

FISCAL YEAR 2009
CONGRESSIONAL BUDGET JUSTIFICATION
AND PERFORMANCE BUDGET GOALS



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Part 1 - Executive Summary

Summary of Request

OSC is requesting \$17,468,000 in FY 2009, which is the same amount as the agency's FY 2008 appropriation of \$17,468,000, which included \$1,100,000 for computer forensics associated with the investigations of its Special Task Force. The \$17,468,000 includes funding for at least one additional FTE, as well as funding to cover the salary increase of January 2008 and the projected increase of January 2009.

OSC's Mission

The U.S. Office of Special Counsel's 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 as 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).

On matters ranging from protecting passengers in the nation's air travel, protecting our borders, identifying waste in federal contracting and grants to save taxpayers money, assuring safety in customs inspections to provide safety to the public, creating greater efficiency in the military for safety, correcting discrimination against service members returning from duty so that our all-volunteer military continues to attract quality persons, to disciplining high level officials for whistleblower retaliation and use of official authority to affect elections -- the U.S. Office of Special Counsel has fulfilled its role as an independent prosecutorial and investigative agency charged with bringing greater integrity and efficiency to the merit system. New challenges have arisen at the Office of Special Counsel, including highly visible investigations into the nation's air traffic control system, investigations into the adequacy of the pumps installed in New Orleans to relieve the city from flooding during hurricanes, and an investigation into possible violations of the Hatch Act throughout the agencies of the federal executive branch of government. Granting this budget request will instill increased public trust in government by sending the message that independent agencies are discovering and counteracting fraud, waste and abuse of authority; that we honor, not punish, those individuals who bring these matters to light.

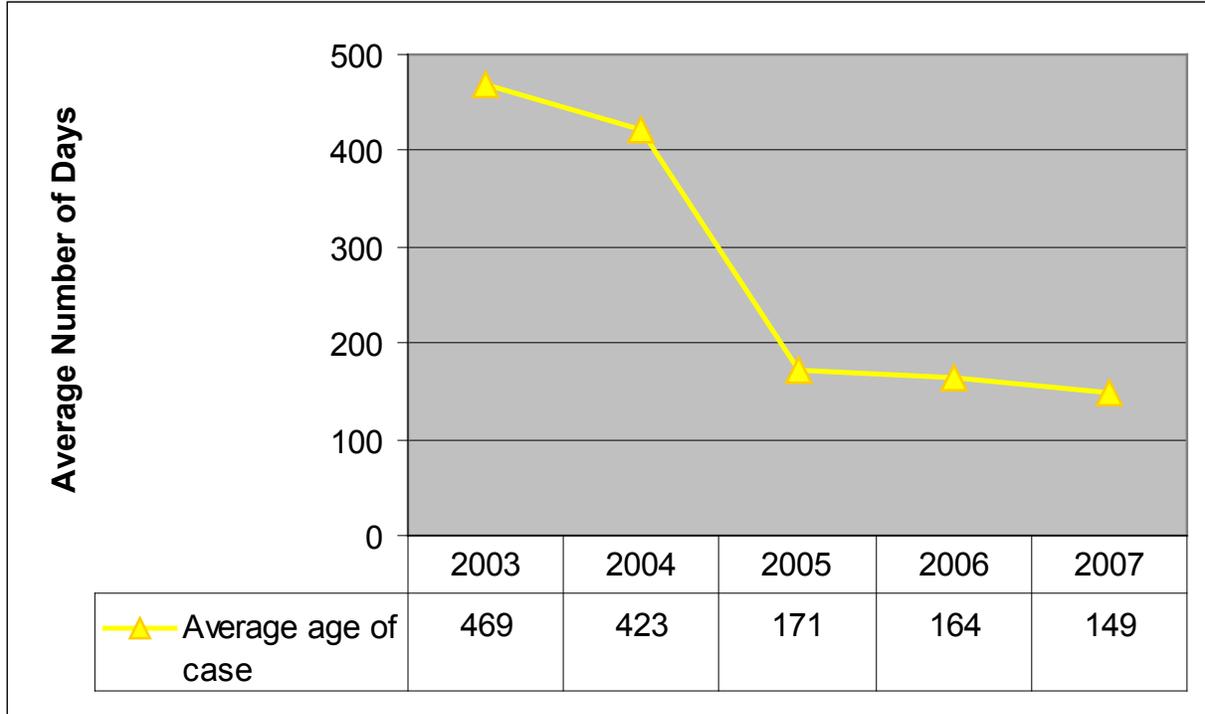
Graphical Highlights of OSC's Successes

When the new Special Counsel took office in January 2004, two major problems confronted OSC: a serious backlog of cases in all of the units and a cumbersome structure of three separate Investigation and Prosecution Divisions (IPDs). The Government Accountability Office (GAO) issued a report in March 2004 (GAO 04-36) that was critical of OSC's chronic backlog problem in the Complaints Examining Unit and Disclosure Unit. That same month, Special Counsel Bloch created a Special Projects Unit (SPU) to begin immediately investigating the problem of the backlog of cases and to find solutions.

The next step in solving the difficulties was a reorganization of the agency in January 2005. The Special Counsel further directed that each operating unit establish standard operating procedures that would establish consistency in case processing, and with that consistency, faster processing times. These improvements have lead to further reductions in backlogs and enabled the agency to reach the meritorious cases faster, enabling OSC to seek settlements or initiate prosecutions before evidence became stale and witnesses' memories faded. Decisions are now reached faster, bringing swifter justice to those Federal employees served by the Office of Special Counsel.

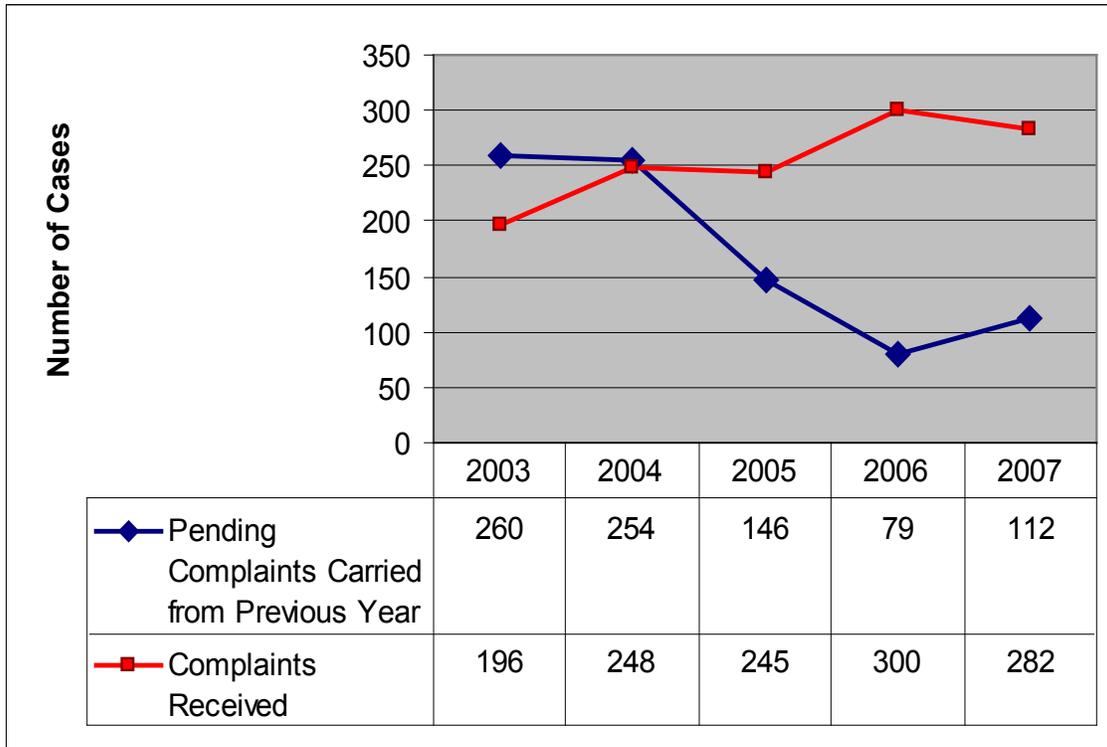
The next seven pages graphically tell the story of the successes of the last four years at OSC, especially the decreased case processing times and the elimination of the backlogs, including those backlogs mentioned by GAO in 2004. These successes were achieved despite increasing caseloads in several units and newly added responsibilities for the agency.

Hatch Act Unit - Average Processing Time per Complaint



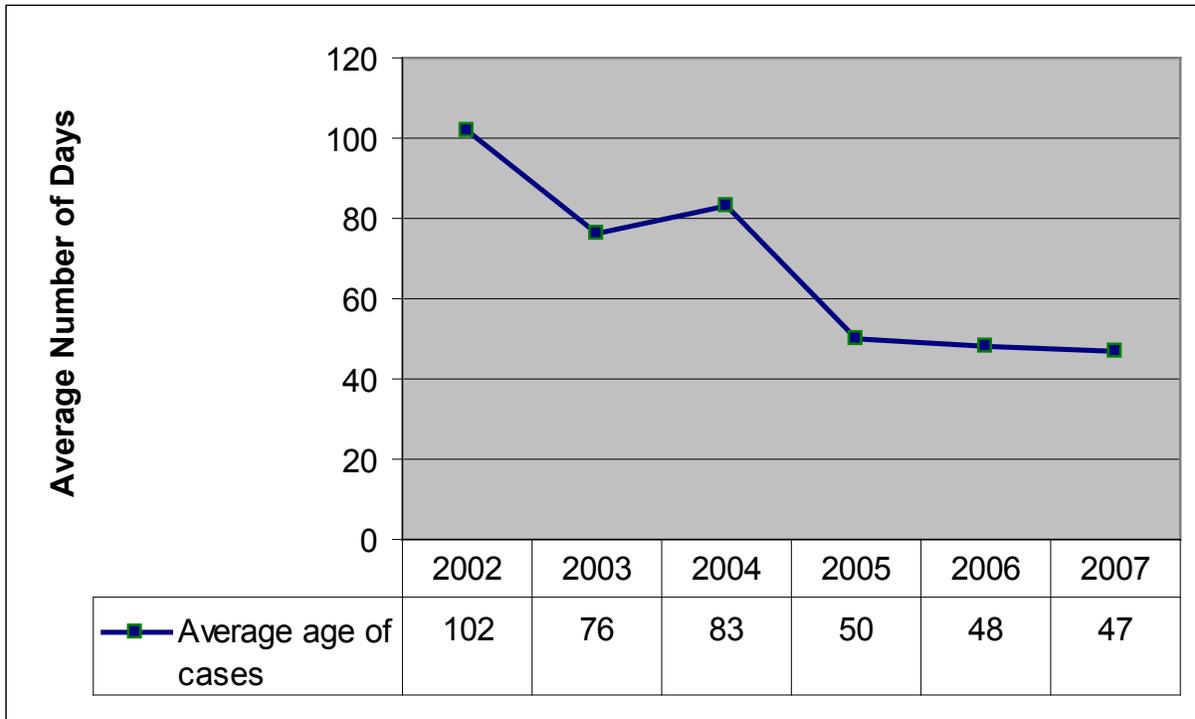
OSC's Hatch Act Unit reduced its case processing time dramatically during the period from FY 2003 to FY 2007. The average number of days to process the case in FY 2007 is less than one third of what it was in FY 2003.

