
**A Report to Congress
From The
U.S. Office Of Special Counsel
Fiscal Year 1992**





U.S. OFFICE OF SPECIAL COUNSEL

**1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505**

The Special Counsel

Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

I herewith respectfully submit to the Congress, in accordance with 5 U.S.C. § 1218, the Annual Report from the Office of Special Counsel for Fiscal Year 1992. As is customary, a copy of this report will also be sent to each member of Congress.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Day Koch".

Kathleen Day Koch

TABLE OF CONTENTS

	PAGE
BIOGRAPHY OF THE SPECIAL COUNSEL	1
INTRODUCTION	2
Mission of the Office of Special Counsel	2
Office of Special Counsel Policy	3
Shared Responsibility for Protecting Whistleblowers	3
OVERVIEW OF OSC OPERATIONS	4
Budget and Staffing	4
Procedures	4
INVESTIGATION OF ALLEGATIONS	6
Nature of Allegations Received During FY 1992	6
Disposition of Allegations	6
Results of FY 1992 Investigations	7
Corrective Actions	8
Disciplinary Actions	9
Merit Systems Protection Board Stays	11
HATCH ACT MATTERS	15
WHISTLEBLOWER DISCLOSURES	16
Results of Referrals	17
LEGISLATION	18
FURTHER INFORMATION	19
ORGANIZATION OF THE OFFICE OF SPECIAL COUNSEL	21

Biography of the Special Counsel

Kathleen Day Koch was appointed Special Counsel of the U.S. Office of Special Counsel (OSC) on December 20, 1991, for a five year term, following Senate approval of her nomination.

Ms. Koch previously held the position of General Counsel of the Federal Labor Relations Authority since December 1988. In her term as General Counsel, she encouraged a heightened emphasis on conflict resolution through cooperation and dispute avoidance. She has been instrumental in creating a conflict resolution seminar program that has been utilized by various federal agencies nationwide.

Ms. Koch's entire legal career has been in public service, where she has developed expertise in federal employee and government ethics issues. Prior to her appointment to the FLRA, she served as Associate Counsel to the President. She was asked to join the White House staff while serving as Senior Attorney in the Personnel Law Division at the Commerce Department. During the significant formative period of the Merit Systems Protection Board (1979-1984), Ms. Koch participated in the development of the adjudicatory agency's procedural and substantive precedents. Her government career began in 1977 when she was appointed an Honors Program attorney at the Department of Housing and Urban Development.



A native of St. Louis, Missouri, Ms. Koch studied at Concordia College, River Forest, Illinois. She received her B.S. degree with honors from the University of Missouri St. Louis in 1971 and was honored that year as a finalist in the competition for the Danforth Urban Leadership Fellowship. Ms. Koch received her J.D. degree from the University of Chicago in 1977.

Ms. Koch and her three children reside in Annandale, Virginia.

Introduction

Mission of the Office of Special Counsel

The Office of the Special Counsel was established on January 1, 1979, by Reorganization Plan Number 2 of 1978. The Civil Service Reform Act (CSRA) of 1978, which came into effect on January 11, 1979, enlarged its functions and powers. The office operated as the autonomous investigative and prosecutive arm of the Merit Systems Protection Board (MSPB) until 1989. In March of 1989, the Congress passed the Whistleblower Protection Act (WPA) of 1989, which became effective on July 9, 1989. The WPA established the Office of the Special Counsel as an independent agency within the Executive Branch, separate from the MSPB, and renamed it the Office of Special Counsel (OSC). Under the new law, the OSC kept its basic investigative and prosecutive functions, and its role in litigating cases before the MSPB.

The WPA substantially amended the CSRA to enhance protections against reprisal for those employees who disclose wrongdoing in the federal government, and the ability of the OSC to enforce those protections. Under the CSRA, as amended, the principal responsibilities of the OSC continue to be --

- the investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. §2302(b),¹ and other activities prohibited by civil service law, rule or regulation, and the initiation of corrective and disciplinary actions when such remedial actions are warranted;
- the interpretation and enforcement of the Hatch Act provisions on political activity in Chapters 15 and 73; and
- the provision of a secure channel through which federal employees may make disclosures of information evidencing violations of law, rule or regulation, gross waste of funds, gross mismanagement, abuse of authority, or a substantial and specific danger to public health or safety, without disclosure of the employee's identity (except with the employee's consent) and without fear of retaliation.

