

**FISCAL YEAR 2016**  
**CONGRESSIONAL BUDGET JUSTIFICATION**  
*—and—*  
**PERFORMANCE BUDGET GOALS**



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

*This document differs slightly from the version submitted to Congress in that some personally identifiable information has been protected in accordance with Section 22.5 of OMB Circular A-11 and some typographical errors have been corrected.*

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## **PART 1 – EXECUTIVE SUMMARY**

The Office of Special Counsel (OSC) requests a fiscal year (FY) 2016 funding level of \$24,119,000, a modest increase of \$1,180,000 above OSC's current funding level. This increase will allow OSC to sustain its current workforce and increase the size of our small staff from 140 FTE to 146 FTE. While this is a relatively small amount of funding, every additional dollar makes a difference at an agency of this size, especially as OSC responds to a projected 27 percent increase in case levels during the current fiscal year.

OSC greatly appreciates congressional support for OSC during the fiscal year (FY) 2015 budget cycle. The FY 2015 appropriation of \$22.939 million allowed OSC to begin to respond to the drastic increase in whistleblower cases from employees at the Department of Veterans Affairs (VA). With modest reinforcements to our staff, OSC has already achieved landmark settlements on behalf of numerous VA employees who suffered retaliation after disclosing significant threats to patient care at the Phoenix VA and other medical centers throughout the country. One of these employees was Dr. Katherine Mitchell, an emergency room physician at the Phoenix VA medical center, whom OSC honored with its public servant award in December 2014. At the award ceremony, VA Deputy Secretary Sloan Gibson commented on the value of whistleblowers in improving care at the VA, and specifically noted, "I believe it's because of Dr. Katherine Mitchell that access to care in Phoenix is beginning to improve."

OSC's work with Dr. Mitchell and other VA whistleblowers is a critical part of the effort to restore confidence in the VA. As Rep. Jeff Miller, Chairman of the House Committee on Veterans Affairs, noted in comments on the House floor, "Despite its small size, OSC's efforts are making a tremendous difference." In FY2016, OSC will continue to work with the VA to provide expedited relief to employees, to hold managers accountable for retaliation, and to respond to whistleblower concerns about ongoing threats to patient care.

In addition to the VA, OSC's work with whistleblowers prompted a revised pay system for Border Patrol agents that will result in \$100 million in *annual* cost savings at the Department of Homeland Security, an amount roughly five times the size of OSC's annual appropriation. In addition, the number of favorable outcomes for whistleblowers and other employees in prohibited personnel practice cases continues to break all-time records, reaching 175 in FY 2014, compared to just 29 positive outcomes six years ago.

These victories for VA whistleblowers, the taxpayers, and the merit system demonstrate the effectiveness of OSC, and result in a corresponding increase in the number of employees seeking OSC's assistance. The funding increase in the CR for FY 2015 provided much-needed staffing reinforcements, but it will not be sufficient to keep up with the steadily increasing number of new cases. As detailed in this justification, the FY 2015 case intake to date greatly exceeds the projections that provided the basis for the FY 2015 funding level. This trend will continue into FY 2016.

As noted, additional funding was needed to begin to respond to the drastic increase in OSC cases from VA employees in the aftermath of the significant management challenges in the agency. OSC has over 250 pending complaints and disclosures from VA employees in cases involving threats to patient health or safety. This is a small subset of OSC's overall VA caseload, and is limited to those cases that concern veterans' health, including concerns about scheduling and access to care. OSC has directed a significant percentage of its limited resources to the resolution of these priority claims. But, the resolution rate cannot keep pace with the new case intake.

In the first two months of FY 2015, OSC received 1,107 new cases across all program areas. At this rate, OSC will receive over 6,600 new cases in FY 2015, an increase of 27 percent above the record level set in FY 2014 (5,236 new cases). This is a 79 percent increase over the 10-year averaged annual case level. By further comparison, the two-month rate of 1,107 new cases to start FY 2015 exceeds the total for May and June 2014, the height of public awareness of the VA issues, by four percent.

In October and November 2014, OSC's Disclosure Unit received an astonishing 385 new whistleblower disclosures of waste, fraud, abuse, or threats to public health or safety. During the same two-month period in 2013, OSC received 154 disclosures. The FY 2014 total number of disclosures received was 1,553, an all-time high and a remarkable 38 percent increase from the 1,125 received in FY2013. If the FY 2015 numbers remain constant, the disclosure rate would again increase by 49 percent, and top 2,300 disclosures government-wide. Five years ago, the number of disclosures was only 721.

OSC's Complaints Examining Unit has seen a similar increase, receiving 693 prohibited personnel practice allegations in October and November, a rate that will result in 4,158 new complaints in FY 2015, a 23 percent increase over FY 2014, which was also an all-time high at 3,371 whistleblower retaliation and other complaints. Five years ago, the number of complaints received was 2,453.

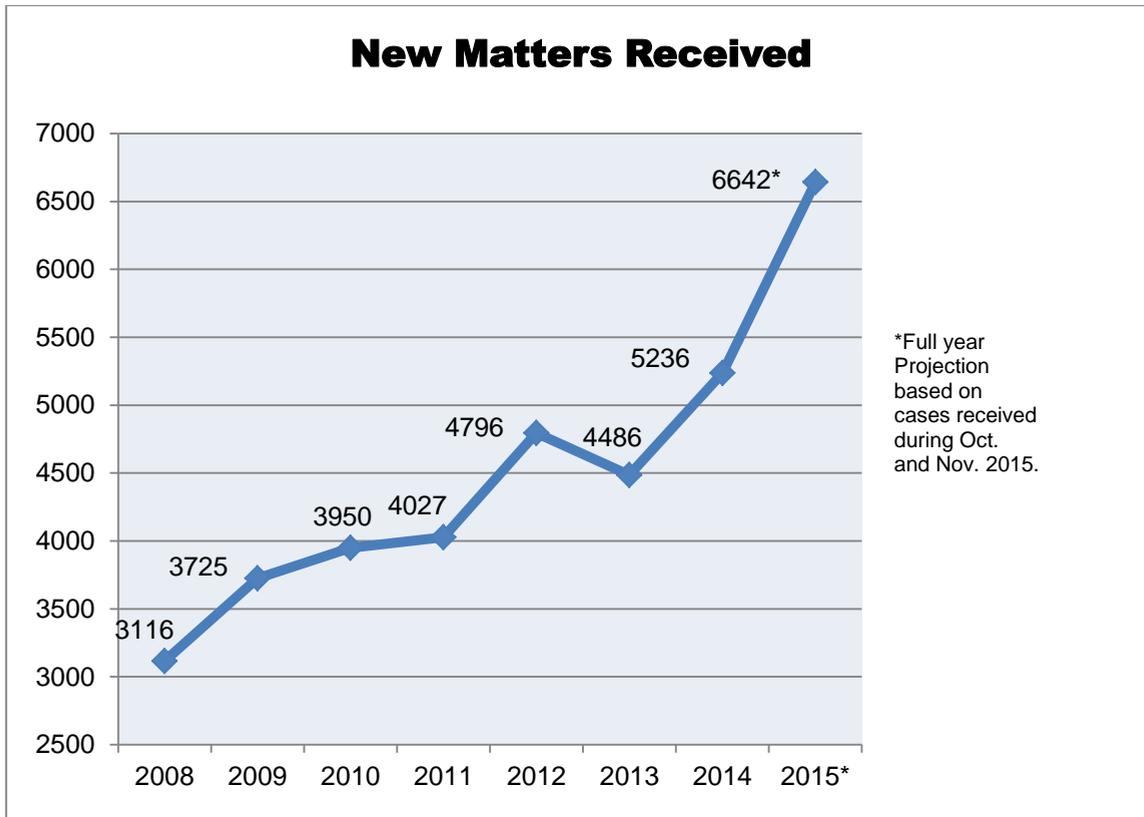
With this steady increase in new cases, OSC's backlog of whistleblower and other cases will increase by 61 percent in FY 2015, from 1,969 cases pending at the end of FY 2014 to 3,164 at the end of FY 2015. A larger backlog and lengthy delays in investigations have significant negative consequences for federal employees and the merit system.

Quite simply, without the modest increase of \$1.147 million for FY 2016, OSC will be unable to keep up with the rising caseloads. This will have a detrimental impact on OSC's ability to protect employees from retaliation and to respond to disclosures of wrongdoing, which continue to come in disproportionately high levels from employees at the VA.

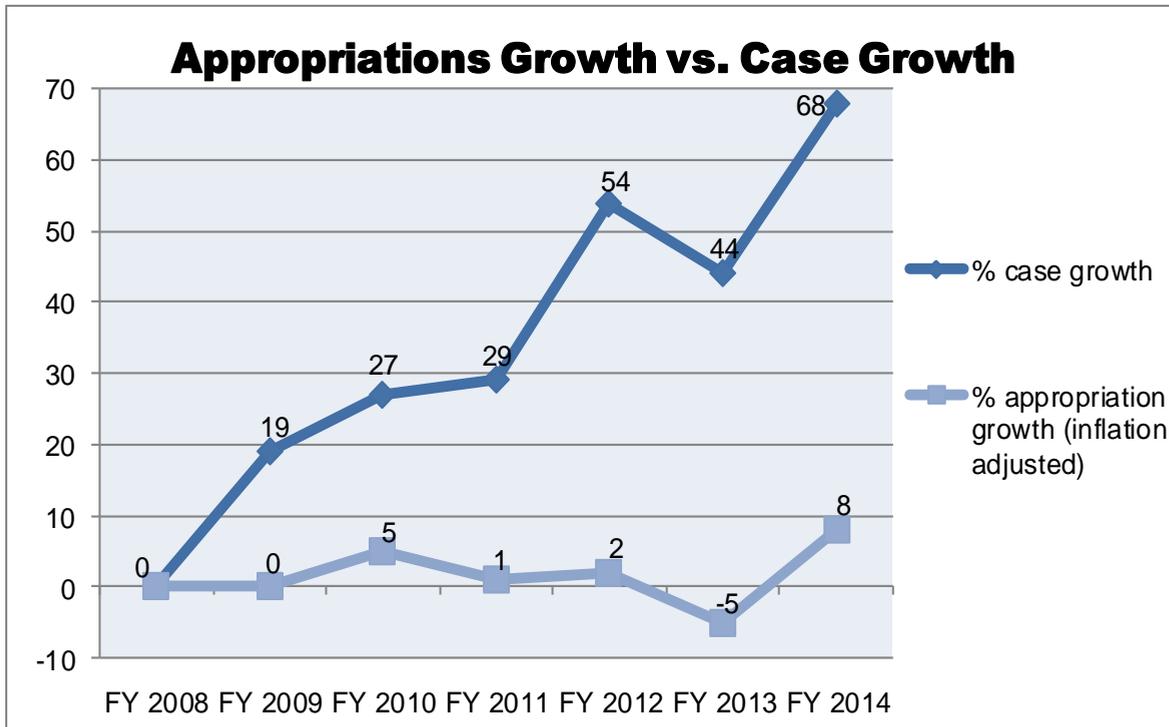
We are thankful for the congressional consideration of this request, and also mindful of the budget constraints facing the federal government overall. However, we continue to believe that the small investment in OSC is one of the most cost-effective methods of promoting good government, preventing violations of merit system laws, and protecting taxpayers by curbing waste, fraud, and abuse. OSC does so with very limited resources.

## **Summary of Request**

During FY 2014 and in FY 2015 to date, OSC has experienced an unprecedented rise in its caseload. In FY 2014, OSC received over 5,200 new matters, an all-time high. (*See chart below.*) This surge is a 17 percent increase over FY 2013's totals and a 30 percent increase from just three years before. The annualized estimate of the FY 2015 numbers exceeds the FY 2014 records by over 20 percent. Despite the challenge of a burgeoning caseload, OSC has continued to deliver results. For example, OSC achieved 347 favorable actions for PPP complaints during FY 2013 and FY 2014, by far the highest total for any two-year period in OSC history. Simply put, OSC is working harder, smarter, and with better results than ever before.



As the federal workforce’s confidence in OSC’s ability to obtain corrective action has grown, the demand for OSC’s services has hit record levels. This demand, however, has not been matched by a corresponding increase in resources, as the chart below indicates. In the past six full years, OSC’s caseload has risen eight times as fast as resources. With Congress’s support, OSC’s budget has risen by eight percent in real terms since 2008 (inflation adjusted); however, the caseload has jumped a staggering 68 percent. (*See chart below.*) If fully funded, OSC’s FY 2016 request will begin to bridge this gap.



OSC is requesting a budget of **\$24,119,000** for **FY 2016**, which includes funding for the salaries and benefits for 146 FTE, an increase of 6 FTE over OSC's FY 2015 appropriation.

This request is largely driven by the increase in OSC's caseload, notably, the unprecedented number of cases brought by employees of the VA. The request for FY 2016 of \$24.119 million represents a five percent increase from OSC's FY 2015 budget.

Based on our projections, OSC may receive nearly 2,500 VA cases in FY 2015, which will comprise 37 percent of OSC's prohibited personnel practice cases and 42 percent of whistleblower disclosure cases in FY 2015. To put this in perspective, at the current rate of receipts, OSC may open more cases from the VA in FY 2015 than the total cases we received just over a decade ago (in 2003) from all agencies. The large majority of OSC's caseload increases in FY 2015 will be attributable to VA cases, as will the substantial increase in OSC's case backlog. These trends will continue into FY2016.

In addition, even without the surge in VA cases, OSC's case levels are at all-time highs and are projected to continue to rise significantly in FY 2016.

Funding OSC at this level will help ensure that we meet our critical challenges to uproot waste, mismanagement, and fraud, protect veterans and federal employees, ensure accountability, integrity, and fairness in the federal workplace, and restore public confidence in the federal merit system.

## **Appropriations Language**

**OFFICE OF SPECIAL COUNSEL**  
*FEDERAL FUNDS*  
**SALARIES AND EXPENSES**

For necessary expenses to carry out functions of the Office of Special Counsel pursuant to Reorganization Plan Numbered 2 of 1978, the Civil Service Reform Act of 1978 (Public Law 95-454), the Whistleblower Protection Act of 1989 (Public Law 101-12) as amended by Public Law 107-304, the Whistleblower Protection Enhancement Act of 2012 (Public Law 112-199), and the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103-353), including services as authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms in the District of Columbia and elsewhere, and hire of passenger motor vehicles; [\$22,939,000: ] *\$24,119,000*.

*(Financial Services and General Government Appropriations Act, 2015.)*

## **About the Office of Special Counsel**

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

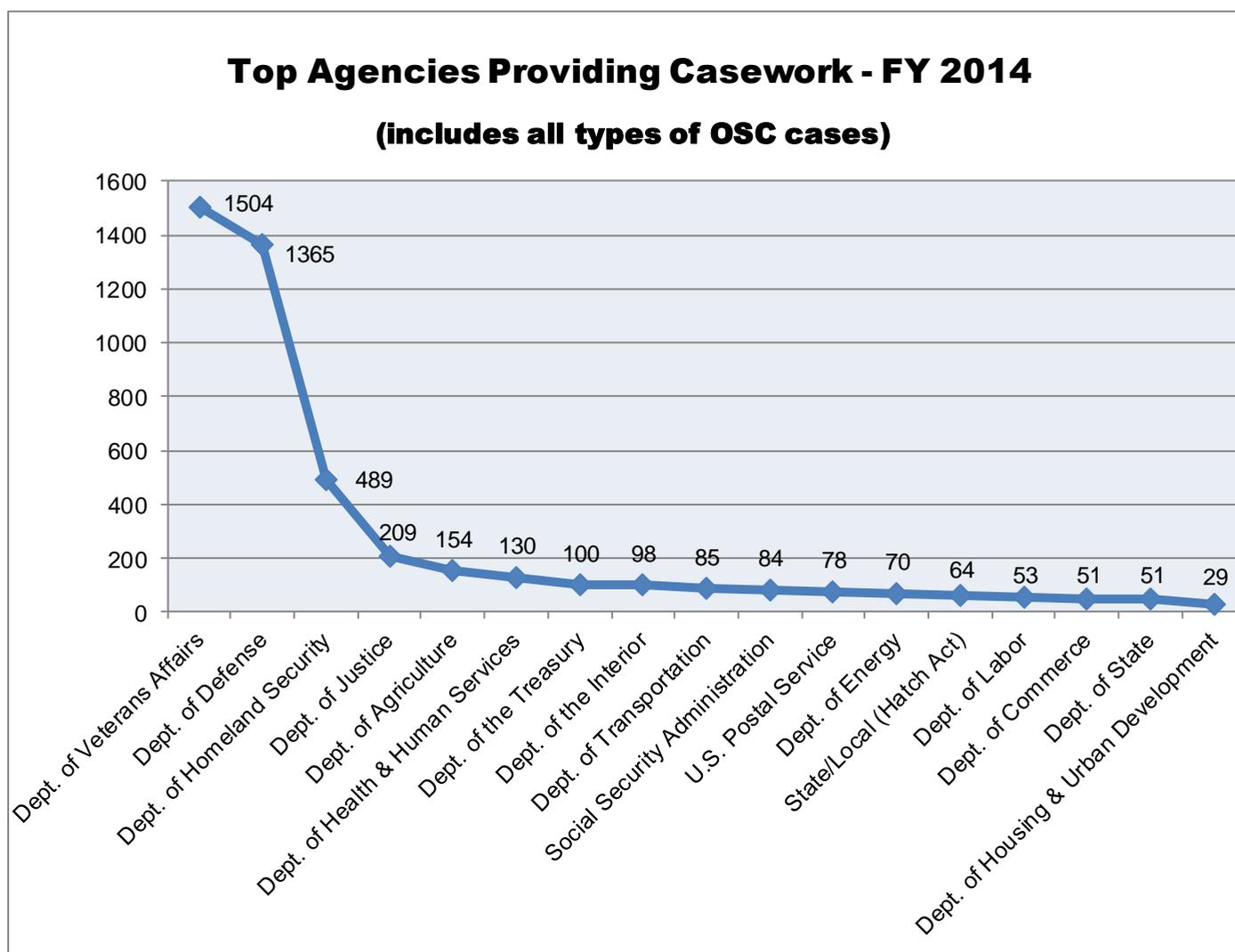
When FAA air traffic controllers witness dangerous flight practices, when VA professionals observe unsafe practices in hospitals and clinics, or when Pentagon procurement officers find significant irregularities in government contracts, OSC acts to ensure that the whistleblowers' claims are heard and acted upon. OSC also protects federal

employees from prohibited personnel practices, such as retaliation for making disclosures. In addition, in enforcing the Hatch Act, OSC preserves the integrity of the civil service system by ensuring that federal employees are not coerced by their superiors into partisan political activity and that employees do not engage in partisan politics while on duty. Critically, OSC also defends returning service members and reservists against employment discrimination by enforcing their rights under USERRA.

OSC does not just spend taxpayers' money; it returns substantial sums to the federal government by pressing for corrective action to remedy waste and fraud. Indeed, by providing a safe channel for whistleblowers and their disclosures, OSC prevents wasteful practices and disasters from ever occurring, saving the government millions of dollars.

