FY2012 Performance and Accountability Report

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A Message from the Special Counsel

It is my pleasure to present the Performance and Accountability Report for Fiscal Year 2012 for the U.S. Office of Special Counsel (OSC).

I had the honor of being sworn in as the Special Counsel in June 2011, and consider it a privilege to lead this essential investigative and prosecutorial agency. OSC fosters accountability, integrity and fairness in the federal government, saves millions of taxpayer dollars, and prevents catastrophic human and economic harm.

Fiscal Year 2012 marks the ninth year the U.S. Office of Special Counsel has been required to produce a financial audit. I am pleased to report the agency's strong results, which include a clean opinion with no material weaknesses. Achieving a strong financial footing is critical to the agency being able to perform its mission. I am reasonably assured that the financial and performance data presented in this report are complete, reliable and accurate.

In FY 2012 the OSC produced a new Strategic Plan, updating its Mission Statement, Strategic Goals and Performance Measures. This is a transition year for our new performance goals: The FY 2012 Performance and Accountability Report is the agency's first opportunity to report on our progress in moving towards these new performance goals.

The growth in demand for OSC's services is both remarkable and challenging. Whistleblowers' disclosures of illegality, waste, fraud, abuse, and dangerous and unsafe practices have risen dramatically. The majority of these whistleblowers also seek OSC's protection from retaliation. Overall, Prohibited Personnel Practice complaints grew 15% this year; yet despite this mounting caseload, OSC nearly **doubled** its favorable outcomes over 2011. Not surprisingly, this being a presidential election year, complaints under the Hatch Act also spiked. Finally, in response to a new congressional demonstration project mandate, OSC is investigating hundreds of employment claims by veterans, Guard members and reservists under the Uniformed Services Employment & Reemployment Rights Act (USERRA). This responsibility is in addition to our traditional litigation docket of federal USERRA claims.

OSC faces daunting challenges. The agency's caseload is growing more than four times faster than its budget. During the past four years, OSC's docket has grown 54% while its budget edged up only 12%. Despite this mounting gap, with new leadership at the agency and renewed energy and commitment from staff, OSC resolved a record number of cases in FY 2012, 4,374 (out of a record number of new cases received, 4,796). Based upon past experience, the agency *conservatively* projects an annual caseload growth in the 6% to 8% range for the foreseeable future. The agency completed 121 outreach and education presentations in FY 2012, a record number. Moreover, the USERRA Demonstration Project expands OSC's responsibilities without providing a corresponding increase in resources. OSC is clearly at a critical juncture, but the agency is doing its part to meet these challenges.

I look forward to working with OSC staff and stakeholders to meet the critical challenges of uprooting waste and fraud, protecting the employment rights of federal employees and returning members of the uniformed services, ensuring accountability, upholding the merit system, and standing up for taxpayers.

Sincerely,

Carolyn N. Lerner
Special Counsel
November 16, 2012

Part 1: Management Discussion and Analysis

I. About OSC

Carolyn Lerner, the eighth permanent Special Counsel, was confirmed by the Senate on April 14, 2011, and sworn in on June 14, 2011. A highly respected attorney and manager, Ms. Lerner has acted quickly and successfully to restore the agency's morale and reputation.

OSC's mission helps implement "The Accountable Government Initiative" from the President's Performance Management Agenda. OSC promotes government accountability, integrity, fairness and efficiency, by providing a safe channel for federal employees to come forward with evidence of waste, fraud, abuse, law-breaking, or threats to public health or safety, and the agency protects these employees against retaliation.

When FAA air traffic controllers witness dangerous flight practices; when Veterans Administration professionals observe unsafe practices in hospitals; or when Pentagon procurement officers find significant irregularities in government contracts, OSC acts to ensure that the whistleblowers' concerns are heard and acted upon. OSC also protects federal employees from prohibited personnel practices, such as retaliation for making disclosures. For example, whistleblowers at the U.S. military's mortuary in Dover, Delaware, reported misconduct regarding the handling of human remains. OSC's intervention prevented retaliation against the whistleblowers, and ensured the discipline of the responsible official. OSC shined a bright light on the lack of proper care for the remains of returning service members, resulting in greatly improved care at the mortuary. In addition, OSC protects the integrity of the merit system by ensuring that partisan politics do not corrupt the civil service. Last but not least, OSC protects returning service members and reservists against employment discrimination.

OSC does not just spend taxpayers' money; it returns substantial sums to the federal government by pressing for corrective action to remedy waste and fraud. Since 2009, OSC calculates that whistleblower disclosures handled by our agency have saved (or returned) at least 11.4 million dollars. That figure, while impressive, does not reflect the full benefit of OSC's work: By pursuing whistleblower disclosures, the agency has saved the government hundreds of millions of dollars by preventing wasteful practices and disasters from occurring -- or recurring.

II. Statutory Background

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

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

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to federal and District of Columbia government employees.[1] The 1993 Amendments to the Hatch Act did not affect covered state and local government employees.

In 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted. USERRA protects the civilian employment and reemployment rights of those who serve or have served in the Armed Forces, including the National Guard and Reserve, and other uniformed services. It prohibits employment discrimination based on past, present, or future military service; requires prompt reinstatement in civilian employment upon return from military service; and, prohibits retaliation for exercising USERRA rights. Under USERRA, OSC may seek corrective action for service members whose rights have been violated by federal agencies (i.e., where a federal agency is the civilian employer).[2]

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the 1994 Reauthorization Act provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred, exists, or is to be taken. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and whistleblower reprisal protections were extended to employees of listed government corporations. Further, the Reauthorization Act broadened the scope of personnel actions covered under these provisions. Finally, the Reauthorization Act required that federal agencies inform employees of their rights and remedies under the Whistleblower Protection Act in consultation with OSC.[3]

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),[4] which created the Transportation Security Administration (TSA). Under the ATSA, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the Board. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the Board. OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC will 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 actions before the Board.

III. Organizational Structure of OSC

OSC maintains a headquarters office in Washington, D.C., and four field offices (located in Dallas, Detroit, Oakland, and Washington, D.C.). The agency includes a number of program and support units.

Program units include:

Immediate Office of the Special Counsel (IOSC). The Special Counsel and the IOSC staff are responsible for policy-making and overall management of OSC. This encompasses management of the agency's congressional liaison and public affairs activities, and coordination of its outreach program. The latter includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

Complaints Examining Unit (CEU). This unit is the intake point for all complaints alleging prohibited personnel practices. CEU screens approximately 2,500 such complaints each 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 qualifying matters for Alternative Dispute Resolution (ADR) or to the Investigation and Prosecution Division (IPD) for further investigation, possible settlement, or prosecution. Matters that do not qualify for referral to ADR or IPD are closed.

Investigation and Prosecution Division (IPD). If ADR is unable to resolve a matter, it is referred to the Investigation and Prosecution Division. IPD is comprised of the four field offices, and is responsible for conducting investigations of prohibited personnel practices. IPD attorneys determine whether the evidence is sufficient to establish that a violation has occurred. If not, the matter is closed. If the evidence is sufficient, IPD decides whether the matter warrants corrective action, disciplinary action, or both. If a meritorious case cannot be resolved through negotiation with the agency involved, IPD may bring an enforcement action before the MSPB.

Disclosure Unit (DU). This unit receives and reviews disclosures from federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the relevant agency to conduct an investigation and report its findings to the Special Counsel; informal referral to the Inspector General (IG) of the agency involved; or closure without further action. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness; the Special Counsel then sends the report, along with any comments by the whistleblower, to the President and responsible congressional oversight committees.

Hatch Act Unit (HAU). This unit enforces and investigates complaints of unlawful political activity by government employees under the Hatch Act, and represents OSC in seeking disciplinary actions before the MSPB. In addition, the HAU is responsible for providing legal advice on the Hatch Act to federal, D.C., state and local employees, as well as the public at large.

USERRA Unit. This unit attempts to resolve employment discrimination complaints by veterans, returning National Guard members and reservists, and members of the uniformed services under the Uniformed Services Employment & Reemployment Rights Act. This unit also reviews USERRA cases referred by the Department of Labor (DOL) for prosecution and represents claimants before the MSPB.

Under a second, three-year Demonstration Project, the USERRA Unit also investigates more than half the federal USERRA cases filed with the U.S. Department of Labor.

Alternative Dispute Resolution Unit (ADR). This unit supports OSC's operational program units. Matters are received from IPD and the USERRA Unit that are appropriate for mediation. Once referred, an OSC ADR specialist will contact the affected employee and agency. If both parties agree, OSC conducts a mediation session, led by OSC-trained mediators who have experience in federal personnel law.

Support units include:

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

Administrative Services Division. This office manages OSC's budget and financial operations, and accomplishes the technical, analytical and administrative needs of the agency. Component units are the Budget, Finance and Procurement Branch, Human Resources and Document Control Branch, and the Information Technology Branch.

IV. Performance Highlights

FY 2012 was a banner year for the Office of Special Counsel (OSC). OSC stepped out of the shadows and made a compelling case for why Congress chose to create an agency to enforce merit system principles, and safeguard accountability, integrity and fairness in the federal workplace. From high profile cases to the seemingly mundane, OSC's new leadership, in tandem with a reinvigorated staff, transformed the agency's reputation from a sleepy, remote federal bureaucracy into a respected, sought-out voice for good government. In short, 2012 was a year of extraordinary performance gains at OSC, with a corresponding dramatic growth in demand for the agency's services.

Among the many achievements of 2012, OSC's successful efforts on behalf of whistleblowers at the Port Mortuary, Dover Air Force Base, stand out. Mortuary officials turned a deaf ear to, and retaliated against, their own employees who had challenged the substandard treatment of the returning remains of American soldiers killed in Iraq. Working closely with Congress, OSC focused a national spotlight on the issue, resulting in substantial improvements in the handling of remains at the Port Mortuary, an end to the retaliation against its whistleblowers, and the disciplining of those responsible for the wrongdoing.

While the Port Mortuary matter was of huge public importance and led the news cycle, it was far from unique on OSC's docket. OSC focused attention on a range of matters brought forth by whistleblowers, from improper supervision of airline safety, to bogus auditing procedures that deprived the Treasury of millions of dollars. Just as importantly, OSC championed the job rights of returning members of the uniformed services and ensured that the civil service is not tarnished by partisan influences.

The results speak for themselves. This past year, favorable outcomes rose **75%** in OSC's whistleblower reprisal cases and, overall, **89%** in its prohibited personnel practice cases. However, as demand for our services mushrooms, this positive trajectory will not be sustainable absent adequate increased support.

The following is a brief summary.

<u>Prohibited Personnel Practices (PPPs)</u>
OSC's strategic goal is to significantly reduce the number of Prohibited Personnel Practices across the federal government. To do so, OSC has set three annual goals: (1) increase OSC's capacity to protect federal employees against whistleblower retaliation; (2) provide outreach and advice; and seek disciplinary action against federal employees for persistent or egregious PPPs; and (3) achieve mutually satisfactory and speedier solutions through mediation. OSC identified performance indicators to measure our success in achieving each of the three goals. The 2012 results have been used to determine FY 2013 realistic targets for these new agency goals.

<u>Whistleblower Disclosures</u>
OSC's goal is to provide a safe, secure channel for whistleblowers to disclose waste, fraud abuse, illegality, and dangers to public health and safety. Numerous studies show that insiders – whistleblowers – are in the best position to detect wrongdoing on the job. Indeed, whistleblower disclosures are a growing portion of OSC's caseload, now comprising nearly a quarter of the agency's new matters. OSC identified performance indicators to measure our success in facilitating and acting on whistleblower disclosures. The 2012 results have been used to determine FY 2013 realistic targets for these new agency goals.

