FY2006 Performance and Accountability Report

November 15, 2006

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A Message from the Special Counsel

It is my pleasure to present the Office of Special Counsel's Performance and Accountability Report for Fiscal Year 2006.

This agency has a proud history of serving the federal workforce and the public through its tenacious defense of the merit system principles that continue to safeguard the integrity of the executive branch agencies of the United States.

Fiscal Year 2006 marks only the third year the Office of Special Counsel was required to have a financial audit. I am happy to report once again the agency's strong results, which include no reportable conditions and no material weaknesses.

To all of those who rely on our counsel, our service, and our protection, be assured that we will continue striving for excellence. Thank you for your continued trust and confidence.

Sincerely,

Scott J. Bloch
Special Counsel

I. Agency at a Glance

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment, by protecting employees and applicants from prohibited personnel practices (PPPs), especially reprisal for whistleblowing. In addition, the agency operates a secure channel for federal whistleblower disclosures of violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. Finally, OSC enforces federal employment rights secured by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

OSC currently has approximately 108 FTE and three career staff vacancies.

II. Statutory Background

OSC was first established on January 1, 1979.[1] From then until 1989, it operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board ("the Board"). By law, OSC received and investigated complaints from current and former federal employees, and applicants for federal employment, alleging prohibited personnel practices by federal agencies; provided advice on restrictions imposed by the Hatch Act on political activity by covered federal, state, and local government employees; and received disclosures from federal whistleblowers (current and former employees, and applicants for employment) about wrongdoing in government agencies. The office also enforced restrictions against prohibited personnel practices and political activity by filing, where appropriate, petitions for corrective and/ or disciplinary action with the Board.

In 1989, Congress enacted the Whistleblower Protection Act. The law made OSC an independent agency within the Executive Branch, with continued responsibility for the functions described above. It also enhanced protections against reprisal for employees who disclose wrongdoing in the federal government, and strengthened OSC's ability to enforce those protections.[2]

The Congress passed legislation in 1993 that significantly amended Hatch Act provisions applicable to federal and District of Columbia (D.C.) government employees, and enforced by OSC.[3] Provisions of the act enforced by OSC with respect to certain state and local government employees were unaffected by the 1993 amendments.

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

OSC's 1994 reauthorization act expanded protections for federal employees, and defined new responsibilities for OSC and other federal agencies. It 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, exists, or is to be taken. The act extended the protections of certain legal provisions enforced by OSC to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under these provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the Whistleblower Protection Act, and directed agencies to consult with OSC in that process. [5]

In November of 2001, Congress enacted the Aviation and Transportation Security Act,[6] which created the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the MSPB.

OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. The MOU did not (and could not), however, provide for OSC enforcement action before the MSPB, or for individual right of action (IRA) appeals by security screeners to the MSPB.

III. The Mission of the U.S. Office of Special Counsel

OSC's mission is to protect current and former federal employees, and applicants for federal employment, especially whistleblowers, from prohibited employment practices; promote and enforce compliance by government employees with legal restrictions on political activity, and facilitate disclosures by federal whistleblowers about government wrongdoing. OSC carries out this mission by:

- investigating complaints of prohibited personnel practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
- providing advisory opinions on, and enforcing Hatch Act restrictions on political activity;
- operating an independent and secure channel for disclosures of wrongdoing in federal agencies;
- protecting reemployment and antidiscrimination rights of veterans under the USERRA; and
- promoting greater understanding of the rights and responsibilities of federal employees under the laws enforced by OSC.

IV. Organizational Structure of OSC

OSC maintains its headquarters office in Washington, D.C. Four field offices are located in Dallas, Oakland, Detroit, and Washington, D.C.

Agency components during FY2005 include the Immediate Office of the Special Counsel (IOSC), five operating units/divisions and six supporting offices explained in detail below.

Immediate Office of the Special Counsel. The Special Counsel and staff in IOSC are responsible for policymaking and overall management of OSC. They also manage the agency's congressional liaison and public affairs activities, and its outreach program, which includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

Complaints Examining Unit. This is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction.[7] This unit is responsible for screening approximately 1,700 prohibited personnel practice cases per year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation.[8]

Disclosure Unit. This unit is responsible for receiving and reviewing disclosures received from federal whistleblowers. It advises the Special Counsel on the appropriate disposition of the information disclosed (including possible referral to the head of the agency involved for an investigation and report to OSC; referral to an agency Inspector General; or closure). The unit also reviews agency reports of investigation, to determine whether they appear to be reasonable and in compliance with statutory requirements before the Special Counsel sends them to the President and appropriate congressional oversight committees.

Investigation and Prosecution Division. The Investigation and Prosecution Division (IPD) is comprised of four field offices. The IPD conducts field investigations of matters referred after preliminary inquiry by the Complaints Examining Unit. Division attorneys conduct a legal analysis after investigations are completed to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. Investigators work with attorneys in evaluating whether a matter warrants corrective action, disciplinary action, or both.

If meritorious cases cannot be resolved through negotiation with the agency involved, division attorneys represent the Special Counsel in litigation before the Merit Systems Protection Board. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, division investigators and attorneys also investigate alleged violations of the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act. However, under a new pilot program, most USERRA functions will be housed in a new USERRA unit in the Special Projects Unit to assure uniformity of policy regarding the new pilot.

Hatch Act Unit. The unit issues advisory opinions to individuals seeking information about Hatch Act restrictions on political activity by federal, and certain state and local, government employees. The unit is also responsible for enforcing the act. It reviews complaints alleging a Hatch Act violation and, when warranted, investigates and prosecutes the matter (or refers the matter to the Investigation and Prosecution Division for further action). It will also oversee Hatch Act matters farmed out to the IPD.

USERRA/Special Projects Unit. This unit uses senior trial lawyers to work cases of high priority and has also been used by the Special Counsel to conduct internal research on the processes and procedures of the operational units at OSC. In addition, this unit handles the new special project assigned by P.L. 108-454 that requires OSC to investigate the re-employment rights of military service members under USERRA, which involves new functions, increased caseload, and new personnel.

SUPPORTING UNITS:

Alternative Dispute Resolution Program In selected cases referred by the Complaints Examining Unit for further investigation, the agency contacts the complainant and the agency involved, and invites them to participate in OSC's voluntary Mediation Program. If mediation resolves the complaint, the parties execute a written and binding settlement agreement; if not, the complaint is referred for further investigation.

The mediation program for Alternative Dispute Resolution has been reorganized. Rather than have a single ADR specialist under the leadership of an SES employee, the agency has expanded the program through cross-training multiple individuals from each of OSC's operating units. As a result the agency now has a broad pool of trained mediators with different legal areas of expertise.

Legal Counsel and Policy Division. This division provides general counsel and policy services to OSC, including legal advice and support on management and administrative matters; legal defense of OSC in litigation filed against the agency; policy planning and development; and management of the agency ethics program.

Management and Budget Division. This division provides administrative and management support services to OSC, in furtherance of program, human capital, and budget decisions. Division also includes the Information Technology Branch (formerly Information Systems Branch), Human Resources Branch, Document Control Branch and Budget and Procurement branch. The purpose of this division is to put the administrative support functions under one authority.

Training Office. A training office has been created to train all new employees, cross train existing employees, and develop specialized training in areas such as litigation skills. Specifically, the Training Office will cross train attorneys and investigators to enable them to traverse organizational boundaries within the agency. They will develop sufficient expertise in several areas of the law, giving management the ability to detail employees to address any potential backlogs that could form in the various units.

V. Performance Goals and Results

In last year's Performance and Accountability Report, OSC reported how the chronic problem of backlogged Prohibited Personnel Practice (PPP) cases, Hatch Act cases and Disclosure Unit cases had been reduced through tremendous effort by the entire agency over an 18-month period. The good news to report in this year's request is that the agency, again through hard work and diligence, has been successful in avoiding a recurrence of any of the three types of backlog. The streamlined processes and logically reorganized organizational structure put into place with the agency reorganization during FY 2005 were the other contributors to the agency's ability to defy resurgent backlogs.

While OSC continues to experience a high caseload level, the agency stands in a vastly improved position entering FY 2007 – with virtually no case backlogs.

OSC'S results in FY 2006 include:

1. The Special Counsel's willingness to prosecute federal agencies for violations of the law again achieved strong results. Prior Special Counsels had never filed any USERRA enforcement actions with the U.S. Merit Systems Protection Board (since USERRA was passed in 1994). In FY 2005, OSC set a precedent by filing three USERRA cases in one year, receiving full corrective action in all three cases. In FY 2006, OSC filed and successfully prosecuted one USERRA appeal and obtained full corrective action on behalf of the claimant - who had been informed by the U.S. Department of Labor that his case had no merit. This willingness to prosecute USERRA violations also causes more corrective action settlements prior to litigation. OSC achieved a record 19 USERRA corrective actions in the first ten months of FY 2006.

2. During FY 2006, the Special Counsel again focused on raising the profile of the Uniform Services Employment and Re-employment Rights Act (USERRA), so that returning reservists and veterans are aware of their rights and of the existence of OSC. In early 2005, OSC's role in enforcing USERRA again expanded. Pursuant to a demonstration project established by the Veterans Benefits Improvement Act of 2004 (VBIA), P.L. 108-454, signed by President Bush on December 10, 2004, OSC, rather than the Department of Labor's Veterans Employment and Training Service (DOL VETS), has the authority to investigate federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit. Under the project, OSC also receives and investigates all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction regardless of the person's social security number. During FY 2006, the second year of the demonstration project, OSC is on track to receive approximately 125 cases from DOL VETS, in addition to approximately 80 cases that come directly to OSC from veterans. This pilot project has already shortened the processing times for members of our armed forces who are

discriminated against in employment.