## OSC's Docket

OSC receives cases from throughout the federal government. The chart below shows the organizations whose employees filed the most cases with OSC during the last full fiscal year, FY 2014. In that year, we received more cases from the Department of Veterans Affairs employees than from employees of any other agency for the first time in OSC's history, and we expect this to continue for FY 2015 and FY 2016 as well.



## **Prohibited Personnel Practices (PPPs)**

OSC is addressing a substantial and steady surge in the number of federal employees alleging PPPs, such as retaliation for whistleblowing. With the passage of the Whistleblower Protection Enhancement Act (WPEA) in 2012, which expanded the number of employees covered and closed loopholes that prevented many claims, the number of complaints in this area is expected to continue to rise going forward. FY 2014 brought a new record for PPPs, with the agency seeing over 3,000 cases for the first time. Employees' protection from PPPs is critical to ensuring an efficient, accountable, and fair federal service.

## **Whistleblower Disclosures**

Whistleblower disclosures are a growing portion of OSC's caseload, now comprising almost a third of the agency's new matters. OSC will again see record levels of disclosures this year. These disclosures, which involve employee reports of gross mismanagement, waste, fraud, abuse, illegality, and dangerous and unsafe practices, are now in FY 2015 projected to *quadruple* the levels seen in 2009 and years prior.

## **Hatch Act**

The Hatch Act ensures that government service is not tainted by partisan political influences. Hatch Act complaints typically increase around election cycles. With the Hatch Act Modernization Act's passage in 2012, which OSC endorsed, the number of state and local cases has decreased significantly.

## **USERRA**

This program protects the employment rights of returning service members and reservists by investigating more than half the federal USERRA complaints filed with the Department of Labor (under a three-year Demonstration Project), and all federal USERRA actions referred for possible prosecution. The Demonstration Project has been funded in part through a reimbursable agreement with the Department of Labor, which ended in FY 2014.

## Strategic Goals

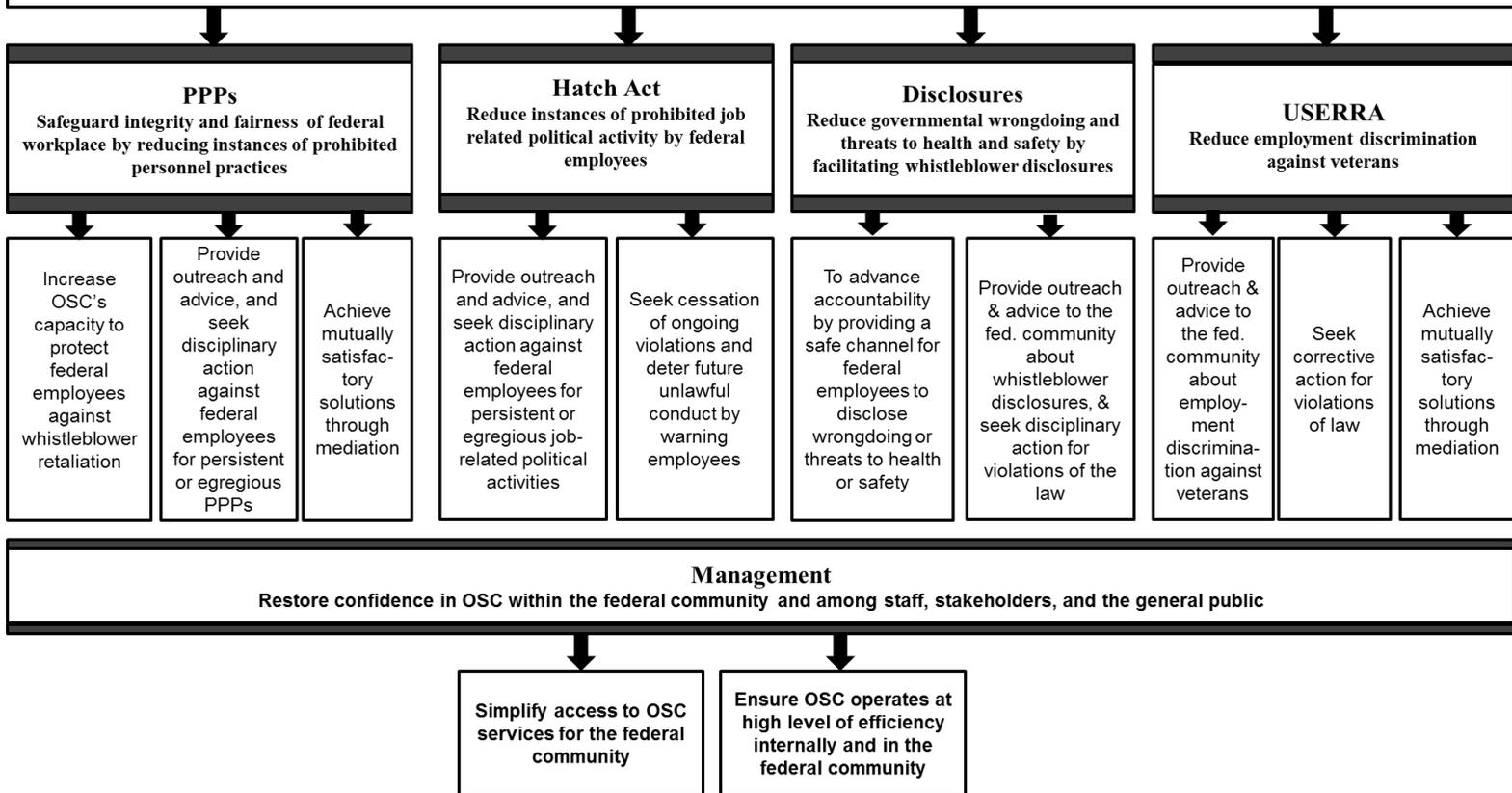
The Office of Special Counsel currently has five strategic goals, enumerated below, each of which is supported by a series of operational objectives. These operational objectives are described in the Strategic Plan (*Appendix A*), and further detailed in the Goal Table section for each budget program.

### **OSC's FY 2016 Strategic Goals and Costs per Goal**

1. Safeguard the integrity and fairness of the federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices. Cost: \$16,810,000
2. Advance the public interest and good government by providing a safe channel for federal employees to disclose wrongdoing or threats to health or safety, in order to effect positive corrective action. Cost: \$3,779,000
3. Strengthen the civil service through outreach and advice to the federal community about prohibited personnel practices, employment discrimination against veterans, and job-related political activity. Cost: \$1,510,000
4. Advance accountability in government by seeking disciplinary action against federal employees for persistent or egregious prohibited personnel practices or unlawful political activities. Cost: \$2,020,000
5. Restore confidence in OSC within the federal community and among staff, stakeholders, and the general public. (Overarching management goal.)

## Chart of OSC's Budget-Related Goals for FY 2015 - 2016

**Mission:** OSC's primary mission is to promote accountability, integrity and fairness in the federal workplace.



# **Office of Special Counsel's Cost Savings to Government, Efficiencies, and other Successes**

OSC improves the efficiency and accountability of government and returns large sums of money to the U.S. Treasury. If current trends continue, the agency could receive nearly 2,000 whistleblower disclosure complaints from federal whistleblowers annually. Many of these complaints result in enormous direct financial returns to the government and even greater indirect benefits in harm avoided or reduced. OSC not only ensures that disclosures are properly considered, it protects the whistleblowers who bring them forward. For example, last year OSC successfully protected a government contracting officer threatened with suspension as reprisal for disclosing \$20 million in contractor waste, fraud, and abuse.

## **Cost Savings**

By providing a safe channel for whistleblower disclosures, OSC regularly reins in waste, fraud, abuse, and threats to public health and safety that pose very real risks of catastrophic harm to the public and huge remedial and liability costs for the government. For example, in the last few years, OSC has managed numerous, harrowing disclosures from courageous FAA employees who have blown the whistle on systemic failures in air traffic control and the oversight of airline safety. When an air traffic controller suffered retaliation after making disclosures about troubling aviation safety practices, OSC intervened, which resulted in the FAA agreeing to a host of corrective actions for the controller, including reversing his demotion and granting him back pay.

OSC cases come from throughout the federal government. At the Department of Homeland Security, whistleblowers alerted OSC that employees were improperly paid administratively uncontrollable overtime (AUO). OSC estimates that \$37 million was misspent on AUO abuses at just several offices within Customs and Border Protection. As a result of bringing this issue to its attention, Congress passed legislation that the Congressional Budget Office now estimates will save taxpayers \$100 million annually. By stopping these type improper payments, the government has the potential to save hundreds of millions of more dollars.

## **Hatch Act**

The number of Hatch Act complaints filed in FY 2013 and FY 2014 decreased as a result of the Hatch Act Modernization Act (HAMA), signed into law by President Obama in December 2012. HAMA modified the penalty provision of the Hatch Act to provide a range of possible disciplinary actions for federal employees. It also narrowed the category of state or local government employees prohibited from running for partisan political office to those employees whose entire salary is federally funded. Lastly, it changed the status of District of Columbia government employees, by treating them as state and local rather than as federal employees. After HAMA went into effect, the Hatch Act Unit issued a series of advisory opinions informing employees of the changes to the law and advising them on HAMA's application. HAMA should significantly enhance the efficiency and effectiveness of OSC's enforcement efforts and allow OSC to better direct its resources. Indeed, OSC has obtained more than twice the number of disciplinary actions in Hatch Act cases at the MSPB in FY 2014 as in FY 2013.

## **Mediation**

OSC plays a unique role in fostering a healthy federal workplace by investigating allegations of prohibited personnel practices, such as nepotism, discrimination, retaliation, and other violations of merit systems principles. These cases are typically resolved by negotiation, mediation, and settlement rather than by prosecution, thereby ensuring fairness and due process to employees while preventing paralyzing stalemates and disruptions to the conduct of government business. In FY 2014, OSC completed a record number of mediations that yielded settlement, and the Alternative Dispute Resolution Unit successfully reached settlement in 79 percent of completed mediations. Because mediation is often a win-win for both parties in the dispute and provides OSC significant savings by reducing the amount of time required to investigate and resolve a case, OSC has added resources to its mediation program in the past three

years, for both prohibited personnel practices and USERRA claims. As a result, we have achieved a record number of settlements.

### **Prohibited Personnel Practices**

The volume of complaints is substantial and growing: Over 3,300 new PPP complaints were filed with OSC in FY 2014, and an even higher number is expected for FY 2015. For many of these cases, the mediation process previously mentioned is used to resolve them when appropriate. Eight percent of new prohibited personnel practice cases were referred for full investigation. A handful of meritorious PPP cases do not settle and, when appropriate, OSC seeks corrective and even disciplinary action through litigation before the MSPB. OSC has ramped up its focus on prohibited personnel practice cases, reallocating additional agency resources for investigation and prosecution. OSC increased favorable actions to 174 in FY 2014, a nine percent increase over FY 2012 levels. These sustained high levels of favorable actions translate into improved accountability and fairness in government, as well as jobs saved, whistleblowers protected, and rights restored.

Of the 174 favorable actions in FY 2014, 138 involved reprisal for whistleblowing, including 23 disciplinary actions and 21 stays negotiated with agencies, which help prevent recurrence of prohibited conduct. When whistleblower disclosures increase, as they have in recent years, OSC experiences a corresponding increase in prohibited personnel practice complaints because whistleblowers are often illegally retaliated against.

In addition, OSC has continued breaking ground this year in a variety of areas. Responding to mandates in the Whistleblower Protection Enhancement Act, OSC is filing more formal litigation with the MSPB where appropriate. Through these efforts, OSC is helping to shape the parameters of the new law to ensure that Congress's and the Administration's efforts to protect whistleblowers are realized. During FY 2014, OSC also negotiated 112 favorable actions with agencies that involved serious cases of reprisal for whistleblowing.

### **USERRA**

For many years, the Department of Labor has investigated, and OSC has prosecuted, claims of discrimination under USERRA. Due to OSC's excellent performance in a prior USERRA Demonstration Project, in which OSC not only investigated half of the complaints as required, but also prosecuted all of the federal complaints, Congress tapped OSC for a second three-year USERRA Demonstration Project, which began in August 2011. The Demonstration Project added hundreds of cases to OSC's docket, and in FY 2014, OSC resolved 153 Demonstration Project cases.

## **Office of Special Counsel's Internal Organization**

OSC is headquartered in Washington, D.C., and has three field offices located in Dallas, Texas; Detroit, Michigan; and Oakland, California. The agency includes a number of program and support units.

### **Immediate Office of Special Counsel (IOSC)**

The Special Counsel and her immediate staff are responsible for policy-making and the overall management of OSC, including supervising each of OSC's program areas. This encompasses management of the agency's congressional relations and public affairs activities, and coordination of its outreach program. The latter includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

### **Complaints Examining Unit (CEU)**

This unit is the intake point for all complaints alleging prohibited personnel practices. CEU normally screens approximately 2,900 such complaints each year, but last year that number spiked to 3,300. 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 headquarters and three 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. The Special Counsel then sends her determination whether the agency report is complete and appears reasonable, the report itself, and any comments by the whistleblower to the President and congressional committees of jurisdiction.

### **Hatch Act Unit (HAU)**

HAU 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 government employees and the public at large.

### **USERRA Unit**

This unit attempts to resolve 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 investigated more than half the federal USERRA cases filed with DOL during FY 2014, when the Demonstration Project Ended.

### **Alternative Dispute Resolution Unit (ADR)**

This unit supports OSC's operational program units. Matters are received from IPD and the USERRA Unit that are appropriate for mediation. Once referred, an OSC ADR specialist will contact 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**

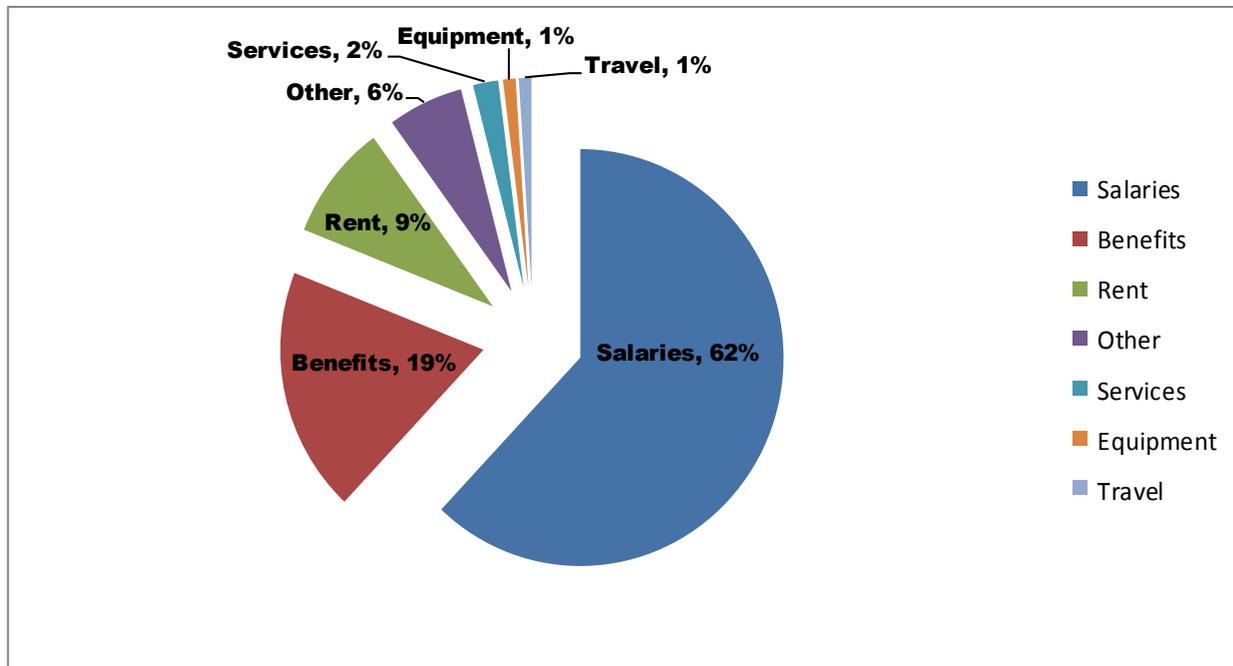
This office provides legal advice and support in connection with management and administrative matters, defense of OSC interests in litigation filed against the agency, management of the agency's Freedom of Information Act, Privacy Act and ethics programs, and policy planning and development.

### **Administrative Services Division**

This office 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.

# Components of Budget Request

The following chart estimates how the FY 2016 request will be distributed on a percentage basis.



## Budget by Program

The following table provides an estimate of the FTE and budgetary resources for each program of the agency.

<b>Budget by Program – Agency Request</b>						
	<b>FY 2015 Estimate</b>		<b>FY 2016 Estimate</b>		<b>Increase/Decrease</b>	
<b>Program</b>	<b>Amount (in 1000s)</b>	<b>FTE</b>	<b>Amount (in 1000s)</b>	<b>FTE</b>	<b>Amount (in 1000s)</b>	<b>FTE</b>
<b>Investigation and Prosecution of Prohibited Personnel Practices</b>	\$13,544	81	\$14,139	84	\$595	3
<b>Hatch Act Enforcement</b>	\$987	4	\$987	4	\$0	0
<b>Whistleblower Disclosure Unit</b>	\$3,193	20	\$3,761	23	\$568	3
<b>USERRA Enforcement and Prosecution</b>	\$390	2	\$230	1	(\$160)	-1
<b>Alternative Dispute Resolution</b>	\$579	4	\$585	4	\$6	0
<b>Immediate Office of the Special Counsel</b>	\$1,111	7	\$1,126	7	\$15	0
<b>Office of the Agency General Counsel</b>	\$950	6	\$963	6	\$13	0
<b>Office of the CFO - Management / Information Technology / Budget / Human Resources / Procurement / Document Control / Planning / Analysis / Facilities</b>	\$2,216	16	\$2,328	17	\$112	1
<b>Totals</b>	<b>\$22,970</b>	<b>140</b>	<b>\$24,119</b>	<b>146</b>	<b>\$1,147</b>	<b>6</b>

## **PART 2 – FY 2016 BUDGET REQUEST – ADDITIONAL INFORMATION**

OSC's budget request is for \$24,119,000—to fund 146 FTE and related non-personnel costs for FY 2016. This number of FTE is necessary to manage and process the agency's significantly increasing levels of prohibited personnel practice complaints, whistleblower disclosures, USERRA cases, and Hatch Act complaints and advisory opinions. OSC anticipates it may see moderate increases in its backlog due to continuously increasing case levels, even with increased funding. However, providing funding to support 146 FTE will allow OSC to better keep up with cases as they are filed.

### **Primary Driver of the FY 2016 increase:**

#### **Costs for Current Salaries and Benefits Operating with an Increased Number of FTE**

We anticipate the agency will have 146 FTE in FY 2016, up from 114 in FY 2014. Salaries and benefits will be approximately 81 percent of OSC's total costs in FY 2016, up from 75 percent just four years ago. The impact of pay raises, step increases, and career ladder promotions are significant in an agency in which 75 to 81 percent of the budget funds salary and benefits.

