

ANNUAL REPORT TO CONGRESS



U.S. OFFICE OF SPECIAL COUNSEL
FISCAL YEAR 2010

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**REPORT TO CONGRESS
FOR
FISCAL YEAR 2010**

U.S. OFFICE OF SPECIAL COUNSEL

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U.S. Office of Special Counsel

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

The Honorable Joseph Biden
President of the Senate
Washington, DC 20510

The Honorable John Boehner
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit the Report to Congress for Fiscal Year 2010 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 that reads "William E. Reukauf". The signature is written in a cursive style with a large, sweeping flourish at the end.

William E. Reukauf
Associate Special Counsel

TABLE OF CONTENTS

| | |
|--|-----------|
| MESSAGE FROM ASSOCIATE SPECIAL COUNSEL WILLIAM E. REUKAUF | 5 |
| INTRODUCTION TO OSC | 6 |
| Statutory Background | 6 |
| Mission | 6 |
| OVERVIEW OF OPERATIONS | 7 |
| Internal Organization | 7 |
| Program Units | 7 |
| Support Units | 8 |
| FY 2010 Budget and Staffing | 8 |
| FY 2010 Case Activity and Results | 8 |
| PROHIBITED PERSONNEL PRACTICE COMPLAINTS | 9 |
| Receipts and Investigations | 9 |
| Mediations | 9 |
| Corrective and Disciplinary Actions | 10 |
| Summary of Workload, Activity, and Results | 13 |
| HATCH ACT ADVICE AND ENFORCEMENT | 15 |
| Overview | 15 |
| Enforcement Highlights | 15 |
| Summary of Workload, Activity, and Results | 17 |
| WHISTLEBLOWER DISCLOSURES | 19 |
| Overview | 19 |
| Disclosure Highlights | 19 |
| Summary of Workload, Activity, and Results | 24 |
| USERRA ENFORCEMENT | 25 |
| Overview | 25 |
| Referral Process | 25 |
| FY 2010 Accomplishments | 25 |
| New USERRA Demonstration Project | 26 |
| Education, Outreach, and Policy | 27 |

| | |
|---|-----------|
| OUTREACH PROGRAM | 28 |
| ANNUAL SURVEY PROGRAM | 28 |
| FURTHER INFORMATION | 28 |
| OSC Web Site | 28 |
| Prohibited Personnel Practices | 28 |
| ADR Program | 29 |
| Hatch Act Program | 29 |
| Whistleblower Disclosures | 29 |
| USERRA Program | 29 |
| Outreach Program | 29 |
| Reports to Congress | 30 |
| SUPPORTING TABLES | |
| TABLE 1. Summary of All OSC Case Activity | 8 |
| TABLE 2. Summary of ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints | 10 |
| TABLE 3. Summary of All Favorable Actions – Prohibited Personnel Practice Complaints | 13 |
| TABLE 4. Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing | 14 |
| TABLE 5. Summary of Hatch Act Complaint and Advisory Opinion Activity | 18 |
| TABLE 6. Summary of Whistleblower Disclosure Activity – Receipts and Dispositions | 24 |
| TABLE 7. Summary of USERRA Referral and Litigation Activity | 27 |
| APPENDICES | |
| APPENDIX A: Survey Totals and Response Sources by Type of Matter at OSC | 31 |
| APPENDIX B: Prohibited Personnel Practice Complaints | 32 |
| APPENDIX C: Formal Hatch Act Advisory Opinions | 36 |
| APPENDIX D: USERRA Cases | 37 |
| APPENDIX E: Endnotes | 39 |
| APPENDIX F: List of Acronyms Used in Report | 40 |

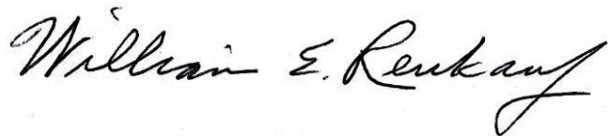
MESSAGE FROM ASSOCIATE SPECIAL COUNSEL WILLIAM E. REUKAUF

This is the U.S. Office of Special Counsel's (OSC's) Report to Congress for Fiscal Year 2010. The report describes OSC's important mission and responsibilities, significant matters handled by the agency, and summary results of the agency's performance during the last fiscal year (FY).

OSC continued to receive increased numbers of cases in several of its mission-critical areas:

- The Disclosure Unit received 961 whistleblower disclosures in FY 2010, up 32.7% over the number of disclosures received in FY 2009.
- OSC received 526 Hatch Act complaints, an increase of 6% over the previous fiscal year.

These caseload increases were significant, and the upward trend in numbers of cases shows no sign of abating. But the real story conveyed within these pages relates to the efforts expended and results achieved in FY 2010 by dedicated employees, regardless of the challenges, on behalf of those who came to OSC seeking its assistance.

A handwritten signature in black ink that reads "William E. Reukauf". The signature is written in a cursive style with a large, sweeping initial 'W'.

INTRODUCTION TO OSC

Statutory Background

OSC was established on January 1, 1979.¹ From then until 1989, the office operated as the independent investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB, or “the Board”). By law, OSC received and investigated complaints from current and former federal employees, and applicants for federal employment, alleging prohibited personnel practices by federal agencies; enforced the Hatch Act, including by giving advice on restrictions imposed by the 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 federal employment) about wrongdoing in government agencies. The office 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 (WPA).² This statute made OSC an independent agency within the executive branch of the federal government, with continued responsibility for the functions described above. It also strengthened protections against reprisal for employees who disclose wrongdoing in the government, and enhanced OSC’s ability to enforce those protections.

Congress enacted 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.⁴ 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.

Also in 1994, OSC’s reauthorization act expanded

protections for federal employees, and defined new responsibilities for OSC and other federal agencies.⁵ It provided, for example, 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 is now the Department of Veterans Affairs (DVA), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under those provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the WPA, and directed agencies to consult with OSC in that process.

In November of 2001, Congress enacted the Aviation and Transportation Security Act,⁶ creating the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA can file allegations of reprisal for whistleblowing with OSC and the MSPB.

Approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the Board. OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA, when warranted.

Mission

OSC is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment by protecting covered employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. The agency also supports covered federal employees and applicants by providing a secure channel for disclosures by them of wrongdoing in government agencies; enforces and provides advice on Hatch Act restrictions on political activity by government employees; and enforces employment rights secured by USERRA for federal employees who serve and protect the country in the National Guard or Reserves.

OVERVIEW OF OPERATIONS

Internal Organization

OSC maintains a headquarters office in Washington, D.C., and four field offices (located in Dallas, Detroit, Oakland, and Washington, D.C.). Agency components during FY 2010 included the Immediate Office of the Special Counsel, five program/operating units, and several support units (described further below).

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

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. CEU screens approximately 2,400 such complaints each year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation or possible mediation.⁷

Investigation and Prosecution Division (IPD). IPD is comprised of the four field offices, and 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. IPD investigators work with the attorneys in deciding whether a matter warrants corrective action, disciplinary action, or both. If meritorious cases cannot be resolved through negotiation with the agency involved, the attorneys represent the Special Counsel in litigation before the MSPB. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, IPD investigators and attorneys assist the Hatch Act and USERRA Units, as needed, with cases handled by those components.

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. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness before the Special Counsel sends the report to the President and responsible congressional oversight committees, along with any comments by the whistleblower and the Special Counsel.

Hatch Act Unit (HAU). This unit investigates and enforces complaints of Hatch Act violations, and represents OSC in litigation before the MSPB seeking disciplinary action. In addition, the HAU is statutorily 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. Under a nearly three-year Demonstration Project established by Congress, the USERRA Unit also directly received and investigated approximately one-half of all federal sector USERRA cases filed between February of 2005 and December of 2007, bypassing DOL. This Demonstration Project has been reestablished for 2011 through 2014.

Support Units

Legal Counsel and Policy Division. This division serves as OSC’s office of general counsel, and provides policy advice and support to the agency. The division’s responsibilities include provision of legal advice and support in connection with management and administrative matters; defense of OSC interests in litigation filed against the agency; management of the agency’s Freedom of Information Act, Privacy Act, and ethics programs; and policy planning and development.

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

FY 2010 Budget and Staffing

During FY 2010, OSC operated with a budget of \$18,495,000. The agency had a staff of approximately 108 employees.

FY 2010 Case Activity and Results

Table 1, below, summarizes basic OSC case intake and dispositions in FY 2010, with comparative data for previous fiscal years. More detailed data can be found in Tables 2-7, which are in sections of this report relating to specific components of OSC’s mission – prohibited personnel practice cases, Hatch Act matters, whistleblower disclosures, and USERRA cases.

| TABLE 1 Summary of All OSC Case Activity | | | | | |
|--|--------------------|--------------------|--------------------|--------------------|--------------------|
| | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
| Matters ^a pending at start of fiscal year | 777 | 667 ^b | 700 | 943 | 1,326 |
| New matters received | 2,718 | 2,880 | 3,116 | 3,725 | 3,950 |
| Matters closed | 2,814 | 2,842 | 2,875 | 3,337 | 3,912 |
| Hatch Act advisory opinions issued | 3,004 | 2,598 | 3,991 | 3,733 | 4,320 |
| Matters pending at end of fiscal year | 681 | 698 | 937 | 1,324 | 1,361 |

^a “Matters” in this table includes prohibited personnel practice cases (including TSA matters), Hatch Act complaints, whistleblower disclosures, and USERRA cases.

