



*U.S. Department of
Justice*

Civil Division

FY 2017 Budget and Performance Plans

Submitted to the Congress of the United States
February 2016

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Overview of the Civil Division

The Civil Division is the largest litigating component of the U.S. Department of Justice. Each year, the Civil Division represents the United States, its departments and agencies, Members of Congress, Cabinet Officers, and other federal employees in tens of thousands of different matters. 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 can be categorized as follows:

- 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 litigates matters on behalf of over 100 federal agencies. This litigation encompasses the array 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, defending constitutional and other challenges to Congressional enactments, and defending national security prerogatives and decisions.

In addition to litigation, Civil aids in administering three compensation programs: the Vaccine Injury Compensation Program, the Radiation Exposure Compensation Program, and the September 11th Victim Compensation Program.

The diversity of this subject matter is impressive, as are the actual results of this litigation. In FY 2015, Civil:

- **Secured** over \$4 billion in settlements, judgments, fines, and restitution.
- **Defeated** over \$9 billion in cases that were closed.
- **Defeated** all or nearly all of the opposing party's claims in 86 percent of defensive cases.
- **Defended** cases in which opposing parties sought tens of billions of dollars from the United States.
- **Defeated** thousands of challenges to laws, regulations, policies, and administrative decisions.

Full Program Costs

This FY 2017 Civil Division Budget Request provides for 1,334 authorized positions, including 960 attorneys, and totals \$309.6 million. It includes program increases for Immigration Enforcement (\$729,000 and 7 positions), Elder Justice (\$558,000 and 2 positions), and E-Records (\$1.6 million) as well as an increase to the appropriated reimbursement for the Vaccine Injury Compensation Program.

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

Year after year, the Civil Division, working with U.S. Attorneys, collects billions of dollars for the U.S. Treasury. Such revenue-generating cases involve health care fraud, financial fraud, procurement fraud, bankruptcies, civil penalties, and oil spills. Since FY 2009, Civil, working with U.S. Attorneys, has secured over \$35 billion in settlements, judgments, fines, and restitution.

Civil Defeats Billions of Dollars in Unmeritorious Damages

The overwhelming majority – approximately 87% – of the Civil Division’s workload involves representing the Federal Government in defensive lawsuits. A large number of these cases are monetary claims filed against the Federal Government including contract disputes, patent claims, a variety of accident and liability claims, and constitutional takings claims. The Federal Government’s potential exposure in this caseload is tens of billions of dollars each year. In FY 2015, the Civil Division defeated over \$9 billion in cases that were closed.

Civil Defends the U.S. Government’s Interests

The Civil Division defends the integrity of federal laws, regulations, policies, and programs. This litigation reflects the diversity of the Federal Government’s activities and involves challenges to statutes passed by Congress, domestic and foreign operations, national security and homeland security policies, and counterterrorism activities.

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

The Civil Division’s litigation ends dangerous practices that harm America’s most vulnerable populations. The Elder Justice and Nursing Home Initiative aids senior citizens and their families. Other consumers are protected through prosecutions of mass marketing frauds, such as lottery or psychic scams. 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. Other consumer fraud litigation pursues cases against those who market unsafe or fraudulent products and services, such as tainted dietary supplements or contaminated food.

Internal and External Challenges

The most significant challenges facing the Civil Division are described below.

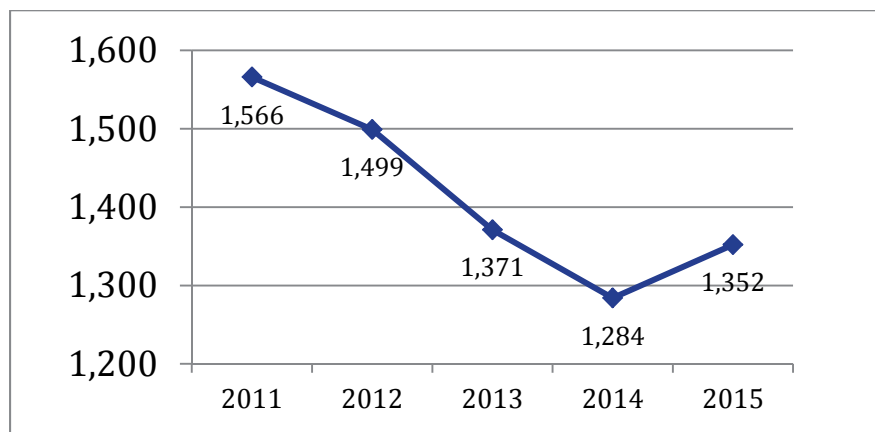
Maintaining Necessary Staffing Levels

The largest immediate challenge facing the Civil Division is the ability to continue to provide high quality legal representation to client agencies and the American people in a difficult budget environment. In recent years, full adjustments-to-base (“ATBs”) for increased personnel costs, rent, and security costs have not been appropriated. At the same time, ATBs for upcoming planned office relocations, which will result in significant long-term cost savings to the Federal Government, have also not been appropriated. More concretely, in the FY 2015 budget, Civil requested \$12.8 million in total ATBs but only received \$5.6 million. In FY 2016, Civil requested \$25.5 million in total ATBs but only received \$760,000.

In FY 2017, Civil is seeking ATBs of \$5.4 million for personnel, rent, and security costs as well as ATBs of \$9.1 million for planned office relocations – totaling \$14.5 million in ATBs. If ATBs are not appropriated, Civil will be forced to absorb these costs in its base budget. Personnel costs are the overwhelming majority of Civil’s expenditures. As such, when it must absorb ATBs in its base budget, Civil has no choice but to find savings by cutting personnel. At this time, Civil estimates that it would need to cut its workforce by approximately 85 FTE to absorb \$14.5 million if ATBs are not appropriated in FY 2017.

Civil’s most prized asset is its excellent workforce; it is these attorneys and support staff that allow Civil to provide high quality legal representation to client agencies and the American people. Since 2011, Civil’s workload has not shrunk in terms of the quantity and complexity of cases. Yet, its workforce is 13% below what it was in 2011. Failing to provide ATBs in FY 2017 risks further personnel cuts.

Civil’s Personnel Levels: 2011 -2015¹

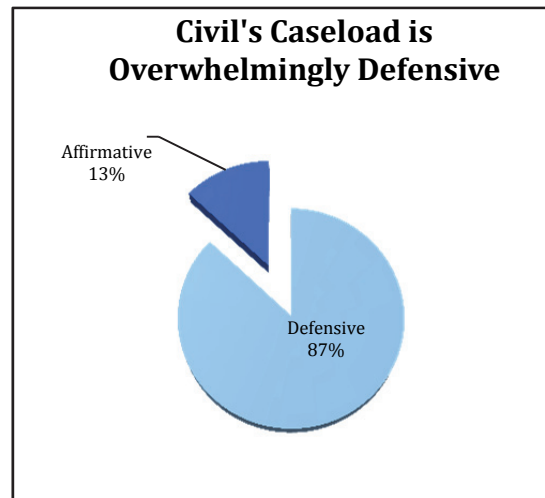


¹ This includes all direct and reimbursable positions. Data is as of Pay Period 2.

Defensive Cases

Civil's greatest continuing challenge is the fact that 87% 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 it face default judgments or sanctions. Regardless of its budget or its ability to absorb additional work, Civil must represent the Federal Government in these matters.

For example, the Vaccine Injury Compensation Program's caseload has exploded in recent years and the current staff level cannot handle the workload. For this reason, Civil is seeking an increase in the reimbursement from the Vaccine Injury Compensation Trust Fund.



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.

Complex Data in Litigation

An ongoing challenge, as well as one that is expected to continue indefinitely, is the increasingly complexity of data in investigations and litigation. Civil is defending claims where billions of dollars are sought in damages. Conversely, Civil is aggressively pursuing health care fraud and financial fraud cases that will return billions of dollars to the U.S. Treasury. Both the quantity and quality of the data required in such matters has increased, and Civil's attorneys require more advanced tools. Modern day litigation requires that attorneys use Automated Litigation Support (ALS) services to review and manage this data.

ALS services aid in acquiring, screening, organizing, and analyzing documents or data in preparation for, and during, the judicial process. Civil uses ALS tools and contractors to organize and control document collection and data, respond to requests for documents, develop institutional memory, and provide access to case material at any time, from anywhere. To achieve this, innovative technology is used to scan, index, sort, retrieve, host, and analyze data.

While not all cases require the use of ALS, many cases cannot be properly investigated and litigated without it. Generally, ALS is required for cases that have massive amounts of evidence (paper or electronic), involve complex issues, have tight court-mandated deadlines, risk large dollar amounts, require multiple productions, involve multiple parties and jurisdictions, have a long case duration, involve key precedents, and are high visibility.

