

**Civil Division**  
**United States Department of Justice**

**FY 2009 Performance Budget**  
**Congressional Submission**

**February 2008**

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## Civil Division: Overview

**MISSION: The Civil Division represents the United States in any civil or criminal matter within its scope of responsibility – protecting the public fisc, ensuring that the Federal Government speaks with one voice in its view of the law, preserving the intent of Congress, and advancing the credibility of the government before the courts.**

The Civil Division's role is two-fold in that it must represent some 200 federal agencies and Congress while maintaining uniformity in government policy. For any particular case, Civil must provide the best possible representation to the client agency involved. This responsibility must be balanced with the need to represent the government as a whole and to ensure lasting precedents favorable to the United States.

Generally, the Division's litigation falls into one of the following categories:

- Cases that involve national policies:
  - The Child Online Protection Act was signed into law in 1998 and was intended to protect minors from sexually explicit material on the Internet. This law has drawn First Amendment legal challenges in court.
- Cases that are so massive and span so many years that they would overwhelm the resources and infrastructure of any individual field office:
  - The United States Army Corps of Engineers (the Corps) has received nearly 490,000 administrative claims arising from the damages caused by Hurricane Katrina. The ensuing litigation will be the largest group of cases ever handled by the Civil Division and could span many years, possibly even decades.
- Cases filed in national or foreign courts:
  - Nuclear utilities filed 66 claims against the Department of Energy (DOE) in the United States Court of Federal Claims alleging breach of contract for DOE's failure to begin accepting spent nuclear fuel in 1998.
- Cases that cross multiple jurisdictions:
  - Pharmaceutical fraud cases often involve overlapping claims, defendants, and witnesses. The Civil Division plays a critical role in ensuring that investigations and litigation are properly coordinated among federal and state entities.

The Civil Division workload exceeds 50,000 cases and administrative claims annually. The overwhelming majority – about 89 percent – of these cases are defensive. Each year, thousands of lawsuits are filed against the government as a result of its policies, laws, and involvement in commercial activities, domestic and foreign operations and entitlement programs, as well as law enforcement initiatives, military actions, and counterterrorism efforts. Civil defeats billions of dollars in unmeritorious claims every year. The Division also brings suits on behalf of the

United States, primarily to recoup money lost through fraud, loan defaults, and the abuse of federal funds. Annually, millions, and often billions, of dollars are returned to the treasury, Medicare, and other entitlement programs as a result of Civil's affirmative litigation efforts.

The Civil Division is also responsible for the administration of two compensation programs created by the National Childhood Vaccine Injury Act of 1986 and the Radiation Exposure Compensation Act (RECA) of 1990.

Finally, Civil Division attorneys play a significant leadership role within the Department of Justice (DOJ) and the Executive Branch. The Division consults with and advises the United States Attorneys, other DOJ components, and client agencies to ensure that the government's litigation position is unified, consistent, and successful. With respect to client agencies, Civil Division attorneys work closely with agencies' general counsels to head off potential litigation and prevent unfavorable outcomes should cases proceed in court.

It is possible for the public to better understand the responsibilities and goals of the Civil Division. Electronic copies of DOJ'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.usdoj.gov/jmd/2009justification>.

## **Full Program Costs**

Funds for the Legal Representation Decision Unit, the Civil Division's only decision unit, are devoted almost entirely to front-line litigation in observance of the management initiatives contained in the DOJ Strategic Plan (2007-2012). Of the Division's roughly 1,200 employees, the vast majority are assigned to the six litigating branches.

In FY 2007, \$383,200,000 was available to the Division, exclusive of the RECA Trust Fund (see Civil's RECA Trust Fund Budget). Fifty-four percent of this funding came from the GLA appropriation while forty-six percent was provided through DOJ allotments and reimbursements. The table on the following page displays a list of the Civil Division's funding sources, including appropriations and reimbursements.

<b>Civil Division Funding Sources (Dollars in Millions)</b>						
<b>Appropriations</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>Legal Representation (GLA)</b>	162.5	167.5	174.4	174.9	192.2	208.3
Immigration & Katrina Emergency Supplemental	0	0	0	0	9.6	0
RECA - Admin. (Became part of Legal Representation in FY 2003)	1.9	0	0	0	0	0
<b>Subtotal</b>	<b>164.4</b>	<b>167.5</b>	<b>174.4</b>	<b>174.9</b>	<b>201.8</b>	<b>208.3</b>
<b>Reimbursements:</b>						
FDIC - Winstar	63.3	32.3	38.5	30.2	18.3	17.5
Vaccine Compensation Program	4.0	4.0	4.0	6.3	6.3	6.3
Three Percent - Debt Collection	32.8	15.7	34.8	31.7	10.0	16.2
Health Care Fraud Abuse Control	21.0	14.4	14.5	15.5	15.3	15.9
Other Reimbursements	32.7	59.0	36.9	75.4	36.3	44.2
<b>Subtotal</b>	<b>153.8</b>	<b>125.4</b>	<b>128.7</b>	<b>159.1</b>	<b>86.2</b>	<b>100.1</b>
<b>DOJ Accounts:</b>						
Working Capital Fund	0	23.4	0	0	0	0
AFF & Super Surplus	0	0	0	0	.8	.8
Expert Witnesses (FEW)	38.1	38.0	46.6	45.1	49.1	54.0
Private Counsel (FEW)	7.0	7.2	9.0	12.3	15.3	13.0
ALS No Year	0	0	2.5	3.3	15.6	7.0
VCR Carry Forward	2.0	2.0	0.2	0	0	0
<b>Subtotal</b>	<b>47.1</b>	<b>70.6</b>	<b>58.3</b>	<b>60.7</b>	<b>80.8</b>	<b>74.8</b>
<b>TOTAL - ALL SOURCES</b>	<b>365.3</b>	<b>363.5</b>	<b>361.4</b>	<b>394.7</b>	<b>368.8</b>	<b>383.2</b>

The FY 2008 Omnibus Appropriation provided \$240,114,000 for the Civil Division and \$10,000,000 in Emergency Designation Funds for the Office of Immigration Litigation. For FY 2009, the Division requests 1,338 positions (957 attorneys), 1,332 FTE, and \$270,431,000 to meet its mission and performance goals.

### **Issues, Strategies, and Outcomes**

Between FY 2006 and FY 2009, the Civil Division's workload is expected to grow from approximately 53,532 to 60,219 cases – an increase of 13 percent – primarily as a result of continued growth in immigration cases and administrative tort claims. However, this number belies the true extent of the workload, as the Division is handling over 489,000 administrative claims that have been filed with the Corps seeking damages associated with Hurricane Katrina. These administrative claims, while not included in the Division's total numbers, are very time-consuming.

### **External Challenges:**

Because the Civil Division's workload is mostly defensive, it cannot control the number of cases filed, the timing of discovery, the size of evidentiary collections, the time span of litigation, or the scheduling of trials. The type, volume, and size of the cases are determined by several exogenous factors:

- **Military Actions**
- **Natural Disasters**
- **Influx of Illegal Aliens**
- **Challenges to Agency Actions**
- **Statutory Enactments**
- **Bankruptcies**
- **Counterterrorism Measures**
- **Whistleblower Referrals**
- **Vaccine Program Expansion**
- **Federal Procurement Actions**

### **Internal Challenges:**

The external challenges create the Division's greatest internal challenge: the unpredictable volume and nature of the cases assigned to the Division. The Division typically does not have the flexibility to adequately respond to a huge influx of cases, especially when the litigation involves massive volumes of evidentiary material and requires substantial litigation support. To address these challenges, the Division has used other mechanisms to secure the necessary funding to assist the government in taking on these complex and resource-intensive cases:

- Vigorously pursue agency reimbursements.
- Reallocate work to the extent feasible.
- Identify prior year balances that can be made available to the Automated Litigation Support (ALS) no-year fund.

These strategies have varied in their success rate.

- The Economy Act permits a federal agency to order supplies and services from another federal agency under certain conditions as prescribed in the Federal Acquisition Regulation. The Act was designed to promote economy in government operations by permitting interagency use of resources and contracts. For example, the Corps is using the Civil Division's litigation support contracts to process the administrative claims it received

following Hurricane Katrina. The Corps reimbursed the Division in FY 2007 and FY 2008 for costs associated with claims processing and document production for discovery in the related lawsuits.

- Section 109 of the 1995 Appropriations Act authorizes, but does not compel, agencies to reimburse the Civil Division for all expenses in litigation with unusually high costs. For example, the Federal Deposit Insurance Corporation reimbursed the Division for the costs associated with the multi-billion dollar savings and loan litigation, which has continued for more than a decade.
- When overwhelmed with a flood of immigration cases, the Division delegated a portion of the briefs to other parts of the Department of Justice, including the United States Attorneys' Offices. However, the other offices were soon saturated, and the Division ceased delegating immigration cases when additional resources were appropriated.

**Outcomes:**

Despite these challenges, the Division has achieved remarkable success in upholding national policies and in defending the public fisc. See the Performance and Resource Tables on page 24 for more information.

In FY 2007, the Division saved or recovered  
nearly \$49 for every dollar spent.

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# Appropriations Language and Analysis of Appropriations Language

## Appropriations Language

The FY 2009 Budget request includes proposed changes in the appropriations language listed and explained below. New language is *italicized and underlined*, and language proposed for deletion is bracketed.

DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

In addition, for reimbursement of expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed [~~\$6,833,000~~] \$7,833,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

## Analysis of Appropriations Language

No substantive changes proposed.

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## Decision Unit Justification

### Civil Division: Legal Representation Decision Unit

<b>Legal Representation – TOTAL</b>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount (\$000)</b>
2007 Enacted with Rescissions	1,149	1,146	\$208,311
2007 Supplementals	0	0	0
2007 Enacted with Rescissions and Supplementals	1,149	1,146	\$208,311
2008 Enacted	1,338	1,253	\$250,114
Adjustments to Base & Technical Adjustments	0	79	\$20,317
2009 Current Services	1,338	1,332	\$270,431
2009 Program Increases	0	0	0
2009 Request	1,338	1,332	\$270,431
<b>Total Change 2008-2009</b>	<b>0</b>	<b>79</b>	<b>\$20,317</b>

<b>Vaccine Injury Compensation Program</b>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount (\$000)</b>
2007 Enacted with Rescissions and Supplementals	0	41	\$6,333
2008 Enacted	0	41	\$6,833
2009 Current Services	0	41	\$6,833
2009 Program Increases	0	0	\$1,000
2009 Request	0	41	\$7,833
<b>Total Change 2008-2009</b>	<b>0</b>	<b>0</b>	<b>\$1,000</b>

## Program Description

The Civil Division's mission to represent the United States' interests in the courts is vital, as the government's activities affect nearly every aspect of society. Each year the government undertakes millions of commercial transactions involving purchases, contracts, loans, grants, and the management of trust funds. Its policies and laws interplay with major counterterrorism activities, the environment, the labor force, national and local economies, industry, and the prevention of crime.

In total, 56,732 cases and matters were assigned to the Civil Division during FY 2007, and of this, the vast majority – 89 percent – were defensive. While plaintiffs in most defensive suits seek direct financial relief, some seek to force programmatic changes that can have far-reaching effects on law enforcement practices, entitlement programs, and the implementation of federal statutes. Civil's affirmative work is a relatively small, but critical, aspect of the Division's mission - securing billions of dollars owed to the government each year.

The Civil Division is composed of six litigating branches and the Office of Management Programs, as described throughout the following pages.

## Appellate Staff

Appellate Staff attorneys represent the United States at the highest levels of judicial review. When the government receives an unfavorable trial decision, the Staff works closely with the Office of the Solicitor General to determine whether or not to seek appellate review. The docket includes challenges to the PATRIOT Act, the No Child Left Behind Act, and the policies of the Medicare and Medicaid programs.



