

**FISCAL YEAR 2013
CONGRESSIONAL BUDGET JUSTIFICATION
AND PERFORMANCE BUDGET GOALS**



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Contents

Part 1 – Executive Summary	3
About OSC	4
Summary of Request	4
Justification of the Request to Fund 107 FTE	4
Performance Highlights	5
Strategic Objectives	9
OSC’s Cost Savings to Government and other successes	10
Internal Organization	12
OSC Organizational Chart	12
Budget by Program	15
Part 2 – FY 2013 Budget Request – Additional Information	16
FY 2013 Budget Request by Budget Object Class	17
Part 3 – Budget Programs and Performance Plan	19
FY 2011 Case Activity and Results – All Programs	19
Investigation and Prosecution Prohibited Personnel Practices (PPPs)	19
Alternative Dispute Resolution	22
Hatch Act Enforcement Program	25
Whistleblower Disclosure Program	30
USERRA Program	35
OSC’s Outreach Program	40
Part 4 – Enhancement of Operations	41
Strategic Management of Human Capital	41
Improved Financial Performance	41
Competitive Sourcing	42
Expanded Electronic Government and other Information Technology Initiatives	42
Improving Employee Satisfaction and Wellness	43
Open Government	43
Green Government	43
Telework	43
Continuity of Operations	44
Appendix	45
A. Statutory Background	45
B. Strategic Plan- FY 2012 to 2016	46
Endnotes	61

PART 1 – EXECUTIVE SUMMARY

Under new leadership since June 2011, the Office of Special Counsel (OSC), an independent investigative and prosecutorial agency, is back on track, fostering integrity and efficiency in the federal government, and saving taxpayers millions of dollars. Even more significantly, OSC protects the public against catastrophic harms that could kill and maim thousands and cost the government billions of dollars.

Carolyn Lerner, the eighth permanent Special Counsel, was confirmed by the Senate on April 14, 2011, and sworn in on June 17, 2011. A highly respected attorney and manager, Ms. Lerner has acted quickly to restore the agency's morale and reputation, and to put it on a sustainable financial footing. This budget request reflects the minimal support OSC will require to adequately discharge its important mission.

OSC is a small agency with a big mission. It promotes government accountability, fairness and efficiency by providing a safe channel for federal employees to come forward with evidence of waste, fraud, abuse, law-breaking, or threats to public health or safety. When FAA air traffic controllers witness dangerous flight practices; when Department of Veterans Affairs 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. OSC also protects these whistleblowers against retaliation by their agencies. In addition, under the Hatch Act, OSC protects the integrity of the civil service system by ensuring that federal employees are not coerced by their superiors into partisan political activity and employees do not engage in partisan politics while on duty. Critically, OSC also protects returning Guard members and reservists against employment discrimination.

OSC is addressing a steady surge in the number of federal employees alleging Prohibited Personnel Practices (PPPs), such as retaliation, and a growing number of whistleblower disclosures regarding illegality, waste, fraud, abuse, and dangerous and unsafe practices. Based upon experience, the agency anticipates an explosion of complaints under the Hatch Act as the country 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 Guard members and reservists, adding hundreds of cases to the OSC docket.

Since FY 2008, OSC has experienced rapidly rising caseloads, growing more than four times faster than its budget. During this three-year period, OSC's case docket grew 28%, while its budget edged up only 6%. Extrapolating based on past experience, the agency conservatively projects an annual caseload growth in the 6% to 8% range for the foreseeable future. On top of this, OSC has been mandated by Congress to undertake a new USERRA Demonstration. As part of the Project, OSC is assuming workload from the Department of Labor, and is exploring options for the department to reimburse OSC for a portion of the costs for these cases. With the addition of the Project and the past growth in the agency's caseload and the projected future growth, it is evident that OSC is at a critical juncture.

Unlike most other agencies, OSC does not just spend taxpayers' money; it returns substantial sums to the federal government by pressing for corrective action to remedy waste and fraud. Every year OSC receives disclosures that result in millions of dollars returned to or saved by the government as a direct result of whistleblower disclosures to the agency. Those dollars, while significant, do not approach the actual benefit of OSC's work: By pursuing whistleblower disclosures, the agency has literally saved the government hundreds of millions of dollars by preventing boondoggles and disasters from occurring or recurring.

OSC is a small budgetary investment that reaps a huge reward in government efficiency and accountability. The agency's entire budget request amounts to well less than the cost of just two days of waste and fraud in Defense contracts in Iraq and Afghanistan, according to the bipartisan Congressional Commission on Wartime Contracting.

New leadership is reinvigorating the OSC, injecting efficiencies and energy toward realizing the agency's essential mission. The entire agency is being mobilized in this undertaking and productivity continues to rise, and more can and will be done. Granting this budget request will ensure that the agency meets its critical challenges of uprooting waste and fraud, upholds the merit system, protects veterans and federal employees, ensures accountability, and stands up for taxpayers.

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.

Summary of Request

OSC is requesting \$18,692,000 in FY 2013, a \$280,000 decrease from the FY 2012 Appropriation level. This amount includes funding for the salaries and benefits for 107 FTE, as well as for supporting the projected salary increases and within-grade increases required for the 107 in FY 2013. Maintaining this level of funding is essential if OSC is to effectively address its fast growing caseload and support the congressionally mandated expansion of the agency's USERRA efforts.

Justification of the Request to Fund 107 FTE

OSC continues to experience a dramatic upsurge in new cases and demands upon its spare resources:

- OSC has seen a 47% growth in new matters in five years and, therefore, conservatively projects a 7.75% annual growth rate going forward. The OSC caseload rose to 4,026 in FY 2011, a new record. (See chart 1 below.)
- In the Prohibited Personnel Practices area, new complaints increased by 6% in FY 2011 over FY 2010 levels. (See chart 2 below.)
- The number of complaints requiring full investigations is on the rise. (See chart 3 below.) In FY 2010, OSC conducted full investigations in 179 prohibited personnel practice complaints, representing 10% of the total cases originally in open status; that number jumped to 190 in FY 2011, representing 12% of the total cases in open status for the fiscal year.
- Whistleblower Disclosures remain near historic high levels -- 928 Disclosures received in FY 2011 -- a nearly 100% increase over FY 2008 --, and Disclosures are expected to rise significantly through FY 2013. (See chart 4 below.)

- OSC has recently received a USERRA Demonstration Project that will result in the agency receiving an expected 540 additional cases over the next three years, a tremendous expansion of the agency's USER-RA mission. (See chart 5 below.)
- The Hatch Act caseload is expected to increase significantly with the presidential election cycle, which will generate a surge of cases through FY 2013, based upon OSC experience. The Hatch Act formal advisory opinions have increased 48% in two years time from FY 2009 to FY 2011; they are projected to increase in the future at an even higher rate.
- The Government is moving into a period of downsizing, and complaints and disclosures have historically increased during these periods.

OSC's staffing has not kept pace with the increasing workload: While the number of cases has risen 28% in the past three years, budgetary resources grew only 6%, other non-payroll expenses increased during that time as well, and the agency projects annual caseload increases in the 6-8% range going forward. Processing cases is a resource intensive operation; increased caseloads require increased staffing resources.

The Federal Budget environment is currently one of austerity. Operating with reduced resources will be challenging and OSC will continue to seek ways to operate more efficiently and effectively, however, reduced staffing to the 107 FTE level will result in expanded case backlogs in FY 2013 and beyond.

Performance Highlights

In FY 2011 OSC's caseload continued to rise, increasing to 4,026 new matters received. This was the first year OSC exceeded 4,000 new matters. It was also a 2% increase over the already record levels of cases brought to OSC in FY 2010. OSC also resolved over 4,000 matters in FY 2011. OSC has managed to increase productivity, as caseloads have gone up. 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 and hard 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, six Disciplinary Actions, and 11 stays negotiated with agencies, as well as five stay actions (three stays and two stay extensions) obtained at the Merit Systems Protection Board (MSPB). Over 20 percent more cases were referred by OSC's Complaints Examining Unit (CEU) to the Investigation and Prosecution Division (IPD) for full investigation in FY 2011 versus FY 2010. In the Hatch Act area 43 corrective actions were taken; five disciplinary actions were obtained; 164 Warning Letters and over 3,000 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 launched a new Demonstration Project in August 2011 to help further protect veteran's employment rights, and OSC has already received over 80 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.

The graphs that follow are intended to help display and explain trends from OSC's program areas.

Chart 1 - Total OSC New Matters (see table 1)

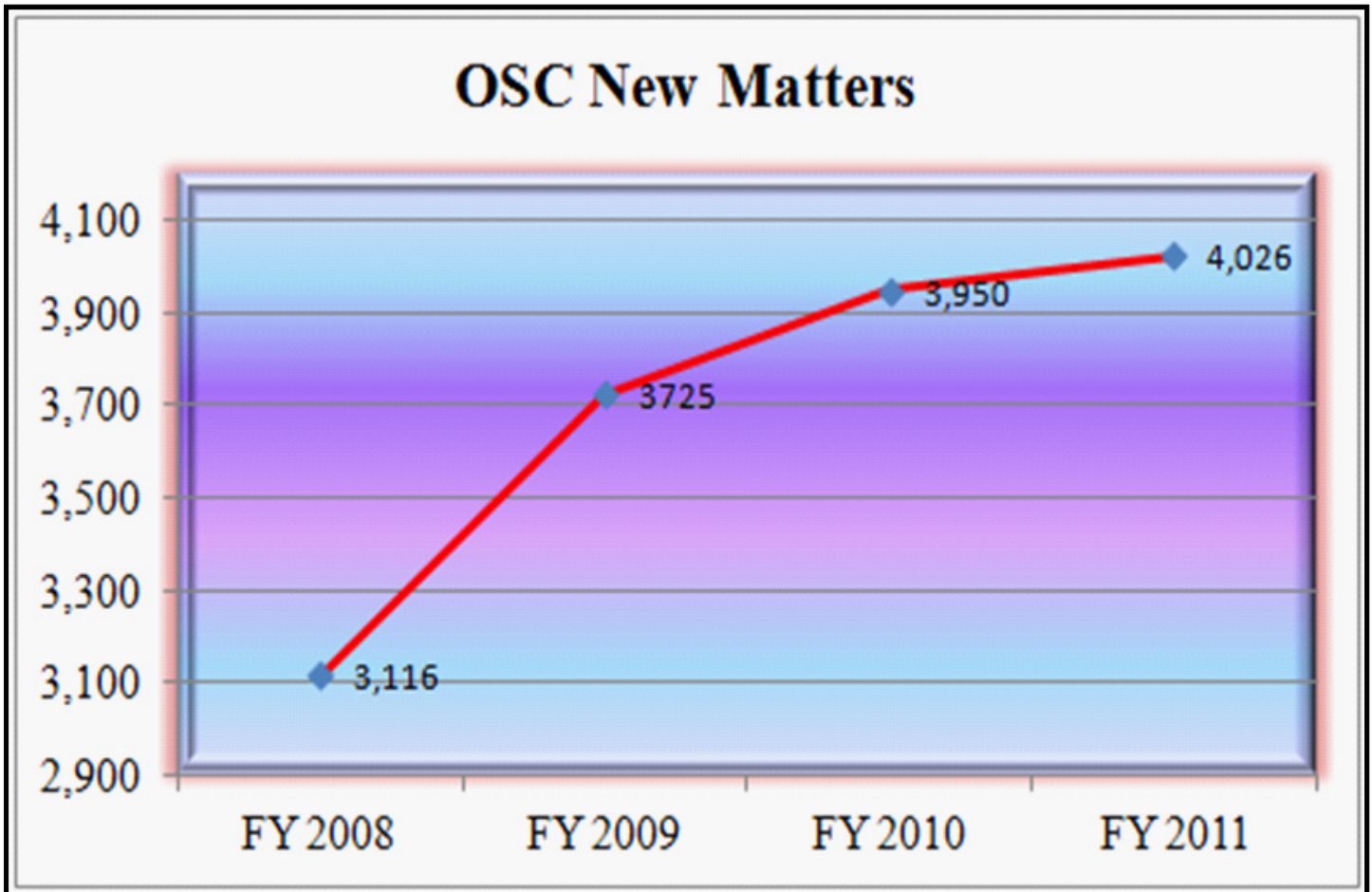


Chart 2 - PPP Cases - (see table 2)