¹ All statutory references to chapters and sections that follow in this report will be to Title 5 of the United States Code, unless otherwise indicated.

Office of Special Counsel Policy

In furtherance of the merit systems principles specified in the CSRA, the OSC's principal responsibility has been and continues to be the receipt and investigation of complaints of alleged prohibited personnel practices, especially reprisal for whistleblowing. Although allegations of reprisal for whistleblowing are relatively few as compared to the number of federal civilian employees, the OSC regards *any* reprisal for whistleblowing as unacceptable. Accordingly, the OSC's priorities are:

- to treat allegations of reprisal for whistleblowing as its highest priority;
- to review allegations of reprisal for whistleblowing intensively for any feasible remedial or preventive action, whether by means of stays, corrective actions, or disciplinary actions; and
- to use every opportunity to make a public record of the OSC's aggressive pursuit of corrective action (especially in whistleblower reprisal cases), both to encourage other whistleblowers, and to affirm the emphasis given to corrective actions by the OSC.

Shared Responsibility for Protecting Whistleblowers

As the General Accounting Office noted in its 1985 report on the OSC's handling of reprisal allegations, the adequacy of whistleblower protections should not be viewed solely by reference to the matters handled by the OSC. Responsibility for establishing and maintaining a climate in which employee disclosures of waste, fraud or abuse are supported, and in which reprisals for such disclosures are not tolerated, is shared by the government as a whole -- including the President, the Congress, agency heads, managers and supervisors, appellate systems, and the Inspectors General.

Overview of OSC Operations

Budget and Staffing

During Fiscal Year (FY) 1992, the OSC operated with a budget of \$7.776 million, and the agency's full-time equivalency (FTE) personnel ceiling was 101.

Procedures

The Complaints Examining Unit (CEU) in the OSC Prosecution Division initially analyzes all allegations of prohibited personnel practices; other activities prohibited by civil service law, rule or regulation; and Hatch Act violations received by the agency. The CEU contacts complainants to ensure that the nature of and basis for the allegation is clearly understood, and conducts further inquiry to the extent necessary to determine whether the allegation warrants further investigation.

If the CEU cannot determine the proper disposition of a complaint, through the initial examination process, it refers the matter to the Investigation Division for more extensive investigation. If the CEU determines that an allegation is not within the OSC's investigative jurisdiction, but that information contained in the complaint may constitute a whistleblower disclosure, the Investigation Division's Disclosure Unit reviews that information for possible transmittal to the agency head concerned. The OSC does not disclose the identity of the employee without the employee's consent.

The Prosecution Division reviews completed field investigations to determine whether the inquiry has established any violation of law, rule or regulation, and whether the matter warrants corrective or disciplinary action, or both. If so, OSC personnel may discuss the matter with the agency concerned in order to obtain an early resolution of the matter. Otherwise, the Special Counsel may refer the matter in writing to the agency head under §1214(b)(2)(A) with a recommendation for corrective action. If an agency declines to take corrective action, the Special Counsel may request the MSPB to consider the matter under §1214(b)(2)(B), and the MSPB may order any corrective action it deems appropriate. During FY 1992, OSC continued its policy of early and firm negotiation with agencies to obtain corrective action prior to an adjudicatory order. These efforts resulted in OSC obtaining corrective actions for more than 100 complainants. If the Special Counsel determines that an apparent violation warrants disciplinary action, the OSC files charges against the offending employee under §1215(a) and prosecutes the case before the MSPB. Finally, if an investigation discloses a violation of any law, rule or regulation not otherwise within the enforcement authority of the OSC, the Special Counsel sends a report of the OSC's findings to the agency head concerned under §1214(e) for certification of any action to be taken on the matter. The OSC reports evidence of any possible criminal violations identified during an investigation to the Department of Justice pursuant to §1214(d).

At any time during an investigation, the OSC may seek a stay of any personnel action if the available evidence provides reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice. The OSC may obtain a stay upon direct request to the agency concerned or by filing a request for a stay with the MSPB under §1214(b)(1). Also, the Special Counsel may, pursuant to §1212(c), intervene as a matter of right or otherwise participate in any proceeding before the MSPB, except that the Special Counsel may not intervene in a proceeding brought under §1221 or §7701 without the consent of the individual initiating the proceeding.

