FISCAL YEAR 2014
CONGRESSIONAL BUDGET JUSTIFICATION
AND PERFORMANCE BUDGET GOALS

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Contents

Part 1 – Executive Summary **3**

Summary of Request 4
About the Office of Special Counsel 5
OSC's Docket 5
Strategic Goals 6
OSC's Cost Savings to Government, Efficiencies and other Successes 8
Internal Organization 11
OSC Organizational Chart 11
Components of Budget Request 13
Budget by Program 14

Part 2 – FY 2014 Budget Request – Additional Information **16**

FY 2014 Budget Request by Budget Object Class 16

Part 3 – Budget Programs and Performance Plan **19**

FY 2012 Case Activity and Results – All Programs 19
Investigation and Prosecution Prohibited Personnel Practices (PPPs) 20
Alternative Dispute Resolution 24
Hatch Act Enforcement Program 33
Whistleblower Disclosure Program 37
USERRA Program 46
OSC's Outreach Program 50

Part 4 – Enhancement of Operations **51**

Strategic Management of Human Capital 51
Improved Financial Performance 51
Competitive Sourcing 52
Expanded Electronic Government and other Information Technology Initiatives 52
Improving Employee Satisfaction and Wellness 53
Open Government 53
Green Government 54
Telework 54
Continuity of Operations 54
Management 55

Appendix **59**

A. Statutory Background 59
B. Strategic Plan- FY 2012 to 2016 61

Endnotes **76**

PART 1 – EXECUTIVE SUMMARY

FY 2012 was a banner year for the Office of Special Counsel (OSC). OSC stepped out of the shadows and made a compelling case for why Congress chose to create an agency to enforce merit system principles, and safeguard accountability, integrity and fairness in the Federal workplace. From high-profile cases to the seemingly mundane, OSC became recognized as a respected, sought-out voice for good government. In short, 2012 was a year of extraordinary performance gains at OSC, as well as a year of dramatic growth in demand for the agency's services. To meet these rising demands, OSC will need commensurate resources.

Among the many achievements of 2012, OSC's successful efforts on behalf of whistleblowers at the Port Mortuary at Dover Air Force Base, stand out. Mortuary officials turned a deaf ear to, and retaliated against, their own employees who had challenged the grotesque treatment of the returning remains of American soldiers killed in Iraq. OSC's efforts, working closely with Congress, focused a national spotlight on the issue, resulting in substantial improvements in the handling of remains at the Port Mortuary, an end to the retaliation against the whistleblowers, and the disciplining of those responsible for the wrongdoing.

While the Port Mortuary matter was of huge public importance and was the subject of many news stories, it was far from unique on the OSC docket. OSC focused attention on a range of matters brought forth by whistleblowers, from improper supervision of airline safety to fraudulent auditing procedures that deprived the Treasury of millions of dollars. As importantly, OSC has championed the employment rights of returning members of the uniformed services and ensured that the civil service is not corrupted by partisan influences.

The results speak for themselves. In just this past year, favorable outcomes rose 75% in OSC's whistleblower retaliation cases and 89% in its prohibited personnel practice cases. However, as demand for our services rapidly increases, absent adequate support, this positive trajectory will not be sustainable.

OSC's budget request for an additional 11 full time employees (FTEs) reflects the crushing increase in our docket: Since 2008, OSC's caseload has risen over 50%, but our staff size has stayed largely unchanged. In just the last year, complaints of prohibited personnel practices jumped 15%. Whistleblower disclosures skyrocketed 24%; OSC expects the rapid increase in disclosures and retaliation cases to accelerate as a result of the greater protections afforded under the Whistleblower Protection Enhancement Act (WPEA), passed on November 28, 2012. The WPEA significantly expands OSC's jurisdiction and the types of cases OSC is required by law to investigate. In addition, OSC has substantially increased its involvement in USERRA cases, protecting the reemployment rights of returning service members, while simultaneously responding to a spike in Hatch Act matters. All told, OSC experienced the highest number of quarterly filings in its 35-year history in the first quarter of FY 2013.

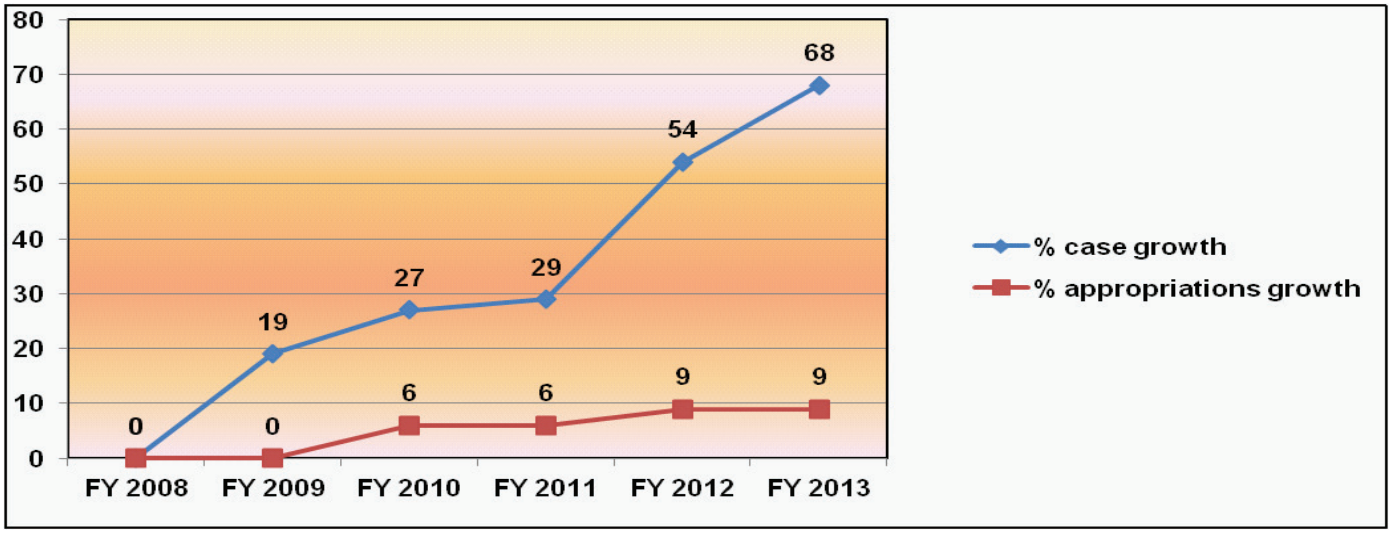
OSC operates on a shoestring – the smallest budget of any Federal law enforcement agency. It is a no-frills operation, with salaries, benefits and rent accounting for 90% of expenditures. We have reviewed every item in our budget and discarded all non-essential expenditures, such as hard copy statutory updates for staff. We have also significantly limited agency travel, excised various employee benefits, and regularly comparison-shopped necessary, ongoing services to reduce our operating costs. We have carved up our library and foyers to house unpaid Presidential Management Fellows and interns. We have revitalized our mediation program to effectively resolve complaints without requiring resource-intensive investigations. Our attorneys are required to do without transcripts in all but the most urgent investigations, relying instead on tape recorders to review witness testimony. Even with all of these cost-saving measures, the shoestring is pulling tighter and fraying as the demand for OSC's services far outpaces its resources.

OSC may no longer be the best-kept secret in the Federal government. However, considering its mission and role in eliminating waste and fraud within the government by protecting whistleblowers, the modest budgetary increase we are requesting will help OSC contribute to strengthening the merit system and investing in good government efforts.

Summary of Request

OSC is working harder, smarter and with better results than at any time in its history. The agency resolved 1,037 more cases in FY 2012 than in FY 2009. There was an eight percent increase in cases resolved over FY 2011, even though staffing levels remained largely unchanged. Key results have risen dramatically. For example total favorable actions in PPPs are up by 89% in 2012 over 2011 levels.

The reputation of OSC has improved dramatically since Carolyn Lerner was sworn in as Special Counsel in June 2011. The Federal workforce has a growing confidence in OSC's ability to obtain corrective action, which drives demand for OSC's services. This demand has not been matched by a corresponding increase in resources, as the graph below indicates, which has created a tipping point for OSC's capacity to meet the demand for its services. While OSC employees are proud and enthusiastic about their work, they are taxed to the limit and the caseload keeps rising.



OSC is requesting **$20,639,000 for FY 2014**, which includes funding for the salaries and benefits for 120 FTEs, an increase of 11 FTEs. This is a 14% increase in personnel over FY 2007 levels; however, during this same time period OSC's workload has jumped a staggering 68%. This upward trend in the workload is conservatively projected to continue at the same rate, and will likely increase. With the requested increase in funds, OSC can manage its workload and discharge its vital mission without increasing the agency's debilitating backlog of cases.

Granting this budget request will ensure that the OSC meets its critical challenges of uprooting waste, mismanagement and fraud, upholding the merit system, protecting veterans and Federal employees, ensuring accountability, standing up for taxpayers and restoring their confidence in the Federal system.

About the Office of Special Counsel

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

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

When FAA air traffic controllers witness dangerous flight practices, when Veterans Administration professionals observe unsafe practices in hospitals, or when Pentagon procurement officers find huge irregularities in government contracts, OSC acts to ensure that the whistleblowers' claims are heard and acted upon. OSC also protects Federal employees from prohibited personnel practices, such as retaliation for making disclosures. In addition, under the Hatch Act, OSC protects the integrity of the civil service system by ensuring that Federal employees are not coerced by their superiors into partisan political activity and that employees do not engage in partisan politics while on duty. Critically, OSC also protects returning service members and reservists against employment discrimination by enforcing their rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

OSC does not just spend taxpayers' money; it returns substantial sums to the Federal government by pressing for corrective action to remedy waste and fraud. Since 2009, OSC calculates at least $11.4 million has either been directly returned to, or saved by, the government as a result of whistleblower disclosures to our agency. That figure, while impressive, does not reflect the full benefit of OSC's work: By pursuing whistleblower disclosures, the agency has saved the government hundreds of millions of dollars by preventing wasteful practices and disasters from occurring or recurring.

OSC's DOCKET

Prohibited Personnel Practices (PPPs)
OSC is addressing a substantial and steady surge in the number of Federal employees alleging PPPs, such as retaliation. These cases are critical to ensuring an efficient, accountable and fair Federal service.

Whistleblower Disclosures
Whistleblower disclosures are a growing portion of OSC's caseload, now comprising nearly a quarter of the agency's new matters. These disclosures, which involve employee reports of gross mismanagement and waste, illegality, fraud, abuse, and dangerous and unsafe practices, have risen 135% since 2007.

Hatch Act
The agency has continued to experience a sharp rise in the number of complaints under the Hatch Act since 2007. The Hatch Act ensures that government service is not tainted by partisan political influences.

USERRA
This program protects the employment rights of returning service members and reservists by investigating more than half the job discrimination complaints filed with the Department of Labor (under a three-year Demonstration Project), and all Federal USERRA actions referred for possible prosecution. (The Project is

funded in part through a reimbursable agreement with the Department of Labor. In FY 2013, we expect the Reimbursable Agreement with the Department of Labor will fund a total of three FTEs at a cost of $596,340, and in FY 2014 will fund three FTEs at a cost of $608,220.)

Strategic Goals

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

OSC's Strategic Goals and FY 2014 Costs per Goal*

1. Safeguard the integrity and fairness of the Federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices. Cost: $14,104,000

2. Advance the public interest and good government by providing a safe channel for Federal employees to disclosure wrongdoing or threats to health or safety, in order to effect positive corrective action. Cost: $2,951,000

3. Strengthen the civil service through outreach and advice to the Federal community about prohibited personnel practices, employment discrimination against veterans, and job-related political activity. Cost: $1,687,000

4. Advance accountability in government by seeking disciplinary action against Federal employees for persistent or egregious prohibited personnel practices or unlawful political activities. Cost: $1,897,000

5. Restore confidence in OSC within the Federal community and among staff, stakeholders, and the general public. (Overarching Management Goal)

*Numbers derived from percentage costs based on projected Budget totals

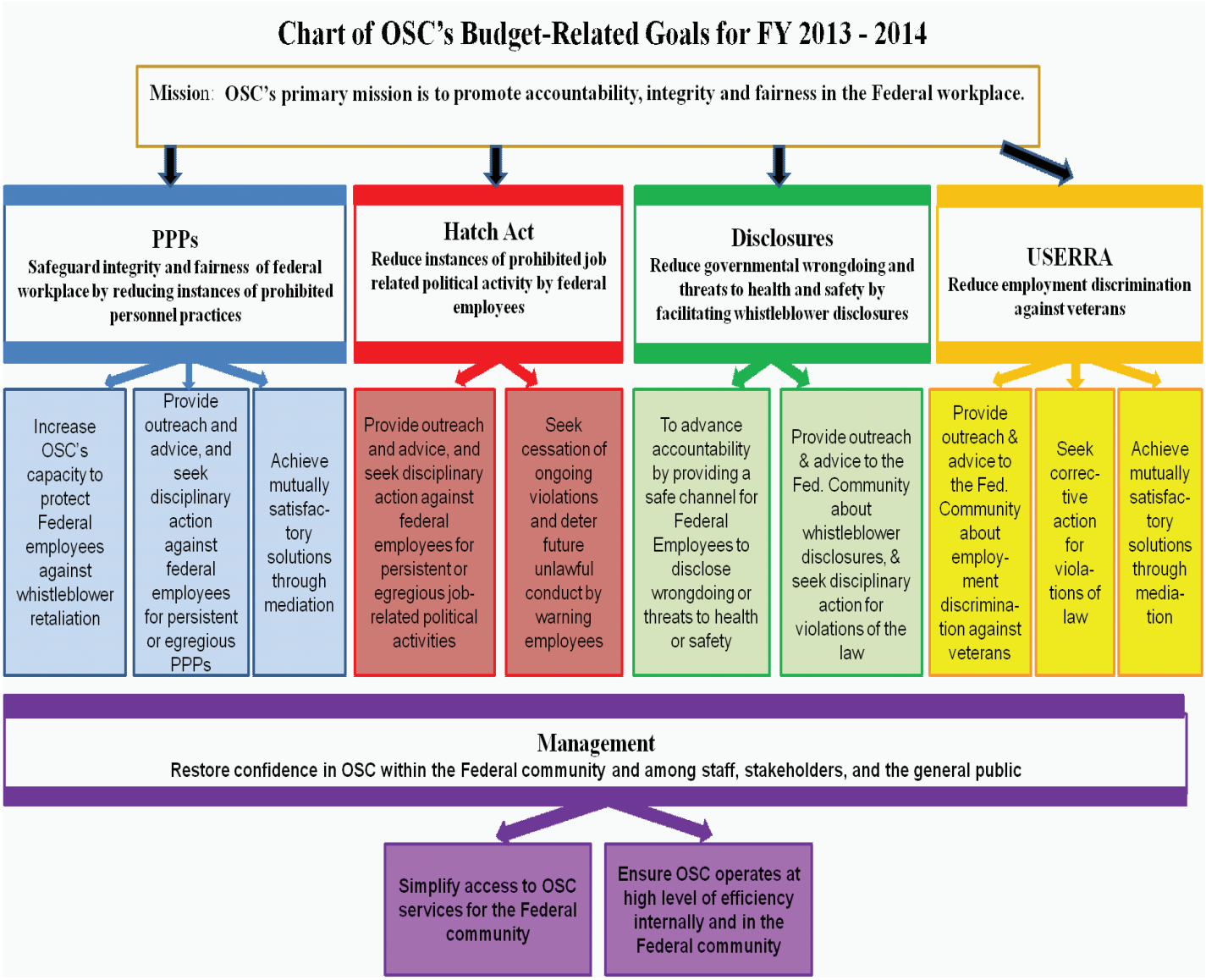


Chart of OSC's Budget-Related Goals for FY 2013 - 2014
Mission: OSC's primary mission is to promote accountability, integrity and fairness in the Federal workplace.
PPPs
Safeguard integrity and fairness of federal workplace by reducing instances of prohibited personnel practices
Hatch Act
Reduce instances of prohibited job related political activity by federal employees
Disclosures
Reduce governmental wrongdoing and threats to health and safety by facilitating whistleblower disclosures
USERRA
Reduce employment discrimination against veterans
Increase OSC's capacity to protect Federal employees against whistleblower retaliation
Provide outreach and advice, and seek disciplinary action against federal employees for persistent or egregious PPPs
Achieve mutually satisfac-tory solutions through mediation
Provide outreach and advice, and seek disciplinary action against federal employees for persistent or egregious job-related political activities
Seek cessation of ongoing violations and deter future unlawful conduct by warning employees
To advance accountability by providing a safe channel for Federal Employees to disclose wrongdoing or threats to health or safety
Provide outreach & advice to the Fed. Community about whistleblower disclosures, & seek disciplinary action for violations of the law
Provide outreach & advice to the Fed. Community about employ-ment discrimina-tion against veterans
Seek correc-tive action for viola-tions of law
Achieve mutually satisfac-tory solutions through media-tion
Management
Restore confidence in OSC within the Federal community and among staff, stakeholders, and the general public
Simplify access to OSC services for the Federal community
Ensure OSC operates at high level of efficiency internally and in the Federal community

OFFICE OF SPECIAL COUNSEL'S COST SAVINGS TO GOVERNMENT, EFFICIENCIES, AND OTHER SUCCESSES

OSC improves the efficiency and accountability of government in many ways, and it returns large sums of money to the U.S. Treasury. The agency now receives well over a thousand disclosure complaints from Federal whistleblowers annually, many of which result in enormous direct financial returns to the government. Four cases alone in just the past few years restored well over $11 million to the government. This amount, while substantial, grossly understates the financial benefit OSC brings to the government. OSC not only ensures that disclosures are properly considered, it protects the whistleblowers who bring them forward. For example, OSC successfully protected a government contracting officer threatened with suspension in reprisal for disclosing $20 million in contractor waste, fraud, and abuse.