^b Closure entries in the agency case tracking system were made in early FY 2007 for several cases completed during FY 2006.

PROHIBITED PERSONNEL PRACTICE COMPLAINTS

Receipts and Investigations

OSC is responsible for investigating complaints alleging any one or more of 12 prohibited personnel practices defined by law.⁷ Of the 3,950 new matters received by OSC during FY 2010, 62% (2,431 matters) were new prohibited personnel practice complaints.⁸

As the intake unit for all prohibited personnel practice complaints filed with OSC, CEU reviewed all such matters received in FY 2010. Complaint examiners reviewed each matter to determine whether it was within OSC's jurisdiction, and if so, whether it stated a potentially valid claim, by reference to legal elements of a violation defined by law and interpreted by the MSPB and the courts.

Complaints consisting of potentially valid claims were referred by CEU to IPD for field investigation. Matters referred during FY 2010 for investigation included: complaints alleging reprisal for engaging in protected activities, reprisal for whistleblowing, political discrimination, nepotism, and unauthorized employment practices.

Mediations

In selected prohibited personnel practice cases referred by CEU to IPD, OSC continued to offer mediation as an alternative to investigation. Under OSC's program, once a case is identified as mediation-appropriate, an ADR specialist contacts the parties to discuss the process. An offer of mediation is first made to the complainant. If the complainant accepts, OSC then offers mediation to the agency involved. Pre-mediation discussions are conducted in an effort to help the parties form realistic expectations and well-defined objectives for the mediation process.

If mediation resolves the complaint, the parties execute a written and binding settlement agreement. Resolutions can result in monetary recoveries, including retroactive promotions, attorney fees, and lump sum payments. Benefits that complainants can

also receive include revised performance appraisals, transfers, and letters of recommendation. If, however, mediation cannot resolve the complaint, it is referred for further investigation by IPD.

Mediated Settlements.

The following are examples of complaints resolved by OSC mediators during FY 2010:

In one case, an electronics industrial controls mechanic reported to agency police that a supervisor assaulted him. When the agency failed to take action on the employee's report, he reported the incident to the local police and the FBI. A number of months later he applied for leave for an extended period of time, which was denied by his second-level supervisor. He also applied for various promotion opportunities and was not selected. Through mediation the parties settled two OSC complaints and an EEO complaint. The agency agreed that if he was not selected for the next promotion he applied for, they would provide him with the opportunity to gain supervisory experience. The agency also agreed to give him annual leave and attorney's fees. In response, the employee agreed to withdraw his complaints.

In another case, a drug treatment specialist reported to her first and second-line supervisors that, on numerous occasions, she had witnessed her co-workers absent without leave while performing outside jobs during official duty hours. Her second-line supervisor, in turn, told his staff that she was scaring employees by reporting misconduct. Shortly thereafter, the employee was reassigned. She was also denied flexible hours to accommodate a series of medical appointments and received a downgraded performance evaluation. Through mediation the parties settled the complaint. The agency agreed to restore sick leave that was used in lieu of accommodating her schedule. Furthermore, her evaluation was upgraded and it was agreed that future evaluations would be reviewed and issued by the director of the facility. In response, the employee agreed to withdraw her complaint.

| TABLE 2 ADR Program Activity - Mediation of Prohibited Personnel Practice Complaints | | | | | | |
|---|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
| Matters identified as mediation-appropriate | | 52 | 38 | 31 | 28 | 37 |
| Initial acceptance rates by parties | Complainants | 83% | 71% | 54% | 61% | 64% |
| | Agencies | 59% | 59% | 94% | 88% | 74% |
| Mediated and other resolutions ^a | | 11 | 10 | 8 | 11 | 6 |
| Resolution rate - OSC mediation program | | 55% | 50% | 50% | 36% | 50% |

^a Category includes complaints settled through mediation by OSC (including “reverse-referrals” - i.e., cases referred back to ADR program staff by IPD after investigation had begun, due to the apparent potential for a mediated resolution). Category also includes complaints that entered the initial OSC mediation process, and were then resolved by withdrawal of the complaint, or through mediation by an agency other than OSC.

Corrective and Disciplinary Actions

In complaints other than those resolved through mediation by OSC, IPD conducts a field investigation. If, after investigation of a complaint, OSC believes that a prohibited personnel practice has been committed, OSC notifies the agency involved. Typically, OSC obtains corrective action through negotiation between the complainant and the agency. By law, before initiating litigation seeking corrective action at the MSPB, OSC must report its findings and recommendations to the head of 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 a petition for corrective action with the MSPB. If OSC determines that disciplinary action against an employee believed to have committed a violation is warranted, it may file a disciplinary action complaint directly with the MSPB. Should the agency agree to take appropriate disciplinary action on its own initiative, then the matter may be settled without resort to an MSPB proceeding.

Examples of Protecting the Federal Workforce from Reprisal for Whistleblowing and Reprisal for Engaging in other Protected Activities

- Reprisal for Whistleblowing

An auditor with a federal agency disclosed to the Inspector General that managers had issued flawed

audit reports of government contractors. The auditor also testified before a congressional committee investigating the agency. Office of Inspector General (OIG) and Government Accounting Office (GAO) investigations verified the validity of the auditor’s allegations, resulting in changes to the auditing procedures.

The auditor suffered a series of adverse personnel actions, including the imposition of a gag order, harassment, lowered performance ratings, and a denial of performance awards. OSC issued formal findings of whistleblower retaliation to the agency. Pursuant to OSC’s findings, this agency granted the auditor full corrective action. In addition, the agency took and proposed disciplinary action against the auditor’s managers. Finally, the agency corrected its auditing procedures as recommended by OIG and GAO.

- Reprisal for Whistleblowing

A former biomedical engineering technician reported that officials of a medical center denied him training and terminated his probationary employment because he made disclosures to the agency police, agency Office of Inspector General, and an agency commission. The technician reported that co-workers were committing time fraud, using government credit cards for private purchases, and were not inspecting/calibrating medical equipment. OSC’s investigation indicated that the technician’s protected disclosures

were a factor in the agency's decision to terminate his employment. OSC facilitated a settlement with the parties. The agency agreed to: (1) rescind the technician's probationary termination and remove all documentation associated with this personnel action from its files; (2) issue him a SF-50 indicating that the technician voluntarily separated from employment; (3) give him a neutral employment reference; and (4) pay him attorney's fees and any other expenses related to his complaint.

- Reprisal for Whistleblowing

An administrative officer with a federal government Medical Center reported that she received an unsatisfactory performance appraisal, a significant change in duties, and endured a hostile work environment in retaliation for her protected activity. Specifically, she disclosed to the medical center Inspector General (IG) that residents and medical students were not receiving proper security clearances. The IG investigation substantiated her allegations. OSC found evidence, in part, supporting the retaliation claim. At OSC's request, the agency agreed to grant the administrative officer full relief. In a settlement agreement, the agency agreed to: (1) change her annual performance rating to Outstanding and grant her a \$700 cash award for superior performance; (2) restore lost leave and sick leave to her leave balance; and (3) reimburse her for medical expenses incurred. In exchange, the administrative officer withdrew her OSC complaint.

- Reprisal for Engaging in Protected Activity

An administrative support assistant with a federal agency reported that she was terminated for filing a complaint of sexual harassment against her supervisor and three female co-workers to a federal police department. An internal agency report validated the administrative assistant's assertions. At OSC's request, the agency settled the complaint by reinstating the administrative assistant, returning her lost annual and sick leave, and paying her for attorney's fees and other costs. The subject official that recommended the Administrative Assistant's removal was transferred to another facility and issued a written reprimand.

Examples of Protecting the Merit System through Enforcement of the Other PPP's

- First Amendment Violation

An employee with a federal military school, a professor, reported that in violation of his First Amendment right to free speech, he was denied an annual merit pay increase because he published newspaper articles criticizing agency policies. OSC's investigation uncovered evidence indicating that the agency illegally denied the employee a merit pay increase because of his public statements. One official told members of the school faculty that the employee should not be rewarded for the manner in which he had expressed his concerns outside the agency. A few months later, the employee was also issued a warning letter informing him that if he continued making inappropriate public statements, disciplinary action could be taken against him. While the investigation was ongoing, OSC negotiated an informal settlement of the complaint. The specific terms of the settlement are confidential.

- Political Discrimination

The employee, an attorney, reported that agency officials refused to approve his appointment to a high-level attorney position within a federal agency because he was a Republican, in violation of the prohibition against political affiliation discrimination. OSC's investigation uncovered evidence that after the employee was selected for the position at issue, two officials illegally blocked final approval of the employee's appointment. For instance, the evidence showed that after receiving information from an outside group about the employee's background, and days after the selection, one subject official researched the employee's political activity. A second official explained her decision not to select the employee because she objected to the fact that he previously held a Schedule C appointment in the former administration. OSC facilitated an informal resolution during the investigation. The agency agreed to pay the employee a lump sum settlement in exchange for the employee agreeing to withdraw his OSC complaint and an Inspector General complaint.

- Political discrimination

OSC examined reports of the politicized hiring of career attorneys at a federal agency during the Bush administration. Based on those reports, OSC conducted an investigation to determine whether the agency had taken sufficient corrective action to restore merit systems principles to the hiring process. In consultation with the Office of Personnel Management's Associate Director of Merit System Audit and Compliance, OSC determined that the agency had instituted hiring procedures that were merit-based and likely to ensure that the abuses of the past would not be repeated.

