



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

**ANNUAL PERFORMANCE REPORT
OF THE U.S. OFFICE OF SPECIAL COUNSEL
FOR FISCAL YEAR 1999
PURSUANT TO THE GOVERNMENT PERFORMANCE AND RESULTS ACT**

MISSION

The U.S. Office of Special Counsel's (OSC's) mission is to: (a) protect federal employees and applicants, especially whistleblowers, from prohibited employment practices; (b) promote compliance by government employees with the law on political activity; and (c) facilitate disclosures of wrongdoing in the federal government.

OSC carries out this mission by:

- investigating possible prohibited employment practices, especially reprisal for whistleblowing, and pursuing appropriate remedies for apparent violations;
- providing advisory opinions and enforcing the law on allowable and unallowable political activity under the Hatch Act;
- operating an independent and secure channel for disclosure and resolution of wrongdoing in federal agencies; and
- promoting greater understanding of the rights and responsibilities of government employees under the laws OSC enforces.

In furtherance of that mission, OSC's Strategic Plan for fiscal year (FY) 1999 (Appendix A) defined the agency's long-term goals as follows:

- to ensure that actionable matters within its jurisdiction are identified and appropriate individual and systemic remedies are pursued in a timely and effective manner;
- to promote broader access to information about legal authorities governing employee rights and responsibilities; and
- to administer its resources in such a way as to further the accomplishment of the agency's mission.

FY 1999 PERFORMANCE GOALS

In furtherance of the goals set forth in OSC's Strategic Plan for FY 1999, the previous Special Counsel defined the agency's performance goals for that fiscal year as follows:

1. Design and initiate a pilot project to test the impact of Alternative Dispute Resolution on the disposition of prohibited personnel practice matters.
2. Acquire data on compliance by federal agencies with statutory informational program requirement.
3. Implement electronic filing of complaints and disclosures with the OSC (subject to FY 1998 feasibility review and assessment).
4. Replace 20% of the agency's information technology infrastructure.

THE NEW SPECIAL COUNSEL'S REVISED STRATEGIC PLAN AND ACTIVITIES BEYOND FY 1999 PERFORMANCE GOALS

When OSC submitted its FY 1999 Budget Justification to Congress, the agency noted that its Annual Performance Plan for that year was subject to revision by the new Special Counsel, whose nomination was then pending before the Senate. After taking office in May of 1998, and through FY 1999, the new Special Counsel conducted intensive reviews of operations and procedures carried out by the agency's program and support units. Based on these reviews, the Special Counsel decided to undertake activities that go beyond, and in some instances supersede, the goals in the previous Special Counsel's Annual Performance Plan (Appendix B).

The reviews conducted by the new Special Counsel indicated that a significant obstacle to OSC's success was and is case processing backlogs that adversely affect OSC's ability to deliver prompt and high-quality service to its customers in accordance with the time frames for processing prohibited personnel practice and Disclosure Unit matters set forth by law. As a result, the Special Counsel declared the reduction and elimination of these backlogs by FY 2004 to be one of the agency's highest priorities, and a focus of agency efforts through FY 1999 and beyond. In fact, annual performance plans after FY 1999 define the reduction of case processing backlogs as the first performance goal, with specific numerical benchmarks.

In addition to developing the Alternative Dispute Resolution program discussed below, the Special Counsel implemented the following measures in FY 1999:

- establishment of an Accelerated Case Team (ACT) pilot project within the Investigation Division to handle targeted case categories involving less serious personnel actions;
- reduction in the number of cases in which attorneys draft lengthy prosecution recommendations;
- elimination of preliminary determination letters by complaints examiners in cases over which OSC lacks jurisdiction;
- establishment of a policy in the Disclosure Unit of closing cases involving *de minimis* allegations of wrongdoing;
- redeployment of administrative staff into program functions; and
- increase in the staffing of the Disclosure Unit.

These initiatives resulted in OSC making significant progress during FY 1999 in several areas: (1) ACT investigators averaged more than twice the number of completed investigations than other investigative staff; (2) OSC achieved a 10 percent increase in the number of prohibited personnel practice matters investigated over the previous fiscal year; and (3) for the first time in OSC's history, the Disclosure Unit processed more cases than it received and reduced its backlog of overage cases by 33%. These and other accomplishments are discussed more fully in a December 1999 OSC report to the House and Senate Appropriations Committees of Congress on case backlogs ([Appendix C](#)).

A report on other OSC activities in FY 1999, by reference to goals expressed in the FY 1999 Annual Performance Plan, follows.



