

ANNUAL REPORT TO CONGRESS



U.S. OFFICE OF SPECIAL COUNSEL
FISCAL YEAR 2012

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**REPORT TO CONGRESS
FOR
FISCAL YEAR 2012**

U.S. OFFICE OF SPECIAL COUNSEL

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U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

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

The Honorable John A. 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 2012 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, appearing to read "Carolyn Lerner".

Carolyn N. Lerner
Special Counsel

TABLE OF CONTENTS

BIOGRAPHY OF THE SPECIAL COUNSEL	7
MESSAGE FROM SPECIAL COUNSEL CAROLYN N. LERNER	8
INTRODUCTION TO OSC	10
Statutory Background	10
Mission	11
OVERVIEW OF OPERATIONS	11
Internal Organization	11
Program Units	11
Support Units	12
FY 2012 Budget and Staffing	12
FY 2012 Case Activity and Results	13
PROHIBITED PERSONNEL PRACTICE COMPLAINTS	14
Summary of Workload, Activity, and Results	14
Receipts and Investigations	14
Examples of protecting employees from retaliation for protected activity (whistleblowing)	16
Examples of protecting employees from the denial of due process	17
Examples of protecting against merit systems abuses	17
Examples of protecting employees through stay requests to the Merit System Protection Board	18
Examples of amicus briefs filed with the Merit System Protection Board	18
Mediation	21
Mediated Settlements	21
ADR expansion initiative during FY 2012	22
HATCH ACT MATTERS	24
Overview	24
Summary of Workload, Activity, and Results	24
Investigations	24
Advisory Opinions	24
Enforcement Highlights	24
Outreach	24
WHISTLEBLOWER DISCLOSURES	26
Overview	26
Summary of Workload, Activity, and Results	26
Disclosure Highlights	26

USERRA ENFORCEMENT	32
Overview	32
Referral Process	32
Summary of Workload, Activity, and Results	32
FY 2012 Accomplishments	32
New USERRA Demonstration Project	33
Outreach and Education	34
OSC OUTREACH PROGRAM	35
OSC ANNUAL SURVEY PROGRAM	35
FURTHER INFORMATION	35
OSC Web Site	35
Prohibited Personnel Practices	35
Complaints Examining Unit	35
ADR Program	36
Hatch Act Program	36
Whistleblower Disclosures	36
USERRA Program	36
Outreach Program	36
Reports to Congress	37
SUPPORTING TABLES	
TABLE 1. Summary of All OSC Case Activity	13
TABLE 2. Summary of All Prohibited Personnel Practices Complaints Activity - Receipts and Processing	14
TABLE 3. Summary of All Favorable Actions – Prohibited Personnel Practice Complaints	19
TABLE 4. Summary of All ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints & USERRA Complaints	23
TABLE 5. Summary of All Hatch Act Complaint and Advisory Opinion Activity	25
TABLE 6. Summary of All Whistleblower Disclosure Activity – Receipts and Dispositions	31
TABLE 7. Summary of All USERRA Referral and Litigation Activity	34
TABLE 8. Summary of All USERRA Demonstration Project Activity	34
APPENDICES	
APPENDIX A: Survey Totals and Response Sources by Type of Matter at OSC	38
APPENDIX B: Prohibited Personnel Practice Complaints	39
APPENDIX C: Formal Hatch Act Advisory Opinions	44
APPENDIX D: USERRA Demonstration Project Cases	45
APPENDIX E: Endnotes	48
APPENDIX F: List of Acronyms Used in Report	49

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

My first full year as Special Counsel proved to be both challenging and rewarding. During Fiscal Year 2012, the U.S. Office of Special Counsel (OSC) worked diligently to carry out its mission of promoting good government through protection of whistleblowers and support of the federal merit system. Despite tough fiscal conditions, OSC achieved a remarkable 89% increase in corrective actions in FY 2012 to set a new agency record of 159. This success was matched by an 8% increase in total cases completed. At the same time, OSC reduced its cost per case to the lowest level in history.

One achievement I am particularly proud of is OSC's success in standing up for veterans and their families. In FY 2012, whistleblowers at Port Mortuary Air Base in Dover, DE revealed improper practices in the handling of remains of fallen service members. OSC brought the whistleblowers' disclosures to the attention of Congress, protected the whistleblowers from retaliation, and ensured that the retaliators were appropriately disciplined. OSC's efforts also led to Secretary of Defense Leon Panetta's creation of the Dover Port Mortuary Independent Review Commission to review base procedures and make recommendations to improve mortuary operations.

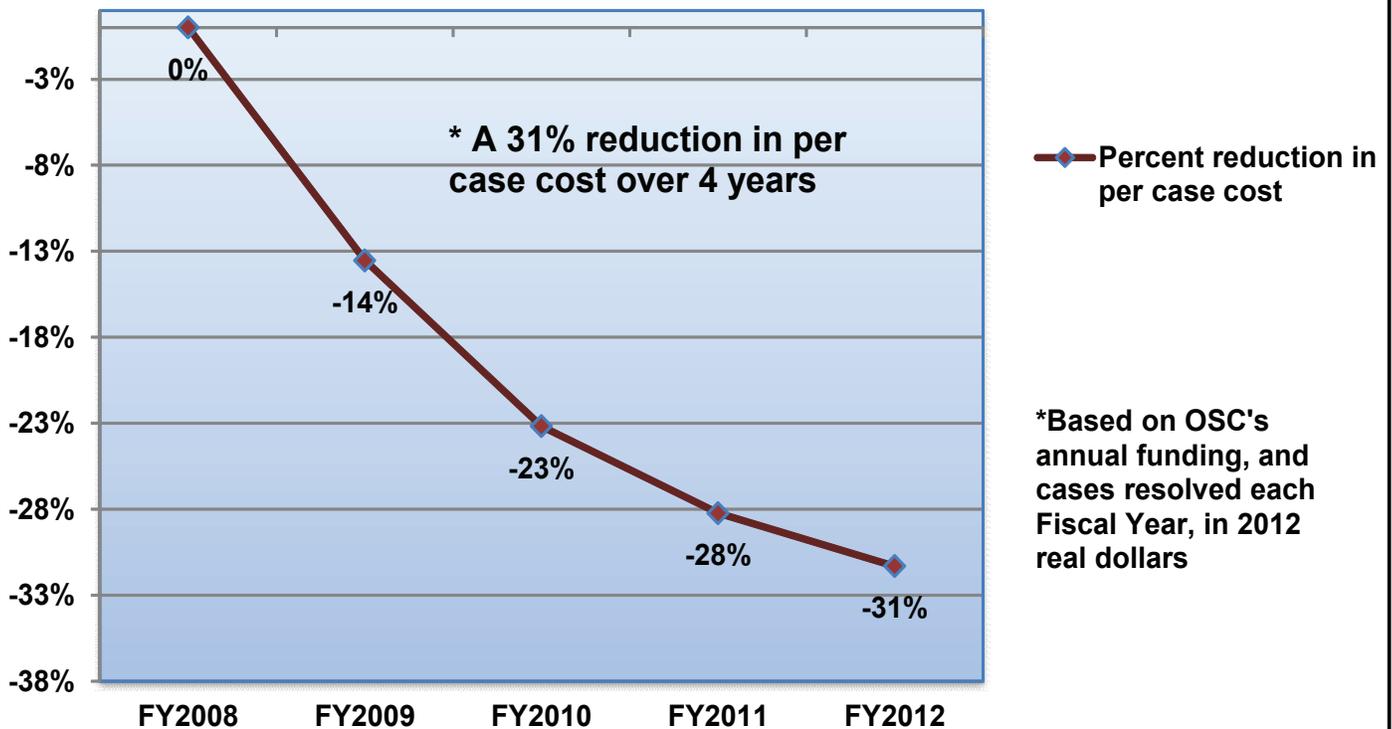
OSC protects the rights of nearly all of the civilian federal workforce. OSC proactively issued a government-wide policy memorandum to prevent excessive and improper electronic monitoring of whistleblower communications. OSC also obtained a record nine formal stays and extensions of stays of personnel actions in litigation before the Merit System Protection Board (MSPB) during FY 2012. Our agency remained proactive on the legislative front as well, successfully supporting passage of the Whistleblower Protection Enhancement Act (WPEA) and the Hatch Act Modernization Act of 2012. The WPEA closes loopholes that left the federal civil service vulnerable to retaliation, enables OSC to seek disciplinary actions against supervisors who commit serious merit system violations, and extends statutory whistleblower rights to 45,000 TSA Transportation Security Officers.

Overall, OSC's efforts have contributed to a fairer, more efficient, and more accountable government. Our efforts in FY 2012 have revitalized confidence in OSC and its mission among federal employees, agencies, good government groups, and the public. OSC has also continued to prioritize defending the employment rights of returning service members. In our second year of work on the USERRA Demonstration Project, OSC achieved corrective actions in 24 cases, including an historic settlement on behalf of a Wisconsin Guardsman who had served two tours in Iraq. OSC also acted on whistleblower disclosures of substandard conditions at Veterans Affairs hospitals in New York and Mississippi, which resulted in remedial actions to improve care for veterans.

Our successes have brought their own challenges. As OSC's reputation in the federal community has grown, our caseload has likewise mushroomed rapidly. OSC processed a record number of cases in FY 2012, a 19% overall increase across all program areas. Whistleblower disclosures of waste, fraud, and other wrongdoing were especially high, increasing 23% to a record 1,148 in FY 2012. This whistleblower disclosure caseload is 100% greater than it was just four years ago in FY 2008, and it is expected to continue to grow due to the enactment of the WPEA. USERRA cases have also spiked as a result of OSC's involvement in the Demonstration Project and the large number of veterans returning from Iraq and Afghanistan.

Managing OSC's rapidly swelling caseload in the current difficult fiscal environment has been one of our agency's strongest challenges; however, OSC has adapted by strategically deploying our resources and resolving cases more efficiently. Indeed, OSC continued to lower its cost to resolve a case, which plummeted to an historic low in FY 2012, having fallen 31% over the last four years. (See chart below.)

OSC's Efficiency Cost to Resolve a Case



These efforts have been complemented by OSC's efforts to use alternative dispute resolution to resolve more cases through mediation. Mediation often avoids lengthy and costly investigations, while producing win-win outcomes for agencies and employees, and thus represents a significant cost savings for all parties involved. During FY 2012, OSC successfully resolved a record eighteen cases through mediation.