Hatch Act
Because this is a presidential election cycle and political season, OSC is experiencing a rise in the number of complaints under the Hatch Act and requests for advisory opinions about permissible and prohibited practices. OSC has two annual goals to reduce instances of federal employees engaging in prohibited job-related political activities: (1) Effect disciplinary action against federal employees for persistent or egregious job-related political activities; and (2) Achieve cessation of ongoing violations and deter future unlawful conduct by warning and educating employees. OSC identified performance indicators to measure our success in achieving both of the goals. The 2012 results have been used to determine FY 2013 realistic targets for these new agency goals.

USERRA
The USERRA program's goal is to reduce employment discrimination against veterans and reservists in federal service. OSC now investigates more than half the job discrimination complaints filed with the Department of Labor under a three-year Demonstration Project (DP) (the Project is funded in part through a reimbursable agreement with the Department of Labor). In addition, OSC handles all federal USERRA actions that are referred for possible prosecution. To effect the goal of reducing employment discrimination against returning members of the uniformed services, OSC: (1) provides outreach and advice to the federal community about employment discrimination against veterans; (2) investigates allegations of discrimination and seeks corrective and/or disciplinary action for violations of law; and (3) achieves mutually satisfactory solutions through mediation. OSC identified performance indicators to measure our success in achieving both of the goals. The 2012 results have been used to determine FY 2013 realistic targets for these new agency goals.

Alternative Dispute Resolution Unit (ADR)
ADR receives matters from CEU, IPD and the USERRA Unit. The use of ADR enables OSC to resolve cases more quickly and efficiently. In FY 2012 ADR reviewed a record 186 cases. From FY 2011 to FY 2012, the number of cases resolved through mediation almost doubled, from 10 to 18 successful mediations. In the future the number of cases resolved through mediation is expected to continue to increase.

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OSC is meeting its duties as an independent investigative and enforcement agency, bringing greater integrity and efficiency to the federal government. OSC is working harder, smarter and with better results than at any time in its history. The agency resolved 1,037 more cases in FY 2012 than in FY 2009. That is a **31%** increase, even though staffing levels have remained largely unchanged these four years. Total favorable actions in PPPs in 2012 have increased by **89%** over 2011 levels. The USERRA DP for veterans has achieved a **26%** favorable resolution rate. More whistleblower disclosures have been resolved, 1,053, than in any previous year. This has truly been a record-setting year.

V. Office of Special Counsel's Cost Savings to Government and Other Successes

Cost Savings

OSC improves the efficiency and accountability of government in many ways and, significantly, it returns large sums to the U.S.Treasury. The agency now receives over one thousand disclosure complaints from federal whistleblowers annually, which result in millions of dollars in direct returns to the government.

Even more significant is the amount that OSC saves the federal government: By providing a safe channel for whistleblower disclosures**,** OSC regularly reins in waste, fraud, abuse, illegality, and threats to public health and safety that risk catastrophic harm to the public, and huge remedial and liability costs for the government. For example, OSC recently has shepherded numerous, harrowing disclosures from courageous FAA employees who have blown the whistle on systemic failures in air traffic control and the oversight of airline safety. Aviation safety inspectors disclosed that FAA failed to timely issue Airworthiness Directives requiring the inspection of aircraft, resulting in unresolved and potentially cataclysmic safety issues. An air traffic controller at Detroit Metropolitan Airport disclosed that FAA failed to complete required environmental, noise and safety risk assessments when establishing a procedure for landing aircraft on airport runways, creating a clear and present safety hazard. This disclosure resulted in FAA cancelling the runway procedure. In another case, whistleblower disclosures to OSC resulted in a Department of Transportation finding that staff at a major metropolitan airport did not know which aircraft separation requirements to follow, a recipe for causing mid-air collisions. These matters are now squarely on FAA's radar screen, thanks to OSC.

OSC cases come from throughout the federal government. The agency has recently confirmed allegations made by whistleblowers in ten different departments and agencies. One disclosure identified contracting irregularities which led to a $1.6 million reimbursement due to the Department of the Army. At the Department of Homeland Security, a whistleblower alerted OSC that employees were improperly paid Administratively Uncontrollable Overtime. By stopping these improper payments, the government saved approximately $2 million.

OSC's track record in leveraging whistleblower disclosures to save lives and taxpayer dollars -- exponentially more dollars than OSC is budgeted -- is but one measure of the OSC's success. We are also the sole federal agency that offers education and advice on the Hatch Act. OSC enforces this good government law so that civil servants are not coerced into partisan political activity by their superiors, and the federal workplace is not tainted by partisan politicking. In the past three years, OSC has investigated close to 1,500 Hatch Act complaints and, in addition, provided thousands of advisory opinions to government employees and the public about what types of political activity are forbidden.

Harmonious relations between managers and employees are critical to the effectiveness and efficiency of government. OSC plays a unique role in fostering a healthy federal workplace by investigating allegations of Prohibited Personnel Practices, such as nepotism, discrimination, retaliation, and violations of merit systems principles. These cases are typically resolved by negotiation, mediation and settlement rather than prosecution, thereby ensuring fairness and due process to employees while preventing paralyzing stalemates and disruptions in the conduct of government business.

The volume of complaints is substantial and growing: **Nearly 3,000 new Prohibited Personnel Practices actions were filed with OSC in 2012, of which a significant percentage were referred for full investigations.**

A handful of PPP cases do not settle and, where appropriate, OSC has sought corrective and even disciplinary action through litigation before the Merit System Protection Board (MSPB). For example, OSC found that a Chief of Staff with the Department of Homeland Security, US Citizenship and Immigration Services, was geographically reassigned to another city and denied performance appraisals for two years running, in retaliation for disclosing that 600 certificates of citizenship and naturalization had been voided without cause and hundreds of others were unaccounted for. As a result of negotiations, DHS agreed to conduct the performance appraisals, yet it balked at canceling the reassignment. OSC then filed an action before the MSPB, after which the case settled, with the complainant receiving a lump sum settlement in return for resigning. In another case, OSC acted on a complaint that the Bureau of Prisons (BOP) cancelled a vacancy announcement after BOP produced a "certificate of eligibles." BOP then re-announced the position at a lower grade in order qualify the pre-selected candidate who indeed, was selected. Based on OSC's intervention, BOP suspended the offending hiring official for 14 days, sending a clear warning to other managers about violating merit system principles.

OSC is especially proud of its record in ensuring that returning veterans and members of the National Guard and reserves are treated fairly in the workplace. As President Obama noted in his September 8, 2011 address to Congress: "We ask these men and women to leave their careers, leave their families, and risk their lives to fight for our country. The last thing they should have to do is fight for a job when they come home." For many years, the Department of Labor has investigated, and OSC has prosecuted, claims of discrimination under the Uniformed Services Employment and Reemployment Rights Act (USERRA)**.** Due to OSC's extraordinary performance in a prior USERRA Demonstration Project, in which OSC not only prosecuted all of the USERRA complaints but investigated half of them as well, Congress again tapped OSC for a second, three-year USERRA Demonstration Project, which began in August 2011.

Word of OSC's effectiveness in achieving good results for the federal community is spreading. The number of new cases before the agency continues to rise, as does OSC's success in pending matters. In 2012, OSC resolved 31 percent more cases than it did in 2009. Indeed, thanks to the incredible dedication of its small but highly productive staff, in FY 2012 OSC resolved over 300 more matters than it resolved just the year prior.

Other Successes

Disclosure Unit 2012 Case Summaries

OSC received over 1,000 disclosures this year, resulting in substantial savings to the government through the elimination of waste, mismanagement and fraud. It also resulted in improved aviation safety, proper treatment of the remains of fallen soldiers, protection of patients at VA hospitals, safer workplaces, and lives saved. Here are some of the highlights.

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

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

In response to the findings, the Air Force took substantial corrective action, even where they did not acknowledge wrongdoing. These corrective actions included enhancing training, and implementing policies and procedures to improve the processes and accountability at the Port Mortuary. While acknowledging these steps forward, OSC raised concerns regarding the insufficiency of the disciplinary action taken against the managers who were found to be responsible for violations of rules and regulations, gross mismanagement, dishonest conduct, and a failure of leadership.

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

Ultimately, the whistleblowers were vindicated and acts of retaliation against them, including removal, were reversed. By contrast, three of the officials responsible for wrongdoing either resigned or were disciplined.

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

Unaccredited VAMC Nuclear Medicine Service Shut Down In New York. OSC referred to the Secretary of Veterans Affairs (VA) allegations that VA Medical Center in Northport, New York (VAMC-Northport) was operating an unaccredited residency training program in nuclear medicine. The agency investigation substantiated the allegation and also found that the Chief of the Nuclear Medicine Service improperly allowed unqualified individuals, not licensed to practice medicine in the U.S., to work in nuclear medicine. In response to the investigative findings, the agency discontinued the VAMC-Northport Nuclear Medicine Residency Training Program and funding for the resident position. The agency also removed two unlicensed trainee physicians and reprimanded two officials, including the Chief of Staff. Furthermore, VAMC-Northport modified its residency validation process so that the Associate Chief of Staff must verify the accreditation status of a residency program and submit the accreditation status to the Chief of Staff for additional verification and approval prior to submitting a request to fund a residency program. *Referred July 2011; transmitted to the President and Congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

BOP Fort Dix Improves Medical Testing and Monitoring Processes. OSC referred to the Attorney General allegations that employees of the Bureau of Prisons (BOP), Federal Correctional Institute (FCI) Fort Dix, New Jersey, failed to timely collect samples for medically ordered laboratory diagnostic tests, including blood, stool, and urine samples, which delayed medical test results necessary for diagnoses. The agency investigation partially substantiated the allegations. The report stated that a large number of medical tests had been ordered by medical staff at FCI Fort Dix, but that medical staff had experienced delays in securing results. The agency report found that the problem with delinquent lab tests was systematic and multifaceted. Several factors contributed to the laboratory delays, including lack of proper staffing, a "tremendous" workload, the unsuccessful attempts to hire a qualified phlebotomist, the necessity to reschedule patients, the failure to adhere to pre-testing requirements, such as fasting, and duplicate lab test orders. VA Chief of Health Programs opined that there was a significant problem with pending diagnostic lab orders, even if there were duplicative requests. The agency report found that the failure to ensure timely test results involved several institutional components, including the failure of BOP`s Health Services to acknowledge, assess, and remedy the untimely lab testing problems. The agency investigation determined, however, that no patients were harmed as a result of laboratory delays.

As a result of the investigation, BOP`s Central Office and Northeast Regional Office established a medical review team to audit all untimely submitted medical files with abnormal lab results. OSC confirmed that the Improving Organizational Performance (IOP) Coordinators have been auditing FCI Fort Dix`s pending lab reports, as planned, in order to ensure that pending or backlogged labs are scheduled timely. The IOP Coordinators currently monitor the "pending collection" lab reports on a daily basis. In its most recent monthly report, FCI Fort Dix had no lab requests pending collection with a due date greater than 30 days. The agency report noted that the whistleblowers agreed that the systematic review processes should resolve the problem. The Special Counsel requested that the Department of Justice provide OSC with an update in six months about its progress monitoring patient medical tests at FCI Fort Dix because of concerns that the agency failed to address this serious health and safety risk regarding timely medical test results more aggressively. *Referred July 2011; transmitted to the President and Congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

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

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

The investigation substantiated the allegation that the Dalton Departure Procedure posed a potential safety hazard and revealed that the number of safety reports relating to the procedure had increased by 450% within the last 11 years. It also confirmed the allegation that FAA took no action to resolve the safety issues relating to the procedure following an internal investigation in 2009. Despite OIG's alarming findings, the agency report and supplemental report reflect that FAA remained steadfast in its position that the Dalton Departure Procedure is a "safety enhancement." FAA continued to operate the procedure without adequately addressing the confirmed safety risks until October 2011.

