

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Administrative Support Offices

Office of General Counsel

SALARIES AND EXPENSES

(Dollars in Thousands)

	2019	2020			2021		
	Actuals	Carry Over	Enacted	Total	Carry Over	President's Budget	Total
Personnel Services:	\$89,431	\$1,785	\$96,448	\$98,233	-	\$101,210	\$101,210
Non-Personnel Services:							
Travel	1,307	-	1,550	1,550	250	950	1,200
Transportation of Things	11	-	175	175	-	-	-
Printing	335	140	455	595	75	400	475
Other Services/Contracts	1,504	300	1,245	1,545	500	1,000	1,500
Training	489	-	535	535	400	100	500
Supplies	274	-	374	374	177	50	227
Claims and Indemnities	187	62	414	476	151	149	300
Total, Non-Personnel Services	\$4,107	\$502	\$4,748	\$5,250	\$1,553	\$2,649	\$4,202
Working Capital Fund	1,529	446	1,167	1,613	-	5,185	5,185
Carryover	2,733	-	1,553	1,553	\$1,553	-	-
Grand Total	\$97,800	\$2,733	\$103,916	\$106,649	\$1,553	\$109,044	\$110,597
FTEs	524	10	533	543	-	545	545

PROGRAM PURPOSE

The General Counsel is the chief legal officer of the Department and is the legal advisor to the Secretary and other principal staff in the Department. The General Counsel provides legal opinions, advice, and services with respect to all programs and departmental activities. The General Counsel defends the Department and enforces the Fair Housing Act and HUD's program requirements. The General Counsel oversees the Departmental Enforcement Center (DEC), an organization of financial and enforcement analysts that enforces HUD program requirements and protects the Department's assets.

BUDGET OVERVIEW

The 2021 President's Budget requests \$109 million for the Office of General Counsel (OGC), which is \$5.1 million more than the 2020 enacted level. The Budget reflects total funding (carryover and new authority) of \$110.6 million, \$4 million above 2020 total funding.

Personnel Services (PS)

The Budget reflects total funding (carryover and new authority) of \$101.2 million for OGC PS, \$3 million above 2020 total funding. This funding will support 545 full-time equivalents (FTEs), two FTEs above 2020. The additional FTEs secured in 2020 and sustained in 2021 will continue to provide resources to the DEC to increase oversight and monitoring of HUD-funded or HUD-insured

assets to ensure the health, safety and fiscal soundness of HUD activities. In 2021, OGC will backfill DEC positions and continue to conduct oversight and monitoring of HUD assets. Funding provided in this request will maintain this level of effort by the DEC. OGC anticipates utilizing three FTEs in fiscal year 2021 to support the President's Management Agenda and OGC's Key Operational Initiatives.

PS funding will also support an increase in awards spending above 2020 levels of no less than 1 percentage point of non-SES/SL/ST salary in 2021.

Non-Personnel Services (NPS)

The Budget reflects total funding (carryover and new authority) of \$4.2 million for OGC NPS, \$1 million below 2020 total funding. OGC will obtain this decrease by minimizing NPS costs in 2021 in order to maintain their FTE levels. The 2020 carryover and 2021 President's Budget for NPS funding will support travel, relocation costs, printing, supplies, contracts, training, and claims and indemnifications (attorney's fees for adverse parties prevailing in non-program related litigation). Printing funding supports the Department's printing costs for the *Federal Register* and the Code of Federal Regulations. NPS funding also supports OGC's access to online legal research and databases. These services include Lexis/RELX Inc., PACER, West LegalEdcenter, CyberFeds, the Congressional Quarterly, and a contract with a vendor to assist with review of regulatory comments.

Working Capital Fund (WCF)

The Budget reflects total funding (carryover and new authority) of \$5.2 million for OGC WCF, \$3.6 million above 2020 total funding. The increase primarily supports the new WCF business lines of IT devices and records management services. Additionally, WCF funding will support existing shared services such as financial management, human resources, HR systems, the National Finance Center (NFC) payroll processes, and other investments as determined by the Secretary.

Program Office Priorities

OGC Priorities

Priority 1: eDiscovery and FOIA. OGC manages the Department's eDiscovery program. This includes not only handling eDiscovery for litigating attorneys and responses to congressional oversight data requests, but also data collections for the FOIA and OIG programs. Based on trends that include historical and 2019 data, in 2021 OGC forecasts requests to collect an average of 19 custodians per workday, or 380 custodians per month (19 custodians per day times 20 workdays). This is a 73 percent increase in collection volume scope from the 2019 average of 11 custodians per workday.

Priority 2: Insured Loan Closings and Transfers of Physical Assets. In addition to increasing the number of FTEs to handle the Rental Assistance Demonstration and Project Rental Assistance Contract conversion workload increases, OGC must maintain and backfill attrition for the approximately 125 OGC FTEs who are dedicated to performing or supporting insured loan closings for multifamily housing, healthcare facilities, and hospitals. In 2019, OGC closed insured loans valued at over \$11.8 billion and performed legal reviews of 277 transfers of physical assets valued at over \$2.6 billion.

Priority 3: Legal Honors and Succession Planning. Currently, 129 of OGC's current employees are eligible for full retirement. This represents 25 percent of OGC's current workforce. The lynchpin of OGC's succession planning efforts is its Legal Honors Program. The Legal Honors program is over 50 years old. OGC backfills attorney attrition with Legal Honors at the GS-11 level and then invests in their training and professional development. Maintaining this program is a top priority.

