

**FISCAL YEAR 2011
CONGRESSIONAL BUDGET JUSTIFICATION
AND PERFORMANCE BUDGET GOALS**



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

Contents

Part 1 – Executive Summary	4
OSC’s Mission	4
Summary of Request	4
Continuing Trend of Rising Receipts of Cases	4
Graphical Highlights of OSC’s Operations	5
OSC’s Successes in FY 2009	11
Strategic Objectives	13
OSC Organizational Chart	14
Internal Organization	15
Budget by Program	16
Part 2 – FY 2011 Budget Request – Additional Information	17
Budgetary Factors	17
Components of Budget Request	18
FY 2011 Budget Request by Budget Object Class	19
Budget Table 1 - Budget by Object Class	19
Budget Table 2 - Analysis of Resources	19
Part 3 – Budget Programs and Performance Plan	20
Investigation and Prosecution of Prohibited Personnel Practices	20
Resource Estimates	21
Alternative Dispute Resolution	23
Goals and Results - Prohibited Personnel Practices	24
Hatch Act Enforcement Program	28
Resource Estimates	28
Goals and Results - Hatch Act Program	30
Whistleblower Disclosure Channel Program	33
Resource Estimates	34
Goals and Results - Whistleblower Disclosure Program	34
USERRA Enforcement and Prosecution Program	37
USERRA Demonstration Project	38
Corrective Actions Results	39
Resource Estimates	39
Goals and Results - USERRA Enforcement Program	39
OSC and the Future of USERRA Enforcement	43
OSC’s Outreach Program	44

Part 4 – Management Performance	45
Strategic Management of Human	45
Competitive Sourcing	45
Improved Financial Performance	45
Expanded Electronic Government	46
Appendix	
Statutory Background	48
Endnotes	49

PART 1 – EXECUTIVE SUMMARY

In matters ranging from protecting passengers in the nation's air travel, protecting our borders, rooting out corruption, identifying waste in federal contracting and grants, 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 independent agency in its mission to discover and combat fraud, waste, and abuse of authority. It will send the messages that this agency is important to the healthy functioning of the United States, and that we honor and support 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 responsive assistance to aggrieved federal employees. From FY 2005 through FY 2007, through hard work and diligence, the chronic problem of backlogged Prohibited Personnel Practice cases, Hatch Act cases, and Disclosure Unit cases did not re-surface. In FY 2008 and FY 2009, however, the incoming caseloads increased very dramatically. OSC's streamlined processes continue to contribute to the agency's ability to handle the cases, but the caseloads are so elevated that OSC needs more employees in order to investigate the cases and enforce the laws without case backlogs and lengthy delays.

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 the civilian employment and reemployment rights of military service members under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Summary of Request

OSC is requesting \$19,486,000 in FY 2011. This amount includes funding for the salaries and benefits for 115 FTE (an increase of four FTE) to meet increased caseloads, as well as for the projected salary and rent increases in FY 2011.

Continuing Trend of Rising Receipts of Cases

- Prohibited Personnel Practices – 2463 cases - **up 17.9%** over FY 2008, which was **up 8.4%** over FY 2007,
- Hatch Act cases – 496 cases - **up 11%** over FY 2008, which was **up 58.2%** over FY 2007,
- Whistleblower Disclosures – 724 cases - **up 37%** over FY 2008, which was **up 10.0%** over FY 2007,
- USERRA referral cases – 41 cases – **up 173%** over FY 2008. The new Veterans' Benefits Improvement Act of 2008 (P.L. 110-389) requires action on these referrals within 60 days.

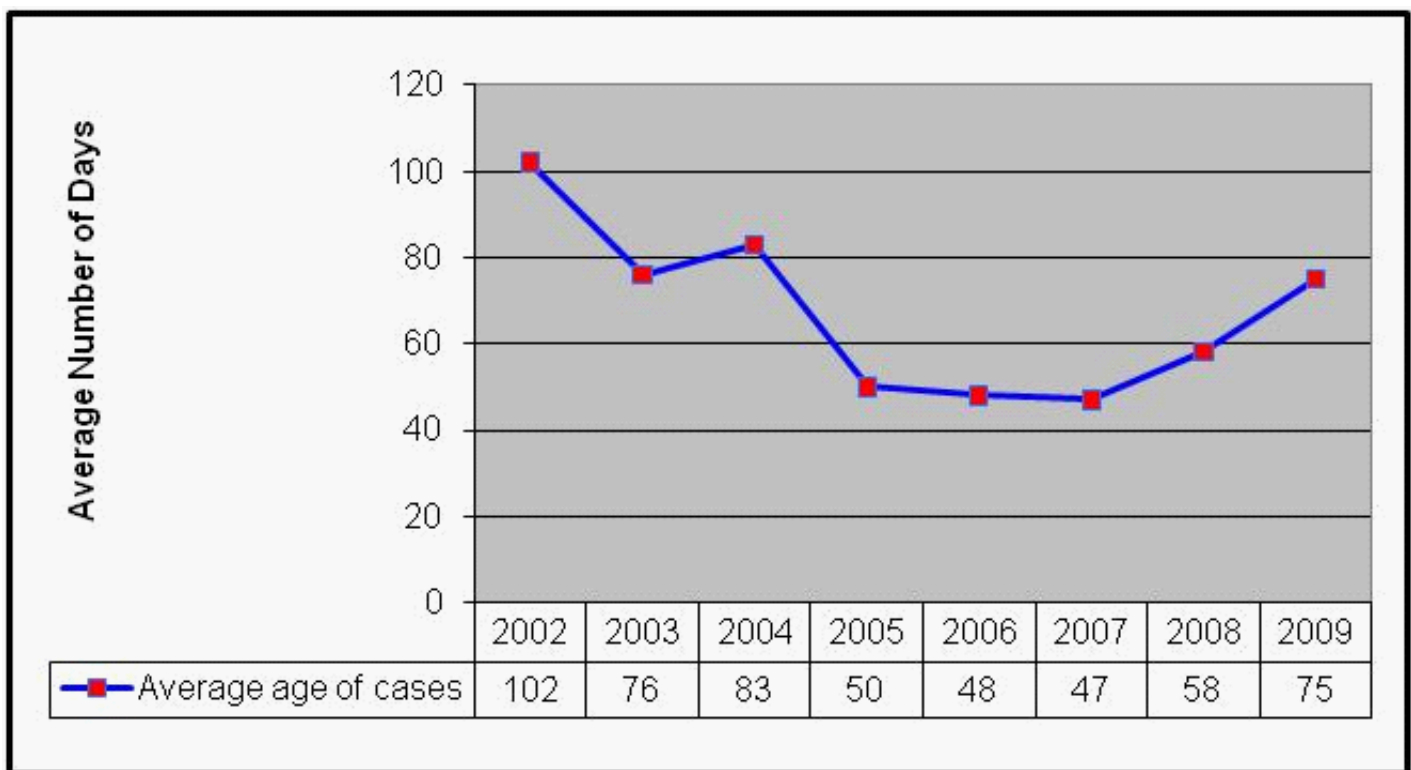
Caseloads are up in each unit, but the increase in Hatch Act cases is the most pronounced. The numbers of

Hatch Act cases received in FY 2008 (446) and FY 2009 (496) are unprecedented. *One might be tempted to think that these large increases in FY 2008 and FY 2009 were due to the presidential election and that the number of complaints will now 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 mid-term election year. During FY 2010, which is also a mid-term election year, we expect continued increases in PPP cases and Whistleblower Disclosures, and we expect to receive over 500 Hatch Act complaints.

