
**A Report to Congress
From The
U.S. Office Of Special Counsel
Fiscal Year 1993**



Biography of the Special Counsel



Kathleen Day Koch was appointed Special Counsel of the U.S. Office of Special Counsel (OSC) on December 20, 1991, for a five year term, following Senate approval of her nomination. During her tenure as Special Counsel, Ms. Koch has emphasized the need for improved respect for OSC and trust in its service to the federal community. She has instituted internal measures to streamline procedures and increase accountability, resulting in a determinative process which better serves OSC's customers. In addition, Ms. Koch has underscored education of federal employees on their rights in whistleblower and other protected activity matters.

Ms. Koch's entire legal career has been in public service, where she has developed expertise in federal employee and government ethics issues. Prior to her appointment to OSC, she served as General Counsel to the Federal Labor Relations Authority and before that was Associate Counsel to the President. She was asked to join the White House staff while serving as Senior Attorney in the Personnel Law Division at the Commerce Department. During the significant formative period of the Merit Systems Protection Board (1979-1984), Ms. Koch participated in the development of the adjudicatory agency's procedural and substantive precedents. Her government career began in 1977 when she was appointed an Honors Program attorney at the Department of Housing and Urban Development.

A native of St. Louis, Missouri, Ms. Koch studied at Concordia College, River Forest, Illinois. She received her B.S. degree with honors from the University of Missouri in St. Louis in 1971 and was honored that year as a finalist in the competition for the Danforth Urban Leadership Fellowship. Ms. Koch received her J.D. degree from the University of Chicago in 1977.

Ms. Koch and her three children reside in Annandale, Virginia.

Introduction

Mission of the Office of Special Counsel

The Office of the Special Counsel was established on January 1, 1979, by Reorganization Plan Number 2 of 1978. The Civil Service Reform Act (CSRA) of 1978, which came into effect on January 11, 1979, enlarged its functions and powers. The office operated as the autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB) until 1989. In March of 1989, the Congress passed the Whistleblower Protection Act (WPA) of 1989, which became effective on July 9, 1989. The WPA established the Office of the Special Counsel as an independent agency within the Executive Branch, separate from the MSPB, and renamed it the Office of Special Counsel (OSC). Under the new law, the OSC kept its basic investigative and prosecutorial functions and its role in litigating cases before the MSPB.

The WPA substantially amended the CSRA to enhance protections against reprisal for those employees who disclose wrongdoing in the federal government, and the ability of the OSC to enforce those protections. Under the CSRA, as amended, the principal responsibilities of the OSC continue to be --

- the investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. §2302(b),¹ and other activities prohibited by civil service law, rule or regulation, and the initiation of corrective and disciplinary actions when such remedial actions are warranted;
- the interpretation and enforcement of the Hatch Act provisions on political activity in Chapters 15 and 73; and
- the provision of a secure channel through which federal employees may make disclosures of information evidencing violations of law, rule or regulation, gross waste of funds, gross mismanagement, abuse of authority, or a substantial and specific danger to public health or safety, without disclosure of the employee's identity (except with the employee's consent) and without fear of retaliation.

¹ All statutory references to chapters and sections that follow in this report will be to Title 5 of the United States Code, unless otherwise indicated.



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

I herewith respectfully submit to the Congress, in accordance with 5 U.S.C. § 1218, the Annual Report from the Office of Special Counsel for Fiscal Year 1993. As is customary, a copy of this report will also be sent to each member of Congress.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Day Koch".

Kathleen Day Koch

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Office of Special Counsel Policy

In furtherance of the merit systems principles specified in the CSRA, the OSC's principal responsibility has been and continues to be the receipt and investigation of complaints of alleged prohibited personnel practices, especially reprisal for whistleblowing. Although allegations of reprisal for whistleblowing are relatively few as compared to the number of federal civilian employees, the OSC regards *any* reprisal for whistleblowing as unacceptable. Accordingly, the OSC's priorities are:

- to treat allegations of reprisal for whistleblowing as its highest priority;
- to review allegations of reprisal for whistleblowing intensively for any feasible remedial or preventive action, whether by means of stays, corrective actions, or disciplinary actions; and
- to use every opportunity to make a public record of the OSC's aggressive pursuit of corrective action (especially in whistleblower reprisal cases), both to encourage other whistleblowers, and to affirm the emphasis given to corrective actions by the OSC.