#### **General Services Administration Rental Costs**

OSC operates out of its headquarters location in Washington, D.C., along with its three off-site field offices in Detroit, Dallas, and Oakland. Rental costs for our four GSA leases are the agency's biggest cost component, after salaries and benefits, and will comprise approximately nine per cent of OSC's budget in FY 2016. OSC will need a small space expansion at our current headquarters location and within our current lease in order to accommodate the additional FTE.

## FY 2016 Budget Request by Budget Object Class

For a detailed projection of the expenditures that will be required in each Budget Object Class (BOC) during FY 2016, see Budget Table 1 below.

<b>Budget Table 1 – Budget Object Classification of Obligations: FY 2014-2016</b>			
<i>(in thousands of dollars)</i>			
<b>Budget Object Classification of Obligations</b>	<b>FY 2014*</b> <i>Actual</i>	<b>FY 2015*</b> <i>(projected)</i>	<b>FY 2016</b> <i>(projected)</i>
<b>11.0 Personnel compensation</b>	12,776	14,254	15,015
<b>12.0 Civilian Personnel Benefits</b>	3,698	4,290	4,606
<b>21.0 Travel and transportation of persons</b>	105	150	195
<b>22.0 Transportation of things</b>	20	20	20
<b>23.1 Rental payments to GSA</b>	1,741	1,945	2,116
<b>23.3 Communications, utilities and misc. charges</b>	270	272	275
<b>24.0 Printing and reproduction</b>	17	20	22
<b>25.0 Other services</b>	1,752	1,641	1,375
<b>26.0 Supplies and materials</b>	87	88	90
<b>31.0 Equipment</b>	363	290	250
<b>32.0 Leasehold improvements</b>	225	0	155
<b>Total</b>	21,054	22,970	24,119
<b>*Includes Reimbursable Fund Expenses</b>			

### Notes Concerning the Above BOC Line Items:

#### Object Class 11.0 Personnel Compensation Costs:

Overall personnel compensation will increase in FY 2016 as compared to FY 2015, since OSC will be supporting 146 FTE in FY 2016 versus 140 in FY 2015. Increased caseloads and added responsibilities are driving the need for higher staffing levels, of six additional FTE, as processing cases is resource intensive. OSC has seen or will see:

- record levels of incoming cases, projected to be over 6,000 cases in FY 2015 and beyond;
- this past year, a 49 percent-increase in new matters over recent historical case averages;
- a projected case increase of around 20 percent in FY 2015 and in future years;
- the addition of hundreds of new cases due to the Whistleblower Protection Enhancement Act;
- a pay raise of 1.3% for FY 2016;
- expected wage inflation with 65 within-grade increases and career ladder promotions projected in FY 2015;
- a similar number of promotions in FY 2016;
- low turnover during this timeframe.

**Object Class 12.0 Civilian Personnel Benefits Costs:**

These costs are for employee benefits, to include Medicare, Federal Employees Group Life Insurance, health benefits contributions, old age survivors and disability insurance, and retirement plan contributions. Total benefits costs in FY 2016 are increasing primarily due to the new personnel added to the agency.

**Object Class 21.0 Travel and Transportation of People:**

During FY 2015 and FY 2016, we expect travel to be conducted at the full and appropriate levels required for OSC's investigations and mediations.

**Object Class 23.1 Rental Payments to GSA:**

This category reflects the lease costs of the agency's headquarters facility and OSC field offices along with rent and tax escalations. OSC estimates that total agency rent will be approximately \$1.945 million for FY 2015 and \$2.116 million for FY 2016, based on projections provided by GSA. OSC will need an expansion of our space footprint at the headquarters location and within the current lease in order to accommodate the additional FTE. We have exceeded the capacity of our current space.

**Object Class 23.3 Communications and Utilities:**

In FY 2014, OSC began a project to increase the internet bandwidth to its field office locations, in response to problems with gaining and keeping connectivity. This category reflects the cost to sustain the improved connections in FY 2015 and FY 2016, as well as to meet additional compliance requirements and the costs to support additional FTE.

**Object Class 25.0 Other Services:**

OSC outsources its accounting services, financial and procurement systems, payroll services, travel services, and procurement services. Certain efforts to modernize our information technology infrastructure began in FY 2014 and will continue into FY 2015, including moving email services to the cloud. Improvements in the case management and electronic case filing are planned for FY 2015 and will be completed in FY 2016.

**Object Class 31.0 Equipment:**

OSC experienced moderate levels of equipment purchases (servers, computers, video conferencing equipment, and copiers) in FY 2014 in order to refresh its information technology equipment and to support modernization projects. These costs will begin to drop in FY 2015, and following the move to the cloud and hosting service providers, we expect continued decreases in FY 2016.

**Object Class 32.0 Leasehold Improvements:**

OSC took occupancy of a new suite at its headquarters location in FY 2014, and made improvements to the space in order to best configure the space for our needs. In FY 2016, we will need to do the same with the extra space we will occupy for the additional employees.

<b>Budget Table 2 – Analysis of Resources: FY 2014-2016</b>				
<i>(in thousands of dollars)</i>				
Description		FY 2014 (Actual)	FY 2015 (Projected)	FY 2016 (Projected)
Budget authority	Direct	20,639	22,939	24,119
	Reimbursable	606	0	0
Total		21,245	22,970	24,119
Outlays		19,498	21,076	22,125
Employment	Direct-Full Time Equivalent	111	140	146
	Reimbursable-Full Time Equivalent	3	0	0
Total		114	140	146

# **PART 3 - BUDGET PROGRAMS AND PERFORMANCE PLAN**

## **FY 2014 Case Activity and Results – All Programs**

During FY 2014, OSC received 5,236 new matters throughout all of its program areas, as well as 64 requests for Hatch Act advisory opinions. Table 1 below summarizes overall OSC case intake and dispositions in FY 2014 with comparative data for the previous four fiscal years. More detailed data can be found in Tables 2 to 8, 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.

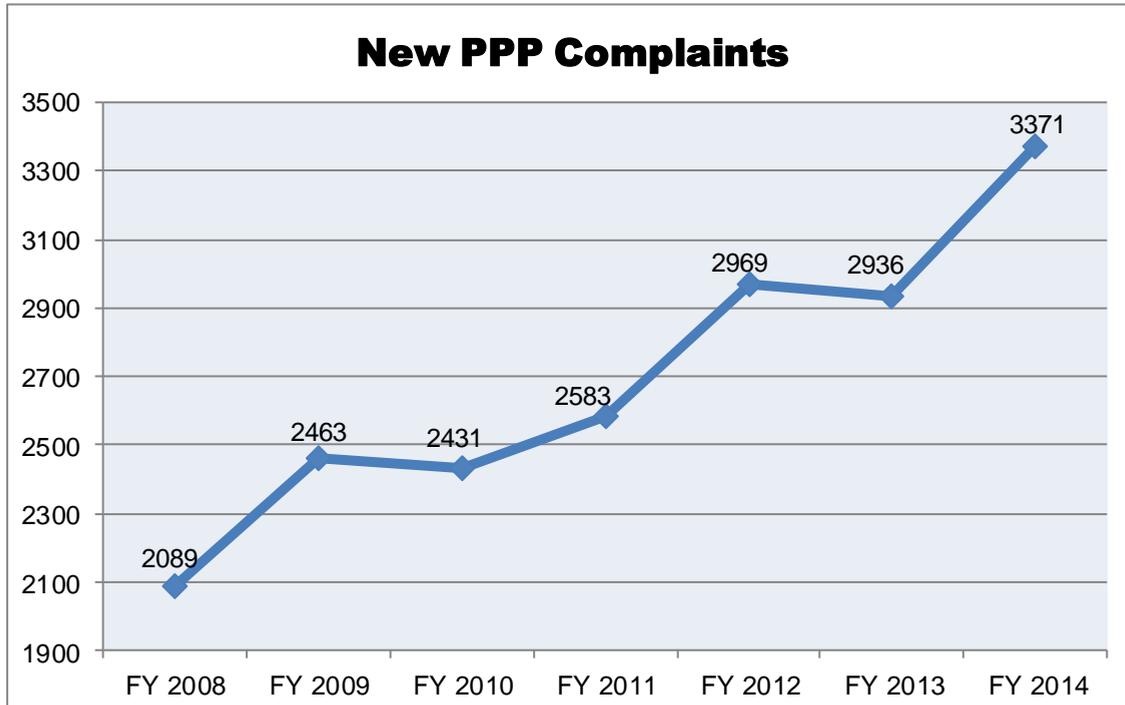
<b>TABLE 1 Summary of All OSC Case Activity</b>							
	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Matters<sup>a</sup> pending at start of fiscal year</b>	700	943	1,326	1,357	1,320	1,744	1,399
<b>New matters received</b>	3,116	3,725	3,950	4,027	4,796	4,486	5,236
<b>Matters closed</b>	2,875	3,337	3,912	4,051	4,374	4,833	4,666
<b>Matters pending at end of fiscal year</b>	937	1,324	1,361	1,331	1,729	1,397	1,970
<b>Hatch Act advisory opinions issued</b>	3,991	3,733	4,320	3,110	3,448	1,767	1,382

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<sup>a</sup> “Matters” in this table includes prohibited personnel practice cases (including TSA matters), whistleblower disclosures, and USERRA cases.

# Investigation and Prosecution of Prohibited Personnel Practices (PPPs)

OSC's largest program is devoted to handling PPP complaints. Of the 5,236 new matters OSC received during FY 2014, 3,371 or 64 percent were new PPP complaints. (See chart below and Table 2).



Unlike many other investigative entities or agencies, OSC *must* conduct an inquiry of all jurisdictionally sound complaints alleging the commission of a prohibited personnel practice. The nature of the inquiry ranges from a screening at intake by the Complaints Examining Unit (CEU) to an Investigation and Prosecution Division (IPD) field investigation. Complaints received by OSC can and often do involve multiple allegations, some of which involve more than one prohibited personnel practice.

After a complaint is received by OSC, CEU attorneys and personnel-management specialists conduct an initial review to determine whether it is within OSC's jurisdiction and whether further investigation is warranted. CEU refers matters stating a viable claim to IPD for further investigation. In FY 2014, CEU referred 274 cases for full IPD investigation. The ADR Unit reviews most of these matters prior to a full-scale investigation to determine if mediation is appropriate.

If a case is a good candidate for mediation, OSC contacts the complainant and the employing agency to invite them to participate in OSC's voluntary ADR program. If both parties agree, OSC conducts a mediation session, led by OSC-trained mediators who have experience in federal personnel law. When mediation resolves the complaint, the parties execute a binding written settlement agreement. If mediation does not resolve the complaint, it is referred back to IPD for further investigation, including complainant and witness interviews. IPD then applies the law to the facts to determine whether the matter warrants corrective action, disciplinary action, or both.

If, upon completion of its investigation, OSC concludes a prohibited personnel practice was committed, it informs the responsible agency of its findings. Most often, the matter is then successfully resolved through negotiations. If

negotiations do not resolve the matter, OSC may initiate an enforcement proceeding seeking corrective action (relief intended to make an aggrieved employee whole) at the MSPB. Before doing so, however, the Special Counsel must formally report her findings and recommendations for corrective action. Only after the agency has had reasonable time to remedy the situation and has failed to do so may OSC petition the MSPB for corrective action. If OSC determines that disciplinary action (the imposition of discipline on an employee who has committed a violation) is warranted, OSC can file a complaint directly with the MSPB. (The agency may agree to take appropriate disciplinary action on its own initiative, thereby avoiding an MSPB proceeding.)

OSC litigation before the MSPB—whether by enforcement actions seeking to obtain corrective and/or disciplinary action, as an *amicus* or by otherwise intervening in matters filed by others—often has the benefit of clarifying and expanding existing law. It also brings greater public attention to OSC’s mission and work, which can increase the deterrent effect of its efforts.

## Resource Estimates

During FY 2015, the Investigation and Prosecution Division and Complaints Examining Unit, which together have jurisdiction over prohibited personnel practices, will use approximately 81 FTE at a cost of approximately \$13,544,000. During FY 2016, we estimate the cost of the program will be approximately \$14,139,000, with 84 FTE assigned.

<b>TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing<sup>a</sup></b>								
		<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Pending complaints carried over from prior fiscal year</b>		358	474	769	863	934	1,152	1,045
<b>New complaints received<sup>b</sup></b>		2,089	2,463	2,431	2,583	2,969	2,936	3,371
<b>Total complaints</b>		2,447	2,937	3,200	3,446	3,903	4,088	4,416
<b>Complaints referred by CEU for investigation by IPD</b>		135	169	220	270	252	255	274
<b>Complaints processed by IPD</b>		88 <sup>c</sup>	150	179	190	274	266	278
<b>Complaints pending in IPD at end of fiscal year</b>		185	201	250	331	325	316	316
<b>Total complaints processed and closed (CEU and IPD combined)</b>		1,971	2,173	2,341	2,508	2,750	3,041	3,003
<b>Complaint processing times</b>	Within 240 days	1,889	2,045	2,185	2,327	2,570	2,594	2,577
	Over 240 days	80	127	154	175	439	440	422
<b>Percentage processed within 240 days</b>		95%	94%	93%	92%	88%	85%	85%

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

<sup>b</sup> “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.

<sup>c</sup> In FY 2008, IPD not only handled 88 PPP complaints, but also 17 USERRA Demonstration Project cases and one Hatch Act case.

Table 3 below provides information regarding the numbers of corrective actions obtained in prohibited personnel practice cases.

<b>TABLE 3 Summary of All Favorable Actions – Prohibited Personnel Practice Complaints<sup>a</sup></b>		<b>FY 2008<sup>a</sup></b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Total favorable actions negotiated with agencies (all PPPs)</b>	No. of actions <sup>b</sup>	58	62	96	84	159	173	174
	No. of matters	33	53	76	65	128	124	142
<b>Total favorable actions negotiated with agencies (reprisal for whistleblowing)</b>	No. of actions	44	35	66	64	112	104	138
	No. of matters	20	29	55	50	95	91	112
<b>Disciplinary actions negotiated with agencies</b>		3	5	13	6	19	27	23
<b>Stays negotiated with agencies</b>		4 <sup>c</sup>	9	13	12	27	28	21
<b>Stays obtained from MSPB</b>		0	1 <sup>d</sup>	2	4	8	5	2
<b>Stay extensions obtained from MSPB</b>		n/a	n/a	n/a	1	1	7	0
<b>Corrective action petitions filed with the MSPB</b>		0	0	0	1	0	2	0
<b>Disciplinary action complaints filed with the MSPB</b>		3	0	0	0	0	0	3

<sup>a</sup> Actions itemized in this column occurred in matters referred by CEU and processed by IPD.

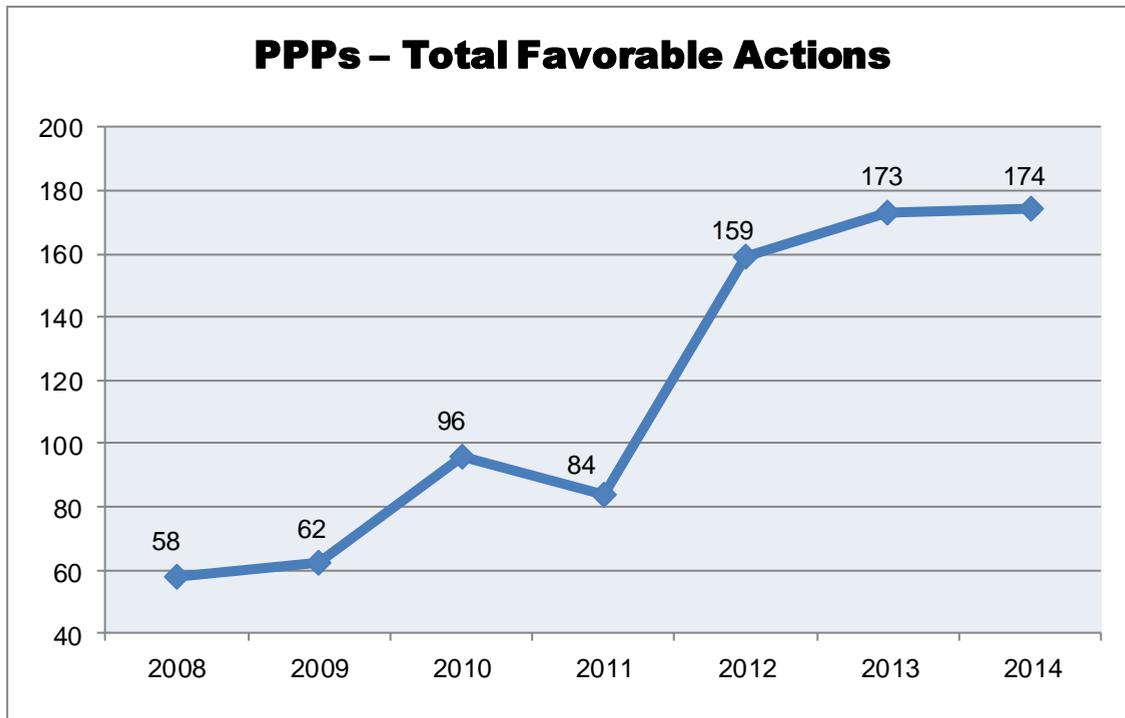
<sup>b</sup> The number of actions refers to how many corrective actions are applied to the case; the number of matters consists of how many individuals were involved in the original case.

<sup>c</sup> Represents two stays obtained in each of two cases.

<sup>d</sup> A revised query now correctly shows this quantity to be one, not zero as previously reported.

## Goals and Results – Prohibited Personnel Practices

In FY 2014, OSC received 3,371 complaints, a 13 percent increase over FY 2012 levels, and a 61 percent jump since FY 2008. OSC again achieved a record number of favorable actions, 174, in FY 2014.



OSC's Strategic Objective 1 is to protect the merit system and promote justice in the federal workforce through investigation and prosecution of prohibited personnel practice cases. The following tables describe the three performance goals supporting this strategic objective.

