

**U.S. Department of Justice
Office of Legal Counsel**

FY 2012 PERFORMANCE BUDGET

Congressional Submission

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I. Overview for Office of Legal Counsel

1. Introduction

In FY 2012, the Office of Legal Counsel (OLC) requests a total of \$7,839,000, 36 positions (of which 26 are attorneys), and 36 FTEs. The requested amount is \$174,000 more than what was enacted in FY 2011.

With the requested FY 2012 resources, OLC will be able to continue to provide top-quality legal advice on matters related to national security, civil rights, crime fighting programs, and legislative initiatives, as well as a range of other legal issues concerning constitutional, regulatory, and statutory authority. Although specifically included only under Strategic Goal II (“Enforce Federal Laws and Represent the Rights and Interests of the American People”), OLC is involved in every aspect of the Department’s Strategic Plan. OLC has issued opinions or otherwise rendered legal advice touching on virtually every aspect of the Department’s overall work and mission. For example, in the last few months, OLC has advised on matters ranging from the response to the nation’s economic crisis, including such legislative proposals as mandatory registration of credit-rating agencies; to the sentencing provision of a federal firearms statute.

2. Issues, Outcomes and Strategies

OLC’s mission remains highly critical and urgent as the Department enters into a new era of responsibility confronting national security and intelligence challenges, reinvigorating federal civil rights enforcement, and advising the agencies involved in responding to the economic crisis.

OLC is headed by an Assistant Attorney General who is appointed by the President and confirmed by the Senate. The Office drafts legal opinions and provides written opinions and oral advice in response to requests from the Counsel to the President, the various agencies of the executive branch, and offices within the Department. Such requests frequently deal with legal issues about which two or more agencies are in disagreement. It has already published a dozen of its full opinions issued in this administration. These opinions cover constitutional and statutory questions from a wide range of fields, including national security, criminal law, civil rights, fiscal law, and appointment and removal authorities. OLC thus gives critical advice on how the executive branch organizes itself and carries out its missions. OLC also reviews pending legislation for constitutionality and reviews proposed Executive Orders and proclamations, as well as proposed Orders of the Attorney General.

Because formal Attorney General Opinions are so rare, 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 based upon the research of one or more of the Office’s staff attorneys. Other requests may result in the provision of informal advice to the client agency.

Since 1977, at the direction of the Attorney General, OLC has published selected formal opinions. Volumes covering the years 1977 through 2000 have already been issued in hardback and production of the volumes for 2001 and 2002 is in progress. As an interim step, preliminary to publication in hardback, OLC has on its website

<http://www.usdoj.gov/olc/opinions.htm> published opinions from 1992 to 2010. OLC has accelerated the speed with which it publishes opinions on its website. The rate of publication has increased, and the time between opinion signing and publication has decreased. Work on this effort will continue into FY 2012.

In recent months, OLC has taken on new responsibilities that are associated with emerging circumstances and the change in Administration. It has had to deal with the many legal questions generated by initiatives of the new Administration in a variety of areas. Furthermore, the Office has been deeply involved in issues concerning the ongoing review of OLC opinions for possible release. The Office must handle these new responsibilities while carrying out its significant continuing duties. For example, OLC's work in the Department's general legislative comment program and its Executive Orders practice has increased dramatically, because the many initiatives of the new Administration have added to the baseline work in these areas.

3. Full Program Costs

OLC's budget is fully integrated with its own priorities as well as the full range of the Department's Strategic Goals and Objectives, most especially Strategic Goal II: ("Enforce Federal Laws and Represent the Rights and Interests of the American People").

4. Performance Challenges

OLC's ability to accomplish its mission centers primarily on its ability to maximize resources to meet the demands of an externally-driven workload.

External Challenges: OLC generally does not initiate any 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 Executive Office of the President components; general counsels of Executive Branch departments and agencies; 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 feature of OLC's mission, and is inherent in all aspects of the Office's work in reviewing legislation, testimony, and Presidential documents.

