
**A Report to Congress
From The
U.S. Office Of Special Counsel
Fiscal Year 1995**



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

The Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20515

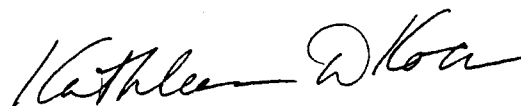
Dear Mr. President and Mr. Speaker:

I herewith respectfully submit to the Congress, in accordance with 5 U.S.C. § 1218, the Annual Report from the Office of Special Counsel (OSC) for Fiscal Year (FY) 1995.

FY 1995 was another record-setting year for OSC with respect to the number of cases in which we were able to negotiate redress for individuals who sought our assistance. We have also implemented several new procedures which have positively impacted the operations of and results achieved by the agency.

As is customary, a copy of this report will also be sent to each Member of Congress.

Sincerely,



Kathleen Day Koch

Enclosure

Executive Summary

Fiscal Year (FY) 1995 was another record-setting year for OSC. For the second year in a row, we obtained a record number of corrective, disciplinary and other favorable actions on behalf of federal employees who sought the assistance of OSC. In fact, in FY 1995 we negotiated **175 favorable actions** in prohibited personnel practices and Hatch Act cases, which represents more than a **28% increase** over the 136 favorable actions obtained in FY 1994. Of particular importance, in FY 1995, 120 favorable actions, or 68.5% of the total, were obtained in whistleblower reprisal cases. Overall in FY 1995, there were more than 5,800 instances in which the assistance or action of OSC was sought by federal employees and other persons.

These accomplishments were the direct result of changes that have been made in the way we approach our work. Of particular note, in FY 1994, OSC reported the trial of a Pilot Project that was based upon the use of **interdisciplinary teams of investigators and attorneys** to handle cases from the inception of a full field investigation through final disposition of a case. This project exceeded our expectations and resulted in the past two years of all time high levels of favorable actions. Accordingly, we have implemented this approach to cases on a permanent basis.

OSC also issued a **record-setting 2,821 Hatch Act advisory opinions** (both written and oral) to employees who sought advice. This is the only area of OSC's activities where it is able to issue advisory opinions, and it is particularly valuable for two reasons. First, because of the significant revisions to the Hatch Act in 1993, which generally broadened the scope of lawful political activities for federal employees, there is much uncertainty in the federal community as to which activities are permissible and which are impermissible. Second, individuals who obtain an advisory opinion from OSC which finds that proposed political activity is lawful, are protected from any enforcement activities should someone subsequently challenge this activity before OSC.

Finally, OSC has taken several steps to help educate and inform the federal workforce. For example, in FY 1995, we published an **informational booklet** of materials for agencies to use to educate their employees about the role of OSC and employee rights and remedies. This booklet has been very well received by the federal community. OSC has also established a **Home Page on the World Wide Web** (address <http://www.access.gpo.gov/osc>), which includes a wide range of information, publications, reference materials and forms relating to OSC's programs and operations.

We are very proud of the fact that OSC has achieved these significant accomplishments despite reduced funding and a smaller workforce. We are committed to doing all that is necessary, including developing and using new and more effective methods of operation, to continue to serve individuals who seek our assistance.

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Biography of the Special Counsel



Kathleen Day Koch was appointed Special Counsel of the U.S. Office of Special Counsel (OSC) on December 20, 1991, for a five-year term, following Senate approval of her nomination. During her tenure as Special Counsel, Ms. Koch has emphasized the need for improved respect for OSC and trust in its service to the federal community. She has instituted internal measures to streamline procedures and increase accountability, resulting in a determinative process which better serves OSC's customers. In addition, Ms. Koch has underscored education of federal employees on their rights in whistleblower and other protected activity matters.

Ms. Koch's entire legal career has been in public service, where she has developed expertise in federal employee and government ethics issues. Prior to her appointment to OSC, she served as General Counsel to the Federal Labor Relations Authority and before that was Associate Counsel to the President. She was asked to join the White House staff while serving as Senior Attorney in the Personnel Law Division at the Commerce Department. During the significant formative period of the Merit Systems Protection Board (1979-1984), Ms. Koch participated in the development of the adjudicatory agency's procedural and substantive precedents. Her government career began in 1977 when she was appointed an Honors Program attorney at the Department of Housing and Urban Development.

