

***FY 2017
PERFORMANCE
BUDGET***

*Office of Legal Counsel
Congressional Submission*



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I. Overview for the Office of Legal Counsel

Introduction

In FY 2017, the Office of Legal Counsel (OLC) requests a total of \$8,015,000, 33 positions (of which 27 are attorneys), and 33 FTEs.

With the requested FY 2017 resources, OLC will be able to continue to provide top-quality legal advice on matters related to national security, civil rights, crime fighting programs, and legislative and regulatory initiatives, as well as a range of other legal issues concerning constitutional, statutory, and regulatory authority. Although specifically included only under Strategic Goal II (“Enforce Federal Laws and Represent the Rights and Interests of the American People”), OLC is involved in every aspect of the Department’s Strategic Plan. OLC has issued opinions or otherwise rendered legal advice touching on virtually every aspect of the Department’s overall work and mission.

Issues, Outcomes and Strategies

OLC’s mission as the Department confronts national security and intelligence challenges, continues vigorous federal civil rights enforcement, and advises Executive Branch departments and agencies in promoting the recovery from the economic crisis.

OLC is headed by an Assistant Attorney General who is appointed by the President and confirmed by the Senate. The Office provides formal opinions and informal advice in response to requests from the Counsel to the President, the various Departments and Agencies of the Executive Branch, and offices within the Department, including the offices of the Attorney General and Deputy Attorney General. Such requests frequently deal with legal issues about which two or more agencies are in disagreement.

Because formal Attorney General Opinions, which OLC would draft, are so rare, requests for opinions typically result in the preparation of legal opinions signed by OLC’s Assistant Attorney General or one of the Office’s Deputies. Opinions are based upon the research of one or more of the Office’s staff attorneys and review by at least two Deputies. OLC has already published 50 of its opinions issued in this Administration. Additionally OLC provides informal legal advice on hundreds of matters each year.

The opinions and legal advice cover constitutional, statutory, and regulatory questions from a wide range of fields, including national security, criminal law, civil rights, fiscal law, and appointment and removal authorities. OLC gives critical advice on how the Executive Branch organizes itself and carries out its missions.

OLC also reviews hundreds of pieces of pending legislation annually for constitutionality and reviews all proposed Executive Orders and proclamations, as well as proposed regulations and Orders of the Attorney General, for form and legality. Finally, there continues to be an increase in congressional oversight of the activities of the Executive Branch. This in turn has resulted in a significant increase in this aspect of OLC’s separation of powers work, because OLC is the

principal office providing legal advice to the White House and Executive Branch agencies concerning their responses to congressional oversight.

Beginning in FY 2012, OLC has been working on and updating a series of Presidential Emergency Action Documents (PEADs), first prepared by OLC in 1989 and updated pursuant to presidential directive in 2008. PEADs are pre-coordinated legal documents designed to implement a Presidential decision or transmit a Presidential request when an emergency disrupts normal governmental or legislative processes. A PEAD may take the form of a Proclamation, Executive Order, or Message to Congress. The PEAD Portfolio as an entirety is classified Secret; however, after signature by the President, individual PEADs are unclassified. In coordination with the Office of Counsel to the President and the National Security Council Staff, and under presidential direction, OLC has begun a legal review of the PEADs, to ensure that each of the current 56 documents reflects current law and adequately addresses the emergencies for which it was prepared. OLC's detailed PEAD review involves original legal research, review of other agencies' legal work, and a substantial amount of legal writing and editing.

In recent years, OLC has been the subject of a large number of Freedom of Information Act requests and lawsuits, particularly concerning OLC's work in the national security area, but also including domestic affairs. This entails a significant commitment of time and effort from a team of attorneys and paralegals.

Since 1977, at the direction of the Attorney General, OLC has published selected formal opinions. Volumes covering the years 1977 through 2008 have already been issued in hardback, and preparations for additional volumes are in progress. In addition, OLC published a volume of opinions from the period 1939 until 1977, the first in a supplemental opinion series the Office intends to issue for opinions not published at the time of original issuance. Imaged copies of all these hardback opinions are available on OLC's website, and as an interim step, OLC has also published opinions from 2009 to present on its website <http://www.usdoj.gov/olc/opinions.htm> in memorandum form, pending issuance of those opinions in hardback. In addition, OLC has accelerated the timeliness by which it publishes opinions on its website. Work on this effort will continue into FY 2017.

DOJ Strategic Goal 2: Enforce Federal Laws and Represent the Rights and Interests of the American People (FY 2017 Request: \$8,015,000)

- Objective 2.6: Protect the federal fisc and defend the interests of the United States.

Performance Challenges

OLC's ability to accomplish its mission depends on its ability to devote the greatest resources possible to meet the demands of an externally-driven workload.

External Challenges: OLC generally does not initiate any programs, nor does it have control over the volume of its work. The work results from requests for opinions and legal advice from the Counsel to the President; general counsels of OMB and other Executive Office of the President components; general counsels of Executive Branch Departments and Agencies; and the Attorney General and other Department of Justice officials. The lack of control over this

externally-driven workload has been and is likely to remain a constant challenge to OLC's mission, and is inherent in all aspects of the Office's work, including reviewing legislation, testimony, and Presidential and Attorney General documents.

