

ANNUAL REPORT TO CONGRESS



U.S. OFFICE OF SPECIAL COUNSEL
FISCAL YEAR 2007



REPORT TO CONGRESS

U.S. OFFICE OF SPECIAL COUNSEL
FISCAL YEAR 2007

www.osc.gov



U.S. Office of Special Counsel

**1730 M. Street, N.W., Suite 218
Washington, D.C. 20036-4505**

The Special Counsel

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. President and Madam Speaker:

I respectfully submit, in accordance with 5 U.S.C. § 1218, Fiscal Year 2007 Report to Congress from the U.S. Office of Special Counsel. A copy of this report will also be sent to each Member of Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

Scott J. Bloch

Enclosure

<u>TABLE OF CONTENTS</u>	PAGE
BIOGRAPHY OF THE SPECIAL COUNSEL	6
MESSAGE FROM THE SPECIAL COUNSEL	7
GRAPHICAL HIGHLIGHTS OF OUR AGENCY’S SUCCESSES	8
INTRODUCTION	16
OVERVIEW OF OSC OPERATIONS	16
Statutory Background	16
Mission	17
Summary of Year’s Activity	18
Budget and Staffing	19
Organization and Functions	19
Immediate Office of the Special Counsel	19
Complaints Examining Unit	19
Disclosure Unit	19
Investigation and Prosecution Division	19
Hatch Act Unit	19
USERRA Unit	20
Alternative Dispute Resolution Program	20
Legal Counsel and Policy Division	20
Management and Budget Division	20
Training Office	20
PROHIBITED PERSONNEL PRACTICE COMPLAINTS	21
Receipts and Investigations	21
Stays	21
Mediation	22
Corrective and Disciplinary Actions	23
Reprisal for Whistleblowing	24
Other PPPs, Non-reprisal	25
PPP Litigation	26
Summary of Favorable Actions	27

	PAGE
HATCH ACT MATTERS	28
Hatch Act Disciplinary Actions Filed	28
Task Force Investigations	30
WHISTLEBLOWER DISCLOSURES	32
Overview	32
Allegation of Substantial and Specific Danger to Public Health and/or Safety	33
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT	36
USERRA Referral Cases	36
The USERRA Demonstration Project	38
USERRA Corrective Actions	39
OUTREACH PROGRAM	41
ANNUAL SURVEY PROGRAM	41
FURTHER INFORMATION	43
Annual Report	43
Prohibited Personnel Practice Complaints	43
Mediation Program	44
Hatch Act Questions	44
Whistleblower Disclosures	44
Uniformed Services Employment and Reemployment Rights Act	45
Outreach Program	45

SUPPORTING TABLES:

1. Summary of Overall Agency Matters and Actions	18
2. Summary of PPP Complaints Activity – Receipts and Processing	21
3. Summary of PPP Complaints Activity – Mediation Program	23
4. Summary of PPP Complaints Activity – Favorable Actions	27
5. Summary of Hatch Act Advisory Opinion and Complaint Activity	31
6. Summary of Whistleblower Disclosure Activity – Receipts and Dispositions	32
7. Summary of USERRA Referral Activity	37
8. Summary of USERRA Demonstration Project Referral Activity	38

APPENDICES:

Survey Results Appendix A, Totals and Response Options	46
Survey Results Appendix B, PPP	47
Survey Results Appendix C, HA	51
Survey Results Appendix D, USERRA	52
Endnotes Appendix E	54

BIOGRAPHY OF THE SPECIAL COUNSEL

On June 26, 2003, President George W. Bush nominated Scott J. Bloch for the position of Special Counsel at the U.S. Office of Special Counsel. The U.S. Senate unanimously confirmed Mr. Bloch on December 9, 2003. On January 5, 2004, he was sworn in to serve a five-year term.

Mr. Bloch brings over 17 years of experience to the Office of Special Counsel, including litigation of employment, lawyer ethics, and complex cases before state courts, federal courts and administrative tribunals. He briefed and argued cases before state and federal appellate courts and is admitted to practice in the United States Supreme Court.



Scott J. Bloch

From 2001-2003, Mr. Bloch served as Associate Director and then Deputy Director and Counsel to the Task Force for Faith-based and Community Initiatives at the U.S. Department of Justice, where he worked on First Amendment cases, regulations, intergovernmental outreach, and programmatic initiatives. Before serving in the Justice Department, he was a partner with Stevens & Brand, LLP, of Lawrence, Kansas, where he practiced in the areas of civil rights law, employment law, and legal ethics. Mr. Bloch tried jury trials before state and federal courts, representing employees and employers in cases involving whistleblower and other retaliation claims, as well as civil rights claims. He worked on important cases that set precedents in the field of legal ethics, including a ground-breaking Texas case that changed the way plaintiffs' lawyers handle mass tort cases.

Mr. Bloch served as chair of his county Bar Ethics and Grievance Committee, investigating cases of alleged breaches by attorneys of ethics rules, and making recommendations to the state Supreme Court on disciplinary action. He also served on the state board of discipline, hearing testimony and legal arguments, and making findings on appropriate discipline of attorneys. For five years, he served as an Adjunct Professor at the University of Kansas School of Law.

Mr. Bloch earned his bachelor's and law degree from the University of Kansas, where he graduated Order of the Coif, and served on the Boards of Editors of *The Kansas Law Review* and *The Kansas Criminal Procedure Review*.

Mr. Bloch has published various articles including: "The Judgment of History: Faction, Political Machines, and the Hatch Act," published in the *University of Pennsylvania Journal of Labor & Employment Law* (7U. Pa. J. Lab. & Emp. L. 225 (2006)), and "Don't Bury the Hatch Act: Hidden Dangers for the Unwary and Politically Active Prosecutor's Office Employee," published in *The Prosecutor* in the September/October 2004 issue (Vol.38/Number 5, Sept/Oct 2004).

He and his wife Catherine have seven children, and live in Alexandria, Virginia.

MESSAGE FROM SPECIAL COUNSEL SCOTT J. BLOCH

Welcome to the 2007 Annual Report to Congress for the U.S. Office of Special Counsel (OSC). Included within you will find case data, case samples, graphical charts of important performance indicators, descriptions of agency activities, and details of changes at OSC during Fiscal Year 2007. It is my hope that you will find this information useful and informative.

I am pleased to report that during FY 2007 we succeeded in avoiding a resurgence of each of the types of case backlogs that had plagued the agency for years. In FY 2007, after thorough review, OSC processed 1,953 PPP cases. This success in the Investigation and Prosecution Division (IPD) puts the agency in an excellent position at the start of FY 2008.

I am also extremely pleased to note that we again lowered processing times for Hatch Act cases, as shown in the chart on page 9. We have again reduced processing times in OSC's Whistleblower Disclosure Unit, at the same time that we referred more disclosures to agency heads for full investigations (see pages 12 and 14). This annual report provides the details of these milestones.

When I arrived at OSC in January, 2004, USERRA cases were a low priority at OSC. I changed that by creating a USERRA Unit in the agency, and staffing it with attorneys and investigators dedicated full-time to USERRA enforcement. This unit now handles all of the cases referred from the Department of Labor for litigation, as well as all of the cases that came to OSC during the three year Demonstration Project created by the Veterans Benefits Improvement Act of 2004 (VBIA), which started in February 2005, and ended in December 2007.

During FY 2007, OSC continued to provide excellent service to veterans by lowering the average time to process USERRA claims. Under the Demonstration Project created by the VBIA, OSC had exclusive investigative authority over certain federal sector claims brought under USERRA. I am proud of what we achieved. During FY 2007 (in the third year of the demonstration project), OSC received 142 cases for investigation and obtained corrective action in 35% of the cases completed, which is an extremely high rate of corrective action for any investigative agency. OSC required agencies to reinstate service members (including injured members) to jobs from which they had been wrongly removed. OSC also achieved corrective action in cases where the service member was denied initial employment by the agency because of service in the military. The demonstration project has ended, and OSC awaits Congress' decision regarding which agency will handle federal sector USERRA cases for the benefit of the country's brave service members.

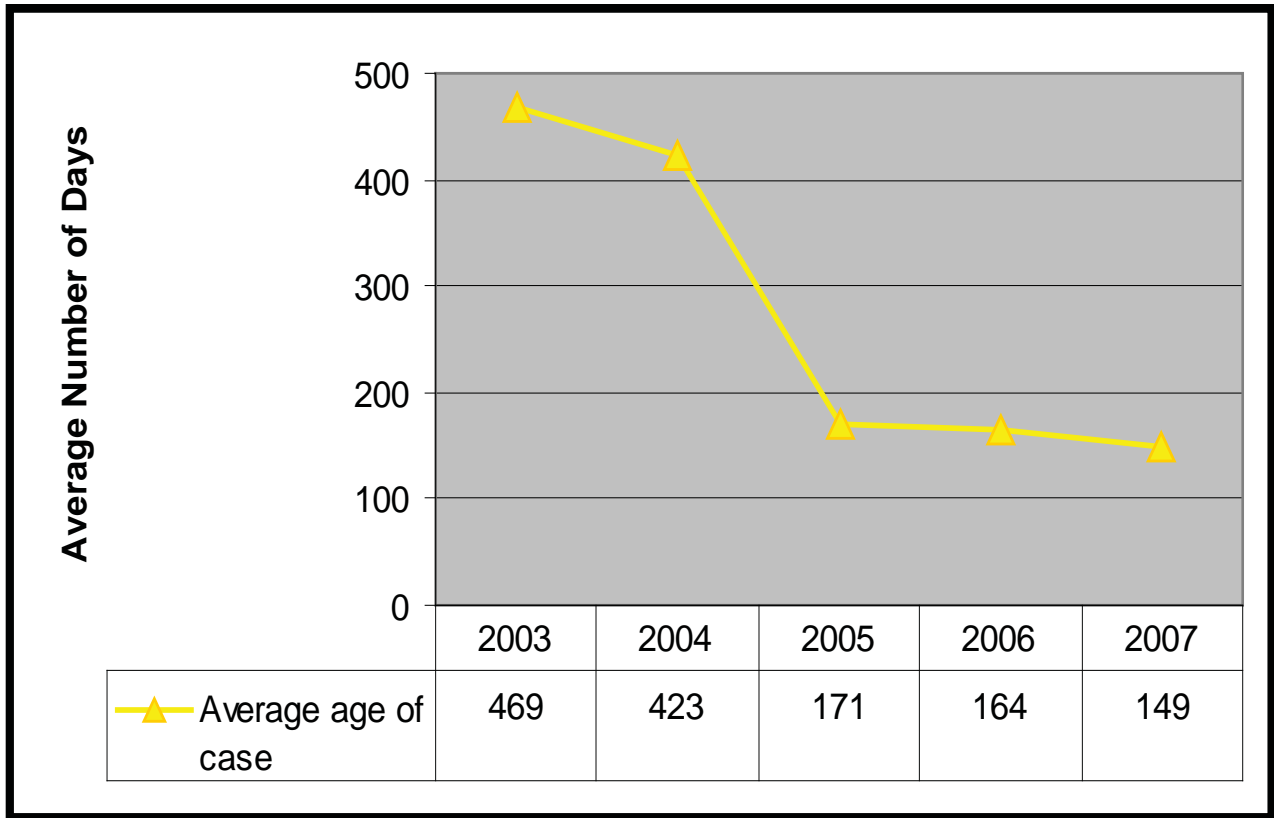
OSC continues to experience high caseloads in all of its units. In particular, there is now a heightened awareness of the Hatch Act among Federal employees, brought about by significant press coverage of a string of high profile Hatch Act cases in the last three years, as well as by dedicated outreach efforts to other agencies by OSC. The upcoming election year, FY 2008, will bring a surge in Hatch Act Complaints, as well as increased numbers of written and oral advisory opinions. We have already seen a rise in such requests.

