

ANNUAL REPORT TO CONGRESS



U.S. OFFICE OF SPECIAL COUNSEL
FISCAL YEAR 2011

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**REPORT TO CONGRESS
FOR
FISCAL YEAR 2011**

U.S. OFFICE OF SPECIAL COUNSEL

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U.S. Office of Special Counsel

**1730 M Street, NW, Suite 218
Washington, D.C. 20036-4505**

The Honorable Joseph Biden
President of the Senate
Washington, DC 20510

The Honorable John Boehner
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit the Report to Congress for Fiscal Year 2011 from the U.S. Office of Special Counsel. A copy of this report will also be sent to each Member of Congress.

Sincerely,

A handwritten signature in black ink that reads "Carolyn N. Lerner".

Carolyn N. Lerner
Special Counsel

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Biography of the Special Counsel



Carolyn N. Lerner was named U.S. Special Counsel by President Obama and confirmed unanimously by the U.S. Senate. She began her five-year term in June 2011. She brings over twenty years of legal expertise to the Special Counsel position. Prior to her appointment, Lerner was a partner in the D.C. civil rights and employment law firm of Heller, Huron, Chertkof, Lerner, Simon & Salzman. She represented individuals in discrimination and employment matters, and also represented nonprofits on a wide variety of matters, including best employment practices.

Lerner taught mediation as an adjunct professor at George Washington University School of Law. She was also a mediator for the U.S. District Court for the District of Columbia.

Prior to her appointment, Lerner served on various boards, including chairing the board of the Center for WorkLife Law, a non-profit which advocates for workers with family responsibilities, the WAGE Project, which works to end discrimination against women in the workplace, and the Council for Court Excellence.

While an undergraduate at the University of Michigan, Lerner was the state's Harry S. Truman Scholar. Lerner earned her J.D. from New York University School of Law, where she was a Root-Tilden public interest scholar. After law school, she was a law clerk to the Honorable Julian Abele Cook, Jr., Chief U.S. District Court Judge for the Eastern District of Michigan.

MESSAGE FROM SPECIAL COUNSEL CAROLYN N. LERNER

I am pleased to present the 2011 Annual Report to Congress for the United States Office of Special Counsel, my first report since beginning service as the Special Counsel. This report describes OSC's important mission and responsibilities, significant matters handled by the agency, and summary results of the agency's performance during the last fiscal year (FY).

OSC is a small agency with a large mission; ensuring accountability, integrity and fairness in the federal government so that the public is well served. 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' concerns are heard and acted on. OSC also protects these whistleblowers against retaliation by their agencies. 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 employees do not engage in partisan politics while on duty. OSC protects the reemployment rights of National Guard and Reserve members in the federal sector, and protects military members and veterans against employment discrimination by federal agencies. In short, OSC's mission is making government work more responsibly, efficiently, honestly and equitably for the American people. We have a long way to go but I'm pleased to report that we are making a real difference.

The following are some of the highlights since I took office on June 17, 2011. We have initiated a number of exciting new programs to strengthen performance in our core missions, boost staff morale, and improve the public profile of the agency. During this period, OSC also processed a record number of complaints and disclosures, filed two amicus briefs on important issues of law, and succeeded in gaining stays of personnel actions against several federal employees.

OSC launched a Retaliation Pilot Project (RPP), which has increased agency resources for the investigation and prosecution of whistleblower retaliation cases. The RPP has reduced OSC's case backlog and provided quicker relief for whistleblowers. Additionally, the project offers employees from across the agency training in enforcing prohibited personnel practice laws.

OSC substantially revitalized its alternative dispute resolution program to speed up the handling of complaints and achieve win-win outcomes for employees and agencies alike. We hired an expert mediator to lead the effort and we are partnering with the Federal Mediation and Conciliation Service to help us mediate nationwide and at a lower cost. With OSC's significantly rising caseload, a strong ADR program allows us to resolve many cases without resource-intensive litigation.

In August 2011, OSC initiated a three-year USERRA Demonstration Project that significantly increases OSC's responsibilities to protect the employment rights of veterans and reservists. OSC will be investigating more than half the federal USERRA cases brought by returning service members as well as prosecuting *all* federal USERRA claims. This represents a substantial increase in OSC's responsibilities, workload, and commitment to members of the uniformed services.

OSC recommended to Congress legislative options for reforming the Hatch Act. This important good government law can be improved by removing prohibitions on partisan candidacy by state and local employees. Such a change in the law would demonstrate respect for the independence of state and local elections, and allow qualified candidates to run for and serve. In addition, OSC is concerned about the Hatch Act's inflexible penalty

structure for federal employees. Reform will not only make the law fairer to employees; it will make it more enforceable by federal agencies.

OSC has conducted numerous, valuable meetings with the agency's stakeholders, including management and employee organizations, OSC's sister agencies, various good government groups, veterans' groups, and taxpayer advocacy organizations. These meetings provided useful feedback and OSC is working to implement many of the suggestions.

OSC's casework in 2011 made a substantial impact. For example, after a Defense Contracts Audit Agency (DCAA) employee disclosed audit practices that cost the government millions of dollars, her supervisors retaliated against her. OSC intervened and got the employee significant relief. The employee's disclosures led to widespread reforms at DCAA with significant potential cost-savings.

Whistleblowers at the U.S. military's mortuary in Dover, Delaware, reported misconduct regarding the handling of human remains and subsequent retaliation. OSC's intervention prevented the removal of two of the whistleblowers and has shined a bright light on the lack of proper care for the remains of returning service members by the Air Force.

A U.S. Army whistleblower disclosed to OSC that an \$8 million (contract) was largely wasted, and that the Army had received almost no deliverables. The Army will recoup over \$4 million. In response to the OSC's inquiry, the Army's Intelligence and Security Command (INSCOM), the division in question, created a new office to review contracting requirements and intensify scrutiny of all contracts over \$100,000.

A U.S. Navy whistleblower disclosed that critical welding defects existed on the catapult hydraulic piping systems for four catapults on the aircraft carrier USS Kitty Hawk. These catapults are used to launch aircraft from the deck of the ship, and had they not been corrected, these defects could have led to catastrophic loss of life and tax dollars.

OSC received a record number of cases in FY 2011, and the expectation is for large caseload increases going forward. Publicity regarding several new agency initiatives has resulted in bringing more attention – and thus more cases – to OSC. We found innovative approaches to manage surging caseloads, such as recruiting Presidential Management Fellows, despite constricted budgetary resources.

While this is a time of general belt tightening in government, OSC is not just another federal agency that spends money. Indeed, OSC's work pays for itself many times over in savings to the Treasury and in preventing catastrophic harm.

I look forward to working with Congress in the years ahead towards accomplishing the OSC's essential mission.



INTRODUCTION TO OSC

Statutory Background

OSC was established on January 1, 1979.¹ Until 1989, the office operated as the independent investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB, or “Board”). By law, OSC received and investigated complaints from current and former federal employees, and applicants for federal employment (“employees”), alleging prohibited personnel practices by federal agencies; enforced and advised on the Hatch Act, including restrictions imposed on political activity by covered government employees; and received disclosures from federal whistleblowers about wrongdoing in government agencies. The office 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 (WPA).² This statute made OSC an independent agency within the executive branch of the federal government, with continued responsibility for the functions described above. It also strengthened protections against reprisal for employees who disclose wrongdoing in the government, and enhanced OSC’s ability to enforce those protections.

Congress enacted legislation in 1993 that significantly amended Hatch Act provisions applicable to federal and District of Columbia (D.C.) employees, and enforced by OSC.³

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

Also in 1994, OSC’s reauthorization act expanded protections for federal employees, and defined new responsibilities for OSC and other federal agencies.⁵ It provided, for example, 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 certain legal protections to approximately 60,000 employees of what is now the Department of Veterans Affairs (DVA), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under those provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the WPA, and directed agencies to consult with OSC in that process.

In November of 2001, Congress enacted the Aviation and Transportation Security Act,⁶ creating the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA can file allegations of reprisal for whistleblowing with OSC and the MSPB. Approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the Board. OSC’s 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.

Mission

OSC is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment by protecting covered employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. The agency also supports covered federal employees and applicants by providing a secure channel for disclosures by them of wrongdoing in government agencies; enforces and provides advice on Hatch Act restrictions on political activity by government employees; and enforces employment rights secured by USERRA for federal employees who serve their nation in the uniformed services.

OVERVIEW OF OPERATIONS

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:

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

Complaints Examining Unit (CEU). This unit is the intake point for all complaints alleging prohibited personnel practices. CEU screens approximately 2,500 such complaints each year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers 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 Investigation and Prosecution Division. 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 to report its findings to the Special Counsel or informal referrals to the Inspector General (IG) of the agency. 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 Section (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.

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.

