
**A Report to Congress
From The
U.S. Office Of Special Counsel
For
Fiscal Year 1998**



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



The Special Counsel

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

I herewith respectfully submit to the Congress, in accordance with 5 U.S.C. § 1218, the Annual Report from the Office of Special Counsel for Fiscal Year 1998. As is customary, a copy of this report will also be sent to each Member of Congress, along with copies of our recently updated brochure "The Role of the Office of Special Counsel," which should be of assistance to Members and their staffs.

Sincerely,

A handwritten signature in cursive script that reads "Elaine Kaplan".

Elaine Kaplan

Enclosures

U.S. OFFICE OF SPECIAL COUNSEL



BIOGRAPHY OF ELAINE KAPLAN SPECIAL COUNSEL

On May 8, 1998, Elaine Kaplan was sworn in to serve a 5 year term as Special Counsel of the U.S. Office of Special Counsel (OSC), in a ceremony officiated by the Honorable Patricia M. Wald, Circuit Judge of the U.S. Court of Appeals for the D.C. Circuit. Ms. Kaplan was nominated for the position of Special Counsel by President Clinton in November of 1997, and was unanimously confirmed by the Senate in April of 1998.

Ms. Kaplan came to OSC with extensive experience litigating employment-related issues before federal courts and administrative tribunals. Prior to her appointment as Special Counsel, Ms. Kaplan served as Deputy General Counsel of the National Treasury Employees Union (NTEU), where she represented the interests of 150,000 employees in the areas of civil liberties, administrative law, racial and sexual discrimination, and labor law. During her thirteen years at NTEU, Ms. Kaplan briefed and argued dozens of cases at all levels of the federal courts on behalf of the union and the federal employees it represents. Many of the cases in which Ms. Kaplan participated resulted in important precedent setting decisions, including among others, National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989)(the first Supreme Court decision addressing Fourth Amendment implications of urinalysis drug-testing in the public workforce) and National Treasury Employees Union v. United States, 115 S.Ct. 1003 (1995)(which struck down on First Amendment grounds the statutory “honoraria ban” as applied to federal employees).

Ms. Kaplan began her legal career in 1979 at the U.S. Department of Labor, Office of the Solicitor, where she worked as a staff attorney in the Division of Employee Benefits. In 1982, Ms. Kaplan was selected to serve on the staff of the newly created Division of Special Appellate and Supreme Court Litigation, which was established to handle the Department’s most significant appellate cases and all of its Supreme Court work. She subsequently held the position of staff attorney at the State and Local Legal Center, where she drafted amicus briefs on behalf of state and local governments for submission to the United States Supreme Court.

Ms. Kaplan, who is a native of Brooklyn, New York, received her undergraduate degree from the State University of New York at Binghamton and her law degree from the Georgetown University Law Center.

TABLE OF CONTENTS

	PAGE
BIOGRAPHY OF THE SPECIAL COUNSEL.....	1
INTRODUCTION AND SUMMARY	2
THE OFFICE OF SPECIAL COUNSEL	3
Statutory Background	3
OSC’s Mission.....	4
OSC’s Internal Organization.....	4
Case Processing Procedures.....	5
Prohibited Personnel Practices.....	5
Complaints Examining Unit	5
Investigation Division.....	6
General Law and Litigation Unit	6
Hatch Act Unit	7
Disclosure Unit	7
Outreach Program	7
OVERVIEW OF OSC OPERATIONS	8
Budget and Staffing	8
Prohibited Personnel Practice Matters	8
Receipts and Investigations.....	8
Enforcement Actions	9
Favorable Actions Achieved.....	10
Corrective Actions	11
Disciplinary Actions	13
Merit Systems Protection Board Stays	14
Hatch Act Matters	17
Overview of Jurisdiction.....	17
Advisory Opinions.....	18
Violations and Enforcement	18
Disciplinary Actions	19
Uniformed Services Reemployment Rights.....	19
Whistleblower Disclosures	20
Results of Referrals.....	21
Section 1213(c) Reports.....	21
Section 1213(g).....	21
Disclosure Unit Matters	21

ANNUAL SURVEY PROGRAM.....	23
LEGISLATION	24
Pending Appropriations	24
Reauthorization of the Office of Special Counsel	24
FURTHER INFORMATION	24
OSC Publications	24
Prohibited Personnel Practice Complaints.....	25
Whistleblower Disclosures	25
Hatch Act Questions	25
Outreach Programs.....	26
OSC Online.....	26
 SUPPORTING TABLES	
Table 1: Summary of Prohibited Personnel Practice Matters.....	10
Table 2: Summary of Whistleblower Reprisal Matters	11
Table 3: Allegations Contained in Matters Received During FY 1998.....	16
Table 4: Allegations Contained in Matters Referred for Field Investigation During FY 1998	17
Table 5: Summary of Hatch Act Matters.....	18
Table 6: Summary of Disclosure Matters	21

I. INTRODUCTION AND SUMMARY

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Under the Civil Service Reform Act (CSRA) and the Whistleblower Protection Act (WPA), the OSC's primary mission is to safeguard the merit system in federal employment by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. The OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. Finally, the OSC facilitates disclosures of wrongdoing in federal government by operating a secure channel for whistleblowers.

FY 1998 has been a transitional year for OSC, with the arrival of a new Special Counsel, Elaine Kaplan, in May 1998. Shortly after taking office, Special Counsel Kaplan conducted an intensive review of the practices and procedures followed by each of the OSC programs and support units. The review focused on eliminating existing procedural and systemic inefficiencies, with an eye towards positioning OSC to more aggressively enforce the statutes within its jurisdiction and to conduct more systematic and extensive outreach and education of federal employees.

As a result of the review, a number of significant program deficiencies were highlighted, foremost among them a significant backlog of matters pending at the agency. The backlog has resulted in unacceptably long delays in resolving complaints. It has also often made it extremely difficult for OSC staff to find the time to personally communicate with individuals who have filed complaints, particularly in early stages of complaint intake (which, for most complainants, represents their only contact with OSC).

The extended delays in processing at OSC, and the lack of ongoing communication with OSC's customers, have long been matters of grave concern to Congress. From the very beginning, as to disclosure matters, OSC has been under a statutory mandate to make its initial determination whether there is a "substantial likelihood" that the information constitutes wrongdoing covered under § 1213(a), within 15 days. 5 U.S.C. § 1213(b). In 1989, in the WPA, Congress also required OSC to periodically communicate at specific intervals with individuals who have matters pending before it. 5 U.S.C. §§ 1214(a)(1)(B) and (C). More recently, as part of its commitment to whistleblower protection, and in response to widespread criticism, in 1994 Congress imposed upon OSC a 240-day deadline for processing and investigation of prohibited personnel practice complaints, including complaints of reprisal for whistleblowing. 5 U.S.C. § 1214(b)(2)(A)(I). Indeed, whistleblowers also have the option, if their complaint is not processed within 120 days, of effectively withdrawing their complaint from OSC and going directly to the MSPB on their own with an Individual Right of Action (IRA). 5 U.S.C. § 1214(a)(3)(B).