Due to the uncertainty of personnel funding in 2018, OGC put a 1-year hold on its program and did not onboard a class in September 2018, which hampered OGC's succession planning efforts. The 2019 funding allowed OGC to restart the program and onboard 15 Legal Honors in September 2019. OGC anticipates onboarding up to 10 Legal Honors in September 2020, with their salaries to be paid largely from 2021 funding. OGC's funding request in 2021 will allow OGC to continue its Legal Honors program and bring a class of at least 15 Legal Honors to start in September 2021 and whose salaries will largely be paid in 2022.

In 2021, OGC DEC will be in its 23rd year and most of the employees who started with the DEC when it was created will be retiring. Many have over 40 years of service. Resources will be dedicated to maintaining the additional 21 FTEs hired in 2019 and backfilling attrition.

Priority 4: Performance-Based Contract Administrator (PBCA) Litigation. Contract administrators manage all aspects of the Office of Housing's Section 8 Project-Based Rental Assistance program. Historically, under this program, the contract administrators (PHAs) received renewal funding pursuant to an annual contributions contract. Pursuant to a court order, the Office of Housing will have to procure a contractor to assist in administering the program. It is anticipated that the process of awarding new contracts will be surrounded by significant litigation, and HUD anticipates that costs associated with that litigation will be incurred through the budget window.

President's Management Agenda

Regulatory Reform. In January and February 2017, the President issued two EOs (Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs; and Executive Order 13777, Enforcing the Regulatory Reform Agenda) directing deregulation and other regulatory reforms. OGC helps drive these reforms at HUD, provides legal advice to HUD's Regulatory Task Force, and serves as the Regulatory Reform Officer. OGC facilitates and drafts the deregulatory actions as identified by HUD's Regulatory Reform Task Force. Deregulatory actions will need to be published in the *Federal Register*. OGC manages the *Federal Register* printing for the Department and the 2021 request includes \$475 thousand to support departmental deregulatory efforts and other printing in the *Federal Register* and Code of Federal Regulations. One FTE will be dedicated to managing and streamlining regulatory and process requirements across HUD program offices.

HUD/Agency Priority Goals

OGC provides legal support to the key initiatives of the Secretary, including the Advancing Economic Opportunity Task Force and the Agency-Wide Integrity Task Force. Assistance includes providing legal support for homeownership opportunities for borrowers while safeguarding the housing finance system; enhancing the rental assistance programs; facilitating housing recovery and creating resilient housing and communities; enforcing Section 3; reducing homelessness; and supporting the objective of the White House Council on eliminating regulatory barriers to affordable housing, of which Secretary Carson serves as chair.

Priority 1: Rental Assistance Demonstration and Project Rental Assistance Contracts (PRAC) 202 Conversions. In March 2018, Congress raised the statutory unit cap on the RAD program to 455,000 units from 225,000 units. For 2020, 831 RAD transactions, with approximately 94,763 units, are expected based on RCCs awaiting closing (91 transaction with 10,574 units), Financing Plans under review (84 transactions with 8,002 units) and CHAPS approved (656 transactions with 76,187 units). This level of activity will greatly increase OGC's legal reviews.

Congress also authorized the conversion of the 202 PRAC portfolio with 2,875 properties with 125,062 units. The increase in the cap and the addition of the 202 PRAC portfolio will significantly increase OGC's legal review activity.

Priority 2: Enforcement and CDBG-DR. The Departmental Enforcement Center (DEC) will expand their monitoring and program enforcement efforts to ensure compliance with contractual obligations related to the long-term disaster recovery funded by the Community Development Block Grants-Disaster Recovery (CDBG-DR). OGC will provide legal support to CPD and the DEC to increase effectiveness and accountability in disaster recovery.

KEY OPERATIONAL INITIATIVES

Priority 1: Legal Support to the Department. OGC continues to provide a full array of legal support to the Department, including defending the Department's programs against over \$808.4 million in claims; defending against \$58 million in tort claims; reviewing Ginnie Mae Multiclass Securities transactions valued at over \$73.8 billion; issuing charges of discrimination under the Fair Housing Act; handling bid protests and procurement claims at the Civilian Board of Contract Appeals; reviewing over \$646 million of departmental procurements; managing the Department's ethics program for over 2,500 financial disclosure filers; defending the Department in personnel and labor actions; processing regulatory waivers; drafting legislative amendments, reviewing draft interagency legislative documents; drafting *Federal Register* documents; reviewing and drafting sub-regulatory directives; drafting regulations; reviewing transfers of physical assets; reviewing interest rate reduction documents; representing the Department's interests in Multifamily foreclosures; and reviewing FOIA packages and handling FOIA appeals; collecting over \$4 million in debts owed to the Department; and handling over 11,000 legal actions to protect the single-family inventory. OGC plans to utilize two FTEs in fiscal year 2021 to handle the legal work associated with Secretarial and departmental key operational initiatives.

Priority 2: Enforcement and Protection of HUD Assets. OGC leads the Department's efforts to enforce HUD program requirements and protect HUD assets. In 2019, OGC's enforcement efforts returned over \$69.4 million to the FHA Fund and returned almost \$3 million to PIH and CPD programs and activities. In 2019, the DEC suspended 40 irresponsible parties from participation in federal programs and debarred 98 irresponsible parties from participation in all federal programs. The DEC obtained over \$9.1 million in recoveries for the Multifamily Housing Program.