

U.S. Department of Justice



CIVIL DIVISION

FY 2016 Budget and Performance Plans

Submitted to the Congress of the United States
February 2015

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OVERVIEW OF THE CIVIL DIVISION

The Civil Division is the largest litigating component of the United States Department of Justice and represents the legal interests of the United States, its departments and agencies, Members of Congress, Cabinet Officers, and other federal employees. Civil safeguards taxpayer dollars, preserves the intent of Congress, ensures the Federal Government speaks with one voice in its view of the law, advances the credibility of the Federal Government before the courts, and protects the health, safety, and economic security of the American people.

The Civil Division's litigation generally falls into the following categories:

- Cases involving national policies;
- Cases that are so massive and span so many years that they would overwhelm the resources and infrastructure of any individual field office;
- Cases filed in national or foreign courts;
- Cases crossing multiple jurisdictions; and
- A wide range of individual and class action immigration cases.

Each year, the Civil Division represents the Federal Government in tens of thousands of unique matters, litigating on behalf of some 200 federal agencies. This litigation encompasses the panoply of the Federal Government's legal interests ranging from contract disputes, efforts to combat fraud and the abuse of federal funds, benefits programs, multi-million dollar tort claims, alleged takings of property, intellectual property disputes, and defending national security decisions. Outside of the realm of litigation, Civil is involved in three separate compensation programs: the Vaccine Injury Compensation Program, the Radiation Exposure Compensation Program, and the September 11th Victim Compensation Fund.

The diversity of this subject matter is impressive, as are the results of the Civil Division's litigation.

Civil Recovers Billions of Dollars for the U.S. Treasury

Year after year, the Civil Division, often working with its U.S. Attorney partners, collects billions of dollars for the U.S. Treasury. Such revenue generating cases involve health care fraud, financial fraud, procurement fraud, bankruptcy, civil penalties, and oil spills. Since FY 2009, Civil, working with U.S. Attorneys, has secured over \$28 billion in settlements, judgments, fines and restitution.

This trend continued in FY 2014. This past year, global health care giant Johnson & Johnson paid more than \$2.2 billion to resolve allegations of illegally promoting prescription drugs for uses not approved by the FDA and paying kickbacks to physicians and the nation's largest long term care pharmacy provider. Also, in FY 2014, the efforts of the Financial Fraud Enforcement Task Force and its Residential Mortgage-Backed Securities Working Group, which is co-chaired

by Civil's Assistant Attorney General, obtained settlements with Bank of America for \$16.65 billion, Citigroup for \$7 billion, and JPMorgan for \$13 billion.

Civil Defeats Billions of Dollars in Unmeritorious Damages

The Civil Division's workload mostly involves defending the Federal Government in defensive lawsuits. A large percentage of these cases are monetary claims filed against the Federal Government – typically contract, tort, or takings claims. In total, in FY 2014, Civil defended cases where over \$100 billion, in the aggregate, was at issue. In cases closed in FY 2014, Civil defeated well over \$15 billion. Currently, Civil aggressively represents the U.S. Government in multi-billion dollar suits stemming from the Federal Government's actions following the 2008 economic crisis. Shareholders of American International Group, Inc., Fannie Mae, and Freddie Mac have filed claims against the U.S. Government, in which they collectively seek tens of billions of dollars.

Civil Defends the U.S. Government's Interests

Civil defends the integrity of federal laws, regulations, policies, and programs, ranging from border security to patent protection to laws that seek to prevent child pornography. A significant portion of Civil's workload involves national security matters, including protecting national security programs and information and defending *habeas corpus* challenges by Guantanamo Bay detainees. Additionally, Civil represents the Federal Government in thousands of immigration matters each year, including *habeas corpus* petitions brought by known or suspected terrorists and, currently, twenty-six class action cases challenging critical policies and programs relating to the Federal Government's interpretation, administration and enforcement of immigration law. Finally, Civil defends statutes being challenged, such as health care statutes, obscenity laws, and statutes imposing criminal penalties.

Civil Protects the Health, Safety, and Welfare of the American People

Civil's litigation also ends dangerous practices that harm America's most vulnerable populations. Health care fraud litigation deters health care providers from billing federal health care programs for unnecessary, invasive, and useless medical tests that endanger the health and safety of countless patients. Consumer fraud litigation pursues cases against those who market unsafe or fraudulent products and services.

Full Program Costs

To continue to fund critical core programming and achieve these accomplishments, the FY 2016 Civil Division Budget Request provides for 1,360 authorized positions, including 968 attorneys, and totals \$326,009,000. It includes:

- *Base adjustments of \$25,508,000; and*
- *Three critical program increases:*
 - *Health Care Fraud Enhancement (\$1,341,000);*
 - *Immigration Enforcement (\$1,356,000); and*
 - *Advanced Litigation Support Services (\$6,350,000).*

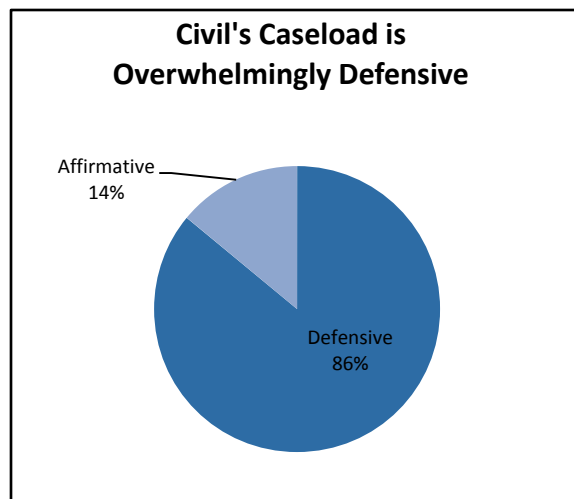
INTERNAL AND EXTERNAL CHALLENGES

The major challenges facing the Civil Division in FY 2016 are outlined below.

Uncontrollable External Factors Drive Civil's Caseload

Civil's greatest challenge is the fact that 86% of its caseload is defensive. This means that opponents decide the time, nature, and location of a claim. Once a complaint is filed, the Federal Government has no choice but to respond to the suit, lest attorneys face default judgments or sanctions. Regardless of its budget or its ability to absorb additional work, Civil must represent the Federal Government in court when claims are filed against the United States.

Relatedly, the underlying events that give rise to litigation are typically beyond Civil's control, unpredictable, or even unknowable. Disputes over the terms of a contract between an agency and a government contractor, natural disasters such as hurricanes, and catastrophic events such as oil spills, all give rise to litigation. In all such cases, the Civil Division will represent the interests of the United States.



Civil's docket of immigration cases is a timely example of how Civil's caseload is driven by factors beyond its control. The FY 2015 appropriations bill (P.L. 113-235) provides the Department's Executive Office for Immigration Review with funding to hire 35 new Immigration Judge Teams. Increasing the number of Immigration Judge Teams will ultimately lead to an increased workload for the Civil Division's Office of Immigration Litigation. After an undocumented immigrant appears before an Immigration Judge of the Executive Office for Immigration Review, he or she may appeal to the Board of Immigration Appeals and then to a U.S. Circuit Court of Appeals. Civil's Office of Immigration Litigation represents the Federal Government in these immigration cases pending before a U.S. Circuit Court of Appeals. Similarly, the Office of Immigration Litigation's District Court Section's docket includes twenty-

six class action cases, many of which are driven by factors beyond its control, like the recent surge of unaccompanied children applicants at the United States' southern border.

Other examples of Civil's limited ability to control its workload are whistleblower lawsuits filed under the False Claims Act. Whistleblowers may file lawsuits on behalf of the Federal Government alleging that false claims were submitted to the Federal Government, and resulted in payment of federal funds. They are then eligible to receive a portion of the amount recovered. Between FY 2009 and FY 2014, the total number of whistleblower lawsuits has increased by nearly 66%. Additionally, under the False Claims Act's *qui tam* statute (see 31 U.S.C. § 3730), when a party files a whistleblower case alleging fraud or abuse, the case must be investigated; the Department of Justice generally must make a decision whether or not to intervene under a timetable mandated by the supervising court. Therefore, as the number of whistleblower complaints has increased, Civil is forced to expend additional resources to meet its mandatory requirements under law and increasingly shorter court deadlines. Since many of these whistleblower suits are related to health care fraud, this FY 2016 Budget Request includes a program increase for health care fraud litigation.

Civil Must Keep Pace with Rapidly Advancing Litigation Support Services

Over the last decade, the use of Automated Litigation Support ("ALS") in civil litigation has become a key contributing factor to a litigator's success. Civil's use of ALS has been instrumental to the efforts to fight fraud and to prevent the awarding of unwarranted damages in defensive cases. However, Civil's opponents spare no resource to develop complex statistical models or to review advanced medical records using state-of-the-art software. Moving forward, Civil must have access to the rapidly advancing technological capabilities necessary to represent the Federal Government.

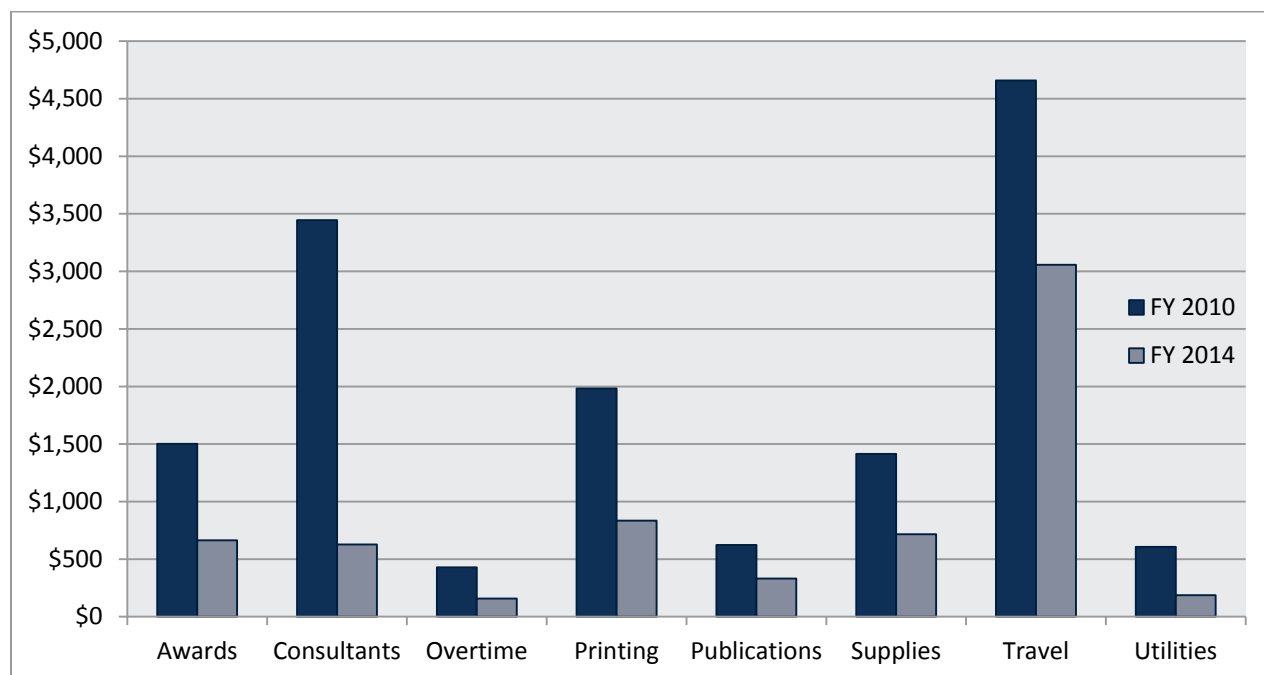
Not only is the ALS technology key, but the expertise and personnel necessary to maximize its potential are vital. The introduction of these tools and the volume of data the Civil Division receives in litigation has radically altered the required skillset of the ALS support staff, requiring a legal understanding of the cases and contract management skills, as well as a technological understanding of how best to structure the use of electronic discovery technology. ALS support staff work hand-in-hand with attorneys to craft the most effective, efficient, and cost-conscious solutions. Without these experts, ALS technology cannot be utilized to its optimum. For these reasons, this FY 2016 Budget Request proposes a program increase for ALS needs.

Aiding Efforts to Promote Long-term Cost Savings

In recent years, Congress and the Administration have prioritized reducing discretionary spending. Cognizant of this focus, the Civil Division has carefully examined its spending and undertaken significant efforts to reduce administrative expenses. The chart on the following page compares spending in certain areas and shows that these efforts have resulted in significant savings.