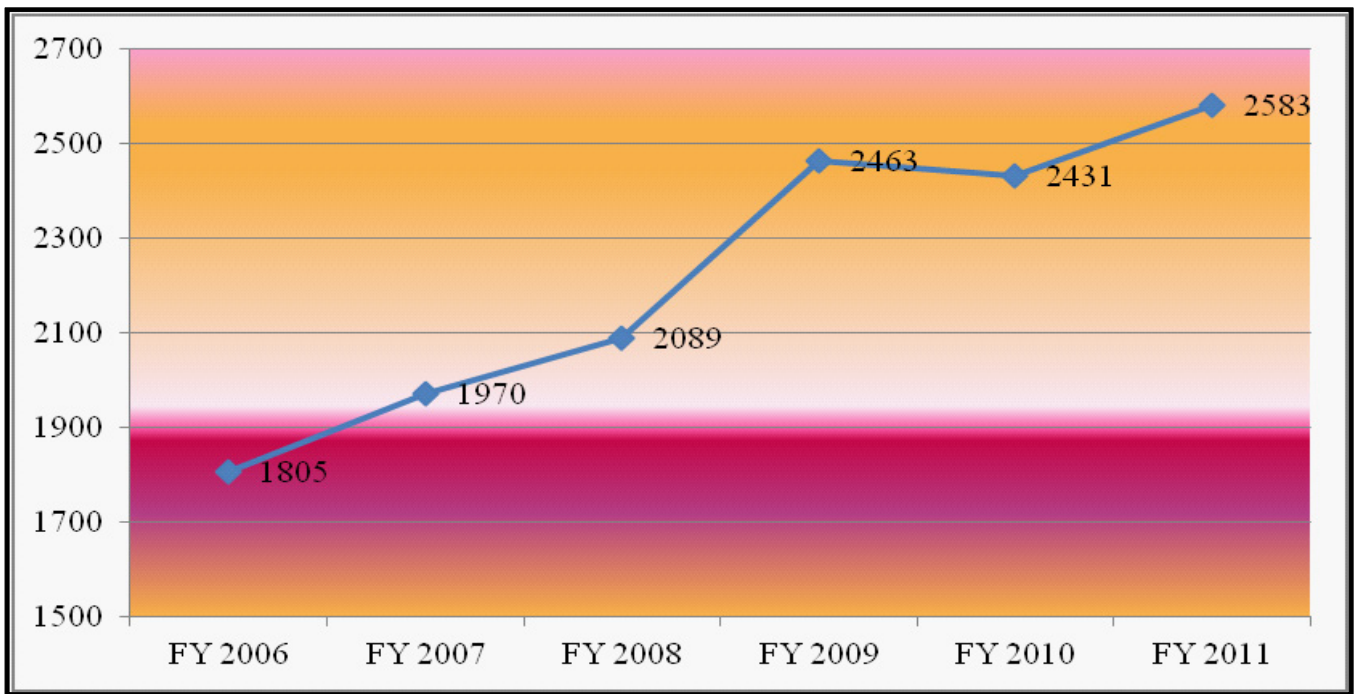


Chart 3 - PPP Referrals for Full Investigation

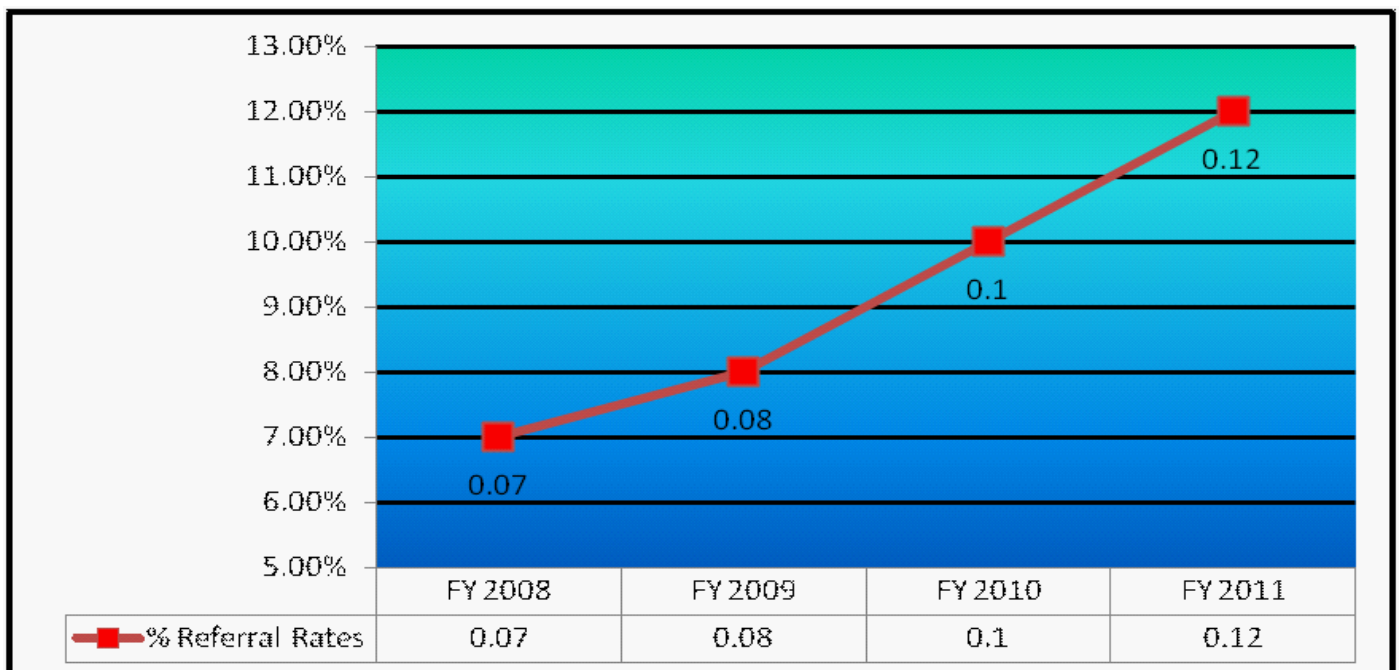
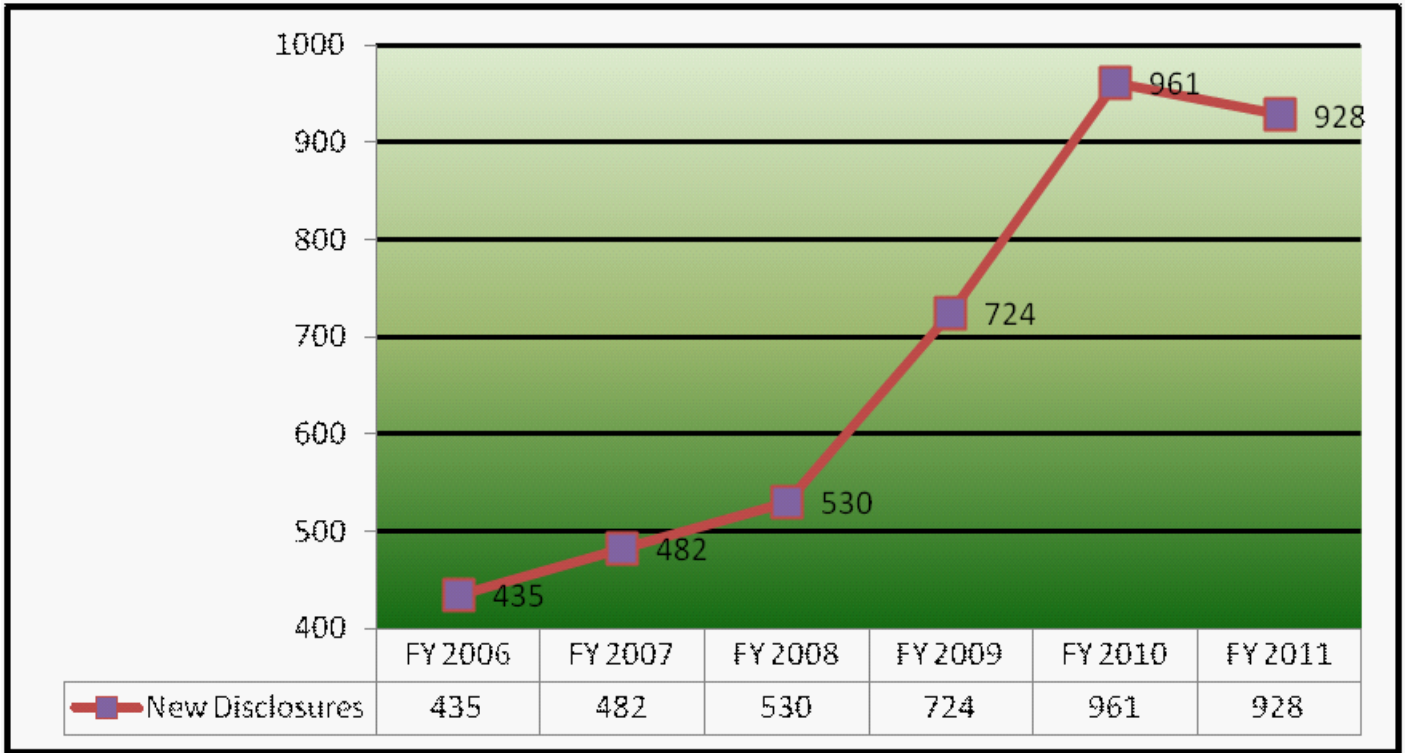
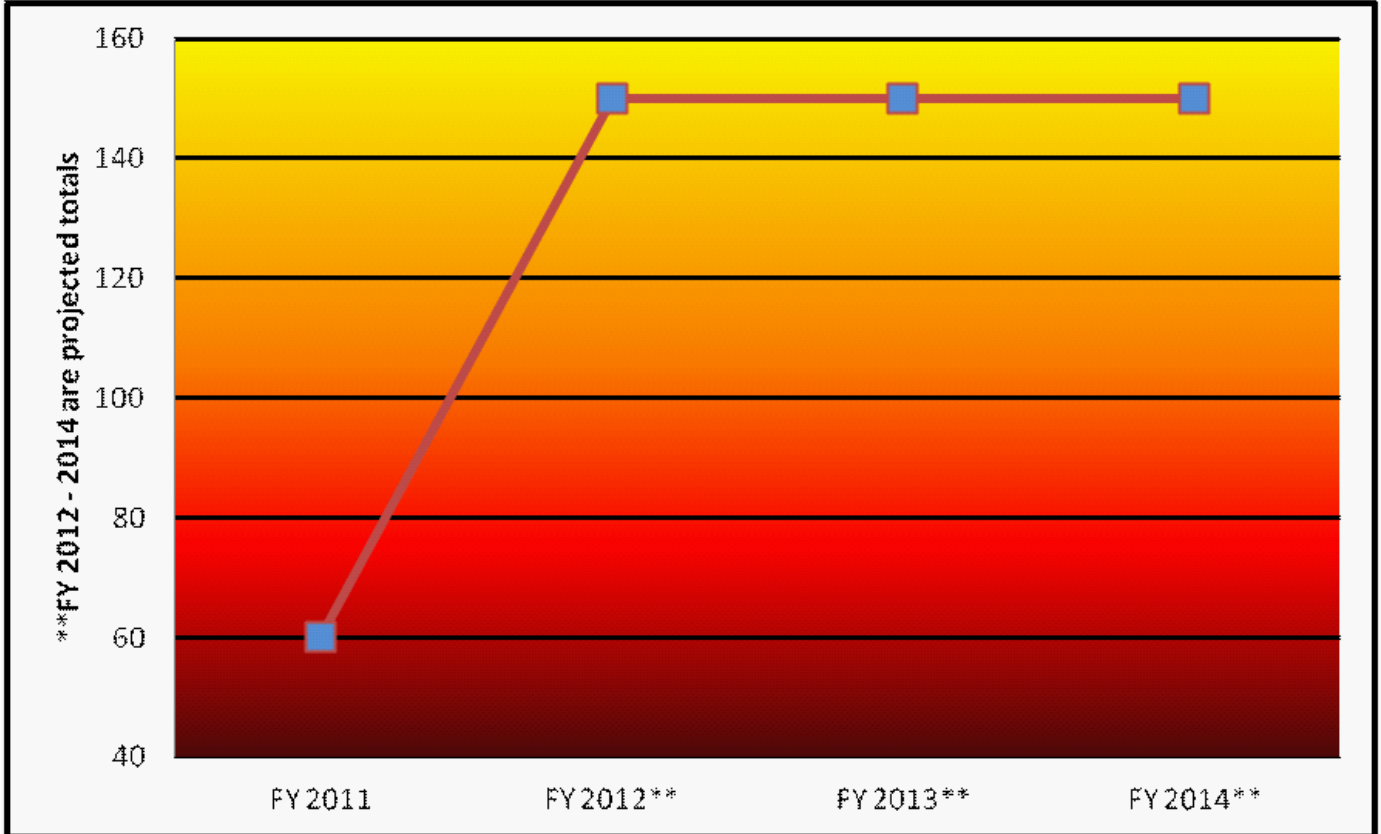


Chart 4 - Whistleblower Disclosure Cases (see table 6)



USERRA Cases Received (see tables 7 and 8)*



*Both Referrals and Demonstration Cases

Strategic Objectives

The Office of Special Counsel currently has four existing strategic objectives (see table below), each of which is supported by a series of operational goals. These operational goals are described in Part 3 in the appropriate section for each budget program. However, OSC's new leadership has just approved a new strategic plan for 2012 through 2016, which is located at Appendix B. The new goals and measures will be fully integrated into the future submissions of the performance based budget.

Strategic Objectives of the Agency

U.S. Office of Special Counsel

Strategic Objective 1

OSC will protect the Merit System and promote justice in the Federal workforce through investigation and prosecution of Prohibited Personnel Practices.

Strategic Objective 2

OSC will protect the Merit System and promote justice in the Federal workforce by enforcing the Hatch Act.

Strategic Objective 3

OSC will promote public safety and efficiency by acting as a safe channel for whistleblowers in the Federal workforce to disclose information.

Strategic Objective 4

OSC will protect veterans in the Federal workforce through enforcement of the Uniformed Services Employment and Reemployment Rights Act.