Investigation of Allegations

At the beginning of FY 1992 (October 1, 1991), the OSC had 512 matters pending initial review and inquiry and 52 matters under field investigation.

Nature of Allegations Received During FY 1992

During FY 1992, the OSC received 1,891 new matters containing 3,156 separate allegations. Reprisal for whistleblowing accounted for 18.2 percent of the total allegations received during FY 1992, making it the most frequently cited claim of a prohibited personnel practice. The next largest category of allegations claimed was Reprisal for exercise of a right of appeal (15.1 percent). This represents an increase of 83.8 percent over the number of reprisal for appeal right allegations received last year. A complete breakdown of the nature of all allegations received by the OSC during FY 1992 appears in *Table 1, Allegations Contained in Matters Received During FY 1992*, on pages 12-13.

Disposition of Matters

During FY 1992 --

- the CEU closed 1,798 matters (including matters carried over from FY 1991) on the basis of initial review and inquiry, satisfactory resolution of an employee's complaint during the initial review process, or a determination that there was insufficient basis for further OSC action;
- 270 matters were referred by the CEU for field investigation; and
- 136 matters received by the OSC (including 65 matters referred by the CEU) were assigned for additional review for possible referral to the agency concerned as a whistleblower disclosure.

The OSC carried over the remaining matters for further action in FY 1993. A breakdown of the nature of allegations referred for field investigation appears in *Table 2, Allegations Contained in Matters Referred for Field Investigation During FY 1992*, on page 14.

Results of FY 1992 Investigations

The OSC completed 234 field investigations during FY 1992 (including investigations carried over from FY 1991), and 88 investigations awaited completion at the end of the year. Of completed field investigations (including investigations completed in FY 1991), 219 matters were closed following legal review by the Prosecution Division. Legal reviews and decisions as to final disposition in the remaining investigative matters had not been completed at the end of the fiscal year. During FY 1992, the OSC --

- obtained 104 corrective actions or favorable dispositions in 95 matters;²
- initiated corrective actions in eight additional matters which were pending at the end of FY 1992;
- filed 13 disciplinary action complaints, concerning Federal, State and local Hatch Act violations;
- secured one stay of personnel actions, and three extensions of that stay, from the MSPB in one matter; and
- obtained 11 stays of personnel actions through direct requests to the agencies.

During FY 1992, the MSPB issued five Final Decisions, and the MSPB Chief Administrative Law Judge (CALJ) issued 11 Recommended Decisions in OSC cases. These Final and Recommended Decisions resulted from complaints for disciplinary action filed by the OSC in FY 1992 and prior fiscal years. The OSC prevailed in three of the recommended decisions; the remaining eight are now before the MSPB.

² "Corrective actions or favorable dispositions" include (1) those actions taken by an agency pursuant to a written request for corrective action by the Special Counsel; (2) actions taken by an agency at the request of the OSC as a settlement of a prohibited personnel practice complaint in advance of a written request for corrective action by the Special Counsel; or (3) actions taken by an agency with knowledge of a pending OSC investigation, which satisfactorily resolve those matters under inquiry by the OSC.

Corrective Actions

The following is a representative sample of corrective actions obtained by the OSC during FY 1992:

- OSC investigated an employee's allegation that he was issued a written reprimand, placed on a detail, subjected to two internal agency investigations, and coerced into resigning in reprisal for making protected disclosures of fraud, waste, and abuse. At OSC's request, the agency agreed to reinstate the employee to his previously held position at a mutually agreeable geographic location.
- OSC investigated a supervisor's allegations that in reprisal for disclosures of gross mismanagement and for filing EEO complaints, the agency refused to approve the supervisor's selection of a specific individual for a vacant position. Further, the agency gave the supervisor lowered annual performance ratings and reassigned him to another position. The OSC investigation disclosed that the supervisor's protected activity was a factor in the personnel actions. The agency agreed to raise the supervisor's performance ratings, including monetary performance awards based on the raised ratings and pay reasonable attorney fees. The agency also agreed to promote the employee whom the supervisor had originally selected for the vacant position, including full back pay and benefits. Finally, the agency disciplined the manager who had taken the improper actions.
- OSC investigated an allegation that an employee was improperly not selected for a reassignment because of her medical condition. The employee also alleged that management cited additional job requirements during the interview which were not reflected in the vacancy announcement in an attempt to influence her to withdraw from competition. The OSC investigation disclosed evidence supporting the employee's allegations. At OSC's request, the agency agreed to settle the matter by reassigning the employee to the position in question.
- OSC investigated an allegation that an agency issued an employee a Minimally Successful performance rating and failed to rehire him as a seasonal firefighter in reprisal for making protected disclosures regarding his supervisor. When OSC's investigation disclosed evidence supporting the allegations, the agency agreed to issue the employee a presumptive fully successful rating and granted him benefits and backpay for the season he was not rehired.
- OSC investigated an employee's allegations that she received a lowered performance rating and was reassigned because she filed a grievance and a complaint with OSC against her second level supervisor and that the appraisal system used to rate her performance was not authorized by the U.S. Office of Personnel Management. OSC confirmed the second part of the employee's allegations. At OSC's request, the agency offered the employee a cash settlement of \$3,500 and agreed to remove the performance appraisals in question from her official personnel file.

