



FY2009 Performance and Accountability Report

November 16, 2009

U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300

Washington, D.C. 20036-4505

www.osc.gov

TABLE OF CONTENTS

	Page
Message from the Associate Special Counsel	3
<hr/>	
Part 1: Management Discussion and Analysis	4
<hr/>	
I. Agency at a Glance	4
II. Statutory Background	4
III. The Mission of the U.S. Office of Special Counsel	5
<hr/>	
IV. Organizational Structure of OSC	6
V. Performance Highlights	8
VI. OSC's Systems, Controls, and Legal Compliance	10
VII. Management Assurances	13
VIII. Future Effects of Known Demands, Risks, Uncertainties, Events, Conditions and Trends	14
<hr/>	
IX. Comments on Final FY 2009 Financial Statements	16
X. Endnotes	17
<hr/>	
Part 2: Performance Section	18
<hr/>	
Goals: Prohibited Personnel Practices	19
Goals: Hatch Act.....	20
Goals: USERRA	23
Goals: Whistleblower Disclosures.....	27
<hr/>	
Part 3: Financial Section	30
<hr/>	
CFO Letter	31
Independent Auditor's Report.....	32
FY 2009 Financial Statements.....	35
Notes to Principal Financial Statements.....	39



A Message from the Associate Special Counsel

It is my pleasure to present the Office of Special Counsel's Performance and Accountability Report for Fiscal Year 2009. This agency has a proud history of serving the federal workforce and the public through its tenacious defense of the merit system principles that continue to safeguard the integrity of the executive branch agencies of the United States. Fiscal Year 2009 marks the sixth year the U.S. Office of Special Counsel was required to have a financial audit. I am happy to report once again the agency's strong results, which include no reportable conditions and no material weaknesses.

To all of those who rely on our counsel, our service, and our protection, be assured that we will continue striving for excellence. Thank you for your continued trust and confidence.

Sincerely,

William E. Reukauf
Associate Special Counsel

Part 1: Management Discussion and Analysis

I. Agency at a Glance

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

II. Statutory Background

OSC was first established on January 1, 1979. From then until 1989, it operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (“the Board”). By law, OSC received and investigated complaints from current and former federal employees, and applicants for federal employment, alleging prohibited personnel practices by federal agencies. OSC provided advice on restrictions imposed by the Hatch Act on political activity by covered federal, state, and local government employees. And the agency received disclosures from federal whistleblowers (current and former employees, and applicants for employment) about wrongdoing in government agencies. The office also enforced restrictions against prohibited personnel practices and political activity by filing, where appropriate, petitions for corrective and/ or disciplinary action with the Board.

In 1989, Congress enacted the Whistleblower Protection Act. The law made OSC an independent agency within the Executive Branch, with continued responsibility for the functions described above. It also enhanced protections against reprisal for employees who disclose wrongdoing in the federal government, and strengthened OSC’s ability to enforce those protections.

The Congress passed legislation in 1993 that significantly amended Hatch Act provisions applicable to federal and District of Columbia (D.C.) government employees, and enforced by OSC.¹ Provisions of the act enforced by OSC with respect to certain state and local government employees were unaffected by the 1993 amendments.

In 1994, the Uniformed Services Employment and Reemployment Rights Act became law. It defined employment-related rights of persons in connection with military service, prohibited discrimination against them because of that service, and gave OSC new authority to pursue remedies for violations by federal agencies.²

OSC's 1994 reauthorization act expanded protections for federal employees, and defined new responsibilities for OSC and other federal agencies. It 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. The act extended the protections of certain legal provisions enforced by OSC to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under these provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the Whistleblower Protection Act, and directed agencies to consult with OSC in that process.³

In November of 2001, Congress enacted the Aviation and Transportation Security Act,⁴ which created the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the MSPB.

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 MSPB, or for individual right of action (IRA) appeals by security screeners to the MSPB.

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

OSC's mission is to protect current and former federal employees, and applicants for federal employment, especially whistleblowers, from prohibited employment practices; promote and enforce compliance by government employees with legal restrictions on political activity, and facilitate disclosures by federal whistleblowers about government wrongdoing. OSC carries out this mission by:

- investigating complaints of prohibited personnel practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
- providing advisory opinions on, and enforcing Hatch Act restrictions on political activity;
- operating an independent and secure channel for disclosures of wrongdoing in federal agencies;
- protecting reemployment and antidiscrimination rights of veterans under the USERRA; and
- promoting greater understanding of the rights and responsibilities of federal employees under the laws enforced by OSC.

IV. Organizational Structure of OSC

OSC maintains its headquarters office in Washington, D.C. Four field offices are located in Dallas, Oakland, Detroit, and Washington, D.C.

Agency components during FY2009 include the Immediate Office of the Special Counsel (IOSC), five operating units/divisions and several supporting offices explained in detail below.

Immediate Office of the Special Counsel. The Special Counsel and staff in IOSC are responsible for policymaking and overall management of OSC. They also manage the agency's congressional liaison and public affairs activities, and its outreach program, which includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

Complaints Examining Unit. This unit is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction. This unit is responsible for screening approximately 2,000 prohibited personnel practice cases per year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation or potential mediation.

Disclosure Unit (DU). This component receives and reviews disclosures from federal whistleblowers. Reporting directly to the Deputy Special Counsel, DU recommends the appropriate disposition of disclosures, which may include referral to the head of the agency involved for investigation and a report to the Special Counsel; informal referral to the Inspector General (IG) of the agency involved; or closure without further action. Unit attorneys review each agency report of investigation to determine its sufficiency and reasonableness before the Special Counsel sends the report to the President and responsible congressional oversight committees, along with any comments by the whistleblower and the Special Counsel.

Investigation and Prosecution Division (IPD). IPD is comprised of the four field offices, and is generally responsible for conducting field investigations of matters referred after preliminary inquiry by CEU. In selected cases referred by CEU for further investigation, IPD coordinates mediation of complaints in which the complainant and the agency involved have agreed to participate in OSC's voluntary Alternative Dispute Resolution (ADR) Program. In other cases, after field investigation of matters referred by CEU, IPD attorneys perform legal analyses to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. IPD investigators work with the attorneys in deciding whether a matter warrants corrective action, disciplinary action, or both. If meritorious cases cannot be resolved through negotiation with the agency involved, the attorneys represent the Special Counsel in litigation before the MSPB. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, when needed, IPD investigators and attorneys assist the Hatch Act Unit and the USERRA Unit by handling Hatch and USERRA cases.