A native of St. Louis, Missouri, Ms. Koch studied at Concordia College, River Forest, Illinois. She received her B.S. degree with honors from the University of Missouri in St. Louis in 1971 and was honored that year as a finalist in the competition for the Danforth Urban Leadership Fellowship. Ms. Koch received her J.D. degree from the University of Chicago in 1977.

Ms. Koch and her three children reside in Annandale, Virginia.

Introduction

Mission of the Office of Special Counsel

The Office of the Special Counsel was established on January 1, 1979, by Reorganization Plan Number 2 of 1978. The Civil Service Reform Act (CSRA) of 1978, which came into effect on January 11, 1979, enlarged its functions and powers. The office operated as the autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB or Board) until 1989. In March of 1989, the Congress passed the Whistleblower Protection Act (WPA) of 1989, which became effective on July 9, 1989. The WPA established the Office of the Special Counsel as an independent agency within the Executive Branch, separate from the MSPB, and renamed it the Office of Special Counsel (OSC). Under the new law, the OSC kept its basic investigative and prosecutorial functions and its role in litigating cases before the MSPB.

The WPA substantially amended the CSRA to enhance protections against reprisal for those employees who disclose wrongdoing in the federal government, and the ability of the OSC to enforce those protections. Under the CSRA, as amended, the principal responsibilities of the OSC continue to be --

- the investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. §2302(b),¹ and other activities prohibited by civil service law, rule or regulation, and the initiation of corrective and disciplinary actions when warranted;
- the interpretation and enforcement of the Hatch Act provisions on political activity in Chapters 15 and 73; and
- the provision of a secure channel through which federal employees may make disclosures of information evidencing violations of law, rule or regulation, gross waste of funds, gross mismanagement, abuse of authority, or a substantial and specific danger to public health or safety, without disclosure of the employee's identity (except with the employee's consent) and without fear of retaliation.

¹ All statutory references to chapters and sections that follow in this report will be to Title 5 of the United States Code, unless otherwise indicated.

Office of Special Counsel Policy

In furtherance of the merit systems principles specified in the CSRA, the OSC's principal responsibility has been and continues to be the receipt and investigation of complaints of alleged prohibited personnel practices, especially reprisal for whistleblowing. Although allegations of reprisal for whistleblowing are relatively few compared to the number of federal civilian employees, the OSC regards *any* reprisal for whistleblowing as unacceptable. Accordingly, the OSC's priorities are to:

- treat allegations of reprisal for whistleblowing as its highest priority;
- intensively review allegations of reprisal for whistleblowing for any feasible remedial or preventive action, whether by means of stays, corrective actions, or disciplinary actions; and
- use every opportunity to make a public record of the OSC's aggressive pursuit of corrective action (especially in whistleblower reprisal cases), both to encourage other whistleblowers, and to affirm the emphasis given to corrective actions by the OSC.

Overview of OSC Operations

Budget and Staffing

During Fiscal Year (FY) 1995, the OSC operated with a budget of \$7.955 million, and the agency's full-time equivalency (FTE) personnel ceiling was 96.

Procedures

The Office of Special Counsel is comprised of four divisions: Investigation, Prosecution, Management, and Planning and Advice Divisions. The Investigation and Prosecution Divisions are the primary program units of the agency and are supported by the Management Division and the Planning and Advice Division.

The Complaints Examining Unit (CEU), which is part of the Prosecution Division, initially analyzes all allegations of prohibited personnel practices and allegations of other activities prohibited by civil service law, rule or regulation. The CEU contacts requestors to ensure that the nature of and basis for the allegation is clearly understood, and conducts further inquiry to the extent necessary to determine whether the allegation warrants further investigation.

After a thorough initial examination, the CEU refers matters stating a potentially valid statutory claim to the Investigation Division for more extensive investigation. If the CEU determines that an allegation is not within the OSC's investigative jurisdiction, but that information contained in the complaint may constitute a whistleblower disclosure, the Prosecution Division's Disclosure Unit reviews that information for possible transmittal to the agency head concerned. The OSC does not disclose the identity of the employee without the employee's consent.

