint, which likely saved the government at least two years of investigation and/or litigation of the matter. As the complaint involved senior officials, mediation also saved the agency from considerable disruption.

Reprisal Complaint after Disclosure

After disclosing a supervisor's misconduct to the Office of Inspector General (OIG), a long-term employee filed a reprisal complaint with OSC against a government agency. The OIG substantiated the complainant's allegations and, thereafter, retaliation by the employee's new supervisor in the form of a low performance evaluation associated with a performance improvement plan (PIP). The parties entered into a settlement agreement that included the withdrawal of the PIP and allowed the employee to retire on a day the employee previously had suggested.

Reprisal after Reporting Agency Culpability

A senior management official claimed retaliation after reporting agency culpability in a safety incident that occurred in a federal building. The situation had drawn media interest and congressional oversight. The employee and agency leadership discussed their differences, brainstormed solutions and reached a collaborative agreement that included flexibility for the employee's next work assignment and a significant monetary settlement. The agency was able to resolve the OSC case and several other related legal matters, and move forward with management reorganization plans.

USERRA Cases Handled by ADR

Position Terminated

A federal employee, who is also a reservist with the Navy, filed a claim of USERRA discrimination. The claimant asserted that the agency terminated the employee's "excepted service" position while the claimant was deployed. The claimant noted that when they signed a Memorandum of Understanding providing that the position was not-to-exceed, their expectation was that the position would be renewed because the agency had done so in the past. The claimant requested relief in the form of reinstatement. The agency asserted that its hands were tied on reinstatement because the funding for the position (which came from another agency) was no longer available. Through mediation, the claimant and the agency brainstormed ideas for a mutually beneficial solution. Settlement was achieved, with the claimant agreeing to withdraw the claim in exchange for the agency arranging to cover the costs of attendance at a week long Career Seminar for Military Personnel, and providing a letter of recommendation and a lump sum to the claimant.

Lack of Training

A federal employee, who is also a reservist with the Army, filed a claim of USERRA discrimination. The claimant alleged that the agency did not provide the training and tools needed to reintegrate the claimant after deployment. As a consequence, work performance suffered, resulting in reprimands and lowered performance evaluations. The claimant and the agency came together and discussed ideas for a mutually beneficial solution. Settlement was achieved, with the claimant agreeing to withdraw the claim in exchange for the agency returning the claimant to work under a different supervisor, providing training and tools for the claimant to do the job, providing the claimant with a new performance plan, establishing a clean performance record, and considering a within grade increase within 30 days of the claimant's return to work.

ADR Automation Initiative in FY 2013

During FY 2013, ADR’s caseload expanded dramatically: ADR conducted 733 percent more mediations and settled 866 percent more mediations than in FY 2010 (a record 29 mediations). ADR expects its caseload to increase even more in FY 2014 and FY 2015. The IT staff is creating new capabilities to track and automate calculations to show real-time case status in ADR.

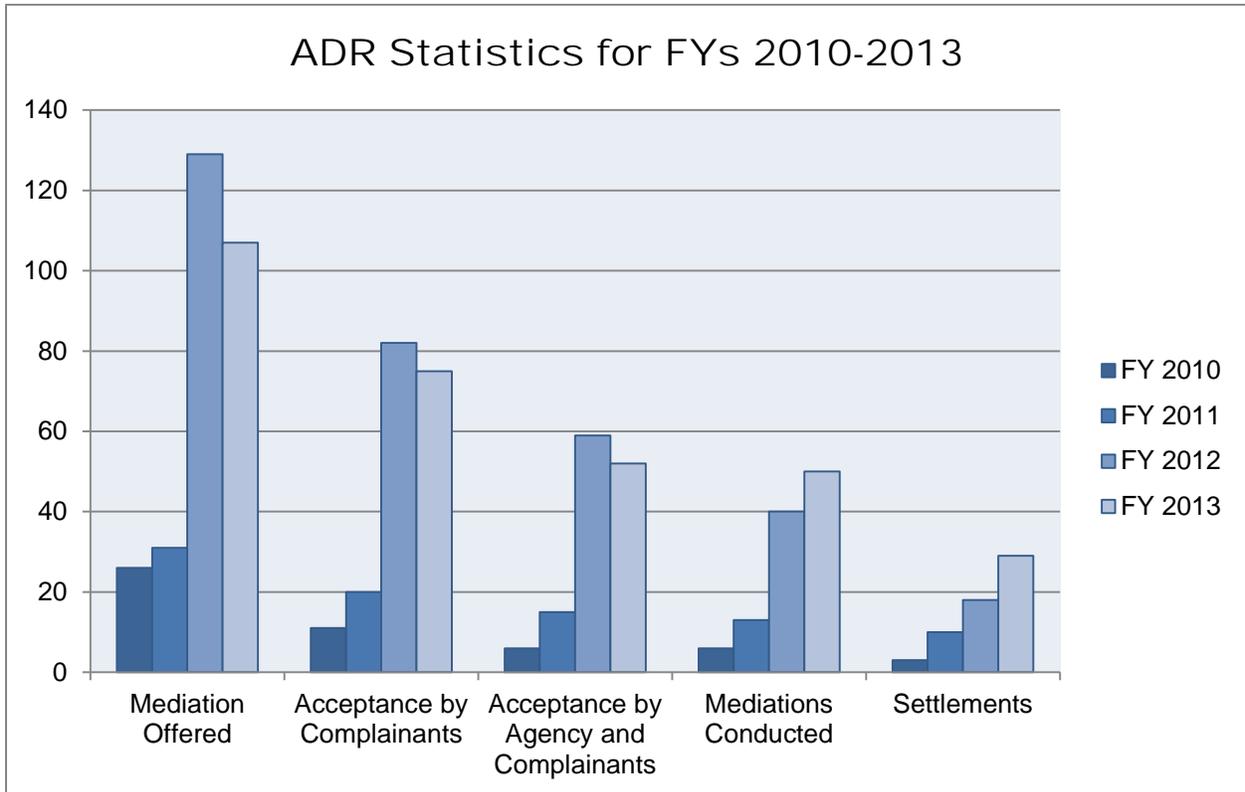


Table 4, below, contains summary data for FY 2013 (with comparative data for the five previous fiscal years) on all mediations OSC offered and completed in response to prohibited personnel practice complaints.

