

**FISCAL YEAR 2010  
CONGRESSIONAL BUDGET JUSTIFICATION  
AND PERFORMANCE BUDGET GOALS**



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## **PART 1 – EXECUTIVE SUMMARY**

The following budget justification shows that on matters ranging from protecting passengers in the nation's air travel, protecting our borders, rooting out corruption, identifying waste in federal contracting and grants to save taxpayers money, correcting discrimination against service members returning from duty, to disciplining high level officials for whistleblower retaliation and use of official authority to affect elections - the U.S. Office of Special Counsel has fulfilled its role as an independent prosecutorial and investigative agency charged with bringing greater integrity and efficiency to the merit system. Granting this budget request will assist this agency in sending the message that independent agencies that discover fraud, waste, and abuse of authority are important to the healthy functioning of the United States; that we honor those who bring these matters to light.

In last year's budget justification, OSC reported how the agency had continued to enhance its protection of the merit system and to provide even more responsive assistance to aggrieved federal employees. Also reported was the fact that through hard work and diligence, the chronic problem of backlogged Prohibited Personnel Practice cases, Hatch Act cases and Disclosure Unit cases did not return. In FY2008, however, the incoming caseloads increased again, in some units very dramatically. OSC's streamlined processes continue to contribute to the agency's ability to handle the cases, but it is crucial that OSC receive enough funding to enable it to operate at the level of 111 FTE for the entire FY 2010.

### **Summary of Request**

OSC is requesting \$18,495,000 in FY 2010. This amount includes funding for the salaries and benefits of the agency's 111 FTE, including the salary increase of January 2009 and the projected increase of January 2010. It also includes funds to cover the agency's rent increase.

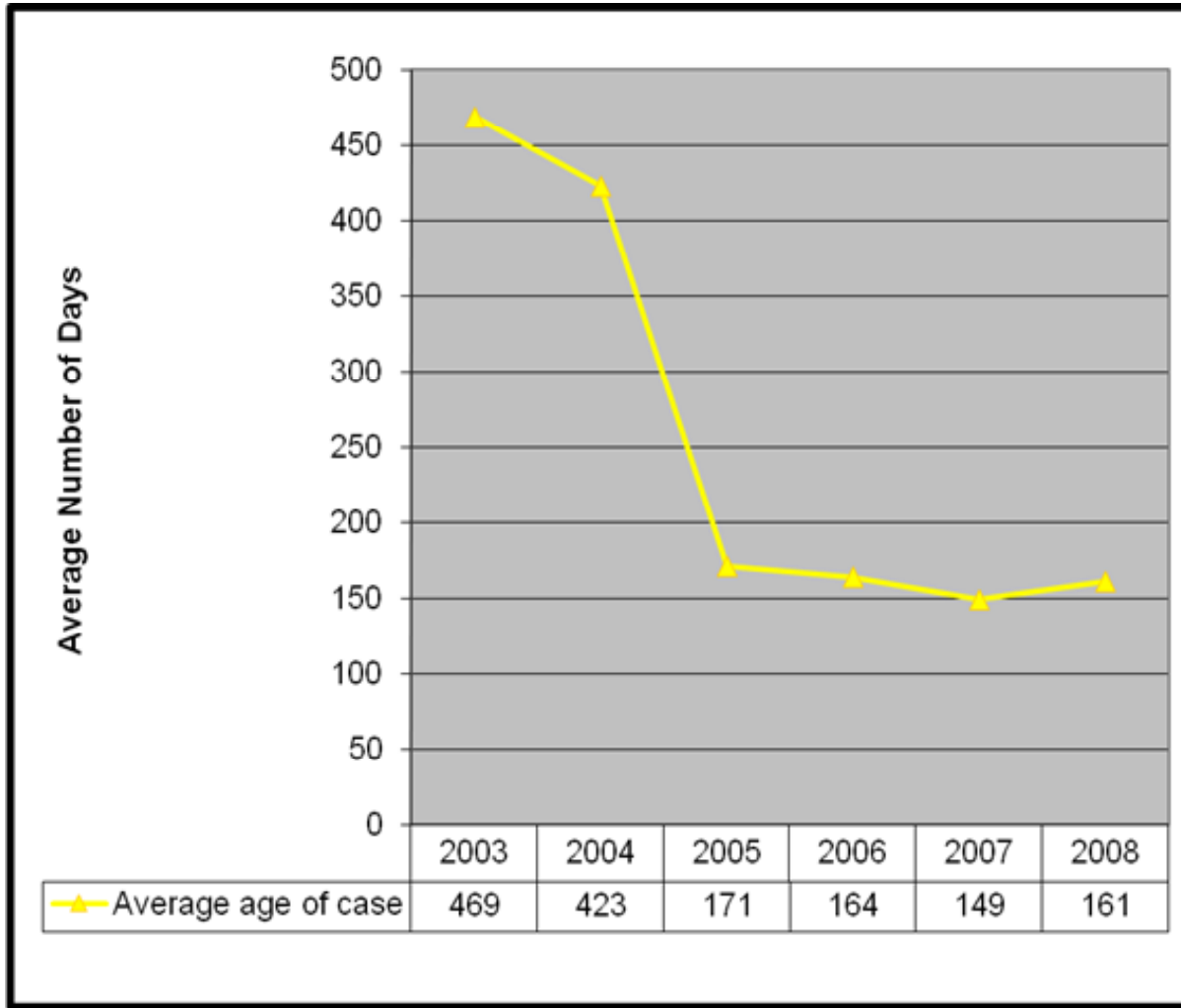
### **OSC's Mission**

The U.S. Office of Special Counsel's primary mission is to safeguard the merit system in federal employment by protecting employees and applicants from prohibited personnel practices (PPPs), especially reprisal for whistleblowing. In addition, the agency 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. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. Finally, OSC enforces federal employment rights secured by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

### **Graphical Highlights of OSC's Successes**

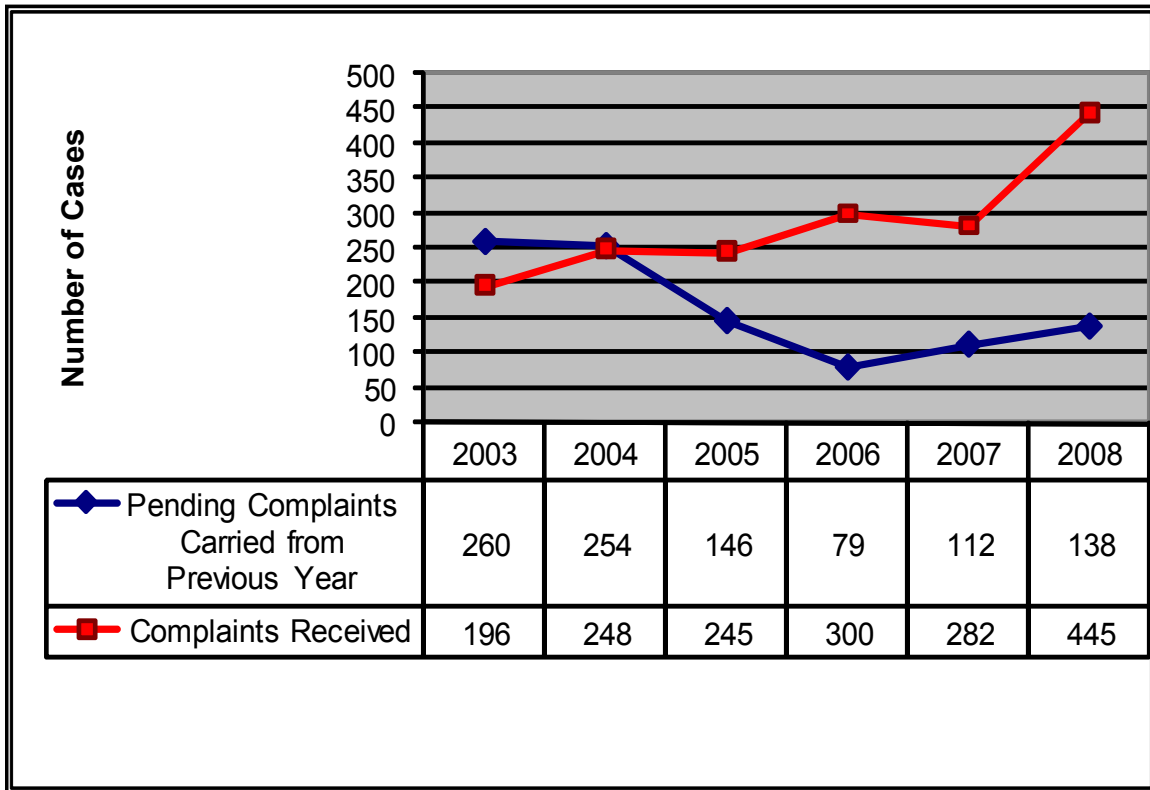
Over the last four years, OSC has made progress on several fronts. For example, a reorganization of the agency has borne fruit in terms of a streamlined structure and more efficient standard operating procedures in the Investigation and Prosecution Division. OSC now reaches the meritorious cases faster, seeking settlements or initiating prosecutions before evidence becomes stale and witnesses' memories fade, which brings swifter justice to those Federal employees served by the Office of Special Counsel. Also, increased staffing in the Hatch Act and Disclosure Units have led to more efficiency and greater output in those components.

## Hatch Act Unit- Average Processing Time per Complaint



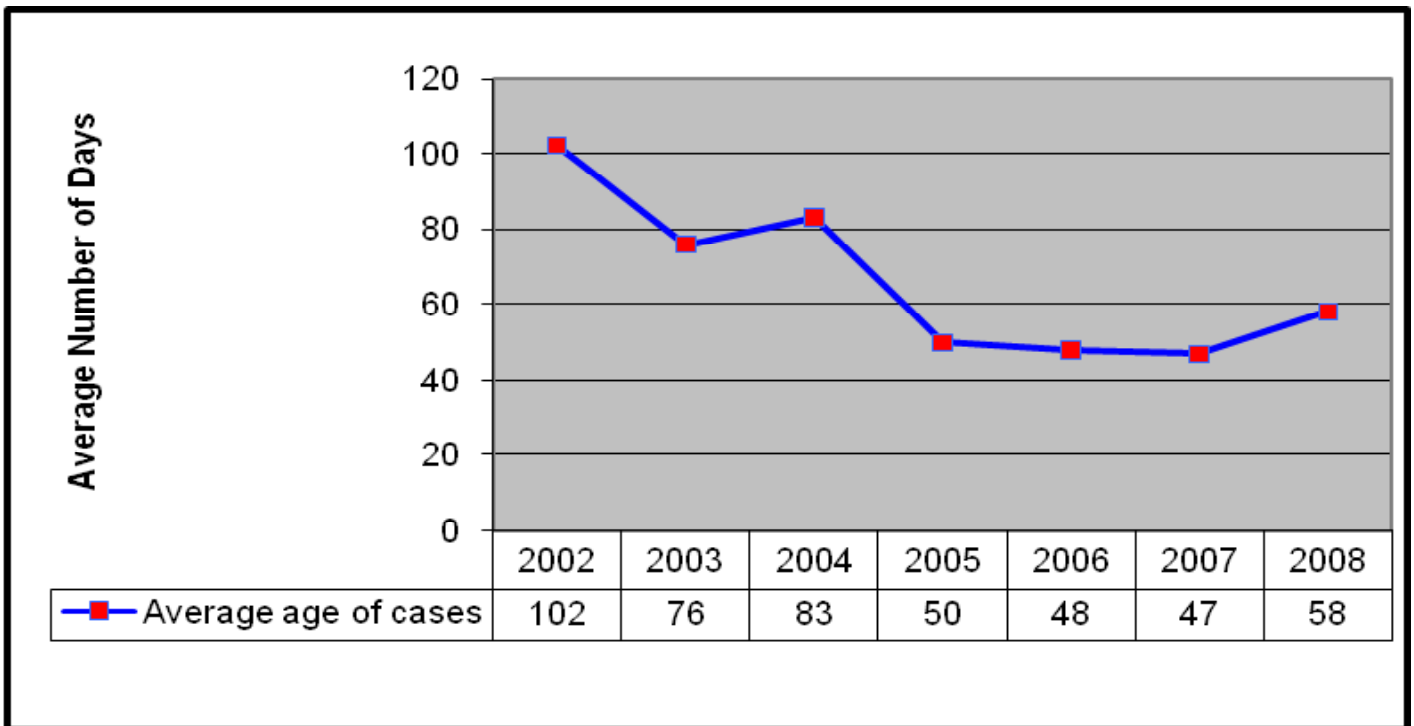
OSC's Hatch Act Unit has reduced its case processing time dramatically since FY 2003. The average number of days to process a case now is approximately one third of what it was in FY 2003.

