



June 2018

OFFICE OF SPECIAL COUNSEL

Actions Needed to Improve Processing of Prohibited Personnel Practice and Whistleblower Disclosure Cases

Accessible Version

GAO Highlights

Highlights of [GAO-18-400](#), a report to congressional committees

Why GAO Did This Study

OSC is responsible for safeguarding the merit system in federal employment by protecting employees and applicants, including whistleblowers. Consequently, OSC must ensure its case processes are adequate to protect the federal workforce, including its own employees.

GAO was asked to review OSC case processes and procedures for whistleblower disclosures and PPPs. For both types of cases, this report among other things (1) examines trends in cases received and closed from fiscal year 2011 to 2016, (2) examines timeliness of cases closed from fiscal year 2011 to 2016, and (3) assesses the extent to which safeguards are in place for OSC employees who make allegations.

GAO reviewed OSC case guidance, processes, controls, and the latest available OSC data from fiscal year 2016. GAO also assessed whether OSC's processes adhered to *Standards for Internal Control in the Federal Government*, and surveyed and interviewed OSC employees.

What GAO Recommends

GAO is making seven recommendations, including that OSC communicate timelines to whistleblowers and finalize a time frame for obtaining an independent internal review process for OSC employees. OSC agreed with GAO's recommendations.

View [GAO-18-400](#). For more information, contact Yvonne D. Jones at (202) 512-2717 or JonesY@gao.gov.

June 2018

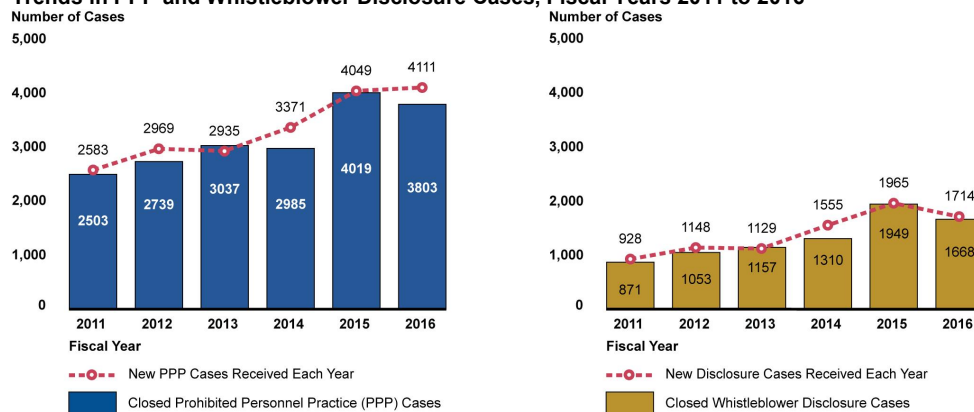
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What GAO Found

Between fiscal years 2011 and 2016, the number of prohibited personnel practice (PPP) and whistleblower disclosure cases the Office of Special Counsel (OSC) received from employees of other federal agencies increased by 66 percent. Although the number of cases OSC closed increased by 62 percent during this period, the pace at which cases were closed did not keep pace with the number of cases received. As a result, the backlog also grew. OSC closed the vast majority of cases it received for various reasons, including a lack of sufficient evidence or lack of OSC jurisdiction.

Trends in PPP and Whistleblower Disclosure Cases, Fiscal Years 2011 to 2016



Source: GAO analysis of Office of Special Counsel (OSC) data. | GAO-18-400

OSC's processing time increased for both types of cases from fiscal year 2011 to 2016, but the time for processing whistleblower disclosure cases experienced a significantly greater increase, from a median of 10 days to 29 days. Because processing times for whistleblower disclosures include the time that agencies take to conduct investigations and respond to OSC, they can be significant, especially if an agency requests an extension from OSC for additional time. GAO found that in fiscal year 2016, OSC approved on average 2.7 extensions per whistleblower referral, and that the average time to process these cases was 1.8 years. However, OSC does not provide whistleblowers specific information on timelines for agency responses to OSC referrals; as a result these individuals may not know how long the process could potentially take.

OSC's process for reviewing and referring allegations submitted by its own employees includes the involvement of officials and staff. This involvement was identified as a key concern by OSC employees. Specifically, 17 of the 87 OSC employees who responded to GAO's survey reported that they considered filing internal allegations against another OSC employee but chose not to do so in part because they feared losing anonymity, feared management reprisal, or were uncertain how to file an internal OSC complaint. Congress recently enacted statutory changes to provide additional safeguards to OSC employees who file internal complaints, including establishing an agreement with an agency inspector general to review internal OSC cases. However, OSC has not yet fully implemented such an agreement.

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Abbreviations

ADR	Alternative Dispute Resolution Unit
Army	Department of the Army
CEU	Complaints Examining Unit
CIGIE	Council of Inspectors General on Integrity and Efficiency
DHS	Department of Homeland Security
DU	Disclosure Unit
eCMS	Electronic Case Management System
IPD	Investigation and Prosecution Division
IPD-Field	Investigation and Prosecution Division-OSC field offices
IPD-HQ	Investigation and Prosecution Division-OSC headquarters
IG	inspector general
MSPB	Merit Systems Protection Board
NSF-OIG	National Science Foundation Office of Inspector General
OSC	Office of Special Counsel
OSC 2000	OSC's electronic case management system
PPP	Prohibited Personnel Practice
RDU	Retaliation and Disclosure Unit
VA	Department of Veterans Affairs

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June 14, 2018

Congressional Committees

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment by protecting employees and applicants for federal employment from prohibited personnel practices (PPP), including reprisal for whistleblowing. OSC also reviews claims of wrongdoing within the federal government from current federal employees, former employees, and applicants for federal employment. These individuals, known as whistleblowers, report to OSC potential fraud, waste, and abuse in the federal government and threats to public safety or health.

You asked us to review OSC's processes and procedures for PPP and whistleblower disclosure cases. This report examines (1) the number of PPP and whistleblower disclosure cases OSC received and closed from fiscal year 2011 to 2016 and the effect on its existing caseload, (2) the timeliness of PPP and whistleblower disclosure cases closed from fiscal year 2011 to 2016, (3) the extent to which OSC's PPP and whistleblower disclosure case processes adhere to selected internal control principles, and (4) the extent to which safeguards are in place for OSC employees who file PPP and whistleblower disclosure complaints against OSC.

For the first objective, we reviewed case-level data from OSC's electronic case management system, OSC 2000, on PPP and whistleblower disclosure cases that OSC closed from fiscal years 2011 to 2016 (the most recent full fiscal year available at the time of our analysis). We identified and analyzed the number of PPP and whistleblower disclosure cases closed, the federal agencies from which they were received, the types of case resolutions, and the effect of case receipts and closures on OSC's existing caseload.

For the second objective, we analyzed OSC 2000 case-level data on the median number of days cases were open. We also analyzed OSC data and documents on agency extension requests granted for whistleblower disclosure cases and compared the median number of days whistleblower cases were open to relevant statutory requirements. We assessed the reliability of the OSC 2000 data, by reviewing relevant documentation, interviewing knowledgeable OSC officials, and electronically testing the data to identify obvious errors or outliers. We

determined that the OSC 2000 data used in our analysis were sufficiently reliable for our reporting purposes. For both objectives 1 and 2, we also interviewed OSC officials, federal agency liaisons, whistleblower advocacy organizations, and an employment law firm to obtain their views on the number of cases received and closed by OSC.

For the third objective, we reviewed OSC procedures, reports, and related guidance intended to help OSC implement its case processes for PPP and whistleblower disclosure cases. We also interviewed relevant OSC officials concerning their understanding of OSC's case processes and procedures. To obtain their respective views on OSC's PPP and whistleblower disclosure case processes, we interviewed OSC liaison officials from the three federal agencies that most frequently were the subject of PPP complaints and whistleblower disclosures in cases closed in fiscal year 2016, and interviewed officials from two whistleblower advocacy organizations and one law firm that specializes in federal employment law. We assessed whether OSC's procedures and related guidance adhered to relevant Standards for Internal Control in the Federal Government.¹

To obtain OSC staff's perspective on the extent to which OSC adhered to relevant internal control principles related to processing PPP and whistleblower disclosure cases, we held small group discussions with employees from the six OSC work units involved in the PPP and whistleblower disclosure processes. For four of the six units, we held these discussions with a random, nongeneralizable selection of nonmanagement staff in those units. For the remaining two units, given their small size, we held discussions with all nonmanagement staff in those units. A GAO analyst reviewed all six write-ups of our small group discussions to code identified themes from the discussions. Another GAO analyst reviewed the coding. If there was a disagreement, the two analysts reviewed and discussed until they reached agreement. As a result of the analysis, we identified the major themes that covered the relevant internal control principles we discussed with the participants.

To assess how well OSC implemented its PPP and whistleblower disclosure case procedures and processes, we reviewed five distinct groups of PPP and whistleblower disclosure cases closed in fiscal year

¹GAO, *Internal Control: Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

2016.² Given the larger size of case populations for two of these groups, we examined randomly selected, generalizable samples of cases. For the remaining three groups, none of which totaled more than 84 cases, we reviewed all cases of that case type. We selected these groups to include the various types of case outcomes for PPP and whistleblower disclosure cases. We used uniform data collection instruments for our file reviews to help ensure we consistently captured information on the completeness of required documentation for PPP and whistleblower disclosure cases. OSC officials reviewed and verified the elements of the data collection instruments we used to review case files. To ensure the accuracy of our reviews, two GAO analysts reviewed each case file and reconciled any differences between responses. We then identified common themes from our reviews.

For the fourth objective, we examined OSC procedures for its employees to file PPP and whistleblower disclosure allegations. We interviewed officials from OSC, the National Science Foundation Office of the Inspector General (NSF-OIG), and the Council of Inspectors General for Integrity and Efficiency (CIGIE). We interviewed officials from these entities because they review certain complaints and disclosures from OSC employees. In addition, we assessed whether OSC's procedures aligned with relevant Standards for Internal Control in the Federal Government.

We also sent a survey to all 132 OSC employees to obtain their views on processes by which they could file PPP complaints and make whistleblower disclosures. The survey questions and subsequent responses helped us identify OSC employees who had filed or considered filing an allegation against another OSC employee. We conducted in-person and phone interviews with this group of OSC employees to allow them to discuss their views and experiences with OSC's internal allegations procedures in more detail. We supplemented these views with information from OSC's Federal Employee Viewpoint Surveys from fiscal years 2012 to 2017. Finally, we reviewed all PPP complaints and whistleblower disclosures from fiscal years 2011 through 2016 that OSC submitted to the CIGIE Integrity Committee and the NSF-OIG, as well as all OSC PPP complaints and whistleblower disclosures

²These included (1) whistleblower disclosure cases referred to an agency, (2) whistleblower disclosure cases not referred to an agency, (3) PPP cases with a favorable action taken in the Complaints Examining Unit (CEU), (4) PPP cases referred for investigation, and (5) cases closed in CEU without a favorable action.

where OSC reviewed allegations against OSC employees. For additional details on our scope and methodology, see appendix I.

We conducted this performance audit from March 2017 to June 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Office of Special Counsel

Individuals who believe that a prohibited personnel practice (PPP), such as nepotism, has been committed may file complaints with OSC.³ OSC has a number of other responsibilities as well. It operates as a secure channel for federal whistleblowing disclosures of violations of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific dangers to public health or safety. OSC also provides advisory opinions and enforces Hatch Act restrictions on political activities of individuals employed by the federal government as well as certain state and local government employees employed in connection with programs financed by federal funds. Finally, the agency enforces the rights of federal employees and applicants for federal employment under the Uniformed Services Employment and Reemployment Rights Act of 1994.⁴

OSC is led by the Special Counsel, who is appointed by the President and later confirmed by the Senate to serve a 5-year term.⁵ The current Special Counsel was confirmed on October 16, 2017. OSC is headquartered in Washington, D.C., with three field offices in Dallas,

³Nepotism is the hiring, promotion, or advocating the hiring or promotion of relatives. See 5 U.S.C. § 2302(b)(7).

⁴Pub. L. No. 103-353, 108 Stat. 3149 (Oct. 13, 1994), *codified* at 38 U.S.C. §§ 4301-4335.

⁵5 U.S.C. § 1211(b).

Detroit, and Oakland. As of fiscal year 2017, OSC had 135 full-time equivalent employees.⁶

OSC tracks its workload across case types through its computerized system, known as OSC 2000. OSC 2000 is designed to store case status updates on all case types, from the initial filing of the complaint, whistleblower disclosure, or request for advisory opinion until closure and archiving of the file. OSC staff also maintain paper case files. OSC is transitioning to a new data tracking system, the electronic Case Management System (eCMS). According to OSC, eCMS will allow OSC to track and maintain electronic cases, as well as provide capacity to deliver customizable reports.

