

**FISCAL YEAR 2015
CONGRESSIONAL BUDGET JUSTIFICATION
—and—
PERFORMANCE BUDGET GOALS**



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PART 1 – EXECUTIVE SUMMARY

In FY 2013, the U.S. Office of Special Counsel (OSC) continued to build on its FY 2012 record successes to fulfill its mission of promoting accountability, integrity, and fairness in the federal workplace. The agency established new productivity records in FY 2013, resolving nearly 5,000 matters, a remarkable 68% increase over five years ago. While the volume of output is extraordinary, it is only one measure of OSC's renaissance. OSC also settled nearly ten times as many complaints through mediation in FY 2013 than in FY 2010. In short, the agency is now performing as Congress intended on behalf of the federal community. Indeed, in the two year period FY 2012 to FY 2013, OSC achieved 332 favorable actions correcting prohibited personnel practices, an unprecedented 84-percent increase over the prior two-year period.

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

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

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

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

OSC has achieved a stunning 40-percent reduction in its cost to resolve a case in the past five years. Yet this increased efficiency has not meant sacrificing results, as favorable actions in whistleblower and other merit system cases are at the highest level in the agency's 35-year history.

The slight increase in FY 2015 will support the increased volume of cases received by OSC. This will require a budget increase of at least 4 percent. Reducing OSC's small budget will have predictable effects: federal employees will be dissuaded from blowing the whistle on waste and mismanagement, which will hamstring

agencies, frustrate taxpayers, and threaten the very real gains OSC has made over the past few years in restoring confidence in the agency, its mission, and its impact.

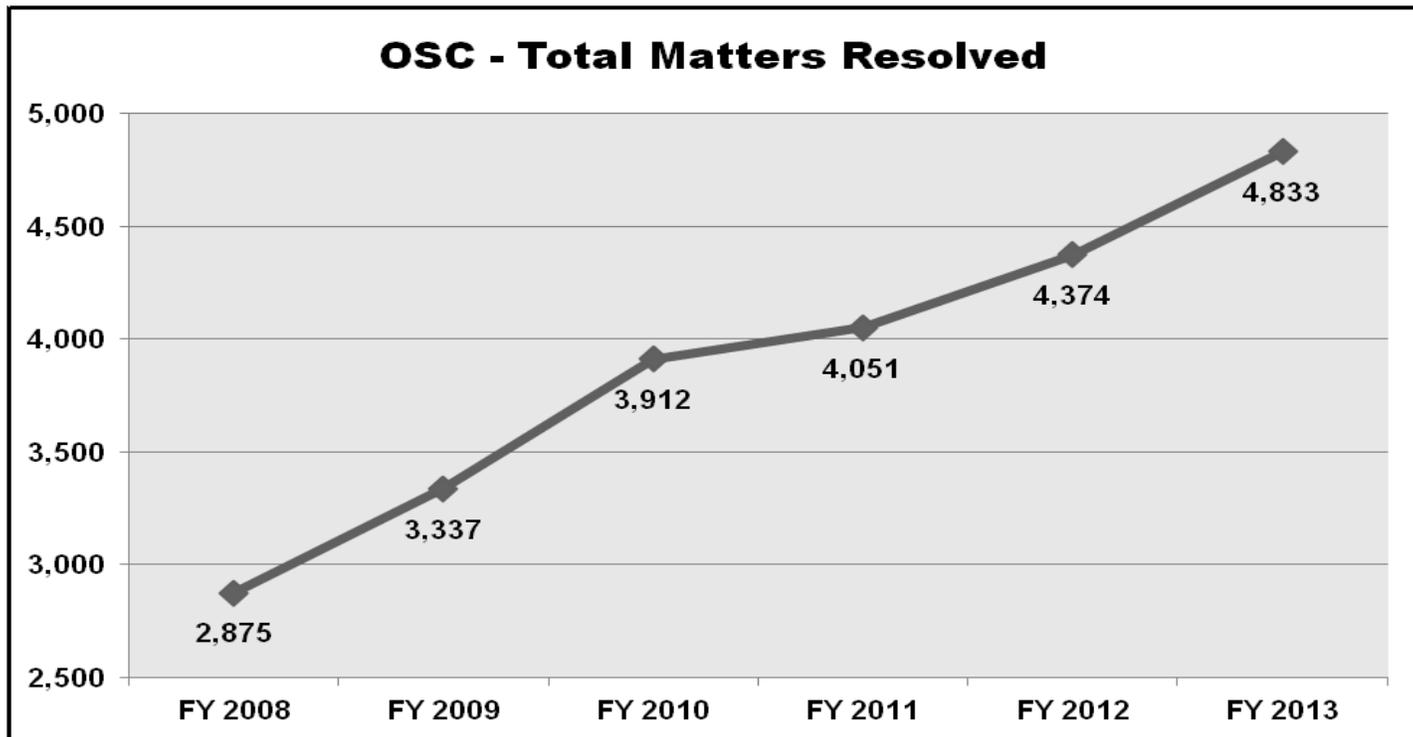
OSC returns far more to the Treasury and the nation than it costs, in dollars *and* lives saved. Indeed, the modest budget boost we request is an investment and vote of confidence in good government and the merit system.

OSC is doing its part to address government-wide fiscal challenges. Our budget is the smallest of any federal law enforcement agency. We have jurisdiction over more than 2 million federal employees. Ninety-one percent of OSC's budget goes toward salaries, benefits, and rents. Yet despite operating on a shoestring, OSC is achieving unprecedented successes.

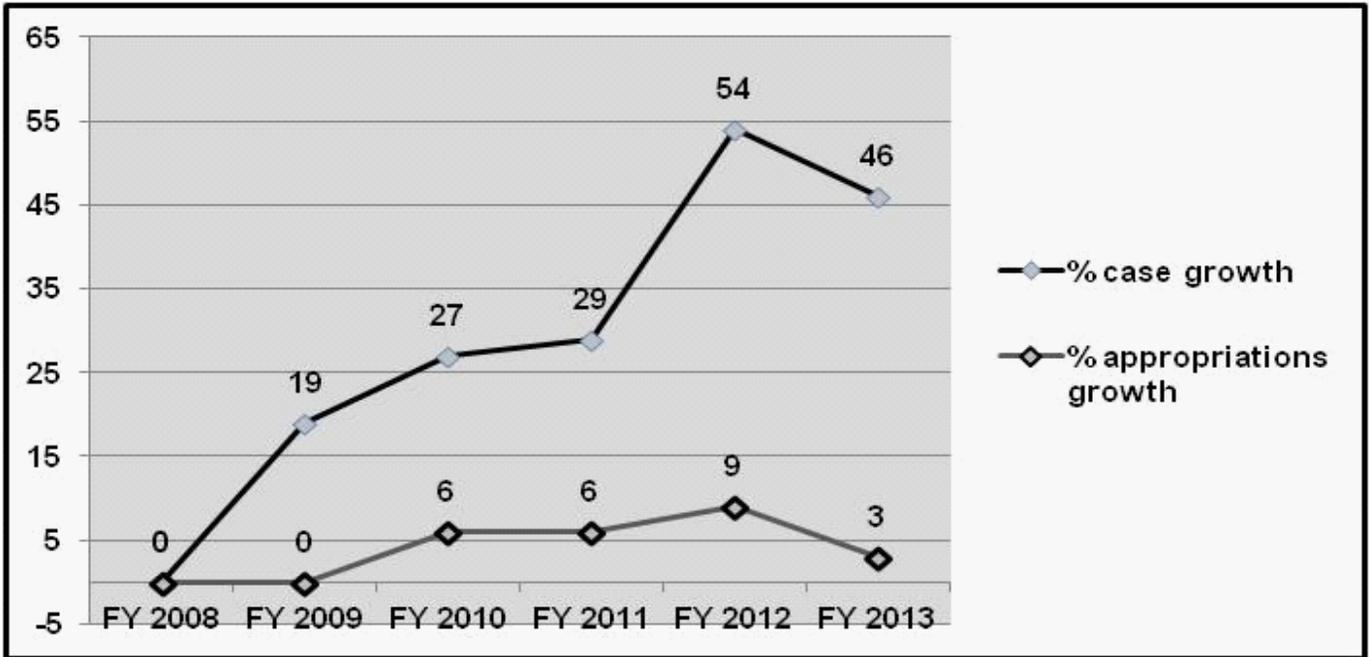
We ask that Congress recognize the critical role OSC plays in ensuring accountability, integrity, and fairness in the Executive branch; acknowledge OSC's diligence in reducing its costs while producing excellent results for the federal community and taxpayers; and honor OSC's value to the federal government and its service to America with an enhanced budget allocation equal to OSC's contribution.

Summary of Request

OSC is working harder, smarter, and with better results than at any time in its history. Despite the constraints of a sequestered budget in FY 2013, the agency experienced another historic year, with nearly 5,000 matters resolved. (*see chart below*). OSC resolved 24% more cases than three years ago, and 19% more than two years ago. Even though staffing levels did not change during that time, key results rose dramatically. For example, total favorable actions in PPPs are up significantly. OSC has received 332 favorable actions in the past two years, more than any comparable period in OSC history.



OSC's reputation has improved dramatically since Special Counsel Carolyn Lerner took office in June 2011. The federal workforce has a growing confidence in OSC's ability to obtain corrective action, evidenced by the mushrooming demand for OSC's services. This demand has not been matched by a corresponding increase in resources, as the chart below indicates. While OSC employees are proud and enthusiastic about their work, they are already beyond capacity, and their dockets continue to rise. In the past four years, OSC's caseload has risen 15 times as fast as resources: While the budget rose by 3 percent, the caseload jumped a staggering 46 percent. (See chart below.) Accounting for inflation, agency resources remained substantially unchanged. This gap between resources and demand must be closed so that OSC can continue to effectively fulfill its mission.



OSC is requesting **\$21,452,000** for **FY 2015**, which includes funding 128 FTE, an increase of 6 FTE over FY 2014 budget levels. With passage of the Whistleblower Protection Enhancement Act (WPEA) at the end of 2012, OSC's case levels are at all-time highs and are projected to continue to increase in FY 2015. The Congressional Budget Office estimated that OSC would need at least \$1 million annually to successfully implement the WPEA. The actual number of case filings to date show that this estimate was too low; we are suffering now from an increasing backlog of cases. Moreover, since enactment of the WPEA, under sequestration, OSC's available resources have been reduced by \$1 million, significantly compromising OSC's ability to effect the law's good government mandates. With the requested increase in funds, OSC can manage its workload, discharge its vital mission, and respond to the WPEA's new mandates without increasing the agency's debilitating backlog of cases.

Granting this budget request will ensure that OSC meets its 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.

About the Office of Special Counsel

Carolyn N. Lerner, the eighth permanent Special Counsel, was confirmed by the Senate on April 14, 2011, and was sworn in on June 14, 2011. A highly respected attorney and manager, Ms. Lerner has acted quickly and successfully to restore the agency’s morale and reputation.

