



FY 2024 Congressional Submission

Office of Legal Counsel

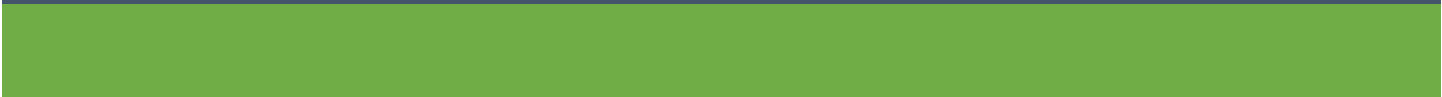


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I. Overview for the Office of Legal Counsel

Introduction

In FY 2024, the Office of Legal Counsel (OLC) requests a total of \$12,198,000, 38 positions (of which 32 are attorneys), and 38 FTEs. At the requested FY 2024 funding level, OLC will be able to continue to fulfill its core function of providing the essential legal advice needed on a broad range of constitutional, statutory, and regulatory issues to enable the Executive Branch to carry out its essential functions in a lawful manner. Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: [Department of Justice | Budget and Performance](#).

Issues, Outcomes, and Strategies

By delegation, OLC exercises the Attorney General's function, with origins in the Judiciary Act of 1789, as legal adviser to the President and agencies of the Executive Branch. OLC provides controlling advice on questions of law that are centrally important to the functioning of the government, including advice that supports the President in fulfilling his constitutional duties to preserve, protect and defend the Constitution and to "take Care that the Laws be faithfully executed." OLC's mission remains critical as the government confronts great challenges in areas that range from national security, terrorism, war powers, and immigration to law enforcement, economic stability, the pandemic, and civil and constitutional rights.

OLC is headed by an Assistant Attorney General who is appointed by the President with the advice and consent of the Senate and is assisted in providing legal advice by Deputy Assistant Attorneys General and career attorneys. The Office's advice takes a variety of written and oral forms and is provided in response to requests from the Counsel to the President, the various departments and agencies of the Executive Branch, and offices within the Department, including the offices of the Attorney General and Deputy Attorney General. OLC also resolves intra-Executive Branch legal disputes and drafts opinions signed by the Attorney General.

OLC also reviews for form and legality all proposed Executive Orders and substantive presidential proclamations and memoranda, as well as proposed regulations and Orders of the Attorney General. In addition, OLC often reviews important regulations of other executive agencies. OLC has a robust bill comment process which involves reviewing numerous pieces of proposed or pending legislation and other material related to the legislative process. OLC also provides legal advice to the Counsel to the President and Executive Branch agencies concerning their responses to congressional oversight inquiries, which have increased in the last several years.

OLC publishes many of its written opinions on its website and in recent years has endeavored to accelerate the speed with which it does so. OLC opinions can be found at <http://www.usdoj.gov/olc>. OLC makes decisions about publication based upon a presumption in favor of making significant opinions fully and promptly available to the public, as further discussed in "Best Practices for OLC Legal Advice and Written Opinions," found at <https://www.justice.gov/olc/best-practices-olc-legal-advice-and-written-opinions>. Since 1977,

OLC also has periodically published bound volumes of selected opinion. Volumes covering the years 1977 through 2016 have already been issued, and preparations for additional volumes are in progress. In addition, OLC published a volume of opinions from the period 1939 until 1977, the first in a supplemental opinion series the Office intends to issue for opinions not published at the time of original issuance. Work on these publication efforts will continue into FY 2024.

Adequate funding of OLC is imperative to ensure OLC continues its critical functions, summarized above, of providing legal advice to the President, the Attorney General, other components in the Department of Justice, and other executive departments and agencies, to the end of helping to ensure the legality of governmental action and uphold the Rule of Law.

Performance Challenges

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

External Challenges: OLC generally does not initiate programs, nor does it have control over the volume of its work. The work results from requests for legal advice from the Counsel to the President, the general counsels of other Executive Branch departments and agencies, and the Attorney General and other Department of Justice officials, as well as from the need to review pending legislation and documents to be issued by the President and the Attorney General. The lack of control over this externally driven workload remains a constant challenge to OLC's ability to fulfill its mission and is inherent in all aspects of the Office's work.

Internal Challenges: Because it is a relatively small component, OLC has little flexibility in responding to unexpected surges in workload, such as those created by the broad range of matters that require legal advice to the President, the Attorney General, other components in the Department of Justice, and other Executive Branch departments and agencies. It is critical that OLC is adequately funded to provide the human and technological resources necessary to meet workload challenges related to its core mission.

II. Summary of Program Changes:

OLC is requesting funding to design and build an electronic and searchable database to house internal classified documents and to develop and implement enhancements to an existing unclassified database, Document Archival Management System (DAMS). The new database will house and track classified attorney work product related to its responsibility in providing legal advice on matters related to national security.

