

ANNUAL REPORT  
TO CONGRESS  
*—for—*  
FISCAL YEAR 2014

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**The Special Counsel**

The Honorable Joseph R. Biden, Jr.  
President of the Senate  
Washington, D.C. 20510

The Honorable John A. Boehner  
Speaker of the House of Representatives  
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit the Report to Congress for fiscal year 2014 from the U.S. Office of Special Counsel. A copy of this report will also be posted on our website.

Sincerely,

A handwritten signature in blue ink that reads "Carolyn Lerner". The signature is written in a cursive, flowing style.

Carolyn N. Lerner

# TABLE OF CONTENTS

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|  |    |
|--|----|
| THE SPECIAL COUNSEL  | 7  |
| MESSAGE FROM SPECIAL COUNSEL CAROLYN N. LERNER                                 | 8  |
| PART 1 – INTRODUCTION TO OSC   | 10 |
| Statutory Background   | 10 |
| Mission  | 11 |
| PART 2 – OVERVIEW OF OPERATIONS  | 12 |
| Internal Organization  | 12 |
| FY 2014 Budget and Staffing  | 14 |
| FY 2014 Case Activity and Results  | 14 |
| PART 3 – PROHIBITED PERSONNEL PRACTICE COMPLAINTS                              | 16 |
| Summary of Workload, Activity, and Results                                     | 16 |
| Receipts and Investigations  | 17 |
| Prohibited Personnel Practice Successes  | 18 |
| Litigation before the Merit Systems Protection Board                           | 18 |
| Protecting Whistleblowers from Retaliation                                     | 19 |
| Protecting Federal Employees from Discriminatory Hiring Practices              | 21 |
| Stays of Personnel Actions   | 21 |
| Amicus Curiae Briefs Filed   | 22 |
| Corrective Action for Lesbian, Gay, Bisexual and Transgender Federal Employees | 22 |
| Motion for Intervention  | 23 |
| WPEA Nondisclosure Prohibition   | 23 |
| PART 4 – USERRA ENFORCEMENT  | 25 |
| Overview   | 25 |
| Referral Process   | 25 |
| Summary of Workload, Activity, and Results                                     | 26 |
| USERRA Unit Successes  | 26 |
| Outreach and Education   | 27 |
| PART 5 – ALTERNATIVE DISPUTE RESOLUTION  | 29 |
| Mediated Settlements   | 29 |
| USERRA Cases Handled by ADR  | 30 |
| PART 6 – WHISTLEBLOWER DISCLOSURES   | 33 |
| Overview   | 33 |
| Summary of Workload, Activity, and Results                                     | 33 |

|   |    |
|---|----|
| Disclosure Unit Successes   | 34 |
| PART 7 – HATCH ACT MATTERS  | 39 |
| Overview  | 39 |
| Summary of Workload, Activity, and Results  | 39 |
| Advisory Opinions   | 39 |
| Hatch Act Unit Successes  | 40 |
| Hatch Act Unit Outreach   | 41 |
| PART 8 – OUTREACH   | 43 |
| Outreach Program  | 43 |
| Annual Survey Program   | 43 |
| FURTHER INFORMATION   | 44 |
| Prohibited Personnel Practices  | 44 |
| ADR Unit  | 44 |
| Hatch Act Unit  | 45 |
| Whistleblower Disclosure Unit   | 45 |
| USERRA Unit   | 46 |
| Outreach Program  | 46 |
| Policy and Congressional Affairs  | 46 |
| SUPPORTING TABLES   |    |
| Table 1 – Summary of All OSC Case Activity  | 15 |
| Table 2 – Summary of All Prohibited Personnel Practice Complaints Activity –<br>Receipts and Processing       | 17 |
| Table 3 – Summary of All Favorable Actions – Prohibited Personnel Practice<br>Complaints                      | 24 |
| Table 4 – Summary of USERRA Referral and Litigation Activity  | 28 |
| Table 5 – Summary of USERRA Demonstration Project Activity  | 28 |
| Table 6 – ADR Program Activity – Mediation of Prohibited Personnel Practice<br>Complaints & USERRA Complaints | 32 |
| Table 7 – Summary of Whistleblower Disclosure Activity – Receipts and<br>Dispositions                         | 38 |
| Table 8 – Summary of Hatch Act Complaint and Advisory Opinion Activity  | 42 |
| APPENDICES  | 47 |
| Appendix A – Survey Totals and Response Sources by Type of Matter   | 47 |
| Appendix B – Prohibited Personnel Practice Complaints Responses   | 48 |
| Appendix C – Formal Hatch Act Advisory Opinions   | 53 |
| Appendix D – USERRA Unit Survey Responses   | 54 |
| Appendix E – Disclosure Unit Survey Responses   | 57 |
| Appendix F – List of Acronyms   | 59 |
| Appendix G – Endnotes   | 60 |



## THE SPECIAL COUNSEL



Carolyn N. Lerner was named U.S. Special Counsel by President Obama and confirmed unanimously by the U.S. Senate. She began her five-year term in June 2011. Ms. Lerner brings over twenty years of legal expertise to the office. Prior to her appointment, she was a partner in the Washington, D.C. civil rights and employment law firm of Heller, Huron, Chertkof, Lerner, Simon & Salzman, where she represented individuals in discrimination and employment matters, and nonprofits on a wide variety of matters, including best employment practices.

Ms. Lerner taught mediation as an adjunct professor at The George Washington University School of Law. She was also a mediator for the U.S. District Court for the District of Columbia.

Prior to her appointment, Ms. Lerner served on various boards, including chairing the board of the Center for WorkLife Law, a non-profit which advocates for workers with family responsibilities, the WAGE Project, which works to end discrimination against women in the workplace, and the Council for Court Excellence.

Ms. Lerner earned her undergraduate degree from the honors program at the University of Michigan with high distinction and was selected to be a Truman Scholar. She earned her law degree from New York University (NYU) School of Law, where she was a Root-Tilden-Snow public interest scholar. After law school, she served for two years as a law clerk to the Honorable Julian Abele Cook, Jr., Chief U.S. District Court Judge for the Eastern District of Michigan.

# A MESSAGE FROM SPECIAL COUNSEL

## CAROLYN N. LERNER

Fiscal year (FY) 2014 was a record-breaking year for the U.S. Office of Special Counsel (OSC). OSC saw many firsts, not just in terms of unprecedented case numbers, but more importantly, in terms of results for the public and the federal community. For instance, in 2014, the agency filed its first amicus curiae brief with the U.S. Supreme Court, in *Dep't. of Homeland Security vs. MacLean*. The case involved a former federal air marshal who blew the whistle on the Transportation Security Administration's decision to stop its air marshal coverage of long-distance flights, even though there were heightened intelligence warnings that terrorists were targeting those flights. OSC argued that Robert MacLean's disclosures should be covered by the Whistleblower Protection Act. Mr. MacLean won his case 7-2.

For the first time, OSC received over 5,000 cases, a 17 percent increase from the previous fiscal year. The number of prohibited personnel practice (PPP) complaints was also at an all-time high, 3,371, nearly a thousand more than just four years prior. We also received significantly more whistleblower disclosures in FY 2014 than in past years.

A growing proportion of these PPP complaints and whistleblower disclosures are from employees at the Department of Veterans Affairs (VA). With modest reinforcements to our staff in FY 2014 to respond to the increase in VA claims, OSC achieved landmark settlements on behalf of numerous VA employees who suffered retaliation after disclosing significant threats to patient care at medical centers throughout the country. One of these employees was Dr. Katherine Mitchell, formerly the head of the Phoenix VA emergency department. OSC honored Dr. Mitchell, and two other VA doctors, with its Public Servant of the Year award in December 2014. At the ceremony, VA Deputy Secretary Sloan Gibson commented on the value of whistleblowers in improving care at the VA, and specifically noted, "I believe it's because of Dr. Katherine Mitchell that access to care in Phoenix is beginning to improve."

OSC's work with Dr. Mitchell and other VA whistleblowers is a critical part of the effort to restore confidence in the VA. As Chairman of the House Committee on Veterans' Affairs Jeff Miller noted in comments on the House floor, "Despite its small size, OSC's efforts are making a tremendous difference." In FY 2015 and beyond, OSC will continue to work with the VA to provide expedited relief to employees, hold managers accountable for retaliation, and respond to whistleblower concerns about ongoing threats to patient care.

In addition to its efforts involving the VA, OSC's work with whistleblowers prompted a revised pay system for Border Patrol agents that will result in \$100 million in *annual* cost savings at the Department of Homeland Security, an amount roughly five times the size of OSC's annual appropriation.

In addition to our work with DHS and the VA, the number of favorable outcomes for whistleblowers and other employees across the government continues to break all-time records. OSC secured 177 favorable outcomes in 2014 helping to restore the careers of courageous public

servants who blew the whistle on fraud, waste and abuse, or encountered another form of prohibited conduct in the government. This total represents an increase of 185 percent over six years ago.

A major area of focus for corrective action has been in protecting lesbian, gay, bisexual and transgender federal employees from discrimination in the workplace. For instance, OSC obtained corrective action for a transgender U.S. Army employee who was discriminated against on the basis of her gender identity. In another case, in response to an OSC investigation, the Army modified a longstanding regulation that could disqualify civilian employees from holding sensitive positions based on their sexual orientation.

These victories for whistleblowers, the taxpayers, and the merit system showcase OSC's effectiveness and increase awareness of the agency in the federal community. As a result, the number of employees seeking OSC's assistance continues to grow, posing daunting challenges to the agency.

We anticipate receiving over 6,000 new cases in FY 2015, more than a 60 percent increase over the ten-year averaged annual case load level. OSC already faces the largest case backlog in agency history, and addressing this backlog is critical to OSC's ability to protect employees from retaliation and to respond to disclosures of wrongdoing, which continue to be received in disproportionately high levels from employees at the VA.

OSC is one of the most cost-effective methods of promoting good government, preventing violations of merit system principles, and protecting taxpayers, by curbing fraud, waste and abuse. OSC does so with very limited resources, but we are stretched beyond our carrying capacity.

As Special Counsel, I look forward to working with Congress to identify how OSC can perform its important mission even better. A strong OSC makes for a more efficient, accountable, and fair federal government.

A handwritten signature in blue ink that reads "Carolyn Heimer". The signature is written in a cursive, flowing style.

# PART 1 – INTRODUCTION TO OSC

## Statutory Background

OSC was established on January 1, 1979, when Congress enacted the Civil Service Reform Act (CSRA). Under the CSRA, OSC at first operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB or the Board). Congress directed that OSC would: (1) receive and investigate complaints from federal employees alleging prohibited personnel practices; (2) receive and investigate complaints regarding the political activity of federal employees and covered state and local employees, and provide advice on restrictions imposed by the Hatch Act on political activity by covered government employees; and (3) receive disclosures from federal whistleblowers about government wrongdoing. Additionally, OSC, when appropriate, filed petitions for corrective and or disciplinary action with the Board in prohibited personnel practices and Hatch Act cases.

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

Congress passed legislation in 1993 that significantly amended the Hatch Act provisions applicable to federal and District of Columbia government employees.<sup>1</sup>

In 1994, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA protects the civilian employment and reemployment rights of those who serve or have served in the Armed Forces, including the National Guard and Reserve, and other uniformed services. It prohibits employment discrimination based on military service, requires prompt reinstatement in civilian employment upon return from military service, and prohibits retaliation for exercising USERRA rights. Under USERRA, OSC may seek corrective action for service members whose rights have been violated by federal agency employers.<sup>2</sup>

OSC's 1994 Reauthorization Act expanded protections for federal employees and defined new responsibilities for OSC and other federal agencies. For example, the 1994 Reauthorization Act provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred or exists. Also, the Reauthorization Act extended protections to approximately 60,000 employees of what is now the Department of Veterans Affairs (VA), and whistleblower reprisal protections were afforded to employees of specified government corporations. The 1994 Reauthorization Act also broadened the scope of personnel actions covered under these provisions and required that federal agencies inform employees of their rights and remedies under the WPA.<sup>3</sup>

In November of 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),<sup>4</sup> which created the Transportation Security Administration (TSA). Under the ATSA, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. However, approximately 45,000 security screeners in TSA could not pursue

retaliation complaints at OSC or the Board. OSC's efforts led to the signing of a memorandum of understanding (MOU) with TSA, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. The MOU, however, did not provide for OSC enforcement action before the Board.

In November 2012, Congress passed and President Obama signed into law the Whistleblower Protection Enhancement Act (WPEA), which extended whistleblower protections to TSA screeners. It also overturned court decisions that had narrowed protections for government whistleblowers, and enabled OSC to seek disciplinary actions against supervisors who retaliated against whistleblowers.

In December 2012, Congress, with OSC's support, passed the Hatch Act Modernization Act, which created a more flexible penalty structure for violations of the Hatch Act by federal employees and lifted the ban on state and local government employees running for partisan political office in most cases. The new act allowed state and local employees to run as long as their salary was not entirely provided by the federal government.

## Mission

OSC is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system by protecting employees from prohibited personnel practices, especially reprisal for whistleblowing. The agency also provides employees a secure channel for disclosing wrongdoing in government agencies, enforces and provides advice on Hatch Act restrictions on political activity by government employees, and enforces employment rights under USERRA for federal employees who serve or had served in the uniformed services.

## PART 2 – OVERVIEW OF OPERATIONS

### Internal Organization

OSC is headquartered in Washington, D.C., and has three field offices located in Dallas, Texas; Detroit, Michigan; and Oakland, California. The agency includes a number of program and support units.