- Nepotism

OSC investigated an allegation that a logistics management officer violated anti-nepotism laws by advocating for the selection of his son for a position in his directorate. OSC's investigation revealed that the logistics management officer gave the appearance of advocating for his son's employment and that the son's selection and first work assignment violated a department directive pertaining to the employment of relatives. At OSC's request, the agency transferred the son to another organization on post, and on October 16, 2009, the agency issued the logistics management officer a written reprimand.

- Litigation-Unauthorized Employment Preference/Hiring Practice Irregularities

On May 14, 2010, the Merit Systems Protection Board (MSPB) ordered an agency to suspend two human resources specialists, one for 45 days and the other for 10 days, pursuant to OSC disciplinary action complaints filed against the subject officials. The MSPB found that both human resources specialists intentionally assisted a now retired uniformed servicewoman officer in granting an illegal preference to a GS-8 applicant during the hiring process for a GS-11 supervisory merchant marine specialist, a violation of 5 USC § 2302(b)(6). More specifically, the human resources specialists participated in the cancellation of two sets of vacancy announcements because the preferred applicant did not make the certificate of eligibles. Further, the human resources specialists tailored a third announcement to lower the grade level of the position so the preferred candidate could qualify for the GS-11 level position.

The Federal Circuit Court of Appeals reversed one of the respondent's 10-day suspensions in FY 2011. That decision will be discussed in the next annual report, covering that year's activity.

Summary of Workload, Activity, and Results

Complaints involving allegations of reprisal for whistleblowing – OSC’s highest priority – accounted for the highest numbers of complaints resolved and favorable actions (stays,⁹ corrective actions, and disciplinary actions) obtained by OSC during FY 2010.

Table 3, below, contains summary data for the year (with comparative data for the four previous fiscal years) for prohibited personnel practice complaints. The percentage increase in the number of complaints referred by CEU for investigation by IPD increased from 25% for FY 2009 to 30% for FY 2010.

| TABLE 3 Summary of All Prohibited Personnel Practice Complaints Activity - Receipts and Processing^a | | | | | | |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|-------|
| | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | |
| Pending complaints carried over from prior fiscal year | 521 | 386 | 358 | 474 | 769 | |
| New complaints received ^b | 1,805 | 1,970 | 2,089 | 2,463 | 2,431 | |
| <i>Total complaints:</i> | 2,326 | 2,356 | 2,447 | 2,937 | 3,200 | |
| Complaints referred by CEU for investigation by IPD | 143 | 125 | 135 | 169 | 220 | |
| Complaints processed by IPD | 256 | 151 | 88 ^c | 150 | 179 | |
| Complaints pending in IPD at end of fiscal year | 155 | 136 | 185 | 201 | 250 | |
| Total complaints processed and closed (CEU and IPD combined) | 1,930 | 1,996 | 1,971 | 2,173 | 2,341 | |
| Complaint processing times | Within 240 days | 1,693 | 1,874 | 1,889 | 2,045 | 2,185 |
| | Over 240 days | 237 | 121 | 80 | 127 | 154 |
| Percentage processed within 240 days | 88% | 94% | 95% | 94% | 93% | |

^a Complaints frequently contain more than one type of allegation. This table, however, records all allegations received in a complaint as a single matter.

^b “New complaints received” includes a few reopened cases each year, as well as prohibited personnel practice cases referred by the MSPB for possible disciplinary action.

^c In FY 2008, IPD not only processed 88 PPP complaints, but also handled 17 USERRA demonstration project cases and one Hatch Act case.

Table 4, below, contains FY 2010 summary data (with comparative data for the four previous fiscal years) on OSC’s receipt and processing of all favorable actions in prohibited personnel practice complaints handled by CEU and IPD.¹⁰ The number of favorable actions obtained increased from 53 in FY 2009 to 76 in 2010.

| TABLE 4 Summary of All Favorable Actions - Prohibited Personnel Practice Complaints^a | | | | | | |
|--|---------------------------|--------------------|--------------------|--------------------------------|--------------------|--------------------|
| | | FY 2006 | FY 2007 | FY 2008^b | FY 2009 | FY 2010 |
| Total favorable actions negotiated with agencies (all PPPs) | # of actions ^c | 52 | 29 | 58 | 62 | 96 |
| | # of matters | 48 | 29 | 33 | 53 | 76 |
| Total favorable actions negotiated obtained (re-prisal for whistleblowing) | # of actions | 40 | 21 | 44 | 35 | 66 |
| | # of matters | 37 | 21 | 20 | 29 | 55 |
| Disciplinary actions negotiated with agencies | | 4 | 5 | 3 | 5 | 13 |
| Stays negotiated with agencies | | 8 | 7 ^d | 4 ^e | 9 | 15 |
| Stays obtained from MSPB | | 1 | 3 | 0 | 0 | 0 |
| Corrective action complaints filed with the MSPB | | 1 | 1 | 0 | 0 | 0 |
| Disciplinary action complaints filed with the MSPB | | 0 | 0 | 3 | 0 | 0 |

- ^a OSC used a newly developed standardized query tool to generate the numbers for FY 2008. When applied backwards to the years FY 2004 through FY 2007, the query tool generated slightly different numbers for several of the figures. Differences are caused by entry of valid data into the case tracking system after annual report figures were compiled and reported, and by data entry errors in earlier years that have since been corrected.
- ^b Actions itemized in this column occurred in matters referred by CEU and processed by IPD.
- ^c The number of actions refers to how many corrective actions are applied to the case, the number of matters consists of how many individuals were involved in the original case.
- ^d Incorrectly reported as 4 in OSC’s FY 2007 report to Congress due to administrative error.
- ^e Represents two stays obtained in each of two cases.

HATCH ACT ADVICE AND ENFORCEMENT

Overview

Enforcement of the Hatch Act – which restricts the political activity of federal employees, employees of the D.C. government, and certain employees of state and local governments – is another important component of OSC’s mission. The agency’s Hatch Act Unit continued to be responsible for this enforcement responsibility, through investigation of complaints received, issuance of advisory opinions responsive to requests, and proactive outreach activities.

Investigations

The HAU enforces compliance with the Hatch Act by investigating complaint allegations to determine whether the evidence supports disciplinary action. After investigating a complaint and determining that a violation has occurred, the HAU will either issue a warning letter to the subject, attempt to informally resolve the violation, negotiate a settlement or prosecute the case before the MSPB.

HAU and IPD representatives also served as advisors to a task force created by the Special Counsel in 2007 to investigate possible violations by Executive Branch officials of the Hatch Act, and certain other civil service laws, rules or regulations. Task force investigative efforts continued during FY 2010.

Advisory Opinions

The HAU also is responsible for a nation-wide program that provides federal, state, and local (including D.C.) government employees, as well as the public at large, with legal advice on the Hatch Act, enabling individuals to determine whether they are covered by the act, and whether their contemplated activities are permitted under the act. Specifically, HAU has the unique responsibility of providing Hatch Act information and legal advice to White House and congressional offices; cabinet members and other senior management officials throughout the federal government; state and local government officials;

and the media. As the only unit authorized by law to issue legal advice to persons outside the agency, HAU issues all OSC advisory opinions.

Outreach

To complement its investigative and advisory roles, the HAU continued to be an active participant in OSC outreach program activities in FY 2010.

Enforcement Highlights

The HAU continued to generate increased investigative and litigation activity at OSC, with many of the cases resulting in significant public and media interest. During FY 2010 the HAU saw yet another increase in the number of complaints of Hatch Act violations by federal employees. The 526 complaints received were the highest on record. In addition, the unit issued 4,320 oral and written advisory opinions (351 formal written opinions, 1,628 e-mail opinions, and 2,372 oral opinions) in response to requests for advice on permissible and prohibited activities under the Hatch Act.

Some of the unit’s significant enforcement results for the year are highlighted below:

- The MSPB found that a federal Program Analyst and Contracting Officer Technical Representative violated the Hatch Act when she sent five partisan political e-mails while on duty and in her federal workplace. Specifically, the employee, while at work, among other things, twice solicited political contributions from coworkers and from contract employees via e-mail. The MSPB agreed with OSC that the employee violated several provisions of the Act, including the prohibition against using her official authority or influence to affect an election, and ordered the employee removed from federal service. (OSC v. Ware, 114 M.S.P.R. 128 (2010)).
- The MSPB found that a federal employee violated the Hatch Act when he disseminated an e-mail, while on duty and in the federal workplace, soliciting political contributions for a Presidential candidate. The MSPB ordered him suspended without pay for 120 days. (OSC v. Mark, 114 M.S.P.R. 516 (2010)).