In addition, OLC is requesting two additional attorney advisor positions that will support the office its important work described above, and including: 1) advising the Attorney General, the Counsel to the President, Executive Branch departments and agencies, and the various components of the Department of Justice on constitutional and statutory matters; 2) reviewing regulations for legal issues; 3) reviewing for form and legality of all Executive orders and substantive proclamations and memoranda proposed to be issued by the President as well as all Attorney General Orders and regulations; and 4) reviewing proposed legislation for constitutionality and other legal issues.

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Attorney Advisors	Supports the overall mission of the OLC.	2	2	452	9
DAMS Classified/ Unclassified Development and Enhancements	Supports the review of classified documents in support of the overall mission of the OLC.	0	0	300	10

III. Appropriations Language and Analysis of Appropriations Language

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

IV. Program Activity Justification

A. Office of Legal Counsel

<i>Federal Appellate Activity</i>	Perm. Pos.	FTE	Amount (\$000)
2022 Enacted	32	28	\$9,872
2023 President’s Budget	36	36	10,986
Adjustments to Base and Technical Adjustments	0	0	460
2024 Current Services	36	36	11,446
2024 Program Increases	2	2	752
2024 Program Offsets	0	0	0
2024 Request	38	38	12,198
Total Change 2023-2024	2	2	1,212

1. Program Description

OLC will continue its principal duty of assisting the Attorney General and, by delegation, fulfilling his role as legal adviser to the President and Executive Branch agencies as described more fully above in Part I (Overview for the Office of Legal Counsel). A significant portion of OLC’s resources is devoted to providing legal advice to the Counsel to the President and Executive Branch agencies on a broad range of vital matters, including related to national security. OLC also serves as arbiter of legal disputes within the Executive Branch and provides legal assistance to other components of the Department of Justice, including related to litigation. OLC reviews for form and legality all Executive Orders and substantive Proclamations and Memoranda to be issued by the President, as well as all proposed Orders of the Attorney General. OLC’s role in the Department’s legislative work is substantial and includes extensive review of pending legislation. OLC also provides legal advice to the Counsel to the President

and Executive Branch agencies concerning their responses to congressional oversight inquiries, which have increased in the last several years.

2. Performance and Resource Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit:												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2022		FY 2022		FY 2023		Current Services Adjustments and FY 2024 Program Changes		FY 2024 Request	
Total Costs and FTE (Reimbursable: FTE are included, but costs are bracketed and not included in totals)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			32	9,872	28	9,872	36	10,986	2	1,212	38	12,198
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2022		FY 2022		FY 2023		Current Services Adjustments and FY 2024 Program Changes		FY 2024 Request	
Program Activity	Upholding the Rule of Law		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			32	9,872	28	9,872	36	10,986	2	1,212	38	12,198
APG Measure:	1.2	N/A										
KPI: Output	1.1.1	N/A										
Performance Measure:	1.2	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch Agencies	1,700		1,700		1,700				1,700	
Performance Measure:	1.2	Review from and Legality of all Proposed Executive Orders and Proclamations to be issued by the President	190		190		190				190	

*Denotes inclusion in the DOJ Quarterly Status Report and DOJ Annual Performance Plan.
 *This table is required.

	Performance		FY 2022	FY 2023	FY 2024
			Actual	Target	Target
1.	Agency Priority Goal	Upholding the Rule of Law			
1.2	Key Performance Indicator	N/A			
1.2	Performance Measure	Provision of Legal Opinions on Constitutional questions from the President and Executive Branch agencies	1,700	1,700	1,700
1.2	Performance Measure	Review from and legality of all proposed Executive Orders and Proclamations to be issued by the President	190	190	190

[N/A= Data Unavailable]

3. Performance, Resources, and Strategies

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

a. Performance Plan and Report for Outcomes

Because of the nature of its mission and workload (that is, providing legal advice to help ensure the legality of Executive Branch Action), OLC is not included for review in the Department's Performance and Accountability Report (PAR). This budget submission is part of the Department's Performance Plan, reporting targets through FY 2024. However, OLC does not have measures in the PAR.

b. Strategies to Accomplish Outcomes

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

c. Priority Goals

OLC's priority goals for FY 2024 are as follows:

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

V. Program Increases by Item:

Item Name: Attorney-Advisers

Budget Decision Unit(s): Office of Legal Counsel

Strategic Goal & Objective: 1- Upholding the Rule of Law

Organizational Program: Office of Legal Counsel

Program Increase: Positions 2 Atty 2 FTE 2 Dollars \$452,000

Description of Item

OLC is requesting an increase of two attorney-adviser positions, two FTE and \$452,000 in furtherance of its mission.