OSC also revamped its outreach and education program to prevent unlawful actions from occurring in the first place and to save taxpayers' money. During FY 2012, OSC more than doubled its education and outreach efforts by participating in 121 events. Since 2012 was a presidential election year, roughly half of OSC's outreach efforts related to the Hatch Act.

I am proud to say that OSC is achieving more positive results on behalf of federal employees, agencies, and the merit system than at any point in its history. Despite these successes, OSC continues to face the daunting challenge of an increasing backlog of claims in the face of a fast-growing caseload and federal belt-tightening.

As Special Counsel, I look forward to working with Congress in the coming years on this and other issues. A strong OSC makes for a more efficient and accountable federal government.

INTRODUCTION TO OSC

Statutory Background

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

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

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to federal and District of Columbia government employees.

In 1994, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA protects the civilian employment and reemployment rights of those who serve or have served in the Armed Forces, including the National Guard and Reserve, and other uniformed services. It prohibits employment discrimination based on military service, requires prompt reinstatement in civilian employment upon return from military service, and prohibits retaliation for exercising USERRA rights. Under USERRA, OSC may seek corrective action for service members whose rights have been violated by federal agency employers.

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the 1994 Reauthorization Act provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred or exists. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what is now the Department of Veterans Affairs, and whistleblower reprisal protections were extended to employees of specified government corporations. The Reauthorization Act also broadened the scope of personnel actions covered under these provisions and required that federal agencies inform employees of their rights and remedies under the WPA.

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

In November 2012, Congress passed and President Obama signed into law the Whistleblower Protection Enhancement Act (WPEA) which extends whistleblower protections to the 45,000 TSA screeners previously denied it under the Aviation and Transportation Security Act. It also overturns court decisions that had narrowed protections for government whistleblowers, and enables OSC to seek disciplinary actions against supervisors who retaliate against whistleblowers.

In December 2012, Congress, with OSC's support, passed the Hatch Act Modernization Act which lifts the previous ban on state and local government employees running for partisan political office in most cases. The new act allows such candidates to run as

long as their salary is not entirely provided by the federal government.

Mission

OSC is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system by protecting employees from prohibited personnel practices, especially reprisal for whistleblowing. The agency also provides employees a secure channel for disclosing wrongdoing in government agencies, enforces and provides advice on Hatch Act restrictions on political activity by government employees, and enforces employment rights under USERRA for federal employees who served 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). OSC screens approximately 3,000 prohibited personnel practice complaints each year. CEU conducts an initial review of complaints to determine if further investigation is warranted. The unit refers qualifying matters for further investigation, possible settlement, or prosecution.

Alternative Dispute Resolution Unit (ADR). Prohibited Personnel Practice and USERRA complaints that

OSC deems appropriate for mediation are referred to an OSC ADR specialist, who contacts the affected employee and agency. If both parties agree, OSC undertakes a mediation process in an effort to resolve the complaint.

Investigation and Prosecution Division (IPD). If OSC claims examiners determine a complaint merits further attention, and the matter cannot be resolved through ADR, IPD determines whether or not the matter warrants corrective or disciplinary action. If IPD cannot resolve what it deems to be a meritorious case through negotiation, OSC may bring an enforcement action before the MSPB.

Disclosure Unit (DU). OSC receives and reviews disclosures from federal whistleblowers. If DU deems that a violation is substantially likely, OSC refers the matter to the head of the relevant agency to conduct an investigation and report its findings to the Special Counsel. After reviewing the agency report of investigation and the whistleblower's comments, the Special Counsel makes a decision whether the report appears to be reasonable and transmits this determination and the whistleblower's comments to the President and responsible congressional oversight committees.

Hatch Act Unit (HAU). OSC investigates complaints of unlawful political activity by government employees under the Hatch Act, and may seek disciplinary action before the MSPB for violations. In addition, the HAU is responsible for providing legal advice on the Hatch Act.

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

Support units include:

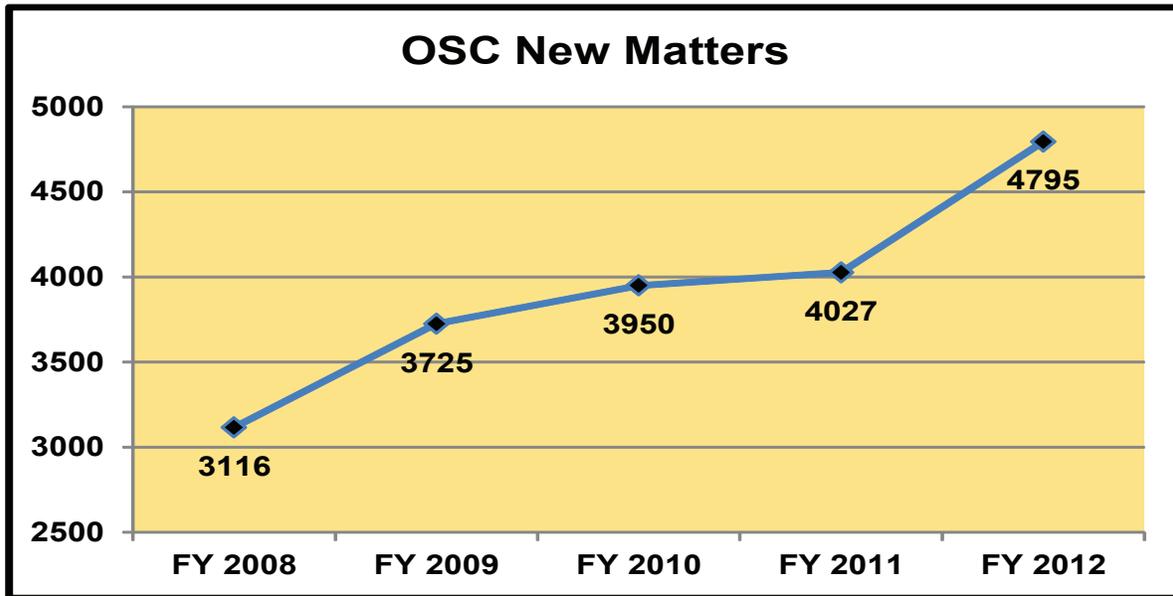
Office of General Counsel. This office provides legal advice and support in management and administrative matters, defense of OSC interests in litigation filed against the agency, management of the agency’s Freedom of Information Act, Privacy Act, and ethics programs, and in policy planning and development.

Administrative Services Division. This office manages OSC’s budget and financial operations, oversees personnel matters, 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 2012 Budget and Staffing

During FY 2012, OSC operated with budget authority of \$19,615,000, of which \$18,972,000 was from appropriated funds, and \$643,000 from reimbursement agreements. The agency operated with a staff of approximately 112 employees.



FY 2012 Case Activity and Results

During FY 2012, OSC received 4,795 new matters. In addition, OSC received 3,448 requests for Hatch Act advisory opinions. **Table 1**, below, summarizes overall OSC case intake and dispositions in FY

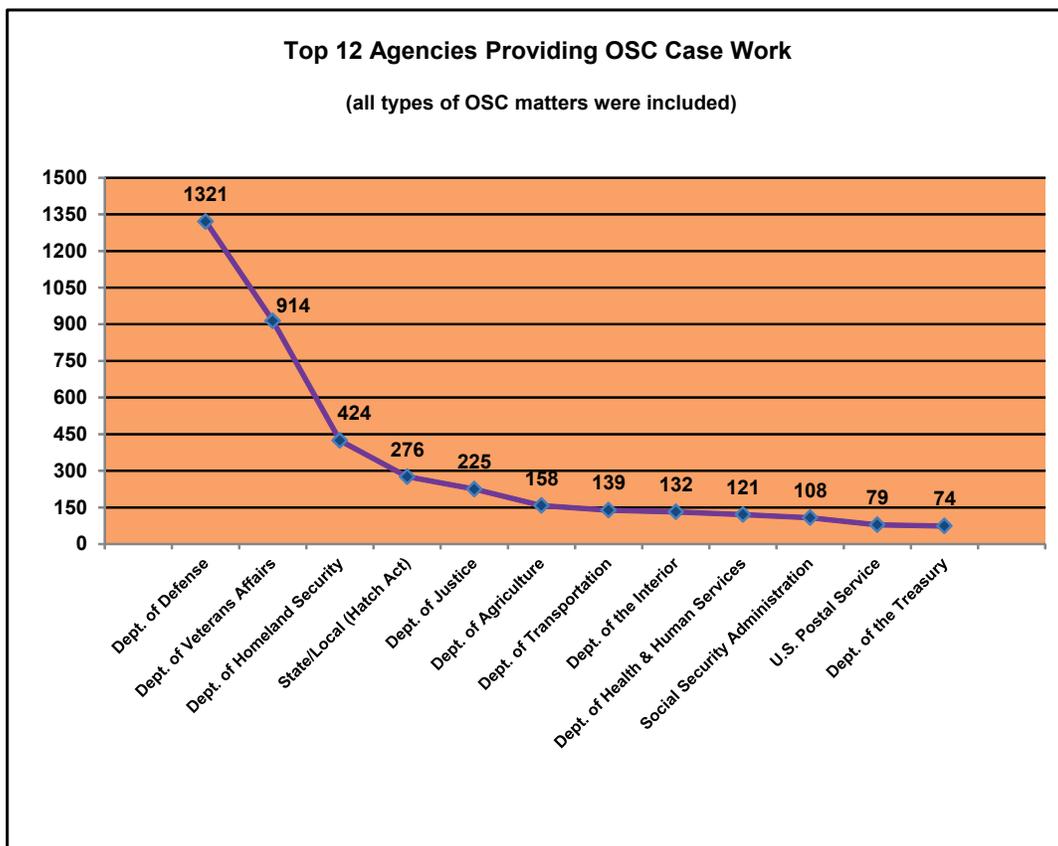
2012, with comparative data for the previous four fiscal years. More detailed data can be found in **Tables 2-7**, in sections below, relating to the four specific components of OSC’s mission – Prohibited Personnel Practice cases, Hatch Act matters, Whistleblower Disclosures, and USERRA cases.