Shared Responsibility for Protecting Whistleblowers

As the General Accounting Office noted in its 1985 report on the OSC's handling of reprisal allegations, the adequacy of whistleblower protections should not be viewed solely by reference to the matters handled by the OSC. Responsibility for establishing and maintaining a climate in which employee disclosures of waste, fraud or abuse are supported, and in which reprisals for such disclosures are not tolerated, is shared by the government as a whole -- including the President, the Congress, agency heads, managers and supervisors, appellate systems, and the Inspectors General.

Overview of OSC Operations

Budget and Staffing

During Fiscal Year (FY) 1993, the OSC operated with a budget of \$7.952 million, and the agency's full-time equivalency (FTE) personnel ceiling was 100.

Procedures

The Office of Special Counsel is comprised of four divisions: Investigation, Prosecution, Management, and Planning and Advice Divisions. The Investigation and Prosecution Divisions are the primary program units of the agency and are supported by the Management Division and the Planning and Advice Division.

The Complaints Examining Unit (CEU), which is part of the Prosecution Division, initially analyzes all allegations of prohibited personnel practices, allegations of other activities prohibited by civil service law, rule or regulation, and allegations of Hatch Act violations received by the agency. The CEU contacts complainants to ensure that the nature of and basis for the allegation is clearly understood, and conducts further inquiry to the extent necessary to determine whether the allegation warrants further investigation.

After a thorough initial examination, the CEU refers matters stating a potentially valid statutory claim to the Investigation Division for more extensive investigation. If the CEU determines that an allegation is not within the OSC's investigative jurisdiction, but that information contained in the complaint may constitute a whistleblower disclosure, the Investigation Division's Disclosure Unit reviews that information for possible transmittal to the agency head concerned. The OSC does not disclose the identity of the employee without the employee's consent.

The Prosecution Division reviews completed field investigations to determine whether the inquiry has established any violation of law, rule or regulation, and whether the matter warrants corrective or disciplinary action, or both. If so, OSC personnel may discuss the matter with the agency concerned in order to obtain an early resolution of the matter. Otherwise, the Special Counsel may refer the matter in writing to the agency head under §1214(b)(2)(A) with a recommendation for corrective action. If an agency declines to take corrective action, the Special Counsel may request the MSPB to consider the matter under §1214(b)(2)(B), and the MSPB may order any corrective action it deems appropriate. During FY 1993, OSC continued its policy of early and firm negotiation with agencies to obtain corrective action prior to initiating litigation before the MSPB. These efforts resulted in OSC obtaining 97 separate corrective actions for complainants. If the Special Counsel determines that an apparent violation warrants disciplinary action, the OSC files charges against the offending employee under

§1215(a) and prosecutes the case before the MSPB. Finally, if an investigation discloses a violation of any law, rule or regulation not otherwise within the enforcement authority of the OSC, the Special Counsel sends a report of the OSC's findings to the agency head concerned under §1214(e) for certification of any action to be taken on the matter. The OSC reports evidence of any possible criminal violations identified during an investigation to the Department of Justice pursuant to §1214(d).

At any time during an investigation, the OSC may seek a stay of any personnel action if the available evidence provides reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice. The OSC may obtain a stay upon direct request to the agency concerned or by filing a request for a stay with the MSPB under §1214(b)(1). Also, the Special Counsel may, pursuant to §1212(c), intervene as a matter of right or otherwise participate in any proceeding before the MSPB, except that the Special Counsel may not intervene in a proceeding brought under §1221 or §7701 without the consent of the individual initiating the proceeding.

Office of Special Counsel Outreach Program

In FY 1993, the OSC's outreach efforts resulted in OSC staff participation in 64 briefings and seminars. The Special Counsel puts great weight on the value of educating federal employees as to their rights under the Whistleblower Protection Act as well as the Hatch Act. Although the OSC anticipates facing restrictive travel allowances for FY 1994, it will make OSC representatives available to engage in educational programs as often as possible.