Hatch Act Complaints



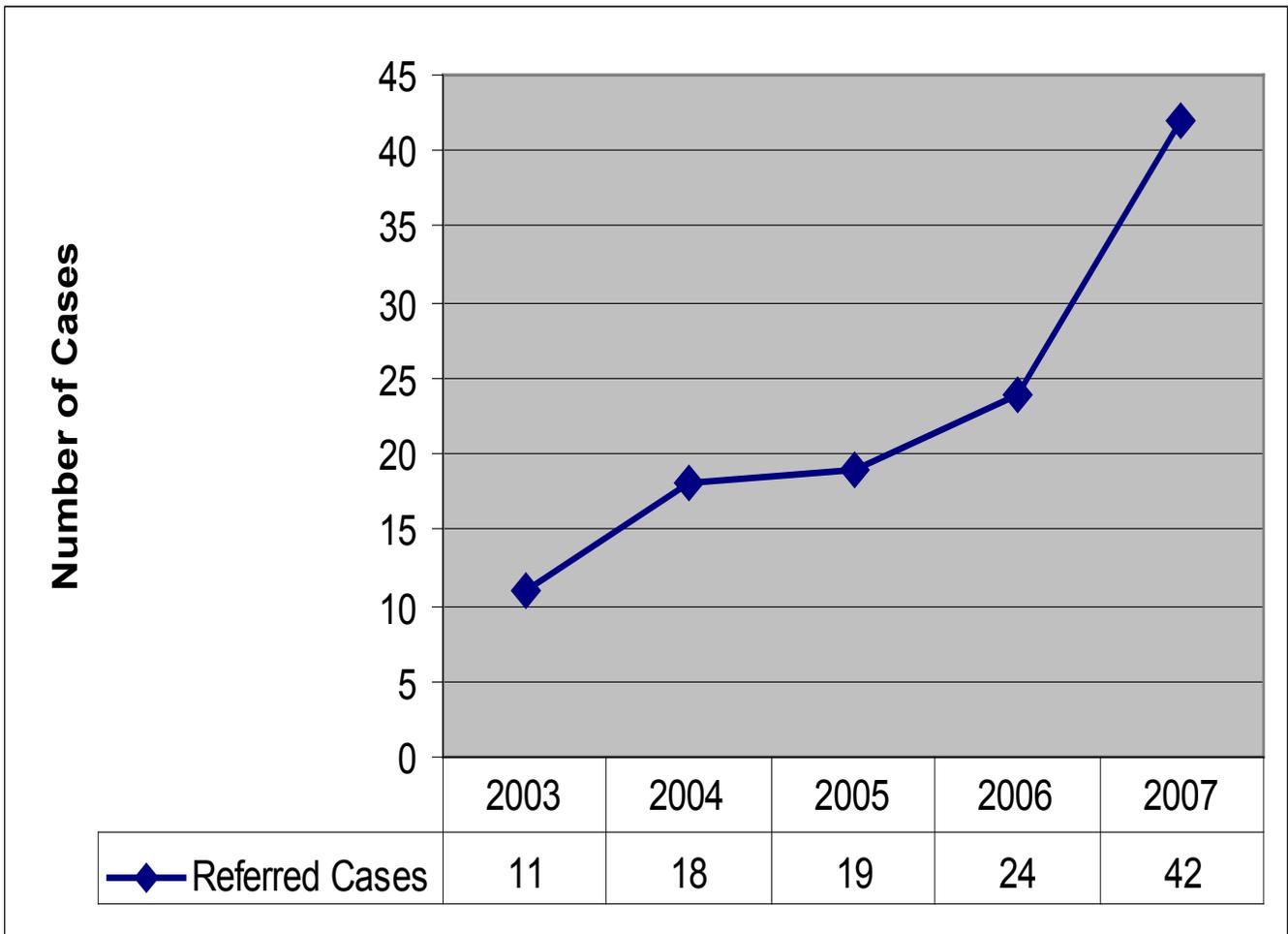
Starting in FY 2005, as OSC reduced its processing time for Hatch Act complaints, the number of pending complaints carried forward from the previous fiscal year sharply declined. From FY 2003 to FY 2007, the overall decline was 57%. During the same period, the number of complaints received increased by 44%. In just three years, the Hatch Act Unit has become much more efficient.

Complaints Examining Unit - Average Processing of PPP Cases in the Unit



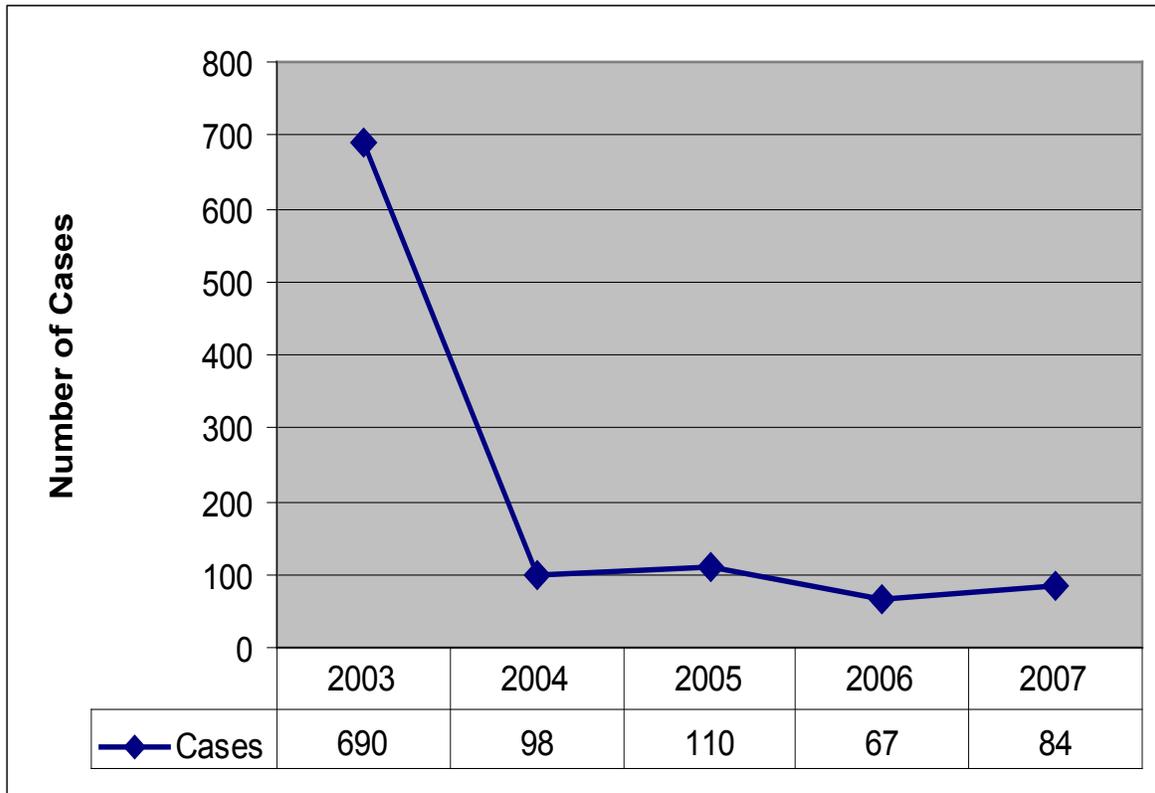
This chart shows the average number of days that a Prohibited Personnel Practice case remained in OSC’s Complaints Examining Unit, before the case was either closed or referred to OSC’s Investigation and Prosecution Division for further investigation.