Civil Division: Cuts to Administrative Expenses

(All \$ in Thousands)



Looking to the future, the Federal Government has made a commitment to cut real estate costs by utilizing less office space (see OMB Memorandum 12-12). Civil is an active participant in this effort. Civil is working with the Office of Management and Budget and General Services Administration to carefully structure upcoming leases of office space to comply with this OMB policy. However, before long-term savings can be achieved, Civil has a short-term cost to acquiring new space, building out the space so that it complies with the new policy, and moving employees to the new space. These short-term costs must be funded to achieve long-term savings, and this FY 2016 Budget Request includes an adjustment-to-base for this purpose.

ENVIRONMENTAL ACCOUNTABILITY

Civil is working toward meeting all Administration and Department of Justice guidelines for improving environmental and energy performance. Civil is moving toward full compliance with efforts to achieve reductions in greenhouse gas emissions, acquiring green products and services, and establishing cost-effective waste prevention and recycling programs. Examples of Civil's environmentally sound practices include: using teleconferencing options to reduce travel costs, expanding recycling programs, installing motion detector lighting systems, using 25 watt "green" lighting, and reducing overtime use of heating and air conditioning. At the same time, Civil continues to develop plans that will consolidate several buildings and result in the Civil Division occupying less office space.

SUMMARY OF PROGRAM CHANGES

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Health Care Fraud Enhancement	Expand Medicare and other health care fraud litigation	15	8	\$1,341	35
Immigration Enforcement	Additional staffing for growing number of class action cases	10	8	\$1,356	40
Advanced Litigation Support Services	Provide ALS and IT tools necessary for complex litigation	10	5	\$6,350	44

APPROPRIATIONS LANGUAGE AND ANALYSIS

The FY 2016 Budget request includes a proposed change in the appropriations language listed and explained below. Civil is seeking an increase in its reimbursement from the Vaccine Injury Compensation Trust Fund for its work on vaccine claims. New language is *italicized and underlined*, and language proposed for deletion is bracketed.

Proposed Change

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 [\$7,833,000] *\$9,358,000*, to be appropriated from the Vaccine Injury Compensation Trust Fund.

Analysis

The Vaccine Injury Compensation Program (“VICP,” or the “Program”) has experienced a steady increase in claims in recent years. In total, claims have risen 60% over FY 2009 levels and are projected to steadily increase through FY 2016 and beyond. These claims are paid by the Vaccine Injury Compensation Trust Fund, which also funds the three governmental entities involved in the administration of the VICP, the Civil Division included.

At the same time, as claims have increased, funding for the administrative costs necessary for Civil to defend the Federal Government against claims filed under the Program has been flat. The appropriated reimbursement from the Vaccine Injury Compensation Trust Fund has remained the same since FY 2009. No adjustments have been included that are afforded to most other appropriations. In FY 2009, VICP funded 41 FTE. However, personnel costs and the workload have increased, resulting in the VICP now only being able to fund 36 FTE.

To fully fund the VICP in FY 2016 and to add staff to handle the increasing claims, an additional \$1,525,000 reimbursement from the VICP Trust Fund is required, bringing the total appropriated reimbursement to \$9,358,000.

Overview of VICP. Congress enacted the National Childhood Vaccine Injury Act of 1986 (the “Act”) to avert a crisis affecting the vaccination of children. There were two primary concerns: (1) individuals injured by vaccines faced an inconsistent, expensive, and unpredictable tort system for compensating claims; and (2) the risk of litigation threatened to reduce the number of vaccine manufacturers to a level that could not meet market demands. The Act established the Vaccine Injury Compensation Program, a no-fault compensation system for persons suffering injury or death allegedly attributable to certain vaccines. An individual claiming a vaccine-related injury or death must file a petition for compensation with the Court of Federal Claims before pursuing any civil action against a manufacturer or physician. Once the claim is filed, Civil represents the interests of the U.S. Government. 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.

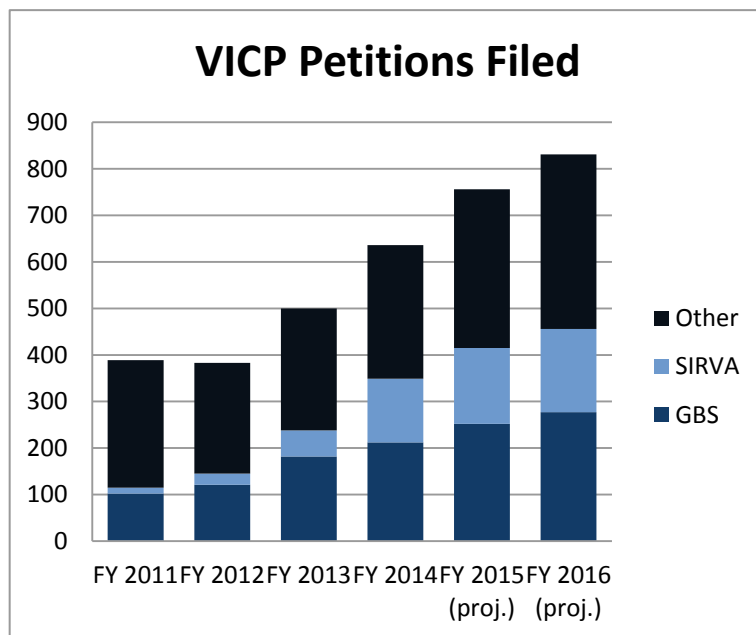
One of the unique features of the Act is its Vaccine Injury Table, which lists certain injuries that are presumed related to the administration of certain vaccines. Even if an injury is not listed, a claimant may still try to prove that the vaccine actually caused the injury. Civil Division attorneys review the submitted evidence and coordinate with the Department of Health & Human Services (HHS) to determine if the claimant's alleged injuries merit compensation. If so, the case will proceed to damages. However, if the claimant has insufficient evidence to merit compensation, Civil will argue against awarding damages, and a Special Master with the Court of Federal Claims will hold a hearing to decide the case. Even if the Special Master agrees with Civil's analysis, the claimant may appeal to the Court of Federal Claims and, subsequently, to the U.S. Court of Appeals for the Federal Circuit. Determination of the appropriate compensation is specifically tailored to each individual claimant, so the process is often time and resource-intensive and may require a trial to resolve.

The Act created a Vaccine Injury Compensation Trust Fund that is used to pay awards to injured individuals and claimants' attorneys' fees. This Trust Fund is funded by an excise tax imposed on each purchased dose of a covered vaccine. As of 2014, since the inception of the Program in 1988, nearly \$2.7 billion in compensation has been awarded to over 3,500 claimants who would have otherwise stood little chance of recovery in traditional tort litigation. This Trust Fund also pays the administrative costs of HHS, Civil's VICP staff, and the Office of the Special Masters of the Court of Federal Claims, all of which are funded through reimbursable authority provided by Congress.

Need for Additional Staff and

Resources. The Program has experienced a steady and continuous increase in newly filed claims. This increase is mainly related to new injuries recently proposed by HHS for addition to the Vaccine Injury Table, including:

- **Shoulder Injury Related to Vaccine Administration ("SIRVA")**, an injury related to the process of administering a vaccine, which manifests as shoulder pain and limited range of motion occurring after the administration of an injected vaccine; and
- **Guillain-Barré syndrome ("GBS")**, an acute paralysis caused by dysfunction in the peripheral nervous system (the nervous system outside the brain and spinal cord).

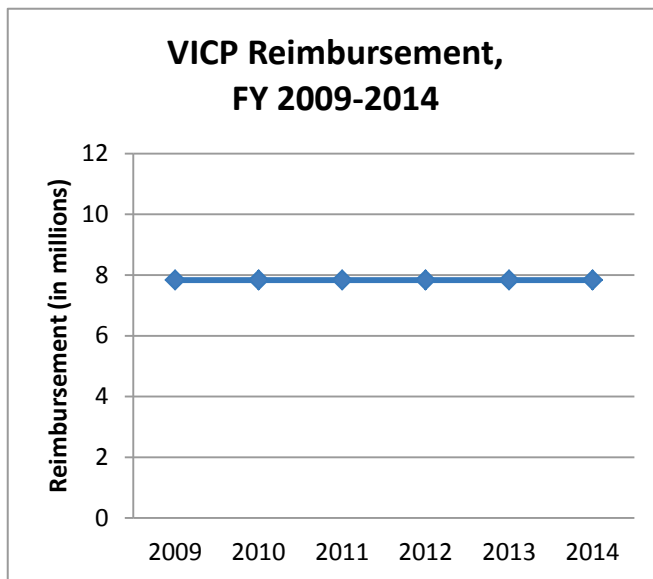
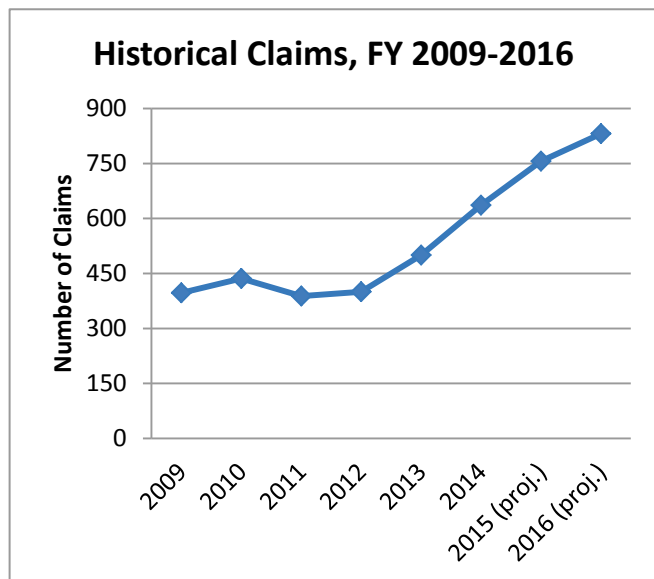


The recognition of an association between vaccination and these injuries spurs petitions being filed. Moreover, the increased pace of claim filings has been sustained for over a year, indicating this is a trend rather than an aberration. Further, the rate of filings is expected to jump when the Vaccine Injury Table changes become effective, which is expected in FY 2015. It is likely there will be over 800 claims filed annually by FY 2016.

Another key reason for the expected increase relates to the statute of limitations for new injuries. The statute of limitations for injuries on the Vaccine Injury Table is three years. Typically, a petitioner has three years after symptoms of a vaccine injury manifest to file with the Program. However, when a new injury is added to the Vaccine Injury Table, the petitioner has an additional two years from the date of the Vaccine Injury Table revision to file a claim if the injury began in the previous six years. Additionally, if a revision to the Vaccine Injury Table makes a claimant eligible to seek compensation, or significantly increases the likelihood of a claimant obtaining compensation, the claimant has the ability to re-file a previously dismissed claim.

Finally, the increasing sophistication of the vaccine injury attorney field is likely a driving force behind the increase in filings. Previously, vaccine injury law firms primarily represented claimants in relatively small geographical regions. However, with a heavy, nationwide online presence, and the coordinated efforts of a Vaccine Practitioners' Bar Association, these firms are reaching far more potential claimants. Further, the possibility of payment of attorneys' fees and costs from the Trust Fund also may encourage the filing of claims.

Largely due to these new injuries, total claims have increased approximately 60% in FY 2014 over FY 2009 levels. Yet, the Program's appropriated reimbursement has not increased since FY 2009, when the reimbursement increased from \$6.833 million to \$7.833 million. The current funding amount of \$7.833 million is now woefully insufficient to staff the full 41 FTE authorized by Congress in FY 2009.



Civil is requesting an additional 4 attorneys, 2 paralegals, and \$300,000 for Automated Litigation Support. In total, the proposed annual reimbursement for FY 2016 would be \$9,358,000. In fact, even after this increased reimbursement, Civil's transactional costs will actually be lower than in FY 2009. While the average cost per petition in FY 2009 was approximately \$19,730, the average cost per petition in FY 2016 is projected to be approximately \$11,261.

	FY 2009	FY 2016 (proj.)
Petitions Filed	397	831
Reimbursement from Trust Fund	\$7,833,000	\$9,358,000
Cost per petition filed	\$19,730	\$11,261

Further, the proposed FY 2016 annual reimbursement of \$9,358,000 would represent just a fraction of the Trust Fund from which it is drawn. The Trust Fund is projected to be over \$3.5 billion by FY 2016, such that the requested increase of \$1,525,000 for Civil's VICP activities would be less than one-twentieth of one percent of the Trust Fund.