OSC Investigations

FY 1993 Overview

During FY 1993, the OSC received 2,256 new matters containing 3,960 separate allegations of prohibited personnel practices and Hatch Act violations. Reprisal for whistleblowing accounted for 15.8 percent of the total allegations received during FY 1993, making it the most frequently cited claim of a prohibited personnel practice. In addition, allegations of reprisal for the exercise of an appeal right totaled 580, or 14.6 percent of receipts. Hatch Act violations accounted for 4.2 percent of the total allegations received. A complete breakdown of the nature of all allegations received by the OSC during FY 1993 appears in *Table 3, Allegations Contained in Matters Received During FY 1993*, on pages 12-13.

During FY 1993, 306 matters were referred by the CEU for full field investigation (an increase of 13.3 percent)². In addition, the CEU closed 1,690 matters on the basis of initial review and inquiry, satisfactory resolution of an employee's complaint during the initial review process, or a determination that there was insufficient basis for further OSC action. Finally, OSC completed 276 full field investigations during FY 1993 and 261 matters were closed following legal review by the Prosecution Division.

Results of Prohibited Personnel Practices Investigations

As a result of its investigation of allegations of prohibited personnel practices, during FY 1993 the OSC --

- obtained 97 corrective actions or favorable dispositions in 87 matters;³
- initiated 29 corrective actions in 27 additional matters which were pending at the end of FY 1993;
- filed one disciplinary action complaint concerning reprisal for an appeal right;

² A breakdown of the nature of allegations referred for field investigation appears in *Table 4, Allegations Contained in Matters Referred for Field Investigation During FY 1993*, on page 14.

³ "Corrective actions or favorable dispositions" include (1) those actions taken by an agency pursuant to a written request for corrective action by the Special Counsel; (2) actions taken by an agency at the request of the OSC as a settlement of a prohibited personnel practice complaint in advance of a written request for corrective action by the Special Counsel; or (3) actions taken by an agency with knowledge of a pending OSC investigation, which satisfactorily resolve those matters under inquiry by the OSC.

- secured two stays of personnel actions, and one extension of a stay, from the MSPB in two cases; two additional requests for stays in two cases were pending before the MSPB at the end of the fiscal year; and
- obtained 21 stays of personnel actions through direct requests to the agencies.

During FY 1993, the MSPB issued eight Final Decisions, and the MSPB Chief Administrative Law Judge (CALJ) issued 13 Recommended Decisions in 12 OSC cases. These Final and Recommended Decisions resulted from complaints for disciplinary action filed by the OSC in FY 1993 and prior fiscal years. The OSC prevailed in all of the recommended decisions, and seven of the eight final MSPB decisions.

Table 1

SUMMARY OF PROHIBITED PERSONNEL PRACTICES INVESTIGATIONS

	<u>FY 1992</u>	<u>FY 1993</u>
Referrals for full field investigation	270	306
Stays obtained from the Merit Systems Protection Board	1	2
Negotiated stays	11	21
Corrective actions obtained	104	97

Results of Hatch Act Investigations

During FY 1993, the OSC received 134 new matters containing 166 separate allegations of Hatch Act violations, and initiated field investigations in 41 matters. As a result of the OSC inquiries into these matters (including those carried over from FY 1992) the OSC --

- filed 24 complaints seeking disciplinary action against 6 federal employees and 18 state employees;
- issued warning letters in 29 matters in which violations had occurred but were not sufficiently egregious to warrant prosecution;
- found no violation and closed 107 matters; and
- carried the remaining matters over to FY 1994 for completion of review.

Apart from investigating and prosecuting alleged violations of the Hatch Act, a vital component of the OSC's statutory responsibility is the issuance of advisory opinions to federal, state and local government employees on Hatch Act questions. During FY 1993, the OSC's Hatch Act Unit issued 219 written advisory opinions, provided 1,109 advisory opinions orally

in response to telephone inquiries, and responded to an additional 718 telephone inquiries requesting general information.