3. OSC's Outreach Program efforts have succeeded in educating federal agency managers and employees concerning their responsibilities and rights. OSC also assisted federal agencies to fulfill their statutory obligation to consult with OSC concerning informing federal employees of their rights under the laws that OSC enforces.[9] OSC formally launched its government-wide 2302(c) Certification Program in October 2002. Since that time, 51 agencies (including Cabinet-level agencies such as the Departments of Labor, Energy, State, Transportation, Education, Health and Human Services and Veterans Affairs) have registered for the program.

4. OSC continues to enhance its resources for conducting mediations. Instead of having one full time mediator, seven people from different parts of the agency have received training in conducting mediations. OSC now has a cadre of professionals with varied skills and legal expertise in multiple areas from which to draw.

5. The agency hired two extraordinarily qualified employees through the Federal Career Intern program and one highly qualified employee through the Veterans Recruitment Appointment (VRA) program.

6. During FY 2006, OSC's Strategic Plan was re-written and the agency's Performance Goals were thoroughly re-designed. They are now measurable, finite, and tied directly to the four statutory missions of the agency. They deal with timeliness, quality, and outreach (where applicable) for each enforcement mission. The Senate Appropriations Committee expressed their satisfaction with the changes in the budget hearing in March of 2006.

7. In November OSC won removal of an agency attorney in California who used his office to effect fundraising and organizing activities for his political party through his office computer during office hours. The Merit Systems Protection Board upheld this decision in August, 2006.

8. In March Special Counsel Scott Bloch presented 2302(c) certification to MSPB Chairman Neil McPhie. OSC is certifying that MSPB has taken the required steps to ensure its employees are informed about their rights under the law. Increased outreach to inform federal workers of their rights has been cited as a major factor in ensuring that workers are aware of their rights and feel secure in exercising them.

9. In March OSC won admission of guilt on Hatch Act violations from the former Mayor of Atlantic City, Lorenzo Langford. Langford is temporarily barred from government service. His position as mayor included administration of federal grants, rendering him covered by the Act. Langford had committed multiple violations, including ordering his subordinates to engage in political activities and abusing his office.

10. In April Special Counsel Scott Bloch sat on a panel at the National Press Club with the MSPB Chairman, moderated by Bill Bransford of the Senior Executives Association. They discussed misconceptions among federal employees and managers that hamper the

proper application of employee rights under the law. They also discussed potential changes to the law that would aid employees.

11. In June OSC achieved corrective action (reinstatement, promotion, back pay) for serviceman Russell Jones from the Army Corps of Engineers. Jones had been told that his case was worthless, but OSC was able to obtain full corrective action on his behalf.

12. In June the Special Counsel presented 2302(c) certification to the General Counsel for the Department of Homeland Security, Phil Perry. OSC is certifying that DHS has taken the required steps to ensure its employees are informed about their rights under the law.

13. In July the Special Counsel testified before the House Government Reform Committee's subcommittee on the federal workforce. The hearing was regarding a bill to create a commission, on which the Special Counsel would sit, that would study ways to improve the federal employee appeals process. The Special Counsel offered OSC's own efforts at backlog resolution, including vigorous management and a well-regulated screening unit. He expressed an eager willingness to cooperate with the other agencies and the committee to find ways to improve the process.

14. In September Leroy Smith received the Public Servant of the Year Award from OSC. As in past years, this award is presented to the public servant who has performed an outstanding service to the public through OSC. Smith blew the whistle on unsafe and potentially deadly activities at the Bureau of Prisons, where not only inmates but also staff were at risk due to dangerous chemical recycling operations. Currently, the Justice Department is investigating OSC's allegations that BOP and Federal Prison Industries have failed to take corrective action.

In spite of these successes, OSC faces serious challenges. For fiscal reasons OSC has not hired up to its approved level of 113 FTE during FY 2006. Several positions have been filled with part time employees, in order to further reduce salary and benefit expenditures.

Although the elimination of backlogged cases has helped OSC achieve its strategic goals of protecting federal employees from PPPs, protecting the merit system, and guarding the public interest through its Disclosure Unit, there are other important ways in which the agency must gauge its success. OSC made progress on improving the timeliness to review PPP cases (89% processed in less than 240 days during FY 2006, a 22% improvement). OSC's percentage of whistleblower disclosures handled in less than 15 days dropped slightly to 42% in FY 2006 (down from 50% in FY 2005). A major focus of OSC during the next two years will be the measurable realization of more progress in this area.

VI. OSC's Systems, Controls, and Legal Compliance

Management control activities carried out by OSC include periodic reviews of agency administrative and program elements to assure that obligations and costs comply with applicable laws; funds, property and other assets are safeguarded; revenues and expenditures are properly recorded and accounted for; and programs are efficiently and effectively carried out in accordance with law and management policy. During FY 2006, reviews were completed on the following agency administrative operations:

1. Information Security Program. OSC's Chief Information Officer conducts an annual security review. The results of this review were summarized in the agency's Federal Information Security Management Act (FISMA) Report, submitted to OMB in early October, 2006. The review found no material weaknesses in the agency's information technology policies, procedures, or practices. Further, there were no security incidents affecting critical agency information systems.

2. GAO Correspondence: On October 15, 2004, GAO produced a correspondence entitled "U.S. Office of Special Counsel's Role in Enforcing Law to Protect Reemployment Rights of Veterans and Reservists in Federal Employment. GAO-05-74R, which analyzes how OSC carries out its responsibilities under USERRA, including processing times and changes made by OSC to handle current claims and any increase in claims.

   This correspondence reported favorably on OSC's processes and results, noting that OSC obtained corrective action from Federal Employers on all USERRA claims that had merit. It also outlined the possible benefits to service members from having OSC handle USERRA claims earlier in the process. This later became a reality with the passage of the Veterans Benefits Improvement Act of 2004, Pub. L. No. 108-454, § 204, 118 Stat. 3606, which requires DOL and OSC to carry out a three-year demonstration program under which certain federal sector claims under USERRA are to be referred to OSC for initial investigation and resolution.

   Even though the demonstration project created by the VBIA is still in its third year, GAO is currently studying the results of the program so far, the reductions in processing times for the claims filed by the veterans and reservists, and the quality of the investigations.

3. Financial Audit. OSC is undergoing its third financial audit. The agency's first audit was in FY 2004. The auditors reported no material weaknesses in FY 2004 or FY 2005. The FY 2006 audit addresses accounting and procurement procedures and operations, almost all of which were accomplished by the Bureau of Public Debt (BPD) at the Department of the Treasury under an interagency outsourcing agreement. The audit will not be completed until early December 2006. In the event that any material control weaknesses are identified during this year's audit, they will be discussed in the next FMFIA/IG Act report.

4. OSC Capitalization Policy. In November of FY 2005, OSC created a capitalization policy for assets with purchase price over $50,000. This policy is in place and reviewed quarterly, to determine if OSC has additional assets to capitalize.

5. HSPD-12. To comply with the security requirements of directive HSPD-12, OSC signed an agreement for with the Department of Interior for the issuance of PIV cards to OSC employees. OSC met the October 2006 deadline to have a process in place and at least one card issued.

In FY 2006, several OSC financial management activities including procurement, budget accounting, financial accounting, reporting accounting, and travel services were administered by BPD. OSC personnel and payroll data entry transactions were processed by the Department of Agriculture's (USDA's) National Finance Center (NFC). These operations were administered under cross-servicing agreements with both departmental entities. For information on any significant management control issues related to services provided under these agreements, OSC relies on information received from BPD and NFC, and any audits or other reviews issued by the Treasury and USDA OIGs, their Offices of the Chief Financial Officer (OCFO), and the General Accounting Office (GAO).

On April 18, 2005, there was a GAO Correspondence entitled "Bureau of the Public Debt: Areas for Improvement in Information Security Controls" GAO-05-467R, which pointed out that the FY 2004 audit at BPD identified six new general information security control issues. It also states that BPD informed GAO that it has taken corrective action to address these issues, and further notes that BPD has made significant progress in addressing open recommendations from prior years' audits. Additionally, the correspondence points out that none of these findings pose significant risk to the BPD financial systems. These GAO conclusions lead OSC to conclude that the objectives of its management control program for its transactions handled by BPD were met for FY 2006.

Reports on NFC operations have identified internal control or other problems detailed in USDA OIG and/or OCFO reports required by law to be submitted to the President and Congress. These include OIG Report No. 11401-20-FM, "Fiscal Year 2004- Review of the National Finance Center General Controls" (October 2004). The report identifies eleven technical control issues. However, OSC transactions processed by NFC during FY 2006, however, do not appear to have been affected by the problems reported. OSC will, however, follow up on findings when warranted.

VII. Future Effects of Known Demands, Risks, Uncertainties, Events, Conditions, and Trends

In the past several years, the agency has experienced an increase in caseload level. There are a number of factors which have contributed to this level of complaint filings with OSC:

- A string of Hatch Act cases involving high-profile employees over the last three years has resulted in significant national press coverage. There is now a heightened awareness of the Hatch Act among Federal employees. The number of Hatch Act complaints received in FY 2006 (300) exceeds the numbers received previously in any year. Hatch Act complaints in FY 2008 are projected to be the highest number yet, due to the upcoming presidential election.

- Due to OSC's more vigorous focus on USERRA complaints from members of our armed forces, increased numbers of such complaints are being filed with OSC.

- In recent years, OSC has had a large number of high-profile whistleblower cases, leading to increased national press coverage of OSC. FY 2006 continued this trend.

- OSC continues to investigate whistleblower retaliation complaints from Transportation Security Agency (TSA) security screeners under OSC's Memorandum of Understanding (MOU) with TSA. This MOU remains viable despite the Merit System Protection Board's decision that the Board does not have jurisdiction to adjudicate these matters.