Prohibited Personnel Practices

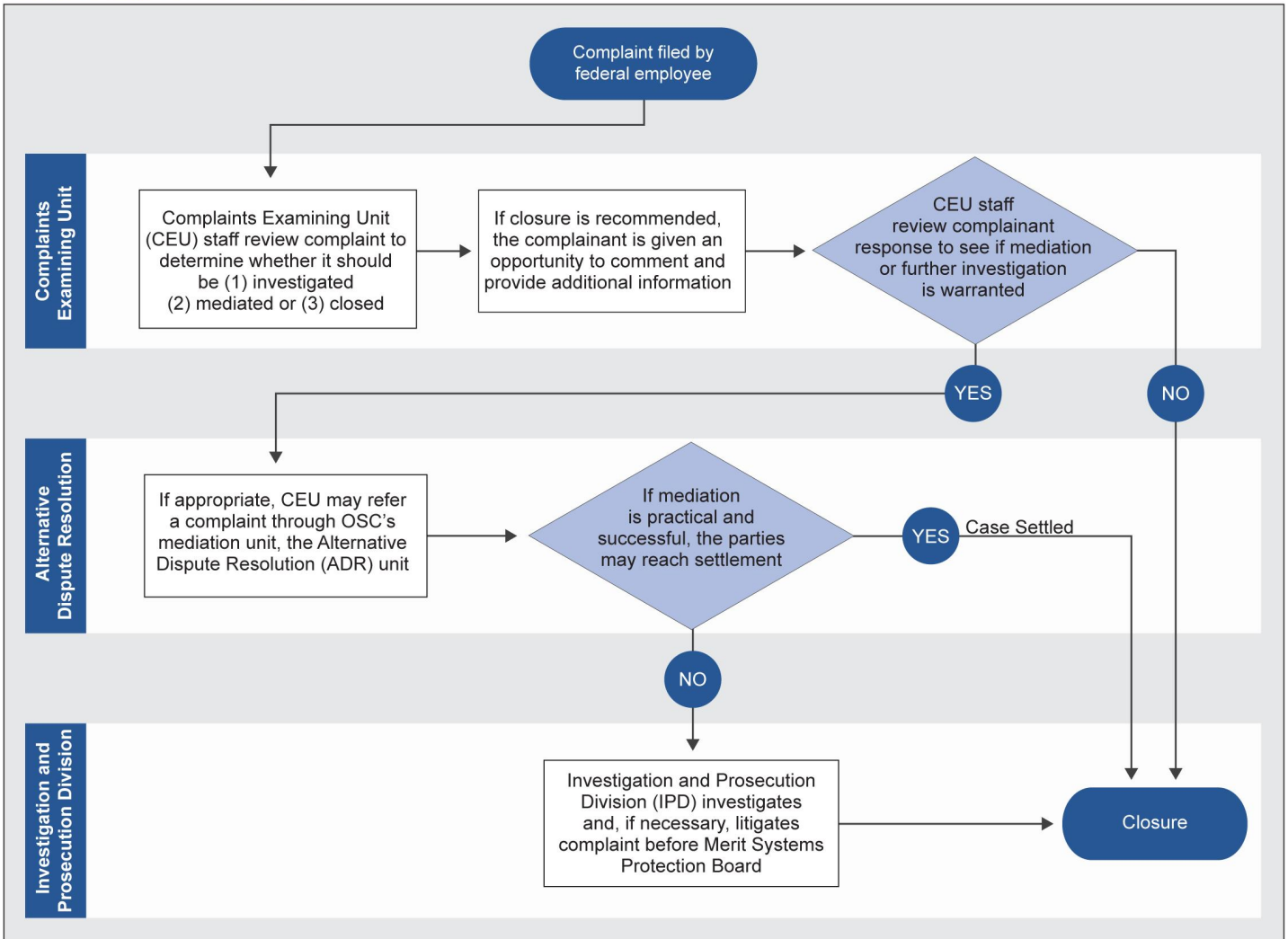
Federal law designates 14 PPPs.⁷ If a federal employee, applicant, or former employee believes he or she has been subjected to 1 or more of these PPPs, he or she can file a complaint with OSC using OSC Form 11—Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity—or submit a correspondence. In fiscal year 2016, OSC received 4,111 PPP complaints, about 68 percent of its total cases received that year. See figure 1 for OSC's PPP process.

⁶Full-time equivalent employees equal the number of employees on full-time schedules plus the number of employees on part-time schedules converted to a full-time basis.

⁷5 U.S.C. § 2302(b).

Figure 1: Office of Special Counsel (OSC) Prohibited Personnel Practice (PPP) Process

Process Map for PPP Case



GAO analysis of Office of Special Counsel (OSC) documentation. | GAO-18-400

Note: CEU may also forward cases to the Retaliation and Disclosure Unit (RDU) for hybrid cases that involve both a whistleblower disclosure and an allegation of retaliation. In addition, CEU may directly refer some cases to ADR and some directly to IPD. IPD or RDU may also refer cases back to ADR.

PPP complaints are received by OSC's Complaints Examining Unit (CEU). The CEU Chief assigns cases to CEU examiners based on the following: case complexity, case priority, examiner's case preferences, examiner position, examiner availability, and the examiner's current caseload. A CEU examiner may determine a complaint contains evidence

of a PPP or other prohibited activity, which warrants further investigation by OSC. To make this determination, the examiner reviews the information contained in the complaint, speaks with the complainant, and may also contact liaison officials at the federal agency in question. The examiner may also request information from those parties. After CEU's review is complete, CEU could: (1) close the case, (2) refer the case to the Alternative Dispute Resolution (ADR) Unit for evaluation for potential mediation, or (3) refer the case to the Investigation and Prosecution Division (IPD) for further investigation. When referring a case to either office, CEU has determined that there are reasonable grounds to believe that a PPP has occurred, exists, or will occur.

ADR reviews complaints to determine whether they are appropriate for mediation after CEU has referred them for investigation, but before any investigation has occurred. If the mediation is successful, both parties agree to settlement terms and the agreement is put into writing. If settlement is not reached, the complaint will proceed to IPD for investigation.

IPD investigates PPP allegations for OSC. When IPD receives a case, an attorney or investigator is assigned who may request additional documentation and also interview the parties involved. Attorneys are assigned based on their current caseload and the complexity of cases. After the IPD attorney completes the investigation, IPD management discusses the case evidence and applicable law and recommends an outcome that is subject to review by OSC management. Depending on the recommendation, IPD will (1) close the complaint because no further action is warranted, or (2) pursue corrective or disciplinary action (or both) against the subject officials.⁸

OSC allows complainants 13 days to comment on preliminary determinations and the reason for the determinations made in a case. After reviewing any response from the complainant, IPD or CEU will decide whether further investigation is warranted or the complaint should be closed.⁹

⁸In some instances where there is evidence that supports the allegations in a complaint, IPD may attempt to settle a complaint with the agency or refer the case to ADR if the investigator deems it appropriate.

⁹Complainants can request that OSC reconsider the closure. At this point, OSC management reviews both the complainant's submission and the case.

At any time during the PPP complaint process, OSC units may pursue favorable actions on cases. A favorable action is an outcome in a case that could result in a specific benefit to the complainant, an outcome aimed at disciplining the subject official and deterring future bad conduct, or an improvement to agency processes. OSC tracks the following types of favorable actions that result from its involvement in PPP cases:

- stays (e.g., delay in an agency decision to demote the employee),
- corrective actions (e.g., agency rescinds a suspension),
- systemic corrective actions (e.g., subject agency changes deficient regulation), and
- disciplinary actions (e.g., agency official is suspended).¹⁰

If the agency does not take the corrective or disciplinary action requested or grant the stay within a reasonable period, OSC can file a petition with the Merit System Protection Board (MSPB).¹¹

Whistleblower Disclosures

OSC also responds to employees', former employees', and applicants' disclosures of alleged wrongdoing (termed "whistleblower disclosures") within federal agencies. In fiscal year 2016, OSC received 1,714 whistleblower disclosures, about 28 percent of its total caseload received that year.¹² OSC has jurisdiction and may take further action if the whistleblower disclosure alleges a violation 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.¹³ Figure 2 illustrates OSC's process for reviewing these cases, and a more detailed description of each step follows below.

¹⁰OSC tracks stays of personnel action, settlements, corrective actions, and disciplinary actions as performance metrics based on its Strategic Plan.

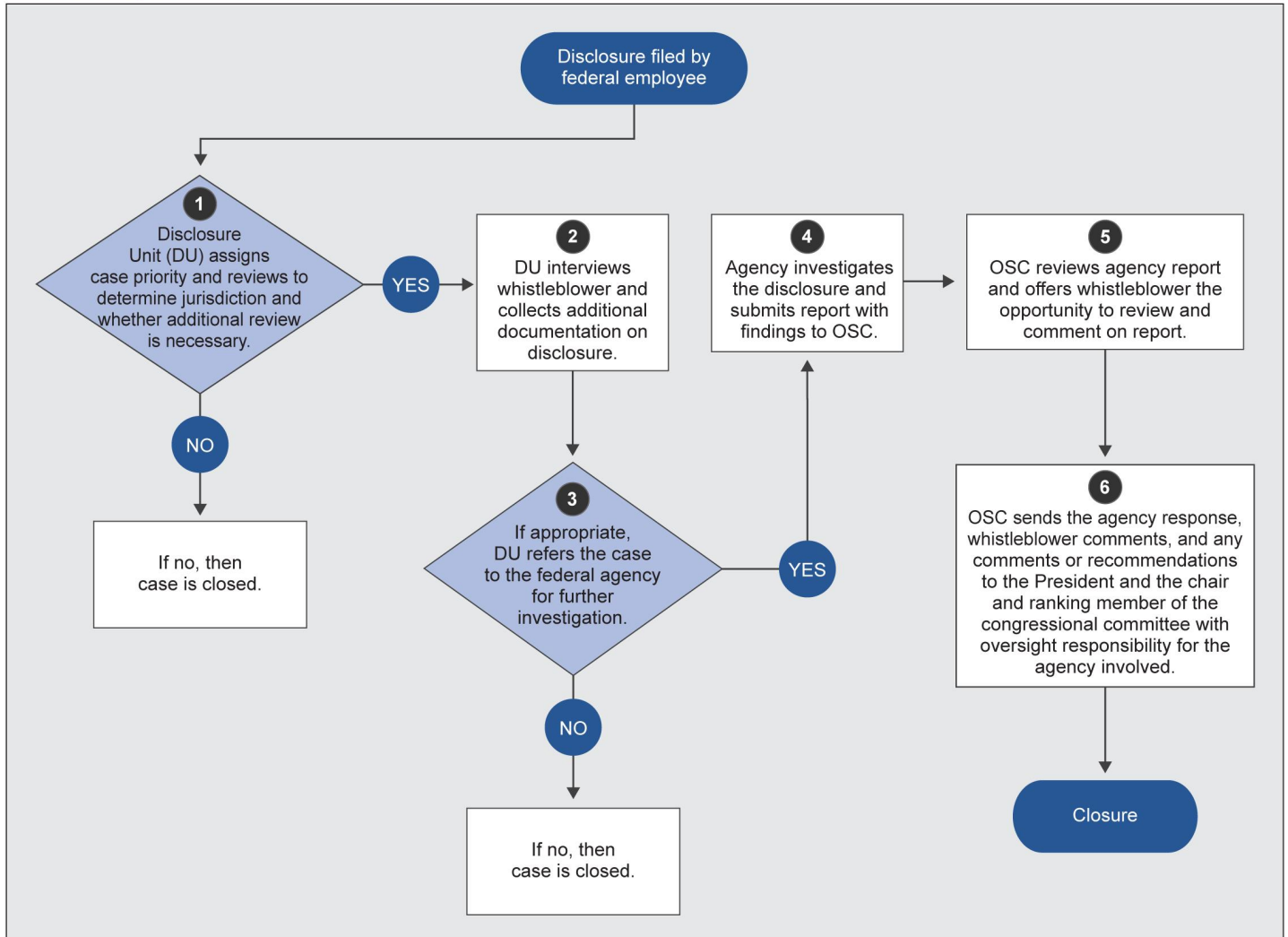
¹¹MSPB's mission is to protect the merit system principles and promote an effective federal workforce free of prohibited personnel practices. MSPB's primary role is to adjudicate the cases brought to the Board. 5 U.S.C. §§ 1204.

¹²The remaining cases closed by OSC in fiscal year 2016 were Hatch Act and Uniformed Services Employment and Reemployment Rights Act of 1994 cases.

