

**ANNUAL REPORT
TO CONGRESS**
—for—
FISCAL YEAR 2015



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The Special Counsel

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

The Honorable Paul D. Ryan
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit the Report to Congress for fiscal year 2015 from the U.S. Office of Special Counsel. A copy of this report will also be posted on our website.

Sincerely,

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

Carolyn N. Lerner

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THE SPECIAL COUNSEL



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

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

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

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

A MESSAGE FROM SPECIAL COUNSEL

CAROLYN N. LERNER

Fiscal year 2015 was extremely productive and busy for the U.S. Office of Special Counsel (OSC). Caseloads hit an all-time high, driven by a record number of new prohibited personnel practice complaints (over 4,000 for the first time in agency history). OSC rose to this challenge, achieving a record number of favorable results on behalf of whistleblowers and the merit system. We anticipate caseload pressures will continue into FY 2016 due in part to a presidential election year surge in Hatch Act complaints.

When OSC succeeds, good government and taxpayers are the real winners. As a result of wrongdoing identified by OSC over the last two years, the Department of Veterans Affairs (VA) has disciplined or proposed to discipline more than 40 employees who retaliated against whistleblowers or engaged in other misconduct that threatened the health and safety of veterans. OSC has also obtained relief for dozens of VA employees who blew the whistle on improper scheduling and dangerous patient care practices. For example, after a food services manager disclosed violations of VA sanitation policies and other problems, his supervisor reassigned him to janitorial duties in the facility's morgue. OSC's investigation resulted in a settlement between the VA and the whistleblower. In another case, the VA fired an employee during his probationary period after he contacted Congress for assistance. OSC's investigation resulted in a settlement that put the employee back to work and provided him back pay and compensatory damages.

OSC's efforts extend well beyond the VA. We work with whistleblowers throughout the government to ensure public health and safety and to save taxpayers money. For example, OSC intervened on behalf of air traffic controllers who blew the whistle on threats to aviation safety caused by confusing and conflicting flight plans for certain aircraft. After the whistleblowers disclosed their concerns to OSC, the Federal Aviation Administration implemented reforms to correct this nationwide problem. At the Navy Yard in Washington, D.C., two whistleblowers revealed shortcomings in security protocols at a highly sensitive facility. The Navy Inspector General confirmed their disclosures, leading to tightened security. These examples are among the hundreds of corrective actions sparked by disclosures or retaliation complaints to OSC.

As stated, in 2015, OSC achieved a record number of favorable outcomes for whistleblowers and other employees across the government. In 2015, OSC secured 277 favorable outcomes, helping to restore the careers of courageous public servants who blew the whistle on fraud, waste, and abuse, or encountered other prohibited conduct in the government, such as unlawful hiring preferences and discrimination based on sexual orientation or gender identity. These favorable outcomes represent an increase of more than 230 percent over five years ago.

OSC also promotes accountability by securing disciplinary actions against employees who commit Hatch Act violations and prohibited personnel practices, including retaliation against whistleblowers. Over the last five years, OSC has secured disciplinary action against 84 employees in prohibited personnel practice investigations. This is nearly a three-fold increase

over the preceding five-year period. We also obtained at least 19 disciplinary actions against employees because of whistleblower disclosure cases.

These victories for whistleblowers, the taxpayers, and the merit system showcase OSC's effectiveness and increase awareness of the agency in the federal community. As a result, the number of employees seeking OSC's assistance continues to grow.

While OSC has one of the smallest budgets of any federal law enforcement agency with government-wide jurisdiction, the demands on our agency have never been greater. With Congress' continued support, OSC will be able to keep pace with its rising caseload, and continue to promote better and more accountable government. As our track record demonstrates, a relatively small investment in OSC pays huge dividends in curbing waste, fraud and abuse.

As Special Counsel, I look forward to working with Congress to identify more ways to further OSC's mission. A strong OSC makes for a more efficient, accountable, and fair federal government.

A handwritten signature in blue ink that reads "Carolyn Heimer". The signature is written in a cursive, flowing style.

PART 1 – INTRODUCTION TO OSC

Statutory Background

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

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

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

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

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

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),⁴ which created the Transportation Security Administration (TSA). Under the ATSA, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. However, approximately 45,000 security screeners in TSA could not pursue

retaliation complaints at OSC or the Board. OSC's efforts led to a memorandum of understanding (MOU) with TSA, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. The MOU, however, did not provide for OSC enforcement actions before the Board.

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

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

Mission

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

PART 2 – OVERVIEW OF OPERATIONS

Internal Organization

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

Immediate Office of Special Counsel (IOSC)

The Special Counsel and the IOSC staff are responsible for policy-making and overall management of OSC. This encompasses management of the agency's congressional liaison and public affairs activities.

Complaints Examining Unit (CEU)

This unit is the intake point for all complaints alleging prohibited personnel practices. In FY 2015, CEU screened a record 4,051 complaints. Attorneys and personnel-management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers qualifying matters for alternative dispute resolution (ADR) to the ADR Unit or to the Investigation and Prosecution Division (IPD) for further investigation, possible settlement, or prosecution. Matters that do not qualify for referral to ADR or IPD are closed.

Investigation and Prosecution Division (IPD)

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

Disclosure Unit (DU)

This unit receives and reviews disclosures of wrongdoing 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 to report its findings to the Special Counsel, or closure without further action. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness; the Special Counsel then sends her determination, the report, and any comments by the whistleblower to the President and responsible congressional oversight committees, and these are posted to an online public file.

Retaliation and Disclosure Unit (RDU)

This unit reviews prohibited personnel practice complaints and disclosures submitted by the same complainant. The assigned RDU attorney serves as the single OSC point of contact for both filings, performing a similar function to the CEU, IPD, and DU attorneys. Where appropriate,

attorneys investigate prohibited personnel practice complaints, obtain corrective or disciplinary actions, and refer disclosures for investigation. RDU attorneys also refer cases to ADR.

Hatch Act Unit (HAU)

OSC investigates and resolves complaints of unlawful political activity by government employees under the Hatch Act, and may seek corrective and disciplinary action informally as well as before the MSPB. In addition, OSC is responsible for providing advisory opinions on the Hatch Act to government employees and the public at large. OSC's outreach and education make employees and agencies aware of their rights and responsibilities under the Hatch Act.

USERRA Unit

OSC enforces the Uniformed Services Employment and Reemployment Rights Act for civilian federal employees. OSC may seek corrective action for violations of USERRA, and provides outreach and education to veterans and agencies on their rights and responsibilities under USERRA.

Alternative Dispute Resolution Unit (ADR)

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

Outreach and Education Unit

The Outreach and Education Unit facilitates coordination with and assistance to agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that federal agencies inform their workforces, in consultation with the OSC, about the rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the Whistleblower Protection Act. OSC designed and implements a five-step educational program, the 2302(c) Certification Program, which is mandatory for agencies to complete under the White House Second National Action Plan. Unit staff provide government-wide training related to 2302(c). OSC provides formal and informal outreach sessions, including making materials available on the agency website. This unit also helps develop and implement training programs for OSC's internal staff, in order to meet compliance requirements.

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, ethics programs, and policy planning and development.

Administrative Services Division

Component units are Finance, Human Capital, Administrative Services and Document Control, and Information Technology.

FY 2015 Budget and Staffing

During FY 2015 OSC operated with budget authority of \$23,075,272, of which \$22,939,000 was from appropriated funds, and \$136,272 was from reimbursement agreements or other sources. The agency operated with a staff of approximately 129 full-time equivalent (FTE) employees.

FY 2015 Case Activity and Results

During FY 2015, OSC received 6,140^a new matters and carried over 1,967 matters, for a total of 8,110. During this time OSC resolved 6,208 matters, as shown in the charts below. In addition, OSC received 1,023 requests for Hatch Act advisory opinions. **Table 1**, below, summarizes overall OSC case intakes and dispositions in FY 2015, with comparative data for the previous six fiscal years. More detailed data can be found in **Tables 2-7**, relating to the four specific components of OSC's mission—prohibited personnel practice cases, Hatch Act matters, whistleblower disclosures, and USERRA cases.