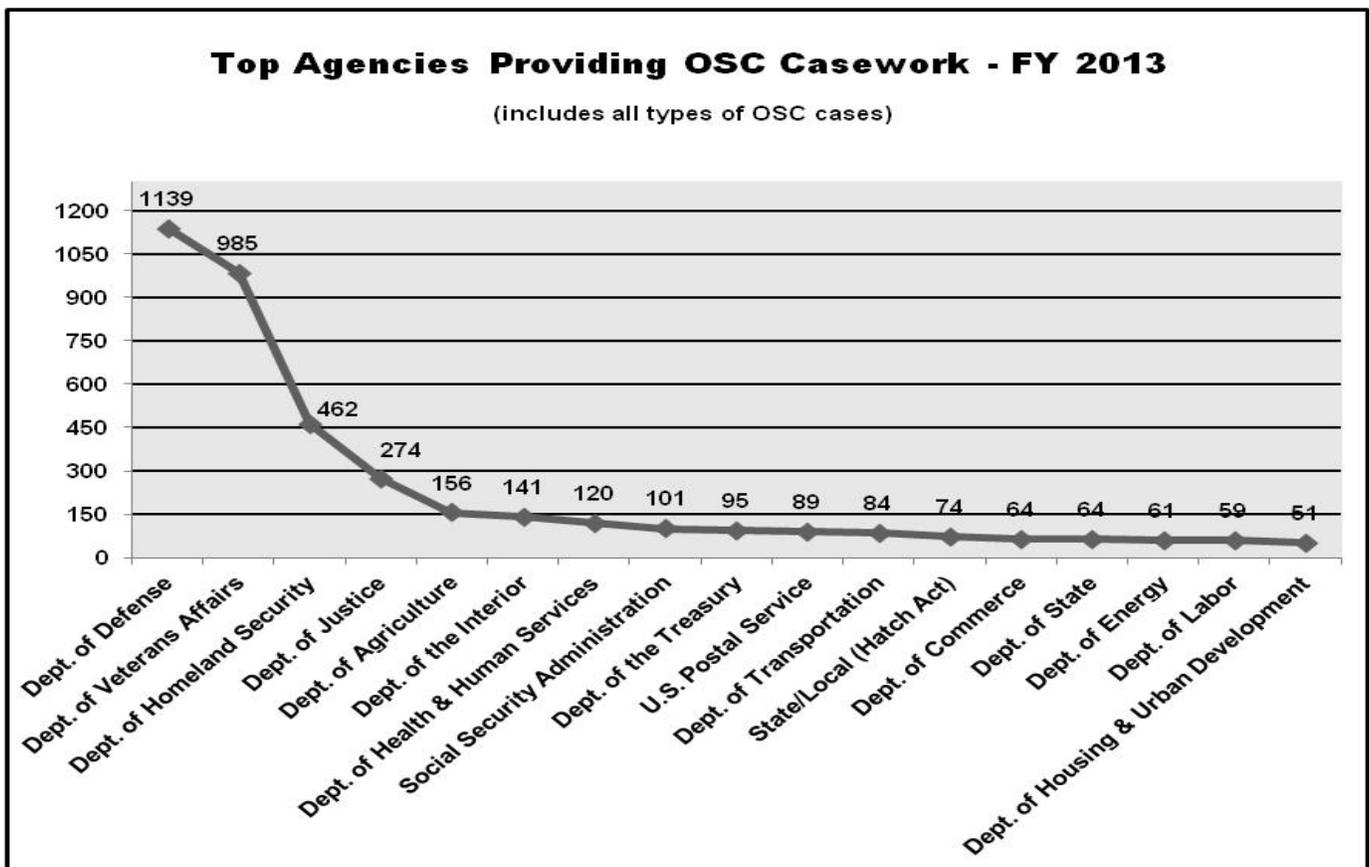
OSC’s mission helps implement “The Accountable Government Initiative” from the President’s Performance Management Agenda. OSC promotes government accountability, integrity, fairness, and efficiency by providing a safe channel for federal employees to come forward with evidence of waste, fraud, abuse, 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 Veterans Affairs professionals observe unsafe practices in hospitals, or when DHS employees disclose far-reaching abuse of that agency’s overtime program, 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, under 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. And, 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 depicts the organizations that file the most cases with OSC.



Prohibited Personnel Practices (PPPs)

OSC is addressing a substantial and steady surge in the number of federal employees alleging PPPs, in particular, retaliation for whistleblowing. With the passage of the Whistleblower Protection Enhancement Act in 2012, which expands the number of employees covered and closes loopholes that prevented many claims, the number of complaints in this area is expected to continue to rise. Appropriate processing of these cases 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 fully a quarter of the agency's new matters, and OSC will again see record levels of disclosures this year. These disclosures, which involve employee reports of gross mismanagement and waste, illegality, fraud, abuse, and dangerous and unsafe practices, rose 113% in FY 2013 over 2008 totals.

Hatch Act

The Hatch Act ensures that government service is not tainted by partisan political influences, and complaints typically increase around election cycles. The Hatch Act Modernization Act of 2012, which OSC promoted, has made the penalty structure under the Hatch Act more effective and fair, and engendered greater balance to the federal role in state elections, thereby reducing the number of state and local cases on OSC's docket.

USERRA

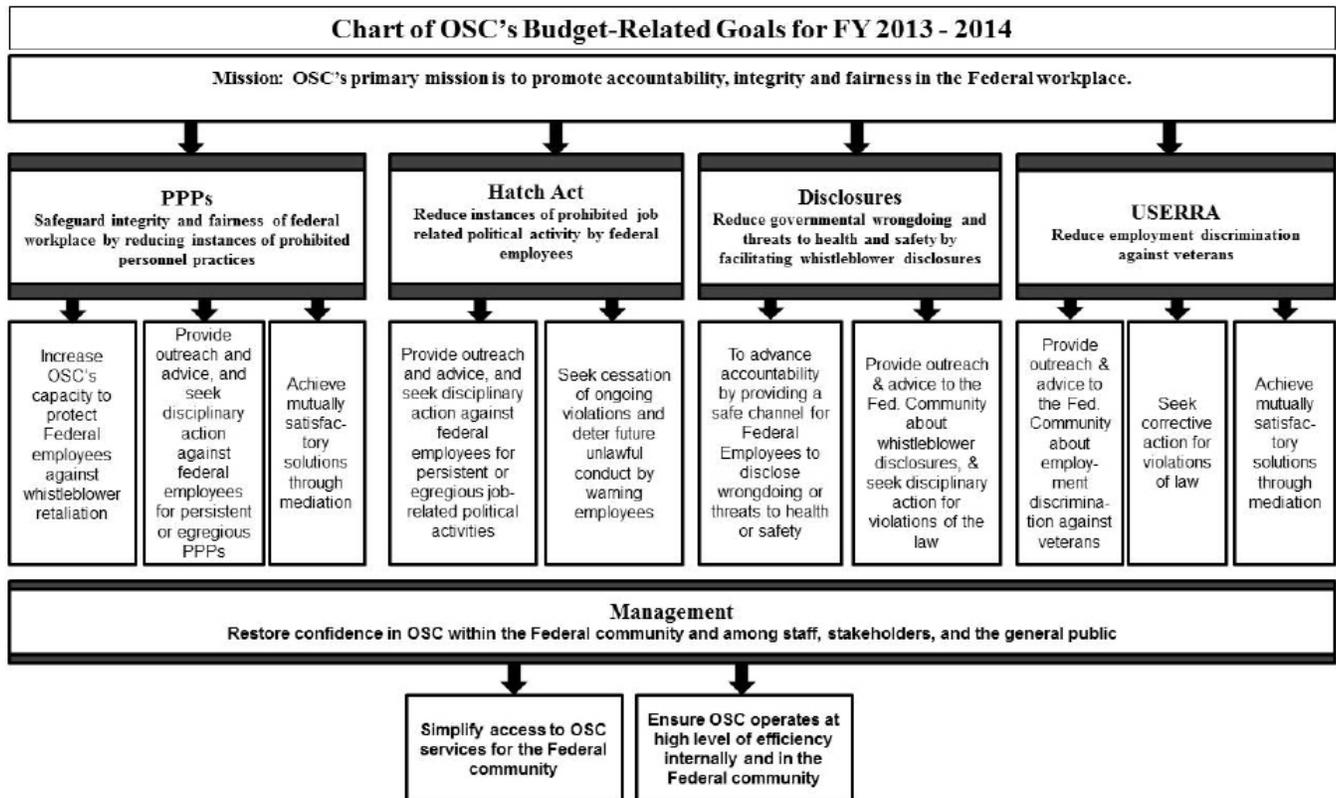
This program protects the employment rights of returning service members and reservists by investigating more than half the job discrimination complaints filed with the Department of Labor (under a three-year Demonstration Project), and all federal USERRA actions referred for possible prosecution. The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

Strategic Goals

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

OSC's Strategic Goals and FY 2015 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: \$16,409,000
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 affect positive corrective action. Cost: \$2,914,000
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: \$792,000
4. Advance accountability in government by seeking disciplinary action against federal employees for persistent or egregious prohibited personnel practices or unlawful political activities. Cost: \$1,337,000
5. Restore confidence in OSC within the federal community and among staff, stakeholders, and the general public. (Overarching Management Goal)



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

OSC improves the efficiency and accountability of government in many ways, and it returns large sums of money to the U.S. Treasury. The agency now receives well over a thousand disclosure complaints from federal whistleblowers annually, many of which result in enormous direct financial returns to the government. Courageous Department of Homeland Security employees disclosed, through OSC, systemic violations of the overtime payment system that amount to tens of millions of dollars lost to the U.S. Treasury. OSC not only ensures that disclosures are properly considered so that they are remedied, it protects the whistleblowers who bring them forward. For example, OSC successfully protected a government contracting officer threatened with suspension for disclosing \$20 million in contractor waste, fraud, and abuse.

Cost Savings

The real measure of OSC's financial contribution is preventative: By providing a safe channel for whistleblower disclosures, OSC regularly reins in waste, fraud, abuse, and threats to public health and safety that pose the 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 referred 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. OSC's interventions have resulted in a host of corrective actions for these FAA employees.

OSC cases come from throughout the federal government. In FY 2013, there were 50 or more cases filed with OSC by employees at 17 different federal agencies. One disclosure netted a \$1.1 million reimbursement to the Department of the Army as a result of contracting irregularities. At the Department of Homeland Security, whistleblowers alerted OSC that employees were abusing the overtime pay system. Elimination of this widespread overtime abuse is projected to save tens of millions of dollars annually.

Hatch Act

OSC continued to investigate, enforce, and provide advice about the Hatch Act in FY 2013. In one case, for example, a GSA employee was suspended for using his government office to fundraise for upcoming elections. Meanwhile, passage in late 2012 of the Hatch Act Modernization Act has largely removed the federal prohibition against state and local government employees' running for partisan office. This should significantly reduce the number of OSC complaints against state and local officials going forward, as well as enhance the efficiency and effectiveness of OSC's enforcement efforts.

Mediation

Harmonious relations between managers and employees are critical to the effectiveness and efficiency of government. OSC plays a unique role in fostering a healthy federal workplace by investigating allegations of prohibited personnel practices, such as nepotism, discrimination, retaliation, and 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. Accordingly, OSC has ramped up its mediation program. The cases referred for mediation have more than tripled and mediation settlements have increased 866% over 2010 levels. (*see Table 4*). Mediation provides a streamlined settlement option that is often a win-win for both parties in the dispute, and also provides OSC significant savings by reducing the amount of time required to investigate and resolve a case.

Prohibited Personnel Practices

The volume of complaints is substantial and growing: Nearly 3,000 new prohibited personnel practice actions were filed with OSC in 2013. Nearly nine percent of new PPP actions were referred for full investigation. A handful of PPP cases do not settle and, where appropriate, OSC seeks corrective and even disciplinary action through litigation before the Merit System Protection Board (MSPB) in order to resolve such cases. OSC has implemented new strategic and tactical approaches to reallocate agency resources for the investigation and prosecution of whistleblower disclosures. With 173 favorable actions achieved in FY 2013, OSC increased favorable actions by 106% as compared to just two years prior. This increase translates into improved accountability and fairness in government, as well as jobs saved, whistleblowers protected, and rights restored.

