



## **FY2011 Performance and Accountability Report**

### **U.S. OFFICE OF SPECIAL COUNSEL**

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## **A Message from the Special Counsel**

It is my pleasure to present the Performance and Accountability Report for Fiscal Year 2011 for the US Office of Special Counsel.

I was sworn in as the Special Counsel in June 2011, and consider it a privilege to be able to lead this essential independent investigative and prosecutorial agency. OSC fosters integrity, accountability and efficiency in the federal government, returns millions of taxpayer dollars to the Treasury, and prevents catastrophic human and economic harm.

OSC is a small agency with a big mission. It provides a safe channel for federal employees to come forward with evidence of waste, fraud, abuse, law-breaking, and threats to public health or safety. When FAA air traffic controllers witness dangerous flight practices; when Veterans Administration professionals observe unsafe practices in hospitals; or when Pentagon procurement officers find huge irregularities in government contracts, OSC acts to ensure that the whistleblowers' concerns are heard and acted on, and it protects these whistleblowers against retaliation by their agencies. In addition, under the Hatch Act, OSC safeguards the integrity of the civil service system by ensuring that federal employees are not coerced by their superiors into partisan political activity and civil servants do not engage in partisan politics while on duty. Critically, OSC also protects returning veterans, Guard members and reservists against employment discrimination.

OSC is addressing a steady surge in whistleblower disclosures regarding illegality, waste, fraud, abuse, and dangerous and unsafe practices. Approximately 80 percent of these whistleblowers also seek OSC's protection against retaliation. In addition, the agency anticipates an explosion of complaints under the Hatch Act as the nation enters a new political season. Moreover, in recognition of OSC's excellent performance record under the Uniformed Services Employment & Reemployment Rights Act (USERRA), Congress has mandated that the agency greatly expand its service to veterans, Guard members and reservists, adding hundreds of cases annually to the OSC docket.

OSC faces significant challenges. Overall, the agency's caseload is growing more than four times faster than its budget. During the past three years, OSC's case docket has grown 29% while its budget edged up only 6%. Extrapolating from past experience, the agency conservatively projects an annual caseload growth in the 6% to 8% range for the foreseeable future. In addition, Congress has mandated OSC to undertake a new USERRA Demonstration Project, further extending OSC's responsibilities without providing a corresponding increase in resources. OSC is clearly at a critical juncture, but the agency is doing its part to meet these challenges.

Fiscal Year 2011 marks the eighth year the U.S. Office of Special Counsel has been required to produce a financial audit. I am pleased to report the agency's strong results, which include no identified significant deficiencies and no material weaknesses. Achieving a strong financial footing is critical to the agency being able to perform its mission. I am assured that the financial and performance data presented in this report are complete, reliable and accurate.

Unlike most other agencies, OSC does not only spend taxpayers' money; it returns many times its budget to the federal government by obtaining corrective actions to remedy waste and fraud, and by preventing dangers and disasters from occurring or recurring.

OSC provides critical services to the Nation, and the entire agency is being mobilized in this undertaking. We take seriously our responsibility to use our resources prudently and strategically. Productivity continues to rise and new efficiencies are being employed. More can and will be done.

I look forward to working with agency staff and all OSC stakeholders to meet the critical challenges of uprooting waste and fraud, upholding the merit system, protecting veterans and federal employees, ensuring accountability, and standing up for taxpayers.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolyn Lerner". The signature is fluid and cursive, written in a professional style.

Carolyn Lerner  
Special Counsel  
November 15, 2011

## **Part 1: Management Discussion and Analysis**

### **I. About OSC**

The U.S. Office of Special Counsel's primary mission is to safeguard the merit system in federal employment by protecting employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. In addition, the agency operates as a secure channel for federal whistleblower disclosures of: violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific dangers to public health and safety. OSC also is authorized by the Hatch Act to protect the civil service against undue political influence. Finally, OSC investigates and enforces the civilian employment and re-employment rights of military service members under the USERRA.

### **II. Statutory Background**

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC at first operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (the Board). Pursuant to the CSRA, OSC: (1) receives and investigates complaints from federal employees alleging prohibited personnel practices; (2) receives and investigates complaints regarding allegedly unlawful political activity of government under the Hatch Act; and (3) receives disclosures from federal whistleblowers about wrongdoing in government. Additionally, OSC, when appropriate, files petitions for corrective and or disciplinary action with the Board in prohibited personnel practice and Hatch Act cases.

In 1989, Congress enacted the Whistleblower Protection Act (WPA). Under the WPA, OSC became an independent agency within the Executive Branch, with continued responsibility for the functions described above. The WPA also enhanced protections for employees who allege reprisal for whistleblowing, and strengthened OSC's ability to enforce those protections.

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to federal and District of Columbia government employees.<sup>1</sup> The 1993 Amendments to the Hatch Act did not affect covered state and local government employees.

In 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted. USERRA protects the civilian employment and reemployment rights of those who serve in the Armed Forces, including the National Guard and Reserve, and other uniformed services. It prohibits employment discrimination based on past, present, or future military service; requires prompt reinstatement in civilian employment upon return from military service; and prohibits retaliation for exercising USERRA rights. Under USERRA, OSC may seek corrective action for

service members whose rights have been violated by federal agencies (i.e., where a federal agency is the civilian employer).<sup>2</sup>

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the 1994 Reauthorization Act provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred, exists, or is about to be taken. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and whistleblower reprisal protections were extended to employees of listed government corporations. Further, the Reauthorization Act broadened the scope of personnel actions covered under these provisions. Finally, the Reauthorization Act required that federal agencies, in consultation with OSC, inform employees of their rights and remedies under the Whistleblower Protection Act.<sup>3</sup>

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),<sup>4</sup> which created the Transportation Security Administration (TSA). Under the ATSA, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the Board. The 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. The MOU did not (and could not), however, provide for OSC enforcement action before the Board.

### III. Organizational Structure of OSC

OSC maintains a headquarters office in Washington, D.C., and four field offices (located in Dallas, Detroit, Oakland, and Washington, D.C.). The agency includes a number of program and support units.

#### **Program units include:**

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).

Complaints Examining Unit (CEU). This unit is the intake point for all complaints alleging prohibited personnel practices. 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 qualifying matters for Alternative Dispute Resolution (ADR) or to the Investigation and Prosecution Division (IPD) for further investigation, possible settlement, or prosecution. Matters that do not qualify for referral to ADR or IPD are closed.

Investigation and Prosecution Division (IPD). If ADR does not solve a matter, or a matter does not qualify for ADR, it is referred to the Investigation and Prosecution Division. IPD is comprised of the four field offices, and is responsible for conducting field investigations. IPD attorneys determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. If not sufficient, the matter is closed. If the evidence is sufficient, IPD decides whether the matter warrants corrective action, disciplinary action, or both. If a meritorious case cannot be resolved through negotiation with the agency involved, IPD brings an enforcement action before the MSPB.

Disclosure Unit (DU). This unit receives and reviews disclosures from federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the relevant agency to conduct an investigation and a report its findings 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; the Special Counsel then sends the report, along with any comments by the whistleblower, to the President and responsible congressional oversight committees.

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

USERRA Unit. This unit attempts to resolve employment discrimination complaints by veterans, returning National Guard members and reservists under the Uniformed Services Employment &

Reemployment Rights Act. This unit also reviews USERRA cases referred by the Department of Labor (DOL) for prosecution and represents claimants before the MSPB. Under a second, three-year Demonstration Project, the USERRA Unit also investigates half the federal USERRA cases filed with the US Department of Labor.

***Support units include:***

Office of General Counsel. This office provides 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 office manages OSC's budget and financial operations, and accomplishes the technical, analytical and administrative needs of the agency. Component units are the Budget, Finance and Procurement Branch, Human Resources and Document Control Branch, and the Information Technology Branch.



## Map showing locations of OSC Field Offices



## **IV. Performance Highlights**

In FY 2011 OSC's caseload continued to rise, increasing to 4,026 new matters received. This is the first year OSC has exceeded 4,000 new matters. It was also a 2% increase over the already record levels of cases brought in FY 2010. OSC also resolved over 4,000 matters in FY 2011. Significant growth areas were Prohibited Personnel Practice complaints, which increased 6% in the year, and USERRA cases, which nearly doubled with the start-up of a new Demonstration Project. Hatch Act cases and Whistleblower Disclosures continued this year at elevated levels. Despite the rising caseload, due to effective management, hard work and smart work, OSC's case backlogs did not increase this fiscal year.

OSC's efforts paid off in the form of a fairer and more accountable federal workplace. The agency negotiated 81 Favorable Actions with agencies for PPPs, 6 Disciplinary Actions, and 10 stays, including 4 obtained in actions before the MSPB. Over 20 percent of cases were referred by CEU to IPD for full investigation. In the Hatch Act area 43 corrective actions were taken; 6 disciplinary actions were obtained; 164 Warning Letters were issued; and over 3,000 Hatch Act advisory opinions were issued. In the Disclosure Unit, over 900 whistleblower disclosures were received, 47 of which were referred to agency heads for investigation and report. The USERRA Unit received and commenced a new Demonstration Project three months ago to help further protect veteran's employment rights, and OSC has already received 36 new project cases.

Despite its growing caseload and expanding scope of responsibility, OSC is meeting its duties as an independent investigative and enforcement agency, bringing greater integrity and efficiency to the federal government.

## V. OFFICE OF SPECIAL COUNSEL'S COST SAVINGS TO GOVERNMENT AND OTHER SUCCESSES

OSC improves the efficiency and accountability of government in many ways and, significantly, it returns large sums to the Treasury. The agency receives over 900 disclosure complaints from federal whistleblowers every year, many of which result in enormous direct returns to the government. Four cases alone in just the past few years restored well over \$11 million to the government. This amount, while substantial, grossly understates the financial benefit OSC brings to the government.

The real measure of OSC's financial contribution is prophylactic: By providing a safe channel for whistleblower disclosures, OSC regularly reins in waste, fraud, abuse, illegality, and threats to public health and safety that pose the very real risk of catastrophic harm to the public, and huge remedial and liability costs for the government. For example, in the last few years, OSC has shepherded numerous, harrowing disclosures from courageous FAA employees who have blown the whistle on systemic failures in air traffic control and the oversight of airline safety. Aviation safety inspectors disclosed that FAA failed to timely issue Airworthiness Directives requiring the inspection of aircraft, resulting in unresolved and potentially cataclysmic safety issues. An air traffic controller at Detroit Metropolitan Airport disclosed that FAA failed to complete required environmental, noise and safety risk assessments when establishing a procedure for landing aircraft on airport runways, creating a clear and present safety hazard. This disclosure resulted in FAA cancelling the runway procedure. In another case, whistleblower disclosures to OSC resulted in a Department of Transportation finding that staff at a major metropolitan airport did not know which aircraft separation requirements to follow, a recipe for causing mid-air collisions. These matters are now squarely on FAA's radar screen, thanks to OSC.