## Goal Table 1 Safeguard Integrity and Fairness of Federal Workplace by Reducing Instances of Prohibited Personnel Practices

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result
1	Number of corrective actions obtained by IPD	n/a	140	140	130	130	150	130		130	
2	Percent of corrective actions obtained per number of cases closed	n/a	5%	5%	4%	5%	5%	5%		5%	
3	Number of cases referred for investigation directly to IPD	n/a	75	83	87	87	114	95		95	
4	Number of informal stays requested	n/a	26	30	17	20	21	20		20	
5	Percent of informal stays obtained	n/a	n/a	n/a	n/a	n/a	100%	100%		100%	
6	Number of formal initial stays requested	n/a	7	10	2	5	2	5		5	
7	Percent of formal initial stays obtained	n/a	100%	100%	100%	100%	100%	100%		100%	
8	Number of corrective actions obtained in cases referred for investigation directly from CEU to IPD	n/a	31	31	50	50	58	50		50	
9	Percent of corrective actions obtained per number of cases referred for investigation directly from CEU to IPD	n/a	41%	45%	57%	50%	51%	50%		50%	
10	Number of initial examinations completed by CEU within 120 days	n/a	1,716	1,801	1,576	1,600	1,645	1,700		1,600	
11	Percent of initial examinations completed by CEU within 120 days	n/a	63%	66%	57%	57%	63%	60%		60%	
12	Number of CEU cases more than 240 days old	n/a	98	120	256	140	244	200		200	
13	Percent of CEU cases more than 240 days old <sup>13</sup>	n/a	3%	4%	9%	10%	9%	10%		10%	
14	Number of staff allocated to whistleblower retaliation and other PPPs	53	60	65	59	65	62	65		65	
15	Percent of total staff allocated to whistleblower retaliation and other PPPs	50%	50%	52%	53%	55%	53%	55%		55%	
16	Number of staff training programs in whistleblower retaliation and other PPPs	2	3	4	4	4	5	4		4	
17	Percent of cases qualifying for full investigation referred to ADR Unit for review	n/a	89%	89%	56%	65%	74%	65%		65%	

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

## Goal Table 2 Provide Outreach and Advice; Seek Disciplinary Action against Federal Employees for Persistent or Egregious Prohibited Personnel Practices

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result
18	Number of recommendations to agencies to take disciplinary action	n/a	n/a	6	19	12	23	18		18	
19	Number of disciplinary action complaints filed	n/a	0	1	0	1	3	1		1	
20	Number of disciplinary actions resolved pre-litigation through negotiated settlement	n/a	19	20	27	27	23	23		23	
21	Total number of successful disciplinary prosecutions	n/a	0	1	0	1	0	1		1	
22	Percent of successful disciplinary prosecutions	n/a	n/a	100%	N/A	100%	N/A	100%		100%	
23	Upon receipt of a complaint, clearly explain the OSC review process and when action can be expected <sup>23</sup>	n/a	99%	99%	99%	99%	97%	99%		99%	
24	Provide complainants status updates at defined intervals and when significant new developments occur <sup>24</sup>	n/a	88%	99%	80%	90%	93%	92% <sup>24</sup>		92% <sup>24</sup>	
25	If OSC declines to refer a case for investigation, clearly inform complainant of the reason(s) why <sup>25</sup>	n/a	100% <sup>24</sup>	100%	82%	100%	87%	100%		100%	

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

24. The IT system is coded to generate this information. Since we cannot dedicate additional resources to maintain a 99-percent result, we feel that 92 percent (for FY 2015) is in substantial compliance with this goal target.

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

## **Prohibited Personnel Practices Successes**

In FY 2014, 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 unattainable, 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 (MSPB).

### **Litigation before the Merit Systems Protection Board**

OSC filed a complaint with the MSPB alleging that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) fired a criminal investigator with over 20 years of federal law enforcement experience in violation of the First Amendment, a prohibited personnel practice under 5 U.S.C. § 2302(b)(12). The investigator gave testimony under subpoena in a federal criminal matter that was favorable to a defendant's motion to suppress a court-ordered wiretap. Neither the investigator nor ATF was involved in the underlying prosecution, having both dropped out of the case. Nevertheless, ATF disagreed with the substance of the investigator's testimony and fired him for allegedly having lacked candor in his testimony. ATF filed an interlocutory appeal of the judge's finding of jurisdiction, which was upheld by the MSPB. Thereafter, the parties reached a monetary settlement and the employee retired.

OSC filed three complaints with the MSPB seeking disciplinary action against three high-level Customs and Border Protection (CBP) officials for participating in a scheme to discriminate for and against applicants based on political affiliation, and to grant illegal preferences or advantages to a former CBP Commissioner's preferred candidates. Two of the complaints settled with the MSPB ordering demotions to nonsupervisory duties. The third complaint is still pending before the MSPB.

### **Protecting Whistleblowers from Retaliation**

OSC issued formal findings to the Department of the Army under 5 U.S.C. § 1214(b) documenting the retaliatory removal of an engineering technician for protected whistleblowing activities. The employee reported what she believed were violations of the Army's rules pertaining to the use of a government purchase card. Her report was made in the course of her duties. Shortly thereafter, the technician was fired. Prior to the WPEA, her report would have been excluded from protection as whistleblowing under Federal Court decisions (*Huffmann v OPM*, *Willis v. USDA*) because it was made in the course of regular duties. The WPEA, however, overturned these decisions and OSC was able to pursue the case. As a result of OSC's investigation and statutory report, the Army agreed to reinstate the employee with full back pay and benefits. It also convened a disciplinary review of the subjects responsible for the retaliatory discharge and is in the process of proposing disciplinary action.

OSC issued formal findings to the Transportation Security Administration (TSA) documenting the retaliatory removal of a security screener for protected whistleblowing activities. The screener reported a coworker's misconduct and his supervisor's failure to correct the misconduct. Shortly thereafter, the screener was discharged from service. As a result of OSC's investigation and statutory report, TSA agreed to a monetary settlement.

OSC issued formal findings to the Department of Veterans Affairs (VA) under 5 U.S.C. § 1214(b) documenting the retaliatory suspension of a nurse for having disclosed that other VA employees improperly restrained wheelchair-bound patients in violation of agency rules. As a result of OSC's statutory report, the VA agreed to take corrective action.

OSC issued formal findings to the Department of Energy under 5 U.S.C. § 1214(b) documenting retaliatory suspensions of an electrician with the Bonneville Power Administration for protected whistleblowing. The electrician disclosed misconduct by a supervisor, which OSC determined had been covered up in a subsequent agency investigation. As a result of OSC's statutory report, the Department agreed to a monetary settlement and to place the employee permanently at a different location.

OSC issued formal findings to the Department of Commerce Office of Inspector General under 5 U.S.C. § 1214(b) documenting a retaliatory performance appraisal and separation agreement. The complainant, a supervisor, was given an unfounded, failing performance appraisal which was used to coerce him into signing a separation agreement containing a non-disparagement provision (gag clause) prohibiting him from contacting OSC, Congress, or the media. OSC investigated whether these actions were taken in retaliation for complainant's perceived whistleblowing and for his engagement in the Equal Employment Opportunity process. As a result of OSC's statutory report, the Department agreed to provide full corrective action to complainant, implement systemic measures to prevent future violations, and take disciplinary action against two agency officials.

The complainant, a supervisor with the Department of Army, was terminated during his probationary period in retaliation for making disclosures concerning his second-level supervisor's improper distribution of excess medical material. After obtaining evidence supporting the complainant's allegations—and prior to the completion of OSC's investigation—the agency agreed to convert the termination to a voluntary resignation, as well as to provide the complainant with a lump sum payment, attorneys' fees, and a neutral reference.

Two complainants with the Transportation Security Administration made multiple disclosures, including allegations of a hostile work environment, misuse of government vehicles, improper use of awards, and improper work space allocations. One complainant was placed on a performance improvement plan and issued a proposed 14-day suspension, while the other complainant experienced a significant change in working conditions, was placed under a "mentorship agreement," and received a letter of reprimand. Following investigation, OSC negotiated a resolution for full corrective action and consequential damages for the complainants. In addition, OSC obtained disciplinary action in which the complainants' former supervisor agreed to a nonsupervisory demotion lasting a minimum of one year, a geographic reassignment, and training.

The complainants, married seasonal park rangers with the National Park Service, U.S. Department of Interior, were given tentative offers of employment that were rescinded after management discovered one of the spouses had made disclosures to the Office of the Inspector General concerning the former park superintendent's alleged excessive travel and illegal endorsement of a private company while employed by the federal government. Following OSC's investigation, the agency agreed to offer the complainants seasonal employment at the park of their choice and to take appropriate disciplinary action against agency officials.

### **Protecting Federal Employees from Discriminatory Hiring Practices**

The Office of Personnel Management referred to OSC for investigation allegations that a federal official with the Federal Trade Commission violated federal regulations concerning failure to compete for a detail to a higher-graded position and for exceeding the length of time allowed for details. Following OSC's investigation, which substantiated the allegations, the agency agreed to take several systemic measures to prevent future violations.

The Office of Personnel Management (OPM) referred to OSC for investigation its findings that the National Resources Conservation Service (NCRS), part of the U.S. Department of Agriculture, engaged in improper hiring practices that were sufficiently severe and pervasive to cause OPM to withdraw its delegation of hiring authority for

NRCS. OSC investigated the allegations and confirmed that six officials were hired improperly, as OPM found. OSC further determined that disciplinary action was warranted for 11 officials who participated in the illegal hiring practices. OSC requested in eight instances that the agency discipline its own officials and OSC approved requests from the agency to take disciplinary action. The actions approved by OSC included a removal, four suspensions of over 14 days, a short suspension, and two reprimands. In three instances, OSC negotiated directly with the individuals who no longer work at the agency. OSC obtained short suspensions in two cases, and a resignation and one-year debarment from federal service in the third.

The Department of the Navy's Office of Inspector General referred to OSC for investigation allegations that federal officials granted unauthorized preferences to individuals by manipulating the hiring processes for several competitive positions. The referral also alleged that some of these officials violated anti-nepotism rules by advocating for the hiring of their relatives. Following OSC's investigation, which substantiated the allegations, the parties agreed to significant suspensions without pay for three current and former agency officials.

### **Stays of Personnel Actions**

Based on a request by OSC, MSPB ordered the suspension of a geographic detail imposed by the Department of Homeland Security on a special agent who refused to obey an order that would have required him to violate laws restricting the disclosure of classified information. This was the first time OSC initiated an action based on a violation of 5 U.S.C. § 2302(b)(9)(D), a statute that prohibits personnel actions based on an employee's refusal to obey an order that would require a violation of law.

Based on a request by OSC, the MSPB ordered the temporary reinstatement of a former consumer safety inspector based on allegations that the Food Safety Inspection Service at the U.S. Department of Agriculture coerced the inspector's resignation in retaliation for whistleblowing. The inspector disclosed that her managers ignored violations of laws and regulations at the slaughterhouse where she worked, and thereby allowed inhumane slaughter practices to continue. The Board granted the stay request based on OSC findings that the employee witnessed instances of inhumane practices, reported them to her chain of command and to the Secretary, was shortly thereafter detailed to a different duty location, and received notice of her proposed removal.

A civilian employee and team lead with the Department of Army submitted an administrative grievance contesting her performance evaluation. Shortly thereafter, she was removed from her leadership position and reassigned. She was subsequently issued a proposed five-day suspension for misuse of government property and conduct unbecoming a federal employee in connection with her extramarital relationship with a married soldier. At OSC's request, the agency agreed to stay the suspension during the pendency of OSC's investigation.

### ***Amicus Curiae* Briefs Filed**

OSC submitted its first *amicus curiae* brief in the Supreme Court. The case, *Department of Homeland Security v. MacLean*, involves an interpretation of an original provision of the whistleblower statute in the CSRA in 1978. It is the first whistleblower case to be heard by the Court. At issue is whether an agency may enforce a regulation that restricts a whistleblower's ability to make a public disclosure of a danger to public health and safety. The Board permitted the agency to enforce the regulation against a federal air marshal for having disclosed to the media changes in flight coverage that he believed presented a serious threat to the safety of the flying public. The Federal Circuit reversed, holding that Congress forbade agencies from relying on their own regulations to limit the protective scope established by Congress for whistleblowers.

OSC filed an *amicus curiae* brief in *Kerr v. Jewell* (9<sup>th</sup> Cir. 2013). In its brief, OSC argued that the WPEA should be applied to cases pending before the law's enactment. Specifically, OSC urged the Ninth Circuit to apply the WPEA to the case because: (1) it clarified existing law by overturning prior decisions that unduly limited whistleblower protections; (2) Congress expressly intended the WPEA to apply to pending cases; and (3) applying the WPEA to pending cases promotes government efficiency and accountability. In its ruling, the Ninth Circuit determined that

portions of the original Whistleblower Protection Act had been misapplied since its inception and that the WPEA simply clarified the protections Congress intended to confer in the statute.

OSC also filed an *amicus curiae* brief in *Clarke v. Dep't of Veterans Affairs* (Fed. Cir. 2014). OSC argued that the MSPB's decision was erroneous because the Board's analysis of the exhaustion of administrative remedies requirement disregarded the plain language of the statute, conflicted with precedent barring the Board from relying on OSC's determinations in analyzing the exhaustion requirement, and encroached upon OSC's independence, thereby threatening future whistleblower claims. The matter is pending.

### **Corrective Action for Lesbian, Gay, Bisexual, and Transgender Federal Employees**

OSC recently found that the Department of the Army engaged in gender identity discrimination against a transgender civilian Army quality assurance specialist, after she announced her transition from male to female. OSC's investigation found that she experienced a significant change in working conditions when the Army improperly restricted her restroom usage, repeatedly referred to her by her birth name and male pronouns, and excessively monitored her conversations with coworkers. In response, the Army agreed to provide training to correct and prevent future discrimination. The Army already had permitted her to use the restroom associated with her gender identity. According to OSC's prohibited personnel practice report, the acts at issue were sufficiently frequent, pervasive, and humiliating to constitute discriminatory harassment" and that the employee "experienced these effects on a daily basis for many months, and they served as a constant reminder that she was deprived of equal status, respect, and dignity in the workplace." As a result, OSC concluded that the Army violated 5 U.S.C. § 2302(b)(10), which prohibits discrimination based on conduct that does not adversely affect job performance, including sexual orientation and gender identity discrimination. OSC's investigation found no evidence that her gender transition had a discernable or detrimental impact on her or other employees' work performance.

### **Motion for Intervention**

OSC moved to intervene in a case before the MSPB, challenging the Administrative Judge's decision to dismiss a complainant's individual right of action (IRA) appeal. In the intervention motion, OSC argued that the complainant exhausted his administrative remedies, that the Administrative Judge abused his discretion when he inquired into OSC's reason for terminating its investigation, and that no purpose would be served by requiring the complainant to wait 120 days to file an IRA appeal. While the matter was pending, the parties entered into a settlement agreement in which the complainant received a lump sum payment and all negative references were removed from his personnel file.

### **WPEA Nondisclosure Prohibition**

OSC intervened on behalf of an Army employee who faced disciplinary action for having reported a co-worker to a state social services agency for child abuse. The Army issued her a written counseling for taking the matter outside her chain of command. The directive states: "Taking [division] issues outside the [Army] Chain of Command is not appropriate and could result in disciplinary action should it occur in the future." Based on OSC's intervention, the division manager agreed to rescind all records of the counseling and advised all supervisors at the activity to stop counseling, admonishing, or warning employees to use the chain of command for protected disclosures inside or outside the chain of command.

### **USERRA Unit**

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects the civilian employment and reemployment rights of those who serve the nation in the Armed Forces, including the National Guard and Reserves, by prohibiting employment discrimination due to uniformed service (including initial hiring, promotion, retention, or any benefit of employment) and providing for prompt reemployment of service members in their civilian jobs after they return from military duty. Congress intends for the federal government to be a "model employer" under USERRA.

OSC plays an important role in enforcing USERRA by providing representation, when warranted, before the MSPB and the U.S. Court of Appeals for the Federal Circuit to service members whose USERRA complaints involve federal executive agencies.

## **USERRA Referral Cases**

Under USERRA, a claimant alleging a violation by a federal executive agency may either file an appeal with the MSPB or a complaint with the Department of Labor, Veterans' Employment and Training Service (VETS). If the claimant chooses to file a complaint with VETS, VETS must investigate and attempt to resolve the complaint (see below "USERRA Demonstration Project" for OSC's enhanced role in investigations). If it cannot resolve the matter, the claimant may direct VETS to refer the complaint to OSC for possible representation before the MSPB. If, after reviewing the complaint and investigative file, and conducting any necessary follow-up investigation, OSC is reasonably satisfied that the claimant is entitled to relief under USERRA, it may act as the claimant's attorney and initiate an action before the MSPB.

## **USERRA Demonstration Projects**

From 2005-2007, Congress mandated a USERRA Demonstration Project whereby OSC directly received half of all federal USERRA cases for investigation, resolution, and possible prosecution. OSC obtained significant relief for veterans during the last project, prompting Congress to establish a second Demonstration Project, which began on August 9, 2011 and expired on August 9, 2014. The Office received similarly significant results during the most recent Demonstration Project.

## **Resource Estimates**

During FY 2015, the USERRA Unit will use approximately two FTE at a cost of \$390,000, while during FY 2016 OSC, estimates the program will use one FTE at a cost of \$230,000. These costs address USERRA referrals from DOL only and do not take into account future Demonstration Project work or USERRA investigations that OSC may be awarded.

## Goals and Results – USERRA Enforcement

The recent USERRA Demonstration Project added 464 USERRA cases to the unit’s total workload during the span of the three-year project. Unlike the Referral cases, OSC investigates as well as enforces the Demonstration Project cases. OSC has received an average 23 percent corrective action rate during this Demonstration Project. In the prior Demonstration Project, from 2005 to 2008, the Unit achieved similar results.

<b>TABLE 4<sup>a</sup> Summary of USERRA Referral and Litigation Activity</b>							
	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Pending referrals carried over from prior fiscal year</b>	3	5	7	12	17	11	6
<b>New referrals received from VETS during fiscal year</b>	15	41	32	36	24	7	14
<b>Referrals closed</b>	13	39	27	31	30	12	13
<b>Referrals closed with corrective action</b>	2	4	0	2	4	2	2
<b>Referrals closed with no corrective action</b>	11	35	27	29	26	10	11
<b>Referrals pending at end of fiscal year</b>	5	7	12	17	11	6	7
<b>Litigation cases carried over from prior fiscal year</b>	1	1	1	1	0	0	0
<b>Litigation cases closed</b>	1	0	1	1	0	0	0
<b>Litigation closed with corrective action</b>	0	0	1	1	0	0	0
<b>Litigation closed with no corrective action</b>	1	0	0	0	0	0	0
<b>Litigation pending at end of fiscal year</b>	1	1	1	0	0	0	0

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

**TABLE 5 Summary of USERRA Demonstration Project Activity**

	FY 2012	FY 2013	FY 2014
Pending cases carried over from previous fiscal year	28	88	69
New cases opened	152	137	146
Cases closed	92	154	153
Closed cases where corrective action was obtained	24	38	37
Closed cases where no corrective action was obtained	68	116	116
Pending cases at end of fiscal year	88	71	62

**Goal Table 3 Provide Outreach and Advice to the Federal Community about Employment Discrimination Against Veterans**

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result
39	Number of staff allocated	n/a	2	3	3	3	3	3		3	
40	Percent of staff allocated	n/a	25%	37%	37%	50%	50%	50%		50%	

## Goal Table 4 Seek Disciplinary or Corrective Action for Violations of Law

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result
41	Number of favorable resolutions	n/a	29	30	40	35	39	12 <sup>41</sup>		6 <sup>41</sup>	
42	Percentage of favorable resolutions	n/a	24%	24%	24%	24%	23%	24% <sup>42</sup>		N/A <sup>42</sup>	
43	Number of investigations within 90 days	n/a	59	60	59	60	84	20 <sup>43</sup>		N/A <sup>43</sup>	
44	Percentage of investigations within 90 days	n/a	63%	63%	42%	50%	57%	50% <sup>44</sup>		N/A <sup>44</sup>	
45	Number of legal reviews within 60 days	n/a	32	33	30	32	16	18 <sup>45</sup>		18 <sup>45</sup>	
46	Percent of legal reviews within 60 days	n/a	76%	76%	83%	76%	80%	76% <sup>46</sup>		76% <sup>46</sup>	
47a	Customer service exit survey findings	n/a	45%	47%	50% <sup>57a</sup>	50%	48%	N/A <sup>47a</sup>		N/A <sup>47a</sup>	
47b	Percent of cases received by USERRA Unit referred to ADR Unit for review	n/a	18%	50%	34%	50%	21%	N/A <sup>47b</sup>		N/A <sup>47b</sup>	

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

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

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

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

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

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

47a. This target was eliminated for 2015 and 2016 due to the USERRA Demonstration Project ending on August 9, 2014. Accordingly, OSC is no longer conducting a customer satisfaction survey for USERRA Demonstration Project cases.