## Hatch Act Complaints



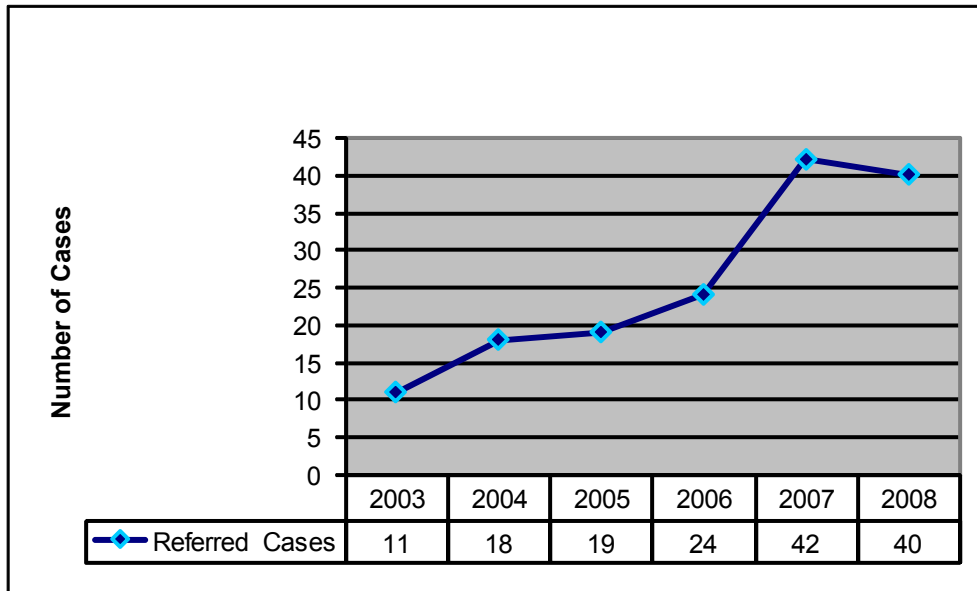
Starting in FY 2005, as OSC reduced its processing time for Hatch Act complaints, the number of pending complaints carried forward from the previous fiscal year sharply declined. From FY 2003 to FY 2006, the overall decline in processing time was 70%. But now in FY 2008, given that the number of complaints received has increased by 128% since FY 2003, the number of complaints pending at the end of the year is beginning to rise. Though OSC's Hatch Act Unit has become much more efficient, the workload has become nearly overwhelming.

## Complaints Examining Unit - Average Processing of PPP Cases in the Unit



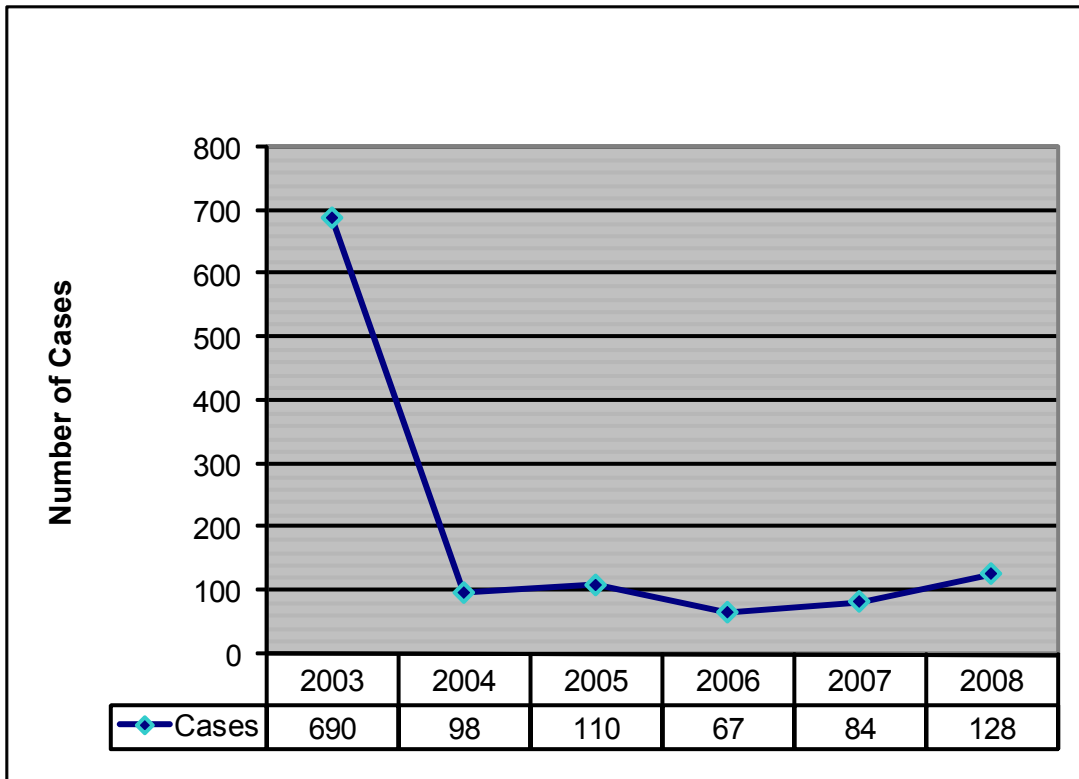
This chart shows the average number of days that a Prohibited Personnel Practice case remained in OSC’s Complaints Examining Unit, before the case was either closed or referred to OSC’s Investigation and Prosecution Division for further investigation. Though the processing times are below where they used to be years ago, they are inching back upwards as OSC faces increasing caseloads.

## Disclosure Referrals to Agency Heads



When the Special Counsel analyzes a whistleblower disclosure and determines there is substantial likelihood of wrongdoing, he refers the matter to the head of the appropriate agency, who is then required to internally investigate the matter and report the results to OSC, the Congress, and the President. Even though caseloads in the Disclosure Unit are continuing to rise, OSC's Disclosure Unit continues to very carefully sift through each of them, in order to find the ones that warrant referral to the appropriate agency head.

## Disclosure Unit Cases Pending at End of Year



In FY 2003, the Disclosure Unit had a backlog of whistleblower disclosures. OSC reduced the backlog by FY 2004, and has prevented a resurgence of backlog since then. However, the increased volume of disclosures received in FY 2008 resulted in a higher number of pending disclosures at the end of FY 2008.

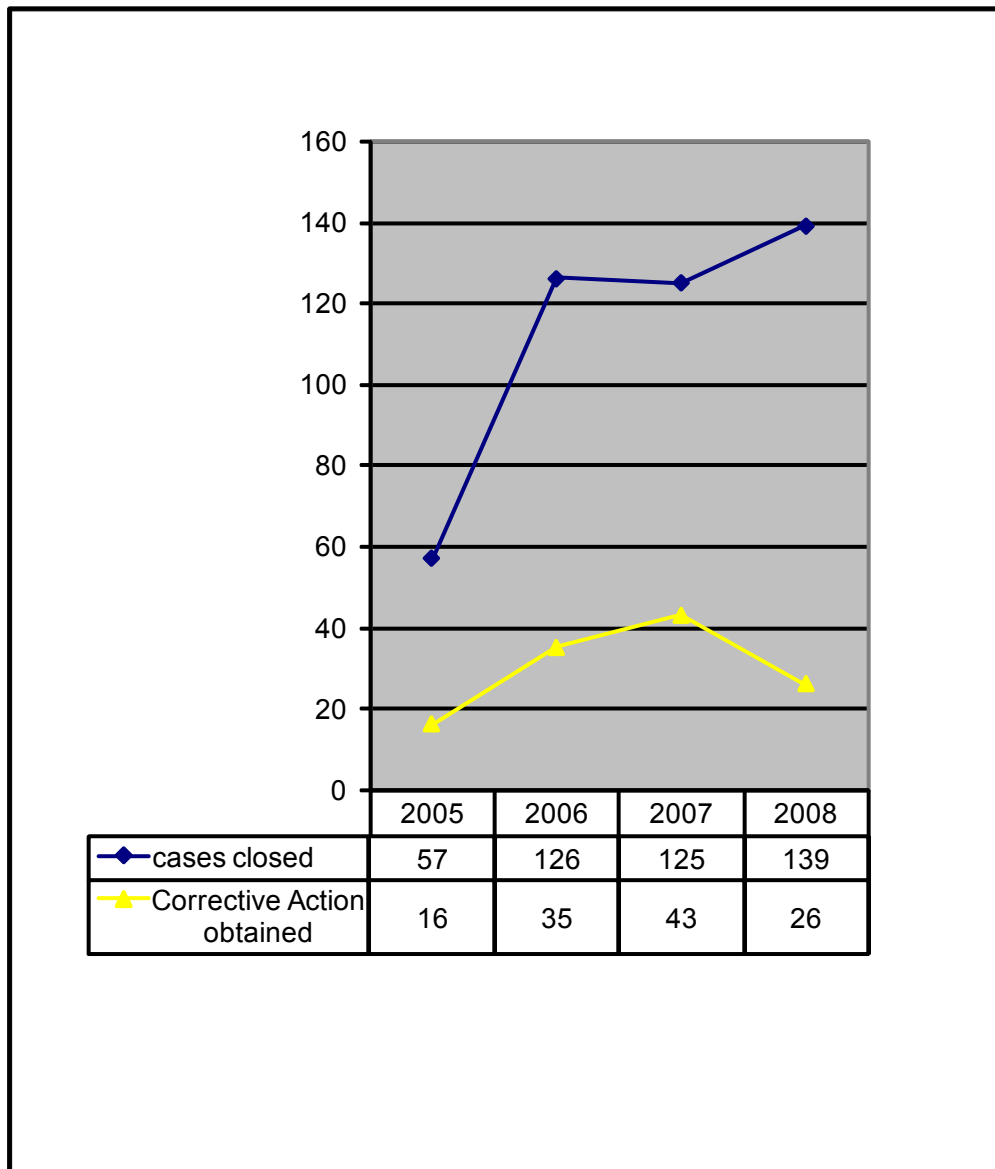


## Disclosure Unit - Average Processing Time per Disclosure



This chart shows the improvement in processing time in OSC's Disclosure Unit. The average processing time for disclosures in FY 2008 was 51 days. This was an 85% reduction from the high of FY 2004 (an average of 351 days).

