A Report to Congress
From The
U.S. Office of Special Counsel
For
Fiscal Year 2002

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
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The Special Counsel

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit to the Congress, in accordance with 5 U.S.C. § 1218, the Annual Report from the U.S. Office of Special Counsel for Fiscal Year 2002. As is customary, a copy of this report will also be sent to each Member of Congress.

Sincerely,

Elaine Kaplan

Enclosure

TABLE OF CONTENTS

PAGE

BIOGRAPHY OF THE SPECIAL COUNSEL 1

INTRODUCTION AND SUMMARY 2

THE U.S. OFFICE OF SPECIAL COUNSEL 3

Statutory Background 3
OSC's Mission 4
OSC's Internal Organization and Procedures 4
Complaints and Disclosure Analysis Division 5
Complaints Examining Unit 5
Disclosure Unit 5
Investigation and Prosecution Divisions 5
IPDs 5
Hatch Act Unit 6
Alternative Dispute Resolution Unit 6
Legal Counsel and Policy Division 6

OVERVIEW OF OSC OPERATIONS 6

Budget and Staffing 6
Prohibited Personnel Practice Matters 6
Receipts and Investigations 6
Enforcement Actions 7
Favorable Actions Achieved 7
Corrective Actions 9
Disciplinary Actions 11
Hatch Act Matters 14
Overview of Jurisdiction 14
Advisory Opinions 14
Violations and Enforcement 14
Recent Hatch Act Cases 15
Uniformed Services Employment Rights 17
Whistleblower Disclosures 17
Results of Referrals 19
Disclosure Unit Cases 19
Outreach Program 20
Mediation Program 21

ANNUAL SURVEY PROGRAM 22

LEGISLATION 28

Pending Appropriations 28
Reauthorization of the Office of Special Counsel 28

FURTHER INFORMATION 28

Annual Report 28
Prohibited Personnel Practice Complaints 29
Whistleblower Disclosures 29
Hatch Act 29
Outreach Program 30
OSC Mediation Program 30

SUPPORTING TABLES

Table 1: Summary of Prohibited Personnel Practice Matters 8
Table 2: Summary of Whistleblower Reprisal Matters 8
Table 3: Allegations Contained in Matters Received During FY 2002 12
Table 4: Allegations Contained in Matters Referred for Field Investigation During FY 2002 13
Table 5: Summary of Hatch Act Matters 15
Table 6: Summary of Disclosure Matters 18
Table 7: Prohibited Personnel Practice Survey Responses 23
Table 8: Hatch Act Survey Responses 26
Table 9: Disclosure Unit Survey Responses 27

U.S. OFFICE OF SPECIAL COUNSEL

BIOGRAPHY OF ELAINE KAPLAN SPECIAL COUNSEL

On May 8, 1998, Elaine Kaplan was sworn in to serve a five-year term as Special Counsel of the U.S. Office of Special Counsel (OSC). Ms. Kaplan was nominated for the position of Special Counsel by President Clinton in November 1997, and was unanimously confirmed by the Senate in April 1998.

Ms. Kaplan came to OSC with extensive experience litigating employment-related issues before federal courts and administrative tribunals. Prior to her appointment as Special Counsel, Ms. Kaplan served as Deputy General Counsel of the National Treasury Employees Union (NTEU), where she represented the interests of 150,000 employees in the areas of civil liberties, administrative law, racial and sexual discrimination, and labor law. During her 13 years at NTEU, Ms. Kaplan briefed and argued dozens of cases at all levels of the federal courts on behalf of the union and the federal employees it represented. Many of the cases in which Ms. Kaplan participated resulted in important precedent-setting decisions including, among others, *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989) (the first Supreme Court decision addressing Fourth Amendment implications of urinalysis drug-testing in the public workforce) and *National Treasury Employees Union v. United States*, 115 S.Ct. 1003 (1995) (which struck down on First Amendment grounds the statutory "honoraria ban" as applied to federal employees).

Ms. Kaplan began her legal career in 1979 at the U.S. Department of Labor, Office of the Solicitor, where she worked as a staff attorney in the Division of Employee Benefits. In 1982, Ms. Kaplan was selected to serve on the staff of the newly created Division of Special Appellate and Supreme Court Litigation, which was established to handle the Department's most significant appellate cases and all of its Supreme Court work. She subsequently held the position of staff attorney at the State and Local Legal Center, where she drafted amicus briefs on behalf of state and local governments for submission to the United States Supreme Court.

Ms. Kaplan, who is a native of Brooklyn, New York, received her undergraduate degree from the State University of New York at Binghamton and her law degree from the Georgetown University Law Center.

I. INTRODUCTION AND SUMMARY

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Under the Civil Service Reform Act (CSRA) and the Whistleblower Protection Act (WPA), OSC's primary mission is to safeguard the merit system in federal employment by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. Finally, OSC facilitates disclosures of wrongdoing in the federal government by operating a secure channel for whistleblowers.

Over the last year, in the wake of the tragic events of September 11, 2001, our nation and its leaders have devoted increasing attention to issues of national security and public safety. Federal employees, of course, are on the front lines of these efforts, and are often in the best position to identify security and safety risks. A number of federal workers have come to OSC since September 11, to raise concerns about matters that directly affect national security, and to seek help in addressing what they believe are incidents of retaliation for making disclosures related to the public health, safety and security. Several of those cases are described in this report. In short, in these challenging times, OSC's mission to provide a safe channel for whistleblower disclosures, and to prevent whistleblower retaliation, has become even more important, both to protecting safety and security, and to maintaining public confidence in our government's most vital operations.

Since taking office in May 1998, one of Special Counsel Elaine Kaplan's primary management goals has been to address the stubborn backlog of prohibited personnel practice (PPP) cases at OSC, while also achieving improvements in the quality of investigations and legal analyses, and targeting resources to more significant cases. Reducing the numbers of overage cases is important for two reasons: (1) in 1994, Congress amended the WPA to set a 240-day deadline for OSC to make a determination as to whether a prohibited personnel practice occurred; and (2) a large backlog of overage cases can prevent staff from quickly investigating and resolving more critical cases.

Significant progress has been made toward reaching this goal. During FY 2002, the backlog of overage PPP cases[1] dropped from 232 to 167, a 28% decrease. Further, while intake has been fairly consistent between FY 2001 and FY 2002, the total number of pending PPP matters at the agency dropped in FY 2002 from 855 at the beginning of the fiscal year to 575 matters as of September 30, 2002.

OSC has also undertaken several major new initiatives this year. First, in the wake of September 11, OSC provided major assistance to the new Transportation Security Administration (TSA) by agreeing to provide whistleblower protection investigations to the workforce of airport security screeners. Second, during this past fiscal year, OSC established and launched its § 2302(c) Certification Program. The program—which was successfully piloted this year at the U.S. Office of Personnel Management—prescribes a five step process

[1] Those cases in which the 240-day time frame for determining whether a prohibited personnel practice occurred has passed.

that federal agencies can use to meet their statutory mandate to inform and educate their employees about the WPA and related laws. Agencies that complete the program will receive an OSC certificate of compliance, which will be valid for three years. The program is slated for expansion government-wide during FY 2003. The program has already met within wide success, with 12 agencies enrolled in the program, and three certificates awarded by the end of the fiscal year. Moreover, the legislation establishing the new Department of Homeland Security requires that the Department achieve certification by OSC within two years, and participation in the program was also listed by the Office of Personnel Management as a "suggested performance indicator" for getting to green on the Strategic Management of Human Capital item of the President's Management Agenda.