#### Immediate Office of the Special Counsel (IOSC)

The Special Counsel and her immediate staff are responsible for policy-making and the overall management of OSC, including supervising each of OSC's program areas. This encompasses management of the agency's congressional relations and public affairs activities and coordination of its outreach program. The latter includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

#### Complaints Examining Unit (CEU)

This unit is the intake point for all complaints alleging prohibited personnel practices. CEU normally receives approximately 2,900 such complaints each year, but last year that number spiked to 3,300. Attorneys and personnel-management specialists conduct an initial review of every complaint to determine if it is within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers qualifying matters for alternative dispute resolution (ADR) to the ADR Unit or to the Investigation and Prosecution Division (IPD) for further investigation, possible settlement, or prosecution. Matters that do not qualify for referral to ADR or IPD are closed.

#### Investigation and Prosecution Division (IPD)

If ADR is unable to resolve a matter, it is referred to IPD, which is comprised of staff at the headquarters and three field offices, and is responsible for conducting investigations of prohibited personnel practices. IPD attorneys determine whether the evidence is sufficient to establish that a violation has occurred. If it is not, the matter is closed. If the evidence is sufficient, IPD decides whether the matter warrants corrective action, disciplinary action, or both. If a meritorious case cannot be resolved through negotiation with the agency involved, IPD may bring an enforcement action before the MSPB.

#### Disclosure Unit (DU)

This unit receives and reviews disclosures from federal whistleblowers. DU recommends the appropriate disposition of disclosures, which may include referral to the head of the relevant agency to conduct an investigation and report its findings to the Special Counsel, or closure without further action. The Special Counsel then sends her determination whether the agency report is complete and appears reasonable, the report itself, and any comments by the whistleblower to the President and congressional committees of jurisdiction.

### Hatch Act Unit (HAU)

HAU investigates complaints of unlawful political activity by government employees under the Hatch Act, and represents OSC in seeking disciplinary actions before the MSPB. In addition, the HAU is responsible for providing legal advice on the Hatch Act to government employees and the public at large.

### USERRA Unit

This unit attempts to resolve employment discrimination complaints by veterans, returning National Guard members and reservists, and members of the uniformed services under the Uniformed Services Employment & Reemployment Rights Act. This unit also reviews USERRA cases referred by the Department of Labor (DOL) for prosecution and represents claimants before the MSPB. Under a second, three-year Demonstration Project, the USERRA Unit also investigated more than half the federal USERRA cases filed with DOL during FY 2014, when the Demonstration Project ended.

### Alternative Dispute Resolution Unit (ADR)

This unit supports OSC's operational program units. Matters are received from IPD and the USERRA Unit that are appropriate for mediation. Once referred, an OSC ADR specialist will contact the affected employee and agency. If both parties agree, OSC conducts a mediation session, led by OSC-trained mediators, who have experience in federal personnel law.

### Office of General Counsel

This office provides legal advice and support in connection with management and administrative matters, defense of OSC interests in litigation filed against the agency, management of the agency's Freedom of Information Act, Privacy Act, and ethics programs, and policy planning and development.

### Administrative Services Division

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

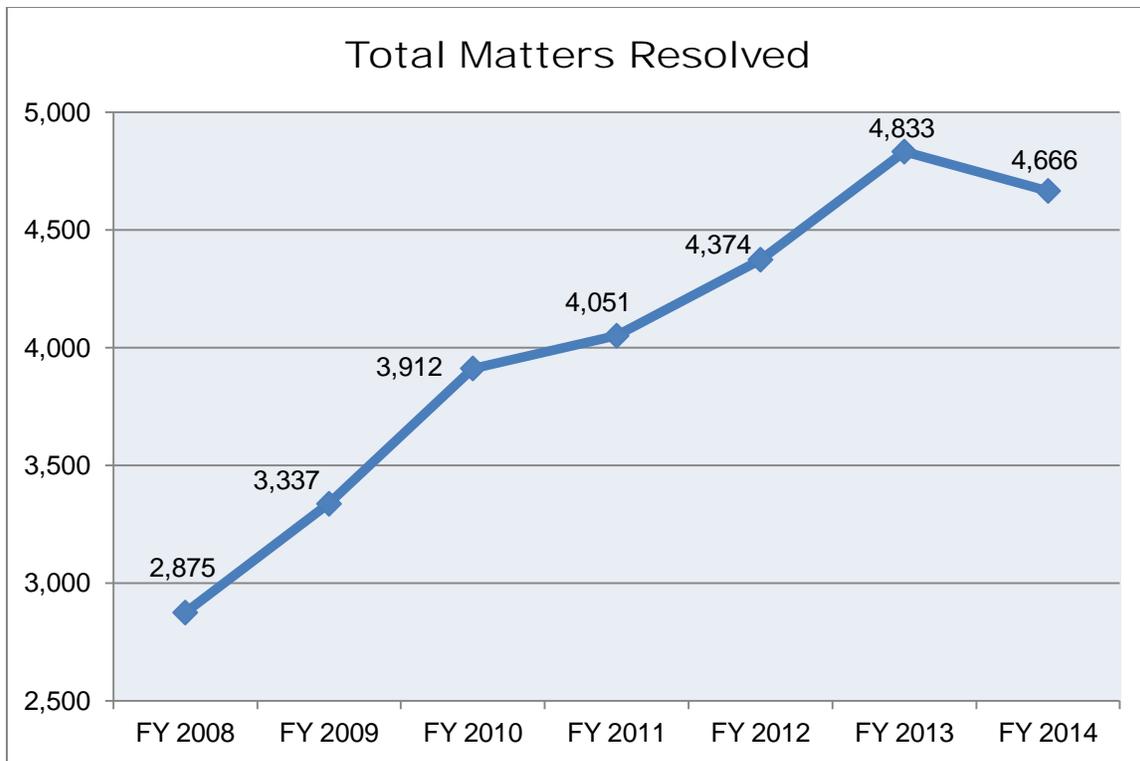
## FY 2014 Budget and Staffing

During FY 2014, OSC operated with budget authority of \$21,245,000, of which \$20,639,000 was from appropriated funds, and \$606,000 was from reimbursement agreements or other sources. The agency operated with a staff of approximately 114 full-time equivalent (FTE) employees.

## FY 2014 Case Activity and Results

During FY 2014, OSC received 5,237 new matters and resolved 4,666 of these, as shown in the charts below. In addition, OSC received 1,382 requests for Hatch Act advisory opinions. **Table 1** below summarizes overall OSC case intake and dispositions in FY 2014, with comparative data for the previous six fiscal years. More detailed data can be found in **Tables 2-7**, in sections below relating to the four specific components of OSC’s mission—prohibited personnel practice cases, Hatch Act matters, whistleblower disclosures, and USERRA cases.



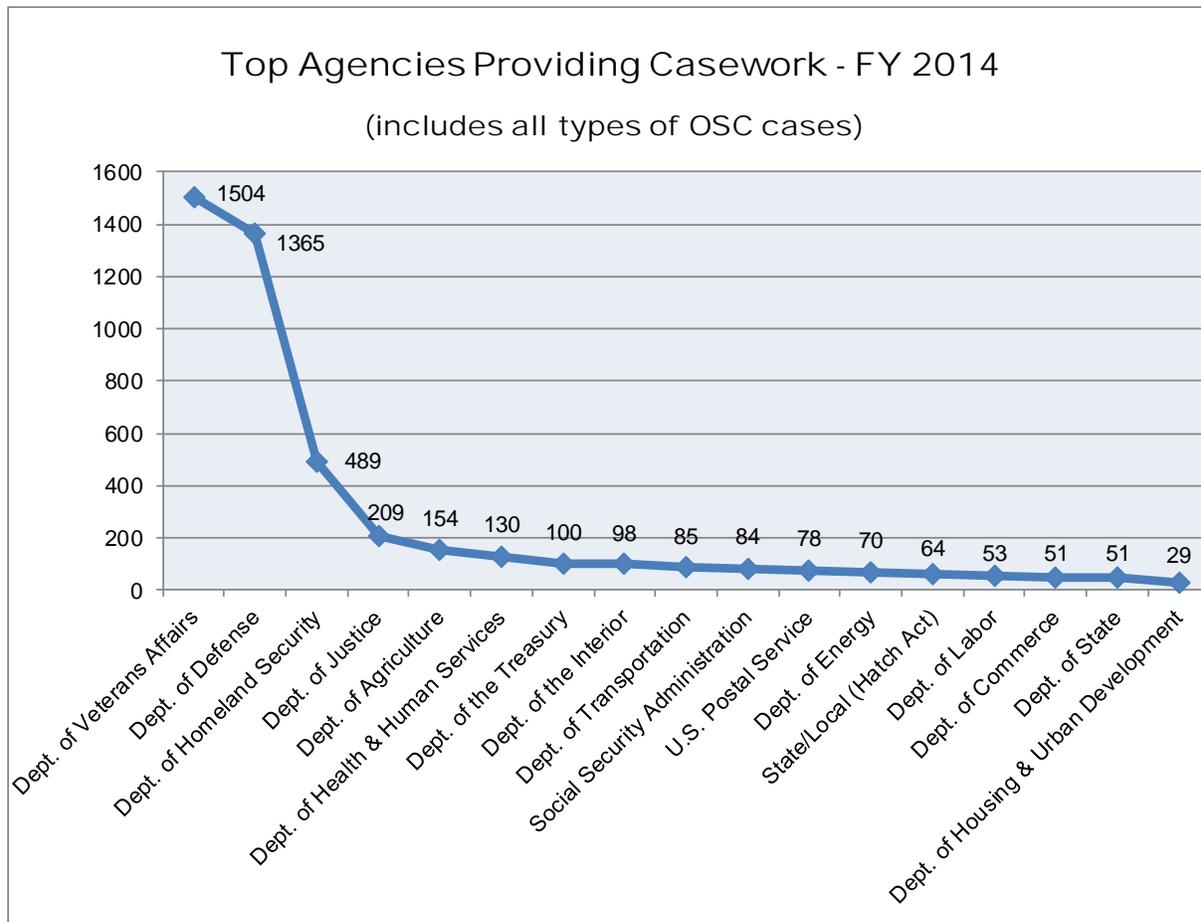


**TABLE 1 Summary of All OSC Case Activity**

|  | <b>FY 2008</b> | <b>FY 2009</b> | <b>FY 2010</b> | <b>FY 2011</b> | <b>FY 2012</b> | <b>FY 2013</b> | <b>FY 2014</b> |
|--|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>Matters<sup>a</sup> pending at start of fiscal year</b> | 700            | 943            | 1,326          | 1,357          | 1,320          | 1,744          | 1,400          |
| <b>New matters received</b>                                | 3,116          | 3,725          | 3,950          | 4,027          | 4,796          | 4,486          | 5,237          |
| <b>Matters closed</b>                                      | 2,875          | 3,337          | 3,912          | 4,051          | 4,374          | 4,833          | 4,666          |
| <b>Matters pending at end of fiscal year</b>               | 937            | 1,324          | 1,361          | 1,331          | 1,729          | 1,397          | 1,969          |
| <b>Hatch Act advisory opinions issued</b>                  | 3,991          | 3,733          | 4,320          | 3,110          | 3,448          | 1,767          | 1,382          |

<sup>a</sup> "Matters" in this table includes prohibited personnel practice cases (including TSA matters), whistleblower disclosures, and USERRA cases.

OSC cases come from across the federal government. The chart below shows the 17 agencies that were the highest sources of our cases, as well as Hatch Act matters concerning state and local employees, in fiscal year 2014.



## PART 3 – PROHIBITED PERSONNEL PRACTICE COMPLAINTS

### Summary of Workload, Activity, and Results

OSC’s largest program is devoted to handling PPP complaints. Of the 5,237 new matters OSC received during FY 2014 (not including requests for advisory opinions on the Hatch Act), 3,371 or 64 percent were new PPP complaints. Complaints involving allegations of reprisal for whistleblowing—OSC’s highest priority—accounted for the highest number of complaints resolved and favorable actions (stays,<sup>5</sup> corrective actions, and disciplinary actions) obtained by OSC during FY 2014. CEU referred 274 cases for full IPD investigation in FY 2014, a 7 percent increase from the year prior.

## Receipts and Investigations

OSC is responsible for investigating complaints alleging prohibited personnel practices defined by law.<sup>6</sup>

As the intake unit for all prohibited personnel practice complaints filed with OSC, CEU reviewed new matters to determine whether they merited further investigation. If so, these matters were referred to IPD for mediation or field investigation. Matters referred during FY 2014 included whistleblower retaliation, due process violations, and violations of law, rule, or regulations in personnel actions.