FY 2011 Budget and Staffing

During FY 2011, OSC operated with a budget of \$18,592,000. The agency operated with a staff of approximately 107 employees.

FY 2011 Case Activity and Results

Table 1, below, summarizes basic OSC case intake and dispositions in FY 2011, with comparative data for previous fiscal years. More detailed data can be found in Tables 2-8, which are in sections of this report relating to specific components of OSC’s mission – prohibited personnel practice cases, Hatch Act matters, whistleblower disclosures, and USERRA cases.

Table 1

Table 1 Summary of All OSC Case Activity					
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Matters ^a pending at start of fiscal year	667 ^b	700	943	1,326	1,357
New matters received	2,880	3,116	3,725	3,950	4,027
Matters closed	2,842	2,875	3,337	3,912	4,051
Matters pending at end of fiscal year	698	937	1,324	1,361	1,331
Hatch Act advisory opinions issued	2,598	3,991	3,733	4,320	3,110

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

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

PROHIBITED PERSONNEL PRACTICE COMPLAINTS

Receipts and Investigations

OSC is responsible for investigating complaints alleging any one or more of 12 prohibited personnel practices defined by law.⁷ Of the 4,027 new matters received by OSC during FY 2011, 64% (2,583 matters) were prohibited personnel practice complaints.⁸

As the intake unit for all prohibited personnel practice complaints filed with OSC, CEU examiners reviewed each matter to determine whether it was within OSC's jurisdiction and, if so, whether it stated a potentially valid claim as defined by law and interpreted by the MSPB and the courts. Potentially valid claims were referred by CEU to IPD for field investigation. Matters referred during FY 2011 included: whistleblower retaliation; retaliation for exercising an appeal right; a due process violation; violations of law, rule or regulations in personnel actions; and marital discrimination.

Mediations

In selected prohibited personnel practice cases referred by CEU to IPD, OSC offered mediation as an alternative to investigation. Under OSC's program, once a case is identified as mediation-appropriate, an offer of mediation is first made to the complainant. If the complainant accepts, OSC then offers mediation to the agency involved. Pre-mediation discussions are conducted in an effort to help the parties form realistic expectations and well-defined objectives for the mediation process.

If mediation resolves the complaint, the parties execute a written and binding settlement agreement. These can result in a range of outcomes, such as an apology, a letter of recommendation, a revised performance appraisal, or monetary recoveries, including retroactive promotions, attorney fees, and lump sum payments. If mediation cannot resolve the complaint, it is referred for further investigation by IPD.

Mediated Settlements

The following are examples of complaints resolved by OSC mediators during FY 2011:

- Equal Opportunity case.

An Information Resource Manager testified on behalf of a co-worker in an EEO case. Later, the employee was put on administrative leave, received a lowered performance evaluation, the corresponding performance award was withheld, and the employee was reassigned. Through mediation the parties settled the Complainant's OSC and EEO complaints, the latter which was set for trial. The agency agreed to a monetary award, issued a letter of apology, and restored annual and sick leave. The employee retired and withdrew the OSC complaint.

- Disagreement with coworker.

A Nursing Assistant reported to his supervisor that a fellow employee attacked him. His supervisor instructed the two employees to write a report of the incident indicating that they had had a disagreement. The employee later felt uncomfortable about what he had written and submitted a memo up his chain of command about how his supervisor had mishandled the incident. He also filed a police report. A month or so later, the employee was issued a letter of reprimand for inappropriate conduct based on events that happened on another day. The employee filed an OSC complaint alleging that the letter of reprimand was retaliation for his report of the supervisor's handling of the problem with the co-worker. Through mediation the parties settled two OSC complaints, a grievance and an EEO complaint. The agency agreed to a contingent removal of the reprimand and the employee withdrew his complaints.

- Failure to report detainee.

A Law Enforcement Officer alleged that his supervisors failed to report an escaped detainee with a criminal record to the agency's headquarters as required. As a result of these allegations, the agency's Office of Inspector General (OIG) commenced an investigation. Shortly afterwards, the Officer's supervisors accused him of having

personal problems, had him sign a memorandum acknowledging low leave balances, and reassigned him to another unit. Through mediation the parties settled the OSC complaint. The Officer waived further legal actions and the Agency agreed to permit the Officer to remain in a two-year, no-cost detail to an alternative division within the agency. The agency further agreed to give the Officer good faith consideration, as required by law and agency policy, for any position for which he applied. The agency also reiterated the rights of the Deportation Officer, and all employees, to work in an environment free of retaliation for protected activity.

ADR expansion initiative for FY 2012

In FY 2011, the newly appointed Special Counsel announced an expansion of the agency’s ADR program. She hired a dedicated director to manage and expand the work of the ADR Unit and select a broader array of cases for possible mediation. In addition to PPP cases, the ADR Unit will begin mediating cases from USERRA in FY 12. (In FY12, the agency expects to mediate about 3-4 times as many cases than in previous years.) As part of this ADR initiative, OSC entered into a working agreement with the Federal Mediation and Conciliation Service to increase its team of mediators.

Table 2 ADR Program Activity - Mediation^a of Prohibited Personnel Practice Complaints						
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Number of Cases Referred to the ADR Unit	50	32	25	28	26	31
Mediation Offers Accepted by Complainants	38	21	10	17	11	20
Meditation Offers Accepted by Agencies	15	12	8	15	6	15 ^b
Number of mediations conducted by OSC	11	8	7	11	6	13
Number of mediations withdrawn by either OSC or the agencies after acceptance	4	2	0	3	0	2
Number of mediations that yielded settlement	6	4	4	4	3	10
Percentage of successful mediations	55%	50%	57%	36%	50%	77%

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

^bOf the 20 offers made to the agency this year, only 5 requests were declined. This puts the agency’s acceptance rate at 75%.

Corrective and Disciplinary Actions:

Examples of whistleblower retaliation

- **Fraudulent audits of contractors.**

A government auditor at the Defense Contract Audit Agency revealed to the agency's Inspector General and the Government Accounting Office evidence of a culture of flawed and fraudulent audits of government contractors. In retaliation for her whistleblowing, the employee suffered a series of adverse actions, including a lowered performance appraisal and the denial of performance awards and promotion opportunities. In response to OSC's investigation and the report of its findings, the agency provided the complainant with full corrective action, including amended performance appraisals and retroactive performance bonuses. The complainant also received a promotion to a position outside her regional management chain. In addition, the agency suspended two supervisors, barred them from career advancement for one year, assigned them to nonsupervisory duties, and adopted new auditing procedures that addressed the employee's whistleblowing disclosures.

- **Improper favoritism towards employees.**

Four police officers at a military base made various joint disclosures to a news reporter and to the Department of the Army's Inspector General alleging, among other things, that their police chief and another supervisor had engaged in improper favoritism toward individual employees and committed time card fraud. Thereafter, the whistleblowers filed individual complaints to OSC challenging an array of personnel actions, including a proposed removal, a demotion, lowered performance appraisals, performance counseling, and a forced detail. OSC conducted a field investigation of the complaints and obtained corrective action for the officers. The remedies included reinstatement to a supervisory position, back pay, corrected performance appraisals, removal of negative information in their employment records, and attorneys' fees. At the conclusion of the field investigation, the accused police chief resigned from federal service.

- **Improper pre-selection for employment.**

A supervisory public affairs officer at the Department

of Housing and Urban Development disclosed to the agency Inspector General that his regional manager had improperly preselected candidates for employment, violated the privacy rights of agency employees, and created a hostile working environment for minorities and persons with disabilities. The employee filed an OSC complaint challenging significant changes to his duties and a hostile working environment as acts of whistleblower retaliation. In a global settlement of the OSC complaint and a related EEO complaint, the agency agreed to pay a lump sum of \$580,000 to the complainant, who then retired.

Example of retaliation for exercising appeal right

A police officer successfully filed an EEO complaint alleging her supervisors at the Department of Agriculture discriminated against her on the basis of gender and disability by, among other things, denying her a performance award. Subsequently, her supervisors proposed her removal for misconduct. Coincident with her proposed removal, the officer was placed on enforced leave, and after exhausting her leave, she resigned her position because of financial hardships. After a lengthy investigation, OSC reported to the agency that there were reasonable grounds to believe that the officer's resignation resulted from retaliatory proposals.

Example of due process violation

After being suspended for misuse of his government vehicle, a federal agent at the Department of Energy unsuccessfully appealed his suspension to the Board. Based on the circumstances of the misuse, his managers reviewed and temporarily revoked his reliability certification. The agent was placed on indefinite suspension for 13 months without pay until the agency ruled in his favor and returned him to pay status. However, because more than a year had passed from his prior certification, the agency required him to be recertified, upon which he was again denied certification and placed on indefinite suspension. The agent filed an OSC complaint challenging these actions, and OSC successfully obtained an order from the Board that stayed the indefinite suspension. OSC also found that the agency violated due process by

requiring agents to be placed on indefinite suspension while deciding whether to permanently revoke their reliability certification. OSC noted that the policy was particularly offensive to due process because it did not allow the employee to recover his lost wages; it allowed the agency to determine the length of suspension without limitation; and, it permitted the agency to subject its employees to a potentially endless cycle of certification review and indefinite suspension. Based on OSC's report, the agency redesigned its policy to exclude mandatory indefinite suspensions.

