

Fees and Expenses of Witnesses

DEPARTMENT
OF JUSTICE

FY 2021 CONGRESSIONAL SUBMISSION



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FY 2021 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 requests a funding level of \$270,000,000 for FY 2021, to remain available until expended. The FEW is a mandatory appropriation. 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/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

No program changes.

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 [\$18,000,000] \$25,000,000 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.

Cancellation

Of the unobligated balances from prior year appropriations available under this heading, \$150,000,000 are hereby permanently cancelled.

Analysis of Appropriations Language

Under the Fees and Expenses of Witnesses (FEW) Appropriation language, the USMS requests to increase the information technology funding cap from \$18,000,000 to \$25,000,000, an increase of \$7,000,000. Below are the IT investments that consist of the request to increase the IT cap. Costs reflected are based on current year estimates.

1. **Insider Threat Reduction:** Deploy select new technologies and tools to reduce risks associated with insider threats and maintain the protection of the Agency's most sensitive data, \$1,500,000.
2. **Core System 2.0:** Initiate design and development of the next generation core system to protect sensitive data, reduce maintenance costs, improve operational efficiency, and improve the user experience, \$3,500,000.
3. **Bandwidth/Circuits:** Increase bandwidth to improve reliability and improve efficiencies at Headquarters and a limited number of field offices, \$1,000,000.
4. **Controlled Unclassified Information (CUI):** Begin the design of a new enclave to support communication and collaboration with key external stakeholders and partners, resulting in more reliable and more efficient channels to control and share information with external partners, \$750,000
5. **Cross Domain Information Sharing:** Design an automated one-way solution to transfer data securely from unclassified to classified networks, reducing the likelihood of data spillage, \$250,000.

Justification

The storage, protection, and management of the Agency's most sensitive data is the primary function of Information Technology. Additionally, appropriate operational users' reliable access to accurate information enables the fulfillment of the mission. As such, investments in IT security, collaboration, and data access and integrity are paramount to the continued success of the Program, especially as those that want to do harm are becoming more sophisticated in their attempts to disrupt. The current Program IT budget covers only the operations and maintenance of the current P30 infrastructure, which is aging.

However, in order to evolve as an organization and extricate ourselves from technical debt, the organization must invest in tools and technologies that improve the security posture, improve the user experience, and increase efficiency. These improvements will bring increased ease of use, better prioritization of tasks and greater visibility of requests. Additionally, inaccurate and/or untimely information results in potentially serious consequences and failure of the mission. As such, the P30 Program proposes the IT projects listed above in order to bring current (and in some cases new or emerging) technologies to the users who require it the most: the law enforcement officials tasked with performing the Program's important mission.

1. **Insider Threat Reduction, \$1,500,000:** Deploy select new technologies and tools (e.g., deep learning, artificial intelligence) to reduce the risks associated with insider threats and enhance overall security. These technologies include system/information assurance controls; also included are additional support for continuous monitoring, certification of new technologies, and data analysis/reporting and dashboards.

The threat that an insider will use his/her authorized access, wittingly or unwittingly, to do harm is of significant concern to the Program.

2. ***Core System 2.0, \$3,500,000:*** Design and development of the next generation core system to provide core business function support. This includes working with key users and stakeholders on system design to meet those requirements using current technologies, to field a system that is scalable and designed to evolve based on developing business needs and requirements over the lifecycle of the system.

The P30 Program proposes to design and develop the next generation core system to the users who require it the most: the law enforcement officials tasked with performing the Program's important mission. The current core system is saddled with poor software quality, lack of documentation, and growing technical debt, introducing operational risks. Replacing the application will accelerate USMS's effort to address unsustainable software quality challenges while adopting industry standard technologies and innovative capabilities. This allows USMS to invest an increased percentage of its resources toward mitigating operational risks, improving security, and supporting mission execution.

3. ***Bandwidth/Circuits, \$1,000,000:*** Increase and maintain bandwidth to improve reliability, and efficiencies at Headquarters and a limited number of field offices.

The P30 Program proposes to maintain and improve the current infrastructure, increasing bandwidth where necessary to support the new capabilities being added. For example, current bandwidth is minimal at best, and in some cases a voice over internet protocol (VOIP) call will be dropped when another user logs into the core system.