OSC determined that some of the agency’s findings, and its response to certain findings, did not appear reasonable. OSC noted, however, that subsequent to DOT's submission of its reports to OSC, the whistleblower advised OSC that FAA finally determined that the Dalton Departure Procedure “poses a safety hazard” and agreed to modify the procedure in a manner that provides the necessary gap in air traffic and separation between aircraft departing Teterboro and arriving at Newark. The whistleblower confirmed that FAA implemented an operational evaluation of the amended procedure, which remains in effect. Thus, it appears that FAA has finally taken appropriate corrective action. *Referred February 2010; transmitted to the President and Congressional oversight committees in May 2012.*

Non-Compliance with Air Traffic Procedures and Agency Rules. OSC referred to the Secretary of Transportation allegations that controllers routinely violated FAA orders and policies, such as non-compliance with air traffic procedures, sleeping and using prohibited electronic devices in the control room, improper work stoppages, and leaving their shifts early. The whistleblower, an Air Traffic Controller assigned as a Frontline Manager in FAA’s New York Air Route Traffic Control Center, also alleged that management was aware of these violations and performance deficiencies, but failed to address and often condoned the conduct, which compromised air traffic safety.

The investigation substantiated most of the allegations, including the controllers’ non-compliance with air traffic procedures, sleeping and using prohibited electronic devices in the control room, improper work stoppages, and leaving their shifts early. The investigation also substantiated the allegation that managers were aware of, but failed to correct, the violations and performance deficiencies.

In response to the findings, the agency took significant corrective actions, including establishing an Interim Leadership Team, bringing in experienced personnel from other FAA facilities to serve in a variety of capacities. The team was tasked with addressing all substantiated non-compliance and deleterious behavior impacting the safety and performance of the operations, and charged with implementing all corrective actions necessary to bring the center into compliance with FAA rules, regulations, orders, and policies. In addition, FAA issued a letter of proposed dismissal from federal service to an Air Traffic Manager, and two managers received letters of proposed demotion and permanent removal from the management ranks. The Special Counsel recommended periodic, unannounced inspections to ensure that the corrective actions taken remain in place. *Referred March 2011; transmitted to the President and Congressional oversight committees in May 2012.*

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

<u>Non-Compliant Modifications to Emergency Medical Service Helicopters Compromising Safety</u>. OSC referred to the Secretary of the Department of Transportation (DOT) allegations from an aviation safety inspector that modifications to hundreds of emergency medical service helicopters for a night vision imaging system did not comply with required specifications. The whistleblower alleged that this made the instrumentation potentially difficult to read under certain conditions, both during daytime and nighttime operations. OSC referred the same allegations to DOT in 2008, but closed the matter after DOT failed to return an investigative report. The agency's report to OSC in response to the 2010 disclosures found that the helicopters were returned to service contrary to FAA policy and that there were "possible impacts to safety," with more than 50 erroneous field approvals performed by an FAA Aviation Safety Inspector. Moreover, of the 29 aircraft inspected as of the date of the report, all had non-compliances and/or non-conformances. Of the 278 findings of non-compliance, 51 (18%) were potential safety concerns. Notably, between the time of the whistleblower's 2008 allegations to OSC and the subsequent re-referral of his disclosures in 2010, the number of helicopters returned to service with potentially non-compliant modifications more than doubled. The reports indicated that up to 500 aircraft could be affected. As a result of the investigation following the second disclosure in 2010, FAA has put into place a comprehensive corrective action plan to address all night vision modified aircraft. The Special Counsel found the report unreasonable, noting that it required the years-long persistence of one whistleblower and two referrals from OSC for FAA to acknowledge that its oversight was lacking and for FAA to institute a comprehensive plan to systematically ensure compliance and, consequently, safety. *Referred July 2010; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

<u>Unsafe Departure Procedures and Faulty Wind Source Instruments at Detroit Airport</u>. OSC referred to the Secretary of the Department of Transportation (DOT) allegations from an air traffic controller with the Federal Aviation Administration at Detroit Metropolitan Airport that unsafe departure procedures and faulty wind source instruments were being used by controllers. Although the agency's investigation did not directly substantiate these allegations, the report states that the two wind measurement instruments at DTW continued to provide disparate wind measurements at times. DOT did not conclude that these disparities presented a safety concern. Despite these findings, the agency pledged to complete a safety-

risk analysis to determine the hazards associated with a change in the primary wind source equipment, and to collect data to isolate any technical reason for the divergent readings of the two devices and help eliminate random differences. The agency also intends to improve the timely release of air traffic from DTW by changing published Standard Instrument Departure procedures so they can be issued to departing aircraft. The Special Counsel found the report not reasonable, stating that very slow progress has been made in two critical areas, both of which could benefit from important aviation safety improvements. *Referred February 2011; transmitted to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

Failure to Ensure Airline Compliance with Federal Regulations on Aircraft Maintenance Programs. OSC referred allegations to the Secretary of Transportation received from Federal Aviation Administration (FAA) Aviation Safety Inspectors that FAA failed to provide proper oversight of Delta Air Lines, Inc. (Delta) and failed to address the airline's non-compliance with FAA Airworthiness Directives (ADs) and Federal Aviation Regulations (FARs). The whistleblowers alleged that FAA employees in the Delta Certificate Management Offices (CMO) in Atlanta, Georgia, and Bloomington, Minnesota, failed to ensure that Delta was in full compliance with the ADs and FARs governing Fuel Tank System (FTS) and Electrical Wiring Interconnection System (EWIS) maintenance programs. They alleged further that the airline's non-compliance presented a substantial and specific danger to public safety through the use and operation of potentially unsafe aircraft. The Secretary tasked the Office of Inspector General (OIG) with the investigation into the allegations.

The OIG investigation partially substantiated the allegations and concluded: 1) When the disclosures were filed with OSC, FAA had not addressed the discrepancies in Delta's FTS and EWIS maintenance programs, but now has an action plan to address them and the weaknesses identified in FAA's national guidance for implementing and overseeing the FTS and EWIS maintenance programs; 2) FAA completed the recommendations from the OIG's 2009 report regarding Delta's compliance with ADs and FTS maintenance program requirements in June 2010, but the OIG determined that those actions were ineffective and substantiated the whistleblowers' allegation that the non-compliance continued; 3) Delta's failure to comply with FTS and EWIS requirements constitutes a failure of the airline's Continued Analysis and Surveillance System; and 4) FAA's Regional Counsel had not finalized its review of the Enforcement Investigation Reports against Delta for non-compliance with an FTS AD but expected to do so in the coming months. *Referred July 2011*; *sent to the President and congressional oversight committees and conditionally closed pending updates on corrective action in May 2012.*

Violation of Law, Rule or Regulation and Gross Mismanagement

Violation of Federal Contract Regulations. OSC referred to the Secretary of Agriculture allegations that employees at the U.S. Forest Service, Cibola National Forest, Engineering and Acquisition Management Departments, Albuquerque, New Mexico, provided a potential construction contractor with government estimate information. The whistleblower explained that in June 2010, the Forest Service initiated creation of a government estimate for the "Forest Road 245 Road Maintenance-Upper Section Project" (M.P.

2.727 to 6.500) in the Cibola National Forest. The project entailed maintenance on the upper half of Forest Road 245, and the agency set aside $343,000 for its completion. On July 8, 2010, the government estimate of $205,195 was submitted for the project. The contract was offered under the U.S. Small Business Administration's 8(a) Business Development Program to Groundhog Excavating, Inc. (Groundhog). The Project Contracting Officer sent a solicitation to Groundhog and received an estimate in response of $350,000, well over the government estimate of $205,195. The whistleblower alleged that the Contracting Officer's Representative (COTR) began communicating directly with Groundhog, without the authority to do so, purportedly in an effort to have the project completed before the end of Fiscal Year 2010 and that this conduct violated the Federal Acquisition Regulation.

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

Violation of Law, Rule, or Regulation

Routine Misuse of Government Property. OSC referred to the Secretary of Veterans Affairs allegations that a Home Based Primary Care Nurse Manager at Raymond G. Murphy VA Medical Center (VAMC), Albuquerque, New Mexico, routinely misused official time and government property to complete schoolwork for a Master of Science in Nursing degree in violation of 5 C.F.R. § 2635.704 (Use of Government Property), 5 C.F.R. § 2635.705 (Use of Official Time), and VA Directive 6001 (Limited Personal Use of Government Office Equipment Including Information Technology). The agency's investigation substantiated the allegation that the Nurse Manager had used a VAMC printer to print school-related documents that, in some cases, interfered with staff work. Based on these findings, the employee was counseled concerning the proper use of government time and equipment. OSC determined that the agency's reports contained all of the information required by statute and that the findings appeared to be reasonable. *Referred May 2011; transmitted to the President and Congressional Oversight Committee May 2012.*

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

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

Management control activities carried out by OSC include periodic reviews of agency administrative and program elements to ensure that obligations and costs comply with applicable laws; funds, property and other assets are safeguarded; revenues and expenditures are properly recorded and accounted for; and programs are efficiently and effectively carried out in accordance with law and management policy. During FY 2012, reviews were completed on the following agency administrative operations:

1. Information Security Program. OSC's Chief Information Officer conducts an annual security review. The results of this review were summarized in the agency's Federal Information Security Management Act (FISMA) Report, submitted to OMB in November, 2012. The review found no material weaknesses in the agency's information technology policies, procedures, or practices. Further, there were no security incidents affecting critical agency information systems.

2. Financial Audit. OSC is undergoing its ninth annual financial audit. The auditors reported no material weaknesses in any prior fiscal years. The FY 2012 audit addresses the financial statements and accounting processes, almost all of which were accomplished by the National Business Center (NBC) at the Department of Interior under an interagency outsourcing agreement.

3. HSPD-12. To comply with the security requirements of directive HSPD-12, OSC has an agreement for HSPD-12 services with the General Services Administration. OSC has met all deadlines so far for the accomplishment of HSPD-12 milestones, has issued PIV cards to all OSC employees, and is now working on expanding its program to include two-factor HSPD-12 authentication for securing each employee's computer.

OSC has continued to outsource financial management and administrative activities which it moved to NBC in FY 2009, including budget, financial, and reporting accounting, and procurement systems software, along with travel services. Contracting operations were moved to the NBC in FY 2010. OSC personnel and payroll data entry transactions have been processed by the Department of Agriculture's National Finance Center (NFC). All these operations are administered under cross-servicing agreements with these certified shared services providers. For information on any significant management control issues related to services provided under these agreements, OSC relies on information received from NBC and NFC, and any audits or reviews issued by the Inspectors General and Chief Financial Officers of the Departments of Treasury and Agriculture, and the Government Accountability Office (GAO). NBC conducts multiple internal and external reviews on its operations, which are captured in the Annual Assurance statement on Internal Controls provided yearly to OSC.

In September of 2012, NBC certified its Oracle Federal Financials Major Application, in accordance with OMB Circular A-130, Appendix III, approving the system for continued operation in line with its continuous monitoring program. NFC's Payroll System was certified on September 2010 and is valid until September 2013. Also, an annual SSAE 16 evaluation was conducted this year on the Oracle Federal Financials Major Application, as well as on NFC's Payroll System. OSC has updated Interconnect Security Agreements previously in place with NBC and NFC to cover the travel, financial and payroll systems.

VII. Management Assurances

Annual Assurance Statement on Internal Controls and Internal Control over Financial Reporting

OSC's management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). OSC conducted its assessment of internal controls over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, “Management's Responsibility for Internal Control.” Based on the results of this evaluation, OSC can provide reasonable assurance that, as of September 30, 2012, its internal controls over the effectiveness and efficiency of operations were compliant with applicable laws and regulations, and no material weaknesses were found.