As a result of the intensive program review led by Special Counsel Kaplan, several reforms have been devised and implemented to begin correcting these program weaknesses. The primary goal of these reforms is to establish more efficient case-handling procedures. Chief among these is the creation of teams within each of the operating units to more quickly identify meritorious cases, so that scarce resources can be devoted to these cases earlier.

During the period since the implementation of these case processing improvements, however, it has become clear that more meaningful reform of the deficiencies in OSC's operations, especially elimination of the case backlogs, is heavily dependent on increases in budget and staffing authority. Existing staff levels are simply inadequate to resolve the backlogs of cases that have existed for more than 5 years. Accordingly, Special Counsel Kaplan requested additional staff from the Office of Management and Budget (OMB) to begin to address the backlog issue. The Administration's Fiscal Year 2000 budget request proposes to increase OSC's staff by five full-time equivalents (FTEs). Should Congress approve the request, OSC will move from 91 FTEs to 96 FTEs to process the thousands of prohibited personnel practice complaints, Hatch Act and disclosure matters filed annually with OSC.

II. THE OFFICE OF SPECIAL COUNSEL

A. Statutory Background

The Office of the Special Counsel was established on January 1, 1979, by Reorganization Plan Number 2 of 1978. 5 U.S.C.A. App.1, § 204, at p. 471. The Civil Service Reform Act (CSRA) of 1978, effective on January 11, 1979, enlarged its functions and powers. Pub. L. No. 95-454, 92 Stat. 1111 (1978). The Office operated as the autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB) until 1989, enforcing the laws concerning prohibited personnel practices (PPPs) as well as the legal limitations on political activity by federal employees contained in the Hatch Act.

In March of 1989, Congress enacted the Whistleblower Protection Act (WPA) of 1989. Pub. L. No. 101-12, 103 Stat. 16 (1989). The WPA established the Office of the Special Counsel as an independent agency within the Executive Branch, separate from the MSPB, and it was renamed the United States Office of Special Counsel (OSC). Under the WPA, the OSC kept its basic investigative and prosecutorial functions and its role in litigating cases before the MSPB. The WPA also substantially amended the CSRA to enhance protections against reprisal for those employees who disclose wrongdoing in the federal government, and improve the ability of the OSC to enforce those protections.

Five years after passage of the WPA, Congress enacted the Office of Special Counsel Reauthorization Act of 1994. Pub. L. No. 103-424, 108 Stat. 4361 (1994). In response to widespread criticism concerning inordinate delays in the processing of complaints by OSC, Congress imposed a 240-day time limit on the agency, within which it is required to determine whether there are reasonable grounds for believing a prohibited personnel practice has been committed.¹ The 1994 legislation also added approximately 160,000 employees of the Veterans Administration and certain government corporations to coverage under the statutes administered

¹ In the 1994 legislation, Congress also imposed upon OSC a requirement that OSC's annual report list the number of "cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(I)." 5 U.S.C. § 1218. Although previous annual reports have not contained this information, the number of cases in which OSC did not meet the 240-day deadline in FY 1998 are listed *infra* at 9.

by OSC, as well as significantly broadening the definitions of the types of personnel actions covered under these statutes.² Finally, the 1994 legislation made federal agencies explicitly responsible for informing their employees of available rights and remedies under the WPA, and directed that OSC play a consultative role in that process. See 5 U.S.C. § 2302(c).

B. OSC's Mission

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

- investigating complaints of prohibited employment practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
- operating an independent and secure channel for disclosure and investigation of wrongdoing in federal agencies;
- providing advisory opinions on, and enforcing, the Hatch Act;
- protecting the reemployment rights of veterans under the Uniformed Services Employment and Reemployment Rights Act (USERRA); and
- promoting greater understanding of the rights and responsibilities of government employees under the statutes enforced by OSC.

C. OSC's Internal Organization

The Office of Special Counsel maintains its headquarters in Washington D.C., and has two field offices: one in Dallas, Texas, and one in Oakland, California. The agency is organized into four divisions: the Prosecution Division, the Investigation Division, the Planning and Advice Division, and the Management Division. During FY 1998, OSC operated under a ceiling of 91 FTEs.

² The "Uniformed Services Employment and Reemployment Rights Act" (USERRA), Pub. L. No. 103-353, 108 Stat. 3149 (1994) (codified at 38 U.S.C. 4301), also enacted in 1994, gave the OSC additional responsibilities. Among other provisions, the Act authorized the OSC, under certain circumstances, to represent a federal employee who is a veteran or reservist before the MSPB and the U.S. Court of Appeals for the Federal Circuit, if a federal agency has failed to reemploy that person in accordance with provisions of the law.

Further changes relating to veterans' reemployment rights were enacted by the Veterans' Employment Opportunities Act of 1998 (VEOA), Pub. L. No. 105-339 (Oct. 31, 1998). VEOA created a new prohibited personnel practice, § 2302(b)(11) which makes it improper to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if the taking (or failing to take) of such action would violate a veterans' preference requirement. The former § 2302(b)(11) was re-designated as § 2302(b)(12). As this change occurred after the close of FY 1998, references herein to 5 U.S.C. § 2302(b)(11) are to the former provision, which makes it a prohibited personnel practice to violate a law, rule or regulation implementing or concerning a merit system principle.

The Prosecution Division—which is one of the two program units responsible for ensuring the enforcement of the statutes under OSC’s jurisdiction—includes four sub-units: the Complaints Examining Unit, the Hatch Act Enforcement Unit, the Disclosure Unit, and the General Law and Litigation Unit. The majority of the staff of the Prosecution Division are housed in Washington, D.C.; there is one attorney from the Division assigned to the Dallas field office and one attorney in the Oakland field office.

The Investigation Division is the chief program unit responsible for investigating complaints referred after the preliminary inquiry by the Complaints Examining Unit. The majority of the staff of the Investigation Division are located in Washington, D.C.; seven work out of the Dallas field office and seven in Oakland.

