



# FY 2020 Performance Budget Congressional Submission

Office of Legal Counsel

## Table of Contents

	Page No.
<b>I. Overview.....</b>	<b>2</b>
<b>II. Summary of Program Changes .....</b>	<b>N/A</b>
<b>III. Appropriations Language and Analysis of Appropriations Language.....</b>	<b>3</b>
<b>IV. Program Activity Justification .....</b>	<b>4</b>
A. Office of Legal Counsel	
1. Program Description	
2. Performance and Resource Tables	
3. Performance, Resources, and Strategies	
<b>V. Program Increase by Item.....</b>	<b>N/A</b>
<b>VI. Program Offsets by Item.....</b>	<b>N/A</b>
<b>VII. Exhibits</b>	
A. Organizational Chart	
B. Summary of Requirements	
C. FY 2020 Program Increases/Offsets by Decision Unit	
D. Resources by DOJ Strategic Goal/Objective	
E. Justification for Technical and Base Adjustments	
F. Crosswalk of 2018 Availability	
G. Crosswalk of 2019 Availability	
H. Summary of Reimbursable Resources	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Changes	
K. Summary of Requirements by Object Class	
L. Status of Congressionally Requested Studies, Reports, and Evaluations	
M. Senior Executive Service Reporting (applies only to DEA and FBI)	

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

## **Introduction**

In FY 2020, the Office of Legal Counsel (OLC) requests a total of \$7,989,000, 32 positions (of which 26 are attorneys), and 32 FTEs.

With the requested FY 2020 resources, OLC will be able to continue to provide top-quality legal advice on matters related to national security, civil rights, crime fighting programs, and legislative and regulatory initiatives, as well as a range of other legal issues concerning constitutional, statutory, and regulatory authority. OLC has issued opinions or otherwise rendered legal advice touching on virtually every aspect of the Department's overall work and mission.

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

OLC's mission remains critical as the Department confronts national security and intelligence challenges and advises various Executive Branch departments and agencies about priorities of the new Administration.

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

OLC generally drafts any formal opinions to be signed by the Attorney General, but requests for opinions typically result in the preparation of legal opinions signed by OLC's Assistant Attorney General or one of the Office's Deputies. Opinions are based upon the research of one or more of the Office's staff attorneys and reviewed by at least two Deputies. Additionally OLC provides informal legal advice on hundreds of matters each year.

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

OLC also reviews hundreds of pieces of pending legislation annually for constitutionality and reviews for form and legality all proposed Executive Orders and substantive presidential proclamations and memoranda, as well as proposed regulations and Orders of the Attorney General, for form and legality. OLC is also the principal office providing legal advice to the White House Counsel and Executive Branch agencies concerning their responses to congressional oversight inquiries, which have increased in the last several years.

Since 1977, at the direction of the Attorney General, OLC has published selected formal opinions. Volumes covering the years 1977 through 2008 have already been issued, and

preparations for additional volumes are in progress. In addition, OLC published a volume of opinions from the period 1939 until 1977, the first in a supplemental opinion series the Office intends to issue for opinions not published at the time of original issuance. Imaged copies of all these previously published opinions are available on OLC's website, and as an interim step, OLC has also placed opinions from 2009 to present on its website <http://www.usdoj.gov/olc/opinions.htm> in memorandum form, pending issuance of those opinions in bound volumes. In addition, OLC has accelerated the speed which it publishes opinions on its website. Work on this effort will continue into FY 2020.

## **Performance Challenges**

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

**External Challenges:** OLC generally does not initiate any programs, nor does it have control over the volume of its work. The work results from requests for opinions and legal advice from the Counsel to the President; general counsels of OMB and other components of the Executive Office of the President; general counsels of other Executive Branch departments and agencies; and the Attorney General and other Department of Justice officials. The lack of control over this externally driven workload has been and is likely to remain a constant challenge to OLC's mission, and is inherent in all aspects of the Office's work, including reviewing legislation, testimony, and Presidential and Attorney General documents.

**Internal Challenges:** Because it is a relatively small component, representing only a single decision unit, OLC has little flexibility in responding to unexpected surges in workload, such as those created by national security matters and carrying out its critical functions of providing legal advice to the President, the Attorney General, other components in the Department of Justice, and other executive departments and agencies.

## **Environmental Accountability**

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

## **II. Summary of Program Changes**

N/A

### III. Appropriations Language and Analysis of Appropriations Language

General Legal Activities language is displayed in the GLA rollup budget submission.

### IV. Program Activity Justification

#### A. Office of Legal Counsel

<i>Office of Legal Counsel</i>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount</b>
2018 Enacted	32	29	7,989
2019 Continuing Resolution	32	32	7,989
Adjustments to Base and Technical Adjustments	0	0	0
2020 Current Services	32	32	7,989
2020 Program Increases	0	0	0
2020 Program Offsets	0	0	0
2020 Request	32	32	7,989
<b>Total Change 2019-2020</b>			<b>0</b>

#### 1. Program Description

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

In addition to these responsibilities, OLC will continue its principal duty of assisting the Attorney General in his role as legal adviser to the President and Executive Branch agencies. OLC will also continue in FY 2020 to serve as arbiter of legal disputes within the Executive Branch, to provide general legal assistance to other components of the Department, including where litigation or proposed legislation raises constitutional issues or general issues of executive authority, and to review for form and legality all Executive Orders and substantive Proclamations and Memoranda to be issued by the President, as well as all proposed Orders of the Attorney General and all regulations requiring Attorney General approval.

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

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

2. Performance and Resource

PERFORMANCE AND RESOURCES TABLE											
RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2018		FY 2018		FY 2019		Current Services Adjustments and FY 2020 Program Changes		FY 20120 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		32	7,989	29	7,863	32	7,989			32	7,989
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE	FY 2018		FY 2018		FY 2019		Current Services Adjustments and FY 2020 Program Changes		FY 2020 Request	
Program Activity		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		32	7,989	29	7,983	32	7,989			32	7,989
<b>Performance Measure: Output</b>	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch agencies		1700		1700		1700				1700
<b>Performance Measure: Efficiency</b>	Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President		190		190		190				190
<b>Performance Measure: Outcome</b>											

## **VII. EXHIBITS**