For its financial reporting needs, OSC works with the National Business Center (NBC). OSC obtains the SSAE 16 report from NBC, and reviews it to assist in assessing internal controls over financial reporting. OSC has not discovered any significant issues or deviations in its financial reporting during FY 2012 and, therefore, concludes that the agency’s internal controls over financial reporting are sufficiently strong.

OSC has no in-house financial system. OSC has chosen to use Oracle Federal Financials in an environment hosted by NBC, a shared service provider. Because of the rigorous testing that NBC undergoes, OSC considers its financial system to be reliable and effective.

VIII. Management Challenges

In the past several years, the agency has experienced significant yearly increases in caseload levels. New matters received have increased by 67% in the course of five years; other workload items such as Hatch Act Advisory opinions have increased as well. Several factors have contributed to these rising levels of complaint filings with OSC, including:

- Greater awareness of OSC and its effectiveness as a result of increased press coverage, as OSC handles high profile cases such as the Port Mortuary, Dover Air Force Base, where mortuary officials turned a deaf ear to, and retaliated against, their own employees who challenged the substandard treatment of the returning remains of American soldiers killed in Iraq. OSC's efforts, working closely with Congress, focused a national spotlight on the issue, resulting in substantial improvements in the handling of remains at the Port Mortuary, an end to the retaliation against the whistleblowers, and the disciplining of those responsible for the wrongdoing.

  While the Port Mortuary matter was of huge public importance and led the news cycle, it was far from unique on the OSC docket. OSC focused attention on a range of matters brought forth by whistleblowers, from improper supervision of airline safety to bogus auditing procedures that deprived the Treasury of millions of dollars.

- OSC's outreach program has continued to build awareness within the federal community. OSC increased its outreach in FY 2012 by 267% over FY 2011.

- Awareness of the Hatch Act along with OSC's enforcement role has continued to build among federal employees, primarily due to media coverage. With the election cycle, OSC has experienced a significant uptick in Hatch Act complaints and requests for advisory opinions.

- OSC conducts a "2302(c)" certification program for federal agencies to ensure that employees are informed of their rights under federal whistleblower protection provisions. As agencies implement the certification process, agency employees who might previously have been unaware of their rights and remedies are becoming informed. Last year, OSC launched a USERRA Demonstration Project that will result in OSC receiving an expected 450 additional investigative cases over a three-year period, a substantial expansion in the agency's USERRA mission.

OSC is working harder, smarter and with better results than at any time in its history. The agency resolved 1,037 more cases in FY 2012 than in FY 2009. This is a 31% increase, even though staffing levels remained largely unchanged. Total favorable actions in PPPs in 2012 are up by 89% over 2011 levels, and the number of cases resolved through mediation more than doubled from 2011 to 2012.

The reputation of OSC has improved dramatically since Carolyn Lerner was sworn in as Special Counsel in June 2011. The federal workforce has growing confidence in OSC's ability to obtain corrective action, driving demand for OSC's services. This demand, when coupled with only a marginal increase in resources, has pushed OSC to a tipping point, in which its capacity will be dwarfed by the demand for its services.

IX. Comments on Final FY 2012 Financial Statements

Financial Highlights

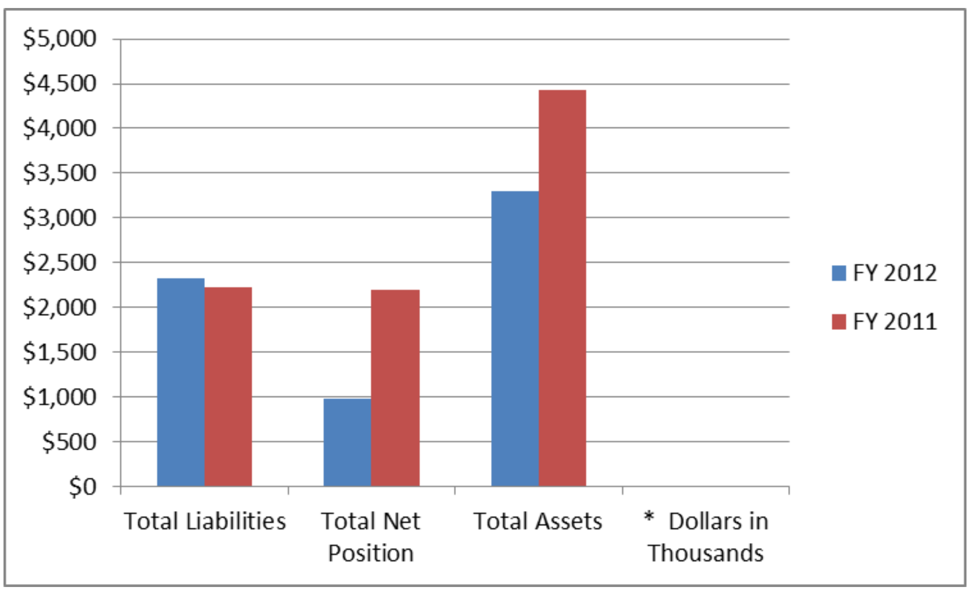
Consolidated Balance Sheet

The Consolidated Balance Sheet presents amounts that are owned or managed by OSC (assets); amounts owed (liabilities); and the net position of the agency divided between the cumulative results of operations and unexpended appropriations.

OSC's balance sheets show total assets of $3,298,000 at the end of FY 2012. This is a decrease of $1,125,000 or approximately 25%, compared to OSC's total assets of $4,423,000 for FY 2011. Fund Balances with Treasury comprise 91% of OSC's assets.

Total Liabilities for OSC increased by $89,000 from $2,230,000 in FY 2011 to $2,319,000 in FY 2012, an increase of 4%. The largest components of Total Liabilities are Unfunded Leave ($981,000) and Accrued Funded Payroll and Leave ($721,000) which both saw increases in FY 2012, while the next largest component, Federal Employee and Veteran Benefits ($256,000), experienced a decrease during FY 2012.

US Office of Special Counsel Balance Sheet



The Net Position is the sum of Unexpended Appropriations and the Cumulative Results of Operations. At the end of FY 2012, OSC's Net Position on its Balance Sheets and the Statement of Changes in Net Position is $979,000, a decrease of $1,214,000, or 55%, over the FY 2011 ending Net Position of $2,193,000. This decrease is due primarily to an increase in OSC's Cumulative Results of Operations for FY 2012 and a significant decrease in Unexpended Appropriations used the same year.

Combined Statements of Budgetary Resources

The Combined Statements of Budgetary Resources show how budgetary resources were made available, and shows the status of those resources at the end of the fiscal year. In FY 2012, OSC received an $18,972,000 appropriation. OSC ended FY 2012 with an increase in total budgetary resources of $535,000, or 3%, over FY 2011. This change is a result of $643,000 OSC received for a Reimbursable Agreement (see the spending authoring line on the Statement of Budgetary Resources) in FY 2012.

Consolidated Statement of Changes in Net Position

The Consolidated Statement of Changes in Net Position represent the change in the net position for FY 2012 and FY 2011 from the cost of operations, appropriations received and used, net of rescissions, and the financing of some costs by other government agencies. The Consolidated Statement of Changes in Net Position decreased over last year by $1,214,000, or 55%.

Other Financial information

In FY 2012 OSC did not capitalize any new assets (OSC's capitalization policy has a threshold of capitalizing individual assets greater than $50,000.) Video-teleconferencing equipment assets, purchased in FY 2011 and not in operation as of September 30, 2011, are now operational. These assets were placed into Property, Plant and Equipment, and deprecation taken accordingly on the new equipment. This brings OSC's Property, Plant and Equipment to a total acquisition value of $900,000, with accumulated depreciation of $609,000 and a 2012 Net Book value of $291,000. (Note 4 to Principal Financial Statements)

OSC had a $1,072,000 higher total in Current Year Gross Obligations this year; $19,585,000 in FY 2012 as compared to $18,513,000 in FY 2011. This was due to OSC fully utilizing its significantly higher budgetary resources. (Note 13 to Principal Financial Statements, Reconciliation of Net Cost of Operations (Proprietary) to Budget)

OSC recognizes Imputed Financing sources and corresponding expense to represent its share of the cost to the Federal Government of providing accrued pension and post-retirement health and life insurance benefits. These benefit expenses for current employees decreased by $167,000, from $972,000 in FY 2011 to $805,000 in FY 2012. Assets and Liabilities relating to these benefits are the responsibility of the Office of Personnel Management.

- The dollar amounts listed above are rounded to the nearest thousand, in accordance with the rounding on the Financial Statements.

- Percentages are rounded off to the nearest whole percentage.

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

The statements were prepared from the books and records of the Review Commission in accordance with generally accepted accounting principles (GAAP) for Federal entities and formats prescribed by the

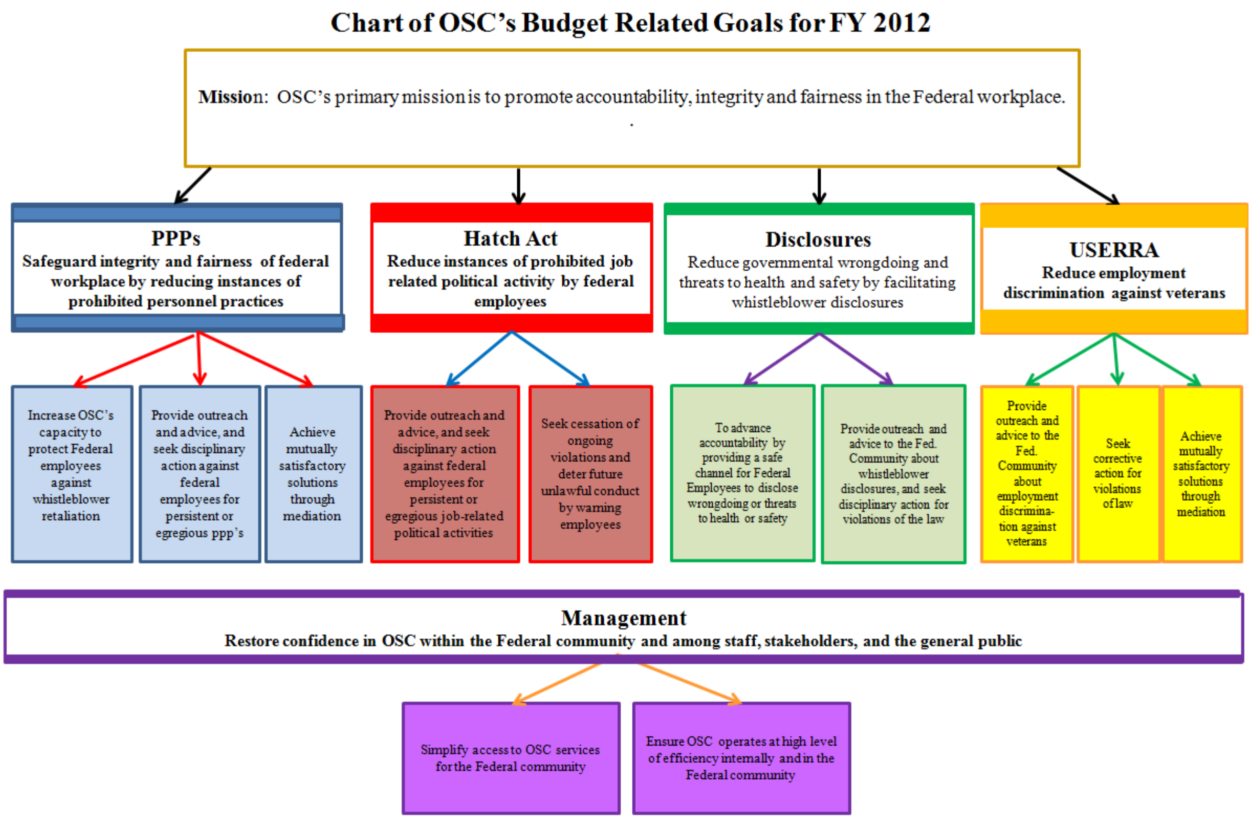
Office of Management and Budget (OMB). The statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These statements should be read with the realization that they are for a component of the United States Government, a sovereign entity.

