



## **FY2008 Performance and Accountability Report**

**November 17, 2008**

**U.S. OFFICE OF SPECIAL COUNSEL**

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# TABLE OF CONTENTS

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Page

Message from the Acting Special Counsel	3
<b>Part 1: Management Discussion and Analysis</b>	<b>4</b>
I. Agency at a Glance	4
II. Statutory Background	4
III. The Mission of the U.S. Office of Special Counsel	5
IV. Organizational Structure of OSC	6
V. Performance Highlights	8
VI. OSC's Systems, Controls, and Legal Compliance	10
VII. Management Assurances	12
VIII. Future Effects of Known Demands, Risks, Uncertainties, Events, Conditions and Trends	12
IX. Comments on Final FY 2008 Financial Statements	13
<b>Part 2: Performance Section</b>	<b>16</b>
Goals: Prohibited Personnel Practices .....	17
Goals: Hatch Act.....	20
Goals: USERRA .....	23
Goals: Whistleblower Disclosures.....	27
<b>Part 3: Financial Section</b>	<b>29</b>
CFO Letter .....	30
Independent Auditor's Report.....	31



## A Message from the Acting Special Counsel

It is my pleasure to present the Office of Special Counsel's Performance and Accountability Report for Fiscal Year 2008. This agency has a proud history of serving the federal workforce and the public through its tenacious defense of the merit system principles that continue to safeguard the integrity of the executive branch agencies of the United States. Fiscal Year 2008 marks the fifth year the U.S. Office of Special Counsel was required to have a financial audit. I am happy to report once again the agency's strong results, which include no reportable conditions and no material weaknesses.

To all of those who rely on our counsel, our service, and our protection, be assured that we will continue striving for excellence. Thank you for your continued trust and confidence.

Sincerely,

A handwritten signature in black ink that reads "William E. Reukauf". The signature is written in a cursive style with a large, sweeping flourish at the end.

William E. Reukauf  
Acting Special Counsel

## **Part 1: Management Discussion and Analysis**

### **I. Agency at a Glance**

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment, by protecting employees and applicants from prohibited personnel practices (PPPs), especially reprisal for whistleblowing. In addition, the agency operates a secure channel for federal whistleblower disclosures of violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. Finally, OSC enforces federal employment rights secured by the Uniformed Services Employment and Reemployment Rights Act (USERRA). OSC currently has approximately 110 employees.

### **II. Statutory Background**

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

In 1989, Congress enacted the Whistleblower Protection Act. The law made OSC an independent agency within the Executive Branch, with continued responsibility for the functions described above. It also enhanced protections against reprisal for employees who disclose wrongdoing in the federal government, and strengthened OSC’s ability to enforce those protections.<sup>2</sup>

The Congress passed legislation in 1993 that significantly amended Hatch Act provisions applicable to federal and District of Columbia (D.C.) government employees, and enforced by OSC.<sup>3</sup> Provisions of the act enforced by OSC with respect to certain state and local government employees were unaffected by the 1993 amendments.

In 1994, the Uniformed Services Employment and Reemployment Rights Act became law. It defined employment-related rights of persons in connection with military service, prohibited discrimination against them because of that service, and gave OSC new authority to pursue remedies for violations by federal agencies.<sup>4</sup>

OSC's 1994 reauthorization act expanded protections for federal employees, and defined new responsibilities for OSC and other federal agencies. It provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred, exists, or is to be taken. The act extended the protections of certain legal provisions enforced by OSC to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under these provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the Whistleblower Protection Act, and directed agencies to consult with OSC in that process.<sup>5</sup>

In November of 2001, Congress enacted the Aviation and Transportation Security Act,<sup>6</sup> which created the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the MSPB.

OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. The MOU did not (and could not), however, provide for OSC enforcement action before the MSPB, or for individual right of action (IRA) appeals by security screeners to the MSPB.

### **III. The Mission of the U.S. Office of Special Counsel**

OSC's mission is to protect current and former federal employees, and applicants for federal employment, especially whistleblowers, from prohibited employment practices; promote and enforce compliance by government employees with legal restrictions on political activity, and facilitate disclosures by federal whistleblowers about government wrongdoing. OSC carries out this mission by:

- investigating complaints of prohibited personnel practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
- providing advisory opinions on, and enforcing Hatch Act restrictions on political activity;
- operating an independent and secure channel for disclosures of wrongdoing in federal agencies;
- protecting reemployment and antidiscrimination rights of veterans under the USERRA; and

- promoting greater understanding of the rights and responsibilities of federal employees under the laws enforced by OSC.