Disclosure Referrals to Agency Heads



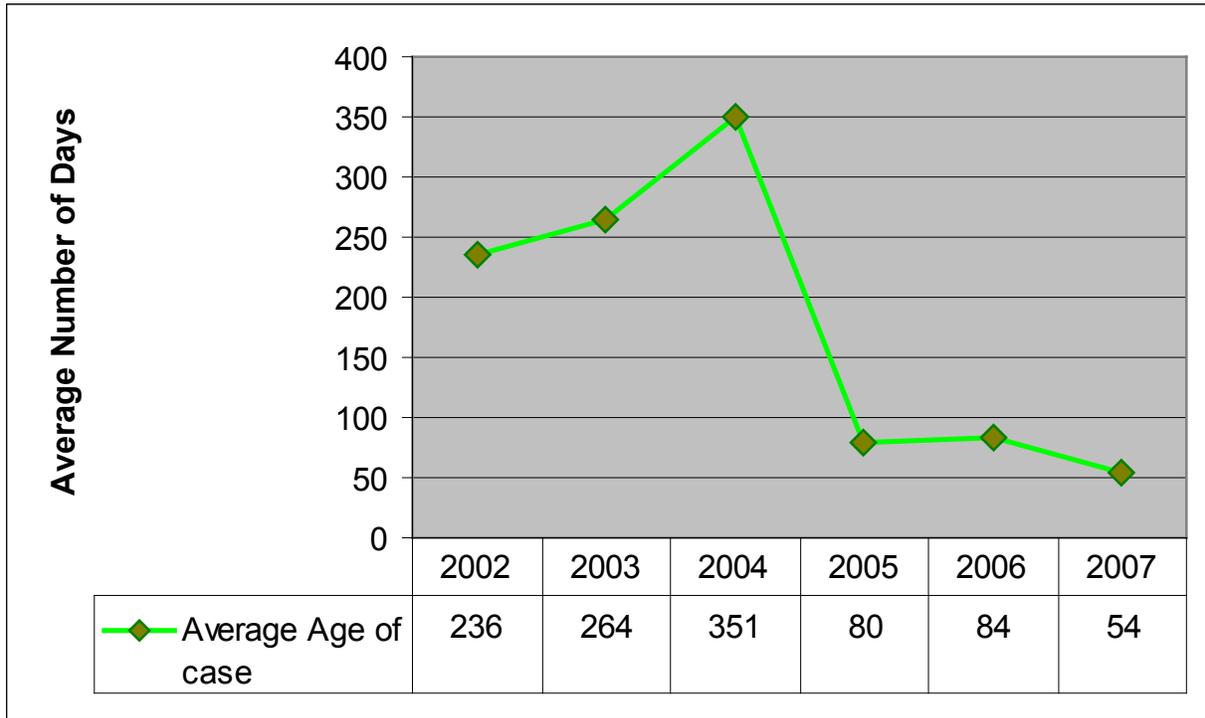
When the Special Counsel analyzes a whistleblower disclosure and determines there is substantial likelihood of wrongdoing, he refers the matter to the head of the appropriate agency, who is then required to internally investigate the matter and report the results to OSC, the Congress, and the President.

Disclosure Unit Cases Pending at End of Year



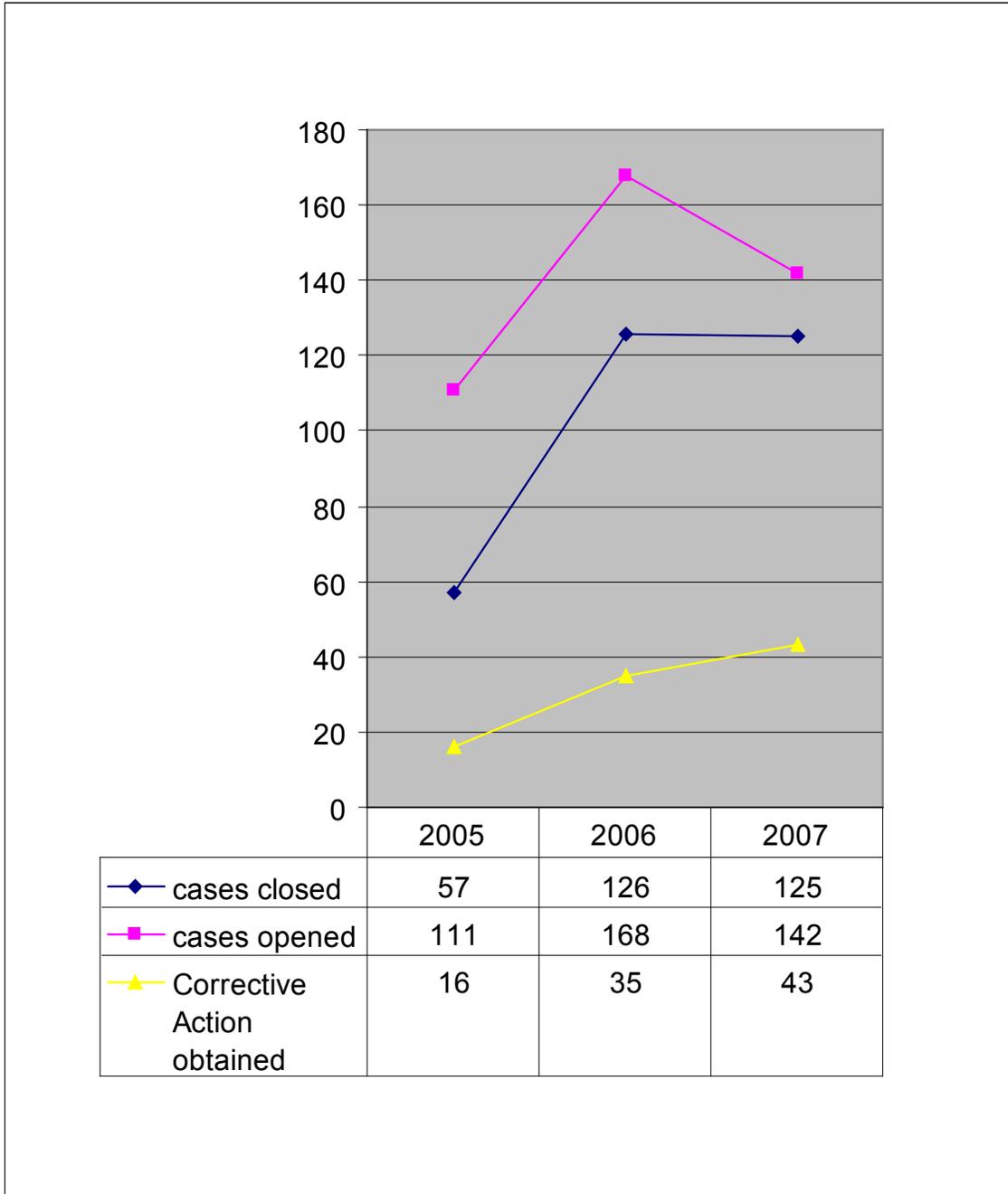
In FY 2003, the Disclosure Unit had a backlog of whistleblower disclosures. OSC reduced the backlog by FY 2004, and has prevented a backlog resurgence in FY 2005, FY 2006 and FY 2007.

Disclosure Unit - Average Processing Time per Disclosure



This chart shows the improvement in processing time in OSC's Disclosure Unit. The average processing time for disclosures in FY 2007 was 54 days. This was an 85% reduction from the high of FY 2004 (an average of 351 days).

USERRA Demonstration Project



The USERRA Demonstration Project began in February of FY 2005. OSC has achieved improvement every year in the number of corrective actions obtained on behalf of members of the armed forces.

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.

Strategic Objectives

OSC has four strategic objectives (see table below), each of which is supported by a series of operational goals. These operational goals are described in Part 2, in the appropriate section for each budget program.

Strategic Objectives of the Agency	
U.S. Office of Special Counsel	
Strategic Objective 1	OSC will protect the Merit System and promote justice in the Federal workforce through investigation and prosecution of the Prohibited Personnel Practices.
Strategic Objective 2	OSC will protect the Merit System and promote justice in the Federal workforce by enforcing the Hatch Act.
Strategic Objective 3	OSC will promote justice, public safety, and efficiency through acting as a channel for whistleblowers in the Federal workforce to disclose information.
Strategic Objective 4	OSC will protect veterans in the Federal workforce through enforcement of the Uniformed Services Employment and Reemployment Rights Act.

Internal Organization

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 FY2007 include the Immediate Office of the Special Counsel (IOSC), five operating units/divisions and several 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 unit 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 sometimes investigate alleged violations of the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act, though most Hatch Act and USERRA work is handled by the Hatch Act Unit and the USERRA Unit, respectively.

Hatch Act Unit. This 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 also oversees Hatch Act matters delegated to the IPD.

USERRA Unit. This unit handles USERRA cases that are referred to OSC for prosecution by the Department of Labor. 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 has involved new functions, increased case load, 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. This division also includes the Information Technology 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.

Budget by Program

FY 2009 Budget by Program						
<i>(in thousands of dollars)</i>						
Program	FY 2008 Estimate		FY 2009 Estimate		Increase/Decrease	
	\$	FTE	\$	FTE	\$	FTE
Investigation and Prosecution of Prohibited Personnel Practices	\$7,480	52	\$7,679	52	\$199	-
Hatch Act Enforcement (including Special Task Force)	\$1,712	11.5	\$1,910	12.5	\$198	1
Whistleblower Disclosure Unit	\$1,116	7.5	\$1,146	7.5	\$30	-
USERRA Enforcement and Prosecution	\$1,185	8	\$1,217	8	\$32	-
Office of the Special Counsel	\$1,197	7	\$1,229	7	\$32	-
Office of the Agency General Counsel	\$897	5	\$921	5	\$24	-
Management / Information Technology / Budget / Human Resources / Procurement / Document Control / Planning / Outsourced Computing Svcs	\$3,881	19	\$3,366	19	-\$515	-
totals	\$17,468	110	\$17,468	111	\$0	1

PART 2 - BUDGET PROGRAMS AND PERFORMANCE PLAN

A. Investigation and Prosecution of Prohibited Personnel Practices

Unlike many other investigative entities or agencies, OSC must, as a general rule, conduct an inquiry after receipt of complaints alleging the commission of a prohibited personnel practice.⁸ The nature of the inquiry ranges from the CEU screening process to the IPD field investigations, but one must be conducted after a complaint is filed. Complaints received by OSC can and often do involve multiple allegations, some of which can involve different prohibited personnel practices. In all such matters, an OSC inquiry requires the review of, and a legal determination about, each allegation and prohibited personnel practice.

After a complaint is received by OSC, CEU attorneys and personnel management specialists conduct an initial review to determine whether it is within OSC's jurisdiction, and whether further investigation is warranted. CEU refers all matters stating a potentially valid claim to the IPD for further investigation. All such matters are reviewed first by the ADR Unit.⁹

In selected cases that have been referred for further investigation, a trained OSC ADR specialist contacts the complainant and the employing agency to invite them to participate in the agency's voluntary ADR Program. If both parties agree, OSC conducts a mediation session, led by OSC trained mediators who have experience in federal personnel law. When mediation resolves the complaint, the parties execute a binding written settlement agreement. If mediation does not resolve the complaint, it is referred for further investigation, as it would have been had the parties not attempted mediation.

The IPD conducts investigations to review pertinent records and to interview complainants and witnesses with knowledge of the matters alleged. Matters undergo legal review and analysis to determine whether the matter warrants corrective action, disciplinary action, or both.

