

ANNUAL REPORT TO CONGRESS



U.S. OFFICE OF SPECIAL COUNSEL
FISCAL YEAR 2005



REPORT TO CONGRESS

U.S. OFFICE OF SPECIAL COUNSEL
FISCAL YEAR 2005



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 J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit, in accordance with 5 U.S.C. § 1218, Fiscal Year 2005 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

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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* (7 U. Pa. J. Lab. & Emp. L. 225 (2005)), 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 lives with his wife, Catherine, and six of his seven children in Alexandria, Virginia. His oldest is a Corporal in the United States Marine Corps and is currently in his third tour of duty in Iraq.

MESSAGE FROM THE SPECIAL COUNSEL SCOTT J. BLOCH

This is OSC's 2005 Annual Report. We have provided case samples, statistics, graphical charts, and descriptions of changes in the agency. It is my hope that you will find this information informative.

We have made great progress in better protecting whistleblowers and safeguarding the merit system. We succeeded in our efforts at overall backlog reduction and reorganized the agency to better serve federal employees.

While OSC received much credit for resolving the cases in the backlog with full and fair resolution, the agency became subject to some criticism that Disclosure Unit (DU) cases were closed without adequate review. The DU cases resolved were primarily cases that had been identified as likely closures during the last two to three years, but had not been closed due to the focus on and volume of the several types of higher priority DU cases. To dissolve this criticism entirely, OSC invited a bipartisan group of Congressional staffers to visit OSC and review the case files and the processes used in resolving these cases, as well as PPP cases. The conclusion of the bipartisan investigation was that not a single case closed for lack of merit was found to have merit. After this investigation, OSC's successes in reducing the DU backlog and reducing the PPP backlog while increasing the internal rate of referral were commended in a congratulatory letter from the U.S. House of Representatives Committee on Government Reform (see letter below).

Having successfully reduced backlogs in the Complaints Examining Unit, the Hatch Act Unit, and the Disclosure Unit in Fiscal Year 2004, we tackled the Investigation and Prosecution Division (IPD) backlog in FY 2005 and enjoyed similar success. In FY 2005, after thorough review, OSC processed 1774 Prohibited Personnel Practice cases, including 576 "old" cases, some of which had been in the IPD for two, three and four years. The reduction of this IPD backlog puts the agency in an excellent position at the start of FY 2006.

Several studies, including one by GAO, had revealed that OSC was clogged with redundant layers of bureaucratic review that stifled processing times and contributed to case backlogs. In January of 2005, OSC initiated a reorganization of the agency. We eliminated a system of three co-equal investigation and prosecution units doing the same work and consolidated them into one Investigation and Prosecution Division. We added a new field office in Detroit, which is already doing an excellent job of providing assistance to Federal employees in the Northern and Midwestern portions of the country. We created a Document Control Branch to handle the records management needs of the agency. This new branch, along with the Human Resources, Information Technology, Budget, Finance, and Procurement functions were all successfully consolidated from various disparate parts of the agency into a newly created Management and Budget Division. This streamlining of the administrative functions has assisted the agency's management, as well as the individual attorneys and investigators. OSC also created a Customer Service Unit to better handle inquiries from federal employees with general questions about the claims process or specific questions about their own open claims at OSC. We also "flattened" the agency by changing processes to enable swifter decision-making by experienced employees and first-line managers.

Fiscal Year 2005 also saw Congress expand OSC's role in enforcing the law that protects the

employment and reemployment rights of persons who serve in the uniformed services. Under a demonstration project that took effect in February 2005, OSC has exclusive investigative authority over certain federal sector claims brought under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). I am very proud of what we have achieved in a very short period of time. In the eight months remaining in the fiscal year since the inception of the demonstration project, OSC received 111 USERRA cases for investigation and obtained corrective action in 28% of the cases completed. For example, OSC had agencies appoint service members to jobs with back pay where they had been wrongfully denied initial employment because of their military service obligations and secured reemployment with full benefits — such as within grade increases in salaries and career ladder promotions — for returning service members. OSC will continue to vigorously enforce USERRA under the demonstration project for the benefit of the country's brave service members.

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May 17, 2005

VIA FACSIMILE

Mr. Scott Bloch
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Dear Mr. Bloch,

The Committee on Government Reform and has recently reviewed your efforts to respond to the findings of Government Accountability Office (GAO) 04-36. In that report, the GAO noted that the Office of Special Counsel (OSC) demonstrated a chronic inability to process cases in a timely manner which inevitably led to case backlogs. The report called for the OSC to develop a comprehensive strategy to address these recurrent failures.

We appreciate the professional seriousness with which you approached these recommendations and reduced the existing backlogs in the year following this report. Unfortunately, this activity, while beneficial to whistleblowers, was regarded with suspicion by activists who claim to work on behalf of whistleblowers.

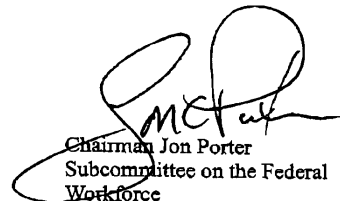
At your invitation, a bipartisan group of congressional staff visited your offices on three occasions to review closed cases. The staff reviewed any closed case they requested, and you provided access to decision makers for questions and policy discussions. At the end of this period of review, one previously critical Senate staffer informed us "we have satisfied ourselves that they did not throw any folders into the Potomac." We are also satisfied that your hard work – and smart work – has resulted in a more responsive Office of Special Counsel.