A major focus of OSC during the next year will be further improvement in reducing case processing times. The goal of providing timely justice to all federal complainants is the ongoing objective of OSC, along with the active achievement of benchmarks of more corrective actions and finding opportunities for greater litigation to generate public awareness of significant cases.

GRAPHICAL HIGHLIGHTS OF OUR AGENCY'S SUCCESSES

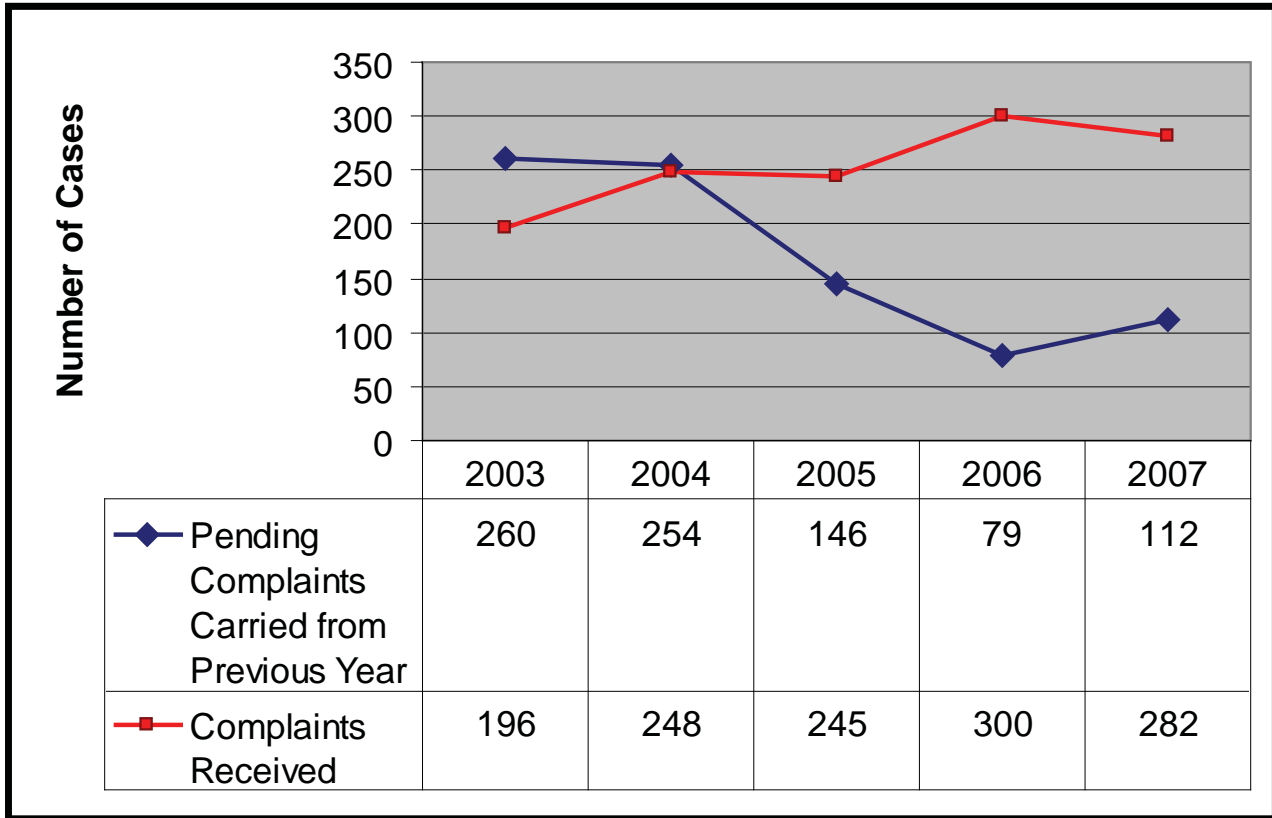
When the new Special Counsel took office in January 2004, two major problems confronted OSC: a serious backlog of cases in all of the units and a cumbersome structure of three separate Investigation and Prosecution Divisions (IPDs). The Government Accountability Office (GAO) issued a report in March 2004 (GAO 04-36) that was critical of OSC's chronic backlog problem in the Complaints Examining Unit and Disclosure Unit. That same month, Special Counsel Bloch created a Special Projects Unit (SPU) to begin immediately investigating the problem of the backlog of cases and to find solutions. The next step in solving the difficulties was a reorganization of the agency in January 2005. The Special Counsel further directed that each operating unit establish standard operating procedures that would establish consistency in case processing, and with that consistency, faster processing times. These improvements have led to further reductions in backlogs and enabled the agency to reach the meritorious cases faster, enabling OSC to seek settlements or initiate prosecutions before evidence becomes stale and witnesses' memories fade. Decisions are now reached faster, bringing swifter justice to those Federal employees served by the Office of Special Counsel. The next seven pages graphically tell the story of the successes of the last four years at OSC, especially the decreased case processing times and the elimination of the backlogs, including those backlogs mentioned by GAO in 2004. These successes were achieved despite increasing caseloads in several units and newly added responsibilities for the agency.

Hatch Act Unit - Average Processing Time per Complaint



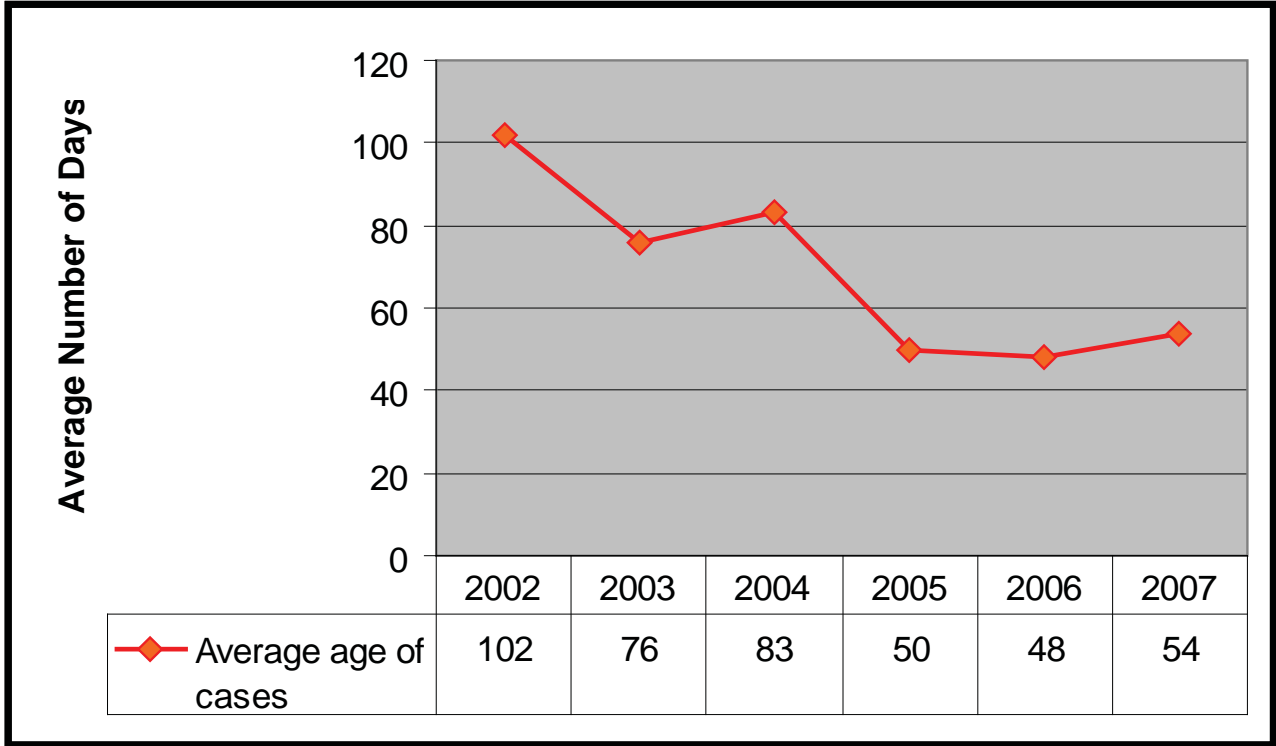
OSC’s Hatch Act Unit reduced its case processing time dramatically during the period from FY 2003 to FY 2007. The average number of days to process the case in FY 2007 is less than one third of what it was in FY 2003.

Hatch Act Complaints



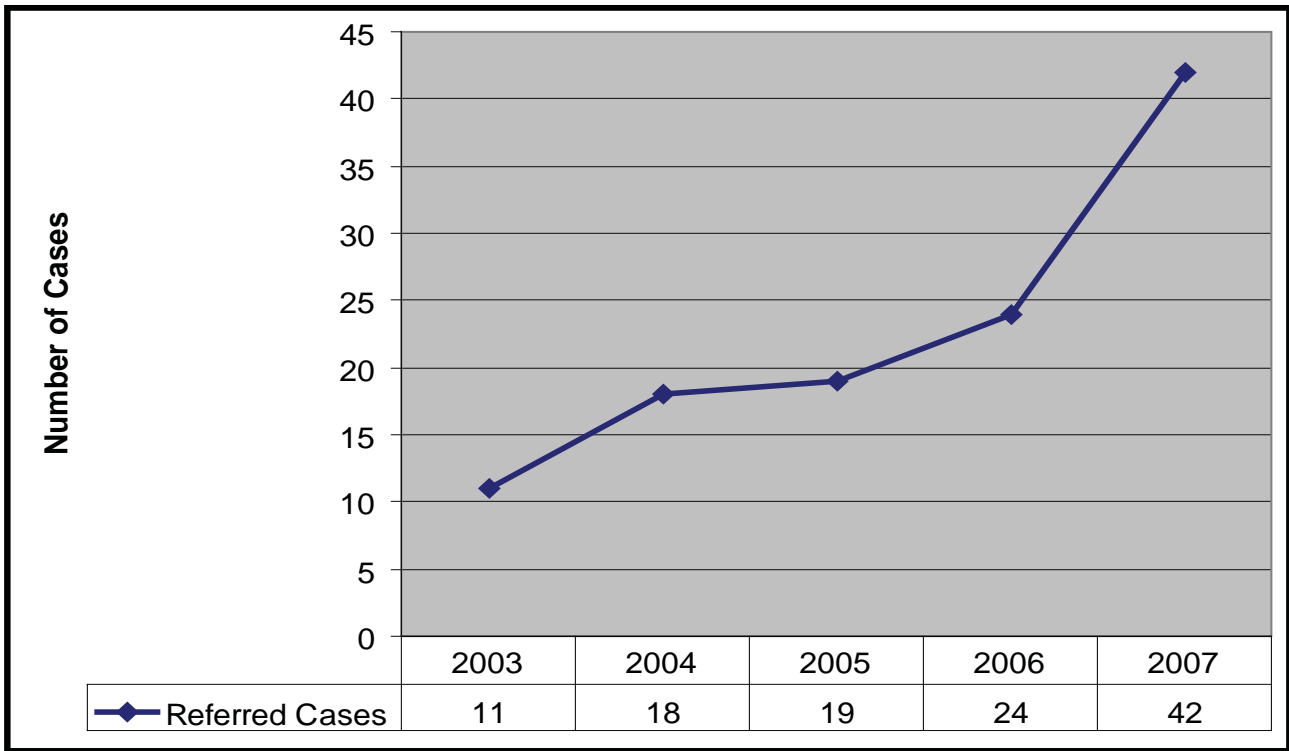
Starting in FY 2005, as OSC reduced its processing time for Hatch Act complaints, the number of pending complaints carried forward from the previous fiscal year sharply declined. From FY 2003 to FY 2007, the overall decline was 57%. During the same period, the number of complaints received increased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