^a Each year, OSC receives a number of cases that are inadvertently filed by federal employees as disclosures of wrongdoing but properly should have been filed as prohibited personnel practice complaints. In order to process these cases, OSC must open a disclosure file, read the information provided, and determine that the individual is only seeking relief to address a possible prohibited personnel practice, and not separately making a disclosure of wrongdoing. After making a determination that the case was improperly filed as a disclosure, OSC's Disclosure Unit forwards the case to OSC's Complaints Examining Unit, which reviews the claim as a prohibited personnel practice complaint. In 2014, the number of these misfiled disclosure cases increased by an estimated nine percent over the historical average because of changes in OSC's online complaint filing system. OSC is in the process of modernizing its online complaint filing system to make it more user-friendly. OSC anticipates that the changes to the online system will be completed by the end of FY 2016. The changes should address not only address the current, elevated number of misfiled disclosure cases, but are also expected to greatly diminish the historical problem of wrongly-filed disclosure forms. This will make OSC's Disclosure Unit more efficient, by reducing the administrative costs to review, close, and re-direct improperly filed cases, while also enhancing the user experience. By diminishing the number of wrongly filed disclosure cases, the new system will also provide a more accurate, but lower number of actual disclosure cases received in FY 2017 and beyond.

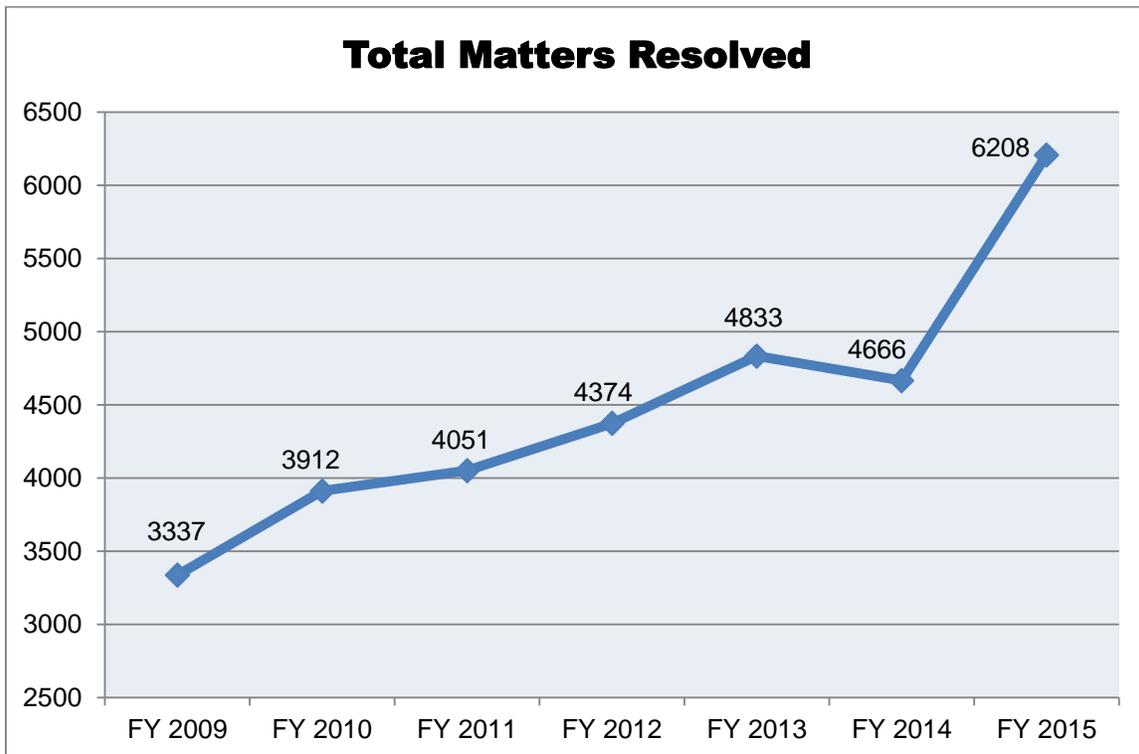
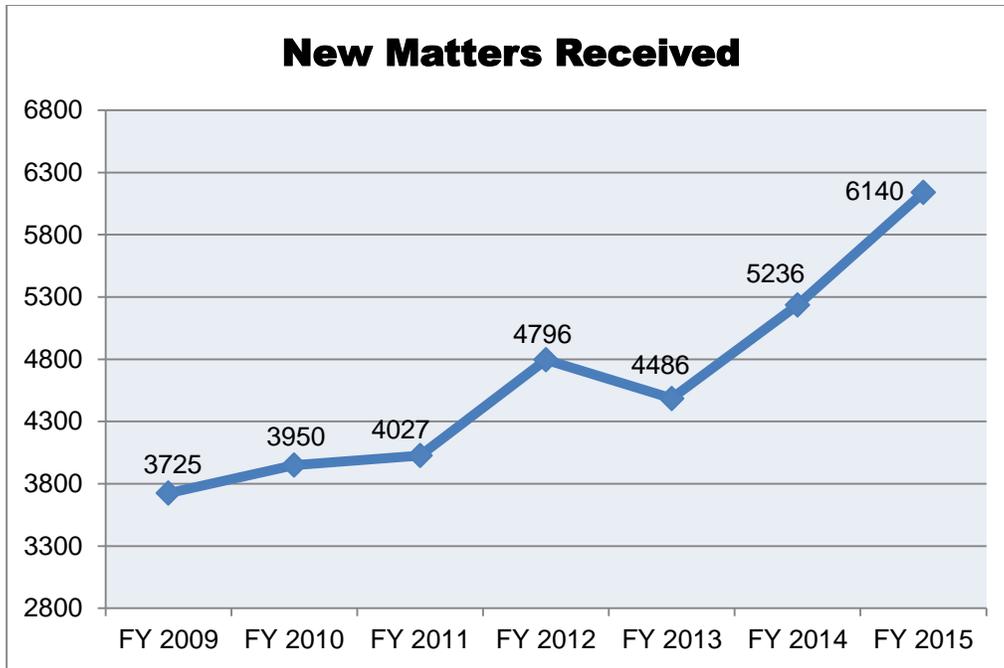
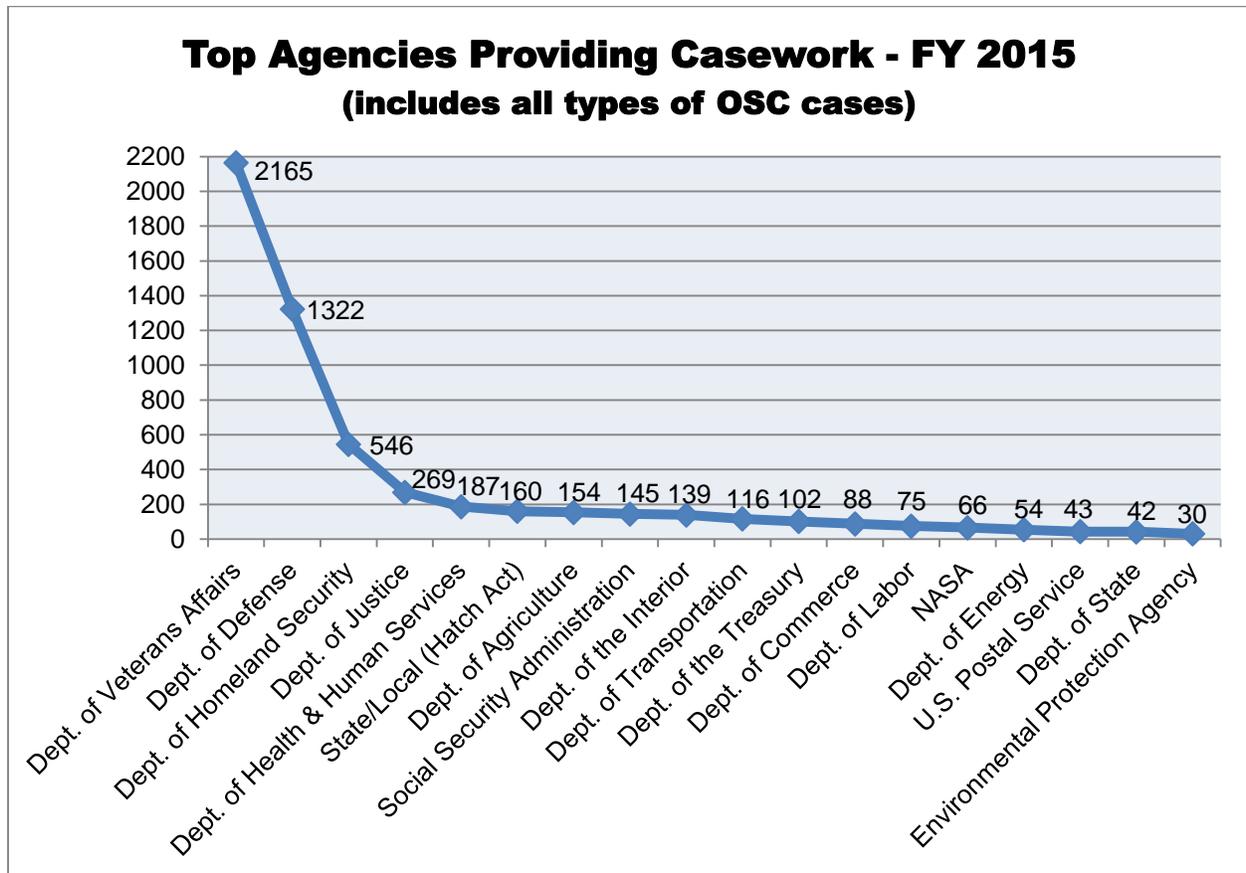