47b. This target was eliminated for 2015 and 2016 due to the USERRA Demonstration Project ending on August 9, 2014.

## Goal Table 5 Achieve Mutually Satisfactory Solutions through USERRA Referral for Mediation

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result
48	Number of USERRA cases referred to ADR unit for review	n/a	17	58	47	47	30	3		3	
49	Percent of cases referred by USERRA to the ADR Unit for review in which mediation was offered	n/a	82%	60%	66%	65%	53%	66%		66%	
50	Percent of cases in which both parties agree to mediate	n/a	50%	50%	48%	50%	75%	50%		50%	
51a	Number of cases withdrawn prior to mediation	n/a	0	n/a	5	n/a	1	0		0	
51b	Number of cases mediated	n/a	2	17	11	7	11	1		1	
51c	Percent of cases successfully mediated	n/a	100%	58%	100%	75%	82%	50%		50%	

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

USERRA requires that complaints be investigated and the claimant be notified of the results within 90 days, unless the claimant grants an extension. Such investigations may include obtaining information from the claimant, requesting and reviewing documents from the agency, interviewing witnesses, and conducting legal research and analysis. All the information gathered must then be synthesized to make a determination about whether the complaint is meritorious. In some cases, there are delays that are beyond OSC's control in receiving documents or interviewing witnesses. Cases also vary widely in depth and complexity. Thus, in a certain proportion of cases, it is not feasible to complete investigations and make a determination within 90 days. Accordingly, OSC has targeted a 63-percent rate of completing USERRA Demonstration Project investigations within 90 days, or in almost two-thirds of complaints.

OSC conducted four USERRA outreaches during FY 2014, satisfying every agency request. OSC expects to again satisfy all outreach requests in FY 2015.

## **USERRA Successes**

OSC is playing a key 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 overseas deployment. Examples of recent USERRA successes by OSC include:

### **Assisting Injured Service Members**

An air traffic controller (ATC) with the Federal Aviation Administration suffered service-connected injuries during a deployment with the Army Reserve. As a result, she was unable to continue to perform ATC duties and requested assistance in finding an appropriate position to accommodate her disabilities. After the agency told her to find something on her own, she could only secure a position with a significant pay cut that extended her time for retirement eligibility. OSC intervened and the agency agreed to assign her to a higher-rated position, increase her base pay to the level she had previously, and arrange for her to attend a leadership development program at agency expense.

### **Ensuring Timely Reemployment**

A National Guardsman who was a cashier at the Defense Commissary Agency was improperly denied reemployment upon returning from a seven-month tour of duty, and told to apply for unemployment benefits. OSC contacted the agency, which agreed to reinstate him to his former position, restore his benefits and seniority, and provide him with back pay.

In another case, after returning from deployment, a Navy Reservist made a timely request for reemployment in his civilian position with the Department of the Navy. However, after initially confirming his requested start date, the agency delayed his reemployment another six weeks because his pre-service position was no longer available. OSC facilitated a settlement agreement under which the agency agreed to provide him with back pay and restore his seniority and other benefits as of the date he should have been reemployed six weeks earlier.

### **Preventing Initial Hiring Discrimination**

An Army Reservist was offered a civilian position with the Department of Defense (DOD) at NATO Special Operations Headquarters in Mons, Belgium. After the Reservist learned that she would be on active duty for seven months, she notified DOD, which withdrew its employment offer. OSC intervened and the agency agreed to re-offer claimant the position for a later “report to duty” date that was compatible with the end date of her military service.

### **Remedying Improper Dismissal**

After returning from an extended deployment, a Navy Reservist who worked as a civilian with the Department of the Navy was told she would be laid off for budgetary reasons in 40 days. OSC informed the agency that USERRA prohibits terminating a service member’s employment, except for cause, for six months following service lasting more than 30 days. At OSC’s request, the agency agreed to provide the Reservist with back pay for the remainder of the protected period (140 days), give her a lump sum payment for all the paid leave she would have accrued, and allow her to make up contributions to her retirement plan.

### **Restoring Promotional Opportunities**

While working as a police officer for the U.S. Mint, a member of the Coast Guard Reserve was called to active duty for two years. During his absence, the agency issued vacancy announcements for sergeant positions, but he was not notified or given the opportunity to apply. OSC contacted the agency, which agreed to resolve his complaint by scheduling him for the next sergeant’s exam, providing him with priority consideration for the next sergeant vacancy, and implementing a mechanism where service members are notified of and permitted to apply for advancement opportunities at the agency while they are absent performing military duty.

## Alternative Dispute Resolution

In select prohibited personnel practice cases referred by CEU to IPD, OSC offers mediation as an alternative to investigation and potential litigation. Under OSC's program, once a case has been identified as appropriate for mediation, an OSC alternative dispute resolution specialist contacts the parties to discuss the process. Pre-mediation discussions are designed to help the parties form realistic expectations and well-defined objectives regarding the mediation process. Among the factors that determine mediation-appropriate cases are the complexity of the issues, the nature of the personnel action, and the relief sought by the complainant.

### Goals and Results

During FY 2014, 80 cases were referred to the ADR Unit. In 56 cases, mediation was accepted by the complainants, and from those cases agencies accepted mediation in 39, from which there were 30 mediated resolutions. (See Table 4.)

<b>TABLE 6 ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints &amp; USERRA Complaints</b>							
	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Number of Cases in which mediation offered after referral from CEU or USERRA plus cases referred from IPD<sup>a</sup></b>	25	28	26	31	129	107	80
<b>Mediation Offers Accepted by Complainants</b>	10	17	11	20	82	75	56
<b>Mediation Offers Accepted by Agencies and by Complainants</b>	8	15	6	15	59	52	39
<b>Number of mediations conducted by OSC<sup>b</sup></b>	7	11	6	13	40	50 <sup>c</sup>	39
<b>Number of mediations withdrawn by either OSC or the agency after acceptance</b>	0	3	0	2	10	6	8
<b>Number of completed mediations that yielded settlement</b>	4	4	3	10	18	29	30
<b>Percentage of completed mediations that resulted in settlement</b>	57%	36%	50%	77%	60%	62%	79% <sup>c</sup>
<b>Cases in process<sup>d</sup> - carryover from previous FY</b>	N/A	N/A	N/A	N/A	5	1	0
<b>Carryover to next FY - In Process</b>	N/A	N/A	N/A	N/A	15	10	12
<b>Carryover to next FY - Offer Pending<sup>e</sup></b>	N/A	N/A	N/A	N/A	20	7	4
<b>Carryover to next FY – Pending review</b>	N/A	N/A	N/A	N/A	N/A	10	10

The new emphasis on mediation has yielded some outstanding results: Mediations that resulted in settlements again reached a record level (30), and 79 percent of mediations resulted in settlement, thus proving an efficient use of resources.

<sup>a</sup> 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.

<sup>b</sup> Includes cases completed or withdrawn after at least one mediation session.

<sup>c</sup> "Percentage of completed mediations that resulted in settlement" omits cases withdrawn before mediation was completed.

<sup>d</sup> "In process" means parties have agreed to mediate and mediation is scheduled or is ongoing with more than one session.

<sup>e</sup> Cases in which OSC will or is in the process of offering mediation to the parties.

## **Resource Estimates**

During FY 2015 the ADR Unit will use approximately four FTE at a cost of approximately \$579,000. During FY 2016, we estimate the cost of the program will be approximately \$585,000, with four FTE assigned.

## **ADR Successes**

Below are some significant case summaries from our ADR Unit. Note that mediation settlement agreements are confidential unless otherwise agreed upon.

### **Relationships Restored, New Agency Policy Initiative after Mediation**

As publicized in an OSC press release, Franz Gayl, a U.S. Marine Corps civilian scientist, had publicly raised concerns about the speed of the military's procurement of blast-resistant trucks known as Mine Resistant Ambush Protected vehicles (MRAPs) and claimed he was retaliated against for his whistleblowing. Through OSC's mediation program, Mr. Gayl and the U.S. Marine Corps successfully resolved Mr. Gayl's Whistleblower Protection Act complaints. In connection with these efforts, the Marine Corps agreed to create an operational planning team, which will develop guidelines to help individual Marine Corps members and employees meet their Marine Corps' obligations and responsibilities consistent with their whistleblower rights. Due to his whistleblower experience, the Marine Corps appointed Mr. Gayl to serve as a member of this team.

### **Reprisal Complaint after a Substantiated Disclosure**

A federal employee claimed that in retaliation for raising concerns about erroneously high locality pay of a senior employee, he was denied telework options and transferred to an undesirable location. Through mediation with OSC, parties were able to clear up key misunderstandings and discuss creative proposals and resolutions. This led to a settlement that met both parties' interests, including a specific telework arrangement, a new office location assignment, whistleblower training at the agency, and a modest change of work duties.

### **Reprisal Complaint after Report of Harassment**

A federal employee claimed that in retaliation for disclosing harassment by her supervisor, she was detailed to another office and assigned menial duties. Through mediation, the parties discussed the employee's concerns and talked through the situation. The parties agreed that the complainant would be reassigned to her permanent duty station under a different supervisor with restoration of leave taken related to the incident. Mediation allowed the employee to obtain the solution she most wanted much more quickly than would have been possible through an extended investigation and prosecution, and provided the agency a more productive employee as well as the cost savings inherent in avoiding an investigation.

## **USERRA Cases Handled by ADR**

### **Leave without Pay**

Another federal employee, a member of the Reserve, claimed his agency violated USERRA when it put him on light duty and then leave without pay (LWOP) after he returned from military duty in which he sustained injuries that impaired his ability to perform his work. The employee asked for monetary compensation, restoration of leave, and assignment to a position equal in pay and status to his pre-deployment position. Through mediation, the parties explored their interests in compensation for the employee, reassignment or retirement for the employee, and increased USERRA awareness for agency personnel involved in the mediation. Settlement was achieved, with the claimant agreeing to withdraw the claim and retire in exchange for the agency paying him a settlement and supporting him in the disability retirement application process.

## Denial of Military Leave

A federal employee, a member of the Navy Reserve, was denied military leave by his agency employer because he was performing a type of duty that did not require military orders, and thus could not provide agency-required documentation. OSC provided a USERRA subject matter expert who, through the mediation process, assisted both the employee and the agency representatives in understanding Reserve and Guard member's rights under USERRA and that the law does not require orders in such a situation. Both parties explored important interests and agreed to a settlement allowing the claimant to transfer to a different branch and added USERRA training for key agency personnel through OSC.

## Change in Position

A federal employee, a member of the National Guard, filed a USERRA claim asserting that upon returning from deployment, the agency assigned him to the same position but in a different location that required more travel time and was, according to the claimant, of lesser status. The employee asserted that the new assignment impaired his opportunities to advance professionally. In mediation, the agency expressed its interest in supporting service members and being a model employer. The employee explained that he needed to maintain a position that validated his seniority and allowed him to maximize his contributions to the agency. With the air cleared, the parties ultimately agreed to reassign the claimant back to his pre-deployment position and location.

### Goal Table 6 Achieve Mutually Satisfactory Solutions through Mediation

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result
26	Number of cases reviewed by the ADR Unit from all sources	n/a	186	190	155	185	132 <sup>26</sup>	200		200	
27	Percentage of cases reviewed in which mediation is offered from all sources	n/a	67%	63%	69%	65%	61%	65%		65%	
28	Number of cases mediated (including cases withdrawn after one or more sessions)	n/a	32	50	49	50	39	45		45	
29	Percentage of all mediations completed that resulted in settlement	n/a	56%	58%	62%	62%	79%	62%		62%	

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

## **Whistleblower Disclosure Program**

In addition to its investigative and prosecutorial mission, OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may, under 5 U.S.C. §1213(a), disclose information they reasonably believe evidences a violation of law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. The Disclosure Unit is responsible for reviewing the information submitted by whistleblowers and advising the Special Counsel whether it shows that there is a substantial likelihood that the type of wrongdoing described in § 1213(a) has occurred or is occurring. If so, the Special Counsel must transmit the disclosure to the head of the relevant agency. The agency is required to conduct an investigation and submit a report to OSC describing its findings and the steps taken in response. Under § 1213(e), the whistleblower is also provided with a copy of the report for comment. The Special Counsel is then required to review the report in order to determine whether it meets the requirements of the statute and its findings appear reasonable. The report is then forwarded to the President and appropriate congressional oversight committees.

During FY 2014, the unit referred a record 92 matters to agency heads for investigation under § 1213(c). (See Table 5.)

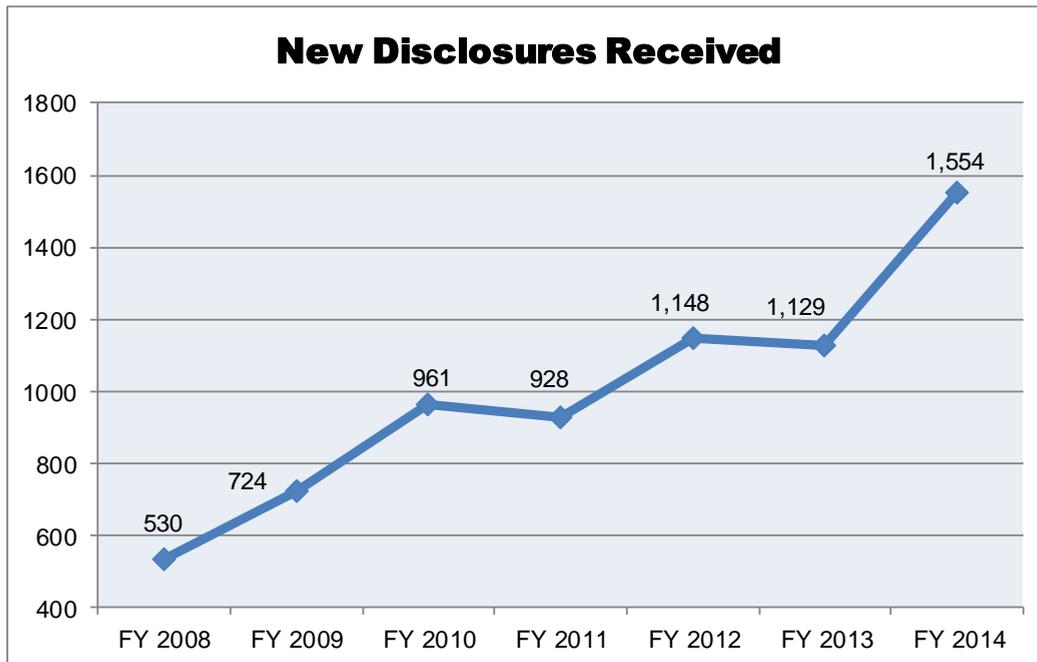
The Disclosure Unit's more complex cases are very labor-intensive and often require the attention of more than one attorney. These cases can take more than a year to fully complete for a number of reasons—agencies routinely request additional time to conduct the investigation and write the report, whistleblowers request additional time to prepare their comments, and Disclosure Unit attorneys and the Special Counsel must review the report to verify it contains the information required by statute, determine whether its findings appear reasonable, and prepare any comments the Special Counsel may have on the report.

### **Resource Estimates**

During FY 2015, we estimate the program will use 20 FTE at a cost of \$3,193,000. During FY 2016, we estimate the program will use 23 FTE at a cost of \$3,761,000.

### **Goals and Results – Whistleblower Disclosures**

OSC's Strategic Objective 2 is to promote public safety and efficiency by acting as a channel for whistleblowers in the federal workforce to disclose information. The following tables describe the two operational goals supporting this strategic objective. Disclosure Unit cases have more than doubled in the last six years. In FY 2014, the unit received 1,554 Disclosures, 37 percent higher than in FY 2013. As a consequence, the Unit's backlog remains a challenge.



**TABLE 7 Summary of Whistleblower Disclosure Activity – Receipts and Dispositions<sup>a</sup>**

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	
<b>Pending disclosures carried over from prior fiscal year</b>	84	128	125	83	132	225	193	
<b>New disclosures received</b>	530	724	961	928	1,148	1,129	1,554	
<b>Total disclosures</b>	614	852	1,086	1,011	1,280	1,354	1,747	
<b>Disclosures referred to agency heads for investigation and report</b>	40	46	24	47	39	51	92	
<b>Referrals to agency IGs</b>	9	10	2	5	6	2	0	
<b>Agency head reports sent to President and Congress</b>	25	34	67	22	36	54	26	
<b>Results of agency investigations and reports</b>	Disclosures substantiated in whole or in part	22	30	62	21	31	49	25
	Disclosures unsubstantiated	3	4	5	1	5	5	1
<b>Disclosure processing times</b>	Within 15 days	256	394	555	555	583	575	731
	Over 15 days	232	333	451	315	470	585	584
<b>Percentage of disclosures processed within 15 days</b>	52%	54%	55%	63%	55%	49%	55%	
<b>Disclosures processed and closed</b>	488	727	1,006	870	1,053	1,160	1,315	

<sup>a</sup> Many disclosures contain more than one type of allegation. This table, however, records each whistleblower disclosure as a single matter, even if multiple allegations were included.

## Goal Table 7 Reduce Governmental Wrongdoing and Threats to Health and Safety by Facilitating Whistleblower Disclosures

Description of Target		FY 2012	FY 2012	FY 2013	FY 2013	FY 2014	FY 2014	FY 2015	FY 2015	FY 2016	FY 2016
		Target	Result	Target	Result	Target	Result	Target	Result	Target	Result
30	Total number of outreach activities undertaken including dissemination of whistleblower information	n/a	9	9	2	5	14	10		10	
31	Success in prompting thorough agency investigations of referred disclosures	n/a	68%	68%	77%	77%	88%	77%		77%	
32	Number of whistleblower disclosures prompting effective corrective action and accountability <sup>32</sup>	n/a	30	32	31	33	25 <sup>32a</sup>	33		33	

32a. The number of whistleblower disclosures prompting effective corrective action and accountability dropped because the Disclosure Unit had to shift its focus to the increased referral workload that emerged in the second half of FY 2014 (see Goal Table 7, row 43).