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



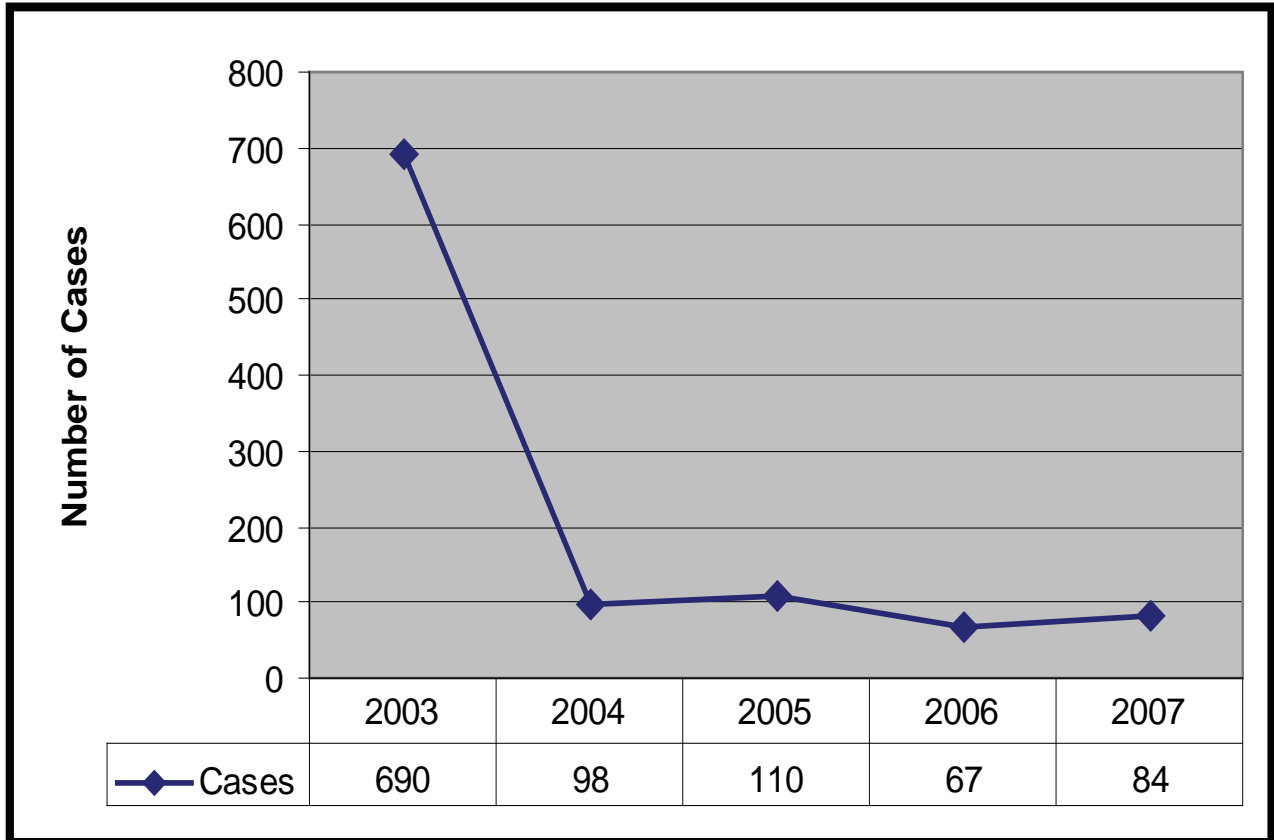
This chart shows the average number of days that a Prohibited Personnel Practice case remained in OSC’s Complaints Examining Unit, before the case was either closed or referred to OSC’s Investigation and Prosecution Division for further investigation.

Disclosure Referrals to Agency Heads



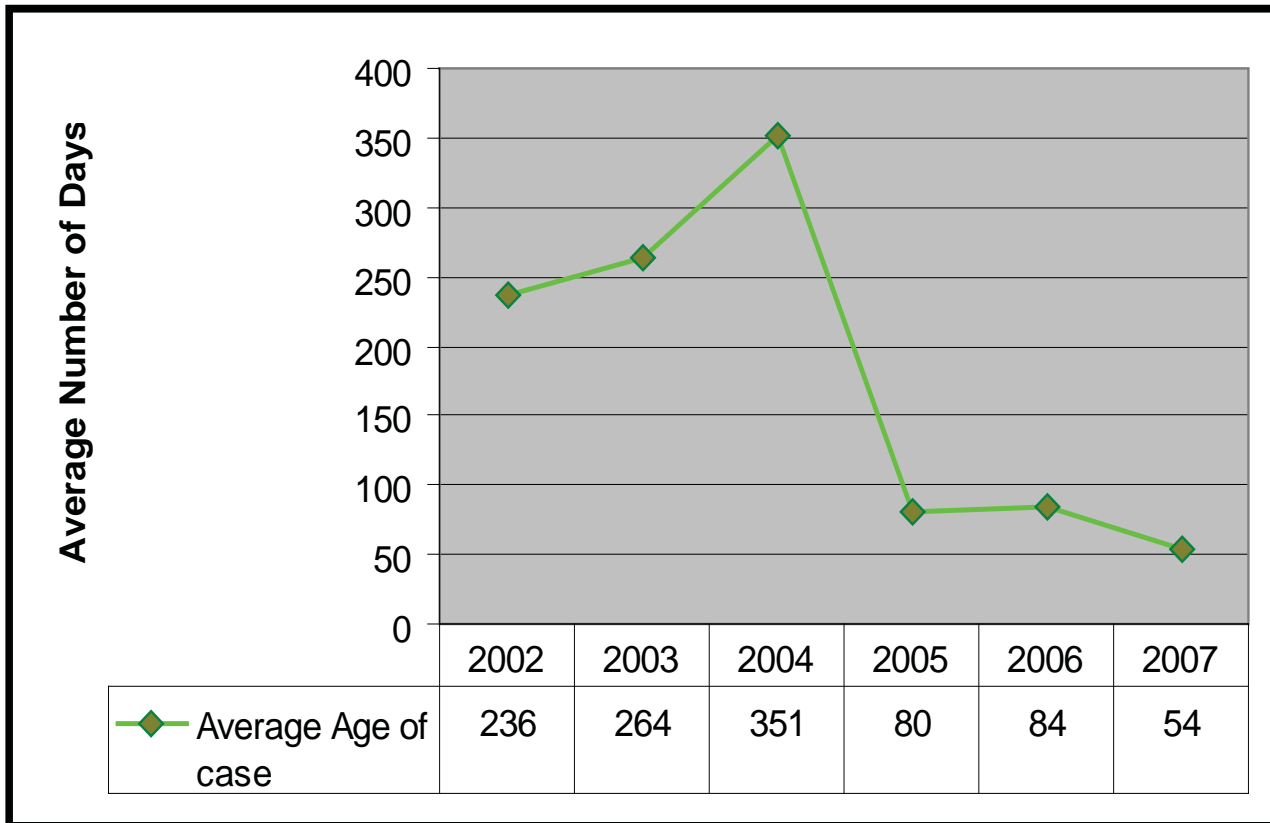
When the Special Counsel analyzes a whistleblower disclosure and determines there is substantial likelihood of wrongdoing, he refers the matter to the head of the appropriate agency, who is then required to internally investigate the matter and report the results to OSC, the Congress, and the President.

Disclosure Unit Cases Pending at End of Year



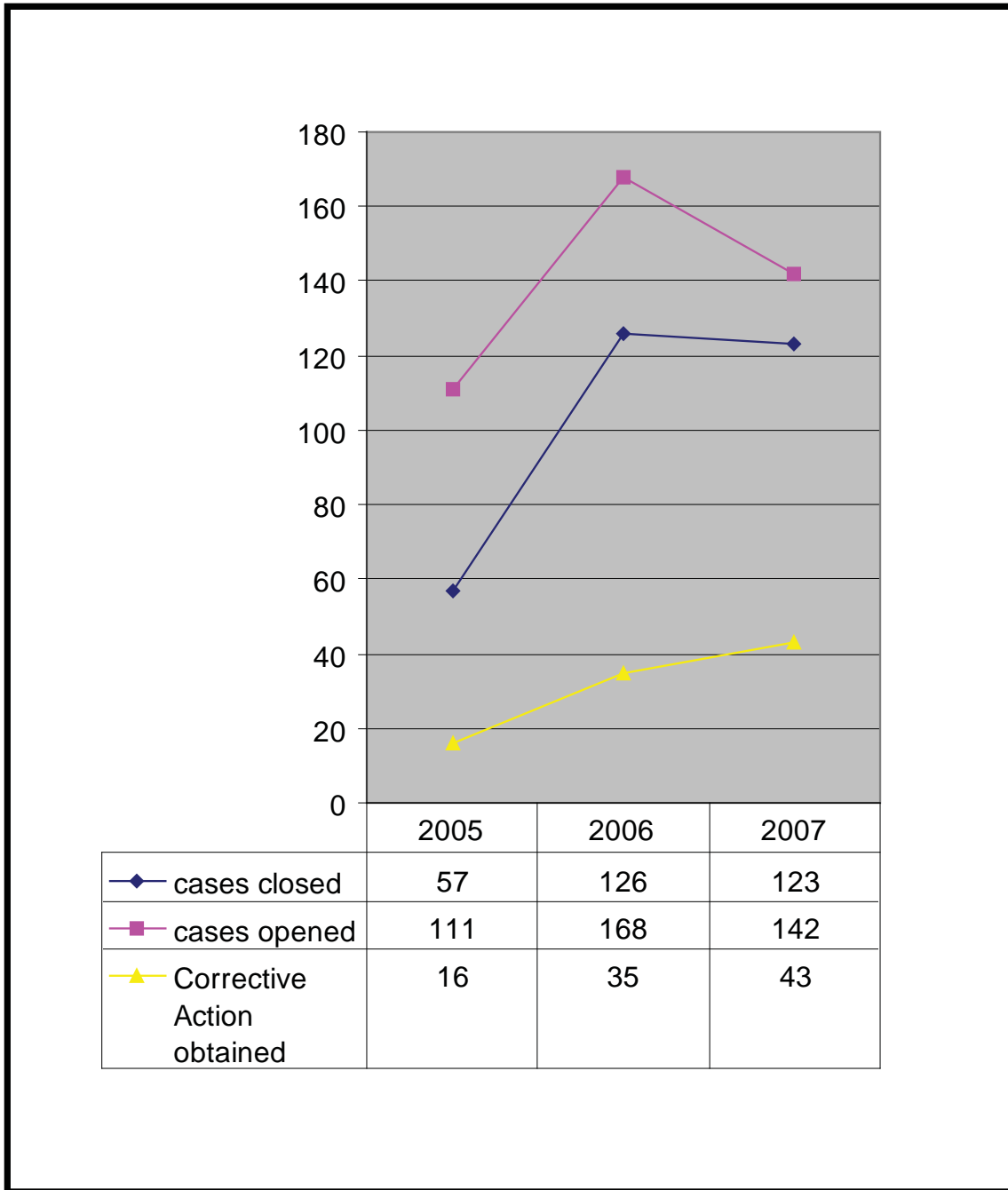
In FY 2003, the Disclosure Unit had a backlog of whistleblower disclosures. OSC reduced the backlog by FY 2004, and has prevented a backlog resurgence in FY 2005, FY 2006, and FY 2007.