OSC cases come from throughout the federal government. The agency has recently confirmed allegations made by whistleblowers in ten different departments and agencies. **One disclosure identified a \$1.6 million reimbursement due to the Department of the Army as a result of contracting irregularities.** At the Department of Homeland Security, a whistleblower alerted OSC that employees were improperly paid Administratively Uncontrollable Overtime. **By stopping these improper payments, the government saved approximately \$2 million.**

OSC's track record in leveraging whistleblower disclosures to save lives and taxpayer dollars -- exponentially more dollars than the agency is budgeted -- is but one measure of the OSC's successes. It is also the sole federal agency that offers education and advice on the Hatch Act. OSC enforces this good government law so that civil servants are not coerced into partisan political activity by their superiors, and the federal workplace is not corrupted by partisan politicking. **In the past three years, OSC investigated close to 1,500 Hatch Act complaints and, in addition, provided thousands of advisory opinions to government employees and the public about what types of political activity are forbidden.** (Based upon past experience, the number of Hatch Act inquiries to OSC will skyrocket as the presidential season heats up.) In 2011, OSC filed a number of new disciplinary actions for violating the Act and, among other successes, prosecuted a Department of Veterans Affairs doctor who pressured subordinates into attending a

fundraiser for a presidential candidate and unlawfully solicited political contributions. The offending doctor was removed from his position.

Harmonious relations between managers and employees are critical to the effectiveness and efficiency of government. **OSC plays a unique role in fostering a healthy federal workplace** by investigating allegations of Prohibited Personnel Practices, such as nepotism, discrimination, retaliation, and violations of merit systems principles. These cases are typically resolved by negotiation, mediation and settlement rather than prosecution, thereby ensuring fairness and due process to employees while preventing paralyzing stalemates and disruptions to the conduct of government business.

The volume of complaints is substantial and growing: **Over 2,500 new Prohibited Personnel Practices actions were filed with OSC in 2011, of which a record percentage were referred for full investigations.**

A handful of PPP cases do not settle and, where appropriate, OSC has sought corrective and even disciplinary action through litigation before the Merit System Protection Board (MSPB). For example, OSC found that a Chief of Staff with the Department of Homeland Security, US Citizenship and Immigration Services, was geographically reassigned to another city and denied performance appraisals for two years running in retaliation for disclosing that 600 certificates of citizenship and naturalization had been voided without cause and hundreds of others were unaccounted for. As a result of negotiations, DHS agreed to conduct the performance appraisals yet it balked at canceling the reassignment. OSC then filed an action before the MSPB, which is pending as of this writing. In another case, OSC acted on a complaint that the Bureau of Prisons cancelled a vacancy announcement after BOP produced a “certificate of eligibles.” BOP then re-announced the position at a lower grade in order to qualify the pre-selected candidate who was, indeed, selected. Based on OSC’s intervention, BOP suspended the offending hiring official for 14 days, sending a clear warning to other managers about violating merit system principles.

OSC is especially proud of its record in ensuring that returning veterans and members of the National Guard and reserves are treated fairly in the workplace. As President Obama noted in his September 8, 2011 address to Congress: “We ask these men and women to leave their careers, leave their families, and risk their lives to fight for our country. The last thing they should have to do is fight for a job when they come home.” For many years, the Department of Labor has investigated, and OSC has prosecuted, claims of discrimination under the Uniformed Services Employment & Reemployment Rights Act. Due to OSC’s extraordinary performance in a prior USERRA Demonstration Project, in which OSC not only prosecuted all of the USERRA complaints but it investigated half of them as well, Congress has again tapped OSC for a second, three-year USERRA Demonstration Project, beginning in August 2011. **The Demonstration Project is expected to add hundreds of cases to OSC’s docket.**

Word of OSC’s effectiveness in achieving good results for the federal community is spreading. The number of new cases before the agency continues to rise, as does OSC’s success in pending matters. **In 2011, OSC resolved 20 percent more cases than it did just two years prior.** Indeed, thanks to the incredible dedication of its small but highly productive staff, OSC will conclude as many new matters as it receives in 2011.

## VI. OSC's Systems, Controls, and Legal Compliance

Management control activities carried out by OSC include periodic reviews of agency administrative and program elements to assure that obligations and costs comply with applicable laws; funds, property and other assets are safeguarded; revenues and expenditures are properly recorded and accounted for; and programs are efficiently and effectively carried out in accordance with law and management policy. During FY 2011, reviews were completed on the following agency administrative operations:

1. Information Security Program. OSC's Chief Information Officer conducts an annual security review. The results of this review were summarized in the agency's Federal Information Security Management Act (FISMA) Report, submitted to OMB in November, 2011. The review found no material weaknesses in the agency's information technology policies, procedures, or practices. Further, there were no security incidents affecting critical agency information systems.
2. Financial Audit. OSC is undergoing its eighth annual financial audit. The auditors reported no material weaknesses in any prior fiscal years. The FY 2011 audit addresses the financial statements and accounting processes, almost all of which were accomplished by the National Business Center (NBC) at the Department of Interior under an interagency outsourcing agreement. In the event that any material control weaknesses are identified during this year's audit, they will be discussed in the next FMFIA/IG Act report.
3. OSC Review of Capital Assets. OSC has a capitalization policy for assets with a purchase price over \$50,000. OSC's reviews its purchases quarterly, to determine if there are additional assets to capitalize.
4. HSPD-12. To comply with the security requirements of directive HSPD-12, OSC has an agreement for HSPD-12 services with the General Services Administration. OSC has met all deadlines so far for the accomplishment of HSPD-12 milestones, has issued PIV cards to all OSC employees, and is now working on expanding its program to include two-factor HSPD-12 authentication for securing each employee's computer.

In FY2010 OSC conducted an analysis and "Best Interest Determination" of its contracting operations and, as a result outsourced this operation to the National Business Center (NBC), and this has been maintained in FY 2011. This has increased OSC's use of Governmental Shared Services providers. OSC has continued the outsourced financial management and administrative activities which it moved to NBC in FY 2009, including budget accounting, financial accounting, reporting accounting, procurement systems software, and travel services. OSC personnel and payroll data entry transactions were processed by the Department of Agriculture's National Finance Center (NFC). All these operations are administered under cross-servicing agreements. For information on any significant management control issues related to services provided under these agreements, OSC relies on information received from NBC and NFC, and any audits or reviews issued by the Inspectors General and Chief Financial Officers of the Departments of

Treasury and Agriculture, and the Government Accountability Office (GAO).

In September of 2009, NBC certified its Oracle Federal Financials Major Application, in accordance with OMB Circular A-130, Appendix III, approving the system for continued operation, and this authorization is valid until September 2012. NFC's Payroll System was certified on September 2010 and is valid until September 2013. Also, an annual SSAE 16 evaluation was conducted this year on the Oracle Federal Financials Major Application, as well as on NFC's Payroll System.

## VII. Management Assurances

### Annual Assurance Statement on Internal Controls and Internal Control over Financial Reporting

OSC's management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). OSC conducted its assessment of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, OSC can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2011 was operating effectively and no material weaknesses were found in the design or operation of the internal controls.

OSC works with the National Business Center (NBC) for its financial reporting needs. OSC obtains the SSAE 16 report from NBC, and reviews it to assist in assessing internal control over financial reporting. OSC has not discovered any significant issues or deviations in its financial reporting during FY 2011 and therefore concludes that the agency's internal controls over financial reporting are sufficiently strong.

OSC has no in-house financial system. OSC has chosen to use Oracle Federal Financials in an environment hosted by NBC, a shared service provider. Because of the rigorous testing that NBC undergoes, OSC considers its financial system to be reliable and effective.



Carolyn Lerner  
Special Counsel  
November 10, 2011

## **VIII. Future Effects of Known Demands, Risks, Uncertainties, Events, Conditions, and Trends**

In the past several years, the agency has experienced significant year-after-year increases in caseload levels. OSC's new matters received have increased by 40% in the course of 4 years; other workload items such as Hatch Act Advisory opinions have increased as well. Several factors which have contributed to these rising levels of complaint filings with OSC include:

- Press coverage of OSC has continued to increase in recent years.
- OSC's outreach program has continued to build awareness within the Federal community.
- Awareness of the Hatch Act along with OSC's role has continued to build among Federal employees, primarily due to media coverage.
- OSC conducts a certification program 2302(c) for Federal agencies. As agencies implement the certification process, agency employees who might previously have been unaware of their rights and remedies through OSC are becoming informed.

A renewed USERRA Demonstration Project commenced in August 2011. OSC had conducted a USERRA Demonstration Project from 2004 through 2007. OSC will have a similar role and will receive half of the Federal USERRA cases that would have been investigated by the Department of Labor, thereby increasing OSC's USERRA caseload considerably. OSC is confident that it has the expertise and infrastructure to successfully conduct this pilot program and improve results for members of our military who were being denied rights under USERRA. During the prior three year program, OSC achieved 120 corrective actions in USERRA cases, which represented 27% of all USERRA cases handled by OSC under the Demonstration Project.

OSC expects cases to grow in the future at the average rate of 6 to 8% per year. However, with the Demonstration Project started, and the onset of the FY 2012 Presidential election cycle which will predictably bring additional Hatch Act cases, OSC expects a significant overall increase in its workload.

Until this point OSC has managed to process more cases by operating more efficiently and effectively, but the agency does not wield magic wands. OSC's case docket has grown 29% in 3 years, while OSC's budget has only increased 6%. As a result, OSC faces an imminent disconnect between resources and caseload. Compounding OSC's resource/workflow dilemma, the USERRA Demonstration Project is at present an unfunded mandate. The risk is real that the agency will develop large case backlogs and be unable to appropriately execute its mission.

In FY 2011, after operating for two years without appointed leadership, a new Special Counsel was appointed for OSC. The Special Counsel has been assessing the strengths and weaknesses of the agency and implementing action plans. Strategic assessments and planning have begun that may well result in new directions for the agency. These new directions promise new efficiencies. The great danger is that in seeking to trim fat, the budget process will undermine the capacity of OSC to provide economic returns to the federal government that far exceed its budget.



## IX. Comments on Final FY 2011 Financial Statements

### Financial Highlights

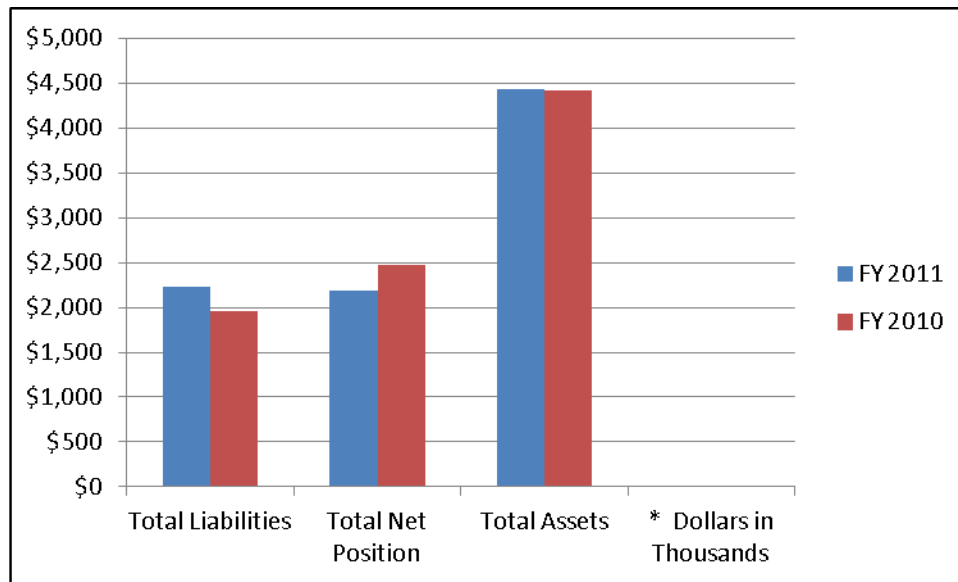
#### Consolidated Balance Sheet

The Consolidated Balance Sheet present amounts that are owned or managed by OSC (assets); amounts owed (liabilities); and the net position of the agency divided between the cumulative results of operations and unexpended appropriations.