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 now receives over 900 disclosure complaints from federal whistleblowers every year, many of which result in enormous direct returns to the government. Three cases alone in just the past few years restored well over \$8 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 fund raiser 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.**

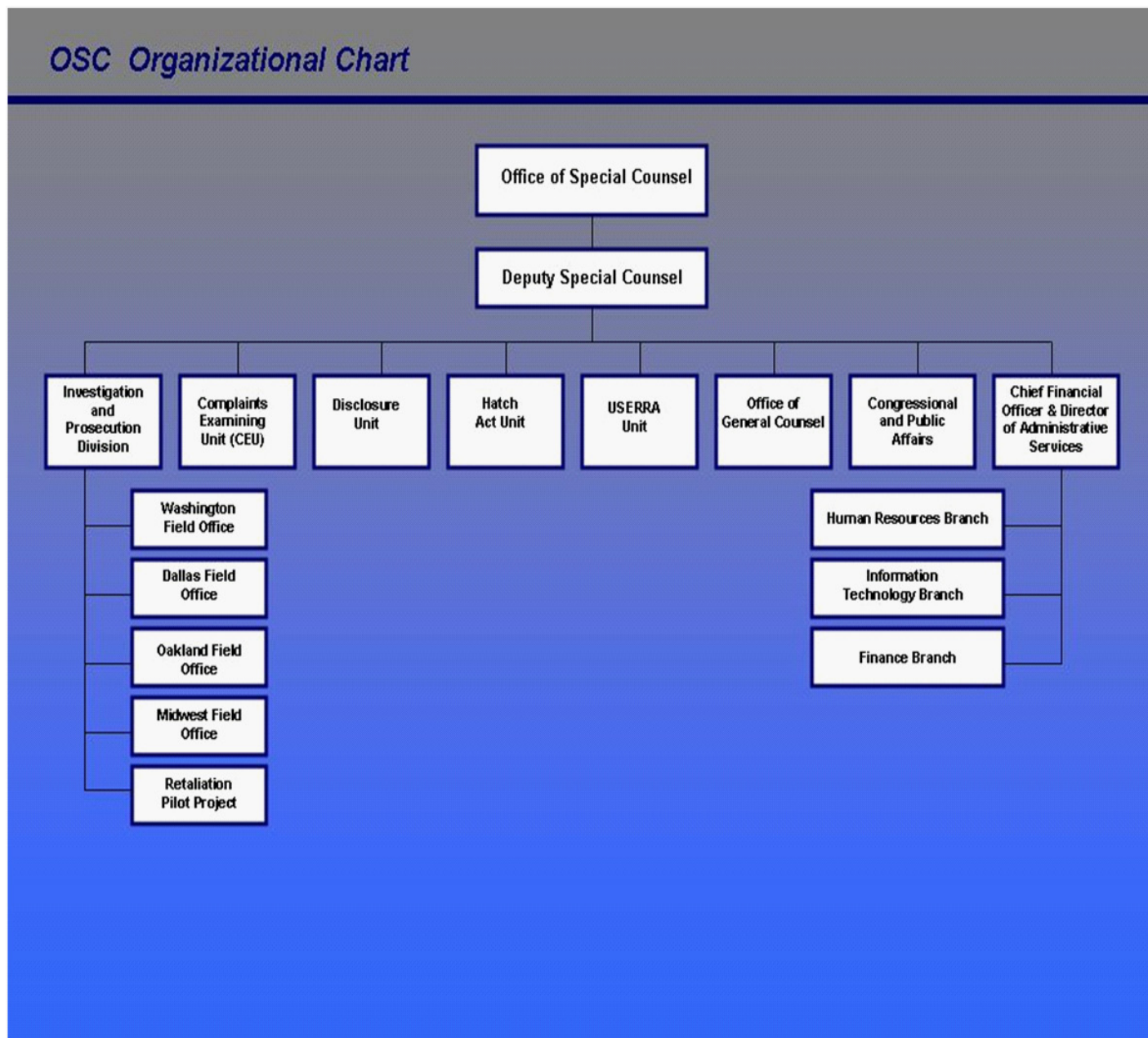
A handful of PPP cases do not settle and, where appropriate, OSC has sought corrective and even disciplinary action through litigation before the Merit System Protection Board (MSPB). For example, OSC found that a Chief of Staff with the [**] was geographically reassigned to another city and denied performance appraisals for two years running in retaliation for disclosing that 600 certificates of [**] had been voided without cause and hundreds of others were unaccounted for. As a result of negotiations, [**] 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 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, that started 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 had just two years prior.** Indeed, thanks to the incredible dedication of its small but highly productive staff, OSC concluded nearly as many new matters as it received in 2011.

**redacted pursuant to Section 22 of OMB Circular A-11 and 5 U.S.C. § 552(b)(7)(C)

OSC ORGANIZATIONAL CHART



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 2,500 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.

Alternative Dispute Resolution Section (ADR). This unit supports OSC's operational program units. Matters are received from CEU that are appropriate for Alternative means of resolution. Once referred, an OSC ADR specialist will contact both parties to a dispute. If both parties agree, OSC conducts a mediation session, led by OSC trained mediators who have experience in federal personnel law.

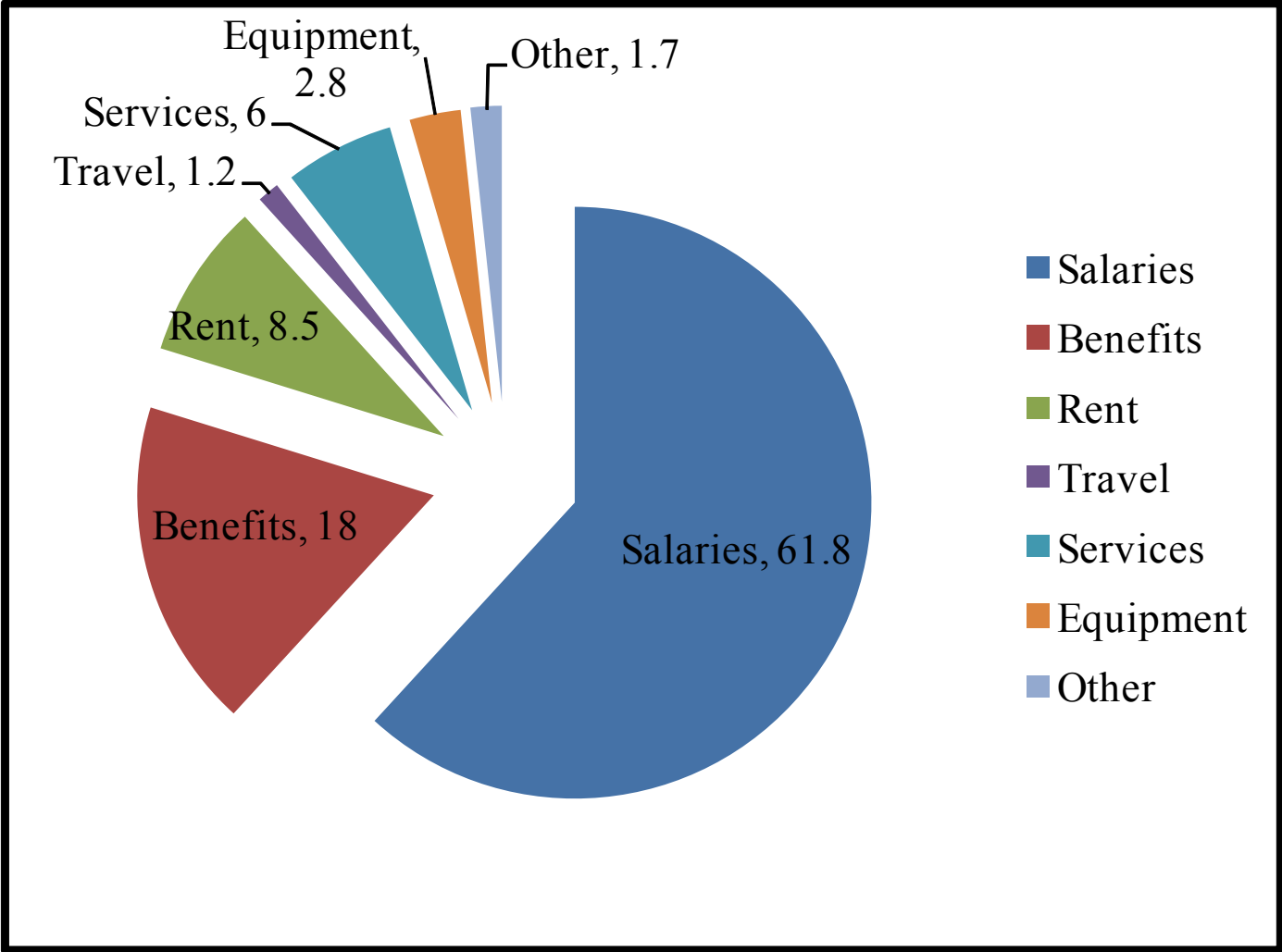
Support units include:

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.

Components of Budget Request:

The following chart estimates how the FY 2013 request will be distributed on a percentage basis:



Budget by Program

The following table provides an estimate of the FTE and budgetary resources for each program of the agency for fiscal years' 2012 and 2013.

Budget by Program						
(in thousands of dollars)						
Program	FY 2012 Estimate		FY 2013 Estimate		Increase/Decrease	
	\$	FTE	\$	FTE	\$	FTE
Investigation and Prosecution of Prohibited Personnel Practices	\$9,262	56	\$9,333	56	\$71	0
Hatch Act Enforcement	\$1,803	11	\$1,330	8	-\$472	-3
Whistleblower Disclosure Unit	\$1,865	12	\$1,871	12	\$6	0
USERRA Enforcement and Prosecution	\$899	5	\$902	5	\$3	0
Alternative Dispute Resolution	\$169	1	\$184	1	\$15	0
Office of the Special Counsel	\$994	6	\$997	6	\$3	0
Office of the Agency General Counsel	\$776	4	\$779	4	\$2	0
Office of the CFO - Management / Information Technology / Budget / Human Resources / Procurement / Document Control / Planning / Analysis / Facilities	\$3,204	15	\$3,296	15	\$92	0
totals	\$18,972	110	\$18,692	107	-\$280	-3

PART 2 - FY 2013 BUDGET REQUEST – ADDITIONAL INFORMATION

OSC's budget request is for \$18,692,000 – to fund 107 FTE and related non-personnel costs for FY 2013. This number of FTE is necessary to manage and process the agency's significantly increasing levels of prohibited personnel practice complaints, USERRA cases under the new Demonstration Project, as well as its sustained high levels of whistleblower disclosures, Hatch Act complaints and Hatch Act advisory opinions. Providing funding to support the 107 FTE level will enable OSC to manage its caseloads, and thus prevent significant backlogs which would negatively impact our ability to efficiently and effectively perform our core mission of safeguarding the merit system for federal employees. OSC does anticipate it may see moderate increases in its backlog due to continuously increasing levels of cases, while facing a 3% reduction in its workforce.

Primary Driver of the FY 2013 costs:

Costs for current salaries and benefits. We anticipate the agency will operate with 107 FTE in FY 2013, down from an estimated 110 in FY 2012. Salary and Benefit will be approximately 80% of OSC's total costs in FY 2013, up from 75% in FY 2011. Pay raises, step increases and career ladder promotions are significant in an agency in which 75% -80% of the budget goes toward salary and benefits.

GSA Rental costs. OSC operates out of its Headquarters location in Washington D.C., along with its three off-site field offices in Detroit, Dallas and Oakland. Rental costs for our four GSA leases are the agency's second biggest cost component, after Salaries and Benefits, approximately 8.5% of OSC's appropriation in FY 2013.

Increased costs for projects required for operational efficiency. OSC has a need to modernize the way it processes cases. An electronic document management system, upgrades to the case tracking system, and life cycle replacement of the Information Technology hardware are required to improve our case processing operations. Putting in place these systems will enable our staff to be more effective and drive productivity improvements. Further details on these projects are included in the Information Technology Projects section.

FY 2013 Budget Request by Budget Object Class:

For a detailed projection of the expenditures that will be required in each Budget Object Class (BOC) during FY 2013, *see Budget Table 1 below.*

Budget Table 1

U.S. Office of Special Counsel

Budget Object Classification of Obligations: FY2011-FY2013

(in thousands of dollars)

Budget Object Classification of Obligations	FY2011 <i>Actual</i>	FY2012 <i>(projected)</i>	FY2013 <i>(projected)</i>
11.0 Personnel compensation	11,617	11,950	11,718
12.0 Civilian personnel benefits	3,103	3,344	3,281
13.0 Benefits to former personnel	0	0	0
21.0 Travel and transportation of persons	123	225	140
22.0 Transportation of things	20	21	21
23.1 Rental payments to GSA	1,898	1,794	1,819
23.3 Communications, utilities and misc. charges	185	187	190
24.0 Printing and reproduction	21	20	18
25.0 Other services	1,094	1,070	1,091
26.0 Supplies and materials	258	261	264
31.0 Equipment	273	100	150
32.0 Land & Structures	0	0	0
42.0 Tort Claims	0	0	0
Total	18,592	18,972	18,692

Notes concerning the above BOC line items:

Object Class 11.0 Personnel Compensation costs:

- Overall Personnel Compensation will reduce in FY 2013 as compared to FY 2012, as OSC will be supporting 107 FTE as compared to 110 in FY 2012. Salaries and Benefits will increase slightly on a per FTE basis, however.
- FY 2012 will be the first full year in several years that OSC has a full political staff of six employees, and this staffing level will continue into FY 2013.
- OSC has seen record levels of incoming cases, with new matters increasing 21% in two years. Cases are expected to increase at the 6-8% range for the foreseeable future. Further, the new USERRA demonstration project will add hundreds of cases to OSC's docket. OSC projects a staffing level of 110 FTE in FY 2012; a staffing level of 107 FTE in FY 2013 is the minimum required to support OSC's programs.
- A pay raise of .5% is projected for FY 2013, along with some expected wage inflation with 59 within-grade increases and career ladder promotions projected in FY 2012, and a similar number in FY 2013. Turnover is expected to remain low during this time frame.

Object Class 12.0 Civilian Personnel Benefits costs: These costs are for employee benefits, to include Medicare, Federal Employees Group Life Insurance, and Health Benefits contributions, Old Age Survivors and Disability Insurance, and retirement plan contributions. Agency contributions for these items will increase in FY 2012 on a per person basis, and likely have a similar increase in FY 2013.