TABLE 4 – ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints & USERRA Complaints							
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Number of cases in which mediation offered after referral from CEU or USERRA plus cases referred from IPD ^a	32	25	28	26	31	129	107
Mediation offers accepted by complainants	21	10	17	11	20	82	75
Mediation offers accepted by agencies and by complainants	12	8	15	6	15	59	52
Number of mediations conducted by OSC ^b	8	7	11	6	13	40	50 ^c
Number of mediations withdrawn by either OSC or the agency after acceptance	2	0	3	0	2	10	6
Number of completed mediations that yielded settlement	4	4	4	3	10	18	29
Percentage of completed mediations that resulted in settlement	50%	57%	36%	50%	77%	60%	62%
Cases in process ^c – carryover from previous fiscal year	N/A	N/A	N/A	N/A	N/A	5	1
Carryover to next fiscal year – in process	N/A	N/A	N/A	N/A	N/A	15	10
Carryover to next fiscal year – offer pending ^d	N/A	N/A	N/A	N/A	N/A	20	7

^a Category includes complaints settled through mediation by OSC (including “reverse-reversals”—i.e., cases referred back to ADR program staff by IPD after investigation had begun, due to the apparent potential for a mediated resolution). Category also includes complaints that entered the initial OSC mediation process and were then resolved by withdrawal of the complaint or through mediation by an agency other than OSC.

^b Includes cases completed or withdrawn after at least one mediation session.

^c “In process” means parties have agreed to mediate, and mediation is scheduled or is ongoing with more than one session.

^d Cases in which OSC will be or is in the process of offering mediation to the parties.

PART 5 – HATCH ACT MATTERS

Overview

Enforcement of the Hatch Act—which protects the civil service against unlawful partisan politics—is another important component of OSC’s mission. OSC investigates complaints and, where appropriate, prosecutes violations, issues advisory opinions in response to requests, and educates the federal workforce and public on the scope of the law.

Summary of Workload, Activity, and Results

The Hatch Act unit had its lowest number of pending complaints ever in FY 2013, 96, compared to 286 in FY 2012, a 66 percent improvement. While reducing the overall backlog of pending complaints, the number of warning letters issued by OSC also increased by 5 percent, and complaints processed and closed increased by 3 percent.

Investigations

OSC enforces compliance by investigating Hatch Act complaint allegations to determine whether disciplinary action is warranted. Upon determining that a violation has occurred, OSC issues a warning letter to the subject, attempts to informally resolve the violation, negotiates a settlement, or prosecutes the case before the MSPB.

Advisory Opinions

OSC is also responsible for a nationwide program that provides federal, state, and local (including D.C.) government employees, as well as the public at large, with legal advice on the Hatch Act to assist in determining whether individuals are covered by the Act and whether their contemplated activities are prohibited. OSC has the unique responsibility of providing Hatch Act information and legal advice to the White House, congressional offices, cabinet members, and senior management officials throughout the federal government, state and local government officials, and the media. The Hatch Act is the only law under which OSC may issue an advisory opinion.

Hatch Act Unit Successes

Some of OSC's significant enforcement results for the year are highlighted below:

Disciplinary Action Obtained Through Settlement Negotiations

OSC successfully resolved seven cases through settlement negotiations this fiscal year. All of the cases involved federal employees who engaged in significant political activity while on duty in the federal workplace. One of the cases involved an employee who invited others to a partisan political fundraiser. The settlements all resulted in the employees receiving either a letter of reprimand or suspensions without pay as disciplinary actions for their violations.

Merit Systems Protection Board Litigation

OSC filed two Hatch Act cases with the Merit Systems Protection Board this fiscal year. Both cases involved federal employees, one of whom is a Postal Service employee. Both of them ran for partisan political office and continued to do so despite being warned by OSC that their candidacies violated the Hatch Act and could result in disciplinary action. Through settlement negotiations, the one federal employee in one case agreed to accept a 180-day suspension without pay. In the other case, the Administrative Law Judge found that the Postal Service employee violated the Hatch Act and should be removed from the Postal Service. The Board is considering a petition for review filed in that case.

Implementation of the Hatch Act Modernization Act of 2012

The Hatch Act Modernization Act of 2012 (HAMA) modified the penalty provision of the Act to provide a range of possible disciplinary actions for federal employees. It also narrowed the category of state and local government employees prohibited from running for partisan political office; now it prohibits only those employees whose salary is entirely federally funded. Lastly, it changed the status of Washington, D.C., government employees by including them in the prohibitions on state and local employees, rather than treating them as federal employees. After HAMA went into effect, OSC issued a series of advisory opinions informing employees of the changes to the law and advising them on HAMA's application.

Hatch Act Unit Outreach

OSC conducts outreach presentations to educate federal, D.C., and state and local employees about the prohibitions of the Hatch Act. In fiscal year 2013, OSC conducted these training sessions and familiarized employees with the law, conducting 11 outreach presentations.

Table 5, below, contains FY 2013 summary data (with comparative data for the six previous fiscal years) on OSC's Hatch Act enforcement activities.