OSC's balance sheets show total assets of \$4,423,000 at the end of FY 2011. This is an increase of \$1,000, or approximately .02 percent, over OSC's total assets of \$4,422,000 for FY 2010. Fund Balances with Treasury comprise over 90% of OSC's assets.

Total Liabilities for OSC increased by \$276,000 from \$1,954,000 in FY 2010 to \$2,230,000 in FY 2011, an increase of 14.1%. The largest components of Total Liabilities are Unfunded Leave (\$928,000), Accrued Funded Payroll and Leave (\$699,000) and Federal Employee and Veteran Benefits (\$290,000), and all of these categories reflected significant increases in FY 2011.

#### US Office of Special Counsel Balance Sheet



The Net Position is the sum of Unexpended Appropriations and the Cumulative Results of Operations. At the end of FY 2011, OSC's Net Position on its Balance Sheets and the Statement of Changes in Net Position is \$2,193,000, a decrease of \$275,000, or 11.14 percent, over the

FY 2010 ending Net Position of \$2,468,000. This decrease is due primarily to an increase in OSC's Cumulative Results of Operations for FY 2011 and a decrease in Unexpended Appropriations used the same year.

### **Combined Statements of Budgetary Resources**

The Combined Statements of Budgetary Resources shows how budgetary resources were made available and the status of those resources at the end of the fiscal year. In FY 2011, OSC received an \$18,495,000 appropriation.

OSC ended FY 2011 with an increase in total budgetary resources of \$137,000, or .7 percent, over FY 2010. Resources not available for new obligations at the end of the year totaled \$535,000 and \$958,000 in FY 2011 and FY 2010, respectively. The unobligated balance not available represents cancelled authority from fund year 2006 and 2005 and a rescission amount of \$37,000 in FY 2011.

### **Consolidated Statement of Changes in Net Position**

The Consolidated Statement of Changes in Net Position represent the change in the net position for FY 2011 and FY 2010 from the cost of operations, appropriations received and used, net of rescissions, and the financing of some costs by other government agencies. The Consolidated Statement of Changes in Net Position decreased over last year by \$275,000, or 11.14 percent.

### **Other Financial information**

In FY 2011 OSC capitalized \$73,000 in assets in accordance with its capitalization policy threshold of capitalizing individual assets greater than \$50,000. The assets added were video-teleconferencing equipment, which as of September 30<sup>th</sup>, 2011 had not been placed into operation, and accordingly depreciation has not been taken on the new equipment. This brings OSC's total Property, Plant and Equipment to a total acquisition value of \$902,000, with accumulated depreciation of \$496,000 and a 2011 Net Book value of \$406,000. (Note 4 to Principal Financial Statements)

OSC had \$386,000 in higher Current Year Gross Obligations this year; \$18,513,000 in FY 2011 as compared to \$18,127,000 in FY 2010. This was due to OSC more fully utilizing its budgetary resources. (Note 13 to Principal Financial Statements, Reconciliation of Net Cost of Operations (Proprietary) to Budget)

The change in Undelivered Orders (UDO's) was a \$125,000 reduction this year (FY2011), as compared to a \$268,000 increase the previous year (FY 2010). UDO's are un-liquidated obligations for which the goods or services ordered and obligated have not been received. This reflects closer management of Undelivered Orders by OSC.

OSC recognizes Imputed Financing sources and corresponding expense to represent its share of the cost to the Federal Government of providing accrued pension and post-retirement health and life insurance benefits. These benefit expenses for current employees decreased by \$36,000, from \$1,008,000 in FY 2010 to \$972,000 in FY 2011. Assets and Liabilities relating to these benefits are the responsibility of the Office of Personnel Management.

- The dollar amounts listed above are rounded to the nearest thousand, in accordance with the rounding on the Financial Statements.
- **Limitations of the Financial Statements:** The principal financial statements have been prepared to report the financial position and results of operations of OSC, pursuant to the requirements of 31 U.S.C. 3515 (b).

The statements have been prepared from the books and records of the Review Commission in accordance with generally accepted accounting principles (GAAP) for Federal entities and formats prescribed by the Office of Management and Budget (OMB). The statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These statements should be read with the realization that they are for a component of the United States Government, a sovereign entity.

## Endnotes

- 1 Public Law No. 103-94 (1993), codified in Titles 5 and 12 of the United States Code.
- 2 Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, *et. seq.* The Veterans' Employment Opportunities Act (VEOA) of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The VEOA makes 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 veterans' preference requirement. See 5 U.S.C. § 2302(b)(11). (The former section 2302(b)(11) was re-designated as section 2302(b)(12).)
- 3 5 U.S.C. § 2302(c).
- 4 Public Law 107-71 (2001).

## **Part 2: Performance Section**

The Performance Results Section presents detailed information on the performance results of OSC's programs. The Four Strategic Objectives (below) of OSC are all related to the four statutory responsibilities of the OSC. The four strategic objectives are all supported by Performance goals in each area, which are listed in the pages below. A chart is provided for each performance goal showing OSC's results against the targets, along with the highlights for each objective.

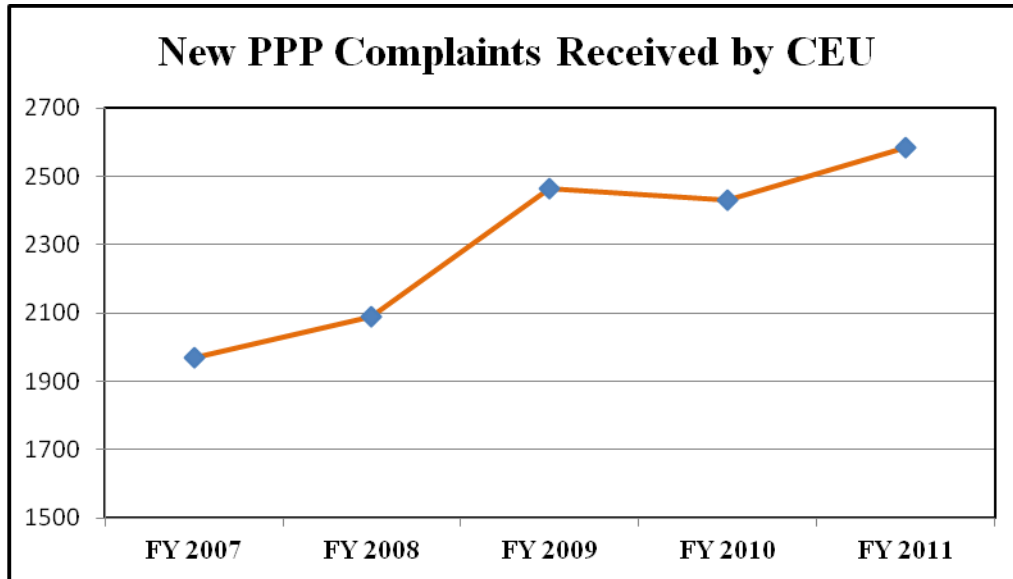
### **Strategic Objectives**

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

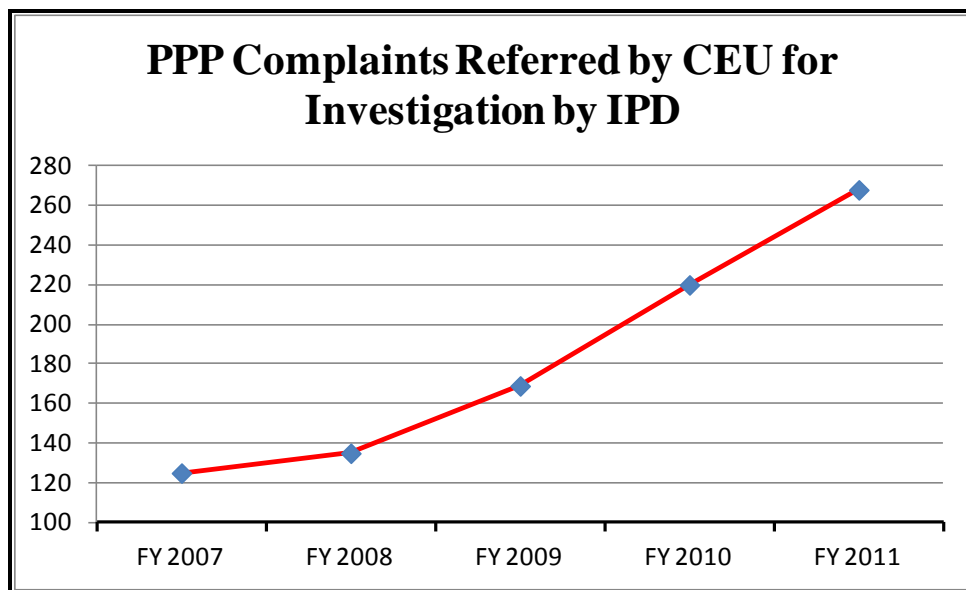
The strategic plan along with its strategic objectives and performance goals was last revised in 2006. With the arrival of OSC's new Special Counsel this year, the agency will be developing a new strategic plan in FY 2012.

## Strategic Objective 1 - Prohibited Personnel Practices

OSC received a record level of PPP cases in FY 2011. The 2,583 complaints received were a 6% increase over the already high FY 2010 levels. PPP complaints have increased 31% since FY 2007.



In addition to the increasing caseloads, the quality of the agency's work has improved, resulting in more cases referred for full investigations. This year's referral of 268 cases was a 22% increase from FY 2010, and a 59% increase as compared to FY 2009. Full investigations are more resource intensive and time consuming; however, that additional effort has netted significant results. OSC received a near record-level high of 81 favorable actions in FY 2011.



<b>Goal 1: TO PROTECT THE MERIT SYSTEM THROUGH TIMELY CASE PROCESSING</b>	
<b>PPP Enforcement Mission</b>	<b>PROHIBITED PERSONNEL PRACTICES CASES</b>
<b>PERFORMANCE INDICATOR</b>	<b>Indicator A: Percentage of cases processed in less than 240 days.</b>
<b>FY 2006 TARGET</b>	85%
<b>FY 2006 RESULTS</b>	89%
<b>FY 2007 TARGET</b>	92%
<b>FY 2007 RESULTS</b>	94%
<b>FY 2008 TARGET</b>	92%
<b>FY 2008 RESULTS</b>	95%
<b>FY 2009 TARGET</b>	92%
<b>FY 2009 RESULTS</b>	94%
<b>FY 2010 TARGET</b>	94%
<b>FY 2010 RESULTS</b>	93%
<b>FY 2011 TARGET</b>	94%
<b>FY 2011 RESULTS</b>	92%
<b>FY 2012 TARGET</b>	94%
<b>FY 2012 RESULTS</b>	
<b>FY 2013 TARGET</b>	93%
<b>FY 2013 RESULTS</b>	

It was not surprising that OSC fell short of its percentage timeliness target, given the fast rising absolute numbers of cases and the added quality controls. What is surprising is that the agency fell short by only 2 percentage points for PPP case processing in FY 2011. Full field investigations often take longer than 240 days due to factors outside of OSC's control, such as extensions of time requested by the agency under investigation, and the timeframes associated with preparing for litigation. Given the experience of FY 2011, we are lowering the FY 2013 target by 1%. Nonetheless, the agency anticipates that its expanded use of ADR will bring positive and earlier resolution to many complaints.