II. THE U.S. OFFICE OF SPECIAL COUNSEL

A. Statutory Background

The Office of Special Counsel was established on January 1, 1979, by Reorganization Plan Number 2 of 1978. See 5 U.S.C.A. App.1, § 204. The Civil Service Reform Act (CSRA) of 1978, effective on January 11, 1979, enlarged its functions and powers. Pub. L. No. 95-454, 92 Stat. 1111 (1978). The Office operated as the autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB) until 1989, enforcing the laws concerning PPPs as well as the restrictions on the political activity of federal employees as governed by the Hatch Act.

In March of 1989, Congress enacted the WPA. Pub. L. No. 101-12, 103 Stat. 16. 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 United States Office of Special Counsel (OSC). Under the WPA, OSC kept its basic investigative and prosecutorial functions and its role in litigating cases before the MSPB. The WPA also substantially amended the CSRA to enhance protections against reprisal for those employees who disclose wrongdoing in the federal government, and improve the ability of OSC to enforce those protections.

Five years after passage of the WPA, Congress enacted the Office of Special Counsel Reauthorization Act of 1994. Pub. L. No. 103-424, 108 Stat. 4361 (1994). In response to widespread criticism concerning inordinate delays in the processing of complaints by OSC, Congress imposed a 240-day time limit on the agency, within which OSC is required to determine whether there are reasonable grounds for believing that a PPP has been committed.[2] The 1994 legislation also added approximately 160,000 employees of the Veterans Administration and certain government corporations to coverage under the statutes administered by OSC, and significantly broadened the definition of the types of personnel

[2] In the 1994 legislation, Congress also imposed a requirement that OSC's annual report list the number of "cases in which it did not make a determination that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i)." See 5 U.S.C. § 1218. The number of cases in which OSC did not meet the 240-day deadline in FY 2002 is listed below at p. 7.

actions covered under these statutes.[3] Finally, the 1994 legislation made federal agencies explicitly responsible for informing their employees of available rights and remedies under the WPA, and directed that OSC play a consultant role in the process. See 5 U.S.C. § 2302(c).

B. OSC's Mission

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

- investigating complaints of prohibited employment practices, especially reprisal for whistleblowing, and pursuing remedies for violation;
- operating an independent and secure channel for disclosure and investigation of wrongdoing in federal agencies;
- providing advisory opinions on, and enforcing the Hatch Act;
- protecting the reemployment rights of veterans under USERRA; and
- promoting greater understanding of the rights and responsibilities of Federal government employees under the statutes enforced by OSC.

C. OSC's Internal Organization and Procedures

OSC maintains its headquarters in Washington D.C., and has field offices in: Dallas, Texas, and Oakland, California. The agency is organized into three divisions, and two administrative support branches: the Human and Administrative Resources Management Branch and the Information Systems Branch. The branch functions include budget, finance, personnel, procurement, information technology, and records management services. During FY 2002, OSC operated with approximately 106 FTE.

The Special Counsel and her staff, who are responsible for policymaking and the overall management of OSC, including Congressional relations and public affairs, are located within the Immediate Office of the Special Counsel (IOSC). OSC's Outreach Director is

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[3] The Uniformed Services Employment and Reemployment Rights Act (USERRA), Pub. L. No. 103-353, 108 Stat. 3149 (1994) (codified at 38 U.S.C. § 4301 et seq.), also enacted in 1994, gave OSC additional responsibilities. Among other provisions, the Act authorized OSC, under certain circumstances, to represent before the MSPB and the U.S. Court of Appeals for the Federal Circuit, a federal employee who is a veteran or reservist, if a federal agency has failed to reemploy that person in accordance with provisions of the law.

Further changes relating to veterans' reemployment rights were enacted by the Veterans' Employment Opportunities Act of 1998 (VEOA), Pub. L. No. 105-339. VEOA created a new prohibited personnel practice, at 5 U.S.C. § 2302(b)(11), which makes it improper 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. The former section 2302(b)(11) was redesigned as section 2302(b)(12).

assigned to the IOSC, and is responsible for developing and/or coordinating outreach efforts by OSC, and for promoting compliance by federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

The agency is organized into three operating divisions. These are the Complaints and Disclosure Analysis Division, the Investigation and Prosecution Division, and the Division of Legal Counsel and Policy. Their functions, briefly, are as follows:

1. The **Complaints and Disclosure Analysis Division** includes OSC's two principal intake units for new matters received by the agency – the Complaints Examining Unit (CEU) and the Disclosure Unit (DU).

CEU. This unit is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction.[4] The attorneys and personnel management specialists in CEU conduct an initial review of complaints to determine whether they are within OSC's jurisdiction and whether further investigation is warranted. CEU refers all matters stating a potentially valid claim to the Investigation and Prosecution Division.[5]

DU. This unit is responsible for reviewing information submitted by federal whistleblowers, and for advising the Special Counsel on the appropriate disposition of the matter (including possible referral to the head of the relevant agency for investigation, referral to an agency Inspector General, or closure). DU also analyzes agency reports of investigation to determine whether they appear reasonable and meet statutory requirements before the Special Counsel transmits them to the President and appropriate congressional oversight committees.

2. The **Investigation and Prosecution Divisions (IPDs)** consist of three parallel Investigation and Prosecution Divisions, which include the Hatch Act (HA) Unit and the Alternative Dispute Resolution (ADR) Unit.

IPDs The three divisions investigate complaints referred after the preliminary inquiry by CEU. Each division conducts investigations to review pertinent records and to interview complainants and witnesses with knowledge of the matters alleged. Matters not resolved during the investigative phase undergo legal review and analysis to determine whether the matter warrants corrective action, disciplinary action or both. Attorneys from these units conduct litigation before the MSPB. The units also

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[4] Unless noted otherwise, all successive references to prohibited personnel practice complaints received by CEU include complaints alleging violations of civil service law, rule, or regulation listed at 5 U.S.C. § 1216, except for alleged violations of the Hatch Act. The latter are treated as a separate category of complaints, and are processed by the Hatch Act Unit (described at p. 14).

[5] When a matter is not referred for investigation, CEU must by law provide complainants with a written statement of reasons, to which they may respond. On the basis of the response, if any, CEU decides whether to finalize its preliminary determination to close the matter, or to refer the matter to the Investigation and Prosecution Division.

represent the Special Counsel when OSC intervenes or otherwise participates in other proceedings before the MSPB.

HA Unit. This unit is responsible for enforcing the Hatch Act's restrictions on the political activities of federal and certain state and local government employees. The unit receives and reviews complaints alleging Hatch Act violations and where warranted will prosecute violations before the MSPB. The unit also issues advisory opinions to individuals seeking information about the provisions of the Act.