TABLE 5 – Summary of Hatch Act Complaint and Advisory Opinion Activity								
	FY 2007	FY 2008 ^a	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	
Formal written advisory opinion requests received	194	292	227	351	283	257	107	
Formal written advisory opinions issued	176	275	226	320	335	262	129	
Total advisory opinions issued ^b	2,598	3,991	3,733	4,320	3,110	3,448	1,767	
New complaints received ^c	282	445	496	526	451	503	277	
Complaints processed and closed	252	264	388	535	635	449	465	
Warning letters issued	68	70	132	163	164	142	150	
Corrective actions taken by cure letter recipients	Withdrawal from partisan races	18	13	15	28	23	5	5
	Resignation from covered employment	6	17	6	26	16	2	2
	Other	1	2	3	1	5	4	4
	<i>Total</i>	25	32	24	55	44	11	11
Disciplinary action complaints filed with MSPB	1	3	10	7	3	0	2	
Disciplinary actions obtained (by negotiation or ordered by MSPB)	5	11	5	10	5	4	7	
Complaints pending at end of fiscal year	142	323	430	422	233	286	96	

^a Numbers revised for fiscal years 2005-2008 based upon a new query which includes disciplinary actions obtained in both negotiated Hatch Act settlements and litigated Hatch Act cases, not just litigated cases, as in past reports.

^b All oral, e-mail, and written advisory opinions issued by OSC.

^c Includes cases that were reopened.

PART 6 – WHISTLEBLOWER DISCLOSURES

Overview

OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may disclose violations of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. Many disclosures involve complex and highly technical matters unique to an agency's or whistleblower's duties, such as disclosures about aviation safety, engineering issues, and impropriety in federal contracting.

Upon receipt of a disclosure, Disclosure Unit (DU) attorneys review the information to evaluate whether there is a "substantial likelihood" that the information discloses one or more of the categories of wrongdoing described in 5 U.S.C. § 1213. If it does, the Special Counsel is required by § 1213(c) to send the information to the head of the agency for an investigation. If the whistleblower consents, his or her name is provided to the agency as the source of the information. If the whistleblower does not consent, the agency is notified that the whistleblower has chosen to remain anonymous. (The Special Counsel may also make discretionary referrals to the heads of agencies in certain circumstances.)

Upon receipt of a § 1213(c) referral from the Special Counsel, the agency head is required to conduct an investigation and promptly issue a report to the Special Counsel describing the agency's findings. The whistleblower has the right to review and comment on the report. The DU and Special Counsel review the report to determine whether the agency's findings appear to be reasonable. The Special Counsel then sends the agency report, any comments by the whistleblower, and any comments or recommendations by the Special Counsel, to the President and congressional oversight committees for the agency involved. A copy of the agency report and any comments on the report are placed in OSC's public file.

Summary of Workload, Activity, and Results

During FY 2013, the number of disclosures processed and closed increased 8 percent, and the number of disclosures substantiated in whole or in part increased by 58 percent. A number of those referred by OSC for further action are highlighted below.

Disclosure Unit Successes

Improper Maintenance of Reusable Medical Equipment

A Department of Veterans Affairs (VA) investigation substantiated the whistleblower's allegation that Continuous Positive Air Pressure (CPAP) machines were put into service in the Overton Brooks VA Medical Center, Shreveport, Louisiana, without maintenance and safety inspections despite a policy requiring the inspection of medical equipment prior to use. In its initial report, the Office of the Medical Inspector (OMI) concluded that the equipment was not properly inspected but did not find that a violation of law, rule, or regulation occurred. The investigation also found that it was likely that biologic filters were not used in the home-use CPAP machines, thus creating a potential risk in converting home-use CPAP machines to hospital inpatient use. The supplemental report clarified the agency's findings and stated that the Medical Center's handling and management of the CPAP machines violated Veterans Health Administration (VHA) Directives 2009-004 and 2009-031 requiring medical facilities to develop and follow standard operating procedures for the proper maintenance of reusable medical equipment. The OMI also concluded that the failure to conduct the biomedical safety and maintenance checks did not result in a substantial and specific danger to public health and safety to patients. Finally, after review and consideration of the investigative findings, the Medical Center removed from service all CPAP machines initially distributed for home use and discontinued the program. The Special Counsel determined that the reports contain all of the information required by statute and the findings appear to be reasonable. *Referred in February 2011; closed and transmitted to the President and congressional oversight committees in December 2012.*

Improper Accessing of Medical Records

On August 30, 2011, OSC requested that the VA conduct an investigation based on information provided by two whistleblowers employed at the Boston Healthcare System, Brockton Division, Business Office, Brockton, Massachusetts. The whistleblowers alleged that three Brockton administrative employees improperly accessed an employee's medical records, in violation of agency policy.

The agency did not substantiate the whistleblowers' allegations, finding that the three administrative employees had valid work-related reasons to access the employee's records. However, the agency failed to provide documentation to support these findings, and failed to reasonably account for access that occurred on several dates identified by the employee. In their comments, both whistleblowers called the agency's findings into question and reasserted that the subject employees did not have valid reasons to view the medical records.

OSC reviewed the original disclosures, the agency's reports, and the whistleblowers' comments. Based on that review, OSC found the agency's report lacked responsive, adequate explanations for the repeated accessing of the employee's records, and that as a result, the report was deficient and not reasonable. *Referred in August 2011; closed and transmitted to the President and congressional oversight committees in February 2013.*

Accounting Irregularities

OSC received disclosures about financial improprieties from a whistleblower who was an accountant with the Cleveland VA Medical Center (VAMC), Fiscal Department and North Central Consolidated Patient Account Center (CPAC), Cleveland, Ohio. The whistleblower alleged that employees improperly transferred funds from suspense accounts to permanent accounts in violation of federal and agency regulations in order to hide the VA's failure to reconcile suspense funds. She also disclosed that employees failed to properly track payments made to the agency resulting in misleading financial records.