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENT ACTIONS	
PPP Enforcement Mission	Prohibited Personnel Practices Cases
PERFORMANCE INDICATOR	Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# of settlements achieved + # of successful litigations) / (# meritorious cases)
FY 2006 TARGET	99%
FY 2006 RESULTS	100%
FY 2007 TARGET	99%
FY 2007 RESULTS	100%
FY 2008 TARGET	100%
FY 2008 RESULTS	100%
FY 2009 TARGET	100%
FY 2009 RESULTS	100%
FY 2010 TARGET	100%
FY 2010 RESULTS	100%
FY 2011 TARGET	100%
FY 2011 RESULTS	100%
FY 2012 TARGET	100%
FY 2012 RESULTS	
FY 2013 TARGET	100%
FY 2013 RESULTS	

OSC maintained a perfect favorable outcome record in PPP litigation before the Merit Systems Protection Board in FY 2011. More often than not, however, agencies settle pending actions when OSC informs them of the prohibited personnel practices that were committed. OSC projects it will maintain a 100% success rate in FY 2013.

Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES	
PPP Enforcement Mission	PROHIBITED PERSONNEL PRACTICES CASES
PERFORMANCE INDICATOR	Indicator A: # of new Federal agencies certified in the 2302 (c) Program by OSC.
FY 2006 TARGET	5
FY 2006 RESULTS	6
FY 2007 TARGET	5
FY 2007 RESULTS	3
FY 2008 TARGET	5
FY 2008 RESULTS	5
FY 2009 TARGET	5
FY 2009 RESULTS	11
FY 2010 TARGET	5
FY 2010 RESULTS	5
FY 2011 TARGET	5
FY 2011 RESULTS	4
FY 2012 TARGET	5
FY 2012 RESULTS	
FY 2013 TARGET	5
FY 2013 RESULTS	

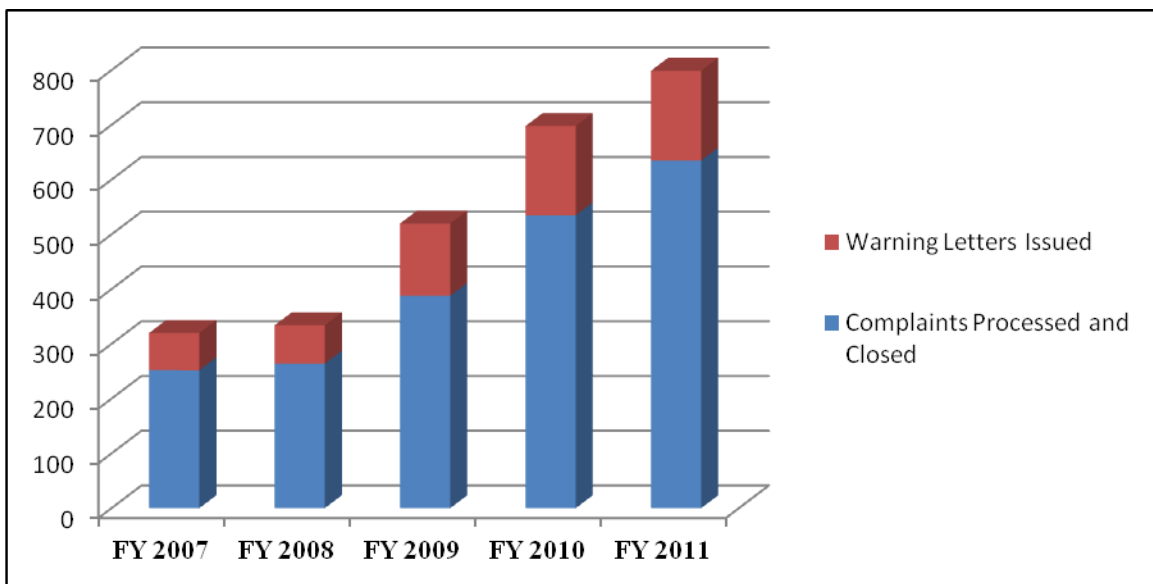
One method to improve the efficiency of the government is OSC's certification program, through which agencies demonstrate they have necessary compliance systems in place. During FY 2011, four agencies were certified or re-certified under OSC's 2302(c) program. We note that the statutory provision upon which OSC's certification program is based - 5 USC § 2302(c) - does not provide an enforcement mechanism to require agencies to become certified. We anticipate a continuing, albeit modest, interest in the certification program from agencies in FY 2013.



## Strategic Objective 2 - Hatch Act

The Hatch Act Unit has seen dramatic increases in complaints and requests for advisory opinions from 2006 onward, with the workload almost doubling by FY 2010. This increase resulted in a backlog of cases. The good news is that in FY 2011, the unit's backlog was reduced to the lowest level in four years. Indeed, FY 2011 was a very productive year, as record breaking numbers of complaints (635) were processed and closed, and formal written advisory opinions (335) were issued.

**Hatch Act Unit Output –  
Complaints Processed and Closed, and Warning Letters Issued**



Goal 1: TO DEFEND THE MERIT SYSTEM BY ENFORCING THE HATCH ACT – THROUGH TIMELY CASE PROCESSING			
HATCH ACT MISSION	HATCH ACT WRITTEN ADVISORY OPINIONS	HATCH ACT ORAL & EMAIL ADVISORY OPINIONS	HATCH ACT COMPLAINTS
PERFORMANCE INDICATORS	Indicator A: Percentage of formal written advisory opinions issued in less than 120 days.	Indicator B: Percentage of oral and e-mail advisory opinions issued in less than five business days	Indicator C: Percentage of matters resolved in less than 365 days.
FY 2007 TARGET	80%	99%	70%
FY 2007 RESULTS	91%	99%	92%
FY 2008 TARGET	85%	99%	80%
FY 2008 RESULTS	60%	100% oral 95% email	88%
FY 2009 TARGET	90%	99% oral 95% email	85%
FY 2009 RESULTS	82%	99% oral 98% email	84%
FY 2010 TARGET	90%	99% oral 95% email	85%
FY 2010 RESULTS	90%	99% oral 99% email	71%
FY 2011 TARGET	85%	99% oral 95% email	85%
FY 2011 RESULTS	82%	99% oral 95% email	69%
FY 2012 TARGET	90%	99% oral 98% email	85%
FY 2012 RESULTS			
FY 2013 TARGET	84%	99% oral 98% email	80%
FY 2013 RESULTS			

Indicator A: The Hatch Act Unit received 283 requests for new advisory opinions in FY 2011. The unit actually issued 351 advisory opinions, counting both backlogged and new requests (118% of the new advisory opinion requests received, compared to 91% in FY 2010). Nonetheless, on a percentage basis, this was slightly less than projected. The FY 2013 target has been decreased to a more realistic level of 84%, as workload is expected to increase significantly in proportion to available resources.

Indicator C: The Hatch Act Unit reduced the number of pending complaints by 45% (451 received, 635 processed). This significantly decreased the Unit’s backlogged cases, but by handling these older cases, the average number of days needed to handle each case increased. In addition, the number of complains processed and closed increased 19% from FY 2010 to FY 2011. As a result, the unit fell somewhat short of it timeliness projections. The FY 2013 target has been decreased to a more realistic level of 80%, as workload is expected to increase significantly in proportion to available resources.

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENT ACTIONS	
HATCH ACT MISSION	HATCH ACT CASES
PERFORMANCE INDICATOR	Indicator A: % favorable outcomes in meritorious cases
FY 2006 TARGET	90%
FY 2006 RESULTS	97%
FY 2007 TARGET	90%
FY 2007 RESULTS	97%
FY 2008 TARGET	97%
FY 2008 RESULTS	96%
FY 2009 TARGET	97%
FY 2009 RESULTS	100%
FY 2010 TARGET	97%
FY 2010 RESULTS	100%
FY 2011 TARGET	97%
FY 2011 RESULTS	100%
FY 2012 TARGET	100%
FY 2012 RESULTS	
FY 2013 TARGET	97%
FY 2013 RESULTS	

During FY 2011, OSC achieved 100% favorable outcomes in meritorious Hatch Act cases, exceeding the target of 97%. We have slightly decreased the FY 2013 target to 97% given uncertainties as to proposed Hatch Act reform legislation.

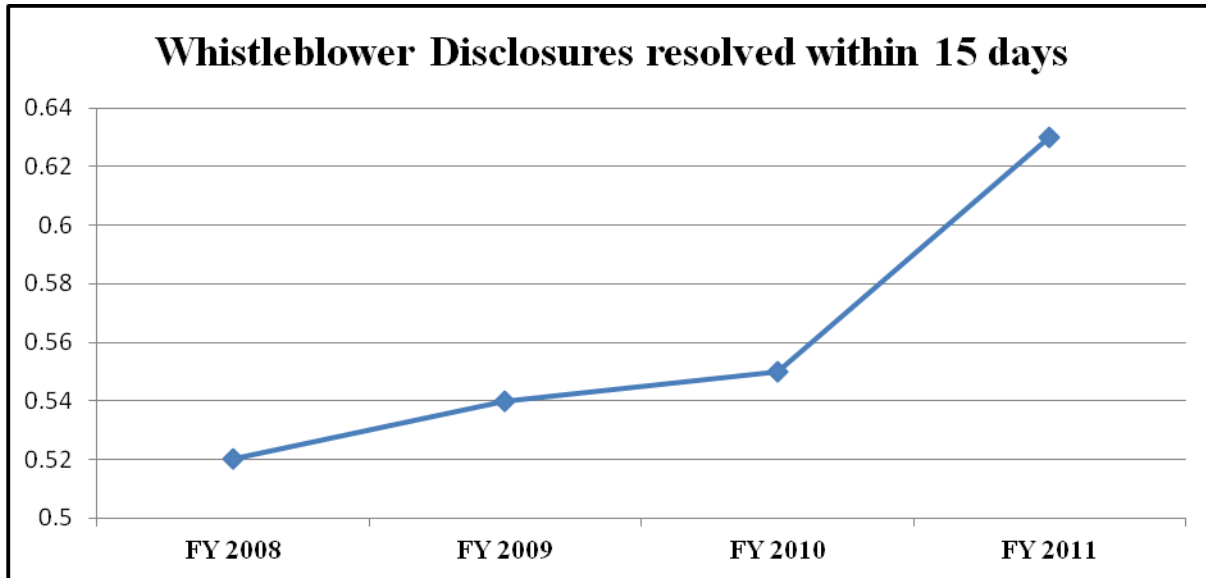
Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES		
HATCH ACT MISSION	HATCH ACT OUTREACH VISITS	HATCH ACT SECTION OF OSC WEBSITE
PERFORMANCE INDICATORS	Indicator A: (# of HA trainings and outreaches given) / (# of invitations to provide HA training or outreach, where the inviter sponsors OSC)	Indicator B: Average number of new advisory complex opinions added every month to the website. (complex opinions are also posted in the form of Q&A)
FY 2006 TARGET	90%	One
FY 2006 RESULTS	96%	One
FY 2007 TARGET	90%	One
FY 2007 RESULTS	100%	One
FY 2008 TARGET	95%	One
FY 2008 RESULTS	98%	One
FY 2009 TARGET	95%	One
FY 2009 RESULTS	99%	One
FY 2010 TARGET	95%	One
FY 2010 RESULTS	93%	One
FY 2011 TARGET	97%	One
FY 2011 RESULTS	95%	One
FY 2012 TARGET	97%	One
FY 2012 RESULTS		
FY 2013 TARGET	97%	One
FY 2013 RESULTS		

Indicator A: During FY 2011, OSC's Hatch Act Unit provided training to federal, state, and local agencies 95% of the time when invited by sponsoring organizations, just short of the 97% target. Absent scheduling conflicts, the unit satisfied every request. OSC recognizes the importance of outreach and is maintaining a target of 97% for FY 2013, despite the expected workload increase in the numbers of Hatch Act cases and advisory opinions.