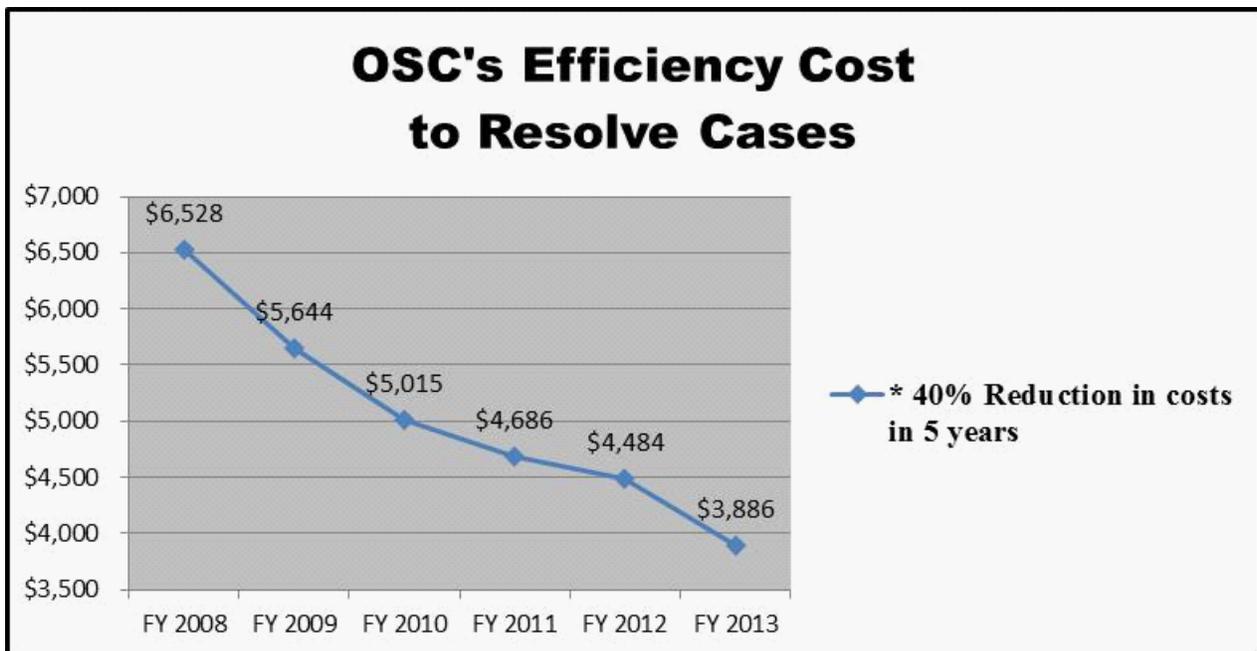
USERRA

OSC is proud of its record in ensuring that returning service members and reservists are treated fairly in the workplace. As President Obama noted in his September 8, 2011, address to Congress: “We ask these men and women to leave their careers, leave their families, and risk their lives to fight for our country. The last thing they should have to do is fight for a job when they come home.” When a police officer was on extended leave for the reserves, serving four combat tours in Iraq, his agency proposed his removal. However, notice of the proposed removal was not sent to the proper address. OSC investigated and determined that the agency had violated the police officer’s due process rights by failing to provide proper notice of the officer’s removal. In response to OSC’s report of the violation, the agency provided the police officer full corrective action, including an offer to return to federal service and payment of his out-of-pocket expenses and attorneys’ fees.

For many years, the Department of Labor has investigated, and OSC has prosecuted, claims of discrimination under the Uniformed Services Employment & Reemployment Rights Act (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 is adding hundreds of cases to OSC’s docket, and in FY 2013 OSC resolved 154 Demonstration Project cases.

Increasing Effectiveness Resulting in Increased Filings

Across program areas, word of OSC’s effectiveness in achieving good results for the federal community is spreading. The number of new cases before the agency continues to rise, as does OSC’s success in pending matters. In FY 2013, OSC resolved 45% more cases than it did just four years prior. OSC has been able to drive the cost per case it resolves down by 40% over 5 years (*see chart below*). However, in terms of productivity increases, OSC has begun to reach the point of diminishing returns. Without proper resources, the case backlog can quickly spike. For example, despite its best efforts, at FY 2012 year’s end the backlog of cases had increased by almost 30%. Given the sharply increasing number of whistleblower disclosures, PPP cases, Hatch Act matters, and the exacting mandates of the USERRA program, OSC will need substantial increases to its resources in FY 2015 and beyond to sustain and build upon the agency’s record of success.



Internal Organization

OSC is headquartered and has one of its field offices in Washington, D.C., and three additional field offices located in Dallas, Detroit, and Oakland. 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 supervision of each of OSC's program areas. This encompasses management of the agency's Congressional liaison and public affairs activities, and coordination of its outreach program. 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 2,500 such complaints each year, but last year that number spiked to almost 3,000. Attorneys and personnel-management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers qualifying matters for Alternative Dispute Resolution (ADR) or to the Investigation and Prosecution Division (IPD) for further investigation, possible settlement, or prosecution. Matters that do not qualify for referral to ADR or IPD are closed.

Investigation and Prosecution Division (IPD)

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

Disclosure Unit (DU)

This unit receives and reviews disclosures from federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the relevant agency to conduct an investigation and report its findings to the Special Counsel, or closure without further action. 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 responsible Congressional oversight committees.

Hatch Act Unit (HAU)

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

USERRA Unit

This unit 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 for prosecution and represents claimants before the MSPB. Under a second, three-year Demonstration Project, the USERRA Unit also investigates more than half the federal USERRA cases filed with the Department of Labor.

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

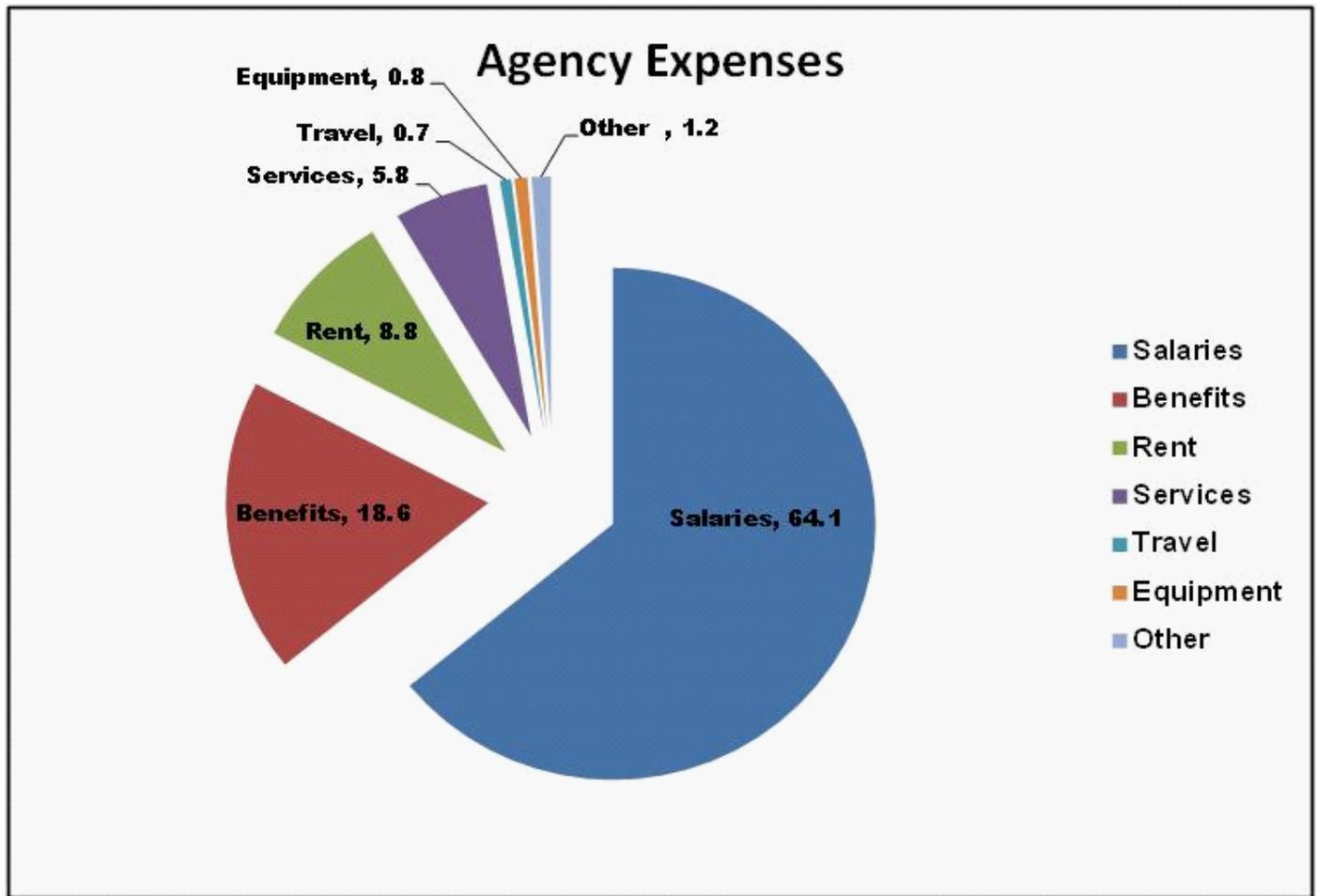
This office provides legal advice and support in connection with management and administrative matters; defense of OSC interests in litigation filed against the agency; management of the agency's Freedom of Information Act, Privacy Act, and ethics programs; and policy planning and development.

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 2015 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:

Budget by Program						
(in thousands of dollars)						
	FY 2014 estimate		FY 2015 estimate*		Increase/Decrease	
	\$	FTE	\$	FTE	\$	FTE
Investigation and Prosecution of Prohibited Personnel Practices	\$11,705	69	\$12,657	73	\$953	4
Hatch Act Enforcement	\$1,222	6	\$1,031	5	-\$191	-1
Whistleblower Disclosure Unit	\$2,132	13	\$2,248	15	\$117	2
USERRA Enforcement and Prosecution	\$627	3	\$611	3	-\$16	0
Alternative Dispute Resolution	\$580	4	\$596	4	\$16	0
Immediate Office of the Special Counsel	\$1,122	6	\$1,139	6	\$17	0
Office of the Agency General Counsel	\$1,029	6	\$978	6	-\$51	0
Office of the CFO - Management / Information Technology / Budget / Human Resources / Procurement / Document Control / Planning / Analysis / Facilities	\$2,223	15	\$2,191	16	-\$32	1
Totals	\$20,639	122	\$21,452	128	\$813	6

*The FY 2015 Estimate is based upon OSC's President's Budget level

Reimbursable Based Funding Table *

Reimbursable Based Funding				
	FY 2014 Estimate		FY 2015 Estimate	
	Dollars	FTE	Dollars	FTE
Estimated Reimbursable Resources	\$446,000	3	\$0	0

* OSC's USERRA Demonstration Project, which is partially supported by Reimbursable funding, is expected to end in FY 2014

PART 2 - FY 2015 BUDGET REQUEST – ADDITIONAL INFORMATION

OSC’s budget request is for \$21,452,000 – to fund 128 FTE and related non-personnel costs for FY 2015. This number of FTE is necessary to manage and process the agency’s significantly increasing levels of prohibited personnel practice complaints and whistleblower disclosures, USERRA cases under the Demonstration Project, as well as Hatch Act complaints and advisory opinions. Providing funding to support the 128 FTE level will enable OSC to keep pace with its caseload, and prevent the growth of significant backlogs which disserve the merit system and the federal community. OSC anticipates it may see moderate increases in its backlog due to continuously increasing levels of cases.

Primary Driver of the FY 2015 increase:

Costs for current salaries and benefits operating with an increased number of FTE

We anticipate the agency will have 128 FTE in FY 2015, up from an estimated 122 in FY 2014. Salaries and benefits will be approximately 83% of OSC’s total costs in FY 2015, up from 75% just four years prior. The impact of pay raises, step increases, and career ladder promotions are significant in an agency in which 75%-84% of the budget goes toward salary and benefits.

General Services Administration rental costs

OSC operates out of its headquarters location in Washington, D.C., along with its three 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 comprise approximately 8.8% of OSC’s budget in FY 2015. OSC will need a small space expansion at our current HQ location and within our current lease in order to accommodate the additional FTE.

FY 2015 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 2015, see Budget Table 1 below.

Budget Table 1 – Budget Object Classification of Obligations: FY 2013-2015			
(in thousands of dollars)			
	FY 2013* (Actual)	FY 2014* (Projected)	FY 2015 (Projected)
11.0 Personnel compensation	\$12,063	\$12,961	\$13,745
12.0 Civilian Personnel Benefits	\$3,468	\$3,759	\$3,986
21.0 Travel and transportation of persons	\$81	\$150	\$155
22.0 Transportation of things	\$14	\$17	\$18
23.1 Rental payments to GSA	\$1,686	\$1,786	\$1,885
23.3 Communications, utilities and misc. charges	\$149	\$155	\$160
24.0 Printing and reproduction	\$14	\$17	\$20
25.0 Other services	\$970	\$1,935	\$1,248
26.0 Supplies and materials	\$42	\$55	\$60
31.0 Equipment	\$26	\$250	\$175
Total	\$18,513	\$21,085	\$21,452

*Includes Reimbursable Fund Expenses

Object Class 11.0 Personnel Compensation costs:

Overall personnel compensation will increase in FY 2015 as compared to FY 2014, since OSC will be supporting 128 FTE in FY 2015 versus 122 in FY 2014. Increased caseloads and added responsibilities are driving the need for higher staffing levels, as processing cases is resource intensive. OSC has seen or will see:

- record levels of incoming cases;
- new matters increasing 19% for the past two year period as compared to two years prior;
- increasing 36% versus the two year period prior to that;
- elevated case levels;
- a projected case increase at the 4-6% range;
- significantly, the new Whistleblower Protection Enhancement Act is projected to add hundreds of new cases;
- a pay raise of 1% is projected for FY 2015;
- expected wage inflation with 60 within-grade increases and career ladder promotions projected in FY 2014;
- a similar number of promotions in FY 2015 are expected;
- Turnover is forecast to remain low 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 2015 are increasing primarily due to the new personnel being added.