X. Endnotes

[1]Public Law No. 103-94 (1993), codified in Titles 5 and 12 of the United States Code.
[2]Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, et. seq. The Veterans' Employment Opportunities Act (VEOA) of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The VEOA makes 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 section 2302(b)(11) was re-designated as section 2302(b)(12).)
[3]5 U.S.C. § 2302(c).
[4]Public Law 107-71 (2001).

Part 2: Performance Section

The Performance Results Section presents detailed information on the annual performance results of programs related to OSC's four statutory responsibilities. A chart is provided for each performance goal showing OSC's results against the targets, along with the highlights for each objective.



Following the arrival of OSC's new Special Counsel, the agency developed a new strategic plan in FY 2012, updating its Mission Statement, Strategic Goals and Performance Measures. This is a transition year to the new performance goals, and the FY 2012 Performance and Accountability Report is the agency's first opportunity to report on our progress in moving to these new goals. As a result of the transition, many of the performance targets are just now being set; hence, performance for most of these goals will not be fully reflected until FY 2013.

That said, OSC **fully met all 15 goals for which targets were set in FY 2012; no goals were unmet.** Below are tables listing each of OSC's Performance Measures. They are color coded to correspond to the appropriate Performance and Strategic Goal as found in the chart above.

Prohibited Personnel Practices.

OSC received a record level of PPP cases in FY 2012. The 2,969 complaints received were a sharp 15% increase over the **record-high** FY 2011 level.

Even as the caseload has risen, the quality of the agency's work has improved, resulting in large numbers of cases referred for full investigations, netting significant results. OSC received a record-level high of 159 favorable actions in FY 2012.

While this is a transition year to the new goals, in the Prohibited Personnel Practices area OSC successfully met three out of its stated three targets. Note, however, that performance for the majority of the PPP goals will be reported on for the first time in FY 2013.

Goal Table 1 Safeguard integrity and fairness of federal workplace by reducing instances of prohibited personnel practices

	Description of Target	FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
1	Number of corrective actions obtained by IPD	n/a	140	140		140	
2	Percent of corrective actions obtained per number of cases closed.	n/a	5%	5%		5%	
3	Number of cases referred for investigation from CEU to IPD (non-ADR)	n/a	75	83		91	
4	Number of informal stays requested	n/a	26	30		30	
5	Percent of informal stays obtained[5]	n/a	**n/a**[5]	**n/a**[5]		**TBD**	
6	Number of formal initial stays requested	n/a	7	10		10	
7	Percent of formal initial stays obtained	n/a	100%	100%		100%	
8	Number of corrective actions obtained in cases referred for investigation directly from CEU to IPD	n/a	31	31		31	
9	Percent of corrective actions obtained per number cases referred for investigation directly from CEU to IPD	n/a	41%	45		45	
10	Number of initial examinations completed by CEU within120 days	n/a	1,716	1,801		1,891	
11	Percent of initial examinations completed by CEU within 120 days	n/a	63%	66%		69%	
12	Number of CEU cases more than 240 days old	n/a	98	120		120	
13	Percent of CEU cases more than 240 days old[13]	n/a	3%	4%		4%	
14	Number of staff allocated to whistleblower retaliation and other PPPs	53	60	65		70	
15	Percent of total staff allocated to whistleblower retaliation and other PPPs	50%	50%	52%		55%	
16	Number of staff training programs in whistleblower retaliation and other PPPs	2	3	4		5	

5. Tracking and reporting capability is currently being developed in the case tracking system.
13. Due to the sharp increase in PPP caseload, an increase in the number of aged cases will occur.

Goal Table 2	Provide outreach and advice; seek disciplinary action against federal employees for persistent or egregious prohibited personnel practices						
Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
17	Number of recommendations to agencies to take disciplinary action	n/a	n/a	6		6	
18	Number of disciplinary action complaints filed	n/a	0	1		1	
19	Number of disciplinary actions resolved pre-litigation through negotiated settlement	n/a	19	20		25	
20	Total number of successful disciplinary prosecutions	n/a	0	1		1	
21	Percent of successful disciplinary prosecutions	n/a	n/a	100%		100%	
22	Upon receipt of a complaint, clearly explain the OSC review process and when action can be expected[22]	n/a	99%	99%		99%	
23	Provide complainants status updates at defined intervals and when significant new developments occur[23]	n/a	88%	99%		99%	
24	If OSC declines to refer a case for investigation, clearly inform complainant of the reason(s) why[24]	n/a	100%	100%		100%	

17. Tracking and reporting capability is currently being developed in the case tracking system, thus the FY 12 result is listed as n/a while this is being developed.

22. Upon receipt of a complaint, clearly explain the OSC review process and when action can be expected:

Target: Since the third quarter of FY 12, prepare an attachment for the acknowledgment letter explaining the complaint review process, and expected time for CEU to make a determination on the complaint. Since beginning fourth quarter FY 12, all acknowledgment letters include the attachment. CEU Chief will provide senior management a list of files that do not include the attachment.

23. Provide complainants status updates at defined intervals and when significant new developments occur. The IT system is coded to generate this information.

24. If OSC declines to refer a case for investigation, clearly inform complainant of the reasons why.

Target: As of the end of third quarter FY12, and at the beginning of each FY thereafter, CEU Chief will meet with examiners to identify the information that should be included in preliminary determination and closure letters. CEU Chief will provide senior management a list of the files (by case number and name) lacking this information.

Result: The 2012 result of 100% was obtained from a combination of an automatic query of data in OSC 2000, and a manual count as well.

Goal Table 3	Achieve mutually satisfactory solutions through mediation						
Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
25a	Percent of cases qualifying for full investigation referred to ADR Unit for review[25a]	n/a	89%	89%		89%	
25b	Percent of cases received by USERRA Unit referred to ADR Unit for review[25b]	n/a	18%	50%		50%	
26	Number of cases reviewed by the ADR Unit from all sources	n/a	186	190		200	
27	Number of cases in which mediation is offered from all sources	n/a	124	125		125	
28	Number of cases mediated (including cases withdrawn after one or more sessions)	n/a	32[28]	50		55	
29	Percentage of all mediations completed that resulted in settlement	n/a	56%	58%		60%	

25a. This target pertains to the CEU section.

25b. This target pertains to the USERRA section. Resources were only provided during part of FY 12; therefore, the goal is higher for FY13.

28. We currently have an additional 28 cases either in mediation or scheduled for mediation.

Hatch Act

The Hatch Act Unit has seen dramatic increases in complaints and requests for advisory opinions from 2006 onward, with 503 complaints received in 2012, an increase of 11.5% over 2011 levels. This increase resulted in a backlog of cases. In 2012, 449 complaints were processed and resolved.

While this is a transition year to the new goals, OSC met two out of two goals for which targets had been set. Performance for the majority of the new Hatch Act targets will be reported for the first time in FY 2013.

Goal Table 4 Provide outreach and advice; seek disciplinary action against federal employees for persistent or egregious job-related political activity							
Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
30	Number of Hatch Act updates to OSC website or Listserv messages[30]	10	15	10		10	
31	Percent of cases obtaining corrective action[31]	n/a	92%	95%		95%	
32	Percent of appropriate cases resolved thru negotiated [32]	n/a	100%	100%		100%	
33	Number of successful prosecutions	n/a	1	1		1	
34	Percent of successful prosecutions	n/a	100%	100%		100%	

30. Message/Update Records: The Hatch Act Unit will keep track of how many messages and updates we complete each year.

31. Calculating corrective actions: Hatch Act Unit attorneys will keep track of cases where we try to achieve corrective action but are unsuccessful. We will then compare that number to the total number of corrective actions we achieve. For example, if we achieve 40 corrective actions and are unsuccessful in two attempts, we would calculate the percentage as 40/42 = 95% successful.

32. Calculating Disciplinary Actions: Hatch Act Unit attorneys will keep track of the number of unsuccessful attempts at settling and compare that number to the total number of negotiated disciplinary actions we achieve.

Goal Table 5	Reduce instances of prohibited job-related political activity by Federal employees						
	Description of Target	**FY 2012 Target**	**FY 2012 Result**	**FY 2013 Target**	**FY 2013 Result**	**FY 2014 Target**	**FY 2014 Result**
35	Number of warning letters issued	n/a	142	142		142	
36	Percent of Hatch Act outreach/training requests accepted[36]	98%	98%	98%		98%	
37	Percent of oral and email advisories issued within 5 business days of receipt of complaint[37]	95%	99%	95%		95%	
38	Percent of formal written advisories issued within 120 days	n/a	95%	95%		95%	
39	Percent of formal written advisory requests responded to[39]	n/a	98%	98%		98%	

36. HA outreach records: The Outreach coordinator retains a record of requests that are accepted and declined each year. One outreach request was denied in FY 2012 due to a shortage of resources. In addition, starting in FY 2013, the HAU program assistant will maintain a record of this information.

37. Oral and Email advisories: Hatch Act Unit attorneys will keep track of the number of oral and email advisories that take longer than five days to issue and compare that number to the total number for the year, to come up with the percentage.

39. Advisories: Compare intakes with number of advisories issued for fiscal year

Whistleblower Disclosures

The Disclosure Unit cases have more than doubled in the last five years. In FY 2012, the unit received 1,148 Disclosures, a staggering 24% increase over 2011 levels. Despite this significant increase in workload, the Unit managed to review disclosures within 15 days in 55% of the cases. Overall, the Unit had a productive year, processing and resolving 1,053 cases, an increase of 21% over last year's number of resolved cases.

Due to the transition to the new goals this year, the Disclosure Unit did not have any FY 12 targets to report against. The first year for performance measurement will by FY13.

Goal table 6 Reduce governmental wrongdoing and threats to health and safety by facilitating whistleblower disclosures

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
40	Total number of outreach activities undertaken including dissemination of Whistleblower information	n/a	9	9		9	
41	Success in prompting thorough agency investigations of referred disclosures[41]	n/a	68%	68%		68%	
42	Number of whistleblower disclosures prompting effective corrective action and accountability[42]	n/a	30	32		34	

41. From the subset of reports received that did not require a return action back to the agency involved. This captures only the percentage of investigations performed within the same fiscal year.

42. This reflects the number of cases closed in the fiscal year, in which an action code was entered signifying corrective action, disciplinary action, changes in agency policy, or cost-savings. These cases were closed in the given fiscal year, but may have been referred in a prior fiscal year. Due to the length of time our process takes, cases referred in one fiscal year could be closed in subsequent fiscal years.

Goal Table 7 Provide outreach and advice to the federal community about Whistleblower Disclosures; seek corrective action							
Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
43	Number of whistleblower disclosures referred by OSC to agency head for investigation	n/a	39	41		43	
44	Percent of whistleblower disclosures submitted to OSC referred to agency head for investigation	n/a	4%	6		8	
45	Number of whistleblower disclosures either closed or referred within 15 day statutory timeline	n/a	583	590		596	
46	Percent of whistleblower disclosures closed or referred within 15 day statutory deadline	n/a	55%	55%		55%	
47	Expand Federal agency compliance with provisions of the Whistleblower Protection Act by invigorating the Certification Program under Section 2302c	n/a	n/a[47]	Develop and redesign training materials		Train agencies on redesigned materials	
48	Survey of attendees at outreach events[48]	n/a	n/a[48]	Develop survey		Survey 1,000 attendees	

47. The FY 12 result is n/a as OSC is starting this goal in FY 13. The FY 15 planned target is to increase number of certifications by 5%.