¹³5 U.S.C. § 1213(a).

Figure 2: Office of Special Counsel (OSC) Whistleblower Disclosure Process

Process Map for Whistleblower Disclosure



GAO analysis of Office of Special Counsel (OSC) documentation. | GAO-18-400

OSC takes the following steps in the whistleblower disclosure process:

1. OSC management reviews the case to determine whether it constitutes a whistleblower disclosure as defined by statute and if OSC has jurisdiction over the matter. If not, OSC closes the case.
2. If OSC determines the case constitutes a whistleblower disclosure, an attorney in the Disclosure Unit (DU) is assigned. He or she examines the material forwarded by the whistleblower, interviews the

whistleblower, and requests additional information if needed.

Attorneys are assigned cases based on their current caseload and the complexity of the case. The assigned attorney determines whether there is a substantial likelihood that the information discloses one of the types of wrongdoing described above. Prior to December 2017, OSC was required by law to make this determination within 15 days of receiving the whistleblower disclosure. Because of a statutory change in December 2017, OSC now has 45 days to make this determination.¹⁴

3. If OSC determines that the substantial likelihood threshold is met, it formally refers the allegations to the head of the subject agency.¹⁵ OSC will close a case if it determines that there is not a substantial likelihood that the alleged action occurred. Prior to referring a whistleblower disclosure, OSC must ask whether the whistleblower consents to the release of his or her name to the agency.¹⁶ If the whistleblower declines, OSC is to inform the whistleblower that it may be possible for agency officials to identify the whistleblower based on the information disclosed, and that anonymity may affect the agency investigation. In referred cases, when OSC submits a referral letter to the agency head, the agency head is required to investigate the allegations and provide a written report to OSC in 60 days or within any longer period agreed to in writing by the Special Counsel. OSC also notifies the whistleblower of the referral to the agency. OSC can grant multiple time extensions if the agency requests additional time to respond. Each extension could provide 60 or more additional days for the agency to respond to the referral. OSC also can informally refer the allegations to the subject agency's general counsel office if

¹⁴National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 1097(c)(2)(A), 131 Stat. 1283, 1618 (Dec. 12, 2017), amending 5 U.S.C. § 1213(b).

¹⁵5 U.S.C. § 1213(c). In cases where OSC does not make a positive substantial likelihood determination, OSC may, with the consent of the whistleblower, transmit the information to the head of the agency concerned. The agency head is required to inform OSC in writing, within a reasonable time, of what action has been or is being taken, and when such action will be completed. OSC is required to inform the whistleblower of the agency's report. 5 U.S.C. § 1213(g)(2).

¹⁶OSC may determine that the whistleblower disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law. 5 U.S.C. § 1213(h).

the allegations do not meet the substantial likelihood threshold and are less egregious in nature.¹⁷

4. The agency is to investigate the whistleblower disclosure and submit a report to OSC with its findings. The report is required to include the agency's findings and a description of any action taken or planned as a result of the investigation, including policy changes the agency has implemented in response to the whistleblower disclosure.¹⁸
5. When OSC receives the agency's report, OSC's assigned attorney is to review the report to determine whether it contains the information required and whether the report's findings appear to be reasonable. OSC may request a supplemental agency report if it believes the agency did not include the necessary information or the findings do not appear reasonable. OSC is then to share the agency response with the whistleblower, who may provide comments.
6. Finally, OSC is to submit the agency report and any supplemental reports, the whistleblower's comments, and any comments or recommendations from OSC to the President and the chairmen and ranking members of the congressional committees with oversight responsibility for the involved agency. OSC also sends the involved agency and the whistleblower a closure letter and posts the case information on OSC's public website.¹⁹

¹⁷OSC also has the discretionary authority to refer information to the agency head from a whistleblower who reasonably believes the information evidences wrongdoing within an agency other than the one where the individual is, was employed by, or has applied to, or where the information is obtained outside the performance of the individual's duties. The agency must inform OSC of the actions taken, or to be taken, in response to the referral, and when such action shall be completed. OSC is required to inform the whistleblower of the agency's response. 5 U.S.C. § 1213(g)(1).

¹⁸5 U.S.C. § 1213(c), (d).

¹⁹See www.osc.gov. Whistleblowers may request that OSC reconsider its review of a case. Generally, a whistleblower is limited to two requests for reconsideration. Upon receipt of a request for reconsideration, the attorney is to review the request and contact the whistleblower to determine if any additional information has been provided. If there is no information presented that reverses the initial determination, the attorney is to prepare a closure letter for review and signature by OSC management.

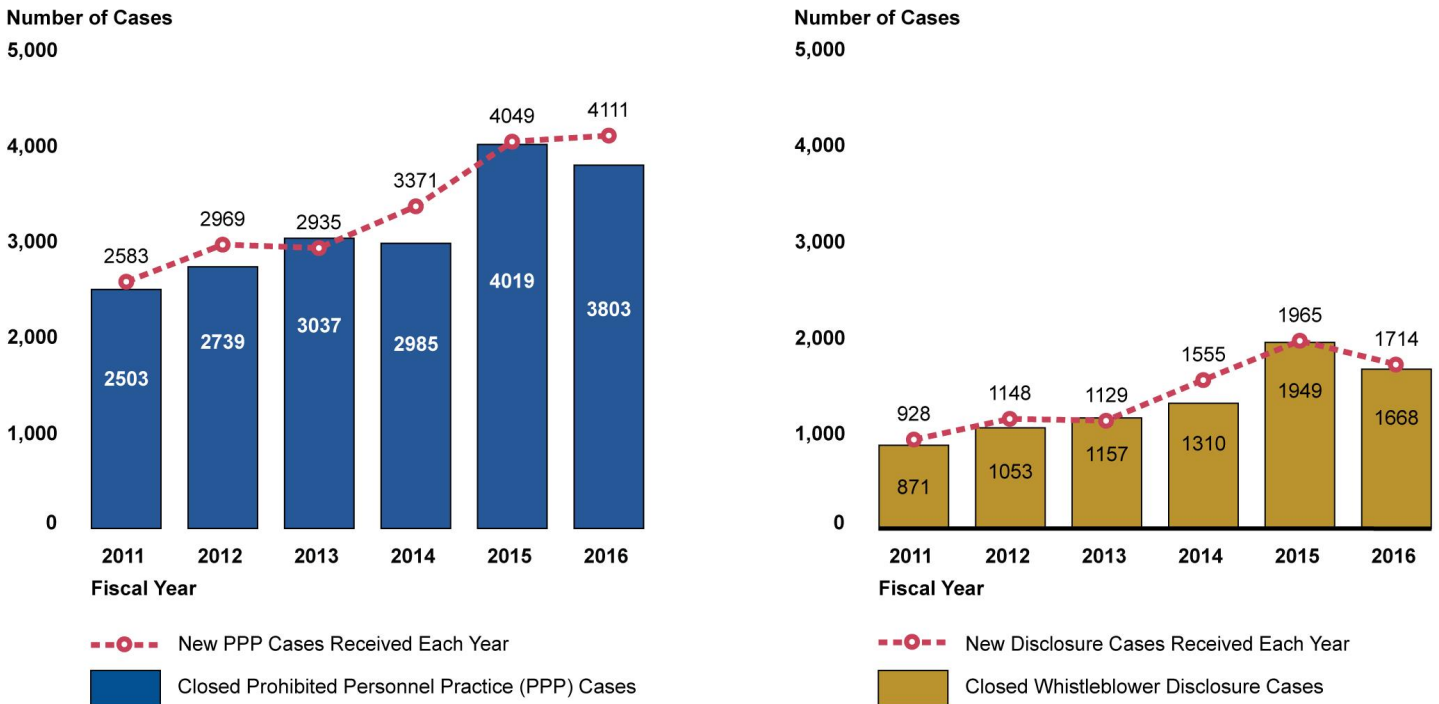
OSC's Data Show a Higher Number of Cases Received and Cases Closed from 2011 to 2016, although the Backlog Has Increased

Number of Cases Received and Cases Closed Increased More than 60 Percent between Fiscal Years 2011 and 2016

OSC reported that it received a total of 5,825 PPP and whistleblower disclosure cases in 2016, an increase of 66 percent over the 3,511 cases it received in fiscal year 2011. (See figure 3.) OSC and agency officials believe that the passage of the Whistleblower Protection Enhancement Act of 2012 likely contributed to the increase. The act amended federal personnel law to, among other things, clarify the breadth of disclosures that are afforded protection, expand the right to bring reprisal claims for certain protected activities, and enhance the remedies available to federal whistleblowers who have suffered retaliation.²⁰

²⁰Pub. L. No. 112-199, 126 Stat. 1465 (Nov. 27, 2012).

Figure 3: Numbers of PPP and Whistleblower Disclosure Cases Received and Closed from Fiscal Years 2011 through 2016



Source: GAO analysis of Office of Special Counsel (OSC) data. | GAO-18-400

OSC’s previous Special Counsel attributed some of the increase in cases received to OSC’s expanded educational outreach efforts to federal employees. For example, in fiscal years 2015 and 2016, OSC reported it completed over 300 outreach events to agencies and certified 69 new agencies under its 2302(c) Certification Program. According to OSC, this program helps agencies meet their statutory requirements for informing employees of their whistleblowing rights.²¹ Additionally, on its website, OSC promotes favorable actions received for individuals in PPP and whistleblower cases. OSC also issues various press releases regarding case closures, and posts favorable results on social media. According to OSC, these actions promote greater awareness among federal employees of the services OSC provides.

²¹Agency heads are required to ensure, in consultation with OSC, that employees are informed of the rights and remedies available to them under the Whistleblower Protection Act, as amended. 5 U.S.C. § 2302(c)(1)(B), (2)(C). In 2002, OSC established a “2302(c) Certification Program” to provide agencies and agency components with a process for meeting this statutory requirement.

OSC also reported that the number of cases closed increased between fiscal years 2011 and 2016. As shown in figure 3 above, the total number of closed PPP and whistleblower disclosure cases increased from 3,374 in fiscal year 2011 to 5,471 in fiscal year 2016, a 62 percent increase. In 2016, the number of closed PPP cases (3,803) was about 50 percent more than in 2011 (2,503), and the number of closed whistleblower disclosure cases nearly doubled from 871 in 2011 to 1,668 in 2016. During this time, staff available to work on these cases full time increased by 29 percent, from 76 employees in 2011 to 98 employees in 2016.

During the period we reviewed, OSC did not refer the majority of cases it ultimately closed to either IPD (in PPP cases) or the subject agency (in whistleblower disclosure cases) for additional investigation. OSC closed these cases for at least one of the following reasons:

1. The case lacked sufficient evidence to warrant further investigation.
2. OSC lacked jurisdiction over the case, which happens if the whistleblower in question is not a current, former, or prospective federal employee, or if the individual has the basis of an Equal Employment Opportunity complaint.²²
3. The case had been misfiled, meaning complainants incorrectly filed PPPs as whistleblower disclosures.

From fiscal years 2011 through 2016, at least 80 percent of OSC's case closures were the result of one these OSC determinations. According to OSC staff, many federal workers and applicants for the federal workforce incorrectly submit PPP allegations as whistleblower disclosure allegations because they do not understand the difference between PPPs and whistleblower disclosures and their respective filing systems (i.e., Form 11 for PPPs and Form 12 for whistleblower disclosures). Such misfiling in turn delays OSC's processing of the case. Once correctly identified, DU closes the whistleblower disclosure case, and notifies CEU staff to open a PPP case, then CEU staff process the cases in accordance with CEU procedures.

OSC has undertaken efforts to replace the separate filing systems with a one-stop filing system, known as Form 14, for both types of cases. OSC staff believe Form 14 could reduce misfiling because the single form

²²OSC also has no jurisdiction over allegations filed by employees of intelligence agencies, the armed forces, ourselves, the Postal Rate Commission, and the Federal Bureau of Investigation.

should remove the need for filers to distinguish between PPP and whistleblower disclosure allegations. OSC promulgated a final rule adopting Form 14 effective July 2017 but has since encountered delays.²³ OSC officials told us that they are looking to implement this system in tandem with the rollout of OSC's new electronic case management system, which is still in testing.

We also found that OSC's caseload, in terms of case closures, is not spread evenly across federal agencies. In fiscal year 2016, 51 percent of all OSC case closures involved cases at three agencies, the Department of Veterans Affairs (VA), the Department of the Army (Army), and the Department of Homeland Security (DHS). The percentage of closed PPP and whistleblower disclosure cases that involved VA increased from 20 percent (678 cases) in 2011 to 34 percent (1,853 cases) in 2016. During the same period, the percentage of cases that involved DHS and Army remained stable. In fiscal year 2011, DHS and Army represented 18 percent of OSC's closed PPP and whistleblower disclosure cases and 17 percent in fiscal year 2016. Thus, VA's caseload can account for much of the increase in OSC's closed cases during the period of our review. VA officials attributed the higher number of VA cases to increased publicity stemming from congressional hearings and media attention surrounding lengthy patient wait times at VA.