Table 1 Summary of All OSC Case Activity					
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Matters ^a pending at start of fiscal year	700	943	1,326	1,357	1,329
New matters received	3,116	3,725	3,950	4,027	4,795
Matters resolved	2,875	3,337	3,912	4,051	4,377
Matters pending at end of fiscal year	937	1,324	1,361	1,331	1,744
Hatch Act advisory opinions issued	3,991	3,733	4,320	3,110	3,448

^a“Matters” in this table includes prohibited personnel practice cases (including TSA matters), Hatch Act complaints, whistleblower disclosures, and USERRA cases. “Matters” does not include Hatch Act advisory opinions issued.

Source of Agency Casework

OSC cases come from across the federal government. The following chart shows the twelve agencies that were the source of the most cases in FY 2012.



PROHIBITED PERSONNEL PRACTICE COMPLAINTS

Summary of Workload, Activity, and Results

OSC's largest program is devoted to handling PPP complaints. Of the 4,795 new matters OSC received during FY 2012 (not including requests for advisory opinions on the Hatch Act), 2,969 or 62% were new PPP complaints. Complaints involving allegations of reprisal for whistleblowing – OSC's highest priority – accounted for the highest number of complaints resolved and favorable actions (stays, corrective actions, and disciplinary actions) obtained by OSC during FY 2012. CEU referred 253 cases for full IPD investigation in FY 2012, a 15% increase from just two years earlier.

Receipts and Investigations

OSC is responsible for investigating complaints alleging prohibited personnel practices defined by law.

As the intake unit for all prohibited personnel practice complaints filed with OSC, CEU reviewed new matters to determine whether they merited further investigation. If so, these matters were referred to IPD for mediation or field investigation. Matters referred during FY 2012 included whistleblower retaliation, improper job dismissal, due process violations, violations of law, rule or regulations in personnel actions, and indefinite suspensions.

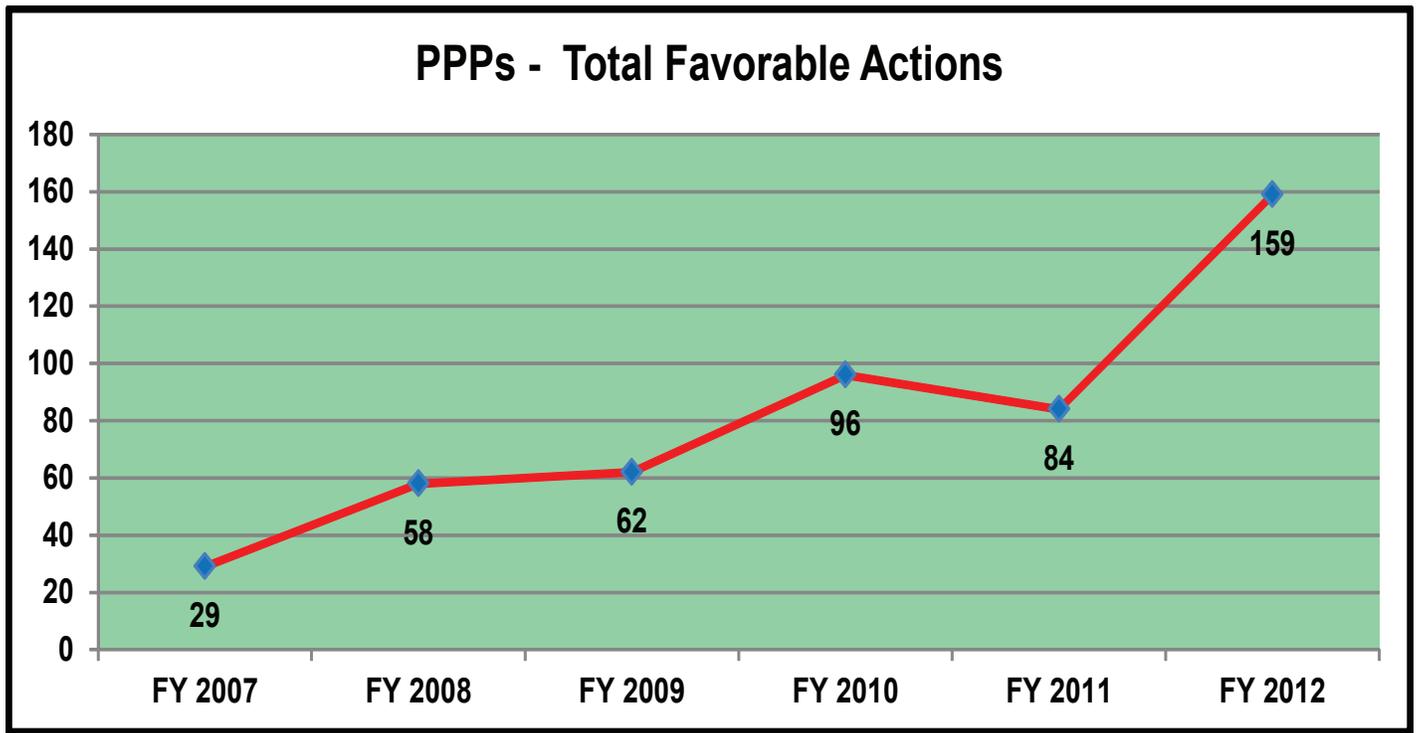
Table 2, below, contains FY 2012 summary data (with comparative data for the five previous fiscal years) on OSC's receipt and processing of all prohibited personnel practice complaints handled by CEU and IPD.

Table 2 Summary of All Prohibited Personnel Practice Complaints Activity - Receipt and Processing^a							
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	
Pending complaints carried over from prior fiscal year	386	358	474	769	863	934	
New complaints received ^b	1,970	2,089	2,463	2,431	2,583	2,969	
<i>Total complaints</i>	2,356	2,447	2,937	3,200	3,446	3,903	
Complaints referred by CEU for investigation by IPD	125	135	169	220	270	253	
Complaints processed by IPD	151	88 ^c	150	179	190	274	
Complaints pending in IPD at end of fiscal year	136	185	201	250	331	328	
Total complaints processed and resolved (CEU and IPD combined)	1,996	1,971	2,173	2,341	2,508	2,750	
Complaint processing times	Within 240 days	1,874	1,889	2,045	2,185	2,327	2,425
	Over 240 days	121	80	127	154	175	320
Percentage processed within 240 days	94%	95%	94%	93%	92%	88%	

^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.

^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.



Examples of protecting employees from retaliation for protected activity (whistleblowing)

Mishandling of veterans' remains. Three OSC whistleblowers at the U.S. Port Mortuary alleged that a series of adverse personnel actions were taken against them in retaliation for having disclosed to OSC and to the Air Force's Inspector General numerous incidents of misconduct, mishandling, and regulatory violations in the mortuary's care of the remains of fallen service members. In an extensive PPP report, OSC concluded that Air Force officials retaliated against the whistleblowers because of their disclosures through various harmful actions that included a proposed removal, placement on extended administrative leave, suspensions, significant changes in duties and working conditions, and lowered performance appraisals. The Air Force responded positively to OSC's report by providing full corrective action to the whistleblowers and disciplining the responsible officials. The former commander of the Port Mortuary received a formal reprimand and monetary fine, the deputy commander was suspended for twenty days and another supervisor resigned in lieu of disciplinary action. In addition, the Air Force instituted OSC's recommended reforms to improve mortuary operations and train its employees on whistleblower protection.

Wasteful use of funds. A supervisory auditor employed a private attorney to assist in blowing the whistle on his agency's gross waste of funds under a million dollar service contract. In the course of his privileged communications with his attorney, the auditor disclosed confidential information concerning an important government audit. Thereafter, the employee made his disclosure to the Inspector General prompting the agency to investigate the employee for having disclosed confidential information to his private attorney. When the investigation confirmed the employee's conduct, the agency proposed the employee's removal, later mitigating the removal to a suspension. OSC investigated the complaint to determine whether the agency's disciplinary action was in retaliation for protected whistleblowing. In a case of first impression, OSC issued a PPP report sustaining the complaint and finding that the agency's retaliation violated the First Amendment and the WPA. In response, the agency agreed to provide full corrective action to the employee including attorney fees reimbursement, and the employee withdrew his OSC complaint in a settlement.

Improper weapons transport. Three law enforcement agents disclosed to Congress that their agency knowingly allowed weapons to be transported from the country for likely use in criminal activity. They alleged that they suffered retaliation for their disclosures. This high-profile case was resolved by OSC's mediation program. Under OSC's mediation program policy, the individual results remain confidential.

Improper disposal of a harmful substance. An employee at an agency disclosed to EPA and a state public health agency that a colleague had improperly disposed of a banned substance by pouring it down the sink drain at work. In retaliation for his whistleblowing, he was fired for "disruptive behavior." OSC's investigation substantiated the complaint and provided a PPP report to the agency. The agency responded positively by agreeing to provide full corrective action to the employee, including reinstatement, back pay, consequential damages, retroactive medical benefits, and a clean employment record. The employee, however, refused the offer because he wanted to pursue other claims against his former employer, including an ongoing EEO complaint.

Improper solicitation of personal benefits. The Merit System Protection Board referred this case for disciplinary action to OSC. The MSPB concluded that an official had retaliated against an employee for disclosing to the agency's ethics officer that the official had wanted the employee to solicit a personal benefit from an agency contractor. The Board found that the official solicited the employee's resignation under threat of a misconduct investigation in retaliation for the whistleblowing. OSC resolved the matter through a settlement wherein the official agreed to accept a suspension with certain probationary conditions.

Inaccurate payment. A supervisor encouraged her subordinate to report a decision that granted payments to a claimant that they believed would result in the erroneous payment of hundreds of thousands of dollars, if not corrected. In retaliation for their disclosure, the manager received a reprimand, was stripped of her supervisory title, and was reassigned to a different duty station. The subordinate whistleblower received a 14-day suspension. OSC obtained full corrective ac-

tion for the manager. OSC also negotiated a full offer of relief for the subordinate, but the subordinate declined in order to pursue his administrative claims independently.

Repeated violations of air passenger safety. A supervisory employee made several disclosures regarding employee misconduct and violation of workplace rules governing a highly sensitive mission that protects air passenger safety. In retaliation for his disclosures, the employee was fired. In a settlement, OSC obtained full corrective action for the employee, including reinstatement, back pay, attorneys' fees, and compensatory damages.