Disclosure Unit - Average Processing Time per Disclosure



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

USERRA Demonstration Project



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

INTRODUCTION

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment, by protecting employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. In addition, the agency operates a secure channel for disclosures of government wrongdoing by federal whistleblowers. Finally, OSC enforces federal employment rights secured by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

OVERVIEW OF OSC OPERATIONS

Statutory Background

OSC was first established on January 1, 1979.¹ From then until 1989, it operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (“the Board”). By law, OSC received and investigated complaints from current and former federal employees, and applicants for federal employment, alleging prohibited personnel practices by federal agencies; provided advice on restrictions imposed by the Hatch Act on political activity by covered federal, state, and local government employees; and received disclosures from federal whistleblowers (current and former employees, and applicants for employment) about wrongdoing in government agencies. The office also enforced restrictions against prohibited personnel practices and political activity by filing, where appropriate, petitions for corrective and/ or disciplinary action with the Board. In 1989, Congress enacted the Whistleblower Protection Act. The law made OSC an independent agency within the Executive Branch, with continued

responsibility for the functions described above. It also enhanced protections against reprisal for employees who disclose wrongdoing in the federal government, and strengthened OSC’s ability to enforce those protections.² The Congress passed legislation in 1993 that significantly amended Hatch Act provisions applicable to federal and District of Columbia (D.C.) government employees, and enforced by OSC.³ Provisions of the act enforced by OSC with respect to certain state and local government employees were unaffected by the 1993 amendments. In 1994, the Uniformed Services Employment and Reemployment Rights Act became law. It defined employment-related rights of persons in connection with military service, prohibited discrimination against them because of that service, and gave OSC new authority to pursue remedies for violations by federal agencies.⁴ OSC’s 1994 reauthorization act expanded protections for federal employees, and defined new responsibilities for OSC and other federal agencies. It provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred, exists, or is to be taken. The act extended the protections of certain legal provisions enforced by OSC to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under these provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the Whistleblower Protection Act, and directed agencies to consult with OSC in that process.⁵ In November of 2001, Congress enacted the Aviation and Transportation Security Act,⁶ which created

the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the MSPB. OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. Individuals who wish to determine what rights they have should contact their individual HR office, as the legislation concerning this agreement is in the process of being modified.

OSC's Mission

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

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

Summary of Year's Activity

The table below summarizes OSC's activity for FY 2007 (with comparative data for the previous fiscal years). More detailed data for each mission of the agency can be found in Tables 2-8, which appear in the sections of this report related to the individual units.

TABLE 1 Breakdown of Matters^a Pending and Completed FY2003 to FY 2007					
	FY 2003	FY 2004	FY 2005^b	FY 2006	FY 2007
Matters pending at beginning of fiscal year	1,415	1,605	778	777	667 ^c
New matters received	2,530	2,798	2,684	2,718	2,880
Matters closed	2,344	3,612	2,685	2,814	2,842
Matters pending at end of fiscal year	1,601	791	777	681	698
Corrective actions obtained	n/a	112	93	114	99

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

^b Includes USERRA Demonstration Project matters.

^c System closure entries were made in early FY 2007 for several cases that were finished during FY 2006.

Budget and Staffing

During FY 2007, OSC operated with a budget of \$15,524,000. By the end of the fiscal year, OSC had a staff of 110 employees.

OSC's Internal Organization and Functions

OSC maintains its headquarters office in Washington, D.C. Four field offices are located in Dallas, Oakland, Detroit, and Washington, D.C. Agency components during FY2007 include the Immediate Office of the Special Counsel (IOSC), five operating units/divisions and several supporting offices explained in detail below.

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

Complaints Examining Unit. This unit is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction.⁷ This unit is responsible for screening approximately 1,900 prohibited personnel practice cases per year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation.⁸

Disclosure Unit. This unit is responsible for receiving and reviewing disclosures received from federal whistleblowers. It advises the Special Counsel on the appropriate disposition of the information disclosed (including possible referral to the head of the agency involved for an

investigation and report to OSC; referral to an agency Inspector General; or closure). The unit also reviews agency reports of investigation, to determine whether they appear to be reasonable and in compliance with statutory requirements before the Special Counsel sends them to the President and appropriate congressional oversight committees.

Investigation and Prosecution Division. The Investigation and Prosecution Division (IPD) is comprised of four field offices. The IPD conducts field investigations of matters referred after preliminary inquiry by the Complaints Examining Unit. Division attorneys conduct a legal analysis after investigations are completed to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. Investigators work with attorneys in evaluating whether a matter warrants corrective action, disciplinary action, or both. If meritorious cases cannot be resolved through negotiation with the agency involved, division attorneys represent the Special Counsel in litigation before the Merit Systems Protection Board. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, division investigators and attorneys also sometimes investigate alleged violations of the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act, though most Hatch Act and USERRA work is handled by the Hatch Act Unit and the USERRA Unit, respectively.

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

USERRA Unit This unit handles USERRA cases that are referred to OSC for prosecution by the Department of Labor. In addition, this unit handles the special demonstration project assigned by P.L. 108-454 that requires OSC to investigate the re-employment rights of military service members under USERRA, which has involved new functions, increased case load, and new personnel.

SUPPORTING UNITS:

Alternative Dispute Resolution Program.

In selected cases referred by the Complaints Examining Unit for further investigation, the agency contacts the complainant and the agency involved, and invites them to participate in OSC's voluntary Mediation Program. If mediation resolves the complaint, the parties execute a written and binding settlement agreement; if not, the complaint is referred for further investigation. The mediation program for Alternative Dispute Resolution has been reorganized. Rather than have a single ADR specialist under the leadership of an SES employee, the agency has expanded the program through crosstraining multiple individuals from each of OSC's operating units. As a result the agency now has a broad pool of trained mediators with different legal areas of expertise.

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

Management and Budget Division. This division provides administrative and management support services to OSC, in furtherance of program, human capital, and budget decisions. This division also includes the Information Technology Branch, Human Resources Branch, Document Control Branch and Budget and Pro-

curement branch. The purpose of this division is to put the administrative support functions under one authority.

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

PROHIBITED PERSONNEL PRACTICE COMPLAINTS

Receipts and Investigations

OSC is authorized to receive and investigate complaints alleging any one or more of 12 prohibited personnel practices defined by law.⁸

Of the total 2,880 new matters OSC received during FY 2007, 1,927 or 67% were new PPP complaints.

Table 2, below, contains summary data (with comparative data for the two previous fiscal years) on OSC's receipt and processing of such complaints during FY 2007.⁹

Stays

An individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action, pending investigation of the action by OSC. If the Special Counsel has reasonable grounds to believe that the action resulted from a prohibited personnel practice, OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, OSC may then ask the Merit Systems Protection Board to stay the action. During 2007, OSC obtained 7 stays of personnel actions through negotiation with agencies, or litigation at the MSPB.

Table 2 Summary of Prohibited Personnel Practice (PPP) Complaints Activity – Receipts and Processing						
		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Pending complaints carried over from previous fiscal year		594	653	524	521	387
New complaints received (Intake Unit)		1,791	1,964 ^a	1,771	1,805	1,927
<i>Total complaints:</i>		2,385	2,617	2,295	2,326	1,967
Complaints referred for field investigation		162	244	198	143	125
Complaints processed and closed		1,732	2,039	1,774	1,930	1,953
Processing Times	< 240 days	1,471	1,799	1,198	1,693	1,832
	> 240 days	261	294	576	237	121
Percentage processed in under 240 days		85%	86%	67.5%	88%	94%

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

Mediation

OSC offers mediation in selected prohibited personnel practice cases as an alternative to further investigation after referral by the Complaints Examining Unit. Once a case is identified as mediation-appropriate, an Alternative Dispute Resolution Specialist contacts the parties to discuss OSC's program. An offer of mediation is made to the complainant first. If the complainant accepts, OSC then offers mediation to the agency involved. Pre-mediation discussions are designed to help the parties form realistic expectations and well-defined objectives for the mediation process. Mediation can result in monetary recovery, which can include retroactive promotions, attorney fees, and lump sum payments. In addition to monetary recovery, the benefits that complainants can receive include revised performance appraisals, transfers, and letters of recommendation. There were ten formal mediations of PPP matters during FY 2007; 50% of these mediations were successful. (See **Table 3 below**).

An Educational Aide alleged she was terminated for her whistleblowing activities. She disclosed to her superiors that the agency was not in compliance with regulations and public law, by allowing her to be left alone with two kindergarten classes. This was not only outside of her job duties, but she should not have been left alone with the children, since her criminal background check was incomplete. In addition, the employee disclosed that others were also performing duties in violation of this regulation. The case was settled through mediation and the employee accepted the agency's offer to award her back pay and replace the termination letter in her file with one of resignation.

A law enforcement agent, who was the recipient of a death threat, alleged he was retaliated against after notifying his congressman of the agency's failure to comply with regulations regarding risk assessments for placement of agents and did not accord his family their rights under the Victim and Witness Assistance Program. After the threatened agent's disclosure, the agency proceeded to relocate him five times in ten months, causing his family to suffer problems arising from stress anxiety resulting from the multiple relocations. In addition, the agency relocated the agent to an unsafe area, where the same threat to his life was present. Through mediation the parties settled the case. The agency agreed to reassign the agent to a secure location and reimburse his expenses in exchange for the agent's cooperation with the threat assessment for his transfer and his agreement not to file a complaint in Federal District Court.

TABLE 3 Summary of Prohibited Personnel Practice Complaints Activity – Mediation Program						
		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Matters identified before investigation as mediation-appropriate		43	82	22	52	38
Initial acceptance rates by parties	Complainants	82%	68%	27%	83%	71%
	Agencies	69%	64%	22%	59%	59%
Mediated and other resolutions ^a		23	18	5	11	10
Resolution rate – OSC mediation program		92%	86%	100%	55%	50%

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

Corrective and Disciplinary Actions

If, after investigation of a complaint, OSC believes that a prohibited personnel practice has been committed, OSC notifies the agency involved. By law, before initiating litigation seeking corrective action from the Merit Systems Protection Board (the Board), OSC must report its findings and recommendations to the agency involved. Once the agency has had a reasonable period of time to take corrective action and fails to do so, OSC may file an enforcement action with the Board. Usually, however, corrective action is obtained through negotiation by OSC of a settlement between the complainant and the agency involved.

If OSC determines that disciplinary action (the imposition of discipline on an employee who has committed a violation) is warranted, it can file a complaint directly with the Board. Should the agency agree to take appropriate disciplinary action on its own initiative, then the matter can be settled without resort to an MSPB proceeding.

The following are examples of corrective and disciplinary actions obtained by OSC in FY 2007 through negotiation with the agency involved.

Protecting the Federal Workforce from Reprisal for Whistleblowing

Reprisal for whistleblowing

Complainant, an engineer with a federal agency, alleged that he was reassigned from a project in Russia to a position in Kentucky because of his whistleblowing. He disclosed improprieties of a high level employee of the agency, involving local contractors. As a result of the OSC investigation, the Special Counsel sent the agency head a Report of Prohibited Personnel Practice and requested corrective action for Complainant. The agency agreed to provide corrective action. OSC was extensively involved in settlement discussions that ultimately led to the settlement. While final offers were being made and it was clear that the case would be settled, OSC closed the case. Had the Complainant remained in Russia, he would have received financial benefits that he did not receive in his position in Kentucky. Consequently, a settlement was reached in which Complainant received a lump sum of \$221,723, and \$43,276 for attorney's fees.

Reprisal for protected disclosure

Complainant, a surgeon with a federal agency, alleged that he was terminated during his probationary period because he made several disclosures regarding patient safety and health care issues, in violation of 5 U.S.C. §§2302(b)(8) and (b)(9). At OSC's request, the agency informally stayed Complainant's termination for 60 days and placed him in a paid administrative leave status.