**Table 2**, below, contains FY 2014 summary data (with comparative data for the six previous fiscal years) on OSC's receipt and processing of all prohibited personnel practice complaints handled by CEU and IPD.

| TABLE 2 Summary of All Prohibited Personnel Practice Complaints Activity – Receipts and Processing <sup>a</sup> |                 |         |         |         |         |         |         |       |
|---|-----------------|---------|---------|---------|---------|---------|---------|-------|
|   | FY 2008         | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |       |
| <b>Pending complaints carried over from prior fiscal year</b>   | 358             | 474     | 769     | 863     | 934     | 1,152   | 1,045   |       |
| <b>New complaints received<sup>b</sup></b>  | 2,089           | 2,463   | 2,431   | 2,583   | 2,969   | 2,936   | 3,371   |       |
| <b>Total complaints</b>   | 2,447           | 2,937   | 3,200   | 3,446   | 3,903   | 4,088   | 4,416   |       |
| <b>Complaints referred by CEU to IPD for investigation</b>  | 135             | 169     | 220     | 270     | 252     | 255     | 275     |       |
| <b>Complaints processed by IPD</b>  | 88 <sup>c</sup> | 150     | 179     | 190     | 274     | 266     | 278     |       |
| <b>Complaints pending in IPD at end of fiscal year</b>  | 185             | 201     | 250     | 331     | 325     | 316     | 321     |       |
| <b>Total complaints processed and closed (CEU and IPD combined)</b>   | 1,971           | 2,173   | 2,341   | 2,508   | 2,750   | 3,041   | 3,003   |       |
| <b>Complaint processing times</b>   | Within 240 days | 1,889   | 2,045   | 2,185   | 2,327   | 2,570   | 2,594   | 2,577 |
|   | Over 240 days   | 80      | 127     | 154     | 175     | 439     | 440     | 422   |
| <b>Percentage processed within 240 days</b>   | 95%             | 94%     | 93%     | 92%     | 88%     | 85%     | 85%     |       |

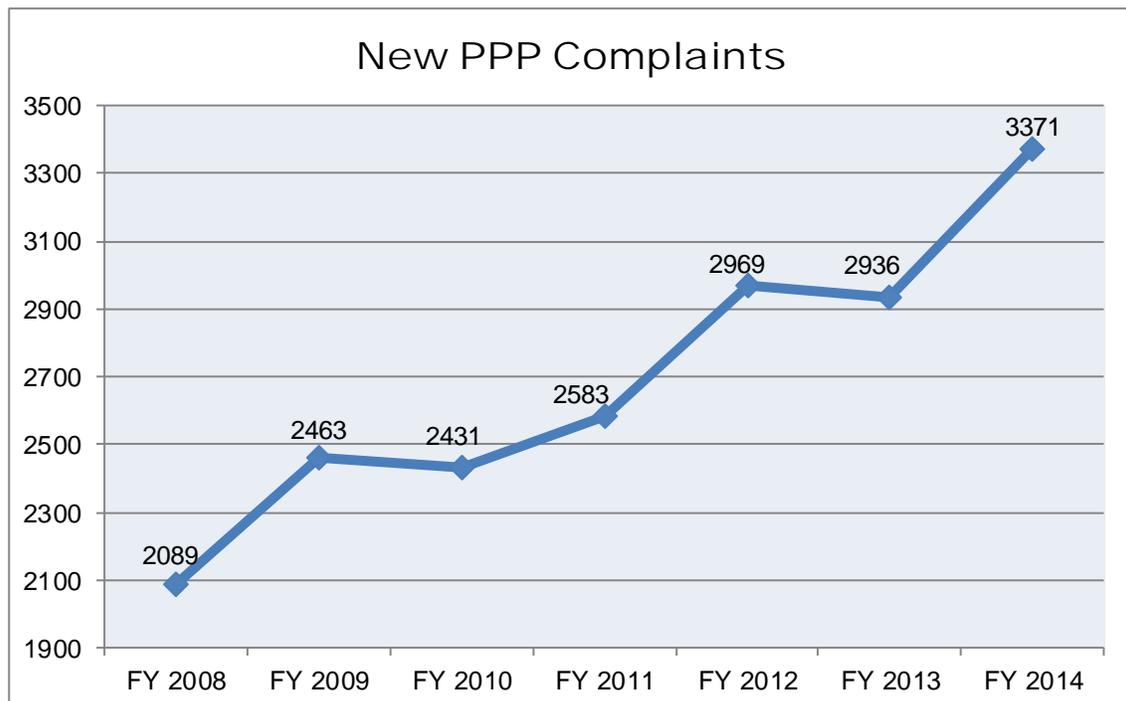
<sup>a</sup> Complaints frequently contain more than one type of allegation. This table, however, records all allegations received in a complaint as a single matter.

<sup>b</sup> "New complaints received" includes a few re-opened cases each year, as well as prohibited personnel practice cases referred by the MSPB for possible disciplinary action.

<sup>c</sup> In FY 2008, IPD not only handled 88 PPP complaints, but also 17 USERRA Demonstration Project cases and one Hatch Act case.

## Prohibited Personnel Practice Successes

In FY 2014, OSC obtained a 15 percent increase in the number of corrective action matters on behalf of employees who were victims of a prohibited personnel practice, such as whistleblower retaliation, and historic numbers of disciplinary actions against officials who commit PPPs. In many cases, OSC negotiates informally with federal agencies to obtain both corrective action for employees and disciplinary action against responsible officials. When informal relief or disciplinary action is not attainable through negotiation, OSC seeks to obtain relief and disciplinary action through its formal statutory process. Generally, that process requires OSC to issue a report to the head of the responsible agency setting forth findings of prohibited personnel practices and recommendations for corrective and/or disciplinary action. In the vast majority of cases where OSC issues a formal report of findings, the employing agency accepts OSC's findings and recommendations and takes appropriate corrective and/or disciplinary action. When an employing agency declines, however, OSC is authorized to seek an appropriate remedy before the Merit Systems Protection Board.



## Litigation before the Merit Systems Protection Board

OSC filed a complaint with the MSPB alleging that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) fired a criminal investigator with over 20 years of federal law enforcement experience in violation of the First Amendment, a prohibited personnel practice under 5 U.S.C. § 2302(b)(12). The investigator gave testimony under subpoena in a federal criminal matter that was favorable to a defendant's motion to suppress a court-ordered wiretap. Neither the investigator nor ATF was involved in the underlying prosecution, having both dropped out of the case. Nevertheless, ATF disagreed with the substance of the investigator's testimony and fired him for allegedly having lacked candor in his testimony. ATF filed an interlocutory appeal of the judge's finding of jurisdiction, which was upheld by the MSPB. Thereafter, the parties reached a monetary settlement and the employee retired.

OSC filed three complaints with the MSPB seeking disciplinary action against three high-level Customs and Border Protection (CBP) officials for participating in a scheme to discriminate for and against applicants based on political affiliation, and to grant illegal preferences or advantages to a former CBP Commissioner's preferred candidates. Two of the complaints settled with the MSPB ordering demotions to nonsupervisory duties. The third complaint is still pending before the MSPB.

## Protecting Whistleblowers from Retaliation

OSC issued formal findings to the Department of the Army under 5 U.S.C. § 1214(b) documenting the retaliatory removal of an engineering technician for protected whistleblowing activities. The employee reported what she believed were violations of the Army's rules pertaining to the use of a government purchase card. Her report was made in the course of her duties. Shortly thereafter, the technician was fired. Prior to the WPEA, her report would have been excluded from protection as whistleblowing under Federal Court decisions (*Huffmann v OPM* and *Willis v. USDA*) because it was made in the course of regular duties. The WPEA, however, overturned these decisions and OSC was able to pursue the case. As a result of OSC's investigation and statutory report, the Army agreed to reinstate the employee with full back pay and benefits. It also convened a disciplinary review of the subjects responsible for the retaliatory discharge and is in the process of proposing disciplinary action.

OSC issued formal findings to the Transportation Security Administration (TSA) documenting the retaliatory removal of a security screener for protected whistleblowing activities. The screener reported a coworker's misconduct and his supervisor's failure to correct the misconduct. Shortly thereafter, the screener was discharged from service. As a result of OSC's investigation and statutory report, TSA agreed to a monetary settlement.

OSC issued formal findings to the VA under 5 U.S.C. § 1214(b) documenting the retaliatory suspension of a nurse for having disclosed that other VA employees improperly restrained wheelchair-bound patients in violation of agency rules. As a result of OSC's statutory report, the VA agreed to take corrective action.

OSC issued formal findings to the Department of Energy under 5 U.S.C. § 1214(b) documenting retaliatory suspensions of an electrician with the Bonneville Power Administration for protected whistleblowing. The electrician disclosed misconduct by a supervisor, which OSC determined

had been covered up in a subsequent agency investigation. As a result of OSC's statutory report, the Department agreed to a monetary settlement and to place the employee permanently at a different location.

OSC issued formal findings to the Department of Commerce Office of Inspector General under 5 U.S.C. § 1214(b) documenting a retaliatory performance appraisal and separation agreement. The complainant, a supervisor, was given an unfounded, failing performance appraisal that was used to coerce him into signing a separation agreement containing a non-disparagement provision (gag clause) prohibiting him from contacting OSC, Congress, or the media. OSC investigated whether these actions were taken in retaliation for complainant's perceived whistleblowing and for his engagement in the Equal Employment Opportunity process. As a result of OSC's statutory report, the Department agreed to provide full corrective action to the complainant, implement systemic measures to prevent future violations, and take disciplinary action against two agency officials.

The complainant, a supervisor with the Department of Army, was terminated during his probationary period in retaliation for making disclosures concerning his second-level supervisor's improper distribution of excess medical material. After obtaining evidence supporting the complainant's allegations—and prior to the completion of OSC's investigation—the agency agreed to convert the termination to a voluntary resignation, as well as to provide the complainant with a lump sum payment, attorneys' fees, and a neutral reference.

Two complainants with the Transportation Security Administration made multiple disclosures, including allegations of a hostile work environment, misuse of government vehicles, improper use of awards, and improper work space allocations. One complainant was placed on a performance improvement plan and issued a proposed fourteen-day suspension, while the other complainant experienced a significant change in working conditions, was placed under a "mentorship agreement," and received a letter of reprimand. Following investigation, OSC negotiated a resolution for full corrective action and consequential damages for the complainants. In addition, OSC obtained disciplinary action in which the complainants' former supervisor agreed to a nonsupervisory demotion lasting a minimum of one year, a geographic reassignment, and training.

The complainants, married seasonal park rangers with the National Park Service, U.S. Department of Interior, were given tentative offers of employment that were rescinded after management discovered one of the spouses had made disclosures to the Office of the Inspector General concerning the former park superintendent's alleged excessive travel and illegal endorsement of a private company while employed by the federal government. Following OSC's investigation, the agency agreed to offer the complainants seasonal employment at the park of their choice and to take appropriate disciplinary action against certain agency officials.

## Protecting Federal Employees from Discriminatory Hiring Practices

The Office of Personnel Management (OPM) referred to OSC for investigation allegations that an official with the Federal Trade Commission violated federal regulations concerning failure to compete for a detail to a higher-graded position and for exceeding the length of time allowed for work details. Following OSC's investigation, which substantiated the allegations, the agency agreed to take several systemic measures to prevent future violations.

The OPM referred to OSC for investigation its findings that the National Resources Conservation Service (NRCS), part of the U.S. Department of Agriculture, engaged in improper hiring practices that were sufficiently severe and pervasive to cause OPM to withdraw its delegation of hiring authority for NRCS. OSC investigated the allegations and confirmed that six officials were hired improperly, as OPM found. OSC further determined that disciplinary action was warranted for eleven officials who participated in the illegal hiring practices. OSC requested in eight instances that the agency discipline its own officials and OSC approved requests from the agency to take disciplinary action. The actions approved by OSC included a removal, four suspensions of over fourteen days, a short suspension, and two reprimands. In three instances, OSC negotiated directly with the individuals who no longer work at the agency. OSC obtained short suspensions in two cases, and a resignation and one-year debarment from federal service in the third.

The Department of the Navy's Office of Inspector General referred to OSC for investigation allegations that federal officials granted unauthorized preferences to individuals by manipulating the hiring processes for several competitive positions. The referral also alleged that some of these officials violated anti-nepotism rules by advocating for the hiring of their relatives. Following OSC's investigation, which substantiated the allegations, the parties agreed to significant suspensions without pay for three current and former agency officials.

## Stays of Personnel Actions

Based on a request by OSC, MSPB ordered the suspension of a geographic detail imposed by the Department of Homeland Security on a special agent who refused to obey an order that would have required him to violate laws restricting the disclosure of classified information. This was the first time OSC initiated an action based on a violation of 5 U.S.C. § 2302(b)(9)(D), a statute that prohibits personnel actions based on an employee's refusal to obey an order that would require a violation of law.

Based on a request by OSC, the MSPB ordered the temporary reinstatement of a former consumer safety inspector based on allegations that the Food Safety Inspection Service at the U.S. Department of Agriculture coerced the inspector's resignation in retaliation for whistleblowing. The inspector disclosed that her managers ignored violations of laws and regulations at the slaughterhouse where she worked, and thereby allowed inhumane slaughter practices to continue. The Board granted the stay request based on OSC findings that the employee witnessed instances of inhumane practices, reported them to her chain of command and to the Secretary, was shortly thereafter detailed to a different duty location, and received notice of her proposed removal.

A civilian employee and team lead with the Department of Army submitted an administrative grievance contesting her performance evaluation. Shortly thereafter, she was removed from her leadership position and reassigned. She was subsequently issued a proposed five-day suspension for misuse of government property and conduct unbecoming a federal employee in connection with her extramarital relationship with a married soldier. At OSC's request, the agency agreed to stay the suspension during the pendency of OSC's investigation.

### Amicus Curiae Briefs Filed

OSC submitted its first amicus curiae brief in the Supreme Court. The case, *Dep't. of Homeland Security v. MacLean*, involves an interpretation of an original provision of the whistleblower statute in the CSRA in 1978. It is the first whistleblower case to be heard by the Court. At issue is whether an agency may enforce a regulation that restricts a whistleblower's ability to make a public disclosure of a danger to public health and safety. The Board permitted the agency to enforce the regulation against a federal air marshal for having disclosed to the media changes in flight coverage that he believed presented a serious threat to the safety of the flying public. The Federal Circuit reversed, holding that Congress forbade agencies from relying on their own regulations to limit the protective scope established by Congress for whistleblowers.