ADR Unit. In selected cases that have been referred for further investigation, this unit contacts the complainant and the employing agency to invite them to participate in OSC's voluntary Mediation Program. If both parties agree, OSC conducts a mediation session, led by OSC mediators who have extensive mediation training and experience in federal personnel law. When mediation resolves the complaint, the parties execute a written and binding settlement agreement. If mediation does not bring about resolution, the case is referred for further investigation, as it would have been had the parties not tried mediation.

3. The **Legal Counsel and Policy Division (LC&P)**[6] provides general legal, planning and policy services to OSC, including: (1) legal advice and support in connection with agency management and administrative matters; (2) legal defense of OSC in litigation filed against the agency; (3) strategic planning; (4) policy planning and development; (5) planning, conduct, and/or follow-up on reviews of program and administrative operations; (6) management of the agency Freedom of Information/Privacy Act and ethics programs; (7) management of the statutorily required annual survey of persons seeking OSC assistance; and (8) development and coordination of reports on agency operations to other agencies and the Congress.

III. OVERVIEW OF OSC OPERATIONS

A. Budget and Staffing

During FY 2002, OSC operated with a budget of $11,883,000 and approximately 106 FTE.

B. Prohibited Personnel Practice Matters

1. Receipts and Investigations

During FY 2002, OSC received 1,548 new matters alleging PPPs with 3,392 separate allegations. Of the 1,577 matters processed by CEU in FY 2002, OSC lacked jurisdiction in 207 of the matters (or 13.1% of the total matters processed), leaving 1370 matters (86.9%) in which OSC was authorized by statute to conduct an inquiry. Following CEU review, 191 matters were referred for field investigation (13.9% of the matters over which OSC had jurisdiction). In addition, following initial review and inquiry, CEU closed 1,386 matters

[6] LC&P was formerly known as the Planning and Advice Division.

because of satisfactory resolution of an employee's complaint during the initial review, or because there was insufficient basis for further OSC action. The types of PPP allegations received in FY 2002 and the types of PPP allegations referred for field investigation are included in Tables 3 and 4, respectively, on pages 12 and 13.

In 1994, Congress imposed upon OSC a requirement that its annual report list the number of "cases in which it did not make a determination whether there are reasonable grounds to believe that a PPP has occurred, exist, or is to be taken with the 240-day period specified in section 1214(b)(2)(A)(i)," See 5 U.S.C. § 1218. At the end of FY 2002, 167 pending matters were older than 240 days.

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 OSC may initiate proceedings for corrective action before the MSPB, 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 fails to do so, may OSC proceed to petition the MSPB for corrective action.

If OSC believes a PPP has been committed and initiates discussions with the agency, the matter is often resolved through settlement between the complainant and the agency. When an agency refuses to grant appropriate corrective action after a formal request from the Special Counsel, OSC generally 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 OSC. This significantly increases the deterrent effect of OSC's efforts. In FY 2002, OSC filed one enforcement action in a PPP case with the MSPB.

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

3. Favorable Actions Achieved

OSC obtained 126 informal favorable actions[7] in FY 2002 in 107 matters. Of these favorable actions, 13 were disciplinary actions and 7 were stays of personnel actions obtained

[7] "Favorable actions" are 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 action, such as training or educational programs, to prevent future questionable personnel actions. The term encompasses: (1) those actions taken by an agency pursuant to a written request for corrective action by the Special Counsel; (2) action taken by an agency at the request of OSC as settlement of a PPP complaint in advance of a written request for corrective action by the Special Counsel; and (3) actions taken by an agency with knowledge of a pending OSC investigation, which satisfactorily resolve those matters under inquiry by OSC.

through voluntary negotiations with agencies. Cases involving allegations of reprisal for whistleblowing accounted for 83 of the 107 matters.

Table 1

Summary of Prohibited Personnel Practice Matters

	FY 2000	FY2001	FY2002
Matters received	1,958	1,292	1,548
Matters processed by Complaints Examining Unit (CEU)	1,610	1,589	1,577
Matters processed in which OSC had jurisdiction	1,343	1,401	1,370
Matters closed by CEU	1,351	1,300	1,386
Matters referred for full investigation	259	267	191
Enforcement actions	4	0	1
Stays – negotiated	7	13	7
Stays – obtained from the MSPB	2	1	1
Favorable actions obtained	75	74	126

Table 2

Summary of Whistleblower Reprisal Matters

	FY 2000	FY 2001	FY 2002
Matters received	773	546	553
Matters processed by CEU	647	700	597
Matters processed in which OSC had jurisdiction	598	626	538
Matters closed by CEU	470	499	513
Matters referred for full investigation	177	201	84
Enforcement actions	2	0	1
Stays – negotiated	4	11	6
Favorable actions obtained	51	39	98

Corrective Actions

The following is a representative sample of corrective actions obtained by OSC during FY 2002:

- A HUD employee alleged that she was not given a career-ladder promotion and was reassigned out of her Field Office Director position in violation of section 2302(b)(8). She claimed these actions were taken because she reported to the agency's Deputy Secretary that one of the agency's programs was flawed and had little value, the positions in the program were over-graded, and there were problems with the selection process for the positions. Prior to the completion of the investigation, the agency and the employee agreed to settle this matter. The agency agreed to return the employee to her Field Office Director position; retroactively promote her to the GS-15 level; and to pay a lump sum representing two years of back pay for the GS-15 salary (approximately $10,000).

- A GS-14 education line officer at the Bureau of Indian Affairs, Office of Indian Education Programs (OIEP), alleged that he was terminated during his probationary period because he made disclosures that an OIEP financial manager had made an unauthorized commitment to a private contractor in violation of the Federal Acquisition Regulation. In exchange for the employee withdrawing his OSC complaint, the agency agreed to pay him $148,170.08 for back pay, a lump sum for 351 hours of annual and restored pay minus withholdings, and $6,410.30 interest on the back pay. In addition, the agency agreed to correct the Nature of Action on his SF-50 from Termination during Probationary Period to Resignation.

- An employee of the Department of Justice, U.S. Marshal's Service had been demoted from his GS-13 supervisory position and had Contracting Officer Technical Representative (COTR) duties removed from his position because he made disclosures of aircraft maintenance violations. In response to OSC's request for corrective action, the agency agreed to promote the employee back to a non-supervisory GS-13 level position, restore his COTR duties, and pay his attorney's fees.

- The Immigration and Naturalization Service (INS) agreed to provide full corrective relief to two Border Patrol Agents whom OSC concluded had suffered retaliation because they made disclosures to the media concerning border security lapses, in the wake of the September 11th terrorist attacks. The agents, who are assigned to INS' Detroit Sector Office, alleged that INS took or threatened to take personnel actions against them because they had disclosed, among other things that: (1) 28 field agents were attempting to protect 804 miles of waterway and shoreline between the U.S. and Canadian border with only one working boat, several damaged electronic sensors, and a broken remote surveillance camera; and (2) 324 field agents were then serving the entire U.S.- Canada border and the agents were often required to release certain detainees because the Border Patrol did not have its own detention facilities. The disclosures were reported by print and television media, including the Detroit Free Press and NBC's *Today Show*, angering some Border Patrol officials, who viewed the

public revelation of these issues as an act of "disloyalty." As a result, the INS temporarily changed the agents' tours of duty, which caused them to lose special pay, and proposed to suspend them for 90 days and demote them for one year. OSC concluded that there were reasonable grounds to believe that the Border Patrol officials' actions against the complainants violated the WPA, and the First Amendment of the U.S. Constitution. The INS Commissioner agreed to provide full corrective action in response to OSC's findings, including: (1) providing the agents with back pay plus interest for the loss of all special pay; (2) rescinding, and expunging from their personnel files, the proposals to suspend and demote the agents; and (3) providing OSC-sponsored whistleblower protection training for all managers and supervisors in the Detroit Sector and Eastern Regional Offices.