## USERRA Demonstration Project



The USERRA Demonstration Project began in February of FY 2005. Since then, OSC achieved very high rates of corrective actions on behalf of members of the armed forces. The project ended at the end of 2007, and OSC's USERRA Unit worked very hard during FY 2008 towards finishing off the cases received under the project.

From the preceding graphs it is clear that OSC's incoming caseloads continue to rise. There are a number of factors which contribute to these increases. For example, a string of Hatch Act cases involving high-profile employees over the last three years has resulted in significant national press coverage. There is now a very heightened awareness of the Hatch Act among Federal employees. OSC received 445 Hatch Act complaints in FY 2008, an increase of 58% over FY 2007. One might be tempted to think that this large increase is due to the presidential election year and that the number of complaints will then decline. But history does not support that explanation. In the last presidential election year, FY 2004, OSC received 248 complaints, an increase of 27% over FY 2003. But then in FY 2005, the complaints stayed constant with FY 2004, and the number received jumped upwards by 21% during FY 2006, the non-presidential election year. We expect there to be approximately 500 Hatch Act complaints to OSC during upcoming non-presidential election year FY 2010.

### **OSC'S SUCCESSES IN FY 2008**

- 1) **FAA Safety.** OSC recently oversaw the completion of investigations into the FAA resulting in much needed oversight and changes for passengers and increased airline safety compliance.
- 2) **OSC's FAA Task Force.** This internal task force continues to receive and address numerous safety-related issues from concerned whistleblowers and is working collaboratively with the FAA and Congressional oversight committees to ensure safety concerns are being addressed.
- 3) **New Orleans Pumps.** OSC's work on the possibly defective New Orleans levee pumps prompted a new independent investigation to ensure proper safeguards are in place to avoid another Katrina disaster.
- 4) **High profile Hatch Act results.** Over the last year, OSC has investigated hundreds of potential Hatch Act violations and has worked expediently to prosecute egregious cases of politicization and coercion. For example, a recent high profile OSC investigation of an Ohio Prosecutor who solicited subordinate employees for political contributions resulted in an admission of guilt and an agreement not to seek employment with a locality or government agency for a period of 18 months.
- 5) **More Hatch Act results.** Another prominent investigation by the OSC resulted in a 180-day suspension for a NASA employee for using his government email account to send partisan political e-mails. The employee was also found to have solicited political contributions.
- 6) **OSC Special Task Force continues review of possible violations.** OSC is conducting several high-level investigations related to the Hatch Act and to possible violations of certain Prohibited Personnel Practices.
- 7) **OSC's willingness to prosecute federal agencies for violations of the USERRA law.** OSC set precedent in the last four years by filing a number of USERRA cases with the Merit Systems Protection Board, and receiving full corrective action in nearly all of them, including one in which the U.S. Department of Labor told the claimant that his case had no merit. Several of these cases stem from the demonstration project created by the Veterans Benefits Improvement Act of 2004, under which OSC had responsibility to investigate and resolve certain federal sector USERRA cases. This willingness to prosecute USERRA violations also contributes to more corrective action settlements prior to litigation. OSC achieved another 26 USERRA corrective actions in Demonstration Project cases during FY 2008, bringing its total for the three year project to 120, which represents a corrective action rate for the project of approximately 27%.

- 8) **Specific USERRA Results.** An Air National Guardsman, who lost his federal job while on active military duty, waited more than seven years to get relief under USERRA. Only months after the Government agency where his case had languished for seven years referred it to OSC, a settlement was reached providing him with full back pay and restored benefits.
- 9) **More Specific USERRA Results.** In many instances, OSC investigates complex USERRA claims where investigators work to remedy personal hardships caused by employer’s misunderstanding of the law. For example, one of this year’s cases involved a claimant who alleged that an agency mischarged his leave and imposed a debt on him as a result of his service in the Air Force Reserve. At the USERRA unit’s request, the agency took the series of actions that were necessary to fully correct the situation, including restoring the employee’s annual leave, cancelling the debt, and reimbursing him for lost pay.
- 10) **OSC continues to enhance its resources for conducting mediations.** Instead of having one full time mediator, seven people from different parts of the agency have received training in conducting mediations. OSC now has a cadre of professionals with varied skills and legal expertise in multiple areas from which to draw.

### Strategic Objectives

OSC has four strategic objectives (see table below), each of which is supported by a series of operational goals. These operational goals are described in Part 2, in the appropriate section for each budget program.

Strategic Objectives of the Agency	
U.S. Office of Special Counsel	
Strategic Objective 1	OSC will protect the Merit System and promote justice in the Federal workforce through investigation and prosecution of the Prohibited Personnel Practices.
Strategic Objective 2	OSC will protect the Merit System and promote justice in the Federal workforce by enforcing the Hatch Act.
Strategic Objective 3	OSC will promote public safety, and efficiency through acting as a channel for whistleblowers in the Federal workforce to disclose information.
Strategic Objective 4	OSC will protect veterans in the Federal workforce through enforcement of the Uniformed Services Employment and Reemployment Rights Act.

## Internal Organization

OSC maintains its headquarters office in Washington, D.C. Four field offices are located in Washington, D.C., Dallas, Oakland, and Detroit. Agency components during FY2008 include the Immediate Office of the Special Counsel (IOSC), five operating units/divisions and several supporting offices explained in detail below.

**Immediate Office of the Special Counsel.** The Special Counsel and staff in IOSC are responsible for policy-making and overall management of OSC. They also manage the agency's congressional liaison and public affairs activities, and its outreach program, which includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

**Complaints Examining Unit.** This unit is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction.<sup>1</sup> This unit is responsible for screening approximately 2,000 prohibited personnel practice cases per year. 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 all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation.

**Disclosure Unit.** This unit is responsible for receiving and reviewing disclosures received from federal whistleblowers. It advises the Special Counsel on the appropriate disposition of the information disclosed (including possible referral to the head of the agency involved for an investigation and report to OSC; referral to an agency Inspector General; or closure). The unit also reviews agency reports of investigation to determine whether they appear to be reasonable and in compliance with statutory requirements before the Special Counsel sends them to the President and appropriate congressional oversight committees.

**Investigation and Prosecution Division.** The Investigation and Prosecution Division (IPD) is comprised of four field offices. The IPD conducts field investigations of matters referred after preliminary inquiry by the Complaints Examining Unit. Division attorneys conduct a legal analysis after investigations are completed to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. Investigators work with attorneys in evaluating whether a matter warrants corrective action, disciplinary action, or both.

If meritorious cases cannot be resolved through negotiation with the agency involved, division attorneys represent the Special Counsel in litigation before the Merit Systems Protection Board (MSPB). They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, division investigators and attorneys at times assist with investigations of alleged violations of the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act, though most Hatch Act and USERRA work is handled by the Hatch Act Unit and the USERRA Unit, respectively.

**Hatch Act Unit.** This unit issues advisory opinions to individuals seeking information about Hatch Act restrictions on political activity by federal, and certain state and local, government employees. The unit is also responsible for enforcing the act. It reviews complaints alleging a Hatch Act violation and, when warranted, investigates and prosecutes the matter (or refers the matter to the Investigation and Prosecution Division for further action). It also oversees Hatch Act matters delegated to the IPD.

**USERRA Unit.** This unit handles USERRA cases that are referred to OSC for prosecution by the Department of Labor. Often these cases must be re-investigated by OSC. In addition, this unit investigated cases referred to OSC under the special project assigned by P.L. 108-454. This law required OSC to investigate the re-

employment rights of approximately half of the USERRA cases involving federal employees who are also members of one of the military services. These cases were transferred to OSC by the Department of Labor during a three year period which ended during FY 2008.

## **Supporting Units**

**Alternative Dispute Resolution Program.** In selected cases referred by the Complaints Examining Unit for further investigation, the agency contacts the complainant and the agency involved, and invites them to participate in OSC's voluntary Mediation Program. If mediation resolves the complaint, the parties execute a written and binding settlement agreement; if not, the complaint is referred for further investigation.

The mediation program for Alternative Dispute Resolution has been reorganized. Rather than have a single ADR specialist under the leadership of an SES employee, the agency has expanded the program through cross-training multiple individuals from OSC's operating units. As a result the agency now has a broad pool of trained mediators with different legal areas of expertise.

**Legal Counsel and Policy Division.** This division provides general counsel and policy services to OSC, including legal advice and support on management and administrative matters; legal defense of OSC in litigation filed against the agency; policy planning and development; and management of the agency ethics program.

**Office of the Chief Financial Officer.** This office provides administrative and management support services to OSC, in furtherance of program, human capital, technology, and budget decisions. This division also includes the Information Technology Branch, Human Resources Branch, Document Control Branch, Procurement Branch, and Budget and Analysis Branch. The purpose of this division is to put the administrative support functions under one authority.

**Training Office.** A training office has been created to train all new employees, cross train existing employees, and develop specialized training in areas such as litigation skills. Specifically, the Training Office facilitates cross training of attorneys and investigators to enable them to traverse organizational boundaries within the agency. They develop sufficient expertise in several areas of the law, giving management more ability to detail employees to address any potential backlogs that form in the various units.

## Budget by Program

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

<b>FY 2010 Budget by Program</b>						
<i>(in thousands of dollars)</i>						
<b>Program</b>	<b>FY 2009 Estimate</b>		<b>FY 2010 Estimate</b>		<b>Increase/Decrease</b>	
	<b>\$</b>	<b>FTE</b>	<b>\$</b>	<b>FTE</b>	<b>\$</b>	<b>FTE</b>
Investigation and Prosecution of Prohibited Personnel Practices <sup>1</sup>	\$8,530	55	\$9,375	57	\$846	2
Hatch Act Enforcement (including Special Task Force)	\$1,938	12.5	\$1,891	11.5	-\$46	-1
Whistleblower Disclosure Unit	\$1,626	10.5	\$1,727	10.5	\$101	0
USERRA Enforcement and Prosecution	\$309	2	\$329	2	\$20	0
Office of the Special Counsel	\$1,097	6	\$988	5	-\$109	-1
Office of the Agency General Counsel	\$927	5	\$971	5	\$44	0
Management / Information Technology / Budget / Human Resources / Procurement / Document Control / Planning / Outsourced Computing, Statistics, and Document Management Svcs	\$3,041	20	\$3,214	20	\$173	0
<b>totals</b>	<b>\$17,468</b>	<b>111</b>	<b>\$18,495</b>	<b>111</b>	<b>\$1,027</b>	<b>0</b>

Note 1: The sizeable increase in funding in FY 2010 for the Investigation and Prosecution Division is from a) the fact that FTE are returning from details to the Special Task Force, b) the projected pay raise of FY 2010, and c) a higher overhead assigned to each FTE, due to OSC's higher rental expenses in F 2010.