Impact on Performance. Failure to approve this request will impede the Program's ability to keep pace with the growing workload. Inevitably, the time to resolve cases will increase and backlogs will grow, compromising the Program's ability to meet its Congressional mandate to provide a fair and expeditious means to resolve childhood vaccine claims and adversely affecting the interests of deserving claimants. Such claimants – who are most often sick children or adults with significant physical impairments – will unnecessarily have to wait to receive compensation. Adequate staffing is critical to prevent non-meritorious claims and ensure that the Trust Fund has sufficient resources to handle future claims. Finally, the Program has historically and admirably met all of its aggressive performance goals in recent years. Without sufficient resources, this success cannot continue.

PROGRAM ACTIVITY JUSTIFICATION: LEGAL REPRESENTATION

Legal Representation	Direct Pos.	Estimate FTE	Amount (\$ in Thousands)
2014 Enacted	1,425	1,124	285,927
2015 Enacted	1,325	1,189	291,454
Adjustments to Base and Technical Adjustments	0	0	25,508
2016 Current Services	1,325	1,189	316,962
2016 Program Increases	35	21	9,047
2016 Request	1,360	1,210	326,009
Total Change 2015-2016	35	21	34,555

Program Description: Legal Representation

Civil represents the United States in any civil or criminal matter within its scope of responsibility. Civil is composed of six litigating branches (several of which have multiple sections) as well as an administrative office, the Office of Management Programs. The six litigating branches and their sections are listed below.



Appellate Staff



Commercial Litigation Branch

- Corporate/Financial Litigation Section
- Fraud Section
- Intellectual Property Section
- National Courts Section
- Office of Foreign Litigation



Consumer Protection Branch



Federal Programs Branch



Office of Immigration Litigation

- Appellate Section
- District Court Section



Torts Branch

- Aviation & Admiralty Section
- Constitutional & Specialized Tort Litigation Section
- Environmental Tort Litigation Section
- Federal Tort Claims Act Litigation Section

Appellate Staff

Civil's Appellate Staff represents the interests of the United States in federal circuit courts of appeals and, occasionally, in state appellate courts. Appellate's cases involve complex, sensitive, and novel legal questions that set far-reaching precedents. Appellate's monetary cases involve billions of dollars with outcomes that determine how the law or policy in question will affect millions of Americans. The Appellate Staff also defends against constitutional challenges to Executive Branch decisions when these matters are litigated in appellate courts. A notable amount of Appellate's caseload involves representing national security policies in federal appellate courts, such as Guantanamo Bay detainees challenging the lawfulness of their detentions, actions challenging counterterrorism surveillance and investigations, and challenges to terrorist financing and travel.

Commercial Litigation Branch

Civil's Commercial Litigation Branch has five sections: (1) Corporate/Financial Litigation Section, (2) Office of Foreign Litigation, (3) Fraud Section, (4) Intellectual Property Section, and (5) National Courts Section.

Corporate and Financial Litigation Section

The Corporate and Financial Litigation Section handles unique nationwide matters involving money and property, as well as representing the Federal Government's interests in complex Chapter 11 bankruptcies and other contractual disputes litigated in the federal district courts. These cases involve a variety of diverse industries, including those involving health care providers, communications companies, energy suppliers, and commercial airlines.

Office of Foreign Litigation

The Office of Foreign Litigation ensures that U.S. policies, programs, and activities are protected when challenged in foreign courts. This Office handles all types of cases in courts of foreign countries – whether civil, criminal, affirmative, or defensive.

At any given time, the Office handles approximately 1,000 civil and criminal matters in over 100 different countries. While Office attorneys do not practice law in foreign countries, the Office works closely with local attorneys in foreign countries to represent the United States. The office also provides advice and counsel on issues relating to international law both within the Department and to agency partners, including the Department of State.



Fraud Section

The Fraud Section, working with U.S. Attorneys across the country, recovers billions of dollars annually by investigating and litigating matters involving fraud against the Federal Government. This Section handles fraudulent activity regarding health care, financial institutions, loan programs, defense contracting, grants, construction of federal buildings and prisons, as well as foreign aid. Much of the Fraud Section's litigation takes place under the False Claims Act. In FY 2014, the Department secured nearly \$5.69 billion in settlements and judgments from False Claims Act cases.

Intellectual Property Section

The Intellectual Property Section represents the United States in all intellectual property matters where a patent, copyright, or trademark is at issue. Many of the cases this Section handles involve complex technologies, such as pharmaceutical compositions and highly sophisticated electronic devices. To meet the challenges presented by these cases, all attorneys assigned to the Section have a degree in one of the physical sciences or in an engineering field. Many of the Section's attorneys are U.S. Patent and Trademark bar members.

National Courts Section

The mission of the National Courts Section is to protect taxpayer dollars in lawsuits brought against the Federal Government. It is one of the of the largest and oldest litigating sections in the Department, and handles matters in three federal courts of nation-wide jurisdiction: the U.S. Court of Appeals for the Federal Circuit, the U.S. Court of Federal Claims, and the U.S. Court of International Trade. Some of the Section's areas of focus include government contract matters, constitutional and pay claims against the Federal Government, personnel benefits appeals, and international trade cases. National Courts cases often last for several years if not decades and involve large sums of money. These include, for example, the actions brought by the shareholders of AIG, Fannie Mae, and Freddie Mac, discussed further in a section below.

Consumer Protection Branch

Civil's Consumer Protection Branch protects the health, safety, and economic security of American consumers through criminal prosecutions and civil enforcement actions under national consumer protection statutes. Its workload involves pharmaceuticals and medical devices, deceptive trade practices and telemarketing fraud, adulterated food and dietary supplements, consumer product safety, odometer fraud, tobacco products, and civil defensive litigation. This particular Branch is unique within Civil because it has both criminal and civil jurisdiction.

The Consumer Protection Branch has seen great success over the past several years. Each fiscal year it recovers hundreds of millions of dollars in criminal fines, forfeitures and disgorgement under the Federal Food, Drug and Cosmetic Act. In addition to recoveries under the Federal

Food, Drug and Cosmetic Act, the Consumer Protection Branch handles a significant portion of financial and mortgage fraud work. For example, the Consumer Protection Branch is handling the case against Standard & Poor's Rating Services ("S&P") for its actions and leadership in the 2008 financial crisis. Specifically, the lawsuit alleges that S&P engaged in a scheme to defraud investors in structured financial products known as residential mortgage-backed securities and collateralized debt obligations. The lawsuit alleges that investors, many of them federally insured financial institutions, lost billions of dollars on investments for which S&P issued inflated ratings that misrepresented the securities' true credit risks.

Federal Programs Branch

The Federal Programs Branch defends federal programs, policies, laws, and regulations on behalf of federal agencies, the President, and Cabinet officers, including challenges to the constitutionality of Executive Branch actions as well as statutory law enacted by Congress. Federal Programs is involved in matters representing approximately 100 federal agencies. Many of its cases involve complex questions of constitutional law, including the scope of the powers of Congress, the President, and the federal courts, as well as limitations imposed by the Constitution. The Branch defends against challenges to the lawfulness of key government decisions in suits seeking to overturn important federal policies and programs. In a significant number of matters, Federal Programs defends critical national security policies, decisions, and information.

Office of Immigration Litigation

The Office of Immigration Litigation is organized into two sections – the District Court Section and the Appellate Section. Office of Immigration Litigation attorneys vigorously defend Executive Branch decisions regarding border security and pursue consistent enforcement of the country's immigration laws.

District Court Section

The Office of Immigration Litigation's District Court Section is a highly active litigation section. It handles immigration cases at the district court level in any of the ninety-four federal district courts nationwide on behalf of several agencies. The District Court Section also has primary responsibility for handling appeals arising from immigration-related cases in district courts nationwide. These include the Department of Homeland Security and the Department of Health and Human Services in cases involving a wide range of complex immigration matters, the Department of State in cases involving passports and visas, the Department of Labor in employment-related visas, and the Federal Bureau of Investigation on background and other security checks. The District Court Section coordinates litigation strategy on these cases with the agencies and with the United States Attorneys throughout the United States.

While the District Court Section does affirmatively file and prosecute an ever increasing number of denaturalization cases, the overwhelming majority of the Section's cases are defensive. The most complex and time-consuming cases this Section handles are class action cases, which have increased dramatically in recent years. The fifty-two attorneys in the Section currently handles twenty-six class action cases challenging critical policies and programs relating to the Federal Government's interpretation, administration and enforcement of immigration law. Also, this Section's litigation routinely involves national security cases. The District Court Section defended numerous cases brought by known or suspected terrorists and convicted criminals attempting to acquire immigration benefits, thwart removal, or avoid mandatory detention pending removal, including naturalization claims of members of Hamas, Al-Qaeda, and Al-Shabab.

Appellate Section

The Office of Immigration Litigation's Appellate Section defends the U.S. in immigration litigation before the federal appellate courts. Appellate attorneys handle removal cases in the Courts of Appeals and support the Office of the Solicitor General's immigration litigation efforts in the U.S. Supreme Court. These cases comprise challenges related to whether an individual is subject to removal from the U.S. or is eligible for some form of benefit, relief, or protection that would allow him or her to remain in the United States.

The caseload is almost entirely defensive and is directly tied to the enforcement efforts of the Department of Homeland Security and the resulting removal adjudications by the Department of Justice's Executive Office for Immigration Review ("EOIR"). As EOIR handles more cases and issues more decisions, the Office of Immigration Litigation's Appellate Section will handle more immigration appeals in federal appeals courts. Given the defensive nature of the Appellate Section's litigation, Civil attorneys must respond to each challenge or risk immigration enforcement actions being negated.

In addition, the Appellate Section also provides advice and counsel to U.S. Attorneys' offices prosecuting criminal immigration issues that overlap with the Office's civil litigation. This Section provides support and counsel to all federal agencies involved in the admission, regulation, and removal of aliens under U.S. immigration and nationality statutes, as well as related areas of border enforcement and national security.

Torts Branch

The Torts Branch is comprised of four litigating sections:

- Aviation & Admiralty Section,
- Constitutional & Specialized Tort Litigation Section,
- Environmental Tort Litigation Section, and
- Federal Tort Claims Act Litigation Section

This Branch also is home to tort reform programs, including the National Childhood Vaccine Injury Program and the Radiation Exposure Compensation Program. Although the majority of the Torts Branch's workload involves defensive matters in which other parties have sued the Federal Government, the Torts Branch also litigates one of the Federal Government's largest affirmative cases – Deepwater Horizon.

Aviation & Admiralty Section

The Aviation & Admiralty Litigation Section handles matters surrounding aviation and maritime accidents. The **Aviation** caseload is comprised of litigation related to activities such as air commerce regulation, air traffic control, aviation security, provision of weather services, and aeronautical charting. When aircraft accidents occur, the Aviation and Admiralty Litigation Section handles litigation involving the Federal Aviation Administration's air traffic control, weather dissemination services, and its certification of airports, aircraft, and air personnel. The **Admiralty** caseload involves the Federal Government's role as ship-owner, regulator, and protector of the nation's waterways. Cases relate to collisions involving government vessels, disputes over navigational markings, and challenges to the boarding of vessels on the high seas during national security activities. Affirmative admiralty actions seek compensation for the loss of government cargo and the costs associated with maritime pollution cleanups.

The Aviation & Admiralty Section works in tandem with the Department's Environment and Natural Resources Division and Criminal Division in representing the Federal Government in litigation arising from the explosion on the drilling rig Deepwater Horizon and the resulting oil spill in the Gulf of Mexico in 2010. In the ongoing litigation, Civil is responsible for recovering the billions of dollars spent by numerous government agencies in response costs, as well as assessing and pursuing damages and civil penalties authorized under existing statutes.



Constitutional & Specialized Tort Litigation Section

The Constitutional & Specialized Tort Litigation Section consists of three groups: the Constitutional Torts Staff, the Office of Vaccine Litigation, and the Radiation Exposure Compensation Act Program. The **Constitutional Torts Staff** provides legal representation to federal employees in cases filed against them for actions performed as part of their official duties. The Staff focuses on cases with critical and sensitive Executive Branch functions, cutting-edge questions of law affecting the federal workforce, and difficult personal liability cases. Many cases encompass national security or law enforcement activity.