The agency reports substantiated the allegations. The Department of the Treasury requires federal agencies to classify payments and collections properly. According to the Department of the Treasury Financial Manual, Volume I, Part 2, Chapter 1520.25 (Clearing Accounts), suspense funds may be used to temporarily hold unidentified collections with the expectation that these funds will be cleared within 60 days. VA policy requires that employees must make all efforts to research and clear unapplied deposit items (suspense funds) prior to 60 days from receipt. The failure to reconcile deposits in a timely manner weakens the agency's financial reports and increases the risk of fund mismanagement. The investigation revealed, however, that the errors were strictly accounting errors and did not rise to criminal wrongdoing, such as a misappropriation of funds or theft. The agency report added that only the whistleblower and the VAMC's Chief Financial Officer were able to correctly describe the procedures for transfers from suspense accounts to permanent accounts. In the supplemental report, the agency confirmed that investigators had identified \$37,163 in accounting errors.

As a result of these determinations, VA has taken several steps to address these issues in order to ensure the integrity of the financial records. Specifically, employees conducted journal voucher reviews, identified accounting errors, and corrected them. Proper accounting training was also provided to the VAMC and CPAC accounting staff.

Furthermore, VAMC issued an admonishment to the Accounting Section chief, who resigned effective May 2012, and to the former accounts receivable supervisor, who was reassigned to another VAMC position. The agency report found that these two individuals were responsible for ensuring the proper justification to transfer funds from suspense accounts to permanent accounts. The Special Counsel determined that the agency's reports contained all the information required by statute and that the findings appeared reasonable. *Referred in January 2012; closed and transmitted to the President and congressional oversight committees in November 2012.*

Faulty Laboratory Policies and Procedures

OSC requested that the VA conduct an investigation based on information provided by a whistleblower employed at the San Francisco VA Medical Center (VAMC), San Francisco, California. The whistleblower, a laboratory technician, alleged that urine samples at the San Francisco VAMC were improperly handled.

The agency report did not conclude that employees at the San Francisco VAMC engaged in conduct that constituted gross mismanagement or a substantial and specific danger to public health and safety. The investigation also did not substantiate the allegations that lab technicians routinely stored urine samples in an unsafe manner, that the means of disposal of samples was unsafe, or that disposal was accomplished without the use of personal protective equipment. The agency was also unable to substantiate the allegation that management was aware of these concerns and failed to take action. However, the agency determined that the San Francisco VAMC lab lacked a written policy manual or documentation of employee training on the proper methods of storage and disposal of urine samples. In its report, the agency found that the lab was not in compliance with its own local policy requiring refrigeration of urine samples, nor was it in compliance with local and national policies on the procedure for documenting the time of sample collection. The agency also found that lab employees did not have a consistent definition for the criteria necessary to reclassify a sample as medical waste. In response, the agency recommended that the San Francisco VAMC lab take steps to improve its process for receiving and storing samples, including refrigeration of samples immediately after testing and additional training for staff. OSC found that the agency's reports contained all of the information required by statute and that the findings appeared to be reasonable. *Referred November 2011; closed and transmitted to the President and congressional oversight committees in February 2013.*

Regulatory Non-Compliance

OSC requested that the VA conduct an investigation based on information provided by a whistleblower employed at the Canandaigua VA Medical Center (VAMC), in Canandaigua, New York. The whistleblower, a police officer at the Canandaigua and Bath VAMCs, alleged that the chief of the Police Service at the Canandaigua and Bath VAMCs, directed the whistleblower to improperly issue Personal Identity Verification (PIV) cards. Specifically, the whistleblower disclosed that the police chief ordered him to enter PIV-required employee information into the VA PIV System and issue PIV cards prior to completion of his own background check and without proper training. He further disclosed that the chief directed the Bath VAMC assistant chief to enter the whistleblower's employee and personal information into VA and Department of Justice computer systems under a false badge number to enable him to issue PIV cards.

In its report, the agency stated that it was unable to substantiate the whistleblower's allegations regarding the improper issuance of PIV cards. However, the agency did find that the Bath VAMC lacked a standard policy governing the retention of employee PIV training records. The report stated that the Bath VAMC was not in compliance with regulatory requirements regarding such records. The agency recommended that a compliant record retention policy be put in place for PIV training employee records. OSC determined that the agency's report contained all the information required by statute and the agency's findings appeared to be reasonable. *Referred March 2012; closed and transmitted to the President and congressional oversight committees in December 2012.*

Improper Records Maintenance

The whistleblowers, four medical record technicians at the VA Western New York Healthcare System (WNYHS), Health Information Management System Department (HIMS), Buffalo, New York, alleged that the HIMS Department managers engaged in conduct that may constitute violations of law, rule, or regulation and gross mismanagement. The agency report substantiated the majority of the whistleblowers' allegations. Specifically, the investigation confirmed the whistleblowers' allegation that VA records at both the Buffalo and Batavia sites of WNYHS were not maintained in accordance with the requirements for records management as defined by the National Archives and Records Administration (NARA). The investigation further substantiated the whistleblowers' allegation that the HIMS manager authorized the transfer of 227 boxes of records to the VA Records Center & Vault in Neosho, New York (Neosho RC&V), five of which were damaged by water and mildew. The report recommended numerous steps, including the development of a strategic plan for the creation of an effective records management program that allows the facility to properly create, maintain, and dispose of records in accordance with VA Directives and the Code of Federal Regulations. In addition, a letter of counseling was issued to the HIMS Manager. The Special Counsel found that the report contained all of the information required by statute and that the findings were reasonable. *Referred May 2012; closed and transmitted to the President and congressional oversight committees in April 2013.*

Mishandling of Prescription Drugs at VA Pharmacy

The whistleblower alleged that employees of the West Palm Beach VA Medical Center, Outpatient Pharmacy, violated VA and Food and Drug Administration (FDA) rules and regulations by failing to properly dispose of prescription drugs that were returned to the pharmacy. The whistleblower also reported that employees retained and restocked prescription drugs that were returned to the pharmacy as a means of managing and reconciling the pharmacy inventory. According to the whistleblower, the restocking of previously dispensed prescription drugs created a substantial and specific danger to public health and safety as the potential existed that the drugs may have been contaminated or otherwise adulterated while outside the custody of the pharmacy.