Justification

In light of its increasing workload in several key areas, OLC has been challenged in meeting its demanding workload with the current FTE level. OLC provides authoritative opinions and legal advice in the areas of constitutional, statutory, and regulatory questions from a wide range of fields, including national security, criminal law, civil rights, fiscal law, and appointment and removal authorities. Among other work, OLC advises the Counsel to the President, the Department of Justice, and other Executive Branch agencies on executive privilege and congressional oversight matters. That workload has increased substantially over time, and we anticipate it will increase further in the coming years. In addition, OLC reviews often lengthy regulations (e.g., 700 pages) both for the Department of Justice and, on request, for other agencies. That workload has also been increasing due to an expanding volume of requests for OLC review and the growing complexity of legal issues presented in light of evolving jurisprudence concerning judicial review of regulations. We have determined two additional attorney-adviser positions are necessary to meet these and other demands of the Office.

The additional resources will support the office in 1) advising the Attorney General, the Counsel to the President, Executive Branch departments and agencies, and the various components of the Department of Justice on constitutional and statutory matters; 2) reviewing regulations for legal issues; 3) resolving legal disputes within the Executive; 4) reviewing for form and legality all Executive Orders and substantive proclamations and memoranda proposed to be issued by the President as well as all Attorney General Orders and regulations; and 5) reviewing proposed legislation.

Impact on Performance

A program increase of two attorney positions, two FTE and \$452,000 in support of the Department's Strategic Goal is necessary in meeting the responsibilities of the Office in its role as legal advisor to the President and Executive Branch agencies to help uphold the Rule of Law.

Funding

Base Funding

FY 2022 Enacted				2023 President's Budget Request				FY 2024 Current Services			
Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)
32	26	32	\$9,872	36	30	36	\$10,986	36	30	36	\$11,446

Personnel Increase Cost Summary – Attorney-Adviser

Type of Position/Series	FY 2024 Request (\$000)	Positions Requested	Full-Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				1 st Year	2 nd Year	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Attorneys (0905)	\$420	2	\$210	\$170	\$170	\$0	\$0
Total Personnel	\$420	2	\$210	\$170	\$170	\$0	\$0

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Contract Services and Supplies	\$22	\$11	2	4	0
Acquisitions & Assets	\$10	\$5	2	8	60
Total Non-Personnel	\$32	\$16	2	\$12	\$60

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	36	30	36	\$7,787	\$2,375	\$11,446	N/A	N/A
Increases	2	2	2	420	32	452	12	60
Grand Total	38	32	38	\$8,207	\$2,407	\$11,898	\$12	\$60

Affected Crosscut

None

Item Name: **Classified/Unclassified Database Development and Enhancements**

Budget Decision Unit(s): Office of Legal Counsel

Strategic Goal & Objective: 1- Upholding the Rule of Law

Organizational Program: Office of Legal Counsel

Program Increase: Positions 0 Atty 0 Dollars \$300,000

Description of Item

OLC is requesting funding in support of a searchable database to house classified work product related to its overall mission and responsibility to the Department and to develop and implement enhancements to an existing database for unclassified documents. This request provides an increase of \$300,000 for these efforts.

Justification

The requested database will allow OLC to systematically maintain formal and informal classified advice and opinions in a secure, electronic repository that can be easily navigated. Currently, these documents are not centrally located in electronic form, nor can they be easily searched. Using technological tools to search through these documents will assist OLC attorneys in researching responses to questions related to highly sensitive matters, similar to OLC's existing capabilities with respect to its unclassified work product.

The increase in funding will allow OLC to complete the design and build of the classified database in FY 2024, and to design and implement enhancements to its unclassified database. OLC is committed to using operational funding in FY 2022 and FY 2023 to begin the planning and development of a general design of the database. OLC will also look to leverage Departmental systems already in existence that may meet its overall requirements. Enhancements to the existing unclassified database will result in improvements in usability and scope of the database.

Impact on Performance

The development of and enhancement to the Classified/Unclassified Databases will support the work of the office by allowing attorneys to efficiently identify and review relevant prior classified work product, thereby increasing the productivity of OLC's work on classified matters. Similarly, enhancements to the unclassified database will aid efficient and thorough use of that database.

Funding

Base Funding

FY 2022 Enacted				2023 President's Budget Request				FY 2024 Current Services			
Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)
32	26	32	\$9,872	36	30	36	\$10,986	36	30	36	\$11,446

Personnel Increase Cost Summary – None

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Classified/Non-Classified Database	\$300	\$300	0	-\$100	-\$150
Total Non-Personnel	\$300	\$300	0	-\$100	\$150

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	36	30	36	\$7,787	\$2,375	\$11,446	N/A	N/A
Increases	0	0	0	0	300	300	-\$100	-\$150
Grand Total	36	30	36	\$7,787	\$2,675	\$11,746	-\$100	-\$150

Affected Crosscut

None

VI. Program Offsets by Item:

N/A

VII. EXHIBITS