**U.S. Department of Justice**

**Office of Legal Counsel**

**FY 2013 PERFORMANCE BUDGET**

**Congressional Submission**

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**I. Overview for Office of Legal Counsel**

**1. Introduction**

In FY 2013, the Office of Legal Counsel (OLC) requests a total of $7,636,000, 37 positions (of which 25 are attorneys), and 37 FTEs. The requested amount is $31,000 more than what was enacted in FY 2012.

With the requested FY 2013 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 (“Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law”), 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

**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 35 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. OLC’s work in the Department’s Executive Orders practice continues to be intense because the many initiatives of the Administration have added to the baseline work in this area.

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**](http://www.usdoj.gov/olc/opinions.htm)published opinions from 1992 to 2012. 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 2013.

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 of a new Administration.

1. **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. Summary of Program Changes**

Due to fiscal constraints, staffing challenges, and the need for constant reevaluation of processes to find the most efficient management of resources, several executive office functions of the Office of Legal Counsel (OLC) and the Office of Solicitor General (OSG) will be consolidated. OLC and OSG are similarly sized components of the General Legal Activities (GLA) appropriation. These two components will consolidate by merging the executive offices into a single, unified executive office. This consolidation streamlines the executive office functions of OSG and OLC and combines many of the overlapping functions.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item Name** | **Description** | | | | **Page** |
|  | **Pos.** | **FTE** | **Dollars ($000)** |
| **Office of Legal Counsel** | OLC/OSG Administrative Functions Consolidation | **0** | **0** | **-232** |  |

**III. Appropriations Language and Analysis of Appropriations Language**

**Appropriations Language**

*Please refer to the General Legal Activities consolidated exhibit and related analysis.*

**IV. Decision Unit Justification**

**A. *Office of Legal Counsel***

|  |  |  |  |
| --- | --- | --- | --- |
| Office of Legal Counsel | Perm. Pos. | FTE | Amount |
| 2011 Enacted | 37 | 37 | 7,605 |
| 2012 Enacted | 37 | 37 | 7,605 |
| Adjustments to Base and Technical Adjustments |  |  | 263 |
| 2013 Current Services | 37 | 37 | 7,868 |
| 2013 Program Increases |  |  |  |
| 2013 Program Offsets |  |  | -232 |
| 2013 Request | 37 | 37 | 7,636 |
| Total Change 2012-2013 | 0 | 0 | 31 |

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 2013 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.

1. Performance and Resource Tables





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

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 FY13. 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 Priority G**

**oals for FY 2013** are as follows:

* Provide critical legal advice to the White House, the Attorney General, other components of DOJ, and other Executive Branch agencies raised by proposed legislation and, in significant cases, by litigation
* Resolve intra-Executive Branch disputes over legal questions
* Advise on 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

**V. Program Increases by Item:**

N/A

**VI. Program Offsets by Item**

**Item Name: Administrative Functions Consolidation**

Budget Decision Unit(s): Office of Legal Counsel

Strategic Goal(s) & Objective(s): Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law

Organizational Program: Office of Legal Counsel

Program Reduction: Positions TBD\* Atty 0 FTE TBD\* Dollars -$232,000

Description of Item

The offset will consolidate the Office of Solicitor General (OSG) and Office of Legal Counsel’s (OLC) administrative functions by merging both components’ executive offices into a single executive office.

Summary Justification

OSG and OLC are similarly sized components of the General Legal Activities (GLA) appropriation. Due to fiscal constraints, staffing challenges, and the need for constant reevaluation of processes to find the most efficient management of resources, several executive office functions will be consolidated in these two components by merging the executive offices of OLC and OSG into a single, unified executive office. This consolidation streamlines the executive office functions of OSG and OLC and combines many of the similar functions**.**

Impact on Performance (Relationship of Decrease to Priority Goals)

This reduction will not affect OLC’s ability to accomplish its mission. The consolidation of the executive office functions will allow both OLC and OSG to operate in a more streamlined and efficient manner.

# \*The consolidated executive office will consist of 5 positions from OLC/OSG, however, the allocation of the position reductions is still to be determined.

# Funding

Base Funding

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| FY 2011 Enacted | | | | FY 2012 Enacted | | | | FY 2013 Current Services | | | |
| Pos | agt/  atty | FTE | $(000) | Pos | agt/  atty | FTE | $(000) | Pos | agt/  atty | FTE | $(000) |
| 4 | 0 | 4 | 419 | 4 | 0 | 4 | 419 | 4 | 0 | 4 | 419 |

Personnel Reduction Cost Summary

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Type of Position | Modular Cost  per Position  ($000) | Number of  Positions  Reduced | FY 2013  Request  ($000) | FY 2014 Net  Annualization (change from 2013)  ($000) | FY 2015 Net  Annualization (change from 2014)  ($000) |
| Admin | N/A | TBD | -232 | N/A | N/A |
| Total Personnel | N/A | TBD | -232 | N/A | N/A |

Non-Personnel Reduction Cost Summary

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Non-Personnel Item | Unit | Quantity | FY 2013  Request  ($000) | FY 2014 Net  Annualization (change from 2013)  ($000) | FY 2015 Net  Annualization (change from 2014)  ($000) |
| Total Non-Personnel | N/A | N/A | 0 | N/A | N/A |

Total Request for this Item

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Pos | Agt/Atty | FTE | Total  ($000) | FY 2014 Net  Annualization (change from 2013)  ($000) | FY 2015 Net  Annualization (change from 2014)  ($000) |
| Current Services | 4 | 0 | 4 | 419 | N/A | N/A |
| Decreases | TBD | 0 | TBD | -232 | N/A | N/A |
| Grand Total | TBD | 0 | TBD | 187 | N/A | N/A |

**VII. EXHIBITS**