Cost Savings

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

OSC cases come from throughout the Federal government. The agency recently confirmed allegations made by whistleblowers in ten different departments and agencies. One disclosure identified a $1.6 million reimbursement due to the Department of the Army as a result of contracting irregularities. At the Department of Homeland Security, a whistleblower alerted OSC that employees were improperly paid Administratively Uncontrollable Overtime. By stopping these improper payments, the government saved approximately $2 million.

Hatch Act

OSC had an 11% increase in the number of Hatch Act complaints filed in FY 2012, which is consistent with past presidential election cycles (while complaints in general have increased heavily from 2007 levels). For example, following an OSC investigation, a GSA employee was suspended after using his government office to fundraise for upcoming elections. OSC also sought to improve its enforcement capabilities by convincing Congress to amend the Hatch Act. The Hatch Act Modernization Act was signed into law by President Obama in December 2012, and has removed the Federal prohibition against state and local government employees' running for office. This should significantly reduce the number of Hatch Act complaints against state and local officials and enhance the efficiency and effectiveness of OSC's enforcement efforts.

Mediation

Harmonious relations between managers and employees are critical to the effectiveness and efficiency of government. OSC plays a unique role in fostering a healthy Federal workplace by investigating allegations of Prohibited Personnel Practices, such as nepotism, discrimination, retaliation, and violations of merit systems principles. These cases are typically resolved by negotiation, mediation, and settlement rather than prosecution, thereby ensuring fairness and due process to employees, while preventing paralyzing stalemates and disruptions to the conduct of government business. Accordingly, OSC has ramped up its mediation program. The cases referred for mediation have more than tripled and mediation settlements have already increased 500% over 2010 levels (see Table 4). Mediation provides a streamlined settlement option that is often a win-win for both parties

in the dispute, and also provides OSC significant savings by reducing the amount of time required to investigate and resolve a case.

Prohibited Personnel Practices

The volume of complaints is substantial and growing: Nearly 3,000 new Prohibited Personnel Practices actions were filed with OSC in 2012, and for many of these cases, the mediation process previously mentioned is used to resolve them when appropriate. Over 8% of new Prohibited Personnel Practices actions were referred for full investigation. A handful of PPP cases do not settle and, when appropriate, OSC seeks corrective and even disciplinary action through litigation before the Merit System Protection Board (MSPB) in order to resolve such cases. OSC has implemented new strategic and tactical approaches, such as the Retaliation Pilot Program (RPP) which reallocates agency resources for the investigation and prosecution of whistleblower disclosures. With 159 Favorable Actions achieved in FY 2012, OSC increased Favorable Actions by 89%. This increase translates into improved accountability and fairness in government, as well as jobs saved, whistleblowers protected and rights restored.

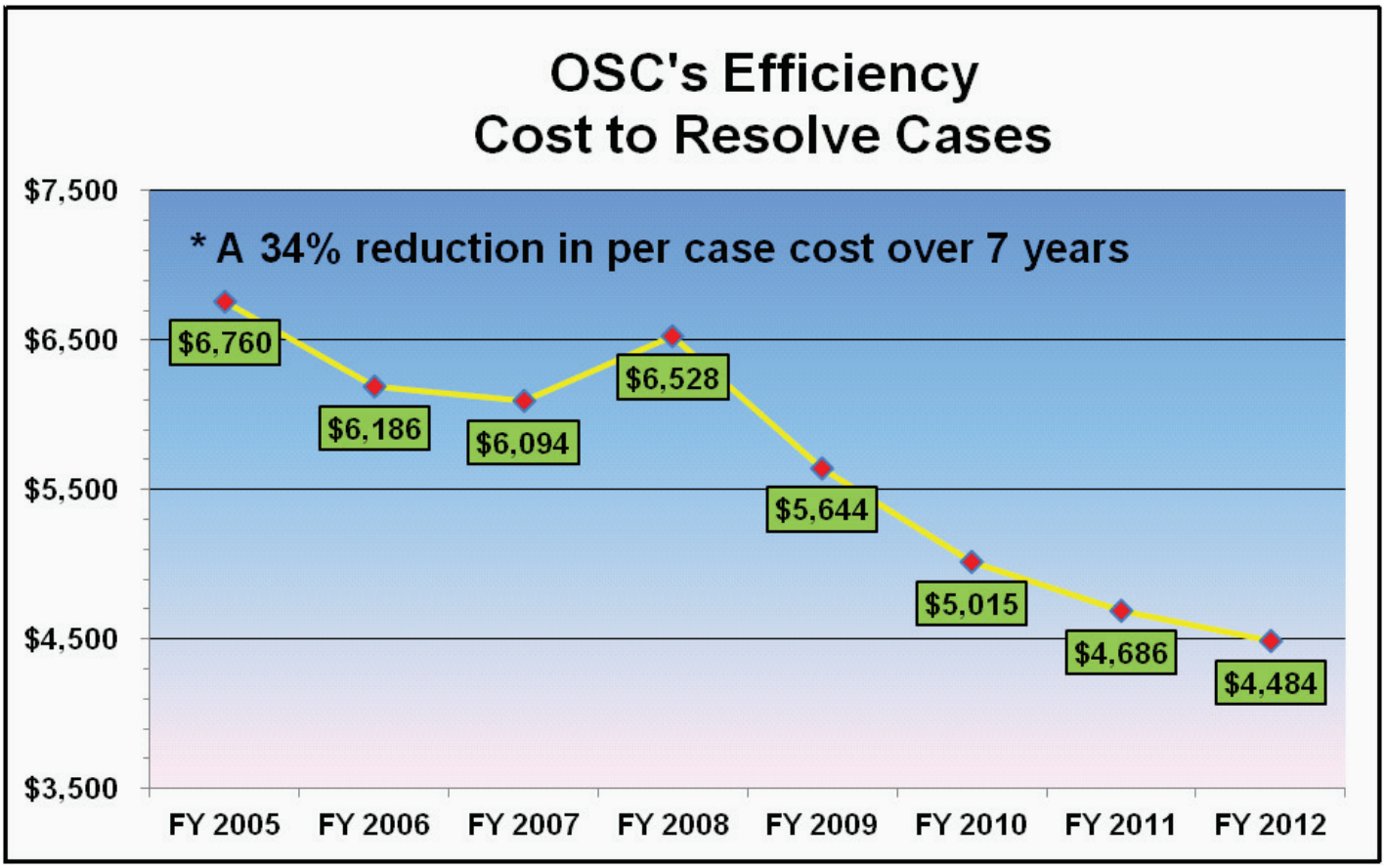
USERRA

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

For many years, the Department of Labor has investigated, and OSC has prosecuted, claims of discrimination under the Uniformed Services Employment & Reemployment Rights Act (USERRA)**.** Due to OSC's excellent performance in a prior USERRA Demonstration Project (in which OSC not only investigated half of the complaints as required, but also prosecuted all of the Federal complaints) Congress tapped OSC for a second, three-year USERRA Demonstration Project which began in August 2011. The Demonstration Project is adding hundreds of cases to OSC's docket, and in FY 2012 OSC closed 92 Demonstration Project cases.

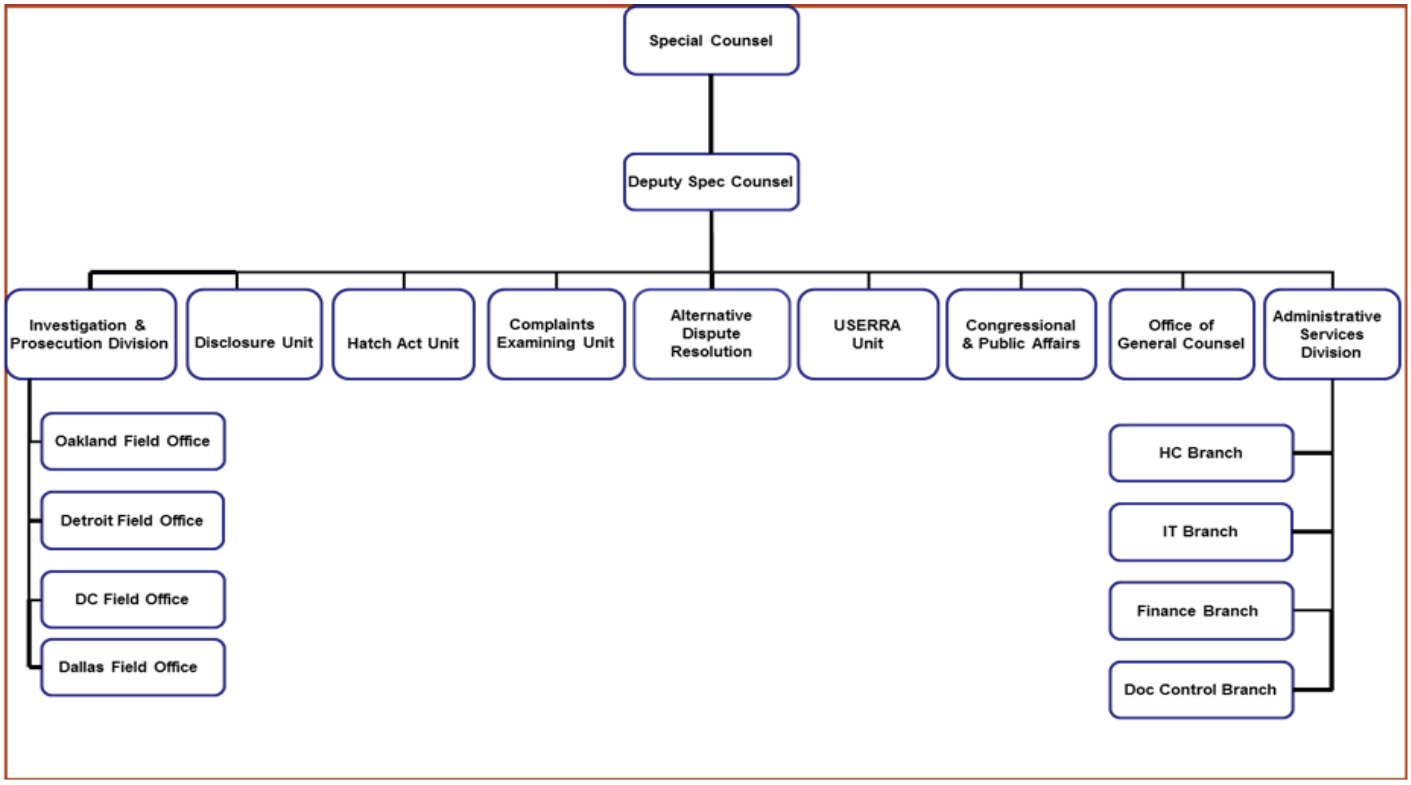
Increasing Effectiveness Resulting in Increased Filings

Across program areas, word of OSC's effectiveness in achieving good results for the Federal community is spreading. The number of new cases before the agency continues to rise, as does OSC's success in pending matters. In FY 2012, OSC resolved one third more cases than it did just three years prior. OSC has been able to drive the cost per case it resolves down by 34% over 7 years (chart below). However, in terms of productivity increases, OSC has begun to reach the point of diminishing returns. Despite its best efforts, the backlog of cases increased by almost 30% by FY 2012 year's end. Given the sharply increasing numbers of whistleblower disclosure and PPP cases, the continued increase in Hatch Act matters, and the exacting mandates of the USERRA Demonstration Project, OSC, in 2014 and beyond, will need substantial increases to the requested resources in order to sustain and build upon the agency's record of success.


OSC's Efficiency
Cost to Resolve Cases
* A 34% reduction in per case cost over 7 years
$7,500
$6,500
$5,500
$4,500
$3,500
$6,760
$6,186
$6,094
$6,528
$5,644
$5,015
$4,686
$4,484
FY 2005
FY 2006
FY 2007
FY 2008
FY 2009
FY 2010
FY 2011
FY 2012

Internal Organization

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.). The agency includes a number of program and support units.

Program units include:

The Special Counsel and her immediate 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).

Complaints Examining Unit (CEU) This unit is the intake point for all complaints alleging prohibited personnel practices. CEU normally screens approximately 2,500 such complaints each year, but last year that number spiked to almost 3,000. Attorneys and personnel-management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers qualifying matters for Alternative Dispute Resolution (ADR) or to the Investigation and Prosecution Division (IPD) for further investigation, possible settlement, or prosecution. Matters that do not qualify for referral to ADR or IPD are closed.

Investigation and Prosecution Division (IPD) If ADR is unable to resolve a matter, it is referred to the IPD. IPD is comprised of the four field offices, and is responsible for conducting investigations of prohibited personnel practices. IPD attorneys determine whether the evidence is sufficient to establish that a violation has occurred.

If not, the matter is closed. If the evidence is sufficient, IPD decides whether the matter warrants corrective action, disciplinary action, or both. If a meritorious case cannot be resolved through negotiation with the agency involved, IPD may bring an enforcement action before the MSPB.

Disclosure Unit (DU) This unit receives and reviews disclosures from Federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the relevant agency to conduct an investigation and report its findings to the Special Counsel, 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; the Special Counsel then sends the report, along with any comments by the whistleblower, to the President and responsible congressional oversight committees.

Hatch Act Unit (HAU) This unit enforces and investigates complaints of unlawful political activity by government employees under the Hatch Act, and represents OSC in seeking disciplinary actions before the MSPB. In addition, the HAU is responsible for providing legal advice on the Hatch Act to Federal, D.C., state and local employees, as well as the public at large.

USERRA Unit This unit attempts to resolve employment discrimination complaints by veterans, returning National Guard members and reservists, and members of the uniformed services under the Uniformed Services Employment & Reemployment Rights Act. This unit also reviews USERRA cases referred by the Department of Labor (DOL) for prosecution and represents claimants before the MSPB. Under a second, three-year Demonstration Project, the USERRA Unit also investigates more than half the Federal USERRA cases filed with the U.S. Department of Labor.

Alternative Dispute Resolution Unit (ADR) This unit supports OSC's operational program units. Matters are received from IPD and the USERRA Unit that are appropriate for mediation. Once referred, an OSC ADR specialist will contact the affected employee and agency. If both parties agree, OSC conducts a mediation session, led by OSC-trained mediators who have experience in Federal personnel law.