48. The FY 12 result is n/a. The first target is for the survey to be developed in FY 13.

USERRA Enforcement

In addition to enforcing its docket of USERRA Referral cases, OSC's USERRA Unit has an on-going Demonstration Project, at the mandate of Congress, which resulted in an additional 152 USERRA cases in 2012. Unlike the Referral cases, OSC *investigates* as well as enforces the Demonstration Project cases. This is a huge increase in the USERRA unit's scope and number of cases. In FY 2012, 92 cases were resolved. OSC achieved a 24% favorable resolution rate, on par with the results from the prior Demonstration Project from 2005-2008.

Due to the transition to the new goals this year, the USERRA Unit did not have any FY 12 targets in place to report against, the first year for performance measurement will by FY13.

Goal Table 8 Provide outreach and advice to the federal community about employment discrimination against veterans

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
49	Number of staff allocated	n/a	2	3		4	
50	Percent of staff	n/a	25%	37%		50%	

Goal Table 9 Seek disciplinary or corrective action for violations of law

Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
51	Number of favorable resolutions	n/a	29	30		31	
52	Percentage of favorable resolutions	n/a	24%	24%		24%	
53	Number of investigations within 90 days	n/a	59	60		61	
54	Percentage of investigations within 90 days	n/a	63%	63%		63%	
55	Number of legal reviews within 60 days	n/a	32	33		34	
56	Percent of legal reviews within 60 days	n/a	76%	76%		76%	
57	Customer service exit survey findings	n/a[57]	45%	47%		50%	

57. Compare results to prior years: FY 12 target is n/a as the survey began during FY 12. In FY 12, 45% of those surveyed were very satisfied, satisfied, or neutral regarding OSC's level of service.

Goal Table 10 Achieve mutually satisfactory solutions through mediation								
Description of Target		**FY 2012 Target**	**FY 2012 Result***	**FY 2013 Target**	**FY 2013 Result**	**FY 2014 Target**	**FY 2014 Result**
58	Number of cases appropriate for mediation	n/a	14	35		45	
59	Percent of cases appropriate for mediation out of cases referred by USERRA to the ADR Unit for review	n/a	82%	60%		60%	
60	Percent of cases in which both parties agree to mediate	n/a	50%	50%		50%	
61a	Number of cases mediated	n/a	2	17		18	
61b	Percent successfully resolved	n/a	100%	58%		60%	

*The ADR unit started reviewing referrals in May 2012.

Management

The OSC adopted a management goal to "restore confidence within the Federal community and among staff, stakeholders, and the general public." This is a two part goal that includes ensuring OSC operates at a high level of efficiency internally and in the Federal community, and simplifying access to OSC services for the Federal community. Our management goals are overarching goals, which when met contribute to the overall success of the agency and all its programs.

This was a transition year to the new goals, however in the Management area OSC fully met 11 out of 11 goals for which targets had been set; no goals were unmet.

Goal Table 11 Ensure OSC operates at a high level of efficiency internally and in the federal community							
Description of Target		**FY 2012 Target**	**FY 2012 Result**	**FY 2013 Target**	**FY 2013 Result**	**FY 2014 Target**	**FY 2014 Result**
62	Establish Individual Development Plans (IDP's) for all employees to identify skills and gaps	Start Classification Study	Met	Conduct Requirements Assessment		Build Templates and implement IDP's	
63	Identify targeted training to mitigate skills gaps	Conduct Annual Survey	Met	Conduct Annual Survey		Conduct Annual Survey	
64	Use telework and alternative schedule options to provide employees with flexibility	55%	71%	70%		70%	
65	Percent of employees that participate in the annual Federal Employee Viewpoint Survey on their job satisfaction	75%	92%	90%		90%	
66	Improve the functionality of the case tracking system	See footnote[66]	Met	See footnote[66]		See footnote[66]	
67	Number of congressional staff or member contacts to strengthen covered laws and improve oversight and accountability	10	25	30		50	
68	Number of amicus briefs, SOI interventions, or other submissions concerning the scope or contours of the laws that OSC enforces.	2	2	2		2	

66. IT supported 24 system change requests in FY 2012. OSC's case tracking system is constantly being improved and updated. Often, the improvements made to the functionalities in the case tracking system are a result of change requests and new requirements from the program offices. IT aims to meet Six – Sigma perfection in the implementation of the Change Requests for the case-tracking.

Goal Table 13	Simplify access to OSC services for the Federal community						
Description of Target		FY 2012 Target	FY 2012 Result	FY 2013 Target	FY 2013 Result	FY 2014 Target	FY 2014 Result
69	Upgrade look, feel and user friendliness of website and keep it current.	See footnote[69]	Met[69]	See footnote[69]		See footnote[69]	
70	Survey user community to gauge strengths and weaknesses of website	See footnote[70]	Met[70]	See footnote[70]		See footnote[70]	
71	Issue Press releases on major agency activities and results in cases, maintain dialogue with news media	See footnote[71]	Met[71]	See footnote[71]		See footnote[71]	
72	Make use of Twitter and social media	See footnote[72]	Met[72]	See footnote[72]		See footnote[72]	
73	Conduct biannual surveys of Federal community to gauge OSC name and mission recognition	n/a	n/a	Develop survey; Receive survey approval		Conduct Survey; Implement changes based on survey findings	

69: Target FY 2012 - Select and retain a website design company for the overhaul of the website.

Results for FY 2012 - A website design firm has been hired and has begun to meet with OSC representatives and research the project.

Target FY 2013 – Implement website design, work out kinks and begin to get results from users. OSC expects the design firm to deliver its product by spring and to have the new website implemented and public by the end of fiscal 2013.

Target FY 2014 – Conduct survey of users to determine ongoing weak spots and to fix/improve them.

Narrative: OSC took information and suggestions from numerous public and private sector sources and created an RFP for a new website. This RFP went out on May 18, 2012 for three weeks. OSC received numerous bids and began work with a vendor during summer 2012. By the end of FY2012, OSC aspires to be nearing completion of the website redesign process.

70: Target FY 2012 – Have solicited feedback from numerous professional and government sources as we begin the redesign process. OSC requested to be part of GSA First Friday’s “usability test.”

Result FY 2012 - user testing is part of the design firm's scope of work.

Target FY 2013 – Will have many in-house and external users testing new website as the design is implemented.

Target FY 2014 – Will conduct survey of users and hope to put website to some kind of external or GSA test or survey as well.

Narrative: OSC invited various stakeholders to give OSC feedback on its website. We have done outreach to numerous nonprofits, unions, management organizations and veterans' organizations and have included website queries in these meetings. We have incorporated their feedback and the feedback of numerous government IT people from various agencies into our website goals and specifications. We will continue this outreach and incorporate feedback into website improvements.

71: Target FY 2012 – Agency is currently issuing press releases whenever appropriate and staying in active contact with news media.

Result FY 2012 - OSC issued 27 press releases; OSC sent 20 tweets on Twitter and had 60 followers by the end of FY12. OSC fielded between 500 and 600 media calls.

Target: 2013 – 30 Tweets, 100 followers, and 550 media calls fielded. Will continue phone, Twitter and e-mail contact with media. Will continue to build press list and build groupings of reporters by content area into Outlook. Will continue to issue and disseminate press releases on all possible areas of activity.

Target: 2014 - 30 Tweets, 100 followers, and 550 media calls fielded; will look for areas of improvement beyond above.

Narrative: OSC currently issues between 20 and 25 press releases a year, depending on the activity load and what cases warrant a news release. These releases are tweeted, posted on the website, and e-mailed to reporters as well as to stakeholder organizations and people, such as nonprofits, management organizations, veterans' groups and labor unions. OSC's communications manager speaks with members of the news media on a daily basis.

72: Target FY 2012 – Twitter account launched November 2011. Look for more occasions to send information out. Consider Facebook and YouTube accounts.

Target FY 2013 – Increase number of Tweets over previous fiscal year. Observe other small government agencies' Twitter accounts for examples of best practices/innovative ways to communicate with public.

Target FY 2014 – Same as FY 2013 target – look for better ways to reach out and increase amount of traffic.

Narrative: OSC includes information on Twitter only if it also available on the OSC website, according to guidelines from the general counsel. Given that stipulation and the potential for inappropriate commentary from outside users on Facebook, OSC has not yet launched a Facebook account. OSC will likely launch a YouTube account this fiscal year and incorporate videos from that into its new website.

73: FY 2012 is n/a as OSC is starting this goal in FY 2013.

Part 3: Financial Section

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

CFO Letter

November 13, 2012

This letter addresses any recommendations for improvement made by the auditor concerning deficiencies in internal controls which may have an effect on the auditor's ability to express an opinion on the financial statements. Overall, the financial statement received an unqualified opinion, with no material weaknesses. We feel that during FY 2012 OSC has made strides towards improving internal financial processes.

The audit report identified one matter involving internal controls that the auditors considered significant, regarding sufficient controls over supporting documentation in the Official Personnel Folders for personnel expenses. OSC will initiate appropriate corrective actions to address this matter. OSC will conduct a 100% review of all its Official Personnel Folders on a bi-annual basis. Further, OSC is revamping its New Employee Orientation (NEO) to ensure all appropriate employee documents are distributed, completed and returned. We believe these steps will help ensure compliance and currency. OSC made progress in this area in FY 2012, as a 100% review of Official Personnel Folders was conducted, and additional controls put into place. This did significantly improve the accuracy of these files, and as a result conditions reported in this area were reduced by 71% in the past year, from 48 to 14 conditions.

The auditor also did not note any noncompliance with laws or regulations which would have an effect on the financial statements.

Aside from the matter discussed above, we believe the recommendations for improvement pointed out during the FY 2011 audit have been fully addressed.

Thank you for the opportunity to comment on the audit report. The U.S. Office of Special Counsel is committed to continuous improvement of our internal controls, processes, and the quality of our financial reporting.

Sincerely,

Karl P. Kammann

Karl Kammann
Director of Finance
U.S. Office of Special Counsel

HARPER, RAINS, KNIGHT & COMPANY

Certified Public Accountants
A Professional Association

Independent Auditors' Report

Special Counsel
U.S. Office of Special Counsel

We have audited the accompanying consolidated balance sheets of the U.S. Office of Special Counsel (OSC), as of September 30, 2012 and 2011, and the related statements of net cost and changes in net position, and statements of budgetary resources, for the years then ended. These financial statements are the responsibility of OSC management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and OMB Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements,* as amended.

Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our audits of the OSC for fiscal years 2012 and 2011, we found

- the financial statements are presented fairly, in all material respects, in conformity with U.S. generally accepted accounting principles,
- no material weaknesses in internal control over financial reporting (including safeguarding of assets) and compliance with laws and regulations, and
- no reportable noncompliance with laws and regulations we tested.

The following sections discuss in more detail (1) these conclusions, (2) our conclusions on Management's Discussion and Analysis and other supplementary information, and (3) our and management's responsibilities.

Opinion on the Financial Statements
In our opinion, the financial statements including the accompanying notes present fairly, in all material respects, the financial position of OSC as of September 30, 2012 and 2011, and its net cost of operations, changes in net position, and budgetary resources for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Consideration of Internal Control

In planning and performing our audits, we considered OSC's internal control over financial reporting and compliance. We did this in order to determine our audit procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on internal control. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 07-04, as amended. We did not test all internal controls relevant to the operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982. Providing an opinion on internal control was not the objective of our audit. Accordingly, we do not express an opinion on OSC's internal control over financial reporting and compliance or on management's assertion on internal control included in Managements' Discussion and Analysis. However, for the controls we tested, we found no material weaknesses in internal control over financial reporting (including safeguarding of assets) and compliance.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a deficiency in internal control, or a combination of deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected. A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that the design or operation of one or more internal controls will not allow management or employees, in the normal course of performing their duties, to promptly detect or prevent errors, fraud, or noncompliance in amounts that would be material to the financial statements. We consider the deficiency described in Exhibit I to be a significant deficiency.