TABLE 1 Summary of All OSC Case Activity

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Matters^a pending at start of fiscal year	943	1,326	1,357	1,320	1,744	1,399	1,967
New matters received	3,725	3,950	4,027	4,796	4,486	5,236	6,140
Matters resolved	3,337	3,912	4,051	4,374	4,833	4,666	6,208
Matters pending at end of fiscal year	1,324	1,361	1,331	1,729	1,397	1,970	1,900
Hatch Act advisory opinions issued	3,733	4,320	3,110	3,448	1,767	1,382	1,023

OSC cases come from across the federal government. The chart below shows the 18 agencies that were the major sources of our cases in FY 2015. It also shows Hatch Act matters concerning state and local employees.



^a “Matters” in this table includes prohibited personnel practice cases, whistleblower disclosures, and USERRA cases.

PART 3 – PROHIBITED PERSONNEL PRACTICE COMPLAINTS

Summary of Workload, Activity, and Results

OSC's largest program is devoted to handling PPP complaints. Of the 6,140 new matters OSC received during FY 2015 (not including requests for advisory opinions on the Hatch Act), 4,051 or 66 percent were new PPP complaints. Complaints involving allegations of reprisal for whistleblowing—OSC's highest priority—accounted for the largest number of complaints resolved and favorable actions (stays,⁵ corrective actions, and disciplinary actions) obtained by OSC during FY 2015.

Receipts and Investigations

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

As the intake and initial examination unit for all prohibited personnel practice complaints filed with OSC, CEU reviewed new matters to determine whether they merited further investigation. If so, these matters were referred to IPD for mediation or investigation. Matters referred during FY 2015 included whistleblower retaliation, due process violations, and violations of law, rule, or regulations in personnel actions.

Table 2, below, contains FY 2015 summary data (with comparative data for the six previous fiscal years) on OSC's receipt and processing of all prohibited personnel practice complaints handled by CEU and IPD.

TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing^a

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	
Pending complaints carried over from prior fiscal year	474	769	863	934	1,152	1,045	1,414	
New complaints received ^b	2,463	2,431	2,583	2,969	2,936	3,371	4,051	
<i>Total complaints</i>	2,937	3,200	3,446	3,903	4,088	4,416	5,465	
Complaints referred by CEU for investigation by IPD	169	220	270	252	255	274	264	
Complaints processed by IPD	150	179	190	274	266	278	307	
Complaints pending in IPD at end of fiscal year	201	250	331	325	316	316	284	
Total complaints processed and closed (CEU and IPD combined)	2,173	2,341	2,508	2,750	3,041	3,003	4,058	
Complaint processing times	Within 240 days	2,045	2,185	2,327	2,570	2,594	2,577	3,381
	Over 240 days	127	154	175	439	440	422	665
Percentage processed within 240 days	94%	93%	92%	88%	85%	85%	83%	

Table 3, below, contains summary data for FY 2015 (with comparative data for the six previous fiscal years) on all favorable actions obtained in connection with OSC’s processing of whistleblower reprisal and other prohibited personnel practice complaints.

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

^b “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.

TABLE 3 Summary of All Favorable Actions – Prohibited Personnel Practice Complaints

		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Total favorable actions negotiated with agencies (all PPPs)	No. of actions^a	62	96	84	159	173	174	277
	No. of matters	53	76	65	128	124	142	212
Total favorable actions negotiated with agencies (reprisal for whistleblowing)^b	No. of actions	35	66	64	112	104	138	233
	No. of matters	29	55	50	95	91	112	175
Disciplinary actions negotiated with agencies		5	13	6	19	27	23	9
Stays negotiated with agencies		9	13	12	27	28	21	62
Stays obtained from MSPB		1 ^c	2	4	8	5	2	3
Stay extensions obtained from MSPB		N/A	N/A	1	1	7	0	1
Corrective action petitions filed with the MSPB		0	0	1	0	2	0	0
Disciplinary action complaints filed with the MSPB		0	0	0	0	0	3	0

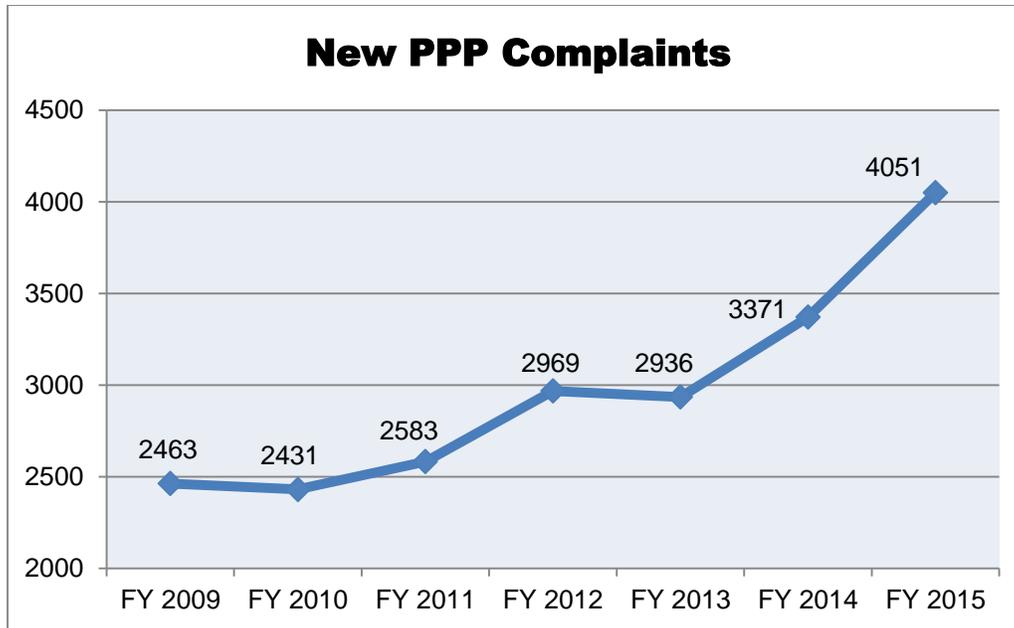
Prohibited Personnel Practice Successes

In FY 2015, OSC obtained a 59 percent increase in the number of corrective actions on behalf of employees who were victims of a prohibited personnel practice, such as whistleblower retaliation. In many cases, OSC negotiates informally with federal agencies to obtain corrective action for employees and disciplinary action against responsible officials. If informal relief or disciplinary action is not attainable through negotiation, OSC may seek relief or 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 MSPB.

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

^b Some of these cases were handled by the Retaliation Disclosure Team (RDT), a pilot project that worked cases in which one person has filed both a retaliation complaint and a whistleblower disclosure. RDT was made permanent in FY 2016 and is now referred to as the Retaliation Disclosure Unit (RDU).

