

Fees and Expenses of Witnesses

DEPARTMENT
OF JUSTICE

FY 2022 PRESIDENT'S BUDGET



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FY 2022 Congressional Submission
Fees and Expenses of Witnesses

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I. Overview for Fees and Expenses of Witnesses

For the Fees and Expenses of Witnesses (FEW) appropriation, the Department of Justice requests a funding level of \$270,000,000 for FY 2022, to remain available until expended. The FEW is a mandatory appropriation. Electronic copies of the Department'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/budget-and-performance>

The Fees and Expenses of Witnesses activity provides funding for all fees and expenses associated with the provision of testimony on behalf of the Federal Government. Specifically, there are two types of witnesses that are compensated under the provisions of this activity. Fact witnesses testify as to events or facts about which they have personal knowledge. These witnesses are paid a statutorily established rate of \$40 per day plus reasonable amounts for travel and certain other costs associated with their appearance in court. Expert witnesses provide technical or scientific testimony and are compensated based on negotiations with the respective Federal Government attorney. Funding allocated to this activity is also used to pay the fees of physicians and psychiatrists who examine defendants upon order of the court to determine their fitness to stand trial.

The Protection of Witnesses activity provides funding for the security of government witnesses, or potential government witnesses, and their families when their testimony, concerning organized criminal activity, may jeopardize their personal security. Typical expenses include, but are not limited to: subsistence, housing, medical and dental care, travel, documentation, identity changes, one-time relocation, and costs associated with obtaining employment. This activity also provides for the construction and maintenance of strategically located safesite facilities to house protected witnesses before and during trial; the purchase and maintenance of armored vehicles; and the maintenance of a secured network.

The Private Counsel activity, established under 28 C.F.R. § 50.15 and 50.16, authorizes the Civil Division to retain private counsel to represent government officers and employees who are sued, charged, or subpoenaed for actions taken while performing their official duties. Further, funding allotted to this activity is used to pay private legal representation expenses associated with the provision of testimony before Congressional committees in instances wherein government counsel is precluded from representing Federal Government employees or wherein private counsel is otherwise appropriate.

The Foreign Counsel activity, established under 28 C.F.R. § 0.46, authorizes the Civil Division to cover all other civil litigation including claims by or against the United States, its agencies, or its officers in domestic or foreign courts, special proceedings, and similar civil matters not otherwise assigned. The activity pays for foreign counsel to represent before foreign criminal courts any agencies of the Department of Justice and other law enforcement officers of the United States who are charged with violations of foreign law as a result of acts performed in the course and scope of Government services.

The Alternative Dispute Resolution activity funds the expenses of hiring third party neutrals and witnesses in resolution proceedings.

The Emergency Witness Assistance Program allows the Government to aid witnesses who might not otherwise testify because of perceived threats surrounding the litigation. This program started in 1997, and is limited to a participation period not to exceed 30 days. The services provided include transportation, temporary housing, temporary subsistence, emergency telephone calls, and child/elder care.

The Victim Compensation Fund was established by Section 1208 of the Comprehensive Crime Control Act (Title II of P.L. 98-473). The Fund is used by the Attorney General to "pay restitution to, or in the case of death, compensation for the death of any victim of a crime that causes or threatens death or serious bodily injury and that is committed by any person during a period in which that person is provided protection under this chapter." In the case of death, an amount not to exceed \$50,000 may be paid to the victim's estate. Moreover, the act authorizes payment of an amount not to exceed \$25,000 to the estate of any individual whose death was caused by a protected witness before the enactment of this law.

II. Summary of Program Changes

N/A

III. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

Fees and Expenses of Witnesses

For fees and expenses of witnesses, for expenses of contracts for the procurement and supervision of expert witnesses, for private counsel expenses, including advances, and for expenses of foreign counsel, \$270,000,000, to remain available until expended, of which not to exceed \$16,000,000 is for construction of buildings for protected witness safesites; not to exceed \$3,000,000 is for the purchase and maintenance of armored and other vehicles for witness security caravans; and not to exceed [\$25,000,000] \$35,000,000 is for the purchase, installation, maintenance, and upgrade of secure telecommunications equipment and a secure automated information network to store and retrieve the identities and locations of protected witnesses: Provided, That amounts made available under this heading may not be transferred pursuant to section 205 of this Act.

Analysis of Appropriations Language

The Department requests that the Fees and Expenses of Witness Appropriation, Information Technology CAP language authority be increased from **\$25,000,000** to **\$35,000,000**.

