

OLC

FY 2015 PERFORMANCE BUDGET

Congressional Submission



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I. Overview for the Office of Legal Counsel

1. Introduction

In FY 2015, the Office of Legal Counsel (OLC) requests a total of \$7,742,000, 33 positions (of which 27 are attorneys), and 27 FTEs.

With the requested FY 2015 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, regulatory, and statutory 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.

2. Issues, Outcomes and Strategies

OLC’s mission remains highly critical and urgent 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 49 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 and statutory 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. OLC has been charged by the National Security Staff with conducting its current legal review of the PEADs, expected to be completed by June 2015, 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 2002 have already been issued in hardback and production of the volumes for 2003, 2004, and 2005 is in progress. In addition, OLC recently published a volume of opinions from the period 1939 until 1977, the first in a supplemental opinion series the Office intends to issue. As an interim step, OLC has also published opinions from 1992 to 2012 on its website <http://www.usdoj.gov/olc/opinions.htm>. In addition, OLC has accelerated the timeliness by which it publishes opinions on its website. The rate of publication has increased, and the time between opinion signing and publication has decreased. Work on this effort will continue into FY 2015.

DOJ Strategic Goal 2: Enforce Federal Laws and Represent the Rights and Interests of the American People (FY 2015 Request: \$7,742,000)

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

3. Performance Challenges

OLC's ability to accomplish its mission centers primarily on its ability to maximize resources 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 in 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.

4. 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
2013 Enacted with Rescissions and Sequester	29	25	6,783
2014 Enacted	33	27	7,400
Adjustments to Base and Technical Adjustments			342
2015 Current Services	29	22	7,742
2015 Program Increases			0
2015 Program Offsets			0
2015 Request	33	27	7,742
Total Change 2014-2015			342

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 2015 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 an on-going 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		Actual		Projected		Changes		Requested (Total)	
		FY 2013		FY 2013		FY 2014		Current Services Adjustments and FY 2015 Program Changes		FY 2015 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
		25	6,783	25	6,238	27	7,400	0	342	27	7,742
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE	FY 2013		FY 2013		FY 2014		Current Services Adjustments and FY 2015 Program Changes		FY 2015 Request	
Program Activity		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		25	6,783	25	6,238	27	7,400	0	342	27	7,742
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 2009	FY 2010	FY 2011	FY 2012	FY 2013		FY 2014	FY 2015
		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 15. 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 2015 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 whether litigation or proposed legislation raises 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