- An administrative law judge ruled that a federal employee violated the Hatch Act when, while on duty and in a federal building, she disseminated over 30 political e-mails in opposition to a Presidential candidate, and included her electronic signature in the e-mails identifying her federal agency and position. The employee retired while the case was pending. The judge ordered that removal was the appropriate penalty for this violation and directed that a copy of the removal order be placed in the employee's official personnel file.
- An administrative law judge ruled that a doctor at a federal agency violated the Hatch Act when, while on duty and in a federal building, he sent an invitation to a campaign fundraising event to several individuals, including subordinate employees. The judge also found that the employee again violated the Hatch Act when he sent an e-mail that solicited campaign contributions to one colleague. The judge concluded that the employee's violations warranted removal. An appeal is pending.
- After filing a petition for disciplinary action with the MSPB, OSC negotiated a settlement agreement in a case involving a doctor at a federal agency. Under the terms of the settlement agreement, the employee agreed to a 90-day suspension as a penalty for violating the Hatch Act. OSC charged that the employee violated the Hatch Act by using her official authority and influence for the purpose of affecting the result of the 2008 Presidential election and by engaging in political activity while in a federal room or building. Specifically, OSC charged that the employee sent two e-mails advocating for one of the candidates in the 2008 Presidential election while in her federal workplace. The recipients of the e-mails included several individuals who were subordinate to the employee.
- OSC filed a petition for disciplinary action with the MSPB against a federal employee for engaging in prohibited political activity while on duty and/or in the federal workplace. The employee sent several e-mails supporting the candidacy of a Presidential candidate, including one that invited recipients to donate money to the campaign. Subsequent to filing the complaint, OSC negotiated a settlement agreement for a 60-day suspension without pay for the employee's violations of the Act.
- OSC negotiated a settlement agreement with a federal employee who disseminated an e-mail containing multiple statements about why a candidate was unsuitable to be President of the United States. The employee sent the e-mail to numerous recipients while she was in a federal room or building. The employee agreed to accept a 45-day suspension without pay for her violation of the Act.
- OSC issued an advisory opinion to a federal employee informing him that the Hatch Act prohibited him from being a candidate in a partisan election and outlining the ways in which a purported nonpartisan election may become partisan. The employee then filed a motion for a temporary restraining order in a United States District Court seeking an order enjoining OSC from initiating any action against him for being a candidate in a nonpartisan election that may have become partisan. The Court denied the employee's motion reasoning that because OSC had taken no action against the employee, the matter was not ripe for judicial review. The Court held that OSC's nonbinding advisory opinions are not subject to judicial review.
- OSC filed a complaint against a federal employee charging her with violating the Hatch Act by knowingly soliciting, accepting, or receiving a political contribution and engaging in political activity while on duty and/or in a room or building occupied in the discharge of official duties. The charges stemmed from two fundraiser invitation e-mails that the employee composed and disseminated while on duty and in the federal workplace. In addition, after receiving advice from her ethics coordinator to cancel the event, the employee hosted a political fundraiser in her home. An administrative law judge ruled that the employee violated the Hatch Act as to all counts in the complaint and that her violations warrant removal. An appeal is pending.
- After filing a petition for disciplinary action with the MSPB, OSC negotiated a settlement agreement for a 60-day suspension without pay for an executive director of a state agency who violated two provisions of the Hatch Act – the prohibitions against using one's official authority or influence for the purpose of interfering with or affecting the result of an election and coercing state employees to pay, lend, or

contribute anything of value to a political campaign. Specifically, OSC found that the executive director posted political fundraiser invitations in the workplace, and verbally invited subordinates to the same political fundraiser at the close of an official staff meeting.

- An administrative law judge ruled that a state employee violated the Hatch Act by being a candidate in a 2008 election for state representative. During the employee's candidacy in the partisan election, OSC advised the employee that he was covered by the Hatch Act and that his candidacy was in violation of the law. Despite these warnings, the employee continued to pursue his candidacy. The judge found that the employee's violation warranted removal. An appeal is pending.

- An administrative law judge ruled that a local police chief violated the Hatch Act by being a candidate in a partisan election for state senate. The employee continued to pursue his candidacy although OSC warned the employee that his candidacy was in violation of the law. The judge found that the employee's violation warranted removal. An appeal is pending.

- OSC filed a complaint against a state employee charging him with violating the Hatch Act by being a candidate for public office in a partisan election on two occasions. Despite having received an opinion from OSC in 2006, which advised him that the Act prohibited him from running for partisan elective office, the employee ran for a seat on his local borough council in 2008 and for the state assembly in 2009.

- In FY 2010, OSC investigated many complaints involving state or local government employees who were candidates for partisan public office. In some cases, OSC found that the employee's candidacy violated the Hatch Act and advised the employee that he or she needed to come into compliance with the law by either resigning from his or her employment or withdrawing from the election. In 55 cases, OSC achieved such corrective action – in 28 instances the employee chose to withdraw from the election, and in 26 instances the employee chose to resign his or her employment.

Outreach

HAU attorneys made over 50 presentations to various federal agencies, national organizations, and employee groups on employee rights and responsibilities under the Hatch Act. Many of these sessions were attended by high-level agency officials of other agencies. Notably, several presentations were conducted as roundtable discussions with Senate-confirmed presidential appointees and other political appointees; others were sponsored by OPM as part of its program introducing new Schedule C appointees to federal employment.

Summary of Workload, Activity, and Results

Growing public awareness of OSC's enforcement efforts and increased media attention contributed to record numbers of Hatch Act complaints received and advisory opinions issued in FY 2010. The 526 complaints received were a 6% increase over the previous year (and the highest on record). **Table 5** contains FY 2010 summary data (with comparative data for the four previous fiscal years) on OSC's Hatch Act enforcement activities.¹¹

TABLE 5 Summary of Hatch Act Complaint and Advisory Opinion Activity

| | | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|--|-------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Formal written advisory opinion requests received | | 237 | 194 | 292 | 227 | 351 |
| Formal written advisory opinions issued | | 230 | 176 | 275 | 226 | 320 |
| Total advisory opinions issued ^a | | 3,004 | 2,598 | 3,991 | 3,733 | 4,320 |
| New complaints received ^b | | 299 | 282 | 445 | 496 | 526 |
| Complaints processed and closed | | 266 | 252 | 264 | 388 | 535 |
| Warning letters issued | | 76 | 68 | 70 | 132 | 163 |
| Corrective actions taken by cure letter recipients: | Withdrawal from partisan races | 9 | 18 | 13 | 15 | 28 |
| | Resignation from covered employment | 22 | 6 | 17 | 6 | 26 |
| | Other | 2 | 1 | 2 | 3 | 1 |
| | Total: | 33 | 25 | 32 | 24 | 55 |
| Disciplinary action complaints filed with MSPB | | 6 | 1 | 3 | 10 | 7 |
| Disciplinary actions obtained (by negotiation or ordered by MSPB) ^c | | 10 | 5 | 11 | 5 | 10 |
| Complaints pending at end of fiscal year | | 112 | 142 | 323 | 430 | 422 |

^a All oral, e-mail, and written advisory opinions issued by OSC.

^b Includes cases that were re-opened.

^c Numbers revised for all five fiscal years based upon a new query which includes disciplinary actions obtained in both negotiated Hatch Act settlements and litigated Hatch Act cases, not just litigated cases as in the past. As a result, the numbers have increased from what was previously reported.

WHISTLEBLOWER DISCLOSURES

Overview

OSC's Disclosure Unit provides a safe channel through which federal employees, former federal employees, or applicants for federal employment, may disclose violations 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. Many disclosures involve complex and highly technical matters unique to an agency's or whistleblower's duties, such as disclosures about aviation safety matters, engineering issues, and impropriety in federal contracting.

Upon receipt of a disclosure, DU attorneys review the information to evaluate whether there is a substantial likelihood that the information discloses one or more of the categories of wrongdoing described in 5 U.S.C. § 1213. If the Special Counsel determines that there is a substantial likelihood that the information falls within one or more of those categories, he or she is required by § 1213(c) to send the information to the head of the agency for an investigation. If the whistleblower consents, his or her name is provided to the agency as the source of the information. If the whistleblower does not consent, the agency is notified that the whistleblower has chosen to remain anonymous.

Upon receipt of a referral for investigation from the Special Counsel, the agency head is required to have the allegations in the disclosure investigated, and to send a report to the Special Counsel describing the agency's findings. The whistleblower has the right to review and provide OSC with comments on the report. The DU and Special Counsel review the report to determine whether the agency's findings appear to be reasonable. When that review is complete, 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 oversight committees for the agency involved. A copy of the agency report, and any comments on the report, are placed in OSC's public file.

Disclosures not referred to an agency head under §1213(c) are either referred informally to the IG for the agency involved, or are closed. Agency head reports sent to President and Congress increased from 34 in FY 2009 to 67 in FY 2010.

Disclosure Highlights

Whistleblower disclosures in FY 2010 continued to span a broad range of concerns. Several of those referred by OSC for further action are highlighted below:

Substantial and Specific Danger to Public Health or Safety

Mold Affecting the Health of Air Traffic Controllers.

OSC referred to the Secretary of the Department of Transportation allegations that air traffic controllers at the Federal Aviation Administration, Detroit Metropolitan Airport, Romulus, Michigan, were suffering severe health problems caused by mold in the air traffic control tower. Although attempts to remediate the mold had been made, employees continued to suffer adverse health effects, such as asthma. Following OSC's referral to the Secretary for investigation, the agency acknowledged that mold and moisture problems in the air traffic control tower had not been fully remediated. The agency restarted the inspection and remediation process in January 2009 in cooperation with the whistleblowers' union. The agency also planned to conduct an employee health survey of current and former air traffic control tower employees. *Referred March 2008; sent to the President and congressional oversight committees and closed January 2010.*

Discharge of Pollutants in Excess of Allowable Limits.