Environmental Accountability

Civil is actively 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: significantly increasing teleconferencing capabilities throughout its office space to reduce travel costs, utilizing UNICOR’s e-recycling program for excess and obsolete computer equipment, installing motion detector lighting systems, using 25 watt “green” lighting, and significantly reducing the overtime use of heating and air conditioning. For more than five years, Civil has served as a leader within the Department in the area of energy savings achieved through server virtualization technology. Through successful server and desktop virtualization efforts, Civil eliminates nearly 4 million pounds of CO2 each year which is the equivalent of removing over 325 cars from the road or planting nearly 6,000 trees. At the same time, Civil continues to develop plans that will consolidate several buildings and result in the Division occupying 20 percent less office space. Beginning in the spring of 2017, nearly one-third of Civil’s employees will be housed in office space that meets LEED Platinum designation and is in close proximity to Metro, VRE, and MARC transit options.

Summary of Program Changes

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Immigration Enforcement	To provide additional attorneys to handle the increase of national security and labor and employment.	7	4	\$729	31
Elder Justice	To provide additional support for the Elder Justice Initiative successes.	2	1	\$558	36
E-Records	To provide funding to meet government-wide e-record mandates.	0	0	\$1,600	39

Appropriations Language and Analysis

The FY 2017 Budget Request includes a proposed change in the Legal Activities, Salaries and Expenses, General Legal Activities appropriations language, which is explained below. 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 [\$9,358,000] *\$11,970,000*, to be appropriated from the Vaccine Injury Compensation Trust Fund.

Summary

The Vaccine Injury Compensation Program (“VICP” or the “Program”) caseload has doubled over FY 2009 levels and is projected to continue increasing through FY 2017 and beyond. To manage this drastic increase in case activity, Civil is requesting an increase of \$2.61 million for total program funding of \$11.97 million to fund 12 additional positions and to pay for increased operating costs associated with the burgeoning caseload. If this request is not funded, significant delays in the adjudication process will occur, causing delays in compensation to meritorious petitioners, which will undermine this innovative compensation system that Congress designed.

Analysis

Overview of the Program. 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; and (2) the risk of litigation threatened to reduce vaccine manufacturing to a level that could not meet market demands.

The Act established the VICP, a no-fault compensation system for persons suffering injury or death allegedly attributable to certain vaccines or the administration thereof.² An individual claiming a vaccine-related injury must file a petition for compensation with the U.S. Court of Federal Claims before pursuing any civil action against a manufacturer or physician.

² The Vaccine Injury Table lists certain injuries that are presumed related to the administration of certain vaccines. Even if an injury is not listed, a petitioner may still try to prove that the vaccine actually caused the injury.

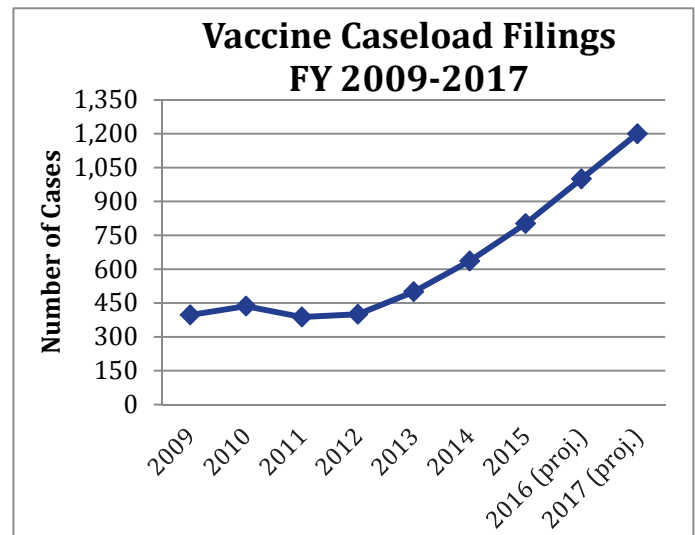
Civil Division's Role. Once the case is filed, Civil represents the interests of the U.S. Government. To ensure that compensation is awarded only to those whom Congress intended, cases are closely examined for legal and medical sufficiency. Civil attorneys review the submitted evidence and coordinate with the U.S. Department of Health and Human Services (“HHS”) to determine if the petitioner’s alleged injuries merit compensation. If so, compensation is awarded either through a court decision or a settlement.

Approximately 80% of compensation awarded is the result of a negotiated settlement. Determination of the appropriate compensation is specifically tailored to each individual petitioner, so the process is often time and resource-intensive and may require a trial to resolve. If the petitioner has insufficient evidence to merit compensation, a Special Master with the Court of Federal Claims will hold a hearing to decide the case, and Civil will present evidence and argue against awarding damages.

Overview of the Fund. The Vaccine Injury Compensation Trust Fund is funded by an excise tax imposed on each purchased dose of a covered vaccine. As of January 2016, since the inception of the Program in 1988, more than \$3.2 billion in compensation has been awarded to over 4,400 claimants who would have otherwise stood little chance of recovery in traditional tort litigation. The Trust Fund also pays the administrative costs of Civil’s VICP staff, HHS, and the Office of the Special Masters of the Court of Federal Claims through reimbursable authority provided by Congress.

The proposed FY 2017 increased reimbursement would represent just a fraction of the Trust Fund from which it is drawn, which is projected to be over \$3.7 billion by next year. The total requested increase of \$2.61 million for Civil’s VICP activities would be about one-tenth of one percent of the Trust Fund balance.

Caseload Increases. The Program has experienced a rapid increase in newly filed cases. In fact, the caseload has grown even more than was anticipated a year ago. At this time, in FY 2017, total vaccine filings are expected to be more than 300% the level in FY 2009. In FY 2009, less than 400 cases were filed. Currently, Civil estimates that over 1,000 cases will be filed annually by FY 2016 and approximately 1,200 in FY 2017.

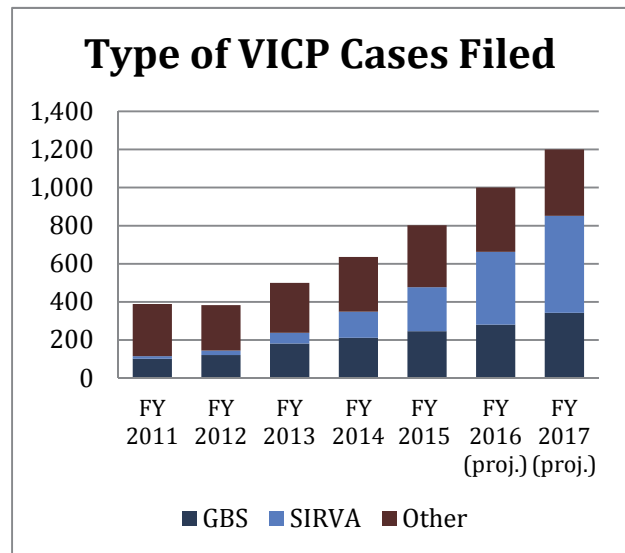


There are several reasons for the recent caseload increase.

- The proposed recognition of an association between vaccination and two injuries (Guillain-Barré syndrome and Shoulder Injury Related to Vaccine Administration) spurs petitions being filed. Further, the rate of filings related to these injuries is expected to jump when the Vaccine Injury Table is amended to include them as presumed vaccine injuries, a change which is expected to become effective in FY 2016.³
- Revisions to the Vaccine Injury Table allow claimants to file with an expanded timeline or even re-file a previously dismissed case.
- The growing sophistication of the vaccine injury attorney field is likely a driving force behind the increase in filings. Previously, vaccine injury law firms primarily represented petitioners 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 petitioners. Further, the statute's provision for payment of certain attorneys' fees and costs from the Trust Fund also may encourage the filing of cases.

Data Supporting Caseload Increases. New injuries proposed by HHS for inclusion in the Vaccine Injury Table have contributed to the increases in caseload.

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



³ HHS published the Notice of Proposed Rulemaking, the first step to proposing an amendment to the Table, on July 29, 2015. See <https://www.federalregister.gov/articles/2015/07/29/2015-17503/national-vaccine-injury-compensation-program-revisions-to-the-vaccine-injury-table#h-10>. The public comment period of this notice lasted until January 25, 2016. Therefore, the final rule on the amendments to the Table will likely be in late FY 2016 or early FY 2017.

Additional Staff and Resources Needed. This increased reimbursement would fund 12 additional positions (10 attorneys and 2 paralegals) as well as provide \$300,000 in additional automated litigation support services for vaccine injury cases. In FY 2009, the \$7.83 million appropriation to the VICP funded 41 FTE. In FY 2009, these 41 FTE handled 397 new cases. Assuming the full \$11.97 million is provided in FY 2017, Civil will now have 52 FTE handling 1,200 new cases. The cost per petition filed will be far lower in FY 2017 than in FY 2009, while the number of new petitions handled per FTE will be far higher in FY 2017 than in FY 2009. Therefore, in any analysis, Civil’s attorneys are far more efficiently adjudicating vaccine injury cases.