A: Organizational Chart

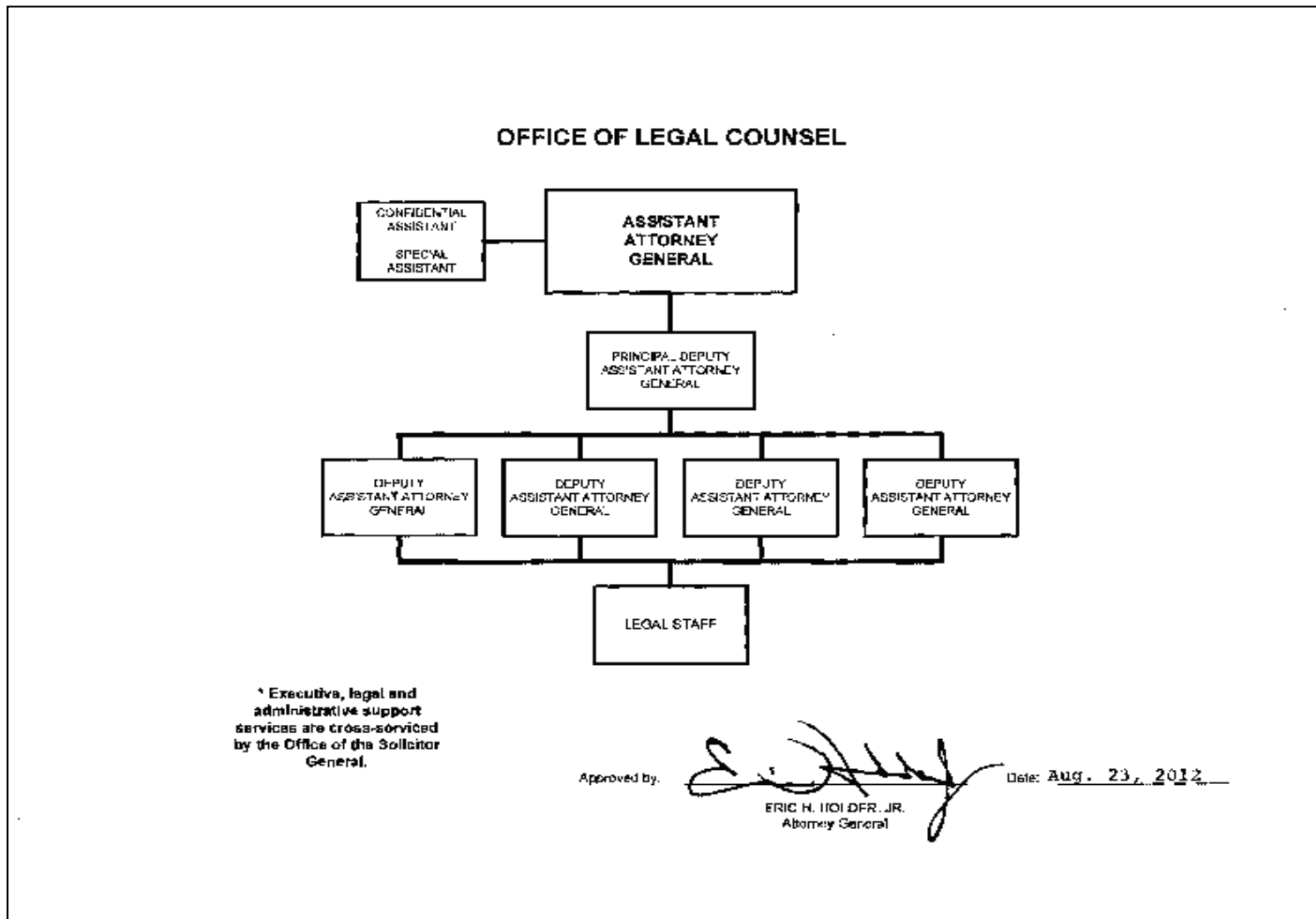


Exhibit A - Organizational Chart

B. Summary of Requirements

Summary of Requirements

Office of Legal Counsel
Salaries and Expenses
(Dollars in Thousands)

	FY 2015 Request		
	Direct Pos.	FTE	Amount
2013 Enacted	31	25	7,337
2013 Rescissions (1.877% & 0.2%)			-164
2013 Sequester Cut			-390
Total 2013 Enacted (Rescissions and Sequester)	31	25	6,783
2014 Enacted	2	2	7,400
Total 2014 Enacted	33	27	7,400
Base Adjustments			
Pay and Benefits	0	0	135
Domestic Rent and Facilities	0	0	207
Total Base Adjustments	0	0	342
2015 Current Services	33	27	7,742
2015 Total Request	33	27	7,742
2014 - 2015 Total Change	0	0	342

B. Summary of Requirements

Summary of Requirements

Office of Legal Counsel
Salaries and Expenses
(Dollars in Thousands)

Program Activity	2013 Enacted with Rescissions and Sequester			2014 Enacted			2015 Technical and Base Adjustments			2015 Current Services		
	Direct Pos.	Est. FTE	Amount	Direct Pos.	Est. FTE	Amount	Direct Pos.	Est. FTE	Amount	Direct Pos.	Est. FTE	Amount
Office of Legal Counsel	31	25	6,783	33	27	7,400	0	0	342	33	27	7,742
Total Direct	31	25	6,783	33	27	7,400	0	0	342	33	27	7,742
Balance Rescission			0			0			0			0
Total Direct with Rescission			6,783			7,400			342			7,742
Reimbursable FTE		0			0			0			0	
Total Direct and Reimb. FTE		25			27			0			27	
Other FTE:												
LEAP		0			0			0			0	
Overtime		0			0			0			0	
Grand Total, FTE		25			27			0			27	

Program Activity	2015 Increases			2015 Offsets			2015 Request		
	Direct Pos.	Est. FTE	Amount	Direct Pos.	Est. FTE	Amount	Direct Pos.	Est. FTE	Amount
Office of Legal Counsel	0	0	0	0	0	0	33	27	7,742
Total Direct	0	0	0	0	0	0	33	27	7,742
Balance Rescission			0			0			0
Total Direct with Rescission			0			0			7,742
Reimbursable FTE		0			0			0	
Total Direct and Reimb. FTE		0			0			27	
Other FTE:									
LEAP		0			0			0	
Overtime		0			0			0	
Grand Total, FTE		0			0			27	

D. Resources by DOJ Strategic Goal and Strategic Objective

Resources by Department of Justice Strategic Goal/Objective

Office of Legal Counsel
Salaries and Expenses
(Dollars in Thousands)