We want to congratulate you on your efforts to improve the services you provide to whistleblowers. We continue to be impressed with the sincerity and pragmatism with which you and all your staff approach your jobs. You are providing a great service to the American people and the Federal government by protecting whistleblowers from illegal reprisals.

Sincerely,



Chairman Tom Davis
Committee on Government Reform



Chairman Jon Porter
Subcommittee on the Federal
Workforce

cc. Rep. Henry Waxman, Ranking Member

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 by federal whistleblowers of government wrongdoing. Finally, OSC enforces federal employment rights secured by the Uniformed Services Employment and Reemployment Rights Act.

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 (MSPB). 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 (USERRA) 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, which created the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the MSPB.

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

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 2005 (with comparative data for the previous fiscal year). 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 Summary of Overall Agency Matters^a and Actions		
	FY 2004	FY 2005^b
Matters pending at beginning of fiscal year	1,921	995
New matters received	2,754	2,684
Matters closed	3,680	2,685
Matters pending at end of fiscal year	995	994
Corrective actions obtained	112	93

^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

Budget and Staffing

During FY 2005, OSC operated with a budget of \$15,325,000, and a full-time equivalent personnel staff of approximately 113 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 FY2005 include the Immediate Office of the Special Counsel (IOSC), five operating units/divisions and five supporting offices explained in detail below.

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

Complaints Examining Unit. This is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction.⁶ This Unit is responsible for screening up to 1,700 prohibited personnel practice cases per year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division (IPD) for further investigation that may lead to prosecution, corrective action, and/or disciplinary action.⁷

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.

Formerly three parallel units, staffed primarily by investigators and attorneys, the reorganization includes one IPD (comprised of four field offices, each with greater personal initiative and accountability) which conducts field investigations of matters referred after preliminary inquiry by the CEU. IPD 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 any litigation before the MSPB. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the MSPB. Finally, division investigators and attorneys also investigate alleged violations of the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act. However, under a new pilot program, most USERRA functions are now housed in a new USERRA unit in the Special Projects Unit to assure uniformity of policy, greater initiative, and accountability regarding the new pilot.

Hatch Act Unit. The unit issues advisory opinions to individuals seeking information about Hatch Act restrictions on political activity by federal, and certain state and local, government employees. The unit is also responsible for enforcing the act. It reviews complaints alleging a Hatch Act violation and either investigates and prosecutes, or refers the matter to the IPD. It also oversees Hatch Act matters assigned to the IPD.

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

Alternative Dispute Resolution Program. In selected cases referred by the Complaints Examining Unit for further investigation, an Alternative Dispute Resolution specialist 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.

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; processing of FOIA requests and appeals; policy planning and development; and management of the agency ethics program.

Management and Budget Division. This division provides administrative and management support services to OSC, in

furtherance of program, human capital, and budget decisions. Division also includes the Information Technology Branch, Human Resources Branch, Document Control Branch and Budget and Procurement branch. The purpose of this division is to put the administrative support functions under one authority.

Training Office. All new employees assigned to an operational unit receive training before case handling. All new managers and supervisors receive training on leadership and the drafting of managerial documents. Training also includes trial related training, cross training to help assist other units if or when they develop a backlog and other advanced, or specialized training as needed.

Customer Service Unit. This unit helps OSC staff better serve the public and federal employees and OSC operational units. Having specific personnel assigned for this purpose will help OSC gain a reputation of better customer service within the federal workforce. In the past, this function has been handled by rotating OSC staff to answer inquiries from the public or help with filing complaints and/or filling out forms.

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

Due to the backlog reduction effort in CEU during FY 2004, the number of complaints referred to the IPD for a field investigation in FY 2004 (244) spiked above all other fiscal years measured. In FY 2005, there were 198, which was higher than in FY 2002 and FY 2003.

The percentage of PPP cases processed in less than 240 days was down to 67.5% during FY 2005. This is understandable because FY 2005 was the year of the PPP backlog reduction in the IPD. After thorough review, many cases which had been in the IPD two or more years were processed during FY 2005. The obvious effect of this was an increase in the number processed in more than 240 days, which led to a lower percentage of cases processed in under 240 days.

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 2005⁹

Wrongful termination for Whistleblowing. The complainant alleged wrongful termination in violation of 5 U.S.C. § 2302(b)(8) and (b)(9) for whistleblowing and filing a union grievance. He had been forced to work overtime with no compensation and without proper approval. When he refused to drop the grievance, his supervisor threatened him with termination. Both parties agreed to OSC mediation and all issues were resolved in a timely manner.

TABLE 2 Summary of Prohibited Personnel Practice (PPP) Complaints Activity – Receipts and Processing			
	FY2003	FY2004	FY2005
Pending complaints carried over from previous fiscal year	594	653	524
New complaints received (Intake Unit)	1,791	1,964	1,771
<i>Total complaints:</i>	2,385	2,617	2,295
Complaints referred for field investigation	162	244	198
Complaints processed and closed	1,732	2,093	1,774
Processing times			
<i>Less than 240 days</i>	1,471	1,799	1,198
<i>More than 240 days</i>	261	294	576
Percentage processed in under 240 days	85%	86%	67.5%

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 2004, OSC obtained 4 stays of personnel actions through negotiation with agencies, or litigation at the MSPB.