Support units include:

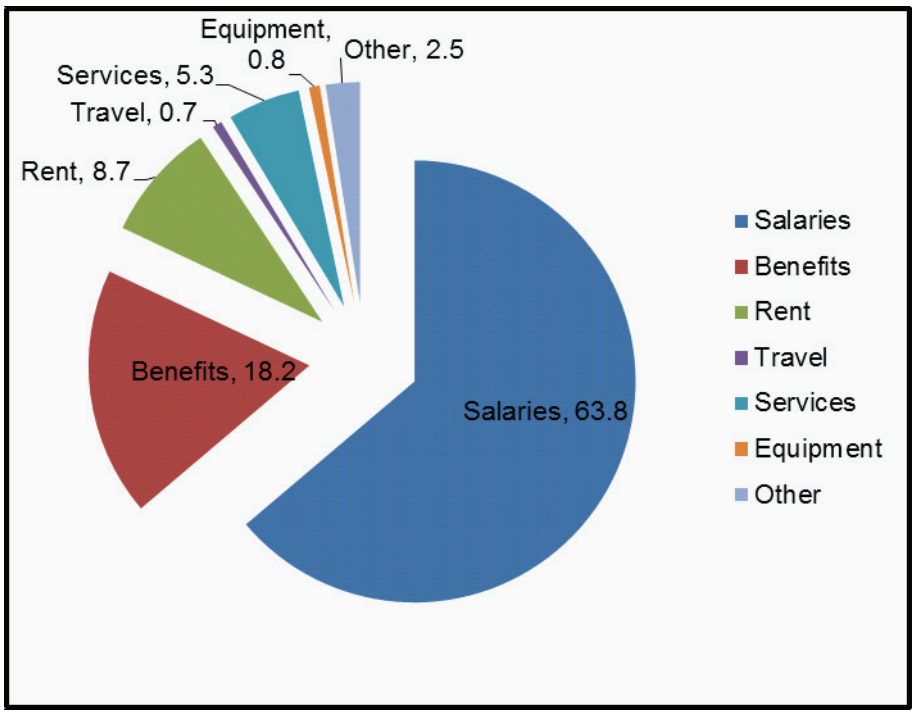
Office of General Counsel This office provides legal advice and support in connection with management and administrative matters; defense of OSC interests in litigation filed against the agency; management of the agency's Freedom of Information Act, Privacy Act, and ethics programs; and policy planning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

Congressional and Public Affairs This office liaises with congressional oversight committees, helps develop new legislation pertaining to OSC's mission and jurisdiction, and trains OSC employees on the effects of new legislation on established operating procedures.

Administrative Services Division This office manages OSC's budget and financial operations, and accomplishes the technical, analytical and administrative needs of the agency. Component units are the Budget, Finance and Procurement Branch, Human Resources and Document Control Branch, and the Information Technology Branch.

Components of Budget Request:

The following chart estimates how the FY 2014 request will be distributed on a percentage basis:



Budget by Program

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

Budget by Program (in thousands of dollars)							
		FY 2013 Estimate		FY 2014 Estimate		Increase/Decrease	
Program		$	FTE	$	FTE	$	FTE
Investigation and Prosecution of Prohibited Personnel Practices		$9,939	58	$10,939	67	$1,000	9
Hatch Act Enforcement		$1,197	8	$1,203	8	$7	0
Whistleblower Disclosure Unit		$2,029	12	$2,276	13	$247	1
USERRA Enforcement and Prosecution		$464	3	$673	3	$209	0
Alternative Dispute Resolution		$312	2	$378	2	$66	0
Office of the Special Counsel		$984	6	$1,006	6	$21	0
Office of the Agency General Counsel		$648	4	$652	4	$4	0
Office of the CFO - Management / Information Technology / Budget / Human Resources / Procurement / Document Control / Planning / Analysis / Facilities		$3,399	16	$3,513	17	$113	1
	totals	$18,972	109	$20,639	120	$1,667	11

*The FY 2013 Estimate is based upon the Continuing Resolution Level

**Numbers may not total exactly due to rounding

Reimbursable Based Funding Table

Reimbursable Based Funding	FY 2013 Estimate		FY 2014 Estimate	
	Dollars	FTE	Dollars	FTE
Estimated Reimbursable Resources	$705,000	3	$608,220	3

PART 2 - FY 2014 BUDGET REQUEST – ADDITIONAL INFORMATION

OSC's budget request is for $20,639,000 – to fund 120 FTEs and related non-personnel costs for FY 2014. This number of FTEs is necessary to manage and process the agency's significantly increasing levels of prohibited personnel practice complaints, new cases and covered parties under the recently passed Whistleblower Protection Enhancement Act, continued USERRA cases under the Demonstration Project, as well as its sustained high levels of whistleblower disclosures, Hatch Act complaints and Hatch Act advisory opinions. Providing funding to support the 120 FTEs level will enable OSC to manage its caseloads, and prevent significant backlogs, which would negatively impact our ability to efficiently and effectively perform our core mission of safeguarding the merit system for Federal employees. OSC anticipates it may see moderate increases in its backlog due to continuously increasing levels of cases.

Primary Driver of the FY 2014 costs:

Costs for current salaries and benefits for increased number of FTEs. We anticipate the agency will operate with 120 FTEs in FY 2014, up from an estimated 109 in FY 2013. Salaries and Benefits will be approximately 82% of OSC's total costs in FY 2014, up from 75% in FY 2011. Pay raises, step increases and career ladder promotions are significant in an agency in which 75% -82% of the budget goes toward salary and benefits.

General Services Administration Rental costs. OSC operates out of its Headquarters location in Washington D.C., along with its three off-site field offices in Detroit, Dallas and Oakland. Rental costs for our four GSA leases are the agency's second biggest cost component, after Salaries and Benefits, approximately 8.7% of OSC's budget in FY 2014.

FY 2014 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 2014, see Budget Table 1 below.

Budget Table 1

U.S. Office of Special Counsel

Budget Object Classification of Obligations: FY2012-FY2014

(in thousands of dollars)

Budget Object Classification of Obligations		FY2012 *Actual*	FY2013* *(projected)*	FY2014 *(projected)*
11.0	Personnel compensation	11,462	11,937	13,162
12.0	Civilian Personnel Benefits	3,512	3,342	3,686
21.0	Travel and transportation of persons	99	140	155
22.0	Transportation of things	20	21	23
23.1	Rental payments to GSA	1,602	1,819	1,833
23.3	Communications, utilities and misc. charges	123	190	195
24.0	Printing and reproduction	18	18	20
25.0	Other services	1,101	1,091	1,121
26.0	Supplies and materials	260	264	269
31.0	Equipment	620	150	175
Direct Fund Obligations		18,815	18,972	20,639
Reimbursable Fund Obligations		643	705	608
	Total	19,458	19,677	21,247

Notes concerning the above BOC line items:

Object Class 11.0 Personnel Compensation costs:

1) Overall Personnel Compensation will increase in FY 2014 as compared to FY 2013, as OSC will be supporting 120 FTEs as compared to 109 in FY 2013.
2) Increased caseloads and added responsibilities are driving the need for higher staffing levels, (11 additional FTEs) as processing cases is resource intensive. OSC has seen record levels of incoming cases, with new matters increasing 21% in two years. Cases are expected to increase at the 6-8% range for the foreseeable future. Significantly, the new Whistleblower Protection Enhancement Act will add hundreds of new cases for OSC going forward. The USERRA demonstration project will continue to add 150 cases annually to OSC's docket.
3) A pay raise of 1% is projected for FY 2014, along with some expected wage inflation with 59 within-grade increases and career ladder promotions projected in FY 2013, and a similar number in FY 2014 are expected. Turnover is expected to remain low during this timeframe.

Object Class 12.0 Civilian Personnel Benefits costs: These costs are for employee benefits, to include Medicare, Federal Employees Group Life Insurance, Health Benefits contributions, Old Age Survivors and Disability Insurance, and retirement plan contributions. Total benefits costs in FY 2014 are increasing primarily due to the new personnel being added.

Object Class 21.0 Travel and Transportation of People: During FY 2012, travel was conducted on a restricted basis; during FY 2013 and FY 2014 we expect to resume a fuller level required for OSC's investigations.

Object Class 23.1 Rental Payments to GSA: This category reflects the lease costs of the agency's Headquarters facility and OSC field offices along with rent and tax escalations. OSC estimates that total agency rent will be approximately $1.819 Million for FY 2013 and $1.833 Million for FY 2014, based on projections provided by GSA.

Object Class 23.3 Communications and Utilities: The increase in this category reflects new needs to meet additional compliance requirements, as well as costs to support additional FTEs.

Object Class 25.0 Other Services: OSC outsources its accounting services, financial and procurement systems, payroll services, travel services, and procurement services. OSC has negotiated costs for these services that will result in stabilized costs in FY 2013, with small increases expected in FY 2014.

Object Class 31.0 Equipment: OSC anticipates moderate levels of equipment purchases (servers, computers, video teleconferencing equipment) in FY 2014 in order to properly refresh its Information Technology equipment.

Budget Table 2

Analysis of Resources: FY 2012-FY2014 (in thousands of dollars)				
Description		FY 2012 (Actual)	FY 2013-CR levels (Projected)	FY 2014 (Projected)
Budget authority	Direct	18,972	18,972	20,639
	Reimbursable	643	705	608
Total		19,615	19,677	21,247
Outlays		17,993	17,999	19,607
Employment:	Direct-Full Time Equivalent	109	109	120
	Reimbursable-Full Time Equivalent	3	3	3
Total		112	112	123

FY 2012 CASE ACTIVITY AND RESULTS – All Programs

During FY 2012, OSC received 4,796 new matters throughout all of its program areas and 3,448 requests for Hatch Act advisory opinions. Table 1 below summarizes overall OSC case intake and dispositions in FY 2012 with comparative data for the previous four fiscal years. More detailed data can be found in Tables 2-7, in sections below relating to the four specific components of OSC's mission – Prohibited Personnel Practice cases, Hatch Act matters, Whistleblower Disclosures, and USERRA cases.

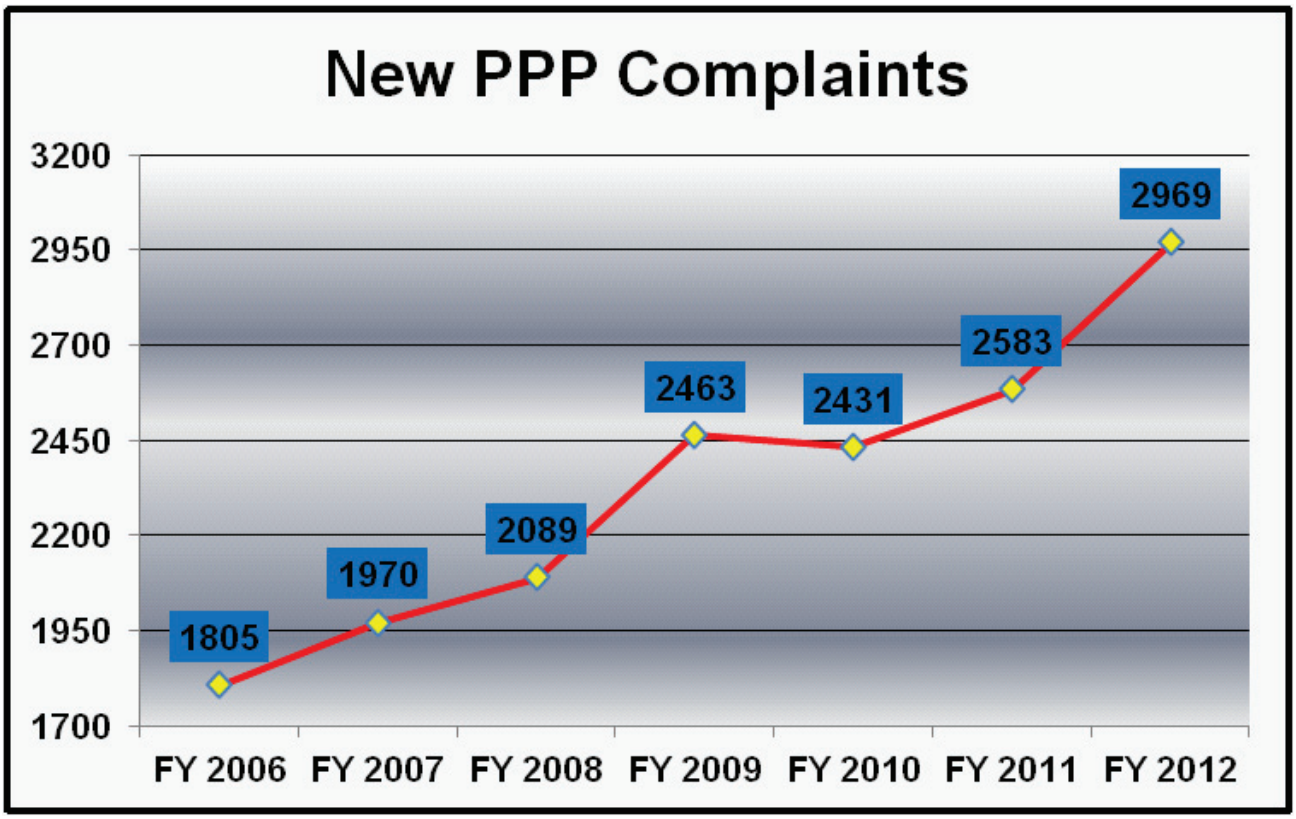
TABLE 1 Summary of All OSC Case Activity

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Matters[a] pending at start of fiscal year	700	943	1,326	1,357	1,320
New matters received	3,116	3,725	3,950	4,027	4,796
Matters closed	2,875	3,337	3,912	4,051	4,374
Matters pending at end of fiscal year	937	1,324	1,361	1,331	1,729
Hatch Act advisory opinions issued	3,991	3,733	4,320	3,110	3,448

[a] "Matters" in this table includes prohibited personnel practice cases (including TSA matters), whistleblower disclosures, and USERRA cases.

INVESTIGATION AND PROSECUTION OF PROHIBITED PERSONNEL PRACTICES (PPPs)

OSC's largest program is devoted to handling PPP complaints. Of the 4,796 new matters OSC received during FY 2012, 2,969 or 62% were new PPP complaints (*see chart below and Table 2*).



Unlike many other investigative entities or agencies, OSC *must* conduct an inquiry of all jurisdictionally sound complaints alleging the commission of a prohibited personnel practice. The nature of the inquiry ranges from a screening at intake by the Complaints Examining Unit (CEU) to an Investigation and Prosecution Division (IPD) field investigation. Complaints received by OSC can and often do involve multiple allegations, some of which involve multiple prohibited personnel practices. In all such matters, an OSC inquiry requires fact-finding and legal analysis for each allegation.

After a complaint is received by OSC, CEU attorneys and personnel-management specialists conduct an initial review to determine whether it is within OSC's jurisdiction and whether further investigation is warranted. CEU refers matters stating a viable claim to the IPD for further investigation. CEU referred 252 cases for full IPD investigation in FY 2012, with new complaints received increasing by 15% percent. In most cases, prior to a full-scale investigation, these matters are first reviewed by the ADR Unit to determine if mediation is appropriate.

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

Moreover, upon completion of its investigation, if OSC concludes a prohibited personnel practice was committed, it informs the responsible agency of its findings. Most often, the matter is then successfully resolved through negotiations. If negotiations do not resolve the matter, OSC may initiate an enforcement proceeding seeking corrective action (relief intended to make an aggrieved employee whole) at the MSPB. Before doing so, however, the Special Counsel must formally report its findings and recommendations for corrective action. Only after the agency has had reasonable time to take corrective action and failed to do so may OSC petition the MSPB for corrective action. If OSC determines that disciplinary action (the imposition of discipline on an employee who has committed a violation) is warranted, it can file a complaint directly with the MSPB. (The agency may agree to take appropriate disciplinary action on its own initiative, thereby avoiding 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, as an amicus or by otherwise intervening 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, which can increase the deterrent effect of its efforts.

