



**OFFICE OF THE SPECIAL COUNSEL
U.S. Merit Systems Protection Board**



The Special Counsel

1120 Vermont Avenue, N.W., Suite 1100
Washington, D.C. 20005

December 29, 1986

The Honorable George Bush
President of the Senate
and
The Honorable Jim Wright
Speaker of the House of Representatives

Dear Mr. President and Mr. Speaker:

In accordance with the Civil Service Reform Act of 1978, Section 1206(m) of Title 5 of the United States Code, I respectfully submit the Fiscal Year 1986 annual report to the Congress on the activities of the Office of the Special Counsel (OSC). As is customary, a copy of this report will be forwarded to each member of Congress.

My term as Special Counsel began in September 1986, the end of the reporting period. Therefore, this report reflects, for the most part, the work of the OSC under the leadership of former Special Counsel, K. William O'Connor. Following his departure in June 1986, the statutory mission of the office continued under the able direction of the Acting Special Counsel, Lynn R. Collins. I am pleased to report significant accomplishments under their stewardship.

This report chronicles a continuing record of achievement on the part of the OSC. The Office has in place an efficient and effective organizational structure and a staff of dedicated, experienced professionals determined to successfully implement the statutory responsibilities of the office.

I am grateful for the opportunity afforded me as Special Counsel to assist in the President's commitment to integrity and efficiency in government. My efforts will be directed to that goal, and to assuring the continued effectiveness of the OSC.