The Staff also handles a host of counterterrorism cases involving terrorist surveillance activities, the freezing of terrorist assets, and the designation of foreign terrorist organizations. These responsibilities have increased significantly with the enactment of the Military Commissions Act (MCA) of 2006. The MCA eliminates habeas jurisdiction of all courts with respect to claims by detainees held as enemy combatants or those awaiting enemy combatant status determinations, as well as jurisdiction over any other claims by such detainees. The MCA and the Detainee Treatment Act (DTA) establish a mechanism for exclusive review in the United States Court of Appeals for the District of Columbia Circuit of claims regarding the validity of the military's designation of a Guantanamo detainee as an enemy combatant and any conviction by a military commission. As of January 2008, 168 detainees have filed for review in the D.C. Circuit per the DTA and the MCA. These cases are handled by the Appellate Staff. Each case involves classified materials and presents serious issues of law and fact. The detainee counsel frequently seek emergency relief and expedition of their cases. Division attorneys anticipate that as many as 350 DTA cases will be filed in the court of appeals. In addition to the numerous DTA cases, the Guantanamo detainees have, in even greater numbers, filed habeas cases in district court. Over 350 detainees have filed such actions. Those actions have led to more than 100 related appeals filed in the D.C. Circuit, which are all handled by the Appellate Staff. The viability of the habeas cases (and the related appeals) is currently unclear. On February 20, 2007, the D.C. Circuit decided in *Boumediene* that the MCA applies to the habeas cases brought on behalf of aliens held at Guantanamo Bay and that the MCA is not an unconstitutional suspension of the writ. The Supreme Court, however, granted certiorari to review the court of appeals decision and heard the argument in December 2007. A decision is expected by June 2008.

### Appellate Staff Quick Facts

- 59 Authorized Attorney FTE - 2007
- 1,274 Cases Pending on January 6

## Federal Programs

While other branches handle cases that directly involve the defense of monetary claims and the recovery of monies owed to the government, most of the Federal Programs Branch's cases are not monetary. The attorneys annually handle hundreds of defensive cases that are of unparalleled importance because of their far-reaching repercussions for government programs and policies. For example, they defend challenges to executive orders and federal statutes, such as the Equal Pay Act and the Child Online Protection Act. Also, the Branch is currently handling several controversial housing-related lawsuits as a result of Hurricane Katrina. Although a minority of their cases, the Branch protects the public fisc by defending government policies and programs involving the distribution of monetary resources and benefits.

In addition, the Branch defends federal agency officials and actions. Eight states and the District of Columbia sued the Department of Health and Human Services (HHS) for a penalty assessed to them for failing to comply with child support enforcement program requirements as stated in their federal Temporary Assistance for Needy Families (TANF) grants. In March 2007, the court agreed with the government that HHS reasonably interpreted TANF when it informed the states that they became subject to the penalty after failing to meet the requirements for two consecutive years. In another case, *Students for Sensible Drug Policy Foundation v. Spellings*, plaintiffs claimed that a provision of the Higher Education Act of 1965, as amended, which suspends eligibility for federal financial aid for students who have been convicted of drug-related offenses, is unconstitutional. In granting the government's motion to dismiss this case against the Secretary of Education, the court cited the rational basis of the statute – deterring drug-related offenses on college campuses.

The Branch's docket also includes a number of challenges to military policy, antiterrorism laws, and national security measures – most notably the hundreds of habeas corpus actions filed on behalf of Guantanamo Bay detainees. Federal Programs attorneys are working to get these cases dismissed in light of the MCA, which recognizes an opportunity for review in the D.C. Circuit. Related appeals are being handled by the Division's Appellate Staff. Also, attorneys are handling challenges to the Department of Defense's base closures.

### Federal Programs Quick Facts

- 109 Authorized Attorney FTE – 2007
- 1,398 Cases Pending on January 6

## Torts Branch

The four distinct sections within the Torts Branch are organized according to different areas of tort law: Environmental Torts, the Federal Torts Claims Act (FTCA), Constitutional and Specialized Torts, and Aviation and Admiralty Torts. The caseload includes traditional tort suits, such as alleged malpractice at federal medical facilities, environmental contamination cases, and maritime accident litigation. In addition to suits filed in federal courts, the Branch handles

thousands of administrative claims every year. The Branch also administers the Vaccine Injury Compensation and Radiation Exposure Compensation Programs.

One of the issues faced by the Torts Branch is how to deal with environmental contamination caused by various government activities. Although Congress has provided funds to clean up such contamination, tort suits are often brought against the United States seeking damages above and beyond the funds available. The Civil Division works diligently to protect the public fisc when such lawsuits lack legal merit. Currently, Environmental Torts attorneys are representing the United States' interests in the World Trade Center (WTC) litigation, which consists of approximately 6,000 administrative claims alleging personal injury following efforts to clean up the WTC Disaster Site, as well as five lawsuits. *In Re World Trade Center Disaster Site Litigation* represents the consolidation of these personal injury tort cases being brought against the City of New York and the city's four primary contractors for the WTC recovery and cleanup, and numerous other entities. These claims seek, in aggregate, more than \$1 billion. The United States has been named as a direct defendant in only three of the consolidated cases – and none have been properly served. However, if suits are brought, the litigation would be very resource-intensive.

Torts attorneys also handle *Bivens* cases, which involve federal employees who are personally sued for actions taken within the scope of their employment. Over the past 11 years, multiple allegations have been filed against federal officials in *Cobell v. Kempthorne*, including several Secretaries of the Department of the Interior (DOI) and other DOI officials. Several years ago, the district court held then-Secretary Gale Norton and then-Assistant Secretary Neal McCaleb in contempt, for, among other things, failing properly to undertake an accounting project. However, the *Bivens* attorneys secured a decision from the appeals court that vacated the contempt ruling. Effective representation of such employees allows public servants to carry out their duties without fear of personal liability for their actions.

The FTCA, enacted in 1946, allows citizens to sue the government in a federal court for injuries allegedly caused by the “negligent or wrongful act of any employee of the government while acting within the scope of his office or employment.” For any claim brought under the FTCA, the claimant must first file an administrative claim against the agency allegedly at fault.

The Branch's FTCA Staff is representing the government in over 300 lawsuits that have been filed as a result of the flooding caused by Hurricane Katrina in New Orleans. Hurricane Katrina made landfall in Louisiana on August 29, 2005, causing several breaches in the levees and flood walls surrounding the New Orleans area. It became one of the costliest natural disasters ever experienced in the United States. Nearly 490,000 administrative claims



Source: [http://news.nationalgeographic.com/news/2005/08/photogalleries/New\\_Orleans\\_flood/photo3.html](http://news.nationalgeographic.com/news/2005/08/photogalleries/New_Orleans_flood/photo3.html)

have been filed with the Army Corps of Engineers (the Corps). Claimants and plaintiffs seek compensation for personal injury, death, and property damage suffered as a result of the failure of the flood protection system. They allege that the Corps negligently failed to build adequate flood protection and that the Corps' negligent design, construction, and maintenance of a navigable waterway worsened the impact of Hurricane Katrina's storm surge.

The tort suits against the United States, many of which are styled as class actions, are consolidated with hundreds of other cases under the umbrella caption *In re Katrina Canal Breaches Litigation*. One case, *Robinson v. United States*, has been designated as a "test" case. On January 11, 2008, the plaintiffs and the United States filed cross motions for summary judgment in *Robinson* on the issue of the United States' immunity pursuant to the Flood Control Act of 1928. The court ordered the parties to proceed with all merits discovery and to be prepared for a September 2008 trial of *Robinson*. Trials of other cases involving the United States are scheduled for spring and summer 2009.

The Civil Division is working closely with the Corps to ensure that the administrative claims are processed efficiently and that the United States receives the best possible representation in the litigation. The Corps agreed to reimburse the Department of Justice during FY 2007 and FY 2008 for the costs that the Corps would have incurred for claims processing and discovery. In FY 2009, the three scheduled trials will require an unprecedented level of litigation support to manage millions of paper and electronic documents. A ruling against the government could ultimately lead to billions of dollars in treasury losses and legal precedents that will have significant adverse consequences in the future.

#### **Torts Branch Quick Facts**

- 125 Authorized Attorney FTE - 2007
- 18,139 Cases and Administrative Claims Pending on January 6 (excluding Hurricane Katrina administrative claims)

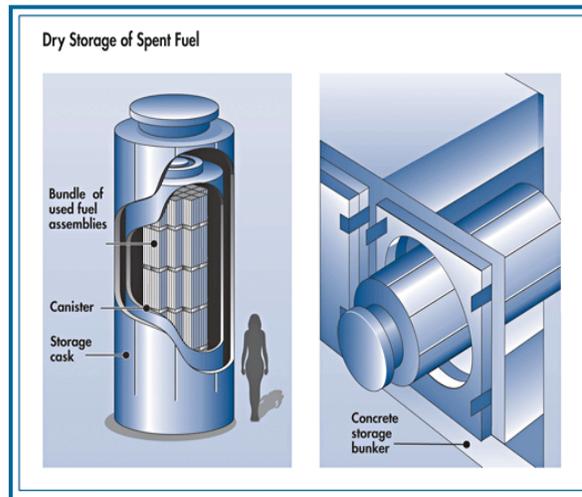
## **Commercial Litigation**

The Commercial Litigation Branch is the largest in the Civil Division and is divided into five sections: Intellectual Property, Corporate/Financial, Civil Frauds, Foreign Litigation, and National Courts. Most of the cases are defensive and involve billions of dollars in claims filed both by and against the government. These cases often involve protracted proceedings, high monetary stakes, complex damage theories, and large evidentiary collections.

The section with the largest caseload and most often the litigation with the highest stakes is the National Courts Section. These attorneys represent the government in cases filed in the Court of Federal Claims (CFC) and the Court of Appeals for the Federal Circuit, which are national courts located in Washington, D.C. National Courts attorneys are also responsible for litigation filed in the Court of International Trade, a national court located in New York City.

National Courts cases often involve billion-dollar contracts and large corporations with virtually limitless litigation resources. A massive group of lawsuits embodying enormous financial stakes is known collectively as the Spent Nuclear Fuel Litigation. “Spent nuclear fuel” is a byproduct of commercial nuclear utilities and defense activities. Because the fuel continues to emit radiation after it no longer produces energy for potentially thousands of years, it must be safely stored. The Nuclear Waste Policy Act of 1982 requires the Department of Energy (DOE) to accept the fuel at a federal facility. In 1987, Congress designated Yucca Mountain in Nevada as the repository site. DOE entered into 76 contracts with utilities and agreed to begin accepting their fuel starting in January 1998 in exchange for the utilities’ quarterly fees.

Because of delays in preparing the Yucca Mountain site, DOE has been unable to begin acceptance and most likely will not be able to do so until at least 2017. It is conceivable that the repository will not be ready until the 2050s, causing the government’s liability to grow exponentially. To date, 66 cases seeking \$50 billion in damages have been filed in the CFC



alleging a partial breach of contract. Trials are expected in up to 13 cases in fiscal years 2008 and 2009. The cases are scientifically complex, making them both labor- and resource-intensive. Litigation support services, which include collecting, organizing, and reviewing massive amounts of paper, are critical to the government’s defense.

The following serve to further exemplify the enormity of the cases that National Courts addresses on a regular basis. The *Winstar* cases made history in 1995 when some 400 financial institutions sought about \$30 billion for alleged losses arising from banking reforms enacted in the 1980s. The successful defense of these cases by National Courts attorneys has limited plaintiffs’ damage awards to six cents on the dollar. Following the 1988 legislation restricting prepayment of Housing and Urban Development-insured mortgages on low-income housing, 325 plaintiffs filed constitutional takings claims, with over \$2 billion at issue. In *Amber Resources Co. v. United States*, the CFC awarded 40 oil and gas lessees \$1.1 billion in restitution for an alleged material breach in their leases, but this decision has been appealed. Finally, attorneys are defending the Air Force in a \$1 billion contract dispute with Northrop Grumman over the termination for convenience of the Tri-Service Stand-Off Attack Missile, a highly classified stealth missile.

