

Fees and Expenses of Witnesses

DEPARTMENT
OF JUSTICE

FY 2018 CONGRESSIONAL SUBMISSION



FY 2018 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 total funding level of \$270,000,000 for FY 2018 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: <http://www.justice.gov/02organizations/bpp.htm>.

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. 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 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 needs, temporary housing, temporary subsistence, emergency telephone calls, and child/elder care.

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, costs associated with 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 purchase and maintenance of armored vehicles; and the maintenance of a secured network.

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.

The Private Counsel activity was established under 28 C.F.R. § 50.15 and 50.16, whereby, the Civil Division is authorized 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 in instances wherein private counsel is otherwise appropriate.

The District of Columbia Superior Court Informant Program (SCIP) was established upon passage of the 1991 Dire Emergency Supplemental Appropriations Act. Unlike the Witness Security program, which provides permanent relocations and identity changes, the SCIP provides temporary relocation and limited protective services to witnesses who provide prosecution testimony in District of Columbia Superior Court cases.

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

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

II. Summary of Program Changes

No program changes.

III. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

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 [\$13,000,000] \$15,000,000 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

No substantive changes proposed.

IV. Decision Unit Justification

A. Fees and Expenses of Witnesses

<i>Fees and Expenses of Witnesses</i>	Direct Pos.	Est. FTE	Amount
2016 Enacted w/Sequester			200,028
2017 Continuing Resolution w/Sequester			199,433
Adjustments to Base and Technical Adjustments			10,567
2018 Current Services			210,000
2018 Program Increases			0
2018 Request			210,000
Total Change 2017-2018			10,567

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 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.

Planned Initiatives:

- 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.	Est FTE	Amount
2016 Enacted w/Sequester			40,692
2017 Continuing Resolution w/Sequester			40,571
Adjustments to Base and Technical Adjustments			4,429
2018 Current Services			45,000
2018 Program Increases			0
2018 Request			45,000
Total Change 2017-2018			4,429

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.

Planned Initiatives:

- 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.
- To increase the effectiveness of Federal prosecutions in the District of Columbia by providing funding to temporarily relocate District of Columbia Superior witnesses who face potential danger as a result of their participation in Superior Court prosecutions.
- To provide funding to temporarily protect Superior Court witnesses and their families when the testimony of the witnesses may jeopardize their personal security.
- To compensate Superior Court witnesses for subsistence costs such as food, temporary relocation, and other expenses incidental to their protection.

C. Victim Compensation Fund

<i>Victim Compensation Fund</i>	Direct Pos.	Est FTE	Amount
2016 Enacted w/Sequester			0
2017 Continuing Resolution w/Sequester			0
Adjustments to Base and Technical Adjustments			0
2018 Current Services			0
2018 Program Increases			0
2018 Request			0
Total Change 2017-2018			0

Program Description:

This program provides resources to compensate individuals who are victimized by protected witnesses. The Fund was initially funded by the 1985 Supplemental Appropriations Act (P.L. 99-88).

Restitution will not exceed \$50,000 for those victimized since the establishment of the Fund. Restitution not to exceed \$25,000 shall be paid to the estate of victims killed as a result of crimes committed by persons who have been enrolled in the Witness Security Program if such crimes were committed prior to enactment of P.L. 98-473. The Department paid \$22,500 from this program in FY 2006 and 2007, but has not provided funds since. No costs are anticipated for this program in FY 2017 and FY 2018.

Planned Initiative:

- To provide compensation to those individuals, or, in the case of death, to the individual's estate, who are victimized by a protected witness.

D. Private Counsel

<i>Private Counsel</i>	Direct Pos.	Est FTE	Amount
2016 Enacted w/Sequester			6,524
2017 Continuing Resolution w/Sequester			6,505
Adjustments to Base and Technical Adjustments			1,495
2018 Current Services			8,000
2018 Program Increases			0
2018 Request			8,000
Total Change 2017-2018			1,495

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.

Planned Initiatives:

- 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.

E. Superior Court Informant Program

<i>Superior Court Informant Program</i>	Direct Pos.	Est FTE	Amount
2016 Enacted w/Sequester			0
2017 Continuing Resolution w/Sequester			0
Adjustments to Base and Technical Adjustments			0
2018 Current Services			0
2018 Program Increases			0
2018 Request			0
Total Change 2017-2018			0

Program Description:

This program provides for funding for the protective services offered to the District of Columbia Superior Court witnesses. Specifically, funding is provided for subsistence expenses, travel, temporary relocation, and other miscellaneous expenses. All participants have already converted to the Witness Security Program (WSP). No one has entered this short term program since 2004. Due to the lack of activity in this program, previously available funding has been moved into the allotment for Protection of Witnesses where SCIP funding originated.

F. Alternative Dispute Resolution

<i>Alternative Dispute Resolution</i>	Direct Pos.	Est FTE	Amount
2016 Enacted w/Sequester			1,212
2017 Continuing Resolution w/Sequester			1,208
Adjustments to Base and Technical Adjustments			792
2018 Current Services			2,000
2018 Program Increases			0
2018 Request			2,000
Total Change 2017-2018			792

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.

Planned Initiatives:

- 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.

G. Foreign Counsel

<i>Foreign Counsel</i>	Direct Pos.	Est FTE	Amount
2016 Enacted w/Sequester			3,184
2017 Continuing Resolution w/Sequester			3,175
Adjustments to Base and Technical Adjustments			1,825
2018 Current Services			5,000
2018 Program Increases			0
2018 Request			5,000
Total Change 2017-2018			1,825

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.

Planned Initiatives:

- 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.

VII. EXHIBITS

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