- OSC negotiated the settlement of a whistleblower complaint filed by an International Aviation Operations Specialist with the Federal Aviation Administration (FAA) in Washington, DC. The complainant alleged that he was fired because he alerted his supervisors and the FBI to what he reasonably believed might be a link between one of the hijackers involved in the September 11th terrorist attacks and an individual who had received Aviation Security training at the FAA Academy. After a preliminary OSC inquiry supported the complainant's allegations, OSC asked the FAA to voluntarily reinstate the complainant while OSC completed its investigation. When the FAA declined, OSC obtained a formal stay from the MSPB. Pursuant to the Board's order, the complainant was reinstated while OSC completed its investigation. After completing its investigation, OSC concluded that there existed reasonable grounds to believe that complainant's dismissal was in retaliation for protected whistleblowing. The settlement provides the complainant with, among other things, full back pay and benefits, attorney's fees, and a voluntary reassignment into a position as an FAA Aeronautical Information Specialist at the same grade and pay that he held at the time of his unlawful dismissal. The FAA also provided OSC sponsored whistleblower training for Office of International Aviation supervisors and managers.
- OSC finalized corrective action in a complaint concerning a U.S. Army Corps of Engineers maintenance technician who alleged that he had experienced workplace harassment, and significant change in duties and working conditions because he had reported to the State of California that an Army water treatment program had been compromised by neglect in violation of state regulations. In a settlement agreement reached between the employee and the agency to settle the OSC complaint and all other claims and appeals, the agency agreed to restore sick and annual leave, facilitate a disability retirement by contributing to the employee's buying back of military time in anticipation of retirement, pay a small amount of attorney's fees, and reimburse him for his medical costs. The agency also agreed to provide training to its managers on whistleblower protection laws.

Disciplinary Actions

The following are a representative sample of disciplinary actions obtained by OSC during FY 2002:

- In September, OSC persuaded the Department of the Army to reprimand one supervisor and counsel another for having caused the reassignment of a quality assurance specialist to an overseas position because of the employee's disclosure of regulatory violations concerning the shipment of munitions.

- In September, in a nepotism case, OSC secured a settlement providing for corrective action, as well as disciplinary action, against a GS-14 Hearing Office Director of the Social Security Administration's Office of Hearings and Appeals (SSA). OSC's investigation revealed that the Director recommended that her first cousin be selected for a GS-13 Supervisory Paralegal Specialist position. After the Director sent a memorandum to the selecting official recommending that her cousin be selected, the Director's cousin was selected. Because the Director advocated the promotion of her first cousin (a "relative" as defined in 5 U.S.C. § 3110(a)(3)), OSC found reasonable grounds to believe that the Director had violated 5 U.S.C. § 2302(b)(7), which prohibits nepotism in the federal government. The SSA agreed to settle the matter by, among other things, re-advertising the position, and requiring the Director to no longer directly supervise or rate her cousin. In addition, SSA agreed to suspend the Director for five business days without pay.

- In August, OSC permitted a park superintendent to retire from service in lieu of disciplinary action based on an OSC investigation that demonstrated that the official had engaged in a lengthy pattern and practice of harassment and retaliation against a subordinate foreman who had disclosed to Members of Congress and the media, evidence of the superintendent's abuse of authority and gross mismanagement of the park's historical ships. The acts of retaliation included a demotion, the failure to promote, and significant changes in the whistleblower's duties and working conditions.

Table 3

Allegations Contained in Matters Received During FY 2002	
Nature of Allegation	**Number of Allegations**
Reprisal for whistleblowing [§ 2302(b)(8)]	557
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)]	508
Reprisal for exercise of a right of appeal [§ 2302(b)(9)]	447
Violation of a law, rule or regulation implementing or concerning a merit system principle [§ 2302(b)(12)]	408
Discrimination on the basis of race, color, religion, sex, national origin, age, or handicapping condition [§ 2302(b)(1)(A)-(D)]	383
Granting of unauthorized preference or advantage [§ 2302(b)(6)]	336
Deception or obstruction of the right to compete [§ 2302(b)(4)]	258
Allegations which did not cite or suggest any prohibited personnel practice or prohibited activity	104
Discrimination on the basis of non-job related conduct [§ 2302(b)(10)]	92
Solicitation or consideration of unauthorized recommendations [§ 2302(b)(2)]	75
Attempts to influence withdrawal from competition [§ 2302(b)(5)]	59
Appointment, promotion, or advocating the appointment or promotion of a relative [§ 2302(b)(7)]	57
Violation of a Veterans Preference Requirement [§ 2302(b)(11)]	40
Discrimination on the basis of marital status or political affiliation [§ 2302(b)(1)(E)]	38
Arbitrary or capricious withholding of information requested under the Freedom of Information Act [§ 1216(a)(3)]	23
Coercion of political activity [§ 2302(b)(3)]	5
Other activities allegedly prohibited by civil service law, rule or regulation [§ 1216]	2
Total	3,392[8]

[8] Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters received. Moreover, while a matter is being handled by OSC, additional allegations may be added to those initially presented to OSC.

Table 4

Allegations Contained in Matters Referred for Field Investigation During FY 2002

Nature of Allegation	Number of Allegations
Reprisal for whistleblowing [§ 2302(b)(8)]	122
Reprisal for exercise of a right of appeal [§ 2302(b)(9)]	83
Granting of unauthorized preference or advantage [§ 2302(b)(6)]	51
Violation of a law, rule or regulation implementing or concerning a merit system principle [§ 2302(b)(12)]	48
Deception or obstruction of the right to compete [§ 2302(b)(4)]	28
Discrimination on the basis of race, color, religion, sex, national origin, age, or handicapping condition [§ 2302(b)(1)(A)-(D)]	20
Discrimination on the basis of non-job related conduct [§ 2302(b)(10)]	15
Appointment, promotion, or advocating the appointment or promotion of a relative [§ 2302(b)(7)]	14
Attempts to influence withdrawal from competition [§ 2302(b)(5)]	9
Solicitation or consideration of unauthorized recommendations [§ 2302(b)(2)]	8
Discrimination on the basis of marital status or political affiliation [§ 2302(b)(1)(E)]	6
Violation of a Veterans Preference requirement [§ 2302(b)(12)]	5
Arbitrary or capricious withholding of information requested under the Freedom of Information Act [§ 1216(a)(3)]	1
Total	410[9]

[9] Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters referred. Moreover, while a matter is being handled by OSC, additional allegations may be added to those initially presented to OSC.