Our internal control work would not necessarily disclose all deficiencies in internal control that might be material weaknesses or other significant deficiencies.

We noted certain additional matters that we will report to management of OSC in a separate letter.

Compliance with Applicable Laws and Regulations

The management of OSC is responsible for complying with laws and regulations applicable to OSC. As part of obtaining reasonable assurance about whether OSC's financial statements are free of material misstatement, we performed tests of its compliance with selected provisions of laws and regulations including laws governing the use of budgetary authority and government-wide policies identified in OMB Bulletin No. 07-04, as amended, non-compliance with which could have a direct and material effect on the determination of consolidated and combined financial statements. Our tests disclosed no instances of noncompliance with laws and regulations which would be reportable under auditing standards generally accepted in the United States of America or OMB audit guidance.

We limited our tests of compliance to the provisions of laws and regulations referred to in the preceding paragraph. Providing an opinion on compliance with those provisions was not an objective of our audit. Accordingly, we do not express such an opinion.

Consistency of Other Information
Management's Discussion and Analysis (MD&A) is not a required part of the financial statements but is supplementary information required by the Federal Accounting Standards Advisory Board and OMB Circular A-136, *Financial Reporting Requirements*. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the MD&A. However, we did not audit the information and accordingly, we express no opinion on it.

Responsibilities
OSC's management is responsible for (1) preparing the financial statements in conformity with accounting principles generally accepted in the United States of America, (2) establishing, maintaining, and assessing internal control to provide reasonable assurance that the broad control objectives of the Federal Managers' Financial Integrity Act are met, and (3) complying with applicable laws and regulations.

We are responsible for obtaining reasonable assurance about whether the financial statements are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America. We are also responsible for (1) obtaining a sufficient understanding of internal control over financial reporting and compliance to plan the audit, (2) testing compliance with selected provisions of laws and regulations that have a direct and material effect on the financial statements and laws for which OMB audit guidance requires testing, and (3) performing limited procedures with respect to certain other information appearing in the Annual Financial Statement.

In order to fulfill these responsibilities, we

- examined, on a test basis, evidence supporting the amounts and disclosures in the financial statements;
- assessed the accounting principles used and significant estimates made by management;
- evaluated the overall presentation of the financial statements;
- obtained an understanding of the entity and its operations, including its internal control related to financial reporting (including safeguarding assets), and compliance with laws and regulations (including execution of transactions in accordance with budget authority);
- tested relevant internal controls over financial reporting, and compliance, and evaluated the design and operating effectiveness of internal control;
- considered the design of the process for evaluating and reporting on internal control and financial management systems under the Federal Managers' Financial Integrity Act; and
- tested compliance with selected provisions of laws and regulations that have a direct and material effect on the financial statements and those required by OMB Bulletin No. 07-04, as amended.

We did not evaluate all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act, such as those controls relevant to preparing statistical reports and ensuring efficient operations. We limited our internal control testing to controls over financial reporting and compliance. Because of inherent limitations in internal control, misstatements due to error or fraud, losses, or noncompliance may nevertheless occur and not be detected. We also caution that projecting our evaluation to future periods is subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with controls may deteriorate. In addition, we caution that our internal control testing may not be sufficient for other purposes.

We did not test compliance with all laws and regulations applicable to OSC. We limited our tests of compliance to selected provisions of laws and regulations that have a direct and material effect on the financial statements and those required by OMB audit guidance that we deemed applicable to the OSC's financial statements for the fiscal year ended September 30, 2012. We caution that noncompliance may occur and not be detected by these tests and that such testing may not be sufficient for other purposes.

We performed our audits in accordance with auditing standards generally accepted in the United States of America and OMB audit guidance.

Our audits were conducted for the purpose of forming an opinion on the financial statements of OSC taken as a whole. The other accompanying information included in this performance and accountability report is presented for purposes of additional analysis and is not a required part of the financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

This report is intended solely for the information and use of the management of the U.S. Office of Special Counsel, the U.S. Office of Management and Budget, the U.S. Government Accountability Office, and the U.S. Congress and is not intended to be and should not be used by anyone other than these specified parties.

Harper, Rains, Knight & Company, P.A.

November 14, 2012

1. Lack of Sufficient Controls over Supporting Documentation for Personnel Expenses

The U.S. Office of Special Counsel (OSC) does not properly maintain supporting documentation for personnel expenses recorded in the general ledger. OSC maintains personnel files for all employees to ensure that wages and elections for withholdings and benefits are consistent with the employee's intent. These files have minimum standards for accuracy, relevancy, necessity, timeliness, and completeness.

In FY 2012, we tested a sample of 45 employees' personnel expenses and supporting documentation maintained by OSC in the employees' personnel files (OPF) for the period of October 1, 2011 through June 30, 2012. Based on our testing, we identified the following exceptions:

- Three (3) employees' pay grade and retention rate per most recent Notification of Personnel Action (SF-50) in OPF does not agree to pay grade and retention rate per the earnings and leave statement (LES) for current pay period.
- Three (3) employees' enrollment code per most recent Federal Employees' Health Benefits (FEHB) enrollment form (SF-2809, SF-2810 or transcript) in OPF does not agree to enrollment code LES for pay period sampled.
- Three (3) employees' enrollment code per most recent Federal Employees' Group Life Insurance (FEGLI) election form (SF-2817, FE 2004 or RI 76-27) in OPF does not agree to enrollment code per SF-50 effective during pay period sampled.
- Three (3) employees' enrollment code per most recent Thrift Savings Plan (TSP) election form (TSP-1 or transcript) in OPF does not agree to enrollment code LES for pay period sampled.
- One (1) employee does not have a FEHB enrollment form (SF-2809, SF-2810 or transcript) in OPF.
- One (1) employee does not have a FEGLI election form (SF-2817, FE 2004 or RI 76-27) in OPF.

These exceptions were caused by insufficient controls in place at OSC to ensure proper and timely documentation is maintained in the OPF. We identified similar exceptions in our audits from FY 2008 through FY 2011.

OSC's failure to properly record and maintain official personnel records increases the risk for improper calculations of liabilities on the Balance Sheets and improper calculations of program costs on the Statements of Net Cost.

The Government Accountability Office's (GAO) GAO Standards for Internal Control in the Federal Government (Green Book) states: "Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained."

To address this issue, we recommend that OSC update its controls over the maintenance of its official personnel files. Additionally, management should perform a thorough review of its employees' personnel files to ensure that documentation is current and complete.

Management's Response: Management generally concurs with the recommendations noted above and will initiate further appropriate corrective actions to address these recommendations. However, in FY 2012, OSC conducted a 100% review of all its Official Personnel Folders (OPFs). This exercise resulted in significantly improving the accuracy of these files. By proactively identifying and correcting issues our OPFs are now in the best condition in the agency's history. We have committed to perform this thorough review on a bi-annual basis. Further, OSC is revamping its New Employee Orientation (NEO) to ensure all appropriate employee documents are distributed, completed and returned. This function will be performed independently by a Senior Human Capital Specialist. We believe these steps will help ensure compliance and currency.

Auditors' Response: FY 2013 audit procedures will determine whether the corrective actions have been implemented and are operating effectively.

Office of Special Counsel
Balance Sheet
As of September 30, 2012 and 2011
(dollars in thousands)

	2012	2011
Assets		
Intragovernmental		
Fund Balance With Treasury (Note 2)	$ 3,004	$ 4,006
Total Intragovernmental	3,004	4,006
Assets With the Public		
Accounts Receivable, Net (Note 3)	3	11
General Property, Plant, and Equipment, Net (Note 4)	291	406
Total Assets	$ 3,298	$ 4,423
Liabilities		
Intragovernmental		
Employer Contributions and Payroll Taxes Payable (Note 5)	186	158
Unfunded FECA Liability (Note 5)	70	66
Other Unfunded Employment Related Liability	5	-
Total Intragovernmental	261	224
Liabilities With the Public		
Accounts Payable	70	61
Federal Employee and Veteran Benefits (Note 5)	256	290
Accrued Funded Payroll and Leave	721	699
Employer Contributions and Payroll Taxes Payable (Note 5)	30	28
Unfunded Leave (Note 5)	981	928
Total Liabilities	$ 2,319	$ 2,230
Net Position		
Unexpended Appropriations-Other Funds	1,996	3,059
Cumulative Results of Operations-Other Funds	(1,017)	(866)
Total Net Position	$ 979	$ 2,193
Total Liabilities And Net Position	$ 3,298	$ 4,423

The accompanying notes are an integral part of these statements.

Office of Special Counsel
Statement of Net Cost
For the Years Ended September 30, 2012 and 2011
(dollars in thousands)

	2012	2011
Gross costs (Note 9)	$ 20,665	$ 19,207
Less: Total Earned Revenue	643	-
Net Cost of Operations	$ 20,022	$ 19,207

The accompanying notes are an integral part of these statements.

Office of Special Counsel
Statement of Changes in Net Position
For the Years Ended September 30, 2012 and 2011
(dollars in thousands)

	2012	2011
Cumulative Results of Operations:		
Beginning Balances	$ (866)	$ (715)
Beginning Balances, as Adjusted	(866)	(715)
Budgetary Financing Sources:		
Appropriations Used	19,066	18,084
Imputed Financing (Note 8)	805	972
Total Financing Sources	19,871	19,056
Net Cost of Operations	(20,022)	(19,207)
Net Change	(151)	(151)
Cumulative Results of Operations	$ (1,017)	$ (866)
Unexpended Appropriations:		
Beginning Balances	$ 3,059	$ 3,183
Beginning Balances, as Adjusted	3,059	3,183
Budgetary Financing Sources:		
Appropriations Received	18,972	18,495
Appropriations Used	(19,066)	(18,084)
Other Adjustments	(969)	(535)
Total Budgetary Financing Resources	(1,063)	(124)
Total Unexpended Appropriations	$ 1,996	$ 3,059
Net Position	$ 979	$ 2,193

The accompanying notes are an integral part of these statements.

Office of Special Counsel
STATEMENT OF BUDGETARY RESOURCES
For the Years Ended September 30, 2012 and 2011
(dollars in thousands)

	2012	2011
Budgetary resources:		
Unobligated balance brought forward, October 1	$ 1,134	$ 1,383
Recoveries of prior year unpaid obligations	402	304
Other changes in unobligated balance	(969)	
Unobligated balance from prior year budget authority, net	567	1,687
Appropriations (discretionary and mandatory)	18,972	18,495
Spending authority (discretionary and mandatory)	643	(535)
Total budgetary resources	$ 20,182	$ 19,647
Status of budgetary resources:		
Obligations incurred (Note 10):	$ 19,585	$ 18,513
Apportioned	164	174
Unapportioned	433	960
Total unobligated balance, end of year	597	1,134
Total budgetary resources	$ 20,182	$ 19,647
Change in obligated balance:		
Unpaid obligations, brought forward, October 1 (gross)	$ 2,872	$ 2,573
Obligated balance, start of year (net), before adjustments	2,872	2,573
Obligated balance, start of year (net), as adjusted	2,872	2,573
Obligations incurred	19,585	18,513
Outlays (gross)	(19,648)	(17,910)
Change in uncollected customer payments from Federal sources	-	-
Recoveries of prior year unpaid obligations	(402)	(304)
Unpaid obligations, end of year (gross)	2,407	2,872
Obligated balance, end of year (net)	$ 2,407	$ 2,872
Budget Authority and Outlays, Net		
Budget authority, gross (discretionary and mandatory)	$ 19,615	$ 18,495
Actual offsetting collections (discretionary and mandatory)	(643)	-
Budget authority, net (discretionary and mandatory)	18,972	18,495
Outlays, gross (discretionary and mandatory)	19,648	17,910
Actual offsetting collections (discretionary and mandatory)	(643)	-
Outlays, net (discretionary and mandatory)	19,005	17,910
Agency outlays, net (discretionary and mandatory)	$ 19,005	$ 17,910

OFFICE OF SPECIAL COUNSEL
Washington, D.C

Notes to Principal Financial Statements
As of and for the Years Ended
September 30, 2012 and 2011

Office of Special Counsel
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NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Reporting Entity

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

OSC is headed by the Special Counsel, who is appointed by the President, and confirmed by the Senate. At full strength, the agency employs approximately 119 employees to carry out its government-wide responsibilities in the headquarters office in Washington, D.C., and in the Dallas, San Francisco, and Detroit field offices.