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 five formal mediations of PPP matters during FY 2005 (compared to 18 in FY 2004). 100% of these five mediations were successful. There are two reasons contributing to the lower number of mediations which occurred in FY 2005:

1. The number of matters identified as

mediation-appropriate was 22 in FY 2005, lower than in previous years. This was due to a redesigned ADR program that is headed by an experienced SES career employee. Under this person, the ADR unit adopted a different operating philosophy. In the past, all cases were equally considered for mediation. Now, more specific criteria are applied concerning the merits of the case. The result was that the total number of cases considered mediation-appropriate has been lowered. In addition, more staff have become involved in mediation, have received mediation training, and have participated in successful mediation teams.

2. The other factor in this lower number of mediations is the acceptance by the complainant of OSC’s offer to mediate, which dropped from 68% in FY 2004 to 27% in FY 2005. OSC does not have control over whether complainants will agree to enter the mediation process. (See **Table 3** below).

Disclosure led to resignation. The complainant alleged that the Agency proposed her termination in violation of 5 U.S.C. § 2302(b)(8) and (b)(9), causing her to resign during her probationary period. She had previously disclosed travel fraud and claim reimbursement irregularities. Among those implicated in her disclosures were various high-level officials with responsibility for overseeing financial matters in the Agency. Some of the disclosures resulted in investigations by the Office of the Inspector General (OIG). She cooperated with the OIG during these investigations. The parties agreed to OSC mediation and all issues were resolved.

TABLE 3 Summary of Prohibited Personnel Practice Complaints Activity – Mediation Program

		FY2003	FY2004	FY2005
Matters identified before investigation as mediation-appropriate		43	82	22
Initial acceptance rates by parties	<i>Complainants</i>	82%	68%	27%
	<i>Agencies</i>	69%	64%	22%
Mediated and other resolutions		23	18	5
Resolution rate – OSC mediation program		92%	86%	100%

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 2005 through negotiation with the agency involved:

Nepotism. OSC secured disciplinary and corrective action in a case in which agency management officials violated nepotism laws and granted an unauthorized preference or advantage to certain applicants for vacant positions in an installation during the fall of 1999. Our investigation revealed that the selecting official completed job applications and advanced the candidacy of several relatives of agency officials and advocated for her own daughter’s employment. Our investigation also revealed that the selecting official’s supervisor and another Division Chief advocated for their respective daughters’ employment for one of the vacant positions. At OSC request, the agency suspended the selecting official for five days and her supervisor for three days, and gave the Division Chief an oral admonishment that will remain in his supervisory file for two years. The agency also agreed to provide Outreach training about prohibited personnel practices to relevant management officials.

Unauthorized Preference. OSC secured disciplinary and corrective action in a case in which a former Chief Administrative Law Judge (ALJ) of a federal agency granted an unauthorized preference to an employee. The ALJ selected the employee in 1998 as an Attorney Adviser and 18 months later, made inquiries with the agency's personnel about raising her grade. In April 2000, the servicing personnel office acted on the ALJ's request, retroactively converting the employee to a higher grade as of November 1998, 90 days after her original appointment and awarding her back pay. Four months later, the ALJ selected the employee for a management position for which she would not have been qualified without the retroactive upgrade.

The agency corrected all of the employee's SF-50's; initiated collection proceedings against her for the difference in when she would have received her promotions absent the unauthorized preference; and offered priority consideration for future similar positions to the other candidates for the management position.

Retaliation for Protected Activity. OSC secured corrective action in a case in which a federal employee alleged that he was given a directed reassignment from his duty station in Virginia, to California, in retaliation for having joined in a class action lawsuit against the agency. Prior to investigating the matter, OSC secured an agreement with the agency allowing the employee to remain in Virginia, which stayed in effect until he was ready to retire.

Reprisal for Protected Activity. OSC settled a case in which a former Security Specialist at a federal agency alleged that he was suspended for 14 days because he provided testimony in an IG investigation and released a draft IG report to the media. Additionally, the employee alleged that his security clearance was suspended and he was reassigned to a non-security clearance position at the agency because of his disclosure. As a result of our investigation and conclusion that the agency violated the whistleblower statute when it suspended the employee, in part, because of his protected disclosure of the unclassified draft IG report, the agency agreed to (1) rescind the 14-day suspension; (2) compensate the employee for lost pay plus interest; (3) restore all related benefits from the rescission of the 14-day suspension; (4) pay the employee \$2,000 in attorney's fees; and (5) expunge all records related to the employee's 14-day suspension from his employment files, with the exception of his Personnel Security file.

Reprisal for Protected Activity. In February of 2003, a supervisory systems accountant at a federal agency in Alabama, alleged that she was given a letter of reprimand in part because she disclosed to the Office of Inspector General (OIG) in May of 2002 that her two supervisors violated the Federal Acquisition Regulation and abused their authority. The OIG investigation substantiated five of complainant's thirteen allegations. Investigation revealed that her disclosures were a contributing factor in the decision by her first-line supervisor to reprimand her. The agency agreed to pull the letter of reprimand from the employee's Official Personnel File.