The Prosecution Division reviews completed full field investigations to determine whether the inquiry has established any violation of law, rule or regulation, and whether the matter warrants corrective or disciplinary action, or both. OSC may have discussions with an agency about a case at any point of the investigation or analysis in order to obtain mutually agreeable resolution. Otherwise, the Special Counsel may refer the matter in writing to the agency head under §1214(b)(2)(A) with a recommendation for corrective action. If an agency declines to take corrective action, the Special Counsel may request the MSPB to consider the matter under §1214(b)(2)(B), and the MSPB may order any corrective action it deems appropriate. During FY 1995, OSC continued its policy of early and firm negotiation with agencies to obtain corrective action prior to initiating litigation before the MSPB. If the Special Counsel determines that an apparent violation warrants disciplinary action, the OSC files charges against the offending employee under §1215(a) and prosecutes the case before the MSPB. Finally, if an investigation discloses a violation of any law, rule

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

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

Office of Special Counsel Outreach Program

The Special Counsel puts great weight on the value of educating federal employees as to their rights and remedies available to them under the Whistleblower Protection Act, as well as the rights and restrictions of the Hatch Act. To that end, OSC makes representatives available to engage in educational programs as often as possible.

In FY 1995, the OSC's outreach efforts resulted in OSC staff participation in 67 briefings and seminars. In addition, OSC has been given greater authority in this regard by our Reauthorization Act, P.L. 103-424, which directed all executive agencies to inform their employees of the rights and remedies available to them under the Whistleblower Protection Act, and to carry out this function in consultation with OSC. OSC has responded by preparing an informational packet for distribution to all covered entities and stands ready to consult with all agencies so that this requirement is carried out expeditiously.

Prohibited Personnel Practice Matters

Receipts and Investigations

During FY 1995, the OSC received 1,884 new matters alleging prohibited personnel practices (PPPs) which contained 3,727 separate allegations. Of the 1,960 matters which were actually processed by CEU in FY 1995, the OSC lacked jurisdiction in 285 of the matters, leaving 1,675 matters in which the agency was authorized by statute to conduct an inquiry. Following CEU review, 344 matters (20.5 percent of the matters over which OSC had jurisdiction) were referred for full field investigation. In addition, following initial review and inquiry, CEU closed 1,616 matters because of a determination that there was insufficient basis for further OSC action or because of satisfactory resolution of an employee's complaint during the initial review.²

Enforcement Actions

Enforcement actions are cases filed by OSC with the MSPB that seek corrective action (relief intended to make an aggrieved employee whole), or disciplinary action (the imposition of discipline on an employee who has committed a violation). Under 5 U.S.C. §1214, before the OSC may initiate proceedings for corrective action before the MSPB, the OSC must report its findings and recommendations to the agency involved. Only when the agency has had a reasonable period of time to take corrective action, and has failed to do so, may the OSC proceed to petition the Board for corrective action.

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

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

² The types of PPP allegations received in FY 1995 and the types of PPP allegations referred for full field investigation are included in Tables 1 and 2 of the Appendix.

In FY 1995, the OSC filed 7 enforcement action complaints -- 4 in PPP matters and 3 in Hatch Act matters (Hatch Act cases are discussed in the next section).

Based on complaints filed in PPP cases, the OSC participated in 6 hearings before the MSPB Administrative Law Judge during FY 1995. Two rulings were handed down by the MSPB during this period for these and other previously filed matters. The remaining complaints were either settled prior to hearing, are awaiting decision by the Board, or have been scheduled for hearing in FY 1996.

Favorable Actions Achieved

The OSC also obtained a record 173 favorable actions³ in 149 PPP matters in FY 1995, compared to the FY 1994 level of 131 favorable actions in 108 PPP matters. This represents an increase of 32 percent in favorable actions obtained in PPP matters. Moreover, the number of cases referred for a full field investigation increased from 316 in FY 1994 to 344 in FY 1995. Of the 173 favorable actions obtained in FY 1995, 146 were corrective actions and 27 were disciplinary actions. Reprisal for whistleblowing accounted for 120 of the favorable actions, compared to the FY 1994 level of 76 favorable actions in whistleblower matters. This represents an increase of 36 percent. In addition, there was a 60 percent increase in the number of whistleblower cases sent for a full field investigation in FY 1995 as reflected in the numbers below. The OSC obtained 13 stays of personnel actions through negotiations with agencies and, in cases where agencies refused OSC's request, 3 stays through petitions to the MSPB.⁴

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

⁴ Data concerning PPPs and the Hatch Act are set out separately in this Annual Report.