Note 2: The FY 2010 decrease for the Hatch Act Unit is due to Special Task Force detailees returning to their units. However, the Hatch Act Unit is receiving additional resources to handle its very high caseload levels. These additional resources nearly offset the loss of the detailed employees.



## PART 2 - FY 2010 BUDGET REQUEST - ADDITIONAL INFORMATION

OSC is requesting \$18,495,000. This includes funding for OSC's current staff of 111 FTE, and funding to cover the FY 2009 and projected FY 2010 salary increases. This number of FTE is necessary to manage and process the agency's elevated workload of prohibited personnel practice complaints, whistleblower disclosures, Hatch Act complaints, Hatch Act cases, Hatch Act advisory opinions, special task force investigations, and USERRA cases in a manner that precludes the formation of case backlogs. The workload has steadily increased since 2000, and steeply increased during the last two years.

### **Budgetary Factors**

Over 90% of OSC's budget goes toward salary, benefits, and office space rent. When salary, benefits, and rent all rise, the agency needs additional funds. There are two main drivers of the FY 2010 increase.

- 1. Increased costs for salaries and benefits.** For the first time in several years, OSC will have a full political staff of approximately five employees during FY2010. Given the continued rapid increase in caseloads and the fact that five of OSC's 111 FTE will be used for political staff, it is imperative that OSC operate with 106 career employees during all of FY 2010. In sum, OSC will need sufficient funding to support its full approved staffing level of 111 FTE, including the pay raise of FY 2009, and the projected raise of FY 2010.
- 2. New GSA lease for OSC's headquarters.** OSC's ten year lease for its headquarters space expires in October, 2009. The best estimate from GSA is that rent for OSC's headquarters and three field offices will rise by \$644,000 during FY 2010. This rent increase is an unavoidable expense.

Other notable increased expenses for OSC include the higher cost of legal information services (projected 10% increase), the higher cost of mandatory security charges payable to DHS (projected 25% increase), and the higher cost of transit subsidies (projected 42% increase). As the agency operates with more employees than it has in the past, a marginal increase in expenditures for supplies, travel, equipment, and other services can be expected. The agency's outsourced E-travel expenses have also increased.

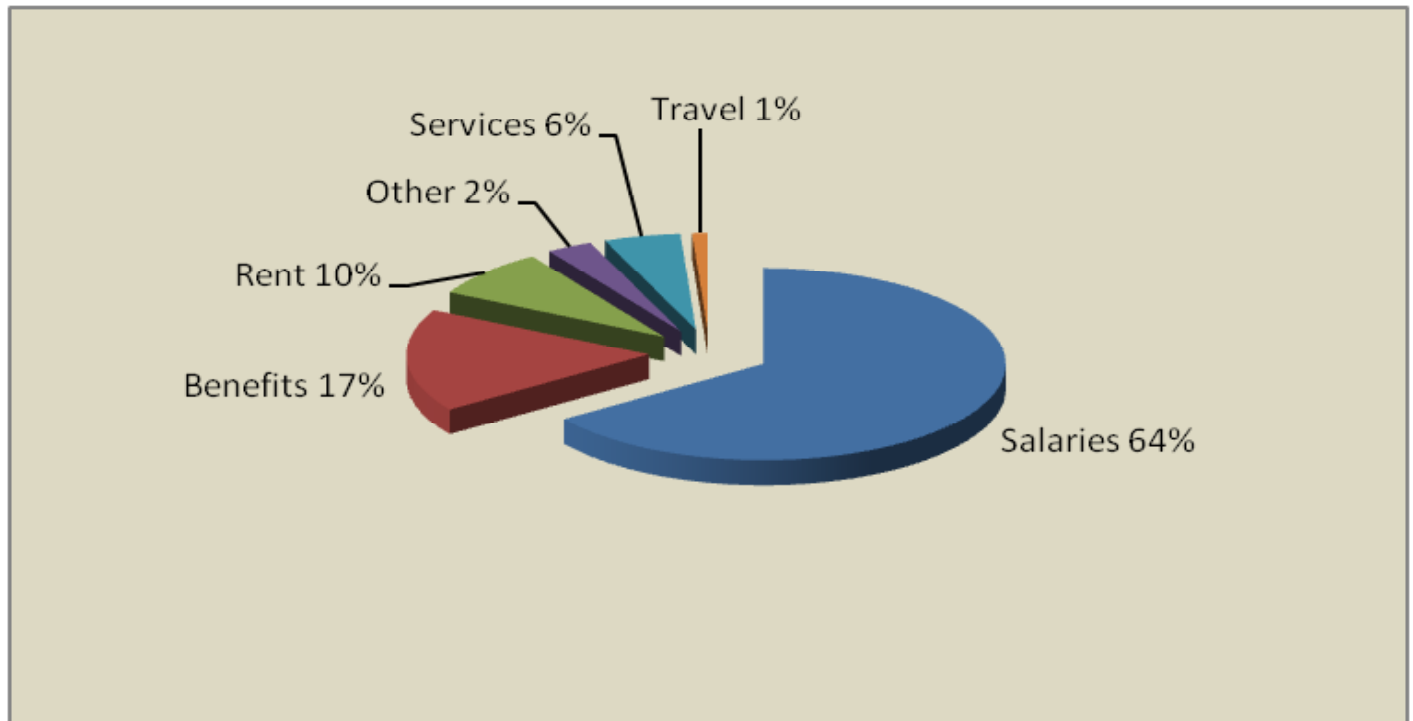
### **Information Technology Necessity:**

OSC needs to convert its ten-year old case tracking system to a web-based platform. OSC will work to accomplish as much as possible towards this goal, recognizing that salary, benefits and rent expenses for 111 FTE during FY 2010 are the highest priority.



### Components of Budget Request:

The following chart estimates how the FY 2010 request will be distributed on a percentage basis:



Field office expenditures are almost entirely driven by the number of employees in the field offices. Below is a list of approximate staffing levels by field office. Staffing levels vary during the year due to hires, departures, and the management needs of the agency.

Headquarters	approximately 75-78 employees
Midwest Field Office	approximately 7 employees
Dallas Field office	approximately 8-9 employees
Oakland Field Office	approximately 9-10 employees
Washington DC Field Office	approximately 10-12 employees

### FY 2010 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 2010, see Table 9 below.

**Table 9**

<b>U.S. Office of Special Counsel</b>			
<b>Budget Object Classification of Obligations: FY2008-FY2010</b>			
<b>(in thousands of dollars)</b>			
Budget Object Classification of Obligations	FY2008 Actual	FY2009 (projected)	FY2010 (projected)
11.0 Personnel compensation	10,826	11,225	11,840
12.0 Civilian personnel benefits	2,924	3,160	3,173
13.0 Benefits to former personnel	0	15	0
21.0 Travel and transportation of persons	230	233	135
22.0 Transportation of things	20	21	21
23.1 Rental payments to GSA	1,135	1,228	1,872
23.3 Communications, utilities and misc. charges	112	112	110
24.0 Printing and reproduction	20	21	20
25.0 Other services	1,588	1,150	1,076
26.0 Supplies and materials	122	111	108
31.0 Equipment	379	192	140
32.0 Land & Structures	76	0	0
42.0 Tort Claims	0	0	0
99.9 Total	17,433	17,468	18,495

Notes concerning detailed BOC line items:

Object Class 12.0 Civilian Personnel Benefits: This category normally includes the agency's expanded Student Loan Repayment / Employee Retention Program, as well as transit subsidies. But in FY 2010, funds for this program have been redirected towards salaries of the agency's 111 FTE.

Object Class 23.1 Rental Payments to GSA: The increase in this category reflects the expiration of the agency's lease in October of 2009. Due to higher rental prices for new leases in the DC area, GSA estimates that total agency rent will be approximately 1.872M for FY2010. If OSC relocates to another office space in DC due to the results of the space competition, an additional \$1M-1.5M will likely be required for the move and the build-out.

Object Class 25.0 Other Services: Costs in this BOC are expected to reduce during FY2010. While costs of outsourced accounting services, financial systems, payroll services, Westlaw legal information services, Federal Protective Services, travel services, and software services will increase, it is likely that there will be no Special Task Force for high level Hatch Act investigations in existence.

**Table 10**

<b>Analysis of Resources: FY2008 - FY2010 (in thousands of dollars)</b>			
<b>Description</b>	<b>FY2008 (Actual)</b>	<b>FY2009 (projected)</b>	<b>FY2010 (projected)</b>
Budget authority	17,468	17,468	18,495
Outlays	15,881	16,516	17,487
Approximate full-time equivalent employment (FTE) work years	107	111	111

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

### **Investigation and Prosecution of Prohibited Personnel Practices**

Unlike many other investigative entities or agencies, OSC must, as a general rule, conduct an inquiry after receipt of complaints alleging the commission of a prohibited personnel practice.<sup>2</sup> The nature of the inquiry ranges from a screening analysis by the CEU to an IPD field investigation. Complaints received by OSC can and often do involve multiple allegations, some of which can involve different prohibited personnel practices. In all such matters, an OSC inquiry requires the review of, and a legal determination about, each allegation and 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 all matters stating a potentially valid claim to the IPD for further investigation. All such matters are reviewed first by the ADR Unit.

In selected cases that have been referred for further investigation, a trained OSC ADR specialist contacts the complainant and the employing agency to invite them to participate in the agency'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 for further investigation, which would have been the normal course of action had the parties not attempted mediation.

The IPD conducts investigations to review pertinent records and to interview complainants and witnesses with knowledge of the matters alleged. Matters undergo legal review and analysis to determine whether the matter warrants corrective action, disciplinary action, or both.

If OSC believes a prohibited personnel practice has been committed and initiates discussions with an agency, the matter is often resolved through negotiation. Before OSC may initiate an enforcement proceeding seeking corrective action (relief intended to make an aggrieved employee whole) at the MSPB, the Special Counsel must make a formal request to the agency involved, reporting on its findings and recommendations. Only when the agency has had a reasonable period of time to take corrective action and fails to do so, may OSC proceed to petition the MSPB for corrective action. When an agency refuses to grant appropriate corrective action, OSC generally proceeds immediately to file a complaint with the MSPB. 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. Should the agency agree to take appropriate disciplinary action on its own initiative, then the matter can be settled without resort to an MSPB proceeding.

In addition to rectifying the matter at issue, OSC litigation before the MSPB – whether by enforcement actions seeking to obtain corrective and/or disciplinary action, or by intervention or other participation in matters filed by others – often has the additional benefit of clarifying and expanding existing law. It also brings greater public attention to OSC's mission and work, a factor likely to increase the deterrent effect of its efforts.

For FY 2008 OSC received 3,116 new matters, including PPP, Hatch Act, and Disclosure matters (see Table 1).

## Resource Estimates

During FY2009 the Investigation and Prosecution of Prohibited Personnel Practices will use approximately 55 FTE at a cost of approximately \$8,530,000. During FY 2010, we estimate the cost of the program will be approximately \$9,375,000 with 57 FTE.