OSC filed an amicus curiae brief in *Kerr v. Jewell* (9<sup>th</sup> Cir. 2013). In its brief, OSC argued that the WPEA should be applied to cases pending before the law's enactment. Specifically, OSC urged the Ninth Circuit to apply the WPEA to the case because: (1) it clarified existing law by overturning prior decisions that unduly limited whistleblower protections; (2) Congress expressly intended the WPEA to apply to pending cases; and (3) applying the WPEA to pending cases promotes government efficiency and accountability. In its ruling, the Ninth Circuit determined that portions of the original Whistleblower Protection Act had been misapplied since its inception and that the WPEA simply clarified the protections Congress intended to confer in the statute.

OSC also filed an amicus curiae brief in *Clarke v. Dep't. of Veterans Affairs* (Fed. Cir. 2014). OSC argued that the MSPB's decision was erroneous because the Board's analysis of the exhaustion of administrative remedies requirement disregarded the plain language of the statute, conflicted with precedent barring the Board from relying on OSC's determinations in analyzing the exhaustion requirement, and encroached upon OSC's independence, thereby threatening future whistleblower claims. This matter is pending.

### Corrective Action for Lesbian, Gay, Bisexual, and Transgender Federal Employees

OSC recently found that the Department of the Army engaged in gender identity discrimination against a transgender civilian Army quality assurance specialist, after she announced her transition from male to female. OSC's investigation found that she experienced a significant change in working conditions when the Army improperly restricted her restroom usage, repeatedly referred to her by her birth name and male pronouns, and excessively monitored her conversations with coworkers. In response, the Army agreed to provide training to correct and prevent future discrimination. The Army already had permitted her to use the restroom associated with her gender identity. According to OSC's prohibited personnel practice report, the acts at issue were sufficiently frequent, pervasive, and humiliating to constitute discriminatory

harassment,” the employee “experienced these effects on a daily basis for many months, and they served as a constant reminder that she was deprived of equal status, respect, and dignity in the workplace.” As a result, OSC concluded that the Army violated 5 U.S.C. § 2302(b)(10), which prohibits discrimination based on conduct that does not adversely affect job performance, including sexual orientation and gender identity discrimination. OSC’s investigation found no evidence that her gender transition had a discernable or detrimental impact on her or other employees’ work performance.

#### Motion for Intervention

OSC moved to intervene in a case before the MSPB, challenging the administrative judge’s decision to dismiss a complainant’s individual right of action (IRA) appeal. In the intervention motion, OSC argued that the complainant exhausted his administrative remedies, that the administrative judge abused his discretion when he inquired into OSC’s reason for terminating its investigation, and that no purpose would be served by requiring the complainant to wait 120 days to file an IRA appeal. While the matter was pending, the parties entered into a settlement agreement in which the complainant received a lump sum payment and all negative references were removed from his personnel file.

#### WPEA Nondisclosure Prohibition

OSC intervened on behalf of an Army employee who faced disciplinary action for having reported a co-worker to a state social services agency for child abuse. The Army issued her a written counseling for taking the matter outside her chain of command. The directive states: “Taking [division] issues outside the [Army] Chain of Command is not appropriate and could result in disciplinary action should it occur in the future.” Based on OSC’s intervention, the division manager agreed to rescind all records of the counseling and advised all supervisors at the activity to stop counseling, admonishing, or warning employees to use the chain of command for protected disclosures inside or outside the chain of command.

**Table 3**, below, contains summary data for FY 2014 (with comparative data for the six previous fiscal years) on all favorable actions obtained in connection with OSC’s processing of whistleblower reprisal and other prohibited personnel practice complaints.

| <b>TABLE 3 Summary of All Favorable Actions – Prohibited Personnel Practice Complaints</b> |                             | <b>FY 2008<sup>a</sup></b> | <b>FY 2009</b> | <b>FY 2010</b> | <b>FY 2011</b> | <b>FY 2012</b> | <b>FY 2013</b> | <b>FY 2014</b> |
|--|-----------------------------|----------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>Total favorable actions negotiated with agencies (all PPPs)<sup>a</sup></b>             | No. of actions <sup>b</sup> | 58                         | 62             | 96             | 84             | 159            | 173            | 177            |
|  | No. of matters              | 33                         | 53             | 76             | 65             | 128            | 124            | 144            |
| <b>Total favorable actions negotiated with agencies (reprisal for whistleblowing)</b>      | No. of actions              | 44                         | 35             | 66             | 64             | 112            | 104            | 144            |
|  | No. of matters              | 20                         | 29             | 55             | 50             | 95             | 91             | 114            |
| <b>Stays negotiated with agencies</b>  |                             | 4 <sup>c</sup>             | 9              | 13             | 12             | 27             | 28             | 23             |
| <b>Stays obtained from MSPB</b>  |                             | 0                          | 1 <sup>d</sup> | 2              | 4              | 8              | 5              | 2              |
| <b>Stay extensions obtained from MSPB</b>  |                             | n/a                        | n/a            | n/a            | 1              | 1              | 7              | 0              |
| <b>Corrective action petitions filed with the MSPB</b>                                     |                             | 0                          | 0              | 0              | 1              | 0              | 2              | 0              |
| <b>Disciplinary actions negotiated with agencies</b>                                       |                             | 3                          | 5              | 13             | 6              | 19             | 27             | 23             |
| <b>Disciplinary action complaints filed with the MSPB</b>                                  |                             | 3                          | 0              | 0              | 0              | 0              | 0              | 3              |

<sup>a</sup> Actions itemized in this column occurred in matters referred by CEU and processed by IPD.

This figure and the one below include all settlement agreements but does not include systemic corrective action, unless that systemic action was achieved apart from a settlement agreement.

<sup>b</sup> The number of actions refers to how many corrective actions are applied to the case; the number of matters consists of how many individuals were involved in the original case.

<sup>c</sup> Represents two stays obtained in each of two cases.

<sup>d</sup> A revised query now correctly shows this quantity to be one, not zero as previously reported.

## PART 4 – USERRA ENFORCEMENT

### Overview

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the civilian employment and reemployment rights of those who serve in the Armed Forces, including the National Guard and Reserves, and other uniformed services. USERRA is intended to encourage non-career military service and to minimize the disruption to the lives of those who serve by ensuring that such persons: (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty, with full benefits and seniority, as if they had never left; and (3) are not discriminated against in employment (including initial hiring, promotion, retention, or any benefit of employment) based on past, present, or future uniformed service. The law applies to federal, state, local, and private employers.

Congress intends for the federal government to be a “model employer” under USERRA, and OSC is committed to helping fulfill that goal. In furtherance of that effort, OSC plays a critical role in enforcing USERRA by providing representation before the MSPB, when warranted, to service members whose complaints involve federal executive agencies. OSC also endeavors to informally resolve USERRA complaints. Finally, OSC provides USERRA outreach and training to the federal community and technical assistance to employers and employees with USERRA questions via telephone and email hotlines.

Under a three-year Demonstration Project that began in FY 2011 (described further below), OSC’s role was dramatically expanded to include receiving, investigating, and resolving approximately 137 additional USERRA cases per year. This Demonstration Project ended in August 2014.

### Referral Process

By law, a person alleging a USERRA violation by a federal executive agency may file a complaint with the Veterans’ Employment and Training Service (VETS) at the U.S. Department of Labor. VETS must investigate and attempt to resolve the complaint. If VETS cannot resolve the complaint, the person may direct VETS to refer it to OSC for possible representation before the MSPB. If, after reviewing the complaint and investigative file, OSC is reasonably satisfied that the person is entitled to relief under USERRA, OSC may act as his or her attorney and initiate an action before the MSPB.

# Summary of Workload, Activity, and Results

## Corrective Action

OSC achieved a 23 percent corrective action rate during the Demonstration Project. In addition, there were two referrals in FY 2014 that resulted in corrective action taken.

## Referrals Pending at End of Fiscal Year

These decreased 10 percent from FY 2013 levels.

## USERRA Unit Successes

OSC is playing a central role in ensuring that the federal government upholds its responsibility to be a “model employer” under USERRA, especially with so many military personnel returning from Afghanistan and Iraq. The following are examples of individual corrective actions obtained by OSC for service members in FY 2014:

### Assisting Injured Service Members

An air traffic controller (ATC) with the Federal Aviation Administration suffered service-connected injuries during a deployment with the Army Reserve. As a result, she was unable to continue to perform ATC duties and requested assistance in finding an appropriate position to accommodate her disabilities. After the agency told her to find something on her own, she could only secure a position with a significant pay cut that extended her time for retirement eligibility. OSC intervened and the agency agreed to assign her to a higher-rated position, increase her base pay to the level she had previously, and arrange for her to attend a leadership development program at agency expense.

### Ensuring Timely Reemployment

A National Guardsman who was a cashier at the Defense Commissary Agency was improperly denied reemployment upon returning from a seven-month tour of duty, and told to apply for unemployment benefits. OSC contacted the agency, which agreed to reinstate him to his former position, restore his benefits and seniority, and provide him with back pay.

In another case, after returning from deployment, a Navy Reservist made a timely request for reemployment into his civilian position with the Department of the Navy. However, after initially confirming his requested start date, the agency delayed his reemployment another six weeks because his pre-service position was no longer available. OSC facilitated a settlement agreement under which the agency agreed to provide him with back pay and restore his seniority and other benefits as of the date he should have been reemployed six weeks earlier.

### Preventing Initial Hiring Discrimination

An Army Reservist was offered a civilian position with the Department of Defense (DoD) at NATO Special Operations Headquarters in Mons, Belgium. After the Reservist learned that she would be on active duty for seven months, she notified DoD, which withdrew its employment

offer. OSC intervened and the agency agreed to re-offer claimant the position for a later “report to duty” date that was compatible with the end date of her military service.

### Remedying Improper Dismissal

After returning from an extended deployment, a Navy Reservist who worked as a civilian with the Department of the Navy was told she would be laid off for budgetary reasons in 40 days. OSC informed the agency that USERRA prohibits terminating a service member’s employment, except for cause, for six months following service lasting more than 30 days. At OSC’s request, the agency agreed to provide the Reservist with back pay for the remainder of the protected period (140 days), give her a lump sum payment for all the paid leave she would have accrued, and allowed her to make up contributions to her retirement plan.

### Restoring Promotional Opportunities

While working as a police officer for the U.S. Mint, a member of the Coast Guard Reserve was called to active duty for two years. During his absence, the agency issued vacancy announcements for sergeant positions, but he was not notified or given the opportunity to apply. OSC contacted the agency, which agreed to resolve his complaint by scheduling him for the next sergeant’s exam, providing him with priority consideration for the next sergeant vacancy, and implementing a mechanism where service members are notified of and permitted to apply for advancement opportunities at the agency while they are absent performing military duty.

## Outreach and Education

During FY 2014, OSC worked to ensure that the federal government is a “model employer” under USERRA by (1) conducting USERRA training for federal agencies and at national conferences; (2) briefing veterans service organizations about OSC’s USERRA program; and (3) providing technical assistance to service members and their employers through USERRA’s telephone and e-mail questions hotlines.

**Table 4** and **Table 5**, below, contain FY 2014 summary data with comparative data and disposition of USERRA referral cases, and Demonstration Project cases, respectively.

| <b>TABLE 4 Summary of USERRA Referral and Litigation Activity<sup>a</sup></b> |                |                |                |                |                |                |                |
|---|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
|   | <b>FY 2008</b> | <b>FY 2009</b> | <b>FY 2010</b> | <b>FY 2011</b> | <b>FY 2012</b> | <b>FY 2013</b> | <b>FY 2014</b> |
| <b>Pending referrals carried over from prior fiscal year</b>                  | 3              | 5              | 7              | 12             | 17             | 11             | 6              |
| <b>New referrals received from VETS during fiscal year</b>                    | 15             | 41             | 32             | 36             | 24             | 7              | 14             |
| <b>Referrals closed</b>   | 13             | 39             | 27             | 31             | 30             | 12             | 13             |
| <b>Referrals closed with corrective action</b>                                | 2              | 4              | 0              | 2              | 4              | 2              | 2              |
| <b>Referrals closed with no corrective action</b>                             | 11             | 35             | 27             | 29             | 26             | 10             | 11             |
| <b>Referrals pending at end of fiscal year</b>                                | 5              | 7              | 12             | 17             | 11             | 6              | 7              |
| <b>Litigation cases carried over from prior fiscal year</b>                   | 1              | 1              | 1              | 1              | 0              | 0              | 0              |
| <b>Litigation cases closed</b>  | 1              | 0              | 1              | 1              | 0              | 0              | 0              |
| <b>Litigation closed with corrective action</b>                               | 0              | 0              | 1              | 1              | 0              | 0              | 0              |
| <b>Litigation closed with no corrective action</b>                            | 1              | 0              | 0              | 0              | 0              | 0              | 0              |
| <b>Litigation pending at end of fiscal year</b>                               | 1              | 1              | 1              | 0              | 0              | 0              | 0              |

| <b>TABLE 5 Summary of USERRA Demonstration Project Activity</b> |                |                |                |
|---|----------------|----------------|----------------|
|   | <b>FY 2012</b> | <b>FY 2013</b> | <b>FY 2014</b> |
| <b>Pending cases carried over from previous fiscal year</b>     | 28             | 88             | 69             |
| <b>New cases opened</b>   | 152            | 137            | 146            |
| <b>Cases closed</b>   | 92             | 154            | 153            |
| <b>Closed cases where corrective action was obtained</b>        | 24             | 38             | 37             |
| <b>Closed cases where no corrective action was obtained</b>     | 68             | 116            | 116            |
| <b>Pending cases at end of fiscal year</b>                      | 88             | 71             | 62             |

<sup>a</sup> This table has been reorganized, with some categories and figures changed from prior reports to correct discrepancies and more clearly present relevant information.