- During FY 2006, OSC continued to certify more agencies through its outreach program. As agencies implement the certification process, agency employees who might previously have been unaware of their rights and remedies through OSC are becoming informed.

- In addition to OSC's certification program, OSC continues to provide outreach programs to agencies requesting them, or as part of OSC settlements in particular matters.

The effect of these trends is that caseloads will continue increasing. OSC must therefore continue adding personnel with relevant skills who can contribute quickly when they come into the agency.

The Special Counsel continues to stress the importance of further development of OSC's agency-wide cross training program. This is an important initiative, which provided for unprecedented efficiency at OSC by developing the agency's employees to the point where they have sufficient expertise to operate in more than one of OSC's highly specialized units, and can therefore cross organizational boundaries to address the case backlogs in their initial stage.

Since February 2005, OSC has been investigating certain federal sector USERRA claims under the demonstration project explained in the Performance Goals and Results section on page nine of this document. OSC, rather than the Department of Labor's Veterans Employment and Training Service (VETS), has the authority to investigate federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit. Under the project, OSC also receives and investigates all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction regardless of the person's social security number. The demonstration project ends on September 30, 2007, and Congress will determine whether OSC will continue to have investigative responsibility over federal sector USERRA claims. The decision from Congress could bring with it the necessity for OSC to add staff to take on more than just the cases of those service members with odd-numbered social security numbers.

VIII. Comments on Final FY 2006 Financial Statements

- OSC's Asset Capitalization Policy has been in place for two years. It pertains to assets with initial purchase price over $50,000. The agency's phone system falls under this policy, and was initially capitalized in the amount of $108,650. Net book value is now $67,371. Additionally, $272,528 in various leasehold improvements were added to the list of capitalized assets during FY 2006.

- An ongoing trend is that salaries, benefits, rent and utility payments tend to take precedence over major productivity-enhancing Information Technology projects. Salaries, benefits, rent and utility payments are over 86% of the agency's expenditures. So any increases such as pay raises or rent increases have an impact on the agency's ability to fund the IT projects. OSC continues to find ways to implement IT enhancements at low costs. However, in the near future, investments in certain systems must be made, for projects such as the agency's planned Document Management System.

- Under "Liabilities Not Covered by Budgetary Resources" in the Notes to the Financial Statements, unfunded leave balances at the end of FY 2006 are $704,595, an 8.1% increase over the unfunded leave balances at the end of FY 2005. This unfunded liability stems from the tremendous effort given by the OSC employees to accomplish the mission of the agency in a timely manner without the resurgence of backlogs.

- **Limitations of the Financial Statements:** The principal financial statements have been prepared to report the financial position and results of operations of OSC, pursuant to the requirements of 31 U.S.C. 3515 (b).

  The statements have been prepared from the books and records of the Review Commission in accordance with generally accepted accounting principles (GAAP) for Federal entities and formats prescribed by the Office of Management and Budget (OMB). The statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These statements should be read with the realization that they are for a component of the United States Government, a sovereign entity.

Endnotes

[1] Reorganization Plan Number 2 of 1978. See 5 U.S.C.A. App.1, § 204. The Civil Service Reform Act of 1978 (Public Law No. 95-454, 92 Stat. 1111) enlarged OSC's functions and powers.
[2] Public Law No. 101-12 (1989). Provisions setting forth OSC authorities and responsibilities were codified at 5 U.S.C. § 1211, *et seq*.
[3] Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.
[4] Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, *et seq*. The Veterans' Employment Opportunities Act of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The act made it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veterans' preference requirement. See 5 U.S.C. § 2302(b)(11). (The former § 2302(b)(11) was re-designated as § 2302(b)(12).).
[5] Public Law No. 103-424 (1994), codified in various sections of title 5 of the U.S. Code. The provision making federal agencies responsible, in consultation with OSC, for informing their employees of rights and remedies under the Whistleblower Protection Act appears at 5 U.S.C. § 2302(c).
[6] Public Law 107-71 (2001).
[7] Unless noted otherwise, all references after this to prohibited personnel practice complaints include complaints alleging other violations of civil service law, rule, or regulation listed at 5 U.S.C. § 1216, except for alleged violations of the Hatch Act.
[8] When the Complaints Examining Unit makes a preliminary determination to close a complaint without further investigation, it must by law provide complainants with a written statement of reasons, to which they may respond. On the basis of the response, if any, the unit decides whether to close the matter, or refer it to the Investigation and Prosecution Division.
[9] "The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title." 5 U.S.C. 2302(c).

OSC Statutory Missions:
PPP ENFORCEMENT MISSION

Goal 1: *PROTECTION OF THE MERIT SYSTEM THROUGH TIMELY CASE PROCESSING*					
PPP Enforcement Mission	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
Prohibited Personnel Practices Cases	Indicator A: **Percentage of cases processed in less than 240 days.**	85%	89%	95%	

Comments for Goal #1:

1. Indicator A: PPP Cases.

This timeliness indicator measures the combined effectiveness of both OSC's Complaints Examining Unit (CEU) and OSC's Investigation and Prosecution Division (IPD).

OSC receives complaints of Prohibited Personnel Practices into the CEU. If, after initial screening, investigation, and legal analysis, a complaint meets the requirements for merit, it is internally referred to the IPD for further investigation. If the IPD investigates and determines the case does indeed have merit, the IPD either seeks relief for the claimant through mediation, settlement, or prosecution.

The reason the target is less than 100% is because in some cases the settlement process can take a considerable amount of time. In cases involving litigation, the timeframe for events is no longer driven by the speed of work of OSC attorneys and investigators. To strive for 100% would carry the implicit assumption that OSC would not litigate any cases.

The result for Goal 1 for FY 2006 surpassed the target. However, further efficiencies will need to be introduced during FY 2007, in order to meet the FY 2007 target, which is higher.

Goal 2: ***PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS***					
PPP Enforcement Mission	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
Prohibited Personnel Practices Cases	Indicator A: **% favorable outcomes in cases determined by OSC to be meritorious = (# successful mediations + # of settlements achieved + # of successful litigations) / (# meritorious cases)**	99%	100%	99%	

Comments to Goal #2

1. Performance Indicator A

A meritorious case is one in which the Office of Special Counsel is satisfied that claimant is entitled to relief. In certain meritorious cases, OSC may endeavor to use mediation to secure relief for the claimant. If mediation was not appropriate or did not succeed, OSC may exercise its prosecutorial authority and file for corrective or disciplinary action before the MSPB. As prosecutor, OSC seeks to obtain full corrective action on behalf of claimants either by settlements with the involved federal employer or via litigation.

Typically, OSC will prosecute cases it believes are meritorious but where the involved agency is unwilling to resolve them voluntarily. OSC is confident of its ability to prosecute successfully cases warranting corrective action.

In FY 2006, OSC processed 47 meritorious PPP cases. There was one more case in which a stay was in place at the end of the year. Even though the stay was favorable action, we are not counting that case in the 06 numbers, because we won’t have completed its investigation of the case until FY 2007.

In 46 of the 47 meritorious cases, OSC successfully achieved corrective action during or after the investigation of the case. The 47th case went to litigation, but was settled for corrective action prior to the conclusion of trial proceedings. Therefore, there were 47 corrective actions achieved in 47 cases, which gives the percentage of 100% as the result in FY 2006. This percentage exceeded the previously established target.

Goal 3: ***ENHANCE OUTREACH TO FEDERAL AGENCIES TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES***					
PPP Enforcement Mission	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
Prohibited Personnel Practices Outreach	Indicator A: **# of new Federal agencies certified in the 2302 (c) Program by OSC.**	5	6	5	

Comments to Goal #3

OSC has statutory authority to administer the 2302(c) Program, which recognizes the federal sector's need for awareness of Prohibited Personnel Practices and training in avoidance of committing them. However, OSC cannot force any agency to apply for certification. There are no statutory penalties for not being certified. This annual numeric target is not overly aggressive because 1) OSC cannot force compliance, and 2) the number of Federal agencies that may seek certification is limited by the number of agencies in existence. OSC already has 47 certified agencies, including most of the major ones.

Other outreach activities:

Additionally, members of the Investigation and Prosecution Division and the Complaints Examining Unit regularly accept invitations to provide outreach services designed to educate Federal personnel on these issues so that agencies comply with the law. Employees from OSC were able to educate employees of many agencies during a presentation at the Federal Dispute Resolution Conference (FDR).

- OSC maintains a telephonic hotline for answering PPP-related questions from members of the Federal workforce.

- OSC’s website provides a wealth of information regarding PPPs and is a valuable and constantly improving resource for educating the Federal workforce on this subject. Every year the website statistics for user sessions increase, with an average increase in activity of 15% each previous year.

- The Go Learn project is a new initiative that will bring OSC expertise to thousands of Federal workers. OSC does not have responsibility for this project, other than providing expert content.

The results for the number of certifications exceeded the previously set target of five agencies to be certified during FY 2006.

OSC Statutory Missions:
HATCH ACT MISSION

Goal 1: ***TO DEFEND THE MERIT SYSTEM BY ENFORCING THE HATCH ACT - THROUGH TIMELY CASE PROCESSING***					
HATCH ACT MISSION	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
HATCH ACT WRITTEN ADVISORY OPINIONS See comment 1.	Indicator A: **Percentage of formal written advisory opinions issued in less than 120 days.**	75%	93%	80%	
HATCH ACT ORAL & EMAIL ADVISORY OPINIONS See comment 2.	Indicator B: **Percentage of oral and e-mail advisory opinions issued in less than five days.**	99%	100%	99%	
HATCH ACT COMPLAINTS	Indicator C: **Percentage of matters resolved in less than 365 days.**	60%	84%	70%	

Comments for Goal #1:

1. Performance Indicator A: written advisory opinions

These are the requests for an advisory opinion that come in to OSC's Hatch Act Unit that are very complex and require significant analysis before answering.