If OSC believes a prohibited personnel practice has been committed and initiates discussions with an agency, the matter is often resolved through negotiation. Before OSC may initiate an enforcement proceeding seeking corrective action (relief intended to make an aggrieved employee whole) at the MSPB, the Special Counsel must make a formal request to the agency involved, reporting on its findings and recommendations. Only when the agency has had a reasonable period of time to take corrective action and fails to do so, may OSC proceed to petition the MSPB for corrective action.¹⁰ When an agency refuses to grant appropriate corrective action, OSC generally proceeds immediately to file a complaint with the MSPB. If OSC determines that disciplinary action (the imposition of discipline on an employee who has committed a violation) is warranted, it can file a complaint directly with the MSPB.¹¹ Should the agency agree to take appropriate disciplinary action on its own initiative, then the matter can be settled without resort to an MSPB proceeding.

In addition to rectifying the matter at issue, OSC litigation before the MSPB – whether by enforcement actions seeking to obtain corrective and/or disciplinary action, or by intervention or other participation in matters filed by others – often has the additional benefit of clarifying and expanding existing law. It also brings greater public attention to OSC's mission and work, a factor likely to increase the deterrent effect of its efforts. OSC's Complaints Examining Unit (CEU), as discussed above, is the intake unit for all prohibited personnel practice complaints.

For FY 2007 OSC received 2,880 new matters, including PPP, Hatch Act, and Disclosure matters (See **Table 1**).

Resource Estimates

During FY2008 the Investigation and Prosecution of Prohibited Personnel Practices will use approximately 52 FTE at a cost of approximately \$7,480,000. During FY 2009, we estimate the cost of the program will be at a cost of approximately \$7,679,000 with no increase in FTE.

TABLE 1

Breakdown of Matters^a Pending and Completed FY2003 to FY2007					
	FY2003	FY2004	FY2005^b	FY2006	FY2007
Matters pending at beginning of fiscal year	1,415	1,605	778	777	667
New matters received	2,530	2,798	2,684	2,718	2,880
Matters closed	2,344	3,612	2,685	2,814	2,842
Matters pending at end of fiscal year	1,601	791	777	681	698

^a The term "matters" in this table includes prohibited personnel practice complaints (including Transportation Security Administration matters); Hatch Act complaints, whistleblower disclosures (DU matters); USERRA referrals from the MSPB pursuant to 5 U.S.C. x 1221(f)(3).

^b Includes USERRA Demonstration Project matters.

The majority of OSC's staff resources were devoted to the processing of PPP complaints. Of the total 2,880 new matters OSC received during FY 2007, 1,927 or 67% were new PPP complaints. (See Table 2).

TABLE 2

Summary of Prohibited Personnel Practice (PPP) Complaints Activity – Receipts and Processing^a						
		FY 2003	FY2004	FY 2005	FY2006	FY2007
Pending complaints carried over from previous fiscal year		594	653	524	521	387
New complaints received (Intake Unit)		1,791	1,964	1,771	1,805	1,927
<i>Total complaints:</i>		2,385	2,617	2,295	2,326	1,967
Complaints referred for field investigation		162	244	198	143	125
Complaints processed and closed		1,732	2,093	1,774	1,930	1,953
Processing times	< 240 days	1,471	1,799	1,198	1,693	1,832
	>240 days	261	294	576	237	121
Percentage processed in under 240 days		85%	86%	67.5%	88%	94%

^aThis figure is higher than reported in the President's FY 2006 Budget because it includes several closed cases that were reopened.

In FY 2007, there was an increase in stays obtained from the Merit Systems Protection Board and an increase in disciplinary actions negotiated with agencies. (see Table 3).

TABLE 3

Summary of Prohibited Practice Complaints Activity – Favorable Actions						
		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Total favorable actions obtained ^a (all prohibited personnel practices)	<i># of actions</i>	115	80	45	52	29
	<i># of matters</i>	83	65	45	48	29
Favorable actions obtained (reprisal for whistleblowing)	<i># of actions</i>	75	57	37	40	21
	<i># of matters</i>	75	49	37	37	21
Stays negotiated with agencies ^b		6	11	3	8	4
Stays obtained from Merit Systems Protection Board		1	1	1	1	3
Disciplinary actions negotiated with agencies		12	11	3	4	5
Corrective action complaints filed with the Board		0	1	1	1	1
Disciplinary actions obtained from the Board		1	0	1	0	0

^a The purpose of this breakout is to show the number of favorable actions obtained, and the number of matters involved. A matter (case) can have more than one action (favorable outcome).

^b Stays and disciplinary actions listed in this table (except for disciplinary actions obtained by OSC from the Board) are included in the totals shown in the first two rows above, but are broken out here for further information.

Alternative Dispute Resolution

Among the factors that determine “mediation-appropriate” cases are the complexity of the issues, the nature of the personnel action, and the relief sought by the Complainant. Once a case has been identified as mediation-appropriate, the OSC ADR Specialist contacts the parties to discuss the ADR Program. “Pre-mediation” discussions are designed to help the parties form realistic expectations and well-defined objectives regarding the mediation process.

During fiscal year 2007, the number of agencies which accepted initial mediation remained at 59% and there were ten successfully mediated resolutions. (See Table 4).

TABLE 4

Summary of Prohibited Personnel Practice Complaints Activity – Mediation Program						
		FY2003	FY2004	FY2005	FY2006	FY2007
Matters identified before investigation as mediation-appropriate		43	82	22	52	38
Initial acceptance rates by parties	<i>Complainants</i>	82%	68%	27%	83%	71%
	<i>Agencies</i>	69%	64%	22%	59%	59%
Mediated and other resolutions ^a		23	18	5	11	10
Resolution rate – OSC mediation program		92%	86%	100%	55%	50%

^a This category includes complaints settled through mediation by OSC (including “reverse-referrals”- i.e., cases referred back to the Alternative Dispute Resolution Unit by an Investigation and Prosecution Division due to the apparent potential for a mediated resolution). Also included in this category are complaints that entered the initial OSC mediation process, and were then resolved through withdrawal of the complaint, or through mediation by an agency other than OSC.

Mediation settlement outcomes in OSC’s Mediation Program vary, depending on the interests of the parties. Monetary recovery includes retroactive promotions, attorney fees, and lump sum payments. In addition to monetary recovery, the benefits received by complainants in ADR include revised performance appraisals, reinstatement of employment, and transfers to better working environments.

Goals and Results - Prohibited Personnel Practices

OSC's Strategic Objective 1 is to protect the Merit System and promote justice in the Federal workforce through investigation and prosecution of the Prohibited Personnel Practices. The tables below describe the three operational goals supporting this strategic objective.

Goal 1: TO PROTECT THE MERIT SYSTEM THROUGH TIMELY CASE PROCESSING	
PPP Enforcement Mission	PROHIBITED PERSONNEL PRACTICES CASES
PERFORMANCE INDICATOR	Indicator A: Percentage of cases processed in less than 240 days.
FY 2006 TARGET	85%
FY 2006 RESULTS	89%
FY 2007 TARGET	92%
FY 2007 RESULTS	94%
FY 2008 TARGET	92%
FY 2008 RESULTS	
FY 2009 TARGET	92%
FY 2009 RESULTS	

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 92% target reflects the reality that 8-10% of the PPP cases call for full investigations. To set a target higher than 92% would imply that the agency should artificially try to limit the number of cases receiving full investigations. The agency will never do that. Therefore the appropriate target is 92%.

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS	
PPP Enforcement Mission	Prohibited Personnel Practices Cases
PERFORMANCE INDICATOR	Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# successful mediations + # of settlements achieved + # of successful litigations) / (# meritorious cases)
FY 2006 TARGET	99%
FY 2006 RESULTS	100%
FY 2007 TARGET	99%
FY 2007 RESULTS	100%
FY 2008 TARGET	100%
FY 2008 RESULTS	
FY 2009 TARGET	100%
FY 2009 RESULTS	

Comments for 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 successfully prosecute cases warranting corrective action.

OSC maintained the same high standard of achieving favorable outcomes in 100% of meritorious PPP cases.

Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES	
PPP Enforcement Mission	PROHIBITED PERSONNEL PRACTICES CASES
PERFORMANCE INDICATOR	Indicator A: # of new Federal agencies certified in the 2302 (c) Program by OSC.
FY 2006 TARGET	5
FY 2006 RESULTS	6
FY 2007 TARGET	5
FY 2007 RESULTS	3
FY 2008 TARGET	5
FY 2008 RESULTS	
FY 2009 TARGET	5
FY 2009 RESULTS	

Comments for 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 32 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% over the previous year.

The results for the number of certifications fell below the target of five agencies to be certified during FY 2007, but we anticipate reaching our target for FY 2008.

Hatch Act Enforcement Program

OSC is also responsible for enforcing the Hatch Act, including investigating and prosecuting complaints alleging violations of the Act, and providing advisory opinions on the Act's requirements. The Hatch Act Unit, staffed by a Chief and five staff attorneys, is responsible for a nationwide program that provides legal advice on the Hatch Act to federal, state and local employees and the public at large. Specifically, the Hatch Act Unit has the unique responsibility of providing Hatch Act information and legal advice to White House staff, Congressional staff, the national press, senior management officials throughout the federal government, and state and local government officials. The Hatch Act Unit provides all of OSC's advisory opinions. When provided to individuals, the advisory opinions enable them to determine whether they are covered or not by the Act, and whether their contemplated activities are permitted under the Act or not.

The Hatch Act Unit also enforces compliance with the Act by receiving complaints alleging Hatch Act violations, conducting preliminary inquiries into complaint allegations and, (where warranted) further investigating allegations or referring the complaints to OSC's IPD (for further investigation). Depending on the severity of the violation, the Hatch Act Unit will either issue a warning letter to the employee, attempt to informally resolve the violation, prosecute the case before the MSPB or send it to the IPD to prosecute before the MSPB.

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 very heightened awareness of the Hatch Act among Federal employees. The number of Hatch Act complaints received in FY 2006 exceeded the number 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.

Resource estimates:

During FY 2008, the Hatch Enforcement Program (including the Special Task Force) will use approximately 11.5 FTE at a cost of approximately \$1,712,000. This does not include an additional \$1,100,000 for forensic computing services. During FY 2009, we estimate the cost of this program to be \$1,910,000 for 12.5 FTE.

In FY 2007, OSC had double the number of withdrawals from partisan races as in FY 2006. (See Table 5).