Indicator B: OSC met its goal of posting one complex advisory opinion to the OSC website on a monthly basis. We are maintaining this goal in FY 2013, posting more opinions would detract from the importance of the cases selected for posting.

### Strategic Objective 3 - Whistleblower Disclosures

The Disclosure Unit cases have more than doubled in the last five years. In FY 2011, the unit received 928 Disclosures, 97% of the record level of FY 2010. Despite this significant increase in workload, the unit managed to increase its timeliness percentage to 63% of disclosures closed within 15 days, well above projections. Overall, the unit had a productive year, processing and closing 870 cases, while referring a record level of 47 disclosures to agency heads for investigation and reporting.



Goal 1: TO RECEIVE AND RESOLVE WHISTLEBLOWER DISCLOSURES WITH TIMELY PROCESSING	
WHISTLEBLOWER DISCLOSURE MISSION	DISCLOSURES
PERFORMANCE INDICATORS	Indicator A: Percentage of disclosures resolved within the statutory 15 day time frame
FY 2006 TARGET	50%
FY 2006 RESULTS	42%
FY 2007 TARGET	50%
FY 2007 RESULTS	61%
FY 2008 TARGET	50%
FY 2008 RESULTS	52%
FY 2009 TARGET	50%
FY 2009 RESULTS	54%
FY 2010 TARGET	50%
FY 2010 RESULTS	55%
FY 2011 TARGET	50%
FY 2011 RESULTS	63%
FY 2012 TARGET	54%
FY 2012 RESULTS	
FY 2013 TARGET	54%
FY 2013 RESULTS	

The target for FY 2012 was increased to 54% on the basis of the Disclosure Unit's performance and management of its caseload. The target for FY 2013 will remain at 54%, however, because the volume of cases received is expected to continue to exceed 900, as it has for FY 2011 and FY 2012, and because of uncertainty as to unit resources and staffing.

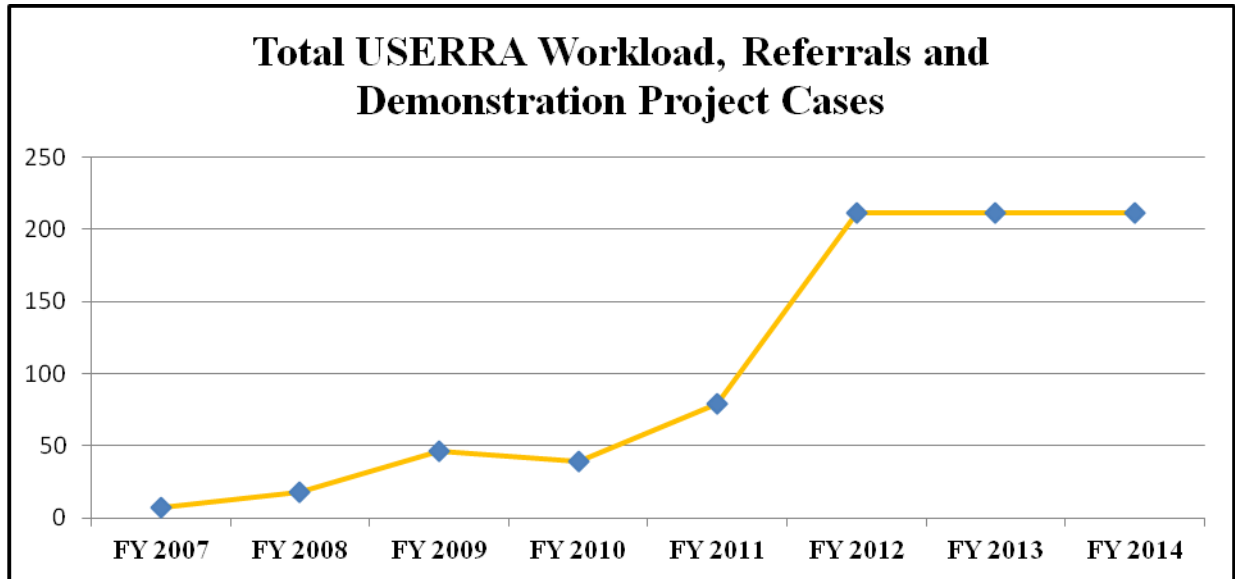
Goal 2: TO PROMOTE JUSTICE AND PROTECT THE MERIT SYSTEM THROUGH THE QUALITY OF DETERMINATIONS AND REFERRALS	
WHISTLEBLOWER DISCLOSURE MISSION	DISCLOSURES
PERFORMANCE INDICATORS	Indicator A: Percentage of disclosures referred to agency head, pursuant to 5 U.S.C. § 1213, or under the informal IG referral process. <sup>1</sup>
FY 2006 TARGET	7%
FY 2006 RESULTS	8%
FY 2007 TARGET	7%
FY 2007 RESULTS	10%
FY 2008 TARGET	7%
FY 2008 RESULTS	6%
FY 2009 TARGET	7%
FY 2009 RESULTS	7%
FY 2010 TARGET	7%
FY 2010 RESULTS	3%
FY 2011 TARGET	7%
FY 2011 RESULTS	6%
FY 2012 TARGET	5%
FY 2012 RESULTS	
FY 2013 TARGET	7%
FY 2013 RESULTS	

<sup>1</sup>Figures are rounded in order to reflect a whole percentage.

The percentage of whistleblower disclosure cases referred to agency heads for investigation in FY 2011 was 6%, slightly less than projected. The rate of referrals is dependent upon the information received from whistleblowers and whether that information meets the “substantial likelihood” standard required by the statute. The percentage of cases referred since 2006 has ranged from 3% to 10% of cases. The target for referrals in FY 2012 was set at 5%; the target rate for referrals in FY 2013 has been set at 7%, the average rate for the past 6 years and, thus, is a reasonable estimate of projected referrals.

## Strategic Objective 4 - USERRA Enforcement

In addition to enforcing its docket of USERRA Referral cases, OSC's USERRA Unit launched a new Demonstration Project in August 2011, at the mandate of Congress, which is expected to result in an additional 175 USERRA cases per year. Unlike the Referral cases, OSC will *investigate* as well as enforce the DP cases. This is a huge increase in the USERRA unit's scope and number of cases; however, in the prior Demonstration Project from 2005-2008, the Unit achieved excellent results. In FY 2011, the unit devoted itself primarily to setting up the Demonstration Project's framework and procedures.



FY 2012 through FY 2014 are projections.

Goal 1: TO ENFORCE THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT THROUGH TIMELY CASE PROCESSING		
USERRA MISSION	USERRA Referral (RE) Cases	USERRA Demonstration Project (DP) Cases
PERFORMANCE INDICATORS	<b>Indicator A:</b> Average number of days in which the case is settled, closed or a decision to litigate is made.	<b>Indicator B:</b> Average number of days in which the case is settled, closed, or a preliminary determination is made.
FY 2007 TARGET	75 days	N/A <sup>1</sup>
FY 2007 RESULTS	33 days	N/A
FY 2008 TARGET	75 days	N/A
FY 2008 RESULTS	110 days	N/A
FY 2009 TARGET	80% in 60 days	N/A
FY 2009 RESULTS	75% in 60 days	N/A
FY 2010 TARGET	80% in 60 days	N/A
FY 2010 RESULTS	79% in 60 days	N/A
FY 2011 TARGET	80% in 60 days	N/A
FY 2011 RESULTS	77% in 60 days	N/A
FY 2012 TARGET	80% in 60 days	65% in 90 days
FY 2012 RESULTS		
FY 2013 TARGET	80% in 60 days	65% in 90 days
FY 2013 RESULTS		

<sup>1</sup>Project began in August of 2011, which is why FY 2012 is the first year in which a target can be applied.



Indicator A: Ordinarily, resolving meritorious Referral cases takes longer than weaker cases. In FY 2011, the unit received a high proportion of potentially meritorious cases and, as a result, OSC fell short of its FY 2011 target by three percentage points. We are nonetheless maintaining the FY 2013 target of 80% in 60 days.

Indicator B: Targets for the new USERRA Demonstration have been added for FY 2012 and FY 2013. USERRA requires that complaints be investigated and the claimant be notified of the results within 90 days, unless the claimant grants an extension. Such investigations may include obtaining information from the claimant, requesting and reviewing documents from the agency, interviewing witnesses, and conducting legal research and analysis. All the information gathered must then be synthesized to make a determination about whether the complaint is meritorious. In some cases, there are delays in receiving documents or interviewing witnesses that are beyond OSC's control. Cases also vary widely in depth and complexity. Thus, in a certain proportion of cases, it is not feasible to complete investigations and make a determination within 90 days. Accordingly, OSC has targeted a 65% rate of completing USERRA DP investigations within 90 days, or in almost two-thirds of complaints.

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENT ACTIONS		
USERRA MISSION	USERRA CASES	
PERFORMANCE INDICATORS	Indicator A: % favorable outcomes in cases determined by OSC to be meritorious = (# successful meditations + # of settlements achieved + # of successful litigations) / (# meritorious cases)	Indicator B: # of "test cases" filed
FY 2006 TARGET	90%	Inappropriate to set a specific target
FY 2006 RESULTS	100%	0
FY 2007 TARGET	90%	Inappropriate to set a specific target
FY 2007 RESULTS	100%	1
FY 2008 TARGET	95%	Inappropriate to set a specific target
FY 2008 RESULTS	97%	1
FY 2009 TARGET	99%	Inappropriate to set a specific target
FY 2009 RESULTS	100%	0
FY 2010 TARGET	90%	Inappropriate to set a specific target
FY 2010 RESULTS	100%	1
FY 2011 TARGET	90%	Inappropriate to set a specific target
FY 2011 RESULTS	100%	0
FY 2012 TARGET	90%	Inappropriate to set a specific target
FY 2012 RESULTS		
FY 2013 TARGET	90%	Inappropriate to set a specific target
FY 2013 RESULTS		

Indicator A: OSC was successful in 3 out of 3 meritorious cases during FY 2011.

Indicator B: There were no test cases filed in FY 2011 that fell in this category.

