



FY 2023 Performance Budget Congressional Submission

Office of Legal Counsel

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I. Overview for the Office of Legal Counsel

Introduction

In FY 2023, the Office of Legal Counsel (OLC) requests a total of \$10,986,000, 36 positions (of which 30 are attorneys), and 36 FTEs.

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. Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <https://www.justice.gov/doj/fy-2021-CJ>.

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 2023.

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

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Attorney Adviser	Career GS-905-15	2	2	412	8
Senior Counsel	Career GS-905-15	2	2	412	8

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>Federal Appellate Activity</i>	Perm. Pos.	FTE	Amount (\$000)
2021 Enacted	32	29	\$9,570
2022 Annualized CR	32	32	9,570
2022 Rebaseline Adjustment	0	0	302
Adjustments to Base and Technical Adjustments	0	0	290
2023 Current Services	32	32	10,162
2023 Program Increases	4	4	824
2023 Program Offsets	0	0	0
2023 Request	36	36	10,986
Total Change 2022-2023	4	4	1,114

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 2023 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

PERFORMANCE AND RESOURCES TABLE												
Decision Unit:												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2021		FY 2021		FY 2022		Current Services Adjustments and FY 2023 Program Changes		FY 2023 Request	
Total Costs and FTE (Reimbursable: FTE are included, but costs are bracketed and not included in totals)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			32	9,570	29	9,570	32	9,872	4	1,114	36	10,986
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2021		FY 2021		FY 2022		Current Services Adjustments and FY 2023 Program Changes		FY 2023 Request	
Program Activity	Promote Good Government		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			32	9,570	29	9,570	32	9,872	4	1,114	36	10,986
APG Measure:	1.2	N/A										
KPI: Output	1.1.1	N/A										
Performance Measure:	1.2	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch Agencies	1,700		1,700		1,700				1,700	
Performance Measure:	1.2	Review from and Legality of all Proposed Executive Orders and Proclamations to be issued by the President	190		190		190				190	
*Denotes inclusion in the DOJ Quarterly Status Report and DOJ Annual Performance Plan.												
*This table is required.												

	Performance		FY 2021	FY 2022	FY 2023
			Actual	Target	Target
1.2	Agency Priority Goal	Promote Good Government			
1.2	Key Performance Indicator	N/A			
1.2	Performance Measure	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch agencies	1,700	1,700	1,700
1.2	Performance Measure	Review from and legality of all proposed Executive Orders and Proclamations to be issued by the President	190	190	190

[N/A= Data Unavailable]

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 2023. However, OLC does not have measures in the PAR.

b. Strategies to Accomplish Outcomes

Since September 11, 2001, OLC has had to realign its priorities in terms of workload and assignments in order to meet the variety of new challenges, 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 2023 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:

Item Name: **Two Senior Counsels and Two Attorney Advisors**

Budget Decision Unit(s): Office of Legal Counsel

Strategic Goal & Objective:

Organizational Program: Office of Legal Counsel

Program Increase: Positions 4 Atty 4 FTE 4 Dollars \$824,000

Description of Item

OLC is requesting an increase of four attorney positions (two senior counsel positions and two attorney advisor positions), four FTE and \$824,000 in furtherance of its mission.

Justification

Within the last three years, OLC has been challenged in maintaining its demanding workload with the current FTE level in light of its responsibility in providing opinions and legal advice in the areas of 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. We have determined two additional senior attorneys and two staff attorney positions are necessary to meet the continued demands of the Office. The two senior attorneys will provide authoritative and professional level support and advice to the Assistant Attorney General (AAG) on key areas of ongoing responsibilities assigned to the Office, while the two additional attorney advisors are necessary to meet the continued demands of the Office.

The additional resources will support the office in 1) advising the Attorney General, the White House Counsel, all executive departments and agencies, and the various components of the Department of Justice on constitutional and statutory matters; 2) resolving legal disputes within the Executive Branch through the issuance of authoritative legal opinions; 3) reviewing for constitutionality proposed legislation; and 4) reviewing for form and legality of all executive orders and substantive proclamations and memoranda proposed to be issued by the President as well as all Attorney General Orders and regulations.

Impact on Performance

A program increase of four attorney positions, four FTE and \$824,000 in support of the Department's Strategic Goal 1.2-Promote Good Government is necessary in meeting the responsibilities of the Office in its role as legal advisor to the President and Executive Branch agencies.

Base Funding

FY 2021 Enacted				2022 President's Budget Request				FY 2023 Current Services			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
32	26	29	\$9,570	32	26	32	\$9,872	32	26	32	\$10,162

Personnel Increase Cost Summary -See attached Cost module templates

Type of Position/Series	FY 2023 Request (\$000)	Positions Requested	Full-Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				1 st Year	2 nd Year	FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Attorneys (0905)	\$708	4	\$177	\$51	\$0	\$0	\$0
Total Personnel	\$708	4	\$177	\$51	\$0	\$0	\$0

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2023 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Contract Services and Supplies	\$116	\$29	4	\$0	\$0
Total Non-Personnel	\$116	\$29	4	\$0	\$0

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	32	26	32	\$7,787	\$2,375	\$10,162	\$0	\$0
Increases	4	4	4	708	116	824	0	0
Grand Total	36	30	36	\$8,495	\$2,491	\$10,986	\$0	\$0

VI. Program Offsets by Item:

Not applicable.

VII. Exhibits