Resource Estimates

During FY 2013 the Investigation and Prosecution Division, which has jurisdiction over Prohibited Personnel Practices, will use approximately 58 FTEs at a cost of approximately $9,939,000. During FY 2014, we estimate the cost of the program will be approximately $10,939,000, with 67 FTEs assigned.

TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing[a]							
		FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Pending complaints carried over from Prior fiscal year		386	358	474	769	863	934
New complaints received[b]		1,970	2,089	2,463	2,431	2,583	2,969
Total complaints		2,356	2,447	2,937	3,200	3,446	3,903
Complaints referred by CEU for investigation by IPD		125	135	169	220	270	252
Complaints processed by IPD		151	88[c]	150	179	190	274
Complaints pending in IPD at end of fiscal year		136	185	201	250	331	325
Total complaints processed and closed (CEU and IPD combined)		1,996	1,971	2,173	2,341	2,508	2,750
Complaint processing times	Within 240 days	1,874	1,889	2,045	2,185	2,327	2,425
	Over 240 days	121	80	127	154	175	320
Percentage processed within 240 days		94%	95%	94%	93%	92%	88%

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

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

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

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

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

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

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

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

[d] Incorrectly reported as 4 in OSC's FY 2007 report to Congress due to administrative error.

[e] Represents two stays obtained in each of two cases.

[f] A revised query now correctly shows this quantity to be one, not zero as previously reported.

ALTERNATIVE DISPUTE RESOLUTION

As mentioned above, in selected prohibited personnel practice cases referred by CEU to IPD, OSC continues to offer mediation as an alternative to investigation and potential litigation. Under OSC's program, once a case has been identified as mediation-appropriate, an OSC Alternative Dispute Resolution Specialist contacts the parties to discuss the process. Pre-mediation discussions are designed to help the parties form realistic expectations and well-defined objectives regarding the mediation process. Among the factors that determine mediation-appropriate cases are the complexity of the issues, the nature of the personnel action, and the relief sought by the complainant.

In FY 2013 and FY 2014, OSC will engage the Federal Mediation and Conciliation Service via an Inter-Agency Agreement to provide alternative dispute resolution services throughout the country. This will allow OSC to better leverage its resources and increase its use of mediation without incurring significantly higher travel costs. We anticipate that the additional expanded use of mediation may also result in reduced case backlogs.

Goals and Results - Alternative Dispute Resolution

During fiscal year 2012, 129 cases were referred to the ADR Unit. In 82 cases mediation was accepted by the complainants, and from those cases agencies accepted mediation in 59 of those cases, from which there were 18 mediated resolutions (see Table 4).

Table 4 ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints & USERRA Complaints

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

[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 re-solved by withdrawal of the complaint, or through mediation by an agency other than OSC.

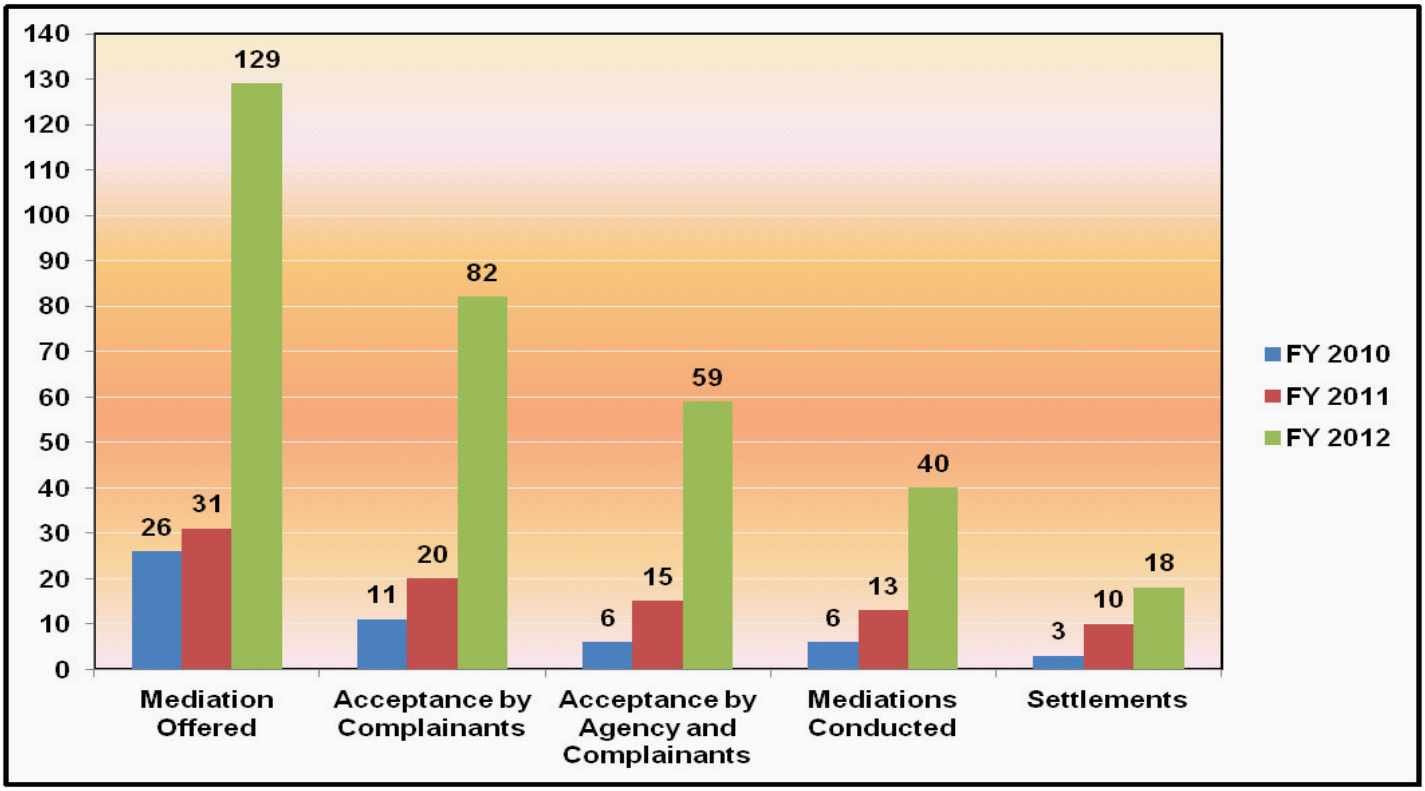
[b]Includes cases completed or withdrawn after at least one mediation session

[c]"In process" means parties have agreed to mediate and mediation is scheduled or is ongoing with more than one session

[d]Cases in which OSC will or is in the process of offering mediation to the parties

The new emphasis on mediation has yielded some outstanding results: Mediations Offered increased by 316% (see chart below).

ADR Stats for Fiscal Years 2010-2012

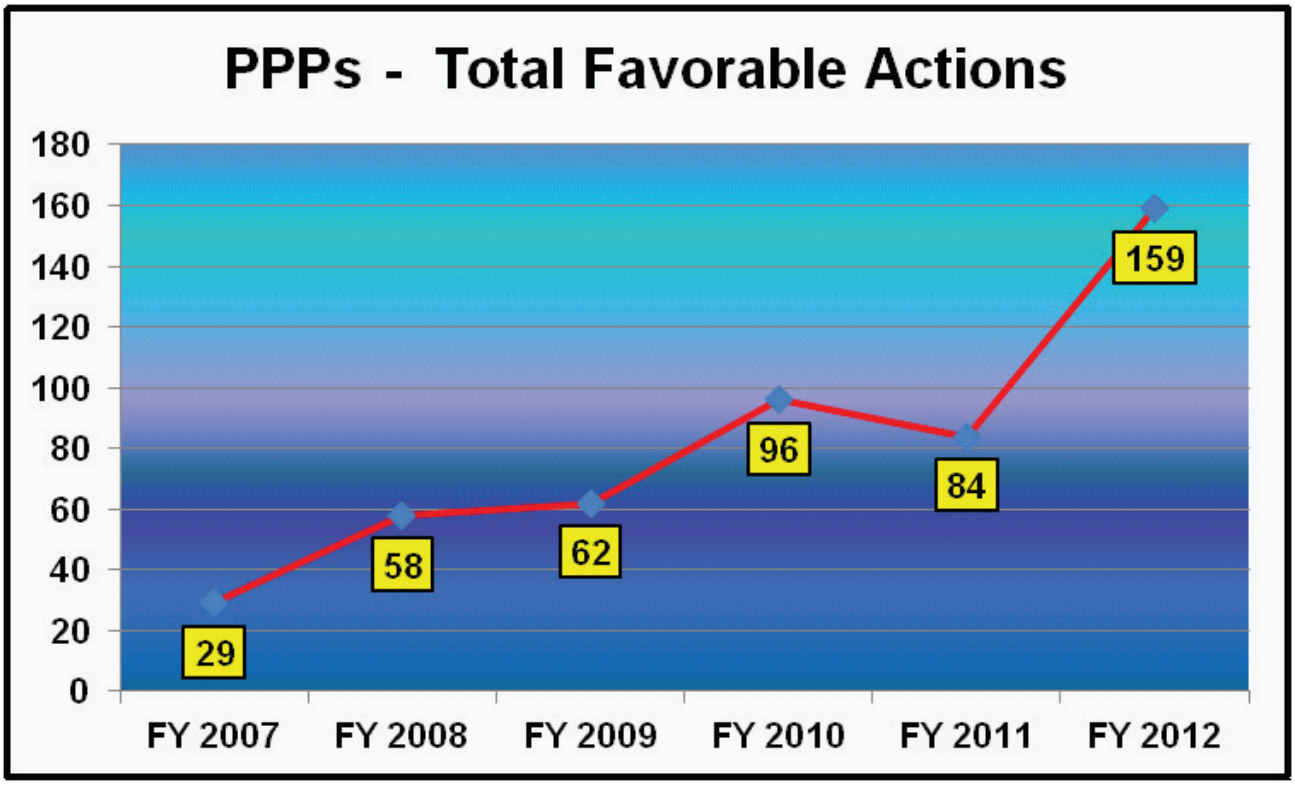


Resource Estimates

During FY 2013 the Alternative Dispute Resolution program will use approximately 2 FTEs at a cost of approximately $312,000. During FY 2014, we estimate the cost of the program will be approximately $378,000, with 2 FTEs assigned.

Goals and Results - Prohibited Personnel Practices

OSC received a record level of PPP cases in FY 2012. The 2,969 complaints received were a 15% increase over the already high FY 2011 levels. PPP complaints have increased 51% since FY 2007. OSC received a near record-level high of 159 favorable actions in FY 2012.



OSC's Strategic Objective 1 is to protect the Merit System and promote justice in the Federal workforce through investigation and prosecution of the prohibited personnel practices. The following tables describe the three Performance goals supporting this strategic objective.

Goal Table 1 Safeguard integrity and fairness of Federal workplace by reducing instances of prohibited personnel practices							
	Description of Target	FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
1	Number of corrective actions obtained by IPD	n/a	140	140		140	
2	Percent of corrective actions obtained per number of cases closed.	n/a	5%	5%		5%	
3	Number of cases referred for investigation from CEU to IPD (non-ADR)	n/a	75	83		91	
4	Number of informal stays requested	n/a	26	30		30	
5	Percent of informal stays obtained[5]	n/a	**n/a[5]**	**n/a[5]**		**TBD**	
6	Number of formal initial stays requested	n/a	7	10		10	
7	Percent of formal initial stays obtained	n/a	100%	100%		100%	
8	Number of corrective actions obtained in cases referred for investigation directly from CEU to IPD	n/a	31	31		31	
9	Percent of corrective actions obtained per number of cases referred for investigation directly from CEU to IPD	n/a	41%	45%		45%	
10	Number of initial examinations completed by CEU within120 days	n/a	1,716	1,801		1,891	
11	Percent of initial examinations completed by CEU within 120 days	n/a	63%	66%		69%	
12	Number of CEU cases more than 240 days old	n/a	98	120		120	
13	Percent of CEU cases more than 240 days old[13]	n/a	3%	4%		4%	
14	Number of staff allocated to whistleblower retaliation and other PPPs	53	60	65		70	
15	Percent of total staff allocated to whistleblower retaliation and other PPPs	50%	50%	52%		55%	
16	Number of staff training programs in whistleblower retaliation and other PPPs	2	3	4		5	

5. Tracking and reporting capability is currently being developed in the case tracking system.

13. Due to the sharp increase in PPP caseload, an increase in the number of aged cases will occur.

Goal Table 2 Provide outreach and advice; seek disciplinary action against Federal employees for persistent or egregious prohibited personnel practices							
	Description of Target	FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
17	Number of recommendations to agencies to take disciplinary action	n/a	n/a	6		6	
18	Number of disciplinary action complaints filed	n/a	0	1		1	
19	Number of disciplinary actions resolved pre-litigation through negotiated settlement	n/a	19	20		25	
20	Total number of successful disciplinary prosecutions	n/a	0	1		1	
21	Percent of successful disciplinary prosecutions	n/a	n/a	100%		100%	
22	Upon receipt of a complaint, clearly explain the OSC review process and when action can be expected[22]	n/a	99%	99%		99%	
23	Provide complainants status updates at defined intervals and when significant new developments occur[23]	n/a	88%	99%		99%	
24	If OSC declines to refer a case for investigation, clearly inform complainant of the reason(s) why[24]	n/a	100%	100%		100%	

17. Tracking and reporting capability is currently being developed in the case tracking system, thus the FY 2012 result is listed as n/a while this is being developed.

22. Upon receipt of a complaint, clearly explain the OSC review process and when action can be expected:

Target: Since the third quarter of FY 2012, prepare an attachment for the acknowledgment letter explaining the complaint review process and expected time for CEU to make a determination on the complaint. Starting from the beginning of the fourth quarter of FY 2012, include the attachment with all acknowledgment letters. The CEU Chief will provide senior management a list of files that do not include the attachment.

23. Provide complainants with status updates at defined intervals and when significant new developments occur. The IT system is coded to generate this information.

24. If OSC declines to refer a case for investigation, clearly inform complainant of the reasons why.

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

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

Goal Table 3 Achieve mutually satisfactory solutions through mediation

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
25a	Percent of cases qualifying for full investigation referred to ADR Unit for review[25a]	n/a	89%	89%		89%	
25b	Percent of cases received by USERRA Unit referred to ADR Unit for review[25b]	n/a	18%	50%		50%	
26	Number of cases reviewed by the ADR Unit from all sources	n/a	186	190		200	
27	Number of cases in which mediation is offered from all sources	n/a	129	125		125	
28	Number of cases mediated (including cases withdrawn after one or more sessions)	n/a	40[28]	50		55	
29	Percentage of all mediations completed that resulted in settlement	n/a	60%	58%		60%	

25a. This target pertains to the CEU section.

25b. This target pertains to the USERRA section. Resources were only provided during part of FY 2012; therefore, the goal is higher for FY 2013.

28. At the end of FY 2012, 28 cases were either in mediation or scheduled for mediation.

Prohibited Personnel Practices Successes

Protecting Employees from Retaliation

- OSC continues to obtain corrective actions for employees who have suffered retaliation for whistleblowing and for engaging in protected activity as well as disciplinary action against officials who retaliate against Federal employees. In four significant whistleblower retaliation cases, the whistleblowers, all employees of the United States Department of the Air Force (the Air Force) Mortuary Affairs Operation (AFMAO) Port Mortuary, alleged that various personnel actions were taken against them in reprisal for their disclosures to the Air Force Office of the Inspector General (OIG) and OSC concerning numerous violations of AFMAO regulations and substantial and specific dangers to public health and safety related to misconduct in the care of our fallen service members. The combined personnel actions taken against the whistleblowers included removal from their positions, a proposed removal, placing an employee on administrative leave for eight months without explanation, suspensions, significant changes in duties and working conditions, and lowered performance appraisals. Following OSC's investigation, which substantiated the whistleblowers' retaliation allegations, OSC issued a Report of Prohibited Personnel Practice (PPP Report) to the Air Force detailing its findings. In response to the PPP Report, the Air Force entered into separate settlement agreements with each whistleblower, providing full corrective action. In addition, the Air Force formally reprimanded the former Commander of the Port Mortuary, issued him a monetary fine, and issued the former Deputy Commander a twenty-day suspension without pay. Furthermore, a third responsible official resigned to avoid facing likely disciplinary action.