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



Litigation

- OSC filed three complaints for disciplinary action with the MSPB, alleging political discrimination and unauthorized preference when human resources officials manipulated the selection process to hire preferred candidates into career positions. OSC settled two of these complaints, with two human resources employees receiving one-grade demotions to non-supervisory positions and being debarred from a higher graded position for a specified time period. In the third complaint, tried before an administrative law judge, OSC did not prevail. In December 2015, OSC filed a petition for review with the MSPB to overturn the administrative law judge’s decision. The case is pending.

Amicus Curiae

- OSC filed its first amicus curiae brief in the U.S. Supreme Court in *Dep’t. of Homeland Security v. MacLean*. In that case, the appellant, a U.S. Air Marshal, was fired after his agency learned he had disclosed to the media (as well as to management and the Inspector General) its controversial decision to cancel protection services on all domestic long-haul flights for a set time period in the midst of alerts on elevated terrorism on air carriers. The appellant believed the decision created a risk to public safety, and his disclosure led to public and congressional pressure to reinstate protective services on long-haul domestic flights. The agency defended the appellant’s termination on grounds that he made an unauthorized disclosure of sensitive information in violation of its own regulations. In its brief, OSC argued that the appellant’s disclosure—which involved a threat to public safety—was a proper subject of whistleblower protection and not exempt from the WPA. In January 2015, the Court agreed in a 7-2 decision and remanded the

case for further hearings. Subsequently, the appellant and the agency reached a settlement that included back pay and reinstatement.

Retaliation

- An electrician was fired in retaliation for disclosing that a supervisor, working under the influence of alcohol, deliberately sabotaged a test of the power plant's electrical system, which could have caused severe injury or death. OSC issued a PPP report, which resulted in a monetary settlement. By separate report, OSC negotiated suspensions for the two officials responsible for the retaliatory termination.
- A consumer safety inspector disclosed violations of the Humane Methods of Slaughter Act in rendering animals unconscious before their slaughter. Subsequently, the agency relieved the inspector of her duties and proposed her removal. OSC obtained a stay of the removal and negotiated a settlement on her behalf that included a lump sum payment for back pay and other damages.
- A special agent was fired after he testified, under a subpoena, in support of a defense motion to suppress a federal wiretap. He gave his testimony as a citizen, not as a representative of his agency, which was not involved in the underlying prosecution. Based solely on his testimony, his agency fired him. OSC concluded that his First Amendment right to free speech was violated. OSC obtained from the MSPB an indefinite stay of his removal and filed a corrective action complaint with the Board. Soon after, the Supreme Court issued its decision in *Lane v. Franks*, a case involving similar facts, which affirmed First Amendment rights for public employees who give testimony under oath in criminal trials. Subsequently, OSC settled its case with the agency. The complainant, who by then had reached retirement age, retired with a monetary settlement and a clean employment record.
- A GS-5 probationary employee was terminated immediately after the agency became aware that he had contacted a U.S. Senator for assistance with compensation related to his status as a veteran. OSC's investigation showed that the agency's reasons for the termination were pretextual and that agency officials demonstrated retaliatory animus. OSC issued a PPP report (published in redacted form on OSC's website; OSC File No. MA-14-4058) finding that the agency terminated complainant for contacting Congress and requested full corrective action. The agency agreed to reinstate the complainant to a similar position and provide him with back pay and compensatory damages. OSC is also negotiating appropriate disciplinary action for the agency officials.

Discrimination

- A quality assurance specialist who began the gender transition process was subjected to harassment, including not being able to use the restroom associated with her gender identity and being repeatedly called by the wrong name and pronouns. After completing its investigation, OSC issued its first PPP report (published in redacted form on OSC's website; No. MA-11-3846) finding that an agency had engaged in gender identity

discrimination. OSC also negotiated a resolution that led to institutional changes at the agency regarding the treatment of transgender employees. OSC provided training to supervisors and employees regarding diversity and cultural competency on sexual orientation and gender identity employment issues.

- A complainant was terminated because of her high-risk pregnancy. In its investigation, OSC learned that agency officials knew of her pregnancy and discussed terminating her in lieu of ordering her a maternity uniform. Additionally, while she was in labor, agency officials asked her to ignore her physician's instructions and delay going to the hospital so that they could pick up her credentials at her residence. After OSC's investigation, the agency agreed to pay her a lump sum payment, rescind her termination, and expunge the removal and related documents from her personnel file. The agency also agreed to issue a revised SF-50 reflecting her voluntary resignation, rescind a letter of counseling for sick leave abuse, provide her with a copy of her personnel file, and limit employment reference responses to her job title, time of service, duty station, pay band, and job description.

Subpoena

- A complainant reported that her supervisor was creating a hostile work environment and appeared to have a substance abuse problem. Her allegations resulted in a formal investigation against the complainant by the agency. She was notified by her supervisor approximately two weeks after the investigation began that her overseas tour was being curtailed. After the agency refused to cooperate with the request for information, OSC issued a subpoena to obtain the documents.

Stays

- A complainant received a proposed removal after reporting improper infection control and prevention. An agency investigation determined that proper protocols were not being followed and that patient care was substandard. At OSC's request, the agency agreed to informally stay the complainant's proposed removal during OSC's investigation.
- A complainant received a proposed removal after reporting that his supervisor abused her authority, harassed employees, yelled at staff in front of patients, monitored employees by hiding behind curtains, allowed unsafe working conditions due to inadequate staffing, refused to grant leave and improperly charged employees with AWOL despite documentation, terminated employees who spoke up regarding conditions, and created a hostile work environment. There was no fact-finding investigation conducted into the complainant's alleged misconduct and there were no statements taken from any of the patients. The agency subsequently mitigated her proposed removal to a 14-day suspension. OSC requested that the agency informally stay the 14-day suspension, pending OSC's investigation, and the agency agreed.

PART 4 – USERRA ENFORCEMENT

Overview

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

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

Under a three-year Demonstration Project that began in FY 2011, OSC’s role was dramatically expanded to include receiving, investigating, and resolving approximately 137 additional USERRA cases per year. While OSC ceased receiving new Demonstration Project cases at the end of FY 2014, many Demonstration Project cases remained on OSC’s docket in FY 2015.

Referral Process

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

Summary of Workload, Activity, and Results

Corrective Action

There were two referrals in FY 2015 that resulted in corrective action taken.

Referrals Pending at End of Fiscal Year

The number of pending referrals decreased 43 percent from FY 2014 levels.

USERRA Unit Successes

OSC plays a central role in ensuring that the federal government upholds its responsibility to be a “model employer” under USERRA, especially with so many military personnel returning from Afghanistan and Iraq. The following are examples of individual corrective actions obtained by OSC for service members in FY 2015:

Reemployment

- An Army National Guard member was refused reemployment as a contractor with the Air Force following his return from active duty. As a result, he was unemployed for several months before finding a new job. OSC argued that the Air Force improperly interfered with the member’s reemployment rights, and negotiated a resolution where the Air Force paid him lost wages for the period of his unemployment.

Discrimination and Retaliation

- An Air Force reservist received a lower rating on his performance appraisal and a significantly smaller cash award bonus after returning from deployment to his civilian position at the U.S. Marshals Service. After OSC concluded that the adverse actions were taken because of the reservist’s military status, the agency retroactively upgraded the reservist’s rating, granted him a time-off award, and gave him additional hours of paid leave to approximate the cash award bonus he should have received.
- An Army National Guard member, upon returning from a one-year deployment, was denied a regularly-scheduled promotion in his Army civilian police officer position at the same time as all of his coworkers (who were not deployed). This caused the member to miss an additional promotional opportunity because he lacked the necessary time-in-grade requirements. OSC investigated and persuaded the agency to offer the member full relief, including a retroactive promotion, corresponding back pay, and reconsideration for the promotional opportunity.

Outreach and Education

During FY 2015, OSC worked to ensure that the federal government is a “model employer” under USERRA by (1) conducting USERRA training for federal agencies and at national

conferences; (2) briefing veterans service organizations about OSC’s USERRA program; and (3) providing technical assistance to service members and their employers through USERRA’s telephone and email questions hotlines.

