

SUPPORTING STATEMENT A
U.S. OFFICE OF SPECIAL COUNSEL

Justification

1. **Necessity for collection.** The mission of the U.S. Office of Special Counsel (OSC) is to protect current and former federal government employees, and applicants for federal employment, especially whistleblowers, from prohibited employment practices; facilitate disclosures of wrongdoing in the federal government; and promote compliance by government employees with legal restrictions on political activity. OSC carries out this mission by: (1) investigating complaints of prohibited employment practices, especially reprisal for whistleblowing, and pursuing remedies for violations; (2) operating an independent and secure channel for whistleblower disclosures of wrongdoing in federal agencies, with referral for investigation in appropriate cases; (3) providing advisory opinions on, and enforcing, the Hatch Act; (4) protecting the reemployment rights of veterans under the Uniformed Services Employment and Reemployment Rights Act; and (5) promoting greater understanding of the rights and remedies of federal employees under the statutes enforced by OSC.

The three forms included in this submission, Form OSC-11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity); Form OSC-12 (Disclosure of Information); and Form OSC-13 (Complaint of Possible Prohibited Political Activity (Violation of the Hatch Act)) provide potential filers of complaints and whistleblower disclosures with information about OSC's jurisdiction and authorities, and provide OSC with information needed to carry out its investigative, review, and referral functions. Authority for the collection of information in these forms is found at 5 U.S.C. § 1211, et seq., and 5 C.F.R. §§ 1800.1 and 1800.2 (copies attached).

2. **Uses of Information.** OSC employees use the information collected primarily to: (a) investigate and seek appropriate remedies for allegations of prohibited employment practices; and (b) review whistleblower disclosures of wrongdoing in federal agencies, and refer disclosures in appropriate cases to the head of the agency involved for investigation; (c) investigate allegations of a violation of the Hatch Act. The information may also be used for other purposes authorized by the Privacy Act, including routine uses published by OSC pursuant to the act. See Federal Register notice at 78 FR 24242 (April 23, 2012).
3. **Collection techniques.** All three forms are posted on OSC's Web site (http://www.osc.gov/RR_OSCFORMS.htm). Persons wishing to submit a complaint alleging a prohibited employment practice (using Form OSC-11), a whistleblower disclosure (using Form OSC-12), or an allegation of Hatch Act Violation (using Form OSC-13), are currently able to complete the appropriate form online, using either PDF or HTML (web page) format. The form can then be printed, signed, and mailed or faxed to OSC. Consistent with §§ 1703 and 1705 of the Government Paperwork Elimination Act, Public Law 105-277, Title XVII, OSC currently has given submitters the option of filing complaints and disclosures electronically, for Forms OSC-11 and OSC-12. We plan to

make Form OSC-13 able to be electronically submitted in the near future. Manual submission of these forms will continue even after electronic submission begins.

4. **No duplication of effort.** The information to be collected is not otherwise available within OSC. On occasion, complainants or whistleblowers may file the same or a similar complaint or disclosure of information with another federal agency. Any effort by OSC to obtain similar information from those sources would, at a minimum, compromise the identity of complainants and whistleblowers to OSC, and seriously impair OSC efforts to comply with statutory timetables for action on complaints and disclosures. Form OSC-11 may also be used by complainants seeking to establish jurisdiction by the U.S. Merit Systems Protection Board (MSPB) over appeals involving whistleblower reprisal allegations filed with OSC.
5. **Minimizing burden.** The only small entities likely to be affected by these collections of information are the legal or other representatives of complainants or whistleblowers submitting complaints or disclosures to OSC on behalf of those individuals. There is no meaningful way to minimize the burden on such entities.
6. **If collection were not conducted.** OSC was created by law to receive, investigate, and take other appropriate action on complaints of prohibited employment activity and other prohibited activity and on whistleblower disclosures of wrongdoing in federal agencies. If filers of complaints and disclosures did not provide the information contained in the forms covered by this submission to OSC, it could not carry out its statutory responsibilities.
7. **Special Circumstances.** There are no special circumstances of the kind described in the instructions.
8. **Federal Register publication.** Two initial notices were published in the Federal Register on April 16, 2012 at 77 FR 22614 and on May 15, 2012 at 77 FR 28638. On June 18th, 2012, OSC's final notice and request for comment on the forms covered by this submission (see 2012-14726) will be published in the Federal Register. OSC received a single letter "05 15 2012_Public Comment 2012-11760.pdf", see separate attachment) containing comments on our information collection. Senior staff has indicated that since the process to modify the forms will begin only after our renewal of the three year approval period for the forms from OIRA, that the agency will conduct a series of meetings to consolidate all changes needed to the forms, and serious consideration will be made to the suggestion that Form OSC-12 be modified to include a statement that allows disclosures in relation to events "outside of the employees duties and responsibilities".
9. **Payment or gift to respondents.** Not applicable.
10. **Confidentiality.** All OSC forms, consistent with law, regulation, and published OSC policy, permit filers to request confidentiality in connection with the handling of their complaint or disclosure. See generally 5 U.S.C. § 1212(g) (prohibited personnel practices); 5 U.S.C. § 1213 (whistleblower disclosures); 5 C.F.R. § 1800.1(b)(6) (prohibited personnel practices and other prohibited activity); 5 C.F.R. § 1800.2(b)(3) (whistleblower