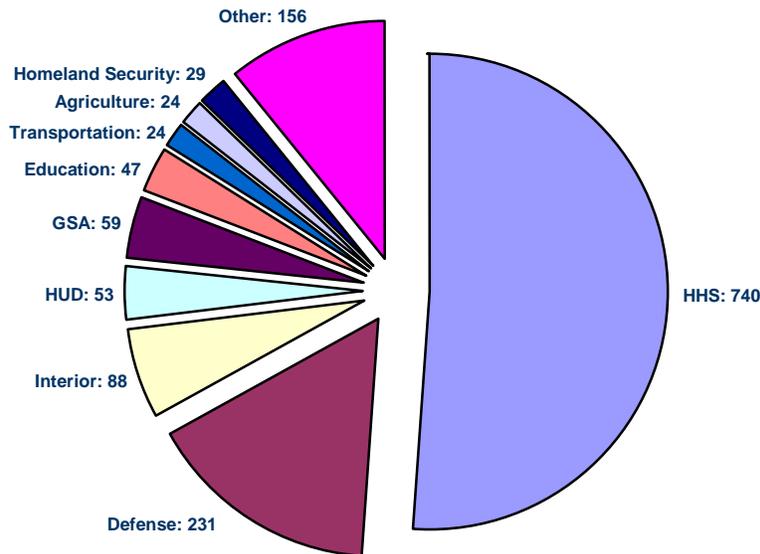
The Corporate/Financial section is handling one of the largest cases ever filed against the government. *Cobell v. Kempthorne* is a multi-billion dollar claim filed against the Department of the Interior. Plaintiffs – 300,000 Native Americans – seek a full accounting of their Individual Indian Trust accounts. Legislative efforts to resolve the litigation have failed. A new district court judge conducted an evidentiary hearing from October 10-15, 2007. The parties have filed post-trial documents and are awaiting the court’s decision.

The Office of Foreign Litigation attorneys retain and manage foreign counsel to represent the United States in cases filed in foreign courts. Most of these cases are defensive and arise from a

range of actions including antiterrorism activities abroad, the war in Iraq, military redeployments, and commercial transactions. The Office's affirmative efforts are aimed at fighting cross-border fraud that targets American citizens, such as telemarketing fraud.

The Branch also handles a wide variety of litigation involving patents, trademarks, copyrights, trade secrets, and other related matters. For example, when patent infringement claims threatened a cessation of BlackBerry service, Intellectual Property attorneys worked to ensure that the government would be exempt from an injunction against use of the service. The most significant defensive suits are brought by major corporations seeking substantial recoveries for the government's use of patented inventions, such as night vision compatible displays used in military aircraft in *Honeywell International v. United States*. Affirmative litigation enforces government-owned patents, trademarks, copyrights, and patent indemnity agreements.

**Commercial Litigation Branch**  
**1,451 Pending Fraud Cases by Agency**  
(as of January 2, 2008)



Through affirmative litigation, Commercial Litigation attorneys recover losses from those who perpetrate fraud against the government and misuse taxpayers' monies. Working with the United States Attorneys' Offices, Branch attorneys recover millions, and often billions, of dollars each year from individuals and companies who have defrauded the government by violating the terms of federal contracts, grants, loans, subsidies, Medicare, and other federal health insurance programs. The chart above details the number of pending fraud cases by federal agency for which the Frauds staff is working to recover money (as of January 2, 2008). In FY 2007, settlements and judgments in suits and investigations of fraud against the Federal Government exceeded \$2 billion.

Since the events of September 11, 2001, the government has increased spending to address homeland security concerns and to fight the wars in Iraq and Afghanistan. In order to ensure that this increase in funding has its intended effect and is not diverted by fraud, the Division has also

increased efforts to detect, aggressively investigate, and pursue individuals and entities that engage in procurement fraud.

A significant portion of fraud cases are filed under the “*qui tam*” provision of the False Claims Act. The Act, as passed in 1863 and amended in 1986, defines and establishes liability for fraud perpetrated against the government. Under the *qui tam* provision, a citizen with knowledge of such fraud can sue on behalf of the government. Of the 1,451 cases pending, 78 percent were filed under the *qui tam* provision. In FY 2007 alone, the Department recovered more than \$1.4 billion in *qui tam* cases – 70 percent of total recoveries.

The Division’s base budget is devoted almost exclusively to defensive litigation – cases that *require* representation to ensure that the government does not lose hundreds of billions of dollars in adverse judgments and settlements. Thus, funding for affirmative cases has increasingly relied on external sources, mainly the Health Care Fraud and Abuse Control account (HCFAC) and Three Percent Fund. The HCFAC account is appropriated from the Medicare Trust Fund. It is distributed in amounts that the Secretary of HHS and the Attorney General jointly certify as necessary to finance anti-fraud activities. Three Percent resources fluctuate annually in accordance with the level of recoveries. In 2007, the DOJ leadership’s Health Care Fraud Initiative increased resources to the Civil Division from both HCFAC and the Three Percent Fund. This allowed the Division to hire an additional seven people devoted to health care fraud.

#### Commercial Branch Quick Facts

- 269 Authorized Attorney FTE - 2007
- 8,388 Cases Pending on January 6

## Consumer Litigation

The Office of Consumer Litigation enforces federal consumer protection laws. Most enforcement suits involve fraud perpetrated by manufacturers and distributors of misbranded, adulterated, or defective consumer goods. Success in these cases safeguards consumers from dangerous or worthless products and from unfair and deceptive trade practices. Consumer also handles a growing number of health care fraud-related cases, some civil but mostly criminal. In the summer of 2007, the resources available for these cases were virtually maxed out. However, the shortfall was alleviated when the Department implemented its Health Care Fraud Initiative in 2007. It provided HCFAC resources for Consumer’s criminal cases and additional Three Percent Fund money for Automated Litigation Support services.

Most of the Office’s cases are affirmative and are filed on referral from the Food and Drug Administration (FDA), the Federal Trade Commission, the Consumer Product Safety Commission, and the National Highway Traffic Safety Administration. The Office handles civil penalty cases brought under consumer protection statutes as well as cases concerning fraudulent activities that extract billions of dollars from unsuspecting consumers through deceptive advertisements and sales and through unfair credit practices. All together, the Office’s affirmative litigation generates hundreds of millions of dollars in recoveries for the United States.

Many of the major affirmative cases handled by the Office of Consumer Litigation deal with protecting the public from business opportunity scams. One group of cases that exemplifies this work arose from a fraudulent scheme to sell a business involving DVD vending machines. American Entertainment Distributors, Inc. (AED), defrauded consumers across the United States of approximately \$19,000,000. Eleven defendants, including owners, salesmen, and AED representatives, have been convicted and given sentences ranging from one to ten years in prison. Additionally, a number of the defendants have been ordered to pay back millions of dollars in restitution. The president of AED has thus far been given the strictest sentence of ten years and one month in prison, and was ordered to pay \$12,000,000 in restitution. AED is one of a series of prosecutions over the past two years involving fraudulent business opportunities which have led the Office to bring charges against almost 80 individuals, 69 of whom have already been convicted. Prison terms have stretched to more than 15 years in prison, and a total of more than \$100,000,000 in restitution has been ordered in these cases.

The Office also defends challenges to consumer protection laws. Such suits include those filed by major drug manufacturers challenging the FDA's approval of generic versions of some of the most widely-used, name-brand medications. In *Biovail Laboratories v. FDA*, the court rejected Biovail Corporation's challenge to the FDA's approval of a generic version of Biovail's blockbuster drug, Wellbutrin XL. The court agreed with the FDA that Biovail's claim that this product was not bioequivalent to the patented drug was unfounded and denied injunctive relief against the government.

#### **Consumer Litigation Quick Facts**

- 30 Authorized Attorney FTE - 2007
- 324 Cases Pending on January 6

## **Office of Immigration Litigation**

Established in 1983 to achieve central control over immigration litigation, the Office of Immigration Litigation (OIL) upholds the enforcement actions of the Department of Homeland Security (DHS) and DOJ's Executive Office for Immigration Review (EOIR). With its unique expertise in immigration law, OIL provides the government with the best possible defense in district court cases and against challenges to removal orders filed in circuit courts by illegal aliens, many of whom are criminals.

DHS's Customs and Border Protection and Immigration and Customs Enforcement divisions estimate that more than 11,000,000 illegal aliens reside in the United States. It is therefore not surprising that in addition to defending counterterrorism efforts, much of the Office's attorney time is devoted to the growing number of petitions filed in circuit courts that seek to overturn removal decisions issued by DHS and EOIR. OIL's share of federal court litigation is now so large that immigration cases comprise approximately one-third of the cases handled annually by the Civil Division. Vigorous defense of these cases is critical to national security and the safety of our communities.

OIL's caseload is directly tied to DHS's immigration enforcement efforts and to the immigration adjudication rates of the Board of Immigration Appeals (BIA) in EOIR. Thus, as DHS continues to increase its immigration enforcement efforts and the BIA continues to adjudicate large numbers of removal cases each year, OIL's caseload will continue to grow into FY 2009. OIL's caseload for FY 2007 exceeded 22,000, and this number is expected to increase to nearly 26,000 in FY 2009. This growth is also fueled by the sharp rise in the percentage of removal decisions that aliens appeal to the federal circuit courts. Congress demonstrated its support for immigration activities and provided funding for the Division to hire OIL attorneys in FY 2006 and FY 2007. Congress and the administration again have shown their support for increased funding in the passage of the most recent appropriations bill. The Consolidated Appropriations Act, 2008, provides \$10,000,000 in emergency funds and \$9,000,000 in permanent resources to further alleviate OIL's caseload burden.



Source: LatinAmericanStudies.org

In addition to fulfilling a key role in addressing the public's widespread desire to gain control over the Nation's borders, the Office's docket often includes sensitive and difficult cases, some of which involve fundamental questions concerning the authority of the Executive and the respective roles of Congress and the courts in immigration matters. One of the most significant items of legislation passed by Congress was the REAL ID Act of 2005. There are a number of components to this act. Each component works towards tightening controls on aliens in the United States and also provides for more flexibility for executive decisions in regard to border control. While this Act has remained controversial, OIL has time and again defended its constitutionality, one recent example being *Iasu v. Smith*. In December 2007, the Ninth Circuit held that the REAL ID Act was not an unconstitutional suspension of the writ of habeas corpus as applied to the alien's citizenship claim. The Eritrean alien raised this claim for the first time in a petition for a writ of habeas corpus filed in the district court after the effective date of the REAL ID Act. The court of appeals held that the district court properly dismissed the alien's habeas petition under the REAL ID Act, and concluded that it also lacked jurisdiction to review the citizenship claim because the statute creating jurisdiction over nationality claims only applies to claims made on direct review of a final order of deportation.

The 110<sup>th</sup> Congress has proposed bills that would overhaul current immigration statutes. Thus far, these bills have not been passed. However, such a development would likely increase the Office's caseload as without the current statutes, aliens would have more legal leverage in their efforts to protest the court's removal decisions.

#### Office of Immigration Litigation Quick Facts

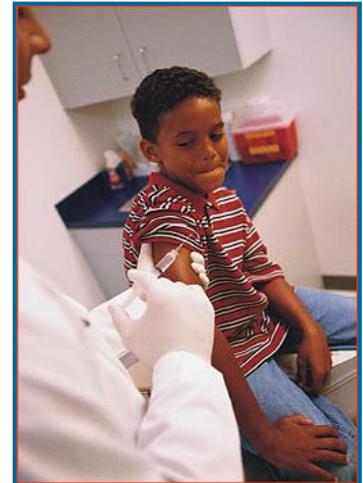
- 175 Authorized Attorney FTE - 2007
- 15,771 Cases Pending on January 6

# Compensation Programs

## Vaccine Injury Compensation Program

Congress enacted the National Childhood Vaccine Injury Act of 1986 (the Act) to avert a crisis affecting the vaccination of children against infectious childhood diseases. There were two primary concerns: 1) individuals injured by vaccines faced an inconsistent, expensive, and unpredictable tort system for compensating claims; 2) the risk of tort litigation threatened to reduce the number of vaccine manufacturers that could viably meet market demands. Recognizing that the “vaccination of children against deadly, disabling, but preventable infectious diseases has been one of the most spectacularly effective public health initiatives this country has ever undertaken,” Congress acknowledged a responsibility “to ensure that all children who are injured by vaccines have access to sufficient compensation for their injuries.”<sup>1</sup>

The Act established the Vaccine Injury Compensation Program (VICP, the Program), a no-fault compensation system for persons suffering injury or death allegedly attributable to certain vaccines. Administered by the Department of Health and Human Services (HHS), DOJ, and the Office of Special Masters within the Court of Federal Claims (CFC), the Program is intended to provide a more expeditious, less costly way for resolving claims. An individual claiming a vaccine-related injury or death must file a petition for compensation with the CFC before pursuing any civil action against a manufacturer or physician. To ensure that compensation is awarded to those whom Congress intended, claims are closely examined for legal and medical sufficiency, with the recognition that eligible claimants should be compensated fairly and expeditiously. Special Masters conduct hearings as necessary to determine whether a petitioner is entitled to compensation and, if so, how much.