The Witness Security Program (WSP) protects the lives and information of program participants using confidential tradecraft and a classified IT infrastructure. The WSP accomplishes these

goals by providing government witnesses with a number of critical services that are instrumental in ensuring for their safety and well-being. A few of these services are:

- Authentic documentation in the new identity.
- Program orientation to include medical/psychological screening and vocational testing.
- Relocation into a safe area.
- Temporary subsistence funding to cover basic living expenses.
- Assimilation into their new safe community.
- Vocational services to promote self-sufficiency in their new community.
- Services to support medical, child custody, and child support issues.
- Education on promoting personal security awareness.

IT CAP Language Change

The IT CAP authority provides for the purchase, installation, maintenance, and upgrade of secure telecommunications equipment and a secure automated information network to store and retrieve the identities and locations of protected witnesses. Due to the age of the current IT infrastructure, the vast majority of the current IT CAP authority has been used to maintain and patch the legacy network and systems that the manufacturers no longer support.

The WSP has been able to maintain the minimal operational viability of the system utilizing the current CAP level, but this maintenance is becoming more costly, spare parts are increasingly difficult to locate, and the current level of security is challenged by the emergence of new vulnerabilities. At the current rate, the maintenance cost of the legacy system will exceed the current CAP authority level by FY 2022. The failure or breach of the system would place all witnesses and their law enforcement contacts in mortal danger.

The FY 2021 CAP increase provided the WSP with the necessary authority to start the modernization process. An additional increase to the CAP authority level is required to ensure the WSP can begin the modernization efforts that will bring the system into sustainable development cycle, increase security, and prevent threat actors from exposing sensitive program data.

The CAP increase will allow USMS to support its current IT modernization efforts associated with the following initiatives: Core System 2.X; Insider Threat Reduction; Controlled Unclassified Information; Bandwidth/Circuits and Skype; Information Technology Service Management; Biometrics/Anti-Biometrics; and Secure Mobility.

The USMS needs to modernize aging IT infrastructures, improve overall system performance and reduce risk (i.e., risk of catastrophic failure and potential insider threat due to the aging software and inability to secure the data with more modern technology).

Technology Modernization (What) – The WSP mission critical IT system is more than 10 years old and is required to provide secure, accurate and reliable information to the Field Inspectors and supporting staff. The current WSP systems are not sustainable. If the system fails, the data may be unrecoverable. The repeated failures of the aging technology puts

operations and security at risk. Additionally, new threats are emerging daily, and the aging system cannot easily be configured to adequately address these threats (e.g., Insider Threat or Ransomware).

Modernization Plan (How) – The WSP IT modernization is mapped to specific program priorities that will improve reliability and predictability and reduce overall technical debt. In addition to keeping the system alive, the near-term activities include:

- Starting to replace legacy operating systems that will no longer be supported by the vendor, which substantially increases the classified program security risk.
- Starting to replace legacy hardware systems (e.g., legacy servers, collaborative tools, storage, networking, and security devices and equipment) to maintain support and operation of critical mission systems.
- Starting to replace/update legacy application systems (e.g., office automation systems – Microsoft Office Suite).

In addition to starting the IT modernization efforts listed above, the plans for future modernization include the following categories and capabilities to protect and secure the classified program data, personnel and participants, and the ability to provide timely support.

Core System v2.x – The WSP Core System which was built 10+ years ago cannot adapt and scale to the size of current field operations. The system experiences consistent operational gaps in functionality and has incurred substantial technical debt due to a lack of funding to modernize. Additionally, the user interface tools are end-of-life, resulting in increased security vulnerabilities and diminished vendor support. Increasing the CAP for the Core System v2.x affords opportunities for the WSP to implement new capability by FY 2024. Delaying the modernization of this mission critical system will only increase the maintenance cost of the legacy system and increase the cost of the replacement system. The plan begins with a fresh architecture that scales to the mission and leverages modernization technologies to provide necessary stability, data security, and reliability. The new system will allow ease of code base maintenance, troubleshooting, reporting, and functional improvements to the end user.

Insider Threat Identification Reduction – The biggest risk for the classified program is centered on insider threats. The existing tools are outdated and lack state of the art features that improve and speed insider threat detection. The plan is to create a baseline with modern tools to identify typical versus suspicious behavior. Utilizing emerging threat information, the USMS will develop real-time dashboards for continuous monitoring. The USMS will provide user training to identify and help prevent insider threats. Threat indicators will be analyzed and behavioral analytics tools will be used to hunt and thwart insider threats. The WSP requires improved continuous monitoring and checks and balances to improve and maintain the security posture of the program.