- In another whistleblower retaliation case, OSC obtained corrective action on behalf of two whistleblowers in a Federal agency. The whistleblowers alleged that they received proposed suspensions (mitigated to letters of reprimand) in retaliation for disclosing to management that the agency failed to adequately protect its employees from health risks related to exposure to an unknown substance in the office. Subsequent to OSC's investigation, the agency agreed to remove the letters of reprimand from the whistleblowers' personnel files and to formally counsel management.

- One complainant, a manager at a Federal agency, alleged the agency violated 5 U.S.C. § 2302(b)(8) and b(9) when they changed his work schedule, converted his position from National Security Personnel System to an incorrect grade, charged him AWOL, lowered his performance appraisal, gave him a directed reassignment to another duty location, and cancelled a promotion that he had been selected for after he reported accounting discrepancies to upper management and the OIG. As a result of OSC's investigation, the agency agreed to retroactively promote the complainant to a GS-11 position. They also agreed to transfer him to a duty location, outside of his current management chain, with full relocation benefits. In agreeing to the terms of the settlement agreement, the complainant withdrew his OSC complaint.

- Another complainant was a Federal employee who alleged that after he made several disclosures relating to management's actions, his supervisors violated 5 U.S.C. § 2302(b)(8) when they demoted him from a supervisory position during his probationary period and changed his working conditions. After OSC's investigation, the complainant entered into a settlement agreement with the agency which resolved the case with OSC. In the agreement, the agency agreed to expunge the letter terminating the complainant's probationary status and grant him

back pay, as well as attorney's fees. In exchange, the complainant agreed to withdraw his OSC complaint.

Example of due process violation

- An officer made disclosures alleging mismanagement by a superior. Subsequently, when the officer, a veteran who had served four combat tours in Iraq, was on extended leave because of an obligation with the military reserves, the agency proposed his removal. However, the officer did not receive the notice of the proposed removal because that notice was not sent to the address he had provided to the agency for reaching him during his reserve service. Nevertheless, the agency effected the officer's removal without receiving any response from him. OSC investigated and determined that the agency had violated the officer's due process rights by failing to provide proper notice of the officer's proposed removal. In response to OSC's report of the violation, the agency provided the officer with full corrective action, including an offer to return to Federal service and payment of his out-of-pocket expenses and attorneys' fees.

More Examples of whistleblower retaliation

- A seasonal employee made disclosures alleging that a stove had been improperly installed in one of the agency's work stations, creating a fire hazard. Shortly thereafter, the agency prematurely terminated the employee's seasonal appointment. In addition, the agency declined to reappoint the lookout for subsequent appointments. In response to OSC's investigation and report of its findings that the employee had suffered retaliation for whistleblowing disclosures, the agency agreed to provide the employee with pay for roughly four seasons of work.

- Another complainant alleged that he was dismissed from his role as the Contracting Officer Representative in a contract with a private company, removed from his acting division, and given a notice of proposed suspension and reduction in pay and band in retaliation for reporting waste, fraud, and abuse of a $20 million government contract. During the course of this OSC investigation, the complainant also alleged that because of his disclosures, his overseas tour of duty was abbreviated by more than two years, he was denied Renewal Travel Agreement (RAT) leave for a trip back to the Continental U.S., and he was not selected for military positions for which he had applied. OSC's investigation substantiated many of the complainant's allegations, and at OSC's request, the agency unilaterally re-extended the complainant's overseas tour, approved his request for RAT travel, and rescinded the notice of proposed suspension and reduction in pay and band. In 2012, the complainant agreed to accept a lateral transfer to a different position in the agency.

- A complainant alleged that he was terminated from his Excepted Service position without being given the notice requirements of 5 U.S.C. § 7513(b) [Adverse Action - Cause and Procedures], and notice that he had an opportunity to appeal his termination to the Merit Systems Protection Board (MSPB), a violation of 5 U.S.C. § 2302(b)(12). An OSC investigation substantiated the complainant's allegations. The complainant was a veteran who had more than one year continuous service, and, as such, was a preference-eligible employee, as defined in 5 U.S.C.§ 7511(a)(1)(B). As a preference-eligible employee, the complainant should have been given the due process rights mandated by 5 U.S.C. § 7513, and appeal rights to the MSPB, but instead he was improperly terminated under the due process procedures of 5 C.F.R. 315.804 (termination of

probationers for unsatisfactory performance or conduct). At OSC's request, the agency agreed to reinstate the complainant, and to give him two and a half year's back pay.

HATCH ACT ENFORCEMENT PROGRAM

Enforcement of the Hatch Act – which protects the Civil Service system from coerced or inappropriate partisan political activity – is another important component of OSC's mission. The agency's Hatch Act Unit (HAU) continued to be responsible for this enforcement responsibility through investigation of complaints received, issuance of advisory opinions responsive to requests, and proactive outreach activities.

OSC successfully leveraged its contacts within Congress to obtain passage of the Hatch Act Modernization Act in December last year. This legislation allows state and local government employees to run for political office, an important reform that should significantly reduce the number of Hatch Act complaints at the state and local level and enhance the OSC's ability to enforce the Hatch Act efficiently.

Investigations

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

A string of Hatch Act cases involving high-profile employees over the last few years has resulted in significant national press coverage and heightened awareness of the law among Federal employees. As a result, Hatch Act complaints have increased to a new average level of 500 a year, a 78% rise from 2007 levels.

At the end of FY 2012, the Hatch Act Unit had closed 449 complaints. It issued 11% more advisory opinions than the previous FY (see Table 5). As 2012 was a presidential election year, we had a significant surge in Hatch Act complaints, which has been the historical pattern. New complaints received represented at 11% increase over the previous Fiscal Year.

Advisory Opinions

The HAU also is responsible for a nationwide program that provides Federal, state, and local (including D.C.) government employees, as well as the public at large, with legal advice on the Hatch Act in order to enable individuals to determine whether they are covered by the Act and whether their political activities are permitted. Specifically, HAU has the unique responsibility of providing Hatch Act information and legal advice to White House and congressional offices; cabinet members and other senior management officials throughout the Federal government; state and local government officials; and the media. During FY 2012, the HAU issued 3,448 total advisory opinions, including 262 formal written advisory opinions. The Unit is also proactive in reaching out to the Federal community about Hatch Act responsibilities and has a near perfect record of satisfying requests for training and education from Federal agencies.

Outreach

To further its advisory role, the Hatch Act Unit is very active in OSC's outreach program. The unit conducted approximately 61 outreach presentations this fiscal year to various Federal agencies and employee groups concerning Federal employees' rights and responsibilities under the Act. Many of these programs involved high-level agency officials.

Resource Estimates

During FY 2013, the Hatch Act Enforcement Program will use 8 FTEs at a cost of approximately $1,197,000. During FY 2014, OSC estimates the cost of this program to be $1,203,000 while employing 8 FTEs. OSC anticipates that enactment of Hatch Act reforms, particularly as to the state and local enforcement provisions, will begin to reduce the need for FTEs as compared to what it has been in earlier years.

Goals and Results - Hatch Act Enforcement

The Hatch Act Unit has seen dramatic increases in complaints and requests for advisory opinions from 2006 onward, with the workload almost doubling by FY 2010. Following this trend, the HAU received 503 Hatch Act complaints and issued 3,448 advisory opinions in FY 2012. OSC successfully obtained 34 Hatch Corrective Actions in FY 2012.

TABLE 5 Summary of Hatch Act Complaint and Advisory Opinion Activity

		FY 2007	FY 2008[c]	FY 2009	FY 2010	FY 2011	FY 2012
Formal written advisory opinion requests received		194	292	227	351	283	257
Formal written advisory opinions issued		176	275	226	320	335	262
Total advisory opinions issued[a]		2,598	3,991	3,733	4,320	3,110	3,448
New complaints received[b]		282	445	496	526	451	503
Complaints processed and closed		252	264	388	535	635	449
Warning letters issued		68	70	132	163	164	142
Corrective actions taken by cure letter recipients	Withdrawal from partisan races	18	13	15	28	23	14
	Resignation from covered employment	6	17	6	26	16	12
	Other	1	2	3	1	5	8
	Total	25	32	24	55	44	34
Disciplinary action complaints filed with MSPB		1	3	10	7	3	0
Disciplinary actions obtained (by negotiation or ordered by MSPB)		5	11	5	10	5	4
Complaints pending at end of fiscal year		142	323	430	422	233	286

[a]All oral, e-mail, and written advisory opinions issued by OSC.
[b]Includes cases that were reopened.
[c]Numbers revised for fiscal years 2007-2008 based upon a new query which includes disciplinary actions obtained in both negotiated Hatch Act settlements and litigated Hatch Act cases, not just litigated cases as in past reports.

Goal Table 4 Provide outreach and advice; seek disciplinary action against Federal employees for persistent or egregious job-related political activity							
Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
30	Number of Hatch Act updates to OSC website or Listserv messages[30]	10	15	10		10	
31	Percent of cases obtaining corrective action[31]	n/a	92%	95%		95%	
32	Percent of appropriate cases resolved through negotiation [32]	n/a	100%	100%		100%	
33	Number of successful prosecutions	n/a	1	1		1	
34	Percent of successful prosecutions	n/a	100%	100%		100%	

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

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

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

Goal Table 5 Reduce instances of prohibited job-related political activity by Federal employees							
Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
35	Number of warning letters issued	n/a	142	142		142	
36	Percent of Hatch Act outreach/training requests accepted[36]	98%	98%	98%		98%	
37	Percent of oral and email advisories issued within 5 business days of receipt of complaint[37]	95%	99%	95%		95%	
38	Percent of formal written advisories issued within 120 days	n/a	95%	95%		95%	
39	Percent of formal written advisory requests responded to[39]	n/a	98%	98%		98%	

36. Hatch Act outreach records: The Outreach coordinator retains a record of requests that are accepted and declined each year. One outreach request was denied in FY 2012 due to a shortage of resources. In addition, starting in FY 2013, the Hatch Act Unit program assistant will maintain a record of this information.

37. Oral and Email advisories: Hatch Act Unit attorneys will keep track of the number of oral and email advisories that take longer than five days to issue, and will compare that number to the total number for the year to come up with the percentage.

39. Advisories: Hatch Act Unit attorneys will compare intakes with number of advisories issued for fiscal year.

Hatch Act Successes

Increased Training on the Hatch Act

The Hatch Act Unit conducts outreach presentations to educate Federal, D.C., and state and local employees about the prohibitions of the Hatch Act. In this Presidential election year, the Unit increased its efforts to conduct these training sessions and familiarize employees with the law. During Fiscal Year 2012, the Unit conducted 61 outreach presentations.

Disciplinary Action Obtained through Settlement Negotiations

The Hatch Act Unit successfully resolved four cases through settlement negotiations this fiscal year. All of the cases involved Federal employees who engaged in significant political activity while on duty and in the Federal workplace. Some of the cases also involved employees who personally solicited political contributions and/or hosted a partisan political fundraiser. The settlements ranged from a letter of reprimand to a 180-day suspension without pay.

Corrective Action Obtained through Negotiations

The Hatch Act Unit successfully resolved 34 cases this fiscal year by encouraging employees to voluntarily cease the activity that violated the Hatch Act. Most of these cases involved state or local government employees who were running for partisan political office. The Unit was able to convince the employees to come into compliance with the law.

Merit Systems Protection Board Litigation

The Hatch Act Unit litigated a case against an employee of a state transportation department who was a candidate for partisan political office despite the fact that OSC warned him that the Hatch Act prohibited his candidacy. An administrative law judge concluded that the employee violated the Act and that the violation warranted his removal. The case currently is on appeal before the Merit Systems Protection Board.

Successful Defense against Attorney Fees Motion

OSC successfully defended a motion for attorney fees filed by a Hatch Act respondent in a case that the parties settled for a 30-day suspension without pay. An administrative law judge ruled that the employee was not the prevailing party, and thus was not eligible for attorney fees. A petition for review is pending before the Merit Systems Protection Board.

Investigations of High Level Presidential Appointees

After receiving complaints alleging Hatch Act violations, the Unit investigated several Presidential appointees during this fiscal year. The cases involved allegations that appointees used their official authority or influence to affect an election, or engaged in political travel funded by the Federal government. For example, one case alleged that a Presidential appointee with Senate confirmation, during an official speech given in the employee's official capacity, encouraged attendees to help support and elect particular candidates for partisan political office.

WHISTLEBLOWER DISCLOSURE PROGRAM

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

During FY 2012, the unit referred 39 matters to agency heads for investigation under § 1213(c). (See Table 6.)

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

Resource Estimates

During FY 2013, the Whistleblower Disclosure Unit will use 12 FTEs at a cost of $2,029,000. During FY 2014, we estimate the program will use 13 FTEs at a cost of $2,276,000.

Goals and Results - Whistleblower Disclosures

OSC's Strategic Objective 2 is to promote public safety and efficiency by acting as a channel for whistleblowers in the Federal workforce to disclose information. The following tables describe the two operational goals supporting this strategic objective. Disclosure Unit cases have more than doubled in the last five years. In FY 2012, the unit received 1,148 Disclosures, 24% higher than the previous FY 2011. As a consequence, the unit's backlog has increased sharply as well.

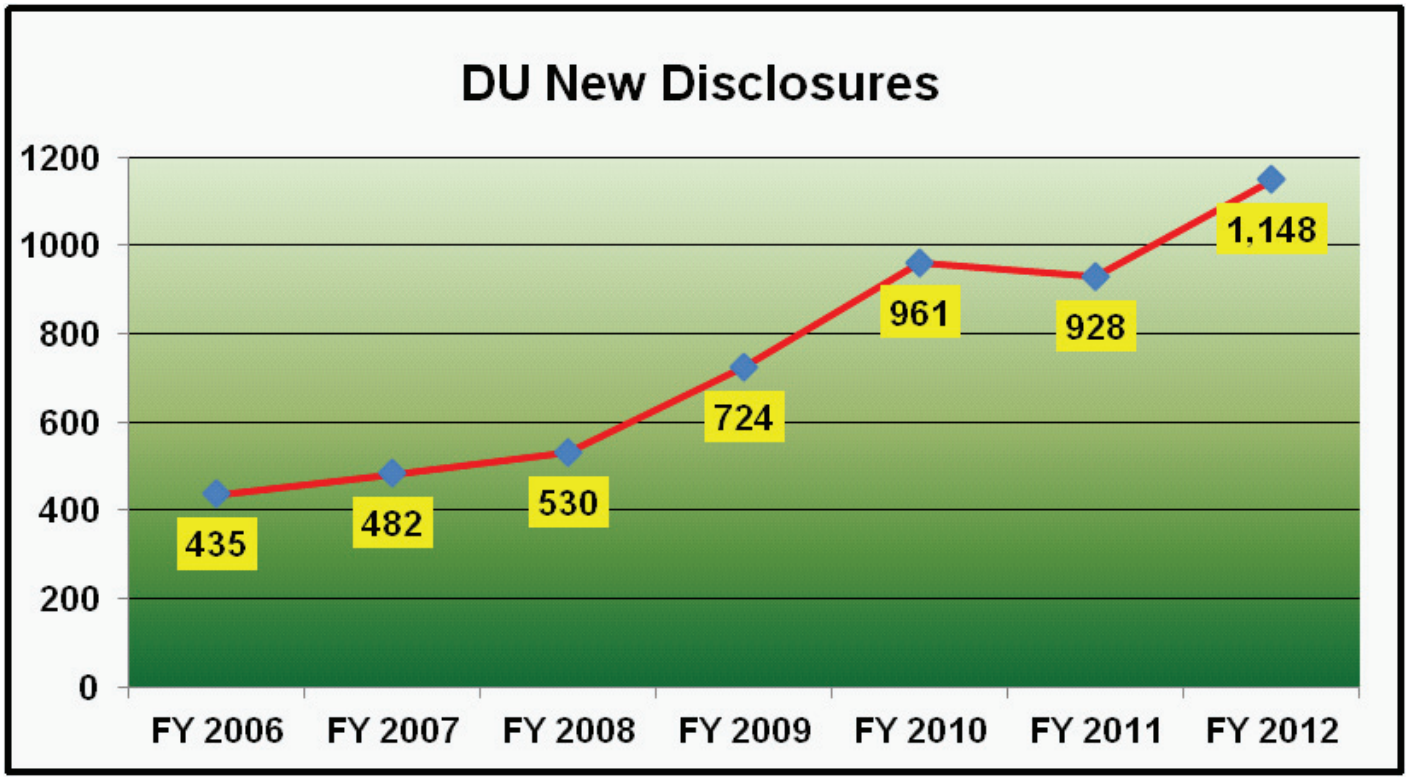


TABLE 6 Summary of Whistleblower Disclosure Activity - Receipts and Dispositions[a]

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

[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] Incorrectly reported as 599 in OSC's FY 2007 report to Congress.