The Planning and Advice Division is responsible for providing general legal advice and support to OSC staff, including EEO advice and legal advice regarding budgetary matters; strategic planning and policy; outreach and education; processing of FOIA and Privacy Act requests; and OSC’s ethics program. The Planning and Advice Division is located in the Washington, D.C. headquarters.

The Management Division is responsible for the administrative support functions of OSC, including budget and finance; personnel and procurement; information systems; and records management. The Management Division is located in the Washington, D.C. headquarters.

In addition to the four operating divisions, the Immediate Office of Special Counsel (IOSC) is responsible for policy making and the overall management of OSC, including congressional relations and public affairs.

D. Case Processing Procedures

1. Prohibited Personnel Practices

Most of OSC’s staff resources are devoted to the processing of complaints alleging the commission of prohibited personnel practices, including reprisal for whistleblowing. In general, such complaints are processed as follows:

a. Complaints Examining Unit (CEU): CEU receives all allegations of prohibited personnel practices. CEU performs an initial review of complaints to determine whether they are within OSC’s jurisdiction and whether further investigation is warranted. Complaints examiners usually make their determinations solely on the basis of the documentation and information submitted by complainants. Matters stating a potentially valid claim are referred by CEU to the Investigation Division. Where a matter is not referred for investigation, CEU provides the complainants with a written statement of reasons, to which they may respond. One reform measure added as a result of the management review referenced above is to offer complainants the option of a telephone conference to respond to a CEU pre-closure

letter. On the basis of the response, if any, CEU makes a determination whether to finalize its closure decision, or refer the matter to the Investigation Division.

b. Investigation Division: The Investigation Division conducts a thorough inquiry into matters referred by CEU. The investigations include in-depth interviews with complainants, witnesses, and the persons alleged to have committed the prohibited personnel practice(s), and review of all relevant documents. Investigations are conducted by investigators in consultation with attorneys from the Prosecution Division, using a team approach. While matters are pending in the Investigation Division, attempts may be made to negotiate settlements and obtain informal corrective actions to resolve the complainants' issues. Where a matter is not resolved informally, the investigator prepares a report or summary of investigation, which is transmitted to the Prosecution Division.

c. General Law and Litigation Unit: This unit, within the Prosecution Division, reviews completed investigations to determine whether the inquiry has established any violation of law, rule or regulation, and whether the matter warrants corrective or disciplinary action, or both.³ OSC attorneys generally first attempt to obtain resolution of complainants' issues informally. If a violation of law is found and informal resolution is not possible, the Special Counsel may refer the matter in writing to the agency head under 5 U.S.C. § 1214(b)(2)(B) with a recommendation for corrective action. If an agency declines to take corrective action, the Special Counsel may file a petition for corrective action with the MSPB under § 1214(b)(2)(C). If the Special Counsel determines that an apparent violation warrants disciplinary action, the OSC files charges against the offending employee under § 1215(a) and prosecutes the case before the MSPB.

Where an investigation discloses a violation of any law, rule or regulation not otherwise within the enforcement authority of the OSC, the Special Counsel sends a report of the OSC's findings to the agency head concerned under § 1214(e) for certification of any action to be taken on the matter. The OSC reports evidence of any possible criminal violations identified during an investigation to the Department of Justice pursuant to § 1214(d).

At any time during its processing of a case, the OSC may seek a stay of any personnel action if the available evidence provides reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice. The OSC may obtain a stay upon direct request to the agency concerned, or by filing a request for a stay with the MSPB under § 1214(b)(1). Also, the Special Counsel may, pursuant to § 1212(c), intervene as a matter of right or otherwise participate in any proceeding before the MSPB, except that the Special Counsel may not intervene in a proceeding brought under § 1221 or 5 U.S.C. § 7701 without the consent of the individual initiating the proceeding.

³ Corrective action seeks a remedy for any injury to the individual complaining employee, such as back pay or reinstatement, while disciplinary action seeks to impose discipline on the perpetrator of the prohibited personnel practice(s).

2. Hatch Act Unit

The Hatch Act Unit, a part of the Prosecution Division, is responsible for administration of the Hatch Act's restrictions on federal employee political involvement. Every year, the Unit provides well in excess of a thousand advisory opinions, enabling individuals to determine whether they are covered by the Hatch Act, and whether their contemplated activities are permitted under the Act. The Hatch Act Unit also enforces compliance with the Act, receiving complaints alleging Hatch Act violations, and, where warranted, referring the complaints to the Investigation Division for further inquiry. Depending on the severity of the violation, the Hatch Act Unit will either issue a warning letter to the employee, or bring a prosecution before the MSPB.

3. Disclosure Unit

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

E. Outreach Program

In 1994, Congress specifically directed federal agencies to take steps, in consultation with OSC, to educate employees about their rights under Chapters 12 and 23 of Title 5. See 5 U.S.C. § 2302(c). Available information indicates that this statutory mandate has been largely disregarded by agencies, resulting in considerable lack of knowledge among federal employees and their managers about, most notably, the laws proscribing whistleblower retaliation. Accordingly, as part of the intensive management review conducted by the Special Counsel referred to above, OSC's outreach program is in the process of being considerably strengthened. An internal working group was formed to design and oversee the implementation of a strategic approach to OSC outreach program activities. As a first step, an outreach specialist has been hired to assist in planning and implementing the program.

Already, key pieces of a stronger program are either completed or being developed:

- OSC's basic informational brochure—"The Role of the U.S. Office of Special Counsel"—has been updated and substantially revised.
- OSC's Internet Web site has been extensively overhauled and updated, and moved in-house for more direct access. A new and simpler address—www.osc.gov—is in operation. The new Web site also contains comprehensive information on agency operations and, for the first time, complaint forms which can be downloaded. Since the re-design, the Web site has been much more heavily used.
- The outreach specialist is overseeing the development of improved educational materials, and coordination with agencies and employee organizations to ensure that those materials are widely available for employee training programs.
- The outreach specialist is developing a coordinated program through which OSC personnel can assist agencies in conducting their own training.

During FY 1998, OSC's outreach efforts resulted in OSC staff participation in 44 briefings and seminars.

III. OVERVIEW OF OSC OPERATIONS

A. Budget and Staffing

During Fiscal Year (FY) 1998, OSC operated with a budget of \$8.45 million, and the agency's full-time equivalency (FTE) personnel ceiling was 91.