The Act also created a Vaccine Injury Compensation Trust Fund that is used to pay awards to individuals injured by vaccines, in addition to claimants’ attorneys’ fees. The Trust Fund is funded by an excise tax imposed on each purchased dose of a covered vaccine. Since the inception of the Program in 1988, more than \$1.7 billion in compensation has been awarded to over 2,100 claimants who would have otherwise stood little chance of recovery in traditional tort litigation. Additionally, costly litigation against drug manufacturers and health care professionals who administer vaccines has nearly ceased. As a result, the supply of vaccines has stabilized, and development of new vaccines has increased. By protecting the Trust Fund against claims by those who have not suffered a vaccine-related injury, the Division helps to preserve the Fund for future deserving claimants.

Trust Fund monies also pay the administrative costs of HHS, the Civil Division’s VICP staff, and the Office of Special Masters. The Civil Division requests that its current reimbursement level of \$6,833,000 be increased by \$1,000,000, for a total of 41 FTE and \$7,833,000. Approval of this request is required to litigate about 4,800 pending autism cases that are expected to

<sup>1</sup> H.R. Rep. No. 99-908, 99<sup>th</sup> Cong., 2d Sess. 7 (1986), *reprinted in* 1986 U.S.C.C.A.N. 6344, 6348.

become active in FY 2009. The \$1,000,000 will provide critical Automated Litigation Support services that facilitate efficient claims processing and resolution.

This litigation arises from claims that vaccines or a vaccine preservative, thimerosal, can cause autism. Up to \$5 billion is at stake – an amount that exceeds the balance in the VICP Trust Fund. It is imperative that the Division be adequately staffed and prepared to handle the activated cases.

At the petitioners' urging, the court has identified three separate causation theories to be argued in nine trials between June 2007 and September 2008. Although a firm date has not been set, the court envisions activating the remainder of the 4,800 cases upon conclusion of the test cases. The Chief Special Master has indicated that he will begin to order production of records in small groups of cases beginning in January 2008.

The petitioners will challenge whether application of the general causation findings will apply to each case. The pressure to expedite consideration of the individual pending cases will be enormous. In turn, the level of effort required to defend these cases will rise sharply. The petitioners will be required to file case-specific medical records, which will include hundreds, possibly thousands, of pages of medical records in each case. While some records may be filed electronically, others will be filed in hard copy. All the records must be automated and made available to the government so that it may assess the factual basis of the claims. Automated Litigation Support services will be required to convert all the records into a searchable form.

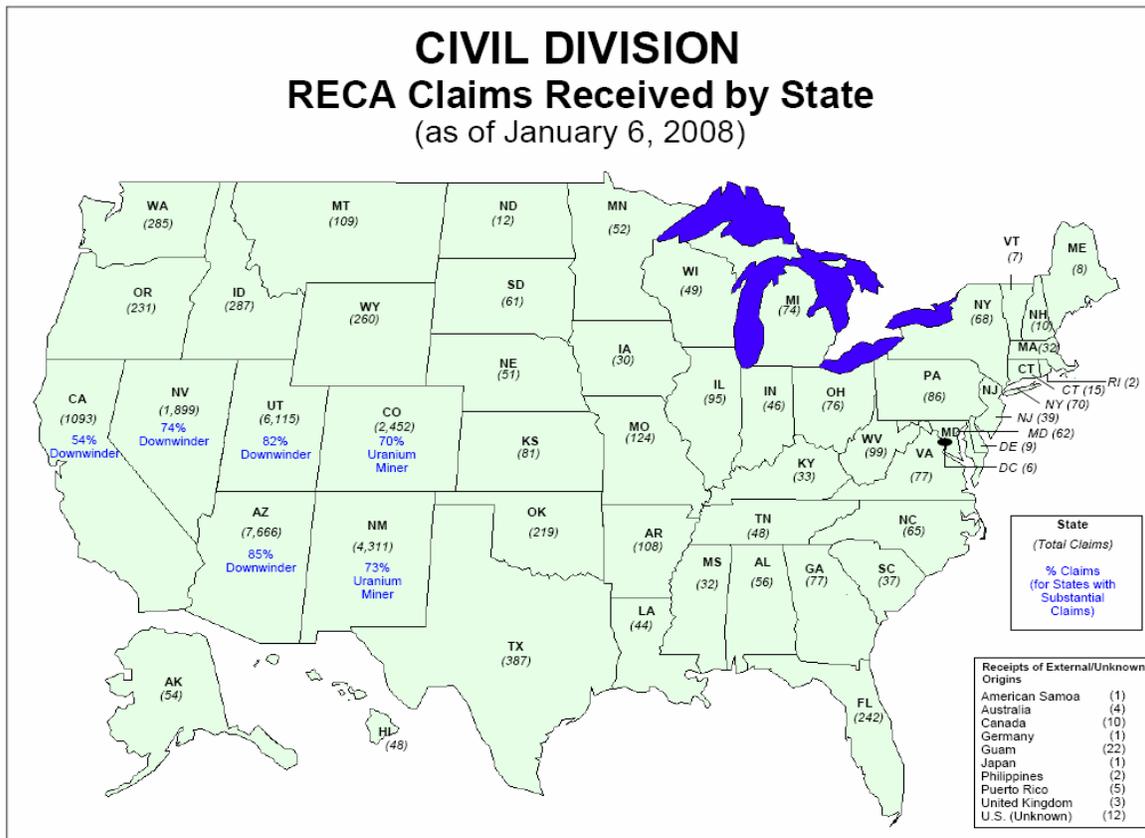
Absent adequate resources, these claims will span many years and severely compromise the program's ability to meet its Congressional mandate to provide a fair and expeditious means to resolve childhood vaccine claims. The requested increase is \$1,000,000 for Automated Litigation Support. Approval of this request will increase the reimbursement authority from \$6,833,000 to \$7,833,000.

### **Radiation Exposure Compensation Act**

In passing the Radiation Exposure Compensation Act (RECA) in 1990, Congress offered an apology and monetary compensation to individuals who suffered disease or death as a result of exposure to radiation released during atmospheric nuclear weapons testing in the 1950s and 1960s, and underground uranium mining operations from the 1940s to the 1970s. This program was designed as an alternative to litigation, in that the statutory criteria did not require claimants to establish causation. If claimants meet the criteria specified in the Act, compensation is awarded. RECA provides fixed payments in the following amounts: \$50,000 for individuals who lived "downwind" of the Nevada Test Site; \$75,000 for individuals present at test site locations; and \$100,000 for uranium miners, mill workers, and ore transporters.

Since the Program began receiving claims in 1992, 27,492 claims have been filed and more than \$1.2 billion has been awarded to 18,885 claimants (as of January 6, 2008). The vast majority of claims are filed by people who live in the Four Corners region – Utah, Colorado, New Mexico, and Arizona. This area had the greatest concentration of uranium ore, and both the mining and production industries were centered there. The "downwind" regions, counties in Nevada, Utah, and Arizona, account for thousands of claims in connection with the fallout from above-ground nuclear weapons testing.

## CIVIL DIVISION RECA Claims Received by State (as of January 6, 2008)



Since its inception, various groups have sought to pressure Congress and the Executive Branch to expand or otherwise change the scope of the Program. In July 2000, RECA Amendments extended compensation to new categories of beneficiaries, added compensable diseases, expanded both the years and geographic areas covered, and lowered the exposure level that miners must demonstrate to receive compensation. These statutory changes caused an influx of new claim filings and a substantial increase in awards.

A National Academy of Sciences 2005 study recommended an overhaul of the Program that would base compensation on an exposure dose assessment for all victims regardless of geographic region. Such changes would require legislative amendments to the current statute. In this case, the claims examination process would dramatically expand and change. Bills were also introduced in this Congress to include Idaho, Montana, and Guam as covered downwind areas.

In FY 2006, the RECA Program was evaluated with OMB's Program Assessment Rating Tool. The Program received a rating of "Adequate," and is working to implement the improvement actions recommended by OMB. For more information, see page 34.

## Office of Management Programs

The workload of the Civil Division is as broad and diverse as the activities of the 200-plus federal agencies it represents. In addition to its role in defending and promoting the laws, policies, and programs of the United States, the Division protects the public fisc. Key to ensuring the Division's continued success in these matters is responsive management capable of providing executive leadership and promoting performance and fiscal responsibility. The Office of Management Programs (OMP) serves this purpose. OMP is comprised of five administrative offices, which contribute to the effective management of the Division.

### Office of Planning, Budget, and Evaluation

As the largest litigating division of the Department of Justice, the Civil Division is responsible for processing the largest number and value of financial transactions in the General Legal Activities appropriation. The Office of Planning, Budget, and Evaluation (OPBE) effectively and efficiently allocates resources according to enacted appropriations and agency reimbursements. In October 2007, the Civil Division successfully transitioned to the Department-wide Consolidated Debt Collection System. Within OPBE is the Communications Unit, which provides a service to the general public by coordinating responses to approximately 2,000 congressional and public inquiries each year.

### Office of Litigation Support

The most direct way OMP promotes performance is through its Automated Litigation Support (ALS) program. This program is run by the Office of Litigation Support (OLS) through large contracts for support activities. The ALS program provides a reliable, efficient, and secure means of converting millions of pages of unorganized paper and electronic evidence into fully searchable imaged-enabled databases available to attorneys on their desktops or while they are traveling. For example, the photo to the right shows just a small number of the boxes of paper related to the Hurricane Katrina litigation. Other critical benefits of the ALS program include the ability to quickly engage qualified subject matter consultants, IT specialists, paralegals, and trial presentation consultants, who are essential to the successful handling of the Civil Division's highest-stakes cases. OLS has provided indispensable support to the Division's largest defensive cases, including *Winstar*, Spent Nuclear Fuel, and Hurricane Katrina, as well as to major affirmative matters, such as the Pharmaceutical fraud cases.



### Office of Policy and Management Operations

The Office of Policy and Management Operations (OPMO) manages the Justice Consolidated Network (JCON) office automation system. JCON provides Civil Division staff with computer workstations, printers, scanners, and network equipment, which allow access to e-mail, document storage, office application software, legal research applications, such as Westlaw,

Lexis/Nexis, and the Internet. The Civil Division's centralized records management staff manages the creation, maintenance, retrieval, and lawful disposition of all the Division's official litigation case files. These amount to almost 259,000 file sections for active cases and more than 1,646,000 file sections for cases closed over the past 30 years.

### **Office of Administration**

Responsive administrative support is just as crucial as litigation and technological support. The Office of Administration (OA) provides many services to the Civil Division, including recruitment, hiring, employee assistance, incentives, training, labor relations, procurement, facilities management, security, and providing office furniture, equipment, and supplies.

The Office of Administration assisted the Department in acquiring replacement office space and then planned a major move of 300 employees in 2007. The new space will be less expensive, more secure, and closer to other Division facilities than that being vacated. OA's endeavors have surely played a role in the Civil Division ranking 13 out of 222 agency subcomponents in the "Best Places to Work in the Federal Government 2007" rankings.<sup>2</sup>

### **Office of Management Information**

Successful management of the Civil Division's ever-expanding caseload is essential to ensuring efficiency in all stages of litigation. The Office of Management Information (OMI) maintains CASES, the Civil Division's automated case information tracking system, which contains the basic data for over 700,000 open and closed cases. Attorneys can access CASES directly from their desktop computers to obtain case-related information and enter case-related time. Managers can search the database or generate reports developed to their specifications and available on the Division's intranet. Such information is useful in monitoring caseload activity and time expenditures, tracking litigation histories, analyzing caseload trends, and evaluating future resource requirements. OMI is also participating in the development and implementation of the Department-wide Litigation Case Management System (LCMS). The Division is expected to transition to LCMS in late FY 2009.

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<sup>2</sup> The Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation using data from the Office of Personnel Management's Federal Human Capital Survey, [bestplacestowork.org/BPTW/rankings](http://bestplacestowork.org/BPTW/rankings).