Retaliation for reporting security shortcomings

Complainant, a computer technician at an agency in Europe alleged that his immediate supervisor reduced an element in his annual performance appraisal, limited an overseas tour extension, and required him to use 16 hours of his compensatory time off to make travel arrangements for his spouse in retaliation for reporting classified material security shortcomings to military intelligence

in violation of 5 U.S.C. § 2302 (b)(8). OSC's investigation confirmed his allegations. As a result of the OSC investigation, the agency agreed to settle his complaint by upgrading the element of his performance evaluation under contention from "Success" to "Excellence;" extend his overseas tour of duty by an additional 12 months (which entitles both the Complainant and his dependents to a government-funded return trip to the U.S. at the completion of his tour); and provided him with the 16 hours of compensatory time he exhausted while the overseas tour decision was pending. The subject official received an oral admonishment and was required to attend training on the 12 Prohibited Personnel Practices.

Reprisal for protected disclosure

Complainant, a GS-13 Supervisory Physical Security Specialist with a federal agency, alleged that the agency issued him a letter of reprimand, prematurely cancelled a 90-day temporary promotion, failed to select him for a permanent GS-14 position, inserted negative comments in his 2005 annual performance evaluation, issued him a proposed 14-day suspension, and issued him an interim mid-year evaluation in 2006 containing negative comments in reprisal for his disclosures to the agency director. Complainant reported that both his first and second level supervisors were abusing their authority, grossly mismanaging a local agency office and that they had violated various laws, rules or regulations. The OSC investigation confirmed that the disclosures were a contributing factor in these personnel action decisions. As a result, the agency agreed to promote complainant to the GS-14 position permanently; grant him the pay he would have received had he served the entire 90-day temporary promotion period; cancel the letter of reprimand and proposed 14-day suspension; remove the derogatory comments from the 2005 annual performance evaluation and the 2006 interim appraisal; and pay his attorney's fees. In addition, OSC granted the

agency's 5 U.S.C. § 1214(f) request to issue the first level supervisor a letter of reprimand for her role in the aforementioned personnel actions.

Reprisal for protected activity

Complainant, a former law enforcement officer with a federal agency, alleged retaliation for whistleblowing and participating in an investigation. Specifically, the complainant had provided testimony in an Office of Professional Responsibility investigation. Shortly thereafter, he received three counseling letters and a proposed 14-day suspension. He resigned after receiving the proposed suspension. The parties agreed to the following settlement terms: The agency would forward the complainant's unofficial personnel records to its headquarters office. The complainant would direct prospective employers to a designated agency official, who would confirm that the complainant voluntarily resigned his employment for personal reasons. The agency would remove all copies of the proposed 14-day suspension from the complainant's unofficial personnel records. In return, the complainant would withdraw his OSC complaint.

Protection of the Merit System through Enforcement of the Other PPP's (non-reprisal)

Unauthorized employment preference

Complainant, an applicant for a position with an agency, alleged that a high-level official granted a candidate an unauthorized employment preference in violation of 5 U.S.C. § 2302 (b) (6). OSC's investigation revealed that the subject official cancelled an announcement after he learned his preferred candidate was not on the qualifying certificate. The subject official then re-drafted the position description and the specialized experience requirement to more closely match the experience possessed by the preferred candidate. The position was re-announced, and the preferred candidate rose to the top of the new certificate and was

immediately selected without interviews. As a result of OSC's negotiation of this matter, the agency signed a settlement agreement in which it agreed to: (1) remove the incumbent from the Legal Assistant position; (2) re-post the announcement for this position; (3) contact all the applicants for the previous announcement for this position and notify them of the new announcement; and (4) not permit agency personnel who worked on previous announcements for the position at issue to work on the new announcement.

Unauthorized employment preference

Complainant, a federal employee, alleged that the agency provided a preferred candidate an unauthorized employment preference in violation of 5 U.S.C. § 2302(b)(6). The complainant alleged, among other things, that the preference was granted to management's preferred candidate after she failed to qualify on the certificate of eligible candidates. Thereafter, the agency re-announced the position including a new Knowledge Skills and Abilities (KSAs) requirement—knowledge of EEO law—which the position did not call for. Consequently, the preferred candidate, who had extensive experience with EEO matters, was ultimately selected for the position under the revised announcement. OSC investigated and found that there was sufficient evidence to warrant issuing a formal corrective action letter and prohibited personnel practice report to the head of the agency. In response to the OSC letter and report, the agency agreed to take the following full corrective action: (1) re-assign the selected candidate to another position; (2) re-advertise the position using the original vacancy announcement and KSAs; (3) contact all applicants, including veterans, who applied under the first announcement; (4) ensure that all applicants are evaluated by individuals who were not involved with the first two vacancy announcements and; (5) require identified staff members within the agency to attend prohibited personnel practice training.

Coerced resignation

Complainant, a former Security Guard with an agency, alleged that his resignation was coerced in reprisal for disclosing to management that another guard assaulted him by slamming on her brakes and injuring his shoulder due to the seat belt restraint system. After investigating the incident, Complainant was informed that he would be fired if he did not resign. The OSC investigation found reasonable grounds to conclude that Complainant's whistleblowing was a contributing factor to his coerced resignation, and that the agency lacked clear and convincing evidence that the resignation would have occurred without the whistleblowing. The agency agreed to grant full corrective action to the Complainant, including reinstating him to a new position in a different chain of command, sanitizing his personnel records, and providing him with back pay, interest, and restored benefits. The agency also agreed to conduct an assessment of current management practices and in-depth personnel training for management to identify and correct any vulnerabilities and eliminate possible similar violations in the future.

Unauthorized quota system

Complainant, a federal agency specialist, alleged that he received a lowered performance rating based on improper quotas or "organization distribution." He received a performance rating of Fully Meets Expectations. However, his supervisor had written on the rating form that the Complainant performed at the Significantly Exceeds Expectations level, but that "organization distribution" prevented that rating. Complainant also alleged that if he had been given the higher rating, he would have received a 6 percent cash award rather than the 3 percent he actually obtained. As a result of OSC's efforts, the agency agreed to grant full corrective action, including a new performance rating at the higher level, cash to raise the amount of his cash award to 6 percent, and appropriate interest.

Nepotism

An anonymous complainant alleged that a high level official with a federal agency signed off on the promotion of her son-in-law in violation of 5 U.S.C. § 2302(b)(7). The OSC investigation substantiated the allegations. Specifically, OSC obtained the SF-52 form that the subject official signed as the "requesting official" to promote her son-in-law. In response to a request from OSC to suspend the subject official for 15-days, she elected to retire from the federal government.

PPP Litigation

Retaliatory reassignment

OSC settled a complaint for corrective action filed against a federal agency. OSC's petition filed with the Merit Systems Protection Board (MSPB), charged that the agency violated 5 U.S.C. § 2302(b)(8), when it directed the reassignment of a senior Special Agent from Oklahoma to New York because he sent an anonymous letter to an administrator of the agency reporting inappropriate conduct and alleged civil rights violations by a District Assistant Special Agent in Charge. The agency agreed to reassign the individual to its Miami Field Division Office on or before Oct. 8, 2007, and then after 36 months to reassign him to its Atlanta Field Division Office. Both geographical reassignments are to be paid for by the agency. The agency also agreed to remove from its records a memorandum of admonishment given to the individual on January 23, 2007, and to expunge the rating official's comments from his 2006 annual performance evaluation. The individual agreed to withdraw a pending grievance related to his 2006 performance evaluation, and the MSPB Individual Right of Action appeal of his 2007 memorandum of admonishment. The Special Counsel moved to dismiss the corrective action petition based on the settlement agreement.

Nepotism

A complainant reported to OSC that federal officials at an agency medical center violated civil service laws prohibiting the employment of relatives. Specifically, the center's Rehabilitation and Long Term Care Administrative Director approved the selections of her two daughters as temporary Student Nurse Technicians. Later, she approved one daughter's selection as a Registered Nurse. All three of these positions fell under the Administrative Director's chain of command. She approved additional personnel actions for her daughters until she retired in 2006. OSC concluded that she had violated 5 U.S.C. § 2302(b)(7) by appointing and employing her daughters. Already retired, OSC had a disinterested party review the daughters' official personnel folders instead, and determined that the personnel actions would have been taken in the absence of any family relationship. The agency also agreed to provide nepotism training to the entire division human resources staff, including the Human Resources director.

Summary of Favorable Actions

Complaints involving allegations of reprisal for whistleblowing – OSC's highest priority – accounted for the highest numbers of the complaints resolved and the favorable actions obtained by OSC during FY 2007⁹.

Table 4, below, contains FY 2007 summary data on all favorable actions obtained by OSC in connection with its processing of whistleblower reprisal and other prohibited personnel practice complaints. There was a slight increase in the total number of PPP matters closed, which can be seen in Table 1. OSC certainly makes extra effort to find the merit in each case, but the PPP corrective action number for each year is a function of the sum of the merits of the individual cases. The fact that there were fewer meritorious cases FY 2007 is the driver behind the lower number of corrective actions for that year.

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

HATCH ACT MATTERS

Hatch Act Disciplinary Actions Filed:

State/Local Employee Violations

The majority of complaints filed by OSC for disciplinary action against state or local employees are for using their official authority and influence for the purpose of interfering with or affecting the result of an election and/or coercing subordinates to make political contributions.

An employee of a federal agency was a candidate in a 2005 partisan election for Alderman. After investigating the complaint, OSC determined that the employee violated the Hatch Act. OSC, the employee and the agency agreed to informally settle this matter with the employee serving a suspension of 30 consecutive work days without pay. The employee served her suspension from November 27, 2006 through January 9, 2007.

On February 1, 2007, OSC filed a complaint for disciplinary action against the Executive Director of a local agency, charging that he violated the Hatch Act by being a candidate in the November 2005 partisan election for Township Council. After OSC filed the complaint, the parties entered into a settlement agreement. Pursuant to the agreement, the director was removed from his position as Executive Director and debarred for a period of six months from seeking or accepting employment at a state or local agency within the State of New Jersey.

The Executive Director of an agency has been involved in a Hatch Act complaint. The agency is a private, not-for-profit organization, which is subject to the Hatch Act by virtue of its significant federal funding. On September 7, 2004, the executive director allowed an agency employee who was on leave of absence, running for election to the U.S. House of Representatives, to give a campaign speech at

a mandatory meeting of the entire agency staff. OSC determined there was a Hatch Act violation and filed a complaint with MSPB on July 10, 2006. On October 25, 2006, the Executive Director and OSC entered a settlement whereby the Executive Director admitted liability and agreed to serve a 30-day suspension. The suspension was served October 25 to November 24, 2006.

Federal Employee Violations

A Team Leader with a federal agency disseminated four partisan political e-mails to agency employees, including subordinates, and other individuals. One of the e-mails the Team Leader distributed contained a video that was 12:39 minutes long and was paid for by the Republican National Committee and the Bush/Cheney '04 campaign. The Team Leader was on duty and in his federal workplace when he disseminated this e-mail. OSC concluded that the Team Leader's actions violated the Hatch Act. OSC, the agency, and the Team Leader agreed to informally settle this complaint. The Team Leader was suspended without pay for ten consecutive work days, from October 23, 2006, through November 3, 2006.

A civilian employee of a federal agency was a candidate in the November 2006 partisan election for a Georgia County School Board. After investigating the complaint, OSC determined that the civilian employee violated the Hatch Act. OSC, the civilian employee and agency agreed to informally settle this matter with the civilian employee being suspended for 32 consecutive work days without pay. The civilian employee's suspension was served from May 14, 2007, through June 27, 2007.