Table 2

SUMMARY OF HATCH ACT ACTIVITIES

	<u>FY 1992</u>	<u>FY 1993</u>
Disciplinary actions filed	13	24
Advisory opinions (oral and written)	1,405	1,328
Telephone inquiry responses	630	718

Corrective Actions

The following is a representative sample of corrective actions obtained by the OSC during FY 1993:

- OSC investigated allegations by an SES employee that she made disclosures of improper expenditures by superior officials, first to her superiors and then to the IG and other offices in the Department. She subsequently received lower ratings on her performance appraisals and was reassigned. After determining that the adverse actions were taken because of her disclosures, OSC sought corrective action from the agency, and entered into a settlement agreement by which the employee's last four performance appraisals were expunged and replaced with "outstanding " ratings, the employee was given two retroactive SES promotions and the agency agreed to pay attorneys fees.
- OSC investigated allegations that an employee was given a lower performance rating and was denied a performance award, and that his duties were substantially changed in reprisal for having given a deposition in an MSPB proceeding in which he also made disclosures. OSC requested that the agency take corrective action after finding violations of 5 U.S.C. §§ 2302(b)(8) and 2302(b)(9). The agency agreed to upgrade the performance appraisal to "outstanding," give the employee a \$6,000 performance award and withdraw the memorandum by which his duties had been changed.
- OSC investigated allegations that an employee who had made disclosures about contract awards was reassigned to a different position, and given a lowered rating on his performance appraisal. OSC requested the agency to take corrective action. The agency agreed to return the employee to his previous position, raise his performance rating, select an arbitrator acceptable to the employee who would resolve further disputes with the agency, and pay attorneys fees.

- OSC investigated allegations that the agency created a position to hire a person referred by a Congressman, and the complainant was obstructed from competing for the position when the agency name-requested and hired the person referred. After finding sufficient evidence to substantiate the allegation, OSC requested that the agency take corrective action. The agency agreed to give the complainant a appointment at the GS-11 level and back pay and benefits at the GS-9 level, retroactive to 1988.
- OSC investigated allegations that an employee sexually harassed a female employee. After finding that the evidence substantiated the allegations, OSC requested the agency to take corrective action. The agency agreed to reimburse the victim for medical expenses related to the harassment and for her legal fees, and promoted her to a GS-12 with assurance that the harasser would have no future contact with her. The harasser agreed to retire.
- OSC investigated allegations that because an employee made protected disclosures, his supervisor threatened to terminate him during his probationary period if he did not resign. After finding that the evidence supported the allegations that the resignation was coerced in reprisal for whistleblowing, OSC requested the agency to take corrective action. The agency agreed to reinstate the employee with back pay and benefits to the date of his resignation, give him a within-grade increase and issue presumptively satisfactory performance ratings. In a similar case involving a terminated probationary employee in a different agency, the agency allowed the employee to resign, expunged the termination from her record, provided a satisfactory reference for future positions, and paid approximately 15 months of back pay, to the agreed upon date of resignation.
- OSC investigated allegations that an agency terminated the appointment of one wage-grade temporary employee and coerced the resignation of another in reprisal for whistleblowing. After determining that the evidence supported the allegations, OSC sent the matters to the agency for corrective action. In one case, the agency agreed to pay back pay for the period between the termination and the employee's reinstatement in a new position. In the other case, the whistleblowing temporary employee was not interested in returning to employment with the agency. The employee was paid back pay for periods during 1990, 1991 and 1992, including within-grade and cost of living increases.

Disciplinary Actions

The following is a representative sample of disciplinary actions filed by the OSC on which the MSPB issued decisions during FY 1993:

- OSC filed a complaint for disciplinary action against a GM-15 supervisor for violations of 5 U.S.C. §§ 2302(b)(9) and 2302(b)(11). The respondent had terminated the appointment of a temporary employee because he sought

information about his grievance rights and provided information to the IG in connection with an investigation. (OSC obtained corrective action for the complainant from the agency.) The respondent did not answer the complaint, and on June 6, 1993, the CALJ entered a default judgment in favor of OSC, having determined that based on the allegations in the complaint, removal was warranted. (Subsequent to the end of the fiscal year, the MSPB remanded the case for a hearing on the merits.) (*OSC v. Einer R. Nielson*, MSPB Docket No. CB1215930014T1)