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

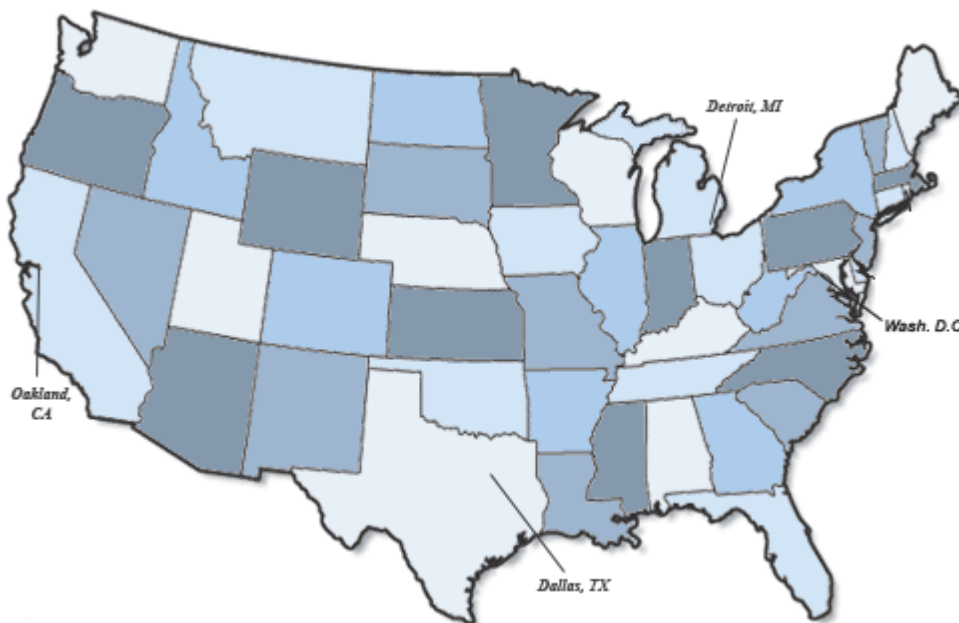
USERRA Unit. This component reviews USERRA cases referred by the Department of Labor (DOL) to OSC for legal representation of the claimant before the MSPB, if warranted. Under a nearly three-year demonstration project established by Congress, the USERRA Unit also directly received and investigated approximately one-half of all federal sector USERRA cases filed between February of 2005 and December of 2007, bypassing DOL.

Support Units:

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

Office of the Chief Financial Officer and Director of Administrative Services. This office manages OSC’s budget and provides management support and administrative services to the agency. Component units are the Budget and Analysis Branch, Document Control Branch, Human Resources Branch, Information Technology Branch, and the Procurement Branch.

Map showing locations of OSC Field Offices



V. Performance Highlights

FY 2009 brought record numbers of cases to OSC. Hatch Act cases increased an unprecedented 58%, whistleblower disclosures increased 10%, and cases involving Prohibited Personnel Practices increased 8%. OSC received 41 complex USERRA referral cases from the Department of Labor (173% higher than during FY 2008), and there is now a new statute requiring action on them within 60 days. Despite a nearly overwhelming caseload, the agency fulfilled its role as an independent prosecutorial and investigative agency charged with bringing greater integrity and efficiency to the merit system.

OSC'S SUCCESSES IN FY 2009

- 1) **FAA Safety.** OSC has referred a substantial number of whistleblower disclosures of aviation safety vulnerabilities to the Department of Transportation for investigation in the past year, prompting additional Congressional oversight and ensuring in-depth investigations into important safety allegations.
- 2) **Inspector General Resignation.** Two complainants, both high-level employees of a federal agency, alleged that personnel actions were taken because they reported, or were believed to have reported, suspected travel irregularities by an agency IG to the President's Council on Integrity and Efficiency. OSC investigated and reported its findings to the President, recommending disciplinary action against the IG, and corrective action for the two complainants. The IG resigned and the agency agreed to provide full corrective action to the complainants.
- 3) **Threats against ATF Agent.** OSC completed a referral in which the whistleblower alleged that officials with the Bureau of Alcohol, Tobacco and Firearms (ATF) failed to adequately investigate death threats made against an agent and that ATF lacked sufficient policies on the investigation of threats and the protection of its agents. The Department of Justice found that ATF officials needlessly and inappropriately delayed investigation into some of the threats made against the agent and that ATF's policies were generally sufficient, but that an amendment was necessary to ensure that orders for emergency relocations were in writing.
- 4) **Missing Property.** An OSC referral substantiated two whistleblowers' claims of millions of dollars of missing government property, including computers and other electronic equipment, at Indian Health Services, Rockville, Maryland. Furthermore, the agency's report demonstrated its continued failure of accountability, which OSC reported to the President and Congress.
- 5) **Mediated Settlement after Aircraft Safety Disclosure.** An electronics mechanic disclosed to his agency that a specific aircraft was not being repaired and overhauled according to specifications. He alleged that this could result in an electrical short-circuit and cause a crash. Shortly thereafter, the employee was reassigned and received a letter of reprimand. Through

OSC mediation, the agency agreed to remove the letter of reprimand from the employee's record and to issue him a written commendation and cash award.