VICP: Cost Per Petition and Petitions Handled Per FTE

	FY 2009	FY 2017 (proj.)
Petitions Filed	397	1,200
Reimbursement	\$7,833,000	\$11,970,000
Civil FTE	41	52
Cost per petition filed	\$19,730	\$9,975
Number of new petitions handled per FTE	9.7	23.1

Impact on Performance

Without additional funding in FY 2017, the Program’s ability to keep pace with the growing workload and, ultimately, to award compensation to meritorious petitioners will be impeded.

Significant Delays in Adjudications. Without sufficient funding and staffing, cases will see significant delays, leading to a backlog. Delays compromise the logic of the Vaccine Injury Trust Fund, which was established as a way to quickly compensate meritorious victims of vaccine injury.

Delays in settlement will cause a ripple effect, causing petitioners to abandon the settlement process and pursue hearings before Special Masters – a considerably more lengthy and resource-intensive process for the VICP. Alternatively, petitioners could entirely abandon seeking compensation from the Trust Fund and file a lawsuit in court against the manufacturers or administrators of the vaccines. Such a scenario poses even greater potential dangers as the very reason for establishing the VICP was to encourage manufacturers to continue to produce vaccines by removing the risk of unpredictable litigation. If manufacturers are subject to such litigation, they would be dis-incentivized to continue to produce such vaccines.

Greater Expenditures from the Trust Fund. Without the proper staffing levels, Civil attorneys will have insufficient time to conduct the necessary analysis and review of the record so as to settle and try cases effectively. Therefore, unmeritorious cases could receive some compensation, and other meritorious cases may be overcompensated. Both

scenarios result in funds unnecessarily being paid from the Trust Fund. Over time, the financial integrity of the Trust Fund could be at stake. Furthermore, such payments will only encourage additional frivolous suits.

The requested increase is modest in comparison to the increase in caseload. In FY 2015, the Vaccine Injury Trust Fund outlaid \$225 million.⁴ If, as an example, an additional 5% was paid in unmerited compensation, as a result of fewer Civil attorneys handling the increased caseload, then the Trust Fund would lose an additional \$11.3 million. Such a sum is more than four times the \$2.61 million Civil is seeking as an increased reimbursement.

Inevitably, the time to resolve cases will increase and backlogs will grow, which compromises the Program's ability to meet its Congressional mandate to provide a fair and expeditious means to resolve vaccine injury claims and adversely affects the interests of deserving petitioners. Such petitioners – 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 delays in settlements or adjudications, guarantee the judicious award of compensation to meritorious claims, and ensure that the Trust Fund has sufficient resources to handle future claims.

⁴ See <http://www.hrsa.gov/vaccinecompensation/vicpmonthlydecember15.pdf>.

Program Activity Justification: Legal Representation

Program Description: Legal Representation

Legal Representation	Direct Pos.	Estimate FTE	Amount (\$ in thousands)
2015 Enacted	1,325	1,168	\$291,454
2016 Enacted	1,325	1,189	\$292,214
Adjustments to Base and Technical Adjustments	0	0	\$14,490
2017 Current Services	1,325	1,189	\$306,704
2017 Program Increases	9	5	\$2,887
2017 Request	1,334	1,194	\$309,591
Total Change 2016-2017	9	5	\$17,377

The Civil Division 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 and Financial Litigation Section
- Office of Foreign Litigation
- Fraud Section
- Intellectual Property Section
- National Courts Section



Consumer Protection Branch



Federal Programs Branch



Office of Immigration Litigation

- Appellate Section
- District Court Section



Torts Branch

- Aviation and Admiralty Section
- Constitutional and 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. The Appellate Staff

Appellate's monetary cases involve billions of dollars with outcomes that determine how the law or policy in question will affect millions of Americans.

also defends against constitutional challenges to statutes passed by Congress as well as 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, (2) Foreign Litigation, (3) Fraud Section, (4) Intellectual Property, and (5) National Courts.

Corporate and Financial Litigation Section

The Corporate and Financial Litigation Section handles unique nation-wide matters involving money and property, and represents the Federal Government's interests in complex Chapter 11 bankruptcies and other contractual and monetary disputes. These cases, which are litigated in courts throughout the country, involve many different industries, including health care providers, communications companies, energy producers and 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. In addition, the Office manages litigation in the courts of foreign nations so that people and entities cannot avoid paying money owed to the U.S. Treasury by absconding to a foreign country.



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 arising from federal health care programs, financial institutions, loan programs, defense and other agency contracting, federal grant programs, customs duties, and oil and gas leases. Much of the Fraud Section's litigation takes place under the False Claims Act.

In FY 2015, the Department secured nearly \$3.5 billion in settlements and judgments from False Claims Act cases. FY 2015 is the fourth year in a row that the Department has exceeded \$3.5 billion in cases under the False Claims Act, and brings total recoveries from January 2009 to the end of the fiscal year to \$26.4 billion.

The False Claims Act whistleblower (or "qui tam") provision allow individuals to file lawsuits alleging false claims on behalf of the government. If the government prevails, the whistleblower may receive up to 30 percent of the recovery. In FY 2015, 638 qui tam suits were filed, and the Department recovered \$2.8 billion in these and earlier filed suits. Whistleblower awards during the same period totaled \$597 million.

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 involves 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.

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 fraud work.

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 represents a number of agencies at the trial level in immigration cases arising in the 94 federal district courts nationwide and has primary responsibility for handling appeals arising from immigration-related cases in the district courts. Agencies represented 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 foreign worker programs; and the Federal Bureau of Investigation on national security matters, including denaturalization and other actions involving individuals with established terrorism ties. The office also provides advice and counsel on issues relating to immigration-related national security and labor matters

within the Department of State and Homeland Security. The District Court Section coordinates litigation strategy on these cases with the various United States Attorneys throughout the United States.

In addition to its defensive litigation responsibilities, the District Court Section also handles affirmative litigation, filing and prosecuting an ever increasing number of denaturalization cases, often with national security implications. The overwhelming majority of the Section's cases are, however, defensive. As the District Court Section must represent the Federal Government in these defensive cases, action can be delayed on affirmative denaturalization cases. The program increase for Immigration Enforcement included in this budget (see page 31) will allow the District Court Section to more expeditiously file denaturalization cases. Also, the Section currently handles approximately 26 class action cases challenging critical policies and programs relating to the Federal Government's interpretation, administration and enforcement of immigration law. Finally, 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 and Admiralty Section,
- Constitutional and 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 Vaccine Injury Compensation Program and the Radiation Exposure Compensation Act 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 handled one of the Federal Government's largest affirmative cases – Deepwater Horizon.

Aviation and Admiralty Section

The Aviation and 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, and the aviation activities of the military services and other federal agencies. 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 and Admiralty Section has worked 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. The Department announced a settlement with BP of more than \$20 billion in October 2015.

Constitutional and Specialized Tort Litigation Section

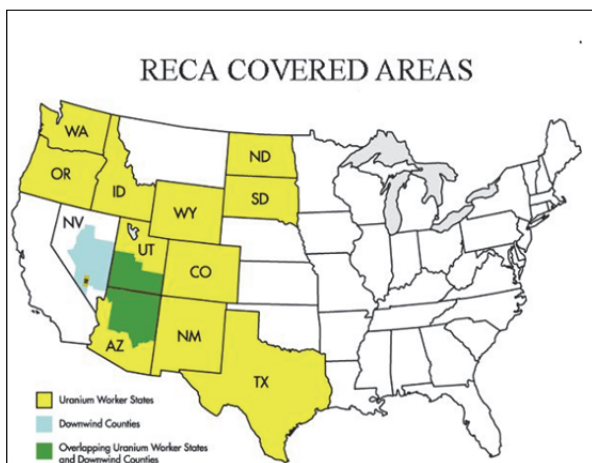
The Constitutional and Specialized Tort Litigation Section consists of three groups: the Constitutional Torts Staff, the Office of Vaccine Litigation, and the Radiation Exposure Compensation Act Program. The Constitutional Torts Staff provides legal representation to federal employees in cases filed 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’s 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, petitioners 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 \$3.2 billion to over 4,400 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 2017 Budget Request (*see* page 6) 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 \$2 billion to over 31,000 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. In total, the Environmental Tort Litigation Section has saved the Federal Government billions of dollars.

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.

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.

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

Program Overview. The September 11th Victim Compensation Fund of 2001 (“VCF”) was reopened by the James Zadroga 9/11 Health and Compensation Act of 2010 (“the Act”), and was reauthorized in 2015. 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.

The VCF re-opened when the VCF’s Special Master’s final rule took effect on October 3, 2011. Civil Division attorneys review and adjudicate claims, and the Division 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. As of the fourth quarter of FY 2015, over 20,622 eligibility forms have been received, 12,150 claims have been approved, and 6,285 compensation decisions have been rendered at a value of over \$1.4 billion.