- OSC had filed a complaint for disciplinary action against a District of Columbia employee for violations of the Hatch Act while he was employed by a federal agency. The CALJ found that OSC had proven three of the four specifications in the Complaint and ordered a 60-day suspension. OSC filed exceptions, arguing that removal was warranted. The MSPB found that the respondent's political activity was substantive, pervasive and continuing, and that he had participated in the decision-making process which led to the candidacy, and had made loans and provided services to the campaign. The MSPB amended the CALJ decision to find violations on all four counts and ordered removal. (*OSC v. Clifford Lee*, 58 MSPR 81 (1993))
- OSC investigated allegations that a federal employee with collateral responsibilities as agency Hispanic Manager violated the Hatch Act by soliciting contributions for a Hispanic candidate. The respondent made the solicitations by letter, and followed up on those requests even after he was warned about violating the Hatch Act. After a hearing, the CALJ issued a decision on June 23, 1993, finding that the respondent's violation was an aggravated offense for which removal was warranted. (Subsequent to the end of the fiscal year, the MSPB reversed the removal penalty and ordered a 60-day suspension.) (*OSC v. Salvador A. Rivera*, 1994 WL 116329 (MSPB))
- After filing complaints for violation of the Hatch Act, the MSPB approved settlement agreements negotiated by OSC in five cases. Three of these cases involved federal employees who agreed to suspensions of 45, 60 and 90 days. Two of these cases involved state and local employees. In one case the employee resigned and agreed to an 18-month debarment from public employment and in the other case, the agency agreed to a withholding of twice the violating employee's annual salary from the federal funds the agency receives from a federal agency. (*OSC v. Daniel C. Martellotta*, 56 MSPR 488 (1993); *OSC v. Bobby J. Griffin*, 56 MSPR 36 (1993); *OSC v. Robert J. Osborne*, Slip Op. MSPB Docket No. CB1216930015T1 (1993); *OSC v. Deborah G. Giles*, 56 MSPR 465 (1993))

Merit Systems Protection Board Stays

The following is a representative sample of the stay cases brought to the MSPB during FY 1993:

- OSC petitioned the MSPB to stay the proposed removal of a biomedical engineer. The agency proposed the removal based on unacceptable performance. OSC found evidence to support a finding that the performance rating and the proposed removal were actions taken because the employee had reported statutory and regulatory violations related to safety and health issues. The MSPB stayed the proposed removal to give OSC time to investigate. The OSC investigation continued into FY 1994. (*OSC v. Department of Veterans Affairs*, 58 MSPR 225 (1993))
- OSC petitioned the MSPB to stay the geographical reassignment of a GS-11 safety inspector. OSC found reasonable grounds to believe that the employee was reassigned because he made protected disclosures and provided information to the agency IG. The MSPB granted the stay to permit OSC to investigate the alleged violations of 5 U.S.C. §§ 2302(b)(8) and 2302(b)(9). The OSC investigation and the MSPB stay order continued into FY 1994. (*OSC v. Department of Transportation*, 59 MSPR 552 (1993))

Table 3

ALLEGATIONS CONTAINED IN MATTERS RECEIVED DURING FY 1993	
NATURE OF ALLEGATION	NUMBER OF ALLEGATIONS
Reprisal for whistleblowing [§2302(b)(8)]	627
Violation of a law, rule or regulation implementing or concerning a merit system principle [§2302(b)(11)]	606
Reprisal for exercise of a right of appeal [§2302(b)(9)]	580
Discrimination on the basis of race, color, sex, national origin, religion, age, or handicapping condition [§2302(b)(1)(A)-(D)]	574
Granting of unauthorized preference or advantage [§2302(b)(6)]	398
Allegations which did not cite or suggest any prohibited personnel practice or prohibited activity ⁴	252
Deception or obstruction of the right to compete [§2302(b)(4)]	247
Disclosures of alleged violation of a law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a danger to public health or safety [§1213(c) or §1213(g)] ⁵	146
Discrimination on the basis of non-job related conduct [§2302(b)(10)]	95
Violation of the Hatch Act by a state or local government employee [§1216(a)(2)]	90
Violation of the Hatch Act by a federal employee [§1216(a)(1)]	76
Appointment, promotion, or advocating the appointment or promotion of a relative [§2302(b)(7)]	73
Solicitation or consideration of unauthorized recommendations [§2302(b)2]	52

continued on next page

⁴ Although these types of allegations may not, on their face, indicate the existence of any matter within the OSC's investigative jurisdiction, follow-up contact is made with the individual to ascertain the exact nature of the allegation and to determine whether there is any basis for further OSC action.

