



## U. S. OFFICE OF SPECIAL COUNSEL

### **ISSUE: INTERPRETATION OF EXISTING FEDERAL NON-DISCRIMINATION LAW BY OFFICE OF SPECIAL COUNSEL**

**GOAL:** To ensure that the Office of Special Counsel charged with enforcing prohibitions on discrimination in the federal workforce returns to a policy of enforcing prohibitions on sexual orientation discrimination.

**POLICY DESCRIPTION:** The Office of Special Counsel (OSC) is an independent agency within the executive branch charged with investigating and prosecuting complaints by federal employees and job applicants who allege that “prohibited personnel practices” have been committed. Under various previous heads of OSC starting nearly 25 years ago (and based on a written opinion first written by Theodore Olson when he was an Assistant Attorney General in the Reagan Administration before becoming Solicitor General), that law was properly interpreted to prohibit discrimination against federal employees and federal job applicants on the basis of their sexual orientation. Specific policies of non-discrimination on these bases should be adopted by the next Administration.

**CURRENT LAW:** 5 U.S.C. §2302(b)(10) makes it unlawful to discriminate against a federal employee or applicant “on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others.” For the past several years, the head of OSC has refused to interpret that law correctly, despite the fact that when a federal agency denies an applicant a job or otherwise discriminates against an employee because of sexual orientation, it does so because of disapproval of their sexual conduct or “lifestyle.”

**RECOMMENDATIONS AND PROCESSES FOR MAKING CHANGES:** Appoint a Special Counsel who understand non-discrimination law thoroughly and who is committed to correcting the interpretation of the law.