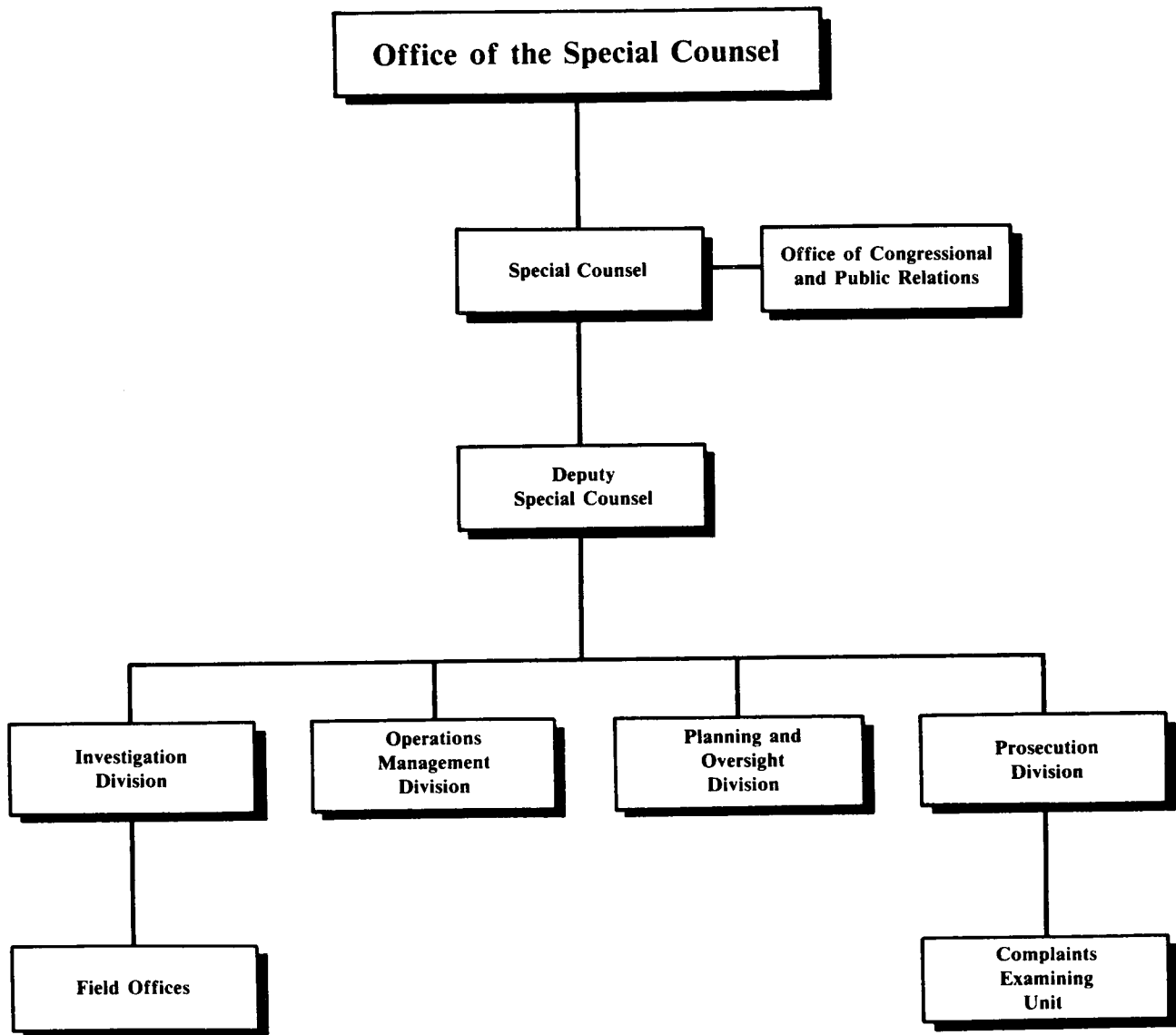
With respect,

Mary F. Wieseman
Special Counsel



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Preface

The Office of Special Counsel (OSC) was established in 1979 by Reorganization Plan Number 2 of 1978. Its functions and powers were enlarged by the Civil Service Reform Act (CSRA) of 1978. During FY 1986 the office operated with a budget of \$4.396 million and a full time equivalency (FTE) personnel ceiling of 84. Budget and staff have remained relatively constant since the beginning of FY 1982.