Fraudulent and wasteful contracting. An employee suffered retaliation in a series of adverse actions after he alleged waste, fraud, and abuse in a government contract valued at a very high amount. He was removed as contracting officer, lost his supervisory duties, received notice of a proposed suspension, suffered a reduction in pay, had his overseas tour shortened, lost overseas leave privileges, and failed to be selected for positions for which he applied. OSC's investigation substantiated many of the complainant's allegations, and the agency granted full corrective action and agreed to reassign the employee to a different position in the agency.

Improper program qualifications. An employee disclosed that a private sector customer of the agency with close ties to the agency's local manager provided inaccurate financial information to qualify for the agency's program. In retaliation for her disclosure, the employee reported that her working conditions became intolerable; she suffered harassment, a significant change in working conditions, a reprimand, a lowered performance appraisal, denial of a cash award, and denial of overtime. In a settlement, the agency agreed to reassign the employee to a different office, rescind her letter of reprimand, and pay her attorneys' fees. In return, the complainant withdrew her OSC complaint.

Accounting errors. An employee suffered a series of harassing retaliatory actions because he revealed accounting discrepancies to his managers and to the Inspector General. The actions included changing his

work schedule, placing him in an incorrect grade after being converted from the National Security Personnel System, charging him with AWOL, lowering his performance appraisal, reassigning him to a new duty location, and cancelling a promotion. The OSC investigation substantiated the employee's complaint and the agency agreed to retroactively promote him and reassign him geographically with relocation benefits to a position outside of his management chain.

Potential fire hazard. A long-time seasonal employee reported the improper installation of a stove in a remote location as a potential fire hazard. Shortly after her report, the agency terminated the employee's appointment and declined to rehire her in successive seasons for a position she had held for over 10 years. OSC's investigation verified the employee's whistleblowing disclosure and retaliation complaint. In a settlement, the agency agreed to provide the employee with back pay for four seasons of missed work and the employee withdrew her OSC complaint.

Examples of protecting employees from the denial of due process

Improper notice of job removal. A police officer alleged that his supervisor instructed staff to make traffic stops off property in violation of agency policy. Subsequently, when the officer, a combat veteran of four tours in Iraq, was on extended military leave, the agency proposed his removal. However, the agency failed to send notice to the address that the employee provided. When the officer failed to reply to the proposal, the agency removed him. OSC's investigation determined that the employee did not receive notice, and the agency's removal without proper notice violated the employee's due process right. Based on a PPP report documenting OSC's findings, the agency provided the police officer with full corrective action, including an offer to return to service, two years back pay, consequential damages, EEO compensatory damages, and attorneys' fees.

Right to appeal job removal. An employee who was a preference-eligible veteran was removed from an

Excepted Service position without receiving notice of his right to appeal his removal to the Merit Systems Protection Board, as required by law. After the OSC investigation substantiated the employee's due process complaint, the agency agreed to reinstate him and give him back pay.

Examples of protecting against merit systems abuses

Violation of civil service law. Based on a referral from the Director of OPM, OSC determined that the former Director and his HR Director at an agency violated civil service law by improperly converting a political appointee to a career SES position in anticipation of a change in administration. The investigation revealed that the HR Director had backdated important documents. The two political appointees involved in the action resigned before OPM's referral. OSC settled a potential disciplinary action with the HR Director when she agreed to retire and not return to service for one year. The agency agreed to implement remedial training on political conversions and the prevention of prohibited personnel practices.

Improper job promotion. An OSC investigation determined that an agency granted a preference not authorized by law, rule, or regulation to promote an employee who lacked an essential qualification for his supervisory appointment. The manager who orchestrated the improper appointment and the HR specialist who processed the selection received suspensions.

Illegal promotion of political appointee. Based on a referral from the Director of OPM, OSC determined that an agency attempted to illegally burrow a political appointee into a career position through the now-discontinued Career Intern Program. The improper appointment was stopped by OPM, and OSC required the agency to take institutional corrective action to train current and future hiring officials on PPPs, provide refresher training to all HR staff, and formalize internal agency policies and practices to ensure that HR staff can report incidents of undue pressure or influence regarding hiring decisions to senior-level management.

Examples of protecting employees through stay requests to the Merit System Protection Board

Abuse of supervisory authority. An entire work unit's nonsupervisory staff of six disclosed to the local ombudsman of their agency that their manager had altered and falsified patient records, breached patient confidentiality, and abused her supervisor authority. Subsequently, they alleged, management made their working conditions so intolerable that all six employees quit or were fired. In the aftermath, the agency attempted to recoup relocation incentive bonuses to the employees and threatened to provide negative job references to prospective employers. OSC obtained a stay order from the Board that protects the four current employees and applicants for employment from any further attempts to recoup past bonuses or provide negative employment references while OSC conducts its investigation.

Improper job dismissal. A long-time employee, testifying in federal court under subpoena on behalf of a criminal defendant, expressed his belief that a court-ordered wiretap had been obtained illegally. His belief was based on personal conclusions drawn from his past experiences on the case, but significantly not from personal knowledge of or involvement with the circumstances of the obtaining of the wiretap itself. Based on the employee's lack of personal knowledge, the trial judge found that his testimony lacked credibility. Thereafter, the employing agency concluded that the employee should be removed for lack of candor. In a matter of first impression for the Board, OSC obtained a stay of the removal to allow OSC an opportunity to complete its investigation.

Inappropriate physical contact. A part-time employee with an outstanding performance record provided information in connection with an anonymous EEO complaint at an agency against her program manager. The employee indicated in her EEO statement that her manager had made unwelcome physical contact with her in a private meeting. After her disclosure, the

agency informed her that a position that she had been offered would be given to someone else. This led eventually to her removal when her current appointment expired. The employee attributed the decision not to offer her a new position to retaliation for her EEO statement. OSC successfully sought a stay of the removal from the Board in order to investigate the matter.

Example of amicus brief filed with the Merit System Protection Board

Indefinite suspension. OSC filed an amicus brief with the Merit System Protection Board in *McGriff v. Department of the Navy, et al.*, 2012 MSPB 62 (April 26, 2012), four consolidated cases that concerned whether the Board has authority to review indefinite suspensions of pay that follow interim decisions to temporarily suspend an employee's access to classified information. OSC supported the proposition that the Constitution guarantees every employee who has a statutory appeal right to a "meaningful" appeal on the merits, even if the indefinite suspension decision is a consequence of a national security decision to suspend a clearance. OSC argued that the Supreme Court's decision in *Gilbert v. Homar* required no less than a full review of the merits of the suspension action and that the Court's decision in *Department of the Navy v. Egan*, restricting Board review of personnel actions that flow from a final decision to deny or revoke a security clearance, did not require a different result. The Board's decision in *McGriff* validated OSC's argument that employees are entitled to a meaningful review on the merits, and not an empty process that could invite an erroneous deprivation of a vested property interest.

Table 3, below, contains summary data for FY 2012 (with comparative data for the five previous fiscal years) on all favorable actions obtained in connection with OSC's processing of whistleblower reprisal and other prohibited personnel practice complaints.

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

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

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

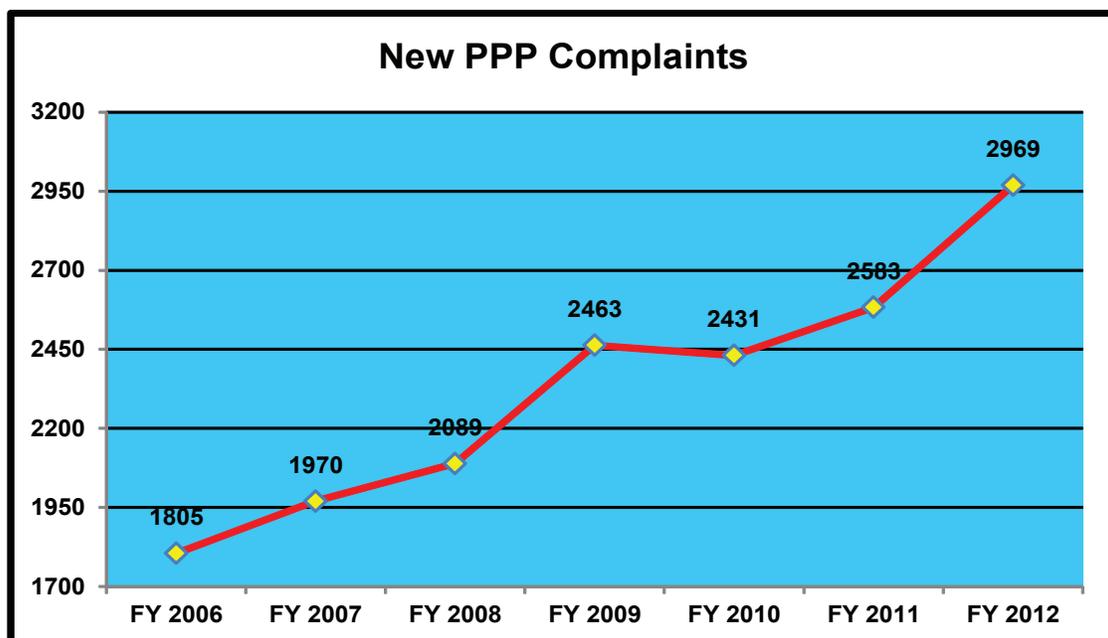
^cThe number of actions refers to how many corrective actions are applied to the case; the number of matters consists of how many individuals were involved in the original case.

^dIncorrectly reported as four in OSC's FY 2007 report to Congress due to an administrative error.