Funding. The VCF is not funded through the Civil Division’s appropriations. Rather, Congress, in the Act, originally appropriated a total of \$2.775 billion for award payments and administrative expenses. Of this \$2.775 billion, \$875 million was to be available in the first five years. The remaining \$1.9 billion was to be available in the sixth year (FY 2017). The recent reauthorization provides the full \$2.775 billion in FY 2016, and, as explained below, provides additional money.

Reauthorization. On December 18, 2015, President Obama signed into law a bill reauthorizing the James Zadroga 9/11 Health and Compensation Act of 2010. This reauthorization law provides an additional \$4.6 billion starting in FY 2017. The new law directs the VCF to issue “full compensation” to claimants with Group A Claims, defined as claims for which a loss determination was issued on or before December 17, 2015, “as soon as practicable.” The reauthorization also requires important changes be made to the VCF’s policies and procedures for evaluating Group B claims and computing losses. Group B claims are those claims that are not defined in the legislation as Group A claims. Funding to pay Group B claims will not be available until all Group A claimants “have received the full compensation due” or October 2016, whichever is earlier.

Additional Information. Complete program information, messages from the Special Master, important forms and process information, and information about filing a claim go to the VCF website at <http://www.vcf.gov/index.html>.

Regarding the VCF’s handling of claims, the VCF is updating statistics on a quarterly basis. The last update, which was current through September 9, 2015, is available at <http://www.vcf.gov/pdf/VCFProgramStatistics09092015.pdf>.

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		Target		Changes		Requested (Total)			
			FY 2015		FY 2015		FY 2016		Current Services Adjustments and FY 2017 Program Changes		FY 2017 Request			
Workload	1. Number of cases pending beginning of year		24,461		26,408		23,541		N/A		24,486			
	2. Number of cases received during the year		16,008		13,774		16,478		N/A		16,618			
	3. Total Workload		40,469		40,182		40,019		N/A		41,104			
Total Costs and FTE			FTE		\$0		FTE		\$0		FTE		\$0	
(Reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)			1,350		291,454 (191,578)		1,310		296,809 (149,436)		1,426		292,214 (198,801)	
			20		17,377 (2,612)		1,446		309,591 (201,413)					
Type	Strategic Objective	Performance	FY 2015		FY 2015		FY 2016		Current Services Adjustments and FY 2017 Program Changes		FY 2017 Request			
Output	2.4/2.6	1. Number of cases terminated during the year	16,928		13,981		15,533		N/A		15,898			
Civil Division Performance (Excludes VICP and RECA)														
Outcome	2.6	2. Percent of civil cases favorably resolved	80%		93%		80%		N/A		80%			
	2.6	3. Percent of defensive cases in which at least 85 percent of the claim is defeated	80%		86%		80%		N/A		80%			
	2.4	4. Percent of affirmative cases in which at least 85 percent of the claim is recovered	60%		73%		60%		N/A		60%			
	2.6	5. Percent of favorable resolutions in non-monetary trial cases	80%		87%		80%		N/A		80%			
	2.6	6. Percent of favorable resolutions in non-monetary appellate cases	85%		91%		85%		N/A		85%			

PERFORMANCE			Target	Actual	Target	Changes	Requested (Total)
Type	Strategic Objective	Performance	FY 2015	FY 2015	FY 2016	Current Services Adjustments and FY 2017 Program Changes	FY 2017 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%	95%	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	207	200	N/A	200
	2.6	11. Percentage of claims paid within six weeks of Program receipt of acceptance form	90%	94%	90%	N/A	90%
	2.6	12. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	95%	94%	95%	N/A	95%
Efficiency	2.6	13. Percentage of claims adjudicated within 12 months or less	80%	83%	80%	N/A	80%

History of Performance

Decision Unit: Civil Division - Legal Representation										
Type	Strategic Objective	Performance	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015		FY 2016	FY 2017
			Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Workload	2.4/2.6	1. Number of cases pending beginning of year	34,611	34,462	27,750	26,545	24,461	26,764	23,541	24,486
	2.4/2.6	2. Number of cases received during the year	16,239	17,303	15,566	15,212	16,008	14,836	16,478	16,618
	2.4/2.6	3. Total Workload	50,850	51,765	43,316	41,757	40,469	41,600	40,019	41,104
Output	2.4/2.6	1. Number of cases terminated during the year	17,618	22,586	16,129	16,941	16,928	15,383	15,553	15,898
Civil Division Performance (Excludes VICP and RECA)										
Outcome	2.6	2. Percent of civil cases favorably resolved	96%	96%	98%	97%	80%	93%	80%	80%
	2.6	3. Percent of defensive cases in which at least 85 percent of the claim is defeated	86%	90%	87%	90%	80%	86%	80%	80%
	2.4	4. Percent of affirmative cases in which at least 85 percent of the claim is recovered	66%	73%	64%	61%	60%	73%	60%	60%
	2.6	5. Percent of favorable resolutions in non-monetary trial cases	92%	90%	90%	91%	80%	87%	80%	80%
	2.6	6. Percent of favorable resolutions in non-monetary appellate cases	92%	94%	94%	93%	85%	91%	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	97%	95%	95%	92%	86%	86%	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%
Efficiency	2.6	9. Percentage of cases in which settlements are completed within the court-ordered 15 weeks	100%	100%	100%	100%	92%	100%	92%	92%

Performance Report			FY 2011	FY 2012	FY 2013	FY 2014	FY 2015		FY 2016	FY 2017
			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	100	116	247	272	200	207	200	200
	2.6	11. Percentage of claims paid within six weeks of Program receipt of acceptance form	91%	92%	86%	86%	90%	90%	90%	90%
	2.6	12. Percentage of claim appeals adjudicated within 90 days of filing administrative appeal	100%	100%	96%	97%	95%	95%	97%	97%
Efficiency	2.6	13. Percentage of claims adjudicated within 12 months or less	94%	97%	75%	76%	80%	83%	80%	80%

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:** Workload actuals 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. 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. In many of these cases, Civil works with colleagues in U.S. Attorney offices.

Performance Plan and Report for Outcomes

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

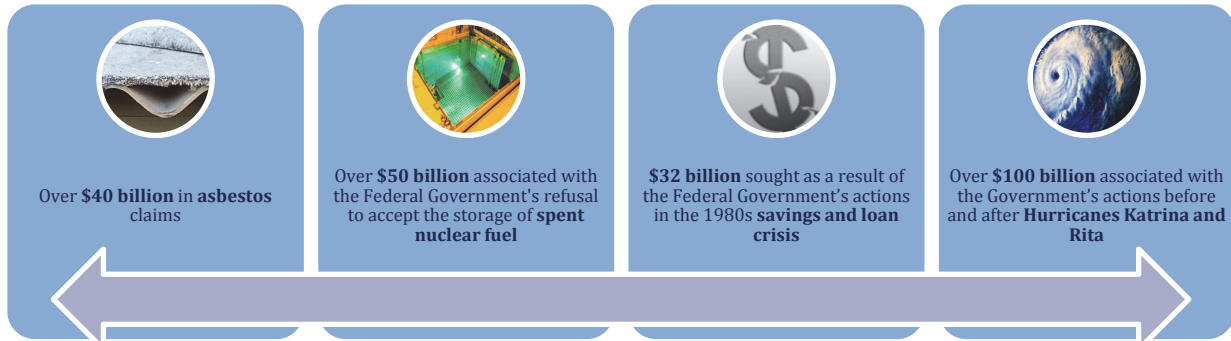
A substantial portion of Civil's workload falls within Strategic Objective 2.6; Civil (1) protects the federal fisc and (2) defends the interests of the United States.

Civil Protects the Federal Fisc

The Federal Government engages in countless transactions annually, such as purchasing and leasing goods or services, offering loan guarantees and grants, signing contracts, and issuing payroll. Inevitably, disagreements sometimes arise over the terms of these agreements, and parties will sue the Federal Government. In other situations, the debtor may not be able to pay the full amount of its debt to the Federal Government and will file a bankruptcy case. 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 the maintenance of federal lands. The Civil Division pursues affirmative litigation when a complex Chapter 11 bankruptcy case is filed or the debtor is able, but unwilling, to pay a large debt to the Government. Similarly, the Civil Division defends the Federal Government in these matters and, in so doing, avoids the payment of unwarranted damages. These cases can last for several years or even decades. Just as importantly, one negative precedent will encourage similar future suits and thereby worsen the Federal Government's bottom line.

The events that give rise to these cases – whether regulatory action or natural disasters – are unique and varied. Yet, the results are remarkably similar. Historically, in defensive cases 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.