Graphical Highlights of OSC's Operations

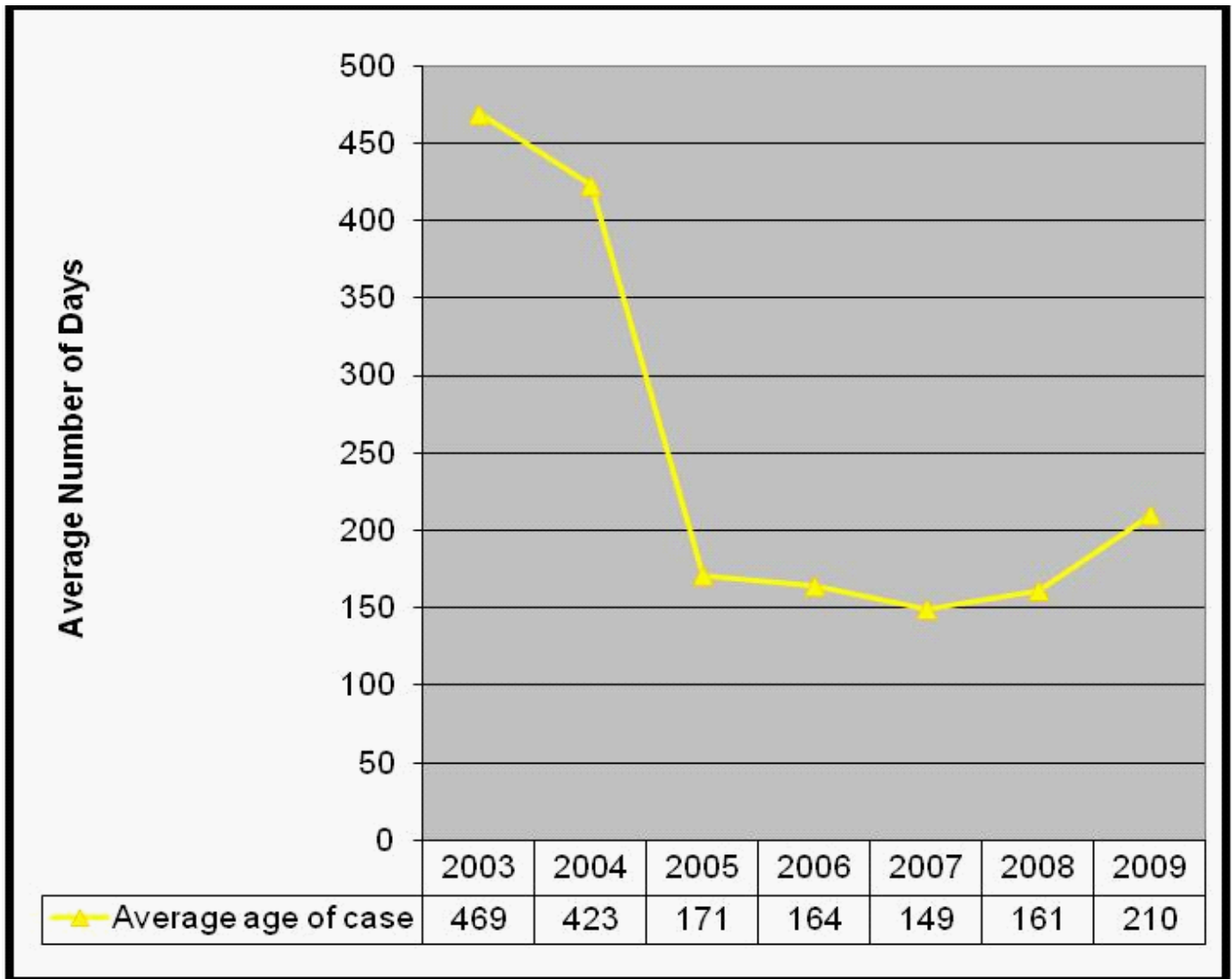
In order to bring justice swiftly to those Federal employees served by OSC, the agency tries to reach the meritorious cases quickly, seeking settlements or initiating prosecutions before evidence becomes stale and witnesses' memories fade.

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



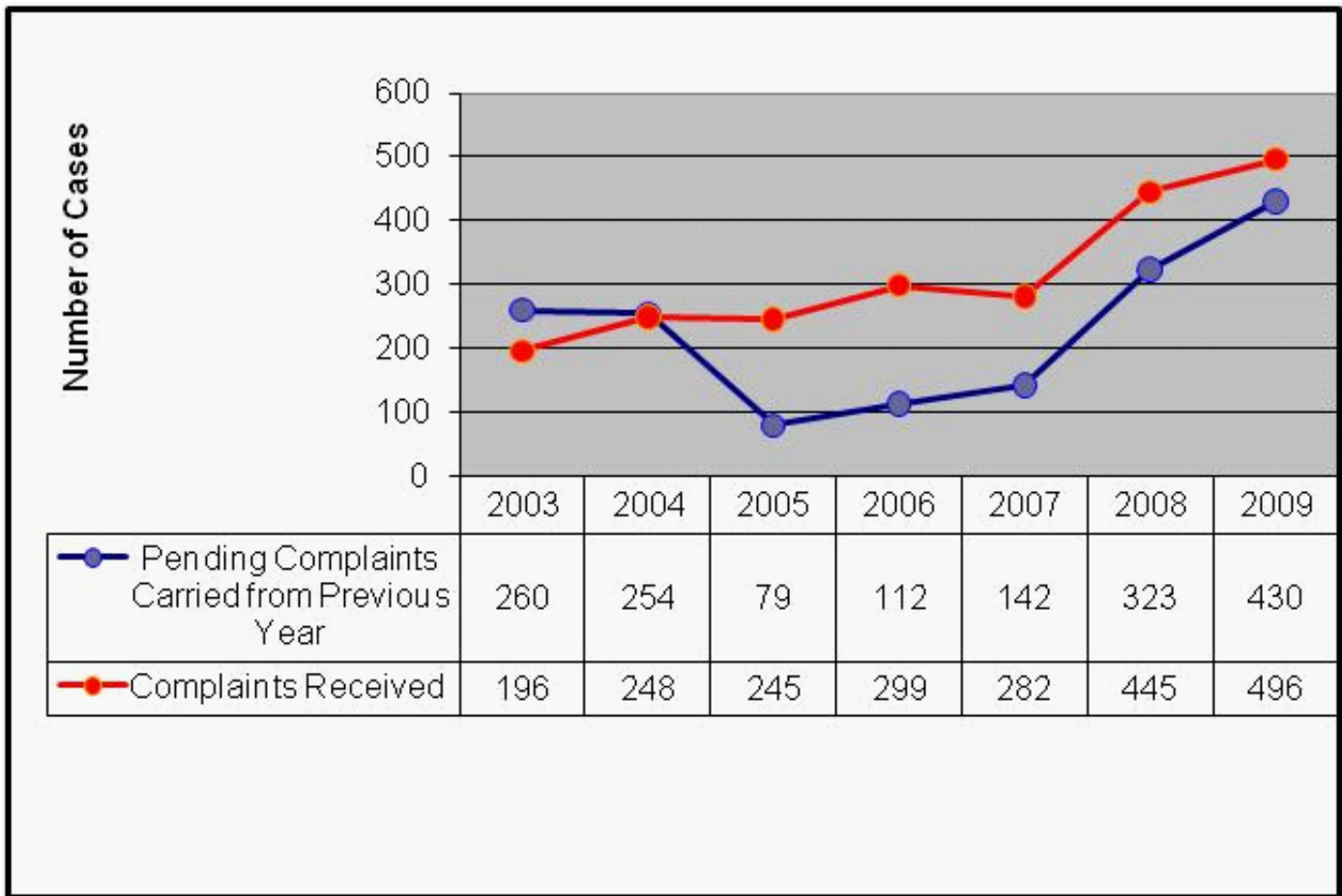
This chart shows the average number of days that a Prohibited Personnel Practice case remained in OSC's Complaints Examining Unit, before the case was either closed or referred to OSC's Investigation and Prosecution Division for further investigation. Though the processing times are below where they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