Internal Challenges: Because OLC is a relatively small component, representing only a single decision unit, OLC has little flexibility in responding to unexpected surges in workload, such as those created by national security matters, the financial crisis, or the many legal issues attending the transition to a new Administration that has been underway.

5. Environmental Accountability

In compliance with Executive Order 13423, OLC is striving to integrate environmental accountability into our strategic management plans with the inclusion of procurement governance on Sustainable Buildings, Energy Management, Transportation, Recycling, Water Management, Environmental Management Systems, Electronics Stewardship, and the reduction of Toxic and Hazardous Chemicals

II. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

Please refer to the General Legal Activities Appropriation Exhibit.

III. Decision Unit Justification

A. Office of Legal Counsel

<i>Office of Legal Counsel</i>	Perm. Pos.	FTE	Amount
2010 Enacted with Rescissions	37	37	7,665
2010 Supplemental			
2010 Enacted w/Rescissions and Supplementals	37	37	7,665
2011 CR	37	37	7,665
Adjustments to Base and Technical Adjustments	-1	-1	183
2012 Current Services	36	36	7,848
2012 Program Increases			
2012 Program Offsets			-9
2012 Request	36	36	7,839
Total Change 2010-2012	-1	-1	174

1. Program Description

Playing a major role in intelligence and national security reforms and issues following September 11, 2001 OLC has continued to devote a significant portion of its resources to providing legal advice to the White House, the Attorney General, and other Executive Branch agencies in these areas, and we do not expect that to change. This focus has, unfortunately, come at the expense of some of the rest of the Office's workload. The Office is also now taxed by the demands placed upon it by handling the legal issues that have arisen in relation to pending legislation.

In addition to these responsibilities, OLC will continue its principal duty of assisting the Attorney General in his role as legal advisor to the President and Executive Branch agencies. OLC will also continue in FY 2012 to serve as arbiter of legal disputes within the Executive Branch, to provide general legal assistance to other components of the Department, 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 Proclamations 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 has increased dramatically in recent years, and includes drafting comments on pending legislation and testimony. 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; the volume is high and the deadlines usually urgent. OLC has taken a major role in preparing testimony in connection with pending legislation of interest to the Department and the

Executive Branch, and has assisted in the drafting of legislation. A Deputy Assistant Attorney General from OLC recently testified, for example, on proposals regarding the Constitution for the United States Virgin Islands.

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

2. Performance and Resource Tables

PERFORMANCE AND RESOURCES TABLE										
Decision Unit: Office of Legal Counsel										
WORKLOAD/ RESOURCES	Final Target		Estimate		Projected		Changes		Requested (Total)	
	FY 2010		FY 2010		FY 2011 CR		Current Services Adjustments and FY 2012 Program Changes		FY 2012 Request	
Workload										
Provision of Legal Opinions on Constitutional questions from the President and Executive Branch agencies	1,700		1,700		1,700				1,700	
Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President	190		190		190				190	
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
	37	7,665	37	7,665	37	7,665	-1	174	36	7,839

3. Performance, Resources, and Strategies

The Office of Legal Counsel represents a single decision unit. Given its primary mission (“assisting the Attorney General in his role as legal advisor to the President and Executive Branch agencies”), OLC is involved in every aspect of the Department’s Strategic Plan. 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

Given 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 FY12. 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. High Priority Performance Goals – N/A

OLC's general goals for FY 2012 are as follows:

- Provide critical legal advice to the White House, the Attorney General, and other Executive Branch agencies
- Resolve intra-Executive Branch disputes over legal questions
- Advise other components of the Department of Justice where litigation or proposed legislation raises constitutional issues or other legal issues of general concern to the Executive Branch
- Approve for form and legality all Executive Orders and Orders of the Attorney General

IV. EXHIBITS

V. BACK-UP EXHIBIT: ATB by Decision Unit