The agency's report fully substantiated the allegations, finding that employees restocked and re-dispensed prescription drugs, improperly reconciled the inventory using returned and restocked drugs, and violated Veterans Health Administration Handbook regulations, medical center policies, and FDA compliance guides by failing to destroy previously dispensed and returned drugs. Corrective actions recommended by the agency report included halting the practice of restocking and re-dispensing medications, the development of a system to track the chain of custody of returned drugs, and training in controlled substance management. Finally, the report recommended that consideration be given to disciplinary and/or other administrative action with respect to the employees deemed responsible. Subsequent communications between OSC and agency officials indicated that the corrective actions recommended by the report were implemented and that disciplinary actions ranging from three-to five-day suspensions were proposed against four agency employees deemed responsible for the wrongdoing. The Special

Counsel determined that the report contained all of the information required by statute and that the findings appeared to be reasonable. *Referred December 2012; closed and transmitted to the President and congressional oversight committees in September 2013.*

Table 6 below contains FY 2013 summary data (with comparative data for the six previous fiscal years) on the receipt and disposition of whistleblower disclosure cases.

TABLE 6 – Summary of Whistleblower Disclosure Activity – Receipts and Dispositions ^a								
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	
Pending disclosures carried over from prior fiscal year	69	84	128	125	83	132	225	
New disclosures received	482	530	724	961	928	1,148	1,128	
<i>Total disclosures</i>	<i>551^b</i>	<i>614</i>	<i>852</i>	<i>1,086</i>	<i>1,011</i>	<i>1,280</i>	<i>1,353</i>	
Disclosures referred to agency heads for investigation and report	42	40	46	24	47	39	51	
Referrals to agency IGs	11	9	10	2	5	6	2	
Agency head reports sent to President and Congress	20	25	34	67	22	36	54	
Results of agency investigations and reports	Disclosures substantiated in whole or in part	19	22	30	62	21	31	49
	Disclosures unsubstantiated	1	3	4	5	1	5	5
Disclosure processing times	Within 15 days	285	256	394	555	555	583	569
	Over 15 days	182	232	333	451	315	470	570
Percentage of disclosures processed within 15 days	61%	52%	54%	55%	63%	55%	49%	
Disclosures processed and closed	467	488	727	1,006	870	1,053	1,139	

^a Many disclosures contain more than one allegation. This table, however, records each whistleblower disclosure as a single matter, even if multiple allegations were included.

^b Incorrectly reported as 599 in OSC's FY 2007 report to Congress

PART 7 – USERRA ENFORCEMENT

Overview

USERRA protects the civilian employment and reemployment rights of those who serve in the Armed Forces, including the National Guard and Reserves, and other uniformed services. USERRA is intended to encourage non-career military service and to minimize the disruption to the lives of those who serve by ensuring that such persons: (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty, with full benefits and seniority, as if they had never left; and (3) are not discriminated against in employment (including initial hiring, promotion, retention, or any benefit of employment) based on past, present, or future uniformed service. The law applies to federal, state, local, and private employers.

Congress intends for the federal government to be a “model employer” under USERRA, and OSC is committed to helping fulfill that goal. In furtherance of that effort, OSC plays a critical role in enforcing USERRA by providing representation before the MSPB, when warranted, to service members whose complaints involve federal executive agencies. OSC also endeavors to informally resolve USERRA complaints. Finally, OSC provides USERRA outreach and training to the federal community and technical assistance to employers and employees with USERRA questions via telephone and email hotlines.

Under a three-year Demonstration Project that began in FY 2011 (described further below), OSC’s role was dramatically expanded to include receiving, investigating, and resolving approximately 137 additional USERRA cases per year.

Referral Process

By law, a person alleging a USERRA violation by a federal executive agency may file a complaint with the Veterans’ Employment and Training Service (VETS) at the U.S. Department of Labor. VETS must investigate and attempt to resolve the complaint. If VETS cannot resolve the complaint, the person may direct VETS to refer it to OSC for possible representation before the MSPB. If, after reviewing the complaint and investigative file, OSC is reasonably satisfied that the person is entitled to relief under USERRA, OSC may act as his or her attorney and initiate an action before the MSPB.

Summary of Workload, Activity, and Results

Corrective Action

There was a 25 percent corrective action rate for Demonstration Project cases in FY 2013. In addition, there were two referrals in FY 2013 that resulted in corrective action taken.

Referrals Pending at End of Fiscal Year

These decreased 45 percent, from 11 in FY 2012, to 6 in FY 2013.

USERRA Unit Successes

OSC is playing a central role in ensuring that the federal government upholds its responsibility to be a “model employer” under USERRA, especially with so many military personnel returning from Afghanistan and Iraq. The following are examples of individual corrective actions obtained by OSC for service members in FY 2013:

Loss of Career Advancement

The claimant was a member of the Army Reserve and also served as a police officer with the Department of the Army. While deployed, the claimant’s position description was changed, resulting in promotions for colleagues. Upon the claimant’s return from active duty, however, the claimant was not placed into the new position description, nor promoted like colleagues. After OSC intervened, the agency agreed to: (1) promote the claimant to a higher grade, retroactive to the date of promotion, absent performing active duty; (2) provide the claimant with the back pay associated with the retroactive promotion; and (3) place the claimant in the correct position description and command structure with colleagues.

Initial Hiring Discrimination

The claimant was a Marine deployed overseas who was tentatively selected for a nuclear transport courier position with the Department of Energy. However, the tentative selection was withdrawn when the claimant was unable to complete a required drug test within 30 days of being notified to do so, due to overseas deployment. OSC contacted the agency, which agreed to: (1) restore the claimant’s tentative selection for the nuclear transport courier position; and (2) reschedule the claimant for pre-employment drug testing so that the employment process could proceed.