Table 4 and Table 5, below, contain FY 2015 summary data with comparative data and disposition of USERRA referral cases, and Demonstration Project cases, respectively.

TABLE 4 Summary of USERRA Referral and Litigation Activity^a							
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Pending referrals carried over from prior fiscal year	5	7	12	17	11	6	7
New referrals received from VETS during fiscal year	41	32	36	24	7	14	18
Referrals closed	39	27	31	30	12	13	21
Referrals closed with corrective action	4	0	2	4	2	2	2
Referrals closed with no corrective action	35	27	29	26	10	11	19
Referrals pending at end of fiscal year	7	12	17	11	6	7	4
Litigation cases carried over from prior fiscal year	1	1	1	0	0	0	0
Litigation cases closed	0	1	1	0	0	0	0
Litigation closed with corrective action	0	1	1	0	0	0	0
Litigation closed with no corrective action	0	0	0	0	0	0	0
Litigation pending at end of fiscal year	1	1	0	0	0	0	0

TABLE 5 Summary of USERRA Demonstration Project Activity				
	FY 2012	FY 2013	FY 2014	FY 2015
Pending cases carried over from previous fiscal year	28	88	69	62
New cases opened	152	137	146	0
Cases closed	92	154	153	51
Closed cases where corrective action was obtained	24	38	37	16
Closed cases where no corrective action was obtained	68	116	116	35
Pending cases at end of fiscal year	88	71	62	11

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

PART 5 – ALTERNATIVE DISPUTE RESOLUTION

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

ADR Successes

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

- A manager alleged that his proposed termination during a probationary period was in retaliation for whistleblowing. The complainant reported that a health care worker was impaired while on duty and was promoted partially based on false documentation. These disclosures were partially substantiated. After discussions related to the mediation process, the complainant decided to resign from the agency and pursue other work. The agency agreed to convert the proposed termination into a resignation and provide him a clean record, restore his leave, and pay him a monetary settlement.
- An employee alleged that after he made disclosures of improper agency investigations, he was subjected to a hostile environment from his superiors and some of his colleagues. In mediation, he and the agency explored several possible job changes and ultimately agreed to a new position in a job series and at a location the complainant desired.
- A senior manager alleged that as a result of raising numerous concerns involving the handling of hazardous material, his duties were substantially changed and he was denied a promotion. The parties reached agreement in mediation. The agency agreed to give the complainant the training he desired, the opportunity to meet with a senior regional official, and membership in a safety working group that was tasked with studying and addressing the public safety concerns he disclosed.
- An agency analyst alleged retaliation for disclosing that a senior official had claimed improper locality pay. The improper pay was substantiated and the complainant claimed that, in retaliation, his assignments were substantially changed, he was moved to another duty location, and he was denied telework. A full and productive discussion in mediation led to a repair of working relationships. The parties mutually agreed to new duties for the complainant, a change in office space, restored telework privileges, and a new supervisor for purposes of performance ratings.

- A complainant alleged that after disclosing mismanagement issues, his duties were significantly altered and he was issued a five-day suspension. As a result of mediation, the agency converted part of his suspension to leave without pay (with no disciplinary record); the remaining days were converted to pay days, provided he receives no disciplinary action during the next two years. The agency also agreed to present an award from a management official to the employee acknowledging his contributions. The agency further agreed to provide a neutral reference if the complainant decides to seek a position elsewhere and to conduct training for managers on the WPEA.

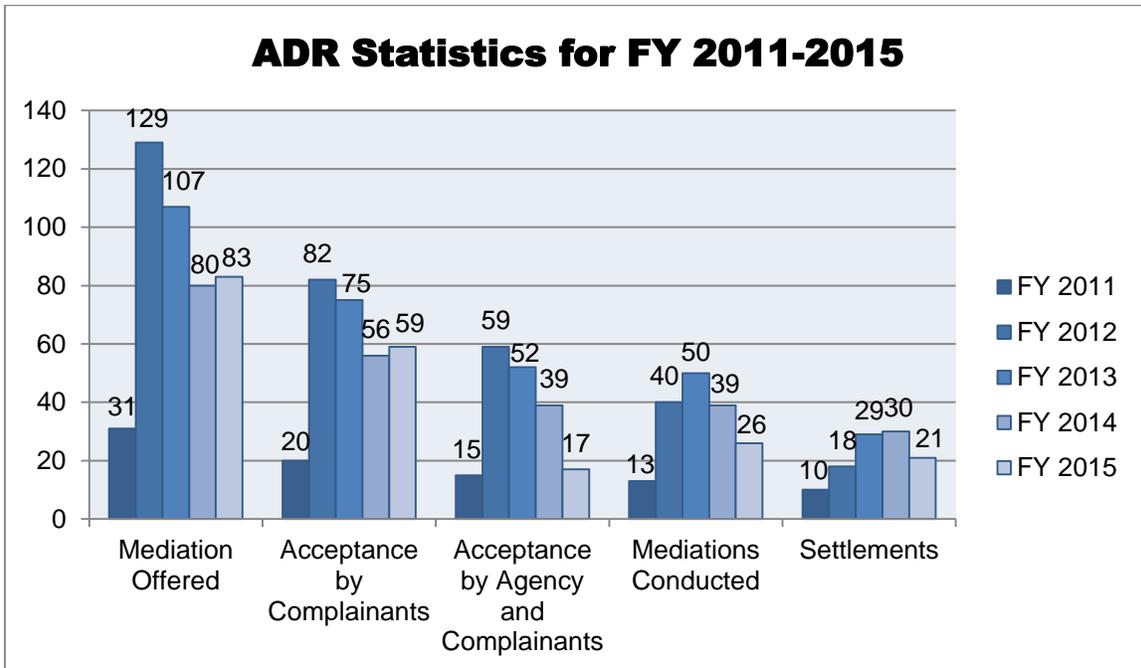


Table 6, below, contains summary data for FY 2015 (with comparative data for the six previous fiscal years) on all mediations OSC offered and completed in response to prohibited personnel practice complaints.

TABLE 6 ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints & USERRA Complaints							
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Number of cases in which mediation offered after referral from CEU or USERRA plus cases referred from IPD^a	28	26	31	129	107	80	83
Mediation offers accepted by complainants	17	11	20	82	75	56	59
Mediation offers accepted by agencies and by complainants	15	6	15	59	52	39	17
Number of mediations conducted by OSC^b	11	6	13	40	50 ^c	39	26
Number of mediations withdrawn by either OSC or the agency after acceptance	3	0	2	10	6	8	13
Number of mediations withdrawn after at least one mediation session	*	*	*	0	2	1	0
Number of completed mediations	*	*	*	30	47	38	26
Number of completed mediations that yielded settlement	4	3	10	18	29	30	21
Percentage of completed mediations that resulted in settlement	36%	50%	77%	60%	62%	79% ^d	81%
Cases in process^e - carryover from previous FY	N/A	N/A	N/A	5	1	0	0
Carryover to next FY – In process	N/A	N/A	N/A	15	10	12	17
Carryover to next FY – Offer pending^f	N/A	N/A	N/A	20	7	4	2
Carryover to next FY – Pending review	N/A	N/A	N/A	N/A	10	10	0

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

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

^c “Number of completed mediations that resulted in settlement” omits cases withdrawn before mediation was completed.

^d Percentage of completed mediations that resulted in settlement” omits cases withdrawn before mediation was completed.

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

^f “Offer pending” means cases in which OSC will offer or is in the process of offering mediation to the parties.

PART 6 – WHISTLEBLOWER DISCLOSURES

Overview

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

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

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

Summary of Workload, Activity, and Results

The number of reports sent to the President and Congress increased by 177 percent between FY 2014 and FY 2015. Examples of disclosures that OSC referred for further action are highlighted below.