disclosures); and "Policy Statement on Disclosure of Information About Prohibited Personnel Practice Complaints" (found at OSC's Web site, in <http://www.osc.gov/documents/pubs/osc49.htm>).

11. **Justification for Questions of a Sensitive Nature.** Neither form requests information of a sensitive nature. Some submitters, however, may furnish such information to OSC in providing details of the allegations they are making in their complaint or disclosure. Allegations that could include such information are sexual discrimination (including sexual harassment), religious discrimination, or the taking of a personnel action in violation of an employee's First Amendment rights. The same Privacy Act safeguards observed in connection with other OSC investigative file records govern information about such allegations. The consent statements on Form OSC-11 were specifically revised to make them easier to understand.
12. **Hour burden of the collection of information.** If all complainants alleging a prohibited employment practice use the Form OSC-11, it is estimated that in each year of the three years covered by this request, 3,445 people will spend an average of one hour and 15 minutes to complete the form. It is also estimated that if all filers of a whistleblower disclosure use the Form OSC-12, 1010 people will spend an average of one hour to complete the form in each of the years covered by this request. It is also estimated that if all filers of a Hatch Act complaint use Form OSC-13, 870 people will spend an average of 30 minutes to complete the form in each of the years covered by this request. Submissions can be made daily throughout the fiscal year.

The total estimated number of responses was calculated based on reference to FY 2011 Annual Report data tables. The burden estimate has already been published on the current version of our OSC forms.

13. **Total Annual Cost Burden.** Costs associated with this information collection are expected to be nominal. Any cost incurred by a filer's reproduction of a personal copy of the complaint or disclosure form submitted to OSC, and by the use of stationery, postage, or a fax machine, are considered to be normal costs incurred as part of customary business or private practices.

[14.] **Total Annual Cost to the Federal Government.** Estimates of annualized costs to the government are as follows: (a) staff time – approximately \$ 1,772.36 based on calculation of rates of pay for estimated 36.5 hours of staff time spent in review and revision of the forms, and preparation of Paperwork Reduction Act clearance materials.

14.[15.] **Changes or Adjustments.** Since the number of complainants has risen, the annual burden is higher than previously reported in 2006.

15.[16.] **Publication of Results.** Statistical data on the number and types of complaints and disclosures received by OSC each fiscal year, including general descriptions of the types of

allegations received, are reported by OSC in the annual report to Congress required by law at 5 U.S.C. § 1218.

16.[17.] **Reason for not displaying expiration date.** Not applicable.

18. **Exceptions to Certification.** Not applicable.

[Code of Federal Regulations]
[Title 5, Volume 3]
[Revised as of January 1, 2001]
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[Page 321-322]

TITLE 5--ADMINISTRATIVE PERSONNEL

CHAPTER VIII--OFFICE OF SPECIAL COUNSEL

PART 1800--FILING OF COMPLAINTS AND ALLEGATIONS--Table of Contents

Sec. 1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.

(a) The Office of Special Counsel (OSC) has investigative jurisdiction over the following prohibited personnel practices against current or former Federal employees and applicants for Federal employment:

- (1) Discrimination, including discrimination based on marital status or political affiliation (see Sec. 1810.1 of this chapter for information about OSC's deferral policy);
- (2) Soliciting or considering improper recommendations or statements about individuals requesting, or under consideration for, personnel actions;
- (3) Coercing political activity, or engaging in reprisal for refusal to engage in political activity;
- (4) Deceiving or obstructing anyone with respect to competition for employment;
- (5) Influencing anyone to withdraw from competition to improve or injure the employment prospects of another;
- (6) Granting an unauthorized preference or advantage to improve or injure the employment prospects of another;
- (7) Nepotism;
- (8) Reprisal for whistleblowing (whistleblowing is generally defined as the disclosure of information about a Federal agency by an employee or applicant who reasonably believes that the information shows a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety);
- (9) Reprisal for:
 - (i) Exercising certain appeal rights;
 - (ii) Providing testimony or other assistance to persons exercising appeal rights;
 - (iii) Cooperating with the Special Counsel or an Inspector General; or
 - (iv) Refusing to obey an order that would require the violation of law;
- (10) Discrimination based on personal conduct not adverse to job performance;
- (11) Violation of a veterans' preference requirement; and
- (12) Taking or failing to take a personnel action in violation of any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. 2302(b)(1).