OSC referred to the Secretary of the Department of the Army (Army) allegations from 12 current and former employees of the Fort Lewis Directorate of Public Works, Waste Water Treatment Plant (WWTP), Fort Lewis, Washington, that levels of oil and other contaminants in the WWTP's effluent water discharged into Puget Sound exceeded limits established by the Clean Water Act and Fort Lewis' National Pollutant Discharge Elimination System (NPDES) permit. The whistleblowers also alleged

that Fort Lewis management failed to conduct proper testing of the water treated at the plant, properly maintain and replace the plant's equipment, and take adequate measures to protect employees against occupational health and safety risks.

The Army's investigation did not substantiate the allegations and determined that the effluent discharged by the WWTP consistently fell within the standards established by the Clean Water Act and the NPDES permit. In addition, the WWTP consistently met the requirements of the Washington State General Permit for Bio-solids Management. The Army concluded that Fort Lewis officials complied with all testing, recording and reporting requirements of the permits and that the equipment failures or irregularities failed to pose significant health and safety hazards as alleged. Notwithstanding these findings, the Army took steps to remediate some of the conditions identified during the investigation, including updating and repairing equipment, developing an industrial wastewater pre-treatment program, entering into a pre-treatment Memorandum of Understanding with the Washington State Department of Ecology, and implementing preventive maintenance and quality control programs. Finally, the Army is establishing guidelines for operator requested testing and making lab test results available to operators and lab technicians to address the allegations that the agency failed to grant requests for periodic wastewater testing and failed to report the results of wastewater samples testing to plant operators. *Referred May 2007; transmitted to the President and Congressional oversight committees and closed January 2010.*

Violation of Law, Rule or Regulation

Army Report Confirms TDY Fraud. OSC completed a disclosure case referred to the Secretary of the Army regarding allegations that Department of the Army (Army) employees routinely commit Temporary Duty (TDY) fraud by collecting TDY payments even though they are staying at their personal residence or at the home of a friend. The Army investigation found that an Army employee and his girlfriend committed the offenses of "fraud and making a false statement in violation of Title 18, United States Code, Section 1001, theft of Government funds in violation

of Title 18, United States Code, Section 641, and conspiracy in violation of Title 18, United States Code, Section 371." As a result of the investigation, the Army employee reimbursed the agency for the travel overpayments he fraudulently received by providing a check to the Army's Finance Center in the amount of \$23,265. In addition, the Army suspended the employee for 90 days in lieu of removal. *Referred July 2008; transmitted to the President and Congressional oversight committees and closed July 2010.*

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

Veterans Affairs Hospital Failed to Inspect Medical Equipment Prior to Use on Patients. The whistleblower, a former employee at the Department of Veterans Affairs (VA), VA Gulf Coast Veterans Health Care System, Biloxi VA Medical Center (Medical Center), Biloxi, Mississippi, alleged that employees failed to inspect medical equipment used on patients and attempted to conceal the lack of inspections. The whistleblower alleged that electrical safety checks had not been performed on most equipment received over the previous two years, including life support equipment. The whistleblower also alleged that certain initial inspection work orders were marked as closed even though employees did not inspect the equipment. In some cases, the whistleblower observed stickers being placed on the uninspected equipment to give the false impression that an inspection occurred. The agency's reports substantiated the whistleblower's allegations that the medical equipment inventory contained many inaccuracies and not all medical equipment was inspected prior to use on patients. The reports also noted that the agency was taking corrective action to address these issues. *Referred April 2009; transmitted to the President and Congressional oversight committees and closed April 2010.*

Uncertified Firefighters Performing Firefighting Duties and Collecting Overtime. OSC referred to the Secretary of the Department of the Interior allegations that officials at the Bureau of Indian Affairs, Mescalero Agency, Mescalero, New Mexico, permitted employees who did not have the proper

certification to work on the fire line of the South Tularosa fire in 2008 and collect significant amounts of overtime and hazard pay. The agency determined that an unidentified employee willfully falsified information in the Incident Qualifications and Certification System to give the impression that the employees in question had the proper certifications to work on the South Tularosa fire. In response to these findings, two supervisors were transferred out of the Mescalero Agency. *Referred January 2009; sent to the President and Congressional oversight committees and closed October 2009.*

Failure to Report Crane Accident. OSC referred to the Secretary of the Navy an allegation that employees at the Naval Surface Warfare Center, Carderock Division, Bayview Detachment, Bayview, Idaho, failed to report that a crane was damaged during a testing operation, as required by Naval regulations. The whistleblower stated that there was no government property damage report or crane report filed. As a result, the crane was not load tested or re-certified, and was still in use, creating unsafe conditions for employees and the potential for further damage to government property. The agency substantiated the allegation that Bayview Detachment employees improperly failed to report a crane accident in violation of NAVFACP-307, as well as Carderock Division Instruction 112262/2a. As a result of the investigation, the agency conducted several inspections of the crane and associated equipment, completed the required accident report, and altered and strengthened the procedures used to deploy equipment. The report also recommended that parts of the equipment be redesigned for better support. Finally, all employees involved in the January 2009 accident were counseled, and required to attend crane remedial/refresher training. *Referred March 2009; sent to the President and Congressional oversight committees and closed April 2010.*

Gross Mismanagement, Abuse of Authority, and Substantial and Specific Danger to Public Health or Safety

Failure to Disclose Fraudulently Certified Mechanics to Intelligence Agencies. OSC referred to the Secretary of U.S. Department of Transportation allegations that officials of the Federal Aviation

Administration (FAA), Orlando Flight Standards District Office, Orlando, Florida, lacked a national security screening mechanism for Airframe and Powerplant (A&P) mechanics who received fraudulent certification through the now defunct FAA-designated mechanic examiner St. George Aviation (SGA). Following OSC's referral of the matter for investigation, the Secretary wrote to the Special Counsel that the list of A&P mechanics certified by SGA had been released to the Transportation Security Administration. *Referred April 2009; sent to the President and Congressional oversight committees and closed November 2009.*

Runway Safety and Air Traffic Control. OSC referred to the Secretary of Transportation allegations received from a senior Air Traffic Controller at the Federal FAA Detroit Metropolitan Airport (DTW) Air Traffic Control Tower (ATCT), Detroit, Michigan, that DTW management operated an air traffic approach and departure configuration known as the "Southwest Flow" in an unsafe manner and in violation of FAA policy. The whistleblower also alleged that management guidance to controllers for directing traffic on an airport taxiway was contradictory and confusing, and that FAA managers provided false information to Senator Carl Levin in response to his inquiry about the safety of the Southwest Flow.

The agency investigation substantiated most of the allegations finding that for approximately six months, a critical segment of DTW's "Southwest Flow" operation was often non-compliant with FAA Order 7110.65, governing aircraft separation standards for intersecting runways, in part as a result of DTW management's failure to provide controllers with proper instruction on its safe operation. The investigation also determined that for two months during the same time six-month period, DTW Operations Manager knowingly allowed the non-compliant operation to continue.

The agency also concluded that DTW managers included language in FAA's September 2007 response to Senator Levin that was, at a minimum, disingenuous. FAA sent a letter clarifying its response to Senator Levin in April 2008, only after OSC

referred the whistleblower's allegations. Additionally, the agency found that the "hold short" lines on Taxiway Quebec, and as depicted on controller monitor screens, were insufficient for controllers to comply with DTW guidance for directing traffic on this taxiway. In addition, DTW's guidance and Operating Manual contained contradictory language, creating confusion for controllers. Finally, the agency found that DTW management had not implemented necessary changes to written guidance provided to controllers for segregating jet and propeller aircraft departures. In response to these findings, FAA pledged to take appropriate corrective and administrative action. DTW ceased operation of the Southwest Flow, DTW managers have been counseled, and changes have been made to FAA and DTW guidance concerning Taxiway Quebec and jet and propeller departures. *Referred March 2008; sent to the President and the Congressional oversight committees and closed March 2010.*

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

Failure to Oversee Aviation Inspection. OSC referred allegations to the Secretary of Transportation that managers at the FAA failed to provide oversight of United Airlines' (United) regarding emergency door battery packs and installation of overhead bins. The agency report substantiated the whistleblower's allegations and found that two supervisory inspectors violated FAA's Voluntary Disclosing Reporting Program (VDRP). FAA managers improperly permitted United to self-disclose noncompliance with an Airworthiness Directive (AD) on the installation of overhead bins, after this noncompliance had been discovered by the whistleblower two weeks earlier. The investigation also found that the senior manager failed to adequately address the expiration of emergency door batteries and the integrity of the battery restoration equipment. United eventually replaced all the emergency door batteries in question, however, the senior manager delayed a decision regarding United's use of non-calibrated equipment during its battery restoration process by 18 months. The agency concluded that this issue was only investigated and reported by FAA because of

Congressional, OSC and whistleblower inquiries into the flawed restoration process. In response to the investigative findings, two managers received five-day suspensions based on their improper acceptance of United's self-disclosure. *Referred August 2008; sent to the President and Congressional oversight committees and closed February 2010.*

Failure to Enforce Aircraft Maintenance and Inspection Regulations. OSC referred to the Secretary of Transportation allegations from an FAA Aviation Safety Inspector assigned to the Southwest Airlines Certificate Management Office (SWA CMO), Irving, Texas. The whistleblower alleged that FAA officials knowingly allowed Southwest Airlines (SWA) to self-disclose a violation of an Airworthiness Directive (AD), and to operate aircraft in passenger revenue service in an unsafe or unairworthy condition, in violation of Title 14 Code of Federal Regulations (CFR) Part 39.7, 39.11m 121.153(a)(2) and the Voluntary Disclosure Reporting Program (VDRP) requirements.