Examples of violations of law, rule or regulations in personnel actions.

- Inappropriate selection of candidate.

An anonymous complainant alleged that officials at a federal prison inappropriately selected a candidate for a position by manipulating the competitive process to ensure the appointment of the preferred candidate. Management officials had cancelled the vacancy announcement for the position after their preferred candidate could not be selected from the certificate of eligibles. Management re-announced the position at a lower grade level and developed a new method for evaluating the applicants to enable the selection of the preferred candidate. After OSC reported its investigative findings, the agency agreed to suspend the responsible human resources officer for 14 days without pay.

- Bargaining unit candidates improperly preferred. While investigating a prohibited personnel practice, OSC discovered evidence of a collateral violation concerning the Veterans Affairs Mississippi Gulf Coast Veterans Healthcare System's implementation of its National Master Agreement with a federal union. Based on a provision in the agreement, the agency established a practice of referring bargaining unit candidates for consideration for internal vacancies over non-bargaining unit candidates, including eligible veterans. OSC concluded that this practice violated veterans' rights under the Veterans Employment Opportunity Act (VEOA). At OSC's request, the agency agreed to take corrective action and clarify that managers may not use the agency's agreement with the union to deny veterans their statutory right to

compete for vacant positions. The agency also developed a joint labor-management training program that provides instruction to its staff on the proper implementation of VEOA and its agreement with the union.

- Family member improperly favored.

OSC investigated an allegation that a Foreign Service officer violated anti-nepotism laws by advocating for the selection of his wife for a position within his chain of command and by pressuring his subordinate to nominate his wife for a cash award. An internal agency report supported the allegations. To resolve the matter, the agency issued the subject official a proposal to suspend his employment for 30 days without pay.

Example of marital discrimination.

A staff attorney at the Department of Defense alleged that her agency discriminated against its employees based on marital status by limiting telework privileges to employees who could demonstrate they would be separated from a spouse or minor child after the planned relocation of the office. The agency agreed to change its policy to make it permissible for all employees, regardless of marital status, to qualify for telework privileges.

Examples of amicus briefs filed with Merit Systems Protection Board

- Non-selection for promotion.

OSC filed an amicus brief supporting a disabled veteran's appeal challenging his non-selection for promotion in favor of a student applicant who had been hired under Schedule A of the Excepted Service through the Student Career Education Program. OSC argued that the agency's use of the Excepted Service illegally circumvented competitive examination requirements and Veterans' Preference law. After OSC filed its brief, the agency reached a settlement with the veteran, who was promoted and received back pay and attorneys' fees.

- Meaning of ‘specifically prohibited by law’. OSC filed an amicus brief arguing that the “specifically prohibited by law” exception to protected whistleblowing applies only to disclosures expressly prohibited by statute. OSC noted that Congress narrowed this exception to Civil Service Reform Act (CSRA) protected whistleblowing by deleting the words “rule or regulation” and by adding the word “specifically” to ensure that the phrase “prohibited by law” referred solely to statutes and not to agency rules or regulations, thereby preventing agencies from using secrecy regulations to cancel the CSRA’s whistleblower protection provision. In addition, OSC argued that expanding the “specifically prohibited by law” exception could have a chilling effect on would-be whistleblowers.

Example of stay obtained from Merit Systems Protection Board

OSC obtained two successive stays of the removal of a pilot who had reported to the Department of Homeland Security Inspector General (IG) that a senior manager had improperly interfered in a criminal investigation of the pilot. This case posed a conflict between whistleblower rights and a private contractual agreement. The agency contracted with the employee to allow the employee to continue working as a pilot until his first date of retirement eligibility instead of firing the employee, as it wanted to do. Here, the Board twice stayed his certain removal under a Last Chance Agreement (LCA) because OSC believed that the agency’s subsequent retaliation had interfered with and breached an implied good faith clause in the agreement. In this case of first impression, the Board agreed that it had authority to stop the whistleblower’s removal even though the agency asserted that the removal was required by the terms of a last-chance settlement agreement in which the whistleblower had agreed to retire but then reneged on his agreement.

Example of corrective action obtained through litigation before Merit Systems Protection Board

An agency chief of staff disclosed that over 600 certificates of citizenship and naturalization had been

voided without cause and that hundreds of other certificates were unaccounted for. The chief of staff alleged that because of this disclosure she did not receive annual performance appraisals for the next two performance appraisal cycles, and she received a notice of geographical reassignment from her chief of staff position in Miami, Florida to a supervisory adjudication officer position in Tampa, Florida. In response to a formal corrective action letter, the agency gave the chief of staff an “exceeds” on the first performance appraisal, and an “achieved expectations” on the second. Because the agency refused to cancel the geographical reassignment, OSC filed a formal Petition for Corrective Action with the Board seeking cancellation of the geographical reassignment and reimbursement for the chief of staff’s attorney’s fees. Before the matter went to hearing, the parties settled; however, the specific terms of the settlement are confidential. The agreement was accepted into the record for enforcement purposes.

Summary of Workload, Activity, and Results

OSC’s largest program is devoted to handling PPP complaints. Of the 4,027 new matters OSC received during FY 2011 (not including requests for advisory opinions on the Hatch Act), 2,583 or 64% were new PPP complaints. Complaints involving allegations of reprisal for whistleblowing – OSC’s highest priority – accounted for the highest numbers of complaints resolved and favorable actions (stays,⁹ corrective actions, and disciplinary actions) obtained by OSC during FY 2011. CEU referred 268 cases for full IPD investigation in FY 2011, a 59% increase from just two years earlier.

Table 3, below, contains FY 2011 summary data (with comparative data for the five previous fiscal years) on OSC’s receipt and processing of all prohibited personnel practice complaints handled by CEU and IPD.¹⁰

TABLE 3 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing^a							
		FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Pending complaints carried over from prior fiscal year		521	386	358	474	769	863
New complaints received ^b		1,805	1,970	2,089	2,463	2,431	2,583
Total complaints		2,326	2,356	2,447	2,937	3,200	3,446
Complaints referred by CEU to IPD for investigation		143	125	135	169	220	270
Complaints processed by IPD		256	151	88 ^c	150	179	190
Complaints pending in IPD at end of fiscal year		155	136	185	201	250	385
Total complaints processed and closed (CEU and IPD combined)		1,930	1,996	1,971	2,173	2,341	2,508
Complaint processing	Within 240 days	1,693	1,874	1,889	2,045	2,185	2,327
	Over 240 days	237	121	80	127	154	175
Percentage processed within 240 days		88%	94%	95%	94%	93%	92%

^aComplaints 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.

^cIn FY 2008, IPD handled 88 PPP complaints, 17 USERRA demonstration project cases, and one Hatch Act case.

Table 4 below, contains summary data for the year (with comparative data for the five previous fiscal years) on all favorable actions obtained in connection with OSC’s processing of whistleblowing reprisal and other prohibited personnel practice complaints. The number of stays obtained from MSPB doubled.

TABLE 4 Summary of All Favorable Actions - Prohibited Personnel Practice Complaints^a		FY 2006	FY 2007	FY 2008^b	FY 2009	FY 2010	FY 2011
Total favorable actions (all PPPs)	No. of actions ^c	52	29	58	62	96	84
	No. of matters	48	29	33	53	76	65
Total favorable actions (reprisal for whistleblowing)	No. of actions	40	21	44	35	66	64
	No. of matters	37	21	20	29	55	50
Disciplinary actions negotiated with agencies		4	5	3	5	13	6
Stays negotiated with agencies		8	7 ^d	4 ^e	9	13	12
Stays obtained from MSPB		1	3	0	1 ^f	2	4
Stay extensions obtained from MSPB		n/a	n/a	n/a	n/a	n/a	1
Corrective action petitions filed with the MSPB		1	1	0	0	0	1
Disciplinary action complaints filed with the MSPB		0	0	3	0	0	0

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

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

^cThe 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.

^dIncorrectly reported as 4 in OSC’s FY 2007 report to Congress due to administrative error.

^eRepresents two stays obtained in each of two cases.

^fA revised query now correctly shows this quantity to be one, not zero as previously reported.

HATCH ACT MATTERS

Overview

Enforcement of the Hatch Act – which restricts the political activity of federal employees, employees of the D.C. government, and certain employees of state and local governments – 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.