Object Class 21.0 Travel and Transportation of People: During FY 2013, travel was conducted on a restricted basis due to sequestration; during FY 2014 and FY 2015 we expect to resume at a fuller level required by OSC's investigations.

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 \$1.786 Million for FY 2014 and \$1,885 Million for FY 2015, based on projections provided by GSA. OSC will need a small expansion of our space footprint at the HQ 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: The moderate increase in this category reflects new needs to meet additional compliance requirements, as well as 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. OSC will have small increase levels in these services expected in FY 2014. However, OSC will require substantial increases in services to modernize various aspects of its operations that have been on hold, such as in the areas of Paperless Case Management and Electronic Case Filing, Electronic Personnel Folders, and other areas.

Object Class 31.0 Equipment: OSC anticipates moderate levels of equipment purchases (servers, computers, video teleconferencing equipment) in FY 2015 in order to properly refresh its Information Technology equipment and to support modernization projects.

Budget Table 2

Budget Table 2 – Analysis of Resources: FY 2013-FY2015

(in thousands of dollars)				
Description		FY 2013 (Actual)	FY 2014	FY 2015 (Projected)
Budget authority:	Direct	\$17,980	\$20,639	\$21,452
	Reimbursable	\$641	\$446	\$0
Total		\$18,621	\$21,085	\$21,452
Outlays		\$17,201	\$18,021	\$19,050
Employment:	Direct-Full Time Equivalent	101	122	128
	Reimbursable-Full Time Equivalent	3	3	0
Total		104	125	128

PART 3 - BUDGET PROGRAMS AND PERFORMANCE PLAN

FY 2013 Case Activity and Results – All Programs

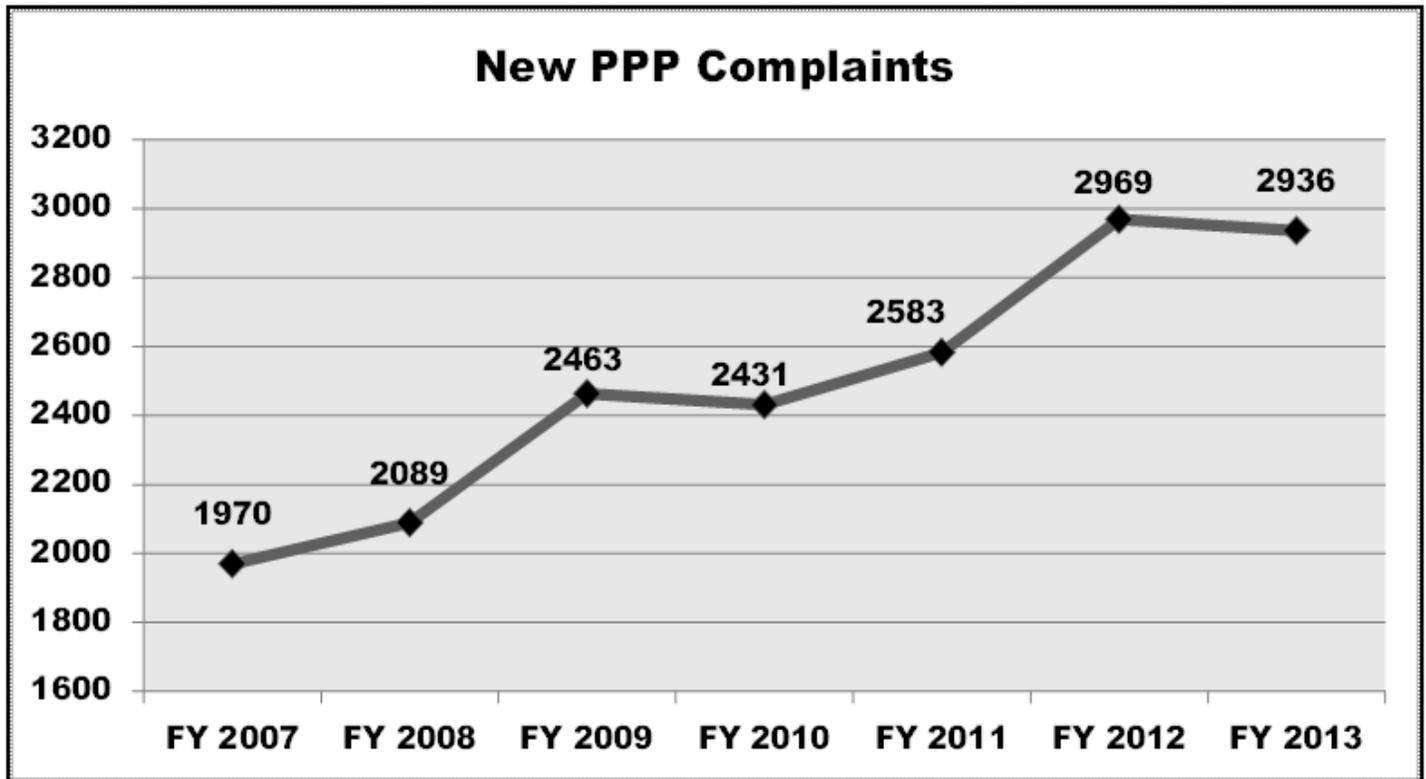
During FY 2013, OSC received 4,486 new matters throughout all of its program areas and 1,767 requests for Hatch Act advisory opinions. Table 1 below summarizes overall OSC case intake and dispositions in FY 2013 with comparative data for the previous four fiscal years. More detailed data can be found in Tables 2-7, in sections below relating to the four specific components of OSC’s mission – Prohibited Personnel Practice cases, Hatch Act matters, Whistleblower Disclosures, and USERRA cases.

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

^a“Matters” in this table includes prohibited personnel practice cases (including TSA matters), 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 4,486 new matters OSC received during FY 2013, 2,936 or 65% 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 the IPD for further investigation. CEU referred 255 cases for full IPD investigation in FY 2013. In most cases, prior to a full-scale investigation, these matters are first reviewed by the ADR Unit to determine if mediation is appropriate.

If a case is ripe 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 the 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 its findings and recommendations for corrective action. Only after the agency has had reasonable time to take corrective action and 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, it can file a complaint directly with the MSPB. (The agency may agree to take appropriate disciplinary action on its own initiative, thereby avoiding having to resort to 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 2014 the Investigation and Prosecution Division, which has jurisdiction over Prohibited Personnel Practices, will use approximately 69 FTE at a cost of approximately \$11,705,000. During FY 2015, we estimate the cost of the program will be approximately \$12,657,000, with 73 FTE assigned.

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

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

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

^cIn FY 2008, IPD not only handled 88 PPP complaints, but also 17 USERRA demonstration project cases and one Hatch Act case.

TABLE 3 Summary of All Favorable Actions - Prohibited Personnel Practice Complaints^a

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

^aOSC used a newly developed standardized query tool to generate the numbers for FY 2008. When applied to the years FY 2004 through FY 2007, the query tool generated slightly different numbers for several of the figures. Differences are caused by entry of valid data into the case tracking system after annual report figures were compiled and reported, and by data entry errors in earlier years that have since been corrected.

^bActions itemized in this column occurred in matters referred by CEU and processed by IPD.

^cThe 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.

^dIncorrectly reported as 4 in OSC's FY 2007 report to Congress due to administrative error.

^eRepresents two stays obtained in each of two cases.

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

Alternative Dispute Resolution

In selected 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 mediation-appropriate, 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 - Alternative Dispute Resolution

During fiscal year 2013, 107 cases were referred to the ADR Unit. In 75 cases mediation was accepted by the complainants, and from those cases agencies accepted mediation in 52 of those cases, from which there were 29 mediated resolutions (see Table 4).

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

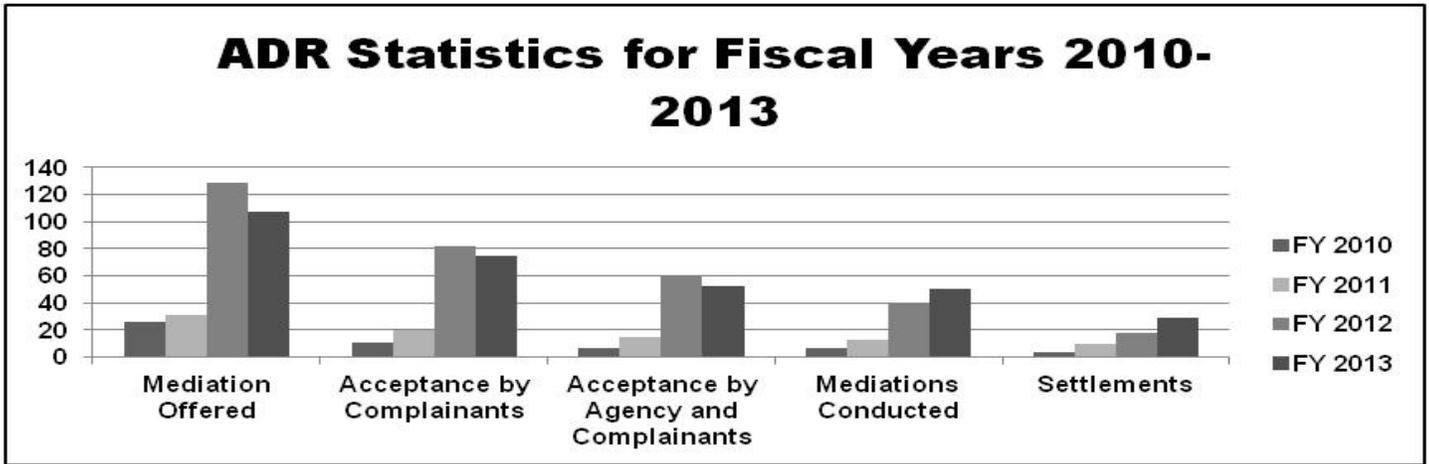
^aCategory includes complaints settled through mediation by OSC (including "reverse-referrals" - i.e., cases referred back to ADR program staff by IPD after investigation had begun, due to the apparent potential for a mediated resolution). Category also includes complaints that entered the initial OSC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

^bIncludes cases completed or withdrawn after at least one mediation session

^c"In process" means parties have agreed to mediate and mediation is either scheduled or is ongoing

^dCases in which OSC will or is in the process of offering mediation to the parties

The new emphasis on mediation has yielded outstanding results: Mediations conducted increased by 733% from 6 to 50 while mediations that yielded settlement increased 866% from 3 to 29 (see chart below).