Goal 3: TO PROMOTE COMPLIANCE WITH THE STATUTES THAT OSC ENFORCES THROUGH ENHANCED OUTREACH TO FEDERAL AGENCIES		
USERRA MISSION	USERRA CASES	
PERFORMANCE INDICATORS	Indicator A: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where inviting agency sponsors OSC})	Indicator B: (# of USERRA trainings and outreaches given) / (# of invitations to provide USERRA training or outreach visits {where OSC pays expenses})
FY 2006 TARGET	90%	50%
FY 2006 RESULTS	NA	100%
FY 2007 TARGET	90%	50%
FY 2007 RESULTS	100%	100%
FY 2008 TARGET	90%	75%
FY 2008 RESULTS	100%	NA
FY 2009 TARGET	90%	75%
FY 2009 RESULTS	100%	NA
FY 2010 TARGET	100%	75%
FY 2010 RESULTS	100%	100%
FY 2011 TARGET	100%	75%
FY 2011 RESULTS	100%	100%
FY 2012 TARGET	100%	100%
FY 2012 RESULTS		
FY 2013 TARGET	100%	100%
FY 2013 RESULTS		

OSC conducted five USERRA outreaches during FY 2011; two paid by the requesting agency and three local outreaches paid by OSC. OSC did not decline any invitations to conduct USERRA outreach opportunities during FY 2011. We are maintaining the 100% target for FY 2013.

**Part 3: Financial Section**



U.S. OFFICE OF SPECIAL COUNSEL  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
202-254-3600

**CFO Letter**

November 9, 2011

This letter usually addresses any recommendations for improvement made by the auditor concerning deficiencies in internal controls which may have an effect on the auditor's ability to express an opinion on the financial statements. I am pleased to report that there were no such matters noted by the auditor in FY 2011 that were considered significant.

The auditor also did not note any noncompliance with laws or regulations which would have an effect on the financial statements.

We believe the minor recommendations for improvement pointed out during the FY 2010 audit have been fully addressed.

Sincerely,

A handwritten signature in cursive script that reads "Karl P. Kammann".

Karl Kammann  
Director of Finance  
U.S. Office of Special Counsel



## **Independent Auditors' Report**

Special Counsel  
U.S. Office of Special Counsel

We have audited the accompanying consolidated balance sheets of the U.S. Office of Special Counsel (OSC), as of September 30, 2011 and 2010, and the related statements of net cost and changes in net position, and statements of budgetary resources, for the years then ended. These financial statements are the responsibility of OSC management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and OMB Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*, as amended.

Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our audits of the OSC for fiscal years 2011 and 2010, we found

- the financial statements are presented fairly, in all material respects, in conformity with U.S. generally accepted accounting principles,
- no material weaknesses in internal control over financial reporting (including safeguarding of assets) and compliance with laws and regulations, and
- no reportable noncompliance with laws and regulations we tested.

The following sections discuss in more detail (1) these conclusions, (2) conclusions on Management's Discussion and Analysis and other supplementary information, and (3) auditors' and management's responsibilities.

### **Opinion on the Financial Statements**

In our opinion, the financial statements including the accompanying notes present fairly, in all material respects, the financial position of OSC as of September 30, 2011 and 2010, and its net cost of operations, changes in net position, and budgetary resources for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

### **Consideration of Internal Control**

In planning and performing our audits, we considered OSC's internal control over financial reporting and compliance. We did this in order to determine our audit procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on internal control. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 07-04, as amended. We did not test all internal controls relevant to the operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982. Providing an opinion on internal control was not the objective of our audit. Accordingly, we do not express an opinion on OSC's internal control over financial reporting and compliance or on management's assertion on internal control included in Management's Discussion and Analysis. However, for the controls we tested, we found no material weaknesses in internal control over financial reporting (including safeguarding of assets) and compliance.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a deficiency in internal control, or a combination of deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected. A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that the design or operation of one or more internal controls will not allow management or employees, in the normal course of performing their duties, to promptly detect or prevent errors, fraud, or noncompliance in amounts that would be material to the financial statements. Our internal control work would not necessarily disclose all deficiencies in internal control that might be material weaknesses or other significant deficiencies.

We noted certain additional matters that we will report to management of OSC in a separate letter.

### **Compliance with Applicable Laws and Regulations**

The management of OSC is responsible for complying with laws and regulations applicable to OSC. As part of obtaining reasonable assurance about whether OSC's financial statements are free of material misstatement, we performed tests of its compliance with selected provisions of laws and regulations including laws governing the use of budgetary authority and government-wide policies identified in OMB Bulletin No. 07-04, as amended, non-compliance with which could have a direct and material effect on the determination of consolidated and combined financial statements. Our tests disclosed no instances of noncompliance with laws and regulations which would be reportable under auditing standards generally accepted in the United States of America or OMB audit guidance.

We limited our tests of compliance to the provisions of laws and regulations referred to in the preceding paragraph. Providing an opinion on compliance with those provisions was not an objective of our audit. Accordingly, we do not express such an opinion

### **Consistency of Other Information**

Management's Discussion and Analysis (MD&A) is not a required part of the financial statements but is supplementary information required by the Federal Accounting Standards Advisory Board and OMB Circular A-136, *Financial Reporting Requirements*. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the MD&A. However, we did not audit the information and accordingly, we express no opinion on it.

### **Responsibilities**

OSC's management is responsible for (1) preparing the financial statements in conformity with accounting principles generally accepted in the United States of America, (2) establishing, maintaining, and assessing internal control to provide reasonable assurance that the broad control objectives of the Federal Managers' Financial Integrity Act are met, and (3) complying with applicable laws and regulations.

We are responsible for obtaining reasonable assurance about whether the financial statements are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America. We are also responsible for (1) obtaining a sufficient understanding of internal control over financial reporting and compliance to plan the audit, (2) testing compliance with selected provisions of laws and regulations that have a direct and material effect on the financial statements and laws for which OMB audit guidance requires testing, and (3) performing limited procedures with respect to certain other information appearing in the Annual Financial Statement.

In order to fulfill these responsibilities, we

- examined, on a test basis, evidence supporting the amounts and disclosures in the financial statements;
- assessed the accounting principles used and significant estimates made by management;
- evaluated the overall presentation of the financial statements;
- obtained an understanding of the entity and its operations, including its internal control related to financial reporting (including safeguarding assets), and compliance with laws and regulations (including execution of transactions in accordance with budget authority);
- tested relevant internal controls over financial reporting, and compliance, and evaluated the design and operating effectiveness of internal control;
- considered the design of the process for evaluating and reporting on internal control and financial management systems under the Federal Managers' Financial Integrity Act; and
- tested compliance with selected provisions of laws and regulations that have a direct and material effect on the financial statements and those required by OMB Bulletin No. 07-04, as amended.

We did not evaluate all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act, such as those controls relevant to preparing statistical reports and ensuring efficient operations. We limited our internal control testing to controls over financial reporting and compliance. Because of inherent limitations in internal

Special Counsel  
U.S. Office of Special Counsel - continued

control, misstatements due to error or fraud, losses, or noncompliance may nevertheless occur and not be detected. We also caution that projecting our evaluation to future periods is subject to the risk that controls may become inadequate

because of changes in conditions or that the degree of compliance with controls may deteriorate. In addition, we caution that our internal control testing may not be sufficient for other purposes.

We did not test compliance with all laws and regulations applicable to OSC. We limited our tests of compliance to selected provisions of laws and regulations that have a direct and material effect on the financial statements and those required by OMB audit guidance that we deemed applicable to the OSC's financial statements for the fiscal year ended September 30, 2011. We caution that noncompliance may occur and not be detected by these tests and that such testing may not be sufficient for other purposes.

We performed our audit in accordance with auditing standards generally accepted in the United States of America and audit guidance in OMB Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*, as amended.

Our audits were conducted for the purpose of forming an opinion on the financial statements of OSC taken as a whole. The other accompanying information included in this performance and accountability report is presented for purposes of additional analysis and is not a required part of the financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

This report is intended solely for the information and use of the management of the U.S. Office of Special Counsel, the U.S. Office of Management and Budget, the U.S. Government Accountability Office, and the U.S. Congress and is not intended to be and should not be used by anyone other than these specified parties.

*Heuper, Ramm, Knight & Company, P.A.*

November 10, 2011



**Office of Special Counsel  
BALANCE SHEET  
As of September 30, 2011 and 2010  
(in thousands)**

	<b>2011</b>	<b>2010</b>
<b>Assets</b>		
<b>Intragovernmental:</b>		
Fund Balance with Treasury (Note 2)	\$ 4,006	\$ 3,957
<b>Total Intragovernmental</b>	<u>4,006</u>	<u>3,957</u>
<b>Assets with the Public</b>		
Accounts Receivable, Net (Note 3)	11	25
General Property, Plant, and Equipment, Net (Note 4)	406	440
<b>Total assets</b>	<u>\$ 4,423</u>	<u>\$ 4,422</u>
<b>Liabilities</b>		
<b>Intragovernmental:</b>		
Employer Contributions and Payroll Taxes Payable (Note 5)	158	144
Unfunded FECA Liability (Note 5)	66	57
<b>Total Intragovernmental</b>	<u>\$ 224</u>	<u>\$ 201</u>
<b>Liabilities with the Public</b>		
Accounts Payable	61	50
Federal Employee and Veteran Benefits (Note 5)	290	258
Other		
Accrued Funded Payroll and Leave	699	574
Employer Contributions and Payroll Taxes Payable (Note 5)	28	5
Unfunded Leave (Note 5)	928	865
Custodial Liability	-	1
<b>Total liabilities</b>	<u>\$ 2,230</u>	<u>\$ 1,954</u>
<b>Net Position:</b>		
Unexpended Appropriations-Other Funds	3,059	3,183
Cumulative Results of Operations-Other Funds	(866)	(715)
<b>Total Net Position</b>	<u>\$ 2,193</u>	<u>\$ 2,468</u>
<b>Total Liabilities and Net Position</b>	<u>\$ 4,423</u>	<u>\$ 4,422</u>

The accompanying notes are an integral part of these statements.

**Office of Special Counsel  
STATEMENT OF NET COST  
For the Years ended September 30, 2011 and 2010  
(in thousands)**

	<b>2011</b>	<b>2010</b>
Gross costs (Note 9)	\$ 19,207	\$ 18,841
Less: earned revenue	<u>          -</u>	<u>          1</u>
<b>Net cost of operations:</b>	<b><u>\$ 19,207</u></b>	<b><u>\$ 18,840</u></b>

The accompanying notes are an integral part of these statements.

**Office of Special Counsel**  
**STATEMENT OF CHANGES IN NET POSITION**  
**For the Years Ended September 30, 2011 and 2010**  
(In thousands)

	2011	2010
<b>Cumulative Results of Operations:</b>		
Beginning Balances	\$ (715)	\$ (872)
Beginning Balances, as Adjusted	<u>(715)</u>	<u>(872)</u>
<b>Budgetary Financing Sources:</b>		
Appropriations Used	18,084	17,990
Nonexchange Revenue	-	(1)
<b>Other Financing Sources (Non Exchange):</b>		
Imputed Financing	<u>972</u>	<u>1,008</u>
Total Financing Sources	19,056	18,997
Net Cost of Operations	<u>(19,207)</u>	<u>(18,840)</u>
Net Change	(151)	157
<b>Cumulative Results of Operations</b>	(866)	(715)
<b>Unexpended Appropriations:</b>		
Beginning Balance	<u>3,183</u>	<u>3,636</u>
Beginning Balance, as Adjusted	3,183	3,636
<b>Budgetary Financing Sources:</b>		
Appropriations Received	18,495	18,495
Appropriations Used	(18,084)	(17,990)
Other Adjustments	<u>(535)</u>	<u>(958)</u>
Total Budgetary Financing Resources	<u>(124)</u>	<u>(453)</u>
Total Unexpended Appropriations	<u>3,059</u>	<u>3,183</u>
Net Position	<u>2,193</u>	<u>2,468</u>

The accompanying notes are an integral part of these statements.