OSC reported having taken several actions to help process the higher caseload. OSC officials said that, starting in 2013, incoming PPP cases were assigned to nonCEU staff across the agency, including employees in the Hatch Act Unit, which normally processes cases involving alleged illegal political activities. In addition, OSC revised its review process in 2014 to help process the higher number of cases originating from VA. This process included a focus on expedited settlements for whistleblower retaliation cases. Finally, in fiscal year 2016, OSC established its Retaliation and Disclosure Unit (RDU) as a permanent unit to process hybrid cases that involve both a whistleblower disclosure and an allegation of retaliation. Previously, CEU, DU, and IPD reviewed these cases separately.

²³82 Fed. Reg. 26,739 (June 9, 2017).

OSC Case Backlog Persists despite OSC's Efforts

Heading into fiscal year 2011, OSC already had a PPP and whistleblower disclosure case backlog of 953 cases. As previously discussed, OSC has received an increased number of PPP and whistleblower disclosure cases every year except 1 since 2011, including approximately 2,000 more cases in fiscal year 2016 than it received in fiscal year 2011. This resulted in nearly doubling backlogged cases from fiscal years 2011 to 2016 and an increase in the proportion of total caseload backlogged each year except 2012 and 2014. As shown in table 1, OSC's case backlog at end of fiscal year 2016 was over 1,850 PPP and whistleblower disclosure cases and represented over 24 percent of the PPP and whistleblower disclosure caseload. The trend of an increasing backlog was particularly evident in whistleblower disclosure cases, where the number of cases carried over as a percentage of total whistleblower caseload increased from 8.4 percent in fiscal year 2011 to 20.8 percent in fiscal year 2016.

Table 1: Number and Percentage of Prohibited Personnel Practice and Whistleblower Disclosure Case Backlog from Fiscal Years 2011-2016

	2011	2012	2013	2014	2015	2016
Cases remaining from prior years	953	1,074	1,381	1,241	1,851	1,858
New cases received	3,511	4,117	4,064	4,926	6,014	5,825
Total caseload	4,464	5,191	5,445	6,167	7,865	7,683
Percent of caseload backlogged	21.3	20.7	25.4	20.1	23.5	24.2

Source: GAO analysis of Office of Special Counsel data. | GAO-18-400.

A sustained backlog puts OSC's ability to fulfill its mission of protecting federal employees at risk. As OSC noted in its fiscal year 2017 Performance and Accountability Report, a longer backlog risks further delay for processing newly received cases. Further, lengthy processing times delays attaining desired favorable actions and remedying wrongdoings. Without timely resolutions, whistleblowers may be discouraged from filing whistleblower disclosures.

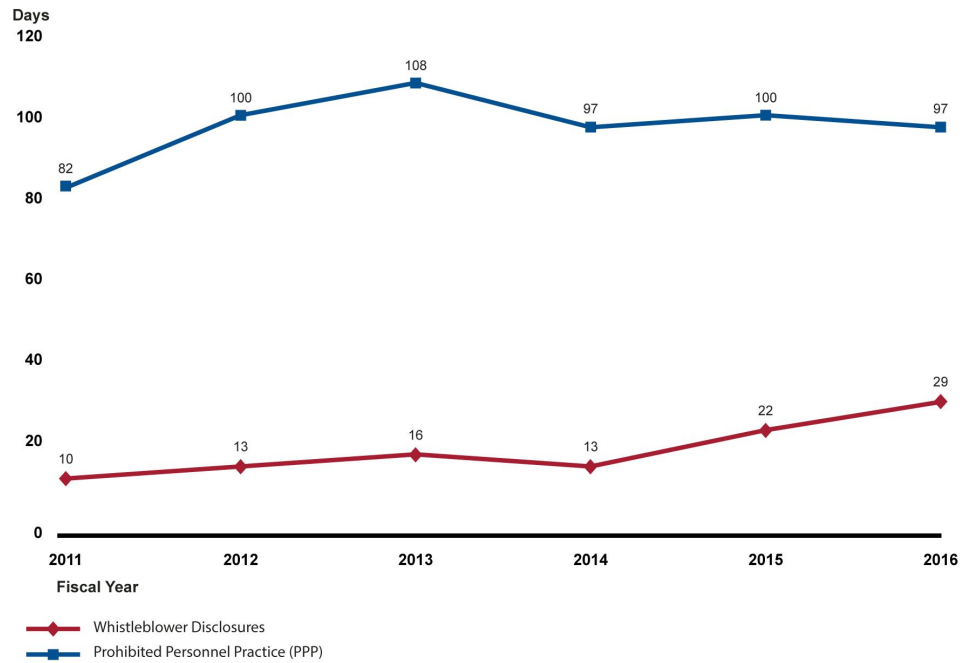
OSC's Time to Close Both Types of Cases Increased from Fiscal Year 2011 to 2016, but Review Times for Referred Whistleblower Disclosure Cases Increased the Most

OSC is Taking Longer to Process Cases

As discussed above, the majority of OSC's case closures do not require full investigation. However, overall OSC is taking longer to review and close PPP and whistleblower disclosure cases (measured as the median number of days from when OSC receives a case).²⁴ According to OSC management, processing times are affected by the complexity of a particular case, the cooperation level of involved parties, and agency requests for additional time. Figure 4 shows the median number of days OSC took to close all PPP and whistleblower disclosures cases from fiscal year 2011 through fiscal year 2016. Median closure times for whistleblower disclosure cases showed a greater relative increase over this time than PPP cases, increasing from 10 days in 2011 to 29 days in 2016.

²⁴We report case processing times in terms of medians because some cases that are referred for further investigation can have extremely long processing times. Despite being generally rare, these cases can distort averages that are described in terms of means.

Figure 4: The Median Number of Days to Close All PPP and Whistleblower Disclosure Cases from Fiscal Years 2011 to 2016



Source: GAO analysis of Office of Special Counsel (OSC) data. | GAO-18-400

Cases Referred to Agencies Often Take the Longest to Process

The increase in the median number of days to close all whistleblower disclosure cases, from 10 to 29 days, was also influenced by the time it took OSC to close the small subset of cases that it referred to agencies for investigation. While these cases represented only 5 percent of the whistleblower disclosure cases OSC closed in fiscal year 2016, they took significantly longer to close. The median lifespan of whistleblower disclosure cases that OSC referred to agencies for investigation increased from 450 days to 668 days from fiscal years 2011 to 2016, a 48

percent increase, with some cases taking as long as 1,523 days (or almost 4.2 years) to close.²⁵

Referred whistleblower disclosure cases have lengthy review times across multiple stages of the case review process. The 2018 OSC Reauthorization, part of the National Defense Authorization Act for 2018, grants OSC 45 days, instead of 15, to determine whether there is a substantial likelihood that the information disclosed one or more of the categories of wrongdoing.²⁶ Even though this change gives OSC increased processing flexibility, OSC may not be able to meet these revised standards. Of the 71 referrals under subsection 1213(c) we reviewed that were closed in fiscal year 2016, 55 would not have met the 45-day requirement. In contrast, 16 would have met the 45-day requirement, with 8 of the 16 referred to an agency within 15 days. Among the closed cases that we reviewed in fiscal year 2016, the median number of days OSC took between opening and referring a case was 91 days. Between fiscal years 2011 and 2016, prior to the change in law, OSC made referrals within 45 days less than half the time in every year except for fiscal year 2012.²⁷

A major factor contributing to the lengthy processing times for referred whistleblower disclosure cases is the length of time it takes agencies to conduct their investigations in response to OSC. By law, the subject agency is required to respond to the allegations within 60 days.²⁸ OSC may grant one or more extensions of this timeline to agencies that request them, and OSC did so in most cases we reviewed. From fiscal year 2011 through fiscal year 2016, OSC granted on average 88 percent of all extension requests received from agencies. In any given year during this period, OSC granted at least 83 percent of extension requests. While OSC procedures normally allow up to two extensions, the disclosure

²⁵Some whistleblower disclosure referrals are closed out quickly in OSC's case management system because they are anonymous and are thus referred directly to the agencies' Inspector General instead of the agencies themselves. The median closure time for these referrals ranged from 2 to 7 days. As a result, we omitted them from this analysis.

²⁶5 U.S.C. § 1213(b) and Pub. L. No: 115-91, § 1097, 131 Stat. 1283, 1618 (Dec. 12, 2017).

²⁷See table 8 in appendix II for more information.

²⁸5 U.S.C. § 1213(c)(1)(B). The time the agency has to respond can be longer than 60 days if agreed to in writing by the Special Counsel.

worksheet included in case files has slots for up to five extensions. We found that OSC granted between 2.7 and 4 agency extension requests per case on average from fiscal years 2011 through 2016.

Our review of cases closed in fiscal year 2016 also showed similar results. OSC did not receive agencies' responses within 60 days for any of the 71 referrals under subsection 1213(c) it closed in fiscal year 2016 that we reviewed. The median number of days between when the referral letter was sent to the agency and when the initial agency response was received by OSC was 169 days, and 33.8 percent (23 of 68) took more than 200 days.²⁹ In certain instances OSC may ask the agency for a supplemental report if OSC believes the agency's report was insufficient. The median number of days between when the referral letter was sent to the agency and when OSC received the final supplemental report response was 289 days and 69.6 percent (48 of 69) took more than 200 days.³⁰ Two agencies, VA and DHS, accounted for 56 of the 71 referrals made under section 1213(c). For those referrals, the median number of days for VA's initial responses to the referrals was 168, and DHS's was 165 days. The median number of days for OSC to receive a final supplemental report from VA was 266 days, and from DHS was 370 days.

Agency officials we interviewed told us that they routinely request extensions and OSC rarely or never rejects their initial requests. They explained that in most cases they need extensions to compile the necessary information to respond to the referral and to have the investigation approved internally. Because OSC information requests can be quite expansive, according to agency officials, agencies have to spend more time identifying the specific issues at the root of any allegations.

OSC has discretion in approving these requests, however, and whistleblower advocacy representatives told us that OSC could use its case closure letters to the President and Congress to apply pressure on agencies to respond more timely to allegations. OSC officials told us that their preference is to give agencies the needed time to complete investigations. They explained that if they have to close a case because an agency did not conduct a full investigation in a timely manner, the

²⁹Three of the referrals we reviewed did not have data on timeframes for agencies' initial responses.

³⁰Two of the referrals we reviewed did not have data on timeframes for agencies' final responses.

whistleblower is ultimately disadvantaged because he or she will have to refile the allegations if he or she wants them fully investigated. OSC's strategic plan for fiscal years 2017 to 2022 includes an objective for OSC to ensure agencies provide timely and appropriate outcomes for referred whistleblower disclosures. To achieve this objective, OSC says it plans to undertake strategies that include engaging agencies in the development of investigation plans of referred whistleblower disclosures and maintaining communications with agencies before, during, and after agencies' investigations of referred whistleblower disclosures, among others. Until OSC reviews and determines whether its policy for extensions is appropriate, it will be unable to meet its strategic goal for timely and appropriate outcomes.

OSC Does Not Communicate Potential Processing Timelines to Whistleblowers

OSC's procedures for notifying whistleblowers initially and when their cases are referred to the agency do not require OSC to communicate time frames for the referral and agency response. The referral notification letter to whistleblowers notes that agencies may ask for an extension and that the investigation may take longer than 60 days. In March 2018, OSC revised its referral letter template for whistleblowers to inform the whistleblower that agency investigations may take longer than 60 days and that agencies frequently request and receive extensions beyond the initial 60 days. This language, however, does not include agency-specific information on typical length of time a whistleblower could expect in their case.

Standards for Internal Control in the Federal Government notes that it is important for an agency to communicate quality information to external parties in order to achieve the agency's objectives.³¹ However, given that disclosure cases that were referred and closed in fiscal year 2016 took on average almost 1.8 years to resolve, whistleblowers are waiting a long time for cases to close. As whistleblower representatives noted, whistleblowers may be subject to retaliatory work environments during these extended processing times. In some instances whistleblowers may have changed positions, left the agency, or otherwise given up on a remedy, which presents uncertainty for all involved. Similarly, agency liaisons noted that officials who are the subject of allegations may have

³¹[GAO-14-704G](#).

also changed positions during the interim, which limits the corrective or disciplinary actions an agency can take. By not providing sufficient transparency on realistic time frames for the referral and agency referral response process, OSC risks and limits whistleblowers' ability to adequately plan for the whistleblower disclosure case process and have a better understanding of the potential timeline for case closure.