Goal table 6 Reduce governmental wrongdoing and threats to health and safety by facilitating whistleblower disclosures							
Description of Target		**FY 2012 Target**	**FY 2012 Result**	**FY 2013 Target**	**FY 2013 Result**	**FY 2014 Target**	**FY 2014 Result**
40	Total number of outreach activities undertaken including dissemination of whistleblower information	n/a	9	9		9	
41	Success in prompting thorough agency investigations of referred disclosures[41]	n/a	68%	68%		68%	
42	Number of whistleblower disclosures prompting effective corrective action and accountability[42]	n/a	30	32		34	

41. From the subset of reports received that did not require a return action back to the agency involved. This captures only the percentage of investigations performed within the same fiscal year.

42. This reflects the number of cases closed in the fiscal year, in which the action code was entered signifying corrective action. These cases were closed in the given fiscal year, but may have been referred in a prior fiscal year. Due to the length of time our process takes, cases referred in one fiscal year could be closed in subsequent fiscal years.

Goal Table 7 Provide outreach and advice to the Federal community about whistleblower disclosures; seek corrective action							
Description of Target		**FY 2012 Target**	**FY 2012 Result**	**FY 2013 Target**	**FY 2013 Result**	**FY 2014 Target**	**FY 2014 Result**
43	Number of whistleblower disclosures referred by OSC to agency head for investigation	n/a	39	41		43	
44	Percent of whistleblower disclosures submitted to OSC referred to agency head for investigation	n/a	4%	6%		8%	
45	Number of whistleblower disclosures either closed or referred within 15 day statutory timeline	n/a	583	590		596	
46	Percent of whistleblower disclosures closed or referred within 15 day statutory deadline	n/a	55%	55%		55%	
47	Expand Federal agency compliance with provisions of the Whistleblower Protection Act by invigorating the Certification Program under Section 2302c	n/a	n/a[47]	Develop and redesign training materials		Train agencies on redesigned materials	
48	Survey of attendees at outreach events	n/a	n/a[48]	Develop survey		Survey 1,000 attendees	

47. The FY 2012 result is n/a as OSC is starting this goal in FY 2013. The FY 2015 planned target is to increase number of certifications by 5%.

48. The FY 2012 result is n/a. The first target is for the survey to be developed in FY 2013.

DISCLOSURE UNIT SUCCESSES

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

Improper Handling and Transport of Human Remains OSC referred to the Secretary of Defense allegations from three whistleblowers at the Department of the Air Force, Air Force Mortuary Affairs Operations, Port Mortuary, Dover Air Force Base, Delaware. They alleged: 1) the improper preparation of remains of a deceased Marine; 2) improper handling and transport of possibly contagious remains; 3) improper transport and cremation of fetal remains of military dependents; and 4) the failure to resolve cases of missing portions of remains. The investigation substantiated the allegations that Port Mortuary leadership failed to properly resolve two cases in which portions of remains of deceased service members were lost. The report concluded

that managers engaged in gross mismanagement, and that the lack of accountability for the portions resulted in "a negligent failure" to meet the requisite standard of care for handling remains and violated several agency rules and regulations. The report also substantiated the allegations of improper cremations without the required authorization. The Air Force did not substantiate the allegations of wrongdoing regarding the preparation of the remains of the Marine, the improper transport of fetal remains of military dependents, or the improper handling and transport of possibly contagious remains. However, the evidence presented in the reports did not support several of the findings and conclusions drawn by the Air Force regarding these allegations; therefore, OSC determined that the findings did not appear reasonable.

In response to the findings, the Air Force took substantial corrective action, even where they did not acknowledge wrongdoing. These corrective actions included enhancing training and implementing policies and procedures to improve the processes and accountability at the Port Mortuary. However, OSC raised concern regarding the insufficiency of the disciplinary action taken against the managers who were found to be responsible for violations of rules and regulations, gross mismanagement, dishonest conduct, and a failure of leadership.

Following OSC's transmittal to the President and Congress, these cases became the subject of a significant volume of news articles and media coverage, and generated significant congressional interest. In response to the concerns raised by OSC, Secretary of Defense Leon Panetta established the Dover Port Mortuary Independent Review Subcommittee, under the Defense Health Board, to review the corrective actions taken and operations in place at the Port Mortuary. *Referred May 2010 and July 2011; transmitted to the President and congressional oversight committees November in 2012.*

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

Unaccredited VAMC Nuclear Medicine Service Shut Down In New York OSC referred to the Secretary of Veterans Affairs (VA) allegations that VA Medical Center in Northport, New York (VAMC-Northport) was operating an unaccredited residency training program. The agency investigation substantiated the allegation and concluded that VAMC-Northport was operating an unaccredited residency training program in nuclear medicine and, further, that a high-level official of the Center improperly allowed unqualified individuals not licensed to practice medicine in the U.S. to work in nuclear medicine. In response to the investigative findings, the agency discontinued the VAMC-Northport Nuclear Medicine Residency Training Program and funding for the resident position. The agency also removed two unlicensed trainee physicians and reprimanded two officials, including another high-level official. Furthermore, VAMC-Northport modified its residency validation process so that the Associate Chief of Staff must verify the accreditation status of a residency program and submit the accreditation status to the Chief of Staff for additional verification and approval prior to submitting a request to fund a residency program. *Referred July 2011; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

BOP Fort Dix Improves Medical Testing and Monitoring Processes OSC referred to the Attorney General allegations that employees of the Bureau of Prisons (BOP), Federal Correctional Institute (FCI) Fort Dix, New Jersey, failed to timely collect samples for medically ordered laboratory diagnostic tests, including blood, stool, and urine samples, which delayed medical test results necessary for diagnoses. The agency investigation partially substantiated the allegations. The report stated that a large number of medical tests had been ordered by medical staff at FCI Fort Dix, but that medical staff had experienced delays in securing results. The agency report found that the problem with delinquent lab tests was systematic and multifaceted. Several

factors contributed to the laboratory delays, including lack of proper staffing, a "tremendous" workload, the unsuccessful attempts to hire a qualified phlebotomist, the necessity to reschedule patients, the failure to adhere to pre-testing requirements, such as fasting, and duplicate lab test orders. The VA Chief of Health Programs opined that there was a significant problem with pending diagnostic lab orders, even if there were duplicate requests. The agency report found that the failure to ensure timely test results involved several institutional components, including the failure of BOP's Health Services to acknowledge, assess, and remedy the untimely lab testing problems. The agency investigation determined, however, that no patients were harmed as a result of laboratory delays.

As a result of the investigation, BOP's Central Office and Northeast Regional Office established a medical review team to audit all medical files with abnormal lab results for which there was a delay in receiving lab tests. OSC confirmed that the Improving Organizational Performance (IOP) Coordinators have been auditing FCI Fort Dix's pending lab reports, as planned, in order to ensure that pending or backlogged labs are scheduled timely. The IOP Coordinators currently monitor the "pending collection" lab reports on a daily basis. In its most recent monthly report, FCI Fort Dix had no lab requests pending collection with a due date greater than 30 days. The agency report noted that the whistleblowers agreed that the systematic review processes should resolve the problem. The Special Counsel requested that the Department of Justice provide OSC with an update in six months about its progress monitoring patient medical tests at FCI Fort Dix because of concerns that the agency failed to address this serious health and safety risk regarding timely medical test results more aggressively. *Referred July 2011; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

Aviation Safety Cases Involving Allegations of Violation of Law, Rule, or Regulation, Gross Mismanagement, Abuse of Authority and Substantial and Specific Danger to Public Safety

Unsafe Air Traffic Departure Procedure OSC referred to the Secretary of Transportation allegations that an air traffic departure procedure, known as the Dalton Departure Procedure, posed a safety hazard by allowing aircraft departing from Teterboro Regional Airport to fly directly below, and in close proximity to, heavy jet aircraft on final approach to Newark Liberty International Airport Newark. The whistleblower, an Air Traffic Controller at the New York Terminal Radar Approach Control (NY TRACON), alleged that the procedure was unsafe because it fails to provide the necessary wake turbulence separation between aircraft.

The investigation substantiated the allegation that the Dalton Departure Procedure posed a potential safety hazard and revealed that the number of safety reports relating to the procedure had increased by 450% within the last 11 years. It also confirmed the allegation that FAA took no action to resolve the safety issues relating to the procedure following an internal investigation in 2009. Despite the Office of Inspector General's alarming findings, the agency report and supplemental report reflect that FAA remained steadfast in its position that the Dalton Departure Procedure is a "safety enhancement." FAA continued to operate the procedure without adequately addressing the confirmed safety risks until October 2011.

OSC determined that some of the agency's findings, and its response to certain findings, did not appear reasonable. OSC noted, however, that subsequent to DOT's submission of its reports to OSC, the whistleblower advised OSC that FAA finally determined that the Dalton Departure Procedure "poses a safety hazard" and agreed to modify the procedure in a manner that provides the necessary gap in air traffic and separation between aircraft departing Teterboro and arriving at Newark. The whistleblower confirmed that FAA implemented an operational evaluation of the amended procedure, which remains in effect. Thus, it appears that FAA has finally taken appropriate corrective action. *Referred February 2010; transmitted to the President and congressional oversight committees in May 2012.*

Non-Compliance with Air Traffic Procedures and Agency Rules OSC referred to the Secretary of Transportation allegations from an Air Traffic Controller assigned as a Frontline Manager in FAA's New York Air Route Traffic Control Center concerning the management and operation of the center. The whistleblower alleged that controllers routinely violated FAA orders and policies, such as non-compliance with air traffic procedures, sleeping and using prohibited electronic devices in the control room, improper work stoppages, and leaving their shifts early. He also alleged that management was aware of these violations and performance deficiencies, but failed to address and often condoned the conduct, which compromised air traffic safety.

The investigation substantiated most of the allegations, including the controllers' non-compliance with air traffic procedures, sleeping and using prohibited electronic devices in the control room, improper work stoppages, and leaving their shifts early. The investigation also substantiated the allegation that managers were aware of, but failed to correct, the violations and performance deficiencies.

In response to the findings, the agency took significant corrective actions, including establishing an Interim Leadership Team and bringing in experienced personnel from other FAA facilities to serve in a variety of capacities. The team was tasked with addressing all substantiated non-compliance and deleterious behavior impacting the safety and performance of the operations, and charged with implementing all corrective actions necessary to bring the center into compliance with FAA rules, regulations, orders, and policies. In addition, FAA issued a letter of proposed dismissal from Federal service to an Air Traffic Manager, and two managers received letters of proposed demotion and permanent removal from the management ranks. The Special Counsel recommended periodic, unannounced inspections to ensure that the corrective actions that were implemented remain in place. *Referred March 2011; transmitted to the President and congressional oversight committees in May 2012.*

Safety Concerns Resulting from Conflicting Rules for Simultaneous Parallel Runway Operations OSC referred to the Secretary of the Department of Transportation allegations from air traffic controllers with the Federal Aviation Administration, Detroit Metropolitan Airport (DTW), Detroit, Michigan, that two FAA rules are in direct conflict with each other and cannot be simultaneously observed. The inconsistent requirements create confusion, put controllers in the untenable position of committing regular operational errors that are usually unreported, and create a threat to public safety. Following OSC's referral to the Secretary for investigation, the agency substantiated the allegations, finding that under certain circumstances, it is impossible for air traffic controllers to simultaneously comply with the two FAA directives in question (Paragraphs 5-8-3 and 5-8-5 of FAA Order 7110.65). Additionally, the investigation found that some air traffic control staff in DTW, including management, misunderstood these FAA directives. As a result, some staff received inadequate guidance or training on them. Operational errors were also found not to have been reported. FAA plans to review the application of the rules and correct any discrepancies to ensure safe air traffic on parallel runways. The Special Counsel found the report not reasonable, noting the length of time it took for the agency to acknowledge the safety issue and initiate corrective action. *Referred May 2011; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

Non-Compliant Modifications to Emergency Medical Service Helicopters Compromising Safety OSC referred to the Secretary of the Department of Transportation (DOT) allegations from an aviation safety inspector that modifications to hundreds of emergency medical service helicopters for a night vision imaging system did not comply with required specifications. The whistleblower alleged that this made the instrumentation potentially difficult to read under certain conditions, both during daytime and nighttime operations. OSC referred the same allegations to DOT in 2008, but closed the matter after DOT failed to return an investigative report. The agency's report to OSC in response to the 2010 disclosures found that the helicopters were returned to service contrary to FAA policy and that there were "possible impacts to safety," with more than 50 erroneous field

approvals performed by an FAA Aviation Safety Inspector. Moreover, of the 29 aircraft inspected as of the date of the report, all had non-compliances and/or non-conformances. Of the 278 findings of non-compliance, 51 (18%) were potential safety concerns. Notably, between the time of the whistleblower's allegations to OSC and the subsequent re-referral of his disclosures in 2010, the number of helicopters returned to service with potentially non-compliant modifications more than doubled. The reports indicated that up to 500 aircraft could be affected. As a result of the investigation following the second disclosure in 2010, FAA has put into place a comprehensive corrective action plan to address all night vision modified aircraft. The Special Counsel found the report not reasonable, noting that it required the years-long persistence of one whistleblower and two referrals from OSC for FAA to acknowledge that its oversight was lacking and to institute a comprehensive plan to systematically ensure compliance and, consequently, safety. *Referred July 2010; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

Unsafe Departure Procedures and Faulty Wind Source Instruments at Detroit Airport OSC referred to the Secretary of the Department of Transportation (DOT) allegations from an air traffic controller with the Federal Aviation Administration at Detroit Metropolitan Airport (DTW) that unsafe departure procedures and faulty wind source instruments were being used by controllers. Although the agency's investigation did not directly substantiate these allegations, the report states that the two wind measurement instruments at DTW continue to provide different wind measurements at times. DOT did not conclude that these disparities presented a safety concern. Despite these findings, the agency pledged to complete a safety-risk analysis to determine the hazards associated with a change in the primary wind source equipment, and to collect data to isolate any technical reason for the divergent readings of the two devices and help eliminate random differences. The agency also intends to improve the timely release of air traffic from DTW by changing published Standard Instrument Departure procedures so they can be issued to departing aircraft. The Special Counsel found the report not reasonable, stating that very slow progress has been made in two critical areas, both of which could benefit from important aviation safety improvements. *Referred February 2011; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

Failure to Ensure Airline Compliance with Federal Regulations on Aircraft Maintenance Programs OSC referred allegations to the Secretary of Transportation received from Federal Aviation Administration (FAA) Aviation Safety Inspectors that FAA failed to provide proper oversight of Delta Air Lines, Inc. (Delta) and failed to address the airline's non-compliance with FAA Airworthiness Directives (ADs) and Federal Aviation Regulations (FARs). The whistleblowers alleged that FAA employees in the Delta Certificate Management Offices (CMO) in Atlanta, Georgia, and Bloomington, Minnesota, failed to ensure that Delta was in full compliance with the ADs and FARs governing Fuel Tank System (FTS) and Electrical Wiring Interconnection System (EWIS) maintenance programs. They alleged further that the airline's non-compliance presented a substantial and specific danger to public safety through the use and operation of potentially unsafe aircraft. The Secretary tasked the Office of Inspector General (OIG) with the investigation into the allegations.