Investigations

The HAU enforces compliance with the Hatch Act by investigating complaint allegations to determine whether the evidence supports disciplinary action. After investigating a complaint and determining 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.

Advisory Opinions

The HAU also is responsible for a nation-wide 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, enabling individuals to determine whether they are covered by the act, and whether their contemplated activities are permitted under the act. 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. As the only unit authorized by law to issue legal advice to persons outside the agency, HAU issues all OSC advisory opinions.

Enforcement Highlights

Investigations

The HAU continued to generate increased investiga-

tive and litigation activity at OSC, with many of the cases resulting in significant public and media interest. The Hatch Act unit issued 3,110 oral and written advisory opinions (283 formal written opinions, 1,168 e-mail opinions, and 1,607 oral opinions) in response to requests for advice on permissible and prohibited activities under the Hatch Act.

Some of the unit’s significant enforcement results for the year are highlighted below:

- Invitation to Fundraiser.

The Merit Systems Protection Board (MSPB) ruled that a doctor at a federal agency violated the Hatch Act when, while on duty and in a federal building, he sent an invitation to a campaign fundraising event to several individuals, including subordinate employees. The MSPB also found that the employee again violated the Hatch Act when he sent an e-mail that solicited campaign contributions to one colleague. The employee was ordered removed from his employment. Special Counsel v. Bagdade, 115 M.S.P.R. 532 (2010).

- Political contribution accepted.

The MSPB found that a federal employee violated the Hatch Act by knowingly soliciting, accepting, or receiving a political contribution and engaging in political activity while on duty and/or in a room or building occupied in the discharge of official duties. The employee composed and disseminated two fundraiser invitation e-mails while on duty and in the federal workplace. In addition, after receiving advice from her ethics coordinator to cancel the event, the employee hosted a political fundraiser in her home. The MSPB ordered her removal from employment. Special Counsel v. Casey, 116 M.S.P.R. 409 (2011).

- Political contribution accepted from subordinates.

After filing a petition for disciplinary action with the MSPB, OSC negotiated a settlement agreement with a federal employee who accepted and/or received two political contributions from subordinate employees while in the federal workplace. In addition, the employee asked subordinate staff members, while on duty and in the federal workplace, to compile a list of former employees that she intended to use for a political fundraiser invitation list. Under the terms

of the settlement agreement, the employee agreed to a 100-day suspension as a penalty for violating the Hatch Act.

- Candidacy in partisan election.

OSC filed a complaint for disciplinary action with the MSPB alleging that a state employee violated the Hatch Act's prohibition against being a candidate in a partisan election on two occasions. Despite having received an opinion from OSC in 2006 advising him that the Act prohibited from running for partisan elective office, the employee ran for a seat on his local borough council in 2008 and for State Assembly in 2009. An administrative law judge granted OSC's motion for summary judgment, finding that the employee was covered by the Hatch Act and that he violated it by running in two partisan elections. Thereafter, the parties entered into a settlement agreement whereby the employee admitted that he violated the Act and, as a penalty, agreed to retire from state employment and be debarred from Hatch Act-covered employment in the same state for a period of 15 months.

- Subordinates directed to volunteer.

OSC negotiated a settlement agreement with a local employee who sent a series of e-mails to subordinate employees directing them to volunteer for a political campaign. Although the employee sought and obtained employment with a non-governmental entity before the conclusion of OSC's investigation, the employee agreed not to seek or accept employment with any state or local government for a period of at least 18 months from the date of her resignation from her previous employment.

- Soliciting contributions.

OSC filed a complaint for disciplinary action against a federal employee for engaging in political activity while on duty and in a federal building, soliciting political contributions, and using her official authority or influence to affect the result of an election. The employee sent several partisan political e-mails while at work and included her official title in the e-mails. The case was still pending at the end of the fiscal year.

- Candidacy for election.

OSC filed a complaint against a state employee

charging him with violating the Hatch Act by becoming a candidate in the 2010 primary and general elections for local county council. On several occasions in 2010 OSC advised the employee that his candidacy violated the Hatch Act's political activity restrictions, but the employee nonetheless continued his candidacy and ultimately won the general election. The case was still pending at the end of the fiscal year.

In FY 2011, OSC investigated many complaints involving state or local government employees who were candidates for partisan public office. In some cases, OSC found that the employee's candidacy violated the Hatch Act and advised the employee that he or she needed to come into compliance with the law by either resigning from his or her employment or withdrawing from the election. In 39 cases, OSC achieved such corrective action – in 23 instances the employee chose to withdraw from the election, and in 16 instances the employee chose to resign his or her employment.

In January 2011, OSC released a report detailing its three year investigation and findings regarding allegations that the White House Office of Political Affairs and agency officials used government resources to support partisan political candidates.

Outreach

To further its advisory role, the Hatch Act Unit is very active in OSC's outreach program. The unit conducted approximately ten 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.

Summary of Workload, Activity, and Results

Formal advisory opinions issued in FY 2011 increased 4%, from 320 to 335, compared to FY 2010. Complaints processed and closed increased 18% in FY 2011, from 535 in FY 2010 to 635 in FY 2011.

Table 5, below, contains FY 2011 summary data (with comparative data for the five previous fiscal years) on OSC's Hatch Act enforcement activities.¹¹

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	
Formal written advisory opinion requests received	237	194	292	227	351	283	
Formal written advisory opinions issued	230	176	275	226	320	335	
Total advisory opinions issued ^a	3,004	2,598	3,991	3,733	4,320	3,110	
New complaints received ^b	299	282	445	496	526	451	
Complaints processed and closed	266	252	264	388	535	635	
Warning letters issued	76	68	70	132	163	164	
Corrective actions taken by cure letter recipients	Withdrawal from partisan races	9	18	13	15	28	23
	Resignation from covered employment	22	6	17	6	26	16
	Other	2	1	2	3	1	5
	Total:	33	25	32	24	55	44
Disciplinary action complaints filed with MSPB	6	1	3	10	7	3	
Disciplinary actions obtained (by negotiation or ordered by MSPB) ^c	10	5	11	5	10	5	
Complaints pending at end of fiscal year	112	142	323	430	422	233	

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

^bIncludes cases that were reopened.

^cNumbers revised for fiscal years 2005 - 2008 based upon a new query which includes disciplinary actions obtained in both negotiated Hatch Act settlements and litigated Hatch Act cases, not just litigated cases, as in past reports.

WHISTLEBLOWER DISCLOSURES

Overview

OSC's Disclosure Unit provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may disclose violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. Many disclosures involve complex and highly technical matters unique to an agency's or whistleblower's duties, such as disclosures about aviation safety, engineering issues, and impropriety in federal contracting.

Upon receipt of a disclosure, DU attorneys review the information to evaluate whether there is a substantial likelihood that the information discloses one or more of the categories of wrongdoing described in 5 U.S.C. § 1213. If it does, the Special Counsel is required by § 1213(c) to send the information to the head of the agency for an investigation. If the whistleblower consents, their name is provided to the agency as the source of the information. If the whistleblower does not consent, the agency is notified that the whistleblower has chosen to remain anonymous.

Upon receipt of a referral from the Special Counsel, the agency head is required to conduct an investigation and to issue a report in a timely manner to the Special Counsel describing the agency's findings. The whistleblower has the right to review and provide OSC with comments on the report. The DU and Special Counsel review the report to determine whether the agency's findings appear to be reasonable. The Special Counsel then sends the agency report, any comments by the whistleblower, and any comments or recommendations by the Special Counsel to the President and congressional oversight committees for the agency involved. A copy of the agency report and any comments on the report are placed in OSC's public file.

Referrals to agency heads under 5 U.S.C. § 1213(c) increased significantly during the past two fiscal years, both in number and as a percentage of DU's workload.

Disclosures not referred to an agency head under §1213(c) are either referred informally to the IG of the agency involved, or closed.

Disclosure Highlights

Whistleblower disclosures in FY 2011 continued to span a broad range of concerns. A number of those referred by OSC for further action are highlighted below:

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

- Unsafe Conditions in Helicopters. OSC referred to the Secretary of Transportation allegations received from an Aerospace Engineer in the Federal Aviation Administration's (FAA) Rotorcraft Directorate. The whistleblower disclosed that Rotorcraft Directorate management failed to ensure that Airworthiness Directives (ADs) were developed and issued in a timely manner in contravention of FAA Order 8040.1C and the Airworthiness Directives Manual. He contended that systemic deficiencies in the AD development process resulted in significant and potentially dangerous delays in resolving unsafe conditions in helicopters. The agency's investigation substantiated the whistleblower's allegations and confirmed that the "Directorate's failure to issue ADs has resulted in unsafe conditions that have been left unresolved for years." The investigation revealed that the Directorate had a substantial backlog of unissued ADs that had exceeded timeliness goals. Three ADs had been open for approximately seven years. The investigation also substantiated the allegation that the Directorate delayed corrective action of unsafe conditions by changing two ADs from Immediately Adopted Rules (IARs) to Notices of Proposed Rulemaking and assigning new identification numbers after the Directorate failed to issue the IARs in a timely way. The report concluded that these actions resulted in further confusion in tracking the ADs and gave the appearance that management was attempting to mask the lack of timeliness. The investigation also confirmed the allegation that the Directorate did not establish recommended timeliness

standards for the AD process, which would have allowed the Directorate to identify and address systemic deficiencies. FAA pledged to take several corrective actions, including measures to reduce the backlog and develop improvements for the AD process and tracking methods. *Referred October 2009; sent to the President and congressional oversight committees and closed December 2010.*

- Failure to Properly Clean Medical Equipment.