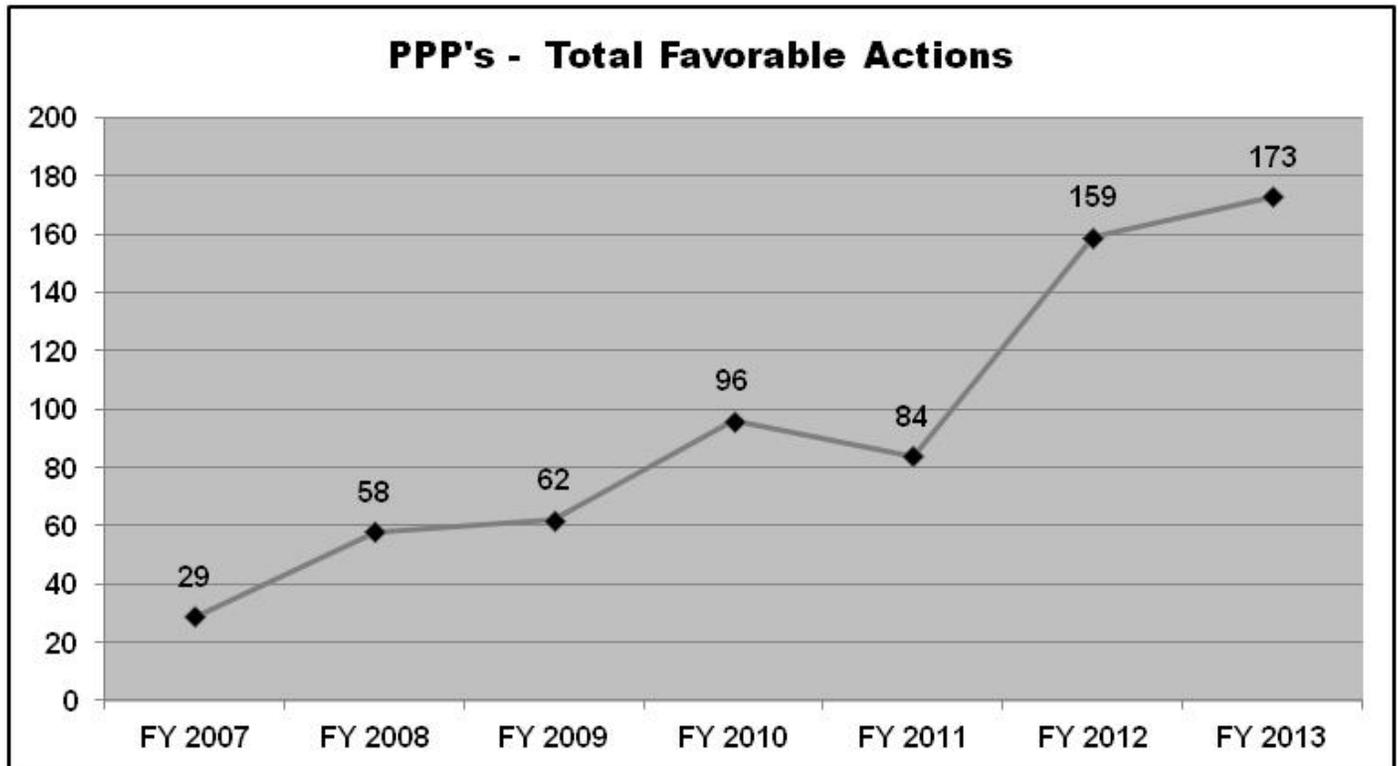


Resource Estimates

During FY 2014, the Alternative Dispute Resolution program will use approximately 4 FTE at a cost of approximately \$580,000. During FY 2015, we estimate the cost of the program will be approximately \$596,000, with 4 FTE assigned.

Goals and Results - Prohibited Personnel Practices

In FY 2013, OSC received 2,936 complaints, a 13% increase over FY 2011 levels, and a 103% jump since FY 2007. OSC achieved a record number of favorable actions, 173, in FY 2013.



OSC's Strategic Objective 1 is to protect the Merit System and promote justice in the federal workforce through investigation and prosecution of the prohibited personnel practices. 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
1	Number of corrective actions obtained by IPD	n/a	140	140	130	130		130	
2	Percent of corrective actions obtained per number of cases closed.	n/a	5%	5%	4%	5%		5%	
3	Number of cases referred for investigation from CEU to IPD (non-ADR)	n/a	75	83	87	87		95	
4	Number of informal stays requested	n/a	26	30	17	20		20	
5	Percent of informal stays obtained ⁵	n/a	n/a ⁵	n/a ⁵	n/a ⁵	TBD		TBD	
6	Number of formal initial stays requested	n/a	7	10	2	5		5	
7	Percent of formal initial stays obtained	n/a	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		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%		50%	
10	Number of initial examinations completed by CEU within 120 days	n/a	1,716	1,801	1,576 ¹⁰	1,600		1,600	
11	Percent of initial examinations completed by CEU within 120 days	n/a	63%	66%	57%	57%		57%	
12	Number of CEU cases more than 240 days old	n/a	98	120	256	140		150	
13	Percent of CEU cases more than 240 days old ¹³	n/a	3%	4%	9%	10%		11%	
14	Number of staff allocated to whistleblower retaliation and other PPPs	53	60	65	59	65		65	
15	Percent of total staff allocated to whistleblower retaliation and other PPPs	50%	50%	52%	53%	55%		55%	
16	Number of staff training programs in whistleblower retaliation and other PPPs	2	3	4	4	4		4	
17	Percent of cases qualifying for full investigation referred to ADR Unit for review	n/a	89%	89%	56%	65%		65%	

5. OSC has not yet established a procedure to automate, track, and report on this metric.

10. Additional case load, approximately 50% higher per employee, slowed down our efficiency in FY 2013.

13. Due to the sharp rise in PPP caseload, an increase in the number of older 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
18	Number of recommendations to agencies to take disciplinary action	n/a	n/a	6	19	12		12	
19	Number of disciplinary action complaints filed	n/a	0	1	0	1		1	
20	Number of disciplinary actions resolved pre-litigation through negotiated settlement	n/a	19	20	27	27		27	
21	Total number of successful disciplinary prosecutions	n/a	0	1	0	1		1	
22	Percent of successful disciplinary prosecutions	n/a	n/a	100%	0%	100%		100%	
23	Upon receipt of a complaint, clearly explain the OSC review process and when action can be expected ²³	n/a	99%	99%	99%	99%		99%	
24	Provide complainants status updates at defined intervals and when significant new developments occur ²⁴	n/a	88%	99%	80%	90%		92% ²⁴	
25	If OSC declines to refer a case for investigation, clearly inform complainant of the reason(s) why ²⁵	n/a	100% ²⁴	100%	82%	100%		100%	

23. Upon receipt of a complaint, clearly explain the OSC review process and when action can be expected:
Target: Since the third quarter of FY 2012, prepare an attachment for the acknowledgment letter explaining the complaint review process and expected time for CEU to make a determination on the complaint. Since beginning fourth quarter FY 2012, all acknowledgment letters include the attachment. CEU Chief will provide senior management a list of files that do not include the attachment.

24. Provide complainants status updates at defined intervals and when significant new developments occur. The IT system is coded to generate this information. Since we cannot dedicate additional resources to maintain a 99% result, we have determined that 92% (for FY 2015) is substantial compliance with this goal target.

25. If OSC declines to refer for further investigation a matter in which complainant has no individual right of action, clearly inform complainant of the reasons why:

Target: Since the third quarter of FY 2012, and at the beginning of each FY thereafter, the CEU Chief will meet with examiners to identify the information that should be included in preliminary determination and closure letters. The CEU Chief will provide senior management a list of the files (by case number and name) lacking this information.

Result: The 2012 result of 100% was obtained from a combination of an automatic query of data in OSC 2000, and a manual count as well.

Goal Table 3 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
26	Number of cases reviewed by the ADR Unit from all sources	n/a	186	190	155	185		200	
27	Percentage of cases reviewed in which mediation is offered from all sources	n/a	67%	63%	69%	65%		65%	
28	Number of cases mediated (including cases withdrawn after one or more sessions)	n/a	32	50	49	50		50	
29	Percentage of all mediations completed that resulted in settlement	n/a	56%	58%	62%	62%		62%	

Prohibited Personnel Practice Case Successes

In FY 2013, OSC obtained a record number of corrective actions on behalf of employees who were victims of a prohibited personnel practice (PPP), 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.

Protecting Whistleblowers from Retaliation

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

OSC obtained corrective action on behalf of a whistleblower who reported to an Inspector General improper government expenditures by the head of a federal agency and other high-level agency officials. Subsequently, the agency proposed the whistleblower's removal from service for misconduct and subpar performance. OSC

obtained an informal stay of the proposed removal. At the conclusion of the investigation, OSC negotiated an settlement in which the parties agreed to provide the employee with a clean employment record and a neutral job recommendation. The whistleblower received a retroactive within-grade increase, agency contributions to a private annuity, and reimbursement for attorney's fees. Under the terms of the settlement, the whistleblower remained on the agency's payroll for an additional year. The agency also agreed to provide the whistleblower with professional training to enable the employee to maintain professional credentialing.

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

A whistleblower disclosed that a nonprofit corporation that raised funds to finance a government entity had engaged in gross mismanagement of the funds. This disclosure angered the nonprofit board of directors which persuaded the employing federal agency to intervene. The agency proposed to demote and geographically reassign the whistleblower. OSC negotiated a stay of these actions with the agency while it conducted its investigation. At the conclusion of the investigation, OSC assisted in negotiating a settlement in which the whistleblower would serve two years as a visiting professor at a well-known college under the Intergovernmental Personnel Act and then retire from service. The agency also agreed to reimburse the whistleblower for attorneys' fees, rescind the orders of demotion and reassignment, and provide the whistleblower with a clean record.

OSC filed an amicus brief before the MSPB in support of a whistleblower's attempt to have portions of Whistleblower Protection Enhancement Act of 2012 applied retroactively to his pending appeal. The case concerned whether restrictive decisions by the Federal Circuit that barred certain recurring whistleblower claims from review should be applied to pending cases or only to cases filed after the WPEA's enactment. OSC urged that the statute should be applied retroactively to pending cases. In its decision, *Day v. v. Department of Homeland Security*, 119 M.S.P.R. 589 (2013), the MSPB agreed with OSC and ordered that the WPEA's provision to overturn restrictive court decisions applied retroactively. Under this decision, previously barred whistleblower claims may now be reviewed by OSC and the MSPB.

As it did in the *Day* case, OSC filed an amicus brief in the U.S. Court of Appeals for the Ninth Circuit on behalf of a whistleblower whose claim had been rejected by a district court that relied on the Federal Circuit's restrictive rulings. In *Kerr v. Salazar*, Doc. No. 12-35084, the Ninth Circuit reversed the district court and allowed the retaliation claim, but it did so by rejecting the criticized Federal Circuit decisions and finding that the whistleblower's disclosures were protected by the Whistleblower Protection Act of 1989.

Protecting Employees in their Right to Due Process

OSC filed an amicus brief before the U.S. Court of Appeals for the Federal Circuit to support two employees who suffered adverse actions after their agencies had found them ineligible to occupy positions that were categorized as noncritical sensitive. The case is *Kaplan v. Conyers*, 2013 U.S. App. LEXIS 17278 (Aug. 20, 2013). After a Federal Circuit panel held that the MSPB was prohibited from reviewing national security determinations concerning the eligibility of employees to occupy a “sensitive” position, the Federal Circuit, sitting en banc, agreed to rehear the appeal. On rehearing, OSC urged the court to respect the due process rights of federal employees by allowing the MSPB and OSC to review adverse personnel actions based on security determinations, especially in whistleblower cases. The court, relying on *Department of the Navy v. Egan*, 484 U.S. 518 (1988), however, held that the employees could not appeal these adverse actions against them based on the national security concerns. The decision reserved for another day the question of whether a whistleblower might be allowed to appeal a personnel action under the MSPB’s IRA appeal authority if the action is based on an adverse security determination.

In an enforcement action that had systemic impact, OSC issued a PPP report that concluded that an agency’s procedure to indefinitely suspend employees whose personal reliability certifications had been revoked or suspended constituted a violation of due process. In this case, an employee’s certification was temporarily revoked pending an administrative review. During the review, which lasted 13 months, the employee was placed on suspension and denied any salary. At the conclusion of the long review process, the agency determined that the employee’s certification should not be revoked and returned him to duty, but without back pay. Because more than a year had elapsed since the employee had last been certified, the agency required the employee to submit to recertification before returning to work. During the second certification process, the agency failed the employee again. This led to another indefinite suspension while the agency completed its administrative review. At that point, the employee filed a complaint for relief with OSC. Based on clear evidence that the agency’s procedures failed to provide any meaningful opportunity for relief, OSC issued a report that recommended a change in the agency’s procedures so that revocation of the personal reliability certification did not result automatically in loss of pay. The agency agreed to change its policy to add this protection and it agreed to provide back pay to the employee. Under the amended policy, employees whose certifications are revoked or suspended will be placed on administrative leave pending administrative review.

Protecting the Merit System from Abusive Personnel Practices

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

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

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

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

Temporary Relief for Whistleblowers

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

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

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

ADR Successes

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

Reprisal Complaint after Public Disagreement

A former employee of a government agency filed a reprisal complaint with OSC after expressing disagreements publicly about environmental policies with other senior officials during the previous year. The complainant stated that they experienced reprisal in the form of a significant change of duties and proposed disciplinary action. OSC mediated the complex reprisal complaint which resulted in an agreement that met the interests of both parties. Given the complexity of the case, mediation likely saved the government at least two years of investigation and/or litigation of the matter. The complaint also involved senior officials; thus, mediation also saved the agency disruption and, because of the mediated settlement, allowed the parties to move forward without further distractions about this conflict(s).