Some Aspects of OSC Case Processing Procedures Generally Adhere to Internal Control Principles, but Others Do Not

We identified eight internal control principles that are relevant to ensuring that OSC has an effective process in place so that its objective will be achieved for resolving PPP and whistleblower disclosure cases. These eight internal control principles include (1) establishing a structure, responsibility, and authority; (2) defining objectives and risk tolerances; (3) identifying, analyzing, and responding to change; (4) communicating internally; (5) performing monitoring activities; (6) implementing control activities through policies; (7) design control activities; and (8) committing to competence. Based on our review, OSC generally adhered to five of the relevant internal control principles, but did not fully adhere to three.

OSC Generally Adhered to Five Relevant Internal Control Principles

Establish Structure, Responsibility, and Authority

We believe that OSC has established a structure for PPP and whistleblower case processing, and assigned responsibilities and authorities. Specifically, CEU guidance outlines criteria for when to refer cases to IPD for investigation. The guidance includes a checklist of factors to aid the ADR Unit in evaluating whether a case is suitable for mediation. OSC's units have established and documented the key roles needed to carry out unit responsibilities. OSC also has documentation that assigns units responsibilities for working with external stakeholders, such as complainants, whistleblowers, and federal agencies, and that establishes reporting lines for OSC to communicate with these parties. OSC also provides training to federal agencies on whistleblower disclosures and PPPs and certifies that federal agencies have informed their employees about the PPP and whistleblower disclosure processes.

Define Objectives and Risk Tolerances

We believe that OSC has defined program objectives and risk tolerances for PPP and whistleblower case processing. Specifically, OSC's most recent two strategic plans outline program objectives as well as implementation strategies, and specify PPP and whistleblower disclosure case metrics to track. OSC unit managers, via staff meeting minutes, notes, and various reports, document how they communicate objectives and track progress towards achieving those objectives.

Identify, Analyze, and Respond to Change

We believe that OSC has identified, analyzed, and responded to changes that could affect its case processing. Specifically, OSC's agency-wide Enterprise Risk Management process, established in early 2017, documents OSC's key risk identification and management process. According to the risk management profile and meeting minutes, the Enterprise Risk Management group has met twice since being established to identify risks, develop responses, and follow up on previous responses and risks identified.

Communicate Internally

We believe that OSC has established a process to communicate internally. Specifically, OSC management communicates information about PPP and whistleblower case processes using internal communication channels such as mass emails, employee newsletters, one-on-one meetings, and meeting agendas. OSC staff also told us they utilize informal communication channels and that OSC management are available to discuss PPP and whistleblower case processes. OSC management also provided policy memos and procedures that communicate certain PPP and whistleblower disclosure case processes.

Perform Monitoring Activities

We believe that OSC has established a process to monitor case activities. Specifically, OSC's monitoring of case operations include a variety of reports that track cases received, pending cases, and case resolutions to assess the effectiveness of OSC's PPP and whistleblower disclosure operations. Key pieces of information from these reports are shared via the internal meeting structures with staff and management. IPD, DU and RDU management also conduct docket reviews of cases with their staffs. OSC management provided examples of monitoring the caseloads of

staff as well as how they discussed and monitored the status of open cases at meetings. For example, CEU tracks which staff are assigned certain cases and whether the cases were closed or referred to another unit

OSC Generally Did Not Adhere to Three Relevant Internal Control Principles

Implementation of Control Activities through Policies

We believe that for the PPP and whistleblower disclosure processes OSC did not implement its control activities through policies.

Prohibited Personnel Practices: CEU receives and processes PPP cases and is OSC's largest unit in terms of staff and caseload. However, CEU lacks documented, complete procedures for processing cases, such as a comprehensive guide or manual describing procedures for reviewing and resolving PPP cases. We identified the following specific procedures, for which CEU lacks documentation: (1) case priorities, (2) obtaining favorable actions, (3) staff productivity expectations, and (4) supervisory review.

First, regarding case priorities, CEU management described to us seven different types of cases that should be prioritized but did not provide documentation for them. OSC case files also lacked documentation regarding case prioritization. In May 2016, CEU conducted a "Best Practice Survey," in which CEU staff were asked their views on CEU's case processes. One of the many themes identified was that CEU needs to clarify its case priorities.

Second, concerning favorable actions, CEU lacks procedures for how staff should determine when a favorable action is warranted, how to obtain and negotiate favorable actions with agencies, and how to document favorable actions in case files. A favorable action is an outcome in a case that could result in a specific benefit to the complainant, an outcome aimed at disciplining the subject official and deterring future bad conduct, or an improvement to agency processes. OSC lists the number of favorable actions as a key performance metric in its budget and performance documents. CEU, in particular since 2014, has sought favorable actions, especially in cases that do not merit referral to its investigative unit or mediation unit. According to OSC officials, this initiative was part of an effort by the prior Special Counsel to expand

CEU's investigative role beyond that of an intake unit. CEU increased its share of OSC's favorable actions from approximately 1 percent in fiscal year 2011 (1 of 75) to 31 percent in fiscal year 2016 (77 of 251). However, without documentation of procedures, OSC staff may not consistently perform required steps to attain favorable actions. For example, we found that 18 of the 61 cases (29.5 percent) where CEU claimed a favorable action lacked documentation of OSC's involvement in obtaining the favorable action, the agencies' implementation of the favorable action, whether the favorable action was achieved in another OSC unit but claimed by CEU, or some other discrepancy. The "Best Practice Survey" results noted that CEU staff would like written procedures for obtaining favorable actions.

Third, CEU lacked documentation for staff productivity expectations. In August 2017, according to an OSC official, CEU staff were expected, though not required, to resolve at least 36 PPP cases per quarter. CEU officials were unable to provide documentation on how the goal was communicated to staff. Another finding from OSC's "Best Practice Survey" was that CEU staff need clarity regarding case resolution requirements. In addition, during our small group discussion with CEU staff in September 2017, the staff raised concerns regarding OSC's case resolution expectations. They said that productivity expectations are unwritten and vary depending on whether staff telework or not. One staff person was concerned that management had an unwritten expectation for staff to close significantly more than the 36 cases per quarter. OSC shared documentation in April 2018 clarifying staff expectations for case productivity. The expectations, which are effective June 1, 2018, and vary depending on the grade level of the OSC employee, were emailed to all CEU staff. However, while OSC has documented and communicated CEU staff productivity expectations, the expectations did not include guidance on how staff should balance resolving a certain number of cases over a specified time period and obtaining favorable actions, which OSC has also emphasized for CEU staff.

Fourth, CEU does not have written procedures specifying supervisory review of CEU cases. CEU management officials told us they are required to review (1) PPP closure letters; (2) all cases that allege reprisal for whistleblowing; and (3) all cases referred to other units, such as those referred for mediation and investigation. However, OSC lacked procedures for these review processes. As a result, OSC staff has not followed some steps in case files consistently. For example, of the 61 cases we reviewed with a corrective action taken in CEU, 45 alleged reprisal for whistleblowing. We found that 15 of these 45 cases did not

have a CEU management review. Also, of those cases without a corrective action that were not referred for investigation, we estimate that 58.8 percent did not include CEU managerial review of the closure letter.³² For cases referred for investigation, we found that 44.7 percent did not include CEU managerial review of the referral memorandum.³³ The OSC “Best Practice Survey” results also indicated that CEU staff would like to standardize the unit’s review procedures.

Standards for Internal Control in the Federal Government states that management should implement control activities through policies by documenting them. CEU management said these specific steps, though not documented, could be discussed during staff’s initial training, at midterm and annual reviews, when assigning cases, and at OSC meetings. CEU management officials said they are formalizing guidance and have orally communicated these case processes to staff during off-site training and informal communications. Without documented procedures, there is an increased risk that employees will not consistently follow management’s directives.

Whistleblower Disclosures: OSC has written procedures for processing whistleblower disclosure cases. These procedures, among other things, describe case productivity requirements for staff, specify managerial involvement for cases, and outline the case prioritization process, as well as other case processes. However, these procedures also include outdated processes. For example, OSC’s case prioritization process specifies three priority levels but we found whistleblower disclosure priority worksheets in case files that specify four priority levels. In addition, OSC’s written procedures outline an informal referral process to agencies’ respective inspector general (IG) offices. According to OSC’s procedures, OSC uses this referral process in cases where the whistleblower disclosure is less egregious in nature and does not warrant a referral to the head of the federal agency. However, according to OSC officials, OSC no longer refers whistleblower disclosures informally to IG offices, but instead refers whistleblower disclosures informally to agencies’ respective general counsel offices.

³²The margin of error of the estimates is no larger than +/- 10.8 percentage points. We reviewed a sample of 85 cases and our estimates apply to the 3,168 cases in population.

³³The margin of error of the estimates is no larger than +/- 11.1 percentage points. We reviewed a sample of 47 cases and our estimates apply to the 106 cases in population.

Standards for Internal Control in the Federal Government states that management should periodically review policies, procedures, and related control activities for continued relevance and effectiveness. An OSC official told us OSC had not updated its procedures due to OSC's high caseload for whistleblower disclosures. In April 2018, OSC provided us with updated case procedures for case prioritization and informal referrals. OSC officials said they will communicate the updated procedures to the appropriate staff during a staff meeting and will make the procedures available on OSC's intranet page. The updated procedures should help OSC staff implement case processes as intended by OSC management.

Design Control Activities

To conduct our case file review, we asked OSC to locate and retrieve 396 PPP and whistleblower disclosure paper case files that were closed in fiscal year 2016. OSC told us after several months, that it was unable to locate 18 files (4.5 percent) and was still retrieving 36 case files (9 percent). Ultimately, OSC could not locate 20 case files and told us 13 cases would be unavailable within the course of our review. These 33 cases were opened by OSC in fiscal years 2012 to 2016, although a majority were opened in fiscal years 2015 and 2016. Based on our estimates, OSC would not be able to locate 8.3 percent of closed case files.³⁴

According to OSC officials, some of the difficulty of finding their files is because they are maintained in paper files. OSC officials said that one full-time OSC employee oversees the maintenance and retrieval of closed OSC paper case files. They explained that records are stored at multiple locations: OSC headquarters, OSC's field offices, and at federal record and archive centers. OSC officials told us that, if given additional time beyond our January 2018 deadline, then they could locate the remaining cases files but could not provide us a time frame for doing so.

OSC is planning to implement a new electronic case management system (eCMS), which is designed to mitigate the need to maintain physical case files. According to OSC, staff could then retrieve electronic case files as needed. OSC documentation indicated that eCMS will allow OSC to take

³⁴The margin of error of the estimates is no larger than +/- 3.03 percentage points.

an electronically filed Form 14 and create an electronic case file.³⁵ Based on OSC's functional requirements for eCMS, the system should also allow staff to quickly locate case files that may be connected to other cases. This system would also allow staff to search e-mails and documents based on a particular filter, among other capabilities. OSC's original time frame was to have eCMS operational in October 2017.

However, OSC has had issues migrating data from OSC 2000 to eCMS, has not implemented the new system, and continues to maintain paper files. As of March 2018, OSC was determining whether its contracted vendor would be able to migrate the OSC 2000 data to eCMS. In addition, OSC was examining (1) whether eCMS as constructed can reach full functionality so that OSC can eliminate paper case files, and (2) if so, what further system development is required to accomplish this. OSC officials said their tentative goal is to transition from OSC 2000 to eCMS at the beginning of fiscal year 2019.

Under *Standards for Internal Control in the Federal Government*, management should clearly document internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. In addition, according to OSC regulations, OSC is to maintain records to (1) document how OSC handled each matter; (2) provide a resource for consistency in interpretation and application of the law; and (3) allow for statistical reports and analysis of matters processed at OSC.³⁶ Until OSC develops an electronic case management system that would allow individual staff to perform customizable case history searches and manage their caseloads, it cannot ensure that cases related to a specific individual or agency will be located in a timely manner, which could also delay the work of OSC staff.

Commitment to Competence

OSC does not have a systematic, standardized training program for OSC employees who review and process PPP and whistleblower disclosure cases. CEU and DU, OSC's two largest units in terms of cases closed, described a number of aspects of training for entry level employees. For

³⁵As of March 2018, OSC said that it plans to roll out Form 14 in line with its implementation of eCMS at the beginning of fiscal year 2019.