**PERFORMANCE AND RESOURCES TABLE**

**Decision Unit: Department of Justice – Civil Division – Legal Representation**

**DOJ Strategic Goal II: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People.**

**Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.**

WORKLOAD/ RESOURCES		Final Target		Actual		FY 2008 Enacted		Changes		Requested (Total)	
		FY 2007		FY 2007		FY 2008 Enacted		Current Services Adjustments and FY 2009 Program Changes		FY 2009 Request	
<b>Workload</b>	1. Number of cases pending beginning of year	39,383	38,803	41,117	N/A	39,910					
	2. Number of cases received during the year	21,256	17,929	21,859	N/A	20,309					
	3. Total workload	60,639	56,732	62,976	N/A	60,219					
<b>Total Costs and FTE</b> Includes \$3,400,000 for administrative expenses associated with the RECA Program in FY 2007  (Reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>	<b>FTE</b>	<b>\$000</b>
		1,187	\$208,311 [\$76,721]	1,187	\$208,311 [\$93,564]	1,253	\$250,114 [\$102,444]	79	\$20,317 [(\$35,190)]	1,378	\$270,431 [\$67,254]
<b>TYPE/ Strategic Objective</b>	<b>PERFORMANCE</b>	<b>FY 2007</b>		<b>FY 2007</b>		<b>FY 2008 Enacted</b>		<b>Current Services Adjustments and FY 2009 Program Changes</b>		<b>FY 2009 Request</b>	
<b>Output</b>	1. Number of cases terminated during the year	18,061	15,615	23,066	N/A	17,119					
<b>Civil Division Performance Measures (Excludes VICP and RECA)</b>											
<b>Outcome</b>	2. Percent of civil cases favorably resolved	80%	89%	80%	N/A	80%					
	3. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%	91%	80%	N/A	80%					
	4. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%	68%	60%	N/A	60%					
	5. Percent of favorable resolutions in non-monetary trial cases	80%	78%	80%	N/A	80%					
	6. Percent of favorable resolutions in non-monetary appellate cases	85%	87%	85%	N/A	85%					
<b>Efficiency</b>	7. Ratio of dollars defeated and recovered to dollars obligated for litigation	\$62	\$49	\$42	N/A	\$43					

**PERFORMANCE AND RESOURCES TABLE (CONTINUED)**

		<b>Final Target</b>	<b>Actual</b>		<b>Changes</b>	<b>Requested (Total)</b>
<b>TYPE/ Strategic Objective</b>	<b>PERFORMANCE</b>	<b>FY 2007</b>	<b>FY 2007</b>	<b>FY 2008 Enacted</b>	<b>Current Services Adjustments and FY 2009 Program Changes</b>	<b>FY 2009 Request</b>
<b>Vaccine Injury Compensation Program</b>						
<b>Output</b>	8. Percentage of cases where the deadline for filing the government's response to Petitioner's complaint (the Rule (4b) report) is met once the case has been deemed complete	83%	89%	86%	N/A	86%
	9. Median time to process an award for damages (in days)	485	483	475	N/A	465
<b>Outcome</b>	10. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	0%	0%	0%	N/A	0%
	11. Average claim processing time (in days)	1,213	1,337	1,433	N/A	1,653
<b>Efficiency</b>	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	92%	96%	92%	N/A	92%
<b>Radiation Exposure Compensation Program</b>						
<b>Output</b>	13. Reduce backlog of pending claims by 60% by FY 2011	(20%) 1,617 claims	(60%) 807 claims	(23%) 619 claims	N/A	(11%) 553 claims
	14. Reduce average claim processing time to 200 days by FY 2011	277	298	258	N/A	239
	15. Percentage of claims paid within six weeks of Program receipt of acceptance form	75%	91%	80%	N/A	85%
	16. Percentage of claims appeals adjudicated within 90 days of filing administrative appeal	88%	97%	90%	N/A	95%
<b>Efficiency</b>	17. Percentage of claims adjudicated within 12 months or less (RECA)	71%	71%	71%	N/A	75%

## DATA DEFINITION, VALIDATION, VERIFICATION, AND LIMITATIONS

### DATA DEFINITION, VALIDATION, VERIFICATION, AND LIMITATIONS

- **All Workload and Performance Indicators:** The data source for all indicators is CASES, the Civil Division's fully automated case management system. Quality assurance efforts include: regular interviews with attorneys to review data listings for each case; input screens programmed to preclude the entry of incorrect data; exception reports which list data that are questionable or inconsistent; attorney manager review of numerous monthly reports for data completeness and accuracy; and verification of representative data samples by an independent contractor. Despite these measures, some data limitations do exist. Most significantly, incomplete data can cause the system to under-report case terminations and attorney time. Some performance successes can be attributed to litigation where the United States Attorneys' Offices were involved.
- **Performance Indicators 2, 5, and 6:** Favorable resolutions include court judgments in favor of the government, as well as settlements.
- **All Workload and Performance Indicators:** All workload actuals and workload estimates exclude more than 9,000 Harbor Maintenance Tax Cases, as well as over 489,000 Hurricane Katrina administrative claims. These cases have been removed to avoid skewing the data.

### ISSUES AFFECTING FY 2007 PERFORMANCE

- **Performance Indicator 1:** The number of cases terminated in FY 2007 was lower than expected due to the unpredictable nature of litigation. For example, the timing of judgments and other court decisions are up to the judge's discretion.
- **Performance Indicator 5:** In FY 2007, there was an unusually large number of unfavorable district court decisions in immigration cases. These cases are often very complex and hard-fought by the government.
- **Performance Indicator 11:** Longer processing times reflect the expectation that the 4,800 vaccine program cases currently pending in several omnibus proceedings will begin to be resolved in the coming years. As these cases are finally resolved, they will increase significantly the average processing time for all cases completed during these years.
- **Performance Indicator 14:** The RECA statute permits on-site participants sufficient time to elect whether or not to accept an award under RECA because if they accept the award they are ineligible to receive any payment or medical benefits under EEOICPA, even if they qualify. As a result, processing times for on-site participants have increased and the performance target was not met.

### ISSUES AFFECTING SELECTION OF FY 2008 AND FY 2009 ESTIMATES

- **Workload Indicators 1, 2, and 3:** The workload is measured by summing the number of cases pending at the beginning of the year and new cases that the Division receives. Because 89 percent of the Division's caseload is defensive, the size of the workload is externally driven. Between FY 2006 and FY 2009, the workload is expected to increase by 13 percent. This increase is primarily the result of pending immigration cases, as well as additional Hurricane Katrina-related cases and World Trade Center disaster site administrative claims, all of which are defensive and are beyond the Division's control.
- **Output Indicator 1:** The increase in estimated terminations is due to the expected resolution of thousands of Vieques administrative claims.
- **Performance Indicators 2 and 3:** Vaccine Injury Compensation Program cases are excluded from these measures.

**PERFORMANCE MEASURE TABLE**

**Decision Unit: Department of Justice – Civil Division – Legal Representation**

Performance Report and Performance Plan Targets		FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007		FY 2008	FY 2009
		Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
<b>Output</b>	1. Number of cases terminated during the year	9,902	12,231	12,154	15,101	15,727	13,585	18,061	15,615	23,066	17,119
<b>Civil Division Performance Measures (Excludes VICP and RECA)</b>											
<b>Outcome</b>	2. Percent of civil cases favorably resolved	93%	93%	94%	93%	90%	93%	80%	89%	80%	80%
	3. Percent of defensive cases in which at least 85 percent of the claim is defeated	84%	86%	89%	90%	90%	91%	80%	91%	80%	80%
	4. Percent of affirmative cases in which at least 85 percent of the claim is recovered	66%	64%	66%	65%	72%	72%	60%	68%	60%	60%
	5. Percent of favorable resolutions in non-monetary trial cases	80%	85%	86%	84%	89%	92%	80%	78%	80%	80%
	6. Percent of favorable resolutions in non-monetary appellate cases	89%	89%	92%	93%	91%	87%	85%	87%	85%	85%
<b>Efficiency</b>	7. Ratio of dollars defeated and recovered to dollars obligated for litigation	\$72	\$79	\$64	\$67	\$60	\$60	\$62	\$49	\$42	\$43
<b>Vaccine Injury Compensation Program</b>											
<b>Outcome</b>	8. Percentage of cases where the deadline for filing the government's response to petitioner's complaint (the Rule (4b) report) is met once the case has been deemed complete	N/A	N/A	N/A	75%	84%	82%	83%	89%	86%	86%
	9. Median time to process an award for damages (in days)	N/A	533	564.5	529.5	484	335	485	483	475	465
	10. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	N/A	0%	1.5%	0%	0%	0%	0%	0%	0%	0%

**PERFORMANCE MEASURE TABLE (CONTINUED)**

<b>Performance Report and Performance Plan Targets</b>		<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>		<b>FY 2008</b>	<b>FY 2009</b>
		<b>Actual</b>	<b>Target</b>	<b>Actual</b>	<b>Target</b>						
	11. Average claim processing time (in days)	N/A	995	1,021	738	894	834	1,213	1,337	1,433	1,653
<b>Efficiency</b>	12. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	N/A	80%	92%	80%	95%	98%	92%	96%	92%	92%
<b>Radiation Exposure Compensation Program</b>											
<b>Efficiency</b>	13. Reduce backlog of pending claims by 60% by FY 2011	N/A	N/A	N/A	N/A	2,021	.5% 2,032	(20%) 1,617	(60%) 807	(23%) 619	(11%) 553
	14. Reduce average claim processing time to 200 days by FY 2011	N/A	N/A	N/A	N/A	316	339	277	298	258	239
	15. Percentage of claims paid within six weeks of Program receipt of acceptance form	N/A	N/A	37%	51%	63%	71%	75%	91%	80%	85%
	17. Percentage of claims appeals adjudicated within 90 days of filing administrative appeal	N/A	N/A	N/A	77%	84%	100%	88%	97%	90%	95%
	18. Percentage of claims adjudicated within 12 months or less (RECA)	88%	64%	74%	55%	71%	66%	71%	71%	71%	75%

# Performance, Resources, and Strategies

## Performance Plan and Report for Outcomes

The data presented in the Performance and Resources Table demonstrate the Civil Division's consistent success in meeting performance targets in support of the Department's Strategic Objective 2.7 to "vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction." The following cases highlight how Civil has recently worked to protect the public fisc, defend United States policies, and enforce civil statutes.

Between FY 2003 and FY 2007, more than \$64 billion was saved as a result of the Civil Division's successful defense against unmeritorious claims. In FY 2007 alone, the Division defeated over \$10 billion in unmeritorious claims. Significant victories include the following:

- **Winstar** Of the 103 cases fully resolved to date, 75 resulted in zero damages paid to the plaintiff. For example, an appellate court reversed the trial court's judgment awarding damages of \$435,000,000 in *Long Island Savings Bank, FSB v. United States*. Long Island Savings Bank sued the government alleging breach of contract and related claims.

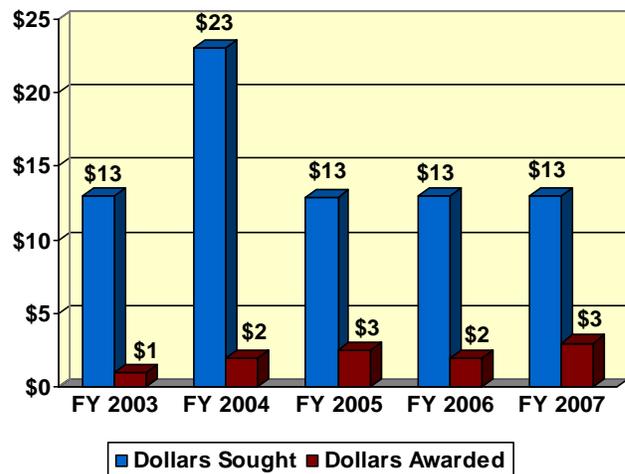
- **Defense Department**

- **Contracts**

- In 1991, the Navy terminated for default a multi-billion dollar contract with General Dynamics and the Boeing Co. for the development of an A-12 stealth fighter aircraft. The contractors challenged this termination. After initially prevailing before the trial court, the Federal Circuit overturned the \$1.2 billion award and remanded the case to trial in 1999. In 2001, the trial court held that the contract had been properly terminated for default. In May 2007, the Court of Federal Claims upheld this determination in favor of the government. If the judgment is affirmed on appeal, the contractors will be required to return to the government over \$2.6 billion, which includes original payments of \$1.35 billion, plus interest.