Object Class 21.0 Travel and Transportation of People: During FY 2011 travel was conducted on a restricted basis, during FY 2012 we expect to resume a fuller level required for OSC's investigations. In FY 2013 the travel budget level will again be reduced, in accordance with Executive Order 13589.

Object Class 23.1 Rental Payments to GSA: The increase in this category reflects the increased lease costs of the agency's Headquarters facility and tax increases, along with rent increases at the OSC field offices. OSC estimates that total agency rent will be approximately \$1.819 Million for FY 2013, based on projections provided by GSA.

Object Class 23.3 Communications and Utilities: The increase in this category reflects small but steady inflationary increases.

Object Class 25.0 Other Services: OSC outsources its accounting services, financial and procurement systems, payroll services, travel services, and procurement services. OSC has negotiated costs for these services that will result in cost decreases in FY 2012, and small increases are expected in FY 2013.

Object Class 31.0 Equipment: OSC had significant equipment purchases (servers, video teleconferencing equipment) in FY 2011, however, purchases are being kept to a minimum in FY 2012, and equipment replacements will be needed in FY 2013.

Table 2

Analysis of Resources: FY2011-FY2013			
<i>(in thousands of dollars)</i>			
Description	FY2011 (Actual)	FY2012 (Projected)	FY2013 (Projected)
Budget authority	18,642	18,972	18,692
Outlays	17,910	18,447	18,078
Approximate full-time equivalent employment (FTE) work years	107	110	107

PART 3 - BUDGET PROGRAMS AND PERFORMANCE PLAN

This section provides programmatic information on OSC, to include case tables and activities,, program highlights, resource estimates, and performance results and goals. As mentioned previously, OSC just released its new strategic plan. As the prior plan has been in place until this point, its existing goals will be reported on, while OSC shapes the performance based budget around the new strategic plan, and transitions over to the new performance goals and measures in the year ahead.

FY 2011 CASE ACTIVITY AND RESULTS – All Programs

During FY 2011, OSC received 4,026 new matters throughout all of its program areas. Table 1 below summarizes overall OSC case intake and dispositions in FY 2011 with comparative data for the previous two fiscal years. More detailed data can be found in Tables 2-7, in sections below relating to the four specific components of OSC’s mission – Prohibited Personnel Practice cases, Hatch Act matters, Whistleblower Disclosures, and USERRA cases.

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Matters ^a pending at start of fiscal year	667 ^b	700	943	1,326	1,357
New matters received	2,880	3,116	3,725	3,950	4,026
Matters closed	2,842	2,875	3,337	3,912	4,021
Hatch Act advisory opinions issued	2,598	3,991	3,733	4,320	3110
Matters pending at end of fiscal year	698	937	1,324	1,361	1,360

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

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

INVESTIGATION AND PROSECUTION OF PROHIBITED PERSONNEL PRACTICES (PPPs)

OSC’s largest program is devoted to handling PPP complaints. Of the 4,026 new matters OSC received during FY 2011, 2,583 or 64% were new PPP complaints (*see Table 2*).

Unlike many other investigative entities or agencies, OSC must conduct an inquiry of all jurisdictionally sound complaints alleging the commission of a prohibited personnel practice. The nature of the inquiry ranges from a screening at intake by the Complaints Examining Unit (CEU) to an Investigation and Prosecution Division (IPD) field investigation. Complaints received by OSC can and often do involve multiple allegations, some of which involve multiple prohibited personnel practices. In all such matters, an OSC inquiry requires fact-finding and legal analysis for each allegation.

After a complaint is received by OSC, CEU attorneys and personnel management specialists conduct an initial review to determine whether it is within OSC’s jurisdiction and whether further investigation is warranted. CEU refers matters stating a viable claim to the IPD for further investigation. CEU referred 268 cases for full IPD investigation in FY 2011, a 59% increase from just two years earlier. In most cases, prior to a full-scale investigation, these matters are first reviewed by the ADR Unit to determine if mediation is appropriate.

If ripe for mediation, OSC contacts the complainant and the employing agency to invite them to participate in OSC's voluntary ADR Program. If both parties agree, OSC conducts a mediation session, led by OSC-trained mediators who have experience in federal personnel law. When mediation resolves the complaint, the parties execute a binding written settlement agreement. If mediation does not resolve the complaint, it is referred back to the IPD for further investigation, including complainant and witness interviews. IPD then applies the law to the facts to determine whether the matter warrants corrective action, disciplinary action, or both.

Moreover, upon completion of its investigation, if OSC concludes a prohibited personnel practice was committed, it informs the responsible agency of its findings. Most often, the matter is then successfully resolved through negotiations. If negotiations do not resolve the matter, OSC may initiate an enforcement proceeding seeking corrective action (relief intended to make an aggrieved employee whole) at the MSPB. Before doing so, however, the Special Counsel must formally report its findings and recommendations for corrective action. Only after the agency has had reasonable time to take corrective action and failed to do so may OSC petition the MSPB for corrective action. If OSC determines that disciplinary action (the imposition of discipline on an employee who has committed a violation) is warranted, it can file a complaint directly with the MSPB. (The agency may agree to take appropriate disciplinary action on its own initiative, thereby avoiding resort to an MSPB proceeding.)

In addition to rectifying the matter at issue, OSC litigation before the MSPB – whether by enforcement actions seeking to obtain corrective and/or disciplinary action, as an amicus or by otherwise intervening in matters filed by others – often has the additional benefit of clarifying and expanding existing law. It also brings greater public attention to OSC's mission and work, which can increase the deterrent effect of its efforts.

Resource Estimates

During FY 2012 the Investigation and Prosecution of Prohibited Personnel Practices will use approximately 56 FTE at a cost of approximately \$9,262,000. During FY 2013, we estimate the cost of the program will be approximately \$9,333,000, with 56 FTE assigned.

TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing^a							
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	
Pending complaints carried over from Prior fiscal year	521	386	358	474	769	859	
New complaints received ^b	1,805	1,970	2,089	2,463	2,431	2,583	
<i>Total complaints</i>	2,326	2,356	2,447	2,937	3,200	3,442	
Complaints referred by CEU for investigation by IPD	143	125	135	169	220	268	
Complaints processed by IPD	256	151	88 ^c	150	179	190	
Complaints pending in IPD at end of fiscal year	155	136	185	201	250	333	
Total complaints processed and closed (CEU and IPD combined)	1,930	1,996	1,971	2,173	2,341	2,508	
Complaint processing times	Within 240 days	1,693	1,874	1,889	2,045	2,185	2,327
	Over 240 days	237	121	80	127	154	175
Percentage processed within 240 days	88%	94%	95%	94%	93%	92%	

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

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

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

Table 3 below provides information regarding the numbers of corrective actions obtained in Prohibited Personnel Practice cases.

TABLE 3 Summary of All Favorable Actions - Prohibited Personnel Practice Complaints^a		FY 2006	FY 2007	FY 2008^b	FY 2009	FY 2010	FY 2011
Total favorable actions (all PPPs)	No. of actions ^c	52	29	58	62	96	83
	No. of matters	48	29	33	53	76	64
Total favorable actions (reprisal for whistleblowing)	No. of actions	40	21	44	35	66	62
	No. of matters	37	21	20	29	55	49
Disciplinary actions negotiated with agencies		4	5	3	5	13	6
Stays negotiated with agencies		8	7 ^d	4 ^e	9	13	11
Stays obtained from MSPB		1	3	0	0	2	3
Stay extensions obtained from MSPB		n/a	n/a	n/a	n/a	n/a	2
Corrective action petitions filed with the MSPB		1	1	0	0	0	1
Disciplinary action complaints filed with the MSPB		0	0	3	0	0	0

^aOSC used a newly developed standardized query tool to generate the numbers for FY 2008. When applied backwards to the years FY 2004 through FY 2007, the query tool generated slightly different numbers for several of the figures. Differences are caused by entry of valid data into the case tracking system after annual report figures were compiled and reported, and by data entry errors in earlier years that have since been corrected.

^bActions itemized in this column occurred in matters referred by CEU and processed by IPD.

^cThe number of actions refers to how many corrective actions are applied to the case, the number of matters consists of how many individuals were involved in the original case.

^dIncorrectly reported as 4 in OSC's FY 2007 report to Congress due to administrative error.

^eRepresents two stays obtained in each of two cases.

ALTERNATIVE DISPUTE RESOLUTION

As mentioned above, in selected prohibited personnel practice cases referred by CEU to IPD, OSC continues to offer mediation as an alternative to investigation and potential litigation. Under OSC's program, once a case has been identified as mediation appropriate, an OSC Alternative Dispute Resolution Specialist contacts the parties to discuss the process. Pre-mediation discussions are designed to help the parties form realistic expectations and well-defined objectives regarding the mediation process. Among the factors that determine mediation-appropriate cases are the complexity of the issues, the nature of the personnel action, and the relief sought by the Complainant.

In FY 2012 and FY 2013 OSC will engage the Federal Mediation and Conciliation Service via an Inter-Agency Agreement to provide alternative dispute resolution services throughout the country. This will allow OSC to

better leverage its resources and increase its use of mediation without incurring significantly higher travel costs. We anticipate that the additional expanded use of mediation may also result in reduced case backlogs.

Goals and Results - Alternative Dispute Resolution

During fiscal year 2011, 31 cases were referred to the ADR Unit. In 20 cases mediation was accepted by the complainants, and from those cases agencies accepted initial mediation 75% of the time, from which there were 10 mediated resolutions (*see Table 4*).

Table 4 ADR Program Activity – Mediation^a of Prohibited Personnel Practice Complaints						
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Number of Cases Referred to the ADR Unit	50	32	25	28	26	31
Mediation Offers Accepted by Complainants	38	21	10	17	11	20
Mediation Offers Accepted by Agencies	15	12	8	15	6	15*
Number of mediations conducted by OSC	11	8	7	11	6	13
Number of mediations withdrawn by either OSC or the agencies after acceptance	4	2	0	3	0	2
Number of mediations that yielded settlement	6	4	4	4	3	10
Percentage of successful mediations	55%	50%	57%	36%	50%	77%

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

*Of the 20 offers made to the agency this year, only 5 requests were declined. This puts the agency’s acceptance rate at 75%.

Resource Estimates

During FY 2012 the Alternative Dispute Resolution program will use approximately 1 FTE at a cost of approximately \$169,000. During FY 2013, we estimate the cost of the program will be approximately \$184,000, with 1 FTE assigned.

Goals and Results - Prohibited Personnel Practices

OSC's Strategic Objective 1 is to protect the Merit System and promote justice in the Federal workforce through investigation and prosecution of the prohibited personnel practices. The following tables describe the three Performance goals supporting this strategic objective.

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 investigation. 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 83 favorable actions in FY 2011.

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

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, OSC is 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 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. Goal table number two was removed from this report, because the target was 100%, and the target was reached over several years, the goal became obsolete as a result.

HATCH ACT ENFORCEMENT PROGRAM

Enforcement of the Hatch Act – which protects the Civil Service system from coerced or inappropriate partisan political activity – is another important component of OSC’s mission. The agency’s Hatch Act Unit (HAU) continued to be responsible for this enforcement responsibility through investigation of complaints received, issuance of advisory opinions responsive to requests, and proactive outreach activities.

OSC is working diligently with legislators to reform the Hatch Act statute. Agenda items include removing OSC jurisdiction over state and local government employees seeking partisan office, expanding the range of

penalties for federal workers under the law, and asking Congress to clarify what constitutes prohibited political activity in the age of technology and the internet.

Investigations

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

A string of Hatch Act cases involving high-profile employees over the last three years has resulted in significant national press coverage and heightened awareness of the law among Federal employees.

At the end of FY 2011, the Hatch Act Unit had closed 635 complaints. (see Table 5). As 2012 is a presidential election year, we expect a significant surge in Hatch Act complaints, which has been the historical pattern.

Advisory Opinions

The HAU also is responsible for a nationwide program that provides federal, state, and local (including D.C.) government employees, as well as the public at large, with legal advice on the Hatch Act, enabling individuals to determine whether they are covered by the Act, and whether their contemplated activities are permitted. Specifically, HAU has the unique responsibility of providing Hatch Act information and legal advice to White House and congressional offices; cabinet members and other senior management officials throughout the federal government; state and local government officials; and the media. The Unit is proactive in reaching out to the federal community about Hatch Act responsibilities and has a near perfect record of satisfying requests for training and education from Federal agencies.

Outreach

To further its advisory role, the Hatch Act Unit is very active in OSC's outreach program. The unit conducted approximately ten outreach presentations this fiscal year to various federal agencies and employee groups concerning federal employees' rights and responsibilities under the Act. Many of these programs involved high-level agency officials.