Strategic Goal and Strategic Objective	2013 Enacted with Rescissions and Sequester		2014 Enacted		2015 Current Services		2015 Increases		2015 Offsets		2015 Total Request	
	Direct/Reimb FTE	Direct Amount	Direct/Reimb FTE	Direct Amount	Direct/Reimb FTE	Direct Amount	Direct/Reimb FTE	Direct Amount	Direct/Reimb FTE	Direct Amount	Direct/Reimb FTE	Direct Amount
Goal 2 Prevent Crime, Protect the Rights of the American People, and enforce Federal Law												
2.6 Protect the federal fisc and defend the interests of the United States.	25	6,783	27	7,400	27	7,742	0	0	0	0	27	7,742
Subtotal, Goal 2	25	6,783	27	7,400	27	7,742	0	0	0	0	27	7,742
TOTAL	25	6,783	27	7,400	27	7,742	0	0	0	0	27	7,742

Note: Excludes Balance Rescission and/or Supplemental Appropriations.

E. Justification for Technical and Base Adjustments

Justifications for Technical and Base Adjustments

Office of Legal Counsel

Salaries and Expenses

(Dollars in Thousands)

	Direct Pos.	Estimate FTE	Amount
Pay and Benefits			
1 <u>2015 Pay Raise:</u> This request provides for a proposed 1 percent pay raise to be effective in January of 2015. The amount requested, \$36,000, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$27,000 for pay and \$9,000 for benefits).	0	0	36
2 <u>Annualization of 2014 Pay Raise:</u> This pay annualization represents first quarter amounts (October through December) of the 2014 pay increase of 1.0% included in the 2014 President's Budget. The amount requested \$14,000, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$10,500 for pay and \$3,500 for benefits).	0	0	14
3 <u>FERS Regular/Law Enforcement Retirement Contribution:</u> Effective October 1, 2014 (FY 2015), the new agency contribution rates of 13.2% (up from the current 11.9%, or an increase of 1.3%) and 28.8% for law enforcement personnel (up from the current 26.3%, or an increase of 2.5%). The amount requested, \$42,000, represents the funds needed to cover this increase.	0	0	42
4 <u>Health Insurance:</u> Effective January 2015, the component's contribution to Federal employees' health insurance decreased by 3.6 percent. Applied against the 2014 estimate of \$3,934, the amount increased by 39,000.	0	0	39
5 <u>Retirement:</u> 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 \$9,000 is necessary to meet our increased retirement obligations as a result of this conversion.	0	0	4
Subtotal, Pay and Benefits	0	0	135
Domestic Rent and Facilities			
1 <u>General Services Administration (GSA) Rent:</u> GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$207,000 is required to meet our commitment to GSA. The costs associated with GSA rent were derived through the use of an automated system, which uses the latest inventory data, including rate increases to be effective FY 2015 for each building currently occupied by Department of Justice components, as well as the costs of new space to be occupied. GSA provides data on the rate increases.	0	0	207
Subtotal, Domestic Rent and Facilities	0	0	207
Subtotal, Other Adjustments	0	0	0
TOTAL DIRECT TECHNICAL and BASE ADJUSTMENTS	0	0	342

F. Crosswalk of 2013 Availability

Crosswalk of 2013 Availability

Office of Legal Counsel
Salaries and Expenses
(Dollars in Thousands)

Program Activity	2013 Appropriation Enacted w/o Balance Rescission			Balance Rescission			Sequester			Reprogramming/ Transfers			Carryover	Recoveries/ Refunds	2013 Estimate		
	Direct Pos.	Estim. FTE	Amount	Direct Pos.	Estim. FTE	Amount	Direct Pos.	Estim. FTE	Amount	Direct Pos.	Estim. FTE	Amount	Amount	Amount	Direct Pos.	Estim. FTE	Amount
Office of Legal Counsel	31	25	7,173	0	0	0	0	0	-390	0	0	0	0	0	31	25	6,783
Total Direct	31	25	7,173	0	0	0	0	0	-390	0	0	0	0	0	31	25	6,783
Reimbursable FTE		0			0			0			0						0
Total Direct and Reimb. FTE		25			0			0			0						25
Other FTE:																	
LEAP		0			0			0			0						0
Overtime		0			0			0			0						0
Grand Total, FTE		25			0			0			0						25

Footnotes:

1) The 2013 Enacted appropriation includes the 2 across-the-board rescissions of 1.877% and 0.2%.