Internal Challenges: Because it is a relatively small component, representing only a single decision unit, OLC has little flexibility in responding to unexpected surges in workload, such as those created by national security matters and the financial crisis.

Environmental Accountability

In compliance with Executive Order 13423, OLC is striving to integrate environmental accountability into its strategic management plans with the inclusion of procurement governance on Sustainable Buildings, Energy Management, Transportation, Recycling, Water Management, Environmental Management Systems, Electronics Stewardship, and the reduction of Toxic and Hazardous Chemicals.

II. Summary of Program Changes

N/A

III. Appropriations Language and Analysis of Appropriations Language

N/A

IV. Program Activity Justification

A. Office of Legal Counsel

<i>Office of Legal Counsel</i>	Perm. Pos.	FTE	Amount
2015 Enacted	33	27	7,836
2016 Enacted	33	27	7,989
Adjustments to Base and Technical Adjustments	0	0	26
2017 Current Services	33	27	8,015
2017 Program Increases	0	0	0
2017 Program Offsets	0	0	0
2017 Request	33	27	8,015
Total Change 2016-2017			26

1. Program Description

Playing a major role in advising on intelligence and national security issues following September 11 events, OLC has continued to devote a significant portion of its resources to providing legal advice to the White House, the Attorney General, and other Executive Branch agencies in these areas, and this is not likely to change. The Office is also taxed by the demands placed upon it by handling the legal issues that have arisen in relation to pending legislation and regulatory initiatives, as well as the ongoing recovery from the financial crisis.

In addition to these responsibilities, OLC will continue its principal duty of assisting the Attorney General in his role as legal advisor to the President and Executive Branch agencies. OLC will also continue in FY 2017 to serve as arbiter of legal disputes within the Executive Branch, to provide general legal assistance to other components of the Department, including where litigation or proposed legislation raises constitutional issues or general issues of executive authority, and to review for form and legality all Executive Orders and Proclamations to be issued by the President, as well as all proposed Orders of the Attorney General and all regulations requiring Attorney General approval.

OLC's role in the Department's legislative program is substantial, and includes drafting extensive comments on pending legislation and testimony. OLC regularly receives legislation for review from both OMB and the Department's Office of Legislative Affairs, in addition to specific requests from other agencies and the White House; the volume is high and the deadlines usually urgent. OLC also occasionally assists in the drafting of legislation.

In addition, because of its expertise in certain areas, OLC has assumed a continuing advisory role to other Department components, including the Office of the Solicitor General, the National Security Division, and the litigating divisions, on issues relating to, among other things, constitutional rights, national security, and immigration matters.

2. Performance and Resource

PERFORMANCE AND RESOURCES TABLE											
Decision Unit: Office of Legal Counsel: 2.6 Protect the federal fisc and defend the interests of the United States.											
RESOURCES		Target		Estimate		Target		Changes		Requested (Total)	
		FY 2015		FY 2015		FY 2016		Current Services Adjustments and FY 2017 Program Changes		FY 2017 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		27	7,836	24	7,234	27	7,989		26	27	8,015
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE	FY 2015		FY 2015 (as of 3/31/15)		FY 2016		Current Services Adjustments and FY 2017 Program Changes		FY 2017 Request	
Program Activity		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		27	7,836	24	7,234	27	7,989		26	27	8,015
Performance Measure: Output	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch agencies		1700		1700		1700				1700
Performance Measure: Efficiency	Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President		190		190		190				190
Performance Measure: Outcome											

PERFORMANCE MEASURE TABLE

Decision Unit: Office of Legal Counsel

Performance Report and Performance Plan Targets		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015		FY 2016	FY 2017
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch	1700	1700	1700	1700	1700	1700	1700	1700
Performance Measure	Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President	180	190	190	190	190	190	190	190
Performance Measure									
Efficiency Measure									
OUTCOME Measure									

N/A = Data unavailable

* Denotes inclusion in the DOJ Annual Performance Plan

3. Performance, Resources, and Strategies

The Office of Legal Counsel represents a single decision unit. Given its primary mission (“assisting the Attorney General in his role as legal advisor to the President and Executive Branch agencies”), OLC is involved in every aspect of the Department’s Strategic Plan. OLC has issued opinions or otherwise rendered legal advice touching on virtually every aspect of the Department’s overall work and mission.

a. Performance Plan and Report for Outcomes

Because of the legal advisory nature of its mission and workload, OLC is not included for review in the Department’s Performance and Accountability Report (PAR). This budget submission is part of the Department’s Performance Plan since we are reporting targets through FY 2017. However, OLC does not have measures in the PAR.

b. Strategies to Accomplish Outcomes

Since September 11, 2001, OLC has had to realign its priorities in terms of workload and assignments in order to meet the variety of new challenges, while still endeavoring to meet its ongoing workload demands to the greatest extent possible with existing resources.

c. Priority Goals

OLC’s general goals for FY 2017 are as follows:

- Provide critical legal advice to the White House, the Attorney General, other components of DOJ, and other Executive Branch agencies
- Resolve intra-Executive Branch disputes over legal questions
- Advise on litigation or proposed legislation raising constitutional issues or other legal issues of general concern to the Executive Branch
- Approve for form and legality all Executive Orders, other Presidential documents, and Orders and regulations issued by the Attorney General.

V. Program Increases by Item: N/A

VI. Program Offsets by Item: N/A

IV. EXHIBITS