A federal employee disseminated a partisan political e-mail to 27 of her work colleagues while she was on duty and in her federal workplace. The e-mail the agency employee disseminated invited the recipients to a party she was co-hosting that would feature a candidate for

partisan political office, as a special guest. Those who received the e-mail and its attachment were informed about the partisan political office for which the special guest was a candidate. The email stated that hearing the special guest speak would be “a treat.” It also described the special guest in favorable terms and contained a link to the special guest’s campaign website. After investigating this matter, OSC determined that the agency employee violated the Hatch Act. OSC, the agency employee and the agency agreed to informally settle this matter by suspending the agency employee without pay for 40 consecutive work days.

A high level supervisory official at a federal agency solicited her subordinate employee to contribute money to a gubernatorial candidate while on duty and in a federal building. OSC filed a complaint for disciplinary action against the federal employee. A hearing was held in this matter last November and the administrative law judge (ALJ) issued his initial decision in favor of OSC finding that the federal employee’s solicitation of a political contribution from her subordinate violated three separate provisions under the Hatch Act. In September 2007 the full Board adopted the ALJ’s finding that the employee violated the Hatch Act, and ordered the employee removed from her employment for her violation of the law.

A federal employee forwarded a partisan electronic mail message to approximately 30 of his colleagues while he was on duty and in his federal office. Specifically, the e-mail message contained a letter from the then chairman of a Political National Committee that urged its recipients to take immediate action after the Presidential debates so that its candidate would win the Presidential election. OSC filed a complaint for disciplinary action against the employee. The Board concluded that the federal employee’s forwarding of this e-mail constituted political activity in violation of the Hatch Act. The case was remanded back to the administrative law judge for a determination as to the appropriate penalty.

OSC received a referral from a Federal agency’s IG office (which itself was based on credible allegations of an agency employee) concerning allegations that the Administrator engaged in political activities in violation of 5 U.S.C. § 7323(a)(1) of the Hatch Act. Specifically, it was alleged that the Administrator violated the Hatch Act during a January 26, 2007, meeting held at the agency’s headquarters building, by soliciting subordinate employees to participate in political activity. Specifically, OSC found that the agency held a brown bag luncheon for its political appointees with a guest speaker from the White House Office of Political Affairs (OPA). The guest speaker from the White House gave a PowerPoint presentation to the appointees in attendance, including the Administrator. The slides shown included a list of Congressional members targeted to be unseated in the 2008 election, followed immediately by a list of Congressional members whose seats need to be defended in the 2008 election. The presentation also contained a slide entitled “Battle for Governors ‘07/’08” and identified all the states as either on the offensive or on the defensive in relation to one of the Parties. A question and answer session immediately followed the OPA presentation. Numerous agency political appointees testified under oath that during the question and answer session, the Administrator asked a question about, “How can we at xxx help our candidates?” The Administrator and another political appointee then discussed how to ensure that certain party officials would attend agency events.

Based on the above, OSC concluded that the Administrator’s asking “how can we help our candidates” during a meeting in which over thirty subordinates were participating is a per se violation of section 7323(a)(1) based on the well establish legal principle that it is inherently coercive for a supervisor the Administrator to ask and/or encourage subordinates to engage in political activity. OSC found that not only did the Administrator solicit subordinates for ideas about how to help “our candidates,” the question

was an implied, and arguably direct, solicitation for the uncompensated volunteer services of subordinates. In addition, OSC found that the discussion that took place was an overt act of trying to place government resources at the disposal of a national political party. Pursuant to 5 U.S.C. § 1215(b), the Special Counsel sent a report to the President recommending that the President seriously discipline the Administrator for violating the Hatch Act.

Task Force Investigations

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

Table 5, below, contains FY 2007 summary data (with comparative data for the two previous fiscal years) on OSC advisory and enforcement activities pursuant to the Hatch Act. There were 2,598 advisory opinions issued.

TABLE 5 Summary of Hatch Act Advisory Opinion and Complaint Activity						
		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Advisory opinions issued		3,284	3,913 ^a	2,558	3,004	2,598
New advisory requests received (written)		159	176	191	237	194
New complaints received		196	248	245	299	282
Warning letters issued		43	93	87	76	68
Complaints processed and closed in fiscal year		201	357	310	266	252
Corrective actions taken by recipients of cure letters:	Withdrawal from partisan races	18	17	4	9	18
	Resignation from covered employment	7	8	10	22	6
	Other	0	6	3	2	1
	Total:	25	31	17	33	25
Disciplinary action complaints filed with the Merit Systems Protection Board		4	7 ^b	11	6	1
Disciplinary actions obtained (through negotiation or ordered by the Board)		4	2	8	8	0
Complaints pending at end of fiscal year		254	146	79	112	142

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

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

WHISTLEBLOWER DISCLOSURES

Overview

In addition to its investigative and prosecutorial mission, OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may make whistleblower disclosures - that is, information that they reasonably believe evidences a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.¹⁰ Such matters are processed by OSC's Disclosure Unit. Upon receipt of such information, if the Special Counsel determines that there is a substantial likelihood that the information discloses one or more of the kinds of wrongdoing described above, he is required to send the information to the head of the agency for an investigation. OSC does not divulge the identity of the whistleblower without that person's consent. The agency is required

to investigate the matter, and send a report from the agency head to the Special Counsel. The required report describes the agency's findings and conclusion. The Special Counsel sends the agency report, any comments by the whistleblower, and any comments or recommendations by the Special Counsel, to the President and congressional committees with jurisdiction over the agency. A copy of the agency report, and any comments on the report, are also placed in a public file located at OSC.¹¹ In FY 2007, 482 new matters were received in the Disclosure Unit, and 467 disclosure matters were processed and closed. There were 42 referrals to agency heads in FY 2007, which is the highest number of disclosures ever referred by a Special Counsel. In addition, OSC managed for the first time to process over 60% of the disclosures received in less than the 15 days called for in the statute.

See **Table 6** below, which contains FY 2007 summary data on OSC receipts and dispositions of whistleblower disclosures.

TABLE 6 Summary of Whistleblower Disclosure Activity – Receipts and Dispositions^a						
		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Pending disclosures carried over from previous fiscal year		556	269	98	110	69
New disclosures received		535	572	485	435	482
<i>Total disclosures</i>		1,091	1,262	583	545	599
Disclosures referred to agency heads for investigation and report		11	18	19	24	42
Referrals to Agency IGs		3	8	14	10	11
Agency head reports sent to President and Congress		23	8	16	24	20
Results of agency investigations and reports	<i>Disclosures substantiated in whole or in part</i>	13	8	16	21	19
	<i>Disclosures unsubstantiated</i>	10	0	0	3	1
Disclosures processed	<i>In more than 15 days</i>	290	1,019	237	275	182
	<i>In less than 15 days</i>	111	135	236	203	285
Percentage of disclosures processed in less than 15 days		28%	12%	50%	42%	61%
Disclosure matters processed and closed		401	1,154 ^c	473	478	467

^a It should be noted that many disclosures contain more than one type of allegation. This table, however, records each whistleblower disclosure as a single matter, even if there are multiple allegations in it.

Allegations of Substantial and Specific Danger to Public Health and/or Safety

Infrequent and inadequate customs inspections

OSC referred to the Secretary of Homeland Security allegations that the Interim Port Director, Salt Lake City International Airport, significantly curtailed the frequency and scope of customs inspections conducted at the airport. The whistleblower alleged that, in doing so, the Interim Port Director violated applicable regulations and created a substantial and specific danger to public safety. An agency investigation substantiated the whistleblower's allegation that the Interim Port Director fails to conduct adequate customs inspections. Nevertheless, the agency concluded that the Interim Port Director did not violate any law, rule, or regulation because the applicable laws and regulations do not specify a minimum number of inspections to be performed. However, based on the findings of the investigation, the Special Counsel concluded that the Interim Port Director's policies did create a substantial and specific danger to public safety, as customs inspections play an integral role in the federal government's overall strategy for averting terrorism. Referred June 2004; OSC's Analysis of Disclosure submitted to the President and Congressional oversight committees November 2006.

Misallocation of funds earmarked by Congress for wireless initiatives at the southwest border

OSC referred to the Secretary of the Department of Homeland Security (DHS) allegations that in 2004 and 2005, DHS failed to allocate sufficient funds to support the acquisition of wireless telecommunications equipment and technologies as intended by Congress, and instead used the monies for non-wireless procurements. According to the whistleblower, the failure to support wireless communications at the southwestern U.S. border has rendered the border unsafe for agents and vulnerable to terrorist infiltration.

The agency investigation did not substantiate the allegation that money allocated by Congress for wireless initiatives was improperly spent on non-wireless initiatives. The agency's report acknowledged the need for adequate technologies for border patrol agents in the southwest, and cited the Secure Border Initiative and SBInet as recent efforts to provide Border Patrol agents with the means to protect themselves against violence from criminal traffickers. Referred September 2005; OSC's Analysis of Disclosure submitted to the President and Congressional oversight committees September 2006.

Faulty repairs of F/A-18 fighter jets

OSC referred to the Secretary of the Navy allegations that mechanics in Shop 93503, Naval Air Depot, North Island, California, assembled generator conversion units (GCUs) for F/A-18 fighter jets incorrectly. Specifically, the whistleblower alleged that, from March 2005 until July 2005, the mechanics did not have the necessary torque tools required to properly torque the screws used to assemble the GCUs. Although Shop 93503 mechanics finally received torque tools in July 2005, the whistleblower stated that the GCU screws on hundreds of F/A-18s currently deployed by the U.S. military and several foreign militaries still have not been properly torqued. The whistleblower also alleged that Shop 93503 does not perform mandatory quality assurance inspections on all GCU components.

An agency investigation substantiated the whistleblower's allegation that the GCU Shop artisans did not use proper torque tools to assemble GCUs for F/A-18 fighter aircraft. Nevertheless, the agency did not find that this situation posed any "safety of flight" issues. The Navy took corrective action to ensure that all GCU Shop artisans are currently using proper torque tools on GCU screws; however, the agency decided against pursuing disciplinary action against any individuals for the violations. The Special

Counsel determined that the agency's decision to refrain from disciplining any of the GCU Shop managers was unreasonable. Referred February 2006; OSC's Analysis of Disclosure submitted to the President and Congressional oversight committees April 2007.

Ineffective border security tactics mandated by sector management

OSC referred to the Secretary of Homeland Security allegations that Blaine Sector management ordered agents to discontinue their successful low-visibility tactics and adopt high-visibility tactics that stand no reasonable chance of deterring smuggling activities along a particular section of the U.S. Canada border. According to the whistleblowers, management allocated 3 agents to patrol a 75-mile stretch of border and adopted policies which left the border unprotected for at least 16 hours per day. These policies also impede cooperation with other federal and local law enforcement agencies. Given the recognized risk that terrorists may target the unprotected border area as a point of entry into the United States, the whistleblowers alleged that management's new policies amount to a substantial and specific danger to public safety as well as gross mismanagement. In addition, the whistleblowers also alleged that the now retired Patrol Agent-in-Charge for the station in question engaged in violations of law, rule or regulation, gross mismanagement, and a gross waste of funds.

The agency investigation did not substantiate the allegations that agency officials adopted inappropriate new tactics and policies, exposed Border Patrol Agents to surveillance, impeded cooperation with other agencies, or engaged in a gross waste of agency funds. The investigation did substantiate two allegations against the Patrol Agent-in-Charge: inattention to duty and a violation of a DHS Directive regarding facility security. The Patrol Agent-in-Charge retired before the investigation was completed. The agency reports acknowledged

that there are limitations on the ability of the Border Patrol to exercise full operational control of many zones within the Blaine Sector, resulting from limited availability of personnel and technical resources. Referred November 2005; OSC's Analysis of Disclosure submitted to the President and Congressional oversight committees June 2007.