## IV. Organizational Structure of OSC

OSC maintains its headquarters office in Washington, D.C. Four field offices are located in Dallas, Oakland, Detroit, and Washington, D.C.

Agency components during FY2008 include the Immediate Office of the Special Counsel (IOSC), five operating units/divisions and several supporting offices explained in detail below.

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

**Complaints Examining Unit.** This unit is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction.<sup>7</sup> This unit is responsible for screening approximately 2,000 prohibited personnel practice cases per year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation.<sup>8</sup>

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

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

If meritorious cases cannot be resolved through negotiation with the agency involved, division attorneys represent the Special Counsel in litigation before the Merit Systems Protection Board. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, division investigators and attorneys also

sometimes investigate alleged violations of the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act, though most Hatch Act and USERRA work is handled by the Hatch Act Unit and the USERRA Unit, respectively.

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

**USERRA Unit.** This unit handles USERRA cases that are referred to OSC for prosecution by the Department of Labor. In addition, during FY 2008, this unit worked on investigating the last remaining cases that were transferred to OSC under the Demonstration Project created by P.L. 108-454. This law required OSC to investigate approximately half of all federal sector USERRA cases, and to prosecute wherever warranted.

### **SUPPORTING UNITS:**

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

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

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

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

**Training Office.** A training office has been created to train all new employees, cross train existing employees, and develop specialized training in areas such as litigation skills. Specifically, the Training Office will cross train attorneys and investigators to enable them to

traverse organizational boundaries within the agency. They will develop sufficient expertise in several areas of the law, giving management the ability to detail employees to address any potential backlogs that could form in the various units.

## V. Performance Highlights

A high priority item in recent Performance and Accountability Reports has been the status of backlogs at OSC. During FY 2008, despite elevated numbers of Hatch Act cases (up an unprecedented 58%), disclosures (up 10%), and cases involving Prohibited Personnel Practices (up 8%), the agency worked hard to avoid a recurrence of backlogs in these three units.

### OSC'S SUCCESSES IN FY 2007

- 1) **FAA Safety.** OSC recently completed investigations into the FAA resulting in much needed oversight and changes for passengers and increased airline safety compliance.
- 2) **OSC's FAA Task Force.** This internal task force continues to receive and address numerous safety-related issues from concerned whistleblowers and is working collaboratively with the FAA and Congressional oversight committees to ensure safety concerns are being addressed.
- 3) **New Orleans Pumps.** OSC's work on the possibly defective New Orleans levee pumps prompted a new independent investigation to ensure proper safeguards are in place to avoid another Katrina disaster.
- 4) **High profile Hatch Act results.** Over the last year, OSC has investigated hundreds of potential Hatch Act violations and has worked efficaciously to prosecute egregious cases of politicization and coercion. For example, a recent high profile OSC investigation of an Ohio Prosecutor who solicited subordinate employees for political contributions resulted in an admission of guilt and an agreement not to seek employment with a locality or government agency for a period of 18 months.
- 5) **More Hatch Act results.** Another prominent investigation by the OSC resulted in a 180-day suspension for a NASA employee for using his government email account to send partisan political e-mails. The employee was also found to have solicited political contributions.
- 6) **OSC Special Task Force continues review of possible violations by administration officials.** OSC is conducting several high-level investigations related to the Hatch Act and to possible violations of certain Prohibited Personnel Practices.

- 7) **OSC's willingness to prosecute federal agencies for violations of the USERRA law.** OSC set precedent in the last four years by filing a number of USERRA cases with the Merit Systems Protection Board, and receiving full corrective action in nearly all of them, including one in which the U.S. Department of Labor told the claimant that his case had no merit. Several of these cases stem from the demonstration project created by the Veterans Benefits Improvement Act of 2004, under which OSC has responsibility to investigate and resolve certain federal sector USERRA cases. This willingness to prosecute USERRA violations also contributes to more corrective action settlements prior to litigation. OSC achieved another 26 USERRA corrective actions in Demonstration Project cases during FY 2008, bringing its total for the three year project to 120, which represents a corrective action rate for the project of approximately 27%.
- 8) **Specific USERRA Results.** An Air National Guardsman, who lost his federal job while on active military duty, waited more than seven years to get relief under USERRA. Only months after the Government agency where his case had languished for seven years referred it to OSC, a settlement was reached providing him with full back pay and restored benefits.
- 9) **More Specific USERRA Results.** In many instances, OSC investigates complex USERRA claims where investigators work to remedy personal hardships caused by employer's misunderstanding of the law. For example, one of this year's cases involved a claimant who alleged that an agency mischarged his leave and imposed a debt on him as a result of his service in the Air Force Reserve. At the USERRA unit's request, the agency took the series of actions that were necessary to fully correct the situation, including restoring the employee's annual leave, cancelling the debt, and reimbursing him for lost pay.
- 10) **OSC continues to enhance its resources for conducting mediations.** Instead of having one full time mediator, seven people from different parts of the agency have received training in conducting mediations. OSC now has a cadre of professionals with varied skills and legal expertise in multiple areas from which to draw.
- 11) **OSC continues to operate under its re-designed Performance Goals.** OSC's performance goals are now measurable, finite, and directly aligned with the four statutory missions of the agency. They deal with timeliness, quality, and outreach (where applicable) for each enforcement mission. The Senate Appropriations Committee expressed their satisfaction with the changes and they appeared for the first time in the FY 2008 Congressional Budget Justification. OSC will continue to use its performance goals to drive a results-oriented performance culture.