**Table 1**

<b>Breakdown of Matters<sup>a</sup> Pending and Completed FY 2005 to FY 2008</b>				
	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
Matters pending at beginning of fiscal year	778	777	667	698
New matters received	2,684	2,718	2,880	3,116
Matters closed	2,685	2,814	2,842	2,875
Matters pending at end of fiscal year	777	681	698	937

<sup>a</sup> The term “matters” in this table includes Prohibited Personnel Practice complaints (including Transportation Security Administration matters), Hatch Act complaints, whistleblower disclosures, and USERRA cases.

OSC’s largest program is devoted to the processing of PPP complaints. Of the total 3,116 new matters OSC received during FY 2008, 2,089 or 67% were new PPP complaints (see Table 2).

**Table 2**

<b>Summary of Prohibited Personnel Practice (PPP) Complaints Activity – Receipts and Processing</b>					
		<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
Pending complaints carried over from previous fiscal year		524	521	387	358
New complaints received (Intake Unit)		1,771	1,805	1,927	2,089
Total complaints:		2,295	2,326	1,967	2,447
Complaints referred for field investigation		198	143	125	135
Complaints processed and closed		1,774	1,930	1,953	1,971
Processing Times	< 240 days	1,198	1,693	1,832	1,889
	> 240 days	576	237	121	80
Percentage processed in under 240 days		67.5%	88%	94%	95%

Table 3 below provides information regarding the numbers of corrective actions obtained in Prohibited Personnel Practice cases.

**Table 3**

<b>Summary of Prohibited Personnel Practice Matters Activity – Favorable Actions</b>		<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
Total favorable actions obtained <sup>a</sup> (all prohibited personnel practices)	# of actions	45	52	29	62
	# of matters	45	48	29	33
Favorable actions obtained (reprisal for whistleblowing)	# of actions	37	40	21	44
	# of matters	37	37	21	20
Stays negotiated with agencies <sup>b</sup>		3	8	4	2
Stays obtained from Merit Systems Protection Board		1	1	3	0
Disciplinary actions negotiated with agencies		3	4	5	8
Corrective action complaints filed with the Board		1	1	1	1
Disciplinary actions obtained from the Board		1	0	0	0

<sup>a</sup> The purpose of this breakout is to show the number of favorable actions obtained, and the number of matters involved. It is possible for a matter (case) to have more than one action (favorable outcome).

<sup>b</sup> Stays and disciplinary actions listed in this table (except for disciplinary actions obtained by OSC from the Board) are included in the totals shown in the first two rows above, but are broken out here for further information.

### **Alternative Dispute Resolution**

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. Once a case has been identified as mediation appropriate, OSC Alternative Dispute Resolution Specialist contacts the parties to discuss the ADR Program. “Pre-mediation” discussions are designed to help the parties form realistic expectations and well-defined objectives regarding the mediation process.

During fiscal year 2008, the number of agencies which accepted initial mediation increased to 94% and there were eight successfully mediated resolutions (see Table 4).

**Table 4**

<b>Summary of Prohibited Personnel Practice Complaints Activity – Mediation Program</b>		<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
Matters identified before investigation as mediation-appropriate		22	52	38	31
Initial acceptance rates by parties	Complainants	27%	83%	71%	54%
	Agencies	22%	59%	59%	94%
Mediated and other resolutions <sup>a</sup>		5	11	10	8
Resolution rate – OSC mediation program		100%	55%	50%	50%

<sup>a</sup> Included in this category are complaints that entered the initial OSC mediation process, and were then resolved through withdrawal of the complaint, or through mediation by an agency other than OSC.

Mediation settlement outcomes in OSC’s Mediation Program vary, depending on the interests of the parties. Monetary recovery includes retroactive promotions, attorney fees, and lump sum payments. In addition to monetary recovery, the benefits received by complainants in ADR include revised performance appraisals, reinstatement of employment, and transfers to better working environments.

## Goals and Results - Prohibited Personnel Practices

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 operational goals supporting this strategic objective.

<b>Goal 1: TO PROTECT THE MERIT SYSTEM THROUGH TIMELY CASE PROCESSING</b>	
<b>PPP Enforcement Mission</b>	<b>PROHIBITED PERSONNEL PRACTICES CASES</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: Percentage of cases processed in less than 240 days.</b>
<b>FY 2006 TARGET</b>	85%
<b>FY 2006 RESULTS</b>	89%
<b>FY 2007 TARGET</b>	92%
<b>FY 2007 RESULTS</b>	94%
<b>FY 2008 TARGET</b>	92%
<b>FY 2008 RESULTS</b>	95%
<b>FY 2009 TARGET</b>	92%
<b>FY 2009 RESULTS</b>	
<b>FY 2010 TARGET</b>	94%
<b>FY 2010 RESULTS</b>	

OSC achieved its timeliness target in FY 2008. Therefore, for FY 2010 we are again raising the target even though many investigations take longer than 240 days due to factors outside of OSC's control, such as extensions of time requested by the agency under investigation, and the timeframes associated with litigation. To set the target at or close to 100% would carry an implicit assumption that OSC should not litigate cases and should try to limit the number of cases receiving full investigations. Accepting either assumption would undercut the agency's mission to investigate and prosecute occurrences of Prohibited Personnel Practices.



<b>Goal 2: TO PROMOTE THE MERIT SYSTEM THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS</b>	
<b>PPP Enforcement Mission</b>	<b>Prohibited Personnel Practices Cases</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# successful mediations + # of settlements achieved + # of successful litigations) / (# meritorious cases)</b>
<b>FY 2006 TARGET</b>	99%
<b>FY 2006 RESULTS</b>	100%
<b>FY 2007 TARGET</b>	99%
<b>FY 2007 RESULTS</b>	100%
<b>FY 2008 TARGET</b>	100%
<b>FY 2008 RESULTS</b>	100%
<b>FY 2009 TARGET</b>	100%
<b>FY 2009 RESULTS</b>	
<b>FY 2010 TARGET</b>	100%
<b>FY 2010 RESULTS</b>	

During FY 2008, OSC did not lose any cases this year in PPP litigation before the board. Most meritorious cases do not reach the litigation stage, because an agency will normally settle the matter when OSC outlines the nature of the prohibited personnel practices that have been committed.

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>	
<b>PPP Enforcement Mission</b>	<b>PROHIBITED PERSONNEL PRACTICES CASES</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: # of new Federal agencies certified in the 2302 (c) Program by OSC.</b>
<b>FY 2006 TARGET</b>	5
<b>FY 2006 RESULTS</b>	6
<b>FY 2007 TARGET</b>	5
<b>FY 2007 RESULTS</b>	3
<b>FY 2008 TARGET</b>	5
<b>FY 2008 RESULTS</b>	5
<b>FY 2009 TARGET</b>	5
<b>FY 2009 RESULTS</b>	
<b>FY 2010 TARGET</b>	5
<b>FY 2010 RESULTS</b>	

## **Hatch Act Enforcement Program**

OSC is also responsible for enforcing the Hatch Act, including investigating and prosecuting complaints alleging violations of the Act, and providing advisory opinions on the Act's requirements. The Hatch Act Unit is responsible for a nationwide program that provides legal advice on the Hatch Act to federal, state and local employees and the public at large. Specifically, the Hatch Act Unit has the unique responsibility of providing Hatch Act information and legal advice to White House staff, Congressional staff, the national press, senior management officials throughout the federal government, and state and local government officials. The Hatch Act Unit provides all of OSC's advisory opinions. When provided to individuals, the advisory opinions enable them to determine whether they are covered by the Act, and whether their contemplated activities are permitted under the Act.

The Hatch Act Unit also enforces compliance with the Act by receiving complaints alleging Hatch Act violations, conducting preliminary inquiries into complaint allegations and, (where warranted) further investigating allegations or referring the complaints to OSC's IPD (for further investigation). Depending on the severity of the violation, the Hatch Act Unit will either issue a warning letter to the employee, attempt to informally resolve the violation, prosecute the case before the MSPB or send it to the IPD to prosecute before the MSPB.

A string of Hatch Act cases involving high-profile employees over the last three years has resulted in significant national press coverage. There is now a very heightened awareness of the Hatch Act among Federal employees. In FY 2008, the unit received an all time high of 445 complaints, an increase of 58% over FY 2007. In FY 2008, OSC's Hatch Act Unit achieved 32 corrective actions, including 13 withdrawals from partisan races and 17 resignations from covered employment (see Table 5).

To further its advisory role, the Hatch Act Unit is very active in OSC's outreach program; the unit conducted approximately 60 outreach presentations in FY2008 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. Also, the unit attempted to informally resolve as many ongoing Hatch Act violations as possible without resorting to litigation. Advisories concerning partisan activity surrounding upcoming state and local elections have accounted for a fair amount of OSC's work this fiscal year.

### **Resource estimates:**

During FY 2009, the Hatch Enforcement Program (including the Special Task Force) will use approximately 12.5 FTE at a cost of approximately \$1,938,000. During FY 2010, we estimate the cost of this program to be \$1,891,000 for 11.5 FTE. The cost is projected to be lower in FY 2010 because the work of the Special Task Force will be complete and the detailed FTEs will have returned to their original units. However, due to the extremely high level of Hatch Act cases, OSC is placing more permanent resources into the Hatch Act Unit, increasing it almost to the same size as when the Special Task Force existed.

## Task Force Investigations

In the spring of 2007, the Special Counsel created a new task force to investigate numerous allegations that high level agency officials may have violated the Hatch Act or other civil service laws. Specifically, the task force is investigating numerous allegations that certain agency officials may have encouraged or allowed partisan political forces to improperly influence government decisions. Among the allegations that the task force is currently investigating are those regarding certain political briefings given by the White House Office of Political Affairs to political appointees throughout the federal government and various hiring practices at the Justice Department. This task force is working diligently to finish its investigations during the summer of FY 2009.

**Table 5**

<b>Summary of Hatch Act Advisory Opinion and Complaint Activity</b>		<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
Advisory opinions issued		2,558	3,004	2,598	3,991
New advisory requests received (written)		191	237	194	292
New complaints received		245	299	282	445
Warning letters issued		87	76	68	70
Complaints processed and closed in fiscal year		310	266	252	264
Corrective actions taken by recipients of cure letters:	Withdrawal from partisan races	4	9	18	13
	Resignation from covered employment	10	22	6	17
	Other:	3	2	1	2
	Total:	17	33	25	32
Disciplinary action complaints filed with the Merit Systems Protection Board		11	6	1	3
Disciplinary actions obtained (through negotiation or ordered by the Board)		8	8	0	3
Complaints pending at end of fiscal year		79	112	142	320

## Goals and Results - Hatch Act Program

OSC's Strategic Objective 2 is to protect the Merit System and promote justice in the Federal workforce by enforcing the Hatch Act. The tables below describe the three operational goals supporting this strategic objective.