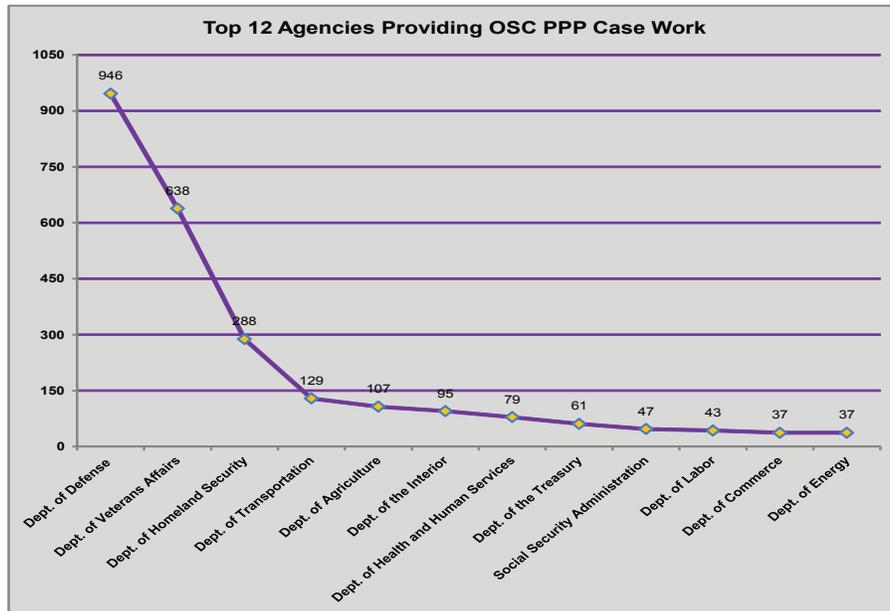
^eRepresents two stays obtained in each of two cases.

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

Between FY 2011 and FY 2012, the number of new PPP complaints increased by 15%.



This chart shows that the Department of Defense provided the largest number of PPP cases received by OSC, followed by the Department of Veterans Affairs and the Department of Homeland Security.



Mediation

OSC offers mediation in appropriate cases as an alternative to investigation. Under OSC’s ADR mediation program, an OSC Alternative Dispute Resolution Specialist contacts the parties to discuss the process and an offer of mediation is made to the complainant. 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, 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 reimbursement, and lump sum payments. If mediation cannot resolve the complaint, it is referred back to IPD for further investigation.

Mediated Settlements

The following are examples of complaints resolved by OSC mediators during FY 2012:

Faulty process. A senior advisor made internal and public disclosures regarding the agency’s scientific integrity process. The complainant alleged retaliation in the form of a lowered performance rating, denial of training and travel, reprimands, and removal during his probationary period. As part of the mediated settlement agreement, the complainant agreed to resign, and the agency revoked the notice of termination and other negative disparaging information from his Official Personnel Folder (OPF). In addition, the agency made a one-time monetary payment to the complainant.

Unauthorized promotions. A budget analyst testified as part of an internal agency investigation regarding pre-selection of staff, unauthorized promotions, abuse and mismanagement of funds, and retaliation against employees who had testified as part of a prior OIG investigation. The complainant alleged that subsequent to her testimony, she suffered retaliation by several management officials who subjected her performance to intense scrutiny and micromanagement; removed job duties which impaired her ability to perform her job; lowered her performance appraisal rating; and rated her on a critical element that was not in her performance plan. As part of the mediated settlement agreement of both complainant's OSC and related EEO complaints, she was able to transfer to a different work unit. In addition, the agency upgraded her performance rating, gave her a quality step increase, restored sick and annual leave, and gave complainant a one-time monetary payment.

Time card fraud. An administrative support assistant testified as part of inspector general and administrative investigations regarding time card fraud. The complainant alleged that in retaliation for her testimony, she was subjected to a lowered performance appraisal, a significant change in duties and working conditions, and a hostile work environment. The agency agreed, as part of a mediated settlement of the complainant's OSC and related EEO complaints, that the complainant would no longer be supervised by the management officials who were the subjects of her complaints. The agency also restored annual and sick leave, and made a one-time monetary payment to the complainant.

Improper contracting. A materials handler made disclosures to his supervisors and the agency inspector general regarding non-compliance with OSHA and hazmat regulations, improper contracting, and unnecessary purchase of equipment. He alleged in his OSC complaint that in retaliation for his disclosures, he received a lowered performance evaluation and was removed during his probationary period. As part of a mediated settlement agreement, the agency agreed to modify the complainant's OPF to change his removal to a voluntary resignation, remove negative comments from his performance evaluation, and provide him with a one-time monetary payment.

Improper handling of funds. An advisor for overseas work in economic development disclosed alleged improper handling of funds by a military officer to the agency's inspector general. The complainant alleged that in retaliation he was removed from his post and lost substantial overtime and hazard pay. In their mediated settlement agreement, the complainant and the agency agreed to settle OSC and related EEO claims. The agency made a one-time monetary payment to the complainant.

Undesirable assignments. A pharmacy technician alleged that he received undesirable shift assignments in retaliation for time he spent away from work serving in the National Guard. As part of the mediated settlement agreement, the agency made a one-time monetary payment to the complainant, agreed to review his drill schedule prior to making shift assignments, and to meet with him prior to making shift assignments to discuss any concerns he might have about the schedule. The agency also agreed to set up a process that would allow the shift assignments to be reviewed by neutral officials and to conduct agency-wide training on USERRA.

Hostile work environment. An employee, who is also a reservist, filed a claim of USERRA discrimination and hostile work environment. The claimant asserted that the first line supervisor, upon learning of the claimant's impending six month absence due to military duty, rated the claimant "unacceptable" on a mid-year performance appraisal. In the USERRA claim, the claimant requested relief in the form of reassignment to another office within the agency (away from his/her present supervisor) and review and adjustment of the appraisal rating (from unacceptable to meets expectations). Through mediation, the claimant agreed to withdraw the claim. In exchange, the agency agreed to change the complainant's rating, worked with the claimant and an HR representative to create a professional development plan for the claimant, approved the claimant's participation in an upcoming management class, and approved the claimant's detail to another office within the agency.

Unfair performance appraisal. An employee, who is also a member of the National Guard, filed a claim of USERRA discrimination, asserting that the first

line supervisor lowered their performance rating in response to a recent deployment to Afghanistan. The claimant pointed out that during the previous rating cycle, they received the highest rating in four of categories. Upon a return to work after deployment, the claimant reported that their rating had gone down in four of five performance areas, despite no feedback on performance-related concerns between the two reviews. The claimant agreed to withdraw the claim. In exchange the agency agreed to reassess the performance appraisal and provide justification for the rating in each performance area, alert the claimant to any performance concerns in a timely fashion, conduct communication “check-ins” on a regular basis, and institute a process for the claimant to raise and manage concerns with those under their supervision.

Denial of employment benefits. An employee, who is also a member of the Reserves, filed a claim of USER-RA discrimination, alleging that their agency refused to afford the complainant rights and benefits of employment afforded to other employees. The employee asserted that the most blatant example of this related to the storage of their belongings. The employee was on a one-year assignment for their agency when they were deployed to Afghanistan. The employee communicated with the agency prior to deployment to determine how to arrange for storage of belongings and training for their next agency assignment. Through

mediation, the complainant described challenges they encountered with navigating the bureaucracy before, during and after deployment. The agency acknowledged these challenges and noted changes the agency was making to ensure that deployed employees would no longer face similar challenges upon their return. Settlement was achieved, with the complainant agreeing to withdraw the claim. In exchange, the agency agreed to reimburse the claimant for the storage costs incurred upon return from deployment and to disseminate information about a change to agency policy to cover the storage costs for military reservists.

ADR expansion initiative during FY 2012

During FY 2012, ADR’s caseload expanded dramatically: ADR offered 400% more mediations and conducted 300% more mediations than in FY 2011. As a result of these efforts, ADR completed a record 18 mediations that achieved settlement in FY 2012. ADR expects its caseload to increase even more in FY 2013 and FY 2014.

Table 4, below, contains summary data for FY 2012 (with comparative data for the five previous fiscal years) on all mediations OSC offered and completed in response to prohibited personnel practice complaints.

Table 4 ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints & USERRA Complaints						
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Number of cases in which mediation offered after referral from CEU or USERRA plus cases referred from IPD ^a	32	25	28	26	31	129
Mediation offers accepted by complainants	21	10	17	11	20	82
Mediation offers accepted by agencies and by complainants	12	8	15	6	15	59
Number of mediations conducted by OSC ^b	8	7	11	6	13	40
Number of mediations withdrawn by either OSC or the agency after acceptance	2	0	3	0	2	5
Number of mediations that yielded settlement	4	4	4	3	10	18
Percentage of successful mediations ^c	50%	57%	36%	50%	77%	51%
Cases in process ^d - carryover from previous FY	N/A	N/A	N/A	N/A	N/A	5
Carryover to next FY - In Process	N/A	N/A	N/A	N/A	N/A	15
Carryover to next FY - Offer Pending ^e	N/A	N/A	N/A	N/A	N/A	20

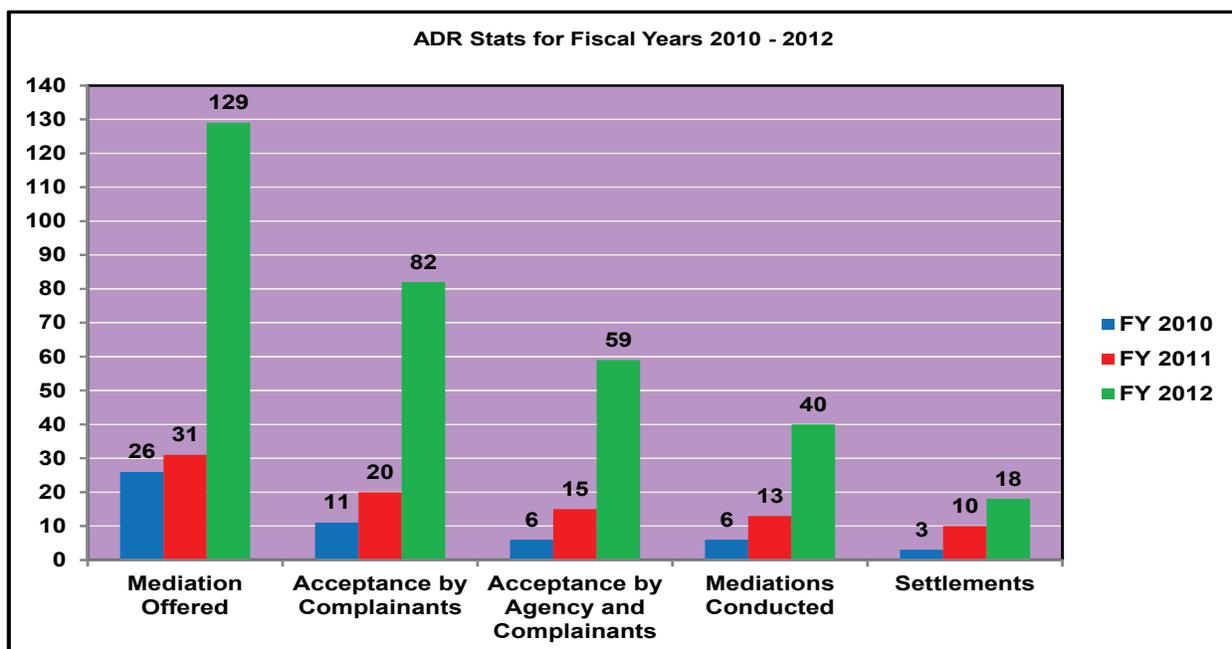
^aCategory includes complaints settled through mediation by OSC (including “reverse-reversals”- *i.e.*, cases referred back to ADR program staff by IPD after investigation had begun, due to the apparent potential for a mediated resolution). Category also includes complaints that entered the initial OSC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

^bIncludes cases completed or withdrawn after at least one mediation session.