Conflict of Interest. OSC settled a case in which an employee alleged that the former Director of a federal agency committed a prohibited personnel practice when she noncompetitively hired another individual who was jointly and severally liable with the former Director on a \$261,600 promissory note secured by their personal residence - a \$2,885 monthly mortgage obligation. The former Director appointed this individual to a Supervisory Business Manager position. OSC investigated this matter as a possible violation of 5 U.S.C. 2302 § (b)(12). These regulations prohibit an employee from participating substantially in an official capacity in any matter in which, to her knowledge, she has a financial interest, if the matter will have a direct and predictable effect on that interest. 5 C.F.R. §§ 2635.402(a) and (c). OSC filed a disciplinary action complaint against the former Director, and she signed a settlement agreement in which she accepted a five-day suspension without pay.

Due Process Violation. OSC also settled a case in which a GS-13 attorney-advisor with a federal agency presently stationed overseas alleged that the agency violated his due process rights under federal law and agency regulations by initiating garnishment of wages for an alleged \$29,962.82 debt to the agency. The Complainant (Cp) alleged that the agency did not provide him the required opportunity to provide proof that he did not owe this debt.

According to our investigation, the agency initiated the garnishment without affording him due process rights in the federal regulations. Thus, we found reasonable grounds to believe that the wage garnishment violated 5 U.S.C. § 2302(b)(12) because the law and regulations violated implement merit principle § 2301(b)(2).

The agency agreed to stop Cp's wage garnishment (\$350 biweekly) and refunded Cp a total of \$14,542.57 and \$772.44 in interest.

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 highest numbers of favorable actions obtained by OSC during FY 2005¹. FY 2005 represented the end of the backlog reduction. The last backlog to be attacked and reduced was that of the Investigation and Prosecution Division. There are two reasons this IPD backlog reduction contributed to a lower number of total favorable actions in FY 2005:

- 1) The primary focus of the IPD was the backlog of older cases during FY 2005;
- 2) The majority of these older cases were not strong cases. In most instances, the cases were closed after thorough review.

FY 2006 will be the first year that the IPD will be able to focus primarily on cases received during the current fiscal. Therefore, we expect a higher number of favorable actions on PPPs in FY 2006.

Table 4, below, contains summary data (with comparative data for the three previous fiscal years) on all favorable actions obtained by OSC in connection with its processing in FY 2005 of whistleblower reprisal and other prohibited personnel practice complaints.

TABLE 4 Summary of Prohibited Personnel Practice Matters Activity – Favorable Actions				
		FY2003	FY2004	FY2005
Total favorable actions obtained (all prohibited personnel practices)	<i># of actions</i>	115	80	45
	<i># of matters</i>	83	65	45
Favorable actions obtained (reprisal for whistleblowing)	<i># of actions</i>	75	57	37
	<i># of matters</i>	75	49	37
Stays negotiated with agencies ^c		6	11	3
Stays obtained from Merit Systems Protection Board		1	1	1
Disciplinary actions negotiated with agencies		12	11	3
Corrective action complaints filed with the Board		0	1	1
Disciplinary actions obtained from the Board		1	0	1

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

HATCH ACT MATTERS

Overview

Under the Hatch Act, federal employees, employees of the District of Columbia (D.C.) government, and certain employees of state and local governments, are prohibited from engaging in certain types of political activity. The act, as amended in 1993, permits most federal and D.C. employees to take an active part in partisan political management and partisan political campaigns. Nevertheless, there continue to be important restrictions on political activity by federal employees, including prohibitions on partisan candidacy, solicitation of political contributions, and political activity while on duty. OSC issues Hatch Act advisory opinions upon request, enabling individuals to determine whether they are covered by the act, and whether any contemplated political activities are permitted or prohibited by the act.

OSC also receives and investigates complaints alleging past or current violations of the Hatch Act by government employees. In appropriate cases involving past conduct, OSC may send a warning letter, informing the employee about the act, and notifying the employee that engaging in future activity barred by the act will be considered to be a knowing and willful violation. In appropriate cases involving a current violation, OSC may send a cure letter, asking the employee involved to come into compliance with the act by resigning from his or her position, or by withdrawing from candidacy. If OSC determines that the violation warrants prosecution, a written complaint for disciplinary action will be filed with the Merit Systems Protection Board.

Advisory Opinions

During FY 2005, OSC issued approximately 2,558 advisory opinions in response to telephone and written inquiries, including e-mails.

Enforcement Actions

The following are examples of Hatch Act disciplinary action proceedings filed by OSC during FY 2005, and results obtained that year in cases filed earlier:

Disciplinary action against state or local employees who were candidates in partisan elections. In one complaint a Transportation Engineer with a state agency was charged with running in the 2001 election for Southington Town Council, in violation of the Hatch Act. In another complaint a Home Care Supervisor with a New York City agency was charged with violating the Hatch Act when he was a candidate in the 2004 election for New York State Assembly. In yet another case, a Child Support Enforcement Specialist with an agency in Hawaii was charged with being a candidate in the 2002 election for Hawaii State Representative, 35th District. Lastly, the Executive Director of a Lorain County agency was charged with violating the Hatch Act when he was a candidate in the 2004 primary election for Lorain County Commissioner.