2. Performance Indicator B: oral or e-mail advisory opinions

If an oral or e-mail advisory opinion were to take longer than five days, generally it would be treated as a formal written advisory request and be captured by Indicator A.

Several employees were detailed into the Hatch Act Unit to assist with the high volume of advisories, complaints, and cases. These employee details, and the extreme dedication of the employees of the Hatch Act Unit, made it possible to exceed all three timeliness targets for FY 2006.

Goal 2: *TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS*					
HATCH ACT MISSION	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
HATCH ACT CASES See comment 1.	Indicator A: **% favorable outcomes in meritorious cases**	**90%**	**97%**	**90%**	

Comments to Goal #2

1. Meritorious cases

A meritorious Hatch Act case is a case in which OSC finds a violation of the Hatch Act. A favorable outcome in a Hatch Act case is either (1) successful litigation of the case; (2) successful settlement of the case; or (3) successful corrective action (individual corrected his violation after receiving notice from OSC, for example, by withdrawing his candidacy or resigning from his employment).

The results achieved by the Hatch Act Unit for Goal 2 exceeded the target by 7% for FY 2006.

Goal 3: ***TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES***					
HATCH ACT MISSION	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
HATCH ACT OUTREACH VISITS	Indicator A: **(# of HA trainings and outreaches given) / (# of invitations to provide HA training or outreach, where the inviter sponsors OSC)**	**90%**	**96%**	**90%**	
HATCH ACT SECTION OF OSC WEBSITE	Indicator B: **Number of new complex advisory opinions added every month to the website.**	**1**	1	**1**	

Comments to Goal #3

1. Results:

Indicator A: The outreach results for FY 2006 exceed the set target by 6%.

Indicator B: Ten complex advisory opinions have been posted. This averages to one opinion per month, since these goals were established in February 2006.

2. Outreach DVD

In addition to the performance of outreach visits and the website enhancement described above, OSC has produced both a Federal Hatch Act DVD and a State & Local Hatch Act DVD that explains the basics of the Hatch Act. OSC is now able to mail the appropriate

DVD to certain requestors who require a basic tutorial overview of the Hatch Act.

3. Hatch Act poster

OSC continues to provide free Hatch Act posters to requesting agencies, if the quantity requested is less than ten. If the quantity requested exceeds ten, the interested agency can use OSC's rider at the Government Printing Office to order the required number of Hatch Act posters.

OSC Statutory Missions:
WHISTLEBLOWER DISCLOSURE MISSION

Goal 1: *TO RECEIVE AND RESOLVE WHISTLEBLOWER DISCLOSURES WITH TIMELY PROCESSING*					
WHISTLE-BLOWER DISCLOSURE MISSION	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
DISCLOSURES See comment 1.	Indicator A: **Percentage of disclosures resolved within the statutory 15 day time frame.**	50%	42%	50%	

Comments for Goal #1:

1. Performance Indicator A: Timely Disclosure Processing

Pursuant to § 1213(b), when the Special Counsel receives any disclosure of information by a federal employee, former federal employee or applicant for federal employment which the [employee] reasonably believes evidences: a violation of law, rule or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, the Special Counsel must review the information within 15 days and determine whether there is a substantial likelihood that the information discloses one or more of the above categories of wrongdoing.

OSC handles these whistleblower disclosures under 5 U.S.C. § 1213 in one of three ways. If the Special Counsel makes a positive determination, he must transmit the information to the appropriate agency head, and require the agency head to conduct an investigation and submit a written report on the findings of the investigation. These referrals under § 1213 represent a small percentage (approximately 8% for FY 2006) of the total number of cases resolved by OSC in any fiscal year.

If the Special Counsel does not make a positive determination, the matter is closed. These closures make up the vast majority (92% for FY 2006) of the total number of cases resolved by OSC in any fiscal year.

If the Special Counsel is unable to make the substantial likelihood determination on the basis of the information supplied by the whistleblower, the matter may be informally referred to the Inspector General (IG) for the agency involved, with a request that the IG assist OSC in making a substantial likelihood determination.

Because of the time involved in preparing cases for referral under § 1213 and in cases referred to the IG, the statutory 15-day time frame is difficult to achieve. As a result the Indicator for Goal #1, "[p]ercentage of disclosures processed within the statutory 15 day timeframe," is intended to capture only those cases in which the substantial likelihood determination has not been met. Even in those cases, the actual percentage of cases resolved in less than 15 days is relatively low. It should also be noted that the Special Counsel is considering proposing a legislative change in the statutory language to enlarge the time frame from 15 days to 45 days, a number which would more accurately reflect the average amount of time required to resolve a whistleblower disclosure.

Because of the issues identified above, the Disclosure Unit did not meet the target set for Goal 1 for FY 2006.

Goal 2: ***TO PROMOTE JUSTICE AND PROTECT THE MERIT SYSTEM THROUGH THE QUALITY OF DETERMINATIONS AND REFERRALS***					
WHISTLE-BLOWER DISCLOSURE MISSION	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
DISCLOSURES See comment 1.	Indicator A: **% of disclosures referred to agency head, pursuant to 5 U.S.C. § 1213, or under the informal IG referral process.**	7%	8%	7%	

Comments to Goal #2

1. Indicator A: Whistleblower referrals:

The U.S. Office of Special Counsel does not have investigative or enforcement authority under 5U.S.C. § 1213. As such, the Indicator for Goal #2 reflects a quality measure based on the number of cases referred under §1213, regardless of the outcome of the referral. The percentage of cases referred out of the total number of cases received in a fiscal year is a relatively low number historically, and as such, the FY 2006 and FY 2007 targets are low. Because OSC's Disclosure Unit processes nearly 500 disclosures annually, this percentage can be seen as an indicator of the average relative height of the "substantial likelihood" bar in a given year.

The Indicator for Goal #2 reflects only one way of measuring quality as defined in Goal #2, to "promote justice and protect the merit system." Because the statutory mandate of §1213 contemplates that OSC make a determination whether there is a substantial likelihood that the information discloses wrongdoing, a negative determination under the statute, resulting in a closure, is as quality driven as a positive determination resulting in a referral. OSC's analysis of a whistleblower disclosure may result in a determination not to burden an agency with an inappropriate referral, thus promoting justice and protecting the merit system. Notwithstanding this difficulty in identifying a measure of quality, the individual whistleblower who initiates the disclosure, thus accessing the statutory protections, is more inclined to measure quality by whether or not his or her disclosure is referred. As such, the Indicator for Goal #2 for now reflects this single measurement.

The target for this goal was exceeded for FY 2006.

Goal 3: ***TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES***					
WHISTLE-BLOWER DISCLOSURE MISSION	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
NA	**NA**	**NA**		**NA**	

Comments to Goal #3

1. Disclosure outreach:

OSC's Disclosure Unit does not have a statutorily defined mandate to perform compliance outreach, and as such does not regularly provide training or outreach to other government entities, with the exception of informational presentations to foreign delegations.

OSC continues to provide free Whistleblower Disclosure Act posters to requesting agencies, if the quantity requested is less than ten. If the quantity requested exceeds ten, the interested agency can obtain extra copies from the Government Printing Office.

OSC Statutory Missions:
USERRA MISSION

Explanatory Comments about the Four Types of USERRA Cases

OSC receives four types of USERRA cases—RE, DP-OD, DP-MX, and DP-TSA—each of which are explained in detail below. Given the different nature of such cases, different performance indicators apply.

1. RE Cases

Under USERRA, certain federal sector claims are investigated by U.S. Department of Labor, Veterans' Employment and Training Service (VETS). Pursuant to 38 U.S.C. § 4324, in the event that VETS is unable to resolve such a claim, a claimant has a right to have his or her claim referred to OSC for a determination on whether OSC will represent the claimant before the U.S. Merit Systems Protection Board (MSPB). Such cases are identified by OSC as "RE cases."

RE cases have already been investigated by VETS and reviewed by a DOL Office of Regional Solicitor (RSOL). The USERRA Unit receives the VETS investigative file and a legal memorandum from RSOL indicating whether RSOL recommends that OSC represent the claimant. USERRA Unit reviews the information and make as "de novo" determination.

Where the USERRA Unit disagrees with an RSOL determination that OSC should represent the claimant, the unit sends the RSOL a report setting forth the factual and legal basis of the unit's preliminary determination not to represent the claim and invites the RSOL to respond. The unit considers any response received from the RSOL in making a final representation determination. The RSOL is typically given two weeks to respond to the report.

It is to be noted that while RE cases have already been investigated by VETS, OSC has found that: further investigation is often warranted, e.g., key witnesses need interviewing; important documents need to be obtained; too much time lapsed between alleged initial violations and their referral to OSC. In such cases, the USERRA Unit will always contact the agency and relevant witnesses to obtain the information necessary to allow it to make a well-reasoned determination regarding the prosecutorial merit of a given claim.

The need and extent of any supplemental investigation affects the processing time of RE cases and is reflected in the performance indicator.

2. DP-OD cases

In late 2004, Congress expanded OSC's role in enforcing USERRA and protecting the employment rights of federal employees and applicants. Pursuant to a demonstration project established by section 204 of the Veterans Benefits Improvement Act of 2004

(VBIA), P.L. 108-454, OSC was given the exclusive authority to investigate federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit. Under the demonstration project, OSC also investigates all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction regardless of the person's social security number (so-called "mixed claims"). VETS' investigative authority was limited to federal sector USERRA claims brought by persons whose social security number ends in an odd-numbered digit and who do not allege a prohibited personnel practice. Pursuant to section 204(d)(1) of VBIA, OSC shall administer the demonstration project and DOL shall cooperate with OSC in carrying out the demonstration project. The demonstration project began on February 8, 2005, and ends on September 30, 2007.