B. Prohibited Personnel Practice Matters

1. Receipts and Investigations

During FY 1998, OSC received 1,721 new matters alleging prohibited personnel practices (PPPs) with 3,400 separate allegations. Of the 1,938 matters processed by CEU in FY 1998, OSC lacked jurisdiction in 299 of the matters (or 15.4% of the total matters processed), leaving 1,639 matters (84.6%) in which the agency was authorized by statute to conduct an inquiry. Following CEU review, 260 matters were referred for field investigation (15% of the matters over which OSC had jurisdiction). In addition, following initial review and inquiry, CEU closed 1,678 matters because there was insufficient basis for further OSC action, or because of satisfactory resolution of an employee's complaint during the initial review. The types of PPP allegations received in FY 1998 and the types of PPP allegations referred for field investigation are included in Tables 3 and 4 on pages 16 and 17.

In 1994, Congress imposed upon OSC a requirement that OSC's annual report list the number of "cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(I)." 5 U.S.C. § 1218. During FY 1998, 244 prohibited personnel practice cases were closed after pending at OSC for longer than 240 days (12.7% of the total number of 1,918 prohibited personnel practice complaint closures during FY 1998). In addition, at the end of FY 1998, 120 of the pending prohibited personnel practice cases (17.5% of the total of 685 cases pending at the close of FY 1998) had been open for longer than 240 days.

2. Enforcement Actions

Enforcement actions are cases filed by OSC with the MSPB that seek corrective or disciplinary action. Under 5 U.S.C. § 1214, before OSC may initiate proceedings for corrective action before the MSPB, the OSC must report its findings and recommendations to the agency involved. Only when the agency has had a reasonable period of time to take corrective action and failed to do so, may OSC proceed to petition the Board for corrective action.

If OSC believes a PPP has been committed and initiates discussions with the agency, the matter is normally resolved through settlement between the complainant and the agency. Thus, historically, in most cases it has not been necessary to send formal letters to agencies, resulting in low levels of corrective action litigation. On most occasions when an agency refuses to grant appropriate corrective action after a formal request from the Special Counsel, OSC proceeds immediately to file a complaint with the MSPB. In addition to rectifying the matter at issue, corrective action litigation often has the additional benefits of clarifying and expanding existing law, and of bringing greater public attention to the mission and the work of the OSC. This significantly increases the deterrent effect of OSC's efforts.

Under 5 U.S.C. § 1215, when OSC determines that disciplinary action against an employee is warranted, OSC can file a complaint directly with the MSPB. If the agency agrees to take appropriate disciplinary action on its own initiative, then the matter can be settled without resort to an MSPB proceeding.

In FY 1998, OSC filed three enforcement actions before the Board, one of which was a whistleblower reprisal PPP complaint and the other two of which were non-whistleblower PPP complaints. Also during FY 1998, the MSPB issued several rulings in previously filed OSC cases. These decisions included eight PPP cases, which included five corrective action cases and three disciplinary actions. The OSC prevailed in three of the five corrective action cases but did not prevail in the three disciplinary action cases. The OSC also filed two petitions for stays of personnel actions, both of which were granted by MSPB.

The MSPB also issued nine rulings in Hatch Act cases. The OSC prevailed in six of these nine cases.

The remaining cases which were pending at the close of FY 1998 were either waiting decision by the MSPB or are awaiting hearings to be held in FY 1999.

3. Favorable Actions Achieved

OSC also obtained 65 favorable actions⁴ in 54 PPP matters in FY 1998. Of these favorable actions, 57 were corrective actions and 8 were disciplinary actions, with cases involving allegations of reprisal for whistleblowing accounting for 42 (64.6%) of the total favorable actions. OSC also obtained 10 stays of personnel actions through negotiations with agencies and, in cases where agencies refused OSC's request, 2 stays through petitions to the MSPB.⁵

Table 1

Summary of Prohibited Personnel Practice Matters			
	FY 1996	FY 1997	FY 1998
Matters received	1,785	1,841	1,721
Matters processed by Complaints Examining Unit (CEU)	1,628	2,127	1,938
Matters processed in which OSC had jurisdiction	1,338	1,816	1,639
Matters referred for full field investigation	223	269	260
Matters closed by CEU	1,405	1,858	1,678
Enforcement actions	1	1	3
Stays – negotiated	10	13	10
Stays – obtained from the MSPB	3	4	2
Favorable actions obtained	87	82	65

⁴ "Favorable actions" include actions taken to directly benefit the complaining employee; actions taken to punish, by disciplinary or other corrective action, the supervisor(s) involved in the personnel action; and systemic actions, such as training or educational programs, to prevent future questionable personnel actions. The term encompasses: (1) those actions taken by an agency pursuant to a written request for corrective action by the Special Counsel; (2) actions taken by an agency at the request of the OSC as a settlement of a PPP complaint in advance of a written request for corrective action by the Special Counsel; or (3) actions taken by an agency with knowledge of a pending OSC investigation, which satisfactorily resolve those matters under inquiry by the OSC.

⁵ Data concerning PPPs and the Hatch Act are set out separately in this Annual Report.

Table 2

Summary of Whistleblower Reprisal Matters			
	FY 1996	FY 1997	FY 1998
Matters received	672	817	691
Matters processed by CEU	566	891	863
Matters processed in which OSC had jurisdiction	513	807	774
Matters closed by CEU	405	673	656
Matters referred for full field investigation	161	218	207
Enforcement actions	1	0	1
Stays – negotiated	7	12	8
Favorable actions obtained	61	56	42

Corrective Actions

The following is a representative sample of corrective actions obtained by OSC during FY 1998:

- OSC investigated allegations that the agency violated 5 U.S.C. §§ 2302(b)(6), (b)(8), and (b)(11) when an employee was denied a temporary 30-day promotion in reprisal for disclosing violations of the Priority Placement Program to the Office of the Inspector General of the agency. The employee claimed that four selections were the result of unauthorized preselection. The agency corrected two of the four complained of violations, and determined that the other two selections were proper. OSC facilitated a settlement agreement, which provided that the agency would give a 30-day promotion to the employee who filed the complaint with OSC, and reinstate her with 40 hours of sick leave.
- OSC investigated an employee's allegation that he was given an unacceptable performance rating, placed on a Performance Improvement Plan (PIP) and not promoted to a GS-15 position because he made disclosures protected by (b)(8) to the U.S. Commission on Civil Rights. The agency agreed to pay \$40,000 in compensatory damages to settle his OSC and Equal Employment Opportunity complaints. The agency also agreed to pay attorney fees up to \$15,000, rescind the PIP and expunge it from the employee's Official Personnel File, replace the unacceptable performance evaluation with a fully satisfactory performance evaluation and restore 112 hours of sick leave and 96 hours of annual leave.