³⁶Notice of a modified system of records, 82 Fed. Reg. 45,076 (Sept. 27, 2017).

example, OSC officials said both units provide a training manual to new staff. The training manuals cover a number of topics, such as unit and OSC policies, case processes, and relevant case law, and include examples. In DU, OSC officials said new staff receive some training on PPPs, and are assigned less difficult cases although they did not provide documentation. They explained that new staff become familiar with DU's procedures through on-the-job training. In CEU, OSC officials described a 2-week training course, but could not provide documentation of the training, such as a syllabus or a list of course participants. OSC officials said the 2-week training course was being updated and formalized. They added that the guidance currently used for the training is informal and not regularly available for staff to access.

In April 2018, OSC provided us with additional documentation regarding training provided in CEU. The documentation included an outline of PPP topics and the CEU training manual we had previously received. As we discussed earlier, to help manage OSC's caseload, PPP cases were assigned to staff to outside of CEU as part of the CEU project. Staff not accustomed to working PPP cases on a regular basis were asked to do so. However, OSC officials said that no formal training was provided to these staff as part of this project.

OSC nonmanagement staff told us they would like more regular, standardized training. During our small group discussions, OSC staff discussed two consistent themes related to training: (1) on-the-job training at OSC is emphasized, and (2) existing training for entry-level employees could be enhanced. For example, one participant in our small group discussions stated that although the nature of their work requires that much is learned via on-the-job training, OSC could do better by providing a systematic approach for new hires that helps them understand the life of a case (e.g., documenting case lifecycle or formalizing checklists). Also, as part of the OSC's "Best Practice Survey" CEU staff identified the need for regular quarterly training meetings to discuss OSC policy issues, developments in case law, and changes and clarifications on CEU case processing procedures.

Standards for Internal Control in Federal Government state that management should demonstrate a commitment to recruit, develop, and retain competent individuals. This includes tailoring training based on the needs of the role. In addition, OSC's strategic plan for fiscal years 2017 to 2022 has an objective on recruiting, developing, and retaining a highly talented, engaged, and diverse workforce. OSC officials noted that given OSC's small size, OSC does not have a regular, standardized training

program. OSC officials did explain and provide documentation regarding continuous training provided to staff, such as external training staff attended. They also told us that efforts to find staff external training opportunities depend on the extent to which funding is available.

As OSC's caseload continues to increase, efficiently recruiting and onboarding staff may help OSC better manage its caseload. The lack of standardized training poses a risk to the consistency with which cases are worked, reviewed, and closed, especially since staff not accustomed to working PPP cases as part of the CEU project were not provided training because OSC lacks standardized training based on the documentation we reviewed. Ensuring consistent training among staff could help alleviate any issues created by absences and employee turnover. Such training would also help OSC manage its caseload if nonPPP staff are again asked to work PPP cases.

OSC's Internal Complaint and Whistleblower Disclosure Process in Some Cases Does Not Provide OSC Employees Protections Afforded to Other Federal Employees

OSC Processes for Reviewing and Referring Internal Allegations Involve OSC Officials and Staff

OSC's policy for reviewing of internal PPP and whistleblower disclosure allegations involves OSC officials and staff at various points in the process depending on the complainants, whistleblowers, and subject officials involved. Table 2 summarizes the various review scenarios for both PPP and whistleblower disclosure cases at OSC.

Table 2: Different Entities Investigate Prohibited Personnel Practice (PPP) and Whistleblower Disclosure Cases Depending on Which Type of Office of Special Counsel (OSC) Employee Is the Subject Official

Type of case	Allegations involving Special Counsel or Principal Deputy Special Counsel	Allegations involving other political appointees and senior managers	Allegations involving nonleadership employees who review PPP or whistleblower disclosure cases, respectively	Allegations involving all other employees
PPP Complaint	Council of the Inspectors General for Integrity and Efficiency (CIGIE) receives case from complainant directly or from OSC Authorized Individual, then reviews case.	National Science Foundation Office of Inspector General (NSF-OIG) receives case from OSC Authorized Individual or Special Counsel, then reviews case. ^a	Complaints Examining Unit receives and reviews case (same as external process).	Principal Deputy Special Counsel receives and reviews case.
Whistleblower Disclosure	CIGIE receives case from whistleblower directly or from OSC Authorized Individual, then reviews case.	NSF-OIG receives case from OSC Authorized Individual or Special Counsel, then reviews case. ^a	Disclosure Unit receives and reviews case and may make referral determination to Special Counsel. If referred, the case would be investigated by either the NSF-OIG or OSC investigators from a different location than the subject official.	Principal Deputy Special Counsel receives and reviews case and may make referral determination to Special Counsel. If referred, the case would be investigated by either the NSF-OIG or OSC investigators from a different location than the subject official.

Source: GAO analysis of OSC and NSF-OIG documentation. | GAO-18-400

^aThe NSF-OIG may decline to review the allegations, in which case OSC conducts the review.

According to OSC Directive 57, OSC’s policy document that explains the internal allegations process, the Principal Deputy Special Counsel reviews allegations against CEU, IPD, or DU non–senior management staff. CEU and DU chiefs review their respective categories of allegations made against employees outside of those units who are not senior managers. The Special Counsel can either refer internal whistleblower disclosure allegations against employees other than senior managers to the NSF-OIG or appoint OSC investigators from another office location. However, it is unclear how this selection process works in practice because, of the five cases in our case file review in which OSC played an investigative role, OSC could only locate one of the cases, which was a PPP instead of a whistleblower disclosure case. For allegations against political appointees, senior executives, and senior managers other than the Special Counsel and Principal Deputy Special Counsel, OSC employees must first submit allegations with either the Special Counsel or

with OSC's Authorized Individual—an employee elected by OSC's workforce—before NSF-OIG can decide to provide investigative services. If NSF-OIG declines to provide such services, Directive 57 notes that OSC reviews the allegations in question.

An OSC employee can choose to file with the Authorized Individual or file directly with a third party when the allegations are against either the Special Counsel or Principal Deputy Special Counsel. Pursuant to the Inspector General Reform Act of 2008, the Council of Inspectors General for Integrity and Efficiency (CIGIE) Integrity Committee reviews allegations made against IGs, their designated Office of Inspector General staff members, and OSC's Special Counsel and Principal Deputy Special Counsel.³⁷ Until 2016, the Special Counsel was also a member of this committee.³⁸ Per OSC Directive 57, OSC employees may file directly with this committee.

OSC officials noted that, in their opinion, the internal allegations process available to OSC staff has challenges and is not ideal. Officials had concerns that partnering with an agency IG that is large or that may frequently have employees that file allegations for OSC to review could create conflicts of interest if the agency IG in turn has to review OSC employee allegations. According to officials, OSC has actively tried to strengthen its internal allegation process by securing an agreement with the NSF-OIG.

OSC's memorandum of understanding with NSF-OIG specified that NSF-OIG staff would determine whether to provide investigative services for allegations that OSC referred to them either via the Special Counsel or the Authorized Individual. NSF-OIG is to present a summary of facts to the Special Counsel after it concludes its investigation, but does not exercise enforcement authority in these matters. The Special Counsel is responsible for initiating corrective or disciplinary action. According to OSC officials familiar with the negotiations that resulted in the initial 2014 agreement, NSF-OIG was concerned with the resources that would be involved if it were charged with independently undertaking investigations of allegations made against OSC without an authorization from OSC. The

³⁷Pub. L. No. 110-409, § 7, 122 Stat. 4302, 4306 (Oct. 14, 2008).

³⁸Until December 2016, the Special Counsel was a sitting member of the committee. Our review of CIGIE Integrity Committee meeting minutes showed that then-Special Counsel Carolyn Lerner recused herself from committee proceedings involving all five cases filed by OSC employees against OSC leadership.

result of these concerns, via Directive 57, was to have either the Special Counsel or the Authorized Individual route allegations to NSF-OIG before NSF-OIG staff decided whether to accept the case.

One-Fifth of OSC Employee Survey Respondents Have Considered Filing Allegations but Cited Clarity and Reprisal Concerns

Of the 87 (of 132) OSC employees who responded to our survey (representing a 66 percent response rate), 17 told us that they either had filed or had considered filing a PPP or whistleblower disclosure allegation against another OSC employee over the course of their careers.³⁹ Five of these 17 employees said they ultimately filed allegations. These 5 also said they had considered filing additional allegations but ultimately chose not to do so.⁴⁰ Table 3 shows that concerns about the integrity of OSC's process for internal allegations played significant roles in the 17 respondents' decisions not to file. These employees, in follow-up discussions with us, cited similar themes. While a majority of these employees said they were able to resolve their issues informally, this was the least common reason to contribute either moderately or very much to an employee's decision not to file.

³⁹Response rates were higher than average in the Investigation and Prosecution Division and Complaints Examining Unit. Nonmanagement staff responded at higher rates than did management staff. Among respondents, per-question response rates for all of the questions summarized in this report were at or above 85 percent.

⁴⁰OSC employees were given the ability to file allegations against political appointees, senior executives, and other senior managers apart from the Special Counsel and Principal Deputy Special Counsel in 2014 with the signing of a memorandum of understanding with NSF-OIG. While we reviewed available information on cases filed with NSF-OIG since 2014, our survey asked employees about their experiences both before and after 2014.

Table 3: Some Procedural Concerns Contributed to Office of Special Counsel (OSC) Employees, Who Considered Filing Complaints, Deciding Not to File Those Complaints

Concern	Number of respondents who considered filing but said concern either moderately or very much contributed to decision not to file
Ability to resolve issue informally	9 of 17
Fear of reprisal from within OSC	15 of 17
Not sure how to file	9 of 17
Concern about objectivity or conflict of interest within complaint process	16 of 17
Concern about length of process	10 of 17
Fear that anonymity would be compromised	16 of 17

Source: GAO survey of OSC employees. | GAO-18-400

Some OSC employees, regardless of whether they had previously considered filing an allegation, expressed concerns about OSC’s process for internal PPP and whistleblower disclosure allegations, as shown in table 4.⁴¹

Table 4: Employees Have a Range of Views on How the Office of Special Counsel’s (OSC) Policy Addresses Several Components of Process for Internal Allegations

Concern	Employees who said OSC’s policy addressed concern not at all well or somewhat well	Employees who said OSC’s policy addressed concern very well or moderately well
Address all stages of the process of filing	31 of 87	44 of 87
Explain employee appeal rights	36 of 87	38 of 87
Identify the entities who will review the allegations	25 of 87	49 of 87

⁴¹Nonresponse rates for subparts of this survey question ranged from 13 to 15 percent.

Concern	Employees who said OSC's policy addressed concern not at all well or somewhat well	Employees who said OSC's policy addressed concern very well or moderately well
Protect against a conflict of interest in responding to allegations	30 of 87	45 of 87
Identify Authorized Individual who refers allegations for investigation	28 of 87	48 of 87
Protect the anonymity of the employee	33 of 87	41 of 87

Source: GAO survey of OSC employees. | GAO-18-400

We found that OSC employees had expressed similar concerns in recent editions of the Federal Employee Viewpoint Survey. From 2012 to 2015, OSC experienced increases in negative responses on questions concerning whether PPPs are tolerated, whether employees feel they can disclose violations of law without fear, and on the honesty and integrity of their leaders. In particular, the percentage of negative responses on the question of whether employees felt they could disclose violations of law without fear rose from 10 percent in 2012 to 37 percent in 2015. Scores on these questions generally improved beginning in 2016, and the agency-wide response rate rebounded significantly from 2015 to 2016.⁴²

During our follow-up discussions with survey respondents, a theme emerged that anonymity is difficult to maintain, in part owing to the perception that OSC has a culture of informal discussion. Given the roles that OSC leadership and other officials currently play in this process, these concerns may be valid. Having an authorized individual and multiple OSC managers responsible for examining case files against OSC employees cannot assure employees that their claims can be reviewed anonymously and independently. Consequently, employees told us they are reluctant to report their workplace concerns in part because OSC management and the Authorized Individual are involved in the review process for certain cases. This in turn increases OSC's risk that workplace violations go unreported.

⁴²The OSC-wide response rate was 85 percent in 2014 before declining to 61 percent in 2015 and increasing to 92 percent in 2016.

Standards for Internal Control in the Federal Government states that agencies should segregate management authority and oversight duties to reduce the risk of fraud, waste, and abuse.⁴³ We found no instances in which top OSC leadership were directly involved in the review of allegations made against them. However, OSC is a small agency of only 135 employees. Without separating management authority and oversight from the review of OSC allegations, the likelihood of an allegation involving someone closely related to or frequently in contact with agency management—even if not involving a member of management directly—is greater and could promote a perception of a conflict of interest.