The investigation substantiated the allegations, finding that the Supervisory/Principal Maintenance Inspector (S/PMI) violated FAA policy by allowing SWA to self-disclose non-compliance with an AD governing window fasteners on 55 Boeing 737 aircraft when the requirements for the VDRP had not been met. The investigation determined that the S/PMI failed to ensure the disclosure was timely, that non-compliance had ceased upon detection, and that the cause of the non-compliance had been identified. The investigation also concluded that he failed to address SWA's continued operation of six non-compliant aircraft for two weeks after the airline was aware of the non-compliance, and after SWA had reported to FAA that the non-compliance had ceased. The S/PMI again violated FAA policy when he failed to ensure that SWA had identified and implemented corrective measures, as required by FAA, before issuing a final close-out Letter of Correction to the airline on February 13, 2008.

The investigation also concluded that the SWA CMO Manager approved the Letter of Correction to SWA without reviewing the file and that he should have ensured that the CMO employees were following

FAA policy and enforcing the VDRP requirements given SWA's knowing and continued operation of aircraft in non-compliant status, its misuse of VDRP, and the complicity of SWA CMO employees in SWA's misuse of the process. FAA proposed suspensions against both managers and incorporated SWA's AD non-compliance into a \$7.5 million settlement on March 2, 2009. *Referred August 2008; sent to the President and the Congressional oversight committees and closed March 2010.*

Use of Industrial Fans Improper for Inmate Housing Facility. OSC referred to the Attorney General allegations received from a Senior Officer at the Bureau of Prisons (BOP), Federal Correctional Institution, Fort Worth, Texas (FCI Ft. Worth) that FCI Ft. Worth officials improperly placed industrial sized fans in inmate housing areas. The whistleblower alleged that the size and position of the fans impeded the safe and efficient movement of inmates through the facility and posed a potential impediment to the safe evacuation of inmates and officers in an emergency.

The investigation substantiated the allegations and found that FCI Ft. Worth officials violated the Code of Federal Regulations and BOP policy by allowing the fans "to remain positioned for unspecified periods of time in such manner as to effectively obstruct egress in the case of an emergency..." The report stated that FCI Ft. Worth management failed to act on the whistleblower's reports regarding the placement and positioning of the fans. To address the inefficiencies and dangers presented, BOP installed air conditioning in the housing units and held training sessions for FCI Ft. Worth executive staff members and department heads on their responsibilities related to the Occupational Safety, Environmental Compliance and Fire Protection Program. *Referred September 2009; transmitted to the President and Congressional oversight committees and closed March 2010.*

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

Construction of Federal Buildings Without Proper Safeguards. OSC referred to the Secretary of the

Department of the Interior allegations that employees of the Bureau of Land Management (BLM), Red Rock Canyon National Conservation Area (Red Rock NCA), in Las Vegas, Nevada, knowingly allowed construction of several new buildings at the Red Rock NCA without a sufficient and safe water supply or communications capability, and that the construction was undertaken without proper environmental safeguards in place, resulting in the destruction of local plant life. The investigation substantiated the allegation that BLM constructed a new Ranger Station and Fire Station at Red Rock NCA without municipal or commercial electricity, communications, or water connections, but noted that the agency is pursuing a connection to a municipal water source, installing solar panels at both Stations, and connected the Ranger Station to a satellite communication system.

The report did not substantiate the allegation that the water used to supply the Fire and Ranger Stations was unsafe. The investigation included a review of water quality reports on water samples taken from the Red Rock NCA Visitor Center well and the Fire Station water tank, which showed the water was safe. The report also stated that there was insufficient evidence to conclude that the Red Rock NCA Visitor Center is currently drawing twice its allocation of ground water. The agency noted, however, that it is working on acquiring more water rights and will continue to monitor its water usage levels. The report did find that BLM failed to salvage local vegetation during construction. The report noted that a salvage plan was initially included in BLM's National Environmental Policy Act (NEPA) Environment Assessment, but was inadvertently removed from the final construction contract. The investigation found that following the omission the agency determined that compliance with the salvaging plan would be too costly. An agency plan is currently underway to restore vegetation to the Visitor Center site. Finally, the report enumerated several changes in agency practices that were initiated as a result of this investigation, focusing on oversight and streamlining management processes, standard operating procedures for plant salvage and safeguarding the water supply. *Referred March 2009; sent to the President and Congressional oversight committees and closed May 2010.*

Summary of Workload, Activity, and Results

Table 6, below, contains FY 2010 summary data (with comparative data for the four previous fiscal years) on DU receipts and dispositions of whistleblower disclosure cases. Despite a 32.7% increase in disclosures received in FY 2010, the average processing time only increased from 57 to 61 days. Fifty five percent of the disclosures were processed in less than 15 days.

| TABLE 6 Summary of Whistleblower Disclosure Activity - Receipts and Dispositions^a | | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|---|--|--------------------|--------------------|--------------------|--------------------|--------------------|
| Pending disclosures carried over from prior fiscal year | | 110 | 69 | 84 | 128 | 125 |
| New disclosures received | | 435 | 482 | 530 | 724 | 961 |
| <i>Total disclosures</i> | | 545 | 551 | 614 | 852 | 1,086 |
| Disclosures referred to agency heads for investigation and report | | 24 | 42 | 40 | 46 | 24 |
| Referrals to agency IGs | | 10 | 11 | 9 | 10 | 2 |
| Agency head reports sent to President and Congress | | 24 | 20 | 25 | 34 | 67 |
| Results of agency investigations and reports | <i>Disclosures substantiated in whole or in part</i> | 21 | 19 | 22 | 30 | 62 |
| | <i>Disclosures unsubstantiated</i> | 3 | 1 | 3 | 4 | 5 |
| Disclosure processing times | Within 15 days | 203 | 285 | 256 | 394 | 555 |
| | Over 15 days | 275 | 182 | 232 | 333 | 451 |
| Percentage of disclosures processed within 15 days | | 42% | 61% | 52% | 54% | 55% |
| Disclosures processed and closed | | 478 | 467 | 488 | 727 | 1,006 |

^a Many disclosures contain more than one type of allegation. This table, however, records each whistleblower disclosure as a single matter, even if multiple allegations were included.

USERRA ENFORCEMENT

Overview

USERRA protects the civilian employment and reemployment rights of those who serve in the Armed Forces, including the National Guard and Reserves, and other uniformed services. USERRA is intended to encourage non-career military service and to minimize the disruption to the lives of those who serve by ensuring that such persons: (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty, with full benefits and seniority, as if they had never left; and (3) are not discriminated against in employment (including initial hiring, promotion, retention, or any benefit of employment) based on past, present, or future uniformed service. The law applies to federal, state, local, and private employers.

Congress intends for the federal government to be a “model employer” under USERRA, and OSC is committed to helping fulfill that goal. In furtherance of that effort, OSC plays a critical role in enforcing USERRA by providing representation before the MSPB, when warranted, to service members whose complaints involve federal executive agencies.

Referral Process

By law, a person alleging a USERRA violation by a federal executive agency may file a complaint with the Veterans’ Employment and Training Service (VETS) at the U.S. Department of Labor. VETS must investigate and attempt to resolve the complaint. If VETS cannot resolve the complaint, the person may direct VETS to refer it to OSC for possible representation before the MSPB. If, after reviewing the complaint and investigative file, OSC is reasonably satisfied that the person is entitled to relief under USERRA, it may act as his or her attorney and initiate an action before the MSPB.

FY 2010 Accomplishments

- Silva v. DHS, 112 MSPR 362 (2009): During FY 2010, OSC obtained a favorable settlement for an

Iraq war veteran in this precedent-setting case before the MSPB. Following his military service, Mr. Silva attempted to exercise his reemployment rights and return to his job as a contractor supporting Customs and Border Protection (CBP), which he had performed without incident prior to his deployment. However, CBP informed the contracting firm for whom Mr. Silva worked that it was satisfied with his replacement and would cancel its contract if Mr. Silva were reinstated. OSC represented Mr. Silva and took the case to a hearing before an MSPB Administrative Judge, who initially ruled against Mr. Silva. OSC appealed the judge’s ruling to the MSPB, which agreed with OSC that a federal agency can be held liable to a government contractor (not just an employee or applicant) under USERRA, and remanded the case. Prior to a new hearing, however, OSC negotiated a full settlement on behalf of Mr. Silva (the parties agreed to keep the terms of the settlement confidential). The case is an important victory for service members because it puts federal agencies on notice that they should not interfere with the employment rights of veterans who work as government contractors, even though such persons are not federal employees in the traditional sense.

