



Office of Legal Counsel

FY 2018 PERFORMANCE BUDGET

Congressional Submission



DEPARTMENT OF JUSTICE

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I. Overview for the Office of Legal Counsel

Introduction

In FY 2018, the Office of Legal Counsel (OLC) requests a total of \$8,010,000, 32 positions (of which 26 are attorneys), and 32 FTEs.

With the requested FY 2018 resources, OLC will be able to continue to provide top-quality legal advice on matters related to national security, civil rights, crime fighting programs, and legislative and regulatory initiatives, as well as a range of other legal issues concerning constitutional, statutory, and regulatory authority. OLC has issued opinions or otherwise rendered legal advice touching on virtually every aspect of the Department's overall work and mission.

Issues, Outcomes and Strategies

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

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

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

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

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

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

In recent years, OLC has been the subject of a large number of Freedom of Information Act requests and lawsuits. That trend has continued in the new Administration. Responding to those requests and lawsuits requires a significant commitment of time and effort from a team of attorneys and paralegals.

Since 1977, at the direction of the Attorney General, OLC has published selected formal opinions. Volumes covering the years 1977 through 2008 have already been issued in hardback, and preparations for additional volumes are in progress. In addition, OLC published a volume of opinions from the period 1939 until 1977, the first in a supplemental opinion series the Office intends to issue for opinions not published at the time of original issuance. Imaged copies of all these hardback opinions are available on OLC's website, and as an interim step, OLC has also published opinions from 2009 to present on its website <http://www.usdoj.gov/olc/opinions.htm> in memorandum form, pending issuance of those opinions bound volumes. In addition, OLC has accelerated the speed which it publishes opinions on its website. Work on this effort will continue into FY 2018.

Performance Challenges

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

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

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

Environmental Accountability

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

II. Summary of Program Changes

N/A

III. Appropriations Language and Analysis of Appropriations Language

N/A

IV. Program Activity Justification

A. Office of Legal Counsel

<i>Office of Legal Counsel</i>	Perm. Pos.	FTE	Amount
2016 Enacted	33	30	7,989
2017 Continuing Resolution	33	27	7,974
Adjustments to Base and Technical Adjustments	-1	5	36
2018 Current Services	32	32	8,010
2018 Program Increases	0	0	0
2018 Program Offsets	0	0	0
2018 Request	32	32	8,010
Total Change 2017-2018	-1	5	36

1. Program Description

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

In addition to these responsibilities, OLC will continue its principal duty of assisting the Attorney General in his role as legal adviser to the President and Executive Branch agencies. OLC will also continue in FY 2018 to serve as arbiter of legal disputes within the Executive Branch, to provide general legal assistance to other components of the Department, including where litigation or proposed legislation raises constitutional issues or general issues of executive authority, and to review for form and legality all Executive Orders and substantive Proclamations and Memoranda to be issued by the President, as well as all proposed Orders of the Attorney General and all regulations requiring Attorney General approval.

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

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

2. Performance and Resource

PERFORMANCE AND RESOURCES TABLE											
RESOURCES		Target		Actual		Target		Changes		Requested (Total)	
		FY 2016		FY 2016		FY 2017		Current Services Adjustments and FY 2018 Program Changes		FY 2018 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		27	7,989	30	8,048	27	7,974	5	36	32	8,010
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE	FY 2016		FY 2016		FY 2017		Current Services Adjustments and FY 2018 Program Changes		FY 2018 Request	
Program Activity		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		27	7,989	30	8,048	27	7,974	5	36	32	8,010
Performance Measure: Output	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch agencies		1700				1700				1700
Performance Measure: Efficiency	Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President		190				190				190
Performance Measure: Outcome											

PERFORMANCE MEASURE TABLE

Decision Unit: Office of Legal Counsel

Performance Report and Performance Plan Targets		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016		FY 2017	FY 2018
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch	1700	1700	1700	1700	1700	1700	1700	1700
Performance Measure	Review form and legality of all proposed Executive Orders and Proclamations to be issued by the President	180	190	190	190	190	190	190	190
Performance Measure									
Efficiency Measure									
OUTCOME Measure									

N/A = Data unavailable

* Denotes inclusion in the DOJ Annual Performance Plan

3. Performance, Resources, and Strategies

OLC has issued opinions or otherwise rendered legal advice touching on virtually every aspect of the Department's overall work and mission.

a. Performance Plan and Report for Outcomes

Because of the legal advisory nature of its mission and workload, OLC is not included for review in the Department's Performance and Accountability Report (PAR). This budget submission is part of the Department's Performance Plan since we are reporting targets through FY 2018. However, OLC does not have measures in the PAR.

b. Strategies to Accomplish Outcomes

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

c. Priority Goals

OLC's general goals for FY 2018 are as follows:

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

V. Program Increases by Item:

N/A

VI. Program Offsets by Item:

N/A

IV. EXHIBITS