⁵ These types of matters are allegations of wrongdoing in government programs or operations received from employees through the OSC whistleblower disclosure channel which may be referred to the agency concerned under §1213(c) or §1213(g) for agency review. If the employee alleges that an adverse personal action occurred because of the disclosure, then the OSC carefully reviews it to determine whether the matter may be treated as an allegation of a prohibited personnel practice or other prohibited activity within its investigative jurisdiction. If so, the OSC investigates the matter.

Table 3 (continued)

ALLEGATIONS CONTAINED IN MATTERS RECEIVED DURING FY 1993	
NATURE OF ALLEGATION	NUMBER OF ALLEGATIONS
Arbitrary or capricious withholding of information requested under the Freedom of Information Act [§1216(a)(3)]	50
Discrimination on the basis of marital status or political affiliation [§2302(b)(1)(E)]	47
Attempts to secure withdrawal from competition [§2302(b)(5)]	35
Other activities allegedly prohibited by civil service law, rule or regulation [§1216(a)(4)]	8
Coercion of political activity [§2302(b)(3)]	<u>4</u>
Total	3,960 ⁶

⁶ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters received.

Table 4

ALLEGATIONS CONTAINED IN MATTERS REFERRED FOR FIELD INVESTIGATION DURING FY 1993

NATURE OF ALLEGATION	NUMBER OF ALLEGATIONS
Reprisal for whistleblowing [§2302(b)(8)]	140
Reprisal for exercise of an appeal right [§2302(b)(9)]	131
Violation of a law, rule or regulation implementing or concerning a merit system principle [§2302(b)(11)]	49
Discrimination on the basis of race, color, sex, national origin, religion, age, handicapping condition, or marital status [§2302(b)(1)(A)-(E)]	42
Unauthorized preference or advantage granted to improve or injure the prospect of employment of any person [§2302(b)(6)]	35
Violation of the Hatch Act by a federal employee [§1216(a)(1)]	35
Violation of the Hatch Act by a state or local government employee [§1216(a)(2)]	27
Deception or obstruction of the right to compete for employment [§2302(b)(4)]	19
Appointment, promotion, or advocating the appointment or promotion of a relative [§2302(b)(7)]	13
Discrimination on the basis of conduct not related to job performance [§2302(b)(10)]	12
Securement of withdrawal from competition [§2302(b)(5)]	10
Other activity prohibited by civil service law, rule or regulation [§1216(a)(4)]	7
Violation of the Freedom of Information Act [§1216(a)(3)]	3
Solicitation or consideration of unauthorized recommendations [§2302(b)(2)]	2
Coercion of political activity [§2302(b)(3)]	<u>1</u>
Total	526 ⁷

⁷ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters actually referred for field investigation (306).

Whistleblower Disclosures

In addition to its investigative and prosecutorial missions, and pursuant to §1213(a), the OSC provides a safe channel through which federal employees may disclose information evidencing a violation of law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a specific and substantial danger to public health or safety.

Upon receipt of such information from a federal employee, the Special Counsel is required by §1213(c) to transmit the information to the head of the agency concerned if the Special Counsel determines that there is a substantial likelihood that the information discloses the kinds of wrongdoing described in the statute. The OSC will not divulge the identity of an employee who provided the information unless he or she consents. The agency head is then required to conduct an investigation and submit a report to the Special Counsel on the findings of the investigation. The Special Counsel sends the agency report with any comments provided by the employee who made the disclosure and any comments or recommendations by the Special Counsel to the President, the congressional committees having jurisdiction over the agency, and the Comptroller General.

The Special Counsel may determine, after review of information received from an employee, that there is not a substantial likelihood that the information discloses the type of wrongdoing described in §1213(a). In such cases, the Special Counsel may, under §1213(g), require the agency head to review the matter and inform the Special Counsel in writing of what action has been or is being taken thereon for transmittal to the employee.

The OSC is not authorized to investigate allegations of the kind described in §1213(a). Nevertheless, complainants often include information which may be covered by §1213(a) with their allegations of other prohibited activities within the OSC's investigative jurisdiction. Disclosures are received directly by the Investigation Division's Disclosure Unit or are referred by the CEU for further review and follow-up with the complainant as needed to confirm the facts and issues involved. After completion of its review, the OSC decides whether to (1) transmit the information developed to the agency concerned under §1213(c) or §1213(g); (2) refer the matter to the agency Inspector General or comparable office for any appropriate action; or (3) close the matter without further action.