## PART 5 – ALTERNATIVE DISPUTE RESOLUTION

OSC offers alternative dispute resolution, including mediation, in appropriate cases as an alternative to investigation. Under OSC's Alternative Dispute Resolution Unit, an OSC ADR specialist contacts the parties to discuss the process and offers of mediation. If accepted, pre-mediation discussions are conducted in an effort to help the parties form realistic expectations and well-defined objectives for the mediation process. If mediation resolves the complaint, the parties execute a written, binding settlement agreement. These can result in a range of outcomes, such as an apology, a letter of recommendation, a revised performance appraisal, retroactive promotions, and monetary recoveries, including attorneys' fees reimbursement and lump sum payments. If mediation cannot resolve the complaint, it is referred back to IPD for further investigation.

### Mediated Settlements

For the second year in a row, OSC is providing case summaries from our ADR Unit.

Below are select significant case summaries from our ADR Unit. Note that mediation settlement agreements are confidential unless otherwise agreed upon.

**Relationships Restored, New Agency Policy Initiative after Mediation**  
As publicized in an OSC press release, Franz Gayl, a U.S. Marine Corps civilian scientist, had publicly raised concerns about the speed of the military's procurement of blast-resistant trucks known as Mine Resistant Ambush Protected vehicles (MRAPs) and claimed he was retaliated against for his whistleblowing. Through OSC's mediation program, Mr. Gayl and the U.S. Marine Corps successfully resolved Mr. Gayl's Whistleblower Protection Act complaints. In connection with these efforts, the Marine Corps agreed to create an operational planning team, which will develop guidelines to help individual Marine Corps members and employees meet their Marine Corps' obligations and responsibilities consistent with their whistleblower rights. Due to his whistleblower experience, the Marine Corps appointed Mr. Gayl to serve as a member of this team.

#### Reprisal Complaint after a Substantiated Disclosure

A federal employee claimed that in retaliation for raising concerns about erroneously high locality pay of a senior employee, he was denied telework options and transferred to an undesirable location. Through mediation with OSC, parties were able to clarify key misunderstandings and discuss creative proposals and resolutions. This led to a settlement that met both parties' interests, including a specific telework arrangement, a new office location assignment, whistleblower training at the agency, and a modest change of work duties.

#### Reprisal Complaint after Report of Harassment

A federal employee claimed that in retaliation for disclosing harassment by her supervisor, she was detailed to another office and assigned menial duties. Through mediation, the parties discussed the employee's concerns and talked through the situation. The parties agreed that the

complainant would be reassigned to her permanent duty station under a different supervisor with restoration of leave taken related to the incident. Mediation allowed the employee to obtain the solution she most wanted much more quickly than would have been possible through an extended investigation and prosecution, and provided the agency a more productive employee as well as the cost savings inherent in avoiding an investigation.

## USERRA Cases Handled by ADR

### Leave without Pay

Another federal employee, a member of the Reserve, claimed his agency violated USERRA when it put him on light duty and then leave without pay (LWOP) after he returned from military duty in which he sustained injuries that impaired his ability to perform his work. The employee asked for monetary compensation, restoration of leave, and assignment to a position equal in pay and status to his pre-deployment position. Through mediation, the parties explored their interests in compensation for the employee, reassignment or retirement for the employee, and increased USERRA awareness for agency personnel involved in the mediation. The case settled with the claimant agreeing to withdraw the claim and retire in exchange for the agency paying him a settlement, and supporting him in the disability retirement application process.

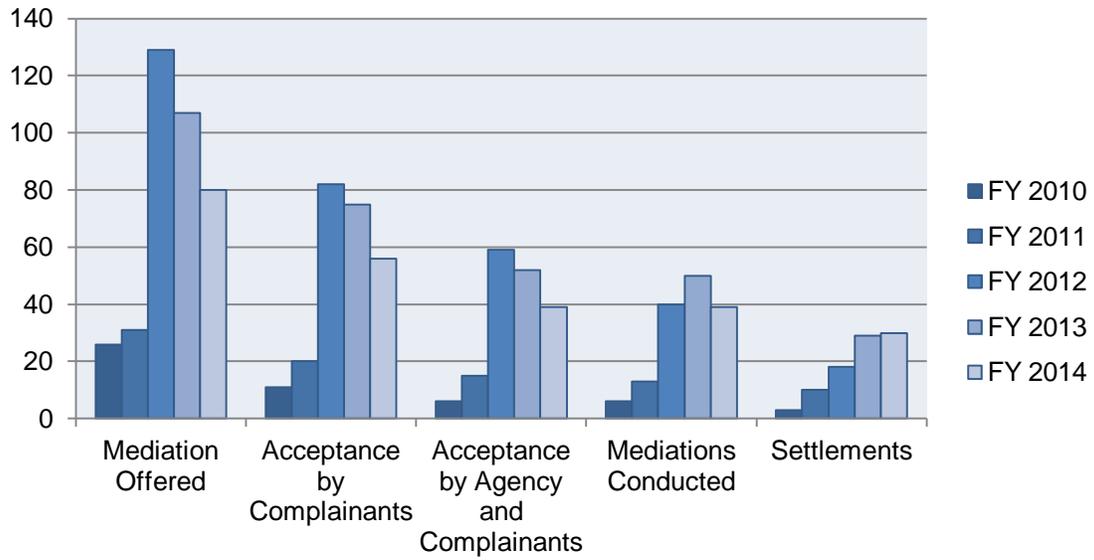
### Denial of Military Leave

A federal employee who was a member of the Navy Reserve was denied military leave by his agency employer because he was performing a type of duty that did not require military orders, and thus could not provide agency-required documentation. OSC provided a USERRA subject matter expert who, through the mediation process, assisted both the employee and the agency representatives in understanding Reserve and Guard member's rights under USERRA and that the law does not require orders in such a situation. Both parties explored important interests and agreed to a settlement allowing the claimant to transfer to a different branch and added USERRA training for key agency personnel conducted by OSC.

### Change in Position

A federal employee who was a member of the National Guard filed a USERRA claim asserting that upon returning from deployment, the agency assigned him to his same position but in a different location that required more travel time and was, according to the claimant, of lesser status. The employee asserted that the new assignment impaired his opportunities to advance professionally. In mediation, the agency expressed its interest in supporting service members and being a model employer. The employee explained that he needed to maintain a position that validated his seniority and allowed him to maximize his contributions to the agency. With the air cleared, the parties ultimately agreed to reassign the claimant back to his pre-deployment position and location.

### ADR Statistics for FY 2010-2014



**Table 6**, below, contains summary data for FY 2014 (with comparative data for the six previous fiscal years) on all mediations OSC offered and completed in response to prohibited personnel practice complaints.

| <b>TABLE 6 ADR Program Activity – Mediation of Prohibited Personnel Practice Complaints &amp; USERRA Complaints</b>          |                |                |                |                |                |                 |                  |
|--|----------------|----------------|----------------|----------------|----------------|-----------------|------------------|
|  | <b>FY 2008</b> | <b>FY 2009</b> | <b>FY 2010</b> | <b>FY 2011</b> | <b>FY 2012</b> | <b>FY 2013</b>  | <b>FY 2014</b>   |
| <b>Number of Cases in which mediation offered after referral from CEU or USERRA plus cases referred from IPD<sup>a</sup></b> | 25             | 28             | 26             | 31             | 129            | 107             | 80               |
| <b>Mediation Offers Accepted by Complainants</b>   | 10             | 17             | 11             | 20             | 82             | 75              | 56               |
| <b>Meditation Offers Accepted by Agencies and by Complainants</b>  | 8              | 15             | 6              | 15             | 59             | 52              | 39               |
| <b>Number of mediations conducted by OSC<sup>b</sup></b>   | 7              | 11             | 6              | 13             | 40             | 50 <sup>c</sup> | 39               |
| <b>Number of mediations withdrawn by either OSC or the agency after acceptance</b>   | 0              | 3              | 0              | 2              | 10             | 6               | 8                |
| <b>Number of completed mediations that yielded settlement</b>  | 4              | 4              | 3              | 10             | 18             | 29              | 30               |
| <b>Percentage of completed mediations that resulted in settlement</b>  | 57%            | 36%            | 50%            | 77%            | 60%            | 62%             | 79% <sup>c</sup> |
| <b>Cases in process<sup>d</sup> - carryover from previous FY</b>   | N/A            | N/A            | N/A            | N/A            | 5              | 1               | 0                |
| <b>Carryover to next FY - In Process</b>   | N/A            | N/A            | N/A            | N/A            | 15             | 10              | 12               |
| <b>Carryover to next FY - Offer Pending<sup>e</sup></b>  | N/A            | N/A            | N/A            | N/A            | 20             | 7               | 4                |
| <b>Carryover to next FY – Pending review</b>   | N/A            | N/A            | N/A            | N/A            | N/A            | 10              | 10               |

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

<sup>b</sup> Includes cases completed or withdrawn after at least one mediation session.

<sup>c</sup> “Percentage of completed mediations that resulted in settlement” omits cases withdrawn before mediation was completed.

<sup>d</sup> “In process” means parties have agreed to mediate and mediation is scheduled or is ongoing with more than one session.

<sup>e</sup> Cases in which OSC will or is in the process of offering mediation to the parties.

## PART 6 – WHISTLEBLOWER DISCLOSURES

### Overview

OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may disclose 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. Many disclosures involve complex and highly technical matters unique to an agency's or whistleblower's duties, such as disclosures about aviation safety, engineering issues, or impropriety in federal contracting.

Upon receipt of a disclosure, Disclosure Unit (DU) attorneys review the information to evaluate whether there is a "substantial likelihood" that the information discloses one or more of the categories of wrongdoing described in 5 U.S.C. § 1213. If it does, the Special Counsel is required by § 1213(c) to send the information to the head of the agency for an investigation. If the whistleblower consents, his or her name is provided to the agency as the source of the information. If the whistleblower does not consent, the agency is notified that the whistleblower has chosen to remain anonymous. (The Special Counsel may also make discretionary referrals to the heads of agencies in certain circumstances.)

Upon receipt of a § 1213(c) referral from the Special Counsel, the agency head is required to conduct an investigation and promptly issue a report to the Special Counsel describing the agency's findings. The whistleblower has the right to review and comment on the report. The DU and Special Counsel review the report to determine whether the agency's findings appear to be reasonable. The Special Counsel then sends the agency report, any comments by the whistleblower, and any comments or recommendations by the Special Counsel, to the President and congressional oversight committees for the agency involved. A copy of the agency report and any comments on the report are placed in OSC's public file.

### Summary of Workload, Activity, and Results

During FY 2014, the number of disclosures received increased 37 percent, and the number of matters referred to agency heads for investigation was 92, an OSC record. A number of disclosures referred by OSC for further action are highlighted below.

## Disclosure Unit Successes

### Violation of Law, Rule, or Regulation, Gross Mismanagement, Substantial and Specific Danger to Public Health and Safety

Residents of Long-Term Care Units Neglected for Almost a Decade. OSC referred to the Secretary of Veterans Affairs allegations received from a former physician at the VA Boston Health Care System, Brockton Campus in Brockton, Massachusetts, that employees failed to provide appropriate medical and mental health care for individuals residing in the long-term care units of the Community Living Center (CLC).

The agency substantiated the allegations, but the VA's Office of the Medical Inspector (OMI) found no violations of law, rule, or regulation. The investigation determined the CLC admitted Patient 1 with significant, chronic mental health issues, but the patient did not receive a comprehensive psychiatric evaluation until eight years later. In addition, the investigation determined that Patient 2 had serious mental health issues, and during his eight year residence in the CLC, he had only one psychiatric note written in his chart. In addition, there was no evidence that, until the whistleblower's recommendation, the CLC tried to lower or eliminate doses of psychotropic medications Patient 2 received. The agency did not substantiate allegations with respect to a third patient. The agency did not engage in a broader review of patient care beyond these three identified patients, despite the whistleblower's concerns.

OSC requested a supplemental report from the VA to explain OMI's conclusion that no patient's rights were violated. However, in its supplemental report the agency reiterated: "in some areas [the veterans'] care could have been better but [the agency] does not feel that their ... rights were violated." In a second supplemental communication, the agency presented additional facts concerning the care received by Patient 1 and Patient 2. Ultimately, the VA failed to acknowledge that the confirmed neglect of residents at the facility had any impact on patient care. In addition, the OMI report did not address the whistleblower's belief that patient neglect in the CLC extended beyond the three individuals identified in his disclosure. OMI failed to look beyond these individuals to examine whether the serious care issues extended to other patients at the CLC or to other facilities within the VA Boston Healthcare System. Because of these deficiencies, the Special Counsel determined that the agency reports were unreasonable. *OSC File No. DI-13-4505. Referred November 2013; transmitted to the President and congressional oversight committees and closed on August 7, 2014.*

Failure to Adhere to Decontamination and Sterilization Procedures. OSC referred for investigation allegations received from a medical supply technician at the Ann Arbor VA Medical Center (Medical Center) in Ann Arbor, Michigan that employees at the facility consistently failed to follow proper procedures in the decontamination and sterile storage areas, and that patients and staff were at risk of infection from contaminated supplies and equipment. The agency investigation, conducted by the OMI, substantiated several of the allegations, finding that employees were not properly trained in safety and conduct requirements. The investigation also found that employees violated procedures used to protect against contamination of sterile supplies and equipment. Despite this finding, the agency investigation did not reveal evidence of contamination as a result of the employee non-compliance. The agency reports identified the

corrective actions taken at the Medical Center in response to the investigation, including renovations to improve functions in the supply and processing divisions. OMI provided a summary supplemental report on the status of the corrective actions. All of the twelve recommendations were adopted, nine have been completed, and three were ongoing. Despite OSC's request, the OMI declined to investigate more recent, specific allegations regarding compliance with safety procedures.