Engaging in political activity on behalf of a Congressional candidate. OSC also filed a complaint for disciplinary action against an employee with a federal agency, charging that he violated the Hatch Act by engaging in political activity on behalf of a Congressional candidate while on duty and in the federal workplace. The employee sent an e-mail to over 300 agency employees inviting them to attend a "meet the candidate" event for Congressional candidate Tim Holden.

Federal employees sending politically partisan electronic mail messages while on duty. One complaint was against a federal employee who sent an e-mail message to about 22 coworkers. The message contained a letter purporting to be written by John Eisenhower, son of former President Eisenhower that states, among other things: " ... I intend to vote for the Democratic Presidential candidate, Sen. John Kerry"; " ... the word 'Republican' has always been synonymous with the word 'responsibility' ... [t]oday's whopping deficit of some \$440 billion does not meet that criterion."; "Sen. Kerry, in whom I am willing to place my trust, has demonstrated that he is courageous, sober, competent ... I will vote for him enthusiastically" Prior to forwarding the above-referenced e-mail, she added the following statement: "Some things to ponder....."

The other complaint also concerned a federal agency employee who sent an e-mail message titled, "Your Vote," to 27 people. The e-mail states, among other things: " ... our votes should be for the party that stands firm on morally and ethically correct issues as written in the [B]ible"; "Kerry claims he has morals and ethics ... American society under Kerry's command is frightening to even think about." The e-mail then states "Pass along the 'I VOTE THE BIBLE' button" and includes a small picture of the button. In addition, there is a picture of President Bush in front of an American flag with the statement "I VOTE THE BIBLE" superimposed on the picture.

Engaging in political activity on behalf of a political party. OSC also filed a complaint for disciplinary action against a federal attorney with a federal agency, charging that he violated the Hatch Act when engaged in political activity on behalf of a political party while on duty in his government office (e.g., using his government office equipment to receive and send more than 100 e-mails, draft documents and have telephone conversations in support of a political party and its candidates).

Soliciting, accepting, receiving political contributions. OSC also filed a complaint for disciplinary action against a federal employee, charging that he violated the Hatch Act's prohibition against soliciting, accepting or receiving political contributions. The employee was identified as the sender of a letter that was sent to approximately 144 people seeking political contributions for a local candidate, either by attending a reception or sending a check in an enclosed envelope. The candidate's campaign committee sent the letter, but the federal employee was aware of and agreed to the contents of the letter before it was sent.

NJ Candidacy. Also, in December 2004, the Merit Systems Protection Board found that a New Jersey state employee's candidacies, in 2003 and 2004, for Member of the Board of the Chosen Freeholders in Cumberland County, New Jersey, violated the Hatch Act and that her removal was warranted.

MD candidacy. Similarly, in February 2005, the Merit System Protection Board found that a civilian employee of a federal agency violated the Hatch Act, which warranted his removal, when he was candidate in the 2002 partisan election for the Maryland House of Delegates.

Candidate in Partisan Elections. For example, in December 2004, OSC reached a settlement agreement with a state employee with a New York agency, who was charged with being a candidate in the partisan elections for Rochester City Council and New York State Senate, 56th District, in 2001 and 2002, respectively. As part of the agreement, the state employee admitted that she was covered by the Hatch Act and that she violated the Act in 2001 and 2002 by her candidacies in partisan elections. As a penalty for her violations of the Act, the employee agreed that she would resign from FLDDS effective January 7, 2005, and would not seek or accept employment with the State of New York for 18 months.

Soliciting Political Contributions. In March 2005, OSC reached a settlement agreement with the former Chief of Staff of a District of Columbia agency. The official was charged with violating the Hatch Act during a campaign rally on August 8, 2002, by specifically asking D.C. employees, many of whom were his subordinates, to volunteer to work on a reelection campaign. Additionally OSC's petition charged that, in or about May 2002, the official personally and/or through subordinates, solicited political contributions by asking individuals to purchase tickets to the Kennedy-King dinner, a political fundraiser for the District of Columbia Democratic State Committee.

OSC filed its petition seeking his removal from the District of Columbia on July 9, 2004. He voluntarily resigned as Chief of Staff effective August 1, 2004. Under the terms of the settlement agreement, he agreed not to seek or accept employment with the District of Columbia for a period of two years, beginning August 1, 2004.

Table 5, below, contains FY 2005 summary data (with comparative data for the two previous fiscal years) on OSC advisory and enforcement activities pursuant to the Hatch Act. In general, OSC's Hatch Act Unit receives more requests for advisory opinions and complaints in election years. Even though FY 2005 was not an election year, the Hatch Act Unit received more requests for written advisory opinions (191) than in FY 2004 (176). In addition, the Hatch Act Unit filed more disciplinary action complaints with MSPB (11) than in FY 2004 (7) and obtained more disciplinary actions (8) than in FY 2004 (2).