- 6) **Mediated Settlement after Public Safety Disclosure.** A scientist alleged that he was retaliated against after raising three critical public health and safety issues and assisted a congressional committee's investigation. The scientist was demoted, placed in untenable working conditions, and given a negative performance appraisal. Through mediation, the agency agreed to pay the scientist a lump sum and to expunge any unsatisfactory performance reviews or other related documents critical of his work. The agency also agreed to pay attorney's fees.
- 7) **Full Corrective Action after Reprisal for Whistleblowing.** Complainant, a research pilot, alleged that he was grounded from flying, subjected to a psychiatric examination, reassigned to a non-flying position, and coerced into accepting a position at another agency facility because of his whistleblowing. He reported that several managers had violated various laws and agency aviation safety directives, engaged in gross mismanagement, abused their authority, and endangered public safety. The agency agreed to reassign complainant back to his original duty station and pay him monetary restitution.
- 8) **Enforcement of Veteran's Preference.** Complainant alleged that his employing agency improperly imposed a one-day cutoff in accepting applications for an information technology position. Based on the investigation, OSC determined that the agency had granted the selectee an unauthorized preference and violated veterans' reference requirements in selecting a requested candidate by name over a higher-standing preference eligible applicant. The agency agreed to offer the veteran a similar position and reassigned the human resources official from the delegated examining unit.
- 9) **Increased Hatch Act Litigation & Investigation.** As a result of the considerable increase in both the number and seriousness of Hatch Act violations by federal employees during the 2008 Presidential election, the Hatch Act Unit continues to generate increased investigative and litigation activity at OSC. Many of these violations involve supervisors coercing subordinates to engage in political activity and employees soliciting political contributions. In one such case, an administrative law judge recently held that a federal supervisor should be removed from her employment because she sent a partisan political e-mail to six individuals, including two subordinates, while she was on duty and in the federal workplace.
- 10) **Hatch Act Disciplinary Action.** OSC also has investigated many other significant Hatch Act cases and has filed seven complaints for disciplinary action with the Merit Systems Protection Board, with many more to be filed soon. For example, one case was filed against a federal supervisor who, during a mandatory staff meeting, told his subordinates which Presidential candidate he planned to vote for, polled them about the candidates for whom they planned to vote, and then encouraged them to exercise their right to vote.
- 11) **More Hatch Act Disciplinary Action.** Another significant investigation by OSC resulted in a 90-day suspension for a high level supervisory official at a federal agency who violated three provisions of the Hatch Act: the prohibitions against using one's official authority or influence for the purpose of affecting the result of an election; soliciting, accepting, or receiving a

political contribution; and engaging in political activity while on duty or in federal room or building. The supervisor hosted a partisan political fundraising event in her home and, during a staff meeting, invited her subordinates to the event.

- 12) **Other Hatch Act Prosecutions.** OSC also successfully prosecuted two federal employees for violating the Hatch Act's prohibition against being a candidate in a partisan election. In both cases, the Merit Systems Protection Board ordered the federal employees removed from their employment for violating the Act.
- 13) **Litigating important USERRA matters.** This year, OSC tried a case of first impression that should clarify the remedies available to federal contract employees whose USERRA rights have been violated by a federal executive agency. OSC will file several other cases before the end of the year if no settlement is reached.
- 14) **Obtaining relief for military service members under USERRA.** OSC has received a record number of USERRA referrals from the Department of Labor, many of which have resulted in favorable settlements for service members, including retroactive promotions, back pay, and restored leave. In addition to obtaining individual relief, OSC has also sought to make broader "systemic" changes in agency policies and procedures to ensure better compliance with USERRA. This includes ensuring that agency merit promotion plans have a mechanism for considering employees who are absent due to military service.
- 15) **OSC continues to enhance its resources for conducting mediations.** Instead of having one full time mediator, seven people from different parts of the agency have received training in conducting mediations. OSC now has a cadre of professionals with varied skills and legal expertise in multiple areas from which to draw.

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

Management control activities carried out by OSC include periodic reviews of agency administrative and program elements to assure that obligations and costs comply with applicable laws; funds, property and other assets are safeguarded; revenues and expenditures are properly recorded and accounted for; and programs are efficiently and effectively carried out in accordance with law and management policy. During FY 2009, reviews were completed on the following agency administrative operations:

1. Information Security Program. OSC's Chief Information Officer conducts an annual security review. The results of this review were summarized in the agency's Federal Information Security Management Act (FISMA) Report, submitted to OMB in October, 2009. The review found no material weaknesses in the agency's information technology policies, procedures, or practices. Further, there were no security incidents affecting critical agency information systems.
2. GAO Correspondence. In early 2008, GAO followed up on its 2007 correspondence entitled "Office of Special Counsel Needs to Follow Structured Life Cycle

Management Practices for its Case Tracking System.” That report had recommended that OSC develop a Systems Development Life Cycle (SDLC) approach for its case tracking system, OSC2000. OSC’s case tracking system has never had any data reliability problems during its nine years of constant use by the agency. But in order to acknowledge that a recommendation had been made, OSC spent considerable man-hours developing the SDLC documentation for the system, which was completed in August of 2007. The report also recommended that OSC establish a standardized method of querying its database. OSC launched a project to create the standardized queries and completed the project in July of 2007. OSC responded to follow-up questions from GAO concerning both of them in early FY 2008. During April of FY 2009, OSC’s Information Technology Branch followed up with GAO and received GAO’s general agreement with developing a global set of templates standardized for all new IT projects. GAO recommends that OSC use other agencies’ templates as examples, tailoring them to OSC’s specific needs.

3. Financial Audit. OSC is undergoing its sixth financial audit. The agency’s first audit was in FY 2004. The auditors reported no material weaknesses in FY 2004, FY 2005, FY 2006, FY 2007, or FY 2008. The FY 2009 audit addresses the financial statements and accounting processes, almost all of which were accomplished by the National Business Center (NBC) at the Department of Interior under an interagency outsourcing agreement. In the event that any material control weaknesses are identified during this year’s audit, they will be discussed in the next FMFIA/IG Act report.
4. OSC Review of Capital Assets. OSC has a capitalization policy for assets with a purchase price over \$50,000. OSC’s reviews its purchases quarterly, to determine if there are additional assets to capitalize.
5. HSPD-12. To comply with the security requirements of directive HSPD-12, OSC has an agreement for HSPD-12 services with the General Services Administration. OSC has met all deadlines so far for the accomplishment of HSPD-12 milestones, has issued PIV cards issued to all OSC employees, and is now working on expanding its program to include two-factor HSPD-12 authentication for securing each employee’s computer.

In FY 2009, OSC outsourced several financial management and administrative activities to the National Business Center (NBC). These activities included budget accounting, financial accounting, reporting accounting, procurement systems software, and travel services. OSC personnel and payroll data entry transactions were processed by the Department of Agriculture’s National Finance Center (NFC). These operations were administered under cross-servicing agreements. For information on any significant management control issues related to services provided under these agreements, OSC relies on information received from NBC and NFC, and any audits or reviews issued by the Inspectors General and Chief Financial Officers of the Departments of Treasury and Agriculture, and the Government Accountability Office (GAO).