The Special Counsel determined that although the agency reports contained all the information required by statute, the findings did not appear reasonable given the whistleblower's ongoing concerns regarding compliance with safety procedures and the agency's decision to ignore these concerns. *OSC File No. DI-13-2133. Referred January 2013; transmitted to the President and congressional oversight committees and closed on July 30, 2014.*

### Violation of Law, Rule, or Regulation and Substantial and Specific Danger to Public Health or Safety

Failure to Follow Proper Procedures for Electrical Work. OSC referred to the Secretary of the Navy allegations of safety violations received from electrical engineering technicians at Naval Facilities Engineering Command Mid-Atlantic, Norfolk, Virginia. The whistleblowers had been reporting the problems since 2008, but no action had been taken. The Navy investigation substantiated the whistleblowers' allegations that management officials failed to ensure that employees complied with the standard operating procedures and failed to ensure compliance with safety rules and eliminate unnecessary safety risks. The investigation did not substantiate the allegations that unqualified employees were allowed to work on high voltage assignments, that employees failed to wear proper protective equipment, or that management had not appropriately responded to these allegations.

In response to the whistleblowers' disclosures, the Navy revised its procedures and agency rules, implemented additional training and safety meetings, added safety review boards, and modified its hiring processes. In addition, the agency has established an apprenticeship training program, a process for tracking and monitoring safety equipment, and a pilot program to evaluate whether further changes need to be made to agency policies. OSC found that the agency reports contain all of the information required by statute and that the findings of the agency head appear reasonable. *OSC File No. DI-12-1819. Referred April 2012; transmitted to the President and congressional oversight committees and closed on April 21, 2014.*

Insufficient Staffing and Improper Documentation of Transfusions. OSC referred to the Secretary of the Department of Health and Human Services (HHS) for investigation allegations received from a former nurse that employees at the Indian Health Service (IHS), Blackfeet Community Hospital, Browning, Montana were engaged in conduct that constituted a violation of law, rule, or regulation, and a substantial and specific danger to public health and safety with respect to patient care and facility security. The agency investigation substantiated that nurses at the hospital were expected to care for a full unit of patients without adequate clerical support, nursing staff, or supervision. The investigation also found that nurses did not properly complete transfusion tags documenting the patients' status following transfusions. In addition, hospital doors were routinely propped open and security measures were lax. Hospital staff, patients, and

visitors regularly smoked at the non-smoking facility. Finally, the agency determined that multiple exterior and security lights were inoperable and the response from hospital security was slow, creating a security concern.

In response to the report, IHS issued or re-issued patient care policies, installed a lock and alarm on the security door, repaired lighting, filled all nursing positions with full-time nurses and improved supervision, revised the smoking policy, and met with the Blackfeet Tribal Health and Blackfeet Tribal Council to request assistance in implementing corrective actions. The Special Counsel determined that the agency reports contain all of the information required by statute and that the findings appear to be reasonable. *OSC File No. DI-12-3553. Referred January 2013; transmitted to the President and congressional oversight committees and closed on July 22, 2014.*

## Violation of Law, Rule, or Regulation, Abuse of Authority, Gross Mismanagement, and Gross Waste of Funds

Widespread and Institutionalized Abuse of Administratively Uncontrollable Overtime. OSC referred to then-Secretary of Homeland Security Janet Napolitano allegations that employees at Customs and Border Protection, Commissioner's Situation Room (CSR), Washington, D.C., regularly abused Administratively Uncontrollable Overtime (AUO), that the CSR director and assistant director authorized and abetted the improper use of AUO, and that they abused it themselves. The whistleblower alleged that CSR employees abused AUO pay by remaining at their duty stations two hours after the end of their regularly scheduled eight-hour shift on a daily basis. The whistleblower disclosed that it was common for CSR employees to work their regular shifts and then spend two additional hours at their duty stations relaxing, joking around, surfing the Internet, watching sports and entertainment on television, and taking care of personal matters. The agency investigation of this matter substantiated the allegation that AUO was improperly used at the CSR and that previous warnings about the proper use of AUO were disregarded. In the report, the agency pledged to take action to correct the abuse of AUO, including the development of a comprehensive department-wide AUO policy, and training.

Based on a determination that DHS had committed to taking the same corrective action in 2008 when OSC brought a previous AUO abuse matter to its attention, yet had been unable or unwilling to follow through on the previous commitment, the Special Counsel found the current report unreasonable. *OSC File No. DI-13-0002. Referred January 2013; transmitted to the President and congressional oversight committees and closed on November 1, 2013.*

## Gross Mismanagement and Abuse of Authority

Failure to Provide Adequate Care to Inmates. OSC requested that the Attorney General investigate disclosures from a nursing assistant at the Department of Justice (DOJ), Bureau of Prisons (BOP), Federal Medical Center (FMC Rochester), Rochester, Minnesota, who alleged that employees engaged in misconduct by failing to provide adequate care to incontinent inmates, and refusing to provide physical care, such as feeding and bathing, to an HIV-positive inmate in hospice care. The agency investigation partially substantiated the disclosures. The agency determined that there were instances in which some incontinent inmates were "double

diapered.” The investigation, however, did not find sufficient evidence to determine who specifically had done this or that any of the four nursing assistants identified by the whistleblower was responsible. The agency also determined that a nursing assistant behaved unprofessionally when she made comments about an HIV-positive inmate. Further, the investigation found sufficient evidence to support additional allegations raised during the investigation that two other nursing assistants did not bathe an inmate or provide him with his dinner on one occasion, and that two nursing assistants behaved unprofessionally when they joked about not feeding an inmate.

In response to the report, FMC Rochester provided training to all nursing staff members on perineal and incontinence care, pledged to update the “Patient Care Manual” to address the inappropriate practice of excessive padding in incontinence briefs, and took disciplinary action against two employees. OSC found that the agency reports contained all of the information required by statute and that the findings of the agency head appeared reasonable. *OSC File No. DI-13-2349. Referred August 2013; transmitted to the President and congressional oversight committees and closed on July 15, 2014.*

**Table 7** below contains FY 2014 summary data (with comparative data for the six previous fiscal years) on the receipt and disposition of whistleblower disclosure cases.

| <b>TABLE 7 Summary of Whistleblower Disclosure Activity – Receipts and Dispositions<sup>a</sup></b> |   |                |                |                |                |                |                    |     |
|---|---|----------------|----------------|----------------|----------------|----------------|--------------------|-----|
|   | <b>FY 2008</b>                                | <b>FY 2009</b> | <b>FY 2010</b> | <b>FY 2011</b> | <b>FY 2012</b> | <b>FY 2013</b> | <b>FY 2014</b>     |     |
| <b>Pending disclosures carried over from prior fiscal year</b>                                      | 84  | 128            | 125            | 83             | 132            | 225            | 193                |     |
| <b>New disclosures received</b>   | 530   | 724            | 961            | 928            | 1,148          | 1,129          | 1,554 <sup>b</sup> |     |
| <b>Total disclosures</b>  | 614   | 852            | 1,086          | 1,011          | 1,280          | 1,354          | 1,747              |     |
| <b>Disclosures referred to agency heads for investigation and report</b>                            | 40  | 46             | 24             | 47             | 39             | 51             | 92                 |     |
| <b>Referrals to agency IGs</b>  | 9   | 10             | 2              | 5              | 6              | 2              | 0                  |     |
| <b>Agency head reports sent to President and Congress</b>   | 25  | 34             | 67             | 22             | 36             | 54             | 26                 |     |
| <b>Results of agency investigations and reports</b>   | Disclosures substantiated in whole or in part | 22             | 30             | 62             | 21             | 31             | 49                 | 25  |
|   | Disclosures unsubstantiated                   | 3              | 4              | 5              | 1              | 5              | 5                  | 1   |
| <b>Disclosure processing times</b>  | Within 15 days                                | 256            | 394            | 555            | 555            | 583            | 575                | 731 |
|   | Over 15 days                                  | 232            | 333            | 451            | 315            | 470            | 585                | 584 |
| <b>Percentage of disclosures processed within 15 days</b>   | 52%   | 54%            | 55%            | 63%            | 55%            | 49%            | 55%                |     |
| <b>Disclosures processed and closed</b>   | 488   | 727            | 1,006          | 870            | 1,053          | 1,160          | 1,315              |     |

<sup>a</sup> Many disclosures contain more than one type of allegation. This table, however, records each whistleblower disclosure as a single matter, even if multiple allegations were included.

<sup>b</sup> Each year, OSC receives a number of cases that are inadvertently filed by federal employees as disclosures of wrongdoing, and properly should have been filed as prohibited personnel practice complaints. In order to process these cases, OSC must open a disclosure file, read the information provided, and determine that the individual is only seeking relief to address a possible prohibited personnel practice, and not separately making a disclosure of wrongdoing. After making a determination that the case was improperly filed as a disclosure, OSC's Disclosure Unit forwards the case to OSC's Complaints Examining Unit, which reviews the claim as a prohibited personnel practice complaint. In 2014, the number of these misfiled disclosure cases increased by an estimated 9 percent over the historical average because of changes in OSC's online complaint filing system. OSC is in the process of modernizing its online complaint filing system to make it more user-friendly and intuitive. OSC anticipates that the changes to the online system will be completed by the start of FY 2016. The changes will address not only the current, elevated number of misfiled disclosure cases, but, with the smarter, more user-friendly interface for federal employees, will greatly diminish the historical problem of wrongly-filed disclosure forms. This will make OSC's Disclosure Unit more efficient, by reducing the administrative costs to review, close, and re-direct improperly filed cases, while also enhancing the user-experience. By diminishing the number of wrongly filed disclosure cases, the new system will also provide a more accurate, but lower number of actual disclosure cases received in FY 2016 and beyond.

## PART 7 – HATCH ACT MATTERS

### Overview

Enforcement of the Hatch Act—which protects the civil service system from coerced or inappropriate partisan political activity—is another important component of OSC’s mission. The agency’s Hatch Act Unit (HAU) investigates complaints, issues advisory opinions, responds to requests, and engages in training and outreach to the federal community.

OSC worked with Congress to obtain passage of the Hatch Act Modernization Act (HAMA) in December 2012. This legislation removed OSC’s jurisdiction over most state and local government employees who run for partisan political office, an important reform that has enabled OSC to enforce the Hatch Act more efficiently and focus on the federal community.

### Summary of Workload, Activity, and Results

The HAU investigates allegations to determine whether the evidence of a Hatch Act violation supports disciplinary action. If a determination is made that a violation has occurred, the HAU can issue a warning letter to the subject, attempt to informally resolve the violation, negotiate a settlement, or prosecute the case before the MSPB.

As anticipated, the Hatch Act Modernization Act resulted in a substantial reduction in the number of allegations of Hatch Act violations related to state and local political campaigns, and fewer requests for advisory opinions. As a result, the Hatch Act Unit received approximately 300 fewer cases than a typical pre-HAMA fiscal year, receiving 151 complaints in FY 2014 while resolving 182 complaints.

### Advisory Opinions

The HAU has the unique responsibility of providing Hatch Act information and advice to the White House and congressional offices, cabinet members and other senior management officials, as well as state and local (including Washington, D.C.) government employees, the public at large, and the news media. OSC advises individuals on whether they are covered by the Act and whether their political activities are permitted. During FY 2014, the HAU issued 1,382 total advisory opinions, including 60 formal written advisory opinions.

## Hatch Act Unit Successes

Some of OSC's significant enforcement results for the year are highlighted below:

### Disciplinary Action Obtained through Settlement Negotiations

OSC successfully resolved fifteen Hatch Act cases through settlement negotiations in fiscal year 2014. All of the cases involved federal employees who engaged in significant prohibited political activity, and the settlements resulted in the employees receiving disciplinary action for their violations.

For example, OSC investigated allegations that a Federal Elections Commission (FEC) employee sent dozens of partisan political messages on social media, including many soliciting campaign contributions for President Obama's 2012 reelection campaign and other political campaigns. The employee also participated in an online broadcast via webcam from an FEC facility, criticizing the Republican Party and then-presidential candidate Mitt Romney. Following a joint investigation by OSC and the FEC Office of Inspector General, the employee admitted to violating the Hatch Act and agreed to resign and accept a two-year debarment from federal executive branch employment.

OSC also investigated allegations that a U.S. Air Force civilian employee sent numerous partisan political e-mails using a government account to a list of as many as 60 federal employees. The employee sent each e-mail while on duty in the months leading up to the 2012 election. The employee admitted knowing about the Hatch Act's restrictions, and even after receiving warnings from his supervisors, persisted in sending more e-mails. All of the e-mails were in opposition to then-candidate President Barack Obama and the Democratic Party. As disciplinary action for his admitted violations, the employee agreed to accept a 40-day suspension without pay.