Hatch Act Unit- Average Processing Time per Complaint



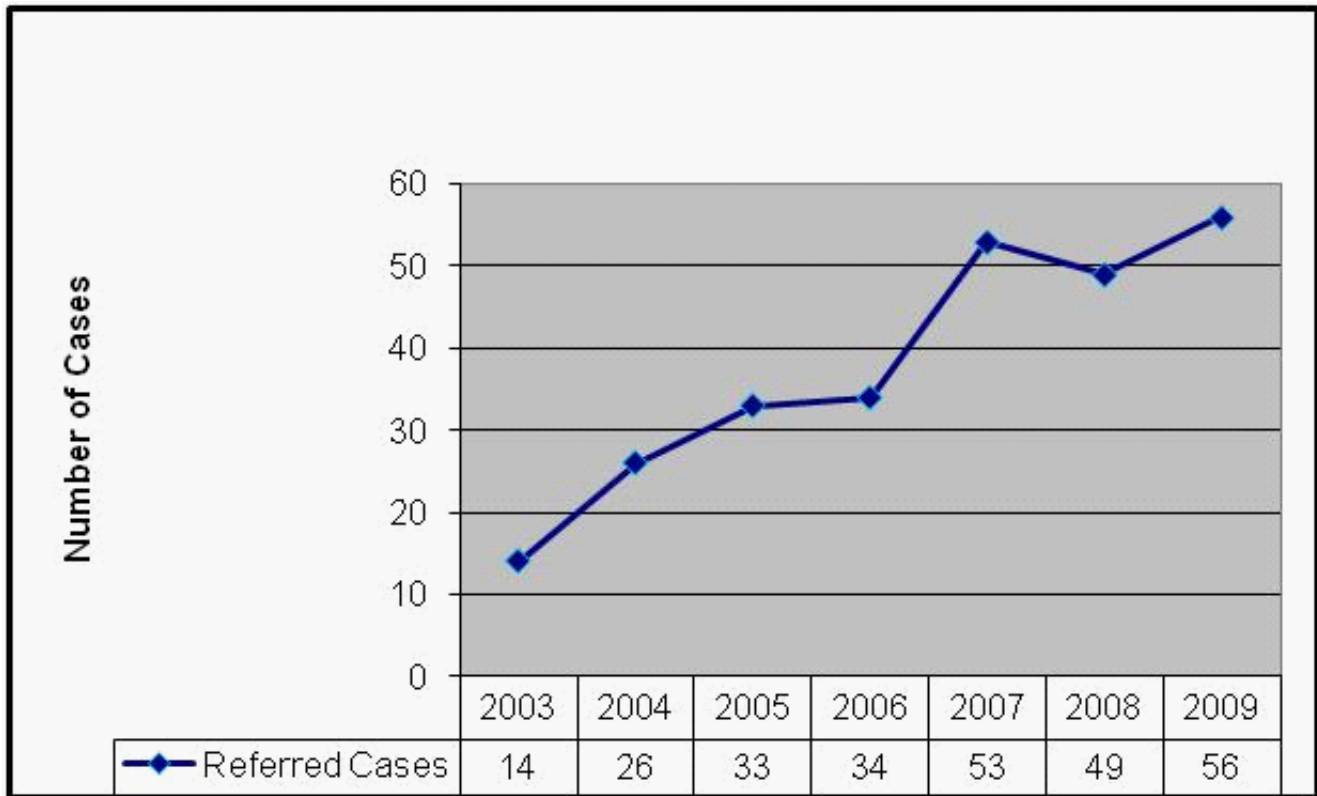
OSC's Hatch Act Unit has reduced its case processing time dramatically since FY 2003. However, due to the large increase in the number of Hatch Act cases received, the average processing time per complaint is rising.

Hatch Act Complaints



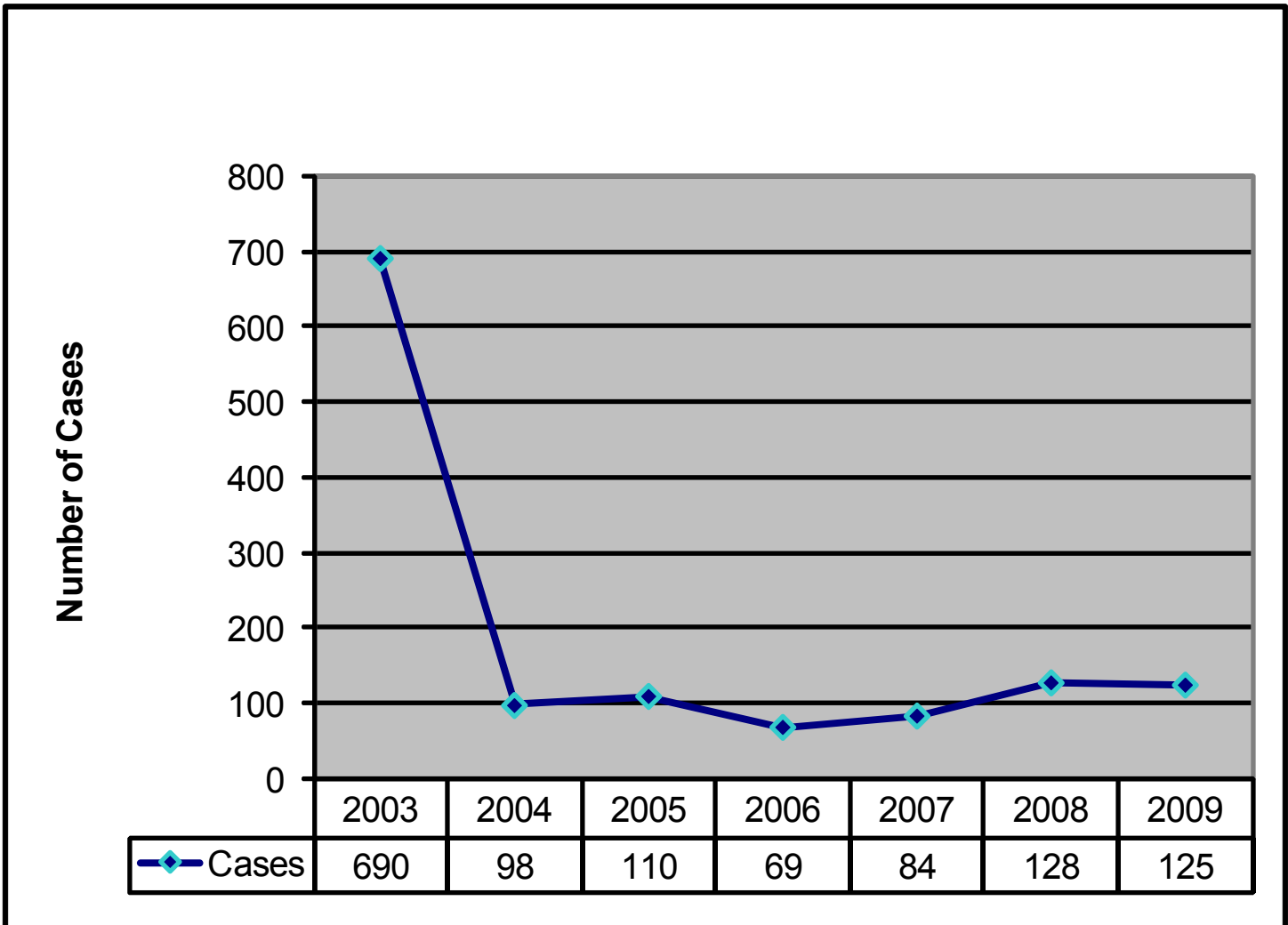
Starting in FY 2005, as OSC reduced its processing time for Hatch Act complaints, the number of pending complaints carried forward from the previous fiscal year sharply declined. From FY 2003 to FY 2006, the overall decline in processing time was 70%. But now in FY 2009, given that the number of complaints received has increased by 153% since FY 2003, the number of complaints pending at the end of the year is rising. Though OSC's Hatch Act Unit has become much more efficient, the workload has become nearly overwhelming.

Disclosure Referrals to Agency Heads



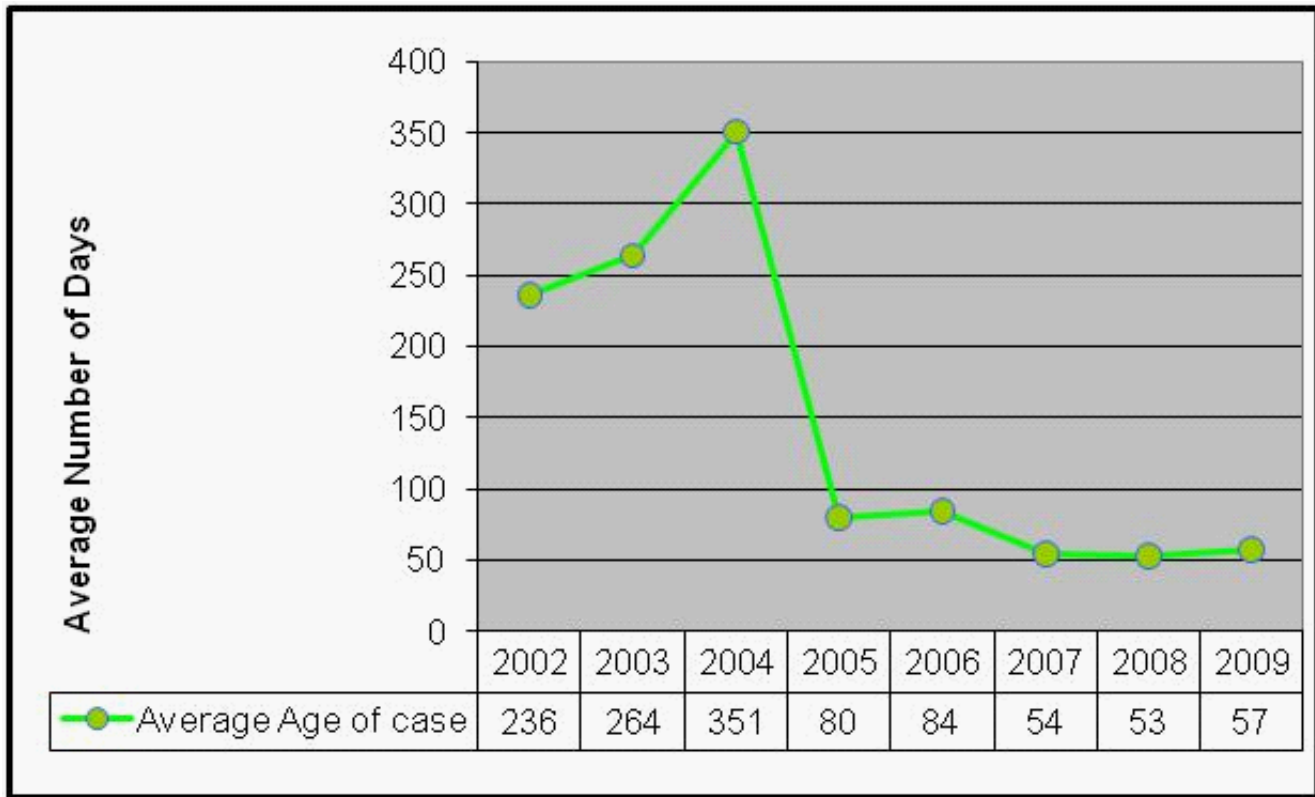
When the Special Counsel analyzes a whistleblower disclosure and determines there is substantial likelihood of wrongdoing, he refers the matter to the head of the appropriate agency, who is then required to internally investigate the matter and report the results to OSC, which, in turn, reports the results to 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. This chart includes several cases each year that were referred to agencies' Inspectors General.

