



## **FY2010 Summary of Performance and Financial Information**

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## About This Report

This Report summarizes the Office of Special Counsel's (OSC's) [FY 2010 Performance and Accountability Report](#) and is intended for a general audience of agency stakeholders. It provides readers with an understanding of OSC's mission, programs, performance results, management challenges and financial highlights for the fiscal year. Our report focuses attention on 7 key performance goals that illustrate OSC's FY 2010 performance. These goals were selected from a total of 11 goals. This agency has a proud history of serving the federal workforce and the public through its tenacious defense of the merit system principles. Such a defense helps to safeguard the integrity of the executive branch agencies of the United States. If you wish to obtain greater detail regarding OSC's performance, accomplishments and financial information from the FY 2010 period, the above hyperlink will take you to the entire report and its individual sections.

## The Mission of the U.S. Office of Special Counsel

The U.S. Office of Special Counsel (OSC), established on January 1, 1979, is an independent federal investigative and prosecutorial agency. OSC maintains its headquarters office in Washington, D.C., along with four field offices that are located in Dallas, Oakland, Detroit, and Washington, D.C. As of September, 2010 OSC has a total FTE workforce of 103 employees. This includes approximately 66 headquarters employees in Washington, D.C., and 37 employees in OSC's 4 field offices.

The U.S. Office of Special Counsel's primary mission is to safeguard the merit system in federal employment by protecting employees and applicants from prohibited personnel practices (PPPs), especially reprisal for whistleblowing. In addition, the agency operates a secure channel for federal whistleblower disclosures of violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. Finally, OSC enforces the civilian employment and reemployment rights of military service members under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

## Summary of Major Program Units

Complaints Examining Unit (CEU). This unit is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation or possible mediation.

Investigation and Prosecution Division (IPD). IPD is generally responsible for conducting field investigations of matters referred after preliminary inquiry by CEU. In selected cases referred by CEU for further investigation, IPD coordinates mediation of complaints in which the complainant and the agency involved have agreed to participate in OSC's voluntary Alternative Dispute Resolution (ADR) Program. In other cases, after field investigation of matters referred by CEU, legal analyses are done by IPD attorneys to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred.

**Disclosure Unit (DU).** This component receives and reviews disclosures from federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the agency involved for investigation and a report to the Special Counsel; informal referral to the Inspector General (IG) of the agency involved; or closure without further action.

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

**USERRA Unit.** This component reviews USERRA cases referred by the Department of Labor (DOL) to OSC for legal representation of the claimant before the MSPB, if warranted.

## Strategic Objectives and Performance Goals

The following chart lists the Strategic Objectives of OSC:

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

In FY 2010 OSC overall caseloads continued to rise, increasing to 3,950 new matters, a 6% increase over the already record levels of cases that were received in FY 2009. Significant growth areas were Whistleblower Disclosures, which increased 33% in the year, and the Hatch Act program, where cases increased by 6%, (along with a 65% jump in the number of Hatch Act Formal Advisory requests received). Through much hard work and dedication caseload backlogs have not increased significantly and remain at manageable levels.

Of paramount importance are the positive outcomes OSC has achieved in its programs. Favorable actions negotiated with agencies for PPP's increased 55%; Disciplinary Actions negotiated with agencies for PPP's more than doubled; stays negotiated with agencies increased 67%; and both Hatch Act corrective actions and disciplinary actions obtained doubled in FY 2010. OSC met 73% of its performance goals in FY 2010.

OSC's Strategic Objectives are supported by 11 Performance Goals, which are aligned with OSC's organization and budget, in order to enhance clarity and accountability at the program level. Within the 11 Performance goals there are 16 Performance indicators. For the purpose of this report, we are highlighting 7 of those key performance goals and their related indicators. Four years of results for each of the goals are shown. It should be noted that OSC has continuously challenged itself by raising the performance targets yearly when appropriate. For example, if FY 2010's performance results were measured against FY 2007's targets, OSC would have fully achieved success in 7 out of the 7 goals areas listed below. Overall, we believe OSC has substantially achieved its Performance Goals in FY 2010.