Statutory Changes Increase Safeguards for OSC Employees, but OSC Has Not Yet Taken All Steps to Implement Changes

Congress has taken multiple actions to increase the independence of reviews of internal PPP and whistleblower disclosure allegations at OSC. As previously noted, the Inspector General Reform Act of 2008 and subsequent CIGIE procedures provided the CIGIE Integrity Committee as an avenue where OSC employees could directly file allegations against either the Special Counsel or Principal Deputy Special Counsel. The Inspector General Empowerment Act of 2016 further bolstered the independence of CIGIE Integrity Committee reviews of OSC cases by removing OSC officials from the committee in these cases.⁴⁴ More recently, the 2018 OSC Reauthorization requires OSC to establish an agreement with at least one agency. Under such an agreement, an IG can receive allegations for investigation directly without the need for an OSC Authorized Individual.⁴⁵ The legislation authorizes OSC to reimburse the third-party IG for any expenses related to their investigations.

In March 2018, OSC officials told us OSC extended the existing agreement with NSF-OIG, with a revised expiration date of August 2018. OSC officials said they are working with CIGIE and other agencies to secure a new IG arrangement, though they had not finalized one. Officials

⁴³[GAO-14-704G](#).

⁴⁴Pub. L. No. 114-317, § 3(3)(A)(i), 130 Stat. 1595, 1596 (Dec. 16, 2016).

⁴⁵Pub. L. No: 115-91, § 1097(g), 131 Stat. 1283, 1683 (Dec. 12, 2017) *codified* at 5 U.S.C. § 1212(i). The OSC reauthorization enacted additional changes for OSC unrelated to OSC's internal allegation process.

added that they intend to adopt language as part of a future arrangement that will allow OSC employees to contact the IG directly. However, it is still unclear who will provide these investigative services. Given the concerns stated above, it is important that OSC employees have a resource that can receive allegations directly, independently investigate allegations, and pursue favorable actions when appropriate. These features of PPP and whistleblower disclosure investigations are protections that federal employees and applicants currently are afforded by OSC and the IG community. The impending expiration of OSC's current agreement with NSF-OIG presents an opportunity for OSC to secure a fully independent review for internal OSC allegations.

Uncertainty over How to File Also Inhibits Some Employees from Reporting Concerns

We also found that there is some uncertainty among OSC staff of OSC's policy for making these allegations. Of the 17 employees who responded to our survey and said that they ultimately chose not to file allegations, 9 said that uncertainty about how to file either moderately or very much contributed to their respective decisions. Moreover, while 44 of 87 employees surveyed said that they were both familiar with and had read OSC's policies for internal allegations, 19 of 87 said they either could not locate OSC's policies or did not know they existed. OSC management told us that OSC has not routinely included information on its internal allegations process as part of its new employee orientation program nor included this information as part of all-staff meetings. The OSC employee newsletter includes an announcement that OSC employees can file allegations and have them reviewed by NSF-OIG. However, in the two most recent examples provided to us, the announcement language did not provide information on the Authorized Individual and did not directly address other types of cases that may not fall under NSF-OIG's jurisdiction.

Regardless of the nature of employees' concerns with their workplace or with the process for investigating allegations, it is important that employees have the information they need to report those concerns. *Standards for Internal Control in the Federal Government* emphasizes that agency management needs to communicate quality information throughout all levels of an organization.⁴⁶ Moreover, management should

⁴⁶[GAO-14-704G](#).

take opportunities to evaluate how it is communicating information in light of its audience, the legal and regulatory environment, and the nature of the information. Implementing recent statutory changes, if successful, may prompt fundamental alterations in how OSC employees' PPP and whistleblower disclosure allegations are investigated. Given the timing of these changes and the sensitivities of employees with workplace concerns, OSC has an opportunity to bolster its information outreach in this area and help promote a greater awareness of OSC internal complaint policies and procedures. In March 2018, after we discussed our preliminary findings, the Special Counsel notified all OSC employees of their rights to disclose wrongdoing at OSC, and officials reported displaying posters with the revised information. OSC officials also said that, in May 2018, OSC started to include a copy of the poster explaining how to make disclosures in every new employee orientation packet. Continuing this type of outreach periodically may help notify OSC employees of their rights going forward.

Conclusions

The position that OSC occupies in the defense of merit system principles in the federal government carries great weight, but it also presents many challenges. OSC's increased caseload has led to a continuing backlog of unresolved cases, both in absolute numbers and in terms of their proportion of total caseload. Alongside this trend has been an increase in the time OSC takes to close individual PPP and whistleblower disclosure cases, with a particularly significant increase for whistleblower disclosure cases that OSC refers to other agencies. OSC's strategic plan for fiscal years 2017 to 2022 includes objectives for OSC to ensure agencies provide timely and appropriate outcomes for referred whistleblower disclosures. However, as cases linger in OSC, there is a greater chance that the individual making the allegations and officials in question may have changed positions, moved jobs, or given up seeking a remedy altogether. OSC has not undertaken a review of its practice of approving multiple extensions at the request of agencies conducting investigations. These extensions have resulted in longer processing times, which have not been transparently communicated to whistleblowers. Whistleblowers therefore have limited understanding of OSC's review process and cannot adequately plan for the complete disclosure case process.

OSC's practices are generally consistent with certain internal control standards for internal communication, risk management, and monitoring. However, it has not fully adhered to internal control principles with regard

to fully documenting its policies, particularly within CEU, and ensuring staff receive consistent training. Moreover, the lack of an effective electronic case file management and storage capability limits OSC's ability to quickly retrieve cases as needed for its work and thus improve its efficiency.

OSC's lack of a fully independent internal complaints filing process has reduced the confidence some OSC employees have in its process for reviewing PPP and whistleblower disclosure allegations. Although Congress has taken steps to mitigate potential conflicts of interest, challenges at OSC include a review process that continues to involve OSC staff and officials, uncertainty among employees about how to file cases, and uncertainty about the future of obtaining permanent investigative services. Leveraging existing resources with CIGIE, NSF-OIG, and others as needed would help OSC ensure that its employees can voice their concerns free from OSC involvement. Once such a process is established, it will be important for OSC to continue to provide its employees outreach and information so they are fully aware of how the process works.

Recommendations for Executive Action

We are making the following seven recommendations to OSC:

The Special Counsel should review and revise as appropriate, its policy for agency extension requests. (Recommendation 1)

The Special Counsel should communicate expected processing timelines to whistleblowers. (Recommendation 2)

The Special Counsel should develop, document, and implement case processing procedures for OSC's Complaints Examining Unit, including procedures for how cases are prioritized, how to take favorable actions, how to balance obtaining favorable actions with meeting staff productivity expectations, and how cases should be reviewed by supervisors. (Recommendation 3)

The Special Counsel should identify and implement additional controls and tools needed to ensure closed case files can be tracked and located efficiently. (Recommendation 4)

The Special Counsel should develop, document, and implement a standardized training program for entry-level employees, across units. (Recommendation 5)

The Special Counsel should finalize a time frame for completing work with CIGIE and agency Inspectors General to obtain a fully independent review process for internal OSC allegations. (Recommendation 6)

The Special Counsel should increase and clarify ongoing outreach to OSC employees regarding OSC's process for handling internal PPP claims or whistleblower disclosure allegations. (Recommendation 7)

Agency Comments and Our Evaluation

We provided a draft of this report to the Special Counsel. In its comments, reproduced in appendix III, OSC agreed with all seven of our recommendations and said it is already taking steps to implement them. We also received technical comments from OSC, which we incorporated where appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Special Counsel, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report please contact me at (202) 512-2717 or jonesy@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Yvonne D. Jones
Director
Strategic Issues

List of Committees

The Honorable Ron Johnson
Chairman
The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate

Appendix I: Objectives, Scope, and Methodology

The objectives of this engagement were to examine (1) the trends in the number of Prohibited Personnel Practice (PPP) and whistleblower disclosure cases Office of Special Counsel (OSC) received and closed from fiscal year 2011 to 2016 and the effect on its existing caseload, (2) the trends in the timeliness of PPP and whistleblower disclosure cases closed from fiscal year 2011 to 2016, (3) the extent to which OSC's PPP and whistleblower disclosure case processes adhere to relevant internal control principles, and (4) the extent to which safeguards are in place for OSC employees who file PPP and whistleblower disclosure complaints against OSC.

To examine PPP and whistleblower disclosure cases received and closed from fiscal years 2011 to 2016, we requested and obtained all case-level data from OSC's electronic case management system (OSC 2000) for the PPP and whistleblower disclosure cases closed from fiscal years 2011 through 2016 (the most recent full fiscal year available). We identified unique cases (i.e., case type, fiscal year case is opened, and four-digit identification number) to analyze case receipts and closures (by OSC unit of closure, type of resolutions, number of allegations per case, allegation type, federal agency, and referral type). To analyze by allegation type, we grouped 36 allegation codes into the 13 PPP allegation types and had OSC officials verify those groupings. Because a case filed with OSC can contain multiple allegations, we used the unique case identifiers to analyze allegations without over counting the number of cases. When we discuss the types of case closures, we are doing so by the types of allegations closures because different allegations of the same case could be closed in different ways. We also requested and reviewed relevant OSC 2000 documentation, including the data dictionary and reference files to identify appropriate data tables and variables. We also analyzed publicly available data on OSC's website as well as data from OSC 2000 to determine how PPP and whistleblower disclosure case receipts and closures have affected OSC's existing caseload.

To examine PPP and whistleblower disclosure timelines from fiscal years 2011 to 2016 and the effect on OSC's existing caseload, we requested and obtained OSC 2000 data for the PPP and whistleblower disclosure cases closed from fiscal years 2011 through 2016. We analyzed OSC 2000 data on the median number of days cases were open, including by

federal agency from which cases were received. We also analyzed OSC 2000 data on agency extension requests granted for whistleblower disclosure cases and compared the median number of days whistleblower cases were open to select statutory requirements. Our analysis included presenting information from our review of closed case files, which is discussed below.

For both of the OSC 2000 data objectives above, we also interviewed OSC officials, federal agency liaisons, whistleblower advocacy organizations, and a law firm to obtain their views on changes in the OSC data, which are also discussed in more detail below.

For the purposes of this review, we determined that the OSC 2000 data used in our analysis were reliable. Our data reliability assessment included reviewing relevant documentation, conducting interviews with knowledgeable OSC officials, such as OSC's Chief Information Officer, and electronic testing for missing data, outliers, and obvious errors.

To evaluate the extent to which OSC's case management processes and procedures for PPP and whistleblower disclosures adhere to relevant internal control standards, we compared documentation for OSC's PPP and whistleblower disclosure processes to selected standards in the *Standards for Internal Control in the Federal Government*.¹ We also reviewed OSC's case processing documentation including case procedures, checklists, fact sheets, training manuals, case reports, example templates documents, and OSC's strategic plan, as well as other documentation. We then assessed whether these documents adhered to the relevant standards for internal control in the federal government. To determine which internal control standards were most relevant, we utilized our Internal Control Management and Evaluation Tool, in conjunction with observations based on our preliminary audit work, to select the standards that most closely related to OSC activities.² We then focused our assessment of OSC internal controls around our selected standards by interviewing OSC officials in each of the units and divisions responsible for PPP and whistleblower disclosures case processes, and reviewing available documentation. We interviewed OSC officials from the

¹GAO, *Internal Control: Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

²GAO, *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: Aug. 1, 2001).

following units and divisions: the Complaints Examining Unit (CEU), Investigation and Prosecution Division (IPD), Disclosure Unit (DU), and Retaliation and Disclosure Unit (RDU). Because IPD is overseen by different managers in OSC's Washington, D.C. headquarters and in OSC's field offices in Detroit, Oakland, and Dallas, for our internal control evaluation we considered IPD-HQ and IPD-Field separately. Similarly, for much our audit, we were unable to interview the Alternative Dispute Resolution (ADR) unit manager due to personal reasons. Thus, we were unable to complete our internal control evaluation because a new manager was not put in place by the time we completed our evaluation.

We also interviewed the OSC liaison officials from the three federal agencies that most frequently were the subject of PPP complaints and whistleblower disclosures in cases closed in fiscal year 2016, to discuss their views on working with OSC. We held similar discussions with two whistleblower advocacy organizations and one law firm that specializes in federal employment law. To obtain the views of nonmanagement OSC staff on our selected internal controls, we held small group discussions with each of the six units responsible for PPP and whistleblower disclosure case processing (CEU, IPD-HQ, IPD-Field, ADR, RDU, and DU). For DU, IPD-Field, CEU, and IPD-HQ, we held the small group discussions with a random selection of six staff in each of those units. In RDU and ADR, since those units have fewer than six staff, we held small group discussions with all staff. We asked questions on internal control-related topics, such as their understanding of key case processes, training, and internal communication in OSC. The IPD-Field discussions were held over the phone while the remaining discussions were held in person at our headquarters. We used NVivo qualitative data analysis software to analyze and summarize the small group discussions. An analyst examined all six write-ups of our small group discussions to code and quantify identified themes from them. Another analyst reviewed the coding. If there was a disagreement, the two analysts reviewed and discussed until they reached an agreement. As a result of the analysis, we identified the major themes that covered the five internal control principles we discussed with the participants.