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 and FY 2009 resulted in higher numbers of pending disclosures at the end of FY 2008 and FY 2009.

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 2009 was 57 days. This was an 84% reduction from the high of FY 2004 (an average of 351 days).

OSC'S SUCCESSES IN FY 2009

- 1. FAA Safety.** OSC has referred a substantial number of whistleblower disclosures of aviation safety vulnerabilities to the Department of Transportation for investigation in the past year, prompting additional Congressional oversight and ensuring in-depth investigations into important safety allegations.
- 2. Inspector General Resignation.** Two complainants, both high-level employees of a federal agency, alleged that personnel actions were taken because they reported, or were believed to have reported, suspected travel irregularities by an agency IG to the President's Council on Integrity and Efficiency. OSC investigated and reported its findings to the President, recommending disciplinary action against the IG, and corrective action for the two complainants. The IG resigned and the agency agreed to provide full corrective action to the complainants.
- 3. Threats against ATF Agent.** OSC completed a referral in which the whistleblower alleged that officials with the Bureau of Alcohol, Tobacco and Firearms (ATF) failed to adequately investigate death threats made against an agent and that ATF lacked sufficient policies on the investigation of threats and the protection of its agents. The Department of Justice found that ATF officials needlessly and inappropriately delayed investigation into some of the threats made against the agent and that ATF's policies were generally sufficient, but that an amendment was necessary to ensure that orders for emergency relocations were in writing.
- 4. Missing Property.** An OSC referral substantiated two whistleblowers' claims of millions of dollars of missing government property, including computers and other electronic equipment, at Indian Health Services, Rockville, Maryland. Furthermore, the agency's report demonstrated its continued failure of accountability, which OSC reported to the President and Congress.
- 5. Mediated Settlement after Aircraft Safety Disclosure.** An electronics mechanic disclosed to his agency that a specific aircraft was not being repaired and overhauled according to specifications. He alleged that this could result in an electrical short-circuit and cause a crash. Shortly thereafter, the employee was reassigned and received a letter of reprimand. Through OSC mediation, the agency agreed to remove the letter of reprimand from the employee's record and to issue him a written commendation and cash award.
- 6. Mediated Settlement after Public Safety Disclosure.** A scientist alleged that he was retaliated against after raising three critical public health and safety issues and assisted a congressional committee's investigation. The scientist was demoted, placed in untenable working conditions, and given a negative performance appraisal. Through mediation, the agency agreed to pay the scientist a lump sum and to expunge any unsatisfactory performance reviews or other related documents critical of his work. The agency also agreed to pay attorney's fees.
- 7. Full Corrective Action after Reprisal for Whistleblowing.** Complainant, a research pilot, alleged that he was grounded from flying, subjected to a psychiatric examination, reassigned to a non-flying position, and coerced into accepting a position at another agency facility because of his whistleblowing. He reported that several managers had violated various laws and agency aviation safety directives, engaged in gross mismanagement, abused their authority, and endangered public safety. The agency agreed to reassign complainant back to his original duty station and pay him monetary restitution.

- 8. Enforcement of Veteran’s Preference.** Complainant alleged that his employing agency improperly imposed a one-day cutoff in accepting applications for an information technology position. Based on the investigation, OSC determined that the agency had granted the selectee an unauthorized preference and violated veterans’ reference requirements in selecting a requested candidate by name over a higher-standing preference eligible applicant. The agency agreed to offer the veteran a similar position and reassigned the human resources official from the delegated examining unit.
- 9. Increased Hatch Act Litigation & Investigation.** As a result of the considerable increase in both the number and seriousness of Hatch Act violations by federal employees during the 2008 Presidential election, the Hatch Act Unit continues to generate increased investigative and litigation activity at OSC. Many of these violations involve supervisors coercing subordinates to engage in political activity and employees soliciting political contributions. In one such case, an administrative law judge recently held that a federal supervisor should be removed from her employment because she sent a partisan political e-mail to six individuals, including two subordinates, while she was on duty and in the federal workplace.
- 10. Hatch Act Disciplinary Action.** OSC also has investigated many other significant Hatch Act cases and has filed seven complaints for disciplinary action with the Merit Systems Protection Board, with many more to be filed soon. For example, one case was filed against a federal supervisor who, during a mandatory staff meeting, told his subordinates which Presidential candidate he planned to vote for, polled them about the candidates for whom they planned to vote, and then encouraged them to exercise their right to vote.
- 11. More Hatch Act Disciplinary Action.** Another significant investigation by OSC resulted in a 90-day suspension for a high level supervisory official at a federal agency who violated three provisions of the Hatch Act: the prohibitions against using one’s official authority or influence for the purpose of affecting the result of an election; soliciting, accepting, or receiving a political contribution; and engaging in political activity while on duty or in federal room or building. The supervisor hosted a partisan political fundraising event in her home and, during a staff meeting, invited her subordinates to the event.
- 12. Other Hatch Act Prosecutions.** OSC also successfully prosecuted two federal employees for violating the Hatch Act’s prohibition against being a candidate in a partisan election. In both cases, the Merit Systems Protection Board ordered the federal employees removed from their employment for violating the Act.
- 13. Litigating important USERRA matters.** This year, OSC tried a case of first impression that should clarify the remedies available to federal contract employees whose USERRA rights have been violated by a federal executive agency. OSC will file several other cases before the end of the year if no settlement is reached.
- 14. Obtaining relief for military service members under USERRA.** OSC has received a record number of USERRA referrals from the Department of Labor, many of which have resulted in favorable settlements for service members, including retroactive promotions, back pay, and restored leave. In addition to obtaining individual relief, OSC has also sought to make broader “systemic” changes in agency policies and procedures to ensure better compliance with USERRA. This includes ensuring that agency merit promotion plans have a mechanism for considering employees who are absent due to military service.