Reprogramming/Transfers

Carryover:

Recoveries/Refunds:

G. Crosswalk of 2014 Availability

Crosswalk of 2014 Availability
 Office of Legal Counsel
 Salaries and Expenses
 (Dollars in Thousands)

Program Activity	FY 2014 Enacted			Reprogramming/Transfers			Carryover	Recoveries/ Refunds	2014 Availability		
	Direct Pos.	Estim. FTE	Amount	Direct Pos.	Estim. FTE	Amount	Amount	Amount	Direct Pos.	Estim. FTE	Amount
Office of Legal Counsel	33	27	7,400	0	0	0	0	0	33	27	7,400
Total Direct	33	27	7,400	0	0	0	0	0	33	27	7,400
Balance Rescission			0								0
Total Direct with Rescission			7,400								7,400
Reimbursable FTE		0			0		0			0	
Total Direct and Reimb. FTE		27			0		0			27	
Other FTE:											
LEAP		0			0		0			0	
Overtime		0			0		0			0	
Grand Total, FTE		27			0		0			27	

Reprogramming/Transfers

Carryover:

Recoveries/Refunds:

I. Detail of Permanent Positions by Category

Detail of Permanent Positions by Category

Office of Legal Counsel

Salaries and Expenses

(Dollars in Thousands)

Category	2013 Enacted with Rescissions & Sequestration		2014 Enacted		2015 Request				
	Direct Pos.	Reimb. Pos.	Direct Pos.	Reimb. Pos.	ATBs	Program Increases	Program Offsets	Total Direct Pos.	Total Reimb. Pos.
Clerical and Office Services (300-399)	2	0	3	0	0	0	0	3	0
Attorneys (905)	27	0	27	0	0	0	0	27	0
Paralegals / Other Law (900-998)	2	0	3	0	0	0	0	3	0
Total	31	0	33	0	0	0	0	33	0
Headquarters (Washington, D.C.)	31	0	33	0	0	0	0	33	0
U.S. Field	0	0	0	0	0	0	0	0	0
Foreign Field	0	0	0	0	0	0	0	0	0
Total	31	0	33	0	0	0	0	33	0

K. Summary of Requirements by Object Class

Summary of Requirements by Object Class

Office of Legal Counsel
Salaries and Expenses
(Dollars in Thousands)

Object Class	2013 Actual		2014 Availability		2015 Request		Increase/Decrease	
	Direct FTE	Amount	Direct FTE	Amount	Direct FTE	Amount	Direct FTE	Amount
11.1 Full-Time Permanent	23	3,268	25	4,010	25	4,332	0	322
11.3 Other than Full-Time Permanent	2	271	2	323	2	274	0	-49
11.5 Other Personnel Compensation	0	68	0	241	0	218	0	-23
<i>Overtime</i>	0	0	0	0	0	0	0	0
<i>Other Compensation</i>	0	0	0	0	0	0	0	0
11.8 Special Personal Services Payments	0	0	0	0	0	0	0	0
Total	25	3,607	27	4,574	27	4,824	0	250
Other Object Classes								
12.0 Personnel Benefits		967		1,072		1,113		41
21.0 Travel and Transportation of Persons		1		1		5		4
22.0 Transportation of Things		29		33		34		1
23.1 Rental Payments to GSA		1,128		1,130		1,170		40
23.2 Rental Payments to Others		47		47		49		2
23.3 Communications, Utilities, and Miscellaneous Charges		71		85		88		3
24.0 Printing and Reproduction		32		33		75		42
25.2 Other Services from Non-Federal Sources		100		104		55		-49
25.3 Other Goods and Services from Federal Sources		139		161		167		6
25.6 Medical Care		4		4		4		0
25.7 Operation and Maintenance of Equipment		10		10		12		2
26.0 Supplies and Materials		78		120		120		0
31.0 Equipment		26		26		26		0
Total Obligations		6,239		7,400		7,742		342
Subtract - Unobligated Balance, Start-of-Year		0		0		0		0
Subtract - Transfers/Reprogramming		0		0		0		0
Subtract - Recoveries/Refunds		0		0		0		0
Add - Unobligated End-of-Year, Available		0		0		0		0
Add - Unobligated End-of-Year, Expiring		544		0		0		0
Total Direct Requirements	0	6,783	0	7,400	0	7,742	0	342
Reimbursable FTE								
Full-Time Permanent	0		0		0		0	
23.1 Rental Payments to GSA (Reimbursable)		0		0		0		0
25.3 Other Goods and Services from Federal Sources - DHS Security (Reimbursable)		0		0		0		0