Reprisal Complaint After Disclosure

After disclosing a supervisor's misconduct to the Office of Inspector General (OIG), a long-term employee filed a reprisal complaint with OSC against a government agency. The OIG substantiated the complainant's allegations and, thereafter, retaliation by the employee's new supervisor in the form of a low performance evaluation associated with a performance improvement plan (PIP). The parties entered into a settlement agreement that included the withdrawal of the PIP and allowed the employee to retire on a day the employee previously had suggested. Estimated savings total \$75,000.

Reprisal After Reporting Agency Culpability

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

USERRA Cases handled by ADR

Position Terminated

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

Lack of Training

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

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 removes OSC’s jurisdiction over most state and local government employees who run for partisan political office, an important reform that is enabling OSC to enforce the Hatch Act 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, attempt to informally resolve the violation, 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. Despite these changes, by the end of FY 2013, the Hatch Act Unit had closed 465 complaints, the third highest number in agency history. This significantly reduced the Unit’s case backlog heading into FY 2014.

Advisory Opinions

The HAU has the unique responsibility of providing Hatch Act information and legal 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 2013, the HAU issued 1,767 total advisory opinions, including 129 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 11 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 2014, the Hatch Act Enforcement Program will use six FTE at a cost of approximately \$1,222,000. During FY 2015, OSC estimates the cost of this program to be \$1,031,000, employing five FTE. These estimates reflect the reduction in state and local enforcement matters.

Goals and Results - Hatch Act Enforcement

Between FY 2008-2012, the number of complaints and requests for advisory opinions regarding the Hatch Act 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 5 Summary of Hatch Act Complaint and Advisory Opinion Activity

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

^aAll oral, email, and written advisory opinions issued by OSC.

^bIncludes cases that were reopened.

^cNumbers revised for FYs 2007-2008 based upon a new query that includes disciplinary actions obtained in both negotiated Hatch Act settlements and litigated Hatch Act cases, not just litigated cases as in past reports.

Goal Table 4 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 Target
30	Number of Hatch Act updates to OSC website or Listserv messages ³⁰	10	15	10	10	10		10	
31	Percent of cases obtaining corrective action ³¹	n/a	92%	95%	92%	90%		90%	
32	Percent of appropriate cases resolved through negotiation ³²	n/a	100%	100%	100%	100%		100%	
33	Number of successful prosecutions	n/a	1	1	1	1		1	
34	Percent of successful prosecutions	n/a	100%	100%	100%	100%		100%	

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

31. Calculating corrective actions: Hatch Act Unit attorneys will keep track of cases where we try to achieve corrective action but are unsuccessful. We will then compare that number to the total number of corrective actions we achieve. For example, if we achieve 40 corrective actions and are unsuccessful in two attempts, we would calculate the percentage as $40/42 = 95\%$ 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.

32. Calculating Disciplinary Actions: Hatch Act Unit attorneys will keep track of unsuccessful attempts at settlement and compare that number to the total number of negotiated disciplinary actions we achieve.

Goal Table 5 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
35	Number of warning letters issued ³⁵	n/a	142	142	150	75 ³⁵		75	
36	Percent of Hatch Act outreach/training requests accepted ³⁶	98%	98%	98%	100%	98%		98%	
37	Percent of oral and email advisories issued within 5 business days of receipt of complaint ³⁷	95%	99%	95%	98%	95%		95%	
38	Percent of formal written advisories issued within 120 days	n/a	95%	95%	95%	95%		95%	
39	Percent of formal written advisory requests responded to ³⁹	n/a	98%	98%	98%	98%		98%	

35. The FY 2014 target for the number of warning letters issued was reduced from 150 to 75, due to the Hatch Act Modernization Act of 2012, which narrowed the criteria for Hatch Act violations at the state and local level. OSC experienced a reduction in the number of Hatch Act complaints received and warning letters issued as a result of these changes and expects this trend to continue. 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 when the numbers are expected to rise.

36. 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 maintained a record of this information.

37. 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 calculate the percentage.

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

Hatch Act Successes

Disciplinary Action Obtained through Settlement Negotiations

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

Merit Systems Protection Board Litigation

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

Implementation of the Hatch Act Modernization Act of 2012

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

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 there is a substantial likelihood that the type of wrongdoing described in § 1213(a) has occurred or is occurring. If there is a substantial likelihood, 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 2013, the unit referred 51 matters to agency heads for investigation under § 1213(c). (See Table 6.)

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 2014, we estimate the program will use 13 FTE at a cost of \$2,132,000. During FY 2015, we estimate the program will use 15 FTE at a cost of \$2,248,000.

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 2013, the unit received 1,128 Disclosures, 22% higher than just two years prior. As a consequence, the Unit's backlog has increased sharply as well.

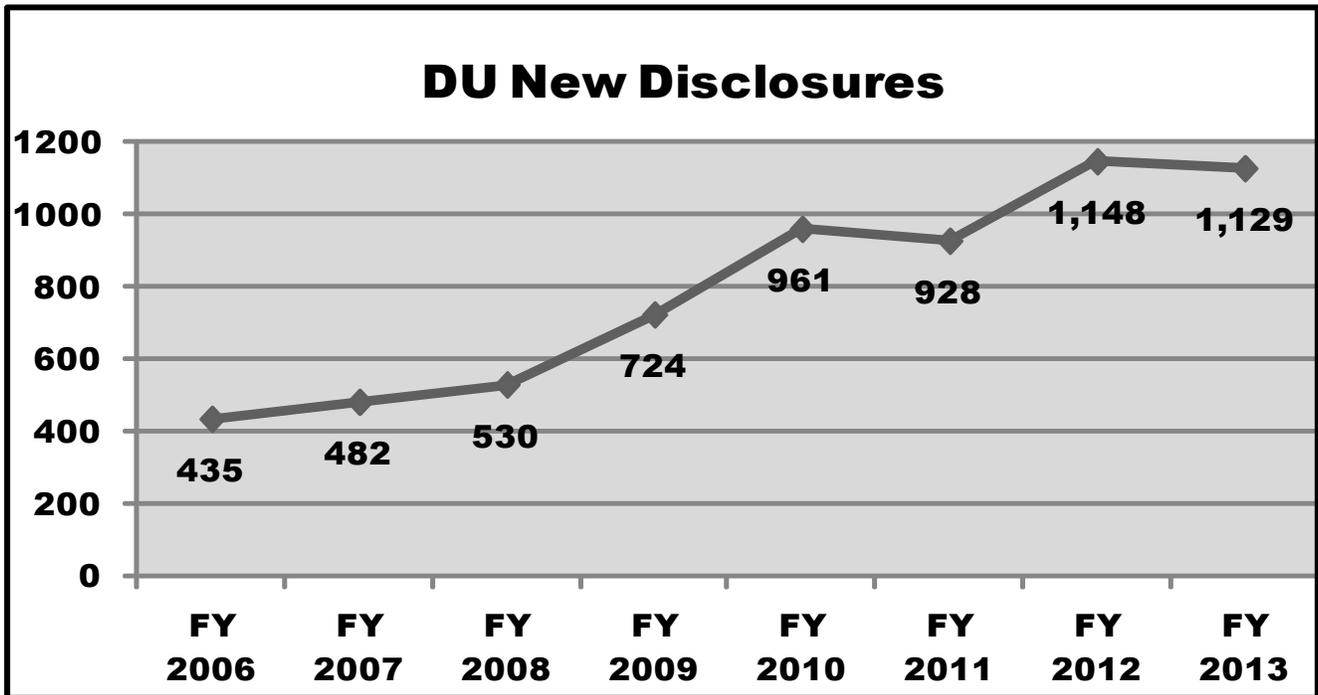


TABLE 6 Summary of Whistleblower Disclosure Activity - Receipts and Dispositions^a

		FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Pending disclosures carried over from prior fiscal year		69	84	128	125	83	132	225
New disclosures received		482	530	724	961	928	1,148	1,129
Total disclosures		551 ^b	614	852	1,086	1,011	1,280	1,354
Disclosures referred to agency heads for investigation and report		42	40	46	24	47	39	51
Referrals to agency IGs		11	9	10	2	5	6	2
Agency head reports sent to President and Congress		20	25	34	67	22	36	54
Results of agency investigations and reports	Disclosures substantiated in whole or in part	19	22	30	62	21	31	49
	Disclosures unsubstantiated	1	3	4	5	1	5	5
Disclosure processing times	Within 15 days	285	256	394	555	555	583	575
	Over 15 days	182	232	333	451	315	470	585
Percentage of disclosures processed within 15 days		61%	52%	54%	55%	63%	55%	49%
Disclosures processed and closed		467	488	727	1,006	870	1,053	1,160

^aMany 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 6 Reduce Governmental Wrongdoing and Threats to Health and Safety by Facilitating Whistleblower Disclosures

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
40	Total number of outreach activities undertaken including dissemination of whistleblower information	n/a	9	9	2	5		5	
41	Success in prompting thorough agency investigations of referred disclosures ⁴¹	n/a	68%	68%	77%	77%		77%	
42	Number of whistleblower disclosures prompting effective corrective action and accountability ⁴²	n/a	30	32	31	33		33	

41. This is taken from the subset of reports received that did not require further follow up with the agency involved. This captures only the percentage of investigations performed within the same fiscal year.

42. This reflects the number of cases closed in the fiscal year, in which an action code was entered signifying corrective action, disciplinary action, changes in agency policy, or cost-savings. These cases were closed in the given fiscal year, but may have been referred in a prior fiscal year. Due to the length of time our process takes, cases referred in one fiscal year can be closed in subsequent fiscal years.

Goal Table 7 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
43	Number of whistleblower disclosures referred by OSC to agency head for investigation	n/a	39	41	51	50 ⁴³		50	
44	Percent of whistleblower disclosures submitted to OSC referred to agency head for investigation	n/a	4%	6%	4%	6% ⁴⁴		6%	
45	Number of whistleblower disclosures either closed or referred within 15 day statutory timeline	n/a	583	590	578	580 ⁴⁵		580	
46	Percent of whistleblower disclosures closed or referred within 15 day statutory deadline	n/a	55%	55%	49%	50% ⁴⁶		50%	
47	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 ⁴⁷	Train agencies on redesigned materials		Train agencies on redesigned materials	
48	Survey of attendees at outreach events ⁴⁸	n/a	n/a ⁴⁸	Develop survey	n/a ⁴⁸	Survey 500 attendees		Survey 500 attendees	

43. The FY 2014 target was adjusted from 43 to 50 because the target was too low based on actual results.
44. The 2014 target was adjusted from 8% to 6% based on the consistency in past year referral rates.
45. The 2014 target was adjusted from 596 to 580 based on consistency in past year referral numbers.
46. The 2014 target was adjusted from 55% to 50% based on the projected increase of disclosures received and reduction in staff.
47. The FY 2012 result is n/a as OSC started this goal in FY 2013. The agency has not pursued this requirement yet as of FY 2013. The FY 2015 planned target is to increase the number of certifications by 5%.
48. The FY 2012 result is n/a. The goal was for the survey to be developed in FY 2013. The agency has not completed this requirement yet.

Disclosure Unit Successes

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

Improper Maintenance of Reusable Medical Equipment

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

Violation of Law, Rule, or Regulation and Abuse of Authority

Misappropriation of Government-Owned Property. OSC received disclosures from an anonymous whistleblower who disclosed that several Navy employees misappropriated government-owned property, including scrap metal, copper wire, gasoline, gravel, wheel rims, dorm-sized refrigerators, dumpster bottoms and motor tubes, for personal use or profit. The Navy substantiated the whistleblower's allegation that two of the identified employees violated 18 U.S.C. § 661 by improperly removing scrap metal from the Recycling Center, selling it to a commercial scrap processor, and converting the proceeds for personal use. In addition, the agency partially substantiated the misappropriation of copper wire to the extent that copper wire might have been mixed among other types of stolen scrap metal. The agency's report did not substantiate the allegation that

employees misappropriated gasoline, gravel, wheel rims, dorm-sized refrigerators, dumpster bottoms, or motor tubes.