**Goal Table 8 Provide Outreach and Advice to the Federal Community about Whistleblower Disclosures; Seek Corrective Action**

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result
33	Number of whistleblower disclosures referred by OSC to agency head for investigation	n/a	39	41	51	50	90	60		60	
34	Percent of whistleblower disclosures submitted to OSC referred to agency head for investigation	n/a	4%	6%	4%	6%	7%	6%		6%	
35	Number of whistleblower disclosures either closed or referred within 15 day statutory timeline	n/a	583	590	578	580	742	600		600	
36	Percent of whistleblower disclosures closed or referred within 15 day statutory deadline	n/a	55%	55%	49%	50%	56%	53%		53%	
37	Expand federal agency compliance with provisions of the Whistleblower Protection Act by invigorating the Certification Program under Section 2302c	n/a	n/a	Develop and redesign training materials	n/a	Train agencies on redesigned materials	14 <sup>37</sup>	Train agencies on redesigned materials		Train agencies on redesigned materials	
38	Survey of attendees at outreach events	n/a	n/a	Develop survey	n/a	Survey 500 attendees	New Survey has DU included	Survey 500 attendees		Survey 500 attendees	

37. This number reflects agency-wide training in which OSC's policy and process regarding whistleblower disclosures was covered. Further, major strides were made with the 2302(c) program, to successfully include VA certification.

## **Disclosure Unit Successes**

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

Residents of Long-Term Care Units Neglected for Almost a Decade. OSC referred to the Secretary of Veterans Affairs allegations received from a former physician at the VA Boston Health Care System, Brockton Campus in Brockton, Massachusetts, that employees failed to provide appropriate medical and mental health care for individuals residing in the long-term care units of the Community Living Center (CLC).

The agency substantiated the allegations but the VA's Office of the Medical Inspector (OMI) found no violations of law, rule, or regulation. The investigation determined the CLC admitted Patient 1 with significant, chronic mental health issues, but the patient did not receive a comprehensive psychiatric evaluation until eight years later. In addition, the investigation determined that Patient 2 had serious mental health issues, and during his eight year residence in the CLC, he had only one psychiatric note written in his chart. In addition, there was no evidence that, until the whistleblower's recommendation, the CLC tried to lower or eliminate doses of psychotropic medications Patient 2 received. The agency did not substantiate allegations with respect to a third patient. The agency did not engage in a broader review of patient care beyond these three identified patients, despite the whistleblower's concerns.

OSC requested a supplemental report from the VA to explain OMI's conclusion that no patient's rights were violated. However, in its supplemental report the agency reiterated: "in some areas [the veterans'] care could have been better but [the agency] does not feel that their ... rights were violated." In a second supplemental communication, the agency presented additional facts concerning the care received by Patient 1 and Patient 2. Ultimately, the VA failed to acknowledge that the confirmed neglect of residents at the facility had any impact on patient care. In addition, the OMI report did not address the whistleblower's belief that patient neglect in the CLC extended beyond the three individuals identified in his disclosure. OMI failed to look beyond these individuals to examine whether the serious care issues extended to other patients at the CLC or to other facilities within the VA Boston Healthcare System. Because of these deficiencies, the Special Counsel determined that the agency reports were unreasonable. *OSC File No. DI-13-4505. Referred November 2013; transmitted to the President and congressional oversight committees and closed on August 7, 2014.*

Failure to Adhere to Decontamination and Sterilization Procedures. OSC referred for investigation allegations received from a medical supply technician at the Ann Arbor VA Medical Center (Medical Center) in Ann Arbor, Michigan that employees at the facility consistently failed to follow proper procedures in the decontamination and sterile storage areas, and that patients and staff were at risk of infection from contaminated supplies and equipment. The agency investigation, conducted by the OMI, substantiated several of the allegations, finding that employees were not properly trained in safety and conduct requirements. The investigation also found that employees violated procedures to protect against contamination of sterile supplies and equipment. Despite this finding, the agency investigation did not reveal evidence of contamination as a result of the employee non-compliance. The agency reports identified the corrective actions taken at the Medical Center in response to the investigation, including renovations to improve functions in the supply and processing divisions. OMI provided a summary supplemental report on the status of the corrective actions. All of the twelve recommendations were adopted, nine have been completed, and three were ongoing. Despite OSC's request, the OMI declined to investigate more recent, specific allegations regarding compliance with safety procedures.

The Special Counsel determined that although the agency reports contained all the information required by statute, the findings did not appear reasonable given the whistleblower's ongoing concerns regarding compliance with safety procedures and the agency's decision to ignore these concerns. *OSC File No. DI-13-2133. Referred January 2013; transmitted to the President and congressional oversight committees and closed on July 30, 2014.*

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

Failure to Follow Proper Procedures for Electrical Work. OSC referred to the Secretary of the Navy allegations of safety violations received from electrical engineering technicians at Naval Facilities Engineering Command Mid-Atlantic, Norfolk, Virginia. The whistleblowers had been reporting the problems since 2008, but no action had been taken. The Navy investigation substantiated the whistleblowers' allegations that management officials failed to ensure that employees complied with the standard operating procedures and failed to ensure compliance with safety rules and eliminate unnecessary safety risks. The investigation did not substantiate the allegations that unqualified employees were allowed to work on high voltage assignments, that employees failed to wear proper protective equipment, or that management has not appropriately responded to these allegations.

In response to the whistleblowers' disclosures, the Navy revised its procedures and agency rules, implemented additional training and safety meetings, added safety review boards and modified its hiring processes. In addition, the agency has established an apprenticeship training program, a process for tracking and monitoring safety equipment, and a pilot program to evaluate whether further changes need to be made to agency policies. OSC found that the agency reports contain all of the information required by statute and that the findings of the agency head appear reasonable. *OSC File No. DI-12-1819. Referred April 2012; transmitted to the President and congressional oversight committees and closed on April 21, 2014.*

Insufficient Staffing and Improper Documentation of Transfusions. OSC referred to the Secretary of the Department of Health and Human Services (HHS) for investigation allegations received from a former nurse that employees at the Indian Health Service (IHS), Blackfeet Community Hospital, Browning, Montana were engaged in conduct that constituted a violation of law, rule, or regulation, and a substantial and specific danger to public health and safety with respect to patient care and facility security. The agency investigation substantiated that nurses at the hospital were expected to care for a full unit of patients without adequate clerical support, nursing staff, or supervision. The investigation also found that nurses did not properly complete transfusion tags documenting the patients' status following transfusions. In addition, hospital doors were routinely propped open and security measures were lax. Hospital staff, patients, and visitors regularly smoked at the non-smoking facility. Finally, the agency determined that multiple exterior and security lights were inoperable and the response from hospital security was slow, creating a security concern.

In response to the report, IHS issued or re-issued patient care policies, installed a lock and alarm on the security door, repaired lighting, filled all nursing positions with full-time nurses and improved supervision, revised the smoking policy, and met with the Blackfeet Tribal Health and Blackfeet Tribal Council to request assistance in implementing corrective actions. The Special Counsel determined that the agency reports contain all of the information required by statute and that the findings appear to be reasonable. *OSC File No. DI-12-3553. Referred January 2013; transmitted to the President and congressional oversight committees and closed on July 22, 2014.*

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

Widespread and Institutionalized Abuse of Administratively Uncontrollable Overtime. OSC referred to then-Secretary of Homeland Security Janet Napolitano allegations that employees at Customs and Border Protection, Commissioner's Situation Room (CSR), Washington, D.C., regularly abused the use of Administratively Uncontrollable Overtime (AUO), that the CSR director and assistant director authorized and abetted the improper use of AUO, and that they abused it themselves. The whistleblower alleged that CSR employees abused the use of AUO pay by remaining at their duty stations two hours after the end of their regularly scheduled eight-hour shift on a daily basis. The whistleblower disclosed that it was common for CSR employees to work their regular shifts and then spend two additional hours at their duty stations relaxing, joking around, surfing the Internet, watching sports and entertainment on television, and taking care of personal matters. The agency investigation of this matter substantiated the allegation that AUO was improperly used at the CSR and that previous warnings about the proper use of AUO were disregarded. In the report, the agency pledged to take action to correct the abuse of AUO, including the development of a comprehensive department-wide AUO policy, and training.

Based on a determination that DHS had committed to taking the same corrective action in 2008 when OSC brought a previous AUO abuse matter to its attention, yet had been unable or unwilling to follow through on the previous commitment, the Special Counsel found the current report unreasonable. *OSC File No. DI-13-0002. Referred January 2013; transmitted to the President and congressional oversight committees and closed on November 1, 2013.*

### **Gross Mismanagement and Abuse of Authority**

Failure to Provide Adequate Care to Inmates. OSC requested that the Attorney General investigate disclosures from a nursing assistant at the Department of Justice (DOJ), Bureau of Prisons (BOP), Federal Medical Center (FMC Rochester), Rochester, Minnesota, who alleged that employees engaged in misconduct by failing to provide adequate care to incontinent inmates, and refusing to provide physical care, such as feeding and bathing, to an HIV-positive inmate in hospice care. The agency investigation partially substantiated the disclosures. The agency determined that there were instances in which some incontinent inmates were "double diapered." The investigation, however, did not find sufficient evidence to determine who specifically had done this or that any of the four nursing assistants identified by the whistleblower was responsible. The agency also determined that a nursing assistant behaved unprofessionally when she made comments about an HIV-positive inmate. Further, the investigation found sufficient evidence to support additional allegations raised during the investigation that two other nursing assistants did not bathe an inmate or provide him with his dinner on one occasion, and that two nursing assistants behaved unprofessionally when they joked about not feeding an inmate.

In response to the report, FMC Rochester provided training to all nursing staff members on perineal and incontinence care, pledged to update the "Patient Care Manual" to address the inappropriate practice of excessive padding in incontinence briefs, and took disciplinary action against two employees. OSC found that the agency reports contained all of the information required by statute and that the findings of the agency head appeared reasonable. *OSC File No. DI-13-2349. Referred August 2013; transmitted to the President and congressional oversight committees and closed on July 15, 2014.*

## **Hatch Act Enforcement Program**

Enforcement of the Hatch Act—which protects the civil service system from coerced or inappropriate partisan political activity—is another important component of OSC’s mission. The agency’s Hatch Act Unit (HAU) investigates complaints, issues advisory opinions, responds to requests, and engages in training and outreach to the federal community.

OSC worked with Congress to obtain passage of the Hatch Act Modernization Act in December 2012. This legislation removed OSC’s jurisdiction over most state and local government employees who run for partisan political office, an important reform that has enabled OSC to enforce the Hatch Act more efficiently and focus on the federal community.

### **Investigations**

The HAU investigates allegations to determine whether the evidence of a Hatch Act violation supports disciplinary action. If a determination is made that a violation has occurred, the HAU will either issue a warning letter to the subject, or attempt to informally resolve the violation, or negotiate a settlement, or prosecute the case before the MSPB.

As anticipated, the Hatch Act Modernization Act resulted in a substantial reduction in the number of allegations of Hatch Act violations related to state and local political campaigns, and fewer requests for advisory opinions. As a result, the Hatch Act Unit closed 182 complaints in FY 2014.

### **Advisory Opinions**

The HAU has the unique responsibility of providing Hatch Act information and advice to the White House and congressional offices, cabinet members and other senior management officials, as well as state and local (including Washington, D.C.) government employees, the public at large, and the news media. OSC advises individuals on whether they are covered by the Act and whether their political activities are permitted. During FY 2014, the HAU issued 1,382 total advisory opinions, including 60 formal written advisory opinions.

### **Outreach**

To further its advisory role, the Hatch Act Unit is very active in OSC's outreach program. The Unit conducted approximately 30 outreach presentations this fiscal year to various federal agencies and employee groups concerning federal employees’ rights and responsibilities under the Act. Many of these programs involved high-level agency officials.

### **Resource Estimates**

During FY 2015, the Hatch Act Unit will use four FTE at a cost of approximately \$987,000. During FY 2016, a presidential election year, OSC estimates the cost of this program to remain the same, employing four FTE.

## Goals and Results – Hatch Act Enforcement

Between FY 2008 and 2012, the number of complaints and requests for advisory opinions regarding the Hatch were at historic levels. OSC’s caseload began to decrease during FY 2013 in response to legislative change. Nonetheless, HAU processed and closed complaints at a near-record rate, allowing the Unit to significantly decrease its case backlog.

**TABLE 8 Summary of Hatch Act Complaint and Advisory Opinion Activity**

	FY 2008 <sup>a</sup>	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	
<b>Formal written advisory opinion requests received</b>	292	227	351	283	257	107	64	
<b>Formal written advisory opinions issued</b>	275	226	320	335	262	129	60	
<b>Total advisory opinions issued<sup>b</sup></b>	3,991	3,733	4,320	3,110	3,448	1,767	1,382	
<b>New complaints received<sup>c</sup></b>	445	496	526	451	503	277	151	
<b>Complaints processed and closed</b>	264	388	535	635	449	465	182	
<b>Warning letters issued</b>	70	132	163	164	142	150	44	
<b>Corrective actions taken by cure letter recipients</b>	Withdrawal from partisan races	13	15	28	23	5	5	7
	Resignation from covered employment	17	6	26	16	2	2	0
	Other	2	3	1	5	4	4	1
	<b>Total</b>	32	24	55	44	11	11	8
<b>Disciplinary action complaints filed with MSPB</b>	3	10	7	3	0	2	1	
<b>Disciplinary actions obtained (by negotiation or ordered by MSPB)</b>	11	5	10	5	4	7	15	
<b>Complaints pending at end of fiscal year</b>	323	430	422	233	286	96	65	

a Numbers revised for fiscal years 2007-2008 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.

## Goal Table 9 Provide Outreach and Advice; Seek Disciplinary Action against Federal Employees for Persistent or Egregious Job-Related Political Activity

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result
52	Number of Hatch Act updates to OSC website or Listserv messages <sup>52</sup>	10	15	10	10	10	10	10		10	
53	Percent of cases obtaining corrective action <sup>53</sup>	n/a	92%	95%	92%	90%	73%	75%		75%	
54	Percent of appropriate cases resolved thru negotiation <sup>54</sup>	n/a	100%	100%	100%	100%	93%	90%		90%	
55	Number of successful prosecutions	n/a	1	1	1	1	2	1		1	
56	Percent of successful prosecutions	n/a	100%	100%	100%	100%	100%	100%		100%	

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

53. Calculating corrective actions: Hatch Act Unit attorneys will keep track of cases where staff try to achieve corrective action but are unsuccessful. The Unit will then compare that number to the total number of corrective actions achieved. For example, if the Unit achieves 40 corrective actions and are unsuccessful in two attempts, it would calculate the percentage as  $40/42 = 95$  percent successful. The FY 2014 target for the number of warning letters issued was reduced from 95 to 90, due to the Hatch Act Modernization Act of 2012, which narrowed the criteria for Hatch Act violations at the state and local level. OSC anticipates a reduction in the number of Hatch Act complaints received and warning letters issued as a result of these changes. After FY 2015, the Hatch Act Unit will reassess the effects of the new legislation on complaints received and warning letters issued in order to provide an accurate estimate for FY 2016.

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

## Goal Table 10 Reduce Instances of Prohibited Job-Related Political Activity by Federal Employees

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result	FY 2016 Target	FY 2016 Result
57	Number of warning letters issued <sup>57</sup>	n/a	142	142	150	75 <sup>57</sup>	44	50		50	
58	Percent of Hatch Act outreach/training requests accepted <sup>58</sup>	98%	98%	98%	100%	98%	100%	98%		98%	
59	Percent of oral and email advisories issued within 5 business days of receipt of complaint <sup>59</sup>	95%	99%	95%	98%	95%	99%	95%		95%	
60	Percent of formal written advisories issued within 120 days	n/a	95%	95%	95%	95%	100%	95%		95%	
61	Percent of formal written advisory requests responded to <sup>61</sup>	n/a	98%	98%	98%	98%	100%	98%		98%	

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

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

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

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

## **Hatch Act Successes**

### **Disciplinary Action Obtained through Settlement Negotiations**

OSC successfully resolved fifteen Hatch Act cases through settlement negotiations in fiscal year 2014. All of the cases involved federal employees who engaged in significant prohibited political activity, and the settlements resulted in the employees receiving disciplinary action for their violations.

For example, OSC investigated allegations that a Federal Elections Commission (FEC) employee sent dozens of partisan political messages on social media, including many soliciting campaign contributions for President Obama's 2012 reelection campaign and other political campaigns. The employee also participated in an online broadcast via webcam from an FEC facility, criticizing the Republican Party and then-presidential candidate Mitt Romney. Following a joint investigation by OSC and the FEC Office of Inspector General, the employee admitted to violating the Hatch Act and agreed to resign and accept a two-year debarment from federal executive branch employment.

OSC also investigated allegations that a U.S. Air Force civilian employee sent numerous partisan political e-mails using a government account to a list of as many as 60 federal employees. The employee sent each e-mail while on duty in the months leading up to the 2012 election. The employee admitted knowing about the Hatch Act's restrictions, and even after receiving warnings from his supervisors, persisted in sending more e-mails. All of the e-mails were in opposition to then-candidate President Barack Obama and the Democratic Party. As disciplinary action for his admitted violations, the employee agreed to accept a 40-day suspension without pay.

Also, OSC investigated a complaint that an immigration services assistant for the United States Custom and Immigration Services, while on duty and in the workplace, sent several emails attempting to, among other things, organize counter-demonstrations at two Republican events during the 2012 elections. As disciplinary action for her admitted violations, the employee agreed to accept a five-day suspension without pay. She already had been disciplined by USCIS and served a ten-day suspension without pay for email abuse.

In another example, OSC investigated an IRS tax advisory specialist who promoted her partisan political views to a taxpayer she was assisting during the 2012 presidential election season. Specifically, OSC received a recorded conversation in which the employee expressed pro-Democratic party and anti-Republican party sentiments to a taxpayer. Following OSC's investigation, the employee entered into a settlement agreement with OSC, wherein she admitted to violating the Hatch Act and agreed to accept a 14-day suspension without pay.

### **Merit Systems Protection Board Litigation**

OSC filed one Hatch Act case with the MSPB in fiscal year 2014. It involved an Internal Revenue Service (IRS) customer service representative who, when fielding taxpayers' questions on an IRS customer service help line, repeatedly urged taxpayers to reelect President Obama in 2012. OSC successfully resolved the case through settlement negotiations and the employee agreed to accept a 100-day suspension without pay for his violation.

In FY 2014, OSC also received a final MSPB decision on what was the first case under the Hatch Act Modernization Act of 2012. The case involved a USPS employee who twice ran in partisan elections for the U.S. House of Representatives and solicited political contributions for his campaigns. OSC and USPS repeatedly warned the employee that his actions violated the Hatch Act and requested that he comply with the law either by withdrawing from the elections or ending his federal employment. Despite these repeated warnings, the employee refused to comply with the law. The MSPB ordered the employee removed from his employment, and the Federal Circuit affirmed the MSPB's decision in December 2014.

