



FY 2021 PERFORMANCE BUDGET  
CONGRESSIONAL SUBMISSION

Office of Legal Counsel

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

## **Introduction**

In FY 2021, the Office of Legal Counsel (OLC) requests a total of \$9,393,000, 33 positions (of which 27 are attorneys), and 29 FTEs.

At the requested FY 2021 funding level, OLC will be able to provide top-quality legal advice on matters related to national security, civil rights, crime fighting programs, and legislative and regulatory initiatives, as well as a range of other legal issues concerning constitutional, statutory, and regulatory authority.

## **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.

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 frequently deal with legal issues about which two or more agencies are in disagreement.

OLC generally drafts 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 2021.

OLC has had a number of challenges meeting fiscal responsibilities due to funding levels that have not been in pace with expenses necessary in fulfilling its mission. 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, 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 in carrying out its critical functions of providing 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 is adequately funded to ensure human and technological resources are available to meet workload challenges related to its core mission.

### **Environmental Accountability**

OLC is striving to integrate environmental accountability into its 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

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Attorney Position	Increase personnel to meet increasing responsibilities	1	1	198	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>Office of Legal Counsel</i>	Perm. Pos.	FTE	Amount (\$000)
2019 Enacted	32	28	\$7,951
2020 Enacted	32	28	8,114
Adjustments to Base and Technical Adjustments	0	0	1,081
2021 Current Services	32	28	9,195
2021 Program Increases	1	1	198
2021 Program Offsets	0	0	0
2021 Request	33	29	9,393
<b>Total Change 2020-2021</b>			<b>\$1,279</b>

### 1. Program Description

Playing a major role in advising on intelligence and national security issues following the September 11 attacks, OLC has continued to devote a significant portion of its resources to providing legal advice to the White House Counsel, the Attorney General, and other Executive Branch agencies in these areas, and this is not likely to change. The Office is also charged with handling the legal issues that have arisen in relation to pending legislation and regulatory initiatives.

In addition to these responsibilities, OLC will continue its principal duty of assisting the Attorney General in his role as legal adviser to the President and Executive Branch agencies. OLC will also continue in FY 2021 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 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 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 and the White House Counsel; the volume is high and the deadlines usually urgent. OLC also occasionally assists in the drafting of legislation.

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, national security, and immigration matters.

2. Performance and Resource

PERFORMANCE AND RESOURCES TABLE											
Decision Unit: Office of Legal Counsel											
RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2019		FY 2019		FY 2020		Current Services Adjustments and FY 2021 Program Changes		FY 2021 Request	
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
		32	7,951	28	8,230	28	8,114	1	1,279	29	9,393
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE	FY 2019		FY 2019		FY 2020		Current Services Adjustments and FY 2021 Program Changes		FY 2021 Request	
Program Activity		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		32	7,951	28	8,230	28	8,114	1	1,279	29	9,393
<b>Performance Measure: Output</b>	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch agencies		1700		1700		1700				1700
<b>Performance Measure: Efficiency</b>	Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President		190		190		190				190
<b>Performance Measure: Outcome</b>											

PERFORMANCE MEASURE TABLE											
Decision Unit: Office of Legal Counsel Strategic Goal 4/Strategic Objective 4.1 Uphold the rule of law and Integrity in the proper administration of justice.											
Strategic Objective	Performance Report and Performance Plan Targets		FY 2015	FY 2016	FY 2017	FY 2018	FY 2019		FY 2020	FY 2021	FY 2022
			Actual	Actual	Actual	Actual	Target	Actual	Target	Target	Target
4.1	Performance Measure	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch	1700	1700	1700	1700	1700	1700	1700	1700	1700
4.1	Performance Measure	Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President	190	190	190	190	190	190	190	190	190
	Performance Measure										
	Performance Measure										
	Performance Measure										

### **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 2021. 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 2021 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:** Program Increase of 1 FTE /1 position  
**Budget Decision Unit(s):** Office of Legal Counsel  
**Strategic Goal & Objective:** 4.1 Uphold the rule of law and Integrity in the proper administration of justice.  
**Organizational Program:** Office of Legal Counsel  
**Program Increase:** Positions   1   Atty   1   FTE   1   Dollars   \$197,660  

### Description of Item

OLC is requesting an increase of 1 attorney position, 1 FTE and \$197,660 in furtherance of its mission.

### Justification

In light of OLC's 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, an additional position is necessary to meet the continued demands of the Office.

### Impact on Performance

This program increase will support the Department's Strategic Goal 4/Strategic Objective 4.1- Uphold the rule of law and integrity in the proper administration of justice 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 2019 Enacted				FY 2020 Enacted				FY 2021 Current Services			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
32	26	28	7,951	32	26	28	7,989	32	26	28	9,195

Personnel Increase Cost Summary

Type of Position/Series	Full-year Modular Cost per Position (\$000)	1 <sup>st</sup> Year Annualization	Number of Positions Requested	FY 2021 Request (\$000)	2 <sup>nd</sup> Year Annualization	FY 2022 Net Annualization (change from 2020) (\$000)	FY 2023 Net Annualization (change from 2021) (\$000)
Attorneys (0905)	198	58	1	198	0	158	162
<b>Total Personnel</b>	198	58	1	198	0	158	162

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2021 Request (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)	FY 2023 Net Annualization (change from 2022) (\$000)
Travel	N/A	N/A	3	3	3
Contractor Services	N/A	N/A	12	13	13
Equipment and Supplies	N/A	N/A	13	5	5
<b>Total Non-Personnel</b>	<b>N/A</b>	<b>1</b>	<b>28</b>	<b>21</b>	<b>21</b>

Total Request for this Item

	Pos	Agt/ Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)	FY 2023 Net Annualization (change from 2022) (\$000)
Current Services	32	26	28	9,195	0	9,195	0	0
Increases	1	1	1	170	28	198	157	162
<b>Grand Total</b>	<b>33</b>	<b>27</b>	<b>29</b>	<b>9,365</b>	<b>28</b>	<b>9,393</b>	<b>157</b>	<b>162</b>

**VI. Program Offsets by Item:**

N/A

**VII. EXHIBITS**