Given the new, additional investigative responsibilities Congress assigned to OSC with the passing of the demonstration project and the Special Counsel's desire to revitalize OSC's enforcement of USERRA during his term, Special Counsel Bloch established the USERRA Unit as part of the January 6, 2005, directive reorganizing the agency. The USERRA Unit is the in-take, investigative, and prosecutorial unit for all matters pertaining to USERRA and veteran-related employment issues. The Unit is responsible for investigating USERRA claims to determine whether prosecution is warranted.

DP-OD cases are federal sector USERRA claims filed by persons having an odd-numbered social security number. DP-OD cases typically come from two sources: 1) from VETS, where a claimant files a USERRA Form 1010 (i.e., a USERRA complaint form) with VETS and 2) directly from the claimant, where the claimant files with OSC the OMB approved form OSC-14 "Complaint of Possible violation of USERRA."

The USERRA Unit conducts an investigation of DP-OD cases and determines whether OSC will represent the claimant in an USERRA action before the MSPB. The performance indicator reflects the time reasonably expected to investigate such cases.

3. DP-MX cases

As stated above, OSC is responsible for investigating all federal sector USERRA claims where the claimant, regardless of his or her social security number, alleges a prohibited personnel practice over which OSC has jurisdiction.

The USERRA Unit conducts an investigation of DP-MX cases and determines whether OSC will represent the claimant in an USERRA or prohibited personnel practice action before the MSPB.

The processing time of DP-MX cases is affected by 1) additional complexity of such cases and 2) the USERRA Unit's adoption of OSC's practice in prohibited personnel practice cases of granting a claimant 13 days to respond to OSC's preliminary determination regarding prohibited personnel practice allegations. The performance indicator incorporates those factors.

4. DP-TSA cases

On June 9, 2005, the MSPB held in Spain v. Department of Homeland Security (MSPB Docket # PH-0353-04-0361-I-1) that USERRA does not apply to Transportation Security Administration (TSA) Security Screeners or TSA Supervisory Security Screeners and, therefore, the MSPB does not recognize jurisdiction over such cases. Consequently, OSC is unable to prosecute USERRA actions involving TSA Security Screeners or TSA Supervisory Security Screeners.

Notwithstanding the Spain decision, TSA voluntarily permits OSC to investigate USERRA claims and reports it findings and recommendations for corrective action to TSA management officials (akin to the manner in which OSC is permitted to investigate and report on allegations of whistleblower reprisal).

The performance indicator for these types of cases reflects the MSPB's decision in the Spain case.

Goal 1: ***TO ENFORCE THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT THROUGH TIMELY CASE PROCESSING***					
USERRA MISSION	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
USERRA A: RE Cases Cases received from DOL pursuant to 38 U.S.C. § 4324.	Indicator A: **Percentage of cases where the representation decision is made in 75 days or less.**	90%	50%	90%	
USERRA B: DP-OD Cases Cases received by OSC pursuant to the VBIA.	Indicator A: **Percentage of cases where the representation decision is made in 120 days or less.**	80%	62%	80%	

USERRA MISSION	PERFORMANCE INDICATORS	FY 2006 TARGET	FY 2006 RESULTS	FY 2007 TARGET	FY 2007 RESULTS
USERRA C: DP-MX Cases Cases received by OSC pursuant to the VBIA.	Indicator A: **Percentage of cases where the representation decision is made in 160 days or less.**	80%	74%	80%	
USERRA D: DP-TSA Cases Cases received by OSC pursuant to the VBIA.	Indicator A: **Percentage of cases where a "no merit" determination is made or a request for voluntary corrective action is sent to TSA in 120 days or less.**	80%	33%	80%	

Comments for Goal #1:

a. For RE cases, in **50%** of them the representation decision was made within 75 days.

- 5 RE cases were resolved in ≤ 75 days.
- 5 RE cases were resolved in ≤ 75 days.
- Average processing time to resolve these 10 RE cases was **71 days.**

GOAL: 90%
ASSESSMENT: USERRA Unit did not meet this aggressive target.

b. For the DP-OD cases, in **62%** of them the representation decision was made within 120 days.

- 91 DP-OD cases were resolved in ≤ 120 days.

- 56 DP-OD cases were not were resolved in ≤ 120 days.
- Average processing time to close 147 DP-OD cases was **115** days.

GOAL: 80%
ASSESSMENT: USERRA Unit did not meet this aggressive target.

c. For DP-MX cases, in **74%** of them the representation decision was made within 160 days.

- 26 DP-MX cases were resolved in ≤ 160 days.
- 9 DP-MX cases were not were resolved in ≤ 160 days.
- Average processing time to close 35 DP-MX cases was **123** days.

GOAL: 80%
ASSESSMENT: USERRA Unit came very close to meeting this aggressive target.

d. For DP-TSA cases, in **33%** of them a "no merit" determination was made or a "request for voluntary corrective action" was sent to TSA within 120 days.

- 2 TSA cases were resolved in ≤ 120 days.
- 4 TSA cases were not were resolved in ≤ 120 days.
- Average processing time to close 6 TSA cases was **161** days.

GOAL: 80%
ASSESSMENT: USERRA Unit did not meet this aggressive target.

In general, the USERRA Unit did not meet the aggressive internal timeliness targets set forth last year because it is a start up unit. As with any "new business," there are initial inefficiencies that adversely affect performance. As time goes by, those inefficiencies diminish, and the business becomes more efficient.

In the case of the USERRA Unit, the inefficiencies stemmed from the need to assemble (hire, re-assign, or detail) and train a new staff of lawyers and investigators to handle the agency's new mission of investigating USERRA cases. A lot of time has been spent training the staff on the substantive law. As the staff's expertise in USERRA grows, so will its efficiency, and the goals should be attainable.

Notwithstanding the failure to meet the aggressive timeliness targets for USERRA for FY 2006, it is important to note OSC's average time to resolve a USERRA claim is exemplary and reflects the dedication of the USERRA Unit members.

Goal 2: *TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS*					
USERRA MISSION	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
USERRA Cases	Indicator A: **% favorable outcomes in cases determined by OSC to be meritorious = (# successful mediations + # of settlements achieved + # of successful litigations) / (# meritorious cases)**	90%	100%	90%	
	Indicator B (unquantifiable): **# of "test cases" filed**	Inappro-priate to set a specific target	0	Inappro-priate to set a specific target	

Comments to Goal #2

1. Performance Indicator A

Where the Office of Special Counsel is satisfied that claimant is entitled to relief, then it may exercise its prosecutorial authority and represent the claimant before the MSPB and, in certain circumstances, the U.S. Court of Appeals for the Federal Circuit. See 38 U.S.C. §§ 4324(a)(2)(A) and (d)(2). As prosecutor, OSC seeks to obtain full corrective action on behalf of claimants either by settlements with the involved federal employer or via litigation.

Typically, OSC will prosecute cases it believes are meritorious but where the involved agency is unwilling to resolve them voluntarily. OSC is confident of its ability to prosecute successfully cases warranting corrective action. "Meritorious cases" under this performance indicator are to be distinguished from the "test cases" found under Performance Indicator B.

Detail behind the percentage in the results for FY 2006 Indicator A:

a.	# of successful mediations	n/a
b.	# of settlements achieved	36
c.	# of successful litigations	1
d.	# meritorious cases	37
e.	# test cases filed	n/a

GOAL = 50 %
RESULTS = 100% (37/37)
ASSESSMENT: USERRA Unit exceeded the target for this indicator.

2. Performance Indicator B

It is foreseeable that OSC will desire to file cases where the law is not clear (e.g., novel legal issues requiring "test cases" to define the bounds of the law) but will establish legal precedent benefiting all service members, if the litigation is successful. The outcomes of these types of cases do not depend on OSC's skill in weighing of the evidence, applying of law, and trying the case. Instead, the cases involve questions of law.

It is difficult to define a performance goal that accurately reflects "success" or "failure" of OSC's identification of cases that are fertile for expanding the law. The mere fact of filing test litigation with an eye toward expanding the law, however, seems appropriate. Performance Indicator B captures this concept. OSC will track how often it files this type of case. However, a target can not be identified because OSC cannot determine how often appropriate "test cases" will come into the agency from claimants.

OSC filed no USERRA test cases during FY 2006.

Goal 3: ***TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES***					
USERRA MISSION	**PERFORMANCE INDICATORS**	**FY 2006 TARGET**	**FY 2006 RESULTS**	**FY 2007 TARGET**	**FY 2007 RESULTS**
USERRA Outreach	Indicator A: **(# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where inviting agency sponsors OSC})**	50%	n/a	90%	
	Indicator B: **(# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where OSC pays expenses})**	50%	100%	50%	

Comments to Goal #3

OSC recognizes the federal sector's need for USERRA training although it has no statutory obligation to provide it. Thus, the USERRA Unit regularly accepts invitations to provide outreach services designed to educate federal personnel on USERRA issues so that agencies comply with the law. Such outreach efforts include USERRA seminars presented by OSC staff to the D.C. Bar, at the annual Federal Dispute Resolution Conference, and presentations at the Army's Advanced Labor and Employment Law Course at the Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Additionally, the unit maintains a telephonic and web-based "hotlines" for answering USERRA-related questions from the public and private sectors.

The performance indicators reflect the practical budgetary constraints of providing OSC-sponsored USERRA training to all requesters and OSC ability and desire to provide such training.

Detail behind the results for FY 2006 Indicator A:

a. # of USERRA training & outreaches given, where inviter sponsors OSC = 0
b. # of invitations for USERRA training/outreach visits, where the inviter sponsors = 0

GOAL = 80 %
ASSESSMENT: N/A (No one invited OSC and offered to sponsor the outreach.)