As a result of the disclosures, the first employee was terminated from employment by contractor MANCON and the second employee was removed from his position at Camp Lejeune. Furthermore, on September 28, 2011, the second employee threatened to break another employee's legs if he lost his job. Consequently, the Special Assistant U.S. Attorney, Camp Lejeune, charged the second employee with communicating a threat, for which he was convicted on February 8, 2012 in U.S. District Court. The Special Assistant U.S. Attorney declined to prosecute for larceny because it was determined that both employees did not have sufficient notice that the government intended to retain ownership of the scrap metal. In part, for this same reason, the Navy Acquisition Integrity Office (AIO) determined that suspension and/or debarment from participation in federal government procurement was not warranted. The AIO based its determination on the lack of evidence that either employee manipulated government procurement or a contractor's participation in government procurement. The agency determined that it could seek to recoup the \$50,000 in scrap metal sales from both employees through administrative setoffs against any debts the government might owe to either of them, such as unpaid salaries or government pensions. However, neither of the two employees is entitled to any unpaid salary nor is either currently receiving a government pension that could be set off against the funds they received for misappropriated scrap metal. To ensure that it is clear to employees that the government retains ownership of materials that are intended for recycling, Camp Lejeune's Commanding Officer issued a policy letter prohibiting the removal of items that have been delivered to the Recycling Center, or placed in solid waste or recycling collection containers at Camp Lejeune. OSC found that the agency's report contains all of the information required by statute and that the findings of the agency head appear reasonable. *Referred August 2011; closed and transmitted to the President and Congressional oversight committees in September 2013.*

Improper Accessing of Medical Records

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

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

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

Violation of Law, Rule, or Regulation, Gross Mismanagement, and Gross Waste of Funds

Accounting Irregularities

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

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

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

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

Violations of Law, Rule, or Regulation, Gross Mismanagement, Gross Waste of Funds, and Abuse of Authority

Contracting Violations

The Federal Protective Service presented an agency report that largely substantiated the whistleblower's allegations: a Regional Director improperly facilitated and influenced the purchase of \$257,472 in law enforcement surveillance equipment from a friend. This friend had drafted the Statement of Work and discussed the contract approval process with the Regional Director, in violation of the Federal Acquisition Regulations. The Regional Director also failed to disclose that this friend was also his neighbor. However, the agency did not find that the agency funds were wasted on the purchase. As a result of the investigation, the agency created a senior technical advisor position to provide contract oversight and the Regional Director was issued a Notice of Proposed

Suspension for 14 days. Based upon the Special Counsel's review of the original disclosure, the agency reports, and the whistleblower's comments, the Special Counsel determined that the agency reports contained all of the information required by statute and that the findings appeared to be reasonable. That said, the Special Counsel added that she was sympathetic to the whistleblower's comments that it appeared that the agency was overly lenient towards the Regional Director in terms of his proposed disciplinary action and subsequent settlement agreement. *Referred January 2012; closed and transmitted to the President and Congressional oversight committees in September 2013.*

Violation of Law, Rule, or Regulation, Gross Mismanagement, and Abuse of Authority

Misallocation of Funds

Pursuant to 5 U.S.C. § 1213(e)(3), OSC transmitted to the President and Congress a report from the Associate Deputy Attorney General, Department of Justice (DOJ) received in response to disclosures filed by a Facility Operations Assistant at the Bureau of Prisons (BOP), Federal Correctional Institute (FCI), Waseca, Minnesota. The whistleblower alleged that FCI Waseca employees violated a law, rule, or regulation and engaged in gross mismanagement and an abuse of authority by misallocating employee salaries and overtime expenditures, and by failing to obtain prior approval for overtime expenditures.

The investigation conducted by DOJ BOP Office of Internal Affairs substantiated the allegations, concluding that an estimated \$14,000 in Salaries and Expenses (S&E) expenditures should have been allocated to the Building and Facilities (B&F) funds. The investigation also found that there were seven occasions when staff worked overtime on a B&F project without the required prior approval and S&E salary expenditures of \$3,872 should have been designated as B&F expenditures. A supplemental report provided by the agency confirmed that FCI Waseca employees received the recommended training. Additional information received from the agency verified that disciplinary action had been taken against the officials found responsible. The Special Counsel determined that the agency's findings appeared reasonable. *Referred February 2012; closed and transmitted to the President and Congressional oversight committees in May 2013.*

Improper Coding of Inmate Records

OSC received disclosures from a whistleblower who was a Case Manager in the Department of Justice, Federal Bureau of Prisons (BOP), McDowell Federal Correctional Institution (FCI McDowell), Welch, West Virginia. The whistleblower disclosed that employees falsified records regarding inmates' participation in BOP's Release Preparation Program (RPP). The agency's report substantiated the whistleblower's allegations regarding the improper coding of inmates' training records. The agency concluded that the practice was based on faulty guidance from misinformed employees about how and when inmates qualified for RPP participation rather than the intentional falsification of records. Given the faulty guidance, the agency expanded its investigation and found that, with the exception of the Mid-Atlantic BOP employees, other regions did not improperly credit inmate participation in the Institution RPP as a matter of common practice. As a result of the investigation, the agency will conduct ongoing audits and provide training on RPP participation. FCI McDowell officials must also correct all inaccuracies found during the investigation and issue a report to BOP Headquarters. The Special Counsel determined that the report contained all of the information required by statute and that the findings appeared to be reasonable. *Referred August 2012; closed and transmitted to the President and Congressional oversight committees in March 2013.*

Gross Mismanagement and a Substantial and Specific Danger to Public Health and Safety

Faulty Laboratory Policies and Procedures

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

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

Violation of Law, Rule, or Regulation; Gross Mismanagement; and a Substantial and Specific Danger to Public Safety

Regulatory Non-Compliance

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

In its report, the agency stated that it was unable to substantiate the whistleblower's allegations regarding the improper issuance of PIV cards. However, the agency did find that the Bath VAMC lacked a standard policy governing the retention of employee PIV training records. The report stated that the Bath VAMC was not in compliance with regulatory requirements regarding such records. The agency recommended that a compliant record retention policy be put in place for PIV training employee records. OSC determined that the agency's

report contained all the information required by statute and the agency's findings appeared to be reasonable. *Referred March 2012; closed and transmitted to the President and Congressional oversight committees in December 2012.*

Violation of Law, Rule, or Regulation; and Gross Mismanagement

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

Violation of Law, Rule, or Regulation; and a Substantial and Specific Danger to Public Health and Safety

Mishandling of Prescription Drugs at VA Pharmacy

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

The agency's report fully substantiated the allegations, finding that employees restocked and re-dispensed prescription drugs, improperly reconciled the inventory using returned and restocked drugs, and violated Veterans Health Administration Handbook regulations, medical center policies, and FDA compliance guides by failing to destroy previously dispensed and returned drugs. Corrective actions recommended by the agency report included halting the practice of restocking and re-dispensing medications, the development of a system to track the chain of custody of returned drugs, and training in controlled substance management. Finally, the report recommended that consideration be given to disciplinary and/or other administrative action with respect to the employees deemed responsible. Subsequent communications between OSC and agency officials indicated that the corrective actions recommended by the report were implemented and that disciplinary actions ranging from three-to five-day suspensions were proposed against four agency employees deemed responsible for the wrongdoing. The Special Counsel determined that the report contained all of the information required by statute and that the findings appeared to be reasonable. *Referred December 2012; closed and transmitted to the President and Congressional oversight committees in September 2013.*

Violation of Law, Rule, or Regulation

Ethics Violations

An anonymous whistleblower alleged that officials at the Department of the Treasury, Office of the Comptroller of the Currency, Law Department, Washington, D.C., failed to provide notice to senior employees that they were subject to post-employment restrictions. The agency's report substantiated the allegation. The agency determined that the failure to provide the required notice occurred after the retirement of the ethics counsel and the death of his successor. In a supplemental report the agency informed OSC that all affected employees have now been notified of their post-employment restrictions and procedures have been implemented to prevent recurrence of this problem. The agency determined that no disciplinary action was warranted. The Special Counsel determined that the reports contained all of the information required by statute and that the findings appeared to be reasonable. *Referred April 2013; closed and transmitted to the President and Congressional oversight committees in September 2013.*

USERRA Program

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 is due to expire in FY 2014.

Resource Estimates

During FY 2014, the USERRA Unit will use approximately three FTE at a cost of \$627,000 while during FY 2015 OSC estimates the program will use three FTE at a cost of \$611,000. The USERRA unit also receives reimbursement-based funding from other federal agencies, primarily the Department of Labor, which will end in FY 2014. In FY 2014, we estimate this funding at \$446,000 and three FTE.

Goals and Results - USERRA Enforcement

The current USERRA Demonstration Project added 137 USERRA cases to the unit’s total workload for Fiscal Year 2013. Unlike the Referral cases, OSC investigates as well as enforces the Demonstration Project cases. This has caused a 372% increase in the USERRA Unit’s caseload since FY 2011. OSC has received an average 23% corrective action rate during this Demonstration Project. In the prior Demonstration Project, from 2005-2008, the Unit achieved similar results.

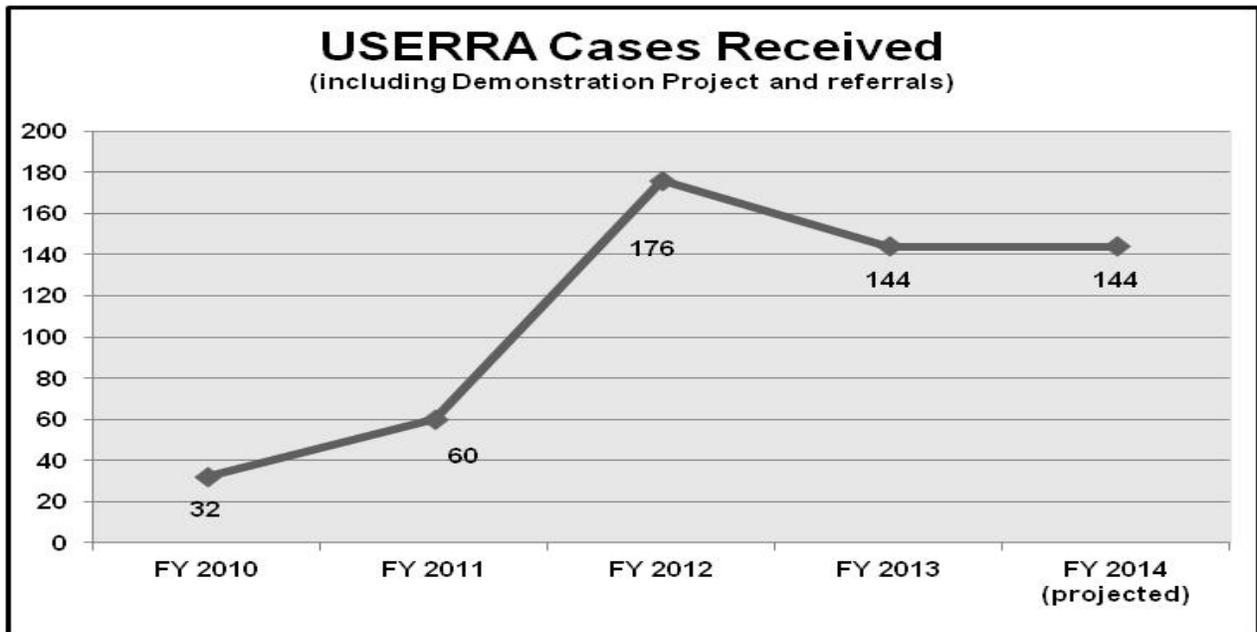


TABLE 7^a Summary of USERRA Referral and Litigation Activity

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

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

TABLE 8 Summary of USERRA Demonstration Project Activity

	FY 2011	FY 2012	FY 2013
Pending cases carried over from previous fiscal year	n/a ^a	28	88
New cases opened	29	152	137
Cases closed	1	92	154
Closed cases where corrective action was obtained	0	24	38
Closed cases where no corrective action was obtained	1	68	116
Pending cases at end of fiscal year	28	88	71

^aOSC began receiving cases under the new USERRA Demonstration Project on August 9, 2011.