- OSC investigated allegations that, in reprisal for refusing to place an electronic monitoring device in a conference room without proper authorization and for his refusal to give technical guidance on how to accomplish the task, an employee was detailed, threatened with disciplinary action, and his efforts to be reassigned were impeded. During OSC's investigation, the agency agreed to reassign the employee with pay retention for two years at his current level and assist in payment of his moving expenses.
- The OSC investigated an allegation that a field activity level employee was reprimanded for making protected disclosures to an agency level official concerning the theft of federal property at the field activity. OSC's investigation confirmed that the employee was reprimanded for making his disclosures outside the chain of command. At OSC's request, the agency rescinded the official reprimand and removed it from the employee's Official Personnel File.

Disciplinary Actions

The following is a representative sample of disciplinary actions filed by the OSC with, and decisions on OSC cases from the previous year issued by, the MSPB during FY 1992:

- The CALJ issued a recommended decision on a complaint for disciplinary action filed by OSC against two supervisory employees who had taken adverse personnel actions against two subordinate managers for making protected disclosures. The adverse personnel action included a "minimally satisfactory" rating on a performance appraisal, a recommendation for demotion and a reassignment of one of the two whistleblowers, and a lowered rating on a performance appraisal which resulted in loss of a merit increase for the other employee. The CALJ found that the supervisory employees had violated the WPA and that disciplinary action was warranted. He recommended a two-grade demotion to a non-supervisory position for one of the employees and a fine for the other who had retired from the Federal service. The MSPB's decision is pending.
- After conducting a hearing, the CALJ issued a Recommended Decision finding that two federal employees, an assistant regional commissioner and an associate regional commissioner, committed prohibited personnel practices. The CALJ found that the assistant regional commissioner influenced an Office of Personnel Management referred Displaced Employee Program candidate to withdraw from competition for a position in a district office. He also found that both respondents failed to timely correct the unauthorized appointment of a non-status candidate to the district office position in violation of regulations which implement or directly concern merit systems principles. Finally, the CALJ found that the associate regional commissioner granted the other respondent an unauthorized preference for the purpose of improving his prospects for promotion into the assistant regional commissioner position. The CALJ recommended that the assistant regional commissioner serve a 60 day suspension and that the

associate regional commissioner serve a 90 day suspension. The MSPB's decision is pending.