Resource Estimates

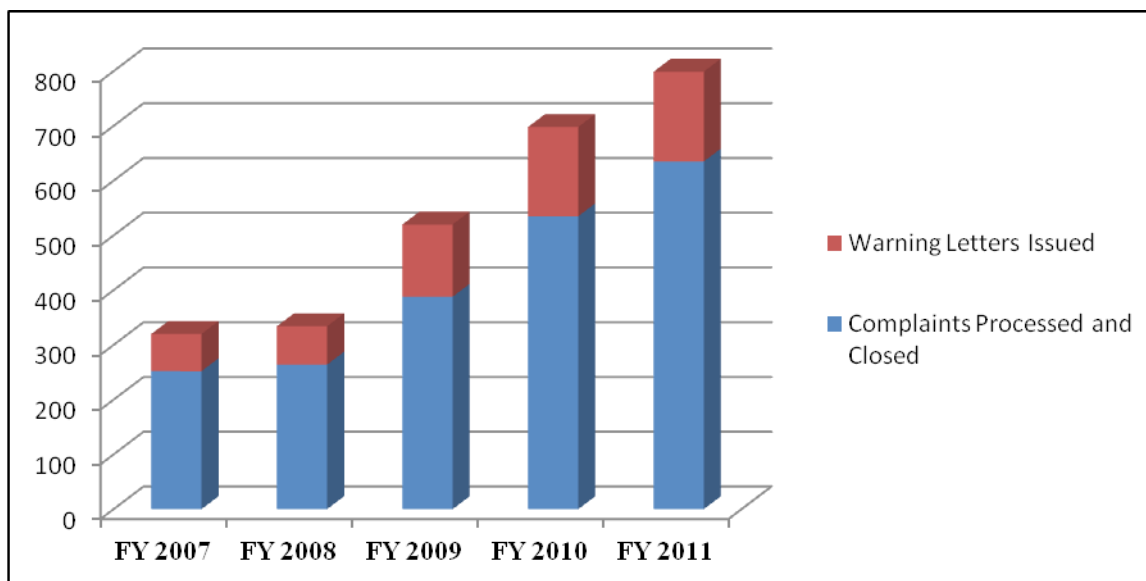
During FY 2012, the Hatch Act Enforcement Program will use approximately 10 FTE at a cost of approximately \$1,611,000. During FY 2013, OSC estimates the cost of this program to be \$1,147,000 while employing 7 FTE. OSC anticipates that enactment of Hatch Act reforms, particularly as to the state and local enforcement provisions, would reduce the need for FTE.

Goals and Results - Hatch Act Enforcement

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. In FY

2011, however, the unit's backlog was reduced to its lowest level in four years, despite record breaking numbers of complaints (635) handled and closed, and formal written advisory opinions (335) 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 2006 TARGET	75%	99%	60%
FY 2006 RESULTS	93%	100%	84%
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	
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 complaints processed and closed increased 19% from FY 2010 to FY 2011. As a result, the unit fell somewhat short of its 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.

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 and shall continue to do so. In addition, OSC met its goal of posting one complex ad-

visory opinion to the OSC website on a monthly basis. We are maintaining this goal in FY 2013, recognizing that over-posting dilutes the importance of the cases selected. Goal table number two was removed from this report, because the target was 100%, and the target was reached over several years, the goal became obsolete as a result.

TABLE 5 Summary of Hatch Act Complaint and Advisory Opinion Activity							
	FY 2006	FY 2007	FY 2008^b	FY 2009	FY 2010	FY 2011	
Formal written advisory opinion requests received	237	194	292	227	351	283	
Formal written advisory opinions issued	230	176	275	226	320	335	
Total advisory opinions issued ^a	3,004	2,598	3,991	3,733	4,320	3,110	
New complaints received ^b	299	282	445	496	526	451	
Complaints processed and closed	266	252	264	388	535	635	
Warning letters issued	76	68	70	132	163	164	
Corrective actions taken by cure letter recipients	Withdrawal from partisan races	9	18	13	15	28	23
	Resignation from covered employment	22	6	17	6	26	16
	Other	2	1	2	3	1	4
	Total	33	25	32	24	55	43
Disciplinary action complaints filed with MSPB	6	1	3	10	7	3	
Disciplinary actions obtained (by negotiation or ordered by MSPB) ^c	10	5	11	5	10	5	
Complaints pending at end of fiscal year	112	142	323	430	422	232	

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

^bIncludes cases that were reopened.

^cNumbers revised for fiscal years 2005 - 2008 based upon a new query which includes disciplinary actions obtained in both negotiated Hatch Act settlements and litigated Hatch Act cases, not just litigated cases as in past reports.

WHISTLEBLOWER DISCLOSURE PROGRAM

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

During FY 2011, the unit referred 47 matters to agency heads for investigation under § 1213(c). (*See Table 6.*) The Disclosure Unit’s more complex cases are very labor-intensive and often require the attention of more than one attorney. These cases can take more than a year to fully complete for a number of reasons—agencies routinely request additional time to conduct the investigation and write the report, whistleblowers request additional time to prepare their comments, and Disclosure Unit attorneys and the Special Counsel must review the report to determine whether it contains the information required by statute, its findings appear reasonable, and to prepare any comments the Special Counsel may have on the report.

The following are summaries of some of the Unit’s accomplishments during the past fiscal year:

(DoD) Ensuring Due Reverence to the Remains of Soldiers.

On May 27, 2010 and July 8, 2011, OSC requested that the Secretary of Defense conduct an investigation based on disclosures made by three whistleblowers at the Department of the Air Force (Air Force), Air Force Mortuary Affairs Operations (AFMAO), Port Mortuary Division (Port Mortuary), Dover Air Force Base (AFB), Delaware. The whistleblowers, James Parsons, Mary Ellen Spera, and William Zwicharowski, alleged: 1) the improper preparation of remains of a deceased Marine; 2) improper handling and transport of possibly contagious remains; 3) improper transport and cremation of fetal remains of military dependents; and 4) the failure to resolve cases of missing portions of remains. The Secretary of Defense delegated responsibility for investigating these matters to the Secretary of the Air Force, who tasked the Air Force Office of Inspector General (OIG) with investigating the allegations. On May 11, 2011, OSC received the Air Force’s report of investigative findings. A supplemental report was received on August 30, 2011.

The investigation substantiated the allegations that Port Mortuary leadership failed to properly resolve two cases in which portions of remains of deceased service members were lost. The report concluded that managers engaged in gross mismanagement, and that the loss of accountability of the portions resulted in “a negligent failure” to meet the requisite standard of care for handling remains and violated several agency rules and regulations. The report also substantiated the allegations of improper cremations without the required authorization. The Air Force did not substantiate the allegations of wrongdoing regarding the preparation of the remains of the Marine, the improper transport of fetal remains of military dependents, or the improper handling and transport of possibly contagious remains. However, the evidence presented in the reports did not support several of the findings and conclusions drawn by the Air Force regarding these allegations, and, therefore, the Special Counsel determined that the findings did not appear reasonable.

In response to the findings, the Air Force took substantial corrective action, even where the Air Force did not acknowledge wrongdoing. These actions included enhancing training and implementing policies and procedures to improve the processes and accountability at the Port Mortuary. However, the Special Counsel raised concern regarding the insufficiency of the disciplinary action taken against the managers who were found to be responsible for violations of rules and regulations, gross mismanagement, dishonest conduct, and a failure of leadership. On November 8, 2011, the Special Counsel forwarded the Air Force's reports and the whistleblowers' comments, with her comments and analysis of the investigative findings, to the President and the Senate and House Armed Services Committees. This matter subsequently generated significant congressional attention, and the Special Counsel and OSC staff participated in several congressional briefings. Further, in response to the concerns raised by the Special Counsel, the Secretary of Defense established an independent review subcommittee to assess the corrective action taken and operations in place at the Port Mortuary.

(FAA) Improvement in Inspection and Maintenance of Commercial Aircraft. The agency investigation substantiated four out of six allegations in an OSC referral relating to the American Certificate Management Office's failure to ensure that American Airlines complied with (1) maintenance procedures, (2) Minimum Equipment List (MEL) deferrals; (3) required inspection item (RII) requirements; and (4) Continuing Analysis and Surveillance System (CASS) requirements. The FAA indicated personnel actions were taken to remove/reassign FAA managers based on other investigations, and American Airlines replaced several senior level personnel. FAA further indicated that it plans to have outside offices provide oversight of the CMO to ensure corrective actions are taken.

(DoI) Agency Confirms Numerous Safety Violations. OSC completed a disclosure case referred to the Secretary of the Interior regarding allegations that the Department of the Interior (DOI) failed to provide employees with adequate safety equipment, improperly blocked emergency exit routes, and erroneously issued respirators to employees without a medical evaluation in violation of 29 CFR 1910.134(e)(1), Respiratory Protection. The DOI investigation found that the proper personal protective equipment (PPE) was available on-site, that emergency exit routes in the southwest corridor of a facility building were improperly obstructed, and that employees were issued respirators without a proper medical examination. It was also found that employees were not properly fit tested or trained on how to wear the respirators. As a result of these determinations, DOI is filling the Park Safety Manager position with a full performance professional safety officer and will bring in outside assistance as necessary in order to avoid such safety deficiencies in the future. DOI has also updated its organizational structure in order to enhance the Park Safety program and strengthen relationships between the Regional Safety Officer and the Safety Managers. Additionally, employees at all three units of the NPS were trained in January 2010 regarding operational leadership and other safety issues.

(FAA) Improvements in Air Traffic Control Operations. The agency investigation substantiated the whistleblower's allegations that TRACON staff did not know which separation requirements to follow regarding successive arrivals into three of the surrounding controlled satellite airports, controllers have violated FAA Order 7110.65 by allowing aircraft to come within 1.5 nautical miles of the adjacent airspace boundary without prior coordination or documented coordination procedures and by operating dual Instrument Landing System approaches, and that Quality Assurance Review procedures and investigation into operational errors and deviations have been inadequate. In response, the FAA Administrator set forth a corrective action plan.

(VA) Protecting Veterans From Unsterilized Medical Equipment. The agency report substantiated the whistleblower's allegation that dirty and rust-stained instruments are being distributed to clinics and operating rooms at the Jackson VAMC. The agency explained that the facility is aware that dirty instruments are being distributed, and is employing both the Operating Room and the Reusable Medical Equipment Oversight Committees to oversee cleaning and sterilization processes within the Jackson VAMC, and that it would follow up with the Jackson VAMC to ensure full compliance with proper cleaning and sterilization processes.

(FAA) Unsafe Conditions of Helicopters Left Unresolved for Years. The agency report substantiated the

whistleblower's allegation that the Rotorcraft Directorate management failed to ensure that Airworthiness Directives (ADs) were developed and issued in a timely manner in contravention of FAA Order 8040.1C and the Airworthiness Directives Manual. FAA confirmed that it would implement near and long-term corrective action, including establishing an AD Process Action Team to focus on the backlog of all ADs.

(FAA) Enforcement of Aviation Maintenance Record and Authorization Requirements. The agency report substantiated the whistleblower's allegations that Front Line Manager and Principal Maintenance Inspector failed to obtain a required approval on an air carrier's revised Approved Aircraft Inspection Program in violation of agency regulations. In response, FAA verbally counseled the Inspector and required the manager to participate in management and communication courses as well as coaching sessions on coordinating approval processes and the proper usage of regulatory guidance.

(VA) Agency Fails to Notify Employees of Safety Recall. The agency report substantiated the whistleblower's allegation that VA officials failed to inform employees of the existence of a safety recall issued against the government-owned vehicles they were assigned. In response, the agency provided verbal information regarding the recall to all regional office management. In addition, the agency provided the website address for the National Highway Traffic and Safety Administration and instructed that the site be queried on a quarterly basis by the Fleet Management Coordinators to obtain recall information for all vehicles within their fleets.

(FAA) Unsafe Runway Configurations at Newark Airport. The whistleblower alleged that FAA management implemented an air traffic procedure without completing the required environmental, noise, and safety risk assessments, or properly notifying FAA and airport officials. The agency report did not substantiate the whistleblower's allegations. OSC found, however, that several of the agency's findings regarding the development and operation of the procedure were not reasonable.

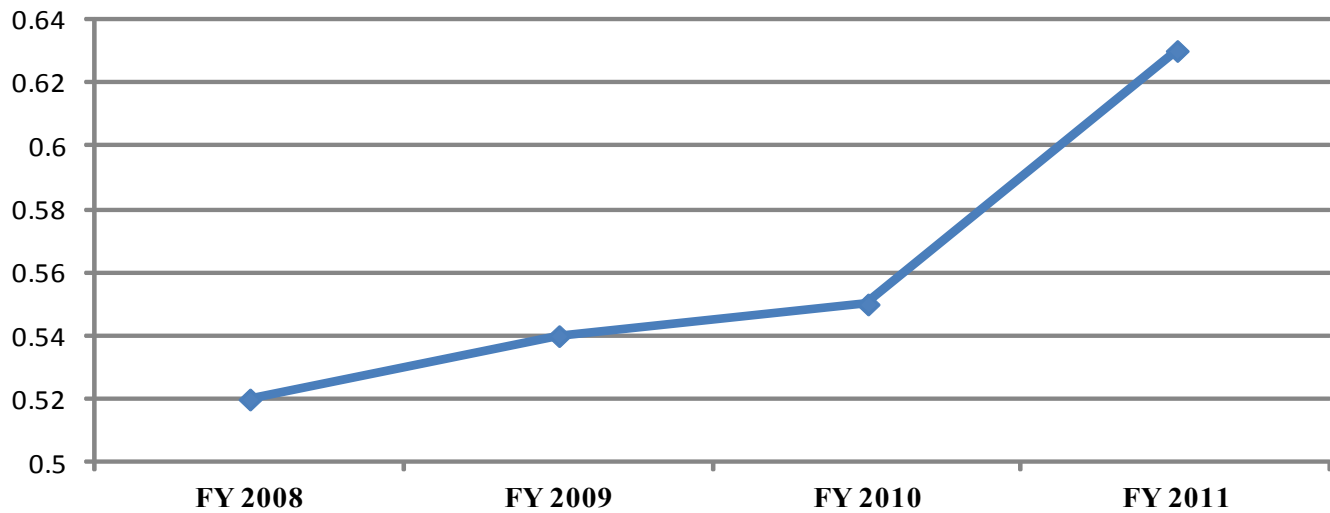
Resource Estimates

During FY 2012, the Whistleblower Disclosure Unit will use approximately 12 FTE at a cost of \$1,865,000. During FY 2013, we estimate the program will use 12 FTE at a cost of \$1,871,000

Goals and Results - Whistleblower Disclosures

OSC's Strategic Objective 3 is to promote public safety and efficiency by acting as a channel for whistleblowers in the Federal workforce to disclose information. The following tables below describe the two operational goals supporting this strategic objective. 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 substantial 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.