- OSC investigated allegations that an employee was given a letter of warning and a two-day suspension in reprisal for his union grievance regarding the agency's failure to provide him with a position description in violation of 5 U.S.C. § 2302(b)(9). OSC also investigated the allegation of a violation of 5 U.S.C. § 2302(b)(8), that these actions were taken because of the employee's disclosures to the Office of Inspector General about gross waste and mismanagement. As corrective action, the agency agreed to rescind the suspension with back pay, rescind the letter of warning, and provide the employee with an adequate position description.
- OSC's investigation confirmed the employee's allegation that the agency had breached a previously entered settlement agreement by providing negative employment references. The prior settlement had resolved an earlier OSC complaint. The investigation further found that the agency's breach was reprisal for the employee's prior protected activity and for having filed a complaint with OSC, violations of 5 U.S.C. §§ 2302(b)(8) and (b)(9) respectively. Following OSC's investigation, the agency reaffirmed the initial settlement, and agreed to implement a protocol to insure that there would be compliance.
- OSC investigated an employee's allegation that his right to compete in violation of 5 U.S.C. § 2302(b)(4) was obstructed by a provision of the Collective Bargaining Agreement between the agency and the union. This was known as the "Rule of Seven" which states that when an employee's name is placed on a certification list, the employee is considered unavailable for certification for other positions for seven calendar days from the date of issuance of the original selection certificate. Following OSC's request for corrective action, the agency in partnership with the union discontinued the "Rule of Seven."
- OSC investigated three employees' allegations that two supervisors lowered their performance appraisals, denied them performance awards, and detailed them to distant locations. The employees alleged that the supervisors acted against them in reprisal for disclosing information alleging that one of the supervisors engaged in sexual misconduct, favoritism, misuse of government equipment and creating a hostile work environment, thus violating 5 U.S.C. § 2302(b)(8). These allegations resulted in an Inspector General inquiry that substantiated the allegations against the accused supervisor as well as finding that several other agency officials engaged in misconduct. As corrective action, the agency raised the employees' performance appraisals and awarded them performance awards. Additionally, the agency paid medical expenses, prescription drug costs, mileage incurred traveling to the distant detail, and mileage incurred while seeking other employment. The agency also restored the employees' sick and annual leave or paid them the appropriate amount for their leave. Finally, the agency made lump sum payments to the employees in the amounts of \$50,000, \$15,000, and \$7,500 for consequential damages.
- OSC investigated an employee's allegation that he was denied a promotion and that his tour of duty was not extended because of his disclosure, in violation of 5 U.S.C. § 2302(b)(8). The employee had disclosed that his first-level supervisor had apparently falsified her federal employment application (SF-171). He discovered this

information when he was researching his supervisor's Official Personnel File (OPF) at her request in order to prepare nomination papers for an award. The employee informed his second-level supervisor and an investigation ensued that discovered she had falsified her SF-171. The first-level supervisor resigned. Her position was subsequently filled, and the employee was not selected. Several years later the selecting official informed the employee that he had been pressured by the agency not to promote the employee because of his disclosure. Following OSC's request for corrective action, the agency agreed to promote the employee retroactively and give him the corresponding performance awards and quality step increases.

- OSC investigated allegations that an applicant was asked to withdraw from competition because, as a veteran, he was blocking the selection of other candidates. This allegation was confirmed by OSC's investigation, and thus OSC found that the agency had violated 5 U.S.C. § 2302(b)(5). Following OSC's request for corrective action, the agency agreed to put the applicant in either the position for which he applied or another position for which he was qualified. The agency also agreed to systemic corrective action to include training of personnelists and managers on the merit systems principles and suspending OPM delegated appointment authority.
- OSC investigated an allegation that an employee was not selected for a promotion and that his duties were significantly changed in reprisal for filing a grievance, in violation of 5 U.S.C. § 2302(b)(9). Although OSC's investigation did not find evidence supporting the above allegation, OSC did discover that a supervisor, not involved in this case, issued a memorandum telling employees that it was wrong to complain outside of the agency. OSC proposed that the agency retract the memorandum, counsel the supervisor and provide training to all supervisors on the rights of employees. The agency had already counseled the supervisor involved but agreed to send out a new memorandum outlining employees' rights and further agreed to supervisory training with OSC's participation.
- OSC investigated allegations that an agency removed an employee during her probationary period in reprisal for reporting violations of law and abuse of authority to her Congressman, an Office Inspector General inspection team and an agency Employee Relations Specialist. The agency agreed to provide the employee with a cash settlement in exchange for withdrawal of her complaint.

Disciplinary Actions

The following is a representative sample of disciplinary actions obtained by OSC during FY 1998:

- OSC obtained disciplinary action against a federal employee who was found to have breached a settlement agreement. The agency agreed to issue the breaching employee a written reprimand for providing a negative employment reference in violation of the settlement agreement that had resolved an earlier OSC complaint.

- OSC obtained disciplinary action against two federal employees for violating 5 U.S.C. § 2302(b)(5), influencing a person to withdraw from competition. This case was referred to OSC by the Office of Personnel Management. The agency imposed a 30-day suspension on one employee and issued the other employee a letter of reprimand.
- OSC obtained disciplinary action against two federal employees for violating 5 U.S.C. §§ 2302(b)(8) and (b)(9). Two supervisory employees suspected that an employee had told co-workers and parents to submit comment cards documenting their complaints about the agency childcare center. The supervisors waged a campaign of verbal and emotional abuse against the employee including talking about the employee to other employees and making fun of her personal appearance and her personal hardship. The employee resigned as a result of her supervisor's abusive behavior. The agency issued the two supervisory employees letters of reprimand, and reassigned one of the supervisors to a nonsupervisory position. In addition, the employee who resigned received six weeks of back pay with interest for the time that it took her to find new employment (the employee was not seeking reemployment with the agency).
- OSC obtained disciplinary action against federal employees for violating 5 U.S.C. §§ 2302(b)(8) and (b)(9). Several agency officials were found to have engaged in misconduct. The agency discovered this misconduct as the result of letters that were forwarded to the Inspector General alleging that one supervisor had engaged in sexual misconduct, favoritism and misuse of government equipment. In addition to obtaining corrective action, OSC also obtained disciplinary action when the agency agreed to suspend one of the supervisors for 15 days. The remaining implicated agency officials had all retired at the time the settlement agreement was reached.
- OSC obtained disciplinary action against two federal employees for violating 5 U.S.C. § 2302(b)(5), influencing a person to withdraw from competition. The two agency officials attempted to influence an applicant to withdraw because he was a veteran, and thus was blocking the selection of other candidates that the agency officials wished to select. One agency official was given a five-day suspension, and the other agency official involved was given a written reprimand.