The OSC is an independent investigative and prosecutorial agency, which litigates before the Merit Systems Protection Board (MSPB). The relationship of the OSC and the MSPB may be likened to that of a judge and prosecutor, the Board performing the former function and the OSC the latter. Both protect the integrity of the merit system by preventing and correcting conduct which undermines the merit system principles, thereby protecting the rights of those who work within that system. As an

agency, OSC is independent of the Board operationally and administratively.

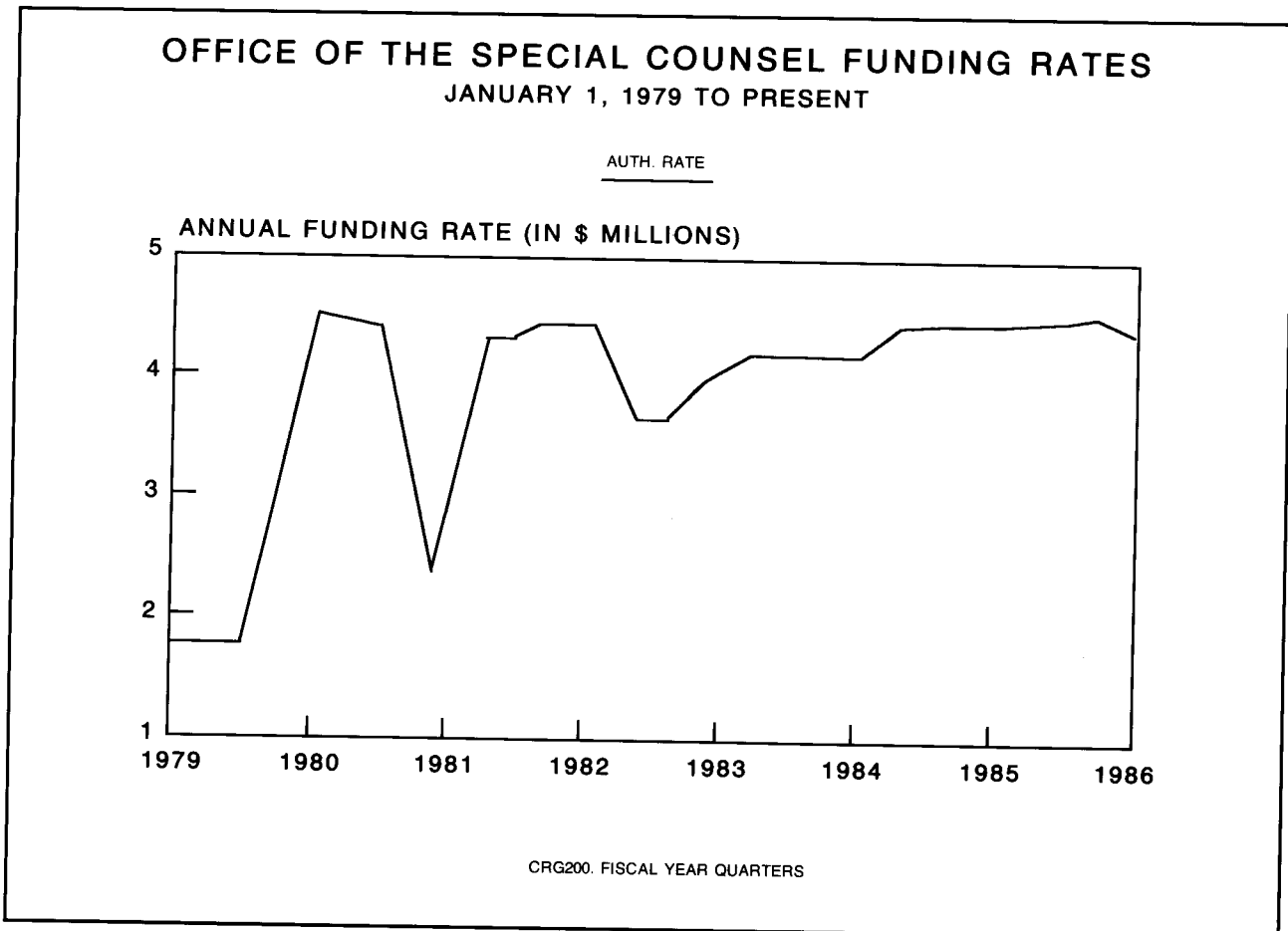
The primary responsibilities of the OSC are:

1. to investigate allegations of activities prohibited by civil service law, rule or regulation, primarily allegations of prohibited personnel practices, and, if warranted, to initiate disciplinary or corrective actions;

2. to provide a secure channel, through which allegations of waste, fraud, mismanagement, abuse of authority or a substantial and specific danger to public health or safety may be made without fear of retaliation and without disclosure of the employee's identity except with the employee's consent;

3. to enforce the Hatch Act.

OSC has jurisdiction world-wide, wherever there are federal civil servants. In this capacity, agency staff have followed leads in investigations throughout the United States, Europe, the Middle East, the South Pacific, Central America and Africa.



Operations

OSC is functionally divided into five basic components. The Prosecution Division, Investigation Division, Planning and Oversight Division, and Office of Congressional and Public Relations, are all supported by the Operations Management Division. In addition, OSC maintains field offices in Dallas, Texas and San Francisco, California.

Operations Management Division

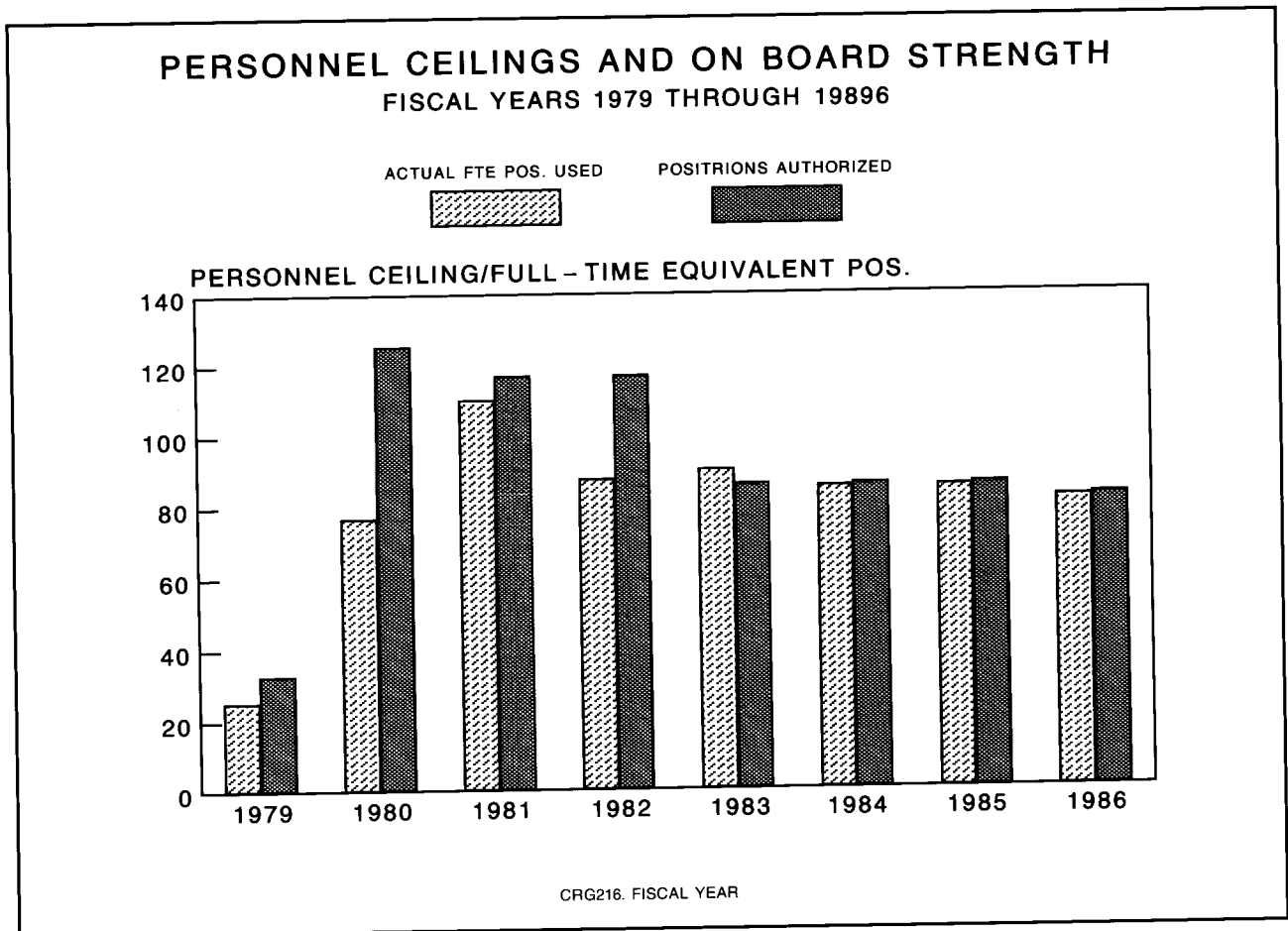
The Operations Management Division, with 16 employees, is responsible for all financial management, budgeting, personnel management, procurement, management infor-

tion and property management activities of the Office of Special Counsel.

During fiscal year 1986, a funding cut of \$198,000 was required in mid-year by the Gramm-Rudman-Hollings law. This necessitated changes in operational techniques, including reductions in travel and the use of court reporters.

Increased emphasis on the use of automated information systems brought about other efficiencies. OSC's personnel management data base was made more useful by adoption of the USDA National Finance Center's position management system. The financial management system was also strengthened through more complete integration with the NFC's central accounting system. The groundwork was laid for future office-wide automation initiatives, including, at year-end, a major conversion to desktop printing capabilities, and expanded use of personal computing.

OSC participation in the GSA administered Diners Club Charge Card Program since



January 1986 has resulted in more timely submission of travel vouchers and processing of payments, and more efficient management of travel advances. A second space audit was conducted by the GSA, which again concluded that the OSC utilization of space was excellent and that no changes were necessary.

Budget and staffing levels were stable during the year. The office operated at its 84 full time equivalency (FTE) personnel ceiling and an authorized budget of \$4.396 million. Over 90 percent of the OSC budget is for uncontrollable items such as personnel compensation, rent, communications, and benefits. The balance covers travel, maintenance, supplies, court reporting and other expenses. Continued efforts to increase efficiency through modern administrative practices within existing budgetary and personnel constraints are planned for the coming year.

Office of Congressional and Public Relations

Since October 1982, the Special Counsel has emphasized outreach to improve and maintain proper communications with Congress and the media, and respond to legislative inquiries which span the OSC program. The Office of Congressional and Public Relations is charged with increasing the awareness among federal employees of the provisions of the CSRA, the Hatch Act and the role and responsibility of OSC.

The Director of Congressional and Public Relations maintains a liaison with the Congress, the press and the public. This is accomplished in great part by responding to telephone inquiries by Congress and the press, distributing informational materials to the public and Congress, and arranging for presentation of speeches to various interest groups in both the public and private sectors.

Twenty-five speeches were given around the country by members of the OSC senior staff during FY 1986. In addition, the office distributed over 36,000 copies of OSC informational materials to the public and Congress.