TABLE 5 Summary of Hatch Act Advisory Opinion and Complaint Activity				
	FY2003	FY2004	FY2005	
Advisory opinions issued	3,284	3,913	2,558	
New advisory requests received (written)	159	176	191	
New complaints received	197	248	245	
Warning letters issued	43	93	87	
Complaints processed and closed in fiscal year	201	357	310	
Corrective actions taken by recipients of cure letters:	Withdrawal from partisan races	18	17	4
	Resignation from covered employment	7	8	10
	Other	0	6	3
	Total:	25	31	17
Disciplinary action complaints filed with the Merit Systems Protection Board	4	7	11	
Disciplinary actions obtained (through negotiation or ordered by the Board)	4	2	8	
Complaints pending at end of FY	254	146	79	

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 2005, 485 new matters were received in the Disclosure Unit. There were 19 Agency referrals in FY 2005.

See **Table 6** below, which contains FY 2005 summary data (with comparative data for the two previous fiscal years) on OSC receipts and dispositions of whistleblower disclosures.

TABLE 6 Summary of Whistleblower Disclosure Activity – Receipts and Dispositions^d				
	FY2003	FY2004	FY2005	
Pending disclosures carried over from previous fiscal year	556	690	98	
New disclosures received	535	572	485	
<i>Total disclosures on hand at start of the fiscal year:</i>	1,091	1,262	583	
Disclosures referred to agency heads for investigation and report	11	18	19	
Agency head reports sent to President and Congress	23 ^e	8	16	
Results of agency investigations and reports	<i>Disclosures substantiated in whole or in part</i>	13	8	16
	<i>Disclosures unsubstantiated</i>	10	0	0
Disclosures processed	<i>In more than 15 days</i>	290	1,019 ^f	237
	<i>In less than 15 days</i>	111	135	236
Percentage of disclosures processed in less than 15 days	28%	12%	50%	
Disclosure matters processed and closed	401	1,154 ^g	473	

^d 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.

^e This number includes reports on disclosures referred to agency heads by OSC before FY 2003.

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

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

Public Servant Award Ceremony

Special Counsel Scott J. Bloch presented the Special Counsel's Public Servant Award to Ms. Anne Whiteman on October 6, 2005, for disclosing serious operational errors relating to air traffic control processes used at Dallas Fort Worth International Airport.

"...society needs these lamplighters of integrity who are willing to sacrifice their comfort for the common good."

— Special Counsel Scott Bloch, Public Servant Award Ceremony in Dallas, TX

The IG from the Department of Transportation investigated her allegations, and confirmed that errors had been covered up, which represented safety deficiencies. The FAA is now routinely reviewing airport procedures for compliance. Ms. Whiteman was not only selected due to the gravity of the danger which the erroneous procedures represented to the public, but also for the courage she displayed in repeating the charges until she was listened to and had the charges corroborated.



Ms. Whiteman and the Special Counsel



The award presented to Ms. Whiteman

Results of Referrals to Agency Heads

Violation of Security Regulations at Agency Facility. OSC referred allegations to the Secretary of the agency that a lead dispatcher violated security procedures and regulations by admitting individuals to highly sensitive areas of the agency solely on voice recognition. The whistleblower alleged that the dispatcher instructed other employees to admit individuals on voice recognition and that he frequently turned off the National Crime Information Center (NCIC) printer in the agency's Communication Center, preventing the agency from receiving contemporaneous information on security threats and criminal activity from law enforcement agencies and the Department of Homeland Security. Finally, the whistleblower alleged that the dispatcher made violent and threatening statements to the whistleblower and other employees.

The agency's investigation partially substantiated the whistleblower's allegations finding that the dispatcher failed to follow the regulations for admitting individuals in violation of agency regulations. The report stated there were significant concerns with the dispatcher's behavior prior to OSC's referral. In response to the investigation, the agency ordered refresher training on access procedures for protected areas and on the proper operation of the NCIC printer. The agency also made significant management changes, undertaking a comprehensive reorganization which included converting the position of Chief, Agency Operations Division, from a military to a civilian position and hiring a civilian supervisor. The supervisor and Agency Operating Division Chief in place during this investigation were stripped of their responsibilities and under the reorganization will not hold supervisory positions. Referred May 2003; closed May 2005.

Management Involvement in Kickback Scheme Excused by Agency. The whistleblowers disclosed to OSC that numerous employees of the Border Patrol, including some management personnel, were engaged in extensive kickback and fraudulent reimbursement schemes in violation of federal law. The whistleblowers initially made a disclosure to the agency's Office of Inspection General (OIG), and the OIG published a report substantiating many of their allegations. The OIG recommended that the agency take "strong and immediate action" against the employees involved in the wrongdoing. Nearly a year after the OIG made its recommendation, however, OSC discovered that the agency decided to forego disciplinary action. Given the OIG's recommendation, the evident seriousness of the wrongdoing identified in the OIG report and agency's refusal to take disciplinary action, OSC referred the whistleblowers' allegations to the Secretary of the agency for formal investigation by the agency. The agency filed two reports with OSC detailing its investigation into the whistleblowers' allegations. These reports uncritically accepted the assertions of management personnel that they were unaware of any wrongdoing. OSC's analysis of the agency's reports concluded that the agency's investigation of management appeared pretextual, at best, and that the agencies involved "failed to conduct a thorough investigation." In response to the press coverage generated by this analysis, the agency publicly committed to thoroughly reinvestigate the whistleblowers' allegations. Referred November 2003; closed May 2005.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

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 2005, OSC had 12 pending USERRA cases. It received 30 referrals from VETS during the fiscal year. OSC filed five USERRA actions before the MSPB. **Table 7**, below, sets forth the FY 2005 data concerning OSC's receipt and disposition during FY 2005 of USERRA cases (with comparative data for the two previous fiscal years).