Performance Goal 1: Design and initiate a pilot project to test the impact of Alternative Dispute Resolution on the disposition of prohibited personnel practice matters.

This FY 1999 goal, contained in OSC's first Annual Performance Plan, was designed to assist in achieving the strategic goal that actionable matters within the agency's jurisdiction be identified and that appropriate individual and systemic remedies be pursued in a timely and effective manner. Specific numerical benchmarks for this strategic goal were not established for FY 1999. Rather, the plan deferred the establishment of such targets until implementation of a pilot program testing the impact of ADR on complaint processing procedures.

In developing this FY 1999 goal, the previous Special Counsel conceived of the pilot project as a means by which to test ADR's effectiveness, which – if proven – would be useful in establishing the benchmarks for performance of OSC's overall complaint processing activities. The relevant performance indicator was contained in the goal – *i.e.*, development of a pilot ADR program in FY 1999.

Intensive management reviews by the new Special Counsel and OSC's senior management staff in 1999 looked at all OSC case processing operations (including the handling of complaints and disclosures). As noted, the reviews confirmed significant, ongoing problems caused by case backlogs, and significant dissatisfaction by complainants and others with OSC's inability to process cases on a timelier basis and in keeping with statutory timetables. Further, the reviews also suggested that case backlogs interfered with OSC's ability to ensure the highest possible quality of work product in all cases before it.

Among other initiatives to address these problems, the reviews, as well as the increasingly widespread success of ADR programs in places of employment generally, contributed to a conclusion by the new Special Counsel that this FY 1999 performance goal was not ambitious enough. Instead of a pilot test, OSC decided to develop an ADR program as a permanent and integral part of the agency's complaint processing function, and a key tool in ongoing efforts to provide high quality service on a timelier basis.

FY 1999, therefore, was devoted to development of that program, rather than to initiation of a pilot. Implementation steps in FY 1999 consisted of the following:

1. *Interdivisional task force.* Over a period of several months, OSC staff members evaluated policy and operational issues; developed a framework for the use of trained mediators to attempt resolutions of prohibited personnel practice cases at an appropriate point in the complaint process; and reached a consensus on the hiring of an experienced professional to guide development and implementation of an ADR program at OSC.
2. *Selection of an ADR Specialist.* By the end of the fiscal year, OSC had hired an experienced ADR professional to develop, implement, and manage the OSC program in FY 2000.

Based on these efforts, at the beginning of FY 2000, OSC, with the assistance of the new ADR specialist designed such a program, and then conducted extensive staff training on ADR, including a one-day ADR awareness program for all OSC staff, and the first of two intensive one-week courses for staff members who will serve as co-mediators in the program. OSC launched its program in March 2000. Under the program, OSC will offer mediation to complainants and federal agencies in selected cases to resolve prohibited personnel practice complaints without the need for lengthy investigations or costly litigation

The first performance goal in OSC's FY 2000 Annual Performance Plan (Appendix D) calls for more efficient processing of complaints and other matters, and ongoing improvement of case processing procedures through elimination of inefficiencies. Implementation of the ADR program during this fiscal year is an essential strategy in support of that performance goal, and the larger FY 2000 Strategic Plan goal of consistently providing high quality services that expeditiously resolve matters brought before OSC within the time guidelines set by Congress (Appendix E).



Performance Goal 2: Acquire data on compliance by federal agencies with statutory informational program requirement.

This performance goal supported the FY 1999 strategic plan goal of providing the federal workforce with greater access to information about their rights and responsibilities under the laws enforced by OSC. The indicator of performance under goal was inherent in the goal itself – *i.e.*, the collection of information about the extent to which agencies were complying with the legal requirement, at 5 U.S.C. § 2302(c), that they inform their employees, after consultation with OSC, about employee rights and responsibilities under laws enforced by OSC.

Based on the new Special Counsel's management reviews of agency operations through FY 1999, OSC made raising federal employees' and managers' awareness of their rights and responsibilities under title 5 a high priority. The decision was driven by several considerations: (1) since 1994, federal agency heads have been required by 5 U.S.C. § 2302(c) to ensure, in consultation with the OSC, that employees are informed of rights and remedies under chapters 12 and 23 of title 5; (2) in fact, very few federal agencies have consulted with OSC about this statutory requirement; (3) full and effective compliance with this statutory requirement would promote a primary goal of the Whistleblower Protection Act – that federal employees feel free to come forward to report instances of official misconduct; and (4) full and effective compliance by agencies with the statute could result in OSC's receipt of fewer complaints of legal violations, both because such violations would not occur as frequently, and because employees would have a greater understanding of the law.