Detail behind the results for FY 2006 Indicator B:

a. # of USERRA training & outreaches given, where OSC pays = 2
b. # of invitations for USERRA training/outreach visits, where OSC pays = 2

GOAL = 50 %
RESULTS = 100% (2/2)
ASSESSMENT: The USERRA Unit exceeded the target for this indicator.

OFFICE OF SPECIAL COUNSEL
Washington, D. C.

INDEPENDENT AUDITOR'S REPORTS AND FINANCIAL STATEMENTS
September 30, 2006 and 2005

OFFICE OF SPECIAL COUNSEL

INDEPENDENT AUDITOR'S REPORTS AND FINANCIAL STATEMENTS
September 30, 2006 and 2005

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Clifton Gunderson LLP
Certified Public Accountants & Consultants

Independent Auditor's Report

To the Office of Special Counsel

We have audited the accompanying balance sheets of the Office of Special Counsel (OSC) as of September 30, 2006 and 2005, and the related statements of net cost, changes in net position, budgetary resources, and statement of financing for the years then ended. These financial statements are the responsibility of OSC's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America; the standards applicable to the financial audits contained in *Government Auditing Standards,* issued by the Comptroller General of the United States; and the Office of Management and Budget (OMB) Bulletin No. 06-03, *Audit Requirements for Federal Financial Statements.* Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above, present fairly, in all material respects, the financial position of OSC as of September 30, 2006 and 2005 and its net cost; changes in net position; budgetary resources; and reconciliation of net cost to budgetary resources for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our reports dated November 2, 2006 on our consideration of OSC's internal control over financial reporting and on our tests of OSC's compliance with certain provisions of laws, regulations, contracts, grant agreements and other matters. The purpose of those reports is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not provide an opinion on the internal control over financial reporting or on compliance. Those reports are an integral part of our audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Our audits were made for the purpose of forming an opinion on the basic financial statements taken as a whole. The Management Discussion and Analysis is not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures to such information, which consisted principally of inquiries of OSC management regarding the methods of measurement and presentation of this supplementary information. However, we did not audit the information and express no opinion on it.

Clifton Gunderson LLP

Calverton, Maryland
November 2, 2006

Clifton Gunderson LLP
Certified Public Accountants & Consultants

Independent Auditor's Report on Compliance and Other Matters

To the Office of Special Counsel

We have audited the financial statements of the Office of Special Counsel (OSC), as of and for the year ended September 30, 2006 and have issued our report thereon dated November 2, 2006. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 06-03, *Audit Requirements for Federal Financial Statements*.

The management of OSC is responsible for complying with laws and regulations applicable to OSC. As part of obtaining reasonable assurance about whether OSC's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material affect on the determination of financial statement amounts and certain other laws and regulations specified in OMB Bulletin No. 06-03, including the requirements referred to in the Federal Financial Management Improvement Act (FFMIA) of 1996. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to OSC.

The results of our tests of compliance with laws and regulations described in the preceding paragraph, exclusive of FFMIA, disclosed no instances of noncompliance with laws and regulations and other matters that are required to be reported under *Government Auditing Standards* and OMB Bulletin No. 06-03.

Under FFMIA, we are required to report whether OSC's financial management systems substantially comply with the Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level. To meet this requirement, we performed tests of compliance with FFMIA section 803(a) requirements. The results of our tests disclosed no instances in which OSC's financial management systems did not substantially comply with the three requirements discussed above.

Providing an opinion on compliance with certain provisions of laws and regulations was not an objective of our audit and, accordingly, we do not express such an opinion.

This report is intended solely for the information and use of the management of OSC, the Bureau of Public Debt, the Government Accountability Office, OMB and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Clifton Gunderson LLP

Calverton, Maryland
November 2, 2006

Clifton Gunderson LLP
Certified Public Accountants & Consultants

Independent Auditor's Report on Internal Control

To the Office of Special Counsel

We have audited the financial statements of the Office of Special Counsel (OSC), as of and for the year ended September 30, 2006, and have issued our report thereon dated November 2, 2006. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to the financial audits contained in *Government Auditing Standards*; issued by the Comptroller General of the United States; and, Office of Management and Budget (OMB) Bulletin No. 06-03, *Audit Requirements for Federal Financial Statements*.

In planning and performing our audit, we considered OSC's internal control over financial reporting by obtaining an understanding of OSC's internal control, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 06-03. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act (31 U.S.C. 3512), such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on internal control. Consequently, we do not provide an opinion on internal control.

Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be reportable conditions. Under standards issued by the American Institute of Certified Public Accountants, reportable conditions are matters coming to our attention relating to significant deficiencies in the design or operation of the internal control that, in our judgment, could adversely affect OSC's ability to record, process, summarize, and report financial data consistent with the assertions by management in the financial statements. Material weaknesses are reportable conditions in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected. We noted no matters involving the internal control and its operation that we consider to be material weaknesses. We noted other matters involving internal control and its operation that we have reported in a separate letter dated November 2, 2006.

Finally, with respect to internal controls related to performance measures reported in OSC's Management's Discussion and Analysis, we obtained an understanding of the design of significant internal controls relating to the existence and completeness assertions, as required by OMB Bulletin No. 06-03. Our procedures were not designed to provide assurance on internal control over reported performance measures, and, accordingly, we do not provide an opinion on such controls.

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This report is intended solely for the information and use of the management of OSC, the Bureau of Public Debt, the Government Accountability Office, OMB and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Clifton Gunderson LLP

Calverton, Maryland
November 2, 2006

OFFICE OF SPECIAL COUNSEL

FINANCIAL STATEMENTS
September 30, 2006 and 2005

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OFFICE OF SPECIAL COUNSEL
BALANCE SHEETS
September 30, 2006 and 2005

	2006	2005
ASSETS		
Intragovernmental - Fund Balance with Treasury (Note 2)	$ 2,999,701	$ 3,325,060
Accounts Receivable	11,171	3,084
General Property, Plant and Equipment, Net (Note 3)	397,878	67,371
TOTAL ASSETS	$ 3,408,750	$ 3,395,515
LIABILITIES		
Intragovernmental liabilities (Note 4)	$ 191,804	$ 177,011
Accounts Payable (Note 4)	67,931	175,142
Other (Note 4)	1,081,307	1,005,565
Total Liabilities	1,341,042	1,357,718
NET POSITION		
Unexpended Appropriations	2,461,486	2,683,745
Cumulative Results of Operations	(393,778)	(645,948)
Total Net Position	2,067,708	2,037,797
TOTAL LIABILITIES AND NET POSITION	$ 3,408,750	$ 3,395,515

The accompanying notes are an integral part of these financial statements.

OFFICE OF SPECIAL COUNSEL
STATEMENTS OF NET COST
For the Years Ended September 30, 2006 and 2005

	2006	2005
PROGRAM COSTS		
Investigations & Enforcements	$ 16,068,378	$ 14,703,913
Less: Earned Revenue	(325,277)	(184,272)
NET COST OF OPERATIONS (Note 7)	$ 15,743,101	$ 14,519,641

The accompanying notes are an integral part of these financial statements.

OFFICE OF SPECIAL COUNSEL
STATEMENTS OF CHANGES IN NET POSITION
For the Years Ended September 30, 2006 and 2005

	2006	2005
Cumulative Results of Operations:		
Beginning Balance	$ (645,948)	$ (679,383)
Budgetary Financing Sources:		
Appropriations Used	15,284,585	13,849,357
Other Financing Sources (Non-Exchange):		
Imputed Financing Sources	710,686	703,719
Total Financing Sources	15,995,271	14,553,076
Net Cost of Operations	(15,743,101)	(14,519,641)
Net Change	252,170	33,435
Cumulative Results of Operations	(393,778)	(645,948)
Unexpended Appropriations:		
Beginning Balance	2,683,745	1,293,682
Budgetary Financing Sources:		
Appropriations Received	15,325,000	15,449,000
Permanently Not Available	(262,674)	(209,580)
Appropriations Used	(15,284,585)	(13,849,357)
Total Budgetary Financing Sources	(222,259)	1,390,063
Total Unexpended Appropriations	2,461,486	2,683,745
Net Position	$ 2,067,708	$ 2,037,797

The accompanying notes are an integral part of these financial statements.

OFFICE OF SPECIAL COUNSEL
STATEMENTS OF BUDGETARY RESOURCES
For the Years Ended September 30, 2006 and 2005

	2006	2005
BUDGETARY RESOURCES		
Unobligated Balance Brought Forward, October 1:	$ 782,260	$ 861,990
Recoveries of Prior Year Unpaid Obligations	317,261	118,268
Budget Authority		
Appropriation	15,325,000	15,449,000
Spending Authority From Offsetting Collections - Collected	325,277	184,272
Subtotal - Budget Authority	15,650,277	15,633,272
Permanently Not Available	(262,674)	(209,580)
Total Budgetary Resources (Note 9)	$ 16,487,124	$ 16,403,950
STATUS OF BUDGETARY RESOURCES		
Obligations Incurred		
Direct	$ 15,177,972	$ 15,437,418
Reimbursable	325,277	184,272
Total Obligations Incurred	15,503,249	15,621,690
Unobligated Balance - Apportioned	313,331	451,740
Unobligated Balance - Not Available	670,544	330,520
Total Status of Budgetary Resources (Note 9)	$ 16,487,124	$ 16,403,950
CHANGE IN OBLIGATED BALANCE		
Obligated Balance, Net		
Unpaid Obligations, Brought Forward, October 1	$ 2,542,799	$ 1,077,561
Total Unpaid Obligated Balance, Net	2,542,799	1,077,561
Obligations Incurred, Net	15,503,249	15,621,690
Less: Gross Outlays	15,712,961	14,038,184
Less: Recoveries of Prior Year Unpaid Obligations, Actual	317,261	118,268
Obligated Balance, Net, End of Period		
Unpaid Obligations	2,015,826	2,542,799
Total, Unpaid Obligated Balance, Net, End of Period	$ 2,015,826	$ 2,542,799
NET OUTLAYS		
Gross Outlays	$ 15,712,961	$ 14,038,184
Less: Offsetting Collections	325,277	184,272
Net Outlays (Note 9)	$ 15,387,684	$ 13,853,912

The accompanying notes are an integral part of these financial statements.