^cStarting in FY 2012, we no longer are counting the withdrawn cases as part of the number of mediations conducted by OSC when calculating the percentage of successful mediations.

^d“In process” means parties have agreed to mediate and mediation is scheduled or is ongoing with more than one session.

^eCases in which OSC will be or is in the process of offering mediation to the parties.



HATCH ACT MATTERS

Overview

Enforcement of the Hatch Act – which shields the civil service against unlawful partisan politics – is another important component of OSC’s mission. OSC investigates complaints and, where appropriate, prosecutes violations, issues advisory opinions in response to requests, and educates the federal workforce and public on the scope of the law.

Summary of Workload, Activity, and Results

New complaints received in FY 2012 increased 11%, from 451 to 502, compared to FY 2011, while total advisory opinions issued in FY 2012 increased 10.8%, from 3,110 to 3,448, compared to FY 2011.

Investigations

OSC enforces compliance by investigating Hatch Act complaint allegations to determine whether disciplinary action is warranted. Upon determining that a violation has occurred, OSC will 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

OSC is also responsible for a nationwide program that provides federal, state, and local (including D.C.) government employees, as well as the public at large, with legal advice on the Hatch Act to assist in determining whether individuals are covered by the Act and whether their contemplated activities are prohibited. OSC has the unique responsibility of providing Hatch Act information and legal advice to the White House, congressional offices, cabinet members, and senior management officials throughout the federal government, state and local government officials, and the media. The Hatch Act is the only law under which OSC may issue an advisory opinion.

Enforcement Highlights

In FY 2012, OSC issued 3,448 written and oral advisory opinions (262 formal written opinions, 1,428 e-mail opinions, and 1,758 oral opinions) in response to requests for advice on permissible and prohibited activities under the Hatch Act.

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

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

Corrective Action Obtained through Negotiations. OSC successfully resolved 37 cases this fiscal year by encouraging employees to voluntarily cease the activity that violated the Hatch Act. Most of these cases involved employees who were running for partisan political office. OSC was able to convince the employees to come into compliance with the law.

Investigation of High Level Appointee.

OSC found that a cabinet secretary, during an official speech, encouraged attendees to help support and elect particular candidates for partisan political office, in violation of the Hatch Act.

Outreach

OSC conducts outreach presentations to educate federal, D.C., and state and local employees about the prohibitions of the Hatch Act. In presidential election year 2012, OSC increased its efforts to conduct these training sessions and familiarize employees with the law, conducting 64 outreach presentations.

Table 5, below, contains FY 2012 summary data (with comparative data for the five previous fiscal years) on OSC’s Hatch Act enforcement activities.

TABLE 5 Summary of Hatch Act Complaint and Advisory Opinion Activity							
		FY 2007	FY 2008^c	FY 2009	FY 2010	FY 2011	FY 2012
Formal written advisory opinion requests received		194	292	227	351	283	257
Formal written advisory opinions issued		176	275	226	320	335	262
Total advisory opinions issued ^a		2,598	3,991	3,733	4,320	3,110	3,448
New complaints received ^b		282	445	496	526	451	502
Complaints processed and resolved		252	264	388	535	635	449
Warning letters issued		68	70	132	163	164	142
Corrective actions taken by cure letter recipients	Withdrawal from partisan races	18	13	15	28	23	14
	Resignation from covered employment	6	17	6	26	16	12
	Other	1	2	3	1	5	8
	Total	25	32	24	55	44	34
Disciplinary action complaints filed with MSPB		1	3	10	7	3	0
Disciplinary actions obtained (by negotiation or ordered by MSPB)		5	11	5	10	5	4
Complaints pending at end of fiscal year		142	323	430	422	233	288

^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 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, Disclosure Unit (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, his or her 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 promptly issue a report 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.

Summary of Workload, Activity, and Results

During FY 2012, the number of disclosures processed and closed increased 21%, and 55% of disclosures were processed in under fifteen days.

Disclosure Highlights

Whistleblower disclosures in FY 2012 continued to span a broad range of concerns. A number of those referred by OSC for further action are highlighted below:

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

Improper Handling and Transport of Human Remains. OSC referred to the Secretary of Defense allegations from three whistleblowers at the Department of the Air Force, Air Force Mortuary Affairs Operations, Port Mortuary, Dover Air Force Base, Delaware. They alleged: (1) the improper preparation of remains of a deceased Marine; (2) improper handling and transport of possibly contagious remains; (3) improper transport and cremation of fetal remains of military dependents; and (4) the failure to resolve cases of missing portions of remains. The investigation substantiated the allegations that Port Mortuary leadership failed to properly resolve two cases in which portions of remains of deceased service members were lost. The report concluded that managers engaged in gross mismanagement, and that the lack of accountability for the portions resulted in "a negligent failure" to meet the requisite standard of care for handling remains and violated several agency rules and regulations. The report also substantiated the allegations of improper cremations without the required authorization. The Air Force did not substantiate the allegations of wrongdoing regarding the preparation of remains, the improper transport of fetal remains of military dependents, or the improper handling and transport of possibly contagious remains. However, the evidence presented in the reports did not support several of the findings and conclusions drawn by the Air Force regarding these allegations; therefore, OSC determined that the findings did not appear reasonable.

In response to the findings, the Air Force took substantial corrective action, even where they did not acknowledge wrongdoing. These corrective actions included enhancing training and implementing policies and procedures to improve the processes and accountability at the Port Mortuary. However, OSC raised concern regarding the insufficiency of the disciplinary

action taken against the managers who were found to be responsible for violations of rules and regulations, gross mismanagement, dishonest conduct, and a failure of leadership.

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

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

BOP Fort Dix Improves Medical Testing and Monitoring Processes. OSC referred to the Attorney General allegations that employees of the Bureau of Prisons (BOP), federal Correctional Institute (FCI) Fort Dix, New Jersey, failed to timely collect samples for medically ordered laboratory diagnostic tests, including blood, stool, and urine samples, which delayed medical test results necessary for diagnoses. The agency investigation partially substantiated the allegations. The report stated that a large number of medical tests had been ordered by medical staff at FCI Fort Dix, but that medical staff had experienced delays in securing results. The agency report found that the problem with delinquent lab tests was systematic and multifaceted. Several factors contributed to the laboratory delays, including lack of proper staffing, a "tremendous" workload, the unsuccessful attempts to hire a qualified phlebotomist, the necessity to reschedule patients, the failure to adhere to pre-testing requirements such as fasting, and duplicate lab test orders. The VA Chief of Health Programs opined that there was a significant problem with pending diagnostic lab orders, even if there were duplicate requests. The agency report

found that the failure to ensure timely test results involved several institutional components, including the failure of BOP's Health Services to acknowledge, assess, and remedy the untimely lab testing problems. The agency investigation determined however, that no patients were harmed as a result of laboratory delays.

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

In November 2012, the agency provided an update that reflected significant improvements in monitoring pending medical test results and the timely processing of lab orders. BOP staff had been trained to monitor pending medical lab orders via electronic health records and staff had been cross-trained to eliminate a backlog of pending orders. Monitoring of medical test orders and results continued at the local, regional, and national levels through a multi-level auditing process. Furthermore, additional contracted staff has been hired at the lab to improve efficiency. *Referred July 2011; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012. Closed and transmitted to the President and congressional oversight committees in February 2013.*

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

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

The investigation substantiated the allegation that the Dalton Departure Procedure posed a potential safety hazard and revealed that the number of safety reports relating to the procedure had increased by 450% within the last eleven years. It also confirmed the allegation that the FAA took no action to resolve the safety issues relating to the procedure following an internal investigation in 2009. Despite the Office of Inspector General's alarming findings, the agency report and supplemental report reflect that the FAA remained steadfast in its position that the Dalton Departure Procedure is a "safety enhancement." The FAA continued to operate the procedure without adequately addressing the confirmed safety risks until October 2011. OSC determined that some of the agency's findings, and its response to certain findings, did not appear reasonable. OSC noted however, that subsequent to DOT's submission of its reports to OSC, the whistleblower advised OSC that the FAA finally determined that the Dalton Departure Procedure "poses a safety hazard" and agreed to modify the procedure in a manner that provides the necessary gap in air traffic and separation between aircraft departing from Teterboro and arriving at Newark. The whistleblower confirmed that the FAA implemented an operational evaluation of the amended procedure, which remains in effect. Thus, it appears that the FAA has finally taken appropriate corrective action. *Referred February 2010; transmitted to the President and congressional oversight committees in May 2012.*

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

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

the helicopters were returned to service contrary to FAA policy and that there were “possible impacts to safety,” with more than 50 erroneous field approvals performed by an FAA Aviation Safety Inspector. Moreover, of the 29 aircraft inspected as of the date of the report, all had non-compliances and/or non-conformances. Of the 278 findings of non-compliance, 51 (18%) were potential safety concerns. Notably, between the time of the whistleblower’s 2008 allegations to OSC and the subsequent re-referral of his disclosures in 2010, the number of helicopters returned to service with potentially non-compliant modifications more than doubled. The reports indicated that up to 500 aircraft could be affected. As a result of the investigation following the second disclosure in 2010, the FAA has put into place a comprehensive corrective action plan to address all night vision modified aircraft. The Special Counsel found the report not reasonable, noting that it required the years-long persistence of one whistleblower and two referrals from OSC for the FAA to acknowledge that its oversight was lacking and to institute a comprehensive plan to systematically ensure compliance and, consequently, safety. *Referred July 2010; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012. Corrective action updates received; final transmittal to the President and congressional oversight committees in December 2012.*