C. Hatch Act Matters

1. Overview of Jurisdiction

Under the Hatch Act, as enacted in 1939, federal employees, employees of the District of Columbia (D.C.) government, and selected employees of state and local governments are prohibited from engaging in certain types of political activity. In 1993, Congress passed legislation that significantly amended the Hatch Act as it applies to federal and D.C. employees. These amendments permit most federal and D.C. employees to take an active part in partisan political management and in partisan political campaigns. Nevertheless, there continue to be important restrictions on the political activities of federal employees, including partisan candidacy, solicitation of political contributions, and political activity while on duty. The 1993 amendments did not change the provisions that apply to state and local government employees.

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

2. Advisory Opinions

During FY 2002, OSC issued approximately 3,245 advisory opinions in response to telephone, written and email inquiries.

3. Violations and Enforcement

During FY 2002, the number of matters alleging violations of the Hatch Act continued to increase, with OSC receiving 213 new matters. Following initial review, 8 matters were referred for field investigation. OSC resolved 107 complaints, including issuing 49 warning letters and filing 4 enforcement actions with the MSPB.

Table 5

Summary of Hatch Act Matters			
	FY 2000	**FY 2001**	**FY 2002**
Advisory opinions issued	2,810	2,806	3,245
Matters received	98	185	213
Matters referred for investigation	5	10	8
Disciplinary action complaints filed with MSPB	4	8	4
Disciplinary actions obtained before MSPB and through negotiation	2	8	4
Warning letters issued	21	59	49
Corrective actions taken by employees in response to OSC cure letter:		29[10]	18
Withdrawal from partisan races		21	12
Resignation from Hatch-covered employment		6	5
Other		2	1

Recent Hatch Act Cases

- In October 2000, OSC filed a complaint for disciplinary action against a school teacher of the District of Columbia, charging that he violated the Hatch Act's ban on candidacy for public office in a partisan election. In March 2002, the MSPB found that the employee violated the Hatch Act and ordered that he be removed from his employment with the District of Columbia. (Special Counsel v. Briggs, MSPB Docket No. CB-1216-01-0002-T-1).

- In December 2000, OSC filed a disciplinary action complaint against an employee of a non-profit organization, the Joint Council for Economic Opportunity (JCEO) for Clinton and Franklin Counties, NY. OSC charged the employee with violating the Hatch Act's ban on candidacy for public office in a partisan election based on the JCEO's receipt of Community Service Block Grant funding which made the JCEO a covered agency for purposes of the Hatch Act. In an Initial Decision dated January 24, 2002, which became final on February 28, 2002, the Board found that the employee's candidacy violated the Hatch Act and ordered that she be removed from her position. (Special Counsel v. Perry, MSPB Docket No. CB-1216-01-0006-T-1).

[10] OSC began monitoring these categories of corrective actions in FY 2000.

- During 2001, OSC filed a complaint for disciplinary action against an Assistant Nutritionist employed by the Erie County Department of Health in New York, charging that the employee violated the Hatch Act's ban on candidacy for public office in a partisan election. On January 16, 2002, the ALJ issued his Recommended Decision, in which he concluded the employee had violated the Hatch Act and the violation warranted removal. The employee filed exceptions to the Recommended Decision on February 15, 2002, and the matter was pending before the Merit Systems Protection Board at the close of the fiscal year. (Special Counsel v. Haxton, MSPB Docket No. CB-1216-01-0017-T-1).

- In October 2001, OSC filed a complaint for disciplinary action against a National Labor Relations Board (NLRB) attorney, charging the attorney violated several Hatch Act prohibitions, including: (1) engaging in political activity while on duty and in a federal building; (2) using his official authority for the purpose of affecting an election result; (3) knowingly soliciting, accepting, and receiving political contributions; and (4) knowingly soliciting the political participation of organizations doing business with the NLRB. In May 2002, the MSPB granted a joint motion for settlement ordering that: (1) the NLRB remove the attorney from his position effective July 15, 2002; (2) the NLRB permanently place a copy of the MSPB decision in the attorney's Official Personnel Folder; and (3) the attorney shall not accept or apply for federal employment on or before July 16, 2002. (Special Counsel v. Buchanan, MSPB Docket No. CB-1216-02-0003-T-1).

- In November 2001, OSC filed a complaint for disciplinary action against an Air Traffic Controller employed by the Federal Aviation Administration, for violating the Hatch Act by running as a candidate in a partisan election and for soliciting campaign contributions in support of his candidacy. On August 7, 2002, the ALJ issued his Recommended Decision, in which he concluded that the employee violated the Hatch Act's ban on candidacy in partisan elections and on solicitation of campaign contributions in support of such a candidacy. The ALJ recommended that the employee be suspended for 120 days for these violations. Both OSC and the employee filed exceptions to the Recommended Decision, and the matter was pending before the Merit Systems Protection Board at the close of the fiscal year. (Special Counsel v. McEntee, MSPB Docket No. CB-1216-02-0007-T-1).

- In January 2002, OSC filed a complaint for disciplinary action against a Head Start Director employed by the Manatee Opportunity Council, Inc., in Florida, who ran for public office in a partisan election. In February 2002, the employee resigned from her position with the Manatee Opportunity Council, Inc. In June 2002, the employee signed a settlement agreement with OSC in which she agreed to be subject to an 18-month debarment from employment with any state or local agency, or non-profit agency (deemed to be a State or local agency for purposes of the Hatch Act) within the State of Florida. Accordingly, the MSPB dismissed the complaint without prejudice. (Special Counsel v. Brown, MSPB Docket Number CB-1216-02-0017-T-1).

- In July 2002, OSC filed a complaint for disciplinary action against the then-Director of Investigative Operations, Defense Criminal Investigative Service, Office of the

Inspector General, Department of Defense, for violating the Hatch Act by engaging in a partisan candidacy for public office. This matter is pending before the MSPB. (Special Counsel v. White, MSPB Docket No. CB-1216-02-0026-T-1).

E. Uniformed Services Employment Rights

The Uniformed Services Employment and Reemployment Rights Act (USERRA) (codified at 38 U.S.C. § 4301, *et seq.*) prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

Where the employer is a federal executive agency, OSC may appear on behalf of, and act as attorney for, the aggrieved person. In such a case, however, the person must first file his USERRA complaint with the Department of Labor's Veterans' Employment and Training Service (VETS). If VETS is unsuccessful in resolving the complaint, the claimant may request that VETS refer the complaint to OSC. If the Special Counsel believes there is merit to the complaint, OSC will initiate an action before the MSPB.

OSC received 18 USERRA referrals from the U.S. Department of Labor in fiscal year 2002. Including five USERRA referrals that were pending at the end of fiscal year 2001, representation was declined by OSC in 19 cases. The Special Counsel initiated no actions before the MSPB on USERRA referrals in fiscal year 2002, but obtained corrective action on behalf of one complainant (summarized below). Including three matters received during fiscal year 2002, six USERRA referrals were pending at the end of the fiscal year.

- In February 2002, OSC secured a favorable settlement on behalf of a reservist who alleged that his employer, the U.S. Department of the Army, placed him on a "leave without pay" status while performing inactive duty training rather than more specifically recording his absence from employment as military service. The reservist claimed that the manner in which the Department characterized his absence caused a delay in his receiving a within-grade increase and a failure to accrue the correct amount of annual and sick leave. At OSC's request, the Department granted relief to the reservist.