The Office of Vaccine Litigation was established pursuant to the National Childhood Vaccine Injury Act of 1986, which created a unique mechanism for adjudicating claims of injury resulting from immunizations. The Vaccine Injury Compensation Program is a streamlined system for compensation in rare instances where an injury results from vaccination. The Program administrative costs are funded out of an annual reimbursement from the Vaccine Injury Compensation Trust Fund and are designed to encourage the manufacture of vaccines by limiting the litigation risk to vaccine manufacturers.

As a “no-fault” system, claimants need only establish causation and not prove that a vaccine was defective, or that there was any degree of negligence in its administration. As a result of the Vaccine Injury Compensation Program, costly litigation has ceased against drug manufacturers and health care professionals. The Program has awarded more than \$2.7 billion to over 3,500 claimants who would not have received damages in traditional tort litigation. To support the Office of Vaccine Litigation in light of the growth in claims over the past several years, this FY 2016 Budget Request includes a proposed change in appropriations language, which would increase the reimbursement from the Vaccine Injury Compensation Trust Fund for the Office’s work on vaccine claims.

The Radiation Exposure Compensation Act Program administers a compensation program created by the Radiation Exposure Compensation Act. The Act provides limited financial compensation for individuals who have developed certain serious illnesses after radiation exposure arising from the mining, milling, and transporting of uranium, as well as atmospheric testing of nuclear weapons during the Cold War era. Since its inception, the Act has awarded more than \$1.97 billion to over 29,846 individuals affected.

Environmental Tort Litigation Section

The Environmental Tort Litigation Section defends the U.S. in high-stakes and complex environmental tort litigation involving alleged exposure to toxic substances in the environment, the workplace, and government-owned housing. These cases often cover complex scientific and medical issues requiring the presentation of expert testimony. Past litigation efforts include cases involving hundreds of property damage and personal injury claims allegedly due to contamination from a U.S. Army chemical warfare research facility during World War I, thousands of personal injury and property damage claims allegedly caused by the military

exercises occurring over a thirty-year period on the island of Vieques, Puerto Rico, hundreds of property damage claims allegedly caused by the Department of Interior's use of herbicides to prevent wildfires on federal land, thousands of alleged personal injury claims due to contaminated drinking water from Camp Lejeune, and consolidated lawsuits involving nearly 100,000 individual administrative claims seeking well in excess of \$100 billion for alleged personal injuries from exposure to formaldehyde in emergency housing units provided by FEMA in response to Hurricanes Katrina and Rita in 2005. In total, the Environmental Tort Litigation Section has saved the Federal Government billions of dollars.

Federal Tort Claims Act Litigation Section

The Federal Tort Claims Act ("FTCA") Section litigates complex and controversial cases under the Federal Tort Claims Act, a statute Congress first passed in 1946 to provide damages for certain injuries and property damage federal employees caused. Today, FTCA litigation typically arises from medical care, regulatory activities, law enforcement, and maintenance of federal lands. Recently, a U.S. District Judge dismissed hundreds of pending cases seeking to hold the Federal Government liable for damages caused by Hurricane Katrina. The dismissal of these cases, which the FTCA Section handled, saved the Government more than \$100 billion. The FTCA Section has also defended the United States in suits brought by individuals who were detained on immigration charges following the September 11, 2001 terrorist attacks. In addition, the FTCA Section makes appeal recommendations on all adverse judgments entered in FTCA cases. It also provides comments on FTCA-related congressional legislation that may have an impact on taxpayer liability. Further, the FTCA Section is responsible for the administrative adjustment of tort claims arising out of DOJ activities.

Office of Management Programs

The Office of Management Programs supports Civil's attorneys in all aspects of their work. Whether helping an employee prepare a presentation for trial, maintaining and updating discovery software, selecting a life insurance plan, or developing Civil's annual budget, Management Programs staff of analysts, accountants, and information technology specialists provides the technological, analytical, and litigation tools necessary for Civil's attorneys to compete against the best law firms in the world.



September 11th Victim Compensation Fund Program

The September 11th Victim Compensation Fund of 2001 (“the VCF”) was reopened by the James Zadroga 9/11 Health and Compensation Act of 2010 (“the Act”). The Act provides compensation to an individual, or a personal representative of a deceased individual, who suffered physical harm as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal that occurred in the immediate aftermath. Congress appropriated a total of \$2.775 billion for award payments and administrative expenses; the VCF is not funded through the Civil Division’s appropriations.

The VCF re-opened when the VCF’s Special Master issued final regulations on October 3, 2011. Civil provides administrative support to the Special Master and her staff. Civil assists with a variety of support services, such as database development and maintenance, claims intake, statistical analysis, and inter-agency coordination.

Regarding the VCF’s handling of claims, the VCF is updating statistics on a quarterly basis. The last update, which was current through January 2, 2015, is available at <http://www.vcf.gov/pdf/VCFProgramStatistics01152015.pdf>. The deadline for claimants to submit Eligibility and Compensation Forms is October 3, 2016. Therefore, the VCF will be busy processing, reviewing, and adjudicating claims in FY 2016 as claimants will work to submit materials before the October 2016 deadline.

Performance Tables

Performance and Resources												
Decision Unit: Civil Division - Legal Representation												
DOJ Strategic Goal II: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law.												
Objective 2.4: Combat corruption, economic crimes, and international organized crime.												
Objective 2.6: Protect the Federal fisc and defend the interests of the United States.												
WORKLOAD/RESOURCES			Target		Actual		Projected		Changes		Requested (Total)	
			FY 2014		FY 2014		FY 2015		Current Services Adjustments and FY 2016 Program Changes		FY 2016 Request	
Workload	1. Number of cases pending beginning of year		27,029		26,545		24,461		N/A		23,541	
	2. Number of cases received during the year		16,495		15,212		16,008		N/A		17,051	
	3. Total Workload		43,524		41,757		40,469		N/A		40,592	
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
			1,344	285,927 (153,387)	1,261	284,614 (153,387)	1,350	291,454 (191,578)	27	34,555 (0)	1,377	326,009 (191,578)
Type	Strategic Objective	Performance	FY 2014		FY 2014		FY 2015		Current Services Adjustments and FY 2016 Program Changes		FY 2016 Request	
Output	2.6	1. Number of cases terminated during the year	17,915		17,296		16,928		N/A		16,807	
Civil Division Performance (Excludes VICP and RECA)												
Outcome	2.6	2. Percent of civil cases favorably resolved	80%		97%		80%		N/A		80%	
	2.6	3. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%		90%		80%		N/A		80%	
	2.4	4. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%		61%		60%		N/A		60%	
	2.6	5. Percent of favorable resolutions in non-monetary trial cases	80%		91%		80%		N/A		80%	
	2.6	6. Percent of favorable resolutions in non-monetary appellate cases	85%		93%		85%		N/A		85%	

PERFORMANCE			Target	Actual	Projected	Changes	Requested (Total)
Type	Strategic Objective	Performance	FY 2014	FY 2014	FY 2015	Current Services Adjustments and FY 2016 Program Changes	FY 2016 Request
Vaccine Injury Compensation Program Performance							
Outcome	2.6	7. 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	86%	92%	86%	N/A	86%
	2.6	8. 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%
Efficiency	2.6	9. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	92%	100%	92%	N/A	92%
Radiation Exposure Compensation Program Performance							
Outcome	2.6	10. Reduce average claim processing time to 200 days by FY 2016	200	272	200	N/A	200
	2.6	11. Percentage of claims paid within six weeks of Program receipt of acceptance form	90%	86%	90%	N/A	90%
	2.6	12. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	95%	97%	95%	N/A	95%
Efficiency	2.6	13. Percentage of claims adjudicated within 12 months or less	80%	76%	80%	N/A	80%

History of Performance											
Decision Unit: Civil Division - Legal Representation											
Type	Strategic Objective	Performance	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014		FY 2015	FY 2016
			Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Output	2.6	1. Number of cases terminated during the year	17,088	17,538	17,618	22,586	16,129	17,915	17,296	16,928	16,807
Civil Division Performance (Excludes VICP and RECA)											
Outcome	2.6	2. Percent of civil cases favorably resolved	93%	93%	96%	96%	98%	80%	97%	80%	80%
	2.6	3. Percent of defensive cases in which at least 85 percent of the claim is defeated	88%	85%	86%	90%	87%	80%	90%	80%	80%
	2.4	4. Percent of affirmative cases in which at least 85 percent of the claim is recovered	63%	74%	66%	73%	64%	60%	61%	60%	60%
	2.6	5. Percent of favorable resolutions in non-monetary trial cases	90%	93%	92%	90%	90%	80%	91%	80%	80%
	2.6	6. Percent of favorable resolutions in non-monetary appellate cases	92%	92%	92%	94%	94%	85%	93%	85%	85%
Vaccine Injury Compensation Program Performance											
Outcome	2.6	7. 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	94%	96%	97%	95%	95%	86%	92%	86%	86%
	2.6	8. Percentage of cases in which judgment awarding compensation is rejected and an election to pursue a civil action is filed	0%	0%	0%	0%	0%	0%	0%	0%	0%
	2.6	Median time to process an award for damages (in days)*	445	637	637	N/A	N/A	N/A	N/A	N/A	N/A
	2.6	Average claim processing time (in days)*	1337	1,280	1,269	1,269	N/A	N/A	N/A	N/A	N/A
Efficiency	2.6	9. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	100%	100%	100%	100%	100%	92%	100%	92%	92%

*Discontinued Measure

Performance Report			FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014		FY 2015	FY 2016
			Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Radiation Exposure Compensation Program Performance											
Outcome	2.6	10. Reduce average claim processing time to 200 days by FY 2016	127	100	100	116	247	200	272	200	200
	2.6	11. Percentage of claims paid within six weeks of Program receipt of acceptance form	94%	90%	91%	92%	86%	90%	86%	90%	90%
	2.6	12. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	100%	100%	100%	100%	96%	95%	97%	95%	95%
	2.6	Reduce backlog of pending claims by 60 percent by FY 2011*	618	618	558	N/A	N/A	N/A	N/A	N/A	N/A
Efficiency	2.6	13. Percentage of claims adjudicated within 12 months or less	96%	96%	94%	97%	75%	80%	76%	80%	80%

***Discontinued Measure**

DATA DEFINITION, VALIDATION, VERIFICATION, AND LIMITATIONS

- **All Workload and Performance Indicators:** The data source for all indicators is CASES, the Civil Division's automated case management system. Quality assurance efforts include regular interviews with attorneys to review data listings; program input screens designed to preclude incorrect data; exception reports listing questionable or inconsistent data; attorney manager review of monthly reports for data completeness and accuracy; and verification of representative data samples by an independent contractor.
- **Limitations:** Incomplete data may cause the system to under-report case terminations and attorney time. These numbers will be updated prior to the end of the fiscal year. Some performance successes can be attributed to litigation where U.S. 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 nearly 500,000 Hurricane Katrina administrative claims and approximately 100,000 FEMA Hurricane Katrina/Rita trailer-related administrative claims. These claims have been removed to avoid skewing the data.

PERFORMANCE, RESOURCES, AND STRATEGIES

The Civil Division's work contributes to the Department of Justice's efforts to achieve Strategic Goal 2. Within that goal, Civil's workload is directly tied to two of the Department's Strategic Objectives – 2.4 and 2.6, outlined below. Also, Civil is also one of three components responsible for ensuring the Department is successful in its efforts to reduce financial and health care fraud, consistent with the Department's priority goals. Finally, Civil's diverse caseload also touches on intergovernmental efforts regarding national security and protecting vulnerable Americans.



Civil has continued its successful efforts in recent years in affirmative and defensive, monetary and non-monetary litigation because of its highly skilled attorneys who efficiently use technological resources. Their successes, discussed below, are only possible with sufficient funding.

PERFORMANCE PLAN AND REPORT FOR OUTCOMES

Strategic Objective 2.6 – Protect the Federal Fisc and Defend the Interests of the United States

A substantial portion of Civil's workload falls within Strategic Objective 2.6, as approximately 86% of Civil's caseload relates to defending the United States. Civil's work in this area encompasses monetary and non-monetary cases. In these cases, Civil (1) protects the federal fisc and (2) defends the interests of the United States.