OSC referred to the Secretary of Veterans Affairs allegations that employees of G.V. Sonny Montgomery Medical Center in Jackson, Mississippi, failed to sterilize medical instruments between uses and potentially exposed patients to infections, viruses and bacteria. The agency substantiated the allegation that dirty and rust-stained instruments were being distributed to clinics, but found that staff generally identified and removed the instruments prior to use. However, the agency will follow up with the Jackson VAMC to ensure full compliance with sterilization requirements, and with their commitment to adding staff to ensure the problem would not continue. *Referred August 2009; sent to the President and congressional oversight committees and closed October 2010.*

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

- Failure to Follow FAA Orders.

OSC referred to the Secretary of Transportation allegations that air traffic controllers at the Federal Aviation Administration (FAA), D21 Terminal Radar Approach Control (TRACON), Detroit Metropolitan Airport, Detroit, Michigan, did not consistently follow FAA rules for air traffic control, and that management created a culture in which rules were selectively enforced and in which operational errors and deviations went unreported. The agency confirmed that TRACON staff did not know which separation requirements to follow regarding successive arrivals into three of the surrounding controlled satellite airports, controllers violated FAA rules by allowing aircraft to come within 1.5 nautical miles of adjacent airspace boundaries, and controllers operated dual

Instrument Landing System (ILS) approaches in violation of FAA rules. The agency's reports also confirmed the inadequacies of the Quality Assurance Review procedures and investigations into operational errors and deviations. The agency issued a memorandum to the controllers on May 27, 2009, in an attempt to remedy the problem of controllers operating dual ILS approaches in violation of FAA Order 7110.65. OSC found a portion of the agency's report unreasonable given that violations of the dual ILS approach procedures in FAA Order 7110.65 continued two years after OSC referred the allegation for investigation. *Referred March 2009; sent to the President and congressional oversight committees and closed April 2011.*

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

- Numerous Safety Violations.

OSC referred to the Secretary of the Interior allegations that the agency failed to provide National Park Service employees with adequate safety equipment, improperly blocked emergency exit routes, and erroneously issued respirators to employees without a medical evaluation in violation of 29 C.F.R. 1910.134(e)(1), Respiratory Protection. The DOI investigation partially substantiated finding that the proper personal protective equipment was available on-site, but emergency exit routes in the southwest corridor of Building 98 were improperly obstructed, and employees were issued respirators without a proper medical examination. The investigation further concluded that respirators were not properly fitted and that employees were not properly trained how to wear the respirators. In response, DOI stated it will fill the Park Safety Manager position with a full performance professional safety officer and will bring in outside assistance as necessary to avoid such safety deficiencies in the future. DOI also updated its organizational structure to enhance the Park Safety program and strengthen relationships between the Regional Safety Officer and the Safety Managers. Finally, employees at all three units of the NPS received training in January 2010 on operational leadership and other safety issues. *Referred September 2009; sent to the President and congressional oversight committees and closed January 2011.*

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

- Paid Administrative Leave for Over Three Years. OSC referred to the Secretary of Health and Human Services an allegation that an employee of the Office of Information Technology Support Services, Atlanta, Georgia, was placed on paid administrative leave for almost four years. The whistleblower disclosed that during this period, the agency took no steps to return the employee to work or to remove him. The agency substantiated these allegations. The agency returned the employee to work and disciplined three individuals involved in allowing the extended leave to occur. *Referred May 2010, sent to the President and congressional oversight committees and closed January 2011.*

Violation of Law, Rule, or Regulation

- Abuse of Federal Transit Benefit Program. OSC referred allegations that an employee of the Department of Veterans Affairs (VA), Edward Hines, Jr. VA Hospital, violated the terms of the VA's Transit Benefit Program. The agency investigation substantiated the whistleblower's allegation that a Food Service employee violated the terms of the Transit Benefit Program by driving her personal vehicle to work and receiving rides to and from work on a regular basis while requesting and receiving transit benefit vouchers from September 22, 2008, through January 15, 2011. As a result of the investigation the abuse of federal funds ceased and the VA proposed the employee's removal from federal service. In addition, a memorandum was distributed to all Hines VA employees to remind transit benefit recipients of the requirements of the program. *Referred March 2011; sent to the President and congressional oversight committees and closed September 2011.*

Violation of Law, Rule, or Regulation, Abuse of Authority, Gross Mismanagement and Danger to Public Health and Safety

- Denial of Required Services to Inmates. OSC referred to the Attorney General allegations that the Warden of Federal Correctional Institution Talladega, Talladega, Alabama, violated the rights of inmates and compromised their health and safety by failing, among other things, to provide them with meals and medication for approximately 30 hours, in violation of federal regulations. While a number of the whistleblower's other allegations were unsubstantiated, the agency did substantiate that the Warden improperly denied inmates food and medicine between September 22 and 23, 2008, and that inmates who were placed in special housing following the discovery of contraband were improperly denied the opportunity to shower or exercise due to improper staffing. In response, the agency proposed suspensions for the responsible employees. *Referred September 2009; sent to the President and congressional oversight committees and closed November 2010.*

Violation of Law, Rule, or Regulation, Gross Mismanagement and Danger to Public Safety

- VA Fails to Notify Employees of Safety Recall. The agency report substantiated the whistleblower's allegation that VA officials at the Western Area Fiduciary Hub, Salt Lake City, Utah failed to inform employees of the existence of a safety recall issued against the government-owned vehicles they were assigned. In response, the agency provided verbal information regarding the recall to all regional office management. In addition, the agency provided the web site address for the National Highway Traffic and Safety Administration and instructed that the site be queried on a quarterly basis by the Fleet Management Coordinators to obtain recall information for all vehicles within their fleets. *Referred; sent to the President and congressional oversight committees and closed April 2011.*

- Unsafe Air Traffic Procedure.

OSC referred to the Secretary of Transportation allegations received from an Air Traffic Controller at the Federal Aviation Administration (FAA), Detroit Metropolitan Airport (DTW). The whistleblower disclosed that DTW management implemented the “Northeast Flow” air traffic procedure without completing the required environmental, noise, and safety risk assessments, or properly notifying FAA and DTW officials. He contended that DTW management operated this configuration in a manner that created a safety hazard.

The investigation did not substantiate the allegations. However, the reports confirmed that after OSC referred this matter to the Secretary, DTW management cancelled the Northeast Flow procedure. In its letter to the President and Congressional oversight committees, OSC advised that, in light of the evidence presented and the requirements of FAA Order 8040.4, OSC found it unreasonable that the agency did not substantiate the allegation that DTW failed to conduct a required safety assessment. OSC also determined that the agency’s finding that DTW officials properly notified FAA and DTW officials of the Northeast Flow procedure was unreasonable. OSC also noted with concern DOT’s failure to interview other controllers who raised safety concerns about the Northeast Flow. *Referred; sent to the President and congressional oversight committees and closed April 2011.*

- Improperly Investigated Child Abuse Allegation.

OSC referred to the Secretary of Defense an allegation that Department of Defense Education Activity (DoDEA) school officials at Lakenheath School, Royal Air Force Station Lakenheath, England, failed to notify the appropriate individuals when they received an allegation of child abuse against a DoDEA teacher. The whistleblower also alleged that the school officials made an improper judgment call regarding the veracity of the allegations. The agency determined that the school officials did fail to notify the proper authorities of the allegation, in violation of DoDEA regulations and DoD directives. The agency also found that the officials improperly used their personal judgment regarding the child abuse allegation, also in violation of DoD regulations. In

response, the agency issued letters of counseling to the school officials involved and provided additional training on the handling of child abuse allegations, such as these. *Referred January 2011; sent to the President and congressional oversight committees and closed September 2011.*

Violation of Law, Rule, or Regulation and Danger to Public Safety

- Improper Issuance of PIV Badges to Employees.

