

ANNUAL RESULTS: STRATEGIC GOAL 1

To fulfill congressional intent that OSC use its investigative and prosecutorial authority to protect the merit system and federal employees from prohibited personnel practices (PPPs), especially retaliation for whistleblowing

<i>FY 2002 Performance Goals</i>	<i>FY 2002 Results</i>	<i>FY 2001 Results</i>	<i>FY 2000 Results</i>
<p>1. <u>Quality standards.</u> Develop clearly identified, written quality standards for case handling, investigation, and legal analyses, including communication with complainants (CPs). Devise measurement system, and incorporate in employees' performance plan.</p>	<ul style="list-style-type: none"> • Standards incorporated in new or revised policy and procedural issuances (e.g., directives and manuals). • Employees required to adhere to standards in policy and procedural issuances. • Standards distilled in program review guide. • Quality review process developed. 	<p><i>[Goal 1 not in FY 2001 plan, but pertinent results shown below.]</i></p> <ul style="list-style-type: none"> • Quality standards developed for use in post-closure quality reviews. 	<p><i>[Goal 1 not in FY 2000 plan.]</i></p>
<p>2. <u>Investigator/attorney consultation.</u> Develop written report with recommendations to Special Counsel to enhance investigator/attorney consultation, sharing of best practices, productivity, and overall quality of investigations and legal analyses. Consider options, including but not limited to, restructuring management ranks, consistent with the President's initiative to delayer the Federal hierarchy, revamping of time-counting to eliminate distinction between ID and PD, and use of incentives to foster improvements, including elimination of written reports of investigation, and cash awards under established, and measurable criteria.</p>	<ul style="list-style-type: none"> • Restructuring implemented in FY 2001. • Directive issued on authentication, organization, and maintenance of records in complaint and investigation files after FY 2001 case file protocol pilot test. 	<p><i>[Goal 2 not in FY 2001 plan, but pertinent results shown below.]</i></p> <ul style="list-style-type: none"> • Reorganization implemented. • Policies on stays, basis for CEU referrals, and investigator-attorney collaboration (including by supervisors) implemented. • Flexible formats adopted for reports of investigation and prosecution recommendations. • New case file protocol pilot-tested for more efficient and effective records management. • Matters may be closed in field office after review by field office head. • Increased use of § 1214(f) waivers (authorizing agencies to take disciplinary action). • Quality standards developed for use in post-closure quality reviews. • Case tracking system improved to provide better information needed to manage workload and productivity. 	<p><i>[Goal 2 not in FY 2000 plan, but pertinent results shown below.]</i></p> <ul style="list-style-type: none"> • Complaint and disclosure forms revised to make them more informative and user-friendly. • Mediation program implemented. • Accelerated Case Team made permanent.

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<p>3. <u>Develop and communicate consistent agency policies.</u> Develop and communicate agency policy on referral of cases for investigation, and other agency policies as developed. Communicate to all staff, and make public, where possible, on OSC web-site.</p>	<ul style="list-style-type: none"> • Agency intranet and/or shared network drives used to communicate new and revised policies and procedures to staff on timely, consistent basis; (e.g., directives, manuals, policy statements, legal analyses, model correspondence with complainants, style guidance, interagency memoranda; forms); policy statements posted on web site. • Training conferences / sessions conducted by each IPD, along with periodic meetings for division employees. • Bi-weekly meetings of senior program staff and management (including Special Counsel) held to ensure consistency and effectiveness of program and administrative policies and procedures. • Hatch Act training provided to IPD employees. 	<p><i>[Goal 2 not in FY 2001 plan, but pertinent results shown below.]</i></p> <ul style="list-style-type: none"> • See column above re: goal 2.) 	<p><i>[Goal 3 not in FY 2000 plan.]</i></p>
<p>4. <u>Case priority system/ resource allocation.</u> Develop clearly written policy for case handling by priority (according to particular types of PPP complaints and complexity level, including consideration of resource allocation); develop guidelines for implementation; devise measurement system within OSC 2000; and incorporate in employees' performance plans.</p>	<ul style="list-style-type: none"> • Directive on IPD case priority and resource allocation issued. • Automated case allocation system implemented. • Employees required to adhere to case priority and resource allocation directive. • CEU testing application and utility of IPD case priority and resource allocation procedures. 	<p><i>[Goal 4 not in FY 2001 plan, but pertinent results shown below.]</i></p> <ul style="list-style-type: none"> • Case priority system established (ensuring that most meritorious cases and serious personnel actions receive attention first). 	<p><i>[Goal 4 not in FY 2000 plan.]</i></p>