TABLE 5

Summary of Hatch Act Advisory Opinion and Complaint Activity		FY2003	FY2004	FY2005	FY2006	FY2007
Advisory opinions issued		3,284	3,913 ^a	2,558	3,004	2,598
New advisory requests received (written)		159	176	191	237	194
New complaints received		196	248	245	299	282
Warning letters issued		43	93	87	76	68
Complaints processed and closed in fiscal year		201	357	310	266	252
Corrective actions taken by recipients of cure letters:	Withdrawal from partisan races	18	17	4	9	18
	Resignation from covered employment	7	8	10	22	6
	Other	0	6	3	2	1
	Total:	25	31	17	33	25
Disciplinary action complaints filed with the Merit Systems Protection Board		4	7 ^b	11	6	1
Disciplinary actions obtained (through negotiation or ordered by the Board)		4	2	8	8	0
Complaints pending at end of FY		254	146	79	112	142

^a This number is lower than reported in the President's FY 2006 Budget (Other Independent Agencies, Appendix, p. 1209) because of a duplication error.

^b This number is higher than reported in the President's FY 2006 Budget because of system entries made after that publication.

To further its advisory role, the Hatch Act Unit is very active in OSC's outreach program; the unit conducted approximately 20 outreach presentations in FY2007 to various federal agencies and employee groups concerning federal employees rights and responsibilities under the Act. Many of these programs involved high-level agency officials. Also, the unit attempted to informally resolve as many ongoing Hatch Act violations as possible without resorting to litigation. Advisories concerning partisan activity surrounding upcoming state and local elections have accounted for a fair amount of OSC's work this fiscal year.

Task Force Investigations

In the spring of 2007, the Special Counsel created a new task force to investigate numerous allegations that high level agency officials may have violated the Hatch Act or other civil service laws. Specifically, the task force is investigating numerous allegations that certain agency officials may have encouraged or allowed partisan political forces to improperly influence government decisions. Among those allegations that the task force is currently investigating is the circumstances surrounding the firing of the United States Attorneys and the legality of the political briefing given by the White House Office of Political Affairs to political appointees throughout the federal government. Due to the highly sensitive and potentially explosive nature of the task force's investigations, the Special Counsel is unable to publicly acknowledge the numerous other allegations that the task force is currently investigating.

Goals and Results - Hatch Act Program

OSC's Strategic Objective 2 is to protect the Merit System and promote justice in the Federal workforce by enforcing the Hatch Act. The tables below describe the three operational goals supporting this strategic objective.

Goal 1: TO DEFEND THE MERIT SYSTEM BY ENFORCING THE HATCH ACT – THROUGH TIMELY CASE PROCESSING			
HATCH ACT MISSION	HATCH ACT WRITTEN ADVISORY OPINIONS See comment 1.	HATCH ACT ORAL & EMAIL ADVISORY OPINIONS See comment 2	HATCH ACT COMPLAINTS
PERFORMANCE INDICATORS	Indicator A: Percentage of formal written advisory opinions issued in less than 120 days.	Indicator B: Percentage of oral and e-mail advisory opinions issued in less than five days	Indicator C: Percentage of matters resolved in less than 365 days.
FY 2006 TARGET	75%	99%	60%
FY 2006 RESULTS	93%	100%	84%
FY 2007 TARGET	80%	99%	70%
FY 2007 RESULTS	91%	99%	92%
FY 2008 TARGET	85%	99%	80%
FY 2008 RESULTS			
FY 2009 TARGET	90%	99%	85%
FY 2009 RESULTS			

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.

The Hatch Act Unit exceeded two of its three timeliness targets for FY 2007, and met its third timeliness target.

The FY 2008 timeliness targets for Indicator A and Indicator C have been revised upwards, in order to be more aggressive. However, these timeliness targets reflect the reality that each member of the unit will spend more time on the phone doing oral advisories during the presidential election year.

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS	
HATCH ACT MISSION	HATCH ACT CASES See comment 1.
PERFORMANCE INDICATOR	Indicator A: % favorable outcomes in meritorious cases
FY 2006 TARGET	90%
FY 2006 RESULTS	97%
FY 2007 TARGET	90%
FY 2007 RESULTS	97%
FY 2008 TARGET	97%
FY 2008 RESULTS	
FY 2009 TARGET	97%
FY 2009 RESULTS	

Comments for 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 2007.

The targets for FY 2008 and FY 2009 have been substantially revised upwards from 90% to 97%.

The target is not set at 100% for several reasons:

- A client may decide not to settle for personal reasons.
- Despite judicious selecting of cases to be brought to trial and good preparation, a judge may disagree with OSC's position.
- Each year, OSC's Hatch Act Unit tackles a few cases which break new ground. For example, in new areas such as the use of blogs while on duty, there are Hatch Act implications. OSC will at times seek judicial clarification of the Hatch Act through litigation in areas such as this. By nature, OSC will not win every one of these.

Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES		
HATCH ACT MISSION	HATCH ACT OUTREACH VISITS	HATCH ACT SECTION OF OSC WEBSITE
PERFORMANCE INDICATORS	Indicator A: (# of HA trainings and outreaches given) / (# of invitations to provide HA training or outreach, where the inviter sponsors OSC)	Indicator B: Number of new advisory complex opinions added every month to the website.
FY 2006 TARGET	90%	One
FY 2006 RESULTS	96%	One
FY 2007 TARGET	90%	One
FY 2007 RESULTS	100%	One
FY 2008 TARGET	95%	One
FY 2008 RESULTS		
FY 2009 TARGET	95%	One
FY 2009 RESULTS		

Comments for Goal #3

1. Results:

Indicator A: The outreach results for FY 2007 exceeded the set target by 10%. The FY 2008 and FY 2009 targets have been revised upwards to 95%. The targets are not set at 100% because OSC needs the flexibility to be able to decline one or two outreaches each year, due to trials, elections, investigations, and heavily booked outreach schedules.

Indicator B: One opinion per month has been posted. This averages to one opinion per month since these goals were established in February 2006. The target for FY 2008 and FY 2009 remains at one complex opinion per month. The opinions online are not a massive database to reflect every possible facet of each type of case. Rather, the Hatch Act Unit looks for unique issues that will be generally useful to many people because they address a new issue or explain a general principle of how the Hatch Act will be enforced.

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.

Whistleblower Disclosure Unit Program

In addition to its investigative and prosecutorial mission, the OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may, under 5 U.S.C. § 1213(a), disclose information they reasonably believe evidences a violation of law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. At present, the Disclosure Unit staff is comprised of the Chief, six attorneys, and one paralegal. The Disclosure Unit is responsible for reviewing the information submitted by whistleblowers, and advising the Special Counsel whether it shows that there is a substantial likelihood that the type of wrongdoing described in § 1213(a) has occurred or is occurring. Where a substantial likelihood determination is made, the Special Counsel must transmit the disclosure to the head of the relevant agency for further action. The agency is required to conduct an investigation and submit a report to OSC describing the results of the investigation and the steps taken in response to the investigative findings. Under § 1213(e), the whistleblower is also provided with a copy of the report for comment. The Special Counsel is then required to review the report in order to determine whether it meets the requirements of the statute and its findings appear reasonable. Finally, the report is forwarded to the President and appropriate Congressional oversight committees.

In recent years, OSC has had a large number of high-profile whistleblower cases, leading to increased national press coverage of OSC. FY 2007 accelerated 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.

Resource Estimates:

During FY 2008, the Whistleblower Disclosure Unit will use approximately 7.5 FTE at a cost of \$1,116,400. During FY 2009, we estimate the cost of the program will be \$1,146,000 with no increase in FTE.

In the Disclosure Unit, 482 new matters were received in FY 2007, an 11% increase from the previous fiscal year. During FY 2007, the Unit referred 42 matters for investigation under § 1213(c), a 43% increase from the previous fiscal year. (See Table 6).

TABLE 6

Summary of Whistleblower Disclosure Activity – Receipts and Dispositions ^a		FY2003	FY2004	FY2005	FY2006	FY2007
Pending disclosures carried over from previous fiscal year		556	690	98	110	69
New disclosures received		535	572	485	435	482
Total disclosures		1,091	1,262	583	545	551
Disclosures referred to agency heads for investigation and report		11	18	19	24	42
Referrals to Agency IGs		3	8	14	10	?
Agency head reports sent to President and Congress		23	8	16	24	20
Results of agency investigations and reports	Disclosures substantiated in whole or in part	13	8	16	21	19
	<i>Disclosures unsubstantiated</i>	10	0	0	3	1
Disclosures processed	<i>In more than 15 days</i>	290	1,019 ^b	237	275	130
	<i>In less than 15 days</i>	111	135	236	203	285
Percentage of disclosures processed in less than 15 days		28%	12%	50%	42%	61%
Disclosure matters processed and closed		401	1,154 ^c	473	478	467

^a It should be noted that many disclosures contain more than one type of allegation. This table, however, records all allegation received in a whistleblower disclosure as a single matter.

^b This number is large due to the backlog reduction effort.

^c This number is large due to the backlog reduction effort, and includes approximately 500 cases that had been reviewed in prior years and determined to be low priority and probable closures.

The Disclosure Unit’s caseload remains high due to growing public awareness of the Unit’s work. In recent years, it has handled several high profile cases that have received widespread national press attention. In addition, after the terrorist attacks of September 11, 2001, more federal whistleblowers came to OSC with national security allegations and concerns. Many cases handled by the Disclosure Unit involve complex issues; some involve classified material and must be handled according to federal requirements.

The Disclosure Unit's more complex cases are very labor-intensive and often require the attention of more than one attorney. These cases can take more than a year to complete for a number of reasons—agencies routinely request additional time to conduct the investigation and write the report, whistleblowers request additional time to prepare their comments, and Disclosure Unit attorneys and the Special Counsel must review the report to determine whether it contains the information required by statute, its findings appear reasonable, and to prepare any comments the Special Counsel may have on the report.

This year, for the sake of brevity, we are not including a representative sample of cases that have been referred by the Special Counsel to the heads of the agencies pursuant to 5 U.S.C. § 1213(c) and closed after receipt and review of the agency report. We are also not including summaries of cases that are presently under investigation by agency heads, though all of these summaries are available. In many cases, OSC's efforts have resulted in significant media coverage and reform efforts.