Performance Goals *	FY 2010 Performance Goal Historical Trend			
	FY 2007	FY 2008	FY 2009	FY 2010
<b>PPP Goal 1 - To Protect the Merit System Through Timely Case Processing</b>	Goal Achieved	Goal Achieved	Goal Achieved	Goal Substantially Achieved <sup>1</sup>
<b>PPP Goal 2 - To Promote Justice through the quality of Investigations and Enforcement Actions</b>	Goal Achieved	Goal Achieved	Goal Achieved	Goal Achieved <sup>2</sup>
<b>HAU Goal 1 - To Defend the Merit System by enforcing the Hatch Act - Through Timely Case Processing</b>	Goal Achieved	Goal Not Achieved	Goal Not Achieved	Goal Not Achieved <sup>3</sup>
<b>HAU Goal 2 - To Promote Justice through the quality of Investigations and Enforcement Actions</b>	Goal Achieved	Goal Substantially Achieved	Goal Achieved	Goal Achieved <sup>4</sup>
<b>DU Goal 1 - To Receive and Resolve whistleblower disclosures with timely processing</b>	Goal Achieved	Goal Achieved	Goal Achieved	Goal Achieved <sup>5</sup>
<b>USERRA Goal 1 - To enforce the Uniformed Services Employment and Reemployment Rights Act through Timely Case Processing</b>	Goal Not Achieved	Goal Achieved	Goal Not Achieved	Goal Substantially Achieved <sup>6</sup>
<b>USERRA Goal 2 - To Promote Justice Through the Quality of Investigations and Enforcement Actions</b>	Goal Achieved	Goal Achieved	Goal Achieved	Goal Achieved <sup>7</sup>
<b>Totals: Goal Achieved</b>	<b>6</b>	<b>5</b>	<b>5</b>	<b>4</b>
<b>Totals: Goal Substantially Achieved</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>2</b>
<b>Totals Goal Not Achieved</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>

\*If one out of the two or three subsets (indicators) failed, then we considered that the overall goal failed.

Notes to Performance Goals

1. OSC missed its timeliness target by one percentage point for PPP case processing in FY 2010, due to the 30% increase in cases referred by CEU to IPD for investigation.

2. OSC did not lose any cases in FY 2010 in PPP litigation before the board.
3. This goal is comprised of 3 indicators, in which OSC met its target in 2 out of 3 them.  
Indicator A: During FY 2010, OSC issued formal written advisory opinions 90% of the time within 120 days, meeting its target. This was a significant performance achievement given the 42% increase in the number of these formal advisory opinions.  
  
Indicator B: During FY 2010 OSC achieved its target of 99% oral advisory opinions and exceeded its target of 95% email advisory opinions issued within 5 business days.  
  
Indicator C: During FY 2010, OSC did not meet its target of resolving 85% of matters within 365 days, due to: a record level rise in caseload and advisory opinions; required prioritization towards handling important cases; an increase in the complexity of cases; more litigation. Additional Hatch Act staff is being added in FY 11 and efforts are being redoubled towards meeting this important goal.
4. During FY 2010, OSC achieved 100% favorable outcomes in meritorious Hatch Act cases, exceeding the target of 97%.
5. In FY 2010, OSC's Disclosure Unit resolved 55% of its cases within the statutory time frame, exceeding its target of 50% despite a 33% increase in the unit's caseload.
6. OSC did not meet its FY 2010 USERRA timeliness target by one percentage point, due to a number of cases received late in the fiscal year that required additional investigation by OSC or in which OSC was attempting to negotiate corrective action on behalf of the service member.
7. This goal is comprised of 2 performance indicators:  
Indicator A: OSC was successful in 2 out of 2 meritorious cases during FY 2010.  
Indicator B: There was 1 USERRA test case filed before the MSPB FY 2010 that clarifies the rights and obligations of service members to promote better understanding of the law.

## OSC's Successes in FY 2010

OSC's successes for the year are listed below in brief. For more detail, see the [OSC PAR, page 10](#).

- Enforced veterans' job rights under USERRA.
- Increased Federal Aviation Administration (FAA) Oversight and improving Aviation Safety.
- Protected the Health of Federal Employees.
- Improved Safety at Construction Sites and Heavy Machinery Sites.
- Protected Employees from Retaliation.
- Provided Increased Rates of Investigation of Prohibited Personnel Practices.
- Took Formal Disciplinary Actions and Prosecutions on Prohibited Personnel Practices.
- Achieved Corrective Action Results for Employees on Prohibited Personnel Practices.
- Obtained Relief for Employees Discriminated Against Based on Political Affiliation.
- Increased Hatch Act Investigation & Litigation.
- Brought Hatch Act Disciplinary Actions before the Merit Systems Protection Board.
- Achieved Informal Settlements of Hatch Act violations that resulted in Corrective and Disciplinary Actions
- Provided Hatch Act Enforcement Activity and Advisory Opinions.
- Clarified OSC's responsibilities and jurisdiction with various Government agencies and entities.