OFFICE OF SPECIAL COUNSEL
STATEMENTS OF FINANCING
For the Years Ended September 30, 2006 and 2005

	2006	2005
Resources Used to Finance Activities:		
Budgetary Resources Obligated		
Obligations Incurred	$ 15,503,249	$ 15,621,690
Less: Spending Authority From Offsetting Collections and Recoveries	(642,538)	(302,540)
Obligations Net of Offsetting Collections and Recoveries	14,860,711	15,319,150
Less: Offsetting Receipts	-	-
Net Obligations	14,860,711	15,319,150
Other Resources		
Imputed Financing From Costs Absorbed by Others	710,686	703,719
Net Other Resources Used to Finance Activities	710,686	703,719
Total Resources Used to Finance Activities	15,571,397	16,022,869
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Change in Budgetary Resources Obligated for Goods, Services and Benefits Ordered But Not Yet Provided	(423,874)	1,511,202
Resources That Fund Expenses Recognized in Prior Periods	-	33,964
Resources That Finance the Acquisition of Assets	361,094	-
Total Resources Used to Finance Items Not Part of the Net Cost of Operations	(62,780)	1,545,166
Total Resources Used to Finance the Net Cost of Operations	15,634,177	14,477,703
Components of the Net Cost of Operations That Will Not Require or Generate Resources in the Current Period		
Components Requiring or Generating Resources in Future Periods		
Increase in Annual Leave Liability	53,092	-
Other	33,331	23,166
Total Components of Net Cost of Operations That Will Require or Generate Resources in Future Periods	86,423	23,166
Components Not Requiring or Generating Resources:		
Depreciation and Amortization	30,587	21,730
Other	(8,086)	(2,958)
Total Components of Net Cost of Operations That Will Not Require or Generate Resources	22,501	18,772
Total Components of Net Cost of Operations That Will Not Require or Generate Resources in the Current Period	108,924	41,938
Net Cost of Operations	$ 15,743,101	$ 14,519,641

The accompanying notes are an integral part of these financial statements.

OFFICE OF SPECIAL COUNSEL
NOTES TO FINANCIAL STATEMENTS
For The Years Ended September 30, 2006 and 2005

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Reporting Entity

The Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. OSC's authority comes from four federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniform Services Employment and Reemployment Rights Act. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices. OSC receives, investigates, and prosecutes allegations of prohibited personnel practices, with an emphasis on protecting federal government whistleblowers.

OSC is headed by the Special Counsel, who is appointed by the President, and confirmed by the Senate. As of September 30, 2006 the agency employs approximately 109 employees to carry out its government-wide responsibilities in the headquarters office in Washington, D.C., and in the Dallas, San Francisco, and Detroit field offices.

OSC has rights and ownership of all assets reported in these financial statements. There are no non-entity assets.

B. Basis of Presentation

The financial statements have been prepared to report the financial position, net cost of operations, changes in net position, status and availability of budgetary resources, and the reconciliation between proprietary and budgetary accounts of the OSC. The statements are a requirement of the Chief Financial Officers Act of 1990, the Government Management Reform Act of 1994, the Accountability of Tax Dollars Act of 2002 and the Office of Management and Budget (OMB) Circular A-136, *Financial Reporting Requirements*. They have been prepared from, and are fully supported by, the books and records of OSC in accordance with the hierarchy of accounting principles generally accepted in the United States of America, standards approved by the principals of the Federal Accounting Standards Advisory Board (FASAB), OMB Circular A-136, and OSC Accounting policies which are summarized in this note. These statements, with the exception of the Statement of Budgetary Resources, are different from financial management reports, which are also prepared pursuant to OMB directives that are used to monitor and control OSC's use of budgetary resources.

The statements consist of the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, Statement of Budgetary Resources, and Statement of Financing. In accordance with OMB Circular A-136, the financial statements and associated notes are presented on a comparative basis.

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED*)*

C. Basis of Accounting

Transactions are recorded on both an accrual accounting basis and a budgetary basis. Under the accrual method, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. These financial statements were prepared following accrual accounting. Budgetary accounting facilitates compliance with legal requirements on the use of federal funds. Balances on these statements may therefore differ from those on financial reports prepared pursuant to other OMB directives that are primarily used to monitor and control OSC's use of budgetary resources.

D. Revenues & Other Financing Sources

Congress enacts annual and multi-year appropriations to be used, within statutory limits, for operating and capital expenditures. Additional amounts are obtained from service fees and reimbursements from other government entities and the public.

Appropriations are recognized as a financing source when expended. Revenues from service fees associated with reimbursable agreements are recognized concurrently with the recognition of accrued expenditures for performing the services.

OSC recognizes as an imputed financing source the amount of accrued pension and post-retirement benefit expenses for current employees paid on our behalf by the Office of Personnel Management (OPM).

E. Taxes

OSC, as a Federal entity, is not subject to Federal, State, or local income taxes, and, accordingly, no provision for income taxes has been recorded in the accompanying financial statements.

F. Fund Balance with Treasury

The U. S. Treasury processes cash receipts and disbursements. Funds held at the Treasury are available to pay agency liabilities. OSC does not maintain cash in commercial bank accounts or foreign currency balances.

G. Accounts Receivable

Accounts receivable consists of amounts owed to OSC by other Federal agencies and the public. Amounts due from Federal agencies are considered fully collectible. Accounts receivable from the public include reimbursements from employees. An allowance for uncollectible accounts

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED*)*

receivable from the public is established when either (1) based upon a review of outstanding accounts and the failure of all collection efforts, management determines that collection is unlikely to occur considering the debtor's ability to pay, or (2) an account for which no allowance has been established is submitted to the Department of the Treasury for collection, which takes place when it becomes 180 days delinquent.

H. General Property, Plant and Equipment

OSC's property and equipment is recorded at original acquisition cost and is depreciated using the straight-line method over the estimated useful life of the asset. Major alterations and renovations are capitalized, while maintenance and repair costs are charged to expense as incurred. OSC's capitalization threshold is $50,000 for individual purchases. Applicable standard governmental guidelines regulate the disposal and convertibility of agency property, plant and equipment. The useful life classifications for capitalized assets are as follows:

Description	Useful Life (years)
Leasehold Improvements	10
Office Equipment	5
Hardware	5
Software	2

I. Advances and Prepaid Charges

Advance payments are generally prohibited by law. There are some exceptions, such as reimbursable agreements, subscriptions and payments to contractors and employees. Payments made in advance of the receipt of goods and services are recorded as advances or prepaid charges at the time of prepayment and recognized as expenses when the related goods and services are received.

J. Liabilities

Liabilities covered by budgetary or other resources are those liabilities for which Congress has appropriated funds or funding is otherwise available to pay amounts due.

Liabilities not covered by budgetary or other resources represent amounts owed in excess of available Congressionally appropriated funds or other amounts. The liquidation of liabilities not covered by budgetary or other resources is dependent on future Congressional appropriations or other funding. Intragovernmental liabilities are claims against OSC by other Federal agencies. Liabilities not covered by budgetary resources on the Balance Sheet are equivalent to amounts reported as Components requiring or generating resources on the Statement of Financing. Additionally, the Government, acting in its sovereign capacity, can abrogate liabilities.

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED*)*

K. Accounts Payable

Accounts payable consists of amounts owed to other Federal agencies and the public.

L. Annual, Sick, and Other Leave

Annual leave is accrued as it is earned, and the accrual is reduced as leave is taken. The balance in the accrued leave account is adjusted to reflect current pay rates. Liabilities associated with other types of vested leave, including compensatory, restored leave, and sick leave in certain circumstances, are accrued at year-end, based on latest pay rates and unused hours of leave. Sick leave is generally nonvested. Funding will be obtained from future financing sources to the extent that current or prior year appropriations are not available to fund annual and other types of vested leave earned but not taken. Nonvested leave is expensed when used.

M. Accrued Workers' Compensation

A liability is recorded for actual and estimated future payments to be made for workers' compensation pursuant to the Federal Employees' Compensation Act (FECA). The actual costs incurred are reflected as a liability because OSC will reimburse the Department of Labor (DOL) two years after the actual payment of expenses. Future appropriations will be used for the reimbursement to DOL. The liability consists of (1) the net present value of estimated future payments calculated by the DOL, and (2) the unreimbursed cost paid by DOL for compensation to recipients under the FECA.

N. Retirement Plans

OSC employees participate in either the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). The employees who participate in CSRS are beneficiaries of OSC's matching contribution, equal to seven percent of pay, distributed to their annuity account in the Civil Service Retirement and Disability Fund.

FERS went into effect on January 1, 1987. FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees hired prior to January 1, 1984 elected to join either FERS and Social Security, or remain in CSRS. FERS offers a savings plan to which OSC automatically contributes one percent of pay and matches any employee contribution up to an additional four percent of pay. For FERS participants, OSC also contributes the employer's matching share of Social Security.

FERS employees and certain CSRS reinstatement employees are eligible to participate in the Social Security program after retirement. In these instances, OSC remits the employer's share of the required contribution.