Consistent with the FY 1999 performance goal, information on compliance by federal agencies with the statutory informational program requirement was gathered during FY 1999 as follows:

Formal surveys of individuals who contact OSC for assistance. Since November of 1994, OSC has been required (by § 13 of Public Law 103-424) to conduct annual surveys of individuals seeking its assistance. The law specifies the questions to be asked, including whether the individual's employing agency informed the individual about his or her rights and responsibilities under title 5. Since then, OSC has surveyed persons in cases closed each fiscal year. Survey recipients are persons in closed cases who alleged a prohibited personnel practice or violation of other law; filed a whistleblower disclosure; or received a written advisory opinion by OSC in response to questions about allowable political activity under the Hatch Act.

During FY 1999, OSC surveyed all individuals whose matters had been closed during FY 1998. As in prior years, response rates were very low; and answers to the agency information question measure employee perceptions more than the content of agency efforts. Nevertheless, as reported in OSC annual reports, answers to this question since the survey program began in 1995 have been consistent: respondents do not perceive that agencies have implemented § 2302(c) in a systematic or meaningful way, especially in connection with prohibited personnel practices and whistleblower disclosures.

Meetings and conferences. The OSC solicited information about agency compliance with the informational program requirement at a variety of meetings hosted by the Special Counsel, or events in which she and other OSC staff participated. These included a meeting by the Special Counsel with the Office of Personnel Management's OPM's Interagency Group (which includes high-level human resources personnel from

each cabinet-level agency), town hall and interagency meetings attended by agency labor relations, employee relations, and human resource management professionals, as well as employee and agency legal representatives. Responses by attendees to verbal polls at these sessions (including the meeting with the Interagency group) indicated almost universal ignorance of the statutory requirement.

Congressional oversight activities. Through interactions with agencies anticipating or engaged in congressional oversight hearings, OSC acquired data on their levels of compliance with the statutory requirement.

Outreach program activities. Through contacts with other agencies in connection with requests for OSC speakers, brochures, and other materials, information was collected about the relevant agency's level of activity in informing their employees about their rights and remedies under title 5. Data collected from all of these sources during FY 1999 suggested that, agency compliance is far from what Congress intended when it enacted section 2302(c) in 1994. The FY 2000 annual performance goal of raising federal employees' and managers' awareness of their rights and responsibilities under the statutes enforced by OSC is a direct result of the information gathered in FY 1999 in furtherance of this performance goal.

Indeed, based on that information, the Special Counsel undertook proactive, broad-based outreach efforts to federal agencies, employees, and their representatives in FY 1999. These efforts began with the hiring of an Outreach Specialist in February of that year, representing the first time in the agency's history that it had dedicated an entire position to this function. By the end of FY 1999 that employee had, among other things updated existing outreach materials (such as brochures and posters), developed new informational materials (*e.g.*, a summary of employee rights, with examples of prohibited personnel practices), and coordinated OSC's participation in several high-impact, time-critical employee information initiatives (including joint, agency-wide training programs with three other agencies, described further below).

The following is more detailed information about the most significant outreach activities undertaken by OSC in FY 1999:

a. Publications. The OSC –

- revised and reissued its basic program brochure, "The Role of the U.S. Office of Special Counsel" (which can be downloaded from OSC's Web site, at <http://www.osc.gov/Documents/oscrole.pdf>);
- created a new, two-page summary for federal employees, suitable for e-mailing, entitled "Your Rights as a Federal Employee (can be downloaded from Web site, at <http://www.osc.gov/Documents/rights.pdf>);
- developed a revised guide in Power Point format on employee rights and remedies under title 5, for use by agencies in implementing the statutory informational program requirement (available for downloading from Web site, at http://www.osc.gov/Documents/lpg_TS.ppt); and
- revised posters dealing with prohibited personnel practices, reprisal for whistleblowing and the Hatch Act, and created a new federal Hatch Act poster.

b. Web Site. OSC substantially redesigned its Web site and launched the upgraded version in January of 1999. One of the most concrete measures of the site's success in its first year of operation was more than a four-fold increase in user sessions – from 3,182 in January of 1999, to 13,675 in January of 2000. OSC placed its basic brochure, the two-page employee rights guide, and the Power Point informational program guide on the Web site. Order forms for those and other OSC informational materials, and forms to request agency speakers were also provided at the site.