The OIG investigation partially substantiated the allegations and concluded: 1) When the disclosures were filed with OSC, FAA had not addressed the discrepancies in Delta's FTS and EWIS maintenance programs, but has formed an action plan to address them and the weaknesses identified in FAA's national guidance for implementing and overseeing the FTS and EWIS maintenance programs since then; 2) Delta is not required to copy verbatim "Instructions for Continued Airworthiness" tasks into the EWIS maintenance program; the OIG did not substantiate the allegation that the Delta CMO's Supervisory Principal Avionics Inspector inappropriately approved the program; 3) FAA completed the recommendations from the OIG's 2009 report regarding Delta's compliance with ADs and FTS maintenance program requirements in June 2010, and the

OIG determined that those actions were ineffective and substantiated the whistleblowers' allegation that the non-compliance continued; 4) Delta's failure to comply with FTS and EWIS requirements constitutes a failure of the airline's Continued Analysis and Surveillance System (CASS); and 5) FAA's Regional Counsel has not finalized its review of the Enforcement Investigation Reports (EIRs) against Delta for non-compliance with an FTS AD but expects to finalize those actions in the coming months. *Referred July 2011*; *sent to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

Violation of Law, Rule or Regulation and Gross Mismanagement

Violation of Federal Contract Regulations OSC referred to the Secretary of Agriculture allegations that employees at the U.S. Forest Service, Cibola National Forest, Engineering and Acquisition Management Departments, Albuquerque, New Mexico, provided a potential construction contractor with government estimate information. The whistleblower explained that in June 2010, the Forest Service initiated creation of a government estimate for the "Forest Road 245 Road Maintenance-Upper Section Project" (M.P. 2.727 to 6.500) in the Cibola National Forest. The project entailed maintenance on the upper half of Forest Road 245, and the agency set aside $343,000 for its completion. On July 8, 2010, the government estimate of $205,195 was submitted for the project.

The contract was offered under the U.S. Small Business Administration's 8(a) Business Development Program to Groundhog Excavating, Inc. (Groundhog). The Project Contracting Officer sent a solicitation to Groundhog and received an estimate in response of $350,000, well over the government estimate of $205,195. The whistleblower alleged that the Contracting Officer's Representative (COTR) began communicating directly with Groundhog without the proper authority to do so, purportedly in an effort to have the project completed before the end of Fiscal Year 2010 and that this conduct violated the Federal Acquisition Regulation.

The agency investigation confirmed that the COTR was not authorized to negotiate the contract with Groundhog independently, and that he did so in violation of the FAR. The agency proposed a seven-day suspension, which was ultimately reduced to a Letter of Reprimand. The agency further explained that due to the impending close of the year, the funding had already been obligated for the project, and therefore, the contract could not be de-obligated. In its supplemental report, the agency explained that the contract was awarded to Groundhog in the USDA's Integrated Acquisition System. *Referred March 2011; transmitted to the President and congressional oversight committees on January 2012.*

Violation of Law, Rule, or Regulation

Employees Engaged in Gambling Activities on Federal Property and While on Duty. OSC referred to the Secretary of the Army allegations that employees of the Directorate of Logistics/Directorate of Public Works (DOL/DPW), Fort Leavenworth, Kansas engaged in gambling activities on Fort Leavenworth property during duty hours, and the DOL/DPW management was aware of, and permitted, these activities. The agency investigation substantiated the allegation that numerous Fort Leavenworth employees engaged in gambling activities on Fort Leavenworth property during duty hours. Employees received disciplinary action ranging from a letter of reprimand to a 14-day suspension, depending on the level of involvement in the gambling. In addition, the New Employee Handbook and training materials were updated to educate employees on the gambling prohibition found in 5 C.F.R. § 735.201. OSC determined that the agency's reports contained all of the information required by statute and that the findings appeared to be reasonable. *Referred August 2010; transmitted to the President and congressional oversight committees March 2012.*

USERRA 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, by prohibiting employment discrimination due to uniformed service (including initial hiring, promotion, retention, or any benefit of employment) and providing for prompt reemployment of service members in their civilian jobs after they return from military duty. Congress intends for the Federal government to be a "model employer" under USERRA.

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

USERRA Referral Cases

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

USERRA Demonstration Project

From 2005-2007, Congress mandated a USERRA Demonstration Project whereby OSC directly received half of all Federal USERRA cases for investigation, resolution, and possible prosecution. OSC was highly successful and obtained significant relief for veterans during the last project, prompting Congress to establish a second Demonstration Project, which began on August 9, 2011.

Resource Estimates

During FY 2013, the USERRA Unit will use approximately 3 FTEs at a cost of $464,000 while during FY 2014 we estimate the program will use 3 FTEs at a cost of $673,000. The USERRA unit also receives reimbursement-based funding from other Federal agencies. In FY 2013 we estimate this funding at $596,340 and 3 FTEs, while in FY 2014 we estimate it at $608,220 and 3 FTEs.

Goals and Results - USERRA Enforcement

The new Demonstration Project has resulted in an additional 152 USERRA cases for Fiscal Year 2012. Unlike the Referral cases, OSC investigates as well as enforces the Demonstration Project cases. This has caused a 400+% increase in the USERRA unit's scope and number of cases. In the prior Demonstration Project, from 2005-2008, the Unit achieved excellent results.

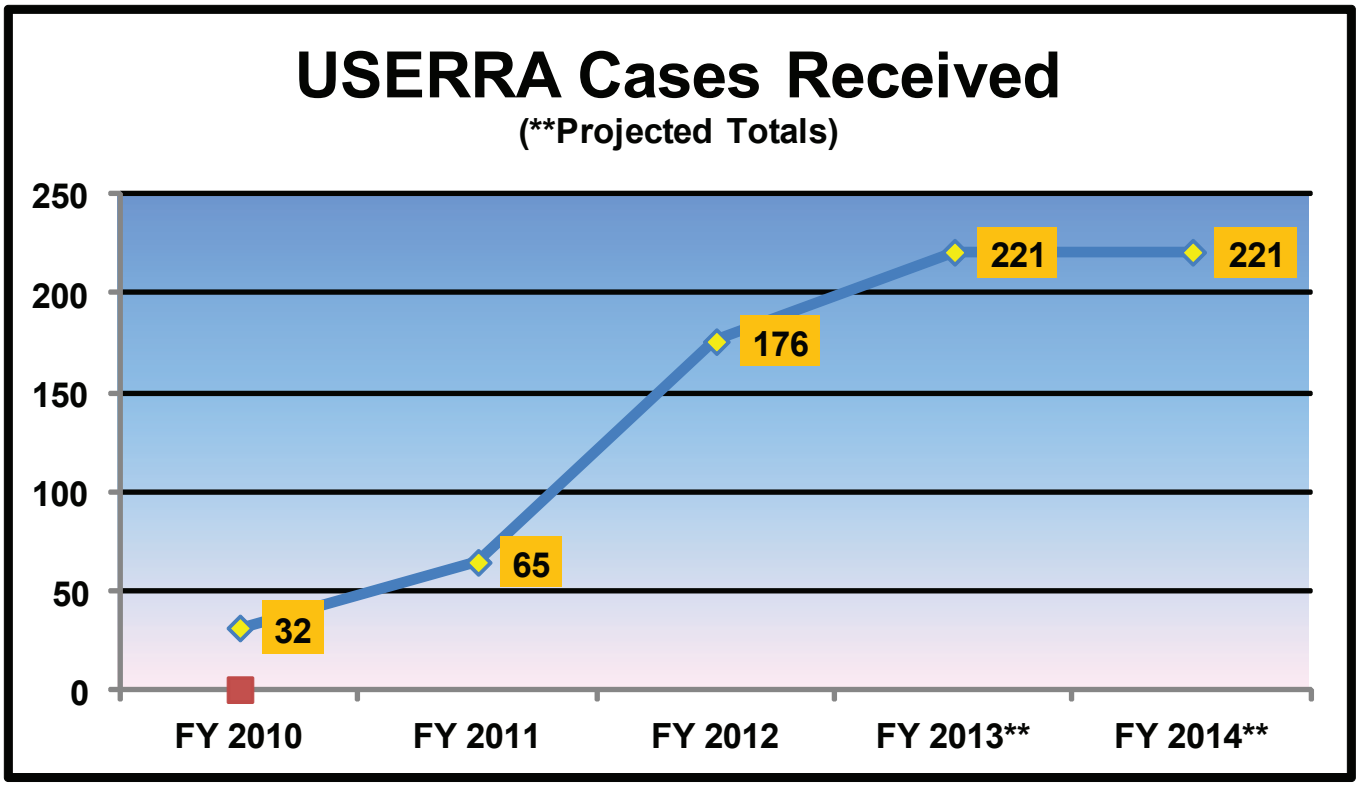

USERRA Cases Received
(**Projected Totals)
250
200
150
100
50
0
32
65
176
221
221
FY 2010
FY 2011
FY 2012
FY 2013**
FY 2014**

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

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

TABLE 8 Summary of USERRA Demonstration Project Activity		
	FY 2011	FY 2012
Pending cases carried over from previous fiscal year	n/a[a]	28
New cases opened	29	152
Cases closed	1	92
Closed cases where corrective action was obtained	0	24
Closed cases where no corrective action was obtained	1	68
Pending cases at end of fiscal year	28	88

[a] OSC began receiving cases under the new USERRA Demonstration Project on August 9, 2011.

Goal Table 8 Provide outreach and advice to the Federal community about employment discrimination against veterans							
Description of Target		**FY 2012 Target**	**FY 2012 Result**	**FY 2013 Target**	**FY 2013 Result**	**FY 2014 Target**	**FY 2014 Result**
49	Number of staff allocated	n/a	2	3		4	
50	Percent of staff	n/a	25%	37%		50%	

Goal Table 9 Seek disciplinary or corrective action for violations of law							
Description of Target		**FY 2012 Target**	**FY 2012 Result[a]**	**FY 2013 Target**	**FY 2013 Result**	**FY 2014 Target**	**FY 2014 Result**
51	Number of favorable resolutions	n/a	29	30		31	
52	Percentage of favorable resolutions	n/a	24%	24%		24%	
53	Number of investigations within 90 days	n/a	59	60		61	
54	Percentage of investigations within 90 days	n/a	63%	63%		63%	
55	Number of legal reviews within 60 days	n/a	32	33		34	
56	Percent of legal reviews within 60 days	n/a	76%	76%		76%	
57	Customer service exit survey findings	n/a[57]	45%	47%		50%	

[a]The ADR unit started reviewing referrals in May 2012.

57. Compare results to prior years: FY 2012 target is n/a as the survey began during FY 2012. In FY 2012, 45% of those surveyed were very satisfied, satisfied, or neutral regarding OSC's level of service.

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

OSC conducted five USERRA outreaches during FY 2012, satisfying every agency request. OSC expects to again satisfy all outreach requests in FY 2013.

USERRA Successes

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

EXAMPLES:

Initial hiring discrimination
A National Guardsman applied and was selected for an Immigration Enforcement Agent position, but his offer was rescinded when he couldn't report on the agency's preferred start date due to a deployment. OSC ensured that the agency re-offered him the position, which he accepted.

Reemploying injured service members
An injured Iraq war veteran's civilian position with the Army was eliminated during his deployment and recovery; OSC ensured that the Army found him an equivalent position consistent with his abilities and restored his seniority and benefits as if he had never left.

Career advancement
An Air Force Reservist and FAA Safety Inspector who served in Operation Enduring Freedom was not promoted with his peers despite performing the same duties and having similar experience; at OSC's request, FAA retroactively promoted him and provided him back pay.

OSC's Outreach Program

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

In an effort to assist agencies in meeting the statutory requirement, in FY 2002, OSC designed and created a five-step Section 2302(c) Certification Program. This program gives guidance to agencies and provides easy-to-use methods and training resources to assist agencies in fulfilling their statutory obligations. Agencies that complete the program receive a certificate of compliance from OSC.

In an effort to promote OSC's mission and programs, OSC provides formal and informal outreach sessions, including making materials available on the agency web site. During FY 2012, OSC employees spoke at over 121 events nationwide.

OSC also informs the news media and issues press releases when it closes an important whistleblower disclosure matter, files a significant litigation petition, or achieves significant corrective or disciplinary action through settlement. Many of these cases generate considerable press coverage, which contributes to Federal employees' and managers' awareness about the merit system protections enforced by OSC.

PART 4 – Enhancement of Operations

Strategic Management of Human Capital

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

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

Improved Financial Performance

OSC has continued its success in receiving unqualified audit opinions, with the receipt of another clean opinion this Fiscal Year. A competitively selected audit firm evaluated OSC's financial statements for FY 2012. The auditor spent time at OSC headquarters and with the Department of Interior's Internal Business Center (IBC) personnel in Denver, who currently perform the accounting, payments, travel system operations, and financial system operations and maintenance functions for OSC. OSC has received unqualified opinions for all seven of its audits since the inception of formal Financial Statement Audits.

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

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

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

Competitive Sourcing

OSC is a small agency, with a highly specialized, inherently governmental mission. 84% of its FTEs perform inherently governmental work, and 16% of its FTEs are considered commercial in nature. According to OMB Circular A-76 and supplemental guidance issued by OMB, government performance of commercial functions is permitted when, as is the case at OSC, it totals 10 FTEs or fewer positions.

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

Expanded Electronic Government and Other Information Technology Initiatives

OSC provides one-stop service for those who wish to file a complaint or disclosure, or request a Hatch Act advisory opinion. Hatch Act advisory opinions may be solicited through our website. A person can file a Prohibited Personnel Practices complaint online, which is the most common channel for PPP complaints to be received by the agency. A person can also make a complete Whistleblower Disclosure online. Those who wish to communicate with a knowledgeable OSC staffer through one of the agency's telephone hotlines will find the relevant information on the OSC website. OSC's website is linked to USA.gov, as well as other agency websites: the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Office of Government Ethics, (among many others). During FY 2012, the total number of user sessions was 880,176. OSC's Information Technology Branch (ITB) staff are continually improving OSC's website. Starting in FY 2012, those who wished to follow and stay in touch with OSC could also do so via Twitter. Furthermore, ITB is in the process of implementing secure functionality to its online filing system to allow people to upload supporting evidence with their PPP complaint or whistleblower disclosure. We also plan to automate the Hatch Act form filing process in FY 2013 and FY 2014.

In FY 2012, ITB enhanced the video conference capabilities and services it provides. New video conferencing equipment and technology allow the creation of virtual meeting rooms, and conferences can be recorded. By the end of FY 2012, video conferences between local users' computers and other agencies were in place via our video conferencing equipment.

ITB is constantly enhancing the OSC's case tracking system to meet the users' ever changing requirements. In FY 2012, ITB implemented the case tracking system for the entire agency with paperless document management incorporated into it. The Interwoven Document Management System (DMS) was upgraded in FY 2012 to a newer version and is running on a new, higher performance server to meet the anticipated demands of a paperless case tracking system. The relational database accessed by the DMS was also upgraded to a new 64-bit version and migrated to a high performance 64-bit blade server. In FY 2012 OSC piloted a paperless case tracking system to create electronic case file workspaces to enhance case file information sharing and retrieval and allow attorneys to easily compile records in case files. In other areas of content management, we now plan to redesign www.osc.gov to run on the MS SharePoint platform to promote enhanced web content authoring and customer experience, and add new features for videos and social computing. In FY 2014 we plan on rolling out the document management system to better manage the agency's work products and records, and to improve document search capabilities. In addition, OSC plans to modernize the existing case tracking system to run on SharePoint and a new database infrastructure.