## Management Challenges

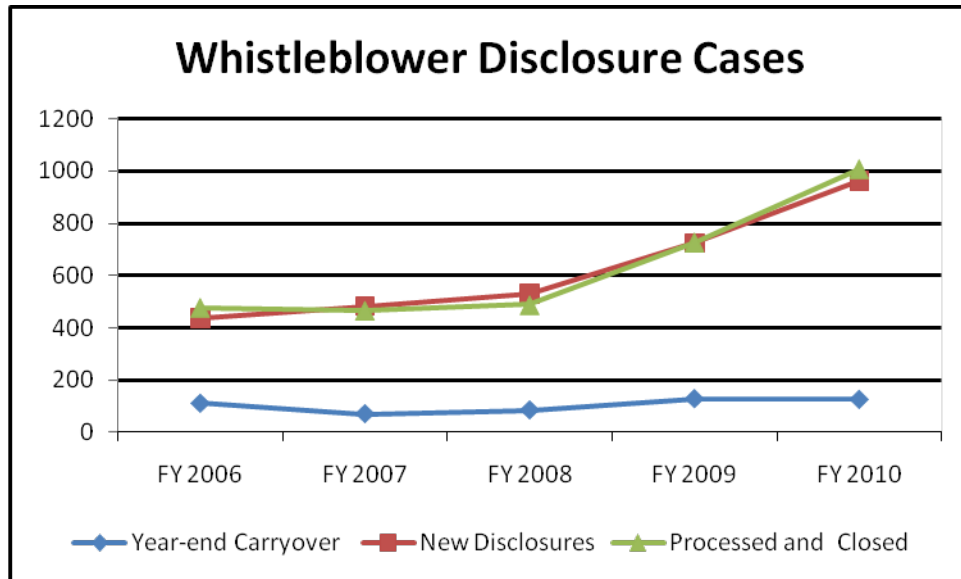
In the past several years, the agency has experienced significant year-after-year increases in caseload levels. For example, in FY 2008, OSC's overall caseload increased 8.0%, in FY 2009 the overall caseload jumped 19.5%, and in FY2010 the caseloads increased 6% further. The most pronounced increases are in the Whistleblower Disclosure and Hatch Act Program areas. Several factors which have contributed to these rising levels of complaint filings with OSC include:

- Media coverage of OSC has continued to increase in recent years. Also, OSC's outreach program has continued to build awareness within the Federal community. During FY 2009, OSC received 724 Whistleblower disclosures, which was a 37% increase, and FY 2010 brought 961 Disclosures, a further 33% increase. (see chart below)
- Awareness of the Hatch Act along with OSC's role has continued to build among Federal employees, primarily due to media coverage. The number of Hatch Act complaints received in FY 2010 was a 6% increase over the prior year which had already brought record levels of Hatch Act cases. Hatch Act complaints are expected to increase from now through the FY 2012 Presidential Election Cycle. Further, the Advisory opinions OSC issued in FY2010 increased to 4,320, a 16% jump from the prior year, with a notable 42% increase in Formal Advisory opinions that were issued.
- During FY 2010, OSC continued to conduct a certification program 2302(c) for Federal Agencies, in addition to conducting its outreach program on the twelve Prohibited Personnel Practices. As agencies implement the certification process and partake in the OSC outreach session, agency employees who might previously have been unaware of their rights and remedies through OSC are becoming informed.

Despite the rising caseloads OSC has continued to achieve success in its mission of protecting the merit system. This is evidenced by OSC's successes (listed above), the large increase in positive outcomes, and close management to avoid case backlogs. Because of management attention, the growth in new caseloads was more than double the growth of case backlogs in FY 2010. Overall, in the face of this growing caseload, the agency fulfilled its role as an independent prosecutorial and investigative agency charged with bringing greater integrity and efficiency to the merit system.