**Office of Special Counsel**  
**STATEMENT OF BUDGETARY RESOURCES**  
**For the Years Ended September 30, 2011 and 2010**  
**(in thousands)**

	<b>2011</b>	<b>2010</b>
<b>Budgetary Resources:</b>		
Unobligated balance; start of year	\$ 1,383	\$ 1,567
Brought forward, October 1		
Recoveries of prior year unpaid obligations:	304	406
Budget authority:		
Appropriation:	18,495	18,495
Total Budget authority	<u>18,495</u>	<u>18,495</u>
Permanently not available:	<u>(535)</u>	<u>(958)</u>
Total budgetary resources	<u>\$ 19,647</u>	<u>\$ 19,510</u>
<b>Status of Budgetary Resources:</b>		
Obligations incurred:		
Direct:	18,513	18,127
Total Obligations incurred	<u>18,513</u>	<u>18,127</u>
Unobligated balance:		
Apportioned:	174	368
Total Unobligated balance	<u>174</u>	<u>368</u>
Unobligated balance not available:	960	1,015
Total status of budgetary resources	<u>\$ 19,647</u>	<u>\$ 19,510</u>
<b>Change in Obligated Balance:</b>		
Obligated balance, net		
Unpaid obligations, brought forward October 1	2,573	2,856
Total, unpaid obligated balance, net	<u>2,573</u>	<u>2,856</u>
Obligations incurred, net	18,513	18,127
Less: Gross outlays	(17,910)	(18,004)
Less: Recoveries of prior-year unpaid obligations, actual	<u>(304)</u>	<u>(406)</u>
Total, unpaid obligated balance, net, end of period	<u>\$ 2,872</u>	<u>\$ 2,573</u>
Obligated balance, net, end of period:		
Unpaid obligations	2,872	2,573
Total, unpaid obligated balance, net end of period	<u>\$ 2,872</u>	<u>\$ 2,573</u>
<b>Net Outlays:</b>		
Net Outlays:		
Gross outlays	17,910	18,004
Net outlays	<u>\$ 17,910</u>	<u>\$ 18,004</u>

The accompanying notes are an integral part of these statements.

**OFFICE OF SPECIAL COUNSEL**  
**Washington, D.C**

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**Notes to Principal Financial Statements**  
**as of and for the Years Ended**  
**September 30, 2011 and 2010**

**Office of Special Counsel  
Notes to Principal Financial Statements  
as of September 30, 2011 and 2010**

**NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**A. Reporting Entity**

The Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. OSC's authority comes from four federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniform Services Employment and Reemployment Rights Act. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices. OSC receives, investigates, and prosecutes allegations of prohibited personnel practices, with an emphasis on protecting federal government whistleblowers.

OSC is headed by the Special Counsel, who is appointed by the President, and confirmed by the Senate. At full strength, the agency employs approximately 112 employees to carry out its government-wide responsibilities in the headquarters office in Washington, D.C., and in the Dallas, San Francisco, and Detroit field offices.

OSC has rights and ownership of all assets reported in these financial statements. There are no non-entity assets.

**B. Basis of Presentation**

The financial statements have been prepared to report the financial position, net cost of operations, changes in net position, status and availability of budgetary resources, and the reconciliation between proprietary and budgetary accounts of the OSC. The statements are a requirement of the Chief Financial Officers Act of 1990, the Government Management Reform Act of 1994, the Accountability of Tax Dollars Act of 2002 and the Office of Management and Budget (OMB) Circular A-136, Financial Reporting Requirements. They have been prepared from, and are fully supported by, the books and records of OSC in accordance with the hierarchy of accounting principles generally accepted in the United States of America, standards approved by the principals of the Federal Accounting Standards Advisory Board (FASAB), OMB Circular A-136, and OSC Accounting policies which are summarized in this note. These statements, with the exception of the Statement of Budgetary Resources, are different from financial management reports, which are also prepared pursuant to OMB directives that are used to monitor and control OSC's use of budgetary resources.

The statements consist of the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, and the Statement of Budgetary Resources. In accordance with OMB Circular A-136, the financial statements and associated notes are presented on a comparative basis.

**C. Basis of Accounting**

Transactions are recorded on both an accrual accounting basis and a budgetary basis. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. These financial statements

## Notes to Principal Financial Statements

were prepared following accrual accounting. Budgetary accounting facilitates compliance with legal requirements on the use of federal funds. Balances on these statements may therefore differ from those on financial reports prepared pursuant to other OMB directives that are primarily used to monitor and control OSC's use of budgetary resources.

### **D. Taxes**

OSC, as a Federal entity, is not subject to Federal, State, or local income taxes, and, accordingly, no provision for income taxes has been recorded in the accompanying financial statements.

### **E. Fund Balance with Treasury**

The U. S. Treasury processes cash receipts and disbursements. Funds held at the Treasury are available to pay agency liabilities. OSC does not maintain cash in commercial bank accounts or foreign currency balances.

### **F. Accounts Receivable**

Accounts receivable consists of amounts owed to OSC by other Federal agencies and the public. Amounts due from Federal agencies are considered fully collectible. Accounts receivable from the public include reimbursements from employees. An allowance for uncollectible accounts receivable from the public is established when either (1) based upon a review of outstanding accounts and the failure of all collection efforts, management determines that collection is unlikely to occur considering the debtor's ability to pay, or (2) an account for which no allowance has been established is submitted to the Department of the Treasury for collection, which takes place when it becomes 180 days delinquent.

### **G. General Property, Plant and Equipment, Net**

OSC's property and equipment is recorded at original acquisition cost and is depreciated using the straight-line method over the estimated useful life of the asset. Major alterations and renovations are capitalized, while maintenance and repair costs are charged to expense as incurred. OSC's capitalization threshold is \$50,000 for individual purchases. Applicable standard governmental guidelines regulate the disposal and convertibility of agency property, plant and equipment. The useful life classifications for capitalized assets are as follows:

<u>Description</u>	<u>Useful Life (years)</u>
Leasehold Improvements	10
Office Equipment	5
Hardware	5
Software	2

### **H. Advances and Prepaid Charges**

Advance payments are generally prohibited by law. There are some exceptions, such as reimbursable agreements, subscriptions and payments to contractors and employees. Payments made in advance of the receipt of goods and services are recorded as advances or prepaid charges at the time of prepayment and recognized as expenses when the related goods and services are received.

**I. Liabilities**

Liabilities covered by budgetary or other resources are those liabilities for which Congress has appropriated funds or funding is otherwise available to pay amounts due.

Liabilities not covered by budgetary or other resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The liquidation of liabilities not covered by budgetary or other resources is dependent on future Congressional appropriations or other funding. Intragovernmental liabilities are claims against OSC by other Federal agencies. Liabilities not covered by budgetary resources on the Balance Sheet are equivalent to amounts reported as components requiring or generating resources on the Statement of Financing. Additionally, the government, acting in its sovereign capacity, can abrogate liabilities.

Accrued liabilities for OSC are comprised of program expense accruals, payroll accruals, and annual leave (funded and unfunded) earned by employees. Program expense accruals represent expenses that were incurred prior to year-end but were not paid. Similarly, payroll accruals represent payroll expenses that were incurred prior to year-end but were not paid.

**J. Accounts Payable**

Accounts payable consists of amounts owed to other Federal agencies and the public.

**K. Annual, Sick, and Other Leave**

Annual leave is accrued as it is earned, and the accrual is reduced as leave is taken. The balance in the accrued leave account is adjusted to reflect current pay rates. Liabilities associated with other types of vested leave, including compensatory, restored leave, and sick leave in certain circumstances, are accrued at year-end, based on latest pay rates and unused hours of leave. Sick leave is generally non-vested. Funding will be obtained from future financing sources to the extent that current or prior year appropriations are not available to fund annual and other types of vested leave earned but not taken. Non-vested leave is expensed when used.

**L. Accrued Workers' Compensation**

A liability is recorded for actual and estimated future payments to be made for workers' compensation pursuant to the Federal Employees' Compensation Act (FECA). The actual costs incurred are reflected as a liability because OSC will reimburse the Department of Labor (DOL) two years after the actual payment of expenses. Future appropriations will be used for the reimbursement to DOL. The liability consists of (1) the net present value of estimated future payments calculated by the DOL, and (2) the unreimbursed cost paid by DOL for compensation to recipients under the FECA.

**M. Retirement Plans**

OSC employees participate in either the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). The employees who participate in CSRS are beneficiaries of OSC's matching contribution, equal to seven percent of pay, distributed to their annuity account in the Civil Service Retirement and Disability Fund.

FERS went into effect on January 1, 1987. FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees hired prior to January 1, 1984 elected to join either FERS, Social Security, or remain in CSRS. FERS offers a savings plan to which OSC automatically



## Notes to Principal Financial Statements

contributes one percent of pay and matches any employee contribution up to an additional four percent of pay. For FERS participants, OSC also contributes the employer's matching share of Social Security.

FERS employees and certain CSRS reinstatement employees are eligible to participate in the Social Security program after retirement. In these instances, OSC remits the employer's share of the required contribution.

OSC recognizes the imputed cost of pension and other retirement benefits during the employees' active years of service. Office of Personnel Management (OPM) actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future and communicate these factors to OSC for current period expense reporting. OPM also provides information regarding the full cost of health and life insurance benefits. OSC recognized the offsetting revenue as imputed financing sources to the extent these expenses will be paid by OPM.

OSC does not report on its financial statements information pertaining to the retirement plans covering its employees. Reporting amounts such as plan assets, accumulated plan benefits, and related unfunded liabilities, if any, is the responsibility of the OPM.

### **N. Net Position**

Net position is the residual difference between assets and liabilities and is comprised of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative result of operations is the net result of OSC's operations since inception.

### **O. Imputed Costs/Financing Sources**

Federal government entities often receive goods and services from other Federal government entities without reimbursing the providing entity for all the related costs. In addition, Federal government entities also incur costs that are paid in total or in part by other entities. An imputed financing source is recognized by the receiving entity for costs that are paid by other entities. OSC recognized imputed costs and financing sources in fiscal years 2011 and 2010 to the extent directed by OMB.

### **P. Revenues & Other Financing Resources**

Congress enacts annual and multi-year appropriations to be used, within statutory limits, for operating and capital expenditures. Additional amounts are obtained from service fees and reimbursements from other government entities and the public.

Appropriations are recognized as a financing source when expended. Revenues from service fees associated with reimbursable agreements are recognized concurrently with the recognition of accrued expenditures for performing the services.

OSC recognizes as an imputed financing source the amount of accrued pension and post-retirement benefit expenses for current employees paid on our behalf by (OPM).

### **Q. Contingencies**

Liabilities are deemed contingent when the existence or amount of the liability cannot be determined with certainty pending the outcome of future events. OSC recognizes contingent liabilities, in the accompanying Balance Sheet and Statement of Net Cost, when it is both probable and can be reasonably estimated. OSC discloses contingent liabilities in the notes to the financial statements when the conditions

## Notes to Principal Financial Statements

for liability recognition are not met or when a loss from the outcome of future events is more than remote. In some cases, once losses are certain, payments may be made from the Judgment Fund maintained by the U.S. Treasury rather than from the amounts appropriated to OSC for agency operations. Payments from the Judgment Fund are recorded as an “Other Financing Source” when made.

