

Overview of OSC Operations

Budget and Staffing

During Fiscal Year (FY) 1996, OSC operated with a budget of \$7.83 million, and the agency's full-time equivalency (FTE) personnel ceiling was 95.

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 and allegations of other activities prohibited by civil service law, rule or regulation. The CEU contacts requestors 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 OSC's investigative jurisdiction, but that information contained in the complaint may constitute a whistleblower disclosure, the Prosecution Division's Disclosure Unit reviews that information for possible transmittal to the agency head concerned. OSC does not disclose the identity of the employee without the employee's consent.

The Prosecution Division reviews completed full 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. OSC may have discussions with an agency about a case at any point of the investigation or analysis in order to obtain a mutually agreeable resolution. 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 1996, OSC continued its policy of early and firm negotiation with agencies to obtain corrective action prior to initiating litigation before the MSPB. If the Special Counsel determines that an apparent violation warrants disciplinary action, 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 OSC, the Special Counsel sends

a report of OSC's findings to the agency head concerned under § 1214(e) for certification of any action to be taken on the matter. 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, 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. 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

The Special Counsel puts great weight on the value of educating federal employees as to their rights and remedies available to them under the Whistleblower Protection Act, as well as the rights and restrictions of the Hatch Act. To that end, OSC makes representatives available to engage in educational programs as often as possible.

In FY 1996, OSC's outreach efforts resulted in OSC staff participation in 46 briefings and seminars. In addition, OSC has been given greater authority in this regard by its 1994 Reauthorization Act, Public Law 103-424, which directed all executive agencies to inform their employees of the rights and remedies available to them under the Whistleblower Protection Act, and to carry out this function in consultation with OSC. OSC responded by preparing an informational packet for distribution to all covered entities and stands ready to consult with all agencies.

Prohibited Personnel Practice Matters

Receipts and Investigations

During FY 1996, OSC received 1,785 new matters alleging prohibited personnel practices (PPPs) which contained 3,536 separate allegations. Of the 1,628 matters which were actually processed by CEU in FY 1996, OSC lacked jurisdiction in 290 of the matters, leaving 1,338 matters in which the agency was authorized by statute to conduct an inquiry. Following CEU review, 223 matters were referred for full field investigation. In addition, following initial review and inquiry, CEU closed 1,405 matters because of a determination that there was insufficient basis for further OSC action or because of satisfactory resolution of an employee's complaint during the initial review.²

Enforcement Actions

Enforcement actions are cases filed by OSC with the MSPB that seek corrective action (relief intended to make an aggrieved employee whole), or disciplinary action (the imposition of discipline on an employee who has committed a violation). Under 5 U.S.C. § 1214, before OSC may initiate proceedings for corrective action before the MSPB, OSC must report its findings and recommendations to the agency involved. Only when the agency has had a reasonable period of time to take corrective action, and has failed to do so, may OSC proceed to petition the Board for corrective action.

If OSC believes a PPP has been committed and it initiates discussions with the agency, the matter is normally resolved through settlement between the requestor and the agency. Thus, historically, in most cases it has not been necessary to send formal letters to agencies and these provisions have resulted in low levels of corrective action litigation. On most occasions when an agency refuses to grant appropriate corrective action after receipt of a formal request from the Special Counsel, OSC proceeds immediately to file a complaint with the MSPB. In addition to rectifying the matter at issue, corrective action litigation often has the additional benefits of clarifying and expanding existing law and of bringing greater public attention to the mission and the work of OSC. This significantly increases the deterrent effect of OSC's efforts.

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

² The types of PPP allegations received in FY 1996 and the types of PPP allegations referred for full field investigation are included in Tables 1 and 2 of the Appendix.