F. Whistleblower Disclosures

In addition to its investigative and prosecutorial mission, OSC provides a safe channel through which federal employees, former federal employees, and applicants for federal employment may disclose information they reasonably believe evidences a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. See 5 U.S.C. § 1213(a).

Disclosures of information are processed by the Disclosure Unit. Upon receipt of such information from a current or former federal employee or applicant for federal employment, the Special Counsel is required by 5 U.S.C. §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 kind of wrongdoing described in the statute. OSC will not divulge the identity of the 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. OSC is not authorized to investigate allegations of the kind described in section 1213(a). The Special Counsel sends the agency report, along with any comments provided by the whistleblower who made the disclosure, and any comments or recommendations by the Special Counsel, to the President, and the congressional committees having jurisdiction over the agency. A copy of the report and any comments regarding the report are also placed in a public file located at OSC in accordance with 5 U.S.C. § 1219(a).

After review of the information received from a whistleblower, the Special Counsel may determine that, although there is not a substantial likelihood that the information discloses the type of wrongdoing described in section 1213(a), the information nonetheless merits attention. In such cases, the Special Counsel may, under section 1213(g)(2), with the consent of the whistleblower, require the agency head to review the matter and inform the Special Counsel of what action has been or is being taken. OSC then notifies the whistleblower.

During FY 2002, OSC received 555 disclosure cases for possible referral to the agency concerned under section 1213(c) or 1213(g). In addition, 245 disclosure cases were carried over from FY 2001. Disclosures usually contain multiple allegations of violations of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. In FY 2002, the Disclosure Unit referred 19 cases to agency heads for their review and completed action on 286 cases.

Table 6

Summary of Disclosure Cases

	FY 2000	FY2001	FY2002
Cases received	422	380	555
Disclosures referred for investigation and a report under § 1213(c)	8	15	19
Disclosure allegations referred to agency Inspectors General	106	119	125
Disclosure allegations closed due to lack of sufficient basis for further action	303	342	286
Remaining disclosures carried over to next fiscal year for completion of review	245	245	534

Results of Referrals

During FY 2002, OSC closed ten cases from agencies to which statutory referrals had been made. OSC's review of the agency reports provided the following results from statutory referrals: Section 1213(c) Reports

Cases in which allegations were substantiated in whole or in part	7
Cases in which allegations were wholly unsubstantiated in whole or in part	3

Disclosure Unit Cases

The following is a representative sample of cases that were either referred by the Special Counsel to the head of the agency pursuant to 5 U.S.C. § 1213(c) during FY 2002, or reports that were received from the agency and the matter closed during FY 2002:

- OSC referred allegations that officials at the San Juan District Office of the Immigration and Naturalization Service operated a program that rewarded employees who contributed $500 or more to the Combined Federal Campaign (CFC) by providing them with administrative leave. The report concluded that officials at the San Juan District Office had long operated a "Super Giver" program under which employees who contributed a certain dollar amount to the CFC were granted eight hours of administrative leave. This practice violated CFC regulations by awarding improper incentives and establishing inappropriate goals. The San Juan District Director was issued a counseling letter regarding her management of the CFC program and errors in the payroll records were corrected. *Referred December 2000; closed December 2001.*

- OSC referred allegations involving misuse of government property, violations of firearms policy and theft of government property by officials of the INS, National Firearms Unit. The report concluded that: (1) 30,000 rounds of ammunition was unaccounted for; (2) non-INS employees were permitted to use government firearms; (3) NFU employees worked on nongovernmental firearms and personal property during duty hours; (4) government property was misused, including vehicles, storage space and a Federal Express account; (5) unauthorized personnel were directed to carry firearms; and (6) unnecessary and expensive machinery was purchased. The Special Counsel concluded that the agency's decision not to propose any disciplinary action against the subject official before he retired did not appear reasonable and that the agency's failure to transmit the report's findings to the U.S. Attorney's Office for review of possible criminal prosecution also did not appear reasonable. *Referred October 2000; closed October 2001.*

- OSC referred allegations of misuse of government property and funds, violations of the federal printing statute and violations of the Anti-Deficiency Act at the National Capital Planning Commission (NCPC). The investigation substantiated the violations and disciplinary was taken against the official. However, due to the manner in which the disciplinary action was imposed, the Special Counsel found the NCPC report partially deficient. *Referred March 2000; closed June 2002.*

- OSC referred allegations that the Liberty Glen Water Treatment Plant, Lake Sonoma, California, produced non-potable water, causing a substantial and specific danger to public health and safety. The Liberty Glen Water Treatment Plant, which is operated by the U.S. Army Corps of Engineers (the Corps), provides water for the Liberty Glen Campground in Geyserville, California. The report also substantiated the whistleblower's allegation that a Liberty Glen Water Treatment Plant Operator violated the California Surface Water Treatment Regulations by submitting falsified documents to the California Department of Health Services for the month of April 2000. *Referred August 2001; closed July 2002.*

G. Outreach Program

The Outreach Program has been established to assist agencies in meeting their statutory mandate under 5 U.S.C. § 2302(c), which Congress imposed in 1994. Under that provision, federal agencies are responsible "for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them" under chapters 12 and 23 of title 5. Because of this clear statutory mandate, OSC considers outreach to federal managers and employees to be an essential part of its mission.

In an effort to assist federal agencies meet this statutory obligation, OSC designed a new employee information program. The 2302(c) Certification Program provides easy-to-use methods and training resources for agency personnel. The program has five requirements: 1) placing informational posters about WPA protections at agency facilities; 2) providing information about these protections to new employees as part of the orientation process; 3) making available periodic information to current employees about their rights and remedies under the WPA; 4) supplying WPA training for supervisors; and 5) establishing a computer link from the agency's internal web site to OSC's web site. Under the program, once these steps are completed, OSC will issue a certificate of compliance, valid for three years.

The Office of Personnel Management (OPM), as a model agency for federal employment practices, piloted the program in March of 2002 and was awarded the first Certificate of Compliance in May. Subsequent to OPM's certification, ten agencies were invited to participate in the 2302(c) Certification Program. Eight of those original invitees have since registered for the program. Two agencies, the Merit System Protection Board and the Office of Federal Housing Enterprise Oversight have also received Certificates of Compliance. Agencies that received certification or registered for the Certification Program prior to the close of FY 2002 are listed below.

Additionally, OSC continues to upgrade and revise the information available on its website, most recently by reorganizing the Outreach Section, updating the PPP and Hatch Act sections and adding a section that deals specifically with the unique employment status of employees of the Transportation Security Administration. OSC employees continue to represent the agency at conferences, seminars and agency training sessions. In FY 2002, 103 OSC employees spoke at 95 different events.