A significant development this year was the signing of legislation on October 13, 2010, for a renewed USERRA Demonstration Project commencing in approximately April 2011. OSC previously conducted a USERRA Demonstration Project from 2004 through 2007. OSC will have a similar role and will receive half of the Federal USERRA cases that would typically have been investigated by the Department of Labor, thereby increasing OSC's USERRA caseload considerably. OSC is confident that it has the expertise and infrastructure to successfully conduct this pilot program and improve results for members of our military. During the prior three year program OSC achieved 120 corrective actions in USERRA cases, which represented 27% of all USERRA cases handled by OSC under the Demonstration Project.

Also of note, FY 2010 marked the second year for OSC without an appointed Special Counsel. The career management, namely the Associate Special Counsel, has fulfilled these responsibilities in the interim. A Special Counsel nominee is currently in the process of Senate confirmation.



Whistleblower Disclosures increased by 37% in FY2010

## Summarized FY 2010 Financial Statement information

### Financial Position

The following is summarized financial statement data from FY 2010's Financial Statements and PAR. For further detailed information and notes please see the [Financial Statements](#) section of the PAR (pgs. 36-56).

- OSC has a clean opinion on its FY 2010 Financial statements with no material weaknesses. Financial reporting was completed in a timely manner. OSC's budgetary resources for FY 2010 totaled \$18.495 million.
- Total Assets decreased from \$4,775,000 in FY 2009 to \$4,422,000 in FY 2010. Fund Balance with Treasury comprises 89% of Total Assets. Fund Balance with Treasury was down from 93% in FY 2009 due to the cancellation of large balances of funds from FY 2005 Appropriations. The other major component of Assets was Property, Plant and Equipment, which increased from \$326,000 in FY 2009 to \$440,000 in FY 2010 due to the added computer servers.
- Net cost of Operations rose from \$17,795,000 in FY 2009 to \$18,840,000 in FY 2010. The primary factor for this is our annual appropriation increasing by \$1,027,000 in FY10. Eighty-five percent of those costs go towards salaries, benefits, rents and utilities. Other contributing factors were a rise in imputed costs, and an increased amortization amount from our capitalized assets. Imputed costs increased from \$805,000 in FY 2009 to \$1,008,000 in FY 2010 due to the higher cost factors provided by OPM for Pension and other Retirement Benefits Accruals. (Pension costs, FERS, FEGLI and FEHB). Imputed Costs are expected to continue to rise. Amortized costs went up \$34,000 due to the added computer servers now being capitalized.
- OSC's Asset Capitalization Policy has been in place for four years. It pertains to assets with an initial purchase price over \$50,000. This year computer servers were added to the list of capitalized assets, in



addition to the agency's phone system, videoconferencing equipment and certain leasehold improvements from prior years.

OSC's assets, liabilities and net position are shown below:

<b>Consolidated Balance Sheets</b>	<b><u>2010</u></b>	<b><u>2009</u></b>
<b>ASSETS</b>		
<b>INTRAGOVERNMENTAL</b>		
Fund Balance With Treasury	\$3,957	\$4,423
<b>Total Intragovernmental</b>	<b>\$3,957</b>	<b>\$4,423</b>
<b>ASSETS WITH THE PUBLIC</b>		
Accounts Receivable, Net	25	26
General Property, Plant and Equipment, Net	440	326
<b>Total Assets</b>	<b>4,422</b>	<b>4,775</b>
<b>LIABILITIES</b>		
<b>INTRAGOVERNMENTAL</b>		
<i>Other:</i>		
Employer Contributions and Payroll Taxes Payable	144	138
Unfunded FECA Liability	57	49
<b>Total Intragovernmental</b>	<b>201</b>	<b>187</b>
<b>LIABILITIES WITH THE PUBLIC</b>		
Accounts Payable	50	117
Federal Employee and Veteran Benefits	258	275
<i>Other:</i>		
Accrued Funded Payroll and Leave	574	532
Employer Contributions and Payroll Taxes Payable	5	-
Unfunded Leave	865	900
Custodial Liability	1	0
<b>Total Liabilities</b>	<b>1,954</b>	<b>2,011</b>
<b>NET POSITION</b>		
Unexpended Appropriations - Other Funds	3,183	3,636
Cumulative Results of Operations - Other Funds	-715	-872
<b>Total Net Position</b>	<b>\$2,468</b>	<b>2,764</b>
<b>Total Liabilities and Net Position</b>	<b>4,422</b>	<b>4,775</b>
As of September 30, 2010 and September 30, 2009		
Dollars are in thousands		
For further detailed information and notes please see <a href="#">Financial Statements</a> section of PAR		