To assess how well OSC implemented its PPP and whistleblower disclosure case procedures and processes, we reviewed five groups of cases closed in fiscal year 2016. For three of these groups, we examined randomly selected, generalizable samples of cases. For the remaining two groups, we attempted to review all cases of that case type. We selected those groups to include the various resolutions for PPP and whistleblower disclosure cases. We used uniform data collection

instruments for our file reviews to consistently capture information on the completeness of required documentation related to PPP and whistleblower disclosure cases. OSC reviewed and verified the elements of the data collection instruments we used to review case files. See table 5 for case outcome types. We also reviewed a sixth group of cases where OSC was the subject of the allegations. We planned to review five of these cases, which were closed between fiscal years 2011 to 2016.

Table 5: Office of Special Counsel (OSC) Prohibited Personnel Practice (PPP) and Whistleblower Disclosure Case Outcome Types

Case outcome type	Case type	Population size	Sample size	Cases not reviewed ^a
Referred to the agency	Whistleblower Disclosures	84	84	4
Not referred to the agency	Whistleblower Disclosures	1,558	92	3
Complaints Examining Unit cases with a corrective action	Prohibited Personnel Practice	65	65	4
Cases referred for investigation	Prohibited Personnel Practice	106	55	8
Cases without a corrective action and not referred for investigation	Prohibited Personnel Practice	3,168	95	10
Cases where OSC is the subject of the allegations	Both	5	5	4

Source: GAO analysis of OSC documentation. | GAO-18-400

^aThese cases were not available by our deadline in January 2018 because OSC could not locate them or they were still being retrieved when we ended our case file review.

OSC officials agreed these five case outcome types covered the range of potential outcomes for PPP and whistleblower disclosure cases. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample’s results as a 95 percent confidence interval (i.e., a margin of error of plus or minus 7 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn.

There were three types of case outcomes for which we planned to review all cases: (1) cases referred to the agency; (2) CEU cases with a corrective action; and (3) cases where OSC is the subject of the allegations. Of these, four cases were unavailable to be reviewed by us for each case group. For the agency referral and CEU corrective action case groups, we continued to treat our case file review results as a

census. For the remaining group, where OSC was the subject of the allegations, we did not speak about the one case we reviewed due to concerns about disclosing the individual who filed the allegations.

For the case file review, we developed a data collection instrument for PPPs and whistleblower disclosures for each case outcome type. The steps we planned to review were based on OSC guidance as well as testimonial evidence from OSC officials and steps we would expect to find in the closed case files. We shared the data collection instruments with OSC for its review and incorporated its comments as appropriate. To ensure accuracy, two analysts reviewed each case file and reconciled any differences in responses. We then analyzed the results of these data collection efforts to identify main themes and develop summary findings.

For the fourth objective on OSC's internal allegations process, we reviewed OSC procedures for OSC employees to file PPP complaints and make whistleblower disclosures specifically found in OSC Directive 57. We also interviewed OSC officials, National Science Foundation Office of the Inspector General (NSF-OIG) officials, and Council of the Inspectors General on Integrity and Efficiency (CIGIE) officials on how these procedures are carried out and, at a high level, what experiences these entities had with cases they have investigated. We interviewed officials from these entities because they review certain complaints and disclosures from OSC employees. To assess how OSC and third-party entities were carrying out the documented procedures, we reviewed all PPP complaints and whistleblower disclosures submitted to the CIGIE Integrity Committee and NSF-OIG by OSC. We also reviewed all OSC PPP complaints and whistleblower disclosures where OSC was the subject agency from fiscal years 2011 to 2016. As discussed above, OSC was only able to locate one of the five complaints or whistleblower disclosures filed with OSC where OSC was the subject of the allegations. Finally, we reviewed the 2018 OSC reauthorization enacted during the course of our audit, and interviewed OSC officials on its potential effects on OSC's internal allegation process.³ We reviewed OSC's overall process for internal PPP and whistleblower disclosure allegations to determine whether it adhered to selected Standards for Internal Control in the Federal Government—specifically standards for internal communication and segregation of duties within an agency.

³National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, § 1097, 131 Stat. 1283, 1618 (Dec. 12, 2017).

To obtain OSC employees' views on how their agency's internal PPP and whistleblower disclosure allegations processes are designed and implemented, we fielded a Microsoft Word-based survey of all 132 OSC employees on board as of July 31, 2017, from August through September 2017. We pretested this survey with five separate individuals in July 2017 to verify that the questions were clear and accurately addressed the relevant terms and concepts. Employees' emailed submissions were coded and saved anonymously, with original submissions saved only for the purposes of following up with respondents as needed to clarify responses. We received submissions from 87 of 132 employees for a response rate of 66 percent. We also analyzed the response rates by unit and supervisory status to account for any potential nonresponse bias. In addition, we also incorporated the aggregated responses of OSC employees to relevant questions on the Federal Employee Viewpoint Survey—particularly those concerning PPPs, workplace environment, organizational leadership, and workload—from years 2012 through 2017 to supplement the survey responses we received.

To better understand employees' views and any concerns expressed in the survey about OSC's internal processes and workplace environment, we offered to hold short interviews with each survey respondent who indicated that he or she either had filed an allegation against another OSC employee or had considered doing so but ultimately chose not to. We interviewed 12 respondents who said they had considered or filed allegations. We also interviewed individual OSC employees who reached out to us to discuss their views of the OSC workplace culture independent of the survey. We offered these interviews as either in-person at our headquarters or phone-based discussions. At multiple points during our engagement, we also offered OSC employees the ability to contact us and our Fraudnet hotline. Fraudnet is an anonymous service whereby concerned employees can report waste, fraud, or abuse to our investigators. Our investigators then may offer to meet and interview the employee(s) in question. We then reviewed these interviews and follow-up discussions using the qualitative analytical software NVivo to code for common themes. Once aggregated, these responses formed the basis for how we presented what were the most frequent testimonial observations and concerns of OSC employees about the internal allegations process.

We conducted this performance audit from March 2017 to June 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that

the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Additional Data on Office of Special Counsel Prohibited Personnel Practice and Whistleblower Disclosure Cases

Table 6: Favorable Actions Claimed by Complaints Examining Unit (CEU), Fiscal Years 2011 to 2016

Fiscal Year	Number of favorable actions claimed agency-wide in prohibited personnel practice (PPP) cases	Number of favorable actions claimed by CEU in PPP cases	Percent of agency's favorable actions claimed by CEU in PPP cases
2011	75	1	1.3
2012	150	6	4.0
2013	151	9	6.0
2014	175	33	18.9
2015	269	58	21.6
2016	251	77	30.7

Source: GAO analysis of Office of Special Counsel data. | GAO-18-400.

Table 7: Office of Special Counsel Is Generally Unable to Refer Whistleblower Disclosure Cases to Agencies within 45 Days

Fiscal Year	Number of whistleblower disclosure cases referred for investigation under 1213(c)	Number of referrals made within 45 days	Percent of referrals made within 45 days
2011	21	5	23.8
2012	24	12	50.0
2013	56	3	5.4
2014	25	3	12.0
2015	76	27	35.5
2016	84	18	21.4

Source: GAO analysis of Office of Special Counsel data. | GAO-18-400.

Appendix II: Additional Data on Office of Special Counsel Prohibited Personnel Practice and Whistleblower Disclosure Cases

Table 8: Average Whistleblower Disclosure Case Complexity Shows Steady Trend amid Increasing Caseload

Fiscal Year	Total number of whistleblower disclosure cases	Average number of types of alleged wrongdoing per whistleblower disclosure case
2011	871	2.67
2012	1053	2.51
2013	1157	2.57
2014	1310	2.61
2015	1949	2.43
2016	1668	2.52

Source: GAO analysis of Office of Special Counsel data. | GAO-18-400.

Table 9: Federal Agencies That Submit the Most Prohibited Personnel Practice Complaints to the Office of Special Counsel, Fiscal Year 2016

Federal Agency	Total number of PPP complaints
Department of Veterans Affairs	1225
Department of Homeland Security	333
Department of the Army	288
Department of Defense	225
Department of the Navy	206
Department of Justice	153
Department of Agriculture	124
Department of Health and Human Services	110
Department of The Air Force	89
Social Security Administration	78
Other	972

Source: GAO analysis of Office of Special data. | GAO-18-400.

Table 10: Federal Agencies That Submit the Most Whistleblower Disclosures to the Office of Special Counsel, Fiscal Year 2016

Federal Agency	Total number of whistleblower disclosures
Department of Veterans Affairs	628
Department of Homeland Security	188
Department of the Army	125
Department of the Navy	84
Department of Justice	78
Department of Agriculture	58

**Appendix II: Additional Data on Office of
Special Counsel Prohibited Personnel Practice
and Whistleblower Disclosure Cases**

Federal Agency	Total number of whistleblower disclosures
Department of Defense	58
Department of Health and Human Services	57
Department of The Air Force	43
Department of Transportation	37
Other	312

Source: GAO analysis of Office of Special Counsel data. | GAO-18-400.

Appendix III: Comments from the Office of Special Counsel



U.S. OFFICE OF SPECIAL COUNSEL
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202-804-7000

May 30, 2018

Ms. Yvonne Jones
Director, Strategic Issues
United States Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Jones:

The Office of Special Counsel (OSC) appreciates the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled *Office of Special Counsel: Actions Needed to Improve Processing of Prohibited Personnel Practice and Whistleblower Disclosure Cases* (GAO-18-400). In the report, GAO makes seven recommendations for improving case processing at OSC. We concur in all seven recommendations and, in fact, have already undertaken steps to implement them.

OSC appreciates the significant time and effort GAO expended reviewing our processes and generating this thoughtful report. I especially want to acknowledge and thank the GAO team for their professionalism, diligence, and commitment to understanding fully the challenges OSC faces in carrying out its dual mission to safeguard the merit system in federal employment and to provide a safe channel for employees, applicants and former employees for disclosing wrongdoing in their federal government agencies. I trust that GAO's recommendations, along with additional changes that I am instituting at OSC, will ensure OSC's robust enforcement of the laws entrusted to us, now and into the future.

We look forward to receiving the final report.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner".

Henry J. Kerner
Special Counsel

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Yvonne D. Jones, (202) 512-2717 or jonesy@gao.gov

Staff Acknowledgments

In addition to the contact named above, Clifton G. Douglas Jr. (Assistant Director), Jason Vassilicos (Analyst-in-Charge), Devin Braun, Karin Fangman, Steven Flint, Ted Hu, Farrah Graham, Robert Graves, Steven Putansu, Andrew J. Stephens, Sonya Vartivarian, and Ralanda Winborn made significant contributions to this report.

Assisting with this report were Michael Bechetti, Caitlin Cusati, Krista Loose, Meredith Moles, James Murphy, Constance Satchell, Stewart W. Small, and Helina Wong.

Appendix V: Accessible Data

Data Tables

Data Table for highlights figure, Trends in PPP and Whistleblower Disclosure Cases, Fiscal Years 2011 to 2016

FY	Prohibited Personnel Practices (PPPs)	New Cases Received
2011	2503	2583
2012	2739	2969
2013	3037	2935
2014	2985	3371
2015	4019	4049
2016	3803	4111

FY	Whistleblower Disclosure	New Cases Received
2011	871	928
2012	1053	1148
2013	1157	1129
2014	1310	1555
2015	1949	1965
2016	1668	1714

Data Table for Figure 3: Numbers of PPP and Whistleblower Disclosure Cases Received and Closed from Fiscal Years 2011 through 2016

FY	Prohibited Personnel Practices (PPPs)	New Cases Received
2011	2503	2583
2012	2739	2969
2013	3037	2935
2014	2985	3371
2015	4019	4049
2016	3803	4111

FY	Whistleblower Disclosure	New Cases Received
2011	871	928
2012	1053	1148
2013	1157	1129
2014	1310	1555
2015	1949	1965
2016	1668	1714

Data Table for Figure 4: The Median Number of Days to Close All PPP and Whistleblower Disclosure Cases from Fiscal Years 2011 to 2016

FY	Prohibited Personnel Practices (PPPs)	Whistleblower Disclosure
2011	82	10
2012	100	13
2013	108	16
2014	97	13
2015	100	22
2016	97	29

Agency Comment Letter

Text of Appendix III: Comments from the Office of Special Counsel

May 30, 2018

United States Government Accountability Office 441 G Street, N.W.

Washington, D.C. 20548

Dear Ms. Jones:

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Henry J. Kerner

Special Counsel

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