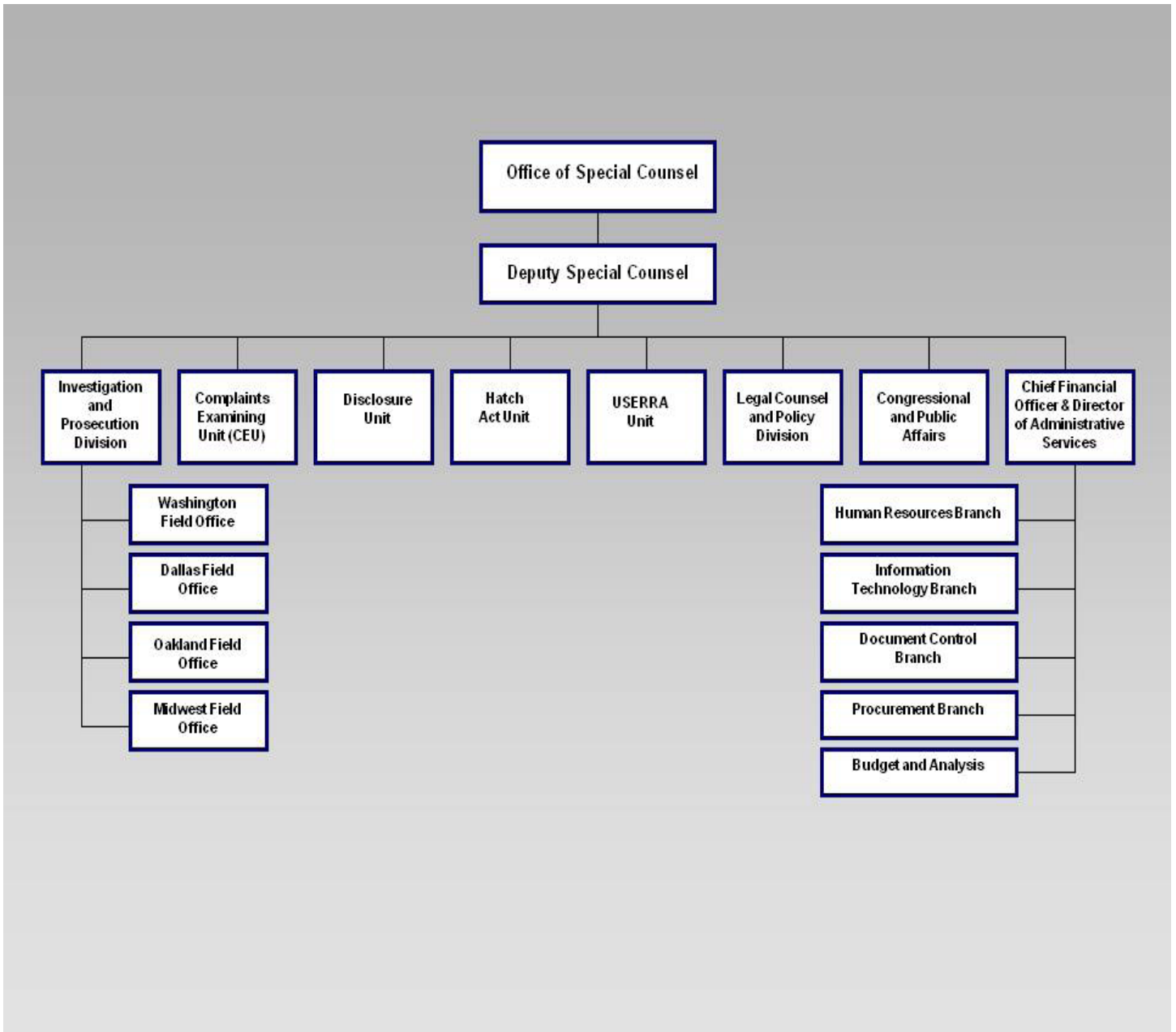
15. OSC continues to enhance its resources for conducting mediations. Instead of having one full time mediator, seven people from different parts of the agency have received training in conducting mediations. OSC now has a cadre of professionals with varied skills and legal expertise in multiple areas 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 3, 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.

OSC ORGANIZATIONAL CHART



Internal Organization

OSC maintains a headquarters office in Washington, D.C., and four field offices (located in Dallas, Detroit, Oakland, and Washington, D.C.). Agency components during FY 2008 included the Immediate Office of the Special Counsel, five program/operating units, and several support units (described further below).

Immediate Office of the 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, and coordination of its outreach program. The latter includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

Program Units

Complaints Examining Unit (CEU). 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. CEU screens over 2,400 such complaints each 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 or possible mediation.

Investigation and Prosecution Division (IPD). IPD is comprised of four field offices, and is generally responsible for conducting field investigations of matters referred after preliminary inquiry by CEU. In selected cases referred by CEU for further investigation, IPD coordinates mediation of complaints in which the complainant and the agency involved have agreed to participate in OSC's voluntary Alternative Dispute Resolution (ADR) Program. In other cases, after field investigation of matters referred by CEU, legal analyses are done by IPD attorneys to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. IPD investigators work with the attorneys in deciding whether a matter warrants corrective action, disciplinary action, or both. If meritorious cases cannot be resolved through negotiation with the agency involved, the attorneys represent the Special Counsel in litigation before the MSPB. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, IPD investigators and attorneys assist the Hatch Act Unit and the USERRA Unit, as needed, with cases handled by those components.

Disclosure Unit (DU). This component receives and reviews disclosures from federal whistleblowers. Reporting directly to the Deputy Special Counsel, DU recommends the appropriate disposition of disclosures, which may include referral to the head of the agency involved for investigation and a report to the Special Counsel; informal referral to the Inspector General (IG) of the agency involved; or closure without further action. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness before the Special Counsel sends the report to the President and responsible congressional oversight committees, along with any comments by the whistleblower and the Special Counsel.

Hatch Act Unit (HAU). This unit enforces and investigates complaints of Hatch Act violations, and represents OSC in litigation before the MSPB seeking disciplinary action. In addition, the HAU is responsible for providing legal advice on the Hatch Act to federal, D.C., state and local employees, as well as the public at large.

USERRA Unit. This component reviews USERRA cases referred by the Department of Labor (DOL) to OSC for legal representation of the claimant before the MSPB, if warranted. Under a nearly three-year demonstration project established by Congress, the USERRA Unit also directly received and investigated approximately one-half of all federal sector USERRA cases filed between February of 2005 and December of 2007, bypassing DOL.

Supporting Units

Legal Counsel and Policy Division. This division serves as OSC's office of general counsel, and provides policy advice and support to the agency. The division's responsibilities include provision of legal advice and support in connection with management and administrative matters; defense of OSC interests in litigation filed against the agency; management of the agency's Freedom of Information Act, Privacy Act, and ethics programs; and policy planning and development.

Office of the Chief Financial Officer and Director of Administrative Services. This office manages OSC's budget and provides management support and administrative services to the agency. Component units are the Budget and Analysis Branch, Document Control Branch, Human Resources Branch, Information Technology Branch, and the Procurement Branch.

Budget by Program

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

FY 2011 Budget by Program						
<i>(in thousands of dollars)</i>						
Program	FY 2010 Estimate		FY 2011 Estimate		Increase/Decrease	
	\$	FTE	\$	FTE	\$	FTE
Investigation and Prosecution of Prohibited Personnel Practices	\$9,520	57	\$9,612	57	\$92	0
Hatch Act Enforcement	\$1,959	12	\$2,434	15	\$475	3
Whistleblower Disclosure Unit	\$2,114	12	\$2,289	13	\$174	1
USERRA Enforcement and Prosecution	\$384	2	\$388	2	\$4	0
Office of the Special Counsel	\$594	4	\$803	4	\$209	0
Office of the Agency General Counsel	\$993	5	\$1,002	5	\$9	0
Office of the CFO - Management / Information Technology / Budget / Human Resources / Procurement / Document Control / Planning / Analysis / Facilities	\$2,930	19	\$2,959	19	\$29	0
totals	\$18,495	111	\$19,486	115	\$992	4

PART 2 - FY 2010 BUDGET REQUEST – ADDITIONAL INFORMATION

OSC is requesting \$19,486,000. This includes funding for OSC's current staff of 111 FTE, funding for four new FTE to address increasing caseloads, rent and salary increases for FY 2011. 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 by almost 30% during the last two years.

Budgetary Factors

Over 90% of OSC's budget goes toward salary, benefits, and office space rent. The first two factors described below are the two main drivers of the FY 2011 increase.

1. Increased costs for salaries and benefits. In FY 2011, for the first time in several years, OSC will have a full political staff of four to five employees for a complete fiscal year. Given the continued rapid increase in caseloads and the fact that four to five of OSC's employees will be used for political staff, it is imperative that OSC operate with 110 career employees during all of FY 2011. In sum, OSC will need sufficient funding to support 115 FTE, including the pay raise of FY 2010, and the projected raise of FY 2011.

2. New GSA lease for OSC's headquarters. OSC's has a new ten-year lease for its headquarters space in Washington, D.C. FY 2011 will be the first full year of operating under the new lease. Rent for OSC's headquarters and three field offices will be \$529,000 higher than during the last full year of the old lease, FY 2009. This rent increase is an unavoidable expense.

3. 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 during FY 2011 are the highest priorities.

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 18% increase), and the higher cost of transit subsidies (projected 10% 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 interagency agreement for outsourced accounting and payment services will also increase.

Components of Budget Request

The following chart estimates how the requested FY 2011 funding 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 Budget Table 1 below.