OSC referred to the Secretary of Veterans Affairs (VA) an allegation that the Chief of the Police Service at the Canandaigua VA Medical Center, Canandaigua, New York, allowed a VA Police Officer to issue PIV card credentials using another employee’s PIV card. The whistleblower alleged that by doing so, the officer was able to bypass the required assigned roles involved in PIV card issuance, and perform multiple roles in the PIV process. The agency substantiated these allegations and found that Canandaigua VAMC management was aware of the violations at the time they occurred, but failed to take corrective action. The agency issued letters of counseling to the lower-level police employees involved and written reprimands to the higher-level employees. The agency also suspended badging privileges for those employees found to be in violation of PIV requirements and implemented a plan to educate all PIV Office teams regarding the requirements. *Referred February 2010; sent to the President and congressional oversight committees and closed September 2011.*

- DOT Confirms Procedural Errors in Inspection.

OSC referred to the Secretary of Transportation disclosures that Federal Aviation Administration (FAA) employees improperly accepted a revised Approved Aircraft Inspection Program (AAIP) submitted by a small, on-demand air carrier. The investigation determined that, although the Front Line Manager and Principal Maintenance Inspector failed to obtain the required approval on the air carrier’s revised AAIP in violation of agency regulations, the revisions did not present a danger to the air carrier’s passengers. The acceptance of the revised AAIP was also improper because the AAIP failed to specify

necessary maintenance inspection tasks and initiatives; extended the intervals of avionic system inspections from one year up to five years; and removed annual avionic inspection requirements for aircraft without the required justifications pursuant to FAA Order 8900.1.

As a result of the investigation and revisions by the air carrier, the Principal Avionics Inspector approved the AAIP in accordance with FAA Order 8900.1. FAA also verbally counseled and directed two FAA managers to participate in management and communication courses as well as coaching sessions on coordinating approval processes and the proper usage of regulatory guidance. *Referred July 2010; transmitted to the President and congressional oversight committees and closed March 2011.*

Violation of Law, Rule, or Regulation and Gross Mismanagement

- Inappropriate E-mails Sent by Employees. OSC referred to the Secretary of Veterans Affairs an allegation that employees at the Department of Veterans Affairs (VA), John D. Dingell VA Medical Center (JDDVAMC), Detroit, Michigan, forwarded inappropriate e-mails, including potentially pornographic images involving children, while on duty, using the government's e-mail system. The VA, in consultation with the Federal Bureau of Investigation, determined that no criminal violations had occurred. The agency investigation determined that five JDDVAMC employees, and four employees at the Loma Linda VA Medical Center, Loma Linda, California, sent inappropriate e-mails in violation of a VA Directive. These nine VA employees received proposed admonishments. *Referred November 2010; sent to the President and congressional oversight committees and closed April 2011.*

Violation of Law, Rule, or Regulation

- Falsification of Employment Records. OSC referred allegations that an employee of the Department of Veterans Affairs (VA), Roseburg Veterans Affairs Medical Center, falsified her VA employment application by responding "no" to questions which asked whether her nursing license

had ever been revoked, suspended, denied, restricted, limited or issued/placed on a probationary status or voluntarily relinquished. The agency report substantiated the whistleblower's allegation. The investigation confirmed that the employee's nursing license was either suspended or in a probationary status from January 21, 1982, until February 20, 1987. The agency declined to take any action against the employee, however, citing the length of time that had passed since completion of the application (16 years) and their belief that the employee has successfully worked as a Nurse, Nurse Manager and Administrative Officer since that time. *Referred July 2010; sent to the President and congressional oversight committees and closed January 2011.*

Summary of Workload, Activity, and Results

Table 6, which follows, contains FY 2011 summary data (with comparative data for the five previous fiscal years) on DU receipts and dispositions of whistleblower disclosure cases. The average processing time decreased from 80 days to 34 days, a 57% decrease, and 63% of the disclosures were processed in less than 15 days.

TABLE 6 Summary of Whistleblower Disclosure Activity - Receipts and Dispositions^a							
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	
Pending disclosures carried over from prior fiscal year	110	69	84	128	125	83	
New disclosures received	435	482	530	724	961	928	
Total disclosures	545	551 ^b	614	852	1,086	1,011	
Disclosures referred to agency heads for investigation and report	24	42	40	46	24	47	
Referrals to agency IGs	10	11	9	10	2	5	
Agency head reports sent to President and Congress	24	20	25	34	67	22	
Results of agency investigations and reports	Disclosures substantiated in whole or in part	21	19	22	30	62	21
	Disclosures unsubstantiated	3	1	3	4	5	1
Disclosure processing times	Within 15 days	203	285	256	394	555	555
	Over 15 days	275	182	232	333	451	315
Percentage of disclosures processed within 15 days	42%	61%	52%	54%	55%	63%	
Disclosures processed and closed	478	467	488	727	1,006	870	

^aMany disclosures contain more than one allegation. This table, however, records each whistleblower disclosure as a single matter, even if multiple allegations were included.

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

USERRA ENFORCEMENT

Overview

USERRA protects the civilian employment and reemployment rights of those who serve in the Armed Forces, including the National Guard and Reserves, and other uniformed services. USERRA is intended to encourage non-career military service and to minimize the disruption to the lives of those who serve by ensuring that such persons: (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty, with full benefits and seniority, as if they had never left; and (3) are not discriminated against in employment (including initial hiring, promotion, retention, or any benefit of employment) based on past, present, or future uniformed service. The law applies to federal, state, local, and private employers.

Congress intends for the federal government to be a “model employer” under USERRA, and OSC is committed to helping fulfill that goal. In furtherance of that effort, OSC plays a critical role in enforcing USERRA by providing representation before the MSPB, when warranted, to service members whose complaints involve federal executive agencies. OSC also endeavors to informally resolve USERRA complaints. Last, OSC provides USERRA outreach and training to the federal community and technical assistance to employers and employees with USERRA questions via telephonic and e-mail hotlines.

Under a new three-year Demonstration Project that began during FY 2011 (described further below), OSC’s role was dramatically expanded to include receiving, investigating, and resolving approximately 150-200 additional USERRA cases per year.

Referral Process

By law, a person alleging a USERRA violation by a federal executive agency may file a complaint with the Veterans’ Employment and Training Service (VETS) at the U.S. Department of Labor. VETS must investigate and attempt to resolve the complaint. If VETS cannot resolve the complaint, the person

may direct VETS to refer it to OSC for possible representation before the MSPB. If, after reviewing the complaint and investigative file, OSC is reasonably satisfied that the person is entitled to relief under USERRA, it may act as his or her attorney and initiate an action before the MSPB.

FY 2011 Accomplishments

The following are examples of individual corrective actions obtained by OSC for service members in FY 2011:

- A National Guardsman successfully applied for a position with a federal agency and was given a start date. When he was mobilized with his unit before the start date, the agency withdrew its offer. Although the agency eventually hired him, it did not treat him as though he had been hired on the original start date. As a result, he lost seniority, pay, and career advancement. OSC represented him and negotiated a settlement under which he received all pay and promotions as if he had started on the original date and never left for military service.
- A service member successfully applied for a position as a firefighter with a federal agency but the agency made his discharge or transfer out of the National Guard a condition of employment. The member refused to leave the Guard and the agency withdrew the job offer. In addition, the agency identified other employees who were members of the National Guard or Reserve, and pressured them to transfer out of their reserve assignments. At OSC’s request, the agency agreed to continue processing the National Guard member for employment and to stop pressuring employees to leave their reserve assignments.
- A National Guard member served two extended active duty tours in Iraq while employed at a federal agency. As a result, his career ladder promotion was delayed by eight months, costing him pay and seniority. At OSC’s request, the agency agreed to make the promotion retroactive, correct its records, and provide the service member with all associated back pay.
- Upon her return from deployment with the National Guard, a service member was directed by her

federal agency to correct all her pay records back to 2007 to accurately reflect her military service, even though she had already provided the required information to the agency. The agency also characterized her service time as “AWOL,” rather than “Leave Without Pay-US” (LWOP-US), as required under USERRA. At OSC’s request, the agency rescinded its directive and agreed to recharacterize the service member’s time in the Guard to “LWOP-US.”

New USERRA Demonstration Project

The Veterans’ Benefits Act of 2010 (VBA), established a new 36-month Demonstration Project under which OSC will receive, investigate, and attempt to resolve more than half of all USERRA complaints against federal executive agencies filed with VETS. (OSC will also continue to receive cases from VETS under the “Referral Process” described above.) A similar project occurred from 2005-2007. GAO will evaluate and compare the performance of OSC and VETS during the project and report its findings and recommendations to Congress. OSC began receiving new USERRA cases under the project on August 9, 2011.

Outreach and Education

During FY 2011, OSC also worked to ensure that the federal government is a “model employer” under USERRA by (1) conducting USERRA training at several federal agencies and national conferences, (2) briefing veterans service organizations about OSC’s USERRA program, and (3) providing technical assistance to employees and employers with USERRA questions via telephone and e-mail hotlines.