<b>Goal 1: TO DEFEND THE MERIT SYSTEM BY ENFORCING THE HATCH ACT – THROUGH TIMELY CASE PROCESSING</b>			
<b>HATCH ACT MISSION</b>	<b>HATCH ACT WRITTEN ADVISORY OPINIONS</b>	<b>HATCH ACT ORAL &amp; EMAIL ADVISORY OPINIONS</b>	<b>HATCH ACT COMPLAINTS</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: Percentage of formal written advisory opinions issued in less than 120 days.</b>	<b>Indicator B: Percentage of oral and e-mail advisory opinions issued in less than five business days</b>	<b>Indicator C: Percentage of matters resolved in less than 365 days.</b>
<b>FY 2006 TARGET</b>	75%	99%	60%
<b>FY 2006 RESULTS</b>	93%	100%	84%
<b>FY 2007 TARGET</b>	80%	99%	70%
<b>FY 2007 RESULTS</b>	91%	99%	92%
<b>FY 2008 TARGET</b>	85%	99%	80%
<b>FY 2008 RESULTS</b>	83%	100% Oral 95% Email	88%
<b>FY 2009 TARGET</b>	90%	99% Oral 95% Email	85%
<b>FY 2009 RESULTS</b>			
<b>FY 2010 TARGET</b>	90%	99% Oral 95% Email	85%
<b>FY 2010 RESULTS</b>			

Indicator A: OSC came close to meeting its timeliness goal for formal advisory opinions during FY 2008. The election year increases in Hatch Act complaints received, oral and email advisories requested, and written advisories requested were even larger than anticipated. These increases made it nearly impossible to meet the various timeliness targets, despite tremendous effort to do so.

Indicator B: OSC always issued oral advisory opinions within five business days. Due to the volume of work and resource allocations, there were times when employees were unable to issue every email advisory within five business days.

Indicator C: OSC met its target for percent of Hatch matters resolved in less than 365 days. This is remarkable, given the size of the election year spike. 445 complaints were received, 146 more than the previous high during any fiscal year.

<b>Goal 2: TO PROMOTE THE MERIT SYSTEM THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS</b>	
<b>HATCH ACT MISSION</b>	<b>HATCH ACT CASES</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: % favorable outcomes in meritorious cases</b>
<b>FY 2006 TARGET</b>	90%
<b>FY 2006 RESULTS</b>	97%
<b>FY 2007 TARGET</b>	90%
<b>FY 2007 RESULTS</b>	97%
<b>FY 2008 TARGET</b>	97%
<b>FY 2008 RESULTS</b>	96%
<b>FY 2009 TARGET</b>	97%
<b>FY 2009 RESULTS</b>	
<b>FY 2010 TARGET</b>	97%
<b>FY 2010 RESULTS</b>	

OSC's Hatch Act Unit was very close to its target of 97% favorable outcomes. There were two cases in which the unit was not successful.

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>		
<b>HATCH ACT MISSION</b>	<b>HATCH ACT OUTREACH VISITS</b>	<b>HATCH ACT SECTION OF OSC WEBSITE</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: (# of HA trainings and outreaches given) / (# of invitations to provide HA training or outreach, where the inviter sponsors OSC)</b>	<b>Indicator B: Number of new advisory complex opinions added every month to the website.</b>
<b>FY 2006 TARGET</b>	90%	One
<b>FY 2006 RESULTS</b>	96%	One
<b>FY 2007 TARGET</b>	90%	One
<b>FY 2007 RESULTS</b>	100%	One
<b>FY 2008 TARGET</b>	95%	One
<b>FY 2008 RESULTS</b>	98%	One
<b>FY 2009 TARGET</b>	95%	One
<b>FY 2009 RESULTS</b>		
<b>FY 2010 TARGET</b>	95%	One
<b>FY 2010 RESULTS</b>		

Indicator A: OSC's Hatch Act Unit only declined one request for outreach this fiscal year, despite the tremendous increase in workload.

## Whistleblower Disclosure Channel Program

In addition to its investigative and prosecutorial mission, the 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. At present, the Disclosure Unit staff is comprised of the Chief, nine attorneys and one paralegal. The Disclosure Unit is responsible for reviewing the information submitted by whistleblowers, and advising the Special Counsel whether it shows that there is a substantial likelihood that the type of wrongdoing described in § 1213(a) has occurred or is occurring. Where a substantial likelihood determination is made, the Special Counsel must transmit the disclosure to the head of the relevant agency for action. The agency is required to conduct an investigation and submit a report to OSC describing the results of the investigation and the steps taken in response to the investigative findings. 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.

In the Disclosure Unit, 530 new matters were received in FY 2008, a 10% increase over the previous fiscal year. During FY 2008, the unit referred 40 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 determine whether it contains the information required by statute, its findings appear reasonable, and to prepare any comments the Special Counsel may have on the report.

This year, for the sake of brevity, we are not including a representative sample of cases that have been referred by the Special Counsel to the heads of the agencies pursuant to 5 U.S.C. § 1213(c) and closed after receipt and review of the agency report. We are also not including summaries of cases that are presently under investigation by agency heads, though all of these summaries are available. In many cases, OSC's efforts have resulted in significant media coverage and reform efforts.



**Table 6**

<b>Summary of Whistleblower Disclosure Activity – Receipts and Dispositions<sup>a</sup></b>		<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
Pending disclosures carried over from previous fiscal year		98	110	69	84
New disclosures received		485	435	482	530
Total disclosures		583	545	599	614
Disclosures referred to agency heads for investigation and report		19	24	42	40
Referrals to Agency IGs		14	10	11	9
Agency head reports sent to President and Congress		16	24	20	25
Results of agency investigations and reports	Disclosures substantiated in whole or in part	16	21	19	22
	Disclosures unsubstantiated	0	3	1	3
Disclosures processed	In more than 15 days	237	275	182	232
	In less than 15 days	236	203	285	256
Percentage of disclosures processed in less than 15 days		50%	42%	61%	52%
Disclosures processed and closed		473	478	467	488

<sup>a</sup> It should be noted that many disclosures contain more than one type of allegation. This table, however, records all allegations received in a whistleblower disclosure as a single matter.

### **Resource Estimates:**

During FY 2009, the Whistleblower Disclosure Unit will use approximately 10.5 FTE at a cost of \$1,626,000. During FY 2010, we estimate the cost of the program will be \$1,727,000 with no increase in FTE.

### **Goals and Results - Whistleblower Disclosure**

OSC's Strategic Objective 3 is to promote public safety and efficiency through acting as a channel for whistleblowers in the Federal workforce to disclose information. The following tables below describe the two operational goals supporting this strategic objective.

<b>Goal 1: TO RECEIVE AND RESOLVE WHISTLEBLOWER DISCLOSURES WITH TIMELY PROCESSING</b>	
<b>WHISTLEBLOWER DISCLOSURE MISSION</b>	<b>DISCLOSURES</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: Percentage of disclosures resolved within the statutory 15 day time frame</b>
<b>FY 2006 TARGET</b>	50%
<b>FY 2006 RESULTS</b>	42%
<b>FY 2007 TARGET</b>	50%
<b>FY 2007 RESULTS</b>	61%
<b>FY 2008 TARGET</b>	50%
<b>FY 2008 RESULTS</b>	52%
<b>FY 2009 TARGET</b>	50%
<b>FY 2009 RESULTS</b>	
<b>FY 2010 TARGET</b>	50%
<b>FY 2010 RESULTS</b>	

Through tremendous effort, OSC's Disclosure Unit achieved its target of 50% during FY 2008.

<b>Goal 2: TO PROMOTE THE PUBLIC GOOD THROUGH THE QUALITY OF DETERMINATIONS AND REFERRALS</b>	
<b>WHISTLEBLOWER DISCLOSURE MISSION</b>	<b>DISCLOSURES</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: % Percentage of disclosures referred to agency head, pursuant to 5 U.S.C. § 1213, or under the informal IG referral process.</b>
<b>FY 2006 TARGET</b>	7%
<b>FY 2006 RESULTS</b>	8%
<b>FY 2007 TARGET</b>	7%
<b>FY 2007 RESULTS</b>	10%
<b>FY 2008 TARGET</b>	7%
<b>FY 2008 RESULTS</b>	6%
<b>FY 2009 TARGET</b>	7%
<b>FY 2009 RESULTS</b>	
<b>FY 2010 TARGET</b>	7%
<b>FY 2010 RESULTS</b>	

During FY 2008, the overall number of disclosures received by the agency rose to 530 from 482 in FY 2007. The number of referrals to agency heads and IGs dropped slightly. Therefore the percentage of disclosures referred dropped to 6%. However, it is important to note that the quality of the incoming disclosures is the major driver of the percent referred to agency heads, and always will be.

## USERRA Enforcement and Prosecution Program

With the passage of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Congress expanded OSC's role as protector of the federal merit system. USERRA is the law that protects the reemployment rights of persons who are absent from their civilian employment due to the performance of military duties. USERRA also makes it illegal for an employer to deny any benefit of employment on the basis of past, current, or future performance of military service.

As special prosecutor, OSC objectively reviews the facts and laws applicable to each complaint. Where the OSC is satisfied that the claimant is entitled to relief, it may exercise its prosecutorial authority and represent the claimant before the MSPB and, if required, the U.S. Court of Appeals for the Federal Circuit.

**Table 7**

<b>Summary of USERRA Referral Activity</b>				
	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
Pending referrals carried over from previous fiscal year	12	6	3	3
Referrals received from DOL during fiscal year	30	11	4	15
Pending referrals closed	36	14	4	13
Pending referrals at the end of the fiscal year	6	3	3	5
Closed cases where corrective action was obtained	6	3	0	2
Closed cases where no corrective action was obtained	25	11	4	11
Closed cases referred for litigation	n/a	n/a	4	0
Litigation closed; no corrective action obtained	2	1	0	1
Litigation closed; corrective action obtained	3	1	2	0
Litigation pending	n/a	2	1	1

## USERRA Demonstration Project

In early 2005, OSC's role in enforcing USERRA expanded. The Veterans Benefits Improvement Act of 2004 (VBIA), set up a Demonstration Project giving OSC, rather than the Department of Labor's Veterans Employment and Training Service (VETS), the exclusive authority to investigate federal sector USERRA claims brought by persons whose social security number ended in an odd-numbered digit. Under the project, OSC also received and investigated all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC had jurisdiction regardless of the person's social security number. The original term of the three-year demonstration project ended on September 30, 2007, but Congress extended the program through the continuing resolutions until Dec 31, 2007.

OSC's USERRA Unit attained exemplary results in the demonstration project cases through its aggressive enforcement of service members' employment and reemployment rights. GAO was tasked with comparing the performance of OSC and DOL under the demonstration project, but instead focused on the two agencies' case tracking systems. OSC has an excellent case tracking system, but much more importantly for the veterans with claims, OSC achieved an outstanding rate of corrective action on behalf of veterans.

**Table 8**

<b>Summary of USERRA Demonstration Project Activity</b>				
	<b>FY2005</b>	<b>FY 2006</b>	<b>FY2007</b>	<b>FY2008</b>
Pending cases carried over from previous fiscal year	0	54	95	115
Cases opened	111	168	142	37
Cases closed	57	126	123	139
Cases pending at the end of the fiscal year	54	96	114	13
Closed cases where corrective action was obtained	16	35	43	26
Closed cases where no corrective action was obtained	38	91	80	113
Closed cases referred for litigation	0	n/a	0	1

**Corrective Action Results:**

In FY 2008, OSC’s USERRA Unit once again achieved impressive results on behalf of military service members. OSC’s overall corrective action rate for the Demonstration Project is a remarkable 27% of the USERRA cases it investigated from FY 2005 to FY 2008 (see Table 8).