Agencies Receiving Certificates of Compliance in the 2302(c) Certification Program during FY 2002:

Office of Personnel Management
Merit Systems Protection Board
Office of Federal Housing Enterprise Oversight

Agencies Registered in the 2302(c) Certification Program during FY 2002:

Social Security Administration
Department of the Army
Corporation for National and Community Service
National Mediation Board
U.S. Marine Corps
Department of the Navy
Farm Credit Administration
Department of Veterans Affairs
Office of the Inspector General of the Department of Defense

H. Mediation Program

OSC offers mediation in selected PPP cases as an alternative to the traditional IPD investigation process. During FY 2002, the Alternative Dispute Resolution (ADR) Unit nurtured steadily increasing mediation, participation and resolution rates. Complainants accepted OSC's invitation to mediate 82% of the time; employing agencies accepted the invitation 59% of the time. Both figures reflect increases in participation over the FY 2000-2001 rates. The ADR case resolution rate increased from 33% in FY 2000-2001 to 85% in FY 2002.[11]

The FY 2002 accomplishments of the ADR Unit are due in large measure to program design changes implemented in FY 2000-2001. First, OSC broadened the scope of cases offered mediation to approximately one third of cases referred by CEU for further investigation. Additionally, cases that are already in the IPDs may come to the ADR Unit through a "reverse-referral." In those instances, the IPD investigator or attorney, in consultation with their supervisor, may request that the ADR Specialist consider the case for mediation.

The second design initiative is the extensive use of "pre-mediation." Through telephone pre-mediation with the ADR Specialist, the parties learn about the mediation process, and begin to form realistic expectations and well-defined objectives for the negotiation

[11] The 85% resolution rate in the ADR Unit reflects cases resolved in OSC mediation, as well as cases in which, after initial discussions with OSC's ADR Specialist pursuant to the OSC pre-mediation process (described below), the complainant withdrew the OSC complaint or the parties settled their dispute through another mediation program, such as the one at the Merit Systems Protection Board. Of those cases mediated at OSC, 65% have been resolved.

process. The pre-mediation phase also enables the ADR Specialist to begin building credibility and trust with the complainant.

Pre-mediation also helps the ADR Specialist determine whether the case is best handled on-site or by telephone. In a substantial number of cases, by ascertaining Complainant's desired outcome during the pre-mediation discussions, the ADR Specialist determines that telephone mediation may be the most advantageous process to resolve the dispute. Telephone mediation was used in 14 of 20 cases mediated during FY 2002. Telephone mediation had a success rate of 55%. This flexibility has greatly reduced travel costs for the ADR Unit. Because of extensive use of telephone mediation, the average travel cost of an OSC mediation for FY 2002 is under $175.00.

IV. ANNUAL SURVEY PROGRAM

Each year, OSC surveys persons whose cases were closed during the previous fiscal year. Specifically, OSC mails survey forms to all identifiable persons in closed matters (with or without favorable action) who: (1) alleged a PPP or other prohibited employment activity;[12] (2) received a written Hatch Act advisory opinion; or (3) filed a report through the whistleblower channel operated by the OSC Disclosure Unit (DU).

During FY 2002, OSC surveyed individuals whose matters were closed in FY 2001. This report covers the results of that survey cycle. OSC had not completed the survey process for matters closed in FY 2002 when this report was released for printing. Survey results for FY 2002 matters will be described in OSC's next annual report.

The forms used for the FY 2001 survey asked the following questions required by law: (1) whether potential respondents were fully apprised of their rights; (2) whether they were successful at OSC or the MSPB; and (3) whether, successful or not, they were satisfied with the service received from the OSC.[13] In addition to these required questions, the forms asked recipients to indicate how they first became aware of OSC program services, the nature of their complaint or disclosure, and the disposition of any individual right of action appeal filed with the MSPB in connection with allegations of reprisal for whistleblowing.[14]

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[12] Related violations include other matters investigated by the OSC pursuant to law – *e.g.*, complaints alleging Hatch Act violations, or arbitrary and capricious withholding under the FOIA. For ease of reference in describing survey types, the term "PPP" includes these related violations.

[13] Section 13, Public Law 103-424 (1994), codified as 5 U.S.C. § 1212 note. Survey forms ask recipients about service received in terms of courtesy, oral communications, written communications, timeliness, and the result obtained. Survey recipients are also invited to provide comments or suggestions on ways in which the OSC can improve its service to persons seeking its assistance.

[14] OSC continues to takes measures to address potential concerns about participation in the surveys. Potential respondents do not receive a survey form until after OSC has completed action on their complaint, disclosure, or request for Hatch Act advice. The survey forms advise recipients that their response is completely voluntary, and that provision of their name and case number is optional. OSC provides postage-paid return envelopes for completed survey forms, and sends a post card reminder to all survey recipients. An OSC unit other than those that process complaints, disclosures, and requests for Hatch Act advice conducts the survey program. Consistent with the decision to allow respondents to reply anonymously if they choose, the survey process does not include cross-checking or verification of responses with case files.

The combined response rate to the FY 2001 surveys was 36%, the highest overall response rate since the surveys began in 1995. Improved response rates to the PPP and DU components of the FY 2001 survey program contributed to that result. The response rate to the PPP surveys was the second highest ever (36%), and the response rate to the DU surveys was the highest ever (34%). The response rate to the Hatch Act surveys declined, however (from 49% the previous year to 38%). While the universe of potential respondents to surveys for the fiscal year covered by this report continued to be small, response rates across the three survey categories tended to be more consistent than in prior years, ranging from 34-38%.

Table 7

1. Has the federal agency by which you are employed (or were most recently employed, if you no longer work for a federal agency) informed you about your rights and remedies in connection with prohibited personnel practices?	
Response Options	***Response Numbers***
Yes	73
No	425
Do not recall	26
Never employed by a federal agency	7

2. How did you first become aware that you could file a complaint with OSC?	
OSC Web site	100
OSC speaker	4
OSC brochure	34
OSC poster	9
News story	17
Agency personnel office	19
Union	66
Co-worker	127
Other (please describe)	158

3. What was the subject matter of your complaint? (CHECK ALL THAT APPLY.)	
Combination of reprisal for whistleblowing and other prohibited personnel practices	257
Reprisal for whistleblowing only	42
Prohibited personnel practice other than reprisal for whistleblowing	273
Hatch Act	33

[15] Total responses to each question are not the same because not all respondents answered every question.

Uniformed Services Employment and Reemployment Rights Act	14
Arbitrary and capricious withholding under the Freedom of Information Act	33
Other	64

4. Was your complaint successfully resolved at OSC?	
Response Options	***Response Numbers***
Yes	23
Partially	23
No	478
Not applicable	15

5. Regardless of the subject of your complaint, if OSC closed the matter without obtaining all the relief you sought, what was the reason given for that outcome? (CHECK ALL THAT APPLY.)	
Response Options	***Response Numbers***
No OSC jurisdiction over agency involved, your position, or agency official(s) involved in your complaint	69
No personnel action taken by agency involved	54
Insufficient evidence that a law or regulation was violated by the action(s) you complained of to OSC	207
OSC could not disprove stated reason(s) of the agency involved for the action(s) you complained of	77
You or OSC settled the matter with the agency involved	27
You declined corrective action offered by the agency involved	3
You withdrew your complaint	23
OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action	10
OSC obtained a decision in the corrective action matter filed with the MSPB	5
Matter was deferred to EEO processes	46
Matter was resolved through OSC's Mediation Program	2
Other	167
Do not recall	31