Disclosure Unit Successes

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

Systemic Violation of Federal Regulations Governing AUO. Over the past two years, OSC referred approximately one dozen disclosure cases to the Secretary of Homeland Security alleging widespread systemic abuse of the pay authority known as administratively

uncontrollable overtime (AUO). Whistleblowers at facilities in Laredo, Houston, and El Paso, Texas; San Ysidro, El Centro, and Bakersfield, California; Glynco, Georgia; Herndon and Reston, Virginia; Washington, D.C.; and, Chattanooga, Tennessee, made this complaint. The whistleblowers alleged that managers approved AUO for work that employees did not perform or for work that should not have qualified. DHS investigated and initiated significant reforms, including drafting a department-wide AUO directive to ensure the lawful administration of overtime pay in each of DHS's component agencies and a review of eligibility assessments resulting in the de-authorization of AUO for 2,300 employees. In addition, in response to these investigations, Congress adopted a new pay system for Border Patrol agents to replace the outdated AUO system. Collectively, the reforms generated in response to these disclosures will result in an estimated \$100 million in annual cost savings to the government, according to the Congressional Budget Office. *Referred during 2013 and 2014; transmitted to the President and congressional oversight committees and closed March 2015.*

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

Violation of Scheduling Protocols for VA patients. OSC referred to the VA Secretary allegations that employees at the Fort Collins Outpatient Clinic in Fort Collins, Colorado, failed to follow proper protocols when scheduling patient appointments. The VA substantiated the whistleblowers' allegation that patient appointments at Fort Collins were not scheduled according to agency policy. Specifically, the Clinic "blind scheduled" appointments for veterans after an initial appointment had been canceled, in violation of VA policy. In addition, the Clinic manipulated the "desired date" for appointments to falsely show that veterans waited for care for shorter periods of time than actually was the case. However, the agency determined that no patients were harmed due to the delay in care within the Cheyenne VAMC system, of which the Clinic is a part. The VA has taken the recommended corrective actions to improve its scheduling practices, including disciplining six individuals responsible for the misconduct. Nevertheless, the Special Counsel determined that the agency's ultimate conclusion that the improper scheduling practices did not pose a danger to patient health or safety was unsupported and thus was not reasonable. *Referred October 2013; transmitted to the President and congressional oversight committees and closed July 2015.*

Failure to Inspect Meat and Poultry in Accordance with Federal Regulations. OSC referred to DoD allegations received from an employee of the Defense Commissary Agency (DeCA), Ord Community Commissary (OCC), Presidio of Monterey, California, that OCC employees engaged in conduct that constituted a violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public health and safety. The whistleblower alleged that the operations of the OCC Meat Department failed to meet the standards of the governing DeCA directive. The agency substantiated the majority of the allegations, finding that OCC employees improperly repacked meat, falsified date labels, excessively marked up sales prices, mislabeled products, and poorly managed inventory. The investigation did not substantiate the allegation that poultry was improperly processed in the Meat Department or that meat being sold was no longer fresh. In response to the DeCA OIG findings and recommendations, DeCA took significant disciplinary action against the responsible OCC employees: The agency removed the store director from federal service; suspended the store manager for seven days; demoted the

Meat Department manager from a supervisory position to a meat cutter position; issued a letter of reprimand to the assistant store director; and issued a letter of counseling to the zone director. In addition, the agency revised the DeCA directive and republished an accompanying manual, DeCA Manual 40-3.1. The agency trained zone managers and developed a mandatory checklist for key operations for all zone managers during store visits, to be kept as a matter of record for use during audits. Finally, the agency launched a pilot program for centralized meat cutting in 2013. The Special Counsel determined that the agency report contained all the information required by statute and that the findings appeared to be reasonable. *Referred July 2012; transmitted to the President and congressional oversight committees and closed July 2015.*

Substantial and Specific Danger to Public Health and Safety

Legionella Eradication at VA Facility in Colorado. OSC referred to the VA Secretary allegations based on disclosures made by a former industrial controls technician at the Grand Junction VA Medical Center, Grand Junction, Colorado. The whistleblower disclosed that management failed to properly address unsafe conditions within the facility that posed health and safety hazards to patients and staff, including the failure to conduct proper testing, eradication, and maintenance to prevent and eliminate *Legionella* bacteria from the facility's water system. The investigation substantiated that environmental testing detected *Legionella* in the water system in February 2013, and despite initiating eradication efforts in March 2013, the facility did not conduct *Legionella* eradication procedures in compliance with VA requirements until October 2013. The VA concluded that the facility did not fully address unsafe conditions that could pose health and safety hazards to patients and staff. Nevertheless, because the investigation did not reveal any evidence of clinical consequences resulting from the presence of *Legionella* in the water system, the VA concluded there was not a substantial and specific danger to public health or safety. The Special Counsel determined that the VA's reports met all of the statutory requirements. However, the Special Counsel did not find reasonable the VA's conclusion that there was no substantial and specific danger to public health or safety, noting that this conclusion reflects the "harmless error" approach often taken by the VA with respect to patient health and safety. *Referred September 2013; transmitted to the President and congressional oversight committees and closed March 2015.*

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

Failure to Report Allegations of Sexual Assault. OSC referred to the VA Secretary allegations based on disclosures of wrongdoing at the Syracuse VA Medical Center. The whistleblower alleged that managers in the Inpatient Behavioral Health Care unit failed to report an alleged sexual assault in violation of Veterans Health Administration protocol; staff engaged in actions that compromised patient health and safety; and managers were frequently absent without excuse. The agency partially substantiated the allegations, concluding that a patient's sexual assault allegations were not properly reported and that the nurse manager and assistant nurse manager of the unit were frequently absent during required working hours. The report recommended administrative action for employees who failed to report the alleged sexual assault and training on reporting requirements for staff in the unit. The agency issued a proposed 14-day suspension to the nurse manager and a letter of reprimand to the assistant nurse manager for time

and attendance violations. The agency provided OSC with an update indicating that it issued a notice of proposed removal for the nurse manager and an additional reprimand or proposed suspension to the assistant nurse manager for their failure to properly report sexual assault allegations. The update also confirmed that all employees received and were tested on newly developed sexual assault reporting procedures. The Special Counsel determined that the report met all statutory requirements and that the findings appeared to be reasonable. *Referred July 2014; transmitted to the President and congressional oversight committees and closed June 2015.*

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

Improper Filling of Prescriptions at VA Facility. OSC referred to the VA Secretary allegations based on disclosures of wrongdoing at the Beckley VA Medical Center in West Virginia. The whistleblower disclosed that Beckley VAMC clinical pharmacy specialists routinely and improperly reject providers' prescriptions in favor of less expensive medications, and pharmacists working in Beckley VAMC clinics exceed the scope of their practice. The agency partially substantiated the whistleblower's allegations, concluding that Beckley VAMC encouraged providers to switch patients to older, less expensive medications, based on a pharmacy cost-savings goal for FY 2013 related to atypical antipsychotic medications. In addition, the report acknowledged that the facility imposed a blanket restriction on continued therapy with aripiprazole or ziprasidone, without any appropriate clinical determination regarding changes to patients' drug regimens. The report recommended that the facility immediately stop this practice. The facility committed to conducting a clinical care review of the conditions and medical records of all patients who were discontinued from medications without review. The report did not substantiate the whistleblower's allegation that pharmacists improperly prescribe medications in clinics. The Special Counsel determined that the report meets all statutory requirements and that the findings appear to be reasonable. During OSC's final review of this matter, the whistleblower disclosed additional allegations, suggesting that related wrongdoing may still be occurring at Beckley VAMC. The Special Counsel requested a supplemental report addressing these allegations. That report was due May 2015 and the VA requested an extension of time. Accordingly, this matter was closed conditionally, pending the receipt of the agency's supplemental report. *Referred July 2014; transmitted to the President and congressional oversight committees and conditionally closed April 2015.*

Table 7, below, contains FY 2015 summary data (with comparative data for the six previous fiscal years) on the receipt and disposition of whistleblower disclosure cases.