- OSC investigated an allegation that a federal employee who resided in a partially exempted locality had violated the Hatch Act by being a partisan candidate, rather than an independent candidate, for public elective office. OSC's investigation confirmed that there were reasonable grounds to believe that although the employee had filed as an independent candidate, the employee's candidacy had been transformed into one which was *de facto* partisan when the employee received the endorsement of a local partisan political party and advertised the endorsement in campaign literature. The MSPB Chief Administrative Law Judge (CALJ) agreed with OSC and the matter is currently on appeal with the MSPB.
- OSC investigated allegations that two local government employees who were subject to Hatch Act restrictions were candidates for public office in a partisan election in violation of the Act. These allegations were confirmed by OSC investigators and the employees admitted they had violated the Act. However, they argued before the CALJ that, since they reasonably believed that they were not subject to the Hatch Act because their salaries were not federally funded, they did not commit a knowing and willful violation of the law. The CALJ agreed with OSC that the employees were aware of OSC, knew how to obtain authoritative advice on the application of the Hatch Act, and yet made no reasonable attempt to do so. Accordingly, the CALJ found that the employees committed a knowing and willful violation of the law and recommended that they be removed from their positions.
- OSC filed a complaint for disciplinary action against a District of Columbia employee for violating the Hatch Act by taking an active part in political management or a political campaign. The employee, while he was a federal employee, engaged in political management of the campaign before the candidate declared her candidacy. After the declaration of candidacy, he performed numerous services for the campaign. The CALJ held that the employee had violated the Hatch Act and disciplinary action was warranted. The CALJ recommended a 60-day suspension. The MSPB's decision is pending.
- OSC investigated an allegation that an employee of a local executive branch agency, who had duties in connection with federally financed activities, violated the Hatch Act by being a candidate for public office in a partisan election. The employee argued that his candidacy did not violate the Act because the election was non-partisan under state law. OSC argued that precedent supported a finding that an election is partisan where any candidate in the election "represents" a partisan political party, that the employee had received written warnings from OSC, and that therefore the employee's candidacy was in knowing and willful disregard of the law. The MSPB agreed with OSC and ordered that the employee be removed from his local government employment and be prohibited from being

reemployed by any other state or local government agency for 18 months from the date of the order.

Merit System Protection Board Stays

During FY 1992, the OSC petitioned the Merit Systems Protection Board for a stay, which was subsequently extended. The following is a synopsis of the stay granted:

- OSC petitioned the U.S. Merit Systems Protection Board to stay a proposed removal. OSC found reasonable grounds to believe that the action was in reprisal for statements made in a grievance activity protected by section 2302(b)(9) of Title 5 of the United States Code. The MSPB stayed the proposed removal pending an OSC investigation. Subsequently, OSC expanded the scope of the investigation to determine whether a prior decision to suspend the employee had been affected by the grievant's allegations of sexual harassment and time-card abuse, activities protected by section 2302(b)(8). The OSC investigation and the MSPB stay order continued into FY 1993.

Table 1

**ALLEGATIONS CONTAINED IN MATTERS RECEIVED
DURING FY 1992**

NATURE OF ALLEGATION	NUMBER OF ALLEGATIONS
Reprisal for whistleblowing [§2302(b)(8)]	575
Discrimination on the basis of race, color, sex, national origin, religion, age, or handicapping condition [§2302(b)(1)(A)-(D)]	442
Attempts to secure withdrawal from competition [§2302(b)(5)]	20
Violation of a law, rule or regulation implementing or concerning a merit system principle [§2302(b)(11)]	376
Reprisal for exercise of a right of appeal [§2302(b)(9)]	476
Granting of unauthorized preference or advantage [§2302(b)(6)]	349
Allegations which did not cite or suggest any prohibited personnel practice or prohibited activity ³	199
Disclosures of alleged violation of a law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a danger to public health or safety [§1213(c) or §1213(g)] ⁴	90
Violation of the Hatch Act by a federal employee [§1216(a)(1)]	69
Discrimination on the basis of non-job related conduct [§2302(b)(10)]	68
Violation of the Hatch Act by a state or local government employee [§1216(a)(2)]	87
Appointment, promotion, or advocating the appointment or promotion of a relative [§2302(b)(7)]	75

³ Although these types of allegations may not, on their face, indicate the existence of any matter within the OSC's investigative jurisdiction, follow-up contact is made with the individual to ascertain the exact nature of the allegation and to determine whether there is any basis for further OSC action.

⁴ These types of matters are allegations of wrongdoing in government programs or operations received from employees through the OSC whistleblower disclosure channel which may be referred to the agency concerned under §1213(c) or §1213(g) for agency review. If the employee alleges that an adverse personal action occurred because of the disclosure, then the OSC carefully reviews it to determine whether the matter may be treated as an allegation of a prohibited personnel practice or other prohibited activity within its investigative jurisdiction. If so, the OSC investigates the matter.

Table 1 (continued)

**ALLEGATIONS CONTAINED IN MATTERS RECEIVED
DURING FY 1992**

NATURE OF ALLEGATION	NUMBER OF ALLEGATIONS
Arbitrary or capricious withholding of information requested under the Freedom of Information Act [§1216(a)(3)]	29
Solicitation or consideration of unauthorized recommendations [§2302(b)2]	36
Deception or obstruction of the right to compete [§2302(b)(4)]	232
Discrimination on the basis of marital status or political affiliation [§2302(b)(1)(E)]	27
Other activities allegedly prohibited by civil service law, rule or regulation [§1216(a)(4)]	5
Coercion of political activity [§2302(b)(3)]	<u>1</u>
Total	3,156 ⁵

⁵ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters received.