(b) OSC also has investigative jurisdiction over allegations of the following prohibited activities:

(1) Violation of the Federal Hatch Act at title 5 of the U.S. Code, chapter 73, subchapter III;

(2) Violation of the state and local Hatch Act at title 5 of the U.S. Code, chapter 15;

(3) Arbitrary and capricious withholding of information prohibited under the Freedom of Information Act at 5 U.S.C. 552 (except for certain foreign and counterintelligence information);

(4) Activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decision making;

(5) Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action (unless the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure); and

(6) Violation of uniformed services employment and reemployment rights under 38 U.S.C. 4301, et seq.

(c) Complaints of prohibited personnel practices or other prohibited activities within OSC's investigative jurisdiction should be sent to: U.S. Office of Special Counsel, Complaints Examining Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036-4505.

(d) Complaints alleging a prohibited personnel practice, or a prohibited activity other than a Hatch Act violation, must be submitted on Form OSC-11 ("Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity").

[[Page 322]]

(1) The form includes a section (Part 2) that must be completed in connection with allegations of reprisal for whistleblowing, including identification of:

(i) Each disclosure involved;

(ii) The date of each disclosure;

(iii) The person to whom each disclosure was made; and

(iv) The type and date of any personnel action that occurred because of each disclosure.

(2) If a complainant who has alleged reprisal for whistleblowing seeks to supplement a pending OSC complaint by reporting a new disclosure or personnel action, then, at OSC's discretion:

(i) The complainant will be required to document the disclosure or personnel action in the Part 2 format, or

(ii) OSC will document the disclosure or personnel action in the Part 2 format, a copy of which will be provided to the complainant upon OSC's closure of the complaint.

(e) Form OSC-11 is available by writing to OSC at the address shown in paragraph (c) of this section; by calling OSC at (1) (800) 872-9855; or by printing the form from OSC's Web site (at <http://www.osc.gov>).

(f) Except for complaints alleging only a Hatch Act violation, OSC will not process a complaint submitted in any format other than a completed Form OSC-11. If a person uses a format other than the required OSC form to file a complaint (other than a Hatch Act allegation), the material received by OSC will be returned to the filer with a blank Form OSC-11 to complete and return to OSC. The complaint will be considered to be filed on the date on which OSC receives the completed Form OSC-11.

(g) Complaints alleging only a Hatch Act violation may be submitted in any written form to the address shown in paragraph (c) of this section, but should include:

(1) The name, mailing address, and telephone number(s) of the complainant(s), and a time when the person(s) making the complaint(s) can be safely contacted, unless the matter is submitted anonymously;

(2) The department or agency, location, and organizational unit complained of; and

(3) A concise description of the actions complained about, names and positions of employees who took these actions, if known to the complainant, and dates, preferably in chronological order, together with any documentary evidence the complainant may have.

[65 FR 64882, Oct. 31, 2000]

Sec. 1800.2 Filing disclosures of information.

(a) OSC is authorized by law (at 5 U.S.C. 1213) to provide an independent and secure channel for use by current or former federal employees and applicants for Federal employment in disclosing information that they reasonably believe shows wrongdoing by a Federal agency. The law requires OSC to determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. If so, OSC must refer the information to the agency head involved for investigation and a written report on the findings to the Special Counsel. The law does not give OSC jurisdiction to investigate the disclosure.

(b) Employees, former employees, or applicants for employment wishing to file a whistleblower disclosure with OSC should send the information to: U.S. Office of Special Counsel, Disclosure Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036-4505.

(c) A disclosure of the type of information described in paragraph (a) of this section should be submitted in writing, using any of the following formats:

(1) Filers may use Form OSC-12 ("Disclosure of Information"), which provides more information about OSC jurisdiction and procedures for processing whistleblower disclosures. This form is available from OSC by writing to the address shown in paragraph (b) of this section; by calling OSC at (1) (800) 572-2249; or by printing it from OSC's Web site (at www.osc.gov).

(2) Filers may use another written format, but the submission should include:

(i) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when that person(s) can be safely contacted by OSC;

(ii) The department or agency, location and organizational unit complained of; and

(iii) A statement as to whether the filer consents to the disclosure of his or her identity to the agency by OSC in connection with any referral to the appropriate agency.

Dated: August 8, 2000.

Timothy Hannapel,

Acting Special Counsel.

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