TABLE 7 Summary of Whistleblower Disclosure Activity Receipts and Dispositions^a								
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	
Pending disclosures carried over from prior fiscal year	128	125	83	132	225	193	433	
New disclosures received	724	961	928	1,148	1,129	1,554	1,965	
Total disclosures	852	1,086	1,011	1,280	1,354	1,747	2,398	
Disclosures referred to agency heads for investigation and report	46	24	47	39	51	92	62	
Referrals to agency IGs	10	2	5	6	2	0	0	
Agency head reports sent to President and Congress	34	67	22	36	54	26	72	
Results of agency investigations and reports	Disclosures substantiated in whole or in part	30	62	21	31	49	25	63
	Disclosures unsubstantiated	4	5	1	5	5	1	9
Disclosure processing times	Within 15 days	394	555	555	583	575	731	830
	Over 15 days	333	451	315	470	585	584	1,117
Percentage of disclosures processed within 15 days	54%	55%	63%	55%	49%	55%	42%	
Disclosures processed and closed^b	727	1,006	870	1,053	1,160	1,315	1,947	

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

^b Some of these cases were handled by the Retaliation Disclosure Team (RDT), a pilot project that works cases in which one person has filed both a retaliation complaint and a whistleblower disclosure. RDT was made permanent in FY 2016 and is now referred to as the Retaliation Disclosure Unit (RDU).

PART 7 – HATCH ACT MATTERS

Overview

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

Summary of Workload, Activity, and Results

The HAU investigates allegations to determine whether there is evidence of a Hatch Act violation and, if so, whether disciplinary action is appropriate. If a determination is made that a violation has occurred, the HAU can 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. In FY 2015, the Hatch Act Unit received 106 complaints while resolving 131 complaints.

Advisory Opinions

The HAU has the unique responsibility of providing Hatch Act information and advice to the White House and congressional offices, cabinet members and other senior management officials, as well as state and local (including Washington, D.C.) government employees, the public at large, and the news media. OSC advises individuals on whether they are covered by the Act and whether their political activities are permitted. During FY 2015, the HAU issued 1,023 total advisory opinions, including 60 formal written advisory opinions.

Hatch Act Unit Successes

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

Litigation

- OSC filed a disciplinary complaint with the MSPB alleging that an employee at the U.S. Army Corps of Engineers (USACE) violated the Hatch Act when he ran as a candidate in a partisan election for sheriff despite being advised by USACE regional counsel and OSC that he was prohibited from doing so. OSC gave the employee an opportunity to come into compliance by resigning his employment or withdrawing from the election, but the employee rejected this opportunity. In 2015, an administrative law judge issued a decision ordering USACE to remove the employee, which the MSPB affirmed.
- In 2015, OSC filed a disciplinary complaint with the MSPB alleging that a career senior executive service official at U.S. Department of Agriculture violated the Hatch Act when he solicited two subordinate employees to donate to a political action committee for President Obama's 2012 reelection campaign. The official implied or promised career advancement opportunities in exchange for the donations. Shortly after OSC filed its complaint, the official retired from federal employment. The MSPB dismissed the case without prejudice, allowing OSC to refile within five years if the official returns to federal service.

Other Resolutions

- An employee at the Federal Emergency Management Agency hosted a partisan political fundraiser and solicited political contributions, sometimes while he was at work. He also recruited campaign volunteers, planned candidate events, and posted partisan messages to Facebook while at work. Despite being warned by his supervisor about engaging in prohibited political activity, the employee continued to violate the Hatch Act. OSC completed its investigation and negotiated a resolution whereby the employee agreed to accept a 112-day suspension without pay.
- An employee at the FAA sent an email while at work to four subordinate employees endorsing a candidate for U.S. Senate. He also included two links to the candidate's campaign website. Shortly after sending the email, he followed up with one of the employees to advise that he had sent the email and the subordinate should take a look at it. OSC completed its investigation and negotiated a resolution whereby the employee agreed to accept a 15-day suspension without pay.

Hatch Act Unit Outreach

The Hatch Act Unit is very active in OSC’s outreach program. The Unit conducted approximately 25 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.

Table 8, below, contains FY 2015 summary data (with comparative data for the six previous fiscal years) on OSC’s Hatch Act enforcement activities. The number of HAU complaints pending at the end of the fiscal year decreased 38 percent from FY 2014 levels.

TABLE 8 Summary of Hatch Act Complaint and Advisory Opinion Activity								
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	
Formal written advisory opinion requests received	227	351	283	257	107	64	64	
Formal written advisory opinions issued	226	320	335	262	129	60	60	
Total advisory opinions issued^a	3,733	4,320	3,110	3,448	1,767	1,382	1,023	
New complaints received^b	496	526	451	503	277	151	106	
Complaints processed and closed	388	535	635	449	465	182	131	
Warning letters issued	132	163	164	142	150	44	28	
Corrective actions taken by cure letter recipients	Withdrawal from partisan races	15	28	23	5	5	7	8
	Resignation from covered employment	6	26	16	2	2	0	3
	Other	3	1	5	4	4	1	0
	Total	24	55	44	11	11	8	11
Disciplinary action complaints filed with MSPB	10	7	3	0	2	1	2	
Disciplinary actions obtained (by negotiation or ordered by MSPB)	5	10	5	4	7	15	9	
Complaints pending at end of fiscal year	430	422	233	286	96	65	40	

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

^b Includes cases that were reopened.

PART 8 – OUTREACH

Outreach Program

The Outreach Program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c) to inform their employees about the rights, remedies, and avenues of redress available to them under the Civil Service Reform Act and whistleblower laws under OSC’s jurisdiction. A February 2014 White House memorandum and the White House’s Second Open Government National Action Plan require that all federal agencies participate in OSC’s 2302(c) Certification Program.

The 2302(c) Certification Program is a five-step program that provides guidance, training resources, and easy-to-use methods to assist agencies in fulfilling their statutory obligation and the White House requirements. Agencies that complete the program receive a certificate of compliance from OSC. To further its education efforts, in FY 2016 OSC developed a “Prohibited Personnel Practice/Whistleblower Disclosure Training Quiz” that went live on OSC’s website in early 2016.

In addition, OSC provides formal and informal outreach sessions regarding all of its program areas, including prohibited personnel practices, whistleblower disclosures, the Hatch Act, and USERRA. During FY 2015, OSC’s subject matter experts spoke at 118 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.

Annual Survey Program

Each year, OSC surveys people who have contacted the agency for assistance during the previous fiscal year.^a Complainants in prohibited personnel practice cases closed during FY 2015, claimants in USERRA demonstration project matters closed during FY 2015, recipients of formal Hatch Act advisory opinions during that year, and for the first time, whistleblowers in Disclosure Unit cases were invited to participate in the survey.

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

Due to the low response rate, typically ten percent, and lack of geographic diversity among respondents, these results may not be representative samples. OSC is considering ways to

^a Pursuant to 5 U.S.C. § 1212 *note*.

improve our response rates and measure nonresponse bias in order to increase the utility of the survey.

Compared to the 2014 rate of returned surveys, which was ten percent, the FY 2015 rate of return was 11 percent. This year's survey is the second time the Survey Monkey software was used, and the number of surveys mailed out increased by 49 percent, from 3,515 in FY 2014, to 5,249 in FY 2015. The increase is due to the increase in those cases. The overall survey results were comparable with prior years' results. Also following the pattern from the prior years', the service from the Hatch Act Unit received the highest ratings.

FURTHER INFORMATION

Prohibited Personnel Practices

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

Complaints Examining Unit

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

There are two ways to file a prohibited personnel complaint with OSC, on paper or electronically. A complaint can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). Alternatively, a complaint may be filed on paper, using Form OSC-11, which is available online (<https://osc.gov/Pages/Resources-OSCForms.aspx>) and can be filled out online, printed, and mailed or faxed to the address above.

ADR

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

Alternative Dispute Resolution Unit

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

Hatch Act

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

Hatch Act Unit

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

A Hatch Act complaint can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). Alternatively, complaints alleging a violation of the Hatch Act can be made by using Form OSC-13. The form is available online (<https://osc.gov/Pages/Resources-OSCFORMS.aspx>) and can be filled out online, printed, and mailed or faxed to the address above.

Whistleblower Disclosure

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

Disclosure Unit

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

A disclosure can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). Alternatively, Form OSC-12 can be used to file a disclosure with OSC. The form is available online (<https://osc.gov/Pages/Resources-OSCFORMS.aspx>) and can be filled out online, printed, and mailed or faxed to the address above.