These tools will be utilized in the Security Operations Center (SOC), vastly improving response time allowing for early detection of security incidents, which minimizes

opportunities for serious damage to the WSP. The SOC will provide reduced complexity of security investigations, continuous security, and improved collaboration.

Controlled Unclassified Information (CUI) – The WSP partners with many external agencies that assist in day-to-day operations for its program participants. Many of these partner agencies transmit program related data to the WSP with little to no security controls, thereby putting program participants and USMS personnel at risk. Once the data arrives, it must be transferred to the appropriate network via a manual process. These manual activities include scanning forms, emailing data over unclassified systems, file transfers between networks, error-prone processes, and insecure methods for sharing data.

Due to the increasing risk and cost of the aging “core system,” there is a need to build the “core system” in a new Controlled Unclassified Information (CUI) classification environment. Implementation of a CUI solution will provide a central, secure, automated function to control data access and communication between external agencies and the WSP preventing data spillage and data compromise. The CUI solution enhances the ability to securely exchange data/information across government agencies. These capabilities do not currently exist within the WSP.

Bandwidth/Circuits & Skype – Current circuits to field locations operate on a legacy technology that is expensive to maintain and provides limited throughput (e.g., currently T1 circuits). Existing bandwidth limitations negatively impact field operations. Telecommunication providers are phasing out these legacy circuit technologies in favor of new Ethernet service offerings while reducing long-term monthly recurring expenditures for customers. The plan is to move to modern circuits and services that will provide secure and increased throughput. New circuits will provide the ability to increase bandwidth on demand.

Information Technology Service Management (ITSM) – Currently an in-house developed system is used to provide IT service support which limits workflows and reporting and is costly to maintain. Individual ITSM components are maintained through spreadsheets and are not integrated into a centralized ITSM repository causing inefficiencies, inaccurate data, and manual resources to maintain. The plan is to use an industry standard technology solution which provides out-of-the-box configured workflows, integrated process, and standard reporting.

Biometrics/Anti-Biometrics – Currently the program participant enrollment process includes digital photos and fingerprints, based on legacy technology. This technology does not keep pace with the current needs of the classified program, and the current system is at its end-of-life, making data migration to today’s standards difficult and increasing the security risk. The plan is to replace this legacy system with a more integrated and portable system providing a multi-modal identification (e.g.: a combination of biometric factors) method of the program participants improving security.

Secure Mobility – The goal of the WSP is to ensure the safety and security of program participants. In support of this goal, Field Inspectors lead the front line, day-to-day program operations by providing participants with critical protective, funding, and support services, including during times of national emergency. Given that much of their mission requires them to work in-person with others – including program participants – it is imperative that the WSP promote telework capabilities where duties allow.

Currently, the program does not have a secure mobile solution which puts program participant and Field Inspector data at risk. A Secure Mobile solution requires ability to protect and obfuscate sensitive data to help aid in protecting program participants while allowing secure communication between Field Inspectors and program support staff. The plan is to implement a secure mobile solution using two-factor authentication and secure tunneling to provide anonymity for the Field Inspectors back to the core system. This will eliminate the need for manual paperwork in the field offices and will increase productivity by providing broader telework capabilities to Field Inspectors.

Implementing a secure, enhanced telework capability for Field Inspectors will start the WSP down the right path for efficient communications, protecting data and resources and satisfying a critical operational need, while also improving readiness. Addressing this capability gap is critical to effective mission execution and risk management, as well as for our Field Inspectors to perform their protective operational responsibilities.

Benefits & Impacts (Why) – Replacing the WSP IT system will address unsustainable software, hardware, and telecommunication circuit quality challenges while adopting industry standard technologies and innovation capabilities. This allows WSP to reduce operational risks and increase the security of the automated information network that stores and retrieves the identities and locations of protected witnesses. Without the CAP language change, this will not be possible.

Key benefits to replacing the current WSP IT system include:

- Improved support to the Program’s mission by replacing the antiquated technology and reducing the current sustainment costs of End of Life assets;
- Improved accurate, reliable, and timely information through data integration and transparency;
- Reduced security risks by taking advantage of proven security capabilities; and
- Improved work efficiencies by repurposing personnel to develop an agile workforce.