SUMMARY OF PROHIBITED PERSONNEL PRACTICE MATTERS

	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>
Matters received	2256	1837	1884
Matters processed by CEU	1847	1353	1960
Matters processed in which OSC had jurisdiction	1590	1208	1675
Matters referred for full field investigation	266	316	344
Complaints filed	1	16	4
Stays - negotiated	22	20	13
Stays - obtained from the MSPB	2	7	3
Favorable actions obtained	97	131	173

SUMMARY OF WHISTLEBLOWER REPRISAL MATTERS

	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>
Matters received	654	662	603
Matters processed by CEU	604	524	705
Matters processed in which OSC had jurisdiction	566	498	671
Matters referred for full field investigation	146	236	242
Complaints filed	1	12	3
Stays - negotiated	16	17	10
Favorable actions obtained	65	76	120

Corrective Actions

The following is a representative sample of corrective actions obtained by OSC during FY 1995:

- * OSC investigated allegations that an employee was reassigned because he publicly disagreed with an agency policy concerning anti-discrimination and affirmative action based on sexual orientation and because he made disclosures about air contamination in the work place. The agency agreed to reassign the employee back to his original position at the same grade and pay.
- * OSC investigated allegations that certain personnel actions--a lowered performance appraisal, proposed removal and placement on administrative leave--were taken because of disclosures an employee made about employees misusing government computers for the purpose of organizing a golf tournament. Among other things, the agency referred to two of the employee's disclosure memoranda in its proposed removal letter. The agency agreed to cancel the proposed removal and raise the performance appraisal.
- * OSC investigated allegations that an employee was coerced into agreeing to a reassignment and demotion because he made disclosures to the Inspector General's Hotline. The employee died after he filed the complaint. OSC, however, continued the investigation on behalf of the employee's widow. The agency agreed to posthumously restore the employee to his previous grade and provide additional entitlements due to his family because of his death.
- * OSC investigated allegations that an employee was denied a reassignment to a high level position, was ordered to undergo a psychiatric examination, and was given a choice of a reassignment at either of two new geographic locations to a position which he believed would be reclassified to a lower grade. The employee alleged that these personnel actions were taken because of his reports of gross mismanagement and abuse of authority to 15 different Members of Congress. As corrective action, the employee indicated that he wanted to remain in his present position and geographic location for two years. The agency agreed to extend the employee's present position and duty location for two years.
- * OSC investigated allegations that an employee was reassigned to a lower graded position as a result of an audit, was given a lowered performance appraisal and was denied a detail because of grievances that he had filed. The agency agreed to return the employee to his higher graded position, pay compensatory damages, attorney fees, a performance award, a retroactive merit pay increase and give the employee an increased performance appraisal and protection from a reduction in force for 18 months.

- * OSC investigated allegations that an employee received several personnel actions because she had filed several grievances and made whistleblower disclosures. The agency agreed to reassign the employee, upgrade the employee's performance appraisals, restore substantial amounts of sick and annual leave and pay medical expenses, as well as attorney fees. The agency also agreed to display OSC brochures on agency bulletin boards.
- * OSC investigated allegations that an agency postponed an employee's career ladder promotion because she exercised grievance rights. The agency agreed to retroactively promote the employee and to train all local managers on prohibited personnel practices.
- * OSC investigated allegations that an employee was reassigned because of his political affiliation. The agency agreed to reassign the employee back to his former position and to give him compensatory time for travel he incurred during his reassignment, as well as reimbursement for mileage costs.
- * OSC investigated allegations that an agency proposed the removal of an employee and placed him on administrative leave because he made disclosures to the Office of Personnel Management that several employees were improperly converted from "seasonal" to "30 days special needs" appointments. The agency agreed to give the employee full corrective action, including attorney fees and reinstatement to his previous position.
- * OSC investigated allegations that an employee was given a "fully successful" performance appraisal (after he had received "outstanding" performance appraisals by four different commanders over a period of nine years) because the employee had made protected whistleblower disclosures and had exercised his first amendment rights in connection with his opposition to the closure of his command. The agency agreed to give the employee an "outstanding" rating and a bonus commensurate with the rating. The agency also agreed to provide counseling on civilian employees' whistleblower and first amendment rights to the subject of the investigation.