Problems with Military Leave

The claimant was a member of the Air National Guard and a police officer with the Department of Veterans Affairs, and indicated that agency officials refused to allow claimant to use paid leave for military duty and failed to provide claimant adequate notice of transfers to different shifts or duty locations. After OSC became involved, the agency agreed to permit the claimant to use paid leave for future military duty, provide the claimant with better notice of changes to schedule, and arrange for USERRA training at the claimant’s work facility.

Lowered Performance Appraisal

The claimant was an Army Reservist and special agent with the Bureau of Alcohol, Tobacco, and Firearms who believed that, due to military obligations, he or she received a lower performance rating and award than would otherwise have been the case. OSC investigated and found evidence supporting the claimant's allegations. At OSC's request, the agency conducted a review of the claimant's performance appraisal, made revisions, and gave the claimant an additional performance award to recognize his or her accomplishments.

USERRA Demonstration Project

The Veterans' Benefits Act of 2010, established a new 36-month Demonstration Project under which OSC receives, investigates, and attempts to resolve more than half of all USERRA complaints against federal executive agencies filed with VETS. (OSC also continues to receive cases from VETS under the referral process described above.) A similar project occurred from 2005-2007. GAO will evaluate and compare the performance of OSC and VETS during the project and report its findings and recommendations to Congress. OSC began receiving USERRA cases under the Project on August 9, 2011.

Outreach and Education

During FY 2013, OSC worked to ensure that the federal government is a "model employer" under USERRA by (1) conducting USERRA training for federal agencies and at national conferences; (2) briefing veterans service organizations about OSC's USERRA program; and (3) providing technical assistance to service members and their employers through its telephone and e-mail USERRA questions hotlines.

Table 7 and **Table 8**, below, contain FY 2013 summary data with comparative data and disposition of USERRA referral cases, and demonstration project cases, respectively.

TABLE 7 ^a – Summary of USERRA Referral and Litigation Activity							
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Pending referrals carried over from prior fiscal year	3	3	5	7	12	17	11
New referrals received from VETS during fiscal year	4	15	41	32	36	24	7
Referrals closed	4	13	39	27	31	30	12
Referrals closed with corrective action	0	2	4	0	2	4	2
Referrals closed with no corrective action	4	11	35	27	29	26	10
Referrals pending at end of fiscal year	3	5	7	12	17	11	6
Litigation cases carried over from prior fiscal year	0	1	1	1	1	0	0
Litigation cases closed	0	1	0	1	1	0	0
Litigation closed with corrective action	0	0	0	1	1	0	0
Litigation closed with no corrective action	0	1	0	0	0	0	0
Litigation pending at end of fiscal year	1	1	1	1	0	0	0

TABLE 8 – Summary of USERRA Demonstration Project Activity			
	FY 2011	FY 2012	FY 2013
Pending cases carried over from previous fiscal year	N/A ^b	28	88
New cases opened	29	152	137
Cases closed	1	92	154
Closed cases where corrective action was obtained	0	24	38
Closed cases where no corrective action was obtained	1	68	116
Pending cases at end of fiscal year	28	88	71

^a This table has been reorganized, with some categories and figures changed from prior reports, to correct discrepancies and more clearly present relevant information.

^b OSC began receiving cases under this USERRA Demonstration Project on August 9, 2011.

PART 8 – OUTREACH

Outreach Program

The Outreach Program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c) and the requirements of the White House's 2013 second Open Government National Action Plan (NAP). Section 2302(c) requires that federal agencies inform their workforce about the rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the Whistleblower Protection Act and Whistleblower Protection Enhancement Act. The White House's second NAP mandates agencies' participation in OSC's Section 2302(c) Certification Program.

OSC's five-step program, initiated in FY 2002, allows agencies to meet both the statutory and White House mandates. The program gives agencies guidance and provides easy-to-use methods and training resources to assist agencies in fulfilling their statutory obligations. Agencies that complete the program receive a certificate of compliance from OSC.

In an effort to promote OSC's mission and programs, OSC provides formal and informal outreach sessions, including making materials available on the agency web site. During FY 2013, OSC employees spoke at over 64 events nationwide.

OSC also informs the news media and issues press releases when it resolves an important whistleblower disclosure matter, files a significant litigation petition, or achieves significant corrective or disciplinary action through settlement. Many of these cases generate considerable press coverage, contributing to federal employees' and managers' awareness about the merit system protections enforced by OSC.

Annual Survey Program

Each year, OSC surveys persons who have contacted the agency for assistance during the previous fiscal year.⁷ Complainants in prohibited personnel practice cases closed during FY 2013, claimants in USERRA demonstration project matters closed during FY 2013, and recipients of formal Hatch Act advisory opinions during that year were invited to participate in the survey.

The prohibited personnel practice and USERRA surveys sought the following information: (1) whether potential respondents were fully apprised of their rights; (2) whether their claim was successful at OSC or at the MSPB; and (3) whether, successful or not, were they satisfied with the service received from OSC.

Due to the low response rate, typically 15 percent, and lack of geographic diversity among respondents, these results may not be representative samples. OSC is considering ways to improve our response rates and measure nonresponse bias in order to increase the utility of the survey.

FURTHER INFORMATION

Prohibited Personnel Practices

Individuals with questions about prohibited personnel practices not answered on the agency website can contact the Officer of the Week at:

Complaints Examining Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: 1 (800) 872-9855
(202) 254-3630
Fax: (202) 653-5151

There are two ways to file a prohibited personnel complaint with OSC, on paper or electronically. A complaint can be filed electronically with OSC (<https://www.osc.gov/oscefile/>). Alternatively, if filing on paper, please use Form OSC-11, which is available online (http://www.osc.gov/RR_OSCFORMS.htm) and can be filled out online, printed, and mailed or faxed to the address above.