Although the elimination of backlogged cases has helped OSC achieve its strategic goals of protecting federal employees from PPPs, protecting the merit system, and guarding the public interest through its Disclosure Unit, there are other important ways in which the agency must gauge its success. OSC made progress on improving the timeliness to review PPP cases (95% processed in less than 240 days during FY 2008, a 1% improvement above the FY 2007 result). Despite unprecedented spikes in Hatch Act caseload (up 58% over FY 2007), OSC still managed to resolve 88% of them in less than 365 days. Timely settlements and processing of cases are very important and will be a continued focus of the agency in the coming year.

## VI. OSC's Systems, Controls, and Legal Compliance

Management control activities carried out by OSC include periodic reviews of agency administrative and program elements to assure that obligations and costs comply with applicable laws; funds, property and other assets are safeguarded; revenues and expenditures are properly recorded and accounted for; and programs are efficiently and effectively carried out in accordance with law and management policy. During FY 2008, reviews were completed on the following agency administrative operations:

1. Information Security Program. OSC's Chief Information Officer conducts an annual security review. The results of this review were summarized in the agency's Federal Information Security Management Act (FISMA) Report, submitted to OMB in early October, 2008. The review found no material weaknesses in the agency's information technology policies, procedures, or practices. Further, there were no security incidents affecting critical agency information systems.
2. GAO Correspondence. In early 2008, GAO followed up on its 2007 correspondence entitled "Office of Special Counsel Needs to Follow Structured Life Cycle Management Practices for its Case Tracking System." That report had recommended that OSC develop an SDLC approach for its case tracking system, OSC2000. OSC's case tracking system has never had any data reliability problems during its seven years of constant use by the agency. But in order to acknowledge that a recommendation had been made, OSC spent considerable man-hours developing the SDLC documentation for the system, which was completed in August of 2007. The report also recommended that OSC establish a standardized method of querying its database. OSC launched a project to create the standardized queries and completed the project in July of 2007. OSC responded to follow-up questions from GAO concerning both of them in early FY 2008.
3. Financial Audit. OSC is undergoing its fifth financial audit. The agency's first audit was in FY 2004. The auditors reported no material weaknesses in FY 2004, FY 2005, FY 2006, or FY 2007. The FY 2008 audit addresses the financial statements and accounting processes, almost all of which were accomplished by the National Business Center (NBC) at the Department of Interior under an interagency outsourcing agreement. In the event that any material control weaknesses are identified during this year's audit, they will be discussed in the next FMFIA/IG Act report.
4. OSC Capitalization Policy. In November of FY 2005, OSC created a capitalization policy for assets with a purchase price over \$50,000. This policy is in place and reviewed quarterly, to determine if OSC has additional assets to capitalize.
5. HSPD-12. To comply with the security requirements of directive HSPD-12, OSC has an agreement for HSPD-12 services with the General Services Administration. OSC

has met the 2006, 2007, and 2008 deadlines for the accomplishment of HSPD-12 milestones and is now in the process of having PIV cards issued to all OSC employees.

In FY 2008, OSC outsourced several financial management and administrative activities to the National Business Center (NBC). These activities included budget accounting, financial accounting, reporting accounting, procurement systems software, and travel services. OSC personnel and payroll data entry transactions were processed by the Department of Agriculture's National Finance Center (NFC). These operations were administered under cross-servicing agreements. For information on any significant management control issues related to services provided under these agreements, OSC relies on information received from NBC and NFC, and any audits or reviews issued by the Inspectors General and Chief Financial Officers of the Departments of Treasury and Agriculture, and the Government Accountability Office (GAO).