Disciplinary Actions

The following is a representative sample of the disciplinary actions obtained by OSC in FY 1995:

- * OSC filed a complaint with the Merit Systems Protection Board alleging that a high ranking employee had sexually harassed six subordinate women. The complaint alleged that the respondent had engaged in repeated and varied unwelcome and offensive conduct over an approximate seven year period, including repeated pressure

and requests for dates and sexual favors, unwelcome sexual gestures and advances, and conditioning job offers upon the granting of sexual favors. As a settlement to the case, the respondent agreed to a sixty day suspension and to remain in a non-supervisory position for the remainder of his tenure with the agency.

- * OSC investigated allegations that an employee was discharged during her probationary period after making disclosures that she and other employees had been exposed to asbestos when her supervisors knew of the danger. In addition, her second and third level supervisors moved the structure in question in violation of the Toxic Substances Act after being advised that the structure was contaminated, and engaged in a cover-up of their actions until OSC became involved and identified their misdeeds. OSC requested that the agency take appropriate disciplinary and corrective action. The agency agreed to reprimand one supervisor and give two other supervisors five and seven day suspensions. The agency also agreed to give employees 16 months of back pay, competitive status (i.e. no requirement to undergo another probationary period), an adjustment in their service compensation date to reflect that one employee had never left government service, and payment of her moving and relocation expenses.

Merit Systems Protection Board Stays

The following is a description of the three cases in which stays were obtained by OSC from the MSPB in FY 1995:

- * OSC petitioned the MSPB to stay the proposed demotion of a GM-14 Group Supervisor to a GS-13 Criminal Investigator. OSC found reasonable grounds to believe that the employee's demotion was because the employee cooperated in an OSC investigation and filed a sexual harassment complaint against his former supervisor, activities protected by 5 U.S.C. §2302(b)(9). An indefinite stay was granted, giving OSC time to further investigate the matter. OSC later filed a complaint with the MSPB seeking corrective action for the employee. *OSC v. Department of Treasury*, No. CB-1208-95-0006-U-5 (Apr. 25, 1995)
- * OSC petitioned the MSPB to stay the removal of a GM-15 Executive Secretary during her probationary period. OSC found reasonable grounds to believe that the employee's removal was because the employee had engaged in whistleblowing activity and because she had filed complaints with the Office of Inspector General. The MSPB granted an indefinite stay to permit OSC to conduct a full investigation. OSC later filed a complaint with the MSPB seeking corrective action for the employee. *OSC v. NASA*, No. CB-1208-95-0004-U-3 (Feb. 15, 1995)
- * OSC petitioned the MSPB to stay the nonrenewal of a temporary appointment of a GS-5 Physical Science Technician. OSC found reasonable grounds to believe that the nonrenewal of the temporary appointment, as well as her nonselection for several term appointments, was because of her protected disclosures. The MSPB granted an indefinite stay pending resolution of OSC's petition to the Board for corrective action. *OSC v. Department of Interior*, No. CB-1208-95-0029-U-3 (Sept. 7, 1995)

Hatch Act Matters

Overview of Jurisdiction

Since the 1939 enactment of the Hatch Act, federal employees, employees of the District of Columbia (D.C.) government, and certain employees of state and local governments have faced significant restrictions in their ability to participate in political activities. Following the 1993 amendments, many federal and D.C. employees are now permitted to take an active part in political management and in political campaigns. However, there continue to be important restrictions on the political activities of federal employees, including partisan candidacy, solicitation of contributions, political activities while on duty, and other actions. The 1993 amendments did not change the provisions applying to state and local government employees.

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

Advisory Opinions

During FY 1995, the OSC's Hatch Act Unit issued 215 written advisory opinions, provided 2,606 advisory opinions orally in response to telephone inquiries, and responded to an additional 300 telephone inquiries requesting general information.

Violations and Enforcement

During FY 1995, the OSC received 104 new matters alleging violations of the Hatch Act. These matters contained 97 separate allegations. Following initial review by the Hatch Act Unit, 14 matters were referred for full field investigation.⁵

Following investigations, the OSC filed 3 complaints seeking disciplinary action against 1 federal employee and 2 state employees. One Hatch Act case went to hearing before the MSPB during FY 1995. During this period, the MSPB handed down 3 rulings for other previously filed matters. Of these rulings, the OSC had 2 rulings in its favor. The remaining complaints are awaiting final Board decision or are scheduled for hearing in FY 1996.