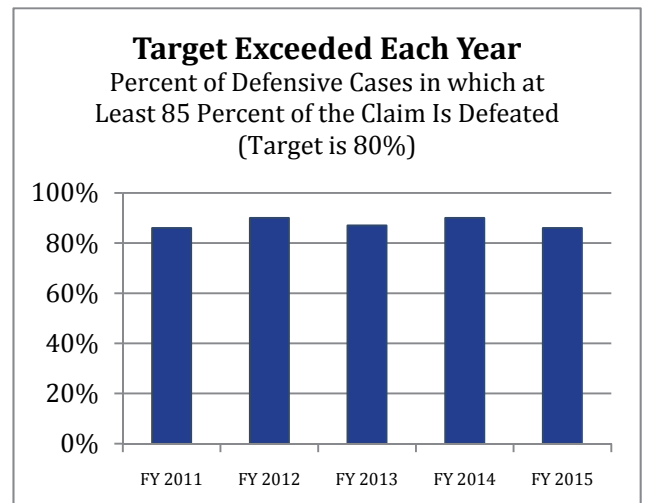
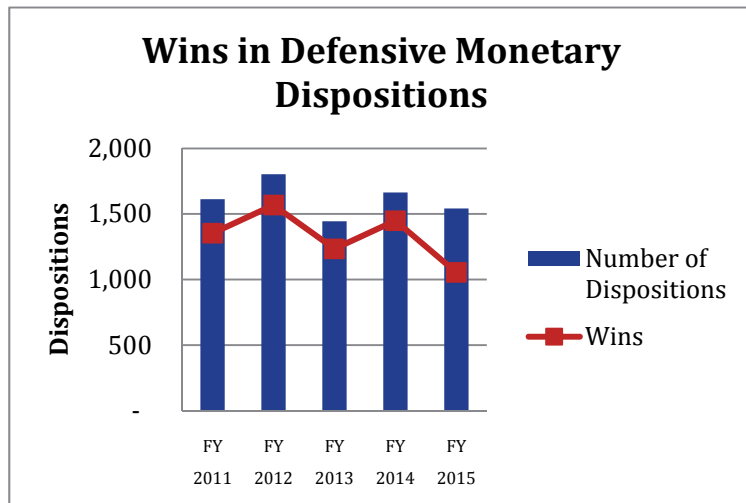
Examples of Civil's Caseload Protecting the Federal Fisc



As noted in the graphic above, the amounts sought in these cases are substantial. Civil estimates that in cases resolved in FY 2015, Civil defeated over \$9 billion in amounts sought by opposing parties. In terms of cases handled in FY 2015 by Civil Division attorneys – though not necessarily closed – Civil defended against tens of billions of dollars. Today, some of largest cases in this area relate to the Federal Government's actions following the 2008 economic crisis. During the 2008 economic crisis, the Federal Government provided assistance worth billions of dollars to several companies so that they would not fail and so America's economy would not decline any further. Shareholders of several of these companies are now suing for billions of dollars.

Indicators of Civil's Performance in Monetary Defensive Cases

These cases are illustrative examples of the major monetary, defensive cases in which Civil represents the Federal Government. Civil has consistently met its performance target by consistently defeating the overwhelming majority of amounts sought in claims brought against the Federal Government in these defensive, monetary cases.



Civil Defends the Interests of the United States

In addition to monetary cases, Civil defends the integrity of federal laws, regulations, policies, adjudications, and programs. Each year, thousands of lawsuits are filed to block or attempt to challenge the actions of the Federal Government.

Protecting the American People

Civil represents the Federal Government in challenges to efforts that protect the American people. Civil defends 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. Attorneys in the Civil Division defend the Department of the Treasury's Office of Foreign Assets Control for actions related to economic sanctions issues such as the freezing of assets due to sanctions. In other matters, Civil defends *Bivens* lawsuits brought against law enforcement and other high ranking government officials related to their efforts in protecting national security.

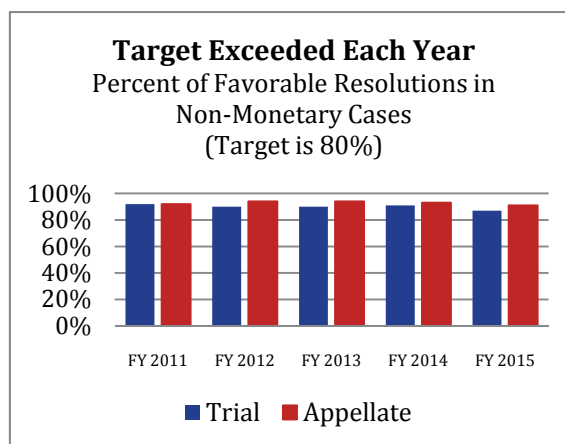
Each year, the Civil Division defends thousands of immigration removal orders, comprised of challenges related to whether an individual is subject to removal from the U.S. or is eligible for some form of benefit, relief, or protection that would allow him or her to remain in the United States. Civil attorneys litigate to remove known or suspected terrorists (as well as other criminals) from the United States.

Defending Statutes, Regulations, Policies, and Decisions

Beyond these national security and homeland security matters, Civil has led the defense to constitutional challenges to federal laws that impose registration requirements on sex offenders and restrict private gambling on sporting events. In several separate cases, Civil is currently defending the Social Security Administration's and Securities and Exchange Commission's use of Administrative Law Judges in administrative proceedings. Civil attorneys also represent the Federal Government, as the nation's largest employer, in a host of labor and employment cases related to civil rights and discrimination.

Indicator of Civil's Performance in Non-Monetary Defensive Cases

Civil's recent performance for its non-monetary cases is summarized in the chart to the right. As this chart reveals, Civil consistently has met its performance targets in non-monetary cases like the ones described above.



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

Civil Investigates and Prosecutes Fraudulent Activity

The Civil Division’s litigation involving economic crimes returns billions of dollars to the U.S. Treasury each year. In FY 2015, Civil, working with U.S. Attorneys, secured over \$4 billion in settlements, judgments, fines and restitution. FY 2015 was not an anomaly; year after year Civil routinely returns billions of dollars. Since FY 2009, Civil, working with U.S. Attorneys, secured over \$35 billion in settlements, judgments, fines, and restitution – nearly all of that money was recovered in cases related to fraud and economic crimes such as health care fraud, financial fraud, and mortgage fraud.

There have been many recent successes in this area. In FY 2015, settlements of \$212.5 million with First Tennessee Bank N.A. and \$123.5 million with MetLife Home Loans LLC were reached to resolve allegations related to misconduct in endorsing mortgages for federal insurance by the Federal Housing Administration even though the mortgages failed to meet eligibility requirements. In February 2015, the Department, working with several states, secured a \$1.375 billion settlement agreement with the ratings agency Standard & Poor’s Financial Services LLC, along with its parent corporation McGraw Hill Financial Inc., to resolve allegations related to defrauding investors in the lead up to the 2008 financial crisis.

In health care fraud, in October 2014 and June 2015, the Department announced two separate settlements with DaVita Healthcare Partners, Inc., the largest provider of dialysis services in the U.S., for \$350 million and \$450 million, respectively. The October 2014 settlement resolved claims that DaVita violated the False Claims Act by paying kickbacks to induce the referral of patients to its dialysis clinics. The June 2015 settlement resolved claims that DaVita violated the False Claims Act by knowingly creating unnecessary waste in administering two particular drugs to dialysis patients and then billing the Federal Government for such avoidable waste.

Finally, in procurement fraud, in FY 2015, the Department reached a settlement for \$146 million with Supreme Group B.V. and several of its subsidiaries for alleged false claims to the Department of Defense for food, water, fuel, and transportation of cargo for American soldiers in Afghanistan.

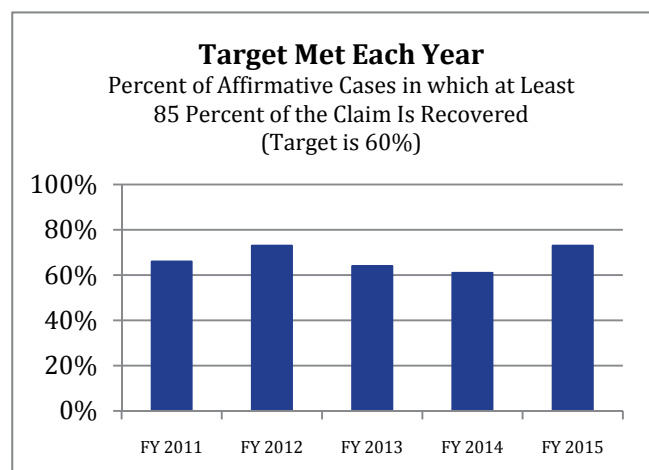
Civil Protects the Health, Safety, and Economic Security of Consumers

As impressive as these returns to the Treasury are, this litigation also punishes bad actors who seek to harm and defraud individual Americans. Below are cases handled by the Civil Division in FY 2015:

- In September 2015, three former officials associated with Peanut Corporation of America received unprecedented prison terms of 28 years, 20 years, and 5 years (totals 53 years) for their roles in the 2009 distribution of salmonella-tainted peanuts and peanut products. The tainted peanuts resulted in hundreds of reported cases of sickness in 46 states and nine deaths. The sentences are the longest imposed in a case involving foodborne illness.
- 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 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 January 2015, a Peruvian man was sentenced to more than 17 years in prison for his operation of a business and call centers in Peru that lied to and threatened Spanish-speaking victims into paying fraudulent settlements for nonexistent debts. The 26 charges against him included conspiracy, mail fraud, wire fraud and attempted extortion.