- Arroyo v. U.S. Postal Service: In FY 2010, OSC successfully litigated another USERRA case of first impression before the MSPB. The issue in this case was whether a federal agency violated USERRA when it withdrew a job offer because the applicant could not report for work on its preferred start date due to military duty. In February 2005, Mr. Arroyo was offered a position as a Criminal Investigator (Special Agent) with the Postal Inspection Service (PIS) following an extensive application and selection process that took several years. He accepted the offer and was told to report to work for a training course beginning in April 2005. At the time, Mr. Arroyo was completing a seven-year career in the U.S. Army, including service in Iraq and the Army’s Criminal Investigation Division. When Mr. Arroyo informed PIS that he would be unable to report on its preferred starting date due to military duty, PIS withdrew its job offer. OSC represented Mr. Arroyo and took his case to a hearing before an MSPB Administrative Judge (AJ). The AJ ruled in Mr. Arroyo’s favor and

ordered the agency to provide him back pay with interest to cover his periods of unemployment and under-employment caused by PIS's failure to hire him in 2005.

- During FY 2010, OSC obtained a settlement for a Reservist who alleged she was removed from her federal employment because her supervisor believed her military obligations were unduly interfering with her civilian job duties. After receiving the case from VETS, OSC negotiated a settlement agreement under which the agency agreed to rescind the removal and reprocess it as a voluntary separation (resignation) as of the date she re-entered active military duty approximately seven months later; remove all documents from her personnel records referencing the removal; provide her a neutral employment reference; adjust her personnel records to show no break in service through her later resignation date; and provide her with full back pay plus benefits for the seven-month period before she returned to military duty.

- In FY 2010, the Government Accountability Office (GAO) conducted an evaluation of OSC's (as well as the Department of Labor's and Department of Justice's) compliance with new USERRA case processing deadlines and reporting requirements enacted in 2008. GAO's report found that OSC met the new deadlines 87% of the time and consistently issued timely, accurate reports to Congress (see GAO Report No. 11-55, issued on October 22, 2010, <http://www.gao.gov/products/GAO-11-55>). In contrast with the other agencies, the report concluded that OSC did not have any data quality issues and did not make any OSC-specific recommendations.

- During FY 2010, OSC continued to provide USERRA outreach and training to federal agencies and technical assistance to employers and employees with USERRA questions via telephonic and e-mail hotlines.

New USERRA Demonstration Project

At the end of FY 2010, Congress passed H.R. 3219, the Veterans' Benefits Act of 2010 (VBA), which establishes a new 36-month Demonstration Project under which OSC will receive, investigate,

and attempt to resolve approximately half of all USERRA complaints against federal executive agencies, bypassing the VETS investigative process (OSC will also continue to receive cases from VETS under the "Referral Process" described above). A similar project occurred from 2005-2007. GAO will evaluate and compare the performance of OSC and VETS during the project and report its findings and recommendations to Congress. OSC expects to begin receiving new USERRA cases under the project in June 2011.

Table 7 contains FY 2010 summary data (with comparative data for previous fiscal years) on OSC's receipt and disposition of USERRA referral cases.

| TABLE 7 Summary of USERRA Referral and Litigation Activity^a | | | | |
|---|--------------------|--------------------|--------------------|--------------------|
| | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
| Pending referrals carried over from prior fiscal year | 3 | 3 | 5 | 7 |
| New referrals received from VETS during fiscal year | 4 | 15 | 41 | 32 |
| Referrals closed | 4 | 13 | 39 | 27 |
| Referrals closed with corrective action | 0 | 2 | 4 | 0 |
| Referrals closed with no corrective action | 4 | 11 | 35 | 27 |
| Referrals pending at end of fiscal year | 3 | 5 | 7 | 12 |
| Litigation cases carried over from prior fiscal year | 0 | 1 | 1 | 1 |
| Litigation cases closed | 0 | 1 | 0 | 1 |
| Litigation closed with corrective action | 0 | 0 | 0 | 1 |
| Litigation closed with no corrective action | 0 | 1 | 0 | 0 |
| Litigation pending at end of fiscal year | 1 | 1 | 1 | 1 |

^a This table has been reorganized, and some categories and figures changed from prior reports to correct discrepancies and more clearly present relevant information.

Education, Outreach, and Policy

In addition to investigating and favorably resolving service members' USERRA claims, and litigating important USERRA cases in FY 2010, OSC also worked to ensure that the federal government is a model employer by: (1) educating federal agencies about their responsibilities under the act; and (2) providing technical assistance; to increase USERRA compliance.

OSC OUTREACH PROGRAM

OSC's outreach program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that federal agencies inform their employees, in consultation with OSC, about rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the WPA. In FY 2002, in an effort to assist agencies in meeting the statutory requirement, OSC designed and created a five step educational program, known as the "2302(c) Certification Program."

The program provides guidance, easy-to-use methods and training resources to agencies to assist them in fulfilling their statutory obligation. Agencies that complete the program receive a certificate of compliance from OSC.

In an effort to promote OSC's mission and programs, OSC provides formal and informal outreach sessions, including making educational materials available on the agency web site. During FY 2010, OSC employees spoke at approximately 57 events nationwide, including American Bar Association events, agency training sessions, conferences and meetings. Finally, OSC continued its policy of issuing press releases when filing significant litigation, or achieving significant corrective or disciplinary actions through settlement. Many of these cases generate considerable press coverage, which contributes to federal employees' and managers' awareness about the merit system protections enforced by OSC.

OSC ANNUAL SURVEY PROGRAM

Each year, OSC surveys persons who have contacted the agency for assistance and whose cases were closed during the previous fiscal year.¹² Complainants in prohibited personnel practice cases closed during FY 2010, claimants in USERRA demonstration project matters closed during FY 2010, and recipients of formal Hatch Act advisory opinions during that year were invited to participate in the survey.

The prohibited personnel practice and USERRA surveys sought the following information: (1) whether potential respondents were fully apprised of their rights; (2) whether their claim was successful at OSC or at the MSPB; and (3) whether, successful or not, they were satisfied with the service received from OSC. Additional questions were asked based on the case type. Survey response rates continued to be low.

Results to the initial question on the prohibited personnel practice and USERRA surveys showed that, on average, only 16% of respondents could recall being informed by their agencies about their rights and responsibilities. Respondents who received formal Hatch Act advisory opinions continued to report the highest levels of satisfaction with OSC service. Of those individuals who sought advisory opinions, over 71% were satisfied or very satisfied (see Appendix C). All FY 2010 survey questions and response tallies are shown in Appendices A-C.

FURTHER INFORMATION

OSC Web Site

The agency web site (www.osc.gov) has a broad range of information about OSC including answers to frequently asked questions; complaint, disclosure and other forms; and publications, training and educational materials.

Prohibited Personnel Practices

Individuals with questions about prohibited personnel practices not answered on the agency web site 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: 1 (800) 872-9855
(202) 254-3630
Fax: (202) 653-5151

Form OSC-11 must be used to file a prohibited personnel practice complaint with OSC.

The form is available online (http://www.osc.gov/RR_OSCFORMS.htm), and can be filled out online, printed, and mailed or faxed to the address above. A complaint can also be filed electronically with OSC (<https://www.osc.gov/oscefile/>).

ADR Program

Questions about mediation under OSC's ADR Program not answered on the agency web site 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 Program

OSC's 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 on common factual situations. Requests for other advice about the Hatch Act can be made by contacting HAU staff at:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 1 (800) 85-HATCH
1 (800) 854-2824
(202) 254-3650
Fax: (202) 653-5151
E-mail: hatchact@osc.gov

Complaints alleging a violation of the Hatch Act can be made by using Form OSC-13. The form is available online (http://www.osc.gov/RR_OSCFORMS.htm) and can be filled out online, printed, and mailed or faxed to the address above.

Whistleblower Disclosures

Information about reporting a whistleblower

disclosure in confidence to OSC is available on the agency web site, or from DU staff at:

Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
Telephone: 1 (800) 572-2249
(202) 254-3640
Fax: (202) 653-5151

Form OSC-12 can be used to file a disclosure with OSC. The form is available online (http://www.osc.gov/RR_OSCFORMS.htm) and can be filled out online, printed, and mailed or faxed to the address above. A disclosure can also be filed electronically with OSC (<https://www.osc.gov/oscefile/>).

USERRA Program

The OSC web site has additional information about USERRA, including a link to the complaint form issued by VETS for use by claimants. Questions not answered on the web site 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

Many OSC forms and publications are available in the "Reading Room" section of the agency web site. Questions not answered on the agency web site about OSC outreach activities and availability of OSC publications should be directed to:

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

Reports to Congress

This and other OSC reports to Congress are available in the “Reading Room” section of the agency web site. Subject to availability, copies of these reports 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
Fax: (202) 653-5161

For callers with hearing and/or speech disabilities, all OSC telephone numbers listed in this section may be accessed using TTY by dialing the Federal Relay Service at:

1 (800) 877-8339

APPENDIX A

Survey Totals

| FY 2010 | |
|-----------------|-------|
| Number Mailed | 2,114 |
| Number Returned | 321 |
| Response Rate | 15% |

Response Sources by Type of Matter at OSC

| What was the nature of your correspondence to OSC? (Please choose only one) | |
|--|----------------|
| Response Options | FY 2010 |
| You filed a complaint concerning a Prohibited Personnel Practice | 263 |
| You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity) | 52 |
| Your case involved a USERRA complaint | 6 |

APPENDIX B

Survey Responses: Prohibited Personnel Practice Complaints

| 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 2010 |
| Yes | 44 |
| No | 186 |
| Do not recall | 28 |
| Never employed by a federal agency | 5 |

| 2. Did you obtain the result that you wanted from OSC? | |
|---|----------------|
| Response Options | FY 2010 |
| Yes | 22 |
| No | 241 |

| 3. Did your complaint include any allegation of reprisal for whistleblowing? | |
|---|----------------|
| Response Options | FY 2010 |
| Yes | 148 |
| No | 93 |