4. ***Controlled Unclassified Information, \$750,000:*** Design a new enclave to support communication and collaboration with key external stakeholders/partners, resulting in more reliable, secure, and efficient channels to control and share information with our external partners.

The P30 Program proposes a new a secure communication capability to share CUI with external partners. The result will be a more reliable, more efficient channel to securely control and share information with our external partners. This new capability, linked to this new classification, will reduce insider threat, significantly reduce possibilities of information loss, and promote the proper handling of CUI material in accordance with Executive Order 13556. The capability will also allow for secure telecommunications collaboration capabilities across geographic and Agency boundaries in support of the operational mission.

5. ***Cross Domain Information Sharing, \$250,000:*** Design an automated one-way solution to transfer data securely from unclassified to classified networks, reducing the likelihood of data spillage.

The P30 Program proposes the implementation of Cross Domain Sharing (CDS) to ensure that timely sharing of crucial information will flow unimpeded across security domains while vital secrets are preserved. CDS will adapt to varying operational environments and account for the evolving technology and mission performed by users, systems, networks and interfaces; the types, formats and volume of data being processed; and the roles and identities of individual users. Implementation will save time and money and reduce security risks associated with the current manual process of transferring data between networks. It will also provide a secure method of receiving and sharing information with our partners according to the classification guidelines of the Attorney General statute, the Department of Justice, and USMS.

IV. Program Activity Justification

A. Fees and Expenses of Witnesses

<i>Fees and Expenses of Witnesses</i>	Direct Pos.	Estimate FTE	Amount (\$000s)
<i>2019 Enacted w/sequester</i>	-	-	\$199,794
<i>2020 Enacted w/sequester</i>	-	-	200,604
<i>Adjustments to Base and Technical Adjustments</i>	-	-	12,396
<i>2021 Current Services</i>	-	-	0
<i>2021 Program Increases</i>	-	-	0
<i>2021 Program Offsets</i>	-	-	0
<i>2021 Request</i>	-	-	213,000
<i>Total Change 2020-2021</i>	-	-	\$12,396

Program Description:

This program provides for the 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 are used extensively. For example, approximately seventy percent of expert witnesses used by the Department in 2016 were physicians, psychiatrists, appraisers, engineers, or economists. 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 (\$000s)
<i>2019 Enacted w/sequester</i>	-	-	\$37,520
<i>2020 Enacted w/sequester</i>	-	-	37,520
<i>Adjustments to Base and Technical Adjustments</i>	-	-	2,480
<i>2021 Current Services</i>	-	-	0
<i>2021 Program Increases</i>	-	-	0
<i>2021 Program Offsets</i>	-	-	0
<i>2021 Request</i>	-	-	40,000
<i>Total Change 2020-2021</i>	-	-	\$2,480

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 (\$000s)
<i>2019 Enacted w/sequester</i>	-	-	\$5,628
<i>2020 President's Budget</i>	-	-	5,628
<i>Adjustments to Base and Technical Adjustments</i>	-	-	372
<i>2021 Current Services</i>	-	-	0
<i>2021 Program Increases</i>	-	-	0
<i>2021 Program Offsets</i>	-	-	0
<i>2021 Request</i>	-	-	6,000
<i>Total Change 2020-2021</i>	-	-	\$372

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 (\$000s)
<i>2019 Enacted w/sequester</i>	-	-	\$9,380
<i>2020 Enacted w/sequester</i>	-	-	9,380
<i>Adjustments to Base and Technical Adjustments</i>	-	-	620
<i>2021 Current Services</i>	-	-	0
<i>2021 Program Increases</i>	-	-	0
<i>2021 Program Offsets</i>	-	-	0
<i>2021 Request</i>	-	-	10,000
<i>Total Change 2020-2021</i>	-	-	\$620

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 (\$000s)
<i>2019 Enacted w/sequester</i>	-	-	\$938
<i>2020 President's Budget</i>	-	-	938
<i>Adjustments to Base and Technical Adjustments</i>	-	-	62
<i>2021 Current Services</i>	-	-	0
<i>2021 Program Increases</i>	-	-	0
<i>2021 Program Offsets</i>	-	-	0
<i>2021 Request</i>	-	-	1,000
<i>Total Change 2020-2021</i>	-	-	\$62

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 2021 budget does not request program increases.

VI. Program Offsets by Item

The FY 2021 budget does not request program offsets.

VII. EXHIBITS

The FY 2021 Exhibits follow on the next page.