Falsification of secure database at airport

OSC referred to the Secretary of the Department of Homeland Security allegations that management officials directed the entry of false records of customs inspections to inflate statistics at the Sanford International Airport (Sanford), Sanford, Florida. According to the six whistleblowers, Customs and Border Patrol (CBP) Agents, during the summer and fall, 2005, they were detailed to work at Sanford. During their shifts in the secondary agricultural inspections area, they were instructed by Sanford CBP Supervisors to take stacks of passenger and crewmember customs declarations, and enter the names into the enforcement database as reports of enforcement screens, or IO25s. They were told to guess at the information that would otherwise be obtained during direct interview and inspection of the passenger or crewmember, such as race, length of stay, and number of bags. They also alleged that they were instructed to enter an "ENF" code, rather than the code for an agricultural secondary inspection, "PPQ." This would falsely reflect that the passenger or crewmember had been stopped, interviewed, and bags inspected in connection with a suspicion of possessing contraband or engaging in unlawful activity.

The report partially substantiated the whistleblowers' allegations. The report reflects that personnel assigned to enter data were improperly directed to use default or generic data, and that authorized users were directed to enter data under another employee's user identification number and password. The agency has taken disciplinary and corrective

action in response to the findings of violations of law. Referred April 2006; OSC's Analysis of Disclosure submitted to the President and Congressional oversight committees May 2007.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

USERRA Referral Cases

OSC has a vital role in enforcing USERRA in the federal sector. The Act prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services, by making it illegal for an employer to deny any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. The right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training is also protected under the Act. OSC receives referrals of possible USERRA violations by federal executive agencies from the Veterans' Employment and Training Service (VETS) at the U.S. Department of Labor. In such cases, OSC may appear on behalf of, and act as attorney for, the aggrieved person. If the Special Counsel believes the complaint has merit, OSC will initiate an action before the MSPB. At the start of FY 2007, OSC had 3 pending USERRA cases. It received 4 referrals from VETS during the fiscal year. **Table 7**, below, sets forth the FY 2007 data concerning OSC's receipt and disposition during FY 2007 of USERRA cases (with comparative data for previous fiscal years).

TABLE 7 Summary of USERRA Referral Activity

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Pending referrals carried over from previous fiscal year	8	4	12	6	3
Referrals received from DOL during fiscal year	7	14	30	11	4
<i>Pending Referrals closed</i>	11	6	36	14	4
Pending referrals at the end of the fiscal year	4	12	6	3	3
Closed cases where corrective action was obtained (including corrective actions obtained in matters referred to litigation)	3	1	6	3	0
Closed cases where no corrective action was obtained	8	5	25	11	4

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

The USERRA Demonstration Project

On December 10, 2004, President Bush signed into law the Veterans Benefits Improvement Act of 2004 (VBIA), P.L. 108-454, which changed the manner in which certain federal sector USERRA claims were investigated during a three-year period. Under the demonstration project established by section 204 of the VBIA, OSC, rather than VETS, investigated USERRA claims filed by federal employees (and applicants for federal employment) whose social security number ended in an odd-numbered digit. In addition to those claims, OSC received and investigated all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction. Under the demonstration project, VETS investigated even numbered claims that did not include a related prohibited personnel

practice allegation. OSC continues to perform its prosecutorial function under the demonstration project.

The original term of the three-year demonstration project ended on September 30, 2007, and Congress extended the program through December 31, 2007. OSC achieved high corrective action rates in each year of the project, culminating with 35% corrective action in FY 2007. This is a very high rate of corrective action for any Investigatory and Prosecutorial agency. Eventually, Congress will look at the results achieved on behalf of veterans during the three years, and decide whether OSC or DOL will have investigative responsibility over federal sector USERRA claims.

Table 8, below, sets forth the FY 2007 data concerning OSC’s receipt and disposition of USERRA cases.

TABLE 8 Summary of USERRA Demonstration Project Activity^a			
	FY 2005	FY 2006	FY 2007
Pending referrals carried over from previous fiscal year	0	54	95
Cases opened	111	168	142
Cases closed	57	126	123
Cases pending at the end of the fiscal year	54	96	114
Closed cases where corrective action was obtained	16	35	43
Closed cases where no corrective action was obtained	38	91	80
Closed cases referred for litigation	0	n/a	0

^aUnder VIBA, P.L. 108-454; OSC started receiving cases in February of 2005.

USERRA Corrective Actions

The corrective actions obtained have been numerous and varied. The Unit has ensured that service members are reemployed to the appropriate “escalator” position upon their return from military duty, including pay, seniority and status as if they had never left; protected service members from wrongful disciplinary actions by having a demotion and letters of reprimand rescinded; alleviated discrimination against service members in initial hiring and career advancement by obtaining federal jobs and promotions for them; and secured other employment benefits such as restored annual and military leave, Within-Grade Increases, and correct accounting of health insurance expenses and retirement benefits. OSC’s USERRA Unit does not simply try to settle USERRA complaints, but to obtain the full relief to which service members are entitled.

For example, in one USERRA reemployment rights case, a service member returned to his civilian employment after serving in Iraq. Upon his return, the claimant learned that co-workers with less seniority had been promoted ahead of him. After making an inquiry into the allegations, OSC determined that the agency had violated claimant’s USERRA reemployment rights. At the behest of OSC, the agency promoted the service member retroactively to the date that he should have originally been promoted and awarded him back pay.

In one USERRA discrimination case, the claimant alleged the agency violated USERRA by proposing a three-day suspension because she had a verbal altercation with her supervisor soon after she returned from an 18-month absence due to military service. The deciding official later mitigated the proposed suspension to a Letter of Reprimand. OSC investigated the matter and determined that, even though the Letter of Reprimand was an appropriate penalty for the claimant’s misconduct, the claimant’s military status played a role in the supervisor’s decision to propose the disciplinary action. Accordingly,

the agency agreed, at OSC’s request, to rescind the Letter of Reprimand.

In another USERRA reemployment rights case, the claimant alleged that the agency did not properly reemploy her upon her return from a two-year tour of active duty in Iraq. Immediately following her release from military duty, and after having unsuccessfully tried to contact her agency’s HR office, the claimant drove 1,700 miles and stopped by the agency to “check in” with her colleagues. The claimant’s supervisor saw her and told her to report to work immediately as a staff nurse on the evening shift, even though the claimant had 90 days to request reemployment and had not been a staff nurse for over five years. Reasonably believing that she would be disciplined if she did not obey her supervisor’s order, she complied. Because the claimant had not yet obtained housing, she stayed in a motel at her own expense. OSC substantiated the claimant’s allegations and discussed with the agency its obligations under USERRA. At OSC’s request, the agency agreed to full corrective action, including reemploying the claimant to her proper position, reimbursing her motel expenses, and restoring annual leave she had been forced to use as a result of the agency’s actions.

OSC also works to obtain “systemic” corrective action to prevent future violations by educating and training agencies about their obligations under USERRA. For example, in a case where an agency supervisor contacted the service member’s military commander and disparaged the claimant’s job performance, OSC informed the agency that such contact should be limited to confirming military orders. The agency also agreed to sponsor, at its own expense, OSC-conducted USERRA training for its managers and HR staff. In another case where the agency demanded copies of the service member’s military orders and refused to allow him eight hours rest following military duty, OSC provided a letter to the agency informing it of its obligations and arranged for agency-sponsored USERRA training by OSC.

The Special Counsel has also continued to enforce USERRA through prosecution of cases before the U.S. Merit Systems Protection Board (MSPB). Specifically, OSC filed a case of first impression concerning whether a federal agency's termination of a service member's probationary employment while he was absent for military duty relieved the agency of its obligation to later reemploy the service member. Because the Special Counsel is committed to enforcing service members' reemployment rights to the fullest extent of the law, he authorized prosecution of this case to clarify this important issue concerning service members' reemployment rights.

In addition to investigating and favorably resolving service members' USERRA claims, and litigating novel issues, OSC has been very active in providing USERRA outreach and training. In FY 2007, the USERRA Unit conducted eight trainings for federal agencies, two presentations for a federal employment sector professional

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

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

OUTREACH PROGRAM

The Outreach Program provides OSC speakers and other resources to inform government employees about their rights and remedies under the laws enforced by OSC. To assist other agencies in meeting their statutory obligation under 5 U.S.C. § 2302(c), OSC created an educational program known as the 2302(c) Certification Program.

To participate in OSC's certification program, agencies must agree to: (1) place informational posters at agency facilities about prohibited personnel practices and whistleblowing; (2) provide information about both subjects to new employees as part of their orientation; (3) make information available periodically to current employees about prohibited personnel practices and whistleblower rights and remedies; (4) furnish training to supervisors on prohibited personnel practices and whistleblower protections; and (5) establish a link from the agency's internet or intranet web site to OSC's web site. Once an agency has completed these five steps, OSC issues a certificate of compliance with § 2302(c), which is valid for three years. As of FY 2007, 57 agencies had registered and were working towards certification. There are 32 agencies which are certified.

ANNUAL SURVEY PROGRAM

Each year, as required by 5 USC, Section 1212, OSC surveys persons who have contacted the agency for assistance and whose cases were closed during the previous fiscal year. During FY 2007, OSC surveyed individuals whose complaints were closed in FY 2007. Persons with Prohibited Personnel Practice (PPP) and USERRA cases were surveyed, as well as those who received written advisory opinions from OSC's Hatch Act (HA) Unit. They were sent a written notification to facilitate their electronic participation in the survey. The form used for the PPP and USERRA surveys seeks the following information:

- whether potential respondents were fully apprised of their rights;
- whether their claim was successful at OSC or at the MSPB; and
- whether, successful or not, if they were satisfied with the service received from OSC.

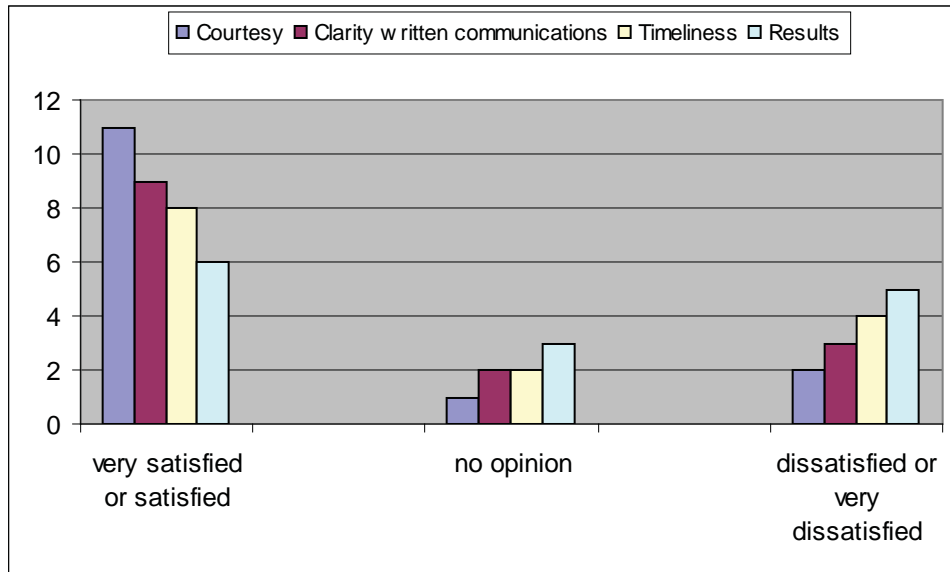
Additional questions are asked based on the case type.

The survey results show that only 18% of respondents can recall being informed by their agencies concerning their rights and responsibilities. Although the survey response rate was relatively low, analysis of the results reveals some very encouraging information:

1. The graph below shows the high level of satisfaction reported by respondents who received advisory opinions from OSC. Of those individuals who sought advisory opinions, over 74% of them were satisfied or very satisfied (see Hatch Act Results in Appendix C). Of those individuals with a USERRA claim who took the survey, 56% were satisfied or very satisfied. See Appendix D. All FY 2007 survey questions and response tallies are included in Appendices A-D.