In May of 2007, there was a GAO Correspondence entitled "Managerial Cost Accounting Practices at the Department of Interior", which pointed out perceived managerial accounting deficiencies in various divisions of the Department of Interior. However, GAO states that the deficiencies affect the way NBC sets pricing and makes managerial decisions. There is no effect on the accounting they do for OSC, other than the possibility that NBC's pricing could be slightly lower or higher than it would be with a better activity based costing system, which could spread costs evenly among clients according to effort expended on the individual clients.

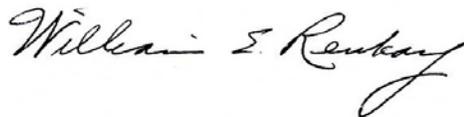
## VII. Management Assurances

### Annual Assurance Statement on Internal Controls and Internal Control over Financial Reporting

OSC's management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). OSC conducted its assessment of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, OSC can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2008 was operating effectively and no material weaknesses were found in the design or operation of the internal controls.

OSC works with the National Business Center (NBC) for its financial reporting needs. OSC obtains the SAS 70 report from NBC, and reviews it to assist in assessing internal control over financial reporting. OSC has not discovered any significant issues or deviations in its financial reporting during FY 2008 and therefore concludes that the agency's internal controls over financial reporting are sufficiently strong.

OSC has no in-house financial system. OSC has chosen to use Oracle Federal Financials on an instance hosted by NBC, a shared service provider. Because of the rigorous testing that NBC undergoes, OSC considers its financial system to be reliable and effective.



William E. Reukauf  
Acting Special Counsel  
November 17, 2008

## **VIII. Future Effects of Known Demands, Risks, Uncertainties, Events, Conditions, and Trends**

In the past several years, the agency has experienced an increase in caseload level. For example, in FY 2008, OSC's caseload increased 8.0%, and in FY 2007, OSC's caseload increased 6.0%. Several factors which have contributed to these rising levels of complaint filings with OSC:

- In recent years, OSC has had a large number of high-profile whistleblower cases, leading to increased national press coverage of OSC. FY 2008 accelerated this trend. There is now a very heightened awareness of the Hatch Act among Federal employees. The number of Hatch Act complaints received in FY 2008 was approximately 50% higher than the highest number ever previously received in a year. Hatch Act complaints in FY 2009 are expected to remain at these elevated levels.
- IN 2004, Congress passed a statute intended to improve results and decrease the processing time for USERRA complainants from members of our armed forces. Under the three-year Demonstration Project, which ended December 31, 2007, OSC investigated half of the USERRA cases that would typically have been investigated by the Department of Labor, thereby increasing OSC's USERRA caseload considerably. OSC is confident that this pilot program improved results for members of our military who were being denied rights under USERRA. During the three year program OSC achieved 120 corrective actions in USERRA cases, which represented 27% of all USERRA cases handled by OSC under the Demonstration Project. Given these excellent results, now that the three year project is over, it is very possible that Congress will ask OSC to take on the responsibility of investigating all Federal USERRA cases.
- OSC continues to investigate whistleblower retaliation complaints from Transportation Security Agency (TSA) security screeners under OSC's Memorandum of Understanding (MOU) with TSA. This MOU remains viable despite the Merit System Protection Board's decision that the Board does not have jurisdiction to adjudicate these matters.
- During FY 2008, OSC continued to certify more agencies through its outreach program. As agencies implement the certification process, agency employees who might previously have been unaware of their rights and remedies through OSC are becoming informed.
- In addition to OSC's certification program, OSC continues to provide outreach programs to agencies requesting them, or as part of OSC settlements in particular matters. Outreaches explaining the twelve Prohibited Personnel Practices can precipitate new cases being filed with OSC, because employees learn more about what a PPP is, and sometimes realize that one may have been committed against them. But in the long run, continued outreaches should diminish actual violations by raising awareness.
- OSC continues to stress the importance of agency-wide cross training. This is an important initiative, which has already provided benefits in efficiency at OSC by developing many of the agency's employees to the point where they have sufficient expertise to operate in more than one of OSC's highly specialized units. These highly trained employees can therefore cross

organizational boundaries to address any building case backlogs in their initial stages.