In May of 2007, there was a GAO Correspondence entitled “Managerial Cost Accounting Practices at the Department of Interior”, which pointed out perceived managerial accounting deficiencies in various divisions of the Department of Interior. However, GAO states that the deficiencies affect the way NBC sets pricing and makes managerial decisions. There is no effect

on the accounting they do for OSC, other than the possibility that NBC's pricing could be slightly lower or higher than it would be with a better activity based costing system, which could spread costs evenly among clients according to effort expended on the individual clients.

In September of 2009, NBC certified its Oracle Federal Financials Major Application, in accordance with OMB Circular A-130, Appendix III, approving the system for continued operation. This authorization is valid for three years.

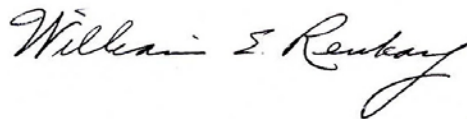
VII. Management Assurances

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

OSC's management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). OSC conducted its assessment of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, OSC can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2009 was operating effectively and no material weaknesses were found in the design or operation of the internal controls.

OSC works with the National Business Center (NBC) for its financial reporting needs. OSC obtains the SAS 70 report from NBC, and reviews it to assist in assessing internal control over financial reporting. OSC has not discovered any significant issues or deviations in its financial reporting during FY 2009 and therefore concludes that the agency's internal controls over financial reporting are sufficiently strong.

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



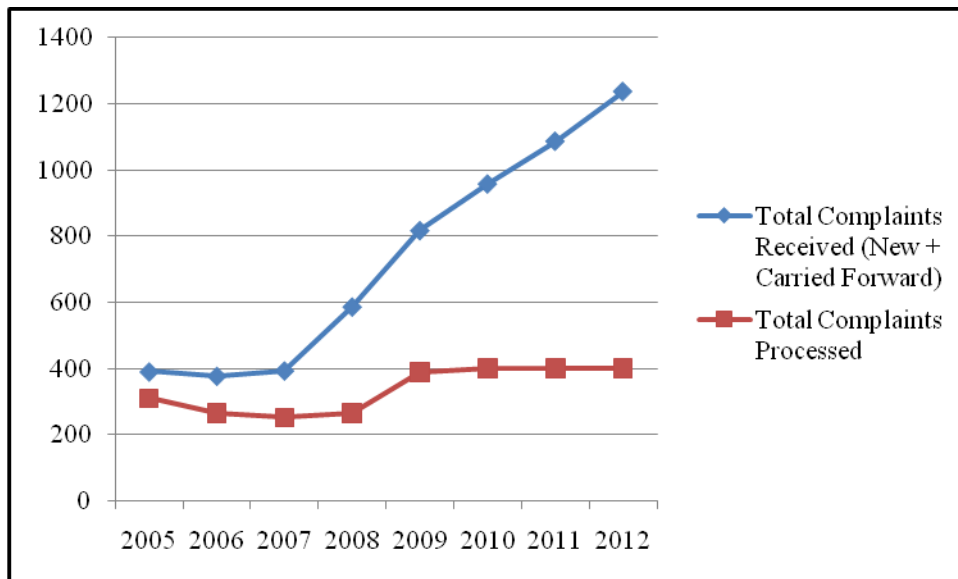
William E. Reukauf
Associate Special Counsel
November 16, 2009

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

In the past several years, the agency has experienced year-after-year increases in caseload levels. For example, in FY 2007, OSC's overall caseload increased 6.0%. In FY 2008, OSC's overall caseload increased 8.0%. And now in FY 2009, the overall caseload jumped 19.5%. Several factors which have contributed to these rising levels of complaint filings with OSC:

- In recent years, OSC has had a large number of high-profile whistleblower cases, leading to increased national press coverage of OSC. FY 2009 accelerated this trend. During FY 2008, OSC received a record 530 whistleblower disclosures. During FY 2009, OSC received 724 disclosures, which was 37% more than the record number the agency had received in FY 2008.
- There is now a very heightened awareness of the Hatch Act among Federal employees. The number of Hatch Act complaints received in FY 2008 was 58% higher than the previous year. The number received in FY 2009 was 11% higher than that record number of complaints in FY 2008. Hatch Act complaints in mid-term election year FY 2010 are expected to continue to increase.

Hatch Act Complaints



Note 1: The figures in the FY 2010 – FY 2012 columns are conservative projections based on recent trends.

Note 2: Though OSC's Hatch Act Unit has become much more efficient over the last four years, and the staff of the unit has increased from 7 to 12 FTE, the drastically increased number of cases received in FY 2008 and FY 2009 has made the workload nearly overwhelming.

- In 2004, Congress passed a statute intended to improve results and decrease the processing time for USERRA complaints from members of our armed forces. Under the three-year Demonstration Project, which ended December 31, 2007, OSC investigated half of the USERRA cases that would typically have been investigated by the Department of Labor, thereby increasing OSC's USERRA caseload considerably. OSC is confident that this pilot program improved results for members of our military who were being denied rights under USERRA. During the three year program OSC achieved 120 corrective actions in USERRA cases, which represented 27% of all USERRA cases handled by OSC under the Demonstration Project. Given these excellent results, now that the three year project is over, it is possible that Congress will ask OSC to take on the responsibility of investigating all Federal USERRA cases.
- OSC continues to investigate whistleblower retaliation complaints from Transportation Security Agency (TSA) security screeners under OSC's Memorandum of Understanding (MOU) with TSA. This MOU remains viable despite the Merit System Protection Board's decision that the Board does not have jurisdiction to adjudicate these matters.
- During FY 2009, OSC continued to certify agencies through its outreach program. As agencies implement the certification process, agency employees who might previously have been unaware of their rights and remedies through OSC are becoming informed.
- In addition to OSC's certification program, OSC continues to provide outreach programs to agencies requesting them, or as part of OSC settlements in particular matters. Outreaches explaining the twelve Prohibited Personnel Practices can precipitate new cases being filed with OSC because employees learn more about what constitutes a PPP, and sometimes realize that one may have been committed against them. But in the long run, continued outreaches should diminish actual violations by raising awareness.