Merit Systems Protection Board Stays

The following are summaries of stay cases brought to the MSPB during FY 1998:

- OSC petitioned the Board to stay the discharge of a WG-5 Materials Handler (MH) during the probationary period. The MH was assigned to the Department of Defense (DOD), Defense Logistics Agency (DLA), Defense Distribution Depot Red River (DDRT), Red River Army Depot (RRAD), Texarkana, Texas. OSC had reasonable grounds to believe that the agency's decision to discharge the MH was in retaliation for making a disclosure to a safety officer regarding hazardous radioactive materials, for reporting that two co-workers were selling personal items at the work place and one co-worker was regularly sleeping on the job, and for disclosing that the security

officer had instructed DDRT employees not to use the RRAD hotline. The Board granted an initial 45-day stay, and one 45-day extension of that initial stay. *Special Counsel, ex rel. Deborah Landrum v. Defense Logistics Agency, Defense Distribution Depot Red River*, CB-1208-98-0004-U-1 (Oct. 30, 1997); CB-1208-98-0004-U-2 (Dec. 11, 1997).

- OSC petitioned the MSPB to stay an agency's failure to extend the term appointment of a GS-14 Program Manager. OSC had reasonable grounds to believe that the failure to extend this appointment was retaliation for the employee's protected disclosures, which included allegations of violations of federal contracting laws and security regulations. The MSPB granted three stay requests to allow OSC to conduct a full investigation into whether the agency violated 5 U.S.C. § 2302(b)(8). *Special Counsel v. Department of Justice*, 78 M.S.P.R. 540 (1998); 78 M.S.P.R. 675 (1998); *Special Counsel, ex rel. Martin E. Andersen v. Department of Justice*, CB-1208-99-0033-U-1 (March 17, 1999).

Table 3

Allegations Contained in Matters Received During FY 1998	
Nature of Allegation	Number of Allegations
Reprisal for whistleblowing [§ 2302(b)(8)]	703
Reprisal for exercise of a right of appeal [§ 2302(b)(9)]	599
Discrimination on the basis of race, color, sex, national origin, religion, age, or handicapping condition [§ 2302(b)(1)(A)-(D)]	530
Violation of a law, rule or regulation implementing or concerning a merit system principle [§ 2302(b)(11)]	525
Disclosures of alleged violation of a law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a danger to public health or safety [§ 1213(c) or § 1213(g)]	519
Granting of unauthorized preference or advantage [§ 2302(b)(6)]	373
Deception or obstruction of the right to compete [§ 2302(b)(4)]	221
Allegations which did not cite or suggest any prohibited personnel practice or prohibited activity	154
Discrimination on the basis of non-job related conduct [§ 2302(b)(10)]	105
Appointment, promotion, or advocating the appointment or promotion of a relative [§ 2302(b)(7)]	55
Attempts to secure withdrawal from competition [§ 2302(b)(5)]	37
Arbitrary or capricious withholding of information requested under the Freedom of Information Act [§ 1216(a)(3)]	35
Solicitation or consideration of unauthorized recommendations [§ 2302(b)(2)]	31
Discrimination on the basis of marital status or political affiliation [§ 2302(b)(1)(E)]	25
Violation of the Hatch Act by a federal employee [§§ 7323-24]	16
Violation of the Hatch Act by a state or local government employee [5 U.S.C. ch. 15]	11
Coercion of political activity [§ 2302(b)(3)]	5
Other activities allegedly prohibited by civil service law, rule or regulation [§ 1216]	2
Total	3,946⁶

⁶ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters received. Moreover, while a matter is being handled by OSC, additional allegations may be added to those initially presented to OSC.

Table 4

Allegations Contained in Matters Referred for Field Investigation During FY 1998	
Nature of Allegation	Number of Allegations
Reprisal for whistleblowing [§ 2302(b)(8)]	198
Reprisal for exercise of a right of appeal [§ 2302(b)(9)]	136
Violation of a law, rule or regulation implementing or concerning a merit system principle [§ 2302(b)(11)]	82
Granting of unauthorized preference or advantage [§ 2302(b)(6)]	40
Deception or obstruction of the right to compete [§ 2302(b)(4)]	25
Discrimination on the basis of non-job related conduct [§ 2302(b)(10)]	23
Discrimination on the basis of race, color, sex, national origin, religion, age, handicapping condition, or marital status [§ 2302(b)(1)(A)-(E)]	15
Appointment, promotion, or advocating the appointment or promotion of a relative [§ 2302(b)(7)]	7
Arbitrary or capricious withholding of information requested under the Freedom of Information Act [§ 1216(a)(3)]	5
Securement of withdrawal from competition [§ 2302(b)(5)]	5
Violation of the Hatch Act by a federal employee [5 U.S.C. ch. 15]	4
Solicitation or consideration of unauthorized recommendations [§ 2302(b)(2)]	4
Violation of the Hatch Act by a state or local government employee [5 U.S.C. ch. 15]	<u>2</u>
Total	546⁷

C. Hatch Act Matters

1. Overview of Jurisdiction

Since the 1939 enactment of the Hatch Act, federal employees, employees of the District of Columbia (D.C.) government, and certain employees of state and local governments have

⁷ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters actually referred for field investigation. Moreover, while a matter is being handled by OSC, additional allegations may be added to those initially presented to OSC.

faced significant restrictions in their ability to participate in political activities. Following amendments enacted in 1993, many federal and D.C. employees are now permitted to take an active part in political management and in political campaigns. Nevertheless, there continues to be important restrictions on the political activities of federal employees, including partisan candidacy, solicitation of contributions, and political activity while on duty. The 1993 amendments did not change the provisions applying to state and local government employees.

OSC receives and investigates complaints of Hatch Act violations, and where warranted, will prosecute violations before the MSPB. In matters in which violations are not sufficiently egregious to warrant prosecution, OSC will issue a warning letter to the employee. In addition, OSC issues advisory opinions upon request, enabling individuals to determine whether they are covered by the Hatch Act and whether their contemplated activities are permitted under the Act.

2. Advisory Opinions

During FY 1998, OSC's Hatch Act Unit issued 2,124 advisory opinions in response to telephone and written inquiries, and responded to an additional 220 e-mail inquiries.

3. Violations and Enforcement

During FY 1998, OSC received 83 new matters alleging violations of the Hatch Act. Following initial review by the Hatch Act Unit, 6 matters were referred for field investigation.⁸

No Hatch Act enforcement actions were filed in FY 1998. Nor did any Hatch Act cases go to hearing before the MSPB in FY 1998. As mentioned above, the MSPB issued decisions in nine previously filed Hatch Act cases during FY 1998.