Goals and Results - Whistleblower Disclosure

OSC's strategic objective 3 is to promote justice, public safety, and efficiency through acting as a channel for whistleblowers in the Federal workforce to disclose information. The tables below describe the two operational goals supporting this strategic objective.

Goal 1: TO RECEIVE AND RESOLVE WHISTLEBLOWER DISCLOSURES WITH TIMELY PROCESSING	
WHISTLEBLOWER DISCLOSURE MISSION	DISCLOSURES See comment 1.
PERFORMANCE INDICATORS	Indicator A: Percentage of disclosures resolved within the statutory 15 day time frame
FY 2006 TARGET	50%
FY 2006 RESULTS	42%
FY 2007 TARGET	50%
FY 2007 RESULTS	61%
FY 2008 TARGET	50%
FY 2008 RESULTS	
FY 2009 TARGET	50%
FY 2009 RESULTS	

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 10% for FY 2007) of the total number of disclosures 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 (90% for FY 2007) 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.

OSC's Disclosure Unit exceeded its timeliness target by 11% for FY 2007. The FY 2007 statistics were aided by the presence of a series of companion cases that were all similar in nature, and could all be handled relatively quickly. This is not normally the case. Therefore, the target will remain the same, at 50% for FY 2008 and FY 2009.

Goal 2: TO PROMOTE JUSTICE AND PROTECT THE MERIT SYSTEM THROUGH THE QUALITY OF DETERMINATIONS AND REFERRALS	
WHISTLEBLOWER DISCLOSURE MISSION	DISCLOSURES See comment 1.
PERFORMANCE INDICATORS	Indicator A: % Percentage of disclosures referred to agency head, pursuant to 5 U.S.C. § 1213, or under the informal IG referral process.
FY 2006 TARGET	7%
FY 2006 RESULTS	8%
FY 2007 TARGET	7%
FY 2007 RESULTS	10%
FY 2008 TARGET	7%
FY 2008 RESULTS	
FY 2009 TARGET	7%
FY 2009 RESULTS	

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.

USERRA Enforcement and Prosecution Program

Background:

With the passage of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Congress expanded OSC's role as protector of the federal merit system. USERRA is the law that protects the reemployment rights of persons who are absent from their respective civilian employment due to the performance of military duties. USERRA also makes it illegal for an employer to deny any benefit of employment on the basis of past, current, or future performance of military service.

As special prosecutor, OSC objectively reviews the facts and laws applicable to each complaint. Where the 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, if required, the U.S. Court of Appeals for the Federal Circuit.

In early 2005, OSC's role in enforcing USERRA again expanded. The Veterans Benefits Improvement Act of 2004 (VBIA), set up a Demonstration Project giving OSC, rather than the Department of Labor's Veterans Employment and Training Service (VETS), the exclusive 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 original team of the three-year demonstration project ended on September 30, 2007, but Congress extended the program through the series of continuing resolutions. Eventually, Congress will determine whether OSC will continue to have investigative responsibility over federal sector USERRA claims.

OSC's USERRA Unit has attained exemplary results in the demonstration project cases through its aggressive and objective enforcement of service members' employment and reemployment rights. GAO was tasked with comparing the performance of OSC and DOL under the demonstration project, but focused on the two agencies' case tracking systems. OSC has an excellent case tracking system, but much more importantly for the veterans with claims, OSC achieved an outstanding rate of corrective action on behalf of veterans. If there were any doubts about the veracity of the corrective action totals, the number of corrective actions could have been verified with a few dozen calls by GAO to the veterans who received corrective action due to OSC's efforts.

Corrective Action Results:

In FY 2007, OSC's USERRA Unit once again achieved impressive results on behalf of military service members, obtaining corrective action in a remarkable 35%, or over one-third, of the USERRA cases it closed during FY2007 (see **Table 8**). Moreover, the Unit anticipates filing several additional cases with the MSPB in the near future should the involved agencies not agree to resolve them voluntarily.

Resource Estimates:

During FY 2008, the USERRA Unit will use approximately 8 FTE at a cost of \$1,185,000. Projecting the same number of FTE into FY 2009 would require approximately \$1,217,000.

Outreach:

In addition to investigating and favorably resolving service members' USERRA claims, and litigating important cases, OSC has been very active in providing USERRA outreach and training. In FY 2007, the USERRA Unit

conducted eight trainings for federal agencies, two presentations for a federal employment sector professional association, and two federal personnel law briefings for its USERRA partner: the U.S. Department of Labor's Veterans' Employment and Training Service. Moreover, the Special Counsel was the keynote speaker at a USERRA conference sponsored by the Reserve Officers Association. The Unit's outreach even extended to the international level as its chief met with representatives of the Australian Defence Department's Office of Reserve Service Protection to discuss common issues and exchange ideas concerning service members' employment and reemployment rights.

TABLE 7

Summary of USERRA Referral Activity					
	FY2003	FY2004	FY2005	FY2006	FY2007
Pending referrals carried over from previous fiscal year	8	4	12	6	3
Referrals received from DOL during fiscal year	7	14	30	11	4
Pending Referrals closed	8	6	36	14	4
Pending referrals at the end of the fiscal year	4	12	6	3	3
Closed cases where corrective action was obtained (including corrective actions obtained in matters referred to litigation)	n/a	n/a	5	3	0
Closed cases where no corrective action was obtained	n/a	n/a	25	11	4

Litigation closed; no corrective action obtained	n/a	n/a	n/a	n/a	4
Litigation closed; corrective action obtained	n/a	n/a	3	1	0
Matters referred for litigation pending	n/a	n/a	2	1	2
Pending litigation matters carried over from prior FY	n/a	n/a	n/a	2	1

TABLE 8

Summary of USERRA Demonstration Project Activity^a				
	FY2004	FY2005	FY2006	FY2007
Pending referrals carried over from previous fiscal year		0	54	95
Cases opened		111	168	142
<i>Cases closed</i>		57	126	123
Cases pending at the end of the fiscal year		54	96	114
Closed cases where corrective action was obtained		16	35	43
Closed cases where no corrective action was obtained		38	91	80
Closed cases referred for litigation		0	n/a	0

^aUnder VIBA, P.L. 108-454; OSC started receiving cases in Feb. 05.

Educating the Federal Sector and Preventing Future Violations

In addition to the individualized corrective action that OSC secured on behalf of many service members, OSC endeavors to improve the federal merit system by obtaining systemic corrective action wherever appropriate. Systemic corrective action (i.e., a change in an agency's practice or policy) is warranted wherever a federal employer's practice or policy deviates from USERRA's requirements. In Fiscal Year 2007, OSC identified two common USERRA violations. The first involved the manner in which federal employers reemployed injured service members. For example, many federal employers are unaware of their obligation to seek placement assistance from U.S. Office of Personnel Management upon determining that they are unable to reemploy an injured service member. The second concerned the kinds of documentation that federal employers demanded where a service member requested a leave of absence due to military service. In response to those common violations, OSC prepared training documents that clearly identify and fully explain federal employers' obligations. Now, whenever either of those issues are identified during the course of an OSC USERRA investigation (regardless if the issue was one that the service member raised), the training document is sent to the involved agency with the request that the agency disseminate it to managers and human resources staff. In those cases where such documents were sent, the agencies were receptive to OSC's guidance.

Goals and Results – USERRA Enforcement and Prosecution Program

OSC's Strategic Objective 4 is to protect veterans in the Federal workforce through enforcement of the Uniformed Services Employment and Reemployment Rights Act. The tables below describe the three operational goals supporting this strategic objective. But first, a note of explanation follows on each of the four types of USERRA cases that OSC receives - RE, DP-OD, DP-MX, and DP-TSA:

1. RE Cases: Under USERRA, certain federal sector claims are investigated by U.S. Department of Labor, Veterans' Employment and Training Service (VETS). 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. OSC's USERRA Unit reviews the information and makes a "de novo" determination.

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: Pursuant to the demonstration project established by the Veterans Benefits Improvement Act of 2004 (VBIA), 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. DP-OD cases are federal sector USERRA claims filed by persons having an odd-numbered social security number. DP-OD cases come from two sources: 1) from VETS, and 2) directly from the claimant.

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: 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. These are also known as "mixed claims".

The USERRA Unit conducts an investigation of DP-MX cases and determines whether OSC will represent the claimant in a 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* 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 its findings and recommendations for corrective action to TSA management officials.

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	USERRA A: RE Cases	USERRA B: DP-OD Cases	USERRA C: DP-MX Cases	USERRA D: DP-TSA Cases
PERFORMANCE INDICATORS	Indicator A: Average number of days in which the case is settled, closed or a decision to litigate is made.	Indicator A: Average number of days in which the case is settled, closed or a decision to litigate is made.	Indicator A: Average number of days in which the case is settled, closed or a decision to litigate is made.	Indicator A: Average number of days in which a “no merit” determination is made or a request for voluntary corrective action is sent to TSA.
FY 2006 TARGET	90%	80%	80%	80%
FY 2006 RESULTS	50%	62%	74%	33%
FY 2007 TARGET	75 days	160 days	160 days	160 days
FY 2007 RESULTS	33 days	107 days	171 days	90 days
FY 2008 TARGET	75 days	140 days	160 days	140 days
FY 2008 RESULTS				
FY 2009 TARGET	75 days	NA	NA	NA
FY 2009 RESULTS				

Comments for Goal #1:

1. For RE cases in FY 2007, OSC achieved resolution in an average of 33 days, which was an improvement over the FY 2006 result. There are few RE cases each year, and they are often very complex. For these cases, OSC normally has to reinvestigate the case to determine the facts and the situation. 75 days is aggressive, because OSC never knows the complexity of these referred cases, nor whether any of the work performed by DOL is usable.

2. For the Demonstration Project cases, OSC has lowered the FY 2008 target from 160 days to 140 days for DP-OD cases, and from 160 days to 140 days for DP-TSA cases. Baseline data in FY 2006 was 115 days for DP-OD cases and 161 days for DP-TSA cases. The USERRA unit is down to 8 employees from its high of 10 employees and OSC will likely not staff it back up to 10 employees unless and until Congress definitely decides to entrust OSC with the investigations of all Federal Sector USERRA claims. Therefore the target of 140 days for these two types of Demonstration project cases is aggressive.