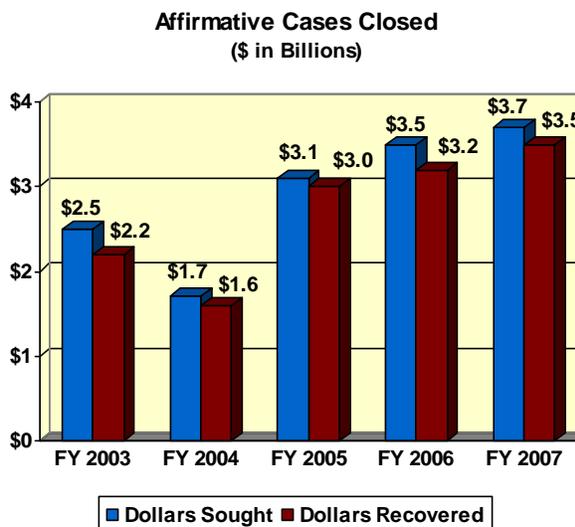
- **Jet Fuel Litigation** In September 2007, the Court of Appeals for the Federal Circuit rejected fuel suppliers' claims that Department of Defense jet fuel contracts were illegal because they violated the Federal Acquisition Regulation's economic price adjustment provision. This rejection prompted the contractors to enter into settlement agreements. Plaintiffs originally estimated their claims to be worth approximately \$3 billion.

**Defensive Cases Closed**  
(\$ in Billions)



Over the last five years, the Division has also made significant affirmative recoveries totaling \$13.5 billion. Most were the result of procurement and *qui tam* health care fraud matters. The following cases are particularly noteworthy:

- Health Care Fraud** In September 2007, Bristol-Myers Squibb Company (BMS) settled allegations involving its drug marketing and pricing practices by agreeing to pay the United States over \$515,000,000. The government alleged that BMS knowingly paid illegal remuneration to physicians and other health care providers to induce them to purchase BMS drugs, promoted the sale and use of Abilify for pediatric use and to treat dementia-related psychosis - both “off-label” uses, and set and maintained fraudulent and inflated prices for a wide assortment of oncology and generic drug products.



- Procurement Fraud** Sioux Manufacturing Corp. settled allegations of procurement fraud by agreeing to pay the United States \$1,900,000. The government accused the company of failing to follow specifications in making Kevlar, a protective material for military helmets and body armor used by the United States military. In a similar case, Hexcel Corporation agreed to pay the United States \$15,000,000 to resolve allegations related to its role in the manufacture and sale of defective Zylon bullet-proof vests to federal law enforcement agencies. The government alleged that Hexcel used Zylon fiber that it knew to be defective and degraded quickly when exposed to heat, light, and humidity.
- OxyContin Prosecution** The Purdue Frederick Company pled guilty to the felony of misbranding the painkiller OxyContin. Purdue’s top three executives pled guilty to misdemeanor misbranding of OxyContin from 1996 to 2001. The court accepted these pleas on July 20, 2007. The case, *United States v. Purdue Frederick Company, et al.*, involved Purdue’s misrepresentations to health care providers that OxyContin was less addictive, less subject to abuse and diversion, and less likely to cause withdrawal problems than other pain medications. In sentencing the defendants, the court imposed fines, penalties, and restitution payments totaling \$634,515,475 which will be paid to various entities, including \$276,000,000 forfeited to the United States and \$160,000,000 paid to federal and state government agencies to resolve liability for false claims made to Medicaid and other government healthcare programs.

The following cases are representative of the non-monetary suits handled by Division attorneys on a daily basis:

- **Designation of Foreign Terrorists and Their Supporters** In *Global Relief Foundation v. Snow*, a district court granted the government’s motion to dismiss, thereby upholding the designation of Global Relief Foundation as a “Specially Designated Global Terrorist.” The court found that the evidence showed that Global Relief Foundation “assisted in, sponsored, or provided financial, material or other technological support to, or in support of, other designated terrorists.” In addition, in *Humanitarian Law Project v. Mukasey*, the Court of Appeals for the Ninth Circuit upheld a federal statute that criminalizes the provision of material support or resources to designated terrorist groups if the donor knows of the group’s designation or that it engages in terrorism.
- **Challenge to United States Nuclear Weapons in Italy** Plaintiffs in this case, including an Italian anti-nuclear weapon organization, filed an action seeking a mandatory injunction requiring the United States to remove all nuclear weapons, if any, from its base in Aviano, Italy. The United States obtained a stay on all proceedings pending a determination by Italy’s Supreme Court of Cassation on whether or not Italian courts have jurisdiction to hear such a challenge. The United States disputed the Italian courts’ jurisdiction, asserting sovereign immunity under customary international law, as well as the rights and obligations of the United States and Italy under various treaties, including the NATO treaty.
- **Deceptive Advertising** On November 7, 2007, the court ruled in *United States v. Baby Tenda*, that a Baby Tenda crib/high chair distributor had falsely and repeatedly claimed in advertisements that the company’s sales shows were sponsored by the Consumer Product Safety Commission. The court found that such tactics violated the mail fraud statute civilly, and that the company was responsible. The court also criticized the company’s “deceitful and reprehensible” practice of luring potential customers to sales meetings by tricking them into believing they were coming to a government sponsored safety seminar.
- **Pharmaceutical Safety** In *Hi-Tech Pharmaceuticals v. Food and Drug Administration*, the court granted the United States’ motion for summary judgment against the pharmaceutical company on actions brought against Hi-Tech’s dietary supplements containing ephedrine alkaloids. The court also denied Hi-Tech’s motions for summary judgment and dismissed Hi-Tech’s complaint for declaratory relief against the Food and Drug Administration’s enforcement of its rule, which declares that dietary supplements which contain ephedrine are adulterated, and thus unlawful for commercial sale. The court ruled that it must defer to the agency’s regulation that the supplement is adulterated.

## **Strategies to Accomplish Outcomes**

The Civil Division has achieved extraordinary success despite internal and external challenges. This is due in large part to the use of the following innovative strategies:

- Retain cases that require coordination at the seat of government or subject matter expertise possessed by the Civil Division, as well as cases assigned to national and foreign courts.

- Improve information dissemination between the Civil Division and the United States Attorneys to promote and maintain uniform litigation positions.
- Work with client agencies, as well as law enforcement entities, such as the FBI, to ensure the best possible representation of the government's interests.
- Recruit and retain a high-caliber legal staff with expertise that will best promote successful litigation. Structure support staff to take full advantage of new technologies that promote efficiency and productivity.
- Maximize resources by improving cash management and utilizing authority to obtain reimbursements. Develop new alternative funding sources.
- Invest in new technologies and litigation support services such as ALS to maximize productivity, meet court mandates, and prevail on behalf of the government.

## Results of the Program Assessment Rating Tool (PART) Reviews

**Civil Division** During FY 2005, the Civil Division was assessed through OMB's Program Assessment Rating Tool (PART) along with five other litigating components (ATR, CRM, CRT, ENRD, and TAX), collectively named the General Legal Activities Program (GLA or the Program). At the end of the assessment, the Program received a rating of "Effective."<sup>3</sup> This is the highest rating a program can receive. Programs rated Effective set ambitious goals, achieve results, are well-managed, and improve efficiency. Other findings showed that:

- The Program effectively achieves its goal of resolving cases in favor of the government. Favorable resolutions, in turn, punish and deter violations of the law; ensure the integrity of Federal laws and programs; and prevent the government from losing money through unfavorable settlements or judgments.
- The Program collaborates effectively with its partners, notably the U.S. Attorneys' Offices. The two programs work closely to share expertise, make referrals, and designate cases for prosecution, while minimizing any overlap of responsibilities.
- The Program exhibits good management practices. This includes strong financial management, collecting and using performance information to make decisions, and holding managers accountable for program performance.

<sup>3</sup> Programs undergoing the PART receive one of five ratings: Effective, Moderately Effective, Adequate, Ineffective, or Results Not Demonstrated.

Additionally, to exhibit continual improvement of its practices, the GLA components have taken steps toward completing the follow-up actions recommended by OMB:

- Implement a plan to conduct an independent evaluation.
- Establish leadership training and mentoring program to continue improving the quality of program management.
- Work with the Department's Chief Information Officer to evaluate and purchase litigation software that will improve productivity and efficiency.

**Vaccine Injury Compensation Program** During FY 2005, the Departments of Justice and Health and Human Services were evaluated through OMB's PART on their respective roles in administering the Vaccine Injury Compensation Program (the Program). The Program received a rating of "Adequate." This rating describes a program that needs to set more ambitious goals, achieve better results, improve accountability or strengthen its management practices.

OMB's findings include the following:

- DOJ and HHS effectively collaborate to administer the Program jointly. The two agencies have a good working relationship and coordinate well with one another and with the judges who adjudicate the claims.
- The Program has made progress in achieving its annual performance goals, but its performance on long-term goals has been inconsistent. In particular, the Program has experienced mixed results in ensuring that all eligible claimants are compensated and reducing the amount of time needed to process a claim.
- The Program's design contains flaws that hinder its ability to satisfy both claimants and vaccine manufacturers. Some of the design-related problems include loopholes allowing circumvention of the Program, extensive delays in the processing of claims, and a large balance in the Program's Trust Fund that remains unspent.

DOJ and HHS will take the following actions to improve the performance of the Program:

- Seek an independent evaluation to assess the Program's effectiveness, impact, and design.
- Improve the way the Program projects its financial liabilities in future years.
- Reduce claims processing time by increasing the use of electronic file sharing between agencies, expert witnesses, and other parties.

**Radiation Exposure Compensation Program** During FY 2006, the Radiation Exposure Compensation Program (the Program) was evaluated with OMB's PART assessment. The Program received a rating of "Adequate."

OMB's findings include the following:

- The Program has developed ambitious annual and long-term goals focusing on outcomes that meaningfully reflect the purpose of the Program. However, the Program must ensure that partners are committed to achieving annual and long term goals.
- The Program's statutory scheme contains flaws with respect to some of its claimant categories. Although the statute is founded on the scientifically-based association between exposure and illness for occupationally exposed uranium workers, the same is not true for the other claimant categories.

DOJ is taking the following actions to improve the performance of the Program:

- Ensure Program partners are expressly committed to achieving the stated annual and long-term performance goals of the Program.
- Develop a plan to tie resources to specific performance measures.
- Monitor the activities of the National Academy of Sciences and like organizations that are studying the Act's eligibility criteria.

## **E-Government Initiatives**

The Justice Department is fully committed to the President’s Management Agenda (PMA) and the E-Government initiatives that are integral to achieving the objectives of the PMA. The E-Government initiatives serve citizens, business, and federal employees by delivering high quality services more efficiently at a lower price. The Department is in varying stages of implementing E-Government solutions and services including initiatives focused on integrating government wide transactions, processes, standards adoption, and consolidation of administrative systems that are necessary tools for agency administration, but are not core to DOJ’s mission. To ensure that DOJ obtains value from the various initiatives, the Department actively participates in the governance bodies that direct the initiatives and we communicate regularly with the other federal agencies that are serving as the “Managing Partners” to ensure that the initiatives meet the needs of the Department and its customers. The Department believes that working with other agencies to implement common or consolidated solutions will help DOJ to reduce the funding requirements for administrative and public-facing systems, thereby allowing DOJ to focus more of its scarce resources on higher priority, mission related needs. DOJ’s modest contributions to the Administration’s E-Government projects will facilitate achievement of this objective.

### **A. Funding and Costs**

The Department of Justice participates in the following E-Government initiatives and Lines of Business:

Business Gateway	E-Travel	Integrated Acquisition Environment	Case Management LoB
Disaster Assistance Improvement Plan	Federal Asset Sales	IAE - Loans & Grants - Dunn & Bradstreet	Geospatial LoB
Disaster Assist. Improvement Plan - Capacity Surge	Geospatial One-Stop	Financial Mgmt. Consolidated LoB	Budget Formulation and Execution LoB
E-Authentication	GovBenefits.gov	Human Resources LoB	IT Infrastructure LoB
E-Rulemaking	Grants.gov	Grants Management LoB	

The Department of Justice E-Government expenses – i.e. DOJ’s share of E-Gov initiatives managed by other federal agencies – are paid for from the Department’s Working Capital Fund (WCF). These costs, along with other internal E-Government related expenses (oversight and administrative expenses such as salaries, rent, etc.) are reimbursed by DOJ components to the WCF. The Civil Division’s reimbursement amount is based on use of the system. The table below identifies the Civil Division’s actual or planned reimbursement to the Department’s Working Capital Fund. As such, the Division’s E-Government reimbursement to the WCF is \$250,000 for FY 2008.