Indicator of Civil's Performance in Monetary Affirmative Cases

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



Strategies to Accomplish Outcomes

Key Civil Division Strategies:

Recover money lost to fraud, waste, and abuse.

Protect the federal fisc from unmeritorious claims.

Promote America's national and homeland security interests.

In addition to the strategies continuously employed to uphold its mission, Civil is focused on recruiting dedicated public servants, leveraging advanced technology, and efficiently using resources. These strategies advance the Administration's priorities by Civil utilizing its resources in new and innovative ways. Civil has taken the lead on many initiatives that benefit the entire Department, including the promotion of highly technical litigation support services, employing advancements in information technology to upgrade systems, and providing key leadership in the area of collecting debts owed to the Federal Government.

Civil Supports its Top-Notch Staff

A key factor in Civil's success in FY 2017 will be its continued ability to hire attorneys and support staff as well as to invest in tools to support them. Civil is able to hire the best and brightest employees with a passion for public service but is not able to return to its personnel level in place before the 2011 hiring freeze. When new staff is hired, they require advanced training programs and professional development resources. Senior attorneys and managers mentor and coach the new staff on the complexity of the Department's caseload to fully prepare them for landmark cases. Civil must develop its staff not just through training and mentoring, but by bringing in the tools and other resources for them to thrive. These tools include the litigation support required to investigate the complex and evolving caseload, as well as information technology tools to support case management.

Civil Leverages Resources to Accomplish Objectives

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 technological strategies that Civil employs is its exemplary Automated Litigation Support (ALS) program. With this program, Civil can use specialized people and technology to conduct discovery, conduct pre-trial activities, aid attorneys in their motions practices, and assist with trial preparation – *saving time, money, and resources*. Civil has been at the forefront of advanced ALS technologies in the past several years and utilizes various sources of base and reimbursable funding to develop the most efficient funding mix.

Additionally, Civil is requesting a program increase in the FY 2017 budget for a new initiative for e-records storage, which will improve the efficiency and effectiveness of Civil's case and records storage system.

Civil Coordinates with Other Government Actors to Achieve 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 and Human Services' Office of Inspector General and the Centers for Medicare and 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 and litigation support staff are consulted by client agencies for their expertise. 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 Goals

The Civil Division contributes data to the Department's Priority Goal for FY 2016 – FY 2017, which is by September 30, 2017, the Department of Justice will increase the number of new investigations by 2 percent with emphasis on holding individuals accountable associated with fraud and public corruption, including white collar crime, financial fraud, and health care fraud. Of note, 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. Civil compiles priority goal data on a quarterly basis and the Department of Justice's Justice Management Division combines Civil's data with data from other components to report progress for the entire Department.

Regarding the FY 2014 – FY 2015 Priority Goal, which was to reduce the number of financial and health care fraud investigations pending longer than two years by three percent over FY 2013 levels, the Civil Division also contributed data to the Department for this goal. The Department did make significant progress in reducing the number of financial and healthcare fraud investigations pending longer than two years during FY 2014 – FY 2015. By the end of FY 2015, the number of pending investigations was 4,801, which is 6.8 percent below FY 2013 when there were 5,152 investigations.

Program Increase: Immigration Enforcement

Item Name:	Immigration Enforcement
Strategic Goal:	Strategic Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law
Strategic Objective:	Strategic 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>7</u> Agt/Atty <u>7</u> FTE <u>4</u> Dollars <u>\$729,000</u>

Description

The Civil Division's Office of Immigration Litigation – District Court Section (“OIL-DCS”) represents the United States in all federal trial and appellate courts in matters involving the Immigration and Nationality Act. This office's caseload has burgeoned in three critical areas: national security cases, labor and employment matters, and class action cases. To adequately handle these three types of cases, OIL-DCS needs additional staff.

Justification

OIL-DCS currently handles over 1,000 matters, including a little over 400 new matters received in 2015. Its total caseload includes, among other things, matters related to detention, employment-based programmatic challenges, denaturalization, and terrorism-related immigration issues. The number and type of cases, however, does not reflect the fact that these cases are time and resource-heavy. Many cases are complex, high profile, and precedent-setting – all of which mandate that OIL-DCS collaborate closely with client agencies. Moreover, cases may arise in any of the 94 district courts nationwide and require extensive time and travel for discovery, investigations, court appearances, or trial. Many of these cases have a robust motions practice.

Given current staffing levels, OIL-DCS must constantly triage and urgently shift resources around to handle its caseload. The overwhelming majority of cases that OIL-DCS handles are defensive, meaning that another party has filed an action against the Federal Government, and OIL-DCS has no choice but to represent the United States according to a court-ordered schedule. As a result, affirmative denaturalization cases, which may implicate national security matters and which OIL-DCS may bring at its discretion, are often delayed or postponed. Further complicating matters, immigration law is a highly nuanced and specialized area of the law. For some types of cases, Civil may delegate cases to U.S. Attorneys or utilize the legal services of attorneys in other sections to handle spikes in workload. However, given the specialization required, such options are not practical to OIL-DCS, its client agencies, or the U.S. Attorney offices.

Enhancing National Security

Defending U.S. citizens from both internal and external threats remains the Department of Justice's highest priority. OIL-DCS plays a critical role in protecting American citizens by filing affirmative, civil denaturalization proceedings against individuals that pose a threat to America's security. Once denaturalized, the United States can undertake efforts to remove these dangerous individuals from the United States or prevent them from entering the country. In these denaturalization cases, OIL-DCS works closely with the Department of State, Department of Homeland Security, the Federal Bureau of Investigation, and U.S. Attorneys. Beyond affirmative denaturalization cases, OIL-DCS also handles defensive *mandamus*, *habeas*, and naturalization denial matters.

As most of OIL-DCS's caseload involves defensive matters, affirmative denaturalization cases are most impacted by the current staffing shortage. With additional resources, OIL-DCS will be able to file additional denaturalization cases. While each denaturalization case involves unique facts, OIL-DCS has used or plans to use denaturalization proceedings to strip citizenship from naturalized individuals convicted in American courts or foreign courts of committing acts of terrorism as well as those who have concealed information in their citizenship application about their ties (including providing material support) to terrorist organizations. Beyond known or suspected terrorists, denaturalization has been used to denaturalize other dangerous individuals, including criminals. Funding is a national security priority and a public safety necessity.

OIL-DCS expects that this caseload will increase dramatically. The Department of Homeland Security is finalizing guidance for referral of denaturalization cases to OIL-DCS, which is expected to dramatically increase denaturalization dockets by hundreds of cases. Staffing these expected cases will be impractical at current levels.

Additional funding would allow DCS to specifically recruit attorneys with the experience necessary to handle such cases. Additional staff would allow OIL-DCS to focus on outreach, coordination, and case development with U.S. Attorneys, agency counsel, and the FBI and, therefore, further strengthen the Department's national security stance.

Protecting America

Denaturalization cases include:

- A naturalized U.S. citizen who plotted to set off a bomb in New York City during Thanksgiving 2012.
- A naturalized U.S. citizen who plotted to assassinate the Saudi Arabian Ambassador.
- A naturalized U.S. citizen who used his charity as an illegal front to funnel over \$3.5 million to a foreign intelligence agency.
- A human rights violator responsible for at least 12 extrajudicial killings during armed conflict between Latin American government forces and leftist guerilla groups.
- Four naturalized U.S. citizens who stole the identities of another Afghani family, at least one of whom was convicted of bribing military officials at Bagram Air Force Base for contracts.
- 29 cases involving subjects that committed atrocities or other human rights violations in the Balkans.
- At least 100 targets who unlawfully procured their naturalization by assuming false identities after receiving final orders of removal, in connection with a multidistrict law enforcement operation to mitigate an identified vulnerability within the naturalization process.
- 27 individuals from a Middle Eastern country who naturalized using false identities, some of whom have attempted to use their assisted known or suspected terrorists immigrate to the United States.

Labor and Employment

There are numerous provisions in federal immigration law relating to the unique circumstances under which foreign nationals may legally work in the United States. Yet, these provisions are frequently challenged in court. When challenges are successful, entire foreign guest worker immigration programs are shut down. In general, OIL-DCS defends decisions of the United States Citizenship and Immigration Services concerning revocation or denials of non-immigrant and immigrant worker petitions across the spectrum of employment-based visa categories within the Immigration and Nationality Act. Additionally, OIL-DCS routinely defends DHS and DOL rules governing guest worker programs. This team continues to handle an ever-increasing number of nationally-significant challenges to the Federal Government's ability to manage its foreign worker program.