During FY 1993, the OSC received and considered 209 disclosure matters for possible referral to the agency concerned under §1213(c) or §1213(g). In addition, 23 disclosure matters were carried over from FY 1992. A disclosure matter usually contains multiple allegations of mismanagement, fraud, waste and abuse. During FY 1993, the OSC --

- referred 14 disclosures for investigation and a report under §1213(c);
- referred 20 disclosures for a report of actions taken or to be taken thereon under §1213(g);

- referred 102 disclosures to the agency Inspector General;
- closed 78 disclosures due to lack of sufficient basis for further action; and
- carried the remaining disclosures over to FY 1994 for completion of review.

Results of Referrals

During FY 1993, the OSC closed 24 reports from agencies to which statutory referrals previously had been made. OSC review of agency reports disclosed the following results from statutory referrals --

Section 1213(c) Reports:

Cases in which allegations were substantiated in whole or in part	4	
Cases in which allegations were not substantiated	<u>1</u>	
Subtotal		5

Section 1213(g) Reports:

Cases in which allegations were substantiated in whole or in part	12	
Cases in which allegations were not substantiated	<u>7</u>	
Subtotal		<u>19</u>
Total		24

Agency Corrective Actions:

In the Reports of Investigations (ROI), 23 allegations were substantiated. The agencies reported the following corrective actions. There were more than one corrective action in some disclosures:

Agency regulations or practices changed	7	
Restoration of an aggrieved employee	1	
Disciplinary action taken	2	
Evidence of a criminal violation referred to the Attorney General	3	
Other	<u>10</u>	
Total		23

Legislation

Reauthorization of Appropriations

The House passed H.R. 2403, the Appropriations for Treasury, Postal Service, and General Government, on June 22, 1993. The Senate passed H.R. 2403 on August 3, 1993. Both chambers agreed to the President's request of \$7.992 million for OSC for FY 1994. The conference report cleared the Congress on October 26, 1993, which the President signed into law on October 28, 1993.

Hatch Act Reform

The Hatch Act Reform Amendments of 1993, H.R. 20, introduced by Representatives William Clay and John Myers, passed the U.S. House of Representatives, amended by a roll call vote of 343 to 86 on March 3, 1993. In the Senate, the text of S. 185, as amended, passed the Senate by a vote of 68 to 31 on July 20. The House then passed H.R. 20, as amended, by the Senate, by a roll call vote of 339 to 85. The President signed the Hatch Act Reform Amendments of 1993 into law on October 6, 1993.

Uniformed Services Employment and Reemployment Rights Act of 1993

Legislation was passed by the U.S. House of Representatives which would amend existing law to clarify and expand the reemployment rights of veterans and reservists returning to the workplace following active duty with the armed services. Among other provisions, H.R. 995 would authorize the OSC, under certain circumstances, to represent a federal employee who is a veteran or a reservist before the Merit Systems Protection Board in the event a federal agency has failed to reemploy that person in accordance with the provisions of the Act. This would provide OSC with a new statutory responsibility. The House and Senate conference did not complete work on the final compromise bill. It is anticipated that this will be taken up in the second session of the 103rd Congress.

Further Information

OSC Publications

Additional copies of this report, or information on other OSC publications, may be obtained by writing or contacting:

Director of Press and Public Affairs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephone: (202) 653-7984

Prohibited Personnel Practice Complaints

Complaints of prohibited personnel practices should be reported to the Officer of the Week at:

Complaints Examining Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephones:
(800) 872-9855 (TDD Equipped)
(202) 653-7188 (TDD Equipped)

Whistleblower Disclosures

Disclosures of information evidencing violations of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a danger to public health or safety may be reported in confidence to:

Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephones:
(800) 572-2249
(202) 653-9125

Hatch Act Questions

Inquiries about the Hatch Act may be made in writing or by telephone to:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephones:
(800) 85-HATCH or (800) 854-2824
(202) 653-7143

Outreach Programs

Requests for OSC Outreach Programs should be made to:

Outreach Programs
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
Telephone: (202) 653-7122

Organization of the Office of Special Counsel