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<p>5. <u>Eliminate unnecessary steps.</u> Develop written agency-wide policies for the elimination of any unnecessary steps in case-handling. Identify case-processing steps that may be eliminated in some or all cases through encouraging ongoing communication among personnel management specialists, attorneys and investigators; develop strategy for implementation; devise measurement system; and incorporate in employees' performance plans.</p>	<ul style="list-style-type: none"> • Directive issued on case priority and resource allocation gave IPDs guidance and discretion to take identified actions to reduce duplication, eliminate unnecessary steps, and appropriately allocate resources. • Training conferences for two IPDs and all supervisors included exchange of best practices and ideas for improvement of case work quality and quantity. • Employees required to adhere to policy and procedural issuances. 	<p><i>[Goal 5 not in FY 2001 plan, but pertinent results shown below.]</i></p> <ul style="list-style-type: none"> • Matters may be closed in field office after review by field office head. • Flexible formats adopted for reports of investigation and prosecution recommendations. 	<p><i>[Goal 5 not in FY 2000 plan.]</i></p>
<p>6. <u>ADR.</u> Offer ADR option in 100% of appropriate cases, and track results.</p>	<ul style="list-style-type: none"> • ADR offered in 100% of mediation-appropriate cases.¹ • Mediation offers: 32% of CEU-referred complaints (goal - 20%). • Acceptance rates: 78% of complainants (goal - 65%), 66% of agencies (goal - 60%). • Mediations held: 20 cases (goal 26). • Resolution rate: 65% (goal 40%).² 	<p><i>[Goal 6 not in FY 2001 plan, but pertinent results shown below.]</i></p> <ul style="list-style-type: none"> • ADR offered in 100% of mediation-appropriate cases. 	<p><i>[Goal 6 not in FY 2000 plan, but pertinent results shown below.]</i></p> <ul style="list-style-type: none"> • Mediation pilot program implemented.

¹ Among the factors determining "mediation-appropriate" cases are the complexity of the issues, the nature of the personnel action, and the relief sought by the complainant.

² Resolution rate including disputes that settled or did not proceed in further in OSC complaint process because of ADR program in another agency: 85%.

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7. <u>Early settlement</u> . Continue to adhere to OSC's policy of early settlement of meritorious cases; monitor settlement of such cases.	<ul style="list-style-type: none"> • Early settlement of meritorious cases policy continued (<i>see Goal 9 results</i>). • Settlements monitored as needed to ensure agency implementation. 	(<i>see Goal 9 results</i>)	(<i>see Goal 9 results</i>)
8. <u>Case-tracking capability</u> . ISB to participate in development of priority system, and other goal-oriented changes, to ensure that OSC 2000 (OSC's in-house case-tracking system) has the capability to monitor and track all new case actions and priorities.	<ul style="list-style-type: none"> • ISB implemented automated case priority and resource allocation system and other changes needed to ensure that case tracking system can monitor and track new case actions and priorities. • ISB held bi-monthly OSC 2000 users' group meetings to exchange ideas. • Litigation tracking system developed and piloted. 	[<i>Goal 8 not in FY 2001 plan.</i>]	[<i>Goal 8 not in FY 2000 plan.</i>]

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<p>9. <u>Obtain voluntary corrective action; prosecute MSPB cases where voluntary action not forthcoming; and obtain disciplinary action where appropriate.</u> These policies are currently in place, but OSC's measurement system needs refinement. During FY 01, devise system for carefully tracking "reasonable grounds" determination in every PPP case, so that subsequent voluntary corrective actions, MSPB litigation, and disciplinary actions can be more accurately tracked.</p>	<ul style="list-style-type: none"> • 126 favorable actions,³ including 13 disciplinary actions, by agencies (78% of matters involved alleged reprisal for whistleblowing). • 1 disciplinary action complaint (alleging reprisal for whistleblowing) filed with MSPB. 	<ul style="list-style-type: none"> • 74 favorable actions, including 4 disciplinary actions, by agencies (53% involved whistleblower reprisal allegations).⁴ • No litigation required due to agreements by agencies to comply with all OSC requests for favorable resolutions. 	<ul style="list-style-type: none"> • 75 favorable actions, including 14 disciplinary actions, by agencies (68% involved whistleblower reprisal allegations).⁵ • 4 disciplinary action complaints (2 alleging reprisal for whistleblowing) filed with MSPB.

³ Actions taken to directly benefit the complaining employee; actions to punish, by disciplinary or other corrective action, the supervisor(s) involved in the personnel action; and systemic actions, such as training or educational programs, to prevent future questionable personnel actions. The term encompasses actions taken by an agency: (1) pursuant to a written request by the Special Counsel for corrective action; (2) at the request of OSC as settlement of a prohibited personnel practice complaint before receipt of a written request by the Special Counsel for corrective action; or (3) with knowledge of a pending OSC investigation, when the actions taken satisfactorily resolve matters under inquiry by OSC.

⁴ One additional corrective action obtained pursuant to referral of USERRA matter by Department of Labor.

⁵ Same as fn. 4.