⁵ The Hatch Act allegations received in FY 1995 and the Hatch Act allegations referred for full field investigations appear in Tables 1 and 2 of the Appendix.

As a result of hearings and settlements, the OSC obtained 2 disciplinary actions from the MSPB and negotiated disciplinary action in 2 other cases during FY 1995. In addition, the OSC issued 29 warning letters during this period.

SUMMARY OF HATCH ACT MATTERS

	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>
Advisory opinions issued	1328	2455	2821
Matters received	134	130	104
Matters referred for investigation	41	25	14
Disciplinary action complaints filed (With MSPB)	24	9	3
Disciplinary actions obtained before MSPB and through negotiation	8	7	4
Warning letters issued	29	35	29

Disciplinary Actions

The following describes the two disciplinary actions filed by the OSC in Hatch Act matters on which the MSPB issued decisions during FY 1995:

- OSC filed a complaint for disciplinary action against a federal employee, charging that the employee was a candidate for elective office in a partisan election while employed in a position covered by the Hatch Act. Based on a settlement reached by the parties, the Board's Chief Administrative Law Judge (CALJ) recommended that the MSPB order a suspension of 30 days without pay. The MSPB subsequently adopted the CALJ's recommended decision and ordered that the employee be suspended (*Special Counsel v. Walker*, 67 M.S.P.R. 271 (1995)).
- OSC had filed a complaint for disciplinary action against a District of Columbia employee for violating the Hatch Act, charging that the employee, while holding a position covered by the Hatch Act, took an active part in the 1994 Mayoral campaign. Based on a settlement reached by the parties that the employee would be suspended without pay for 45 days if she were reemployed by the District government, the MSPB dismissed the complaint (*Special Counsel v. Catchings*, (Sept. 21, 1995)).

Whistleblower Disclosures

In addition to its investigative and prosecutorial mission, the OSC provides a safe channel through which federal employees may disclose information evidencing 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.

Upon receipt of such information from a federal employee, the Special Counsel is required by §1213(c) to transmit the information to the head of the agency concerned if the Special Counsel determines that there is a substantial likelihood that the information discloses the kinds of wrongdoing described in the statute. The OSC will not divulge the identity of an employee who provided the information unless he or she consents. The agency head is then required to conduct an investigation and submit a report to the Special Counsel on the findings of the investigation. The Special Counsel sends the agency report, along with any comments provided by the employee who made the disclosure and any comments or recommendations by the Special Counsel, to the President, the congressional committees having jurisdiction over the agency, and the Comptroller General.

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

The OSC is not authorized to investigate allegations of the kind described in §1213(a). Nevertheless, requestors often include information which may be covered by §1213(a) with their allegations of other prohibited activities within the OSC's investigative jurisdiction. Disclosures are received directly by the Disclosure Unit, which as of July 1995, became a part of the Prosecution Division. Disclosures may also be referred to the Disclosure Unit by the CEU for further review and follow-up with the requestor as needed to confirm the facts and issues involved. After completion of its review, the OSC decides whether to: (1) transmit the information developed to the agency concerned under §1213(c) or §1213(g); (2) refer the matter to the agency Inspector General or comparable office for any appropriate action; or (3) close the matter without further action.

During FY 1995, the OSC received and considered 252 disclosure matters for possible referral to the agency concerned under §1213(c) or §1213(g).⁶ In addition, 71 disclosure matters were carried over from FY 1994. A disclosure matter usually contains multiple allegations of mismanagement, fraud, waste and abuse. During FY 1995, the OSC

⁶ The number of disclosure allegations received in FY 1995 appear in Table 1 of the Appendix.

- referred 1 disclosure for investigation and a report under §1213(c);
- referred 1 disclosure for a report of actions taken or to be taken thereon under §1213(g);
- referred 93 disclosure allegations in 86 matters to agency Inspectors General;
- closed 140 disclosure allegations due to lack of sufficient basis for further action; and
- carried the remaining disclosures over to FY 1996 for completion of review.