## IX. Comments on Final FY 2007 Financial Statements

- OSC's Asset Capitalization Policy has been in place for three years. It pertains to assets with an initial purchase price over \$50,000. The agency's phone system was the first item to be placed on the list of capitalized assets. The videoconferencing equipment and certain leasehold improvements were subsequently added to the list.
- An ongoing trend is that salaries, benefits, rent and utility payments tend to take precedence over major productivity-enhancing Information Technology projects. Salaries, benefits, rent and utility payments are over 90% of the agency's expenditures. Any increases such as pay raises or rent increases have an impact on the agency's ability to fund the IT projects. OSC continues to find ways to implement IT enhancements at low costs. However, in the near future, investments in certain systems must be made, for projects such as the upgrade of OSC's case tracking system to a web-based platform.
- OSC's Unfunded Annual Leave Liability on the Balance Sheet continues to rise. At the end of FY 2008 it was \$851,000 an 11.4% increase over the already high accrued leave liability amount at the end of FY 2007. This liability stems from the diligent effort given by the OSC employees to continue to accomplish the missions of the agency in a timely manner in spite of elevated case levels in all units, and to handle the increased responsibilities of the Special Task Force, the FAA Task Force, and the remaining USERRA Demonstration Project cases.
- **Limitations of the Financial Statements:** The principal financial statements have been prepared to report the financial position and results of operations of OSC, pursuant to the requirements of 31 U.S.C. 3515 (b).

The statements have been prepared from the books and records of the Review Commission in accordance with generally accepted accounting principles (GAAP) for Federal entities and formats prescribed by the Office of Management and Budget (OMB). The statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These statements should be read with the realization that they are for a component of the United States Government, a sovereign entity.

## Endnotes

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<sup>1</sup> Reorganization Plan Number 2 of 1978. See 5 U.S.C.A. App.1, § 204. The Civil Service Reform Act of 1978 (Public Law No. 95-454, 92 Stat. 1111) enlarged OSC's functions and powers.

<sup>2</sup> Public Law No. 101-12 (1989). Provisions setting forth OSC authorities and responsibilities were codified at 5 U.S.C. § 1211, *et seq.*

<sup>3</sup> Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.

<sup>4</sup> Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, *et seq.* The Veterans' Employment Opportunities Act of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The act made it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veterans' preference requirement. See 5 U.S.C. § 2302(b)(11). (The former § 2302(b)(11) was re-designated as § 2302(b)(12).).

<sup>5</sup> Public Law No. 103-424 (1994), codified in various sections of title 5 of the U.S. Code. The provision making federal agencies responsible, in consultation with OSC, for informing their employees of rights and remedies under the Whistleblower Protection Act appears at 5 U.S.C. § 2302(c).

<sup>6</sup> Public Law 107-71 (2001).

<sup>7</sup> Unless noted otherwise, all references after this to prohibited personnel practice complaints include complaints alleging other violations of civil service law, rule, or regulation listed at 5 U.S.C. § 1216, except for alleged violations of the Hatch Act.

<sup>8</sup> When the Complaints Examining Unit makes a preliminary determination to close a complaint without further investigation, it must by law provide complainants with a written statement of reasons, to which they may respond. On the basis of the response, if any, the unit decides whether to close the matter, or refer it to the Investigation and Prosecution Division.

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## **Part 2: Performance Section**

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

OSC achieved its timeliness target in FY 2008. Therefore, we are again raising the target. Some investigations take longer than 240 days due to factors outside of OSC's control, such as extensions of time requested by the agency under investigation, and the timeframes associated with litigation.

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

OSC did not lose any cases this year in PPP litigation before the board. Normally, agencies will settle the matter when OSC outlines the nature of the prohibited personnel practices that have been committed.

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

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

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

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

Indicator C: OSC met its target for percent of Hatch matters resolved in less than 365 days. This is remarkable, given the size of the election year spike. 446 complaints were received, 147 more than the previous high during any fiscal year.

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

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

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

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

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

<sup>a</sup>The first year for which data will be available is FY 2009, based on USERRA amendments signed into law on October 10, 2008 (Veterans’ Benefits Improvement Act of 2008, P.L. 110-389).

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

In one case, DOL did not fully investigate or analyze the claimant’s original allegations, and the claimant raised numerous new allegations after his complaint was referred to OSC. Therefore, it was necessary for OSC to do extensive follow-up investigation and analysis to make a determination on the complaint. In theory, DOL investigates all allegations and OSC reviews

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DOL's investigative file to make a representation decision. In this matter, OSC also had to conduct its own follow-up investigation, substantially increasing the processing time.

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

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

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

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

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

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

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

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

Five outreaches were requested in FY 2008. All five were accomplished by the USERRA Unit.

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

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

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

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

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## **Part 3: Financial Section**