3. For DP-MX cases, the average number of days to resolve the cases was 171, so the USERRA Unit failed to meet the FY 2007 target. DP-MX cases contain both USERRA and Prohibited Personnel Practice (PPP) allegations (whereas DP-OD cases contain only USERRA allegations). Therefore, because DP-MX cases contain more allegations and are more complex, they generally take longer to investigate than DP-OD cases. Accordingly, in FY 2008, OSC will set the target for DP-MX cases at 160 days.

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS		
USERRA MISSION	USERRA CASES	
PERFORMANCE INDICATORS	Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# successful meditations + # of settlements achieved + # of successful litigations) / (# meritorious cases)	Indicator B: # of “test cases” filed
FY 2006 TARGET	90%	Inappropriate to set a specific target
FY 2006 RESULTS	100%	0
FY 2007 TARGET	90%	Inappropriate to set a specific target
FY 2007 RESULTS	100%	1
FY 2008 TARGET	95%	Inappropriate to set a specific target
FY 2008 RESULTS		
FY 2009 TARGET	99%	Inappropriate to set a specific target
FY 2009 RESULTS		

Comments for 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.

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.

Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES		
USERRA MISSION	USERRA CASES	
PERFORMANCE INDICATORS	Indicator A: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where inviting agency sponsors OSC})	Indicator B: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where OSC pays expenses})
FY 2006 TARGET	90%	50%
FY 2006 RESULTS	NA	100%
FY 2007 TARGET	90%	50%
FY 2007 RESULTS	100%	100%
FY 2008 TARGET	90%	75%
FY 2008 RESULTS		
FY 2009 TARGET	90%	75%
FY 2009 RESULTS		

Comments for 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, including presentations conducted at national events such as the Federal Dispute Resolution conference. In individual USERRA cases where OSC believes an agency would benefit from such training, OSC requests that the agency sponsor OSC-conducted USERRA training at agency expense. Additionally, the USERRA unit maintains telephonic and e-mail "hot lines" for answering USERRA-related questions from the public and private sectors.

The target for Indicator A is not set at 100% because OSC needs the flexibility to decline one or two outreaches each year, due to trials, investigations and booked schedules.

Usually there are two to four outreaches each year that fall under Indicator B, for which OSC will bear the expense. The target will go up to 75% in FY 2008 and FY 2009, but OSC needs the flexibility to decline one unreimbursed outreach each year, due to trials, investigations, and booked schedules.

OSC and the Future of USERRA Enforcements

The original term of the 32-month Demonstration Project created by the Veterans Benefits Improvement Act of 2004 ended at the close of FY 2007. Congress has extended the program during the four continuing resolutions of FY 2008 but has not yet decided to entrust the entire federal sector USERRA responsibility to OSC.

There are several different scenarios in which OSC could be called upon to perform investigatory USERRA responsibilities on a permanent basis for the benefit of the members of the United States armed forces. Each of the scenarios would have a different cost structure for OSC. Rather than present various scenarios and their associated costs here, we will simply make four points:

1. Technical Expertise. The agency currently has substantial technical USERRA expertise, and has a training unit in place to train new employees. This expertise has already resulted in increased correction action rates and quick processing times for those members of the military for which OSC has responsibility under the Demonstration Project. The OSC Investigation and Prosecution Division also has expert investigative and prosecutorial firepower that could be brought to bear on any expanded USERRA responsibility.

2. Management expertise. No matter what the requirements would be of an expanded USERRA role for the U.S. Office of Special Counsel, the agency has the experienced management in place to develop a plan, implement it, and achieve highly efficient results for the veterans and members of the military that have rights under USERRA. The current head of the USERRA investigations at OSC is an SES attorney with 27 years of investigation, analysis, and litigation experience. The unit has several experts in USERRA federal sector law and regulations.

3. Priority. Protecting the nation's veterans, guardsmen, and reservists has always been one of the highest of all priorities for Special Counsel Bloch at OSC. Taking on an expanded role in providing expeditious enforcement for these brave Americans through USERRA would be an honor for the agency.

4. Cost models. OSC is able to provide further information regarding current cost structure or any other USERRA related information.

Outreach Program

The Outreach Program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that federal agencies inform their workforces about the rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the Whistleblower Protection Act, in consultation with the OSC.

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

The 2302(c) Certification Program was piloted by the Office of Personnel Management (OPM) in the spring of 2002 and OPM received the first-ever certificate of compliance in May of that year. Shortly thereafter, OSC began working with ten large agencies on participation in the program and offered the program government-wide in October of 2002. Through FY 2007, 57 agencies have been registered in the program and are working towards certification, and 32 agencies have been certified.

During FY 2007, 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.

Finally, OSC has continued its policy of issuing press releases when OSC files a significant litigation petition, or achieves significant corrective or disciplinary action through settlement. Most of these generate considerable press coverage. This contributes to employee and manager awareness of the merit system protections enforced by OSC.

PART 3 - FY 2009 BUDGET REQUEST - ADDITIONAL INFORMATION

OSC is requesting \$17,468,000. This is the same amount as the agency's FY 2008 appropriation, which included \$1,100,000 for computer forensics associated with the investigations of its Special Task Force. The \$17,468,000 includes funding for at least one additional FTE for Special Task Force work, as well as funding to cover the FY 2008 and projected FY 2009 salary increases.

This one additional FTE will bring the agency to 111 employees during FY 2009. This number of FTE is necessary to manage and process the agency's elevated workload (since FY 2000) of prohibited personnel practice complaints, whistleblower disclosures, Hatch Act complaints, Hatch Act cases, Hatch Act advisory opinions, special task force investigations, and USERRA cases in a manner that precludes the formation of case backlogs.

BUDGETARY FACTORS

Increased Expenses:

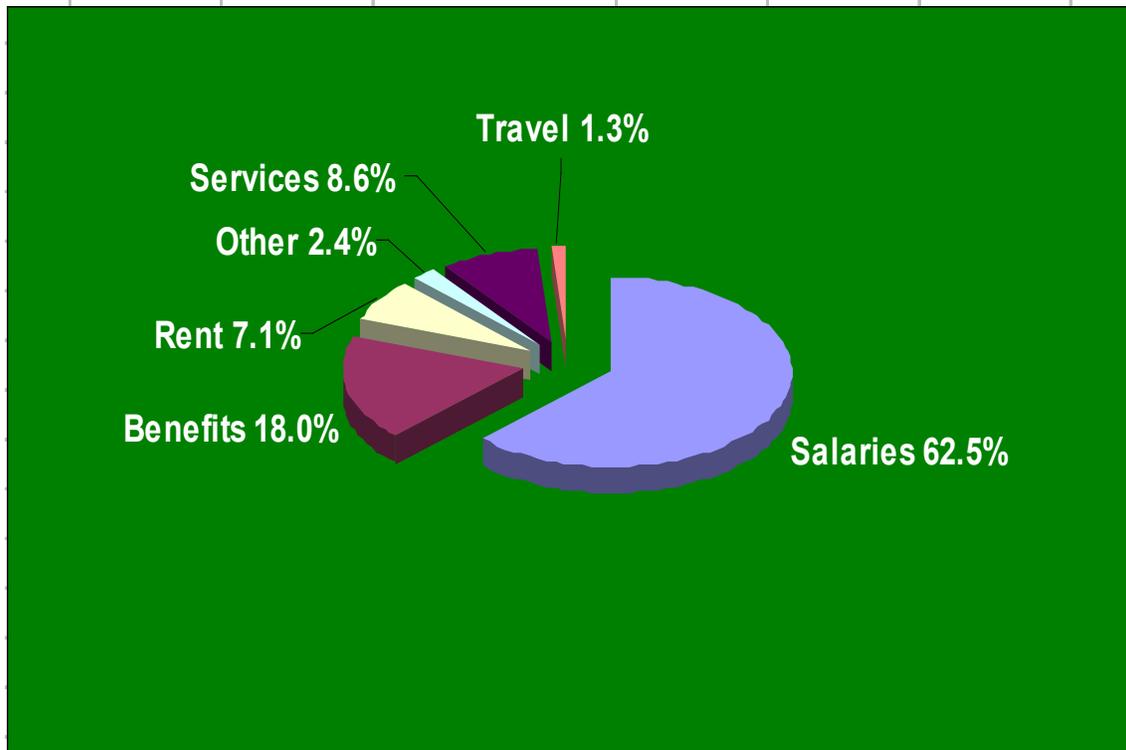
Notable increased expenses for OSC include the higher cost of OSC's existing headquarters rented space and field office rented spaces, the cost of accounting outsourced activities (which has increased 130% since FY 2005), the higher cost of legal information services (12% increase), and the higher cost of mandatory security charges payable to DHS (35% increase). An additional \$32,000 will also be needed for Microsoft Enterprise Software Licenses. OSC's transit subsidy costs are also increasing. As the agency operates with more employees than it has in the past, a marginal increase in expenditures for supplies, travel, equipment, and other services can be expected. The agency's outsourced E-travel expenses have also increased.

Information Technology Necessities:

1. OSC needs to update its outdated computers and convert its case tracking system to a web-based platform. OSC will accomplish as much as possible towards these information technology needs without jeopardizing its ability to pay the salary and benefits of 111 FTE during FY 2009.
2. The OMB-mandated conversion of the agency's infrastructure (network backbone) to Internet Protocol Version 6 (IPv6) will receive as much funding as possible in order to meet the deadline without sacrificing funding needed for salaries, benefits, or rent. All agency networks are supposed to interface with this infrastructure by June 2008.

Components of Budget Request:

The following chart estimates how the FY 2009 request will be distributed on a percentage basis:



Field office expenditures are almost entirely driven by the number of employees in the field offices. Below is a list of ranges by field office. Staffing levels may be slightly adjusted during the year within these ranges in order to properly meet the management needs of the agency, and its individual units.