2. While approximately 6% of PPP complainants who took the survey received the result they desired, an average of 42% weren't dissatisfied with the service provided by OSC in the areas of timeliness, oral communications, written communications, and courtesy. This means that 36% of the PPP survey respondents were willing to admit some level of appreciation for the service provided by OSC, even though their case was closed.

Hatch Act Advisory Opinions - Customer Satisfaction



FURTHER INFORMATION¹²

Annual Report

Additional copies of this report can be requested by writing or contacting:

Director of Congressional and Public Affairs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 202-254-3600
<http://www.osc.gov/documents/reports/ar-2007.pdf>

Prohibited Personnel Practice Complaints

Individuals with questions about prohibited personnel practices can contact the OSC Officer of the Week at:

Complaints Examining Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 800-872-9855, 202-254-3630
Fax: 202-653-5151

The OSC complaint form (Form OSC-11) *must* be used to file a prohibited personnel practice complaint.¹³

The complaint form can be printed from OSC's web site (under "Forms"). Complaints can also be filed with OSC electronically from its web site, <http://www.osc.gov/documents/forms/osc11.pdf>

Mediation Program

Questions about OSC's Mediation Program should be directed to:

Alternative Dispute Resolution Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 202-254-3600
E-mail: adr@osc.gov

Hatch Act Questions

Requests for advice about the Hatch Act can be made by telephone, regular mail, or e-mail to:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 800-85-HATCH [(800) 854-2824, 202-254-3650]
Fax: 202-653-5151
E-mail: hatchact@osc.gov

The OSC web site has additional information about the Hatch Act, including frequently asked questions by federal, state and local government employees, and selected OSC advisory opinions responding to common factual situations.

Whistleblower Disclosures

Whistleblower disclosures (of information evidencing a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a danger to public health or safety) can be reported in confidence to:

Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 800-572-2249, 202-254-3640
Fax: 202-653-5151

The OSC whistleblower disclosure form (Form OSC-12) may be used to file a disclosure. The form can be printed from OSC's web site (under "Forms"). Disclosures can also be filed with OSC electronically from its web site, <http://www.osc.gov/documents/forms/osc12.pdf>

Uniformed Services Employment and Reemployment Rights Act

Questions about OSC's role in enforcing the act may be directed to:

Director of USERRA
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 202-254-3600
E-mail: userra@osc.gov

Outreach Program

For questions about OSC outreach activities, and requests for OSC publications

Director of Outreach
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 202-254-3600
Fax: 202-653-5151

Many forms and publications are available at OSC's web site (under "Forms" and "E-Library") at <http://www.osc.gov/forms.htm>.

APPENDIX A

FY 2007 TOTALS AND RESPONSE OPTIONS

FY 2007	
Number Mailed	1,979
Number Returned	292
Response Rate	15%

What was the nature of your correspondence to OSC? (Please choose only one)	
Response Options	FY 2007
You filed a complaint concerning a Prohibited Personnel Practice	258
You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity)	14
Your case involved a USERRA complaint	20

APPENDIX B

FY 2007 PROHIBITED PERSONNEL PRACTICE SURVEY RESPONSES

1. Did the agency against which you filed the complaint inform you about your rights and responsibilities with regard to prohibited personnel practices?

Response options	FY 2007
Yes	44
No	189
Do not recall	22
Never employed by a federal agency	3

2. Did you obtain the result that you wanted from OSC?

Response options	FY 2007
Yes	17
No	241

3. Did your complaint include any allegation of reprisal for whistleblowing?

Response options	FY 2007
Yes	128
No	113

4. What reason did OSC give for closing any reprisal for whistleblowing allegation in your complaint without obtaining the result that you desired? (Check all that apply.)	
Response Options	FY 2007
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	11
No personnel action taken by the agency involved	11
Information that you disclosed did not appear to be a legally protected disclosure	22
Your disclosure occurred after the personnel action involved in your complaint	3
Insufficient proof that the agency official (who took the personnel action against you) knew about your disclosure.	14
Insufficient proof of connection between your disclosure and the personnel action involved in your complaint	26
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	7
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	28
You or OSC settled the matter with the agency involved	1
You declined corrective action offered by the agency involved	0
You notified OSC that you had filed or would file an Individual Right of Action (IRA) or other appeal with the Merit Systems Protection Board (MSPB)	5
You withdrew your complaint	0
Other	51
Do not recall	12

5. Did you file an Individual Right of Action or other appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?

Response Options	FY 2007
Yes	50
No	161
Have not decided whether to file	30

6. Did you ask for the same relief that you sought from OSC?

Response Options	FY 2007
Yes	47
No	2
Do not recall	1

7. Were you successful at the MSPB in obtaining the same result that you sought from OSC?

Response Options	FY 2007
Yes	1
Partially	4
No	14
Appeal pending	28

8. If the answer [to the previous question] was “yes” or “partially,” how did you obtain that result?

Response Options	FY 2007
Settlement	4
Decision after hearing	1
Other	0

9. What reason did OSC give for closing your complaint without obtaining the result that you Desired? (Check all that apply)	
Response Options:	FY 2007
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	12
No personnel action taken by the agency involved	8
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint	17
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	41
You or OSC settled the matter with the agency involved	0
You declined corrective action offered by the agency involved	0
You withdrew your complaint	0
OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action	0
OSC obtained a decision in the corrective action proceeding filed with the MSPB	1
Closed for further action on discrimination allegations through EEO processes	4
Resolved through OSC's Mediation Program	0
Other	48
Do not recall	5

10. How would you rate the service provided by OSC in each of the following areas?					
Service Categories to be rated	FY 2007 Ratings				
	Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	30	44	55	30	99
<i>Clarity of Oral communications</i>	24	23	60	39	112
<i>Clarity of Written communications</i>	28	29	35	45	121
<i>Timeliness</i>	24	61	37	43	93
<i>Results</i>	8	6	12	33	199

APPENDIX C

FY 2007 HATCH ACT UNIT SURVEY RESPONSES
--

1. As a result of our written advisory opinion given to you concerning the proposed political activity, what was the impact?	
Response Options	FY 2007
The OSC opinion advised that the person in question was free to carry out his or her planned political activity.	6
The OSC opinion advised that the person in question should not continue his or her planned political activity.	8

2. How would you rate the service provided by OSC in the following areas?					
Service Categories to be rated	FY 2007 Ratings				
	Very satisfied	Satisfied	No opinion / inapplicable	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	5	6	1	1	1
<i>Clarity of Written Communications</i>	4	5	2	2	1
<i>Timeliness</i>	4	4	2	1	3
<i>Results</i>	4	2	3	2	3

APPENDIX D

FY 2007 USERRA UNIT SURVEY RESPONSES

1. Did the agency against which you filed the complaint inform you about your rights and remedies with regard to USERRA?

Response Options	FY 2007
Yes	8
No	10
Do not recall	1
Never employed by a federal agency	1

2. Did you obtain the result that you wanted from OSC?

Response options	FY 2007
Yes	10
No	10

3. What reason did OSC give for closing your USERRA case? (Check all that apply.)

Response options	FY 2007
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	1
You declined corrective action offered by the agency involved	5
Insufficient evidence that the personnel action involved in your complaint violated USERRA	1
You or OSC settled the matter with the agency involved	0
You withdrew your complaint	0
Other	4
Do not recall	1

4. Did you file a USERRA appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?

Response options	FY 2007
Yes	2
No	5
Do not recall	3

5. Did you ask for the same relief that you sought from OSC?

Response options	FY 2007
Yes	2
No	0
Do not recall	0

6. Were you successful at the MSPB in obtaining the same result that you sought from OSC?	
Response options	FY 2007
Yes	0
Partially	0
No	2
Appeal pending	0

7. If the answer to previous question was “Yes” or “Partially,” how did you obtain that result?	
Response options	FY 2007
Settlement	0
Decision after hearing	0
other	0

8. How would you rate the service provided by OSC in each of the following areas?					
Service categories to be rated	FY 2007 Ratings				
	Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	9	5	1	2	3
<i>Clarity of Oral communications</i>	7	4	0	4	5
<i>Clarity of Written communications</i>	6	6	0	4	4
<i>Timeliness</i>	5	4	4	1	6
<i>Results</i>	8	2	1	1	8

APPENDIX E

ENDNOTES

¹ Reorganization Plan Number 2 of 1978. See 5 U.S.C.A. App.1, § 204. The Civil Service Reform Act of 1978 (Public Law No. 95-454, 92 Stat. 1111) enlarged OSC's functions and powers.

² Public law No. 101-12 (1989). Provisions setting forth OSC authorities and responsibilities were codified at 5 U.S.C. § 1211, et seq.

³ Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.

⁴ Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, et seq. The Veteran's Employment Opportunities Act of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The act made it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veteran's preference requirement. See 5 U.S.C. § 2302(b)(11). (The former § 2302(b)(11) was redesignated as § 2302(b)(12).)

⁵ Public Law No. 103-424 (1994), codified in various sections of title 5 of the U.S. Code. The provision making federal agencies responsible, in consultation with OSC, for informing their employees of rights and remedies under the Whistleblower Protection Act, appears at 5 U.S.C. § 2302(c).

⁶ Unless noted otherwise, all references after this to prohibited personnel practice complaints include complaints alleging other violations of civil service law, rule, or regulation listed at 5 U.S.C. § 1216, except for alleged violations of the Hatch Act.

⁷ When the Complaints Examining Unit makes a preliminary determination to close a complaint without further investigation, it must by law provide complainants with a written statement of reasons, to which they may respond. On the basis of the response, if any, the unit decides whether to close the matter, or refer it to the Investigation and Prosecution Division.

⁸ The 12 prohibited personnel practices are (in substance): (1) discrimination based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation (allegations of discrimination, except discrimination based on marital status or political affiliation, are generally deferred by OSC to EEO processes, consistent with 5 C.F.R. § 1810.1); (2) soliciting or considering improper employment recommendations; (3) coercion of political activity; (4) deceiving or willfully obstructing anyone from competing for employment; (5) influencing anyone to withdraw from competition to improve or injure the employment prospects of another; (6) giving an unauthorized preference or advantage to improve or injure the employment prospects of another; (7) nepotism; (8) reprisal for whistleblowing; (9) reprisal for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or an Inspector General; or refusing to obey an order that would require one to violate a law; (10) discrimination based on personal conduct that does not adversely affect job performance; (11) violating veterans' preference requirements; and (12) violating a law, rule or regulation implementing or directly concerning merit system principles at 5 U.S.C. § 2301. It should be noted that these are general summaries of the prohibited personnel practices defined at 5 U.S.C. § 2302(b). That section should be consulted for fuller descriptions of the elements of each of these violations.

⁹ It should be noted that complaints frequently contain more than one type of allegation. Table 2, however, records all allegations received in a complaint as a single matter.

¹⁰ 5 U.S.C. § 1213(a).

¹¹ 5 U.S.C. § 1213(c)-(e).

¹² For callers with hearing/speech disabilities, all OSC telephone numbers listed here may be accessed using TTY by dialing the Federal Relay Service at (800) 877-8339.

¹³ 5 C.F.R. § 1800.1.

U.S. Office of Special Counsel

**1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
202-254-3600
or
1-800-872-9855**

The U.S. Office of Special Counsel (OSC) is an independent investigative and prosecutorial agency and operates as a secure channel for disclosures of whistleblower complaints and abuse of authority. Its primary mission is to safeguard the merit system by protecting Federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing. OSC also has jurisdiction over the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act.

**Internet Web Site:
www.osc.gov**