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED*)*

OSC recognizes the imputed cost of pension and other retirement benefits during the employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future and communicates these factors to OSC for current period expense reporting. OPM also provides information regarding the full cost of health and life insurance benefits. OSC recognized the offsetting revenue as imputed financing sources to the extent these expenses will be paid by OPM.

OSC does not report on its financial statements information pertaining to the retirement plans covering its employees. Reporting amounts such as plan assets, accumulated plan benefits, and related unfunded liabilities, if any, is the responsibility of the OPM.

O. Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

P. Net Position

Net position is the residual difference between assets and liabilities and is comprised of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations is the net result of OSC's operations since inception.

Q. Imputed Costs/Financing Sources

Federal Government entities often receive goods and services from other Federal Government entities without reimbursing the providing entity for all the related costs. In addition, Federal Government entities also incur costs that are paid in total or in part by other entities. An imputed financing source is recognized by the receiving entity for costs that are paid by other entities. OSC recognized imputed costs and financing sources in fiscal years 2006 and 2005 to the extent directed by OMB.

R. Contingencies

Liabilities are deemed contingent when the existence or amount of the liability cannot be determined with certainty pending the outcome of future events. OSC recognizes contingent liabilities, in the accompanying balance sheet and statement of net cost, when it is both probable

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

and can be reasonably estimated. OSC discloses contingent liabilities in the notes to the financial statements when the conditions for liability recognition are not met or when a loss from the outcome of future events is more than remote. In some cases, once losses are certain, payments may be made from the Judgment Fund maintained by the U.S. Treasury rather than from the amounts appropriated to OSC for agency operations. Payments from the Judgment Fund are recorded as an "Other Financing Source" when made.

S. Reclassifications

Statement of Budgetary Resources - The presentation used for the Statement of Budgetary Resources (SBR) prior to FY06 has been revised to reflect a new format required pursuant to the Office of Management and Budget (OMB) Circular A-136, *Financial Reporting Requirements*. Circular A-136 requires agencies to present both FY06 and FY05 SBR in the same format. Accordingly, certain reclassifications were made to the previously issued FY05 SBR to conform to the new format.

Other - Certain fiscal year 2005 balances have been reclassified, retitled, or combined with other financial statement line items for consistency with the current year presentation. Due to a change in the accrual process, certain balances in Other Accrued Liabilities for fiscal year 2005 have been reclassified to Accounts Payable for consistency with the current year presentation.

T. Expired Accounts and Cancelled Authority

Unless otherwise specified by law, annual authority expires for incurring new obligations at the beginning of the subsequent fiscal year. The account in which the annual authority is placed is called the expired account. For five fiscal years, the expired account is available for expenditure to liquidate valid obligations incurred during the unexpired period. Adjustments are allowed to increase or decrease valid obligations incurred during the unexpired period but not previously reported. At the end of the fifth expired year, the expired account is cancelled.

NOTE 2 – FUND BALANCE WITH TREASURY

Fund balance with Treasury account balances as of September 30, 2006 and 2005 were:

	2006	2005
Fund Balances:		
Appropriated Funds	$ 2,999,701	$ 3,325,060
Status of Fund Balance with Treasury:		
Unobligated Balance		
Available	$ 313,331	$ 451,740
Unavailable	670,544	330,520
Obligated Balance not yet Disbursed	2,015,826	2,542,800
Total	$ 2,999,701	$ 3,325,060

Restricted unobligated fund balances represent the amount of appropriations for which the period of availability for obligation has expired. These balances are available for upward adjustments of obligations incurred only during the period for which the appropriation was available for obligation or for paying claims attributable to the appropriations.

NOTE 3 – GENERAL PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment account balances as of September 30, 2006 and 2005 were as follows:

Description	Acquisition Cost	Accumulated Depreciation	Net Book Value
September 30, 2006			
Office Equipment	$ 197,216	$ (71,866)	$ 125,350
Leasehold Improvements	272,528	-	272,528
Total	$ 469,744	$ (71,866)	$ 397,878
September 30, 2005			
Office Equipment	$ 108,650	$ (41,279)	$ 67,371

Leasehold improvements relate to an office lease which OSC has not occupied as of September 30, 2006; accordingly depreciation is not recorded.

NOTE 4 – LIABILITIES

The accrued liabilities for OSC are comprised of program expense accruals, payroll accruals, and annual leave (funded and unfunded) earned by employees. Program expense accruals represent expenses that were incurred prior to year-end but were not paid. Similarly, payroll accruals represent payroll expenses that were incurred prior to year-end but were not paid.

	September 30	
	2006	2005
Intragovernmental:		
Accounts Payable	$ 5,518	$ 29,668
Payroll Taxes Payable	88,055	71,697
Post-Employment Benefits	-	10,747
Unfunded FECA Liability	98,231	64,899
Total Intragovernmental	191,804	177,011
Accounts Payable	67,931	175,142
Payroll Accrual	350,745	342,965
Payroll Taxes Payable	25,967	11,097
Unfunded Annual Leave	704,595	651,503
Total Other Liabilities	1,149,238	1,180,707
Total Liabilities	$ 1,341,042	$ 1,357,718

NOTE 5 – OPERATING LEASES

OSC occupies office space under lease agreements in Washington, DC, Dallas, Oakland, and Detroit that are accounted for as operating leases. The DC lease term began on October 26, 1999 and expires on October 25, 2009. The Dallas lease term began on December 9, 2002 and expires on December 8, 2007. The Oakland lease term began on March 1, 2000 and expired on February 28, 2005. A new 60-month lease was entered into during FY05 for the Oakland office commencing on February 1, 2006 and expiring on January 31, 2011. This lease was modified in FY06 with the period commencing on July 1, 2006 and expiring June 30, 2011. The Detroit lease began on March 20, 2005 and will expire on March 31, 2010.

NOTE 5 – LEASES (CONTINUED)

Lease payments are increased annually based on the adjustments for operating cost and real estate tax escalations. Below is a schedule of future payments for the terms of all the leases.

Fiscal Year	Totals
2007	$ 1,082,090
2008	1,027,790
2009	1,031,021
2010	153,141
2011	98,477
Total Future Payments	$ 3,392,519

The operating lease amount does not include estimated payments for leases with annual renewal options.

NOTE 6 – LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities on OSC's Balance Sheet as of September 30, 2006 and 2005, include liabilities not covered by budgetary resources, which are liabilities for which congressional action is needed before budgetary resources can be provided. Although future appropriations to fund these liabilities are likely and anticipated, it is not certain that appropriations will be enacted to fund these liabilities. Intragovernmental liabilities not covered by budgetary resources consists entirely of FECA liabilities. Unfunded FECA liabilities are $98,231 and $64,899 as of September 30, 2006 and 2005, respectively. Other liabilities not covered by budgetary resources consist entirely of unfunded leave. Unfunded leave balances are $704,595 and $651,503 as of September 30, 2006 and 2005, respectively.

NOTE 7 – INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

Intragovernmental costs represent goods and services exchange transactions made between two reporting entities within the Federal government, and are in contrast to those with non-federal entitities (the public). Such costs are summarized as follows:

	2006	2005
Investigations and Enforcements		
Intragovernmental Costs	$ 5,240,996	$ 4,017,863
Public Costs	10,827,382	10,686,050
Total Investigations and Enforcements Costs	16,068,378	14,703,913
Intragovernmental Earned Revenue	(325,277)	(184,272)
Public Earned Revenue	-	-
Total Investigations and Enforcements Earned Revenue	$ (325,277)	$ (184,272)

NOTE 8 – UNDELIVERED ORDERS AT THE END OF THE PERIOD

Beginning with FY06, the format of the Statement of Budgetary Resources has changed and the amount of undelivered orders at the end of the period is no longer required to be reported on the face of the statement. Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, states that the amount of budgetary resources obligated for undelivered orders at the end of the period should be disclosed. For the years ended September 30, 2006 and 2005, Undelivered Orders amounted to $1,477,612 and $1,901,485.

NOTE 9 – BUDGETARY RESOURCE COMPARISONS TO THE BUDGET OF THE UNITED STATES GOVERNMENT

Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, calls for explanations of material differences between amounts reported in the Statement of Budgetary Resources (SBR) and the actual balances published in the Budget of the United States Government (President's Budget). However, the President's Budget that will include FY06 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2007 and can be found at the OMB Web site: http://www.whitehouse.gov/omb. The 2007 Budget of the United States Government, with the Actual Column completed for 2005, has been reconciled, and there were no material differences.

NOTE 10 – IMPUTED FINANCING SOURCES

OSC recognizes as imputed financing the amount of accrued pension and post-retirement benefit expenses for current employees. The assets and liabilities associated with such benefits are the responsibility of the administering agency, the Office of Personnel Management (OPM). For the fiscal years ended September 30, 2006 and 2005, respectively, imputed financing from OPM were $710,686 and $703,719.

NOTE 11 – CONTINGENCIES

A contingency is an existing condition, situation or set of circumstances involving uncertainty as to possible payment by OSC. The uncertainty will ultimately be resolved when one or more future events occur or fail to occur. For pending, threatened or unasserted litigation, a liability/cost is recognized when a past transaction or event has occurred, a future outflow or other sacrifice of resources is probable, and the related future outflow or sacrifice of resources can be reasonably estimated.

NOTE 11 – CONTINGENCIES (CONTINUED)

There are numerous legal actions pending against the United States in Federal courts in which claims have been asserted that may be based on action taken by OSC. Management intends to vigorously contest all such claims. Management believes, based on information provided by legal counsel, that losses, if any, for the majority of these cases would not have a material impact on the Financial Statements. For one case, legal counsel has indicated that a loss is "reasonably possible", and has estimated the potential loss at approximately $600,000; however, no loss accrual has been made for this case outstanding at September 30, 2006.