Also, OSC investigated a complaint that an immigration services assistant for the United States Custom and Immigration Services, while on duty and in the workplace, sent several emails attempting to, among other things, organize counter-demonstrations at two Republican events during the 2012 elections. As disciplinary action for her admitted violations, the employee agreed to accept a five-day suspension without pay. She already had been disciplined by USCIS and served a ten-day suspension without pay for email abuse.

In another example, OSC investigated an IRS tax advisory specialist who promoted her partisan political views to a taxpayer she was assisting during the 2012 presidential election season. Specifically, OSC received a recorded conversation in which the employee expressed pro-Democratic party and anti-Republican party sentiments to a taxpayer. Following OSC's investigation, the employee entered into a settlement agreement with OSC, wherein she admitted to violating the Hatch Act and agreed to accept a 14-day suspension without pay.

## Merit Systems Protection Board Litigation

OSC filed one Hatch Act case with the MSPB in fiscal year 2014. It involved an Internal Revenue Service (IRS) customer service representative who, when fielding taxpayers' questions on an IRS customer service help line, repeatedly urged taxpayers to reelect President Obama in 2012. OSC successfully resolved the case through settlement negotiations and the employee agreed to accept a 100-day suspension without pay for his violation.

In FY 2014, OSC also received a final MSPB decision on what was the first case under the Hatch Act Modernization Act of 2012. The case involved a U.S. Postal Service (USPS) employee who twice ran in partisan elections for the U.S. House of Representatives and solicited political contributions for his campaigns. OSC and USPS repeatedly warned the employee that his actions violated the Hatch Act and requested that he comply with the law either by withdrawing from the elections or ending his federal employment. Despite these repeated warnings, the employee refused to comply with the law. The MSPB ordered the employee removed from his employment, and the Federal Circuit affirmed the MSPB's decision in December 2014.

## Corrective Actions Obtained through Negotiations

The Hatch Act Unit successfully resolved eight cases in fiscal year 2014 by encouraging employees to voluntarily cease the activity that violated the Hatch Act. Seven of these cases involved federal employees who were running for partisan political office. The Hatch Act Unit was able to convince the employees to come into compliance with the law by either withdrawing from the race or resigning from their employment.

## Hatch Act Unit Outreach

To further its advisory role, the Hatch Act Unit is very active in OSC's outreach program. The Unit conducted approximately 30 outreach presentations this fiscal year to various federal agencies and employee groups concerning federal employees' rights and responsibilities under the Act. Many of these programs involved high-level agency officials.

**Table 8** below contains FY 2014 summary data (with comparative data for the six previous fiscal years) on OSC’s Hatch Act enforcement activities. The number of HAU complaints pending at the end of the fiscal year decreased 32 percent from FY 2013 levels.

| <b>TABLE 8 Summary of Hatch Act Complaint and Advisory Opinion Activity</b> |                                     |                            |                |                |                |                |                |                |
|---|-------------------------------------|----------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
|   |                                     | <b>FY 2008<sup>a</sup></b> | <b>FY 2009</b> | <b>FY 2010</b> | <b>FY 2011</b> | <b>FY 2012</b> | <b>FY 2013</b> | <b>FY 2014</b> |
| <b>Formal written advisory opinion requests received</b>                    |                                     | 292                        | 227            | 351            | 283            | 257            | 107            | 64             |
| <b>Formal written advisory opinions issued</b>                              |                                     | 275                        | 226            | 320            | 335            | 262            | 129            | 60             |
| <b>Total advisory opinions issued<sup>b</sup></b>                           |                                     | 3,991                      | 3,733          | 4,320          | 3,110          | 3,448          | 1,767          | 1,382          |
| <b>New complaints received<sup>c</sup></b>                                  |                                     | 445                        | 496            | 526            | 451            | 503            | 277            | 151            |
| <b>Complaints processed and closed</b>                                      |                                     | 264                        | 388            | 535            | 635            | 449            | 465            | 182            |
| <b>Warning letters issued</b>   |                                     | 70                         | 132            | 163            | 164            | 142            | 150            | 44             |
| <b>Corrective actions taken by cure letter recipients</b>                   | Withdrawal from partisan races      | 13                         | 15             | 28             | 23             | 5              | 5              | 7              |
|   | Resignation from covered employment | 17                         | 6              | 26             | 16             | 2              | 2              | 0              |
|   | Other                               | 2                          | 3              | 1              | 5              | 4              | 4              | 1              |
|   | <b>Total</b>                        | 32                         | 24             | 55             | 44             | 11             | 11             | 8              |
| <b>Disciplinary action complaints filed with MSPB</b>                       |                                     | 3                          | 10             | 7              | 3              | 0              | 2              | 1              |
| <b>Disciplinary actions obtained (by negotiation or ordered by MSPB)</b>    |                                     | 11                         | 5              | 10             | 5              | 4              | 7              | 15             |
| <b>Complaints pending at end of fiscal year</b>                             |                                     | 323                        | 430            | 422            | 233            | 286            | 96             | 65             |

<sup>a</sup> Numbers revised for fiscal years 2007-2008 based upon a new query which includes disciplinary actions obtained in both negotiated Hatch Act settlements and litigated Hatch Act cases, not just litigated cases as in past reports.

<sup>b</sup> All oral, e-mail, and written advisory opinions issued by OSC.

<sup>c</sup> Includes cases that were reopened.

## PART 8 – OUTREACH

### Outreach Program

The Outreach Program assists agencies in meeting the statutory mandate of 5 U.S.C. § 2302(c) and the requirements of the White House’s 2013 second Open Government National Action Plan (NAP). The NAP requires that federal agencies inform their workforces about the rights and remedies available to them under the Whistleblower Protection Act and the Whistleblower Protection Enhancement Act and receive OSC’s certification under Section 2302(c).

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

In an effort to promote OSC’s mission and programs, OSC provides formal and informal outreach sessions, including making materials available on the agency web site. During FY 2014, OSC employees spoke at 104 events nationwide.

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

### Annual Survey Program

Each year, OSC surveys people who have contacted the agency for assistance during the previous fiscal year.<sup>a</sup> Complainants in prohibited personnel practice cases closed during FY 2014, claimants in USERRA demonstration project matters closed during FY 2014, recipients of formal Hatch Act advisory opinions during that year, and for the first time, whistleblowers in Disclosure Unit cases were invited to participate in the survey.

The Prohibited Personnel Practice, Disclosure, and USERRA surveys sought the following information: (1) whether potential respondents were fully apprised of their rights; (2) whether their claim was successful at OSC or at the MSPB; and (3) whether, successful or not, they were satisfied with the service received from OSC.

Due to the low response rate, typically 10 percent, and lack of geographic diversity among respondents, these results may not be representative samples. OSC is considering ways to improve our response rates and measure nonresponse bias in order to increase the utility of the survey.

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<sup>a</sup> Pursuant to 5 U.S.C. § 1212 *note*.

Compared to the 2013 rate of returned surveys, which was 9.2 percent, the FY 2014 rate of return was 10 percent. This year's survey was the first time the Survey Monkey software was used, and the number of surveys mailed out increased by 15 percent, from 3,040 in FY 2013, to 3,515 in FY 2014. The increase is due to two factors: IT improved the query used to extract the names and addresses of the complainants with closed cases, and whistleblower disclosure cases were added back into the survey for the first time in ten years. The overall survey results were comparable with prior years' results. Also following the pattern from the prior years', the service from the Hatch Act Unit received the highest ratings.

## FURTHER INFORMATION

### Prohibited Personnel Practices

Individuals with questions about prohibited personnel practices not answered on the agency website can contact the Officer of the Week at:

*Complaints Examining Unit*  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
Telephone: 1 (800) 872-9855  
(202) 254-3630  
Fax: (202) 653-5151

There are two ways to file a prohibited personnel complaint with OSC, on paper or electronically. A complaint can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). Alternatively, if filing on paper, please use Form OSC-11, which is available online (<https://osc.gov/Pages/Resources-OSCFForms.aspx>) and can be filled out online, printed, and mailed or faxed to the address above.

### ADR Unit

Questions about mediation under OSC's ADR Program not answered on the agency website should be directed to:

*Alternative Dispute Resolution Unit*  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
Telephone: (202) 254-3600  
Email: [adr@osc.gov](mailto:adr@osc.gov)

## Hatch Act Unit

Our website has additional information about the Hatch Act, including frequently asked questions by federal, state and local government employees, and selected OSC advisory opinions on common factual situations. Requests for other advice about the Hatch Act can be made by contacting:

### *Hatch Act Unit*

U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
Telephone: 1 (800) 85-HATCH  
              1 (800) 854-2824  
              (202) 254-3650  
Fax: (202) 653-5151  
Email: [hatchact@osc.gov](mailto:hatchact@osc.gov)

A Hatch Act complaint can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). Alternatively, complaints alleging a violation of the Hatch Act can be made by using Form OSC-13. The form is available online (<https://osc.gov/Pages/Resources-OSCFORMS.aspx>) and can be filled out online, printed, and mailed or faxed to the address above.

## Whistleblower Disclosure Unit

Information about reporting a whistleblower disclosure to OSC in confidence is available on the agency website, or at:

### *Disclosure Unit*

U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
Telephone: 1 (800) 572-2249  
              (202) 254-3640  
Fax: (202) 653-5151

A disclosure can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). Alternatively, Form OSC-12 can be used to file a disclosure with OSC. The form is available online (<https://osc.gov/Pages/Resources-OSCFORMS.aspx>) and can be filled out online, printed, and mailed or faxed to the address above.

## USERRA Unit

A USERRA complaint can be filed electronically with OSC (<https://osc.gov/pages/file-complaint.aspx>). The OSC website has additional information about USERRA, including a link to the complaint form issued by VETS for use by claimants. Questions not answered on the web site about OSC's role in enforcing the act may be directed to:

### *USERRA Unit*

U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
Telephone: (202) 254-3600  
Email: [userra@osc.gov](mailto:userra@osc.gov)

## Outreach Program

Many OSC forms and publications are available in the “Resources” section of the agency website. Questions not answered on the agency website about OSC outreach activities and availability of OSC publications should be directed to:

### *Director of Outreach*

U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
Telephone: (202) 254-3600  
Fax: (202) 653-5151

## Policy and Congressional Affairs

This and other OSC reports to Congress are available in the “Resources” section of the agency website. Subject to availability, copies of these reports can be requested by writing or contacting:

### *Office of Policy and Congressional Affairs*

U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
Telephone: (202) 254-3600  
Fax: (202) 653-5161

*For callers with hearing and/or speech disabilities, all OSC telephone numbers listed in this section may be accessed using TTY by dialing the Federal Relay Service at:  
1 (800) 877-8339*

# APPENDICES

## APPENDIX A

### SURVEY TOTALS —*and*— RESPONSE SOURCES FY 2014

#### SURVEY TOTALS

| FY 2014          |       |
|------------------|-------|
| Number mailed.   | 3,515 |
| Number returned. | 355   |
| Response rate.   | 10%   |

#### Response Source by Type of Matter at OSC

| 1. What was the nature of your correspondence to OSC?<br>(Please choose only one)   |            |
|---|------------|
|   | FY 2014    |
| <b><u>Response options</u></b>  |            |
| You filed a complaint concerning a prohibited personnel practice.   | 199        |
| You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity). | 13         |
| Your case involved a USERRA complaint.  | 20         |
| <b>You filed a whistleblower disclosure case (OSC Form 12)</b>  | <b>123</b> |

APPENDIX B  
 PPP COMPLAINTS RESPONSES  
 —for—  
 FY 2014

| 1. Did the agency against which you filed the complaint inform you about your rights and responsibilities with regard to prohibited personnel practices? |                |
|--|----------------|
|  | <b>FY 2014</b> |
| <b><u>Response options</u></b>   |                |
| Yes.   | 28             |
| No.  | 144            |
| Do not recall.   | 26             |
| Never employed by a federal agency.  | 1              |

| 2. Did you obtain the result that you wanted from OSC? |                |
|--|----------------|
|  | <b>FY 2014</b> |
| <b><u>Response options</u></b>                         |                |
| Yes.   | 9              |
| No.  | 190            |

| 3. Did your complaint include any allegation of reprisal for whistleblowing? |                |
|--|----------------|
|  | <b>FY 2014</b> |
| <b><u>Response options</u></b>   |                |
| Yes.   | 104            |
| No.  | 95             |

4. What reason did OSC give for closing any reprisal for whistleblowing allegation in your complaint without obtaining the result that you desired? (Check all that apply.)

|   | <b>FY 2014</b> |
|---|----------------|
| <b><u>Response options</u></b>  |                |
| No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.   | 20             |
| No personnel action taken by the agency involved.   | 22             |
| Information that you disclosed did not appear to be a legally protected disclosure.   | 12             |
| Your disclosure occurred after the personnel action involved in your complaint.   | 6              |
| Insufficient proof that the agency official (who took the personnel action against you) knew about your disclosure.                                   | 14             |
| Insufficient proof of connection between your disclosure and the personnel action involved in your complaint.   | 18             |
| OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.                        | 12             |
| Insufficient evidence that the personnel action involved in your complaint violated a law or regulation.  | 23             |
| You or OSC settled the matter with the agency involved.   | 2              |
| You declined corrective action offered by the agency involved.  | 2              |
| You notified OSC that you had filed or would file an Individual Right of Action (IRA) or other appeal with the Merit Systems Protection Board (MSPB). | 7              |
| You withdrew your complaint.  | 2              |
| Other.  | 52             |
| Do not recall.  | 10             |