Whistleblower Disclosures resolved within 15 days



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.
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	

¹Figures 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.

TABLE 6 Summary of Whistleblower Disclosure Activity - Receipts and Dispositions^a

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	
Pending disclosures carried over from prior fiscal year	110	69	84	128	125	83	
New disclosures received	435	482	530	724	961	928	
<i>Total disclosures</i>	545	551 ^b	614	852	1,086	1,011	
Disclosures referred to agency heads for investigation and report	24	42	40	46	24	47	
Referrals to agency IGs	10	11	9	10	2	5	
Agency head reports sent to President and Congress	24	20	25	34	67	22	
Results of agency investigations and reports	Disclosures substantiated in whole or in part	21	19	22	30	62	21
	Disclosures unsubstantiated	3	1	3	4	5	1
Disclosure processing times	Within 15 days	203	285	256	394	555	555
	Over 15 days	275	182	232	333	451	315
Percentage of disclosures processed within 15 days	42%	61%	52%	54%	55%	63%	
Disclosures processed and closed	478	467	488	727	1,006	870	

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

^bIncorrectly reported as 599 in OSC's FY 2007 report to Congress.

USERRA PROGRAM

With the enactment of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Congress expanded OSC's role in enforcing federal employment rights. USERRA protects the civilian employment and reemployment rights of those who serve the nation in the Armed Forces, including the National Guard and Reserves, and other uniformed services by prohibiting employment discrimination due to past, present, or future uniformed service (including initial hiring, promotion, retention, or any benefit of employment) and providing for prompt reemployment of service members in their civilian jobs after they return from military duty. Congress intends for the federal government to be a "model employer" under USERRA.

OSC plays an important role in enforcing USERRA by providing representation, when warranted, before the

MSPB and the U.S. Court of Appeals for the Federal Circuit to service members whose USERRA complaints involve federal executive agencies.

USERRA Referral Cases

Under USERRA, a claimant alleging a violation by a federal executive agency may either file an appeal with the MSPB or file a complaint with the Department of Labor, Veterans' Employment and Training Service (VETS).

If the claimant chooses to file a complaint with VETS, VETS must investigate and attempt to resolve the complaint. If it cannot resolve the matter, the claimant may direct VETS to refer the complaint to OSC for possible representation before the MSPB. If, after reviewing the complaint and investigative file, and conducting any necessary follow-up investigation, OSC is reasonably satisfied that the claimant is entitled to relief under USERRA, it may act as the claimant's attorney and initiate an action before the MSPB.

USERRA Demonstration Project

From 2005-2007, Congress mandated a USERRA Demonstration Project whereby OSC directly received half of all federal USERRA cases for investigation, resolution, and possible prosecution. OSC was highly successful and obtained significant relief for veterans during the last project, prompting Congress to establish a second Demonstration Project, which began on August 9, 2011.

Examples of the USERRA's Unit's cases:

- An Army officer who served in Iraq was offered his dream job as a federal Special Agent but could not report on the agency's preferred start date due to his military commitment. The agency withdrew the job offer, and the veteran spent several months unemployed and under-employed. After OSC successfully litigated his case, the veteran was re-offered the position and received back pay with interest.
- After a one-year deployment to Iraq, an Army Reservist attempted to resume his job as a federal contractor supporting a government agency. The agency indicated that it was satisfied with his replacement and would cancel the contract if the contractor attempted to reinstate him. OSC successfully litigated his case, holding the government liable for interfering with his reemployment rights under USERRA, setting an important legal precedent in the process.
- During an investigation, OSC discovered that an agency regulation improperly discriminated against veterans by assigning a default performance rating to employees who were absent from work for extended periods. Because USERRA requires that employees who perform military service not be disadvantaged in their civilian jobs due to military duty, OSC objected to the regulation's application to veterans, which often had the effect of lowering performance ratings and bonuses. At OSC's request, the agency agreed to identify all employees who might have been adversely affected by the regulation and to take any necessary corrective action, including upgrading performance ratings and bonuses.
- After performing active duty, a Navy Reservist attempted to return to his civilian job, but his federal employer erroneously told him he had to wait an additional 30 days before returning. OSC intervened and the agency awarded him back pay and adjusted his personnel records to reflect an earlier return date.
- The veteran told OSC that the agency had made the same mistake with other Reservists and corrected the errors as a result of his case.

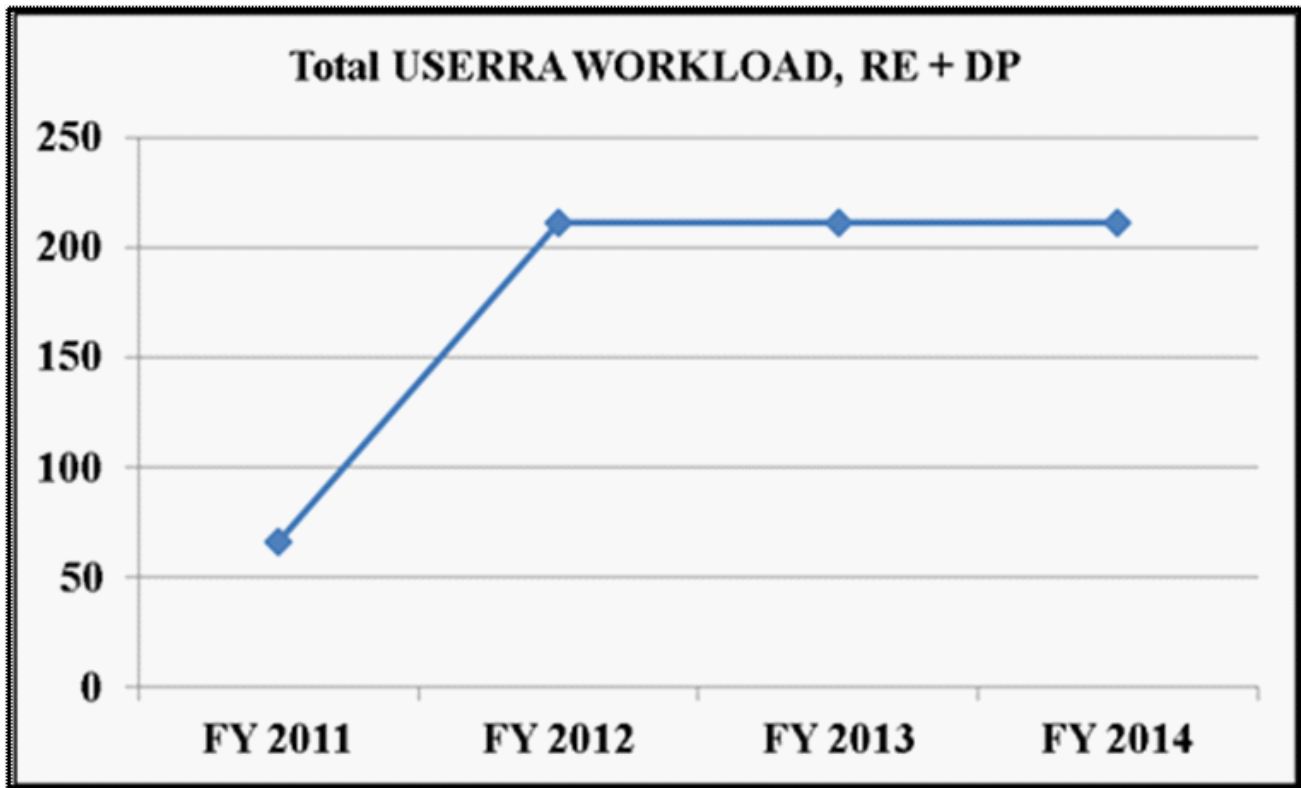
- A National Guardsman successfully applied for a position with a federal agency, and was given a start date. When he was mobilized with his unit before the start date, the agency withdrew its offer. Although the agency eventually hired him, it did not treat him as though he had been hired on the original start date. As a result, he lost seniority, pay, and career advancement. OSC represented him and negotiated a settlement under which he received all pay and promotions as if he had started on the original date and never left for military service.
- An Air Force officer was refused reemployment when he tried to return to his civilian job after an extended tour of duty. OSC represented him and obtained full corrective action, including back pay, reinstatement, and full restoration of seniority and benefits.
- A Reservist was dismissed from his federal employer's supervisory training program because his Reserve duties conflicted with part of the training schedule. The training program was important because it resulted in automatic promotion and related benefits. OSC filed suit and successfully obtained full relief for the Reservist, including a retroactive promotion with back pay upon completion of the training.
- A National Guard member successfully applied for a position as a firefighter with a federal agency, and the agency made his discharge or transfer out of the National Guard a condition of employment. The member refused to leave the Guard, and the agency withdrew the job offer. In addition, the agency identified other employees who were members of the National Guard or Reserve, and pressured them to transfer out their reserve assignments. After OSC became involved, the agency agreed to hire the National Guard member and to stop pressuring employees to leave their reserve assignments.

Resource Estimates

During FY 2012, the USERRA Unit will use approximately 6 FTE at a cost of \$1,091,000. During FY 2013, we estimate the program will use 6 FTE at a cost of \$1,094,000.

Goals and Results - USERRA Enforcement

The new Demonstration Project is expected to result in an additional 180 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. The unit also received 30 new Demonstration Project cases in late FY 2011.



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	Indicator A: Average number of days in which the case is settled, closed or a decision to litigate is made.	Indicator 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 ¹
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		

¹Project 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 Project 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.

OSC conducted five USERRA outreaches during FY 2011, satisfying every agency request. Two of these outreach events were paid for by the requesting agency and three local outreaches were paid for by OSC. OSC expects to again satisfy all outreach requests in FY 2013.

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Pending referrals carried over from prior fiscal year	6	3	3	5	7	12
New referrals received from VETS during fiscal year	11	4	15	41	32	36
Referrals closed	14	4	13	39	27	31
Referrals closed with corrective action	3	0	2	4	0	2
Referrals closed with no corrective action	11	4	11	35	27	29
Referrals pending at end of fiscal year	3	3	5	7	12	17
Litigation cases carried over from prior fiscal year	0	0	1	1	1	1
Litigation cases closed	1	0	1	0	1	1
Litigation closed with corrective action	1	0	0	0	1	0
Litigation closed with no corrective action	0	0	1	0	0	1
Litigation pending at end of fiscal year	0	1	1	1	1	0

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

TABLE 8 Summary of USERRA Demonstration Project Activity	
	FY 2011
Pending cases carried over from previous fiscal year	n/a ¹
New cases opened	30
Cases closed	1
Closed cases where corrective action was obtained	0
Closed cases where no corrective action was obtained	1
Pending cases at end of fiscal year	29

¹OSC began receiving cases under the new USERRA Demonstration Project on August 9, 2011.

OSC's Outreach Program

The Outreach Program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c). This provision requires that federal agencies inform their workforces about the rights and remedies available to them under the whistleblower protection and prohibited personnel practice provisions of the Whistleblower Protection Act.

In an effort to assist agencies in meeting the statutory requirement, in FY 2002, OSC designed and created a five-step Section 2302(c) Certification Program. This program gives guidance to agencies and provides easy-to-use methods and training resources to assist agencies in fulfilling their statutory obligations. Agencies that complete the program receive a certificate of compliance from OSC.

In an effort to promote OSC's mission and programs, OSC provides formal and informal outreach sessions, including making materials available on the agency web site. During FY 2011, OSC employees spoke at over 33 events nationwide.

OSC also informs the news media and issues press releases when it closes an important whistleblower disclosure matter, files a significant litigation petition, or achieves significant corrective or disciplinary action through settlement. Many of these cases generate considerable press coverage, which contributes to federal employees' and managers' awareness about the merit system protections enforced by OSC.

PART 4 – Enhancement of Operations

Strategic Management of Human Capital

OSC's human capital strategy is aligned with its mission, goals and organizational objectives. It is integrated into the budget and strategic plans, and is consistent with human capital guidance from OPM and OMB. OSC has internal accountability systems to ensure effective merit-based human resource management as described below.

The agency is addressing gaps concerning specific skills in its program areas through internal development, upward mobility positions, legal internships, in-house mission-specific training, and by hiring additional personnel. OSC promotes cross-training program to enable employees to learn new skills and participate in the work of several units. OSC also captures valuable information and ideas of departing employees through exit interviews. This information is used by senior managers to refine and improve our work environment and processes. OSC is developing a performance management system that will allow managers to differentiate between high and low performers through the use of appropriate incentives and accountability measures. Performance plans for SES members and managers are in place or being fashioned, and will link to the agency's mission and strategic goals. OSC will implement appropriate, measurable performance goals for each employee. OSC uses personnel flexibilities and tools, including leave flexibilities, alternative work schedules, and a liberal telework program.

Improved Financial Performance

OSC has continued its success in receiving unqualified audit opinions, with the receipt of another clean opinion this Fiscal Year. A competitively selected audit firm evaluated OSC's financial statements for FY 2011. The auditor spent time at OSC headquarters and with the Department of Interior's National Business Center (NBC) personnel in Denver who currently perform the accounting, payments, travel system operations, and financial system operations and maintenance functions for OSC. The audit resulted in an unqualified audit opinion on our annual financial statements, similar to the results of audits for the past seven fiscal years, which was the inception of formal Financial statement Audits at OSC.