IX. Comments on Final FY 2009 Financial Statements

- OSC's Asset Capitalization Policy has been in place for three years. It pertains to assets with an initial purchase price over \$50,000. The agency's phone system was the first item to be placed on the list of capitalized assets. The videoconferencing equipment and certain leasehold improvements were subsequently added to the list.
- An ongoing trend is that salaries, benefits, rent and utility payments tend to take precedence over major productivity-enhancing Information Technology projects. Salaries, benefits, rent and utility payments are over 90% of the agency's expenditures. Any increases such as pay raises or rent increases have an impact on the agency's ability to fund the IT projects. OSC continues to find ways to implement IT enhancements at low costs. However, in the near future, investments in certain systems must be made, for projects such as the upgrade of OSC's case tracking system to a web-based platform.
- OSC's Unfunded Annual Leave Liability on the Balance Sheet continues to rise. At the end of FY 2009, it was \$900,000, a 6% increase over the already high accrued leave liability amount at the end of FY 2008. This liability stems from the diligent effort given by the OSC employees to continue to accomplish the missions of the agency in a timely manner in spite of elevated case levels in all units, and to handle the increased responsibilities of the Special Task Force, the FAA Task Force, and the remaining USERRA Demonstration Project cases.
- **Limitations of the Financial Statements:** The principal financial statements have been prepared to report the financial position and results of operations of OSC, pursuant to the requirements of 31 U.S.C. 3515 (b).

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

Endnotes

¹ Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.

² Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, *et seq.* The Veterans' Employment Opportunities Act of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The act made it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veterans' preference requirement. See 5 U.S.C. § 2302(b)(11). (The former § 2302(b)(11) was re-designated as § 2302(b)(12).).

³ Public Law No. 103-424 (1994), codified in various sections of title 5 of the U.S. Code. The provision making federal agencies responsible, in consultation with OSC, for informing their employees of rights and remedies under the Whistleblower Protection Act appears at 5 U.S.C. § 2302(c).

⁴ Public Law 107-71 (2001).

Part 2: Performance Section

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	
FY 2011 TARGET	94%
FY 2011 RESULTS	

OSC achieved its timeliness target in FY 2009. We are maintaining 94% as the target 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 litigation. Therefore, raising the target above 94% would not be realistic or helpful.

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

OSC did not lose any cases this year in PPP litigation before the board. Normally, agencies will settle the matter when OSC outlines the nature of the prohibited personnel practices that have been committed.

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

During FY 2009, eleven agencies were certified or re-certified under OSC's 2302(c) program. This spike was due to an OSC effort to re-certify agencies whose certifications were expiring. We are not increasing the FY 2011 target for certifying agencies, because many agencies involved with the program have exhibited dwindling interest. We note that the statutory provision upon which OSC's certification program is based - 5 USC § 2302(c) - does not provide an enforcement tool to require agencies to become certified.

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			
FY 2011 TARGET	85%	99% oral 95% email	85%
FY 2011 RESULTS			

Indicator A: During FY 2009, OSC issued formal written advisory opinions 82% of the time within 120 days, missing the target of 90%. This is due to the tremendous increase in Hatch Act caseload. During FY 2009, the number of Hatch Act complaints requiring investigation climbed to nearly 500. Prior to FY 2008, the number of complaints was always less than 300. When considering these steep increases in caseload, issuing 82% of the written advisories within 120 days was an accomplishment. OSC's target in FY 2011 will be to issue 85% of the opinions within 120 days.

Goal 2: TO PROMOTE JUSTICE THROUGH THE QUALITY OF INVESTIGATIONS AND ENFORCEMENTS	
HATCH ACT MISSION	HATCH ACT CASES See comment 1.
PERFORMANCE INDICATOR	Indicator A: % favorable outcomes in meritorious cases
FY 2006 TARGET	90%
FY 2006 RESULTS	97%
FY 2007 TARGET	90%
FY 2007 RESULTS	97%
FY 2008 TARGET	97%
FY 2008 RESULTS	96%
FY 2009 TARGET	97%
FY 2009 RESULTS	100%
FY 2010 TARGET	97%
FY 2010 RESULTS	
FY 2011 TARGET	97%
FY 2011 RESULTS	

During FY 2009, for the first time in recent years, OSC achieved 100% favorable outcomes in meritorious Hatch Act cases, exceeding the target of 97%. Due to the high volume of upcoming litigation in FY 2010 and FY 2011 and the degree of unpredictability inherent whenever a new board is put in place at the MSPB, the agency is maintaining its FY 2011 target at 97%.

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

Indicator A: During FY 2009, OSC's Hatch Act Unit provided training to federal, state, and local agencies 99% of the time when the agency offered to sponsor the cost of the training. This exceeded the target of 95%. Only one training had to be declined this year, due to scheduling. OSC is increasing its target for FY 2011 to 97%.

Goal 1: TO ENFORCE THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT THROUGH TIMELY CASE PROCESSING	
USERRA MISSION	USERRA Referral (RE) Cases
PERFORMANCE INDICATORS	Indicator A: Average number of days in which the case is settled, closed or a decision to litigate is made.
FY 2007 TARGET	75 days
FY 2007 RESULTS	33 days
FY 2008 TARGET	75 days
FY 2008 RESULTS	110 days
FY 2009 TARGET	80% in 60 days
FY 2009 RESULTS	75% in 60 days
FY 2010 TARGET	80% in 60 days
FY 2010 RESULTS	
FY 2011 TARGET	80% in 60 days
FY 2011 RESULTS	

Indicator A: OSC changed this performance indicator for FY 2009 to reflect the Veterans' Benefits Improvement Act of 2008 (P.L. 110-389), which amended USERRA to require that OSC make its representation decision within 60 days of receiving a case from the Department of Labor (unless the claimant agrees to an extension of time). The amendments also require OSC to submit Quarterly Reports to Congress concerning its compliance with the new deadline. Because the law became effective on October 10, 2008, OSC excluded from its Quarterly Reports cases it received before that date, resulting in a higher compliance rate for FY 2009 than reported above (82% vs. 75%).

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

Indicator A: OSC was successful in 6 out of 6 meritorious referral cases during FY 2009.

Indicator B: There were no test cases filed in FY 2009 that fall in this category.

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

Three outreaches were requested in FY 2009. All three were accomplished by the USERRA Unit.

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	
FY 2011 TARGET	50%
FY 2011 RESULTS	

OSC's Disclosure Unit exceeded its target of 50% during FY 2009.

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	
FY 2011 TARGET	7%
FY 2011 RESULTS	

During FY 2009, the overall number of disclosures received by the agency rose to 724 (from 530 in FY 2008). The number of referrals to agency heads and IGs rose by 7. The quality of the incoming disclosures is the major driver of the percent referred to agency heads.