Budget Table 1 U.S. Office of Special Counsel Budget Object Classification of Obligations: FY2009-FY2011 <i>(in thousands of dollars)</i>			
Budget Object Classification of Obligations	FY2009 <i>Actual</i>	FY2010 <i>(projected)</i>	FY2011 <i>(projected)</i>
11.0 Personnel compensation	10,789	11,880	12,468
12.0 Civilian personnel benefits	3,049	3,202	3,358
13.0 Benefits to former personnel	30	24	24
21.0 Travel and transportation of persons	217	225	225
22.0 Transportation of things	20	21	21
23.1 Rental payments to GSA	1,291	1,588	1,795
23.3 Communications, utilities and misc. charges	140	120	120
24.0 Printing and reproduction	18	20	20
25.0 Other services	1,272	1,160	1,193
26.0 Supplies and materials	137	111	111
31.0 Equipment	370	151	151
32.0 Land & Structures	0	0	0
42.0 Tort Claims	0	0	0
99.9 Total	17,333	18,495	19,486

Notes concerning detailed BOC line items:

Object Class 12.0 Civilian Personnel Benefits: This category includes the agency's Student Loan Repayment / Employee Retention Program, as well as transit subsidies.

Object Class 23.1 Rental Payments to GSA: The increase in this category reflects the agency's new lease for its headquarters space, as well as increasing real estate taxes from the District of Columbia.

Budget Table 2 Analysis of Resources: FY2009-FY2011 <i>(in thousands of dollars)</i>			
Description	FY2009 <i>(Actual)</i>	FY2010 <i>(projected)</i>	FY2011 <i>(projected)</i>
Budget authority	17,468	18,495	19,486
Outlays	15,784	16,731	17,611
Approximate full-time equivalent employment (FTE) work years	105	111	115

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.² 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.

During FY 2009, OSC received 3,725 new matters, including PPP, Hatch Act, and Disclosure matters (see Table 1). This was an increase of 19.5% over the number received in FY 2008.

Resource Estimates

During FY2010 the Investigation and Prosecution of Prohibited Personnel Practices will use approximately 57 FTE at a cost of approximately \$9,520,000. During FY 2011, we estimate the cost of the program will be approximately \$9,612,000 with 57 FTE.

TABLE 1 Summary of All OSC Case Activity					
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Matters ^a pending at start of fiscal year	778	777	667 ^b	698	943
New matters received	2,684	2,718	2,880	3,118	3,725
Matters closed	2,685	2,814	2,842	2,875	3,337
Hatch Act advisory opinions issued	2,558	3,004	2,598	3,991	3,733
Matters pending at end of fiscal year	777	681	698	937	1,324

^a “Matters” in this table includes prohibited personnel practice cases (including TSA matters), Hatch Act complaints, whistleblower disclosures, and USERRA cases.

^b Closure entries in the agency case tracking system were made in early FY 2007 for several cases completed during FY 2006.

OSC’s largest program is devoted to the processing of PPP complaints. Of the total 3,725 new matters OSC received during FY 2009, 2,463 or 66% were new PPP complaints (see Table 2).

TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity - Receipts and Processing^a						
		FY 2005	FY 2006	FY 2007^b	FY 2008	FY 2009
Pending complaints carried over from prior fiscal year		524	521	386	358	474
New complaints received ^c		1,771	1,805	1,970	2,089	2,463
<i>Total complaints:</i>		2,295	2,326	2,356	2,447	2,937
Complaints referred by CEU for investigation by IPD		198	143	125	135	169
Complaints processed by IPD		216	256	151	88 ^d	150
Complaints pending in IPD at end of fiscal year		283	155	136	185	201
Total complaints processed and closed (CEU and IPD combined)		1,774	1,930	1,996	1,971	2,173
Complaint processing times	Within 240 days	1,198	1,693	1,874	1,866	2,045
	Over 240 days	576	237	121	83	127
Percentage processed within 240 days		67.5%	88%	94%	95%	94%

^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 Numbers shown in this column in last year's annual report were recalculated due to an administrative error. Calculations are now performed with a new standardized query tool.

^c "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.

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

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

TABLE 3 Summary of All Favorable Actions - Prohibited Personnel Practice Complaints^a						
		FY 2005	FY 2006	FY 2007	FY 2008^b	FY 2009
Total favorable actions negotiated with agencies (all PPPs)	# of actions	45	52	29	58	62
	# of matters	45	48	29	33	53
Total favorable actions negotiated obtained (reprisal for whistleblowing)	# of actions	37	40	21	44	35
	# of matters	37	37	21	20	29
Disciplinary actions negotiated with agencies		3	4	5	3	5
Stays negotiated with agencies		3	8	7 ^c	4 ^d	9
Stays obtained from MSPB		1	1	3	0	0
Corrective action complaints filed with the MSPB		1	1	1	0	0
Disciplinary action complaints filed with the MSPB		1	0	0	3	0

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

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

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

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

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 2009, 88% of the agencies accepted initial mediation and there were eleven successfully mediated resolutions (see Table 4).

TABLE 4 ADR Program Activity - Mediation of Prohibited Personnel Practice Complaints						
		FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Matters identified as mediation-appropriate		22	52	38	31	28
Initial acceptance rates by parties	Complainants	27%	83%	71%	54%	61%
	Agencies	22%	59%	59%	94%	88%
Mediated and other resolutions ^a		5	11	10	8	11
Resolution rate - OSC mediation program		100%	55%	50%	50%	36%

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

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.

Goal 1: TO PROTECT THE MERIT SYSTEM THROUGH TIMELY CASE PROCESSING	
PPP Enforcement Mission	PROHIBITED PERSONNEL PRACTICES CASES
PERFORMANCE INDICATOR	Indicator A: Percentage of cases processed in less than 240 days.
FY 2006 TARGET	85%
FY 2006 RESULTS	89%
FY 2007 TARGET	92%
FY 2007 RESULTS	94%
FY 2008 TARGET	92%
FY 2008 RESULTS	95%
FY 2009 TARGET	92%
FY 2009 RESULTS	94%
FY 2010 TARGET	94%
FY 2010 RESULTS	
FY 2011 TARGET	94%
FY 2011 RESULTS	

OSC achieved its timeliness target in FY 2009. We are maintaining 94% as the target in FY 2011. Full field investigations often 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. Therefore, raising the target above 94% would not be realistic or helpful.

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS	
PPP Enforcement Mission	Prohibited Personnel Practices Cases
PERFORMANCE INDICATOR	Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# of settlements achieved + # of successful litigations) / (# meritorious cases)
FY 2006 TARGET	99%
FY 2006 RESULTS	100%
FY 2007 TARGET	99%
FY 2007 RESULTS	100%
FY 2008 TARGET	100%
FY 2008 RESULTS	100%
FY 2009 TARGET	100%
FY 2009 RESULTS	100%
FY 2010 TARGET	100%
FY 2010 RESULTS	
FY 2011 TARGET	100%
FY 2011 RESULTS	

OSC did not lose any cases this year in PPP litigation before the board. Normally, agencies will settle the matter when OSC outlines the nature of the prohibited personnel practices that have been committed. We are maintaining the FY 2011 target at 100%.

Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES	
PPP Enforcement Mission	PROHIBITED PERSONNEL PRACTICES CASES
PERFORMANCE INDICATOR	Indicator A: # of new Federal agencies certified in the 2302 (c) Program by OSC.
FY 2006 TARGET	5
FY 2006 RESULTS	6
FY 2007 TARGET	5
FY 2007 RESULTS	3
FY 2008 TARGET	5
FY 2008 RESULTS	5
FY 2009 TARGET	5
FY 2009 RESULTS	11
FY 2010 TARGET	5
FY 2010 RESULTS	
FY 2011 TARGET	5
FY 2011 RESULTS	

During FY 2009, eleven agencies were certified or re-certified under OSC's 2302(c) program. This spike was due to an OSC effort to re-certify agencies whose certifications were expiring. We are not increasing the FY 2011 target for certifying agencies, because many agencies involved with the program have exhibited dwindling interest. We note that the statutory provision upon which OSC's certification program is based - 5 USC § 2302(c) - does not provide an enforcement tool to require agencies to become certified.

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 2009, the unit received an all time high of 496 complaints, an increase of 11.5% over FY 2008 and 75.9% over FY 2007. In FY 2009, OSC's Hatch Act Unit achieved 24 corrective actions, including 15 withdrawals from partisan races and 6 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 over 50 outreach presentations in FY2009 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. As usual, advisories concerning partisan activity surrounding state and local elections have accounted for a fair amount of OSC's work this fiscal year.

Resource estimates:

During FY 2010, the Hatch Enforcement Program will use approximately 12 FTE at a cost of approximately \$1,959,000. During FY 2011, we estimate the cost of this program to be \$2,434,000 for 15 FTE.