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

B. Basis of Presentation

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

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

C. Basis of Accounting

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

D. Taxes

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

E. Fund Balance with Treasury

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

F. Accounts Receivable

Accounts receivable consists of amounts owed to OSC by other Federal agencies and the public. Amounts due from Federal agencies are considered fully collectible. Accounts receivable from the public include reimbursements from employees. An allowance for uncollectible accounts receivable from the public is established when either (1) based upon a review of outstanding accounts and the failure of all collection efforts, management determines that collection is unlikely to occur considering the debtor's ability to pay, or (2) an account for which no allowance has been established is submitted to the Department of the Treasury for collection, which takes place when it becomes 180 days delinquent.

G. General Property, Plant and Equipment, Net

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

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

H. Advances and Prepaid Charges

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

I. Liabilities

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

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

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

J. Accounts Payable

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

K. Annual, Sick, and Other Leave

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

L. Accrued Workers' Compensation

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

M. Retirement Plans

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

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

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

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

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

N. Net Position

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

O. Imputed Costs/Financing Sources

Federal government entities often receive goods and services from other Federal government entities without reimbursing the providing entity for all the related costs. In addition, Federal government entities also incur costs that are paid in total or in part by other entities. An imputed financing source is recognized by the receiving entity for costs that are paid by other entities. OSC recognized imputed costs and financing sources in fiscal years 2012 and 2011 to the extent directed by OMB.

P. Revenues & Other Financing Resources

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

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

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

Q. Contingencies

Liabilities are deemed contingent when the existence or amount of the liability cannot be determined with certainty pending the outcome of future events. OSC recognizes contingent liabilities, in the accompanying Balance Sheet and Statement of Net Cost, when it is both probable and can be reasonably estimated. OSC discloses contingent liabilities in the notes to the financial statements when the conditions for liability recognition are not met or when a loss from the outcome of future events is more than remote. In some cases, once losses are certain, payments may be made from the Judgment Fund maintained by the U.S. Treasury rather than from the amounts appropriated to OSC for agency operations. Payments from the Judgment Fund are recorded as an “Other Financing Source” when made.

R. Expired Accounts and Cancelled Authority

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

S. Use of Estimates

The preparation of financial statements in conformity with Generally Accepted Accounting Principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

T. Comparative Data

The financial statements and footnotes present comparative data for the prior fiscal year, in order to provide an understanding of changes in OSC’s financial position and operations. Certain FY 2011 amounts have been reclassified to conform to the FY 2012 financial statement and footnote presentations.

NOTE 2. FUND BALANCE WITH TREASURY

Fund Balance with Treasury account balances as of September 30, 2012 and 2011 were:

(dollars in thousands)				
Fund Balance:		**2012**		**2011**
Appropriated Funds (general)	$	3,004	$	4,006
Total Fund Balance with Treasury	$	3,004	$	4,006
Status of Fund Balance with Treasury				
Unobligated Balance:				
Available	$	164	$	174
Unavailable		433		960
Obligated Balance Not Yet Disbursed		2,407		2,872
Total Status of Fund Balance with Treasury	$	3,004	$	4,006

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

NOTE 3. ACCOUNTS RECEIVABLE

A summary of accounts receivable from the public as of September 30, 2012 and 2011 were as follows:

(dollars in thousands)		2012		2011
Accounts Receivable from the Public:				
Billed:				
Current	$	3	$	11
Total Accounts Receivable		3		11
Accounts Receivable from the Public, Net	$	3	$	11

NOTE 4. GENERAL PROPERTY, PLANT AND EQUIPMENT

Property, Plant and Equipment account balances as of September 30, 2012 and 2011 were as follows:

(dollars in thousands)	Service Life	Acquisition Value	Accumulated Depreciation	2012 Net Book Value	2011 Net Book Value
CIP		$ -	$ -	$ -	$ 73
Office Equipment	5 yrs	627	(448)	179	194
Leasehold Improvements	10 yrs	273	(161)	112	139
Total		$ 900	$ (609)	$ 291	$ 406

NOTE 5. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities on OSC's Balance Sheet as of September 30, 2012 and 2011 include liabilities not covered by budgetary resources, which are liabilities for which congressional action is needed before budgetary resources can be provided. Although future appropriations to fund these liabilities are likely and anticipated, it is not certain that appropriations will be enacted to fund these liabilities.

A. Intragovernmental and Public Liabilities

(dollars in thousands)	2012	2011
Intragovernmental:		
Employer Contributions & Payroll Taxes Payable	$ 186	$ 158
Unfunded FECA Liability	70	66
Other unfunded employment related liability	5	-
Total Intragovernmental	261	224
Public Liabilities:		
Employer Contributions & Payroll Taxes Payable	30	28
Federal Employee and Veteran Benefits	256	290
Unfunded Annual Leave	981	928
Total Liabilities Not Covered by Budgetary Resources	$ 1,528	$ 1,470
Total Liabilities Covered by Budgetary Resources	791	760
Total Liabilities	$ 2,319	$ 2,230

B. Other Information

Unfunded Payroll Liabilities consists of workers' compensation claims payable to the Department of Labor, which will be funded in a future period, and an unfunded estimated liability for future workers' compensation claims based on data provided from the DOL. Unfunded FECA liabilities for 2012 and 2011 were approximately $70 thousand and $66 thousand respectively. Unfunded Employment liabilities for 2012 were $5 and $0 for 2011. The actuarial calculation is based on benefit payments made over 12 quarters, and calculates the annual average of payments. The actuarial FECA liabilities for 2012 and 2011 were approximately $256 thousand and $290 thousand respectively. For medical expenses and compensation, this average is then multiplied by the liability-to-benefit paid ratio for the whole FECA program.

Unfunded Leave represents a liability for earned leave and is reduced when leave is taken. At year end, the balance in the accrued leave account is adjusted to reflect the liability at current pay rates and leave balances. Accrued leave is paid from future funding sources and, accordingly, is reflected as a liability not covered by budgetary resources. Sick and other leave is expensed as taken.

All other liabilities are considered to be covered by budgetary resources.

NOTE 6. OPERATING LEASES

OSC occupies office space under lease agreements in Washington DC, Dallas, Oakland, and Detroit that are accounted for as operating leases. The DC lease term began on October 26, 2009 and expires on October 25, 2019. The Dallas lease term began on December 9, 2002 and expires on December 8, 2017 with, a reset to market rates occurring on December 2012. The current Oakland lease was renewed in February 2011 for a period of 10 years through June 2021, with a market rate reset occurring on July 2016. The Detroit lease began on December 1, 2010 and will expire on November 30, 2020.

Lease payments are increased annually based on the adjustments for operating cost and real estate tax escalations. Escalation cost estimates for Oakland and Dallas for market rate resets and lease renewals have been factored in.

Below is a schedule of future payments for the terms of all the leases.

(dollars in thousands) Fiscal Year		Total
2013	$	1,819
2014		1,833
2015		1,845
2016		1,873
2017		1,896
Total Future Lease Payments	$	9,266

NOTE 7. CONTINGENCIES

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

There are numerous legal actions pending against the United States in Federal courts in which claims have been asserted that may be based on action taken by OSC. Management intends to vigorously contest all such claims. Management believes, based on information provided by legal counsel, that losses, if any, for the majority of these cases would not have a material impact on the financial statements.

NOTE 8. IMPUTED FINANCING SOURCES

OSC recognizes as imputed financing the amount of accrued pension and post-retirement benefit expenses for current employees. The assets and liabilities associated with such benefits are the responsibility of the administering agency, the Office of Personnel Management. For the fiscal years ended September 30, 2012 and 2011, respectively, imputed financing from OPM were approximately $805 and $972.

NOTE 9. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

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

(dollars in thousands)		2012		2011
Investigations and Enforcements				
Intragovernmental Costs	$	3,660	$	3,834
Public Costs		17,005		15,373
Total Investigations and Enforcements	$	20,665	$	19,207
Intragovernmental Earned Revenue	$	643	$	-
Total Intragovernmental Earned Revenue	$	643	$	-

NOTE 10. APPORTIONMENT CATEGORIES OF OBLIGATIONS INCURRED

Obligations incurred reported on the Statement of Budgetary Resources in 2012 and 2011 consisted of the following:

(dollars in thousands)		2012		2011
Direct Obligations:				
Category B	$	19,585	$	18,513
Total Obligations Incurred	$	19,585	$	18,513

NOTE 11. EXPLANATION OF DIFFERENCES BETWEEN THE SBR AND THE BUDGET OF THE U.S. GOVERNMENT

Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, calls for explanations of material differences between amounts reported in the Statement of Budgetary Resources (SBR) and the actual balances published in the Budget of the United States Government (President's Budget). However, the President's Budget that will include FY12 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2013 and can be found at the OMB website: http://www.whitehouse.gov/omb. The 2011 Budget of the United States Government, with the actual column completed for 2011, has been reconciled to the Statement of Budgetary Resources and there were no material differences.

NOTE 12. UNDELIVERED ORDERS AT THE END OF THE PERIOD

Beginning with FY06, the format of the Statement of Budgetary Resources has changed and the amount of undelivered orders at the end of period is no longer required to be reported on the face of the statement. Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, states that the amount of budgetary resources obligated for undelivered orders at the end of the period should be disclosed. For the years ended September 30, 2012 and 2011, undelivered orders amounted to approximately $1,401 thousand and $1,926 thousand.

NOTE 13. RECONCILIATION OF NET COST OF OPERATIONS (PROPRIETARY) TO BUDGET (FORMERLY THE STATEMENT OF FINANCING)

In fiscal year 2006 this reconciliation was presented as a fifth statement, the Statement of Financing. In accordance with OMB Circular A-136, revised June 2007, presentation requirement for this information is now a footnote disclosure. Details of the relationship between budgetary resources obligated and the net costs of operations for the fiscal years ending September 30 are as follows:

(dollars in thousands)

	2012	2011
Resources Used to Finance Activities		
Current Year Gross Obligations	$ 19,585	$ 18,513
Budgetary Resources from Offsetting Collections		
Spending Authority from Offsetting Collections		
Earned	(643)	
Collected	-	
Recoveries of Prior Year Unpaid Obligations	(402)	(304)
Other Financing Resources		
Imputed Financing Sources	805	972
Total Resources Used to Finance Activity	19,345	19,181
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Budgetary Obligations and Resources Not in the Net Cost of Operations		
Change in Undelivered Orders	524	(125)
Current Year Capitalized Purchases	-	(74)
Components of Net Cost which do not Generate or Use Resources in the Reporting Period		
Revenues without Current Year Budgetary Effect		
Change in Non-Federal Receivables	-	14
Other Financing Sources Not in the Budget	-	(972)
Costs without Current Year Budgetary Effect		
Depreciation and Amortization	115	108
Future Funded Expenses	62	71
Imputed Costs	-	972
Other Expenses Not Requiring Budgetary Resources	(24)	32
Net Cost of Operations	$ 20,022	$ 19,207