Part 3: Financial Section



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

CFO Letter

November 16, 2009

This letter usually addresses any recommendations for improvement made by the auditor concerning deficiencies in internal controls which may have an effect on the auditor's ability to express an opinion on the financial statements. I am pleased to report that there were no such matters noted by the FY 2009 auditor that were considered significant.

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

We believe the minor recommendations for improvement pointed out during the FY 2008 audit have been fully addressed.

Sincerely,

A handwritten signature in cursive script that reads "Roderick Anderson".

Roderick Anderson
Chief Financial Officer
U.S. Office of Special Counsel



**HARPER, RAINS, KNIGHT
& COMPANY**

*Certified Public Accountants
A Professional Association*

Report of Independent Auditors

Mr. William Reukauf
Associate Special Counsel

Opinion on the Financial Statements

We have audited the accompanying balance sheet of the U.S. Office of Special Counsel (OSC), as of September 30, 2009 and September 30, 2008, and the related statements of net cost of operations, changes in net position, and budgetary resources, for the year then ended. These financial statements are the responsibility of OSC's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and OMB Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*, as amended. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above, present fairly, in all material respects, the financial position of OSC as of September 30, 2009 and 2008, and its net cost of operations, changes in net position, and budgetary resources for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

Report on Internal Control over Financial Reporting

In planning and performing our audit, we considered OSC's internal control over financial reporting by obtaining an understanding of OSC's internal control, determining whether these internal controls had been placed in operation, assessing control risk, and performing tests of OSC's internal controls in order to determine our audit procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on the internal control over financial reporting.

We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 07-04, as amended. We did not test all internal controls relevant to the operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982. Providing an opinion on internal control over financial reporting was not the objective of our audit, accordingly, we do not express an opinion the effectiveness of OSC's internal control over financial reporting.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. Our consideration of the internal control over financial reporting would not necessarily disclose all deficiencies that might be a significant deficiency. A significant deficiency is a deficiency in internal control, or a combination of deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected. However, we noted no matters involving the internal control and its operation that we considered to be significant deficiencies as defined above. Our consideration of the internal control over financial reporting would not necessarily disclose all significant deficiencies that might be a material weakness. A material weakness is a significant deficiency, or combination of significant deficiencies, that result in a more than remote likelihood that a material misstatement of the financial statements will not be prevented or detected. Because of inherent limitations in internal controls, misstatements, losses, or non-compliance may nevertheless occur and not be detected. However, we noted no matters involving the internal control and its operation that we considered to be material weaknesses as defined above.

Report on Compliance with Applicable Laws and Regulations

The management of OSC is responsible for complying with laws and regulations applicable to OSC. As part of obtaining reasonable assurance about whether OSC's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations including laws governing the use of budgetary authority and government-wide policies identified in OMB Bulletin No. 07-04, as amended, non-compliance with which could have a direct and material effect on the determination of consolidated and combined financial statements.

We limited our tests of compliance to the provisions of laws and regulations referred to in the preceding paragraph. Providing an opinion on compliance with those provisions was not an objective of our audit, accordingly, we do not express such an opinion. However, we noted no noncompliance with laws and regulations, which could have a direct and material effect on the determination of the financial statements.

Other Information

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

Our audits were conducted for the purpose of forming an opinion on the financial statements of OSC taken as a whole. The other accompanying information included in this performance and accountability report is presented for purposes of additional analysis and is not a required part of the financial

statements. Such information has not been subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

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

Harger, Rains, Fung & Company, P.A.

November 13, 2009

**Office of Special Counsel
Consolidated Balance Sheets
as of September 30, 2009 and September 30, 2008
(dollars in thousands)**

	2009	2008
Assets		
Intragovernmental		
Fund Balance With Treasury(Note 2)	\$ 4,423	\$ 4,202
Total Intragovernmental	4,423	4,202
Assets With the Public		
Accounts Receivable, Net(Note 3)	26	26
General Property, Plant, and Equipment, Net(Note 4)	326	265
Total Assets	\$ 4,775	\$ 4,493
Liabilities		
Intragovernmental		
Other		
Employer Contributions & Payroll Taxes Payable	138	134
Unfunded FECA Liability	49	53
Total Intragovernmental	187	187
Liabilities With the Public		
Accounts Payable	117	203
Federal Employee and Veteran Benefits	275	339
Other		
Accrued Funded Payroll and Leave	532	499
Unfunded Leave	900	851
Total Liabilities(Note 5)	2,011	2,079
Net Position		
Unexpended Appropriations-Other Funds	3,636	3,057
Cumulative Results of Operations-Other Funds	(872)	(643)
Total Net Position	2,764	2,414
Total Liabilities And Net Position	\$ 4,775	\$ 4,493

Office of Special Counsel
Consolidated Statements of Net Cost of Operations
for the Fiscal Years Ended September 30, 2009 and September 30, 2008
(dollars in thousands)

	2009	2008
Gross costs	\$ 17,795	\$ 17,786
Less: Total Earned Revenue	-	59
Net Cost of Operations(Note 9)	\$ 17,795	\$ 17,727

Office of Special Counsel
Consolidated Statements of Changes in Net Position
for the Fiscal Years Ended September 30, 2009 and September 30, 2008
(dollars in thousands)

	2009	2008
Cumulative Results of Operations:		
Beginning Balances	\$ (643)	\$ (591)
Beginning Balances, as Adjusted	(643)	(591)
Budgetary Financing Sources:		
Appropriations Used	16,761	16,878
Other Financing Sources (Non Exchange):		
Imputed Financing(Note 8)	805	797
Other	-	-
Total Financing Sources	17,566	17,675
Net Cost of Operations	(17,795)	(17,727)
Net Change	(229)	(52)
Cumulative Results of Operations	\$ (872)	\$ (643)
Unexpended Appropriations:		
Beginning Balances	\$ 3,057	\$ 2,541
Beginning Balances, as Adjusted	3,057	2,541
Budgetary Financing Sources:		
Appropriations Received	17,468	17,468
Appropriations Used	(16,761)	(16,878)
Other Adjustments	(128)	(74)
Total Budgetary Financing Resources	579	516
Total Unexpended Appropriations	\$ 3,636	\$ 3,057
Net Position	\$ 2,764	\$ 2,414

Office of Special Counsel
Combined Statements of Budgetary Resources
for the Fiscal Years Ended September 30, 2009 and September 30, 2008
(dollars in thousands)