IV. Program Activity Justification

A. Fees and Expenses of Witnesses

<i>Fees and Expenses of Witnesses</i>	Direct Pos.	Estimate FTE	Amount
<i>2020 Enacted w/sequester</i>	0	0	200,918
<i>2021 Enacted w/sequester</i>	0	0	199,417
<i>Adjustments to Base and Technical Adjustments</i>	0	0	13,897
<i>2022 Current Services</i>	0	0	213,314
<i>2022 Program Increases</i>	0	0	0
<i>2022 Program Offsets</i>	0	0	0
<i>2022 Request</i>	0	0	213,314
<i>Total Change 2021-2022</i>	0	0	13,897

Program Description:

This program provides for payment of fees and expenses of expert witnesses who appear on behalf of the Federal Government when scientific or technical expertise is required in the prosecution or defense of a case. The pursuit of complex litigation by the Department would not be possible without qualified experts to testify and to refute the non-legal particulars of individual cases. The testimony of expert witnesses helps ensure the successful outcome of such litigation. While a wide array of specialized disciplines are involved in the Department's litigation, experts from certain disciplines such as physicians, psychiatrists, appraisers, engineers, or economists are used extensively. Courts often order the Federal Government to pay the costs associated with mental competency examinations conducted by physicians or psychiatrists. These examinations are performed in an attempt to determine whether an accused person is mentally competent to stand trial and/or was mentally competent at the time of the offense.

The Department's legal divisions and the United States Attorneys also rely on the testimony of fact witnesses in a wide range of court proceedings, as well as pre-trial conferences. Daily attendance fees and other expenses paid to fact witnesses are intended to defray the costs of appearing to testify. The attendance fee is set by law.

Program Goals:

- To provide adequate funding for payment of fees and related expenses incurred by individuals who provide factual, technical, or scientific testimony on behalf of the United States or court designated indigent individuals. Funds provided for this activity also guarantee the right of accused persons to a fair and impartial trial by ensuring that the accused is mentally competent to stand trial and that the court has testimony regarding the mental competency of the accused at the time of the alleged offense.

- To provide reasonable compensation for expert witnesses, who testify on behalf of the United States, at rates established by the Attorney General or the Assistant Attorney General for Administration, pursuant to 28 U.S.C. § 524.
- To provide adequate resources to compensate fact witnesses who testify on behalf of the Federal Government for the expenses associated with the attendance at legal proceedings. The court attendance fee paid to fact witnesses is set by law (28 U.S.C. § 1821). As a result of Public Law 96-346 (September 10, 1980), the amounts authorized for travel, per diem, and mileage are set by regulations governing official travel by federal employees and promulgated by the Administrator of the General Services Administration.
- To provide adequate resources to compensate fact witnesses used by those defendants whom are designated as indigent by the courts. Expenses are paid to those witnesses who appear in criminal proceedings in Federal court for the indigent defendants.
- To provide payment for the fees and expenses of psychiatrists who perform court-ordered evaluations to determine the mental competency of defendants, pursuant to 18 U.S.C. § 4241, § 4242, and § 4248.

B. Protection of Witnesses

<i>Protection of Witnesses</i>	Direct Pos.	Estimate FTE	Amount
<i>2020 Enacted w/sequester</i>	0	0	36,637
<i>2021 Enacted w/sequester</i>	0	0	38,643
<i>Adjustments to Base and Technical Adjustments</i>	0	0	474
<i>2022 Current Services</i>	0	0	39,117
<i>2022 Program Increases</i>	0	0	0
<i>2022 Program Offsets</i>	0	0	0
<i>2022 Request</i>	0	0	39,117
<i>Total Change 2021-2022</i>	0	0	474

Program Description:

The procedure for designating a person as a protected witness is set forth in Department of Justice OBD Order 2110.2 "Witness Protection and Maintenance Policy and Procedures". This order places within the United States Marshals Service the responsibility for the security of these witnesses and their families. This program provides for their financial maintenance, including the following: subsistence expenses, housing, medical and dental expenses, travel, documentation expenses for identity changes, one-time relocation expenses, costs for obtaining employment, and other miscellaneous expenses. This activity also provides for construction and maintenance of strategically located safesite facilities to house protected witnesses before and during trial. The Witness Protection Program also provides the funding for the protective

services offered to the District of Columbia Superior Court Witnesses for subsistence expenses, travel, temporary relocation, and other miscellaneous expenses.