Also during the year, the office produced and sent over 300 case-related letters to Congress. Responses to inquiries concerning non-case related matters stayed about the same as FY 1985.

Planning and Oversight Division

The Planning and Oversight Division (POD) is responsible for coordinating the development, documentation and implementation of OSC policies and procedures and the development of the overall operating plans of the OSC. POD also serves as the OSC Office of Inspector General and is responsible for inspecting, auditing and evaluating programmatic and administrative operations and the adequacy of internal control and financial management systems. POD staff oversees OSC internal training and personnel security programs.

OPM rules and regulations are systematically reviewed by POD pursuant to 5 U.S.C. §1205(e)(1)(C). Planning and conducting special inquiries into apparent or possible patterns of prohibited personnel practices or significant merit system abuses in federal agencies is a POD function. In FY 1986, POD was also assigned responsibility for reviewing all requests to reopen matters previously closed by OSC and taking or recommending appropriate actions thereon. Finally, the division personnel serve all legal and investigative staff as a source of information concerning the technical aspects of civil service laws, rules, and regulations, including reviewing and reporting on significant MSPB and court decisions which impact on OSC operations.

OSC began FY 1986 with a comprehensive operating plan, the first such fiscal year planning document produced since the establishment of the office. The operating plan was supplemented by a training plan designed to further strengthen the ability of all staff to carry out their duties and responsibilities more efficiently, effectively and economically. Those plans will be updated annually. Internal control reviews and program audits were conducted on a systematic and continual basis.

These reviews have identified areas in which improvements can be made to further enhance OSC operations.

POD also assumed responsibility in FY 1986 for processing requests by complainants for reconsideration of OSC decisions to close their files without action. By the end of FY 1986, requests for reconsideration were normally processed within 30 days.

In FY 1986, POD also initiated special inquiries into potentially significant merit system problems in federal agencies. For the first time, an investigation into an allegation of unequal pay for equal work involving three military departments and the Office of Personnel Management was conducted pursuant to Federal court holdings which have further defined the jurisdiction of OSC in position classification matters.

By combining the Planning and Oversight functions, the efficiency of the OSC Inspector General's office has been enhanced. Any problems the Inspector General identifies are, perforce, the priority issues of POD.

A comprehensive legislative history covering the establishment of the Office of the Special Counsel, the merit system principles, and the prohibited personnel practices under Reorganization Plan Number 2 and the Civil Service Reform Act of 1978, was published in March 1986. The title of the book is "Protecting the Integrity of the Merit System."

Investigation Division

The Investigation Division ended FY 1986 with 32 employees, only three of whom are clerical. Despite this reduction in staff of seven positions from FY 1985, this division increased its output and reduced the pending investigative workload. These gains in the face of resource reductions were largely the product of training as new staff became fully familiar with OSC's unique jurisdiction and trial-oriented procedures.

The division workload is heavily concentrated on those prohibited personnel practices which prohibit reprisal and various forms of discrimination. These violations frequently in-

volve complex questions of motivation and intent and are, thus, the most difficult to investigate. The most experienced investigators are assigned these matters, which also receive the greatest share of supervisory attention.

Close supervision of OSC investigative activities is a key feature of the division's operations. Investigation supervisors in headquarters and field offices make weekly status and progress reports to the Associate Special Counsel for Investigation, as well as special reports, when necessary. Status data is retained on a personal computer in the division, where it is frequently reviewed and analyzed.