Corrective Action There were two referrals in FY 2011 which resulted in corrective action taken.

New referrals increased 12%, from 32 in FY 2010 to 36 in FY 2011.

Table 7 and **Table 8**, below, contain FY 2011 summary data (with comparative data for previous fiscal years) on OSC’s receipt and disposition of USERRA referral cases and demonstration project cases, respectively.

TABLE 7 Summary of USERRA Referral and Litigation Activity						
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Pending referrals carried over from prior fiscal year	6	3	3	5	7	12
New referrals received from VETS during fiscal year	11	4	15	41	32	36
Referrals closed	14	4	13	39	27	31
Referrals closed with corrective action	3	0	2	4	0	2
Referrals closed with no corrective action	11	4	11	35	27	29
Referrals pending at end of fiscal year	3	3	5	7	12	17
Litigation cases carried over from prior fiscal year	0	0	1	1	1	1
Litigation cases closed	1	0	1	0	1	1
Litigation closed with corrective action	1	0	0	0	1	1
Litigation closed with no corrective action	0	0	1	0	0	0
Litigation pending at end of fiscal year	0	1	1	1	1	0

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

^aOSC began receiving cases under the new USERRA Demonstration Project on August 9, 2011.

OSC 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.

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 2011, OSC employees spoke at over 33 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, contributing to federal employees' and managers' awareness about the merit system protections enforced by OSC.

OSC ANNUAL SURVEY PROGRAM

Each year, OSC surveys persons who have contacted the agency for assistance and whose cases were closed during the previous fiscal year.¹² Complainants in prohibited personnel practice cases closed during FY 2011, claimants in USERRA demonstration project matters closed during FY 2011, and recipients of formal Hatch Act advisory opinions during that year were invited to participate in the survey.

The prohibited personnel practice and USERRA surveys sought the following information: (1) whether potential respondents were fully apprised of their rights; (2) whether their claim was successful at OSC or at the MSPB; and (3) whether, successful or not, they were satisfied with the service received from OSC.

Results on average showed that only 14% of respondents could recall being informed by their agencies about their rights and responsibilities. Of those who sought Hatch Act Advisory Opinions, 82% were either satisfied or fully satisfied with OSC service, the highest level reported among the three groups surveyed (see Appendix C). All FY 2011 survey questions and response tallies are shown in Appendices A-D.

PREFACE TO OSC'S ANNUAL SURVEY RESULTS

OSC is required by statute to conduct an annual customer satisfaction survey. We report the results in our annual report. While this survey provides some useful

information, we are concerned that its timing biases its results. OSC complainants are surveyed only when their cases are closed. Complainants who do not receive their desired results tend to rate OSC's services negatively across the board.

Government employees file thousands of complaints with OSC each year. We aim to ensure that each complainant is given a fair, courteous and responsive hearing. If a complaint evidences a violation of a law that we enforce, then OSC is called upon to exercise its discretion about whether referring the matter for mediation, or for an in-depth investigation and possible prosecution, would effectively advance the merit system or the purposes of the statutes. However, more often than not, for a number of reasons beyond OSC's control, complaints do not meet these thresholds and OSC must close such cases. Understandably, the complainant is frustrated and unhappy when their case is closed. The annual survey, unfortunately, only captures this frustration and unhappiness over outcomes in these cases. We do not believe, however, that it accurately reflects how fair, courteous and responsive OSC has been in handling these cases, or how good a job OSC has done.

To ensure that the surveying of customers is balanced and nuanced, OSC is in the process of developing a new, additional survey that will capture feedback during the process of working with complainants, prior to their case being closed. We feel this "in-process, open case" type survey will result in feedback that is more reflective of the quality of service that is provided to complainants and less tainted by matters beyond OSC's control. We hope this new survey will provide more useful customer feedback to help us put in place process and customer service improvements going forward. In the FY 2012 annual report, we will provide a link to these new survey results and they will be posted via our public web site.

FURTHER INFORMATION

OSC Web Site

The agency web site (www.osc.gov) has a broad range of information about OSC, including answers to

frequently asked questions; complaint, disclosure and other forms; and publications, training and educational materials.

Prohibited Personnel Practices

Individuals with questions about prohibited personnel practices not answered on the agency web site can contact the OSC Officer of the Week at:

Complaints Examining Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 1 (800) 872-9855
(202) 254-3630
Fax: (202) 653-5151

There are two ways to file a prohibited personnel complaint with OSC, on paper or electronically. A complaint can be filed electronically with OSC: (<https://www.osc.gov/oscfile/>). Alternatively, if filing on paper, please use Form OSC-11, which is available online (http://www.osc.gov/RR_OSCFORMS.htm) and can be filled out online, printed, and mailed or faxed to the address above.

ADR Program

Questions about mediation under OSC's ADR Program not answered on the agency web site should be directed to:

Alternative Dispute Resolution Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: (202) 254-3600
E-mail: adr@osc.gov

Hatch Act Program

OSC's web site has additional information about the Hatch Act, including frequently asked questions by federal, state and local government employees, and selected OSC advisory opinions on common factual situations. Requests for other advice about the Hatch

Act can be made by contacting HAU staff at:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 1 (800) 85-HATCH
1 (800) 854-2824
(202) 254-3650
Fax: (202) 653-5151
E-mail: hatchact@osc.gov

Complaints alleging a violation of the Hatch Act can be made by using Form OSC-13. The form is available online (http://www.osc.gov/RR_OSCFORMS.htm) and can be filled out online, printed, and mailed or faxed to the address above.

Whistleblower Disclosures

Information about reporting a whistleblower disclosure in confidence to OSC is available on the agency web site, or from DU staff at:

Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 1 (800) 572-2249
(202) 254-3640
Fax: (202) 653-5151

A disclosure can be filed electronically with OSC:
(<https://www.osc.gov/oscfile/>).

Alternatively, Form OSC-12 can be used to file a disclosure with OSC. The form is available online (http://www.osc.gov/RR_OSCFORMS.htm) and can be filled out online, printed, and mailed or faxed to the address above.

USERRA Program

The OSC web site has additional information about USERRA, including a link to the complaint form issued by VETS for use by claimants. Questions

not answered on the web site about OSC's role in enforcing the act may be directed to:

Director of USERRA
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: (202) 254-3600
E-mail: userra@osc.gov

Outreach Program

Many OSC forms and publications are available in the "Reading Room" section of the agency web site. Questions not answered on the agency web site about OSC outreach activities and availability of OSC publications should be directed to:

Director of Outreach
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: (202) 254-3600
Fax: (202) 653-5151

Reports to Congress

This and other OSC reports to Congress are available in the "Reading Room" section of the agency web site. Subject to availability, copies of these reports can be requested by writing or contacting:

Director of Congressional and Public Affairs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: (202) 254-3600
Fax: (202) 653-5161

For callers with hearing and/or speech disabilities, all OSC telephone numbers listed in this section may be accessed using TTY by dialing the Federal Relay Service at: 1 (800) 877-8339

APPENDIX A

Survey Totals

FY 2011	
Number Mailed	2,454
Number Returned	342
Response Rate	14%

Response Sources by Type of Matter at OSC

What was the nature of your correspondence to OSC? (Please choose only one)	
Response Options	FY 2011
You filed a complaint concerning a Prohibited Personnel Practice	286
You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity)	46
Your case involved a USERRA complaint	10

APPENDIX B

Survey Responses: Prohibited Personnel Practice Complaints

1. Did the agency against which you filed the complaint inform you about your rights and responsibilities with regard to prohibited personnel practices?	
Response Options	FY 2011
Yes	50
No	189
Do not recall	38
Never employed by a federal agency	9

2. Did you obtain the result that you wanted from OSC?	
Response Options	FY 2011
Yes	21
No	265

3. Did your complaint include any allegation of reprisal for whistleblowing?	
Response Options	FY 2011
Yes	161
No	104

4. What reason did OSC give for closing any reprisal for whistleblowing allegation in your complaint without obtaining the result that you desired? (Check all that apply.)*

Response Options	FY 2011
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	24
No personnel action taken by the agency involved	20
Information that you disclosed did not appear to be a legally protected disclosure	19
Your disclosure occurred after the personnel action involved in your complaint	5
Insufficient proof that the agency official (who took the personnel action against you) knew about your disclosure.	10
Insufficient proof of connection between your disclosure and the personnel action involved in your complaint	24
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	11
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	17
You or OSC settled the matter with the agency involved	4
You declined corrective action offered by the agency involved	1
You notified OSC that you had filed or would file an Individual Right of Action (IRA) or other appeal with the Merit Systems Protection Board (MSPB)	6
You withdrew your complaint	3
Other	74
Do not recall	17

*The above question applies only to PPP's involving Reprisal for Whistleblowing

5. Did you file an Individual Right of Action or other appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?

Response Options	FY 2011
Yes	55
No	193
Have not decided whether to file	17

Yes	50
No	2
Do not recall	3

7. Were you successful at the MSPB in obtaining the same result that you sought from OSC?

Response Options	FY 2011
Yes	4
Partially	3
No	24
Appeal pending	19

8. If the answer to the previous question was “yes” or “partially,” how did you obtain that result?

Response Options	FY 2011
Settlement	3
Decision after hearing	1
Other	0

9. What reason did OSC give for closing your complaint without obtaining the result that you Desired? (Check all that apply)*

Response Options	FY 2011
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	15
No personnel action taken by the agency involved	6
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint	9
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	38
You or OSC settled the matter with the agency involved	2
You declined corrective action offered by the agency involved	0
You withdrew your complaint	3
OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action	1
OSC obtained a decision in the corrective action proceeding filed with the MSPB	0
Closed for further action on discrimination allegations through EEO processes	6
Resolved through OSC’s Mediation Program	0
Other	37
Do not recall	8

*The above question applies to all other PPP complaints not including Reprisal for Whistleblowing.