### **B. Benefits**

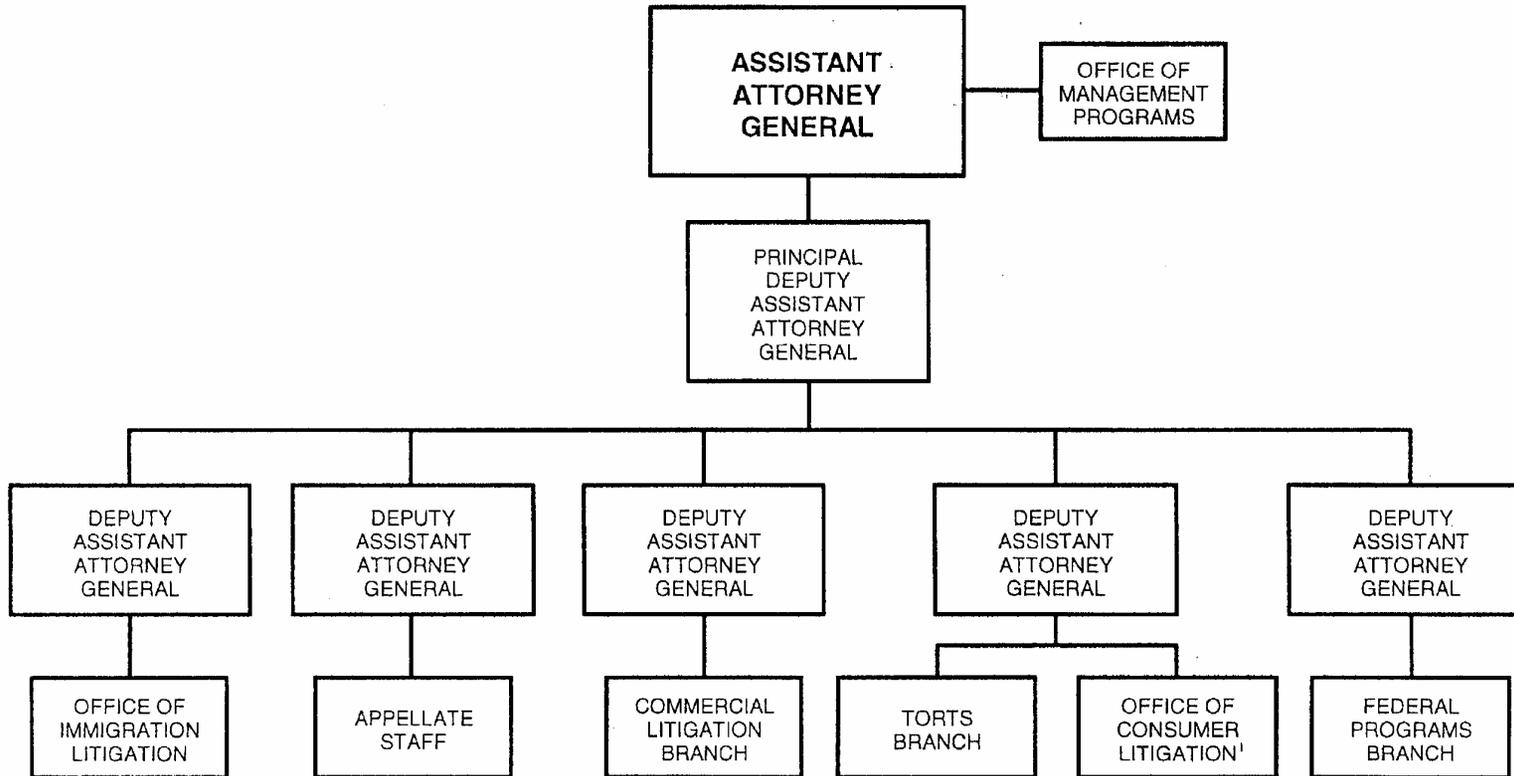
Many of these initiatives have not yet been implemented. As the Division completes migrations to common solutions provided by an E-Government or Line of Business initiative, it may realize

cost savings or avoidance through retirement or replacement of legacy systems and/or decreased operational costs. The table below represents only those E-Government initiatives and Lines of Businesses where the Civil Division may realize benefits in FY 2008 and FY 2009.

<b>E-Gov Initiative</b>	<b>FY 2008 Benefits</b>	<b>FY 2009 Anticipated Benefits</b>	<b>Comments</b>
E-Rulemaking	TBD	TBD	Not yet implemented
E-Travel	TBD	TBD	Only partially implemented, savings not yet quantified
Financial Mgmt. Consolidated LoB	TBD	TBD	Not yet implemented
Human Resource LoB	0	0	Not expected to enter the implementation phase until after FY 2009
Case Management LoB	TBD	TBD	Not expected to transition to this system until late FY 2009
Budget Formulation and Execution LoB	TBD	TBD	Not expected to implement this system until after FY 2009

A: Organizational Chart

CIVIL DIVISION



Approved by:  Date: August 5, 2004  
JOHN ASHCROFT  
Attorney General

**B: Summary of Requirements**

**Summary of Requirements**  
Civil Division  
Salaries and Expenses  
(Dollars in Thousands)

	FY 2009 Request		
	Perm. Pos.	FTE	Amount
<b>FY 2007 Enacted</b>	1,149	1,146	\$208,311
<b>FY 2008 Enacted</b>	1,338	1,253	250,114
<b>Adjustments to Base</b>			
Increases:			
2009 pay raise (2.9%)	0	0	3,211
2008 pay raise annualization (3.5%)	0	0	1,136
Annualization of 2008 positions (FTE)	0	110	0
Annualization of 2008 positions (dollars)	0	0	19,908
Retirement	0	0	116
Health Insurance	0	0	650
Employment Compensation Fund	0	0	6
General Services Administration (GSA) Rent	0	0	(116)
Moves (Lease Expirations)	0	0	(2,644)
DHS Security Charges	0	0	474
Postage	0	0	14
Government Printing Office (GPO)	0	0	44
JUTNet	0	0	623
Overseas Capital Security Cost Sharing	0	0	11
Subtotal Increases	0	110	23,433
Decreases:			
Changes in Compensable Days	0	0	(579)
Non-recrural of FY 2008 Personnel Increases	0	(21)	(2,537)
Unfunded FTE	0	(10)	0
Subtotal Decreases	0	(31)	(3,116)
Total Adjustments to Base	0	79	20,317
<b>FY 2009 Current Services</b>	<b>1,338</b>	<b>1,332</b>	<b>270,431</b>
<b>FY 2009 Total Request</b>	<b>1,338</b>	<b>1,332</b>	<b>270,431</b>
FY 2008 - 2009 Total Change	0	79	20,317

**Summary of Requirements**  
 Civil Divison  
 Salaries and Expenses  
 (Dollars in Thousands)

Estimates by budget activity	FY 2007 Enacted			FY 2008 Enacted			FY 2009 Adjustments to Base and Technical Adjustments			FY 2009 Current Services			FY 2009 Increases			FY 2009 Offsets			FY 2009 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Legal Representation	1,149	1,146	\$208,311	1,338	1,253	\$250,114	0	79	\$20,317	1,338	1,332	\$270,431	0	0	0	0	0	0	1,338	1,332	\$270,431
<b>Total</b>	<b>1,149</b>	<b>1,146</b>	<b>208,311</b>	<b>1,338</b>	<b>1,253</b>	<b>250,114</b>	<b>0</b>	<b>79</b>	<b>20,317</b>	<b>1,338</b>	<b>1,332</b>	<b>270,431</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,338</b>	<b>1,332</b>	<b>270,431</b>
Reimbursable FTE		41			41			0			41			0			0				41
Total FTE		1,187			1,294			79			1,373			0			0				1,373
Other FTE:																					
Overtime		8			8			0			8			0			0				8
Total Comp. FTE		1,195			1,302			79			1,381			0			0				1,381

Note: The total number of reimbursable FTE reflected in Exhibit B, Summary of Requirements, differs from what is in the FY 2009 President's Budget Appendix Program and Financial Schedule, because CIV's reimbursable partners decreased reimbursable FTE after the MAX database was finalized. Exhibit H, Summary of Reimbursable Resources also reflects these decreases.

D: Resources by DOJ Strategic Goal and Strategic Objective

**Resources by Department of Justice Strategic Goal/Objective**  
**Civil Division**  
(Dollars in Thousands)

Strategic Goal and Strategic Objective	FY 2007 Enacted		FY 2008 Enacted		FY 2009 Current Services		FY 2009				FY 2009 Request	
	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Increases		Offsets		Direct, Reimb. Other FTE	Direct Amount \$000s
							Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s		
<b>Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People</b> 2.7 Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction	1,187	\$208,311	1,294	\$250,114	1,373	\$270,431	0	0	0	0	1,373	\$270,431
<b>Subtotal, Goal 2</b>	<b>1,187</b>	<b>208,311</b>	<b>1,294</b>	<b>250,114</b>	<b>1,373</b>	<b>270,431</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,373</b>	<b>270,431</b>
<b>GRAND TOTAL</b>	<b>1,187</b>	<b>208,311</b>	<b>1,294</b>	<b>250,114</b>	<b>1,373</b>	<b>270,431</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,373</b>	<b>270,431</b>

## E. Justification for Base Adjustments

### Justification for Base Adjustments Civil Division

#### Increases

2009 pay raise. This request provides for a proposed 2.9 percent pay raise to be effective in January of 2009. This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$3,211,000, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$2,529,000 for pay and \$682,000 for benefits).

Annualization of 2008 pay raise. This pay annualization represents first quarter amounts (October through December) of the 2008 pay increase of 3.5 percent included in the 2008 President's Budget. The amount requested \$1,136,000, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$894,000 for pay and \$242,000 for benefits).

Annualization of additional positions requested in 2008. This provides for the annualization of 221 additional positions requested in the 2008 President's budget. Annualization of new positions extends to 3 years to provide for entry level funding in the first year with a 2-year progression to the journeyman level. For 2008, this request includes a decrease of \$5,068,000 for one-time items associated with the increased positions, and an increase of \$24,976,000 for full-year costs associated with these additional positions, for a net increase of \$19,908,000

	2008 Increases (\$000)	Annualization Required for 2009 (\$000)
Annual salary rate of 221 new positions	\$21,834	\$16,049
Less lapse (50%)	(10,917)	0
Net Compensation	10,917	16,049
Other Personnel Compensation	23	245
Associated employee benefits	3,224	4,341
Travel	547	569
Transportation of Things	85	88
GSA Rent	0	2,066
Communications/Utilities	223	233
Printing/Reproduction	192	201
Other Contractual Services:		
25.2 Other Services	4,966	(2,596)
25.3 Purchase of Goods and Services from Government Accts.	1,231	(640)
Supplies and Materials	129	141
Equipment	942	(789)
<b>TOTAL COSTS SUBJECT TO ANNUALIZATION</b>	<b>22,479</b>	<b>19,908</b>

Retirement. Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on U.S. Department of Justice Agency estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 1.3 percent per year. The requested increase of \$116,000 is necessary to meet our increased retirement obligations as a result of this conversion.

Health Insurance: Effective January 2007, this component's contribution to Federal employees' health insurance premiums increased by 10.6 percent. Applied against the 2008 estimate of \$6,113,000, the additional amount required is \$650,000.

Employees Compensation Fund: The \$6,000 increase reflects payments to the Department of Labor for injury benefits paid in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.

General Services Administration (GSA) Rent. A funding decrease of \$116,000 is required for this account.

Moves (Lease Expirations). A funding decrease of \$2,644,000 for one-time lease expirations in FY 2008.

DHS Security Charges. The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$474,000 is required to meet our commitment to DHS. The costs associated with DHS security were derived through the use of an automated system, which uses the latest space inventory data. Rate increases expected in FY 2009 for Building Specific Security have been formulated based on DHS billing data. The increased rate for Basic Security costs for use in the FY 2009 budget process was provided by DHS.

Postage: Effective May 14, 2007, the Postage Service implemented a rate increase of 5.1 percent. This percentage was applied to the 2008 estimate of \$284,000 to arrive at an increase of \$14,000.

Government Printing Office (GPO): GOP provides an estimate rate increase of 4%. Funding of \$44,000 is required for this account.

JUTNet. The Justice United Telecommunications Network (JUTNet) is a new system will provide a more reliable, secure, and economic connectivity among the many local office automation networks deployed throughout the Department, as well as a trusted environment for information sharing with other government agencies and remote users, field agents, and traveling staff personnel. JUTNet will utilize uniform security, updated encryption protocols, and eliminate network inefficiencies existing with the current systems. Funding of \$623,000 is required for this account.