(1) Civil Protects the Federal Fisc

The Federal Government engages in countless transactions annually, such as purchasing and leasing goods or services, offering loan guarantees, signing contracts, and issuing payroll. Inevitably, disagreements arise over the terms of these agreements, and parties will sue the Government seeking damages. Likewise, the Federal Government's activities can give rise to numerous allegations of negligence and tort claims. Suits arise from medical care or treatment, regulatory activities, law enforcement, and maintenance of federal lands. The Civil Division defends the Federal Government in these matters so as to avoid paying unwarranted damages. These cases can last for several years, or even decades. The amounts sought in any one of these cases are substantial. Just as importantly, a negative precedent will only encourage similar future suits – thus, increasing the potential exposure of the U.S. Treasury. Historically, in litigation handled by Civil, the U.S. Treasury has paid a very small percentage of the total dollars claimed – often only pennies for each dollar claimed.

In the aggregate, in FY 2014, over \$100 billion was at issue in cases handled by Civil. In cases resolved in FY 2014, Civil defeated over \$15 billion in amounts sought by opposing parties. For example, Civil represented the Federal Government in litigation surrounding the Navy's 1991 termination of a contract. In 2014, after 23 years of litigation, the case was finally resolved. While the

Civil's Success in Complex, Long-term Litigation

Several families of related cases demonstrate Civil's success in litigation. Over the past few decades, Civil has taken the lead in defending the Federal Government in a number of large and complex matters with opponents claiming billions of dollars. Some of these matters include:

- over **\$40 billion** in **asbestos** claims,
- over **\$50 billion** in claims associated with the failure of the Federal Government to accept the storage of **spent nuclear fuel** from nuclear utilities,
- **\$32 billion** sought as a result of the Federal Government's actions in the 1980s **savings and loan crisis**, and
- over **\$100 billion** in claims associated with the Government's actions before and after **Hurricanes Katrina and Rita**.

contractor initially sought \$4.8 billion in damages from the Federal Government, the settlement mandates that the contractors actually provide aircraft and services to the military valued at \$400 million and the Federal Government pay nothing.

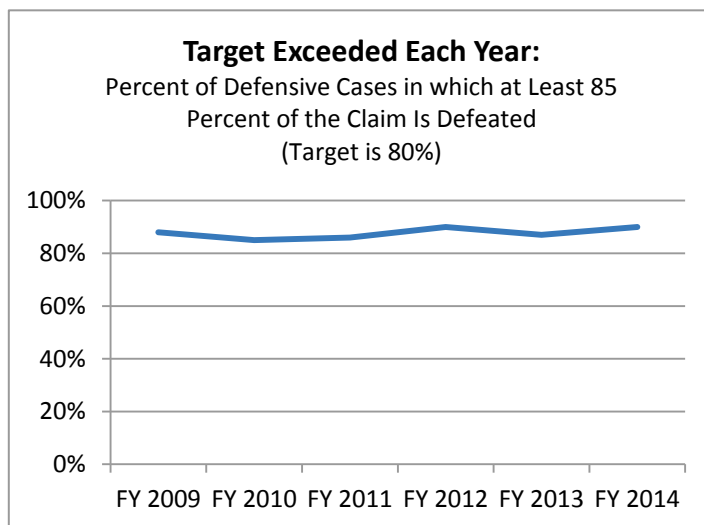
Today, after tackling asbestos, spent nuclear fuel, the aftermaths of natural disasters, and the fallout from the 1980s savings and loan crisis, Civil attorneys are aggressively representing the United States in a series of suits stemming from the Federal Government's actions following the 2008 economic crisis. During the 2008 economic crisis, the Federal Government provided assistance to several companies so that they would not fail and so America's economy would not decline any further. Today, shareholders and others associated with these companies are suing the Federal Government for billions of dollars.

- **AIG (Plaintiffs seek at least \$23 billion plus prejudgment interest from the Treasury).** In 2008, at the height of the economic crisis and when American International Group, Inc. ("AIG") was facing a liquidity crisis and potential collapse, AIG and the Federal Reserve Bank of New York agreed to a deal in which AIG provided 79.9% of its stock while receiving an \$85 billion loan. The Treasury later invested billions of additional dollars in AIG. In November 2011, after these transactions saved AIG from failure, plaintiffs brought a class action upon behalf of AIG's shareholders, alleging that the Government's actions were an unconstitutional taking or illegal exaction. Based upon the plaintiffs' expert reports, plaintiffs claim \$40 billion in damages. The trial concluded in November 2014, and post-trial briefs are currently scheduled to be submitted to the court in early 2015.
- **Fannie Mae and Freddie Mac (Plaintiffs seek \$63.8 billion from the Treasury).** During the 2008 economic crisis, two Government-sponsored enterprises, Fannie Mae and Freddie Mac ("the Enterprises") faced failure as the value of real estate plummeted. In September 2008, the Enterprises consented to placement into conservatorships under the supervision of the Federal Housing Finance Agency. Shortly thereafter, the Treasury agreed to invest hundreds of billions of dollars in the Enterprises in exchange for preferred stock with a fixed dividend and other considerations, including a liquidation preference equal to the amount invested. In 2012, after the Enterprises were required to fund the quarterly dividends owed to the Treasury by obtaining additional funding from the agency, the preferred stock agreements were amended. The amended agreements eliminated the fixed dividend and instead required the Enterprises to pay dividends based upon quarterly net profits.

In 2013, shareholders of the Enterprises filed suit alleging that (1) placement of the Enterprises into conservatorship affected an unconstitutional taking or illegal exaction, (2) the amended agreements tying Government dividends to the Enterprises' net profits effected an unconstitutional taking or illegal exaction, and (3) the amended agreement lacked statutory authorization or constituted arbitrary and capricious Government action. The shareholders are seeking in excess of \$63.8 billion in damages.

These cases are just two examples of the major monetary, defensive cases in which Civil currently defends the Federal Government. During the past few years, Civil has met its performance target by consistently defeating the overwhelming majority of amounts sought in claims brought against the Federal Government in cases such as these, as summarized in the chart below.

Indicator of Civil's Performance in Monetary Defensive Cases



(2) Civil Defends the Interest of the United States

In addition to monetary cases, Civil defends challenges to statutes passed by Congress as well as Executive Branch actions.

One of the most important subsets of litigation in this area involves national security. When national security decisions are challenged in court, Civil's litigators must defend the challenged action and, in so doing, protect the American people. For example, Civil represents the Federal Government in civil litigation related to detentions at Guantanamo Bay. Recently, Civil successfully opposed separate efforts by Guantanamo detainees to undermine necessary security procedures at Guantanamo and to disrupt a military commission proceeding brought against a detainee for his alleged participation in numerous terrorist plots, including the 2000 bombing of the U.S.S. Cole.

In the immigration context, Civil attorneys represent the Federal Government in litigation to remove known or suspected terrorists (as well as other criminals, such as sex offenders) from the United States. In many of these cases, Civil also seeks to ensure that such individuals remain in



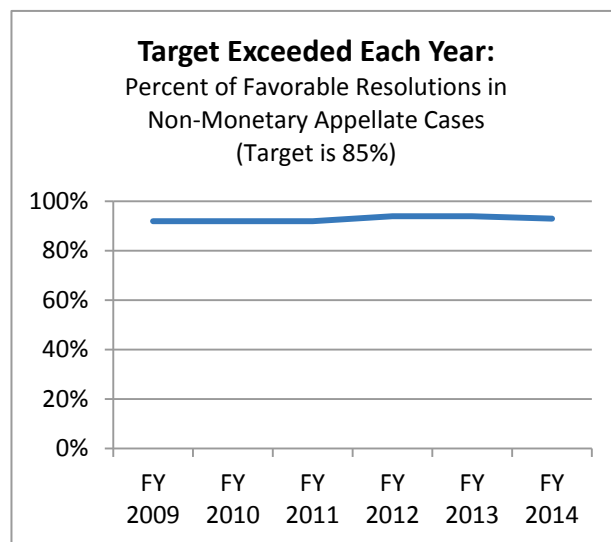
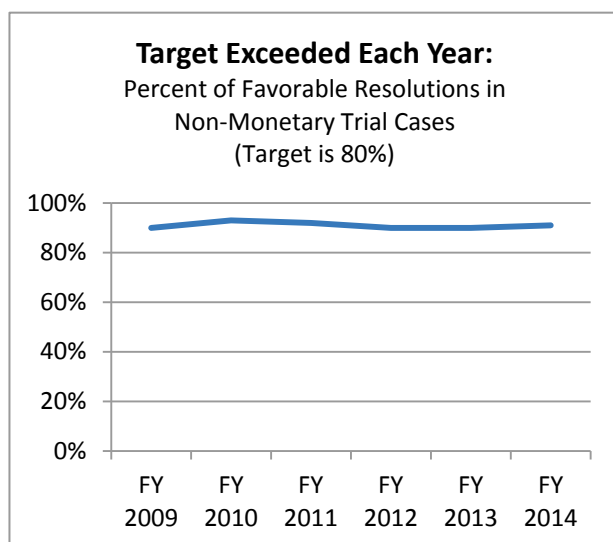
detention pending the resolution of their appeals. In other instances, Civil seeks to denaturalize known or suspected terrorists.

In addition, Civil has defended challenges to efforts that are crucial to America's homeland security. For example, Civil has defended challenges to the Federal Government's border patrol procedures, the use of advanced imaging technology during TSA screening procedures, the No Fly List, and the Terrorist Screening Database. Civil also plays an important role in protecting national assets against foreign ownership by defending Committee on Foreign Investment in the United States' determinations that prevent foreign persons from controlling American assets when such control harms national security. Civil also defends the Department of the Treasury for its actions related to economic sanctions issues such as the freezing of assets due to sanctions.

Outside of national security, Civil also defends congressionally enacted laws such as cigarette trafficking laws, child pornography and obscenity laws, and patent laws.

Civil's recent performance for its non-monetary cases is summarized in the charts below. As these charts reveal, Civil consistently has met its performance targets.

Indicators of Civil's Performance in Non-Monetary Cases



Strategic Objective 2.4 – Investigate and Prosecute Corruption, Economic Crimes, and International Organized Crime

The Civil Division's litigation involving economic crimes returns billions of dollars to the U.S. Treasury each year. In FY 2014, Civil, working with U.S. Attorneys, secured \$5.69 billion in settlements and judgments. Since FY 2009, Civil, again working with U.S. Attorneys, has recovered in excess of \$28 billion. Importantly, these accomplishments do not include billions in additional recoveries from Civil's work in the Residential Mortgage-Backed Securities Working Group's multi-billion dollar settlements with Bank of America, Citigroup and JPMorgan.

Civil's work in combatting economic crimes typically arises in (1) health care fraud and (2) financial fraud cases. Equally important, Civil's work in regards to Strategic Objective 2.4 (3) protects and improves the health, safety, and economic security of America's consumers.

(1) Civil Investigates and Litigates Health Care Fraud Matters

In FY 2014, Civil and U.S. Attorneys obtained \$2.3 billion in federal health care fraud recoveries, including settlements with large pharmaceutical companies, hospitals, and health care companies. These cases involve claims against federal health care programs such as Medicare, Medicaid and TRICARE, the health care program for the military. The largest settlement was with Johnson & Johnson and is detailed below. Other notable settlements included Omnicare, Community Health Systems Inc., Amedisys, Inc., and Boston Scientific Corp.

The Johnson & Johnson Settlement

The \$2.2 billion global settlement with Johnson & Johnson is one of the largest health care fraud settlements in U.S. history, including civil settlements with the Federal Government and states totaling **\$1.72 billion** and criminal fines and forfeiture totaling **\$485 million**. Civil's Consumer Protection Branch and the Fraud Section of the Commercial Litigation Branch both played vital roles in the case.

Consumer Protection Branch: A Johnson & Johnson subsidiary paid a criminal fine in connection with a criminal plea agreement for misbranding the antipsychotic drug Risperdal, in violation of the Federal Food, Drug and Cosmetic Act. The company admitted to promoting Risperdal to health care providers for treatment of psychotic symptoms in elderly dementia patients, when the drug had only been approved to treat schizophrenia.

Commercial Litigation Branch: Johnson & Johnson and a subsidiary settled allegations that the companies targeted vulnerable patients with the drugs, Risperdal and Invega, for unapproved uses. The Government alleged that the company made false and misleading statements about the safety and intended use of the drugs and paid kickbacks to physicians and to the country's largest long term care pharmacy. Johnson & Johnson and a separate subsidiary paid the Government to resolve allegations that the companies caused false and fraudulent claims to be submitted to federal health care programs by promoting off-label uses of the heart failure drug, Natrecor.