Results of Referrals

During FY 1995, the OSC closed 12 reports from agencies to which statutory referrals previously had been made. OSC review of agency reports disclosed the following results from statutory referrals --

Section 1213(c) Reports:

Cases in which allegations were substantiated in whole or in part	6	
Cases in which allegations were not substantiated	<u>1</u>	
Subtotal		<u>7</u>

Section 1213(g) Reports:

Cases in which allegations were substantiated in whole or in part	3	
Cases in which allegations were not substantiated	<u>2</u>	
Subtotal		<u>5</u>
Total		12

Agency Corrective Action

In the Reports of Investigation received from the agencies, fifteen allegations in nine matters were substantiated. The agencies reported the following corrective actions. (There was more than one corrective action in some disclosures):

Agency regulations or practices changed	7
Disciplinary action taken	1
Other	7
Total	15

OSC Initiatives in FY 1995

Surveys

OSC's reauthorization statute, Public Law 103-424 (effective October 29, 1994) included a provision at section 13 requiring the OSC to conduct annual surveys of individuals seeking its assistance to determine whether they were fully apprised of their rights; whether they were successful at the OSC or the Merit Systems Protection Board; and whether, regardless of the outcome of their request for assistance from OSC, they were satisfied with the treatment they received from the agency. OSC designed survey forms for mailings to requestors of assistance in prohibited personnel practice matters, recipients of written Hatch Act advisory opinions, and persons making disclosures through the whistleblower hotline. After clearance of the survey forms by the Office of Management and Budget under the Paperwork Reduction Act, OSC began survey mailings in August. Survey recipients receive the appropriate questionnaire after closure of their matter by OSC. Given the very limited number of survey responses received during August and September 1995, an analysis of the survey results from that period will be included in OSC's report on Fiscal Year 1996 survey activity.

Federal Agency Informational Program Training Aids

Section 5(d) of Public Law 103-424 (effective October 29, 1994) made agency heads and officials with delegated personnel authority responsible, in consultation with the OSC, for informing federal employees of their rights and remedies under title 5 of the U.S. Code, chapters 12 and 23. Those chapters address rights and remedies of employees with respect to:

- prohibited personnel practices;
- access to OSC for assistance in connection with—
 - prohibited personnel practice matters,
 - whistleblower disclosures, and
 - Hatch Act advice; and
- access to the Merit Systems Protection Board in connection with employee appeals from agency actions, including those involving reprisal for whistleblowing and other prohibited personnel practices.

To assist agencies in carrying out their new statutory responsibility under §5(d), OSC produced an informational guide entitled, "Employee Rights and Remedies Under 5 U.S.C., Chapters 12 and 23: U.S. Office of Special Counsel Training Aids." The OSC sent copies

of the guide to personnel directors in federal agencies and departments, and made copies available to other requestors on computer diskettes and through the Government Printing Office. Persons needing further information about these informational materials should contact Robert Murphy at 202-653-7122.

OSC On-Line

In an effort to widen its reach to federal employees and others served by the agency, OSC has developed a Home Page on the World Wide Web. OSC's Home Page address is "<http://www.access.gpo.gov/osc>" and includes access to a wide range of information, publications and forms related to the agency's programs and operations. Available information includes coverage of prohibited personnel practices; federal, state and local Hatch Act do's and don'ts; whistleblower disclosure hotline procedures; and agency management improvement initiatives. Also available are a full-text version of the guide developed by OSC for use by federal agencies in informing employees of their rights and remedies under title 5 of the United States Code; OSC policy statements on disclosures of information; and current publications and forms. OSC also provides information on its operations for posting on "IGNet", the Internet site maintained by the federal Inspectors General.

Legislation

Reauthorization of Appropriations

H.R. 2002, the Appropriations bill for Treasury, Postal Service, and General Government, was passed by the House on June 30, 1995 and by the Senate on August 4, 1995. Both chambers agreed to the President's request of \$7.955 million for OSC for FY 1996. The conference report cleared the Congress on September 31, 1995, and the bill was signed by the President on November 15, 1995 (P.L. 104-50).

Uniformed Services Employment and Reemployment Rights Act of 1994

The Uniformed Services Employment and Reemployment Rights Act (USERRA) clarified and expanded the reemployment rights of veterans and reservists returning to the workplace following active duty with the armed services. The legislation vested OSC with authority, in certain circumstances, to represent a federally employed veteran or reservist before the MSPB, and potentially the U.S. Court of Appeals for the Federal Circuit, in the event that a federal agency fails to reemploy that person in accordance with the provisions of the Act. Under USERRA, cases are referred to OSC from the Department of Labor. OSC received one referral during FY 1995 which, at publication, was being investigated by OSC.