As mentioned above, OSC contracts out certain work under an interagency agreement. OSC was involved in the effort to design the processes used for its accounting system, and to design specific customized reports that reflect exactly the information most helpful to OSC in managing its funds. Contracting these functions out has provided OSC with more specialized expertise at a lower cost than could be accomplished internally. NBC routinely provides financial reports to OSC, and provides a detailed financial review every quarter. NBC also provides current financial information on day-to-day operations for payroll, procurement, and travel, as needed by OSC.

As a small agency without an Inspector General, OSC generally submits a combined Inspector General (IG) Act and Federal Manager's Financial Integrity Act report each October. OSC relies on audits and other reviews of NBC operations by the OIG and the office of the Chief Financial Officer in the National Business Center, as well as information received directly from NBC, for information about any significant issues relating to the services provided to OSC. NBC has a formal Management and Control and Compliance program, to include OMB Circular A123 audits, A123 Accounting Transactions testing, SAS70 Type II audits, and Financial Statements Audits. Further, they conduct Information Technology Audits such as Federal Information Security Management Act, Internal Controls Reviews, as well as other audits.

OSC has met its requirements in regards to the “Do Not Pay” listing, and Improper Payments (IPERA) reporting.

Competitive Sourcing

OSC is a small agency, with a highly specialized inherently government mission. Eighty-four percent of its FTE perform inherently governmental work, and 16% of its FTE are considered commercial in nature. According to OMB Circular A-76 and supplemental guidance issued by OMB, government performance of commercial functions is permitted when, as is the case at OSC, the position activity total is 10 FTE or less.

The interagency agreement with the NBC includes the following services: procurement, budget accounting and budget execution, accounting services, procurement system hosting, and travel management. OSC will review NBC interagency agreements annually to confirm the agreement is meeting OSC’s needs. OSC also has an interagency agreement with the National Finance Center of the Department of Agriculture to perform payroll/personnel processing functions.

Expanded Electronic Government and Other Information Technology Initiatives

OSC provides one-stop service for those who wish to file a complaint or disclosure, or request a Hatch Act advisory opinion. Hatch Act advisory opinions may be solicited through our web site. A person can file a Prohibited Personnel Practices complaint online, which is the most common channel for PPP complaints to be received by the agency. A person can also make a complete Whistleblower Disclosure online. Those who wish to communicate with a knowledgeable OSC staffer through one of the agency’s telephone hot lines will find the relevant information on the OSC web site. OSC’s web site is linked to USA.gov, as well as other agency web sites: the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Office of Government Ethics, (among many others). During FY 2011, the total number of user sessions was 849,530. OSC’s Information Technology Branch (ITB) staff are continually improving OSC’s web site. Starting in FY 2012, those who wish to follow and stay in touch with OSC can now also do so from twitter. Furthermore, ITB is in the process of implementing secure upload functionality to its online filing system to allow a person to upload supporting evidences with his PPP complaint or whistleblower disclosure. Lastly, in FY 2012, ITB has enhanced the video conference capabilities and services it provides. New video conferencing equipment and technology allows the creation of virtual meeting rooms, and conferences can be recorded. By the end of FY2012, video conferences between local users’ computers and other agencies will be in place via our video conferencing equipment.

To promote the use of GreenIT and to continually shift our IT investments to more efficient computing platforms and technologies, the implementation of the Federal Data Center Consolidation Initiative is still ongoing in FY 2012 and continuing in FY 2013. ITB is constantly enhancing the OSC’s case tracking system to meet the users’ ever changing requirements. In FY 2012, ITB is implementing the case tracking system for the entire agency with paperless document management incorporated into it. The Interwoven Document Management System (DMS) has been upgraded in FY 2012 to a newer version and running on a new, higher performance server to meet the anticipated demands of a paperless case tracking system. The relational database accessed by the DMS has also been upgraded to a new 64-bit version and migrated to a high performance 64-bit blade server. Furthermore, ITB has migrated part of the Citrix configuration to a 64-bit computing environment and will continue to migrate the remainder Citrix configuration to a 64-bit computing environment. In FY 2011, ITB implemented a D2D2T backup solution, which phased out obsolete backup tape drives in the three field offices.

Per the Homeland Security Presidential Directive 12 (HSPD-12) initiative, 100% of our employees are using HSPD-12 compliant PIV cards to gain access to our facility in the Headquarters, and our Detroit office is now

fully operational with the same setup. Due to the cost issue, Dallas and Oakland Field Offices will remain as is. In the area of Cybersecurity, we worked with our Managed Trusted IP Service (MTIPS) provider during FY 2011 and implemented our Trusted Internet Connection (TIC) solution. We are fully transitioned to Networx.

Improving Employee Satisfaction and Wellness

Over the past several years, OSC has implemented several key programs and/or initiatives to enhance employee satisfaction and wellness: a cost share (50/50) program for YMCA membership to encourage employees to have a healthier lifestyle and stay fit; made available [on-site] flu vaccinations and blood pressure checks; organized a blood donor drive; conducted a health benefits information session; and instituted a program to pay for professional credentials (bar membership fees) for attorneys. Additionally, management will administer the Federal Employee Viewpoint Survey in 2012. The agency's results will be compared with the government-wide averages and used to address areas that may be in need of attention from management.

Open Government

OSC has met the major requirements of the Open Government initiative. After consultation, we determined the new sets of data which could be posted to our web site. These data gives a clearer picture of three elements: printing expenditures per fiscal year; training expenditures per fiscal year; and our staffing levels (FTE) per month. Our Open Government web page is located at <http://www.osc.gov/opengov.htm>. The web page provides easy access to key information and other reports and data. A link is on the page to receive feedback from the public via the web site. Communications have been sent internally within OSC in order to receive input and ideas from OSC employees on Open Government. OSC's Open Government initiative is an ongoing effort, our plan and data sets will be reviewed continuously and improvements put into place over time.

Green Government

President Obama issued the Executive Order on Federal Leadership in Environmental, Energy, and Economic Performance (E.O. 13514), signed on October 5, 2009. In order to manage their greenhouse gas (GHG) emissions, Federal Agencies must have a consistent methodology for measuring such emissions. The Executive Order requires Federal agencies to establish and report a comprehensive inventory of absolute greenhouse gas emissions to the CEQ and the Office of Management and Budget. In addition, Sustainability plans must be developed and reported on annually by each agency.

The Office of Special Counsel completed its Sustainability Plan, with overall reduction targets of 7%. Also, based on the template designed by the Council on Environmental Quality in cooperation with OMB, the OSC reported its results for the Federal inventory reporting requirements and calculation methodologies on May 28, 2010, and again on January 11, 2012. OSC continues to meet its requirements on GHG reporting. OSC's reduction of Scope 3 Emissions is based on a reduction of purchased energy, where the use of new, more efficient servers by IT will reduce our electricity costs; a reduction of travel through the use of web based technology for interviews, meetings and other operations; and the increased promotion of employee telecommuting.

Telework

In 2011, the OSC complied with the requirements of Telework Enhancement Act by establishing criteria for determining eligibility of employees to participate in telework, notifying employees of their eligibility and indicat-

ing under what conditions they may telework. The OSC's telework program is designed to benefit employees, managers and the community by decreasing work trip vehicle miles, traffic/parking congestion, energy consumption and air pollution; improving the quality of work life and performance; and improving morale by assisting employees in balancing work and family demands.

Continuity of Operations

Continuity of Operations (COOP), mandated by Presidential Decision Directive 67, requires each federal agency to be capable of performing essential functions within 12 hours of a threat, or occurrence of a debilitating event. To accomplish these goals OSC established a Security and Emergency Preparedness (SEP) Team to manage and oversee this program. The team meets weekly and is comprised of four senior staff and three specialists. The SEP Team provides OSC with a security and emergency preparedness capability that (1) ensures security and emergency preparedness are addressed during all phases of operation, including the hiring and training of personnel; the procurement and maintenance of equipment; the development of policies, rules, and procedures; (2) encourages safe operation through the identification, evaluation and resolution of threats and vulnerabilities, and the on-going assessment of OSC's capabilities and readiness; and (3) assists OSC in adhering to governmental guidelines, rules and regulations that promote COOP best practices.

OSC must safeguard vital records and databases, establish an alternate operating site, and validate capability through tests, training, and exercises. OSC will continue to evaluate alternate methodologies to connect OSC's headquarters and field offices. In FY 2011 OSC made considerable progress in an initiative that will allow mirroring of its network to a backup geographic location in Dallas, Texas. This redundancy will provide additional safety and faster recovery time in the event of a debilitating event; agency functions and vital records will be further safeguarded. Implementation will be in 2012. In FY 2013, OSC plans to further refine and test its COOP and perform disaster recovery testing based upon the new location.

Appendix

A. Statutory Background

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC 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 the political activity of federal employees and covered state and local employees and provides advice on restrictions imposed by the Hatch Act on the political activity of covered federal, state, and local government employees; and (3), receives disclosures from federal whistleblowers about government wrongdoing. 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.¹ 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 or have served 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).²

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 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 inform employees of their rights and remedies under the Whistleblower Protection Act in consultation with OSC.³

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),⁴ 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.

Appendix B



Strategic Plan FY2012-2016

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Table of Contents

Introduction	3
Mission – Vision - Values	5
Strategic Goals	6
Goals and Objectives	7
Strategic Goal 1	7
Strategic Goal 2	9
Strategic Goal 3	10
Strategic Goal 4	11
Strategic Goal 5	12
Challenges to Agency Performance	14

U.S. Office of Special Counsel

Strategic Plan for FY 2012 – 2016

Introduction

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

OSC is committed to enhancing government accountability and performance by the realization of a diverse, inclusive Federal workplace where employees embrace excellence in service, uphold merit system principles, are encouraged to disclose wrongdoing, and are safeguarded against reprisals and other unlawful employment practices.

About OSC

In 1883, Congress passed the Pendleton Act, creating the Civil Service Commission, which was intended to help ensure a stable, highly qualified Federal workforce, free from partisan political pressure. In 1978, Congress enacted the Civil Service Reform Act, replacing the Civil Service Commission with the Merit Systems Protection Board (MSPB).

During hearings on the CSRA, the role and functions of MSPB were described by various members of Congress: “. . . [MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with insuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”¹

The Office of Special Counsel was born on January 1, 1979 as the investigative and prosecutorial arm of the MSPB. OSC was authorized to receive complaints from applicants for Federal service, as well as current and former employees, alleging prohibited personnel practices by Federal agencies. It was also conceived as a safe channel to receive disclosures from federal whistleblowers about wrongdoing in government agencies. In addition, Congress assigned OSC responsibility for offering advice and enforcing restrictions on political activity by government employees covered under the Hatch Act.

OSC remained a part of the MSPB for ten years. In 1989, Congress enacted the Whistleblower Protection Act (WPA), making OSC an independent agency within the executive branch. The WPA also strengthened protections against reprisals for employees who disclose wrongdoing in the government and enhanced OSC’s ability to enforce those protections, but it otherwise left OSC’s mission intact.

¹Legislative History of the Civil Service Reform Act of 1978. Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. 2,. (pg 5-6).

In 1994, Congress enacted USERRA, and gave OSC enforcement authority in cases against Federal agencies. USERRA prohibits employment discrimination against persons in connection with their military service and provides for their reemployment upon return from military duty.

Congress also reauthorized the Office of Special Counsel in 2004, setting out new responsibilities for OSC and expanding protections for federal employees. In addition, federal agencies were made responsible for informing their employees of available rights and remedies under the WPA, and directed agencies to consult with OSC in that process.

Demand for OSC services has risen dramatically in recent years even as staffing levels have remained virtually fixed. Since FY 2008, OSC's caseload has grown 28%. Based on experience and trends, OSC conservatively projects an annual growth in caseload in the 6% to 8% range for the foreseeable future. In addition, Congress has assigned OSC responsibility for a new USERRA Demonstration Project,² which will substantially increase the caseload for the agency.

Given the challenging fiscal environment, OSC recognizes that it must prioritize clear strategic goals and objectives that are ambitious yet realistic, and work creatively and efficiently toward achieving them.

On June 17, 2011, Carolyn Lerner was sworn in as the eighth permanent Special Counsel. Ms. Lerner took office following a prolonged, trying period at OSC. The prior Special Counsel had been abruptly removed from office in 2008 by the President and subsequently charged with contempt of Congress, disgracing the agency and demoralizing both staff and stakeholders. He was replaced in 2008 by interim, career leadership who performed a stabilizing, caretaker role until Ms. Lerner took office.

Ms. Lerner has acted quickly to transform the public reputation and morale of OSC. In consort with staff and stakeholders, she has reinvigorated the agency, bringing renewed focus on the OSC's critical merit system principles mission. She has also undertaken a substantial review of OSC's strategic priorities in order to ensure that its resources are properly aligned with agency goals and objectives.

Strategic Plan and Cross-Cutting Documents

This Strategic Plan provides the pathway for OSC's work for the next five years. It sets forth OSC's Mission, Vision, Values, Goals and Objectives, Performance Measures and Validation Methods, and internal and external challenges to fulfilling this Strategic Plan.

In accordance with Government Performance and Results Act (GPRA) as amended by the GPRA Modernization Act of 2010, OSC's Annual Performance Plans (APPs) include program performance goals, measures, and annual performance targets designed to move the agency incrementally to achieve its strategic goals. The APPs are published as part of the Performance Budget provided to the Office of Management and Budget (OMB) and in the Congressional Budget Justification submitted to Congress. OSC reports program performance results as compared to its APPs, along with financial accountability results, in the annual Performance and Accountability Report (PAR). The Strategic Plan, APPs, and PARs are posted on OSC's public website.

²OSC was selected by Congress, in a second demonstration project beginning in 2011, to investigate half of the Federal USERRA complaints received by the U.S. Department of Labor in addition to its existing enforcement responsibilities under USERRA.

