



FY 2022 Performance Budget Congressional Submission

Office of Legal Counsel

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I. Overview for the Office of Legal Counsel

Introduction

In FY 2022, the Office of Legal Counsel (OLC) requests a total of \$9,872,000, 32 positions (of which 26 are attorneys), and 32 FTEs.

At the requested FY 2022 funding level, OLC will be able to provide top-quality legal advice on matters related to national security, civil rights, crime fighting programs, and legislative and regulatory initiatives, as well as a range of other legal issues concerning constitutional, statutory, and regulatory authority.

Issues, Outcomes, and Strategies

OLC's mission remains critical as the Department confronts national security and intelligence challenges and advises various Executive Branch departments and agencies about priorities of the Administration, including responding to the pandemic and its economic consequences, to racial injustice, and to problems in the immigration system.

OLC is headed by an Assistant Attorney General who is appointed by the President with the advice and consent of the Senate. The Office provides formal opinions and informal advice in response to requests from the Counsel to the President, the various departments and agencies of the Executive Branch, and offices within the Department, including the offices of the Attorney General and Deputy Attorney General. Such requests may deal with legal issues about which two or more agencies are in disagreement.

OLC generally drafts the formal opinions signed by the Attorney General, but requests for opinions typically result in the preparation of legal opinions signed by OLC's Assistant Attorney General or one of the Office's Deputies. Opinions are based upon the research of one or more of the Office's staff attorneys and reviewed by at least two Deputies. Additionally, OLC provides informal legal advice on hundreds of matters each year.

The opinions and legal advice cover constitutional, statutory, and regulatory questions from a wide range of fields, including national security, criminal law, civil rights, fiscal law, and appointment and removal authorities. OLC gives critical advice on how the Executive Branch organizes itself and carries out its missions.

OLC also reviews hundreds of pieces of pending legislation annually for constitutionality and reviews for form and legality all proposed Executive Orders and substantive presidential proclamations and memoranda, as well as proposed regulations and Orders of the Attorney General. OLC is also the principal office providing legal advice to the White House Counsel and Executive Branch agencies concerning their responses to congressional oversight inquiries, which have increased in the last several years.

Since 1977, at the direction of the Attorney General, OLC has published selected formal opinions. Volumes covering the years 1977 through 2008 have already been issued, and preparations for additional volumes are in progress. In addition, OLC published a volume of opinions from the period 1939 until 1977, the first in a supplemental opinion series the Office

intends to issue for opinions not published at the time of original issuance. Imaged copies of all these previously published opinions are available on OLC's website, and as an interim step, OLC has also placed opinions from 2009 to present on its website <http://www.usdoj.gov/olc/opinions.htm> in memorandum form, pending issuance of those opinions in bound volumes. In addition, OLC has accelerated the speed which it publishes opinions on its website. Work on this effort will continue into FY 2022.

To ensure OLC continues its critical function of providing legal advice to the President, the Attorney General, other components in the Department of Justice, and other executive departments and agencies, it is imperative adequate funding is provided and reflective of its current operational requirements and scope.

Performance Challenges

OLC's ability to accomplish its mission depends on its ability to devote the greatest resources possible to meet the demands of an externally driven workload.

External Challenges: OLC generally does not initiate programs, nor does it have control over the volume of its work. The work results from requests for opinions and legal advice from the Counsel to the President; general counsels of OMB and other components of the Executive Office of the President; general counsels of other Executive Branch departments and agencies; and the Attorney General and other Department of Justice officials. The lack of control over this externally driven workload has been and is likely to remain a constant challenge to OLC's mission, and is inherent in all aspects of the Office's work, including reviewing legislation and testimony, and documents to be issued by the President or Attorney General.

Internal Challenges: Because it is a relatively small component, OLC has little flexibility in responding to unexpected surges in workload, such as those created by national security matters that require legal advice to the President, the Attorney General, other components in the Department of Justice, and other executive departments and agencies. In addition, it is critical OLC be adequately funded to ensure human and technological resources are available to meet workload challenges related to its core mission.

II. Summary of Program Changes

Not applicable.

III. Appropriations Language and Analysis of Appropriations Language

General Legal Activities language is displayed in the GLA rollup budget submission.