In January 2015, OSC filed a complaint with the MSPB against a career member of the Senior Executive Service (SES) with the U.S. Department of Agriculture. The complaint alleges that around September 2011 the SES official approached a subordinate, and outlined his proposal to establish a political action committee (PAC) in support of

President Barack Obama's 2012 reelection campaign. The official told the subordinate that he hoped to obtain a political appointment by contributing a large sum of money to President Obama's campaign. The official further told the subordinate that if the subordinate contributed to the official's proposed PAC and the official received a political appointment, the official would help the subordinate obtain a career SES position. The official asked the subordinate for a \$2,400 contribution. Around October 2011, the official again approached his subordinate and suggested that the subordinate's performance bonus be used to make a contribution to the proposed PAC. The official again made the suggestion to the subordinate in January 2012. Also, in the complaint OSC alleges that in September 2011 the SES official informed another USDA employee that he was establishing a PAC and asked the attorney to contribute \$2,000. The official told the attorney that donating to PACs is how federal employees advance their careers. The case is still pending.

In October 2014, OSC filed a complaint against a U.S. Army Corps of Engineers (USACE) employee, charging him with violating the Hatch Act by being a candidate in the partisan election for sheriff of Jefferson County, Arkansas. The employee announced his candidacy in September 2013 and held a fundraiser in December 2013. USACE Regional Counsel advised him in March 2014 that he was prohibited from running, but nonetheless, the employee filed candidacy papers in May 2014. OSC also advised him, on more than one occasion, that the Hatch Act prohibited his candidacy. However, the employee continued with his candidacy in violation of the Hatch Act. The case is still pending.

### **Corrective Actions Obtained through Negotiations**

The Hatch Act Unit successfully resolved eight cases in fiscal year 2014 by encouraging employees to voluntarily cease the activity that violated the Hatch Act. Seven of these cases involved federal employees who were running for partisan political office. The Hatch Act Unit was able to convince the employees to come into compliance with the law by either withdrawing from the race or resigning from their employment.

## **OSC's Outreach Program**

The Outreach Program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that federal agencies inform their workforces about the rights and remedies available to them under the Whistleblower Protection Act and the Whistleblower Protection Enhancement Act.

In an effort to assist agencies in meeting the statutory requirement, in FY 2002, OSC designed and created a five-step Section 2302(c) Certification Program. This program gives guidance to agencies 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 2014, OSC employees spoke at 104 events nationwide.

OSC also informs the news media and issues press releases when it closes 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, which contributes to federal employees and managers' awareness about the merit system protections enforced by OSC.

# **PART 4 – ENHANCEMENT OF OPERATIONS**

## **Strategic Management of Human Capital**

OSC's human capital strategy is aligned with its mission, goals, and organizational objectives. It is integrated into the budget and strategic plans, and is consistent with human capital guidance from the Office of Personnel Management and the Office of Management and Budget. OSC has internal accountability systems to ensure effective merit-based human resource management as described below.

The agency is addressing gaps concerning specific skills in its program areas through internal development, upward mobility positions, legal internships, in-house mission-specific training, and by hiring additional personnel. OSC has also taken the initiative of hiring several unpaid interns and hosting Presidential Management Fellows from other agencies to help reduce full-time staff workloads and improve agency efficiency. Furthermore, OSC promotes cross-training programs to enable employees to learn new skills and participate in the work of several units. OSC also captures valuable information and ideas from departing employees through exit interviews. This information is used by senior managers to refine and improve our work environment and processes. OSC has developed a performance management system that will allow managers to differentiate between high and low performers through the use of appropriate incentives and accountability measures. Performance plans that are linked to the agency's mission and strategic goals are in place or being fashioned for senior executive service members and managers. OSC will implement appropriate, measurable performance goals for each employee. OSC uses personnel flexibilities and tools, including leave flexibilities, alternative work schedules, and a liberal telework program.

## **Improved Financial Performance**

OSC has continued its success in receiving unqualified audit opinions with the receipt of another clean opinion this fiscal year. A competitively selected audit firm evaluated OSC's financial statements for FY 2014. The auditor spent time at OSC headquarters and with the Department of Interior's Internal Business Center (IBC) personnel in Denver, Colorado, who currently perform the accounting, payments, travel system operations, and financial system operations and maintenance functions for OSC. OSC has received unqualified opinions for all eleven of its audits since the inception of formal Financial Statement Audits in FY 2004.

As mentioned above, OSC contracts out certain work under an interagency agreement. OSC was involved in the effort to design the processes used for its accounting system and to design specific customized reports that reflect the information most helpful to OSC funds management. Contracting out these functions has provided OSC with more specialized expertise at a lower cost than could be accomplished internally. IBC provides financial reports and a detailed financial review to OSC every quarter. IBC also provides current financial information on day-to-day operations for payroll, procurement, and travel, as needed by OSC.

As a small agency without an Inspector General, OSC relies on audits and other reviews of IBC operations by the OIG and the office of the chief financial officer in the IBC, as well as information received directly from IBC, for information about any significant issues relating to the services provided to OSC. IBC has a formal Management and Control and Compliance program, including OMB Circular A123 audits, A123 Accounting Transactions testing, SAS70 Type II audits, and Financial Statements Audits. Furthermore, they conduct Information Technology Audits, including Federal Information Security Management Act and Internal Controls Reviews.

OSC has met its requirements in regards to the "Do Not Pay" listing, and Improper Payments (IPERA) reporting.

## Competitive Sourcing

OSC is a small agency, with a highly specialized, inherently governmental mission. Eighty-five percent of its FTE perform inherently governmental work, and fifteen percent of its FTE are considered commercial in nature. These fifteen percent are spread across multiple functions, with no more than six FTE in any one given function. According to OMB Circular A-76 and supplemental guidance issued by OMB, government performance of commercial functions is permitted under certain circumstances, the relevant conditions for OSC are that the commercial functions are considered core capabilities, and that each function has fewer than ten FTE.

The interagency agreement with the IBC includes the following services: procurement, procurement system hosting, budget accounting and budget execution, accounting services, and travel management. OSC will review IBC interagency agreements annually to confirm the agreement is meeting OSC's needs. OSC also has an interagency agreement with the National Finance Center of the Department of Agriculture to perform payroll/personnel processing functions.

## Expanded Electronic Government and Other Information Technology Initiatives

OSC is committed to leveraging technology to streamline operations and increase the effectiveness of its information technology programs. The agency has made significant progress in the past several years in modernizing and securing its technological systems, and we will continue to fund those efforts and to make new investments to optimize processes for case management, electronic filing, records management, and internal processes and procedures.

OSC's FY2016 budget request will enable a number of key IT projects, including:

- **More efficient case management** – OSC 2000 case management system modernization to increase work flow integration, system interoperability, flexibility, and customization of the system. The new system will provide the features, security, and adaptability to meet the agency's requirements to improve new and existing complaints intake, case and resolution tracking, searching, reporting, and archiving functions.
- **New e-filing capabilities** – to streamline the complaints filing process by enabling federal employees anywhere to confidentially submit their complaints to OSC with or without access to the agency's existing PDF forms.
- **Improved records management** – to improve OSC's records management platform, processes, and procedures in order to meet OMB M-12-18 mandates.
- **Better information security** – to enhance OSC's cyber security posture by procuring modern security tools to monitor and mitigate internal and external system vulnerabilities, and by providing management and technical oversight of threats and risks to operations.
- **Infrastructure modernization** – to increase the resiliency and availability of the OSC.gov website, phone and email systems, and enable on-demand web, video, and audio conferencing capabilities to support case investigations anywhere in the country.
- **Enhanced telework and staff support** – to consolidate and improve on-site IT services while providing secure always-on access to agency resources to support OMB mandates and modern work environments.

The above IT initiatives will start in FY 2015 and will continue into FY 2016 and beyond. They will advance OSC's ability to deliver better services by leveraging industry standards and commercial-off-the-shelf products and services. The entire range of services forms a basis for sound enterprise technology architecture that connects OSC to its customers and improves the OSC's response to important cases.

## **Improving Employee Satisfaction and Wellness**

Over the past several years, OSC has implemented several key programs and initiatives to enhance employee satisfaction and wellness. For example, we re-established a student loan repayment program in order to retain talented employees; we offered a cost share (50/50) program for gym membership to encourage employees to have a healthier lifestyle and stay fit; we made available on-site flu vaccinations and blood pressure checks; we have been offering an Employee Assistance Program (EAP); we organized a blood donor drive; we conducted a health benefits information session; and we instituted a program to pay for professional credentials (bar membership dues) for attorneys. Training opportunities were greatly enhanced in FY 2014, as we offered increased on-site courses, as well as access to web-based learning portals that offer myriad relevant courses. Additionally, the management administered the Federal Employee Viewpoint Survey in 2014, which revealed a high level of employee satisfaction with their supervisors and the agency's multiple work/life programs. OSC management empowered an employee-driven Action Plan Working Group to analyze the results of the FEVS and to develop strategies for improving employee satisfaction further.

## **Open Government**

OSC has met the major requirements of the Open Government initiative. After consultation, we determined the new sets of data which could be posted to our website. These data give a clearer picture of three elements: printing expenditures per fiscal year; training expenditures per fiscal year; and our staffing levels (FTE) per month. Our Open Government webpage is located at [osc.gov/open](http://osc.gov/open). The webpage provides easy access to key information and other reports and data, and includes a link for receiving feedback from the public. We have solicited input from within OSC for ideas on Open Government. OSC's Open Government initiative is an ongoing effort: Our plan and data sets will be reviewed continually and improvements will be put into place over time as part of this process.

## **Telework**

OSC has complied with the requirements of the Telework Enhancement Act by establishing criteria for determining eligibility of employees to participate in telework, notifying employees of their eligibility, and indicating under what conditions they may telework. OSC's telework program is designed to benefit employees, managers, and the community by decreasing work-trip vehicle miles, traffic/parking congestion, energy consumption, and air pollution, improving the quality of work life and performance, and improving morale by assisting employees in balancing work and family demands.

OSC has a robust information technology network setup that supports telework via a complete Citrix environment. OSC continues to improve our Citrix environment to facilitate telework and streamline business processes. To a similar end, OSC has expanded its Bring Your Own Device program to accommodate staff needs. Furthermore, OSC plans to expand our VoIP and SIP capabilities so that employees, from anywhere, will have secure access to all of the corporate resources, including telephone and VTC services, from their smart devices. In FY 2015 we plan to deploy a dedicated Windows Media Server to allow OSC's employees to view and access recorded training sessions anytime and anywhere from their smart devices and computers. OSC remains committed to improving its telework program and the infrastructure necessary to support it.

## **Continuity of Operations**

Continuity of Operations (COOP), mandated by Presidential Decision Directive 67, requires each federal agency to be capable of performing essential functions within 12 hours of a threat or the occurrence of a debilitating event. To accomplish these goals OSC established a Security and Emergency Preparedness (SEP) team to manage and oversee this program. The SEP team meets weekly and is comprised of four senior staff and three specialists. The team provides OSC with a security and emergency preparedness capability that (1) ensures security and emergency preparedness are addressed during all phases of operation, including the hiring and training of personnel, the procurement and maintenance of equipment, and the development of policies, rules, and procedures; (2) encourages safe operation through the identification, evaluation, and resolution of threats and vulnerabilities and the ongoing assessment of OSC's capabilities and readiness; and (3) assists OSC in adhering to governmental guidelines and rules and regulations that promote COOP best practices.

OSC must safeguard vital records and databases, establish an alternate operating site, and validate capability through tests, training, and exercises. OSC will continue to evaluate alternate methodologies to connect OSC's headquarters and field offices. As part of the IT strategic plan, we are beginning to move infrastructure to the cloud. The built-in redundancies in the cloud environment will provide additional safety and faster recovery time in the event of a debilitating event; as a result, agency functions and vital records will be further safeguarded. These efforts will continue into FY 2015 and FY 2016.

## **Management**

OSC adopted a management goal to "restore confidence within the federal community and among staff, stakeholders, and the general public." This is a two-part goal that includes ensuring OSC operates at a high level of efficiency internally and in the federal community, and simplifying access to OSC services for the federal community. Our management goals are overarching goals, which when met, contribute to the overall success of the agency and all its programs. During FY 2014 OSC fully met 9 goals in the Management area for which targets had been set, partially met 1 goal, and did not meet 2 goals.

## Goal Table 11 Ensure OSC Operates at a High Level of Efficiency Internally and in the Federal Community

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result
62	Establish Individual Development Plans (IDPs) for all employees to identify skills and gaps	Start Classification Study	Met	Conduct Requirements Assessment	Met	Start Pilot Project by Building Templates for HR	Met	Build Templates and Implement IDPs	
63	Identify targeted training to mitigate skills gaps	Conduct Annual Survey	Met	Conduct Annual Survey	Met	Conduct Annual Survey	Met	Conduct Annual Survey	
64	Percent of employees using telework and alternative schedule options; to provide employees with flexibility	55%	71%	70%	84%	70%	85%	70%	
65	Percent of employees that participate in the annual Federal Employee Viewpoint Survey on their job satisfaction	75%	92%	86%	86%	90%	85%	90%	
66	Improve the functionality of the case tracking system	See Footnote <sup>66</sup>	Met	See Footnote <sup>66</sup>	Met	See Footnote <sup>66</sup>	Met	See Footnote <sup>66</sup>	
67	Number of congressional staff or member contacts to strengthen covered laws and improve oversight and accountability	10	25	30	40	40	40	40	
68	Number of <i>amicus</i> briefs, SOI interventions, or other submissions concerning the scope or contours of the laws that OSC enforces.	2	2	2	3	2	3	2	

66. IT supported 30 system change requests in FY 2014. OSC's case tracking system and its canned reports are constantly being improved upon and updated. The improvements made to the functionalities in the case tracking system are often the result of change requests and new requirements from the program offices. Further, a plan has been developed to modernize the case management system. In FY 2014 a contract has been let for the new case management system requirements, and in FY 2015 we will complete these requirements and begin system selection and build.

## Goal Table 12 Simplify Access to OSC Services for the Federal Community

Description of Target		FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result	FY 2015 Target	FY 2015 Result
69	Upgrade look, feel, and user friendliness of website and keep it current.	See footnote <sup>69</sup>	Partially Met <sup>69</sup>	Launch redesigned website	Met	<sup>9</sup> Maintain and update for improvements	
70	Survey user community to gauge strengths and weaknesses of website	See footnote <sup>70</sup>	Unmet	See footnote <sup>70</sup>	Partially met	See footnote <sup>70</sup>	
71	Issue press releases on major agency activities and results in cases; maintain dialogue with news media	See footnote <sup>71</sup>	Met	See footnote <sup>71</sup>	Met	See footnote <sup>71</sup>	
72	Make use of Twitter and social media	See footnote <sup>72</sup>	Partially met	See footnote <sup>72</sup>	Met	See footnote <sup>72</sup>	
73	Conduct biannual surveys of federal community to gauge OSC name and mission recognition	Develop survey; Receive survey approval	Unmet	Conduct survey; Implement changes based on survey findings	Unmet	Conduct survey; Implement changes based on survey findings	

69. Narrative: OSC invited various stakeholders to give OSC feedback on its old website. We have completed outreach to numerous nonprofits, unions, management organizations and veterans' organizations and have included website queries in these meetings. We have incorporated their feedback and the feedback of numerous government IT people from various agencies into our website goals and specifications. We will continue this outreach and incorporate feedback into website improvements.

Target for FY 2013 – Implement website design, work out problems and begin to get results from users. OSC expects the design firm to deliver its product by spring and to have the new website implemented and public by the end of fiscal 2013.

Results for FY 2013 – Numerous problems with the website contractor and technical glitches with the e-filing system and other components of the new website delayed the rollout of the website. New goal is to roll out the website January 1, 2014.

Target for FY 2014 – Launch new website. Conduct survey of users to determine ongoing weak spots and to fix/improve them.

Results for FY 2014 – New website launched on July 4, 2014. Receiving feedback from OSC staff and external users and implementing changes on a rolling basis.

Target for FY 2015 – Obtain more feedback on user experience and implement further changes. Expand website capabilities and install new, more user-friendly e-filing system.

70. Target for FY 2013 – Will have many in-house and external users testing new website as the design is implemented.

Results for FY 2013 – Since the website production itself was delayed, the survey of a user community was also delayed.

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

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

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

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

Target for FY 2013 – 30 Tweets, 100 followers, and 550 media calls fielded. Continue to leverage phone, Twitter and e-mail contact with media. Continue to build press list and groupings of reporters by content area into Outlook. Continue to issue and disseminate press releases on all possible areas of OSC activity.

Results for FY 2013 – OSC continued to issue press releases on all appropriate cases and fielded roughly 150 media calls in FY 2013. Given this was an off-year for electoral politics/Hatch Act activity, the number of press releases issued fell slightly from FY 2012. However, more PPP and USERRA cases are being publicized, a trend OSC intends to continue.

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

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

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

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

Target for FY 2013 – Increase number of Tweets over previous fiscal year. Observe other small government agencies’ Twitter accounts for examples of best practices/innovative ways to communicate with public.

Results for FY 2013 – OSC Twitter presence continued to expand, with 123 followers. In keeping with the press release slowdown, the number of tweets in FY 2013 was slightly below the numbers for FY 2012.

Target for FY 2014 – Same as FY 2013 target –Look for better ways to reach out and increase amount of traffic.

Results for FY 2014 – On Twitter, OSC tweeted 31 times and gained 166 followers.

Target for FY 2015 – Expand number of Twitter followers by more than 300 to a total of 600+, with a special focus on expanding the number of employment attorneys, reporters, public policy experts, and stakeholders who follow OSC. Tweet 120 times – especially by pushing out more educational content. Review OSC’s videos and seek to improve the quality of OSC’s shareable multimedia content. Seek partnerships, such as

with other federal agencies, to more widely distribute OSC's educational material through their social media networks to better reach the federal workforce.

# APPENDIX A

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## STATUTORY BACKGROUND

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (the Board). Pursuant to the CSRA, OSC: (1) receives and investigates complaints from federal employees alleging prohibited personnel practices; (2) receives and investigates complaints regarding the political activity of federal employees and covered state and local employees and provides advice on restrictions imposed by the Hatch Act on the political activity of covered federal, state, and local government employees; and (3), receives disclosures from federal whistleblowers about government wrongdoing. Additionally, OSC, when appropriate, files 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 allege reprisal for whistleblowing, and strengthened OSC's ability to enforce those protections.

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

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

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the 1994 Reauthorization Act provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred or exists. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and whistleblower reprisal protections were extended to employees of listed government corporations. The Reauthorization Act also broadened the scope of personnel actions covered under these provisions. Finally, the Reauthorization Act required that federal agencies inform employees of their rights and remedies under the Whistleblower Protection Act in consultation with OSC.<sup>3</sup>

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),<sup>4</sup> 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 Merit Systems Protection Board. The approximately 45,000 security screeners in TSA however, could not pursue such complaints at OSC or the Board. OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to

TSA when warranted. The MOU did not (and could not), however, provide for OSC enforcement action before the Board.

In November 2012 Congress passed the Whistleblower Protection Enhancement Act which overturned past legal precedents that had narrowed protections for government whistleblowers and extended whistleblower protections to the 45,000 TSA screeners previously denied it. The WPEA also empowered OSC to file *amicus* briefs in federal appellate courts and gave effect to OSC's authority to seek disciplinary actions against supervisors who retaliate against whistleblowers.

