

FY 2019

PERFORMANCE BUDGET
CONGRESSIONAL SUBMISSION



Office of Legal Counsel

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I. Overview for the Office of Legal Counsel

Introduction

In FY 2019, the Office of Legal Counsel (OLC) requests a total of \$8,589,000, 32 positions (of which 26 are attorneys), and 32 FTEs.

With the requested FY 2019 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 and regulatory initiatives, as well as a range of other legal issues concerning constitutional, statutory, and regulatory authority. OLC has issued opinions or otherwise rendered legal advice touching on virtually every aspect of the Department's overall work and mission.

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 new 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.

Because formal Attorney General Opinions, which OLC would draft, 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. 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 all proposed Executive Orders and substantive presidential proclamations and memoranda, as well as proposed regulations and Orders of the Attorney General, for form and legality. 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 2019.

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 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 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 Presidential and Attorney General documents.

Internal Challenges: Because it 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 and the financial crisis.

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

N/A

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
2017 Enacted	32	28	7,989
2018 Continuing Resolution	32	32	7,935
Adjustments to Base and Technical Adjustments	0	0	654
2019 Current Services	32	32	8,589
2019 Program Increases	0	0	0
2019 Program Offsets	0	0	0
2019 Request	32	32	8,589
Total Change 2018-2019			654

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 2019 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 Tables

Performance materials will be provided at a later date.

3. Performance, Resources, and Strategies

Performance materials will be provided at a later date.

V. Program Increases by Item:

N/A

VI. Program Offsets by Item:

N/A

VII. EXHIBITS