Headquarters	70-83 employees
Midwest Field Office	5-8 employees
Dallas Field office	7-11 employees
Oakland Field Office	7-10 employees
Washington DC Field Office	7-11 employees

Table - Budget Object Classification of Obligations

Budget Object Classification of Obligations: FY2008-FY2009				
<i>(in thousands of dollars)</i>				
Budget Object Classification of Obligations		FY2007 Actual	FY2008 (projected)	FY2009 (projected)
11.0	Personnel compensation	9,747	10,556	10,926
12.0	Civilian personnel benefits	2,811	2,980	3,135
13.0	Benefits to former personnel	0	15	15
21.0	Travel and transportation of persons	130	230	233
22.0	Transportation of things	15	20	21
23.1	Rental payments to GSA	1,189	1,214	1,238
23.3	Communications, utilities and misc. charges	95	100	105
24.0	Printing and reproduction	20	21	21
25.0	Other services	932	2,078	1,508
26.0	Supplies and materials	174	104	106
31.0	Equipment	140	150	160
32.0	Land & Structures	0	0	0
42.0	Tort Claims	0	0	0
99.9	Total	15,252	17,468	17,468

Detailed notes concerning the object classes in the table:

Object Class 21.0: Historically, the agency usually expends \$200,000 to \$300,000 for travel. The unique budget factors present in FY 2007 required the agency to restrict travel to a lower level. The agency's video teleconferencing system does now fortunately provide the ability to conduct certain investigations without travel. But face-to-face is extremely important for certain types of investigations. Considering these factors, in FY 2009, OSC projects requirements of \$233,000.

Object Class 23.1: Rental Payments to GSA in FY 2009 will rise approximately 2% over FY 2008 levels.

Object Class 25.0: In the Other Services category, over 40% of this amount is required to cover OSC's Interagency Agreement with the National Business Center for accounting services, travel services, and procurement system services. Also included here are the following items: approximately \$75,000 for Westlaw fees, (an 8% increase), \$50,000 for training, \$37,000 for the FY 2009 financial auditors, \$92,000 for the agency's conversion to a web-based case tracking system, \$40,000 for program support for the document management system, \$60,000 in DHS reimbursement charges for facility security related services (a 10% increase), \$33,000 for Microsoft Enterprise Licenses, \$47,000 for annual maintenance contracts, \$34,000 for Oracle upgrades, \$33,000 for the agency's HSPD-12 program and fees, \$44,000 for the required conversion to Internet Protocol v6, and \$13,000 for payroll services from the National Finance Center.

Object Class 26.0: The \$106,000 projected for this object class represents subscriptions, journals, materials and supplies of all types, including paper and toner for the headquarters and all field offices.

Object Class 31.0: In order to operate at its overall agency wide FY 2009 budget justification funding level, OSC plans to keep expenditures low in this category. However, the agency is behind in replacing certain aspects of its aging hardware, notably the laptops used by employees of the agency to do their day-to-day work, as well as several servers. Therefore, certain hardware and software purchases must be made during FY 2009 in this area.

Table - Analysis of Resources

Analysis of Resources: FY2007-FY2009			
<i>(in thousands of dollars)</i>			
Description	FY2007 <i>(Actual)</i>	FY2008 <i>(projected)</i>	FY2009 <i>(projected)</i>
Budget authority	15,524	17,468	17,468
Outlays	14,147	15,918	15,918
Approximate full-time equivalent employment (FTE) work years	104	110	111

PART 4 - PERFORMANCE UNDER THE PRESIDENT'S MANAGEMENT AGENDA

OSC has developed a results-oriented management agenda that includes many of the core criteria in the President's Management Agenda.

Strategic Management of Human Capital

OSC's human capital strategy is aligned with its mission, goals, and organizational objectives, as it is: 1) integrated into Budget and Strategic Plans; 2) consistent with OPM's human capital balanced scorecard and OMB's plan for strategic management of human capital; and 3) complies with standards for internal accountability systems to ensure effective merit-based human resource management as described below.

OSC uses existing personnel flexibilities and tools, including leave flexibilities, alternative work schedules, and a fairly extensive telework program. In FY 2006, OSC also drafted and implemented a successful student loan repayment / employee retention program in which approximately 20 employees have participated. In FY 2007, OSC finalized a fitness program for its employees. OSC's performance management systems allow managers to differentiate between high and low performers through the use of appropriate incentives and consequences.

The agency is addressing gaps in human resources competencies talent in its program areas through internal development, upward mobility positions, legal internships, in-house mission-specific training, and hiring additional personnel. OSC also has a highly developed cross training program that enables employees to learn new skills and participate in the work of several units. OSC also captures valuable information and ideas of departing employees through extensive exit interviews. This information is used by senior managers to refine and improve work processes.

In FY 2007, OSC continued its strategic management initiatives by further refining the reorganization of 2005, in which a Midwest field office, USERRA Unit, Training Unit, and a Document Control Branch were created. OSC now has set agency and division goals for the age of cases under review by the agency. Performance plans are in place for SES members and managers that link to the agency's mission and to strategic goals that are in place for the individual divisions. OSC also now has measurable finite performance goals in place for each individual employee.

Competitive Sourcing

OSC is a small agency, with a highly specialized inherently government mission. 84% of its FTE perform inherently governmental work, and 16% of its FTE are considered commercial in nature. According to OMB Circular A-76 and supplemental guidance issued by OMB, government performance of commercial functions is permitted when, as is the case at OSC, the position activity total is 10 FTE or less.

However, while OSC is small enough that this guidance may exempt a large proportion of OSC's commercial administrative functions, OSC is dedicated to the intent of the principles of outsourcing cost-effective performance whenever appropriate. Therefore, personnel resources used to perform any functions considered commercial at OSC are regularly assessed to determine whether they might be more effectively performed by a contractor. OSC looked in depth at this issue in a management assessment it commissioned in the summer of 2004.

Improved Financial Performance

OSC's switch to using NBC for outsourced accounting services has provided a unique opportunity to participate in the design of the processes used for its accounting, and to design specific reports that reflect the information most helpful to OSC in managing its funds. Contracting these functions out has provided OSC with more specialized expertise at a lower cost than could be accomplished internally. NBC provides OSC with a detailed financial review every quarter. NBC will also provide up-to-date financial information on day-to-day operations for payroll, procurement and travel, as needed by OSC.

As a small agency without an Inspector General, OSC generally submits a combined Inspector General (IG) Act and Federal Manager's Financial Integrity Act report each October. OSC normally reports that it relies on audits and other reviews of NBC's operations by the OIG and Office of the Chief Financial Officer (OCFO) at the Department in the Interior as well as information received directly from NBC, for information about any significant issues relating to the services provided to OSC.

Historically, OSC received a waiver from OMB for the requirement to have an audit of the agency's financial statements. Since FY 2004, however, OSC has not received an audit waiver. An audit firm spent time at OSC headquarters and with the National Business Center personnel who currently perform the accounting functions for OSC. This audit was completed in November of 2007. The auditor gave OSC an unqualified audit opinion on our annual financial statements, finding no material weaknesses. The results were similar to FY 2004, FY 2005 and FY 2006 audits.

Expanded Electronic Government

OSC provides one-stop service for those who wish to file a complaint or disclosure, or request a Hatch Act advisory opinion. A person can file a Prohibited Personnel Practices complaint on-line. Most of our PPP complaints come into the agency via this channel. A person can also make a complete Whistleblower Disclosure on-line and a Hatch Act advisory opinion may be solicited through the web site.

Those who wish to communicate with a knowledgeable OSC staffer through one of the agency's telephone hot lines will find the relevant information on the web site. OSC's web site is linked to FirstGov, as well as other agency web sites, such as those for the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Office of Government Ethics, among many others. OSC's Information Technology Branch (ITB) staff are continually improving OSC's web site. User sessions on OSC's web site have continued to grow: FY 2007 total number of user sessions was 951,725. This is a 13% increase over the FY 2006 total number of user sessions.

Endnotes

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

2 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).).

3 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).

4 Public Law 107-71 (2001).

5 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.

6 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.

7 Compare, for example, 5 U.S.C. § 1214(a)(1)(A) ("The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.") with 5 U.S.C. app. 3, §10(a) ("[E]ach Inspector General ... is authorized— ... (2) to make such investigations and reports relating to the administration of the programs and operations of the [agency] as are, in the judgment of the Inspector General, necessary or desirable[.]") and § 7(a) ("The Inspector General may receive and investigate complaints or information from an employee of the [agency] concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety."). OSC cannot, however, investigate complaints over which it has no jurisdiction, with the result that some complaints are closed without further action after receipt and review. During FY2004, for example, OSC lacked jurisdiction in 617 (or 31.4%) of the complaints received, leaving 1,347 complaints (69%) in which OSC was required by statute to conduct an inquiry. In addition, discrimination based on race, color, religion, sex, or national origin, age, or handicapping condition is illegal under laws enforced by the Equal Employment Opportunity Commission (EEOC), and is also a prohibited personnel practice under 5 U.S.C. § 2302(b)(1). However, since procedures for 10 investigating discrimination complaints have already been established in the agencies and the EEOC, the Special Counsel will normally avoid duplicating those procedures and will defer to those procedures rather than initiate an independent investigation. 5 C.F.R. § 1810.1. When a matter is not referred for further investigation, CEU must by law provide complainants with a written statement of reasons, to which they may respond. 5 U.S.C. § 1214(a)(1)(D). On the basis of the response, if any, CEU decides whether to finalize its preliminary determination to close the matter, or to refer the matter to an Investigation and Prosecution Division. 11 5 U.S.C. § 1214(b)(2)(C). 11 Corrective action seeks a remedy for any injury to the individual complaining employee, such as back pay or reinstatement, while disciplinary action seeks to impose discipline on the perpetrator of the PPP.

8 Corrective action seeks a remedy for any injury to the individual complaining employee, such as back pay or reinstatement, while disciplinary action seeks to impose discipline on the perpetrator of the PPP.

9 Several factors are believed to account for or contribute to this workload increase. They include: publicity about an increased number of high-profile cases handled by OSC, including whistleblower disclosures, and four Public Servant Awards issued to whistleblowers by OSC; increased public interest in elections since the 2000 presidential election, the public interest generated by the 2004 campaigns; OSC's 2302(c) Certification Program; significant improvements in OSC's web site, increasing awareness by government employees and others of OSC and its functions.

10 http://www.osc.gov/documents/osc_lst3.pdf