One current example of Civil's work is the *Washington Technology Alliance of Workers v. DHS* litigation. In this matter, a rule permitting students that have studied in certain Science, Technology, Engineering or Math (STEM) fields to obtain visas and work in the United States is being challenged. In general, the contributions of these types of foreign workers have repeatedly been recognized in the payment of tuition to colleges and universities; improving academic discourse on college campuses; and providing skills and knowledge that grow vital parts of the American economy. If this challenge is successful, then this important foreign worker program would be terminated.

Class Actions

In an immigration class action matter, attorneys purporting to represent a broad class of people will challenge some aspect of America's immigration laws, programs, 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. Some last for more than 20 years.

Recently, an unexpected surge of such class actions has been filed against the Federal Government involving U.S. Immigration and Customs Enforcement detention, U.S. Citizenship and Immigration Services benefits, ongoing removal hearings, and challenges to U.S. Immigration and Customs Enforcement detainers. Several of these challenges related to unaccompanied alien children entering the United States along the Southern border.

Strategic Goals and Performance

Immigration enforcement is one area where the Civil Division advances the Department of Justice's Strategic Objective 2.6 (to protect the federal fisc and defend the interests of the United States). In its handling of immigration cases, Civil Division defends 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.

The requested funds would permit increased staffing in OIL-DCS to ensure an appropriate level of staffing to enable the Civil Division to carry out critical coordinating functions, casework and other responsibilities in support of national security and high priority employment decisions of the United States Citizenship and Immigration Services (USCIS).

This request would allow DCS to achieve its goals, thereby helping the Civil Division reach its performance targets and helping 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 request ensures that DCS will have the tools that it needs.

Base Funding

FY 2015 Enacted				FY 2016 Enacted				FY 2017 Current Services			
Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)
414	315	410	\$64,941	414	315	410	\$68,700	414	315	410	\$71,241

Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Attorneys (0905)	\$104	7	\$729	\$631	\$39
Total Personnel	\$104	7	\$729	\$631	\$39

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Total Non-Personnel	0	0	\$0	\$0	\$0

Total Request for this Item

	Pos	Agt/ Atty	FTE	Personnel (\$000)	Non- Personnel (\$000)	Total (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Current Services	414	315	410	\$71,241	\$0	\$71,241	\$0	\$0
Increases	7	7	4	\$729	\$0	\$729	\$631	\$39
Grand Total	421	322	414	\$71,970	\$0	\$71,970	\$631	\$39

Affected Crosscut

Information about this Program Increase would be included in the Immigration crosscut.

Program Increase: Elder Justice Initiative

Item Name:	Elder Justice Initiative
Strategic Goal:	Strategic Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law
Strategic Objective:	Strategic Objective 2.4: Combat corruption, economic crimes, and international organized crime
Budget Decision Unit(s):	Legal Representation
Program Increase:	Positions <u>2</u> Agt/Atty <u>0</u> FTE <u>1</u> Dollars <u>\$558,000</u>

Description

The Civil Division seeks this modest program increase for the Elder Justice and Nursing Home Initiative (the “Initiative”) to improve the Department’s efforts to combat elder abuse, neglect, and financial exploitation. This requested increase will allow Civil to expand training, continue improvements to an innovative web site, continue critical research, and provide litigation support services in cases alleging nursing homes or other long-term care facilities provide grossly substandard care.

Justification

The Elder Justice and Nursing Home Initiative is housed in the Commercial Litigation Branch’s Fraud Section. The Initiative began in 1998 after the Senate’s Special Committee on Aging held a series of hearings exposing deplorable physical conditions and sexual abuse in the nation’s nursing homes. Initially, the Initiative included traditional litigation-based efforts, such as fraud cases, bankruptcy filings, drafting legislation, and interagency coordination. However, it became clear that many of the problems afflicting older people in nursing homes were inextricably linked to the problem of elder abuse and neglect. The scope of these issues required the overarching problem of elder abuse and neglect be better addressed.

The scope of elder abuse – including physical, sexual, and psychological abuse, as well as neglect, abandonment, and financial exploitation – affects millions of older Americans each year. Early estimates show that elder care abuse costs billions of dollars each year, a startling statistic considering that just one in 23 cases is reported to authorities. In addition, existing data indicate that one out of every ten people aged 60 and older who lives at home suffers abuse, neglect, or exploitation. Further, about two-thirds of elder abuse victims are women, and African American, Latino, poor, and isolated older adults are disproportionately victimized.

While the Civil Division has achieved a great deal towards protecting this vulnerable population, more resources are needed to continue with these efforts. In recent years, Civil has contributed towards two major events, the June 2015 White House Elder Justice

Forum, and the July 2015 White House Conference on Aging. The Elder Justice Coordinating Council's (ECC) eight recommendations to improve awareness, prevention, intervention, and response to elder abuse, neglect, and exploitation have served as the focus of the Elder Justice Initiative's subsequent efforts. For example, the first recommendation supports the investigation and prosecution of elder abuse cases. The Department of Justice, through the National Institute for the Prevention of Elder Abuse (run by the Office of Violence Against Women) has trained state and local prosecutors in 24 states, with the goal of providing training for the remaining 26 states. At the same time, the Initiative is working with national law enforcement organizations to identify training needs and develop a training plan, as well as develop online resources. Moreover, the Initiative plans to launch 10 regional Elder Justice Task Forces early in 2016. These Task Forces will be multidisciplinary teams comprised of federal, state, and other members of the local law enforcement. The objectives of these Task Forces will be to improve coordination and the ability to intercede more quickly against long term care providers that are providing grossly substandard care to their residents.

Tangible examples of the Initiative's work include the Elder Justice website, which can be found at www.justice.gov/elderjustice. The website was launched in 2014 and includes a wide array of materials and information for elder abuse victims and their families, prosecutors, and researchers. The Initiative is currently working on updating and expanding the website and expects to soon launch the next version. In addition to the Elder Justice website, the Initiative worked with two dozen of the nation's leading elder abuse researchers to develop an elder abuse research agenda, supported the development of online elder abuse and financial exploitation training for legal aid attorneys, and provided training to over 170 crime victim specialists at the U. S. Attorney offices regarding elder abuse and financial exploitation.

FY 2017 Plan

Civil seeks this program increase to allow program expansion to continue. In recent years, Civil has utilized reimbursable funding for the Initiative. But, given uncertainties over continued reimbursable funding and the expanded nature of the Initiative, Civil now wants to dedicate base resources to the Initiative so that its continued operations are not at risk. The funding translates to staff devoted solely to this Initiative, additional training materials, and more investigations. One of the most resource-intensive health care fraud areas involves allegations that skilled nursing facilities violated the False Claims Act by billing Medicare for medically unnecessary rehabilitation therapy services; the requested funding will provide litigation support services for these resource-intensive cases and ultimately result in greater returns to the U.S. Treasury. A 2014 case, where the Initiative played a significant role coordinating the Government's investigation into Extendicare, one of the nation's largest nursing home chains, is a good example. As a result, 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.

Strategic Goals and Performance

This program increase will enhance Civil's efforts in regards to Strategic Objective 2.4, to combat corruption, economic crimes, and international organized crime. Civil is one of three components responsible for ensuring the DOJ is successful in its efforts to reduce financial and health care fraud, consistent with the DOJ's priority goals. Additionally, Civil's performance in affirmative matters, such as those efforts combating elder fraud and abuse, is captured in the performance measure that determines the percentage of affirmative cases in which at least 85 percent of the claim is recovered. This funding will allow Civil to continue to meet this performance target.

Base Funding

FY 2015 Enacted				FY 2016 Enacted				FY 2017 Current Services			
Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Program Analysts	\$78	2	\$158	\$165	\$9
Total Personnel	\$78	2	\$158	\$165	\$9

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Contractor Support	\$400	1	\$400	\$0	\$0
Total Non-Personnel	\$400	1	\$400	\$0	\$0

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	2	0	1	\$158	\$400	\$558	\$165	\$9
Grand Total	2	0	1	\$158	\$400	\$558	\$165	\$9

Affected Crosscut

Information about this Program Increase would be included in the Economic Fraud crosscut.

Program Increase: Funding for E-Records

Item Name:	Funding for E-Records
Strategic Goal:	Strategic Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law
Strategic Objective:	Strategic 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>0</u> Agt/Atty <u>0</u> FTE <u>0</u> Dollars <u>\$1,600,000</u>

Description

As part of an ongoing modernization effort, the Civil Division requests \$1.6 million in FY 2017 to transition to electronic record (“e-records”) keeping techniques. Ultimately, this transition will ensure that all permanent Civil Division records are stored in an electronic format going forward. There are new government-wide requirements relating to e-records implementation in the next few years; the lack of significant and serious action by government agencies raises concern that information overload could negatively impact the delivery of government services, and to the justice system itself. Congress has already increased funding to the National Archives and Records Administration (“NARA”) for this purpose. Just as money has been provided to NARA, the Civil Division needs funding to complete this project.