ADR Unit

Questions about mediation under OSC's ADR Program not answered on the agency website should be directed to:

Alternative Dispute Resolution Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: (202) 254-3600
Email: adr@osc.gov

Hatch Act Unit

Our website has additional information about the Hatch Act, including frequently asked questions by federal, state and local government employees, and selected OSC advisory opinions on common factual situations. Requests for other advice about the Hatch Act can be made by contacting:

Hatch Act Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: 1 (800) 85-HATCH
 1 (800) 854-2824
 (202) 254-3650
Fax: (202) 653-5151
Email: hatchact@osc.gov

Complaints alleging a violation of the Hatch Act can be made by using Form OSC-13. The form is available online (http://www.osc.gov/RR_OSCFORMS.htm) and can be filled out online, printed, and mailed or faxed to the address above.

Whistleblower Disclosure Unit

Information about reporting a whistleblower disclosure to OSC in confidence is available on the agency website, or at:

Disclosure Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: 1 (800) 572-2249
 (202) 254-3640
Fax: (202) 653-5151

A disclosure can be filed electronically with OSC (<https://www.osc.gov/oscefile/>). Alternatively, Form OSC-12 can be used to file a disclosure with OSC. The form is available online (http://www.osc.gov/RR_OSCFORMS.htm) and can be filled out online, printed, and mailed or faxed to the address above.

USERRA Unit

The OSC website has additional information about USERRA, including a link to the complaint form issued by VETS for use by claimants. Questions not answered on the web site about OSC's role in enforcing the act may be directed to:

USERRA Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: (202) 254-3600
Email: userra@osc.gov

Outreach Program

Many OSC forms and publications are available in the “Reading Room” section of the agency website. Questions not answered on the agency website about OSC outreach activities and availability of OSC publications should be directed to:

Director of Outreach

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: (202) 254-3600
Fax: (202) 653-5151

Policy and Congressional Affairs

This and other OSC reports to Congress are available in the “Reading Room” section of the agency website. Subject to availability, copies of these reports can be requested by writing or contacting:

Office of Policy and Congressional Affairs

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Telephone: (202) 254-3600
Fax: (202) 653-5161

*For callers with hearing and/or speech disabilities, all OSC telephone numbers listed in this section may be accessed using TTY by dialing the Federal Relay Service at:
1 (800) 877-8339*

APPENDICIES

APPENDIX A

SURVEY TOTALS —*and*— RESPONSE SOURCES FY 2013

SURVEY TOTALS

FY 2013	
Number mailed.	3,040
Number returned.	281
Response rate.	9.2%

Response Source by Type of Matter at OSC

1. What was the nature of your correspondence to OSC? (Please choose only one)	
<u>Response options</u>	FY 2013
You filed a complaint concerning a prohibited personnel practice.	241
You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity).	24
Your case involved a USERRA complaint.	16

APPENDIX B
 PPP COMPLAINTS RESPONSES
 —for—
 FY 2013

1. Did the agency against which you filed the complaint inform you about your rights and responsibilities with regard to prohibited personnel practices?

<u>Response options</u>	FY 2013
Yes.	62
No.	148
Do not recall.	30
Never employed by a federal agency.	1

2. Did you obtain the result that you wanted from OSC?

<u>Response options</u>	FY 2013
Yes.	13
No.	228

3. Did your complaint include any allegation of reprisal for whistleblowing?

<u>Response options</u>	FY 2013
Yes.	130
No.	98

4. What reason did OSC give for closing any reprisal for whistleblowing allegation in your complaint without obtaining the result that you desired? (Check all that apply.)

<u>Response options</u>	FY 2013
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.	10
No personnel action taken by the agency involved.	19
Information that you disclosed did not appear to be a legally protected disclosure.	19
Your disclosure occurred after the personnel action involved in your complaint.	1
Insufficient proof that the agency official (who took the personnel action against you) knew about your disclosure.	14
Insufficient proof of connection between your disclosure and the personnel action involved in your complaint.	22
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	6
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation.	28
You or OSC settled the matter with the agency involved.	0
You declined corrective action offered by the agency involved.	0
You notified OSC that you had filed or would file an Individual Right of Action (IRA) or other appeal with the Merit Systems Protection Board (MSPB).	9
You withdrew your complaint.	1
Other.	59
Do not recall.	18

5. Did you file an Individual Right of Action or other appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?

<u>Response options</u>	FY 2013
Yes.	65
No.	150
Have not decided whether to file.	13

6. Did you ask for the same relief that you sought from OSC?

<u>Response options</u>	FY 2013
Yes.	57
No.	4
Do not recall.	4

7. Were you successful at the MSPB in obtaining the same result that you sought from OSC?	
<u>Response options</u>	FY 2013
Yes.	3
Partially.	3
No.	26
Appeal pending.	25

8. If the answer to the previous question was "yes" or "partially," how did you obtain the result?	
<u>Response options</u>	FY 2013
Settlement.	5
Decision after hearing.	0
Other.	1

9. What reason did OSC give for closing your complaint without obtaining the result that you desired? (Check all that apply)	
<u>Response Options</u>	FY 2013
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.	12
No personnel action taken by the agency involved.	12
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	5
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation.	39
You or OSC settled the matter with the agency involved.	0
You declined corrective action offered by the agency involved.	0
You withdrew your complaint.	2
OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action.	3
OSC obtained a decision in the corrective action proceeding filed with the MSPB.	1
Closed for further action on discrimination allegations through EEO processes.	5
Resolved through OSC's Mediation Program.	0
Other.	29
Do not recall.	5

10. How would you rate the service provided by OSC in the following areas?

<u>Response Options</u>	FY 2013				
	Very satisfied	Satisfied	No opinion /inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	28	42	37	39	96
Clarity of oral communications.	20	25	43	50	104
Clarity of written communications.	20	24	24	61	113
Timeliness.	17	43	29	44	109
Results.	9	4	9	35	185

APPENDIX C

FORMAL HATCH ACT ADVISORY OPINIONS —*for*— FISCAL YEAR 2013

1. As a result of our written advisory opinion given to you concerning the proposed political activity, what was the impact?