TABLE 5 Summary of Hatch Act Complaint and Advisory Opinion Activity

		FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Formal written advisory opinion requests received		191	237	194	292	227
Formal written advisory opinions issued		183	230	176	275	226
Total advisory opinions issued ^a		2,558	3,004	2,598	3,991	3,733
New complaints received ^b		245	299	282	445	496
Complaints processed and closed		310	266	252	264	388
Warning letters issued		87	76	68	70	132
Corrective actions taken by cure letter recipients:	Withdrawal from partisan races	4	9	18	13	15
	Resignation from covered employment	10	22	6	17	6
	Other	3	2	1	2	3
	Total:	17	33	25	32	24
Disciplinary action complaints filed with MSPB		11	6	1	3	10
Disciplinary actions obtained (by negotiation or ordered by MSPB) ^c		12	10	5	11	5
Complaints pending at end of fiscal year		79	112	142	323	430

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

^b Includes cases that were re-opened.

^c Numbers revised for fiscal years 2005 - 2008 based upon a new query which includes disciplinary actions obtained in both negotiated Hatch Act settlements and litigated Hatch Act cases, not just litigated cases in the past. As a result, the numbers have increased from what was previously reported (except for FY 2004, which remained the same).

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 has completed its investigations and expects to submit its report to the Special Counsel in February 2010.

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.

Goal 1: TO DEFEND THE MERIT SYSTEM BY ENFORCING THE HATCH ACT – THROUGH TIMELY CASE PROCESSING			
HATCH ACT MISSION	HATCH ACT WRITTEN ADVISORY OPINIONS	HATCH ACT ORAL & EMAIL ADVISORY OPINIONS	HATCH ACT COMPLAINTS
PERFORMANCE INDICATORS	Indicator A: Percentage of formal written advisory opinions issued in less than 120 days.	Indicator B: Percentage of oral and e-mail advisory opinions issued in less than five business days	Indicator C: Percentage of matters resolved in less than 365 days.
FY 2006 TARGET	75%	99%	60%
FY 2006 RESULTS	93%	100%	84%
FY 2007 TARGET	80%	99%	70%
FY 2007 RESULTS	91%	99%	92%
FY 2008 TARGET	85%	99%	80%
FY 2008 RESULTS	60%	100% oral 95% email	88%
FY 2009 TARGET	90%	99% oral 95% email	85%
FY 2009 RESULTS	82%	99% oral 98% email	84%
FY 2010 TARGET	90%	99% oral 95% email	85%
FY 2010 RESULTS			
FY 2011 TARGET	85%	99% oral 95% email	85%
FY 2011 RESULTS			

Indicator A: During FY 2009, OSC issued formal written advisory opinions 82% of the time within 120 days, missing the target of 90%. This is due to the tremendous increase in Hatch Act caseload. During FY 2009, the number of Hatch Act complaints requiring investigation climbed to nearly 500. Prior to FY 2008, the number of complaints was always less than 300. When considering these steep increases in caseload, issuing 82% of the written advisories within 120 days was an accomplishment. OSC's target in FY 2011 will be to issue 85% of the opinions within 120 days.

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS	
HATCH ACT MISSION	HATCH ACT CASES
PERFORMANCE INDICATOR	Indicator A: % favorable outcomes in meritorious cases
FY 2006 TARGET	90%
FY 2006 RESULTS	97%
FY 2007 TARGET	90%
FY 2007 RESULTS	97%
FY 2008 TARGET	97%
FY 2008 RESULTS	96%
FY 2009 TARGET	97%
FY 2009 RESULTS	100%
FY 2010 TARGET	97%
FY 2010 RESULTS	
FY 2011 TARGET	97%
FY 2011 RESULTS	

During FY 2009, for the first time in recent years, OSC achieved 100% favorable outcomes in meritorious Hatch Act cases, exceeding the target of 97%. Due to the high volume of upcoming litigation in FY 2010 and FY 2011 and the degree of unpredictability inherent whenever a new board is put in place at the MSPB, the agency is maintaining its FY 2011 target at 97%.

Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES		
HATCH ACT MISSION	HATCH ACT OUTREACH VISITS	HATCH ACT SECTION OF OSC WEBSITE
PERFORMANCE INDICATORS	Indicator A: (# of HA trainings and outreaches given) / (# of invitations to provide HA training or outreach, where the inviter sponsors OSC)	Indicator B: Number of new advisory complex opinions added every month to the website.
FY 2006 TARGET	90%	One
FY 2006 RESULTS	96%	One
FY 2007 TARGET	90%	One
FY 2007 RESULTS	100%	One
FY 2008 TARGET	95%	One
FY 2008 RESULTS	98%	One
FY 2009 TARGET	95%	One
FY 2009 RESULTS	98%	One
FY 2010 TARGET	95%	One
FY 2010 RESULTS		
FY 2011 TARGET	97%	One
FY 2011 RESULTS		

Indicator A: During FY 2009, OSC's Hatch Act Unit provided training to federal, state, and local agencies 98% of the time when the agency offered to sponsor the cost of the training. This exceeded the target of 95%. Only one training had to be declined this year, due to scheduling. OSC is increasing its target for FY 2011 to 97%.

Whistleblower Disclosure Channel Program

In addition to its investigative and prosecutorial mission, OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may, under 5 U.S.C. §1213(a), disclose information they reasonably believe evidences a violation of law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. At present, the Disclosure Unit staff is comprised of the Chief, ten 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, 724 new matters were received in FY 2009, a 36.6% increase over the previous fiscal year. During FY 2009, the unit referred 46 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 Summary of Whistleblower Disclosure Activity - Receipts and Dispositions^a						
		FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Pending disclosures carried over from prior fiscal year		98	110	69	84	128
New disclosures received		485	435	482	530	724
<i>Total disclosures</i>		583	545	551 ^c	614	852
Disclosures referred to agency heads for investigation and report		19	24	42	40	46
Referrals to agency IGs		14	10	11	9	10
Agency head reports sent to President and Congress		16	24	20	25	34
Results of agency investigations and reports	<i>Disclosures substantiated in whole or in part</i>	16	21	19	22	30
	<i>Disclosures unsubstantiated</i>	0	3	1	3	4
Disclosure processing times	Within 15 days	236	203	285	256	394
	Over 15 days	237	275	182	232	333
Percentage of disclosures processed in less than 15 days		50%	42%	61%	52%	54%
Disclosure matters processed and closed		473	478	467	488	727

^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 Correctly reported in OSC's FY 2006 report to Congress, but mistakenly published in the FY 2007 report as 269.

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

Resource Estimates:

During FY 2010, the Whistleblower Disclosure Unit will use approximately 12 FTE at a cost of \$2,114,000. During FY 2011, we estimate the cost of the program will be \$2,289,000 with an increase of one 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.

Goal 1: TO RECEIVE AND RESOLVE WHISTLEBLOWER DISCLOSURES WITH TIMELY PROCESSING	
WHISTLEBLOWER DISCLOSURE MISSION	DISCLOSURES
PERFORMANCE INDICATORS	Indicator A: Percentage of disclosures resolved within the statutory 15 day time frame
FY 2006 TARGET	50%
FY 2006 RESULTS	42%
FY 2007 TARGET	50%
FY 2007 RESULTS	61%
FY 2008 TARGET	50%
FY 2008 RESULTS	52%
FY 2009 TARGET	50%
FY 2009 RESULTS	54%
FY 2010 TARGET	50%
FY 2010 RESULTS	
FY 2011 TARGET	50%
FY 2011 RESULTS	

OSC's Disclosure Unit exceeded its target of 50% during FY 2009. Because of the time involved in preparing cases for referral under § 1213 and in cases referred to the IG, the statutory 15-day time frame is difficult to meet in these cases. It should also be noted that the agency is considering proposing a legislative change in the statutory language to enlarge the time frame from 15 days to 45 days, a number which would more accurately reflect the average amount of time required to resolve a whistleblower disclosure.

Goal 2: TO PROMOTE JUSTICE AND PROTECT THE MERIT SYSTEM THROUGH THE QUALITY OF DETERMINATIONS AND REFERRALS	
WHISTLEBLOWER DISCLOSURE MISSION	DISCLOSURES
PERFORMANCE INDICATORS	Indicator A: % Percentage of disclosures referred to agency head, pursuant to 5 U.S.C. § 1213, or under the informal IG referral process.
FY 2006 TARGET	7%
FY 2006 RESULTS	8%
FY 2007 TARGET	7%
FY 2007 RESULTS	10%
FY 2008 TARGET	7%
FY 2008 RESULTS	6%
FY 2009 TARGET	7%
FY 2009 RESULTS	7%
FY 2010 TARGET	7%
FY 2010 RESULTS	
FY 2011 TARGET	7%
FY 2011 RESULTS	

During FY 2009, the overall number of disclosures received by the agency rose to 724 (from 530 in FY 2008). The number of referrals to agency heads and IGs rose by 7. However, the quality of the incoming disclosures is the major driver of the percent referred to agencies for investigation.