(2) Civil Investigates and Prosecutes Financial Fraud, Mortgage Fraud, and Other Economic Crimes

The Civil Division plays a leadership role in the Administration's efforts to combat financial and mortgage fraud. Following the 2008 financial crisis, the Financial Fraud Enforcement Task Force was formed. This Task Force is comprised of several working groups, including the Residential Mortgage-Backed Securities ("RMBS") Working Group, which is co-chaired by the Civil Division's Assistant Attorney General.



The RMBS Working Group secured several historic settlements in FY 2014:

- In the largest civil settlement with a single entity in American history, in August 2014, the Department announced a \$16.65 billion settlement with **Bank of America**, of which \$5 billion is a Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") penalty and \$1.805 billion represents recoveries under the False Claims Act.
- In July 2014, a \$7 billion global settlement was reached with **Citigroup**, including a \$4 billion civil penalty under FIRREA.
- In November 2013, the Department, working with federal and state partners (including the U.S. Attorneys), secured a \$13 billion global settlement with **JPMorgan**. \$9 billion was paid to settle federal and state civil claims by various entities related to RMBS.

Additionally in FY 2014, the Civil Division led or contributed to other major financial fraud investigations of the underwriting and origination of mortgage loans that were at the core of the 2008 financial crisis. The following two investigations reflect Civil's work in this priority area, which is ongoing and expected to result in additional litigation and/or significant recoveries under the False Claims Act:

- The Federal Government, along with 49 states and D.C., reached a \$968 million agreement, including \$418 million under the False Claims Act, with **SunTrust Mortgage** to address mortgage origination, servicing, and foreclosure abuses and is pending court approval. The agreement requires new servicing standards which will prevent past foreclosure abuses, such as robo-signing, and creates new consumer protections.
- **U.S. Bank** agreed to pay \$200 million to resolve allegations that it violated the False Claims Act by knowingly originating and underwriting mortgage loans insured by the Federal Housing Administration ("FHA") that did not meet underwriting requirements, causing FHA substantial losses when it later paid the insurance claims.

(3) Civil Protects the Health, Safety, and Economic Security of America's Consumers

Civil's litigation protects the health, safety, and economic security of American consumers. Its litigation ends dangerous practices that harm some of America's most vulnerable populations, including the elderly, infirm citizens, and struggling middle class families. As a result of these cases, penalties are paid to the Federal Government, wrongdoers face jail time, victims are given justice, and similar future conduct is deterred. Recent highlights of Civil's work include:



- In December 2014, two defendants entered guilty pleas for introducing a misbranded drug into interstate commerce. Specifically, the defendants were accused of defrauding regulators and suppliers in a scheme whereby they would manufacture and sell industrial bleach as a cure for malaria, cancer, the common cold, and other illnesses. Sentencing of these two individuals is scheduled for March 2015.
- In another recent case, also in December 2014, Civil helped to secure a 131-count criminal indictment against 14 individuals in connection with the 2012 nationwide fungal meningitis outbreak, caused by contaminated vials of preservative-free methylprednisolone acetate ("MPA") manufactured at a facility in New England. The U.S. Centers for Disease Control and Prevention ("CDC") reported that 751 patients in 20 states were diagnosed with a fungal infection after receiving injections of this chemical. Of those 751 patients, the CDC reported that 64 patients in nine states died.
- In April 2014, a Florida resident was sentenced to serve 57 months in prison and 5 years of supervised release following a conviction by a jury on charges related to an international lottery fraud scheme. Specifically, the defendant is accused of lying to victims and causing victims to send fees to collect purported lottery winnings. Yet, after the victims, some of whom were elderly Americans, paid the fees, they never received any lottery winnings.

Civil's work in this area highlights the Consumer Protection Branch's unique role as a branch that has both civil and criminal authority.

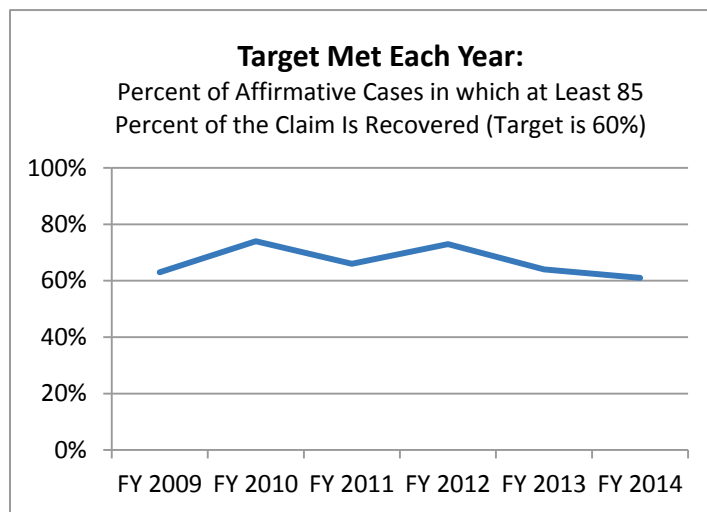
The Civil Division's work entails more than just investigations and litigation. For example, the Commercial Litigation Branch's Fraud Section houses the Department's Elder Justice and Nursing Home Initiative (the "Initiative"), which coordinates and supports law enforcement efforts to combat elder abuse, neglect, and financial exploitation. The Initiative supports law enforcement efforts by, for example, maintaining an information bank of Elder Justice related materials; funding medical reviewers, auditors, and other consultants to assist DOJ attorneys and Assistant United States Attorneys ("AUSAs") in their nursing home and/or long term care facility cases; hosting quarterly teleconferences with DOJ attorneys and AUSAs across the

country to discuss issues or developments in connection with Civil's nursing home and failure of care cases; and coordinating nationwide investigations of skilled nursing facilities. In October 2014, for example, the Initiative played a significant role coordinating and supporting the Government's investigation into Extendicare, one of the nation's largest nursing home chains. As a result of the Initiative's efforts, Extendicare paid the United States \$38 million to resolve allegations that the company billed for medically unnecessary rehabilitation therapy services as well as for grossly substandard nursing care services.

In addition to supporting law enforcement efforts, the Initiative has supported and funded efforts to combat and address elder abuse and financial exploitation. These efforts include funding elder abuse research, training for state and local prosecutors, and online elder abuse training modules for civil legal services workers. Moreover, in September 2014, the Initiative launched the Elder Justice Website (www.justice.gov/elderjustice), a valuable resource for elder abuse victims and their families, state and local prosecutors, and elder abuse researchers and practitioners. The website will also serve as a forum for law enforcement and elder justice policy communities to share information and enhance public awareness about elder abuse.

As with other performance measures, Civil consistently has met its performance targets for affirmative, monetary cases over the past several years. The following chart illustrates that Civil and its partners recover at least 85% of the amount sought in these affirmative cases.

Indicator of Civil's Performance in Monetary Affirmative Cases



STRATEGIES TO ACCOMPLISH OUTCOMES

Recover money lost to fraud, waste, and abuse.

Protect the federal fisc from unmeritorious claims.

Promote America's national and homeland security interests.

Uphold immigration enforcement actions.

In FY 2016, Civil will continue to aggressively represent the Federal Government when its agencies are sued and pursue affirmative cases in areas such as financial and health care fraud. In addition, Civil plans to continue to use the best technology available to improve efficiency, notably including its litigation support program to review and analyze documents and electronic evidence.

Civil Hires Top-Notch Attorneys and Support Staff

A key factor in Civil's success in FY 2016 will be its ability to hire additional attorneys and support. Civil is able to hire the best and brightest attorneys and non-attorneys with a passion for public service. The new staff will require advanced training programs and

professional development resources to fulfill their true potential. Senior attorneys and managers will mentor and coach the new staff on the complexity of the Department's caseload to fully prepare them for landmark cases. Civil's ability to hire high-caliber attorneys and support staff is crucial for its continued strong performance in the future. Additionally, pending approval of the proposed health care fraud program increase, Civil will be able to best utilize its attorney staff on the legal tasks necessary throughout the case. By hiring investigators to handle fact development in cases, attorneys will be better able to use their legal expertise to draft complaints, prepare for depositions, draft motions, and conduct other pre-trial and trial activities, as opposed to investigative activities that can be handled by skilled investigators.

Civil Utilizes Crucial Advanced Technological Resources

Another significant strategy for success in Civil's complex investigations and litigation is the use of state-of-the art technology. One of the most important technology strategies that Civil utilizes is its exemplary Automated Litigation Support ("ALS"). With this program, Civil can use technology to conduct discovery, conduct pre-trial activities, aid attorneys in their motions practices, and assist with trial preparation – *saving time, money, and resources*. One of the most important uses for ALS is analyzing documents and electronic data. In a large-scale investigation or case, massive amounts of information will be collected, analyzed, and produced, necessitating storage, processing, and expertise. The requested Program Increase for Advanced Litigation Support Services, described in detail below, will ensure that Civil attorneys continue to have access to this ever-evolving state-of-the-art technology.

Civil Coordinates with Other Government Actors to Leverage Resources and Achieve Successful Outcomes

The Civil Division works closely with partners within the Department of Justice, the Federal Government, and state governments to achieve successful outcomes. On a regular basis, Civil Division attorneys work with U.S. Attorneys across the country. In the fight against health care fraud, Civil Division attorneys and support staff regularly consult the U.S. Department of Health & Human Services' Office of Inspector General and the Centers for Medicare & Medicaid Services. The Civil Division's Assistant Attorney General serves as a co-chair of the Financial Fraud Enforcement's Residential Mortgage-Backed Securities Working Group (along with the Criminal Division's Assistant Attorney General, the U.S. Securities and Exchange Commission Co-Director of Enforcement, the United States Attorney for the District of Colorado, and New York's Attorney General). On a regular basis, Civil Division attorneys are consulted for their expertise by client agencies. The advice that Civil is able to provide can avoid future litigation or put the U.S. Government in the best possible situation in any future litigation.

PRIORITY GOAL THREE – REDUCE FINANCIAL AND HEALTHCARE FRAUD

The Civil Division contributes data to the Department's Priority Goal of reducing the number of financial and health care fraud investigations pending longer than two years by three percent over FY 2013 levels, leveraging resources to efficiently and effectively drive cases to resolution. When deciding how to complete an investigation, Civil's attorneys carefully consider a number of factors, including: litigation resources needed, amount of federal funds at issue, and potential public impact or harm.

Many investigations are time-consuming because attorneys must interview potential witnesses; master complex regulatory or statutory schemes; and analyze technical financial documents, detailed health utilization records, and other complex evidence to determine the likelihood of the Government's success. Managers review lists of ongoing investigations to decide how to best complete (*i.e.*, make a decision pertaining to charging or filing suit) the investigation based on interests of the Government and the public. Civil compiles priority goal data on a quarterly basis and the Justice Management Division combines Civil's data with data from other components to report progress for the entire Department.

PROGRAM INCREASE: HEALTH CARE FRAUD

Item Name:	Health Care Fraud Enhancement
Strategic Goal:	Strategic Goal II: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law
Strategic Objective:	Objective 2.4: Combat corruption, economic crimes, and international organized crime
Budget Decision Unit(s):	Legal Representation
Program Increase:	Positions <u>15</u> Agt/Atty <u>7</u> FTE <u>8</u> Dollars <u>\$1,341,000</u>

Introduction

The Civil Division is a leading player in the Federal Government's efforts to combat health care fraud. The Civil Division's Fraud Section and its Consumer Protection Branch investigate and litigate health care fraud cases under the False Claims Act and the Federal Food, Drug and Cosmetic Act. In many of these matters, the Civil Division works collaboratively with other Department of Justice components, such as U.S. Attorneys, and client agencies, such as the U.S. Department of Health & Human Service's Office of Inspector General, the Food and Drug Administration, and the Centers for Medicare & Medicaid Services. These cases have resulted in billions of dollars being returned to the Federal Government's health care programs such as Medicare, Medicaid, and Tricare. To continue expanding on this success, Civil needs additional staff to handle the increasing number of whistleblower cases and cases derived from innovative fraud detection tools. Accordingly, Civil requests this modest program increase for FY 2016.

Justification

Civil's longstanding track record of success in enforcing anti-fraud laws has returned billions of dollars to the Federal Government in recent years. From January 2009 through the end of FY 2014, the Department recovered over \$14 billion in health care fraud cases utilizing the False Claims Act. At the same time, the Department secured over \$6 billion in criminal fines, forfeitures, restitution, and disgorgement in connection with Federal Food, Drug and Cosmetic Act violations.