Justification

The Civil Division strives to be the most modern and efficient workforce possible and to make the most effective use of taxpayer dollars. Efforts to achieve this through better information governance conveys Civil’s serious commitment to improve its operations in a world where an estimated 80% of enterprise data is unstructured, 60% of documents are obsolete, 50% of documents are duplicate, and 80% documents are not retrieved by traditional searches.

In recent years, Civil has improved its infrastructure to make the Civil Division, which is the Federal Government’s law firm, truly a law firm of the 21st century. These steps ensure that Civil Division attorneys provide the best possible representation to the Federal Government, as well as the best possible service to the American people in their vital work defending statutes, protecting national security decisions, and defending against unwarranted monetary claims. Transitioning to e-records is an integral part of this process. In contrast, private sector industry leaders are already applying emerging and improving technologies to manage essential information. However, the Federal Government does not need to take the private sector’s cue for this issue. As NARA has noted, “many agencies take their cue on records management responsibilities from the

guidance offered by the Department of Justice (DOJ) as part of litigation requirements, such as litigation holds, discovery, and document production for information requests. DOJ can directly and indirectly support the adoption of automated technologies for records management in Federal agencies”.⁵ In this way, a small amount of funding for the Civil Division can have a larger impact in the Federal Government.

Beyond the Civil Division’s desire to create a more modern and efficient office, there are government-wide requirements that all agencies transition to e-records by FY 2019. Specifically, on November 28, 2011, President Barack Obama issued a Presidential Memorandum on Managing Government Records, which mandates that agencies develop a more efficient and cost effective 21st-century framework for the management of Federal Government records. The subsequent M-12-18 Managing Government Records Directive, issued by the Office of Management and Budget and NARA, states that federal agencies must manage all email records in an electronic format by December 31, 2016, and all permanent records in an electronic format by December 31, 2019. Essentially, the directive requires that, to the fullest extent possible, agencies eliminate paper records and use e-record keeping techniques from December 2019 forward. (This does not mean that agencies must digitize all paper records created prior to December 31, 2019.)

There are many benefits that e-records would provide to the Civil Division, other government entities, and the American taxpayer, to include:

- Improving the speed and ease of access to documentation important to accessing and understanding agency actions and decisions;
- Working towards improving records disclosures to Congress for its oversight responsibilities, and would contribute towards addressing specific Senate concerns about information disclosures (*see* S. Rpt. 114-97 Financial Services and General Government Appropriations Act, 2016);
- Assisting Civil with meeting the unique challenges of digital preservation;
- Assisting executive departments and agencies (referred to collectively as agencies) in minimizing costs and operating more efficiently;
- Supporting a workforce operating in an environment of ever-increasing complexity and accelerated pace of technological change;
- Assisting the Civil Division with meeting the ‘shrink the footprint’ policy;
- Supporting a more mobile workforce;
- Improving capacity to assess the impact of programs, improve business processes, and share knowledge across the government;
- Providing faster and easier access to information to help litigate cases more efficiently, potentially providing cost savings for the American taxpayer; and

⁵ National Archives and Records Administration, Managing Government Records Directive – Automated Electronic Records Management Report/Plan September 19, 2014, at p. 19, *available at* <http://www.archives.gov/records-mgmt/prmd/A31report-9-19-14.pdf>.

- Preserving, accessing, and leveraging institutional knowledge to mitigate the challenges of significant retirements and turnover. GAO Report 14-214 states that 31% of the Federal workforce will be eligible for retirement by 2017.

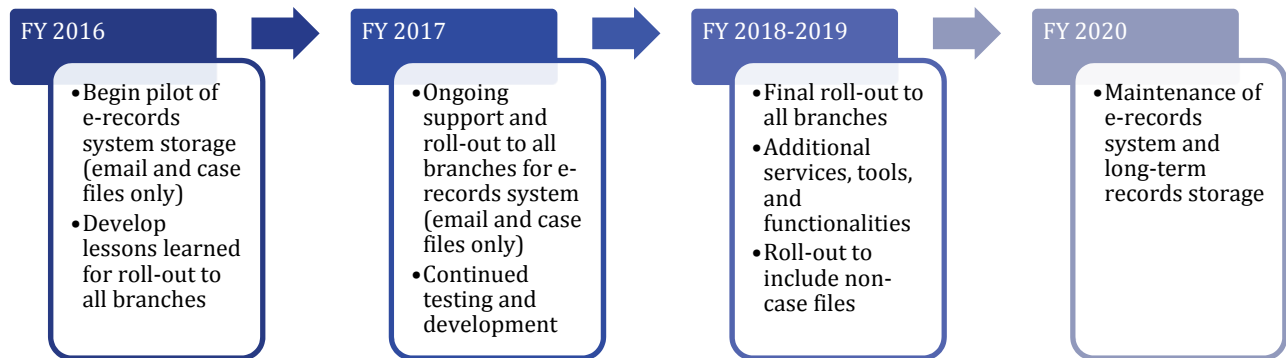
The Civil Division needs additional funds for this transition. In the past few years, Civil has faced a very lean budget environment. Adjustments-to-base (“ATBs”) have not been fully provided in the FY 2015 or FY 2016 appropriation bills. Rather, Civil has been forced to absorb some of the ATBs within existing resources. In FY 2017, Civil simply will not be able to use existing, meager base resources for e-record compliance. The Civil Division believes that Congress supports implementation of the M-12-18 Managing Government Records Directive through funding NARA’s \$2.5 million request for additional resources, for this purpose, in the FY 2016 appropriations process.⁶ Just as funding has been provided to NARA, Civil needs resources to bring about this change.

Scope and Plan of the E-Records Transition. To fully comply with the e-records transition, Civil requires additional resources because the scope of this mandate is exceptionally large. The Civil Division’s current automated file tracking system contains records on approximately 2.7 million case file sections under Civil’s control. File sections are either official Department of Justice case file jackets or 3 1/2-inch legal-sized accordion file folders. Therefore, each file section can contain from a few pages to hundreds of pages that must be maintained. Although the mandate does not require digitizing these existing hard-copy files, it provides a sense of the scope of this project.

The Civil Division is already taking preliminary steps in meeting the e-records mandate by developing a plan for an initial pilot program in FY 2016. This includes contemplating acquiring the contractor support and subject matter expertise necessary to develop a modern records management system and identify one or two branches for a pilot program.

⁶ NARA’s FY 2016 budget included a request for \$372.393 million for its Operating Expenses appropriation. This included a program increase of \$2.5 million and 17 FTE to enhance NARA oversight of government-wide electronic records management activities. “This initiative would provide NARA with the capability to evaluate other Federal agencies’ compliance with the Federal Records Act and NARA/OMB Managing Government Records Directive (M-12-18) through direct physical inspections, systems audits of agency recordkeeping systems, and enhanced data collection, analysis, and reporting.” National Archives and Records Administration, FY 2016 Congressional Justification (Feb. 2, 2015), at OE 5, *available at* <http://www.archives.gov/about/plans-reports/performance-budget/2016-performance-budget.pdf>. Congress fully funded the \$372.393 Operating Expenses requested appropriation.

Electronic Email Storage and E-Records Roll-out Timeline



To manage the FY 2016 pilot program and the full Division roll-out, as well as provide expert support to Civil’s attorneys and staff, in FY 2017 Civil will need to hire a contractor. In addition, it is imperative that these contractors understand the requirements for a modern records management system. Importantly, hiring a contractor – as opposed to hiring permanent employees – minimizes the long-term costs of this transition. Therefore, this request includes specialized contractor support as well as records management resources.

Additional resources will also be required for technology that will better ensure a smooth transition to e-records, such as auto-categorization, records and document management, media upload/file conversion tools, forensic destruction, scanners that can handle bulk scans at 300-600 dpi, media shredders, and adequate storage to maintain electronic files for up to 60 year retention periods. Going forward, the capability to manage and maintain the system will become an ongoing responsibility for Civil’s records staff.

Strategic Goals and Performance

This program increase will be helpful in all litigation the Civil Division handles. Its positive impact would, therefore, be noted in all performance measures. Furthermore, this program increase would aid Civil’s work involving both Strategic Objective 2.4 (Combat corruption, economic crimes, and international organized crime) as well as Strategic Objective 2.6 (Protect the federal fisc and defend the interests of the United States).

Base Funding

FY 2015 Enacted				FY 2016 Enacted				FY 2017 Current Services			
Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Total Personnel	0	0	\$0	\$0	\$0

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Contractor Support	\$1,600	1	\$1,600	\$0	\$0
Total Non-Personnel	\$1,600	1	\$1,600	\$0	\$0

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	0	0	0	0	\$1,600	\$1,600	\$165	\$9
Grand Total	0	0	0	\$0	\$1,600	\$1,600	\$165	\$9

Affected Crosscuts

Given that this program increase would impact every single case handled by the Civil Division, there is no clear crosscut where this information would be included.