Unsafe Departure Procedures and Faulty Wind Source Instruments at Detroit Airport. OSC referred to the Secretary of the Department of Transportation (DOT) allegations from an air traffic controller with the Federal Aviation Administration at Detroit Metropolitan Airport (DTW) that unsafe departure procedures and faulty wind source instruments were being used by controllers. Although the agency’s investigation did not directly substantiate these allegations, the report states that the two wind measurement instruments at DTW continue to provide different wind measurements at times. DOT did not conclude that these disparities presented a safety concern. Despite these findings, the agency pledged to complete a safety-risk analysis to determine the hazards associated with a change in the primary wind source equipment, and to collect data to isolate any technical reason for the divergent readings of the two devices and help elimi-

nate random differences. The agency also intends to improve the timely release of air traffic from DTW by changing published Standard Instrument Departure procedures so they can be issued to departing aircraft. The Special Counsel found the report not reasonable, stating that very slow progress has been made in two critical areas, both of which could benefit from important aviation safety improvements. *Referred February 2011; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012. Corrective action updates received; final transmittal to the President and congressional oversight committees pending.*

Failure to Ensure Airline Compliance with Federal Regulations on Aircraft Maintenance Programs. OSC referred allegations to the Secretary of Transportation received from Federal Aviation Administration (FAA) Aviation Safety Inspectors that the FAA failed to provide proper oversight of Delta Air Lines, Inc. (Delta) and failed to address the airline’s non-compliance with FAA Airworthiness Directives (ADs) and Federal Aviation Regulations (FARs). The whistleblowers alleged that FAA employees in the Delta Certificate Management Offices (CMO) in Atlanta, Georgia, and Bloomington, Minnesota, failed to ensure that Delta was in full compliance with the ADs and FARs governing Fuel Tank System (FTS) and Electrical Wiring Interconnection System (EWIS) maintenance programs. They alleged further that the airline’s non-compliance presented a substantial and specific danger to public safety through the use and operation of potentially unsafe aircraft. The Secretary tasked the Office of Inspector General (OIG) with the investigation into the allegations. The OIG investigation partially substantiated the allegations and concluded: (1) When the disclosures were filed with OSC, the FAA had not addressed the discrepancies in Delta’s FTS and EWIS maintenance programs, but the FAA has since formed an action plan to address them and the weaknesses identified in the FAA’s national guidance for implementing and overseeing the FTS and EWIS maintenance programs; (2) Delta is not required to copy verbatim “Instructions for Continued Airworthiness” tasks into the EWIS maintenance program; the OIG did not substantiate the allegation that the Delta CMO’s Supervisory Principal Avionics Inspector inappropriately approved the program; (3) the FAA

completed the recommendations from the OIG's 2009 report regarding Delta's compliance with ADS and FTS maintenance program requirements in June 2010, and the OIG determined that those actions were ineffective and substantiated the whistleblowers' allegation that the non-compliance continued; (4) Delta's failure to comply with FTS and EWIS requirements constitutes a failure of the airline's Continued Analysis and Surveillance System (CASS); and (5) the FAA's Regional Counsel has not finalized its review of the Enforcement Investigation Reports (EIRs) against Delta for non-compliance with an FTS AD but expects to finalize those actions in the coming months. *Referred July 2011; sent to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

Violation of Law, Rule or Regulation and Gross Mismanagement

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

The contract was offered under the U.S. Small Business Administration's 8(a) Business Development Program to Groundhog Excavating, Inc. (Groundhog). The Project Contracting Officer sent a solicitation to Groundhog and received an estimate of \$350,000, well over the government estimate of \$205,195. The whistleblower alleged that the Contracting Officer's

Representative (COTR) began communicating directly with Groundhog without the proper authority to do so, purportedly in an effort to have the project completed before the end of Fiscal Year 2010, and that this conduct violated the Federal Acquisition Regulation.

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

Violation of Law, Rule, or Regulation

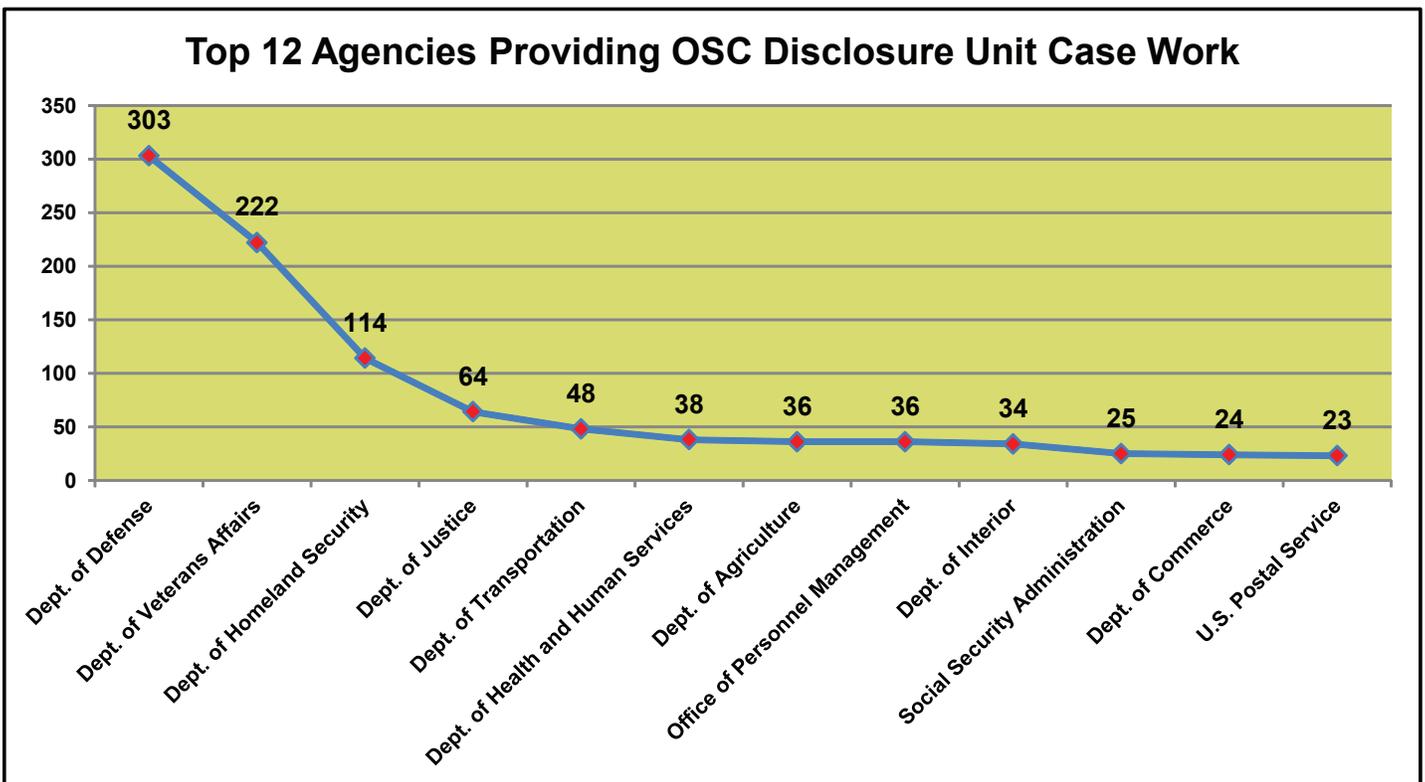
Employees Engaged in Gambling Activities on Federal Property and While on Duty. OSC referred to the Secretary of the Army allegations that employees of the Directorate of Logistics/Directorate of Public Works (DOL/DPW), Fort Leavenworth, Kansas engaged in gambling activities on Fort Leavenworth property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

Table 6 below contains FY 2012 summary data (with comparative data for the five previous fiscal years) on DU receipt and dispositions of whistleblower disclosure cases.

TABLE 6 Summary of Whistleblower Disclosure Activity - Receipt and Dispositions^a		FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Pending disclosures carried over from prior fiscal year		69	84	128	125	83	135
New disclosures received		482	530	724	961	928	1,148
Total disclosures		551 ^b	614	852	1,086	1,011	1,283
Disclosures referred to agency heads for investigation and report		42	40	46	24	47	39
Referrals to agency IGs		11	9	10	2	5	6
Agency head reports sent to President and Congress		20	25	34	67	22	36
Results of agency investigations and reports	Disclosures substantiated in whole or in part	19	22	30	62	21	31
	Disclosures unsubstantiated	1	3	4	5	1	5
Disclosure processing times	Within 15 days	285	256	394	555	555	583
	Over 15 days	182	232	333	451	315	473
Percentage of disclosures processed within 15 days		61%	52%	54%	55%	63%	55%
Disclosures processed and resolved		467	488	727	1,006	870	1,056

^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 re-employment 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. Finally, OSC provides USERRA outreach and training to the federal community and technical assistance to employers and employees with USERRA questions via telephone 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, OSC may act as his or her attorney and initiate an action before the MSPB.

Summary of Workload, Activity, and Results

Corrective Action

There has been a 25% corrective action rate for Demonstration Project cases. In addition, there were four referrals in FY 2012 that resulted in corrective action taken.

Referrals pending at end of fiscal year

These decreased 35%, from 17 in FY 2011, to 11 in FY 2012.

FY 2012 Accomplishments

The following are examples of individual corrective actions obtained by OSC for service members in FY 2012:

New Jersey

After returning home, an injured Iraq war veteran was not reemployed in his former job as a technician for the military because there was no record that he had left his job to perform military service. OSC investigated and located his former supervisor who confirmed that the service member had informed him of his military service. After OSC requested relief, the service member was reemployed in his civilian position with appropriate seniority, pay, benefits, and the opportunity to regain sound financial footing after returning from Iraq.

