



## U.S. OFFICE OF SPECIAL COUNSEL

### **Policy Statement on Continuing or Closing a Hatch Act Case when the Subject Official Leaves Federal Government Service**

The U.S. Office of Special Counsel (OSC) has discretion to continue or close a Hatch Act case when the subject official—typically a current federal employee—leaves government service.

#### ***Background***

Ordinarily a complaint alleging a Hatch Act violation by a current federal employee triggers an investigation by OSC. If the facts warrant, upon completion of its investigation, OSC may file a complaint for disciplinary action before the Merit Systems Protection Board (Board). If the Board determines that the employee violated the Hatch Act, the Board can choose from a variety of penalties: removal, reduction in grade, debarment from federal employment not to exceed five years, suspension, reprimand, or civil penalty not to exceed \$1,000.

In certain cases, OSC may not have completed its investigation and filed a complaint with the Board before the subject official of the investigation leaves federal service. In these cases, the Board lacks jurisdiction to impose a penalty on the subject official.

#### ***Factors***

If OSC has an open Hatch Act investigation when the subject official leaves federal service, OSC will generally close the case given the Board's lack of jurisdiction and OSC's limited resources. In some circumstances, however, OSC may elect to keep the case open and complete the investigation. Factors to consider in making this determination include: (1) whether the investigation is significantly completed; (2) the potential for corrective action (*e.g.*, reimbursement for political travel); (3) whether the violations are notorious, egregious, or likely to reoccur; (4) the level of public interest; and (5) whether resolution of the case will further OSC's goal of providing guidance on Hatch Act compliance and deterring future violations. No one factor is dispositive. Even if multiple factors are present in a case, OSC will not merely add factors together, but instead will weigh the severity of each factor.

#### ***Procedure***

When the subject official in a Hatch Act case leaves government service, the Hatch Act Unit will make a recommendation to the Special Counsel regarding whether to continue or close the case after assessing the relevant factors described above. The Special Counsel will make the final determination.

*Note: This document supersedes all prior oral or written statements on this issue. This document is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against OSC or any other individual or entity.*