10. How would you rate the service provided by OSC in each of the following areas?

Service Categories to be rated	FY 2011 Ratings				
	Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	39	49	51	47	100
<i>Clarity of Oral Communications</i>	28	37	53	57	111
<i>Clarity of Written communications</i>	26	44	31	63	122
<i>Timeliness</i>	22	59	40	53	112
<i>Results</i>	10	10	11	50	205

APPENDIX C

FY 2011 HATCH ACT UNIT SURVEY RESPONSES

1. As a result of our written advisory opinion given to you concerning the proposed political activity, what was the impact?

Response Options	FY 2011
The OSC opinion advised that the person in question was free to carry out his or her planned political activity.	22
The OSC opinion advised that the person in question should not continue his or her planned political activity.	8
The OSC opinion was in response to a general question concerning the application of the Hatch Act.	7
Other	9

2. How would you rate the service provided by OSC in the following areas?

Response Options	FY 2011				
	Very satisfied	Satisfied	No opinion/ inapplicable	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	32	10	1	1	2
<i>Clarity of Written Communications</i>	27	13	1	3	2
<i>Timeliness</i>	20	15	2	4	5
<i>Results</i>	25	10	0	4	7

APPENDIX D

FY 2011 USERRA UNIT SURVEY RESPONSES

1. Did the agency against which you filed the complaint inform you about your rights and remedies with regard to USERRA?

Response Options	FY 2011
Yes	1
No	8
Do not recall	0
Never employed by a federal agency	1

2. Did you obtain the result that you wanted from OSC?

Response Options	FY 2011
Yes	0
No	10

3. What reason did OSC give for closing your USERRA case? (Check all that apply.)

Response Options	FY 2011
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	1
You declined corrective action offered by the agency involved	3
Insufficient evidence that the personnel action involved in your complaint violated USERRA	0
You or OSC settled the matter with the agency involved	1
You withdrew your complaint	0
Other	7
Do not recall	1

4. Did you file a USERRA appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?

Response Options	FY 2011
Yes	4
No	5
Do not recall	1

5. Did you ask for the same relief that you sought from OSC?

Response Options	FY 2011
Yes	2
No	2
Do not recall	0

6. Were you successful at the MSPB in obtaining the same result that you sought from OSC?

Response Options	FY 2011
Yes	0
Partially	0
No	0
Appeal pending	2

7. If the answer to the previous question was “yes” or “partially,” how did you obtain that result?

Response Options	FY 2011
Settlement	0
Decision after hearing	0
Other	0

8. How would you rate the service provided by OSC in each of the following areas?

Response Options	FY 2011				
	Very Satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	0	1	2	2	5
<i>Clarity of Oral Communications</i>	0	0	1	4	5
<i>Clarity of Written communications</i>	0	0	1	4	5
<i>Timeliness</i>	0	0	0	3	7
<i>Results</i>	0	0	0	3	7

APPENDIX E

Endnotes

- 1 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) expanded OSC's functions and powers.
- 2 Public Law No. 101-12 (1989). Provisions setting forth OSC authorities and responsibilities were codified at 5 U.S.C. § 1211, *et seq.*
- 3 Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.
- 4 Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, *et seq.* The Veteran's 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 veteran's preference requirement. See 5 U.S.C. § 2302(b)(11).
- 5 Public Law No. 103-424, 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 WPA, appears at 5 U.S.C. § 2302(c).
- 6 Public Law No. 107-71 (2001).
- 7 The 12 prohibited personnel practices are: (1) discrimination based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation (allegations of discrimination, except discrimination based on marital status or political affiliation, are generally deferred by OSC to EEO processes, consistent with 5 C.F.R. § 1810.1); (2) soliciting or considering improper employment recommendations; (3) coercion of political activity; (4) deceiving or willfully obstructing anyone from competing for employment; (5) influencing anyone to withdraw from competition to improve or injure the employment prospects of another; (6) giving an unauthorized preference or advantage to improve or injure the employment prospects of another; (7) nepotism; (8) reprisal for whistleblowing; (9) reprisal for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or an Inspector General; or refusing to obey an order that would require one to violate a law; (10) discrimination based on personal conduct that does not adversely affect job performance; (11) violating veterans' preference requirements; and (12) violating a law, rule or regulation implementing or directly concerning merit system principles set forth at 5 U.S.C. § 2301. It should be noted that these are general descriptions of the prohibited personnel practices defined at 5 U.S.C. § 2302(b). That section should be consulted for fuller descriptions of the elements of each of these violations.
- 8 Unless noted otherwise, all references after this to prohibited personnel practice complaints or cases handled by OSC include matters that alleged other violations of law also within the agency's jurisdiction under 5 U.S.C. § 1216, except violations of the Hatch Act.
- 9 An individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action, pending investigation of the action by OSC. If the Special Counsel has reasonable grounds to believe that the action resulted from a prohibited personnel practice, OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, OSC may then ask the MSPB to stay the action.
- 10 In addition to matters described in this section, OSC attorneys and investigators worked on a task force created by the Special Counsel in 2007 to investigate allegations of prohibited personnel practices and violations of the Hatch Act. Task force efforts continued into FY 2009.
- 11 See endnote 10.
- 12 Pursuant to 5 U.S.C. § 1212 *note*.

APPENDIX F

List of Acronyms Used In Report

A&P	Airframe and Powerplant	IPD	Investigation and Prosecution Division
ADR	Alternative Dispute Resolution	MOU	Memorandum of Understanding
ATCT	Air Traffic Control Tower	MSPB	Merit Systems Protection Board
AUO	Administratively Uncontrollable Overtime	NCA	National Conservation Area
AWOL	Absent Without Leave	NEPA	National Environmental Policy Act
BLM	Bureau of Land Management	NPS	National Park Service
CBP	Customs and Border Protection	OIG	Office of Inspector General
CEU	Complaints Examining Unit	OPM	Office of Personnel Management
CMO	Certificate Management Office	OSC	Office of Special Counsel
DC	District of Columbia	PMI	Principal Maintenance Inspector
DFW	Dallas-Fort Worth	SGA	St. George Aviation
DHS	Department of Homeland Security	SSI	Sensitive Security Information
DOD	Department of Defense	SSN	Social Security Number
DOL	Department of Labor	TRACON	Terminal Radar Approach Control
DTW	Detroit Metropolitan Airport	TSA	Transportation Security Administration
DU	Disclosure Unit	USACE	U.S. Army Corps of Engineers
DVA	Department of Veterans Affairs	USERRA	Uniformed Services Employment and Reemployment Rights Act
EEO	Equal Employment Opportunity	VA	Veteran's Administration
FAA	Federal Aviation Administration	VBIA	Veterans Benefits Improvement Act
FAMS	Federal Air Marshal Service	VDRP	Voluntary Disclosing Reporting Program
FCI	Federal Correctional Institution	VETS	Veterans' Employment and Training Service
FEPA	Federal Employees Pay Act	VSIP	Voluntary Separation Incentive Payment
FY	Fiscal Year	WG	Wage Grade
GAO	Government Accountability Office	WPA	Whistleblower Protection Act
GS	General Schedule	WWTP	Waste Water Treatment Plant
HAU	Hatch Act Unit		
IG	Inspector General		
IOSC	Immediate Office of the Special Counsel		

U.S. Office of Special Counsel

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or
1-800-872-9855

The U.S. Office of Special Counsel (OSC) is an independent investigative and prosecutorial agency and operates as a secure channel for disclosures of whistleblower complaints and abuse of authority. Its primary mission is to safeguard the merit system by protecting Federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing. OSC also has jurisdiction over the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act.

Internet Web Site:
www.osc.gov