Table 2

ALLEGATIONS CONTAINED IN MATTERS REFERRED FOR FIELD INVESTIGATION DURING FY 1992

NATURE OF ALLEGATION	NUMBER OF ALLEGATIONS
Reprisal for whistleblowing [§2302(b)(8)]	155
Reprisal for exercise of an appeal right [§2302(b)(9)]	97
Unauthorized preference or advantage granted to improve or injure the prospect of employment of any person [§2302(b)(6)]	35
Deception or obstruction of the right to compete for employment [§2302(b)(4)]	25
Discrimination on the basis of race, color, sex, national origin, religion, age, handicapping condition, or marital status [§2302(b)(1)(A)-(E)]	20
Violation of a law, rule or regulation implementing or concerning a merit system principle [§2302(b)(11)]	36
Violation of the Hatch Act by a state or local government employee [§1216(a)(2)]	28
Discrimination on the basis of conduct not related to job performance [§2302(b)(10)]	7
Appointment, promotion, or advocating the appointment or promotion of a relative [§2302(b)(7)]	16
Securement of withdrawal from competition [§2302(b)(5)]	4
Other activity prohibited by civil service law, rule or regulation [§1216(a)(4)]	4
Violation of the Hatch Act by a federal employee [§1216(a)(1)]	27
Violation of the Freedom of Information Act [§1216(a)(3)]	1
Solicitation or consideration of unauthorized recommendations [§2302(b)(2)]	4
Coercion of political activity [§2302(b)(3)]	<u>1</u>
Total	460 ⁶

⁶ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters actually referred for field investigation (270).

Hatch Act Matters

During FY 1992, the OSC received 137 new matters alleging violations of the Hatch Act, and initiated field investigations in 39 matters. As a result of the OSC inquiries into these matters (including those carried over from FY 1991) the OSC --

- filed 13 complaints seeking disciplinary action against six federal employees and seven state employees;
- concluded in 48 other matters that violations had occurred but were not sufficiently egregious to warrant prosecution;
- found no violation and closed 79 matters; and
- carried the remaining matters over to FY 1993 for completion of review.

Apart from investigating and prosecuting alleged violations of the Hatch Act, a vital component of the OSC's statutory responsibility is the issuance of advisory opinions to federal, state and local government employees on Hatch Act questions. During FY 1992, the OSC's Hatch Act Unit issued 312 written advisory opinions, provided 1,093 advisory opinions orally in response to telephone inquiries, and responded to an additional 630 telephone inquiries requesting general information.

Whistleblower Disclosures

In addition to its investigative and prosecutive missions, and pursuant to §1213(a), the OSC provides a safe channel through which federal employees may disclose information evidencing a violation of law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a specific and substantial danger to public health or safety.

Upon receipt of such information from a federal employee, the Special Counsel is required by §1213(c) to transmit the information to the head of the agency concerned if the Special Counsel determines that there is a substantial likelihood that the information discloses the kinds of wrongdoing described in the statute. The OSC will not divulge the identity of an employee who provided the information unless he or she consents. The agency head is then required to conduct an investigation and submit a report to the Special Counsel on the findings of the investigation. The Special Counsel sends the agency report with any comments provided by the employee who made the disclosure and any comments or recommendations by the Special Counsel to the President, the congressional committees having jurisdiction over the agency, and the Comptroller General.

The Special Counsel may determine, after review of information received from an employee, that there is not a substantial likelihood that the information discloses the type of wrongdoing described in §1213(a). In such cases, the Special Counsel may, under §1213(g), require the agency head to review the matter and inform the Special Counsel in writing of what action has been or is being taken thereon for transmittal to the employee.

The OSC is not authorized to investigate allegations of the kind described in §1213(a). Nevertheless, complainants often include information which may be covered by §1213(a) with their allegations of other prohibited activities within the OSC's investigative jurisdiction. The CEU identifies disclosures that may qualify for statutory referral to an agency in its initial review of complaints. The CEU refers any such disclosures to the Investigation Division's Disclosure Unit for further review and follow-up with the complainant as needed to confirm the facts and issues involved. After completion of its review, the OSC decides whether to (1) transmit the information developed to the agency concerned under §1213(c) or §1213(g); (2) refer the matter to the agency Inspector General or comparable office for any appropriate action; or (3) close the matter without further action.