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10. <u>Case-tracking capability</u> . ISB to ensure that OSC 2000 has the capability to monitor and track all “reasonable grounds” determinations.	<ul style="list-style-type: none"> • Further management evaluation determined that tracking “reasonable grounds” determinations was not needed / useful. 	<i>[Goal 10 not in FY 2001 plan.]</i>	<i>[Goal 10 not in FY 2000 plan.]</i>
11. <u>Monitor MSPB and Federal Circuit cases</u> . Establish formal staff responsibility for monitoring non-OSC, MSPB and Federal Circuit cases for amicus, intervention, or other opportunities for OSC to proactively shape PPP law. Staff responsibility should include regular reporting requirements.	<ul style="list-style-type: none"> • MSPB and Federal Circuit cases reviewed for potential intervention / <i>amicus</i> filing. • No intervention / amicus opportunities identified. 	<i>[Goal 11 not in FY 2001 plan, but pertinent results shown below.]</i> <ul style="list-style-type: none"> • 1 filing as <i>amicus</i> in case involving standard for protected disclosure applied by administrative judge (<u>Keefer v. Dept. of Agriculture</u>). 	<i>[Goal 11 not in FY 2000 plan, but pertinent results shown below.]</i> <ul style="list-style-type: none"> • 1 intervention on behalf of employee in case involving allegation of reprisal for whistleblowing - led MSPB to reverse ruling that had restricted scope of protected disclosures (<u>Ganski v. Dept. of the Interior</u>). • 1 filing as <i>amicus</i> in case involving allegation of reprisal for whistleblowing (<u>Schmittling v. Dept. of the Army</u>).
12. <u>Improve quality of correspondence with complainants</u> . Include written correspondence quality standard among standards to be developed by process discussed in Objective A, 1; devise measurement system.	<ul style="list-style-type: none"> • Model correspondence samples circulated and posted on agency intranet and/or shared network drives. • Substantive letters reviewed by a supervisor or ASC. • Correspondence quality standard incorporated in program review guide. 	<i>[Goal 12 not in FY 2001 plan.]</i>	<i>[Goal 12 not in FY 2000 plan.]</i>

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13. <u>Telephone conferences.</u> Continue CEU and PD practice of extending offer of telephone conference in pre-determination letters; devise system, with input from ISB, for collecting data on effectiveness of phone conferences by tracking numbers of cases in which complainants call to discuss case before final closure.	<ul style="list-style-type: none"> • Telephone conference policy continued in all pre-determination letters (and some closure letters). • Further management evaluation determined that tracking telephone conference data was not needed / useful. 	<i>[Goal 13 not in FY 2001 plan.]</i>	<i>[Goal 13 not in FY 2000 plan.]</i>

Other FY 2002 Results

CEU. Despite high staff turnover (approximately 1/3)⁶ during the year and significantly increased complaint intake over FY 2001, 7 CEU significantly reduced both its case inventory and backlog of older cases. At the start of FY 2002, CEU had 363 matters pending (of which 203, or 56%) were more than 90 days old). By the end of FY 2002, CEU reduced the number of pending matters to 337 (of which only 131 cases, or 40%) were more than 60 days old).

ADR. OSC's Mediation Program began its second full year of operations in FY 2002. Continual improvements during that time included a broader range of cases deemed eligible for mediation, extensive use of "pre-mediation" discussions⁸ and, whenever feasible, the conduct of mediations by telephone. These measures led to enhanced availability and use of the program by complainants and agencies, and resulted in significant cost-savings for cases resolved without the need for on-site investigation. The ability to conduct a majority of the mediations by telephone, for example, resulted in an average travel cost of less than \$350 per mediation.

IPDs. During FY 2002, staff productivity per FTE in resolving PPP complaints referred for investigation increased by approximately 30%, compared to the 3-2/3 years before the reorganization of OSC's Investigation and Prosecutorial Divisions in June of 2001. In addition, the backlog of overage PPP cases referred for investigation dropped from 232 at the end of FY 2001 to 167 at the end of FY 2002, a 28% decrease. Finally, while intake was fairly consistent between FY 2001 and FY 2002, the total number of pending PPP matters at OSC dropped in FY 2002 from 855 at the beginning of the fiscal year to 575 by the end of that period.

Other. Prior to creation of the Department of Homeland Security, OSC provided assistance to the new Transportation Security Administration by entering into an agreement to provide investigative services pursuant to any whistleblower reprisal complaints by the new airport security screeners.

⁶ Turnover may include selection for positions in other agency units, as well as departures from OSC.

⁷ OSC received 1,548 new complaints in FY 2002, nearly 20% more than the number received in FY 2001 (1,292).

⁸ These discussions are designed to help the parties form realistic expectations about the process, and well-defined objectives. They also give the ADR Specialist an opportunity to assess whether a case is best handled on-site or by telephone.