Florida

A doctor in the National Guard who was employed by a medical center had conflicts between her work schedule and her Guard training sessions. Despite communicating these conflicts, she suffered severe repercussions from the medical center: her performance review was unjustifiably negative, her hospital privileges were restricted, and she was denied promo-

tions, pay raises and other benefits. The doctor filed a USERRA complaint and OSC helped ensure that the medical center compensated her for its past discrimination, restored her hospital privileges, set her pay fairly, and rewrote her performance reviews objectively. In addition, OSC provided USERRA training to the hospital's management to help ensure such violations do not occur again in the future.

Wisconsin

A sergeant with the Wisconsin National Guard who served two tours of duty in Iraq held a civilian job as a military contractor. In 2010, while the service member was deployed, the military insourced the contractor positions, and rehired many of the sergeant's colleagues to the new civilian government jobs. However, when the sergeant returned from Iraq, the military refused to reemploy him. OSC helped the service member obtain a substantial monetary settlement, which provided him with the resources he needed to avoid foreclosure on his family's home.

Minnesota

A member of the Air Force Reserve claimed he was not reemployed at the proper seniority level and pay grade when he returned from active duty to his civilian job as a Loan Specialist for the government. OSC investigated and determined that the employee would have been promoted had he not been absent for military duty. At OSC's request, the government retroactively promoted him, ensuring that his military service did not disadvantage him in his civilian career.

Oklahoma

A member of the National Guard was offered a job as an Immigration Enforcement Agent, but he could not attend the initial training because it conflicted with an upcoming deployment. As a result, the agency rescinded its offer of employment. After an OSC investigation, the agency agreed to OSC's request to reinstate its employment offer and place the service member in the next available training that did not conflict with his deployment. Under USERRA, service members should not lose job opportunities because of their military duty.

Guam

A Department of Defense (DOD) agency refused to consider a National Guardsman for a civilian firefighter job because it mistakenly thought a DOD directive didn't allow the position to be filled by an active Guardsman. OSC discovered that the agency was also using the same directive to pressure other employees to quit National Guard and Reserve positions that they held. OSC advised the agency of its mistake, allowing the Guardsman to be considered for the job and ending the agency's discriminatory policy that undermined USERRA's purposes.

Georgia

A government worker was denied leave for an upcoming deployment with the Air Force Reserve after providing his supervisor with verbal notice and his military orders. The agency then demanded that he quit his deployment and return to his job or be fired. OSC contacted the agency, which rescinded its demand and made all the necessary changes to ensure the employee was approved for military leave and would be reemployed properly upon his return.

New USERRA Demonstration Project

The Veterans' Benefits Act of 2010, established a new 36-month Demonstration Project under which OSC receives, investigates, and attempts to resolve more than half of all USERRA complaints against federal executive agencies filed with VETS. (OSC also continues 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 USERRA cases under the Project on August 9, 2011.

Outreach and Education

During FY 2012, OSC worked to ensure that the federal government is a "model employer" under USERRA by (1) conducting USERRA training for federal agencies and at national conferences; (2) briefing veterans service organizations about OSC's USERRA program; and (3) providing technical assistance to service members and their employers through its telephone and e-mail USERRA questions hotlines.

Table 7 and **Table 8**, below, contain FY 2012 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 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Pending referrals carried over from prior fiscal year	3	3	5	7	12	17
New referrals received from VETS during fiscal year	4	15	41	32	36	24
Referrals resolved	4	13	39	27	31	30
Referrals resolved with corrective action	0	2	4	0	2	4
Referrals resolved with no corrective action	4	11	35	27	29	26
Referrals pending at end of fiscal year	3	5	7	12	17	11
Litigation cases carried over from prior fiscal year	0	1	1	1	1	0
Litigation cases resolved	0	1	0	1	1	0
Litigation resolved with corrective action	0	0	0	1	1	0
Litigation resolved with no corrective action	0	1	0	0	0	0
Litigation pending at end of fiscal year	1	1	1	1	0	0

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

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

^aOSC began receiving cases under this 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 workforce about the rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the Whistleblower Protection Act and Whistleblower Protection Enhancement Act.

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

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

OSC also informs the news media and issues press releases when it resolves 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 during the previous fiscal year. Complainants in prohibited personnel practice cases closed during FY 2012, claimants in USERRA demonstration project matters closed during FY 2012, 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, were they satisfied with the service received from OSC.

Due to the low response rate, typically 15%, and lack of geographic diversity among respondents, these results may not be representative samples. OSC is considering ways to improve our response rates and measure nonresponse bias in order to increase the utility of the survey.

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, D.C. 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/oscefile/>). 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, D.C. 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:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 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 at:

Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 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/oscefile/>). 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, D.C. 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, D.C. 20036-4505
Telephone: (202) 254-3600

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 Policy and Congressional Affairs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 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
Fax: (202) 653-5151*

APPENDIX A

Survey Totals

FY 2012	
Number Mailed	2,646
Number Returned	340
Response Rate	13%

Response Sources by Type of Matter at OSC

What was the nature of your correspondence to OSC? (Please choose only one)	
Response Options	FY 2012
You filed a complaint concerning a Prohibited Personnel Practice	283
You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity)	36
Your case involved a USERRA complaint	21

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 2012
Yes	50
No	192
Do not recall	38
Never employed by a federal agency	3

2. Did you obtain the result that you wanted from OSC?	
Response Options	FY 2012
Yes	18
No	265

3. Did your complaint include any allegation of reprisal for whistleblowing?	
Response Options	FY 2012
Yes	172
No	93

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 2012
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	27
No personnel action taken by the agency involved	20
Information that you disresolved did not appear to be a legally protected disclosure	14
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.	14
Insufficient proof of connection between your disclosure and the personnel action involved in your complaint	31
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	20
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	28
You or OSC settled the matter with the agency involved	9
You declined corrective action offered by the agency involved	2
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)	17
You withdrew your complaint	2
Other	66
Do not recall	20

*The above question applies only to PPPs 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 2012
Yes	63
No	181
Have not decided whether to file	21

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

Response Options	FY 2012
Yes	53
No	5
Do not recall	5

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

Response Options	FY 2012
Yes	4
Partially	6
No	21
Appeal pending	0

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

Response Options	FY 2012
Settlement	8
Decision after hearing	2
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 2012
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	8
No personnel action taken by the agency involved	5
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint	15
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	34
You or OSC settled the matter with the agency involved	3
You declined corrective action offered by the agency involved	0
You withdrew your complaint	0
OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action	0
OSC obtained a decision in the corrective action proceeding filed with the MSPB	1
Resolved for further action on discrimination allegations through EEO processes	0
Resolved through OSC's Mediation Program	0
Other	28
Do not recall	10

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

Service Categories to be rated	FY 2012 Ratings				
	Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	34	55	55	40	99
<i>Clarity of Oral Communications</i>	22	46	51	49	115
<i>Clarity of Written communications</i>	24	42	29	67	121
<i>Timeliness</i>	15	51	35	57	125
<i>Results</i>	8	6	13	50	206

APPENDIX C

FY 2012 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 2012
The OSC opinion advised that the person in question was free to carry out his or her planned political activity.	17
The OSC opinion advised that the person in question should not continue his or her planned political activity.	5
The OSC opinion was in response to a general question concerning the application of the Hatch Act.	6
Other	8

2. How would you rate the service provided by OSC in the following areas?					
Response Options	FY 2012				
	Very satisfied	Satisfied	No opinion/ inapplicable	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	20	7	1	1	7
<i>Clarity of Written Communications</i>	17	11	1	2	5
<i>Timeliness</i>	15	12	0	5	4
<i>Results</i>	14	5	5	3	9

APPENDIX D

FY 2012 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 2012
Yes	8
No	13
Do not recall	0
Never employed by a federal agency	0

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

Response Options	FY 2012
Yes	2
No	19

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

Response Options	FY 2012
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	10
Insufficient evidence that the personnel action involved in your complaint violated USERRA	2
You or OSC settled the matter with the agency involved	1
You withdrew your complaint	0
Other	6
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 2012
Yes	5
No	12
Do not recall	2

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

Response Options	FY 2012
Yes	5
No	0
Do not recall	0

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

Response Options	FY 2012
Yes	0
Partially	1
No	3
Appeal pending	1

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

Response Options	FY 2012
Settlement	0
Decision after hearing	0
Other	1

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

Response Options	FY 2012				
	Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	5	3	2	2	9
<i>Clarity of Oral Communications</i>	3	2	3	7	6
<i>Clarity of Written communications</i>	3	3	1	6	8
<i>Timeliness</i>	1	3	5	5	7
<i>Results</i>	1	1	0	2	17

APPENDIX E

Endnotes

¹Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.

²Unless 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.

³An 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.

⁴Public Law No. 107-71 (2001).

⁵See endnote 3.

⁶The 13 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. It should also be noted that the Whistleblower Protection Enhancement Act (WPEA) passed in November 2012 created a new prohibited personnel practice, (13) impose any nondisclosure policy, form, or agreement without informing employees of their whistleblower rights. A fuller description can be found in 5 U.S.C. § 2302 (b).

⁷OSC 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.

⁸Pursuant to 5 U.S.C. § 1212 note.

APPENDIX F: *List of Acronyms Used In Report*

ADR	Alternative Dispute Resolution
ATSA	Aviation and Transportation Security Act
AWOL	Absent Without Leave
CEU	Complaints Examining Unit
DHS	Department of Homeland Security
DOD	Department of Defense
DOL	Department of Labor
DOT	Department of Transportation
DU	Disclosure Unit
DVA	Department of Veterans Affairs
EEO	Equal Employment Opportunity
FAA	Federal Aviation Administration
FY	Fiscal Year
HAU	Hatch Act Unit
IG	Inspector General
IOSC	Immediate Office of the Special Counsel
IPD	Investigation and Prosecution Division
MOU	Memorandum of Understanding
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
OPF	Official Personnel Folder
OPM	Office of Personnel Management
OSC	Office of Special Counsel
PII	Personally Identifiable Information
TRACON	Terminal Radar Approach Control
TSA	Transportation Security Administration
USERRA	Uniformed Services Employment and Reemployment Rights Act
VETS	Veterans' Employment and Training Service
WPA	Whistleblower Protection Act
WPEA	Whistleblower Protection Enhancement Act

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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.

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