Program Goals:

- To increase the effectiveness of the Department's efforts to combat criminal activity in such areas as organized crime, drugs or narcotics, and murder or conspiracy to commit murder, by ensuring the safety of endangered or threatened witnesses.
- To protect witnesses and their families when the testimony of the witnesses may jeopardize their personal security.
- To compensate witnesses for subsistence costs such as housing, food, relocation, and incidental expenses as provided by the Witnesses Security Reform Act of 1984.
- To provide orientation, documentation, and family-oriented services to new witness security (WITSEC) Program entrants.

C. Private Counsel

<i>Private Counsel</i>	Direct Pos.	Estimate FTE	Amount
<i>2020 Enacted w/sequester</i>	0	0	5,717
<i>2021 Enacted w/sequester</i>	0	0	5,729
<i>Adjustments to Base and Technical Adjustments</i>	0	0	360
<i>2022 Current Services</i>	0	0	6,089
<i>2022 Program Increases</i>	0	0	0
<i>2022 Program Offsets</i>	0	0	0
<i>2022 Request</i>	0	0	6,089
<i>Total Change 2021-2022</i>	0	0	360

Program Description:

This activity provides funding to allow the Department to retain outside private counsel to represent Government officers and employees who are sued for actions taken while performing their official duties. 28 C.F.R. § 50.15 and 50.16 delegates the Civil Division the authority to retain such counsel and further provides that payments for such services will be payable from FEW appropriations.

Program Goals:

- To continue to defend Federal employees personally sued for carrying out official duties.
- To retain private counsel to represent Government officers and employees who are sued for actions taken while performing their official duties.

D. Foreign Counsel

<i>Foreign Counsel</i>	Direct Pos.	Estimate FTE	Amount
<i>2020 Enacted w/sequester</i>			8,359
<i>2021 Enacted w/sequester</i>			8,377
<i>Adjustments to Base and Technical Adjustments</i>			602
<i>2022 Current Services</i>			8,979
<i>2022 Program Increases</i>			0
<i>2022 Program Offsets</i>			0
<i>2022 Request</i>			8,979
<i>Total Change 2021-2022</i>			602

Program Description:

This activity provides funding to allow the Department to retain outside foreign counsel to represent Government officers and employees who are sued in a foreign country while performing their official duties. 28 C.F.R. § 0.46 delegates the Civil Division the authority to retain such counsel and further provides that payment for such services will be payable from FEW appropriations.

Program Goals:

- To continue to defend Federal employees personally sued for carrying out official duties.
- To retain foreign counsel to represent government officers and employees who are sued for actions taken while performing their official duties in a foreign country.

E. Alternative Dispute Resolution

<i>Alternative Dispute Resolution</i>	Direct Pos.	Estimate FTE	Amount
<i>2020 Enacted w/sequester</i>	0	0	2,439
<i>2021 Enacted w/sequester</i>	0	0	2,444
<i>Adjustments to Base and Technical Adjustments</i>	0	0	57
<i>2022 Current Services</i>	0	0	2,501
<i>2022 Program Increases</i>	0	0	0
<i>2022 Program Offsets</i>	0	0	0
<i>2022 Request</i>	0	0	2,501
<i>Total Change 2021-2022</i>	0	0	57

Program Description:

Alternative Dispute Resolution (ADR) encompasses a wide range of problem solving and conflict management techniques including mediation, early neutral evaluation, arbitration, and mini-trials. ADR processes offer the opportunity to settle pending civil litigation in ways that

can be more efficient than unassisted negotiations, and on terms that can be more advantageous to the parties. According to the National Performance Review, ADR can enhance the public's access to justice by reducing delays and costs associated with government litigation. ADR can provide quick solutions in government disputes, which, in turn, produce savings in interest payments on outstanding debts that the government owes on cases in litigation. ADR can provide flexibility, creativity, and control that lawyers and clients do not have in litigation. Moreover, ADR often produces better, more comprehensive long-term solutions to problems.

Program Goals:

- To attempt resolution of civil disputes and litigation by using professional services of a mediator, arbitrator, or other alternative dispute resolution provider.
- To provide funding to pay the Government's share of the costs incurred during ADR proceedings.

V. Program Increases by Item

The FY 2022 budget does not request program increases.

VI. Program Offsets by Item

The FY 2022 budget does not request program offsets.

VII. EXHIBITS

The FY 2022 OMB Exhibits follow on the next page.