	2009	2008
BUDGETARY RESOURCES		
Unobligated balance; start of year	\$ 1,463	\$ 1,758
Recoveries of prior year unpaid obligations:	34	47
Budget authority:		
Appropriation:	17,468	17,468
Spending authority from offsetting collections (gross):		
Earned		
Collected(Note 9)	-	59
Total Budget authority	17,468	17,527
Permanently not available:	(128)	(74)
Total budgetary resources	\$ 18,837	\$ 19,258
STATUS OF BUDGETARY RESOURCES		
Obligations incurred:		
Direct:(Note 10)	\$ 17,270	\$ 17,736
Reimbursable:(Note 10)	-	59
Total Obligations incurred	17,270	17,795
Unobligated balance:		
Apportioned:	160	94
Total Unobligated balance	160	94
Unobligated balance not available:	1,407	1,369
Total status of budgetary resources	\$ 18,837	\$ 19,258
CHANGE IN OBLIGATED BALANCES		
Obligated balance, net; start of year:		
Unpaid obligations, brought forward, October 1	\$ 2,739	\$ 1,578
Total, unpaid obligated balance, brought forward, net	2,739	1,578
Obligations incurred	17,270	17,795
Less: Gross outlays	(17,119)	(16,587)
Less: Recoveries of prior-year unpaid obligations, actual	(34)	(47)
Total, unpaid obligated balance, net, end of period	\$ 2,856	\$ 2,739
Obligated balance, net, end of period:		
Unpaid obligations	2,856	2,739
Total, unpaid obligated balance, net end of period	\$ 2,856	\$ 2,739
NET OUTLAYS		
Net Outlays:		
Gross outlays	17,119	16,587
Less: Offsetting collections	-	(59)
Net outlays	\$ 17,119	\$ 16,528

OFFICE OF SPECIAL COUNSEL
Washington, D.C

Notes to Principal Financial Statements
As of September 30, 2009 and 2008

Office of Special Counsel
Notes to Principal Financial Statements
As of September 30, 2009 and 2008

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Reporting Entity

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

OSC is headed by the Special Counsel, who is appointed by the President, and confirmed by the Senate. At full strength, the agency employs approximately 111 employees to carry out its government-wide responsibilities in the headquarters office in Washington, D.C., and in the Dallas, Oakland, and Detroit field offices.

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

B. Basis of Presentation

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

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

C. Basis of Accounting

Transactions are recorded on both an accrual accounting basis and a budgetary basis. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. These financial statements were prepared following accrual accounting. Budgetary accounting facilitates compliance with legal requirements on the use of federal funds. Balances on these statements may therefore differ from those on financial reports prepared

pursuant to other OMB directives that are primarily used to monitor and control OSC's use of budgetary resources.

D. Taxes

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

E. Fund Balance with Treasury

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

F. Accounts Receivable

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

G. General Property, Plant and Equipment, Net

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

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

H. Advances and Prepaid Charges

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

I. Liabilities

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

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

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

J. Accounts Payable

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

K. Annual, Sick, and Other Leave

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

L. Accrued Workers' Compensation

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

M. Retirement Plans

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

FERS went into effect on January 1, 1987. FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees hired prior to January 1, 1984 elected to join either FERS, Social Security, or remain in CSRS. FERS offers a savings plan to which OSC automatically contributes one percent of pay and matches any employee contribution up to an additional four percent of pay. For FERS participants, OSC also contributes the employer's matching share of Social Security.

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

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

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

N. Net Position

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

O. Imputed Costs/Financing Sources

Federal government entities often receive goods and services from other Federal government entities without reimbursing the providing entity for all the related costs. In addition, Federal government entities also incur costs that are paid in total or in part by other entities. An imputed financing source is recognized by the receiving entity for costs that are paid by other entities. OSC recognized imputed costs and financing sources in fiscal years 2009 and 2008 to the extent directed by OMB.

P. Revenues & Other Financing Resources

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

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

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

Q. Contingencies

Liabilities are deemed contingent when the existence or amount of the liability cannot be determined with certainty pending the outcome of future events. OSC recognizes contingent liabilities, in the accompanying Balance Sheet and Statement of Net Cost, when it is both probable and can be reasonably estimated. OSC discloses contingent liabilities in the notes to the financial statements when the conditions for liability recognition are not met or when a loss from the outcome of future events is more than remote. In some cases, once losses are certain, payments may be made from the Judgment Fund maintained by the

U.S. Treasury rather than from the amounts appropriated to OSC for agency operations. Payments from the Judgment Fund are recorded as an “Other Financing Source” when made.

R. Expired Accounts and Cancelled Authority

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

S. Use of Estimates

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

T. Comparative Data

The financial statements and footnotes present comparative data for the prior fiscal year. In order to provide an understanding of changes in OSC’s financial position and operations, certain FY 2008 line amounts have been reclassified to conform to the FY 2009 financial statement and footnote presentations.

NOTE 2. FUND BALANCE WITH TREASURY

Fund Balance with Treasury account balances as of September 30, 2009 and 2008 were:

(dollars in thousands)

Fund Balances:	2009	2008
Appropriated Funds (general)	\$ 4,423	\$ 4,202
Total Fund Balance with Treasury	\$ 4,423	\$ 4,202

Status of Fund Balance with Treasury

Unobligated Balance:

Available	\$ 160	\$ 94
Unavailable	1,407	1,369
Obligated Balance Not Yet Disbursed	2,856	2,739
Total Status of Fund Balance with Treasury	\$ 4,423	\$ 4,202

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

NOTE 3. ACCOUNTS RECEIVABLE

A summary of accounts receivable from the public as of September 30, 2009 and 2008 were as follows:

(dollars in thousands)

	2009	2008
Accounts Receivable from the Public:		
Billed:		
Current	\$ 26	\$ 26
Total Accounts Receivable	26	26
Accounts Receivable from the Public, Net	\$ 26	\$ 26

NOTE 4. GENERAL PROPERTY, PLANT AND EQUIPMENT

Property, Plant and Equipment account balances as of September 30, 2009 and 2008 were as follows:

(dollars in thousands)	Service Life	Acquisition Value	Accumulated Depreciation	2009 Net Book Value	2008 Net Book Value
Office Equipment	5 yrs	\$ 330	\$ (195)	\$ 135	\$ 47
Leashold Improvements	10 yrs	273	(82)	191	218
Total		\$ 603	\$ (277)	\$ 326	\$ 265

NOTE 5. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

The liabilities on OSC's Balance Sheet as of September 30, 2009 and 2008 include liabilities not covered by budgetary resources, which are liabilities for which congressional action is needed before budgetary resources can be provided. Although future appropriations to fund these liabilities are likely and anticipated, it is not certain that appropriations will be enacted to fund these liabilities.