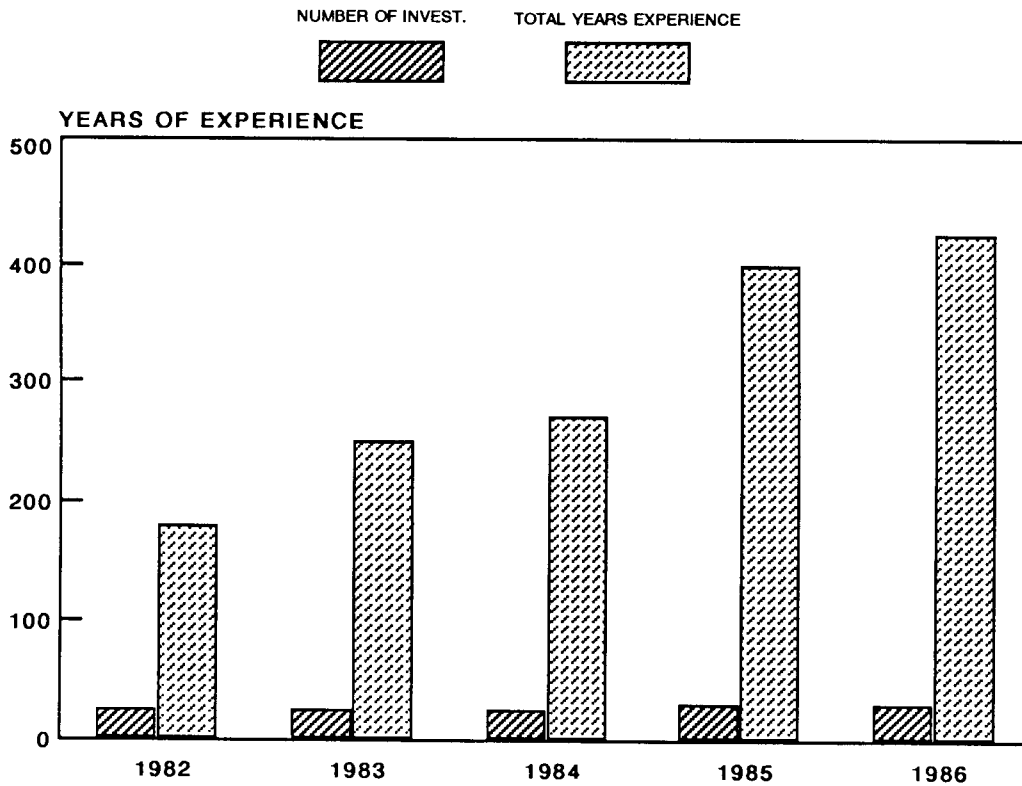
Complex or unusual investigations are analyzed in detail by the assigned investigators and supervisors. The procedure is to investigate aggressively any potential violation until sufficient evidence to support prosecutive action is developed, or it becomes evident that no violation occurred or that, even if one is believed to have occurred, reliable evidence of that violation cannot be obtained. A judgment that prosecution is not warranted or supported must be shared by all investigative supervisors, including the Associate Special Counsel, as well as the assigned trial attorney from the Prosecution Division, before any investigation is closed. Those matters believed to constitute violations are pursued until they are believed to be prepared for trial, at which point they are referred to the Prosecution Division for formal legal analysis and prosecution.

In FY 1986, the division completed 197 field investigations. At the end of the fiscal year 86 additional matters were under active investigation. These results compare favorably to the 155 investigations completed in FY 1985 and the 117 investigations pending at the end of FY 1985.

The Investigation Division also processes all whistleblowing disclosures brought to OSC. Under new procedures, most disclosures are immediately assigned to a staff investigator to develop the information through further contacts with the source of the disclosure, to analyze the information developed, and to recommend further action. The system ensures that the disclosure is fully developed, so that further handling is based on a firm understanding of the information submitted. In FY 1986, 133 disclosures were received and 105

INCREASE IN TOTAL YEARS OF INVEST. EXPERIENCE

FISCAL YEARS 1982 THROUGH 1986



CRG231. PROFESSIONAL INVESTIGATIVE WORK FORCE

disclosures were forwarded to the heads of agencies or Inspectors General. A more detailed description of these activities is contained in the report section on whistleblowing.

Prosecution Division

The focus of all OSC operations is protection of the rights of employees under the merit system through corrective actions and when warranted, the discipline of those who violate the law.

Within the Prosecution Division, the Complaints Examining Unit (CEU), first established in September 1983, conducts initial examination and statutorily required preliminary inquiry into all new non-Hatch Act complaints and allegations. This centralized front-end review ensures

consistent policy application and early assessment of the substance and prosecutive potential of each new matter received. Those matters found through these screening procedures to merit further inquiry are assigned to the Investigation Division for full field investigation. This procedure ensures quality control over all initial determinations and expedites the disposition of matters not warranting full field investigation. The procedure also assures official OSC staff contact with each complainant, so there is no misunderstanding of the nature and scope of the complaint. FY 1986 was the third full year of activity for CEU. The unit has materially aided in reducing the average time required for final resolution of matters.

After referral by CEU to the Investigation Division and completion of the investigation, a Report of Investigation is prepared and