**Resource Estimates:**

During FY 2009, because the demonstration project has ended and the only new cases coming into the USERRA Unit are the referrals from DOL (whereby OSC uses its prosecutorial authority to represent the claimant before the MSPB and, if required, the U.S. Court of Appeals for the Federal Circuit), the unit will use only two FTE at a cost of \$309,000. Projecting the same number of FTE into FY 2010 requires approximately \$329,000.

**Educating the Federal Sector and Preventing Future Violations**

In FY2008, in addition to investigating and favorably resolving service members’ USERRA claims, and litigating important cases, OSC also worked to ensure that the federal government is a “model employer” under USERRA by educating federal agencies about USERRA’s requirements and obtaining “systemic” relief for service members, i.e., changes in agency policies, practices, and procedures that help prevent future violations.

For example, as a direct result of OSC’s efforts, the Office of Personnel Management (OPM) changed a government-wide leave policy for federal civilian employees returning from Reserve and National Guard duty in Iraq and Afghanistan. OPM had previously interpreted an executive order authorizing an additional five days of uncharged leave (excused absence) as applying only to the service member’s first deployment. After a National Guard member brought this policy to OSC’s attention, the Special Counsel wrote a letter to the OPM Administrator requesting a change in policy to allow service members to use the additional five days of leave each time they return from a deployment (not just the first time), given the disruption to their lives and those of their families and the increased incidence of psychological problems, such as post-traumatic stress disorder, associated with multiple deployments. OPM responded favorably and issued new guidance to all federal executive departments and agencies, adopting OSC’s recommendation that the leave be available after each deployment, and also permitting employees who already returned to work to use the additional leave if they have not already done so.

After OSC's inquiry into a case where an employee was improperly denied leave to perform military service, the subject federal agency reminded its personnel that employees are to be allowed to depart for military duty without exception. The agency also issued a memorandum regarding USERRA and military leave and posted it at all facilities in the employee's region. The employee indicated that, following OSC's involvement, he noticed greater efforts by the agency to recognize and support veterans.

In a similar case involving a different federal agency, after OSC brought the matter to the agency's attention, the agency endeavored to educate its managers about USERRA and military leave, including that supervisors, not employees, are responsible for finding replacement workers when making shift changes due to an employee's military duty. Also, copies of a USERRA informational poster were posted in prominent locations throughout the facility where the employee works.

During the course of another investigation, OSC discovered that an agency had published a regulation permitting an employee's performance rating to be lowered if absent for an extended period of time (i.e., a "default" rating provision). The agency relied on such ratings to determine employee bonuses. While not objectionable in many circumstances, the regulation is inconsistent with USERRA, which requires that employees who perform military service be treated as if they had never left their civilian jobs, and are not to be disadvantaged in such jobs by virtue of their military duty. At OSC's request, the agency sent an e-mail to all employees stating its commitment to USERRA and attaching a copy of the USERRA informational poster. It also agreed that in instances where its internal regulations conflict with USERRA, it will make necessary exceptions to ensure compliance with USERRA. Last, the agency worked to identify all employees who might have been adversely affected by the regulation in question and to take any necessary corrective action.

In FY 2008, OSC continued its education and outreach efforts by conducting USERRA seminars at two national labor and employment conferences and USERRA training for several federal agencies. OSC also maintained e-mail and telephonic hotlines to provide technical assistance to employees and employers with USERRA questions.

### **Goals and Results – USERRA Enforcement and Prosecution Program**

OSC's Strategic Objective 4 is to protect veterans in the Federal workforce through enforcement of the Uniformed Services Employment and Reemployment Rights Act. The tables below describe the three operational goals supporting this strategic objective. But first, a note of explanation follows on each of the four types of USERRA cases that OSC receives - RE, DP-OD, DP-MX, and DP-TSA:

1. RE Cases: Under USERRA, certain federal sector claims are investigated by U.S. Department of Labor, Veterans' Employment and Training Service (VETS). In the event that VETS is unable to resolve such a claim, a claimant has a right to have his or her claim referred to OSC for a determination on whether OSC will represent the claimant before the MSPB. Such cases are identified by OSC as "RE cases." RE cases have already been investigated by VETS and reviewed by the DOL Office of Regional Solicitor (RSOL). The

USERRA Unit receives the VETS investigative file and a legal memorandum from RSOL indicating whether RSOL recommends that OSC represent the claimant. OSC's USERRA Unit reviews the information and makes a "de novo" determination.

It is to be noted that while RE cases have already been investigated by VETS, OSC has found that: further investigation is often warranted, e.g., key witnesses need interviewing; important documents need to be

obtained; too much time lapses between alleged initial violations and their referral to OSC. In such cases, the USERRA Unit will always contact the agency and relevant witnesses to obtain the information necessary to allow it to make a well-reasoned determination regarding the prosecutorial merit of a given claim.

The need and extent of any supplemental investigation affects the processing time of RE cases and is reflected in the performance indicator.

2. DP-OD cases: Pursuant to the demonstration project established by the Veterans Benefits Improvement Act of 2004 (VBIA), OSC was given the exclusive authority to investigate federal sector USERRA claims brought by persons whose social security number ended in an odd-numbered digit. DP-OD cases are federal sector USERRA claims filed by persons having an odd-numbered social security number. DP-OD cases came from two sources: 1) from VETS, and 2) directly from the claimant. The USERRA Unit conducted an investigation of DP-OD cases and determined whether OSC will represent the claimant in a USERRA action before the MSPB. The performance indicator reflects the time reasonably expected to investigate such cases.

3. DP-MX cases: Under the demonstration project, OSC also investigated all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction regardless of the person's social security number. These are known as "mixed claims." The USERRA Unit conducted an investigation of DP-MX cases and determined whether OSC will represent the claimant in a USERRA or prohibited personnel practice action before the MSPB.

The processing time of DP-MX cases is affected by 1) additional complexity of such cases and 2) the USERRA Unit's adoption of OSC's practice in prohibited personnel practice cases of granting a claimant 13 days to respond to OSC's preliminary determination regarding prohibited personnel practice allegations. The performance indicator incorporates those factors.

4. DP-TSA cases: On June 9, 2005, the MSPB held in *Spain v. Department of Homeland Security* that USERRA does not apply to Transportation Security Administration (TSA) Security Screeners or TSA Supervisory Security Screeners and, therefore, the MSPB does not recognize jurisdiction over such cases. Consequently, OSC is unable to prosecute USERRA actions involving TSA Security Screeners or TSA Supervisory Security Screeners.

Notwithstanding the *Spain* decision, TSA voluntarily permits OSC to investigate USERRA claims and report its findings and recommendations for corrective action to TSA management officials.

The performance indicator for these types of cases reflects the MSPB's decision in the *Spain* case.



<b>Goal 1: TO ENFORCE THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT THROUGH TIMELY CASE PROCESSING</b>				
<b>USERRA MISSION</b>	<b>USERRA A: RE Cases</b>	<b>USERRA B: DP-OD Cases</b>	<b>USERRA C: DP-MX Cases</b>	<b>USERRA D: DP-TSA Cases</b>
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: Average number of days in which the case is settled, closed or a decision to litigate is made.</b>	<b>Indicator A: Average number of days in which the case is settled, closed or a decision to litigate is made.</b>	<b>Indicator A: Average number of days in which the case is settled, closed or a decision to litigate is made.</b>	<b>Indicator A: Average number of days in which a “no merit” determination is made or a request for voluntary corrective action is sent to TSA.</b>
<b>FY 2007 TARGET</b>	75 days	160 days	160 days	160 days
<b>FY 2007 RESULTS</b>	33 days	107 days	171 days	90 days
<b>FY 2008 TARGET</b>	75 days	140 days	160 days	140 days
<b>FY 2008 RESULTS</b>	110 days	204 days	192 days	NA
<b>FY 2009 TARGET</b>	80% in 60 days	NA	NA	NA
<b>FY 2009 RESULTS</b>				
<b>FY 2010 TARGET</b>	80% in 60 days	NA	NA	NA
<b>FY 2010 RESULTS</b>				

Indicator A: Two cases were excluded from this calculation because they do not accurately represent OSC’s average processing times in these matters, and inordinately skew the average if included:

In one case, DOL did not fully investigate or analyze the claimant’s original allegations, and the claimant raised numerous new allegations after his complaint was referred to OSC. Therefore, it was necessary for OSC to do extensive follow-up investigation and analysis to make a determination on the complaint. In theory, DOL investigates all allegations and OSC reviews DOL’s investigative file to make a representation decision. In this matter, OSC also had to conduct its own follow-up investigation, substantially increasing the processing time.

Similarly, in another case, OSC and DOL agreed that DOL would immediately refer this highly complex matter to OSC without investigating it, primarily because the claimant’s USERRA allegations were related to several Prohibited Personnel Practice (PPP) allegations, over which OSC has exclusive jurisdiction. Thus, OSC conducted its own investigation and analysis of all allegations together (USERRA & PPP), significantly adding to the processing time.



In most cases, the division between investigative (DOL) and prosecutorial (OSC) responsibilities is clearer, but the two cases described above presented unusual circumstances that justify their exclusion from this calculation.

Beginning in FY 2009, we have changed the target for Indicator A to be “80% in 60 days” for RE cases, due to the new statutory requirement for these types of cases.

Indicators B & C: OSC’s USERRA Unit missed its aggressive FY 2008 targets for DP-OD and DP-MX cases. The Demonstration Project finished at the end of 2007, but OSC closed a number of the most complex cases in FY 2008. These were very complex cases from previous fiscal years and therefore raised the overall average number of days.

<b>Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS</b>		
<b>USERRA MISSION</b>	<b>USERRA CASES</b>	
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# successful mediations + # of settlements achieved + # of successful litigations) / (# meritorious cases)</b>	<b>Indicator B: # of “test cases” filed</b>
<b>FY 2006 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2006 RESULTS</b>	100%	0
<b>FY 2007 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2007 RESULTS</b>	100%	1
<b>FY 2008 TARGET</b>	95%	Inappropriate to set a specific target
<b>FY 2008 RESULTS</b>	97%	1
<b>FY 2009 TARGET</b>	99%	Inappropriate to set a specific target
<b>FY 2009 RESULTS</b>		
<b>FY 2010 TARGET</b>	90%	Inappropriate to set a specific target
<b>FY 2010 RESULTS</b>		

Indicator A: OSC was successful in 28 out of 29 meritorious USERRA cases during FY 2008, which is 96.6%.

Indicator B: There was one test case filed that falls in this category.

<b>Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES</b>		
<b>USERRA MISSION</b>	<b>USERRA CASES</b>	
<b>PERFORMANCE INDICATORS</b>	<b>Indicator A: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where inviting agency sponsors OSC})</b>	<b>Indicator B: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where OSC pays expenses})</b>
<b>FY 2006 TARGET</b>	90%	50%
<b>FY 2006 RESULTS</b>	NA	100%
<b>FY 2007 TARGET</b>	90%	50%
<b>FY 2007 RESULTS</b>	100%	100%
<b>FY 2008 TARGET</b>	90%	75%
<b>FY 2008 RESULTS</b>	100%	NA
<b>FY 2009 TARGET</b>	90%	75%
<b>FY 2009 RESULTS</b>		
<b>FY 2010 TARGET</b>	100%	75%
<b>FY 2010 RESULTS</b>		

Five outreaches were requested. All five were accomplished by the USERRA Unit.