In December 2012 Congress passed the Hatch Act Modernization Act which removed the previous ban on state and local government employees running for political office if part of their job was connected to federal funding. The new act allows such candidates to run as long as their salary is not entirely funded by the federal government while upholding the ban on local and state government employees using coercion or their government positions to advance partisan politics.

**APPENDIX B:**  
**STRATEGIC PLAN**  
*—for—*  
**FISCAL YEARS**  
**2012 – 2016**

# INTRODUCTION

The U.S. Office of Special Counsel (OSC) has as its primary mission the safeguarding of the merit system in federal employment by protecting employees and applicants from prohibited personnel practices (PPPs), especially reprisal for whistleblowing. The agency also operates a secure channel for federal whistleblower disclosures of violations of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. In addition, OSC issues advice on the Hatch Act and enforces its restrictions on political activity by government employees. Finally, OSC protects the civilian employment and reemployment rights of military service members under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

OSC is committed to enhancing government accountability and performance by the realization of a diverse, inclusive federal workplace where employees embrace excellence in service, uphold merit system principles, are encouraged to disclose wrongdoing, and are safeguarded against reprisals and other unlawful employment practices.

## About OSC

In 1883, Congress passed the Pendleton Act, creating the Civil Service Commission, which was intended to help ensure a stable, highly qualified federal workforce, free from partisan political pressure. In 1978, Congress enacted the Civil Service Reform Act which replaced the Civil Service Commission with the Merit Systems Protection Board (MSPB).

During hearings on the CSRA, the role and functions of MSPB were described by various members of Congress: “. . . [MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with insuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”<sup>a</sup>

The Office of Special Counsel was born on January 1, 1979 as the investigative and prosecutorial arm of the MSPB. OSC was authorized to receive complaints from applicants for federal service, as well as current and former employees, alleging prohibited personnel practices by federal agencies. It was also conceived as a safe channel to receive disclosures from federal whistleblowers about wrongdoing in government agencies. In addition, Congress assigned OSC responsibility for offering advice and enforcing restrictions on political activity by government employees covered under the Hatch Act.

OSC remained a part of the MSPB for ten years. In 1989, Congress enacted the Whistleblower Protection Act (WPA), making OSC an independent agency within the executive branch. The WPA also strengthened protections against reprisals for employees who disclose wrongdoing in the government and enhanced OSC’s ability to enforce those protections, but it otherwise left OSC’s mission intact.

In 1994, Congress enacted USERRA, and gave OSC enforcement authority in cases against federal agencies. USERRA prohibits employment discrimination against persons in connection with their military service and provides for their reemployment upon return from military duty. Congress also reauthorized the Office of Special Counsel in 2004, setting out new responsibilities for OSC and expanding protections for federal employees. In addition, federal agencies were made responsible for informing their employees of available rights and remedies under the WPA, and directed agencies to consult with OSC in that process.

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<sup>a</sup> Legislative History of the Civil Service Reform Act of 1978. Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. 2., (pp 5-6).

Demand for OSC services has risen dramatically in recent years even as staffing levels have remained virtually fixed. Since FY 2008, OSC's caseload has grown 68%. Based on experience and trends, OSC conservatively projects an annual growth in caseload in the 6% to 8% range for the foreseeable future. In addition, Congress assigned OSC responsibility for a new USERRA Demonstration Project,<sup>a</sup> which substantially increased the caseload for the agency. Moreover, the recent Whistleblower Protection Enhancement Act significantly expanded OSC's jurisdiction and the number of cases it is required by law to investigate. As a result, OSC experienced the highest volume of new cases in its history last quarter, the first quarter WPEA came into effect.

Given the challenging fiscal environment, OSC recognizes that it must prioritize clear strategic goals and objectives that are ambitious yet realistic, and work creatively and efficiently toward achieving them.

On June 17, 2011, Carolyn Lerner was sworn in as the eighth permanent Special Counsel. Ms. Lerner took office following a prolonged and challenging period at OSC. The prior Special Counsel had been abruptly removed from office in 2008 by the President<sup>b</sup> and subsequently charged with contempt of Congress, disgracing the agency and demoralizing both staff and stakeholders. He was replaced in 2008 by interim, career leadership who performed a stabilizing, caretaker role until Ms. Lerner took office.

Ms. Lerner has acted quickly to transform the public reputation and morale of OSC. In consort with staff and stakeholders, she has reinvigorated the agency, bringing renewed focus on the OSC's critical merit system principles mission. She has also undertaken a substantial review of OSC's strategic priorities in order to ensure that its resources are properly aligned with agency goals and objectives.

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<sup>a</sup> OSC was selected by Congress, in a second demonstration project beginning in 2011, to investigate half of the federal USERRA complaints received by the U.S. Department of Labor in addition to its existing enforcement responsibilities under USERRA.

<sup>b</sup> Under 5 U.S.C. Section 1211(b), a Special Counsel may only be removed for "inefficiency, neglect of duty, or malfeasance in office."

## **Strategic Plan and Cross-Cutting Documents**

This Strategic Plan provides the pathway for OSC's work for the next five years. It sets forth OSC's Mission, Vision, Values, Goals and Objectives, Performance Measures and Validation Methods, and internal and external challenges to fulfilling this Strategic Plan.

In accordance with Government Performance and Results Act (GPRA) as amended by the GPRA Modernization Act of 2010, OSC's Annual Performance Plans (APPs) include program performance goals, measures, and annual performance targets designed to move the agency incrementally to achieve its strategic goals. The APPs are published as part of the Performance Budget provided to the Office of Management and Budget (OMB) and in the Congressional Budget Justification submitted to Congress. OSC reports program performance results as compared to its APPs, along with financial accountability results, in the annual Performance and Accountability Report (PAR). The Strategic Plan, APPs, and PARs are posted on OSC's public website.

# Mission – Vision – Values

## OSC Mission

Promote accountability, integrity, and fairness in the federal workplace.

## OSC Vision

A diverse and inclusive federal workplace, where employees embrace excellence in service, uphold merit system principles, are encouraged to disclose wrongdoing, and are safeguarded against reprisals and other unlawful employment practices.

## OSC Values

**Accountability** We will act in accordance with merit system principles, communicate in plain English with customers and stakeholders, make our findings and determinations easy to understand and widely accessible, and take responsibility for our decisions and actions.

**Professionalism** We will conduct our work in a dignified, courteous, respectful, and reliable manner, fairly and without bias, attentive to legal standards and authorities, and conscious of various perspectives and interests of customers and stakeholders.

**Quality** We will strive to provide excellent service to our customers, due care and thoroughness in the substance and timeliness of our work, and produce work products worthy of pride.

**Independence** We value the trust and responsibility invested in us as an independent investigative and prosecutorial agency, and will always exercise that independence in a manner that honors the letter and spirit of the merit system.

## **Strategic Goals**

1. Safeguard the integrity and fairness of the federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices.
2. Advance the public interest and good government by providing a safe channel for federal employees to disclose wrongdoing or threats to health or safety, in order to effect positive corrective action.
3. Strengthen the civil service through outreach and advice to the federal community about prohibited personnel practices, employment discrimination against veterans, and job-related political activity.
4. Advance accountability in government by seeking disciplinary action against federal employees for persistent or egregious prohibited personnel practices or unlawful political activities.
5. Restore confidence in OSC within the federal community and among staff, stakeholders, and the general public.

# Goals and Objectives

## Performance Metrics and Means to Accomplish Goals

**Strategic Goal 1: Safeguard the integrity and fairness of the federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices.**

**Objective 1: Increase OSC's capacity to protect federal employees against whistleblower retaliation and other PPPs.**

Performance Metrics and Means to Accomplish Goals:

- Number of staff allocated to whistleblower retaliation and other PPPs
- Percent of total staff allocated to whistleblower retaliation and other PPPs
- Number of staff training programs in whistleblower retaliation and other PPPs
- Compare results to prior years

**Objective 2: Achieve mutually satisfactory solutions for employees and agencies through mediation of PPP and USERRA matters.**

Performance Metrics and Means to Accomplish Goals for PPP cases:

- Number of cases referred to mediation from examination unit
- Percent of cases referred for mediation from examination unit
- Percent of cases in which both parties agree to mediation on referral from examination unit
- Percent of cases referred from examination unit successfully resolved in mediation
- Number of cases referred to mediation from investigation/prosecution unit
- Percent of cases referred for mediation from investigation/prosecution unit
- Percent of cases in which both parties agree to mediate referral from investigation/prosecution unit
- Percent of cases referred from investigation/prosecution unit successfully resolved in mediation

Performance Metrics and Means to Accomplish Goals for USERRA cases:

- Number of cases referred to mediation
- Percent of cases referred for mediation
- Percent of cases in which both parties agree to mediate referral from USERRA unit
- Percent of cases referred successfully resolved in mediation

Performance Metrics and Means to Accomplish Goals for both PPP and USERRA cases:

- Complainant and agency exit survey findings
- Compare results to prior years

**Objective 3: Keep complainants informed as to the status of their cases and detail the bases for OSC actions.**

Performance Metrics and Means to Accomplish Goals:

- Upon the receipt of a complaint, clearly explain the OSC review process and when action can be expected
- Provide complainants status updates at defined intervals and when significant new developments occur
- If OSC declines to refer a case for investigation, clearly inform complainant of the reason(s) why

**Objective 4: Achieve timely resolution of cases and corrective actions.**

Performance Metrics and Means to Accomplish Goals for PPP cases:

- Number of corrective actions obtained
- Percent of corrective actions obtained per number of cases received
- Number of cases referred for investigation
- Number of informal stays requested
- Number of informal stays obtained
- Number of formal stays requested
- Percent of formal stays obtained
- Number of corrective actions obtained per number cases referred for investigation
- Percent of corrective actions obtained per number cases referred for investigation
- Number of initial examinations completed within 120 days
- Percent of initial examinations completed within 120 days
- Number of cases more than 240 days old
- Percent of cases more than 240 days old

Performance Metrics and Means to Accomplish Goals for USERRA cases:

- Number of settlements obtained
- Percent of settlements obtained per number of cases received
- Number of investigations completed within 90 days old
- Percent of investigations completed within 90 days
- Number of legal reviews completed within 60 days
- Percent of legal reviews completed within 60 days
- Number of corrective actions obtained
- Percent of corrective actions obtained

**Strategic Goal 2: Advance the public interest and good government by providing a safe channel for federal employees to disclose wrongdoing or threats to health or safety, in order to effect positive corrective action and ensure accountability.**

**Objective 1: Provide federal employees a secure means to disclose covered wrongdoing.**

Performance Metrics and Means to Accomplish Goals:

- Number of whistleblower disclosures referred by OSC to agency head for investigation
- Percent of whistleblower disclosures submitted to OSC referred to agency head for investigation
- Number of whistleblower disclosures either closed or referred within 15-day statutory timeline
- Percent of whistleblower disclosures closed or referred within 15-day statutory timeline

**Objective 2: Motivate agencies to take prompt action to investigate and redress whistleblower disclosures.**

Performance Metrics and Means to Accomplish Goals:

- Success in prompting thorough agency investigations of referred disclosures
- Success in prompting effective corrective action and accountability
- Amount of financial and other benefits to government resulting from corrective action

**Strategic Goal 3: Strengthen the civil service through outreach and advice to the federal community about prohibited personnel practices, whistleblower disclosures, employment discrimination against veterans, and unlawful, job-related political activity.**

**Objective 1: Ensure that the federal community is aware of the Office of Special Counsel, its mission and services, by engaging in outreach to, and training for, federal employees and agencies about rights and responsibilities under covered laws.**

Performance Metrics and Means to Accomplish Goals:

- Total number of outreach activities undertaken
- Number of outreach activities by program area
- Survey of attendees at outreach events
- Conduct biannual surveys of federal community to gauge OSC name and mission recognition among federal community
- Expand federal agency compliance with provisions of the Whistleblower Protection Act by invigorating the Certification Program under Section 2302(c)

**Objective 2: Provide timely and quality advice to individuals seeking authoritative opinions about the application of the Hatch Act.**

Performance Metrics and Means to Accomplish Goals:

- Number of oral and email advisories issued within 5 business days of receipt of complaint
- Percent of oral and email advisories issued within 5 business days of receipt of complaint
- Number of formal written advisories issued within 120 days of receipt of complaint
- Percent of formal written advisories issued within 120 days of receipt of complaint
- Number of new complex advisory opinions issued per month

**Objective 3: Furnish OSC expertise to assist legislative, administrative and the judicial bodies in formulating policy and precedent.**

Performance Metrics and Means to Accomplish Goals:

- Number of legislative contacts to improve covered laws
- Number of *amicus* and Statement of Interest interventions on key issues of law

**Strategic Goal 4: Advance accountability in government by seeking disciplinary action against federal employees for persistent or egregious prohibited personnel practices or unlawful, job-related political activities.**

**Objective 1: Provide warning letters to employees that continued or repeated Hatch Act non-compliance, or aggravated violations of the Hatch Act, could result in disciplinary action.**

Performance Metrics and Means to Accomplish Goals:

- Number of warning letters issued
- Number of statements of compliance by agency or offending employee

**Objective 2: Bring disciplinary actions in appropriate PPP and Hatch Act cases to punish and deter wrongdoing.**

Performance Metrics and Means to Accomplish Goals in PPP Cases:

- Number of recommendations to agencies to take disciplinary action
- Number of disciplinary action complaints filed
- Number of disciplinary action complaints resolved pre-litigation through negotiated settlement
- Number of disciplinary prosecutions
- Total number of successful disciplinary prosecutions
- Percent of successful disciplinary prosecutions

Performance Metrics and Means to Accomplish Goals in Hatch Act Cases:

- Number of recommendations to agencies to take disciplinary action
- Number of disciplinary action complaints filed
- Number of disciplinary action complaints resolved pre-litigation through negotiated settlement
- Number of prosecutions
- Total number of successful prosecutions
- Percent of successful prosecutions

**Strategic Goal 5: Restore confidence in OSC within the federal community and among staff, stakeholders, and the general public.**

**Objective 1: Simplify access to OSC services for the federal community.**

Performance Metrics and Means to Accomplish Goals:

- Revise complaint form and other forms to make them easier to understand and use by customers

**Objective 2: Establish OSC as a “model employer,” recognizing that a high level of staff morale and engagement translate into improved performance.**

Performance Metrics and Means to Accomplish Goals:

- Develop Human Capital Management Plan, including a workforce assessment to gauge skills and gaps
- Develop targeted training to mitigate skills gaps
- Provide ongoing cross training to further the staffs’ professional development and enhance performance and flexibility
- Ensure that effective performance reviews are conducted on a timely basis, including for members of the Senior Executive Service
- Use telework and alternate schedule options to provide employees with flexibility
- Survey employees at regular intervals on their job satisfaction

**Objective 3: Ensure that OSC operates at a high level of efficiency and efficacy both internally and within the federal community.**

Performance Metrics and Means to Accomplish Goals:

- Move toward a “paperless office” model for purposes of electronic data storage
- Improve the functionality of the case-tracking system
- Improve the capabilities of the document management system
- Ensure audit compliance, timely submission of budget and performance reports, and that OSC is on sound financial footing
- Ensure compliance with EEO responsibilities
- Participate in relevant inter-agency working groups
- Align individual employee performance to strategic goals, objectives and measures
- Develop plan for staff succession
- Ensure that emergency planning is up-to-date and operational

# Challenges to Agency Performance

OSC undertakes this ambitious agenda in a very difficult fiscal environment: We are projecting substantially greater demand for our agency's services without a corresponding increase in resources to match this demand. This will require OSC to prioritize carefully, and allocate resources and deploy staff wisely, in order to ensure that the Office's most critical responsibilities are effectively and efficiently performed. To that end, since Special Counsel Lerner's arrival in June 2011, OSC has undertaken a top to bottom review of priorities to ensure a sustainable agency going forward.

We do not underestimate the challenge before us. First, the caseload trend lines across our program areas – PPPs, Whistleblower Disclosures, Hatch Act and USERRA – are on a steady, upward rise. In addition, success creates its own quandaries: Ms. Lerner's leadership has quickly moved to restore confidence in OSC within the federal community and among stakeholders. The result of this renewed confidence is a substantial uptick in caseload, including high-priority, time-consuming matters, that are at the heart and soul of OSC's mission. Moreover, the Whistleblower Protection Enhancement Act has removed jurisdictional hurdles to many PPP claims and has already resulted in a further growth in OSC's caseload. Given that even at current docket levels OSC faces a daunting case backlog, the projected, substantial increase in workload will strain the resources and capacity of the agency.

Budget constraints, if not handled adroitly, could also crush morale among OSC employees, just as pride in the agency is reviving. Larger caseloads, poor prospects for advancement, and salary freezes add up to a future fraught with prospects for professional frustration and demoralization. OSC leadership will be called upon to find creative incentives and opportunities, such as professional development and cross training, telework and flexible work schedules, and early retirement, to free up resources to retain and sustain high performing employees.

The difficult federal fiscal environment also takes an indirect toll on OSC. Strapped agencies may be less able to devote the necessary resources to properly investigate whistleblower disclosures of waste, fraud, and abuse referred by OSC. Squeezed budgets may also limit agencies' discretion to settle monetary claims and take other corrective action. The overall effect would be to undermine the federal community's confidence in OSC's ability to make a difference, resulting in renewed cynicism, employee demoralization, falling performance, and even destructive behavior.

OSC will be called upon to work ever more smartly and make tough judgment calls to ensure that mission critical goals and objectives are met. The agency's human capital planning aims to use opportunities presented by attrition and early retirement to better align professional skill sets with staffing needs and budget realities. OSC's priorities, however, are not wholly within its control. Starting in the second half of 2011 and continuing at least into 2014, Congress has tasked OSC with handling half the investigatory docket of federal sector USERRA claims brought by returning service men and women, some 180 new cases a year.

In response to funding challenges and the rising caseload, OSC is being proactive; seeking early resolution of cases through stepped up ADR and settlement efforts in order to preserve resources; ensuring that matters having the broadest and most substantial impact are prioritized; and cross-training staff to improve agency flexibility, efficiency and performance.

By identifying and preventing waste, fraud, abuse, and health and safety challenges, OSC is an agency that returns many times its budget in direct and indirect financial benefits to the federal government. But OSC can only do so if its resources are adequate to its mission. While OSC is putting in place long-term plans to work more efficiently, absent needed resources, there is a point at which a diminished OSC will result in less accountability in government.

Maintaining adequate funding for OSC is a critical challenge to the agency achieving its mission and, as a consequence, to the overall prospects of good government.

## ENDNOTES

- 1 Public Law No. 103-94 (1993), codified in Titles 5 and 12 of the United States Code.
- 2 Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, *et. seq.* The Veterans' Employment Opportunities Act (VEOA) of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The VEOA makes it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veterans' preference requirement. See 5 U.S.C. § 2302(b)(11). (The former section 2302(b)(11) was re-designated as section 2302(b)(12).)
- 3 5 U.S.C. § 2302(c).
- 4 Public Law 107-71 (2001).