c. Agency-wide initiatives. OSC worked with representatives of the Department of Energy (DOE), the Department of Veterans Affairs (DVA), the Customs Service, the Internal Revenue Service (IRS), and the Small Business Administration (SBA) to provide broad-based training. Among the employee information measures undertaken by those agencies in cooperation with OSC were the following:

- letters reinforcing and affirming whistleblower protections from the agency head to all employees (DVA, IRS);
- mailings of "The Role of the OSC" brochure to all employees (Customs Service, IRS);

- satellite training for employees, managers, and/or officials serving as ongoing liaisons with OSC (Customs Service, DVA, IRS); and
 - e-mailings of the two-page OSC guide on employee rights to all employees (DOE, SBA).
- a. *Speaking engagements.* OSC provided a total of 76 speakers to 51 training conferences, forums, or other public events, concerning OSC's role, and the rights and responsibilities of federal employees under the whistleblowing and employee protection laws it enforces.



Performance Goal 3: Implement electronic filing of complaints and disclosures with the OSC (subject to FY 1998 feasibility review and assessment).

This performance goal supported the strategic plan goals of (a) ensuring that actionable matters within its jurisdiction are identified and appropriate individual and systemic remedies are pursued in a timely and effective manner; and (b) administering its resources in such a way as to further the accomplishment of the agency's mission. The goal was designed to enable the OSC to use information technology resources in such a way as to facilitate wider, faster, and easier access by federal employees to OSC programs and services. Again, the principal performance indicator in FY 1999 was implicit in the goal – *i.e.*, development, if feasible, of an electronic complaint filing capability.

The process by which complaints and disclosures are filed with OSC was examined as part of the intensive review of agency operations undertaken by the new Special Counsel and her management team before and during FY 1999. Determinations were made that electronic filing would continue to be an agency goal, but that other steps needed to be taken before that goal could be accomplished. The intermediate steps undertaken in FY 1999 included:

- installing and deploying an OSC Web server;
- transferring administration of the agency's Web site from the Government Printing Office to an OSC domain (at *www.osc.gov*); and
- completely redesigning and upgrading the Web site to provide more content, improve ease of navigation, and enhance the visual appeal of the site as a whole.

OSC posted its complaint and disclosure forms on the agency's revamped Web site in January of 1999, for downloading and submission to OSC by mail or by fax. Evaluations of usage patterns since the redesigned site was launched indicated that OSC forms were consistently among the most frequently visited and downloaded pages. The data confirmed that electronic filing of complaints and disclosures with OSC would likely be a useful service to persons seeking OSC's assistance. OSC, therefore, intends to begin implementation of electronic filing in FY 2000.

OSC's FY 2000 annual performance plan includes the goals of (a) implementing a plan for necessary upgrades of the technology infrastructure, and (b) continuing to eliminate inefficiencies in the case handling process. Plans underway this fiscal year to begin implementing electronic filing procedures (after acquisition of the necessary software, and development of technical and program operating procedures) build upon the results accomplished in FY 1999, and will directly contribute to accomplishment of our FY 2000 goals.



Performance Goal 4: Replace 20% of the agency's information technology infrastructure.

This performance goal supported OSC's strategic plan goal of administering its resources in such a way as to further the accomplishment of the agency's mission. OSC was able to achieve this goal ahead of schedule, through replacement or upgrade of slightly more than half of its inventory in FY 1998, with the result that OSC was able to address other critical infrastructure needs in FY 1999. Program priorities for the year were established after comprehensive review by the new Special Counsel and her management team of the information technology plan developed in 1998 and operations under that plan.

In addition to the Web site-related measures listed under Performance Element 3, program accomplishments in FY 1999 under this element included the following:

- installation of Y2K-compliant elements in agency computer and other systems;
- design and testing of a new, Y2K-compliant case tracking system;
- establishment of direct, high-speed Internet access;
- initiation of migration to FTS 2001; and
- improvement of systems performance and availability (through standardization of systems and procedures).

OSC's FY 2000 annual performance plan calls for the agency to implement a plan for necessary upgrades of technology infrastructure, together with staff training. OSC efforts in FY 2000 build upon priorities established and results achieved in FY 1999. For example, OSC began FY 2000 with a successful transition to a Y2K-compliant case tracking system, accompanied by staff training on the new system. The year will be devoted to refinement of the system to enable it to fully respond to management and staff information needs in the tracking of matters handled by OSC, among other technology enhancements to agency systems.