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 2010 |
|--|----------------|
| No OSC jurisdiction over your position, the agency, or agency official involved in the complaint | 14 |
| No personnel action taken by the agency involved | 14 |
| Information that you disclosed did not appear to be a legally protected disclosure | 14 |
| Your disclosure occurred after the personnel action involved in your complaint | 4 |
| Insufficient proof that the agency official (who took the personnel action against you) knew about your disclosure. | 13 |
| Insufficient proof of connection between your disclosure and the personnel action involved in your complaint | 30 |
| OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint. | 17 |
| Insufficient evidence that the personnel action involved in your complaint violated a law or regulation | 38 |
| You or OSC settled the matter with the agency involved | 9 |
| You declined corrective action offered by the agency involved | 1 |
| 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) | 12 |
| You withdrew your complaint | 2 |
| Other | 64 |
| Do not recall | 11 |

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 2010 |
|----------------------------------|----------------|
| Yes | 55 |
| No | 156 |
| Have not decided whether to file | 30 |

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

| Response Options | FY 2010 |
|-------------------------|----------------|
| Yes | 51 |
| No | 1 |
| Do not recall | 3 |

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

| Response Options | FY 2010 |
|------------------|---------|
| Yes | 3 |
| Partially | 8 |
| No | 18 |
| Appeal pending | 22 |

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

| Response Options | FY 2010 |
|------------------------|---------|
| Settlement | 9 |
| 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 2010 |
|---|---------|
| No OSC jurisdiction over your position, the agency, or agency official involved in the complaint | 13 |
| No personnel action taken by the agency involved | 5 |
| OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint | 9 |
| Insufficient evidence that the personnel action involved in your complaint violated a law or regulation | 26 |
| You or OSC settled the matter with the agency involved | 1 |
| You declined corrective action offered by the agency involved | 0 |
| You withdrew your complaint | 2 |
| OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action | 1 |
| OSC obtained a decision in the corrective action proceeding filed with the MSPB | 1 |
| Closed for further action on discrimination allegations through EEO processes | 5 |
| Resolved through OSC’s Mediation Program | 1 |
| Other | 40 |
| Do not recall | 9 |

10. How would you rate the service provided by OSC in each of the following areas?

| Service Categories to be rated | FY 2010 Ratings | | | | |
|--|-----------------|-----------|--------------------|--------------|-------------------|
| | Very satisfied | Satisfied | No opinion, or N/A | Dissatisfied | Very dissatisfied |
| <i>Courtesy</i> | 35 | 52 | 49 | 39 | 88 |
| <i>Clarity of Oral Communications</i> | 26 | 44 | 54 | 51 | 88 |
| <i>Clarity of Written communications</i> | 21 | 43 | 34 | 61 | 104 |
| <i>Timeliness</i> | 18 | 59 | 36 | 48 | 102 |
| <i>Results</i> | 10 | 13 | 9 | 42 | 189 |

APPENDIX C

FY 2010 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 2010 |
|--|---------|
| The OSC opinion advised that the person in question was free to carry out his or her planned political activity. | 25 |
| The OSC opinion advised that the person in question should not continue his or her planned political activity. | 15 |
| The OSC opinion was in response to a general question concerning the application of the Hatch Act. | 4 |
| Other | 8 |

2. How would you rate the service provided by OSC in the following areas?

| Response Options | FY 2010 | | | | |
|--|----------------|-----------|-----------------------------|--------------|-------------------|
| | Very satisfied | Satisfied | No opinion/ inapplicable | Dissatisfied | Very dissatisfied |
| <i>Courtesy</i> | 25 | 19 | 3 | 4 | 1 |
| <i>Clarity of Written Communications</i> | 25 | 12 | 4 | 8 | 3 |
| <i>Timeliness</i> | 23 | 15 | 2 | 10 | 2 |
| <i>Results</i> | 20 | 9 | 5 | 5 | 13 |

APPENDIX D

FY 2010 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 2010 |
|------------------------------------|----------------|
| Yes | 2 |
| No | 4 |
| Do not recall | 0 |
| Never employed by a federal agency | 0 |

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

| Response Options | FY 2010 |
|-------------------------|----------------|
| Yes | 1 |
| No | 5 |

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

| Response Options | FY 2010 |
|--|----------------|
| No OSC jurisdiction over your position, the agency, or agency official involved in the complaint | 1 |
| You declined corrective action offered by the agency involved | 0 |
| Insufficient evidence that the personnel action involved in your complaint violated USERRA | 0 |
| You or OSC settled the matter with the agency involved | 0 |
| You withdrew your complaint | 0 |
| Other | 5 |
| 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 2010 |
|-------------------------|----------------|
| Yes | 1 |
| No | 3 |
| Do not recall | 1 |

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

| Response Options | FY 2010 |
|------------------|---------|
| Yes | 1 |
| 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 2010 |
|------------------|---------|
| Yes | 0 |
| Partially | 0 |
| No | 1 |
| Appeal pending | 0 |

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

| Response Options | FY 2010 |
|------------------------|---------|
| Settlement | 0 |
| Decision after hearing | 0 |
| Other | 0 |

8. How would you rate the service provided by OSC in each of the following areas?

| Response Options | FY 2010 | | | | |
|--|----------------|-----------|--------------------|--------------|-------------------|
| | Very satisfied | Satisfied | No opinion, or N/A | Dissatisfied | Very dissatisfied |
| <i>Courtesy</i> | 0 | 1 | 0 | 1 | 4 |
| <i>Clarity of Oral Communications</i> | 1 | 0 | 0 | 0 | 5 |
| <i>Clarity of Written communications</i> | 0 | 1 | 0 | 0 | 5 |
| <i>Timeliness</i> | 0 | 1 | 0 | 0 | 5 |
| <i>Results</i> | 0 | 1 | 0 | 0 | 5 |

APPENDIX E

Endnotes

- 1 Reorganization Plan Number 2 of 1978. See 5 U.S.C.A. App. 1, § 204. The Civil Service Reform Act of 1978 (Public Law No. 95-454, 92 Stat. 1111) expanded 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).
- 5 Public Law No. 103-424, 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 WPA, appears at 5 U.S.C. § 2302(c).
- 6 Public Law No. 107-71 (2001).
- 7 The 12 prohibited personnel practices are: (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 set forth at 5 U.S.C. § 2301. It should be noted that these are general descriptions 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.
- 8 Unless noted otherwise, all references after this to prohibited personnel practice complaints or cases handled by OSC include matters that alleged other violations of law also within the agency’s jurisdiction under 5 U.S.C. § 1216, except violations of the Hatch Act.
- 9 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 MSPB to stay the action.
- 10 In addition to matters described in this section, OSC attorneys and investigators worked on a task force created by the Special Counsel in 2007 to investigate allegations of prohibited personnel practices and violations of the Hatch Act. Task force efforts continued into FY 2009.
- 11 See endnote 10.
- 12 Pursuant to 5 U.S.C. § 1212 *note*.

APPENDIX F

List of Acronyms Used In Report

| | | | |
|------|--|--------|---|
| A&P | Airframe and Powerplant | IPD | Investigation and Prosecution Division |
| ADR | Alternative Dispute Resolution | MOU | Memorandum of Understanding |
| ATCT | Air Traffic Control Tower | MSPB | Merit Systems Protection Board |
| AUO | Administratively Uncontrollable Overtime | NCA | National Conservation Area |
| AWOL | Absent Without Leave | NEPA | National Environmental Policy Act |
| BLM | Bureau of Land Management | NPS | National Park Service |
| CBP | Customs and Border Protection | OIG | Office of Inspector General |
| CEU | Complaints Examining Unit | OPM | Office of Personnel Management |
| CMO | Certificate Management Office | OSC | Office of Special Counsel |
| DC | District of Columbia | PMI | Principal Maintenance Inspector |
| DFW | Dallas-Fort Worth | SGA | St. George Aviation |
| DHS | Department of Homeland Security | SSI | Sensitive Security Information |
| DOD | Department of Defense | SSN | Social Security Number |
| DOL | Department of Labor | TRACON | Terminal Radar Approach Control |
| DTW | Detroit Metropolitan Airport | TSA | Transportation Security Administration |
| DU | Disclosure Unit | USACE | U.S. Army Corps of Engineers |
| DVA | Department of Veterans Affairs | USERRA | Uniformed Services Employment and Reemployment Rights Act |
| EEO | Equal Employment Opportunity | VA | Veteran's Administration |
| FAA | Federal Aviation Administration | VBIA | Veterans Benefits Improvement Act |
| FAMS | Federal Air Marshal Service | VDRP | Voluntary Disclosing Reporting Program |
| FCI | Federal Correctional Institution | VETS | Veterans' Employment and Training Service |
| FEPA | Federal Employees Pay Act | VSIP | Voluntary Separation Incentive Payment |
| FY | Fiscal Year | WG | Wage Grade |
| GAO | Government Accountability Office | WPA | Whistleblower Protection Act |
| GS | General Schedule | WWTP | Waste Water Treatment Plant |
| HAU | Hatch Act Unit | | |
| IG | Inspector General | | |
| IOSC | Immediate Office of the Special Counsel | | |

U.S. Office of Special Counsel

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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.

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