During FY 1992, the OSC received and considered 136 matters for possible referral to the agency concerned under §1213(c) or §1213(g). In addition, 13 matters were carried over from FY 1991. During FY 1992, the OSC --

- referred five disclosures for investigation and a report under §1213(c);
- referred eight disclosures for a report of actions taken or to be taken thereon under §1213(g);

- referred 23 disclosures to the agency Inspector General;
- closed 93 matters due to lack of sufficient basis for further action; and
- carried the remaining matters over to FY 1993 for completion of review.

Results of Referrals

During FY 1992, the OSC received and closed ten reports from agencies to which statutory referrals previously had been made. OSC review of agency reports disclosed the following results from statutory referrals --

Section 1213(c) Referrals:

Allegation substantiated in whole or in part:	4
Allegation not substantiated:	2

Section 1213(g) Referrals:

Allegation substantiated in whole or in part:	5
Allegation not substantiated:	1

In the nine cases in which allegations were substantiated, the agencies reported the following corrective actions, with more than one action in some cases:

Agency regulations or practices changed:	5
Disciplinary action taken:	1
Other:	3

LEGISLATION

Office of Special Counsel (OSC) Reauthorization of Appropriations.

Pursuant to §8(a)(2) of the Whistleblower Protection Act (WPA) of 1989, Pub.L. 101-12, appropriations for the OSC are currently authorized only through FY 1992. In FY 1991, the OSC forwarded to both the Senate and the House of Representatives proposed legislation to extend authorization of appropriations through fiscal year 1997. This legislation was introduced as S.1981 in the Senate and hearings were held on May 13, 1992. Despite timely action by the full Senate, the House of Representatives failed to take up this proposed legislation before the end of the 102nd Congress.

Proposed Hatch Act Reform Legislation

Two bills were introduced in the 102nd Congress to amend substantially the provisions of the Hatch Act, which restricts the partisan political activity of federal employees. The OSC has principal responsibility for the interpretation and enforcement of the Hatch Act. S.914, introduced by Senator John Glenn, was identical to legislation which was enacted in the 101st Congress, but vetoed by President Bush. S.914 was reported to the full Senate by the Committee on Governmental Affairs, but no floor action was scheduled prior to the conclusion of the 102nd Congress. No legislative action was taken by the House of Representatives with respect to H.R.20, a bill similar to S.914.

Uniformed Services Employment and Reemployment Rights Act of 1991

Legislation was passed by the House of Representatives which would amend existing law to clarify and expand the reemployment rights of veterans and reservists returning to the workplace following active duty with the armed services. Among other provisions, H.R.1578 would have authorized the OSC, under certain circumstances, to represent a federal employee veteran or reservist before the Merit Systems Protection Board (MSPB) in the event a federal agency has failed to reemploy that person in accordance with the provisions of the Act. This would be a new statutory responsibility for the OSC, and a departure from the historic role of the OSC in enforcing federal laws for the benefit of federal employees. The Senate Committee on Veterans' Affairs marked-up similar legislation (S.1095) which also contained representational authority for the OSC. The Senate version would also have authorized the OSC to represent the federal employee veteran or reservist before the federal courts in the event of an adverse decision of the MSPB. This was significant new authority for the OSC. Neither version of this legislation was enacted before the end of the 102nd Congress.

Further Information

OSC Publications

Additional copies of this report, or information on other OSC publications, may be obtained by writing or contacting:

Director of Legislative and Public Affairs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephone: FTS or (202) 653-7984

Prohibited Personnel Practice Complaints

Complaints of prohibited personnel practices should be reported to:

Complaints Examining Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephones:
Toll free number --
1-800-872-9855 (TDD Equipped)
Officer of the Week --
FTS or (202) 653-7188 (TDD Equipped)

Whistleblower Disclosures

Disclosures of information evidencing violations of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a danger to public health or safety may be reported in confidence to:

Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephone: FTS or (202) 653-9125

Hatch Act Questions

Inquiries about the Hatch Act may be made in writing or by telephone to:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephone: FTS or (202) 653-7143