USERRA

A USERRA complaint can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). The OSC website has additional information about USERRA, including a link to the complaint form issued by VETS for use by claimants. Questions not answered on the web site about OSC's role in enforcing the act may be directed to:

USERRA Unit

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

Outreach Program

Many OSC forms and publications are available in the “Resources” section of the agency website. Questions not answered on the agency website about the 2302(c) Certification Program and OSC outreach activities should be directed to:

Director of Outreach

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

Policy and Congressional Affairs

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

Office of Policy and Congressional Affairs

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

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

APPENDICES

APPENDIX A

SURVEY TOTALS —and— RESPONSE SOURCES FY 2015

SURVEY TOTALS

FY 2015	
Number mailed.	5,249
Number returned.	579
Response rate.	11%

Response Source by Type of Matter at OSC

1. What was the nature of your correspondence to OSC? (Please choose only one)	
	FY 2015
<u>Response options</u>	
You filed a complaint concerning a prohibited personnel practice.	355
You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity).	11
Your case involved a USERRA complaint.	14
You filed a whistleblower disclosure case (OSC Form 12)	185

APPENDIX B

PPP COMPLAINTS RESPONSES

—for—

FY 2015

1. Did the agency against which you filed the complaint inform you about your rights and responsibilities with regard to prohibited personnel practices?	
	FY 2015
<u>Response options</u>	
Yes.	66
No.	238
Do not recall.	39
Never employed by a federal agency.	5

2. Did you obtain the result that you wanted from OSC?	
	FY 2015
<u>Response options</u>	
Yes.	19
No.	329

3. Did your complaint include any allegation of reprisal for whistleblowing?	
	FY 2015
<u>Response options</u>	
Yes.	195
No.	134

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

	FY 2015
<u>Response options</u>	
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.	26
No personnel action taken by the agency involved.	19
Information that you disclosed did not appear to be a legally protected disclosure.	14
Your disclosure occurred after the personnel action involved in your complaint.	4
Insufficient proof that the agency official (who took the personnel action against you) knew about your disclosure.	14
Insufficient proof of connection between your disclosure and the personnel action involved in your complaint.	23
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	19
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation.	36
You or OSC settled the matter with the agency involved.	4
You declined corrective action offered by the agency involved.	1
You notified OSC that you had filed or would file an Individual Right of Action (IRA) or other appeal with the Merit Systems Protection Board (MSPB).	6
You withdrew your complaint.	5
Other.	77
Do not recall.	22

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

	FY 2015
<u>Response options</u>	
Yes.	64
No.	220
Have not decided whether to file.	39

6. Did you ask for the same relief that you sought from OSC?	
	FY 2015
<u>Response options</u>	
Yes.	53
No.	3
Do not recall.	8

7. Were you successful at the MSPB in obtaining the same result that you sought from OSC?	
	FY 2015
<u>Response options</u>	
Yes.	2
Partially.	4
No.	31
Appeal pending.	16

8. If the answer to the previous question was “yes” or “partially,” how did you obtain the result?	
	FY 2015
<u>Response options</u>	
Settlement.	6
Decision after hearing.	0
Other.	0

9. What reason did OSC give for closing your complaint without obtaining the result that you desired? (Check all that apply)

	FY 2015
<u>Response Options</u>	
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.	38
No personnel action taken by the agency involved.	27
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	33
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation.	104
You or OSC settled the matter with the agency involved.	4
You declined corrective action offered by the agency involved.	1
You withdrew your complaint.	11
OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action.	1
OSC obtained a decision in the corrective action proceeding filed with the MSPB.	1
Closed for further action on discrimination allegations through EEO processes.	16
Resolved through OSC's Mediation Program.	0
Other.	123
Do not recall.	31

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

	FY 2015				
<u>Response Options</u>	Very satisfied	Satisfied	No opinion /inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	25	51	46	53	165
Clarity of oral communications.	21	41	41	77	158
Clarity of written communications.	19	55	56	62	146
Timeliness.	24	45	55	50	163
Results.	13	6	21	43	254

APPENDIX C

FORMAL HATCH ACT ADVISORY OPINIONS

—*for*—

FISCAL YEAR 2015

1. As a result of our written advisory opinion given to you concerning the proposed political activity, what was the impact?	
	FY 2015
<u>Response Options</u>	
The OSC opinion advised that the person in question was free to carry out his or her planned political activity.	3
The OSC opinion advised that the person in question should not continue his or her planned political activity.	1
The OSC opinion was in response to a general question concerning the application of the Hatch Act.	1
Other.	4

2. How would you rate the service provided by OSC in the following areas?					
	FY 2015				
<u>Response Options</u>					
	Very satisfied	Satisfied	No opinion/ inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	4	1	1	0	3
Clarity of written communications.	3	2	1	0	3
Timeliness.	3	2	0	1	3
Results.	3	2	0	0	4

APPENDIX D

USERRA UNIT
SURVEY RESPONSES
—for—
FISCAL YEAR
2015

1. Did the agency against which you filed the complaint inform you about your rights and remedies with regard to USERRA?	
	FY 2015
<u>Response options</u>	
Yes.	1
No.	11
Do not recall.	2
Never employed by a federal agency.	0

2. Did you obtain the result that you wanted from OSC?	
	FY 2015
<u>Response options</u>	
Yes.	0
No.	14

3. What reason did OSC give for closing your USERRA case? (Check all that apply.)	
	FY 2015
<u>Response options</u>	
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.	1
Insufficient evidence that the personnel action involved in your complaint violated USERRA.	4
You or OSC settled the matter with the agency involved.	2
You declined corrective action offered by the agency involved.	0
You withdrew your complaint.	0
Other.	8
Do not recall.	1

4. Did you file a USERRA appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?	
	FY 2015
<u>Response options</u>	
Yes.	5
No.	5
Do not recall.	3

5. Did you ask for the same relief that you sought from OSC?	
	FY 2015
<u>Response options</u>	
Yes.	4
No.	1
Do not recall.	0

6. Were you successful at the MSPB in obtaining the same result that you sought from OSC?	
	FY 2015
<u>Response options</u>	
Yes.	0
Partially.	0
No.	1
Appeal pending.	3

7. If the answer to the previous question was “yes” or “partially,” how did you obtain the result?	
	FY 2015
<u>Response options</u>	
Settlement.	0
Decision after hearing.	0
Other.	0

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

FY 2015					
<u>Response Options</u>	Very satisfied	Satisfied	No opinion /inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	1	0	3	4	5
Clarity of oral communications.	1	2	1	3	6
Clarity of written communications.	1	2	2	6	2
Timeliness.	1	2	2	4	4
Results.	0	0	1	6	6

APPENDIX E

DISCLOSURE UNIT SURVEY RESPONSES

—*for*—

FISCAL YEAR

2015

1. Did the agency against which you filed the disclosure inform you about your right to make whistleblower disclosures, and the channels for making such disclosures?	
	FY 2015
<u>Response options</u>	
Yes.	42
No.	119
Do not recall.	21
Never employed by a federal agency.	1

2. Did you obtain the action that you wanted from OSC?	
	FY 2015
<u>Response options</u>	
Yes.	16
No.	167

3. What reason did OSC give for closing your disclosure matter? (Check all that apply.)	
	FY 2015
<u>Response options</u>	
No OSC Jurisdiction over agency involved, your position, or agency official involved in your disclosure	11
Insufficient evidence of a violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety	49
You withdrew your disclosure	3
You resolved the matter with the agency involved	2
Your disclosure was referred to the agency involved for a report to the OSC on the agency's inquiry into the matter	13
Other	77
Do not recall	10

4. Did you agree with the reason OSC gave for closing your disclosure matter?	
	FY 2015
<u>Response options</u>	
Yes.	1
No.	158
I don't know	5

5. How would you rate the service provided by OSC in the following areas?					
	FY 2015				
<u>Response Options</u>	Very satisfied	Satisfied	No opinion /inapplicable	Dissatisfied	Very dissatisfied
Courtesy.	18	34	21	25	81
Clarity of oral communications.	15	23	26	41	74
Clarity of written communications.	16	23	27	40	73
Timeliness.	9	28	26	34	82
Results.	3	9	12	17	138

APPENDIX F

LIST OF ACRONYMS USED IN REPORT

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

APPENDIX G

ENDNOTES

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

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

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

⁴Public Law No. 107-71 (2001).

⁵See endnote 3.

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