5. Did you file an Individual Right of Action or other appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?

|                                   | <b>FY 2014</b> |
|-----------------------------------|----------------|
| <b><u>Response options</u></b>    |                |
| Yes.                              | 45             |
| No.                               | 136            |
| Have not decided whether to file. | 18             |

| 6. Did you ask for the same relief that you sought from OSC? |         |
|--|---------|
|  | FY 2014 |
| <b><u>Response options</u></b>                               |         |
| Yes.   | 59      |
| No.  | 104     |
| Do not recall.   | 36      |

| 7. Were you successful at the MSPB in obtaining the same result that you sought from OSC? |         |
|---|---------|
|   | FY 2014 |
| <b><u>Response options</u></b>  |         |
| Yes.  | 5       |
| Partially.  | 9       |
| No.   | 0       |
| Appeal pending.   | 45      |

| 8. If the answer to the previous question was "yes" or "partially," how did you obtain the result? |         |
|--|---------|
|  | FY 2014 |
| <b><u>Response options</u></b>   |         |
| Settlement.  | 6       |
| Decision after hearing.  | 8       |
| Other.   | 0       |

| 9. What reason did OSC give for closing your complaint without obtaining the result that you desired? (Check all that apply)   |         |
|--|---------|
|  | FY 2014 |
| <b><u>Response Options</u></b>   |         |
| No OSC jurisdiction over your position, the agency, or agency official involved in the complaint.                              | 33      |
| No personnel action taken by the agency involved.  | 29      |
| OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint. | 27      |
| Insufficient evidence that the personnel action involved in your complaint violated a law or regulation.                       | 68      |
| You or OSC settled the matter with the agency involved.  | 5       |
| You declined corrective action offered by the agency involved.   | 2       |
| You withdrew your complaint.   | 3       |
| OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action.                                     | 4       |
| OSC obtained a decision in the corrective action proceeding filed with the MSPB.   | 1       |
| Closed for further action on discrimination allegations through EEO processes.   | 14      |
| Resolved through OSC's Mediation Program.  | 1       |
| Other.   | 91      |
| Do not recall.   | 18      |

10. How would you rate the service provided by OSC in the following areas?

|                                    | <b>FY 2014</b>        |                  |                                 |                     |                          |
|------------------------------------|-----------------------|------------------|---------------------------------|---------------------|--------------------------|
| <b><u>Response Options</u></b>     | <b>Very satisfied</b> | <b>Satisfied</b> | <b>No opinion /inapplicable</b> | <b>Dissatisfied</b> | <b>Very dissatisfied</b> |
| Courtesy.                          | 8                     | 20               | 31                              | 26                  | 114                      |
| Clarity of oral communications.    | 9                     | 17               | 24                              | 43                  | 106                      |
| Clarity of written communications. | 8                     | 22               | 24                              | 44                  | 101                      |
| Timeliness.                        | 10                    | 35               | 28                              | 33                  | 93                       |
| Results.                           | 3                     | 5                | 13                              | 19                  | 159                      |

## APPENDIX C

### FORMAL HATCH ACT ADVISORY OPINIONS

—*for*—

FISCAL YEAR  
2014

| 1. As a result of our written advisory opinion given to you concerning the proposed political activity, what was the impact? |         |
|--|---------|
|  | FY 2014 |
| <b><u>Response Options</u></b>   |         |
| The OSC opinion advised that the person in question was free to carry out his or her planned political activity.             | 7       |
| The OSC opinion advised that the person in question should not continue his or her planned political activity.               | 1       |
| The OSC opinion was in response to a general question concerning the application of the Hatch Act.                           | 1       |
| Other.   | 4       |

| 2. How would you rate the service provided by OSC in the following areas? |                |           |                             |              |                   |
|---|----------------|-----------|-----------------------------|--------------|-------------------|
|   | FY 2014        |           |                             |              |                   |
| <b><u>Response Options</u></b>  |                |           |                             |              |                   |
|   | Very satisfied | Satisfied | No opinion/<br>inapplicable | Dissatisfied | Very dissatisfied |
| Courtesy.   | 8              | 4         | 0                           | 0            | 1                 |
| Clarity of written communications.  | 7              | 3         | 2                           | 1            | 0                 |
| Timeliness.   | 4              | 7         | 0                           | 0            | 2                 |
| Results.  | 6              | 4         | 1                           | 0            | 2                 |

APPENDIX D

USERRA UNIT  
SURVEY RESPONSES  
*—for—*  
FISCAL YEAR  
2014

| 1. Did the agency against which you filed the complaint inform you about your rights and remedies with regard to USERRA? |                |
|--|----------------|
|  | <b>FY 2014</b> |
| <b><u>Response options</u></b>   |                |
| Yes.   | 1              |
| No.  | 16             |
| Do not recall.   | 3              |
| Never employed by a federal agency.  | 0              |

| 2. Did you obtain the result that you wanted from OSC? |                |
|--|----------------|
|  | <b>FY 2014</b> |
| <b><u>Response options</u></b>                         |                |
| Yes.   | 5              |
| No.  | 15             |

| 3. What reason did OSC give for closing your USERRA case? (Check all that apply.)                 |                |
|---|----------------|
|   | <b>FY 2014</b> |
| <b><u>Response options</u></b>  |                |
| No OSC jurisdiction over your position, the agency, or agency official involved in the complaint. | 4              |
| Insufficient evidence that the personnel action involved in your complaint violated USERRA.       | 7              |
| You or OSC settled the matter with the agency involved.   | 0              |
| You declined corrective action offered by the agency involved.                                    | 0              |
| You withdrew your complaint.  | 0              |
| Other.  | 5              |
| Do not recall.  | 0              |

| 4. Did you file a USERRA appeal with the MSPB in connection with the same events that you reported in your complaint to OSC? |         |
|--|---------|
|  | FY 2014 |
| <b><u>Response options</u></b>   |         |
| Yes.   | 8       |
| No.  | 6       |
| Do not recall.   | 0       |

| 5. Did you ask for the same relief that you sought from OSC? |         |
|--|---------|
|  | FY 2014 |
| <b><u>Response options</u></b>                               |         |
| Yes.   | 4       |
| No.  | 1       |
| Do not recall.   | 3       |

| 6. Were you successful at the MSPB in obtaining the same result that you sought from OSC? |         |
|---|---------|
|   | FY 2014 |
| <b><u>Response options</u></b>  |         |
| Yes.  | 1       |
| Partially.  | 0       |
| No.   | 3       |
| Appeal pending.   | 0       |

| 7. If the answer to the previous question was "yes" or "partially," how did you obtain the result? |         |
|--|---------|
|  | FY 2014 |
| <b><u>Response options</u></b>   |         |
| Settlement.  | 0       |
| Decision after hearing.  | 1       |
| Other.   | 0       |

8. How would you rate the service provided by OSC in the following areas?

|                                    | FY 2014               |                  |                                 |                     |                          |
|------------------------------------|-----------------------|------------------|---------------------------------|---------------------|--------------------------|
| <b><u>Response Options</u></b>     | <b>Very satisfied</b> | <b>Satisfied</b> | <b>No opinion /inapplicable</b> | <b>Dissatisfied</b> | <b>Very dissatisfied</b> |
| Courtesy.                          | 3                     | 1                | 2                               | 6                   | 7                        |
| Clarity of oral communications.    | 3                     | 0                | 3                               | 4                   | 9                        |
| Clarity of written communications. | 3                     | 1                | 2                               | 6                   | 7                        |
| Timeliness.                        | 1                     | 2                | 0                               | 8                   | 8                        |
| Results.                           | 3                     | 0                | 0                               | 3                   | 13                       |

## APPENDIX E

### DISCLOSURE UNIT SURVEY RESPONSES *—for—* FISCAL YEAR 2014

| 1. Did the agency against which you filed the disclosure inform you about your right to make whistleblower disclosures, and the channels for making such disclosures? |         |
|---|---------|
|   | FY 2014 |
| <b><u>Response options</u></b>  |         |
| Yes.  | 25      |
| No.   | 80      |
| Do not recall.  | 17      |
| Never employed by a federal agency.   | 1       |

| 2. Did you obtain the action that you wanted from OSC? |         |
|--|---------|
|  | FY 2014 |
| <b><u>Response options</u></b>                         |         |
| Yes.   | 16      |
| No.  | 107     |

| 3. What reason did OSC give for closing your disclosure matter? (Check all that apply.)  |         |
|--|---------|
|  | FY 2014 |
| <b><u>Response options</u></b>   |         |
| No OSC Jurisdiction over agency involved, your position, or agency official involved in your disclosure  | 9       |
| Insufficient evidence of a violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety | 36      |
| You withdrew your disclosure   | 1       |
| You resolved the matter with the agency involved   | 1       |
| Your disclosure was referred to the agency involved for a report to the OSC on the agency's inquiry into the matter  | 10      |
| Other  | 45      |
| Do not recall  | 5       |

| 4. Did you agree with the reason OSC gave for closing your disclosure matter? |         |
|---|---------|
|   | FY 2014 |
| <b><u>Response options</u></b>  |         |
| Yes.  | 3       |
| No.   | 97      |
| I don't know  | 7       |

| 5. How would you rate the service provided by OSC in the following areas? |                       |                  |                                 |                     |                          |
|---|-----------------------|------------------|---------------------------------|---------------------|--------------------------|
|   | FY 2014               |                  |                                 |                     |                          |
| <b><u>Response Options</u></b>  | <b>Very satisfied</b> | <b>Satisfied</b> | <b>No opinion /inapplicable</b> | <b>Dissatisfied</b> | <b>Very dissatisfied</b> |
| Courtesy.   | 14                    | 18               | 12                              | 17                  | 62                       |
| Clarity of oral communications.   | 10                    | 18               | 18                              | 20                  | 57                       |
| Clarity of written communications.  | 11                    | 16               | 15                              | 23                  | 58                       |
| Timeliness.   | 10                    | 17               | 16                              | 26                  | 54                       |
| Results.  | 5                     | 7                | 12                              | 15                  | 84                       |

## APPENDIX F

### LIST OF ACRONYMS USED IN REPORT

|        |   |
|--------|---|
| ADR    | Alternative Dispute Resolution                            |
| ATSA   | Aviation and Transportation Security Act                  |
| AWOL   | Absent Without Leave                                      |
| CEU    | Complaints Examining Unit                                 |
| DHS    | Department of Homeland Security                           |
| DOD    | Department of Defense                                     |
| DOL    | Department of Labor                                       |
| DOT    | Department of Transportation                              |
| DU     | Disclosure Unit   |
| EEO    | Equal Employment Opportunity                              |
| FAA    | Federal Aviation Administration                           |
| HAU    | Hatch Act Unit  |
| IG     | Inspector General   |
| IOSC   | Immediate Office of the Special Counsel                   |
| IPD    | Investigation and Prosecution Division                    |
| MOU    | Memorandum of Understanding                               |
| MSPB   | Merit Systems Protection Board                            |
| OIG    | Office of Inspector General                               |
| OPF    | Official Personnel Folder                                 |
| OPM    | Office of Personnel Management                            |
| OSC    | Office of Special Counsel                                 |
| PPP    | Prohibited Personnel Practice                             |
| SES    | Senior Executive Service                                  |
| TRACON | Terminal Radar Approach Control                           |
| TSA    | Transportation Security Administration                    |
| USERRA | Uniformed Services Employment and Reemployment Rights Act |
| VA     | Department of Veterans Affairs                            |
| VETS   | Veterans' Employment and Training Service                 |
| WPA    | Whistleblower Protection Act                              |
| WPEA   | Whistleblower Protection Enhancement Act                  |

## APPENDIX G

### ENDNOTES

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

<sup>2</sup>Unless noted otherwise, all references after this to prohibited personnel practice complaints or cases handled by OSC include matters that alleged other violations of law also within the agency's jurisdiction under 5 U.S.C. § 1216, except violations of the Hatch Act.

<sup>3</sup>An individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action, pending investigation of the action by OSC. If the Special Counsel has reasonable grounds to believe that the action resulted from a prohibited personnel practice, OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, OSC may then ask the MSPB to stay the action.

<sup>4</sup>Public Law No. 107-71 (2001).

<sup>5</sup> See endnote 3.

<sup>6</sup>The 13 prohibited personnel practices are: (1) discrimination based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation (allegations of discrimination, except discrimination based on marital status or political affiliation, are generally deferred by OSC to EEO processes, consistent with 5 C.F.R. § 1810.1); (2) soliciting or considering improper employment recommendations; (3) coercion of political activity; (4) deceiving or willfully obstructing anyone from competing for employment; (5) influencing anyone to withdraw from competition to improve or injure the employment prospects of another; (6) giving an unauthorized preference or advantage to improve or injure the employment prospects of another; (7) nepotism; (8) reprisal for whistleblowing; (9) reprisal for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or an Inspector General; or refusing to obey an order that would require one to violate a law; (10) discrimination based on personal conduct that does not adversely affect job performance; (11) violating veterans' preference requirements; and (12) violating a law, rule or regulation implementing or directly concerning merit system principles set forth at 5 U.S.C. § 2301. It should be noted that these are general descriptions of the prohibited personnel practices defined at 5 U.S.C. § 2302(b). That section should be consulted for fuller descriptions of the elements of each of these violations. It should also be noted that the Whistleblower Protection Enhancement Act (WPEA) passed in November 2012 created a new prohibited personnel practice, (13) *impose any nondisclosure policy, form, or agreement without informing employees of their whistleblower rights. A fuller description can be found in 5 U.S.C. § 2302 (b).*