Goal Table 8 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
49	Number of staff allocated	n/a	2	3	3	3		3	
50	Percent of staff allocated	n/a	25%	37%	37%	50%		50%	

Goal Table 9 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
51	Number of favorable resolutions	n/a	29	30	40	35 ⁵¹		35 ⁵¹	
52	Percentage of favorable resolutions	n/a	24%	24%	24%	24%		24%	
53	Number of investigations within 90 days	n/a	59	60	59	60 ⁵³		60 ⁵³	
54	Percentage of investigations within 90 days	n/a	63%	63%	42%	50% ⁵⁴		50% ⁵⁴	
55	Number of legal reviews within 60 days	n/a	32	33	30	32 ⁵⁵		32 ⁵⁵	
56	Percent of legal reviews within 60 days	n/a	76%	76%	83%	76%		76%	
57a	Customer service exit survey findings	n/a	45%	47%	50% ^{57a}	50%		50%	
57b	Percent of cases received by USERRA Unit referred to ADR Unit for review	n/a	18%	50%	34%	50%		50%	

51. Due to the record number of cases resolved, the targets for 2014 and 2015 were increased from 31 to 35. All 2014 and 2015 Targets in this section are predicated on Congress continuing OSC's role in investigating half of federal USERRA complaints.
53. Due to the loss of 13% of staff, and loss of work hours due to sequestration and furlough, plus a record number of cases resolved, the targets for 2014 and 2015 were reduced from 61 to 60.
54. Due to the loss of 13% of staff, and loss of work hours due to sequestration and furlough, plus a record number of cases resolved, the targets for 2014 and 2015 were reduced from 63% to 50%.

55. Due to the loss of 13% of staff, and loss of work hours due to sequestration and furlough, plus a record number of cases resolved, the targets for 2014 and 2015 were reduced from 34 to 32.

57a. In FY 2013, 50% of those surveyed were very satisfied, satisfied, or neutral regarding OSC's level of service.

Goal Table 10 Achieve Mutually Satisfactory Solutions Through USERRA 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
58	Number of USERRA cases referred to ADR unit for review ⁵⁸	n/a	17	58	47	47		47	
59	Percent of cases referred by USERRA to the ADR Unit for review in which mediation was offered	n/a	82%	60%	66%	65%		65%	
60	Percent of cases in which both parties agree to mediate	n/a	50%	50%	48%	50%		50%	
61a	Number of cases withdrawn prior to mediation	n/a	0	n/a	5	n/a		n/a	
61b	Number of cases mediated	n/a	2	17	11	7		7	
61c	Percent of cases successfully mediated	n/a	100%	58%	100%	75%		75%	

58. The ADR Unit started reviewing referrals in May 2012. All 2014 and 2015 Targets in this section are predicated on Congress continuing OSC's role in investigating half of federal USERRA complaints.

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% rate of completing USERRA Demonstration Project investigations within 90 days, or in almost two-thirds of complaints.

OSC conducted five USERRA outreaches during FY 2013, satisfying every agency request. OSC expects to again satisfy all outreach requests in FY 2014.

USERRA Successes

OSC is playing a central role in ensuring that the federal government upholds its responsibility to be a “model employer” under USERRA, especially with so many military personnel returning from Afghanistan and Iraq.

Loss of Career Advancement

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

Initial Hiring Discrimination

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

Problems with Military Leave

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

Lowered Performance Appraisal

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

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 and prohibited personnel practice provisions of 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 2013, OSC employees spoke at over 64 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 for Senior Executive Service members and managers are in place or being fashioned, linking to the agency's mission and strategic goals. 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 2013. The auditor spent time at OSC headquarters and with the Department of Interior's Internal Business Center (IBC) personnel, 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 ten 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 exactly 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 routinely 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. 84% of its FTE perform inherently governmental work, and 16% of its FTE are considered commercial in nature. According to OMB Circular A-76 and supplemental guidance issued by OMB, government performance of commercial functions is permitted when, as is the case at OSC, it totals 10 FTE or fewer positions.

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 provides one-stop service for those who wish to file a complaint or disclosure, or request a Hatch Act advisory opinion. Hatch Act advisory opinions may be requested through our website. A person can file a prohibited personnel practices complaint online, which is the most common channel for PPP complaints to be received by the agency. A person can also make a complete whistleblower disclosure online. Those who wish to communicate with a knowledgeable OSC staffer through one of the agency’s telephone hotlines will find the relevant information on the OSC website. OSC’s website is linked to USA.gov, as well as other agency websites: the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Office of Government Ethics (among many others). During FY 2013, the total number of user sessions was 933,085, an increase of more than 6% in website traffic since FY 2012. This continual upward trend led to an OSC website redesign project in FY 2013 to begin modernizing OSC website to enhance user experience when accessing information and/or to guide a person in filing a correct complaint or disclosure, or requesting a Hatch Act advisory opinion. Additionally, this new web content management system enables non-IT professionals in OSC to make content updates, and the new website will become available to the public in FY 2014. Furthermore, during FY 2014, OSC’s Information Technology Branch (ITB) will begin implementing additional functionalities to its online filing system to automate the filing process and allow users to securely upload supporting evidence with their form(s).

In FY 2014, ITB is designing new information architecture to allow OSC to capture and manage unstructured business information, with the goal of having OSC become a totally integrated and paperless office (eOffice) in three years. OSC's eOffice will meet the implementation deadline of December 31, 2019 of the OMB/NARA Management Government Records Directive (M-12-18). In addition, in FY 2014, OSC will start up a project to design, develop, and deploy a SharePoint infrastructure to support eOffice.

OSC's initiatives in FY 2014 also include building a prototype paperless case management system to conduct proof-of-concept study using Commercial Off-the-Shelf (COTS) SharePoint 2013 Project Portfolio Management (PPM) web applications for case management.

In FY 2012, OSC enhanced the video conference capabilities and services it provides. New video conferencing equipment and technology allow the creation of virtual meeting rooms, and conferences can be recorded. In FY 2014, ITB plans to roll out this enterprise VTC service to local desktops.

In terms of Life Cycle Management, the focus is to implement new technology to reduce costs, and enhance the performance and reliability of our systems. In FY 2012, we continued with the existing OSC equipment lifecycle management plan of replacing servers and workstations every 3 – 5 years. Some servers were replaced to provide faster performance with enhanced reliability. In FY 2013 we were incorporating a (n+1) requisition strategy to meet a new architectural design that required automatic failover and a standby spare replacement. This allowed a Service Level Agreement (SLA) with the customers of limiting system downtime to 4 hours or less. In FY 2014 we plan to roll out a next generation desktop application stack based on Windows 8 and Office 2013.

Per the Homeland Security Presidential Directive 12 (HSPD-12) initiative, 100% of our employees are using HSPD-12 compliant Personal Identification Verification (PIV) cards to gain access to our facility in the headquarters, and our Detroit office is now fully operational with the same setup. Due to the cost issue, the Dallas and Oakland Field Offices will remain as they currently are. In FY 2014, we plan to implement logical access using the HSPD-12 PIV cards for our computer systems.

In the area of cybersecurity, we worked with our Managed Trusted IP Service (MTIPS) provider during FY 2011 and implemented our Trusted Internet Connection (TIC) solution. We are now fully transitioned to Networkx. In other security areas, in FY 2014, we plan to implement digital signatures using public key infrastructure technology through the implementation of HSPD-12. In addition, ITB plans to upgrade our TIC connection to TIC 2.0.

Improving Employee Satisfaction and Wellness

Over the past several years, OSC has implemented several key programs and/or initiatives to enhance employee satisfaction and wellness: OSC has offered a cost share (50/50) program for gym membership to encourage employees to have a healthier lifestyle and stay fit; made available [on-site] flu vaccinations and blood pressure checks; organized a blood donor drive; conducted a health benefits information session; and instituted a program to pay for professional credentials (bar membership fees) for attorneys. Additionally, the management administered the Federal Employee Viewpoint Survey in 2013 which revealed a high level of employee satisfaction with OSC ranking 1st among all small agencies in the supervisory category, with 93% of OSC employees giving a positive rating to the quality of work performed by their unit. OSC's results placed it 12th overall among all small federal agencies, and management has created an employee-driven Action Plan Working Group 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 <http://www.osc.gov/opengov.htm>. The webpage provides easy access to key information and other reports and data. The webpage includes a link for receiving feedback from the public. Communications have been sent internally within OSC in order to receive input and ideas from OSC employees on Open Government. OSC's Open Government Initiative is an ongoing effort and our plan and data sets will be reviewed continually and improvements 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 through assisting employees in balancing work and family demands.

OSC has a robust IT network setup that supports telework, to include a complete Citrix environment. ITB migrated part of the Citrix configuration to a 64-bit computing environment in FY 2012 and will continue to migrate the remainder of the Citrix configuration to a 64-bit computing environment. Also to support telework and mobile computing, OSC initiated a Bring Your Own Device (BYOD) program to allow access to corporate email services using personal smart devices (e.g. iPhones, Android smartphones, tablets, etc.). We are working to expand this BYOD program to allow personal laptops or tablets in the office for work. Also, 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 team meets weekly and is comprised of four senior staff and three specialists. The SEP 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. In the past few years OSC has made considerable progress in an initiative that

will allow mirroring of its network to a backup geographic location in Dallas. This redundancy helps 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. In FY 2012, we began the creation of a secure private, cloud computing environment to ensure the highest levels of redundancy, reliability and workload sharing. We are now continuing to expand cloud computing to enhance OSC's COOP capabilities, and these efforts are continuing into FY 2014. Furthermore, we are implementing a new email server architecture, which will include redundancy for high availability, with automatic failover and enhancements in performance.

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 2013 OSC fully met 8 goals in the Management area for which targets had been set, partially met 2 goals, 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	Build Templates and Implement IDPs		Build Templates and Implement IDPs	
63	Identify targeted training to mitigate skills gaps	Conduct Annual Survey	Met	Conduct Annual Survey	Met	Conduct Annual Survey		Conduct Annual Survey	
64	Percent of employees using telework and alternative schedule options; to provide employees with flexibility	55%	71%	70%	84%	70%		70%	
65	Percent of employees that participate in the annual Federal Employee Viewpoint Survey on their job satisfaction	75%	92%	86%	86%	90%		90%	
66	Improve the functionality of the case tracking system	See Footnote ⁶⁶	Met	See Footnote ⁶⁶	Met	See Footnote ⁶⁶		See Footnote ⁶⁶	
67	Number of Congressional staff or member contacts to strengthen covered laws and improve oversight and accountability	10	25	30	40	40		40	
68	Number of amicus briefs, SOI interventions, or other submissions concerning the scope or contours of the laws that OSC enforces.	2	2	2	3	2		2	

66. IT supported 24 system change requests in FY 2013. OSC’s case tracking system and its pre-built 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. IT aims to meet Six Sigma perfection (a disciplined, data-driven approach and methodology for eliminating defects) in the implementation of the change requests for the case-tracking.

Goal Table 13 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 ⁶⁹	Partially Met ⁶⁹	Launch redesigned website		⁹ Maintain and update for improvements	
70 Survey user community to gauge strengths and weaknesses of website	See footnote ⁷⁰	Unmet	See footnote ⁷⁰		See footnote ⁷⁰	
71 Issue press releases on major agency activities and results in cases; maintain dialogue with news media	See footnote ⁷¹	Met	See footnote ⁷¹		See footnote ⁷¹	
72 Make use of Twitter and social media	See footnote ⁷²	Partially met	See footnote ⁷²		See footnote ⁷²	
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		Conduct survey; Implement changes based on survey findings	

69. Target 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. The new goal is to roll out the website in FY 2014.

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

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

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

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

Narrative: OSC invited various stakeholders to give OSC feedback on its 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.

71: Target: 2013 – 30 Tweets, 100 followers, and 550 media calls fielded. Continue to leverage phone, Twitter and email 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.

Result 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: 2014 - 30 Tweets, 100 followers, and 550 media calls fielded; will look for areas of improvement beyond above.

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 emailed to reporters as well as to stakeholder organizations and people, such as nonprofits, management organizations, veterans' groups and labor unions. OSC's Communications Manager speaks with members of the news media on a daily basis.

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

Narrative: OSC includes information on Twitter only if it also available on the OSC website, according to guidelines from the General Counsel. Given that stipulation and the potential for inappropriate commentary from outside users on Facebook, OSC has not yet launched a Facebook account. OSC will likely launch a YouTube account this fiscal year and incorporate videos from that into its new website.

APPENDIX A

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.¹ 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).²

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the 1994 Reauthorization Act provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred or exists. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what 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.³

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),⁴ which created the Transportation Security Administration (TSA). Under the ATSA, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the 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**

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U.S. Office of Special Counsel

Strategic Plan for FY 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.”¹

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.

¹Legislative 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).

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.

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 54%. 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,² 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 President³ 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.

²OSC 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.

³Under 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.

7.

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 redesignated as section 2302(b)(12).)
- 3 5 U.S.C. § 2302(c).
- 4 Public Law 107-71 (2001).