IV. Program Activity Justification

A. Office of Legal Counsel

<i>Office of Legal Counsel</i>	Perm. Pos.	FTE	Amount (\$000)
2020 Enacted	32	29	\$8,114
2021 Enacted	32	32	9,570
Adjustments to Base and Technical Adjustments	0	0	302
2022 Current Services	32	32	9,872
2022 Program Increases	0	0	0
2022 Program Offsets	0	0	0
2022 Request	32	32	9,872
Total Change 2021-2022			\$302

1. Program Description

OLC will continue its principal duty of assisting the Attorney General in his role as legal adviser to the President and Executive Branch agencies. A significant portion of OLC's resources are devoted to providing legal advice to the White House Counsel, and other agencies about national security, intelligence, and other emergencies. OLC will also continue in FY 2022 to serve as arbiter of legal disputes within the Executive Branch, to provide general legal assistance to other components of the Department of Justice, including where litigation or proposed legislation raises constitutional issues or general issues of executive authority, and to review for form and legality all Executive Orders and substantive Proclamations and Memoranda to be issued by the President, as well as all proposed Orders of the Attorney General and all regulations requiring Attorney General approval.

OLC's role in the Department's legislative program is substantial and includes drafting extensive comments on pending legislation. OLC regularly receives legislation for review from both OMB and the Department's Office of Legislative Affairs, in addition to specific requests from other agencies and the White House Counsel; the volume is high and the deadlines usually urgent. OLC occasionally assists in the drafting of legislation. OLC is also the principal office providing legal advice to the White House Counsel and Executive Branch agencies concerning their responses to congressional oversight inquiries, which have increased in the last several years.

In addition, because of its expertise in certain areas, OLC has assumed a continuing role advising other Department components, including the Office of the Solicitor General, the National Security Division, and the other litigating divisions, on issues relating to, among other things, constitutional rights and powers, national security, and immigration matters.

2. Performance and Resource

		FY 2020		FY 2020		FY 2021		Current Services Adjustments and FY 2022 Program Changes		FY 2022 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		32	8,114	29	8,074	32	9,570	0	0	32	9,872
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE	FY 2020		FY 2020		FY 2021		Current Services Adjustments and FY 2022 Program Changes		FY 2022 Request	
Program Activity		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		32	8,114	29	8,074	32	9,570	0	0	32	9,872
Performance Measure: Output	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch agencies	1700		1700		1700				1700	
Performance Measure: Efficiency	Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President	190		190		190				190	
Performance Measure: Outcome											

PERFORMANCE MEASURE TABLE											
Decision Unit: Office of Legal Counsel Strategic Goal 4/Strategic Objective 4.1 Uphold the rule of law and Integrity in the proper administration of justice.											
Strategic Objective	Performance Report and Performance Plan Targets		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020		FY 2021	FY 2022	FY 2022
			Actual	Actual	Actual	Actual	Target	Actual	Target	Target	Target
4.1	Performance Measure	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch	1700	1700	1700	1700	1700	1700	1700	1700	1700
4.1	Performance Measure	Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President	190	190	190	190	190	190	190	190	190
	Performance Measure										
	Performance Measure										
	Performance Measure										

3. Performance, Resources, and Strategies

OLC has issued opinions or otherwise rendered legal advice touching on virtually every aspect of the Department's overall work and mission.

a. Performance Plan and Report for Outcomes

Because of the legal advisory nature of its mission and workload, OLC is not included for review in the Department's Performance and Accountability Report (PAR). This budget submission is part of the Department's Performance Plan since we are reporting targets through FY 2022. However, OLC does not have measures in the PAR.

b. Strategies to Accomplish Outcomes

OLC does not initiate programs or have control over the volume of work that is requested from its various clients, including the White House Counsel, the Attorney General, other components of the Department, and general counsels of various other departments and agencies. OLC continually realigns its priorities in terms of workload and assignments in order to meet the most urgent issues of any given day, while still endeavoring to meet its ongoing workload demands to the greatest extent possible with existing resources.

c. Priority Goals

OLC's general goals for FY 2022 are as follows:

- Provide critical legal advice to the White House Counsel, the Attorney General, other components of DOJ, and other Executive Branch agencies.
- Resolve intra-Executive Branch disputes over legal questions.
- Advise on litigation or proposed legislation raising constitutional issues or other legal issues of general concern to the Executive Branch.
- Approve for form and legality all Executive Orders, other Presidential documents, and Orders and regulations issued by the Attorney General.

V. Program Increases by Item:

Not applicable.

VI. Program Offsets by Item:

Not applicable.

VII. Exhibits