## **OSC and the Future of USERRA Enforcement**

The 35-month Demonstration Project created by the Veterans Benefits Improvement Act of 2004 terminated at the end of 2007. There are several different scenarios in which OSC could be called upon to perform investigatory USERRA responsibilities on a permanent basis for the benefit of those who serve, or have served, the United States Armed Forces. Each of the scenarios would have a different cost structure for OSC. Rather than present various scenarios and their associated costs here, we will simply make four points:

1. **Technical Expertise:** OSC has substantial in-house technical USERRA expertise from its longstanding role as federal sector USERRA prosecutor and its administration of the Demonstration Project. This expertise resulted in high corrective action rates and quick processing times in those cases for which OSC had responsibility under the Project. Much of the staff that comprised the USERRA Unit during the Demonstration Project remains at OSC and could be quickly called upon to re-join the Unit if necessary. OSC also has a training program in place to train new employees to investigate, analyze, and resolve USERRA cases. Last, other OSC personnel also have extensive investigative and prosecutorial experience that could be brought to bear on any expanded USERRA responsibility.
2. **Management Expertise:** No matter what the requirements would be of an expanded USERRA role for OSC, the agency has the experienced management in place to develop a plan, implement it, and efficiently achieve highly positive results for military service members seeking to enforce their USERRA rights. For example, a career Senior Executive with over 25 years of experience currently oversees the USERRA program. Thus, OSC already has the leadership on staff to effectively manage and administer a larger USERRA program.
3. **Specialized Focus:** OSC's staff specializes in federal personnel law, of which USERRA is a part, and its primary mission and focus is protecting the merit system of federal employment. As under the Demonstration Project, OSC's USERRA Unit would be centralized in one location, with an experienced, specialized group of attorneys and investigators working closely and collaboratively on a daily basis to investigate and resolve USERRA claims. All investigations and determinations would receive legal and supervisory review throughout the process and be reviewed by the USERRA Unit Chief before being finalized, ensuring consistency, quality, and, most importantly, correctness under the law.
4. **Cost Models:** Upon request, OSC can provide further information regarding current or projected future cost structures for any expanded role under USERRA.

## **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 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.

In an effort to assist agencies in meeting the statutory requirement, in FY 2002, OSC designed and created a five step educational program, the 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 obligation. 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 2008, OSC employees spoke at approximately 60 events nationwide, including American Bar Association events, agency training sessions, conferences and meetings. Several OSC employees presented at the Government Ethics Conference this year. Additionally, OSC's Director of Communications was a keynote speaker at the Federal Dispute Resolution Conference in August of 2008.

Finally, OSC has continued its policy of issuing press releases when OSC 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 – MANAGEMENT PERFORMANCE**

### **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 OPM and OMB. OSC has internal accountability systems to ensure effective merit-based human resource management as described below.

OSC uses existing personnel flexibilities and tools, including leave flexibilities, alternative work schedules, and a fairly extensive telework program. In the last two years, OSC has developed and implemented several innovative benefits for its employees, including a successful student loan repayment / employee retention program in which 20 employees participate, and a fitness program for employees. OSC's performance management systems allow managers to differentiate between high and low performers through the use of appropriate incentives and consequences.

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 hiring additional personnel. OSC also has a highly developed cross training program that enables employees to learn new skills and participate in the work of several units. OSC also captures valuable information and ideas of departing employees through extensive exit interviews. This information is used by senior managers to refine and improve work processes.

Performance plans are in place for SES members and managers that link to the agency's mission and to strategic goals that are in place for the individual divisions. OSC also now has measurable finite performance goals in place for each employee.

### **Competitive Sourcing**

OSC is a small agency, with a highly specialized inherently government 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, the position activity total is 10 FTE or less.

OSC has an interagency agreement with the Department of Interior's National Business Center (NBC) to perform the following services: budget accounting and budget execution, accounting services, procurement system hosting, and travel management. OSC will review the NBC interagency agreement semi-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.

### **Improved Financial Performance**

As mentioned above, OSC contracts out certain work under an interagency agreement. OSC had a unique opportunity to participate in the design of the processes used for its accounting, and to design specific customized reports that reflect exactly the information most helpful to OSC in managing its funds. Contracting

these functions out has provided OSC with more specialized expertise at a lower cost than could be accomplished internally. NBC routinely provides expenditure reports to OSC, and provides a detailed financial review every quarter. NBC 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 generally submits a combined Inspector General (IG) Act and Federal Manager's Financial Integrity Act report each October. OSC relies on audits and other reviews of NBC operations by the OIG and the office of the Chief Financial Officer in the National Business Center, as well as information received directly from NBC, for information about any significant issues relating to the services provided to OSC.

Historically, OSC received a waiver from OMB for the requirement to have an audit of the agency's financial statements. Since FY 2004, however, OSC has not received an audit waiver. A competitively selected audit firm evaluated OSC's financial statements for FY 2008. The auditor spent time at OSC headquarters and with the National Business Center personnel in Denver who currently perform the accounting functions for OSC. The audit resulted in an unqualified audit opinion on our annual financial statements, similar to the results of the FY 2004, FY 2005, FY 2006, and FY 2007 audits.

### **Expanded Electronic Government**

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 solicited through the web site. A person can file a Prohibited Personnel Practices complaint online, which is the most common channel for PPP complaints to come into 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 hot lines will find the relevant information on the web site. OSC's web site is linked to FirstGov, as well as other agency web sites, such as those for the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Office of Government Ethics, among many others. OSC's Information Technology Branch (ITB) staff are continually improving OSC's web site. User sessions on OSC's web site have continued to grow. During FY 2008, the total number of user sessions was 826,406.

OSC's Information Technology Branch is working to make OSC more efficient by continually enhancing the capabilities of the Information Technology systems of the agency. For example, a major effort during FY 2009 and FY 2010 will be the upgrading of OSC's case tracking system to become a web-based system. ITB will continue migrating the entire agency to the new standard laptop setup and implementing two factor authentications for local area network access as well as for remote Citrix access. ITB will also migrate Citrix to a 64-bit computing environment, and deploy 64-bit blade servers along with a D2D2T backup solution, which will enable OSC to phase out obsolete backup tape drives. ITB will continue its work to migrate all telecommunication services to GSA Networx and WIT3 contracts. And regarding continuity of operations, ITB will evaluate alternate methodologies to interconnect OSC's headquarters and field offices.

## Appendix

## Statutory Background

OSC was first established on January 1, 1979.<sup>4</sup> From then until 1989, it operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (“the Board”). By law, OSC received and investigated complaints from current and former federal employees, and applicants for federal employment, alleging prohibited personnel practices by federal agencies; provided advice on restrictions imposed by the Hatch Act on political activity by covered federal, state, and local government employees; and received disclosures from federal whistleblowers (current and former employees, and applicants for employment) about wrongdoing in government agencies. The office also enforced restrictions against prohibited personnel practices and political activity by filing, where appropriate, petitions for corrective and/or disciplinary action with the Board.

In 1989, Congress enacted the Whistleblower Protection Act. The law made OSC an independent agency within the Executive Branch, with continued responsibility for the functions described above. It also enhanced protections against reprisal for employees who disclose wrongdoing in the federal government, and strengthened OSC’s ability to enforce those protections.<sup>5</sup>

The Congress passed legislation in 1993 that significantly amended Hatch Act provisions applicable to federal and District of Columbia (D.C.) government employees, and enforced by OSC.<sup>6</sup> Provisions of the act enforced by OSC with respect to certain state and local government employees were unaffected by the 1993 amendments.

In 1994, the Uniformed Services Employment and Reemployment Rights Act became law. It defined employment-related rights of persons in connection with military service, prohibited discrimination against them because of that service, and gave OSC new authority to pursue remedies for violations by federal agencies.<sup>7</sup>

OSC’s 1994 reauthorization act expanded protections for federal employees, and defined new responsibilities for OSC and other federal agencies. It 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, exists, or is to be taken. The act extended the protections of certain legal provisions enforced by OSC to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under these provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the Whistleblower Protection Act, and directed agencies to consult with OSC in that process.<sup>8</sup>

In November of 2001, Congress enacted the Aviation and Transportation Security Act, which created the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the MSPB. 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 MSPB, or for individual right of action (IRA) appeals by security screeners to the MSPB.



## Endnotes

- 1 When the Complaints Examining Unit makes a preliminary determination to close a complaint without further investigation, it must by law provide complainants with a written statement of reasons, to which they may respond. On the basis of the response, if any, the unit decides whether to close the matter, or refer it to the Investigation and Prosecution Division.
- 2 Compare, for example, 5 U.S.C. § 1214(a)(1)(A) (“The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.”) with 5 U.S.C. app. 3, §10(a) (“[E]ach Inspector General ... is authorized— ... (2) to make such investigations and reports relating to the administration of the programs and operations of the [agency] as are, in the judgment of the Inspector General, necessary or desirable[.]”) and § 7(a) (“The Inspector General may receive and investigate complaints or information from an employee of the [agency] concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.”). OSC cannot, however, investigate complaints over which it has no jurisdiction, with the result that some complaints are closed without further action after receipt and review. During FY2004, for example, OSC lacked jurisdiction in 617 (or 31.4%) of the complaints received, leaving 1,347 complaints (69%) in which OSC was required by statute to conduct an inquiry. In addition, discrimination based on race, color, religion, sex, or national origin, age, or handicapping condition is illegal under laws enforced by the Equal Employment Opportunity Commission (EEOC), and is also a prohibited personnel practice under 5 U.S.C. § 2302(b)(1). However, since procedures for investigating discrimination complaints have already been established in the agencies and the EEOC, the Special Counsel will normally avoid duplicating those procedures and will defer to those procedures rather than initiate an independent investigation. See 5 C.F.R. § 1810.1. When a matter is not referred for further investigation, CEU must by law provide complainants with a written statement of reasons, to which they may respond. See 5 U.S.C. § 1214(a)(1)(D). On the basis of the response, if any, CEU decides whether to finalize its preliminary determination to close the matter, or to refer the matter to the Investigation and Prosecution Division.
- 3 Corrective action seeks a remedy for any injury to the individual complaining employee, such as back pay or reinstatement, while disciplinary action seeks to impose discipline on the perpetrator of the PPP.
- 4 Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.
- 5 Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, et seq. The Veterans’ Employment Opportunities Act of 1998 (Public Law No. 103-424) also expanded OSC’s role in protecting veterans. The act made 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 § 2302(b)(11) was re-designated as § 2302(b)(12).)
- 6 Public Law No. 103-424 (1994), codified in various sections of title 5 of the U.S. Code. The provision making federal agencies responsible, in consultation with OSC, for informing their employees of rights and remedies under the Whistleblower Protection Act appears at 5 U.S.C. § 2302(c).
- 7 Public Law 107-71 (2001).
- 8 Unless noted otherwise, all references after this to prohibited personnel practice complaints include complaints alleging other violations of civil service law, rule, or regulation listed at 5 U.S.C. § 1216, except for alleged violations of the Hatch Act.