Health Care Fraud Enhancement:

- 7 attorneys
- 5 paralegals
- 3 investigators/analysts
- \$200,000 in ALS

In FY 2014, Civil successfully recovered \$2.3 billion in health care fraud cases filed under the False Claims Act. This marked the fifth straight year that recoveries involving health care fraud exceeded \$2 billion. Among the notable FY 2014 recoveries was the historic \$2.2 billion Johnson & Johnson settlement, one of the largest health care fraud settlements in American history. Other significant FY 2014 health care fraud cases included:

- A pharmaceutical company, **Endo Health Solutions**, paid \$192.7 million for conduct arising from its marketing of a drug for uses not approved as safe and effective by the FDA. In the settlement, the company admitted that it intended for the drug, which was approved to treat a shingles condition, to be used for other unapproved purposes such as back pain, diabetic neuropathy and carpal tunnel syndrome.
- The nation's largest operator of acute care hospitals, **Community Health Systems Inc.**, paid \$98 million to resolve allegations that the company knowingly billed government health care programs for inpatient services that should have been billed as less expensive outpatient care.
- A worldwide manufacturer and marketer of medical devices, **Boston Scientific**, paid \$30 million to settle allegations that a subsidiary knowingly sold defective heart devices that were eventually implanted into Medicare patients. The devices contained a defect where instead of a current traveling to the heart, the current "arcs" back to the device itself, rendering the device ineffective. Instead of disclosing the problem, the subsidiary issued a misleading communication to doctors regarding the defect.

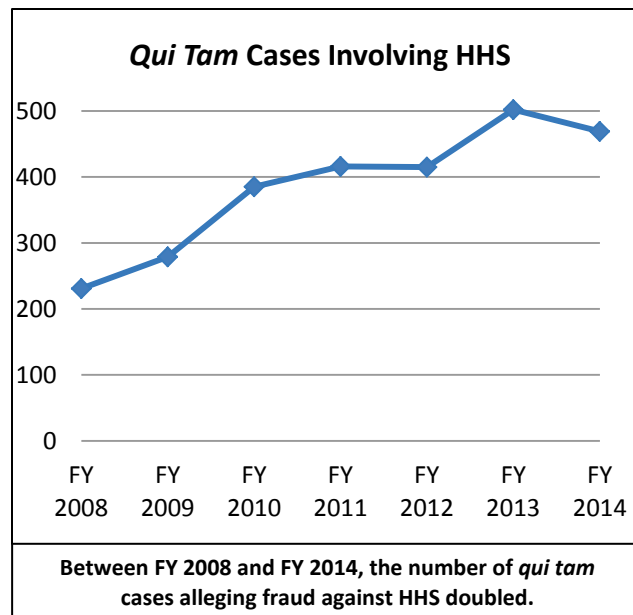
The aforementioned cases demonstrate Civil's success in health care fraud litigation. A typical Civil health care fraud case requires multiple attorneys, professional staff, and costly medical and financial analysts with expertise to engage in extensive discovery. The opposing parties in these matters are invariably very well-funded and present significant hurdles to the Federal Government's efforts to obtain successful resolutions. These cases regularly require the use of advanced litigation support technologies to search huge volumes of medical data. Civil needs additional resources to ensure that efforts to combat health care fraud do not wane. There are three principal reasons why Civil now requests additional resources.

(1) Whistleblower Caseload is Rapidly Increasing

Complaints filed by whistleblowers, or relators, under the False Claims Act are a major source of health care fraud recoveries. These complaints also are known as *qui tam* cases.

Whistleblowers who file False Claims Act lawsuits on behalf of the Federal Government are eligible to receive a portion – up to 30% – of the amount that is recovered.

As the chart reveals, the number of *qui tam* filings involving health care fraud have increased dramatically in recent years. There are several possible reasons for this increase. With the publicity and media attention surrounding each successful health care fraud case, more whistleblowers come forward with allegations that may result in other multi-million dollar recoveries. Similarly, as representing whistleblowers has become a more lucrative practice for attorneys, the number of specialized attorneys in this area has increased, thus increasing the number of *qui tam* filings. Also, these attorneys are filing more sophisticated complaints that raise more complex issues.



As noted earlier, the Department is required by law to investigate each *qui tam* case and make a decision to intervene and take over the suit or to decline to pursue it. (See 31 U.S.C. § 3730). Therefore, as the number of whistleblower complaints increases, Civil must expend additional resources to meet the provisions of the False Claims Act that mandate a diligent investigation of each claim.

(2) New Health Care Fraud Detection Tools

Historically, whistleblower complaints have been the primary source of leads for False Claims Act litigation. In FY 2014, 94% of new health care fraud cases received by Civil's Fraud Section were *qui tam* cases. While pursuing *qui tam* matters has returned billions of dollars to the Federal Government, in recent years Civil pioneered a new approach to also proactively and systematically fight fraud by using health care claims data to identify billing anomalies indicative of fraud. This approach should result in numerous additional investigations and cases to complement the whistleblower complaints received each year.

More specifically, working with a Medicare contractor, Civil analyzes the billing patterns of medical providers to identify providers who appear to be "outliers" when compared to their peers. To date, Civil's efforts have focused on physicians. However, consistent with the Department's commitment to aggressively fight health care fraud in all of its forms, Civil has expanded its focus to identify institutional outliers, such as hospitals, skilled nursing facilities, and diagnostic imaging facilities. Focusing on outlier institutional providers should lead to additional recoveries since the overwhelming majority of historical recoveries under the False Claims Act were obtained from institutional providers.

(3) Maximizing Attorney Productivity

Large-scale litigation involving health care fraud is incredibly complex. Detailed medical records as well as financial records must be reviewed and analyzed. Due to current staffing configurations, attorneys often perform such analysis on their own. To maximize efficiency, Civil is proposing to hire several investigators and analysts with the expertise to appropriately analyze these matters. Attorney time would be re-directed to litigating cases while financial and medical analysts would be responsible for data analysis. This efficient staffing model will effectively increase the amount of more costly attorney time spent actually litigating health care fraud cases.

Strategic Goals and Performance

Civil's most recent accomplishments in health care fraud are reflected in the Department's multi-billion dollar recoveries. Civil's health care fraud cases are part of the performance measure tracking the percentage of cases in which at least 85% of the original amount sought in monetary cases was recovered. Civil regularly meets this target. To continue Civil's successful performance outcomes in priority health care fraud matters, Civil needs the necessary staff and litigation support resources to keep pace with its growing caseload. Approving this Program Increase will enable Civil to continue reporting successful outcomes, even as its health care fraud caseload is expected to increase.

This increase will allow Civil to advance Strategic Goal 2 (prevent crime, protect the rights of the American people, and enforce federal law) and Strategic Objective 2.4 (combatting economic crimes) by investigating institutional "outliers" and enhancing the scope of enforcement efforts. Moreover, this Program Increase will provide necessary resources to help the Department more efficiently process its cases under investigation, consistent with the Department's third priority goal related to health care.

Funding Information

Base Funding

<i>FY 2014 Enacted</i>				<i>FY 2015 Enacted</i>				<i>FY 2016 Current Services</i>			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
7	5	7	\$1,117	7	5	7	\$1,128	7	5	7	\$1,170

Note: As this only includes base funding, it does not capture the very significant reimbursable resources that Civil uses for health care fraud activities.

Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2016 Request (\$000)	FY 2017 Net Annualization (change from 2016) (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Attorneys (0905)	\$98	7	\$686	\$647	\$14
Paralegals / Other Law (0900-0999)	\$46	5	\$230	\$204	\$64
General Investigative (1800-1899)	\$75	3	\$225	\$240	\$14
Total Personnel		15	\$1,141	\$1,091	\$92

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2016 Request (\$000)	FY 2017 Net Annualization (change from 2016) (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
ALS			\$200		
Total Non-Personnel			\$200		

Total Request for this Item

	Pos	Agt/ Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2017 Net Annualization (change from 2016) (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Current Services	7	5	7	\$1,170	\$0	\$1,170		
Increases	15	7	8	\$1,141	\$200	\$1,341	\$1,091	\$92
Grand Total	25	14	18	\$2,311	\$200	\$2,511	\$1,091	\$92

PROGRAM INCREASE: IMMIGRATION ENFORCEMENT

Item Name:	Immigration Enforcement
Strategic Goal:	Strategic Goal II: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law
Strategic Objective:	Objective 2.6: Protect the federal fisc and defend the interests of the United States
Budget Decision Unit(s):	Legal Representation
Program Increase:	Positions <u>10</u> Agt/Atty <u>8</u> FTE <u>8</u> Dollars <u>\$1,356,000</u>

Introduction

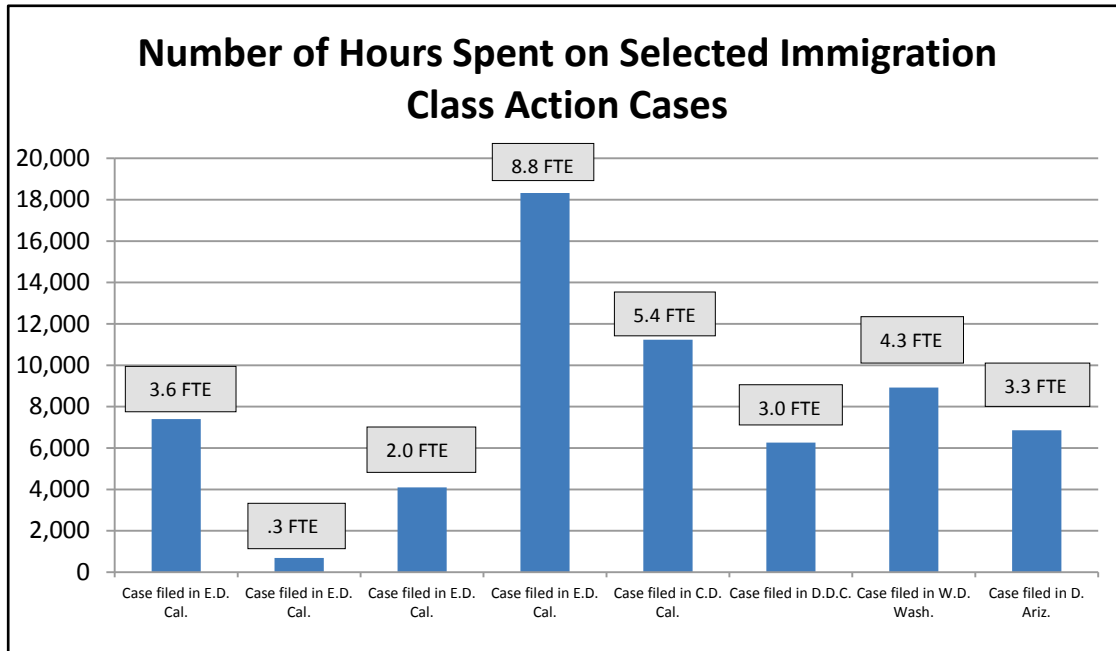
Civil's Office of Immigration Litigation – District Court Section (“DCS”) represents the United States in federal district court in matters involving the Immigration and Nationality Act (“INA”). Over the years, some of the longest running and most time intensive cases that this group has handled have been class action cases. Lately, this section has experienced a flood of such cases; currently, the fifty-two attorney DCS is handling 26 class actions – as opposed to the normal level of approximately 15. Given the size, scope, and length of each class action case, DCS is in dire need of additional attorney and support staff. To provide the necessary staffing to DCS, this FY 2016 Budget Request seeks 10 positions (8 attorneys and 2 paralegals).

Immigration Enforcement:

- 8 attorneys
- 2 paralegals

Justification

In an immigration class action matter, attorneys purporting to represent a broad class of people will challenge some aspect of America's immigration laws or regulations. Successful challenges can forever change America's immigration policy. Therefore, immigration class action cases are incredibly complex with significant long-term repercussions. Each class action case requires a team of at least two to three dedicated attorneys to adequately handle the matter. In the past, such cases routinely have lasted over ten years. In fact, two class action cases stemming from the 1986 comprehensive immigration reform law are still pending today – over 25 years after the reform legislation became law. In total, eight different class action cases were filed after the 1986 comprehensive immigration reform law. The chart on the following page details the number of attorney hours spent on each of these eight cases; the data shows that each case typically took thousands of attorney hours to resolve. Since an attorney working full-time for one year equates to 2,080 hours, in many of the cases detailed in the chart below either several attorneys would have worked full-time on a case in one year or one attorney would have worked full-time on the case for several years. In addition, class action cases are becoming increasingly more complex and time-consuming than they were several years ago.