<u>Response Options</u>	FY 2013
The OSC opinion advised that the person in question was free to carry out his or her planned political activity.	10
The OSC opinion advised that the person in question should not continue his or her planned political activity.	3
The OSC opinion was in response to a general question concerning the application of the Hatch Act.	3
Other.	8

2. How would you rate the service provided by OSC in the following areas?

<u>Response Options</u>	FY 2013				
	Very satisfied	Satisfied	No opinion /inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	10	5	2	3	4
Clarity of written communications.	8	8	1	4	3
Timeliness.	7	6	3	1	7
Results.	7	7	1	3	6

APPENDIX D

USERRA UNIT
SURVEY RESPONSES
—*for*—
FISCAL YEAR
2013

1. Did the agency against which you filed the complaint inform you about your rights and remedies with regard to USERRA?	
<u>Response options</u>	FY 2013
Yes.	2
No.	10
Do not recall.	4
Never employed by a federal agency.	0

2. Did you obtain the result that you wanted from OSC?	
<u>Response options</u>	FY 2013
Yes.	3
No.	13

3. What reason did OSC give for closing your USERRA case? (Check all that apply.)	
<u>Response options</u>	FY 2013
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.	4
Insufficient evidence that the personnel action involved in your complaint violated USERRA.	3
You or OSC settled the matter with the agency involved.	1
You declined corrective action offered by the agency involved.	1
You withdrew your complaint.	1
Other.	4
Do not recall.	2

4. Did you file a USERRA appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?

<u>Response options</u>	FY 2013
Yes.	4
No.	4
Do not recall.	5

5. Did you ask for the same relief that you sought from OSC?

<u>Response options</u>	FY 2013
Yes.	4
No.	0
Do not recall.	0

6. Were you successful at the MSPB in obtaining the same result that you sought from OSC?

<u>Response options</u>	FY 2013
Yes.	0
Partially.	0
No.	1
Appeal pending.	3

7. If the answer to the previous question was "yes" or "partially," how did you obtain the result?

<u>Response options</u>	FY 2013
Settlement.	0
Decision after hearing.	0
Other.	0

8. How would you rate the service provided by OSC in the following areas?

<u>Response Options</u>	FY 2013				
	Very satisfied	Satisfied	No opinion /inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	2	4	1	2	7
Clarity of oral communications.	2	3	1	3	7
Clarity of written communications.	2	3	0	2	9
Timeliness.	1	2	1	4	8
Results.	1	3	0	1	11

APPENDIX E LIST OF ACRONYMS USED IN REPORT

ADR	Alternative Dispute Resolution
ATSA	Aviation and Transportation Security Act
AWOL	Absent Without Leave
CEU	Complaints Examining Unit
DHS	Department of Homeland Security
DOD	Department of Defense
DOL	Department of Labor
DOT	Department of Transportation
DU	Disclosure Unit
EEO	Equal Employment Opportunity
FAA	Federal Aviation Administration
HAU	Hatch Act Unit
IG	Inspector General
IOSC	Immediate Office of the Special Counsel
IPD	Investigation and Prosecution Division
MOU	Memorandum of Understanding
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
OPF	Official Personnel Folder
OPM	Office of Personnel Management
OSC	Office of Special Counsel
PPP	Prohibited Personnel Practice
SES	Senior Executive Service
TRACON	Terminal Radar Approach Control
TSA	Transportation Security Administration
USERRA	Uniformed Services Employment and Reemployment Rights Act
VA	Department of Veterans Affairs
VETS	Veterans' Employment and Training Service
WPA	Whistleblower Protection Act
WPEA	Whistleblower Protection Enhancement Act

APPENDIX F

ENDNOTES

¹Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.

²Unless noted otherwise, all references after this to prohibited personnel practice complaints or cases handled by OSC include matters that alleged other violations of law also within the agency's jurisdiction under 5 U.S.C. § 1216, except violations of the Hatch Act.

³An individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action, pending investigation of the action by OSC. If the Special Counsel has reasonable grounds to believe that the action resulted from a prohibited personnel practice, OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, OSC may then ask the MSPB to stay the action.

⁴Public Law No. 107-71 (2001).

⁵ See endnote 3.

⁶The 13 prohibited personnel practices are: (1) discrimination based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation (allegations of discrimination, except discrimination based on marital status or political affiliation, are generally deferred by OSC to EEO processes, consistent with 5 C.F.R. § 1810.1); (2) soliciting or considering improper employment recommendations; (3) coercion of political activity; (4) deceiving or willfully obstructing anyone from competing for employment; (5) influencing anyone to withdraw from competition to improve or injure the employment prospects of another; (6) giving an unauthorized preference or advantage to improve or injure the employment prospects of another; (7) nepotism; (8) reprisal for whistleblowing; (9) reprisal for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or an Inspector General; or refusing to obey an order that would require one to violate a law; (10) discrimination based on personal conduct that does not adversely affect job performance; (11) violating veterans' preference requirements; and (12) violating a law, rule or regulation implementing or directly concerning merit system principles set forth at 5 U.S.C. § 2301. It should be noted that these are general descriptions of the prohibited personnel practices defined at 5 U.S.C. § 2302(b). That section should be consulted for fuller descriptions of the elements of each of these violations. It should also be noted that the Whistleblower Protection Enhancement Act (WPEA) passed in November 2012 created a new prohibited personnel practice, (13) *impose any nondisclosure policy, form, or agreement without informing employees of their whistleblower rights. A fuller description can be found in 5 U.S.C. § 2302 (b).*

⁷Pursuant to 5 U.S.C. § 1212 *note*.