#### Overseas Capital Security Cost Sharing.

The Department of State is in the midst of a 14-year, \$17.5 billion embassy construction program, with a plan to build approximately 150 new diplomatic and consular compounds. State has proposed that costs be allocated through a Capital Security Cost Sharing Program in which each agency will contribute funding based on the number of positions that are authorized for overseas personnel. The total agency cost will be phased in over 5 years. The estimated cost to the Department, as provided by State, for FY 2008 is \$50,974,159. The Civil Division currently has 1 position overseas, and funding of \$11,000 is requested for this account.

#### Decreases

Changes in Compensable Days: The decrease costs of one compensable day in FY 2009 compared to FY 2008 is calculated by dividing the FY 2008 estimated personnel compensation \$120,160,000 and applicable benefits \$31,435,000 by 262 compensable days. The cost decrease of one compensable day is \$579,000.

Non-recurrence of FY 2008 Personnel Increases. A funding decrease of \$2,537,000 is required for this account.

**F: Crosswalk of 2007 Availability**

**Crosswalk of 2007 Availability**

Civil Division  
Salaries and Expenses  
(Dollars in Thousands)

Decision Unit	FY 2007 Enacted			Rescissions			Supplementals			Reprogrammings / Transfers			Carryover/ Recoveries			FY 2007 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Legal Representation	1,149	1,146	\$208,311	0	0	0	0	0	0	0	0	\$7,000	0	0	\$5,703	1,149	1,146	\$221,014
<b>TOTAL</b>	<b>1,149</b>	<b>1,146</b>	<b>208,311</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7,000</b>	<b>0</b>	<b>0</b>	<b>5,703</b>	<b>1,149</b>	<b>1,146</b>	<b>221,014</b>
Reimbursable FTE		41															41	
Total FTE		1,187			0			0			0			0			1,187	
Other FTE																		
Overtime		8			0			0			0			0			8	
Total Compensable FTE		1,195			0			0			0			0			1,195	

Reprogrammings/Transfers. Funds were transferred from the GLA No Year Account for automated litigation support.

Carryover/Recoveries. Funds were carried over from FY 2006 from the Emergency Supplemental Appropriations Act for Defense, The Global War on Terror, and Hurricane Recovery, and the GLA No Year Account. The Civil Division brought forward \$5,295,000 from funds provided in 2006 for Border Security and \$408,000 for the Violent Crime Reduction Program and Private Counsel.

**G: Crosswalk of 2008 Availability**

**Crosswalk of 2008 Availability**

Civil Division  
Salaries and Expenses  
(Dollars in Thousands)

Decision Unit	FY 2008 Enacted			Rescissions			Supplementals			Reprogrammings / Transfers			Carryover/ Recoveries			FY 2008 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Legal Representation	1,338	1,253	\$250,114	0	0	0	0	0	0	0	0	0	0	0	\$2,379	1,338	1,253	\$252,493
<b>TOTAL</b>	<b>1,338</b>	<b>1,253</b>	<b>250,114</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,379</b>	<b>1,338</b>	<b>1,253</b>	<b>252,493</b>
Reimbursable FTE		41																41
Total FTE		1,294			0			0			0			0				1,294
Other FTE																		
Overtime		8			0			0			0			0				8
Total Compensable FTE		1,302			0			0			0			0				1,302

Carryover/Recoveries. Funds were carried over from FY 2007 from the GLA No Year Account.

## H: Summary of Reimbursable Resources

### Summary of Reimbursable Resources

Civil Division  
Salaries and Expenses  
(Dollars in Thousands)

Collections by Source	FY 2007 Enacted			FY 2008 Planned			FY 2009 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Office of Debt Collection	0	0	\$13,588	0	0	\$11,416	0	0	\$10,649	0	0	(\$767)
Department of the Navy	0	0	1,028	0	0	2,000	0	0	1,000	0	0	(1,000)
Department of Treasury	0	0	16,768	0	0	12,000	0	0	11,545	0	0	(455)
Department of the Air Force	0	0	3,100	0	0	2,700	0	0	2,700	0	0	0
Department of Energy	0	0	15,849	0	0	15,000	0	0	10,000	0	0	(5,000)
Department of Treasury, Vaccine Injury Compensation	0	41	6,333	0	41	6,833	0	41	7,833	0	0	1,000
Department of Agriculture	0	0	518	0	0	2,400	0	0	1,520	0	0	(880)
Department of Interior	0	0	5,494	0	0	6,250	0	0	5,000	0	0	(1,250)
Antitrust Division	0	0	181	0	0	194	0	0	200	0	0	6
Health Care Fraud and Abuse Account	0	0	15,494	0	0	15,459	0	0	15,459	0	0	0
Federal Bureau of Investigation	0	0	3,000	0	0	900	0	0	900	0	0	0
Department of Labor	0	0	174	0	0	183	0	0	192	0	0	9
Department of Homeland Security	0	0	4,370	0	0	500	0	0	0	0	0	(500)
United States Marshals Service	0	0	120	0	0	150	0	0	0	0	0	(150)
Office of Legal Policy	0	0	93	0	0	96	0	0	0	0	0	(96)
NASA	0	0	209	0	0	0	0	0	0	0	0	0
Federal Trade Commission	0	0	10	0	0	0	0	0	0	0	0	0
Department of State	0	0	157	0	0	0	0	0	0	0	0	0
Corps of Engineers	0	0	6,111	0	0	25,351	0	0	0	0	0	(25,351)
Asset Forfeiture Staff	0	0	349	0	0	0	0	0	0	0	0	0
National Institute of Health	0	0	2	0	0	0	0	0	0	0	0	0
National Labor Relations Board	0	0	148	0	0	25	0	0	0	0	0	(25)
US Trustees	0	0	125	0	0	0	0	0	0	0	0	0
Mansfield Foundation	0	0	7	0	0	0	0	0	0	0	0	0
Architect of the Capitol	0	0	3	0	0	0	0	0	0	0	0	0
Office of Attorney Management	0	0	54	0	0	0	0	0	0	0	0	0
Comptroller of the Currency	0	0	0	0	0	30	0	0	0	0	0	(30)
Department of Veterans Affairs	0	0	0	0	0	950	0	0	0	0	0	(950)
Bureau of Reclamation	0	0	0	0	0	7	0	0	0	0	0	(7)
Office of the Assistant Attorney General	0	0	279	0	0	0	0	0	0	0	0	0
<b>Budgetary Resources:</b>	<b>0</b>	<b>41</b>	<b>93,564</b>	<b>0</b>	<b>41</b>	<b>102,444</b>	<b>0</b>	<b>41</b>	<b>66,998</b>	<b>0</b>	<b>0</b>	<b>(35,446)</b>

**I: Detail of Permanent Positions by Category**

**Detail of Permanent Positions by Category**  
Civil Division  
Salaries and Expenses

Category	FY 2007 Enacted		FY 2008 Enacted		ATBs	FY 2009 Request				
	Total Authorized	Total Reimbursable	Total Authorized	Total Reimbursable		Program Increases	Program Decreases	Total Pr. Changes	Total Authorized	Total Reimbursable
Attorneys (905)	789	0	957	0	0	0	0	0	957	0
Paralegals / Other Law (900-998)	69	0	79	0	0	0	0	0	79	0
Clerical and Office Services (300-399)	291	0	302	0	0	0	0	0	302	0
<b>Total</b>	<b>1,149</b>	<b>0</b>	<b>1,338</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,338</b>	<b>0</b>
Headquarters (Washington, D.C.)	1,109	0	1,298	0	0	0	0	0	1,298	0
U.S. Field	39	0	39	0	0	0	0	0	39	0
Foreign Field	1	0	1	0	0	0	0	0	1	0
<b>Total</b>	<b>1,149</b>	<b>0</b>	<b>1,338</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,338</b>	<b>0</b>

**K: Summary of Requirements by Grade**

**Summary of Requirements by Grade**

Civil Division  
Salaries and Expenses

Grades and Salary Ranges	FY 2007 Enacted		FY 2008 Enacted		FY 2009 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Executive Level IV, \$145,400	1		1		1		0	
SES, \$111,676 - \$168,000	37		37		37		0	
GS-15, \$110,363 - 143,471	610		593		593		0	
GS-14, \$93,822 - 121,967	109		297		297		0	
GS-13, \$79,397 - 103,220	64		62		62		0	
GS-12, \$66,767 - 86,801	39		38		38		0	
GS-11, \$55,706 - 72,421	63		60		60		0	
GS-10, 50,703 - 65,912	7		7		7		0	
GS-9, \$46,041 - 59,852	71		78		78		0	
GS-8, 41,686 - 54,194	30		30		30		0	
GS-7, \$37,640 - 48,933	99		116		116		0	
GS-6, \$33,872 - 44,032	9		9		9		0	
GS-5, \$30,386 - 39,501	8		8		8		0	
GS-4, \$27,159 - 35,303	1		1		1		0	
GS-3, \$24,194 - 31,451	1		1		1		0	
GS-2, \$22,174 - 27,901	0		0		0		0	
GS-1, \$19,722 - 24,664	0		0		0		0	
<b>Total, appropriated positions</b>	<b>1,149</b>		<b>1,338</b>		<b>1,338</b>		<b>0</b>	
<b>Average SES Salary</b>		<b>\$160,841</b>		<b>\$166,470</b>		<b>\$171,298</b>		
<b>Average GS Salary</b>		<b>\$99,912</b>		<b>\$103,111</b>		<b>\$106,407</b>		
<b>Average GS Grade</b>		<b>13</b>		<b>13</b>		<b>13</b>		

## L: Summary of Requirements by Object Class

### Summary of Requirements by Object Class

Civil Division  
Salaries and Expenses  
(Dollars in Thousands)

Object Classes	FY 2007 Actuals		FY 2008 Enacted		FY 2009 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Direct FTE & personnel compensation	979	\$91,330	1,185	\$115,680	1,264	\$132,511	79	\$16,831
11.3 Other than full-time permanent	100	11,646	68	4,948	68	5,029	0	81
11.5 Total, Other personnel compensation	5	2,465	8	2,152	8	2,466	0	314
<i>Overtime</i>	5	402	8	420	8	495	0	75
<i>Other Compensation</i>	0	2,063	0	1,732	0	1,971	0	239
11.8 Special personal services payments	0	3,674	0	106	0	106	0	0
Total	1,084	109,115	1,261	122,886	1,340	140,112	79	17,226
Other Object Classes:								
12.0 Personnel benefits		25,467		30,763		36,175		5,412
13.0 Benefits to former personnel		14		14		14		0
21.0 Travel and transportation of persons		4,093		4,974		5,543		569
22.0 Transportation of things		673		830		918		88
23.1 GSA rent		25,279		27,507		29,437		1,930
23.2 Moving/Lease Expirations/Contract Parking		519		714		732		18
23.3 Comm., util., & other misc. charges		2,196		2,655		2,902		247
24.0 Printing and reproduction		1,556		1,921		2,166		245
25.1 Advisory and assistance services		1,853		1,896		1,945		49
25.2 Other services		32,052		43,607		36,412		(7,195)
25.3 Purchases of goods & services from Government accounts (Antennas, DHS Sec. Etc..)		7,526		9,056		9,039		(17)
25.4 Operation and maintenance of facilities		4		4		4		0
25.6 Medical Care		77		85		87		2
25.7 Operation and maintenance of equipment		417		428		450		22
26.0 Supplies and materials		1,451		1,731		1,872		141
31.0 Equipment		3,683		3,412		2,623		(789)
42.0 Insurance Claims and Indemnities		109		10		0		(10)
<b>Total obligations</b>		<b>216,084</b>		<b>252,493</b>		<b>270,431</b>		<b>17,938</b>
Unobligated balance, start of year		(5,703)		(2,379)		0		
Transfers from other accounts		(7,000)		0		0		
Unobligated balance, expiring		2,571		0		0		
Unobligated balance, end of year		2,379		0		0		
<b>Total DIRECT requirements</b>		<b>208,331</b>		<b>250,114</b>		<b>270,431</b>		
Reimbursable FTE:								
Full-time permanent	29	0	41	0	41	0	0	0
23.1 GSA rent (Reimbursable)		2,131		2,195		2,260		65
25.3 DHS Security (Reimbursable)		35		36		37		1