### R. Expired Accounts and Cancelled Authority

Unless otherwise specified by law, annual authority expires for incurring new obligations at the beginning of the subsequent fiscal year. The account in which the annual authority is placed is called the expired account. For five fiscal years, the expired account is available for expenditure to liquidate valid obligations incurred during the unexpired period. Adjustments are allowed to increase or decrease valid obligations incurred during the unexpired period but not previously reported. At the end of the fifth expired year, the expired account is cancelled.

### S. Use of Estimates

The preparation of financial statements in conformity with Generally Accepted Accounting Principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

### T. Comparative Data

The financial statements and footnotes present comparative data for the prior fiscal year, in order to provide an understanding of changes in OSC’s financial position and operations. Certain FY 2010 amounts have been reclassified to conform to the FY 2011 financial statement and footnote presentations.

## NOTE 2. FUND BALANCE WITH TREASURY

Fund Balance with Treasury account balances as of September 30, 2011 and 2010 were:

(dollars in thousands)

<b>Fund Balance:</b>	<b>2011</b>	<b>2010</b>
Appropriated Funds (general)	\$ 4,006	\$ 3,957
<b>Total Fund Balance with Treasury</b>	<b>\$ 4,006</b>	<b>\$ 3,957</b>
<b>Status of Fund Balance with Treasury</b>		
Unobligated Balance:		
Available	\$ 174	\$ 368
Unavailable	960	1,015
Obligated Balance Not Yet Disbursed	2,872	2,573
Non-Budgetary		1
<b>Total Status of Fund Balance with Treasury</b>	<b>\$ 4,006</b>	<b>\$ 3,957</b>

## Notes to Principal Financial Statements

Restricted unobligated fund balance represents the amount of appropriations for which the period of availability for obligation has expired. These balances are available for upward adjustments of obligations incurred only during the period for which the appropriation was available for obligation or paying claims attributable to the appropriations.

### NOTE 3. ACCOUNTS RECEIVABLE

A summary of accounts receivable from the public as of September 30, 2011 and 2010 were as follows:

(dollars in thousands)	2011	2010
<b>Accounts Receivable from the Public:</b>		
Billed:		
Current	\$ 11	\$ 25
<b>Total Accounts Receivable</b>	<b>11</b>	<b>25</b>
<b>Accounts Receivable from the Public, Net</b>	<b>\$ 11</b>	<b>\$ 25</b>

### NOTE 4. GENERAL PROPERTY, PLANT AND EQUIPMENT

Property, Plant and Equipment account balances as of September 30, 2011 and 2010 were as follows:

(dollars in thousands)	Service Life	Acquisition Value	Accumulated Depreciation	2011 Net Book Value	2010 Net Book Value
CIP		\$ 73	\$ -	\$ 73	
Office Equipment	5 yrs	\$ 556	\$ (362)	\$ 194	\$ 274
Leasehold Improvements	10 yrs	273	(134)	139	166
<b>Total</b>		<b>\$ 902</b>	<b>\$ (496)</b>	<b>\$ 406</b>	<b>\$ 440</b>

### NOTE 5. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities on OSC's Balance Sheet as of September 30, 2011 and 2010 include liabilities not covered by budgetary resources, which are liabilities for which congressional action is needed before budgetary resources can be provided. Although future appropriations to fund these liabilities are likely and anticipated, it is not certain that appropriations will be enacted to fund these liabilities.

**A. Intragovernmental and Public Liabilities**

(dollars in thousands)	2011	2010
Intragovernmental:		
Employer Contributions & Payroll Taxes Payable	158	144
Unfunded FECA Liability	66	57
<b>Total Intragovernmental</b>	<b>224</b>	<b>201</b>
Public Liabilities:		
Employer Contributions & Payroll Taxes Payable	28	5
Federal Employee and Veteran Benefits	290	258
Unfunded Annual Leave	928	865
<b>Total Liabilities Not Covered by Budgetary Resources</b>	<b>\$ 1,470</b>	<b>\$ 1,329</b>
<b>Total Liabilities Covered by Budgetary Resources</b>	<b>760</b>	<b>625</b>
<b>Total Liabilities</b>	<b>\$ 2,230</b>	<b>\$ 1,954</b>

**B. Other Information**

Unfunded Payroll Liabilities consists of workers' compensation claims payable to the Department of Labor, which will be funded in a future period, and an unfunded estimated liability for future workers' compensation claims based on data provided from the DOL. Unfunded FECA liabilities for 2011 and 2010 were approximately \$66 thousand and \$57 thousand respectively. Unfunded Employment liabilities for 2011 were \$0 and \$0 for 2010. The actuarial calculation is based on benefit payments made over 12 quarters, and calculates the annual average of payments. The actuarial FECA liabilities for 2011 and 2010 were approximately \$290 thousand and \$258 thousand respectively. For medical expenses and compensation, this average is then multiplied by the liability-to-benefit paid ratio for the whole FECA program.

Unfunded Leave represents a liability for earned leave and is reduced when leave is taken. At year end, the balance in the accrued leave account is adjusted to reflect the liability at current pay rates and leave balances. Accrued leave is paid from future funding sources and, accordingly, is reflected as a liability not covered by budgetary resources. Sick and other leave is expensed as taken.

All other liabilities are considered to be covered by budgetary resources.

**NOTE 6. OPERATING LEASES**

OSC occupies office space under lease agreements in Washington DC, Dallas, Oakland, and Detroit that are accounted for as operating leases. The DC lease term began on October 26, 2009 and expires on October 25, 2019. The Dallas lease term began on December 9, 2002 and expires on December 8, 2017 with, a reset to market rates occurring on December 2012. The current Oakland lease was renewed in February 2011 for a period of 10 years through June 2021, with a market rate reset occurring on July 2016. The Detroit lease began on December 1, 2010 and will expire on November 30, 2020.

Lease payments are increased annually based on the adjustments for operating cost and real estate tax escalations. Escalation cost estimates for Oakland and Dallas for market rate resets and lease renewals have been factored in.

## Notes to Principal Financial Statements

Below is a schedule of future payments for the terms of all the leases.

(dollars in thousands)	
<u>Fiscal Year</u>	<u>Total</u>
2012	\$ 1,790
2013	1,819
2014	1,833
2015	1,847
2016	1,864
<u>Total Future Lease Payments</u>	<u>\$ 9,153</u>

### **NOTE 7. CONTINGENCIES**

A contingency is an existing condition, situation or set of circumstances involving uncertainty as to possible payment by OSC. The uncertainty will ultimately be resolved when one of more future events occur or fail to occur. For pending, threatened or unasserted litigation, a liability/cost is recognized when a past transaction or event has occurred, a future outflow or other sacrifice of resources is probable, and the related future outflow or sacrifice of resources can be reasonably estimated.

There are numerous legal actions pending against the United States in Federal courts in which claims have been asserted that may be based on action taken by OSC. Management intends to vigorously contest all such claims. Management believes, based on information provided by legal counsel, that losses, if any, for the majority of these cases would not have a material impact on the financial statements.

### **NOTE 8. IMPUTED FINANCING SOURCES**

OSC recognizes as imputed financing the amount of accrued pension and post-retirement benefit expenses for current employees. The assets and liabilities associated with such benefits are the responsibility of the administering agency, the Office of Personnel Management. For the fiscal years ended September 30, 2011 and 2010, respectively, imputed financing from OPM were approximately \$972 and \$1,008 thousand.

### **NOTE 9. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE**

Intragovernmental costs represent goods and services exchange transactions made between two reporting entities within the Federal government, and are in contrast to those with non-federal entities (the public). Such costs are summarized as follows:

## Notes to Principal Financial Statements

(dollars in thousands)

	2011	2010
<b>Investigations and Enforcements</b>		
Intragovernmental Costs	\$ 3,834	\$ 3,646
Public Costs	15,373	15,195
<b>Total Investigations and Enforcements</b>	<b>\$ 19,207</b>	<b>\$ 18,841</b>
<hr/>		
Intragovernmental Earned Revenue	\$ -	\$ 1
<b>Total Intragovernmental Earned Revenue</b>	<b>\$ -</b>	<b>\$ 1</b>

### NOTE 10. APPORTIONMENT CATEGORIES OF OBLIGATIONS INCURRED

Obligations incurred reported on the Statement of Budgetary Resources in 2011 and 2010 consisted of the following:

(dollars in thousands)	2011	2010
Direct Obligations:		
Category B	\$ 18,513	\$ 18,127
<b>Total Obligations Incurred</b>	<b>\$ 18,513</b>	<b>\$ 18,127</b>

### NOTE 11. EXPLANATION OF DIFFERENCES BETWEEN THE SBR AND THE BUDGET OF THE U.S. GOVERNMENT

Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, calls for explanations of material differences between amounts reported in the Statement of Budgetary Resources (SBR) and the actual balances published in the Budget of the United States Government (President's Budget). However, the President's Budget that will include FY11 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2012 and can be found at the OMB website: <http://www.whitehouse.gov/omb>. The 2010 Budget of the United States Government, with the actual column completed for 2010, has been reconciled to the Statement of Budgetary Resources and there were no material differences.

### NOTE 12. UNDELIVERED ORDERS AT THE END OF THE PERIOD

Beginning with FY06, the format of the Statement of Budgetary Resources has changed and the amount of undelivered orders at the end of period is no longer required to be reported on the face of the statement. Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, states that the amount of budgetary resources obligated for undelivered orders at the end of the period should be disclosed. For the years ended September 30, 2011 and 2010, undelivered orders amounted to approximately \$1,926 thousand and \$1,801 thousand.

**NOTE 13. RECONCILIATION OF NET COST OF OPERATIONS  
(PROPRIETARY) TO BUDGET (FORMERLY THE STATEMENT OF  
FINANCING)**

In fiscal year 2006 this reconciliation was presented as a fifth statement, the Statement of Financing. In accordance with OMB Circular A-136, revised June 2007, presentation requirement for this information is now a footnote disclosure. Details of the relationship between budgetary resources obligated and the net costs of operations for the fiscal years ending September 30 are as follows:

**Reconciliation of Net Cost of Operations (Proprietary) to Budget  
As of September 30, 2011 and 2010**  
(dollars in thousands)

	2011	2010
<b>Resources Used to Finance Activities</b>		
Current Year Gross Obligations	\$ 18,513	\$ 18,127
<b>Budgetary Resources from Offsetting Collections</b>		
Spending Authority from Offsetting Collections		
Earned		
Collected		
Recoveries of Prior Year Unpaid Obligations	(304)	(406)
<b>Other Financing Resources</b>		
Imputed Financing Sources	972	1,008
<b>Total Resources Used to Finance Activity</b>	<u>19,181</u>	<u>18,729</u>
<b>Resources Used to Finance Items Not Part of the Net Cost of Operations</b>		
<b>Budgetary Obligations and Resources Not in the Net Cost of Operations</b>		
Change in Undelivered Orders	(125)	268
Current Year Capitalized Purchases	(74)	(226)
<b>Components of Net Cost which do not Generate or Use Resources in the Reporting Period</b>		
<b>Revenues without Current Year Budgetary Effect</b>		
Change in Non-Federal Receivables	14	1
Other Financing Sources Not in the Budget	(972)	(1,008)
<b>Costs without Current Year Budgetary Effect</b>		
Depreciation and Amortization	108	111
Future Funded Expenses	71	(25)
Imputed Costs	972	1,008
Other Expenses Not Requiring Budgetary Resources	32	(18)
<b>Net Cost of Operations</b>	<u>\$ 19,207</u>	<u>\$ 18,840</u>