Further Information

OSC Publications

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

Director, Congressional & Public Affairs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephone: (202) 653-9001

Prohibited Personnel Practice Complaints

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

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

Whistleblower Disclosures

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

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

Hatch Act Questions

Inquiries about the Hatch Act may be made in writing or by telephone to:

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

Outreach Programs

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

Outreach Programs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephone: (202) 653-7122

OSC On Line

Information about OSC can be obtained on its Home Page on the World Wide Web.
OSC's address is:

<http://www.access.gpo.gov/osc>

APPENDIX

Table 1

ALLEGATIONS CONTAINED IN MATTERS RECEIVED DURING FY 1995	
NATURE OF ALLEGATION	NUMBER OF ALLEGATIONS
Reprisal for exercise of a right of appeal [§2302(b)(9)]	655
Reprisal for whistleblowing [§2302(b)(8)]	617
Violation of a law, rule or regulation implementing or concerning a merit system principle [§2302(b)(11)]	725
Discrimination on the basis of race, color, sex, national origin, religion, age, or handicapping condition [§2302(b)(1)(A)-(D)]	535
Granting of unauthorized preference or advantage [§2302(b)(6)]	388
Deception or obstruction of the right to compete [§2302(b)(4)]	203
Allegations which did not cite or suggest any prohibited personnel practice or prohibited activity	302
Disclosures of alleged violation of a law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a danger to public health or safety [§1213(c) or §1213(g)]	48
Violation of the Hatch Act by a state or local government employee [§1216(a)(2)]	55
Discrimination on the basis of non-job related conduct [§2302(b)(10)]	68
Appointment, promotion, or advocating the appointment or promotion of a relative [§2302(b)(7)]	75
Violation of the Hatch Act by a federal employee [§1216(a)(1)]	42
Arbitrary or capricious withholding of information requested under the Freedom of Information Act [§1216(a)(3)]	55
Discrimination on the basis of marital status or political affiliation [§2302(b)(1)(E)]	32
Solicitation or consideration of unauthorized recommendations [§2302(b)2]	39

(continued on next page)

Table 1 (continued)

ALLEGATIONS CONTAINED IN MATTERS RECEIVED DURING FY 1995	
NATURE OF ALLEGATION	NUMBER OF ALLEGATIONS
Attempts to secure withdrawal from competition [§2302(b)(5)]	27
Coercion of political activity [§2302(b)(3)]	4
Other activities allegedly prohibited by civil service law, rule or regulation [§1216]	<u>2</u>
Total	3,872 ¹

¹ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters received.

Table 2

ALLEGATIONS CONTAINED IN MATTERS REFERRED FOR FIELD INVESTIGATION DURING FY 1995

NATURE OF ALLEGATION	NUMBER OF ALLEGATIONS
Reprisal for whistleblowing [§2302(b)(8)]	240
Reprisal for exercise of a right of appeal [§2302(b)(9)]	183
Violation of a law, rule or regulation implementing or concerning a merit system principle [§2302(b)(11)]	79
Discrimination on the basis of race, color, sex, national origin, religion, age, handicapping condition, or marital status [§2302(b)(1)(A)-(E)]	32
Granting of unauthorized preference or advantage [§2302(b)(6)]	54
Deception or obstruction of the right to compete [§2302(b)(4)]	25
Violation of the Hatch Act by a state or local government employee [§1216(a)(2)]	7
Discrimination on the basis of non-job related conduct [§2302(b)(10)]	15
Violation of the Hatch Act by a federal employee [§1216(a)(1)]	11
Appointment, promotion, or advocating the appointment or promotion of a relative [§2302(b)(7)]	13
Solicitation or consideration of unauthorized recommendations [§2302(b)(2)]	7
Other activity prohibited by civil service law, rule or regulation [§1216]	2
Arbitrary or capricious withholding of information requested under the Freedom of Information Act [§1216(a)(3)]	4
Securement of withdrawal from competition [§2302(b)(5)]	7
Total	679 ¹

¹ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters actually referred for field investigation.

ORGANIZATION OF THE OFFICE OF SPECIAL COUNSEL