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

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

In the area of Cybersecurity, we worked with our Managed Trusted IP Service (MTIPS) provider during FY 2011 and implemented our Trusted Internet Connection (TIC) solution. We are now fully transitioned to Networx. In other security areas, in FY 2013 we plan to complete the first phase of implementation specified in OMB's IPv6 mandate, and in FY 2014 plan to initiate the second phase of the project. In FY 2014 we also plan to implement digital signatures using public key infrastructure technology through the implementation of HSPD-12.

Improving Employee Satisfaction and Wellness

Over the past several years, OSC has implemented several key programs and/or initiatives to enhance employee satisfaction and wellness: OSC has offered a cost share (50/50) program for gym membership to encourage employees to have a healthier lifestyle and stay fit; made available [on-site] flu vaccinations and blood pressure checks; organized a blood donor drive; conducted a health benefits information session; and instituted a program to pay for professional credentials (bar membership fees) for attorneys. Additionally, the management administered Federal Employee Viewpoint Survey in 2012 revealed a high level of employee satisfaction with OSC ranking 1st among all small agencies in the supervisory category, with 95% of OSC employees giving a positive rating to the quality of work performed by their unit. OSC's results placed it 10th overall among all small Federal agencies, and management has created an employee-driven Action Plan Working Group to develop strategies for improving employee satisfaction further.

Open Government

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

Green Government

President Obama issued the Executive Order on Federal Leadership in Environmental, Energy, and Economic Performance (E.O. 13514), signed on October 5, 2009. In order to manage their greenhouse gas (GHG) emissions, Federal Agencies must have a consistent methodology for measuring such emissions. The Executive Order requires Federal agencies to establish and report a comprehensive inventory of absolute greenhouse gas emissions to the Council on Environmental Quality and the Office of Management and Budget. In addition, official Sustainability plans must be developed and reported on annually by each agency.

The Office of Special Counsel completed its Sustainability Plan, with overall reduction targets of 7%. Also, based on the template designed by the Council on Environmental Quality in cooperation with OMB, the OSC reported its results for the Federal inventory reporting requirements and calculation methodologies on May 28, 2010, January 11, 2012, and again on January 28, 2013. OSC continues to meet its requirements on GHG reporting. OSC's reduction of Scope 3 Emissions is based on a reduction of purchased energy, where the use of new, more efficient servers by IT will reduce our electricity costs; a reduction of travel through the use of web-based technology for interviews, meetings and other operations; and the increased promotion of employee telecommuting. Significantly, in FY 2012 OSC reduced its commuter travel emissions by 11%.

Telework

In 2011, OSC complied with the requirements of the Telework Enhancement Act by establishing criteria for determining eligibility of employees to participate in telework, notifying employees of their eligibility, and indicating under what conditions they may telework. OSC's telework program is designed to benefit employees, managers, and the community by decreasing work trip vehicle miles, traffic/parking congestion, energy consumption, and air pollution, improving the quality of work life and performance, and improving morale through assisting employees in balancing work and family demands.

OSC has a robust Information Technology network setup that supports telework, to include a complete Citrix environment. ITB migrated part of the Citrix configuration to a 64-bit computing environment in FY 2012, and will continue to migrate the remainder of the Citrix configuration to a 64-bit computing environment. Also to support telework and mobile computing, OSC initiated a Bring Your Own Device (BYOD) program to allow access to corporate email services using personal smart devices (e.g. iPhones, Android smartphones, tablets, etc.). We are working to expand this BYOD program in FY 2013 to allow personal laptops or tablets in the office for work. Also, OSC plans to expand our VoIP and SIP capabilities so that employees, from anywhere, will have secure access to all of the corporate resources, including telephone and VTC services, from their smart devices. In FY 2014 we plan to deploy a dedicated Windows Media Server to allow OSC's employees to view and access recorded training sessions anytime and anywhere from their smart devices and computers. OSC remains committed to improving its telework program and the infrastructure necessary to support it.

Continuity of Operations

Continuity of Operations (COOP), mandated by Presidential Decision Directive 67, requires each Federal agency to be capable of performing essential functions within 12 hours of a threat or the occurrence of a debilitating event. To accomplish these goals OSC established a Security and Emergency Preparedness (SEP) team to manage and oversee this program. The team meets weekly and is comprised of four senior staff and three specialists. The SEP Team provides OSC with a security and emergency preparedness capability that (1)

ensures security and emergency preparedness are addressed during all phases of operation, including the hiring and training of personnel, the procurement and maintenance of equipment, and the development of policies, rules, and procedures; (2) encourages safe operation through the identification, evaluation, and resolution of threats and vulnerabilities and the ongoing assessment of OSC's capabilities and readiness; and (3) assists OSC in adhering to governmental guidelines and rules and regulations that promote COOP best practices.

OSC must safeguard vital records and databases, establish an alternate operating site, and validate capability through tests, training, and exercises. OSC will continue to evaluate alternate methodologies to connect OSC's headquarters and field offices. In FY 2011 OSC made considerable progress in an initiative that will allow mirroring of its network to a backup geographic location in Dallas, Texas. This redundancy helps provide additional safety and faster recovery time in the event of a debilitating event; as a result, agency functions and vital records will be further safeguarded. In FY 2012 we began the creation of a secure private, cloud computing environment to ensure the highest levels of redundancy, reliability and workload sharing. We are now continuing to expand cloud computing to enhance OSC's COOP capabilities, and these efforts will continue into FY 2014. Furthermore, we are implementing a new e-mail server architecture, which will include redundancy for high availability, with automatic failover and enhancements in performance.

Management

The OSC adopted a management goal to "restore confidence within the Federal community and among staff, stakeholders, and the general public." This is a two-part goal that includes ensuring OSC operates at a high level of efficiency internally and in the Federal community, and simplifying access to OSC services for the Federal community. Our management goals are overarching goals, which when met contribute to the overall success of the agency and all its programs.

This was a transition year toward the new goals; however, OSC fully met 11 out of 11 goals in the Management area for which targets had been set, leaving no goals unmet.

Goal Table 11 Ensure OSC operates at a high level of efficiency internally and in the Federal community							
Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
62	Establish Individual Development Plans (IDPs) for all employees to identify skills and gaps	Start Classification Study	Met	Conduct Requirements Assessment		Build Templates and Implement IDPs	
63	Identify targeted training to mitigate skills gaps	Conduct Annual Survey	Met	Conduct Annual Survey		Conduct Annual Survey	
64	Use telework and alternative schedule options to provide employees with flexibility	55%	71%	70%		70%	
65	Percent of employees that participate in the annual Federal Employee Viewpoint Survey on their job satisfaction	75%	92%	90%		90%	
66	Improve the functionality of the case tracking system	See Footnote[66]	Met	See Footnote[66]		See Footnote[66]	
67	Number of congressional staff or member contacts to strengthen covered laws and improve oversight and accountability	10	25	30		50	
68	Number of amicus briefs, SOI interventions, or other submissions concerning the scope or contours of the laws that OSC enforces	2	2	2		2	

66. IT supported 24 system change requests in FY 2012. OSC's case tracking system is constantly being improved and updated. Often, the improvements made to the functionalities in the case tracking system are a result of change requests and new requirements from the program offices to enhance case processing capabilities. IT aims to meet Six–Sigma perfection in the implementation of the Change Requests for the case-tracking.

Goal Table 13 Simplify access to OSC services for the Federal community							
Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
69	Upgrade look, feel, and user friendliness of website and keep it current	See Footnote[69]	Met[69]	See Footnote[69]		See Footnote[69]	
70	Survey user community to gauge strengths and weaknesses of website	See Footnote[70]	Met[70]	See Footnote[70]		See Footnote[70]	
71	Issue press releases on major agency activities and results in cases; maintain dialogue with news media	See Footnote[71]	Met[71]	See Footnote[71]		See Footnote[71]	
72	Make use of Twitter and social media	See Footnote[72]	Met[72]	See Footnote[72]		See Footnote[72]	
73	Conduct biannual surveys of Federal community to gauge OSC name and mission recognition	n/a	n/a	Develop survey; receive survey approval		Conduct survey; implement changes based on survey findings	

69: Target FY 2012 - Select and retain a website design company for the overhaul of the website.

Results for FY 2012 - A website design firm was hired and started meeting with OSC representatives and researching the project.

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

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

Narrative: OSC took information and suggestions from numerous public and private sector sources and created a Request for Proposals (RFP) for a new website. This RFP went out on May 18, 2012 for three weeks. OSC received numerous bids and began work with a vendor during summer 2012 and work continues to be ongoing.

70: Target FY 2012 – Have solicited feedback from numerous professional and government sources as we begin the redesign process. OSC requested to be part of GSA's First Friday "usability test."

Result FY 2012 - User testing was included in the design firm's project scope.

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

Target FY 2014 – OSC will conduct a survey of users and hope to have the website evaluated through some kind of external or GSA test or survey as well.

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

71: Target FY 2012 – OSC is currently issuing press releases whenever appropriate and staying in active contact with news media. Result FY 2012 - OSC issued 27 press releases; OSC sent 20 tweets on Twitter and had 60 followers by the end of FY 2012. OSC fielded between 500 and 600 media calls.

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

Target: 2014 - 30 tweets, 100 followers, and 550 media calls fielded; OSC will look for areas of improvement beyond 2013 actions.

Narrative: OSC currently issues between 20 and 25 press releases a year, depending on the activity load and which cases warrant news releases. These releases are tweeted, posted on the website, and e-mailed to reporters as well as to stakeholder organizations and individuals, such as nonprofits, management organizations, veterans' groups and labor unions. OSC's communications manager speaks with members of the news media on a daily basis.

72: Target FY 2012 – Twitter account launched November 2011. Look for more opportunities to send information out via Twitter. Research the costs and benefits of opening Facebook and YouTube accounts.

Target FY 2013 – OSC will increase the number of tweets over FY 2012 and will observe other small government agencies' Twitter accounts for examples of best practices and innovative ways to communicate with the public.

Target FY 2014 – Similar to the FY 2013 target, OSC will continue to look for better ways to reach out and increase avenues of communication with the public.

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

73: FY 2012 is n/a as OSC is starting this goal in FY 2013.

Appendix

A. Statutory Background

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

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

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to Federal and District of Columbia government employees.[1] The 1993 Amendments to the Hatch Act did not affect covered state and local government employees.

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

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

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),[4] which created the Transportation Security Administration (TSA). Under the ATSA, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the Merit Systems Protection Board. The approximately 45,000 security screeners in TSA however, could not pursue such complaints at OSC or the Board. OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. The MOU did not (and could not), however, provide for OSC enforcement action before the Board.

In November 2012 Congress passed and President Obama signed into law the Whistleblower Protection Enhancement Act which overturned past legal precedents that had narrowed protections for government whistleblowers and extended whistleblower protections to the 45,000 TSA screeners previously denied it under the Aviation and Transportation Security Act. The WPEA also restored OSC's authority to seek disciplinary actions against supervisors who retaliate against whistleblowers as well as the authority to seek compensation from agencies for whistleblowers who suffer from such retaliation.

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

Appendix B

Strategic Plan FY2012-2016

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Table of Contents

Introduction **3**
Mission – Vision - Values **6**
Strategic Goals **7**
Goals and Objectives **8**
Strategic Goal 1 ..... **8**
Strategic Goal 2 ..... **10**
Strategic Goal 3 ..... **11**
Strategic Goal 4 ..... **12**
Strategic Goal 5 ..... **13**
Challenges to Agency Performance **15**

U.S. Office of Special Counsel
Strategic Plan for FY 2012 – 2016

Introduction

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

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

About OSC

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

During hearings on the CSRA, the role and functions of MSPB were described by various members of Congress: ". . . [MSPB] will assume principal responsibility for safeguarding merit principles and employee rights" and be "charged with insuring adherence to merit principles and laws" and with "safeguarding the effective operation of the merit principles in practice."[1]

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

3.

1 Legislative History of the Civil Service Reform Act of 1978. Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. 2,. (pg 5-6).

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

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

Demand for OSC services has risen dramatically in recent years even as staffing levels have remained virtually fixed. Since FY 2008, OSC's caseload has grown 54%. Based on experience and trends, OSC conservatively projects an annual growth in caseload in the 6% to 8% range for the foreseeable future. In addition, Congress assigned OSC responsibility for a new USERRA Demonstration Project,[2] which substantially increased the caseload for the agency. Moreover, the recent Whistleblower Protection Enhancement Act significantly expanded OSC's jurisdiction and the number of cases it is required by law to investigate. As a result, OSC experienced the highest volume of new cases in its history last quarter, the first quarter WPEA came into effect.

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

On June 17, 2011, Carolyn Lerner was sworn in as the eighth permanent Special Counsel. Ms. Lerner took office following a prolonged and challenging period at OSC. The prior Special Counsel had been abruptly removed from office in 2008 by the President[3] and subsequently charged with contempt of Congress, disgracing the agency and demoralizing both staff and stakeholders. He was replaced in 2008 by interim, career leadership who performed a stabilizing, caretaker role until Ms. Lerner took office.

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

4.

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

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

Strategic Plan and Cross-Cutting Documents

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

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

5.

Mission – Vision - Values

OSC Mission

Promote accountability, integrity and fairness in the Federal workplace.

OSC Vision

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

OSC Values

Accountability	We will act in accordance with merit system principles, communicate in plain English with customers and stakeholders, make our findings and determinations easy to understand and widely accessible, and take responsibility for our decisions and actions.
Professionalism	We will conduct our work in a dignified, courteous, respectful and reliable manner, fairly and without bias, attentive to legal standards and authorities, and conscious of various perspectives and interests of customers and stakeholders.
Quality	We will strive to provide excellent service to our customers, show due care and thoroughness in the substance and timeliness of our work, and produce work products worthy of pride.
Independence	We value the trust and responsibility invested in us as an independent investigative and prosecutorial agency, and will always exercise that independence in a manner that honors the letter and spirit of the merit system.

OSC's Strategic Goals and FY 2014 Costs per Goal*

1. Safeguard the integrity and fairness of the Federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices. Cost: $14,104,000

2. Advance the public interest and good government by providing a safe channel for Federal employees to disclosure wrongdoing or threats to health or safety, in order to effect positive corrective action. Cost: $2,951,000

3. Strengthen the civil service through outreach and advice to the Federal community about prohibited personnel practices, employment discrimination against veterans, and job-related political activity. Cost: $1,687,000

4. Advance accountability in government by seeking disciplinary action against Federal employees for persistent or egregious prohibited personnel practices or unlawful political activities. Cost: $1,897,000

5. Restore confidence in OSC within the Federal community and among staff, stakeholders, and the general public. (Overarching Management Goal)

*Numbers derived from percentage costs based on projected Budget totals

Goals and Objectives –
Performance Metrics and Means to Accomplish Goals

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals for PPP cases:

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

Performance Metrics and Means to Accomplish Goals for USERRA cases:

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

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

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

8.

Objective 3: Keep complainants informed of the status of their cases and detail the basis for OSC actions.

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals for PPP cases:

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

Performance Metrics and Means to Accomplish Goals for USERRA cases:

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

9.

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

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

Performance Metrics and Means to Accomplish Goals:

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

10.

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals in PPP Cases:

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

11.

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

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

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals:

- Move toward a "paperless office" model for purposes of electronic data storage
- Improve the functionality of the case-tracking system
- Improve the capabilities of the document management system
- Ensure audit compliance, timely submission of budget and performance reports, and that OSC is on sound financial footing

Objective 4: Establish a communications program to ensure effective provision of critical information to the Federal community, stakeholders and the public.

Performance Metrics and Means to Accomplish Goals:

- Upgrade look, feel, and user friendliness of the OSC website and keep it current
- Ensure website compliance with disabilities law requirements
- Survey user community to gauge strengths and weaknesses of website
- Issue press releases on major agency activities and results in cases, and maintain dialogue with the news media
- Make use of Twitter and other social media

13.

Challenges to Agency Performance

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

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

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

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

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

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

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

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

15.

Endnotes

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