TABLE 7 Summary of USERRA Referral Activity			
	FY2003	FY2004	FY2005
Pending referrals carried over from previous fiscal year	8	4	12
Referrals received from DOL ^h during fiscal year	7	14	30
<i>Pending Referrals closed</i>	11	6	36
Pending referrals at the end of the fiscal year	4	12	6
Closed cases where corrective action was obtained (including corrective actions obtained in matters referred to litigation)	3	1	6
Closed cases where no corrective action was obtained	8	5	25
Closed cases referred for litigation ⁱ	0	0	5
Litigation closed; no corrective action obtained	n/a	n/a	n/a
Litigation closed; corrective action obtained	n/a	n/a	3
Litigation pending	n/a	n/a	2

^h Department of Labor

ⁱ No filings before the MSPB occurred prior to Special Counsel Scott J. Bloch's tenure in the 10-year history of the statute.

USERRA Filings with the MSPB

Several examples of cases OSC filed with the MSPB in FY 2005 are described below:

Termination due to military absence.

Claimant, a full-time staff nurse serving under a temporary appointment, alleged that the agency violated USERRA by terminating her employment because she was excessively absent from the work place due to her military service obligations. The agency had taken the position that claimant's position was not covered under USERRA. USERRA's antidiscrimination provisions, however, cover all types of appointments. OSC filed an action before the MSPB and successfully obtained full corrective action for claimant, namely: back pay (approximately \$53,000); the expunging of all negative documentation relating to her termination; and issuance of an SF-50 reflecting that claimant resigned from the agency. Additionally, the agency agreed to undergo USERRA training.

Dismissal from training due to military absence. Claimant had been accepted into a federal agency's 16-week Associate Supervisory training program (ASP). Enrollees who successfully complete the ASP are noncompetitively promoted to supervisory positions. Over the first eight weeks of the ASP, claimant earned excellent performance evaluations and attained a grade point average of 3.65 on a 4.0 scale. While enrolled in the ASP, however, claimant performed reservist duties and was absent from employment and unable to attend the ASP on Saturdays. The agency expressed concern over the fact that claimant's military duties caused him to miss the ASP every Saturday. Moreover, the agency believed there would be an undesirable adverse affect on agency morale when claimant, after completing the program, would be assigned to a junior supervisory position but would be unavailable to work on Saturdays -as is expected of new supervisors- because of his reservist duty. Thus, it was decided to dismiss claimant from the ASP. Because the evidence established that claimant's military service obligations were a substantial and motivating factor in his dismissal from the ASP, OSC determined that the agency violated USERRA. OSC filed a USERRA action before the MSPB and successfully resolved the case with claimant accepting a large cash settlement.

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 changes the manner in which certain federal sector USERRA claims are investigated. Starting on February 8, 2005, pursuant to a demonstration project established by section 204 of the VBIA, OSC rather than VETS will investigate USERRA claims filed by federal employees (and applicants for federal employment) whose social security number ends in an odd-numbered digit. In addition to those claims, OSC will receive and investigate all federal sector USERRA claims containing a related prohibited personnel practice allegation over which OSC has jurisdiction.

Under the demonstration project, VETS will continue to investigate even numbered claims that do not include a related prohibited personnel practice allegation. VBIA does not change the manner in which non-federal sector USERRA claims (i.e., those involving state and local governments and private employers) are received and investigated by VETS. Likewise, OSC will continue to perform its prosecutorial function under the demonstration project.

Table 8, below, sets forth the FY 2005 data concerning OSC's receipt and disposition during FY 2005 of USERRA cases (under VIBA, P.L. 108-454; OSC started receiving cases in Feb. '05)

TABLE 8 Summary of USERRA Demonstration Project Activity^j	
	FY 2005
Pending referrals carried over from previous fiscal year	0
Cases opened	111
Cases closed	57
Cases pending at the end of the fiscal year	54
Closed cases where corrective action was obtained	16
Closed cases where no corrective action was obtained	38
Closed cases referred for litigation	0

^jUnder VIBA, P.L. 108-454; OSC started receiving cases in Feb. 2005.

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.

In FY 2005, OSC presented 42 outreach programs during FY 2005. In addition, some agencies are using the improved educational materials on OSC's website and doing their own internal education programs. In FY 2005, OSC signed an agreement with the federal GoLearn project, which makes outreach style training available online for the federal workforce, making it possible to reach thousands more federal employees at a fraction of the cost of in-person outreach.

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 2006, OSC surveyed individuals whose complaints were closed in FY 2005. Persons with Prohibited Personnel Practice (PPP), Hatch Act (HA) and USERRA cases were surveyed. 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 16% 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. For example, while approximately 4% of PPP complainants who took the survey received the result they desired, an average of 20% report satisfaction with the service provided by OSC. This means that 16% of survey respondents were willing to admit appreciation for the level of service provided by OSC, even though their case was closed.