Mission – Vision - Values

OSC Mission

Promote accountability, integrity and fairness in the Federal workplace.

OSC Vision

A diverse and inclusive Federal workplace where employees embrace excellence in service, uphold merit system principles, are encouraged to disclose wrongdoing, and are safeguarded against reprisals and other unlawful employment practices.

OSC Values

- | | |
|------------------------|---|
| Accountability | We will act in accordance with merit system principles, communicate in plain English with customers and stakeholders, make our findings and determinations easy to understand and widely accessible, and take responsibility for our decisions and actions. |
| Professionalism | We will conduct our work in a dignified, courteous, respectful and reliable manner, fairly and without bias, attentive to legal standards and authorities, and conscious of various perspectives and interests of customers and stakeholders. |
| Quality | We will strive to provide excellent service to our customers, due care and thoroughness in the substance and timeliness of our work, and produce work products worthy of pride. |
| Independence | We value the trust and responsibility invested in us as an independent investigative and prosecutorial agency, and will always exercise that independence in a manner that honors the letter and spirit of the merit system. |

Strategic Goals

1. Safeguard the integrity and fairness of the Federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices.
2. Advance the public interest and good government by providing a safe channel for Federal employees to disclose wrongdoing or threats to health or safety, in order to effect positive corrective action.
3. Strengthen the civil service through outreach and advice to the Federal community about prohibited personnel practices, employment discrimination against veterans, and job-related political activity.
4. Advance accountability in government by seeking disciplinary action against Federal employees for persistent or egregious prohibited personnel practices or unlawful political activities.
5. Restore confidence in OSC within the Federal community and among staff, stakeholders, and the general public.

Goals and Objectives – Performance Metrics and Means to Accomplish Goals

Strategic Goal 1: Safeguard the integrity and fairness of the Federal workplace by protecting employees against retaliation for whistleblowing and other wrongful personnel practices.

Objective 1: Increase OSC's capacity to protect Federal employees against whistleblower retaliation and other PPPs.

Performance Metrics and Means to Accomplish Goals:

- Number of staff allocated to whistleblower retaliation and other PPPs
- Percent of total staff allocated to whistleblower retaliation and other PPPs
- Number of staff training programs in whistleblower retaliation and other PPPs
- Compare results to prior years

Objective 2: Achieve mutually satisfactory solutions for employees and agencies through mediation of PPP and USERRA matters.

Performance Metrics and Means to Accomplish Goals for PPP cases:

- Number of cases referred to mediation from examination unit
- Percent of cases referred for mediation from examination unit
- Percent of cases in which both parties agree to mediation on referral from examination unit
- Percent of cases referred from examination unit successfully resolved in mediation
- Number of cases referred to mediation from investigation/prosecution unit
- Percent of cases referred for mediation from investigation/prosecution unit
- Percent of cases in which both parties agree to mediate referral from investigation/prosecution unit
- Percent of cases referred from investigation/prosecution unit successfully resolved in mediation

Performance Metrics and Means to Accomplish Goals for USERRA cases:

- Number of cases referred to mediation
- Percent of cases referred for mediation Percent of cases in which both parties agree to mediate referral from USERRA unit

- Percent of cases referred successfully resolved in mediation

Performance Metrics and Means to Accomplish Goals for both PPP and USERRA cases:

- Complainant and agency exit survey findings
- Compare results to prior years

Objective 3: Keep complainants informed as to the status of their cases and detail the bases for OSC actions.

Performance Metrics and Means to Accomplish Goals:

- Upon the receipt of a complaint, clearly explain the OSC review process and when action can be expected
- Provide complainants status updates at defined intervals and when significant new developments occur
- If OSC declines to refer a case for investigation, clearly inform complainant of the reason(s) why

Objective 4: Achieve timely resolution of cases and corrective actions.

Performance Metrics and Means to Accomplish Goals for PPP cases:

- Number of corrective actions obtained
- Percent of corrective actions obtained per number of cases received
- Number of cases referred for investigation
- Number of informal stays requested
- Number of informal stays obtained
- Number of formal stays requested
- Percent of formal stays obtained
- Number of corrective actions obtained per number cases referred for investigation
- Percent of corrective actions obtained per number cases referred for investigation
- Number of initial examinations completed within 120 days
- Percent of initial examinations completed within 120 days

- Number of cases more than 240 days old
- Percent of cases more than 240 days old

Performance Metrics and Means to Accomplish Goals for USERRA cases:

- Number of settlements obtained
- Percent of settlements obtained per number of cases received
- Number of investigations completed within 90 days old
- Percent of investigations completed within 90 days
- Number of legal reviews completed within 60 days
- Percent of legal reviews completed within 60 days
- Number of corrective actions obtained
- Percent of corrective actions obtained

Strategic Goal 2: Advance the public interest and good government by providing a safe channel for Federal employees to disclose wrongdoing or threats to health or safety, in order to effect positive corrective action and ensure accountability.

Objective 1: Provide Federal employees a secure means to disclose covered wrongdoing.

Performance Metrics and Means to Accomplish Goals:

- Number of whistleblower disclosures referred by OSC to agency head for investigation
- Percent of whistleblower disclosures submitted to OSC referred to agency head for investigation
- Number of whistleblower disclosures either closed or referred within 15-day statutory timeline
- Percent of whistleblower disclosures closed or referred within 15-day statutory timeline

Objective 2: Motivate agencies to take prompt action to investigate and redress whistleblower disclosures.

Performance Metrics and Means to Accomplish Goals:

- Success in prompting thorough agency investigations of referred disclosures

- Success in prompting effective corrective action and accountability
- Amount of financial and other benefits to government resulting from corrective action

Strategic Goal 3: Strengthen the civil service through outreach and advice to the Federal community about prohibited personnel practices, whistleblower disclosures, employment discrimination against veterans, and unlawful, job-related political activity.

Objective 1: Ensure that the Federal community is aware of the Office of Special Counsel, its mission and services, by engaging in outreach to, and training for, Federal employees and agencies about rights and responsibilities under covered laws.

Performance Metrics and Means to Accomplish Goals:

- Total number of outreach activities undertaken
- Number of outreach activities by program area
- Survey of attendees at outreach events
- Conduct biannual surveys of Federal community to gauge OSC name and mission recognition among Federal community
- Expand Federal agency compliance with provisions of the Whistleblower Protection Act by invigorating the Certification Program under Section 2302(c)

Objective 2: Provide timely and quality advice to individuals seeking authoritative opinions about the application of the Hatch Act.

Performance Metrics and Means to Accomplish Goals:

- Number of oral and email advisories issued within 5 business days of receipt of complaint
- Percent of oral and email advisories issued within 5 business days of receipt of complaint
- Number of formal written advisories issued within 120 days of receipt of complaint
- Percent of formal written advisories issued within 120 days of receipt of complaint
- Number of new complex advisory opinions issued per month

Objective 3: Furnish OSC expertise to assist legislative, administrative and the judicial bodies in formulating policy and precedent.

Performance Metrics and Means to Accomplish Goals:

- Number of legislative contacts to improve covered laws
- Number of amicus and Statement of Interest interventions on key issues of law

Strategic Goal 4: Advance accountability in government by seeking disciplinary action against Federal employees for persistent or egregious prohibited personnel practices or unlawful, job-related political activities.

Objective 1: Provide warning letters to employees that continued or repeated Hatch Act non-compliance, or aggravated violations of the Hatch Act, could result in disciplinary action.

Performance Metrics and Means to Accomplish Goals:

- Number of warning letters issued
- Number of statements of compliance by agency or offending employee

Objective 2: Bring disciplinary actions in appropriate PPP and Hatch Act cases to punish and deter wrongdoing.

Performance Metrics and Means to Accomplish Goals in PPP Cases:

- Number of recommendations to agencies to take disciplinary action
- Number of disciplinary action complaints filed
- Number of disciplinary action complaints resolved pre-litigation through negotiated settlement
- Number of disciplinary prosecutions
- Total number of successful disciplinary prosecutions
- Percent of successful disciplinary prosecutions

Performance Metrics and Means to Accomplish Goals in Hatch Act Cases:

- Number of recommendations to agencies to take disciplinary action
- Number of disciplinary action complaints filed
- Number of disciplinary action complaints resolved pre-litigation through negotiated settlement
- Number of prosecutions
- Total number of successful prosecutions
- Percent of successful prosecutions

Strategic Goal 5: Restore confidence in OSC within the Federal community and among staff, stakeholders, and the general public.

Objective 1: Simplify access to OSC services for the Federal community.

Performance Metrics and Means to Accomplish Goals:

- Revise complaint form and other forms to make them easier to understand and use by customers

Objective 2: Establish OSC as a “model employer,” recognizing that a high level of staff morale and engagement translate into improved performance.

Performance Metrics and Means to Accomplish Goals:

- Develop Human Capital Management Plan, including a workforce assessment to gauge skills and gaps
- Develop targeted training to mitigate skills gaps
- Provide ongoing cross training to further the staffs’ professional development and enhance performance and flexibility
- Ensure that effective performance reviews are conducted on a timely basis, including for members of the Senior Executive Service
- Use telework and alternate schedule options to provide employees with flexibility
- Survey employees at regular intervals on their job satisfaction

Objective 3: Ensure that OSC operates at a high level of efficiency and efficacy both internally and within the Federal community.

Performance Metrics and Means to Accomplish Goals:

- Move toward a “paperless office” model for purposes of electronic data storage
- Improve the functionality of the case-tracking system
- Improve the capabilities of the document management system
- Ensure audit compliance, timely submission of budget and performance reports, and that OSC is on sound financial footing
- Ensure compliance with EEO responsibilities
- Participate in relevant inter-agency working groups

- Align individual employee performance to strategic goals, objectives and measures
- Develop plan for staff succession
- Ensure that emergency planning is up-to-date and operational

Objective 4: Establish communications program to ensure effective provision of critical information to the Federal community, stakeholders and the public.

Performance Metrics and Means to Accomplish Goals:

- Upgrade look, feel and user friendliness of the OSC website and keep it current
- Ensure website compliance with disabilities law requirements
- Survey user community to gauge strengths and weaknesses of website
- Issue press releases on major agency activities and results in cases, and maintain dialogue with the news media
- Make use of Twitter and other social media

Challenges to Agency Performance

OSC undertakes this ambitious agenda in a very difficult fiscal environment: We are projecting substantially greater demand for our agency's services without a corresponding increase in resources to match this demand. This will require OSC to prioritize carefully, and allocate resources and deploy staff wisely, in order to ensure that the Office's most critical responsibilities are effectively and efficiently performed. To that end, since Special Counsel Lerner's arrival in June 2011, OSC has undertaken a top to bottom review of priorities to ensure a sustainable agency going forward.

We do not underestimate the challenge before us. First, the caseload trend lines across our program areas – PPPs, Whistleblower Disclosures, Hatch Act and USERRA – are on a steady, upward rise. In addition, success creates its own quandaries: Ms. Lerner's leadership has quickly moved to restore confidence in OSC within the Federal community and among stakeholders. The result of this renewed confidence is a substantial uptick in caseload, including high-priority, time-consuming matters, that are at the heart and soul of OSC's mission. Moreover, if, as expected, Congress enacts the Whistleblower Protection Enhancement Act, removing jurisdictional hurdles to many more PPP claims, OSC anticipates yet a further growth in its caseload. Given that even at current docket levels OSC faces a daunting backlog, the projected, substantial increase in workload will strain the resources and capacity of the agency.

Budget constraints, if not handled adroitly, could also crush morale among OSC employees, just as pride in the Office is reviving. Larger caseloads, poor prospects for advancement, and salary freezes add up to a future fraught with prospects for professional frustration and demoralization. OSC leadership will be called upon to find creative incentives and opportunities, such as professional development and cross training, telework and flexible work schedules, and early retirement, to free up resources to retain and sustain high performing employees.

The difficult Federal fiscal environment also takes an indirect toll on OSC. Strapped agencies may be less able to devote the necessary resources to properly investigate whistleblower disclosures of waste, fraud and abuse referred by OSC. Squeezed budgets may also limit agencies' discretion to settle monetary claims and take other corrective action. The overall effect would be to undermine the confidence of the Federal community in OSC's ability to make a difference, resulting in renewed cynicism, employee demoralization, falling performance, and even destructive behavior.

OSC will be called upon to work ever more smartly and make tough judgment calls to ensure that mission critical goals and objectives are met. The agency's human capital planning aims to use opportunities presented by attrition and early retirement to better align professional skill sets with staffing needs and budget realities. OSC's priorities, however, are not wholly within its control. Starting in the second half of 2011 and continuing at least into 2014, Congress has tasked OSC with handling half the investigatory docket of Federal sector USERRA claims brought by returning service men and women, some 180 new cases a year. On top of that, each new election cycle brings with it a rising number of requests for advisory opinions and complaints under the Hatch Act.

In response to funding challenges and the rising caseload, OSC is being proactive, seeking early resolution of cases through stepped up ADR and settlement efforts, thereby preserving resources; ensuring that matters having the broadest and most substantial impact are prioritized; and that staff are trained to improve agency flexibility, efficiency and performance.

By identifying and preventing waste, fraud, abuse, and health and safety challenges, OSC is an agency that turns many times its budget in direct and indirect financial benefits to the Federal government. But OSC can

only do so if its resources are adequate to its mission. While OSC is putting in place long-term plans to work more efficiently, absent needed resources, there is a point at which a diminished OSC will result in less accountability in government.

Maintaining adequate funding for OSC is a critical challenge to the agency achieving its mission and, as a consequence, to the overall prospects of good government.

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).