Recently, an unexpected surge of such class actions has been filed against the Federal Government. These cases have included a variety of issues, such as:

- U.S. Immigration and Customs Enforcement (“ICE”) Detention – These cases typically involve class challenges to detention programs that affect either (1) aliens who are in mandatory detention pending resolution of removal proceedings (usually criminals) who want bond hearings or (2) convicted criminals in state criminal custody who are likely to be turned over to ICE at the end of their state sentences.
- U.S. Citizenship and Immigration Services (“USCIS”) Benefits – These cases involve classes of individuals, who have been denied certain immigration visas because USCIS’s interpretation of a particular statute renders the applicants ineligible.
- Ongoing Removal Hearings – These cases are related to aliens in ongoing removal hearings, such as a class of mentally incompetent aliens who seek a right to counsel or a class of unaccompanied minors who seek a right to counsel. Absent extraordinary circumstances, aliens are not provided legal counsel at government expense.
- Challenges to ICE Detainers – These cases relate to the ability of ICE to issue detainers, which are formal written requests to a local law enforcement agency that informs ICE of the release of a particular alien. Once ICE issues detainers to local law enforcement, ICE can take criminal aliens into immigration custody and can hold them at the end of their sentences for an extra two days so that ICE may assume physical custody of the criminal aliens in order to effectuate removal.

While an exact reason for the increase in class actions is uncertain and not tied to a specific statutory, regulatory, or policy change, immigration firms nationwide and prominent non-profit immigrant rights groups have gained extensive experience in filing immigration class action challenges in recent years. It is widely believed that these firms are leveraging their experience and sharing litigation strategies to file additional class action cases. The Department has no choice but to aggressively represent the U.S. when it is sued, and thus, must respond to each suit filed in a class action.

To adequately staff the rapidly growing number of class action cases, DCS managers have had to pull attorneys off of other cases and, in light of DCS's staffing shortage due to high attrition, utilize attorneys from other sections, with limited immigration-related trial experience. While some immigration matters can be delegated to U.S. Attorneys' Offices ("USAOs"), class actions are national in scope, among the highest priority matters for DCS, and, thus, cannot be delegated. For instance, the complexity of the class actions handled by DCS includes the need to respond to large demands for attorneys' fees and costs, whether in the course of litigation or settlement. Attorneys' fees demands in complex class action cases have ranged up to roughly fourteen million dollars, and significant staff and attorney time and resources are necessary to review the documentation supporting such demands.

To handle this recent influx of class action cases, Civil's immigration attorneys are triaging the other critical parts of their work as best as they can. Whenever possible, DCS asks USAOs to accept more delegated cases, but USAOs have expressed concerns about the volume of the immigration cases they can absorb. Indeed, several USAOs, including an extremely busy district on the West Coast, have requested DCS to assume a larger portion of immigration cases. Similarly, the Department of State has asked DCS to handle an important, national security-related group of Yemeni passport fraud denaturalization cases. The consequence of not being able to hire the requested personnel is an inability to prosecute this critical, State Department-requested litigation. Consequently, additional attorneys and support staff are critical to allowing DCS to staff these cases as well as the increasing number of class actions at acceptable levels, provide the USAOs and the Department of State with the requested assistance, and fulfill its mission of protecting the federal fisc and defending the interests of the United States.

Strategic Goals and Performance

Immigration enforcement is an example of Civil's work in helping the Department advance Strategic Objective 2.6 (protect the federal fisc and defend the interests of the United States). Regarding performance measures, Civil's immigration cases are reflected in two performance measures: (1) the percent of favorable resolutions in non-monetary trial cases, and (2) the percent of favorable resolutions in non-monetary appellate cases.

Due to a growing immigration class action caseload, DCS needs more attorneys and staff. This Program Increase would allow DCS to achieve its goals, thereby helping the Civil Division reach its performance targets and the Department achieve its Strategic Objectives. Historically, Civil has performed well in these two performance measures; in fact, Civil has met these targets

every year since FY 2009. To continue this success, DCS will need adequate staff to handle its caseload, and this Program Increase ensures that DCS has the tools that it needs.

Funding Information

Base Funding

<i>FY 2014 Enacted</i>				<i>FY 2015 Enacted</i>				<i>FY 2016 Current Services</i>			
Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)
414	315	410	\$64,298	414	315	410	\$64,941	414	315	410	\$68,700

Personnel Increase Cost Summary

Type of Position/Series	Average* Cost per Position (\$000)	Number of Positions Requested	FY 2016 Request (\$000)	FY 2017 Net Annualization (change from 2016) (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Attorneys (0905)	\$153	8	\$1,224	\$299	\$16
Paralegals / Other Law (0900-0999)	\$66	2	\$132	\$41	\$25
Total Personnel		10	\$1,356	\$340	\$41

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2016 Request (\$000)	FY 2017 Net Annualization (change from 2016) (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Total Non-Personnel			\$0		

Total Request for this Item

	Pos	Agt/ Atty	FTE	Personnel (\$000)	Non- Personnel (\$000)	Total (\$000)	FY 2017 Net Annualization (change from 2016) (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Current Services	414	315	410	\$68,700	0	\$68,700		
Increases	10	8	8	\$1,356	0	\$1,356	\$340	\$41
Grand Total	424	323	418	\$70,056	0	\$70,056	\$340	\$41

PROGRAM INCREASE: ADVANCED LITIGATION SUPPORT SERVICES

Item Name:	<u>Advanced Litigation Support Services</u>
Strategic Goal:	Strategic Goal II: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law
Strategic Objective:	Objective 2.4: Combat corruption, economic crimes, and international organized crime. Objective 2.6: Protect the federal fisc and defend the interests of the United States.
Budget Decision Unit(s):	Legal Representation
Program Increase:	Positions <u>10</u> Agt/Atty <u>0</u> FTE <u>5</u> Dollars <u>\$6.35 million</u>

Introduction

Over the past several years the Civil Division has been instrumental to this Department's record-breaking, multi-billion dollar efforts to fight financial, health care, and mortgage fraud, especially. The fraud schemes that Civil investigates are incredibly complex and require a wide range of advanced investigative and technological resources. Civil has represented the United States Government in countless defensive cases where, collectively, its opponents sought tens of billions of dollars. Our opponents will spare no resource. Civil is proposing this Program Increase to secure the Automated Litigation Support ("ALS") services and information technology tools that are crucial for both affirmative and defensive litigation.

The Program Increase goal is to ensure that all of Civil's attorneys and staff have access to the technological resources required to successfully represent the United States. In recent years,

Advanced Litigation Support Services:

- 10 investigators/analysts (\$750,000)
- ALS/Litigation Technology (\$5,600,000)

the need for ALS has increased and Civil has had to increase its use of outside contractors, financial consultants, and industry experts. This Program Increase will enable Civil to hire several full-time government employees to not only manage the contractor and consultant relationships but will also reduce overhead costs associated with hiring contractors by bringing the necessary resources and additional expertise in-

house. Allowing Civil to hire more in-house ALS staff is the optimal option. This Program Increase is critical to continuing to transition the Civil Division – the Federal Government's law firm – into a law firm of the 21st Century and accomplishing President Obama's objective of delivering "a smarter, more innovative, and more accountable government for its citizens."

Justification

The Civil Division has been instrumental to the Department's multi-billion dollar efforts to fight fraud. Cases brought under the False Claims Act; the Financial Institutions Reform, Recovery, and Enforcement Act; and the Federal Food, Drug and Cosmetic Act have resulted in many billions of dollars being returned to the Federal Government. In conjunction with U.S. Attorneys, Civil's work includes the \$25 billion mortgage servicing agreement; the billion dollar JPMorgan, Citigroup, and Bank of America settlements; and billion dollar health care recoveries from drug companies such as Johnson & Johnson, GlaxoSmithKline, and Abbott. Civil's work in defensive cases has saved billions of dollars in government contract, tort, and other claims. For example, Civil's attorneys saved the Government billions of dollars in the A-12 litigation and over \$30 billion in the Winstar litigation.

These past successes were only possible because of the technological and data analysis tools that Civil deployed in the litigation. Now, Civil is proposing to expand upon its past successes. Through this additional funding, Civil would provide the additional technological resources needed for its complex caseload and would develop new tools to aid in litigation. As part of this plan, Civil plans to hire investigators, analysts, and data specialists to deploy and manage Civil's data analysis tools. Opponents use similar staffing models and technology resources in litigation against the Federal Government. The Government's ability to prevail in litigation depends on our ability to match these resources.

This proposed Program Increase will benefit Civil in several ways since it will: (1) save Civil and the Department money; (2) increase the speed and thoroughness of investigations; and (3) protect investigations from being derailed by external factors.

(1) Saving Civil and Department Money. This Program Increase will save millions of dollars in consulting fees. This proposal will allow Civil to build a unit of specialized industry analysts, statisticians, and data specialists. Accordingly, Civil will better leverage its expertise and resources by having this specialized pool of talent readily available. Civil will avoid high contracting expenses because key personnel will already be retained as government employees. These newly hired specialists will have the necessary industry knowledge to ensure that Civil is getting the best value for the services provided when Civil must contract with outside consultants and experts. The specialized consultants will also be hired at lower costs because Civil will own the technology and data they use. All specialists will be able to use the same advanced analytic technology, regardless if they are federal employees or contractors.

(2) Increasing Speed and Thoroughness of Investigations. Through this initiative, Civil will identify fraud more quickly by using analysts and resources brought in-house. The current process is costly and time-consuming via reliance on resources or evidence borrowed from agency partners. This proposal would reduce delays by keeping on-hand the staff and technology to retrieve, process, and assess relevant information quickly.

(3) Protecting Investigations from Being Derailed by External Factors. When Civil directly controls these resources and skills, attorneys will avoid having their investigations derailed by external factors. Recently, a key consultant performing analysis central to several high priority financial fraud matters developed conflicts of interest and unexpectedly stopped working on several of Civil's high-priority investigations. This conflict, created by the consultant's decision to do business with industry instead of the Government, gravely impacted and delayed these investigations. This proposed Program Increase would allow Civil to take matters into its own hands and ultimately compete with the industry. Funding this initiative would satisfy the needs Civil requires to succeed as an effective and sustainable agency.

Strategic Goals and Performance

This increase will advance Civil's contribution to Strategic Goal 2 and Strategic Objectives 2.4 (combat corruption, economic crimes, and international organized crime) and 2.6 (protect the federal fisc and defend the interests of the United States). Civil is one component contributing data for the Department's Priority Goal 3 (focusing on the reduction of healthcare and financial fraud). Litigation support services are crucial to achieve successful outcomes in both affirmative and defensive cases. Thus, ALS is used in virtually every case in Civil's diverse caseload.

Civil must keep pace with the changing nature of litigation. For example, an industry trade publication recently stated that 70% of law firms reported an increase in their litigation support workload. The resources requested in this Program Increase will affect all of Civil's performance targets because ALS is a crucial component for all of Civil's litigation. Whether reviewing documents, preparing for depositions, or assembling exhibits for trial, the resources that ALS provides to Civil's attorneys are invaluable. Continued victory in the courtroom and at the settlement table requires the ALS services that Civil is seeking in this Program Increase. These resources are needed in order for Civil to continue its successful work on behalf of the American people.

Funding Information

Base Funding

<i>FY 2014 Enacted</i>				<i>FY 2015 Enacted</i>				<i>FY 2016 Current Services</i>			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
12	0	12	\$12,915	12	0	12	\$12,934	12	0	12	\$12,954

Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2016 Request (\$000)	FY 2017 Net Annualization (change from 2016) (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
General Investigative (1800-1899)	\$75	10	\$750	\$799	\$45
Total Personnel	\$75	10	\$750	\$799	\$45

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2016 Request (\$000)	FY 2017 Net Annualization (change from 2016) (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
ALS			\$2,000	\$0	\$0
IT			\$3,600	\$0	\$0
Total Non-Personnel			\$5,600	\$0	\$0

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2017 Net Annualization (change from 2016) (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)
Current Services	12	0	12	\$1,954	\$11,000	\$12,954		
Increases	10	0	5	\$750	\$5,600	\$6,350	\$799	\$45
Grand Total	22	0	17	\$2,704	\$16,600	\$19,304	\$799	\$45