Of those individuals who sought OSC Hatch Act Advisory Opinions, over 67% of them were satisfied or very satisfied (see Hatch Act Results in Appendix C). All FY 2005 survey questions and response tallies are included in Appendices A-D.

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-2003.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

ANNUAL SURVEY PROGRAM FY 2005

FY 2005	
Number Mailed	1,805
Number Returned	287
Response Rate	16%

What was the nature of your correspondence to OSC? (Please choose only one)	
Response Options	FY 2005
You filed a complaint concerning a Prohibited Personnel Practice	229
You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity)	42
Your case involved a USERRA complaint	16

APPENDIX B

FY 2005 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 2005
Yes	41
No	165
Do not recall	20
Never employed by a federal agency	3

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

Response options	FY 2005
Yes	9
No	220

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

Response options	FY 2005
Yes	118
No	102

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 2005
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	14
No personnel action taken by the agency involved	15
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.	11
Insufficient proof of connection between your disclosure and the personnel action involved in your complaint	31
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	15
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	33
You or OSC settled the matter with the agency involved	4
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)	7
You withdrew your complaint	0
Other	45
Do not recall	14

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 2005
Yes	55
No	135
Have not decided whether to file	29

6. Did you ask for the same relief that you sought from OSC?	
Response Options	FY 2005
Yes	48
No	6
Do not recall	2

7. Were you successful at the MSPB in obtaining the same result that you sought from OSC?	
Response Options	FY 2005
Yes	4
Partially	3
No	27
Appeal pending	14

8. If the answer [to the previous question] was “yes” or “partially,” how did you obtain that result?	
Response Options	FY 2005
Settlement	4
Decision after hearing	0
Other	3

9. What reason did OSC give for closing your complaint without obtaining the result that you Desired? (Check all that apply)	
Response Options:	FY 2005
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	13
No personnel action taken by the agency involved	4
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint	15
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	39
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	1
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	0
Closed for further action on discrimination allegations through EEO processes	6
Resolved through OSC's Mediation Program	0
Other	38
Do not recall	10

10. How would you rate the service provided by OSC in each of the following areas?						
		Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	FY 2005	22	47	45	36	79
<i>Oral communications</i>	FY 2005	15	29	52	36	97
<i>Written communications</i>	FY 2005	14	35	17	56	107
<i>Timeliness</i>	FY 2005	20	44	42	41	82
<i>Results</i>	FY 2005	5	8	12	33	171

APPENDIX C

FY 2005 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 2005
The OSC opinion advised that the person in question was free to carry out his or her planned political activity.	22
The OSC opinion advised that the person in question should not continue his or her planned political activity.	20

2. How would you rate the service provided by OSC in the following areas? OSC in the						
Response Options	Fiscal Year	<i>Very satisfied</i>	<i>Satisfied</i>	<i>No opinion / inapplicable</i>	<i>Dissatisfied</i>	<i>Very dissatisfied</i>
Courtesy	FY 2005	21	9	5	1	6
Clarity Written Communications	FY 2005	21	9	2	3	7
Timeliness	FY 2005	13	15	1	4	9
Results	FY 2005	17	8	2	3	12

APPENDIX D

FY 2005 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 2005
Yes	0
No	14
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 2005
Yes	3
No	13

3. What reason did OSC give for closing your USERRA case? (Check all that apply.)	
Response options	FY 2005
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	0
You declined corrective action offered by the agency involved	1
Insufficient evidence that the personnel action involved in your complaint violated USERRA	5
You or OSC settled the matter with the agency involved	0
You withdrew your complaint	1
Other	8
Do not recall	0

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 2005
Yes	4
No	5
Do not recall	4

5. Did you ask for the same relief that you sought from OSC?	
Response options	FY 2005
Yes	4
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 2005
Yes	0
Partially	0
No	2
Appeal pending	2

7. If the answer to previous question was “Yes” or “Partially,” how did you obtain that result?	
Response options	FY 2005
Settlement	0
Decision after hearing	0
other	0

8. How would you rate the service provided by OSC in each of the following areas?						
		Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	FY 2005	6	0	5	0	5
<i>Oral communications</i>	FY 2005	4	2	2	2	6
<i>Written communications</i>	FY 2005	4	0	2	2	8
<i>Timeliness</i>	FY 2005	3	1	3	2	7
<i>Results</i>	FY 2005	4	1	1	2	8

APPENDIX E

ACRONYMS

ADR	Alternative Dispute Resolution
ALJ	Administrative Law Judge
CEU	Complaints Examining Unit
CY	Calendar Year
DOL	Department Of Labor
DOT	Department of Transportation
DU	Disclosure Unit
FAA	Federal Aviation Administration
FY	Fiscal Year
HA	Hatch Act
HAU	Hatch Act Unit
IPD	Investigation and Prosecution Division
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
OSC	Office of Special Counsel
PPP	Prohibited Personnel Practice
SPU	Special Projects Unit
SSA	Social Security Administration
USC	Unites States Code
USERRA	Uniformed Services Employment and Reemployment Rights Act
VETS	Veterans Employment and Training Services
WPA	Whistleblower Protection Act

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.

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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.

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