Table 5

Summary of Hatch Act Matters			
	FY 1996	FY 1997	FY 1998
Advisory opinions issued	3,578	1,700	2,124
Matters received	108	75	83
Matters referred for investigation	12	11	6
Disciplinary action complaints filed with MSPB	3	3	0
Disciplinary actions obtained Before MSPB and through negotiation	2	3	5
Warning letters issued	26	24	20

⁸ The Hatch Act allegations received in FY 1998 and the Hatch Act allegations referred for field investigations appear in Tables 3 and 4 on pages 16 and 17.

Disciplinary Actions

The decisions summarized below are a representative sample of the Hatch Act rulings issued by the Merit Systems Protection Board in FY 1998.

- OSC filed a complaint for disciplinary action against a federal employee for violating the Hatch Act. OSC charged the respondent with soliciting and receiving political contributions in concert with a partisan political campaign during the 1992 Presidential campaign. Specifically, the respondent had discussions with fellow employees concerning the need of a political action committee (PAC) to receive contributions. Four employees gave the respondent checks for the PAC. The MSPB found that the respondent had violated the Act, and ordered him to serve a 120-day suspension. *Special Counsel v. Bilberry*, CB-1216-97-0044-T-1 (August 18, 1998).
- OSC filed a complaint for disciplinary action against a federal employee who ran for public office in a partisan election. The MSPB found that the employee had violated the Hatch Act's restriction against partisan candidacies and ordered his removal from his federal position. *Special Counsel v. DeMeo*, 77 MSPR 158 (Dec. 22, 1997).

D. Uniformed Services Reemployment Rights

The Uniformed Services Employment and Reemployment Rights Act (USERRA) (codified at 38 U.S.C. § 4301), prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying 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. USERRA also protects 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.

USERRA authorizes OSC to investigate alleged violations of the Act by federal executive agencies, and to prosecute meritorious claims before the Merit Systems Protection Board on behalf of the aggrieved person. OSC, however, is not authorized to receive a USERRA complaint directly from the claimant. Instead, the claimant must first file his/her complaint with the Department of Labor's Veterans' Employment and Training Service (VETS). If VETS is unsuccessful in resolving the complaint, the claimant may request that VETS refer the complaint to OSC. If the Special Counsel believes there is merit to the complaint, OSC will initiate an action before the Merit Systems Protection Board and appear on behalf of the claimant.

OSC received five USERRA referrals from the Department of Labor during FY 1998. Including one referral that had been pending at the end of FY 1997, OSC declined representation in three USERRA referrals, leaving three USERRA referrals pending at the end of FY 1998.

E. Whistleblower Disclosures

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 disclose information they reasonably believe evidences a violation of law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a).

Upon receipt of such information from a federal employee, former federal employee or applicant for federal employment, the Special Counsel is required by § 1213(c) to transmit the information to the head of the agency concerned if the Special Counsel determines that there is a substantial likelihood that the information discloses the kind of wrongdoing described in the statute. OSC will not divulge the identity of an employee who provided the information unless he or she consents. The agency head is then required to conduct an investigation and submit a report to the Special Counsel on the findings of the investigation. The Special Counsel sends the agency report, along with any comments provided by the whistleblower who made the disclosure, and any comments or recommendations by the Special Counsel, to the President, and the congressional committees having jurisdiction over the agency. A copy of the report and any comments are also placed in a public file in accordance with 5 U.S.C. § 1219(a).

After review of the information received from a whistleblower, the Special Counsel may determine that there is not a substantial likelihood that the information discloses the type of wrongdoing described in § 1213(a). In such cases, the Special Counsel may, under § 1213(g)(2), with the consent of the whistleblower, require the agency head to review the matter and inform the Special Counsel of what action has been or is being taken. The notification is then transmitted to the whistleblower.

OSC is not authorized to investigate allegations of the kind described in § 1213(a). Nevertheless, complainants often include information which may be covered by § 1213(a) with their allegations of other prohibited activities within OSC's investigative jurisdiction. Disclosures are received directly by the Disclosure Unit, a part of the Prosecution Division. Disclosures may also be referred to the Disclosure Unit by the CEU for further review and follow-up with the complainant as needed to confirm the facts and issues involved. After completion of its review, OSC decides whether to: (1) transmit the information developed to the agency concerned under §1213(c) or §1213(g); (2) refer the matter to the agency Inspector General or comparable office for any appropriate action; or (3) close the matter without further action.

During FY 1997, OSC received 331 disclosure matters for possible referral to the agency concerned under §§ 1213(c) or 1213(g).⁹ In addition, 244 disclosure matters were carried over from FY 1997. A disclosure matter usually contains multiple allegations of 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.

⁹ The number of disclosure allegations received in FY 1998 appears in Table 3 on page 16.

Table 6

Summary of Disclosure Matters			
	FY 1996	FY 1997	FY 1998
Matters received	341	306	331
Disclosures referred for investigation and a report under § 1213(c)	30	14	2
Disclosure allegations referred to agency Inspectors General	82	72	65
Disclosure allegations closed due to lack of sufficient basis for further action	154	206	247
Remaining disclosures carried over to next fiscal year for completion of review	212	244	257

Results of Referrals

During FY 1998, OSC closed 16 reports from agencies to which statutory referrals previously had been made. OSC review of agency reports disclosed the following results from statutory referrals:

Section 1213(c) Reports

Cases in which allegations were substantiated in whole or in part	14
Cases in which allegations were not substantiated	1

Section 1213(g)

Cases in which allegations were substantiated in whole or in part	1
Cases in which allegations were not substantiated	0

Disclosure Unit Matters

The following is a representative sample of matters that were referred by the Special Counsel to the head of the agency pursuant to 5 U.S.C. § 1213(c) during FY 1998:

- OSC referred allegations of a substantial and specific danger to public health and safety at the Department of Veteran Affairs (VA), Franklin Delano Roosevelt Hospital, Montrose (Montrose), New York, to the Secretary of the VA for an investigation and report. Specifically, it was alleged that an employee helped a patient obtain illegal drugs; that Montrose delayed searching for a patient for one day even though the patient's file indicated that he was a flight risk; that Montrose failed to check on a patient's drug levels; and that a patient overdosed on medication. An investigation was conducted by the Office of Medical Inspector (OMI) and it was determined that the three instances of patient neglect were substantiated. With respect to the fourth patient, OMI was unable to determine the accuracy of the allegation, therefore, OMI neither substantiated nor dismissed the allegation. In response to these disclosures, the VA took corrective action including the suspension of an employee for thirty days; improved search procedures for missing patients; changes to staff coverage of patients; re-education of staff on the Medical Center Procedures for reporting unauthorized absences; and improved prescription writing policies.
- OSC referred allegations that an employee at the Department of Justice (DOJ), Immigration and Naturalization Service, San Juan, Puerto Rico, engaged in a violation of law, rule or regulation to the Attorney General. Specifically, it was alleged that the employee obtained cash from the imprest fund to pay for the repairs of government owned vehicles by a private company, however, he would only pay a portion of the repair bill and kept the remainder of the cash for his personal use. The employee signed a promissory note for the remainder of the balance. The DOJ's Department of the Inspector General conducted an investigation and the employee admitted to the misconduct as alleged and other misconduct. The employee received a proposed ten-day suspension from duty.
- OSC referred allegations of violations of law, rule or regulation and an abuse of authority by employees of the Department of the Interior, National Park Service (NPS), Statue of Liberty National Monument, New York, New York, to the Secretary of the Interior. Specifically, it was alleged that employees engaged in theft of government property; unauthorized use of government property; that a supervisor employed a subordinate to perform personal work during duty hours; that the agency failed to properly respond to oil spills emanating from NPS property and failed to remedy the areas contaminated by the spills; that an employee entered into an agreement for testing of fuel storage tanks, wherein the contractor would sign the papers to indicate that the agency had passed without conducting the proper tests. A law enforcement Park Ranger investigated and found that all of the allegations were substantiated with the exception of a supervisor employing a subordinate to perform personal work during duty hours. As a result of the investigation, a memorandum was issued reminding all employees that they cannot borrow government equipment for personal use and that this use could result in disciplinary action; an employee received a seven-day suspension; another employee was admonished; and the matter involving falsified test results was referred to the U.S. Attorney's Office for consideration and prosecution was declined.

- OSC referred allegations of violations of law, rule or regulation by officials of the Department of the Treasury, Office of the Comptroller of the Currency, Acquisitions Branch, Washington, D.C., to the Secretary of the Treasury. Specifically, it alleged that officials failed to comply with certain procurement regulations, namely, the Federal Acquisition Regulation, the Federal Information Resources Management Regulations, the Treasury Acquisition Procurement Regulation, the Competition in Contracting Act, and the Brooks Act. The agency was given seven extensions of time and did not provide a report within the time prescribed by § 1213(c)(2). A copy of the information transmitted to the Secretary of the Treasury was transmitted to the President and the congressional oversight committee together with a statement from the Acting Special Counsel noting the failure of the Secretary of the Treasury to file the required report. This was the first time that the Special Counsel has transmitted information to the President and Congress without a report.

IV. ANNUAL SURVEY PROGRAM

Pursuant to § 13 of Public Law 103-424, OSC annually surveys individuals who have contacted the agency for assistance. The survey asks the following statutorily prescribed questions: (1) whether respondents were fully apprised of their rights; (2) whether they were successful at OSC or MSPB, and (3) whether successful or not, if they were satisfied with the treatment received from OSC.¹⁰

The survey program covering FY 1998 is not yet complete. The three survey forms in use between FY 1995-FY 1997 required revision, as well as updated approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). As part of that process, the revised survey forms were held for review and approval by the new Special Counsel and her staff. After internal clearance of the revised forms, they were sent to the Federal Register for the required public notices and opportunity to comment, and to OMB for its approval under the PRA. By the time it became necessary to complete this report to the Congress, the survey forms had been mailed out. Due to the time needed to receive, analyze, and tabulate the answers, however, it was determined that the survey results could not be included in this report. They will be included in the next report to Congress.

¹⁰ Respondents are also invited to provide comments or suggestions on ways in which OSC can improve its service to persons seeking its assistance.

V. LEGISLATION

A. Pending Appropriations

Consistent with the Administration's budget request, OSC has requested budget authority for FY 2000 in the amount of \$9,740,000 and 96 FTE positions. This represents an increase of \$1,020,000 over OSC's FY 1999 appropriation of \$8,720,000 (an additional \$100,000 was later apportioned to OSC to address Y2K readiness), and an increase of 5 FTEs. A large percentage of this increase, \$442,582 (43.4 percent), is necessary to fund the agency at its current level of FTEs and to pay for the projected FY 2000 salary increase of 4.4 percent.

Funding for the five additional FTEs comprises the next largest portion—\$324,570, or 31.8 percent of our request. Only \$19,250 of this amount is for new equipment, software, and costs directly related to the additional FTEs. The other \$305,320 is for salaries and benefits related to the five additional FTEs.

B. Reauthorization of the Office of Special Counsel

H.R. 3610, the omnibus consolidated appropriations bill for FY 1997, included a reauthorization for OSC through the year 2002.

Further Information¹¹

OSC Publications

Additional copies of this report, or information on other OSC publications, may be obtained by writing or contacting:

Director, Congressional and Public Affairs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephone: (202) 653-5163

Many OSC forms and publications may also be downloaded from OSC's Web site at www.osc.gov/forms.htm.

¹¹ For callers with hearing/speech disabilities, all of the OSC telephone numbers listed herein may be accessed via TTY by first dialing the Federal Relay Service at 1-800-877-8339.

Prohibited Personnel Practice Complaints

Complaints of prohibited personnel practices should be reported to the Officer of the Week at:

Complaints Examining Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephones:
(800) 872-9855
(202) 653-7188

The prohibited personnel practice complaint filing form may be downloaded from OSC's Web site at www.osc.gov/Documents/osc11.pdf, using the Adobe Acrobat Reader.

Whistleblower Disclosures

Disclosures of information evidencing violations of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a danger to public health or safety may be reported in confidence to:

Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephones:
(800) 572-2249
(202) 653-9125

The whistleblower disclosure filing form may be downloaded from OSC's Web site at www.osc.gov/Documents/osc12.pdf, using the Adobe Acrobat Reader.

Hatch Act Questions

Inquiries about the Hatch Act may be made in writing, by telephone, or by e-mail to:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
E-mail address: hatchact@osc.gov
Telephones:
(800) 85-HATCH or (800) 854-2824
(202) 653-7143

The OSC Web site may be visited for additional substantive information about the Hatch Act, including frequently asked questions for federal, state and local employees, as well as a sampling of written advisory opinions on common factual scenarios.

Outreach Programs

Requests about OSC's outreach efforts should be made to:

Outreach Specialist
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Tel: (202) 653-9485
Fax: (202) 653-5161

OSC Online

Information about OSC can be obtained on its home page on the World Wide Web. OSC's address is: <http://www.osc.gov>.