6. If your complaint alleged reprisal for whistleblowing (alone or with other allegations), what reason was given for closure of the whistleblower reprisal allegation(s)? (CHECK ALL THAT APPLY.) If your complaint was not about reprisal for whistleblowing, go to next question.	
Response Options	***Response Numbers***
Information you disclosed did not appear to be a legally protected disclosure	43
Disclosure occurred after personnel action(s) complained of	6
Insufficient proof that agency action official(s) knew of the disclosure	46
Insufficient proof of connection between disclosure and personnel action(s) complained of	78
You filed an Individual Right of Action (IRA) or other appeal with the MSPB	26
Other	132
Do not recall	36

7. Regardless of the outcome, how would you rate the following elements of the service you received?					
	Very Satisfied	*Satisfied*	*No Opinion, or N/A*	*Dissatisfied*	*Very Dissatisfied*
Courtesy	63	180	64	84	150
Oral communications	43	145	69	108	169
Written communications	44	123	41	142	187
Timeliness	29	111	55	118	223
Results	10	31	45	101	354

8. Did you file an IRA or other appeal with the MSPB in connection with the same allegation(s) that you reported to OSC?	
Response Options	*Response Numbers*
Yes	131
No [skip questions 9, 10 & 11]	349
Not applicable [skip questions 9, 10 & 11]	32

9. Did you ask for the same relief that you sought from OSC?	
Response Options	*Response Numbers*
Yes	118
No	24
Do not recall	17

10. Were you successful at the MSPB in obtaining the relief you had sought from OSC?	
Response Options	*Response Numbers*
Yes	16
Partially	26
No	66
Appeal pending	39

11. If the answer to Question 10 was "Yes" or "Partially" how did you obtain that relief?	
Response Options	*Response Numbers*
Settlement	30
Decision after hearing	7
Other	9

Table 8

HATCH ACT SURVEY RESPONSES (FY 2001)[16]		
Number mailed: 131	***Number returned: 50***	***Response rate: 38%***

1. Has the federal agency by which you are employed (or were most recently employed, if you no longer work for a federal agency) informed you about your rights and restrictions in connection with political activity under the Hatch Act?	
Response Options	***Response Numbers***
Yes	14
No	9
Do not recall	3
Never employed by a federal agency	22

2. How did you first become aware that you could request an advisory opinion from OSC?	
Response Options	***Response Numbers***
OSC Web site	16
OSC speaker	0
OSC brochure	3
OSC poster	0
News story	1
Agency personnel office	6
Union	2
Co-worker	4
Other (please describe):	5

3. Did OSC's written advisory opinion adequately address your question(s)?	
Response Options	***Response Numbers***
Yes	40
Partially	4
No	3

4. How would you rate the following elements of the service you received?					
	Very Satisfied	***Satisfied***	***No Opinion, or N/A***	***Dissatisfied***	***Very Dissatisfied***
Courtesy	33	14	2	0	1
Oral communications	31	13	3	1	1
Written communications	30	12	3	1	3
Timeliness	21	19	3	3	4
Results	24	17	2	2	4

[16] Total responses to each question are not the same because not all respondents answered every question.

Table 9

DISCLOSURE UNIT SURVEY RESPONSES (FY 2001)[17]

1. Has the federal agency by which you are employed (or were most recently employed, if you no longer work for a federal agency) informed you about the channels available for, and your rights related to, the reporting of whistleblower disclosures?	
Response Options	***Response Numbers***
Yes	17
No	58
Do not recall	4
Never employed by a federal agency	1

2. How did you first become aware that you could file a disclosure with OSC?	
OSC Web site	14
OSC speaker	1
OSC brochure	6
OSC poster	1
News story	4
Agency personnel office	7
Union	11
Co-worker	14
Other (please describe)	13

3. Were you successful in obtaining the action you sought through OSC?	
Yes	8
Partly successful	2
No	68

4. Regardless of the subject of your disclosure, what was the reason given by OSC for closure	
No OSC jurisdiction over agency involved, your position, or agency official(s) involved in your disclosure	11
Insufficient evidence of a violation of law, rule or regulation, gross mismanagement, gross waste of funds, an abuse of authority, a substantial and specific danger to public health or safety	27
You withdrew your disclosure	6
You resolved the matter with the agency involved	3
Your disclosure was referred to the agency involved for a report to the OSC on the agency's inquiry into the matter	12
Other	35
Do not recall	1

[17] Total responses to each question are not the same because not all respondents answered every question.

5. Regardless of the outcome of the matter, how would you rate the following elements of the service you received from the OSC? (This question relates only to OSC performance, not to service received from the agency to which OSC may have been required to refer the matter for review or investigation.)					
	Very Satisfied	*Satisfied*	*No Opinion, or N/A*	*Dissatisfied*	*Very Dissatisfied*
Courtesy	19	23	16	10	14
Oral communications	13	20	13	16	19
Written communications	10	20	13	18	21
Timeliness	9	11	9	16	37
Results	6	4	9	14	49

V. Legislation

A. Pending Appropriations

OSC is currently operating under a Continuing Resolution at FY 2002 budget levels.

B. Reauthorization of the Office of Special Counsel

H.R. 3340, a bill to amend Title 5, included a reauthorization for OSC through fiscal year 2007.

VI. Further Information[18]

A. Annual Report

Additional copies of this report may be obtained by writing or contacting:

Director, Congressional and Public Affairs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505
Telephone: (202) 653-5163

[18] For callers with hearing/speech disabilities, all of the OSC telephone numbers listed here may be accessed via TTY by first dialing the Federal Relay Service at 800-877-8339.

B. Prohibited Personnel Practice Complaints

Individuals with questions about PPPs may contact the OSC Officer of the Week at:

Complaints Examining Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505
Telephone Numbers: (800) 872-9855
(202) 653-7188
Fax: (202) 653-5151

The form for filing a complaint, the use of which is mandatory for initiating a PPP complaint (5 C.F.R. § 1800.1), may be printed from OSC's Web site at *www.osc.gov/documents/osc11.pdf*.

C. Whistleblower Disclosures

Disclosures of information evidencing a violation 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 201
Washington, D.C. 20036-4505
Telephone Numbers: (800) 572-2249
(202) 653-9125
Fax: (202) 653-5151

The form for filing a whistleblower disclosure may be printed from OSC's Web site at *www.osc.gov/documents/osc12.pdf*.

D. Hatch Act

Inquiries about the Hatch Act may be made in writing, by telephone, or by e-mail to:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505
E-mail address: *hatchact@osc.gov*
Telephone Numbers: (800) 85-HATCH - (800) 854-2824
(202) 653-7143
Fax: (202) 653-5151

The OSC Web site may be visited for additional substantive information about the Hatch Act, including frequently asked questions by federal, state and local employees, as well as a sampling of written advisory opinions on common factual scenarios.

E. Outreach Program

Requests about OSC's outreach efforts and requests for OSC publications should be made to:

Director of Outreach
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505
Telephone: (202) 653-8962
Fax: (202) 653-5161

Many OSC forms and publications may also be printed from OSC's Web site at www.osc.gov/forms.htm.

F. OSC Mediation Program

Questions about the Mediation Program should be directed to the ADR Unit at:

Alternative Dispute Resolution Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505
E-mail address: adr@osc.gov
Telephone Numbers: (800) 872-9855
(202) 653-7188 ext. 4606