A. Intragovernmental and Public Liabilities

(dollars in thousands)	2009	2008
Intragovernmental:		
Accounts Payable	\$ -	
Employer Contributions & Payroll Taxes Payable	138	\$ 134
Unfunded Payroll Liabilities	49	53
Total Intragovernmental	187	187
Federal Employee Benefits-FECA Actuarial Liability	275	339
Unfunded Annual Leave	900	851
Total Liabilities Not Covered by Budgetary Resources	\$ 1,362	\$ 1,377
Total Liabilities Covered by Budgetary Resources	649	702
Total Liabilities	\$ 2,011	\$ 2,079

B. Other Information

Unfunded Payroll Liabilities consists of workers' compensation claims payable to the Department of Labor, which will be funded in a future period, and an unfunded estimated liability for future workers' compensation claims based on data provided from the DOL. Unfunded FECA liabilities for 2009 and 2008 were \$49 and \$53, respectively. Unfunded Employment liabilities for 2009 were \$0 and \$-18 for 2008. The actuarial calculation is based on benefit payments made over 12 quarters, and calculates the annual average of payments. The Actuarial FECA liabilities for 2009 and 2008 were \$275 and \$339, respectively. For medical expenses and compensation this average is then multiplied by the liability-to-benefit paid ratio for the whole FECA program.

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

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

NOTE 6. OPERATING LEASES

OSC occupies office space under lease agreements in Washington, DC, Dallas, Oakland, and Detroit that are accounted for as operating leases. The DC lease term began on October 26, 2009 and expires on October 25, 2019. The original Dallas lease term began on December 9, 2002 and after the new lease was entered now expires on December 8, 2017. The Oakland lease term began on March 1, 2000 and expired on February 28, 2005. A new 60-month lease was entered into during FY05 for the Oakland office commencing on February 1, 2006 and expiring in BFY 2011. This lease was modified in FY06 with the period commencing on July 1, 2006 and expiring BFY 2011. The Detroit lease began on March 20, 2005 and will expire on March 19, 2010.

Lease payments are increased annually based on the adjustments for operating cost and real estate tax escalations. Below is a schedule of future payments for the terms of all the leases.

(dollars in thousands)	
Fiscal Year	Total
2010	\$ 1,542
2011	1,482
2012	1,451
2013	1,432
2014	1,439
Total Future Lease Payments	\$ 7,346

The operating lease amount does not include estimated payments for leases with annual renewal options.

NOTE 7. CONTINGENCIES

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

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

NOTE 8. IMPUTED FINANCING SOURCES

OSC recognizes as imputed financing the amount of accrued pension and post-retirement benefit expenses for current employees. The assets and liabilities associated with such benefits are the responsibility of the administering agency, the Office of Personnel Management. For the fiscal month ended September 30, 2009 and 2008, respectively, imputed financing from OPM were \$805 and \$797.

NOTE 9. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

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

(dollars in thousands)	2009	2008
Investigations and Enforcements		
Intragovernmental Costs	\$ 2,458	\$ 2,779
Public Costs	15,337	15,007
Total Investigations and Enforcements	\$ 17,795	\$ 17,786
Intragovernmental Earned Revenue		\$ 59
Total Intragovernmental Earned Revenue	\$ -	\$ 59

NOTE 10. APPORTIONMENT CATEGORIES OF OBLIGATIONS INCURRED

Obligations incurred reported on the Statement of Budgetary Resources in 2009 and 2008 consisted of the following:

(dollars in thousands)	2009	2008
Direct Obligations:		
Category A	\$ 17,270	\$ 17,736
Reimbursable Obligations:		
Category A		59
Total Obligations Incurred	\$ 17,270	\$ 17,795

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

Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, calls for explanations of material differences between amounts reported in the Statement of Budgetary Resources (SBR) and the actual balances published in the Budget of the United States Government (President's Budget). However, the President's Budget that will include FY09 actual budgetary execution information has not yet been published. The President's Budget is scheduled for publication in February 2010 and can be found at the OMB website: <http://www.whitehouse.gov/omb>. The 2010 Budget of the United States Government, with the Actual column completed for 2008, has been reconciled to the Statement of Budgetary Resources and there were no material differences.

NOTE 12. UNDELIVERED ORDERS AT THE END OF THE PERIOD

Beginning with FY06, the format of the Statement of Budgetary Resources has changed and the amount of undelivered orders at the end of period is no longer required to be reported on the face of the statement. Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting, states that the amount of budgetary resources obligated for undelivered orders at the end of the period should be

disclosed. For the years ended September 30, 2009 and 2008, undelivered orders amounted to \$2,069 and \$1,588.

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

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

Fiscal Year 2009

	2009	2008
Resources Used to Finance Activities		
Current Year Gross Obligations	\$ 17,270	\$ 17,795
 Budgetary Resources from Offsetting Collections		
Spending Authority from Offsetting Collections		
Earned		
Collected		(59)
Recoveries of Prior Year Unpaid Obligations	(34)	(47)
 Other Financing Resources		
Imputed Financing Sources	805	797
Total Resources Used to Finance Activity	<u>18,041</u>	<u>18,486</u>
 Resources Used to Finance Items Not Part of the Net Cost of Operations		
Budgetary Obligations and Resources not in the Net Cost of Operations		
Change in Undelivered Orders	(166)	(870)
Current Year Capitalized Purchases	(133)	
 Components of Net Cost which do not Generate or Use Resources in the Reporting Period		
Revenues without Current Year Budgetary Effect		
Change in NonFederal Receivables	-	(15)
Other Financing Sources Not in the Budget	(805)	(797)
 Costs without Current Year Budgetary Effect		
Depreciation and Amortization	72	66
Future Funded Expenses	44	41
Imputed costs	805	797
Other Expenses Not Requiring Budgetary Resources	(63)	19
Net Cost of Operations	<u><u>\$ 17,795</u></u>	<u><u>\$ 17,727</u></u>