USERRA Enforcement and Prosecution Program

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

OSC plays a critical role in enforcing USERRA by providing representation, when warranted, before the MSPB and the U.S. Court of Appeals for the Federal Circuit to service members whose USERRA complaints involve federal executive agencies. From 2005 through 2007, Congress temporarily expanded OSC's role in USERRA enforcement under a demonstration project, which is described further below.

USERRA Referral Cases

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

During FY 2009, OSC received forty-one USERRA complaints referred from VETS, a record number. OSC anticipates this trend continuing given current levels of military activity and new case processing deadlines established by Congress in 2008.

TABLE 7 Summary of USERRA Referral and Litigation Activity^a

	FY 2006	FY 2007	FY 2008	FY 2009
Pending referrals carried over from prior fiscal year	6	3	3	5
New referrals received from VETS during fiscal year	11	4	15	41
Referrals closed	14	4	13	39
Referrals closed with corrective action	3	0	2	4
Referrals closed with no corrective action	11	4	11	35
Referrals pending at end of the fiscal year	3	3	5	7
Litigation cases carried over from prior fiscal year	0	0	1	1
Litigation cases closed	1	0	1	0
Litigation closed with corrective action	1	0	0	0
Litigation closed with no corrective action	0	1	1	0
Litigation pending at end of fiscal year	0	1	1	1

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

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 December 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.

Corrective Action Results:

During FY 2009, OSC's USERRA Unit focused on the few remaining Demonstration Project cases that were still open. Overall, OSC's corrective action rate for the Demonstration Project is a remarkable 27% of the USERRA cases it investigated (see Table 8).

TABLE 8 Summary of USERRA Dmonstration Project Activity^a					
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Pending cases carried over from prior fiscal year	0	54	95	115	13
New cases opened	111	168	142	37	0
Cases closed	57	126	123	139	10
Closed cases with corrective action	16	35	43	26	2
Closed cases with no corrective action	38	91	80	113	8
Cases pending at end of fiscal year	54	96	114	13	4 ^b

^a Under the demonstration project authorized by the VBIA, OSC received cases from February 2005 through December 2007.

^b This includes one case that was re-opened due to changing legal precedent (not reflected in the figures above).

Resource Estimates:

During FY 2010, 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, with a total program cost of \$384,000. Projecting the same number of FTE into FY 2011 requires a total program cost of approximately \$388,000.

Educating the Federal Sector and Preventing Future Violations

In FY 2009, OSC continued its education and outreach efforts by conducting USERRA seminars for the Federal Employment Lawyers Group and at national conferences for Army and Air Force labor attorneys. 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.

Goal 1: TO ENFORCE THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT THROUGH TIMELY CASE PROCESSING	
USERRA MISSION	USERRA Referral (RE) Cases
PERFORMANCE INDICATORS	Percent of cases in which the case is settled, closed, or a decision to litigate is made within 60 days.
FY 2007 TARGET	75 days
FY 2007 RESULTS	33 days
FY 2008 TARGET	75 days
FY 2008 RESULTS	110 days
FY 2009 TARGET	80% in 60 days
FY 2009 RESULTS	74% in 60 days
FY 2010 TARGET	80% in 60 days
FY 2010 RESULTS	
FY 2011 TARGET	80% in 60 days
FY 2011 RESULTS	

OSC changed this performance indicator for FY 2009 to reflect the Veterans' Benefits Improvement Act of 2008 (P.L. 110-389), which amended USERRA to require that OSC make its representation decision within 60 days of receiving a case from the Department of Labor (unless the claimant agrees to an extension of time). The amendments also require OSC to submit Quarterly Reports to Congress concerning its compliance with the new deadline. Because the law became effective on October 10, 2008, OSC excluded from its Quarterly Reports cases it received before that date, resulting in a higher compliance rate for FY 2009 than reported above (82% vs. 74%).

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS		
USERRA MISSION	USERRA CASES	
PERFORMANCE INDICATORS	Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# successful meditations + # of settlements achieved + # of successful litigations) / (# meritorious cases)	Indicator B: # of “test cases” filed
FY 2006 TARGET	90%	Inappropriate to set a specific target
FY 2006 RESULTS	100%	0
FY 2007 TARGET	90%	Inappropriate to set a specific target
FY 2007 RESULTS	100%	1
FY 2008 TARGET	95%	Inappropriate to set a specific target
FY 2008 RESULTS	97%	1
FY 2009 TARGET	99%	Inappropriate to set a specific target
FY 2009 RESULTS	100%	0
FY 2010 TARGET	90%	Inappropriate to set a specific target
FY 2010 RESULTS		
FY 2011 TARGET	90%	Inappropriate to set a specific target
FY 2011 RESULTS		

Indicator A: OSC was successful in 6 out of 6 meritorious cases during FY 2009.

Indicator B: There were no test cases filed in FY 2009 that fall in this category.

Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES		
USERRA MISSION	USERRA CASES	
PERFORMANCE INDICATORS	Indicator A: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where inviting agency sponsors OSC})	Indicator B: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where OSC pays expenses})
FY 2006 TARGET	90%	50%
FY 2006 RESULTS	NA	100%
FY 2007 TARGET	90%	50%
FY 2007 RESULTS	100%	100%
FY 2008 TARGET	90%	75%
FY 2008 RESULTS	100%	NA
FY 2009 TARGET	90%	75%
FY 2009 RESULTS	100%	NA
FY 2010 TARGET	100%	75%
FY 2010 RESULTS		
FY 2011 TARGET	100%	75%
FY 2011 RESULTS		

Three outreaches were requested in FY 2009. All three were accomplished by the USERRA Unit.

OSC and the Future of USERRA Enforcement

Congress has expressed continuing interest in expanding OSC's role in USERRA enforcement. H.R. 1089, the "Veterans Employment Rights Realignment Act of 2009," would grant OSC exclusive authority to receive, investigate, and prosecute USERRA claims involving federal executive agencies. On May 19, 2009, H.R. 1089 was passed by the House of Representatives by a 423-0 margin. It was subsequently received in the Senate and referred to the Committee on Veterans' Affairs.

For several reasons, OSC is uniquely suited to handle additional responsibilities under USERRA:

1. **Technical Expertise:** OSC employs a staff of attorneys, investigators, and personnel specialists who are experts in federal personnel law and are trained to evaluate, investigate, analyze, and resolve federal employment complaints. OSC also 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.
2. **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 (in contrast to DOL, which administers numerous, varied federal programs and laws). 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 (in contrast to DOL, which assigns USERRA claims to its local VETS offices, and has investigators and attorneys in separate locations). All investigations and resolutions would (1) receive legal and supervisory review throughout the process (in contrast to DOL, which has investigators handle all claims, with supervisory review of only a limited number and legal consultation only on an ad-hoc basis) and (2) be approved by the USERRA Unit Chief (in contrast to DOL, which conducts quality control review on only a very small percentage of its USERRA cases, which are randomly selected). OSC's structure and process ensures consistency, quality, and, most importantly, correctness under the law.
3. **Credible Threat of Litigation before MSPB:** Only OSC possesses the authority and experience to file suit with the MSPB in meritorious USERRA cases against federal agencies. OSC has a track record of doing so when an agency refuses to take the necessary corrective action. This includes pursuing "test cases" where the law is unsettled but OSC believes there is a viable legal argument that the claimant is entitled to relief, as in the case of a federal contract employee OSC successfully represented before the MSPB. Consequently, federal agencies are more willing to quickly resolve meritorious claims (as they often did under the demonstration project) when OSC is involved.

If H.R. 1089 or similar legislation were to become law, the Congressional Budget Office (CBO) "expects that handling an estimated 200 to 300 additional [USERRA] cases per year would increase the OSC's annual budget of \$17 million by about \$3 million a year and \$14 million over the next five years." See CBO Cost Estimate for H.R. 1089, dated May 13, 2009, p. 1. Upon request, OSC can provide further information on the costs associated with an expansion of its 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 2009, 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.

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 27 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 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, FY 2007, and FY 2008 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 2009, the total number of user sessions was 929,303, an increase of 12% over FY 2008.

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 2010 and FY 2011 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 Networkx 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. 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.¹

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.² 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.³

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.

In November of 2001, Congress enacted the Aviation and Transportation Security Act,⁴ 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. 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).
2. Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.
3. 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).)
4. Public Law 107-71 (2001).