

## Appendix B



## Strategic Plan FY2012-2016

### U.S. OFFICE OF SPECIAL COUNSEL

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# U.S. Office of Special Counsel

## Strategic Plan for FY 2012 – 2016

### **Introduction**

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

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

### **About OSC**

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

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

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

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

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

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

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

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

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

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

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

### **Strategic Plan and Cross-Cutting Documents**

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

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

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

## Mission – Vision - Values

### OSC Mission

Promote accountability, integrity and fairness in the Federal workplace.

### OSC Vision

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

### OSC Values

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

## **Strategic Goals**

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

## Goals and Objectives – Performance Metrics and Means to Accomplish Goals

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

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

### Performance Metrics and Means to Accomplish Goals:

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

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

### Performance Metrics and Means to Accomplish Goals for PPP cases:

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

### Performance Metrics and Means to Accomplish Goals for USERRA cases:

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

- Percent of cases referred successfully resolved in mediation

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

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals for PPP cases:

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

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

Performance Metrics and Means to Accomplish Goals for USERRA cases:

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

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals:

- Success in prompting thorough agency investigations of referred disclosures

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

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals in PPP Cases:

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

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

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

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

Performance Metrics and Means to Accomplish Goals:

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

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

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

Performance Metrics and Means to Accomplish Goals:

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

## Challenges to Agency Performance

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

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

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

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

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

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

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

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

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