

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Administrative Support Offices

Office of General Counsel

SALARIES AND EXPENSES

(Dollars in Thousands)

	2020*	2021			2022		
	Actuals	Carryover	Enacted	Total	Carryover	President's Budget	Total
Personnel Services	\$96,438	\$2,837	\$100,698	\$103,535	\$2,838	\$109,747	\$112,585
Non-Personnel Services							
Travel	403	50	45	95	-	1,200	1,200
Transportation of Things	8	-	150	150	-	-	-
Printing	520	50	180	230	-	800	800
Other Services/Contracts	1,517	276	1,368	1,644	-	1,757	1,757
Training	528	-	300	300	-	800	800
Supplies	135	-	139	139	-	300	300
Claims and Indemnities	266	50	300	350	-	650	650
Total, Non-Personnel Services	\$3,377	\$426	\$2,482	\$2,908	-	\$5,507	\$5,507
Working Capital Fund	1,909	53	1,236	1,289	-	2,860	2,860
Carryover	3,316	-	2,838	2,838	-	286	286
Grand Total	\$105,040	\$3,316	\$107,254	\$110,570	\$2,838	\$118,400	\$121,238
FTEs	558	16	565	581	15	593	608

*Includes 2019 Carryover.

PROGRAM PURPOSE

The General Counsel is the chief legal officer of the Department of Housing and Urban Development (HUD) and principal legal adviser to the Secretary and other principal leadership in the Department. The Office of General Counsel (OGC) provides legal opinions, advice, and services with respect to all departmental programs and activities. OGC attorneys draft legislation, regulations, and policy guidance to create, revise and implement HUD programs and initiatives. OGC attorneys also provide litigation support for the Department, including representing HUD in defensive litigation, enforcing the Fair Housing Act, and bringing enforcement actions against individuals and organizations that violate the rules of HUD programs, both administratively and in coordination with the HUD Inspector General and the Department of Justice. In addition, OGC attorneys provide transactional legal services in connection with the Department's various housing programs and the activities of the Federal Housing Administration, and advice on the issuance of mortgage-backed securities and various related financial, capital market, and securitization transactions by the Government National Mortgage Association. OGC attorneys represent the Department with other Federal agencies in support of joint initiatives and projects, and before the Congress and other external parties.

The Departmental Enforcement Center (DEC) provides independent oversight of the administration of HUD programs and HUD's external partners. To this end, the DEC offers support and recommendations to HUD program offices through reviews of program activities in the field and analysis of financial statements and data on the physical condition of housing.

HUD's mission is critical to achieving the President's vision to ensure that we build back better from the public health and economic challenges and address longstanding systemic challenges, including racial injustice, rising inequality, and the climate crisis. HUD's work is essential to improving the quality of life of the American people, and this investment in OGC's salaries and expenses will assist in ensuring that work is able to be done.

BUDGET OVERVIEW

The 2022 President's Budget requests \$118.4 million for the OGC, which is \$11.1 million more than the 2021 enacted level. The Budget reflects total funding (carryover and new authority) of \$121.2 million, which is \$10.7 million above 2021 total funding.

The total OGC funding request in 2022 supports the DEC's total requirement of \$20 million, of which \$2.5 million will be funded through 2021 carryover and \$17.5 million with new authority.

Personnel Services (PS)

The Budget reflects total funding of \$112.6 million for OGC PS, an increase of \$9.1 million above 2021 total PS funding. The funding supports 608 full-time equivalents (FTEs) and increase of 27 FTEs above 2021. OGC will maintain a full staffing level of 112 FTEs in 2022 for the DEC to conduct oversight and monitoring of HUD assets. OGC anticipates utilizing the additional FTEs in 2022 to support its new Key Operational Initiatives including hiring additional attorneys and support staff for Fair Housing, Legislation, Regulations, Personnel, Ethics, and Housing Programs. The additional funding and FTEs will also support the following:

- A Senior Executive Service (SES) or Senior Leader position, reporting to the Principal Deputy General Counsel will administer all legal advice to the Office of Diversity and Equal Employment Opportunity to address outstanding findings from the EEOC.
- A total of 15 Legal Honor positions are requested as part of OGC's succession planning using its 50+ year program to bring graduating law students on board in OGC.
- OGC proposes to convert the ten Regional Counsels to Senior Executive Service employees due to their increased portfolios and workload.

Non-Personnel Services (NPS)

The Budget assumes total funding of \$5.5 million for OGC NPS, of which \$700 thousand will support the DEC needs. Total NPS requirements reflect an increase of \$2.6 million from the total 2021 funding level. With the anticipation of returning to normal operations in the 4th quarter of 2021, OGC will return to pre-COVID-19 levels in travel, relocation costs, scanning, 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 LegalEd, CyberFeds, and the Congressional Quarterly. Additionally, OGC utilizes the services by contract of a vendor to assist with review of regulatory comments to expedite the review process.

Working Capital Fund (WCF)

The Budget assumes total funding of \$2.9 million for OGC's contribution to the WCF, \$1.6 million above 2021 total funding. The increase is primarily attributable to the addition of end-user IT devices and wireless support to the WCF and the forward funding of \$296 thousand of 2021 WCF fees in 2020. This amount will continue to support existing shared services such as financial

management, human resources, HR systems, the National Finance Center (NFC) payroll processes, IT devices, and other investments as determined by the Secretary.

KEY OPERATIONAL INITIATIVES

OGC Priorities

Priority 1: Fair Housing and Equal Opportunity

The Administration has made Fair Housing a central pillar of its equity agenda. Three of the administration's first executive orders call for substantial efforts directly connected to Fair Housing and civil rights enforcement. The Office of Fair Housing and Equal Opportunity (FHEO) expects to receive a substantial increase in complaints alleging Fair Housing Act violations and to initiate significantly more Secretary-initiated investigations, complaints, and compliance reviews. One of the Administration's key focuses is fair lending enforcement. As a result, FHEO has initiated a new fair housing and fair lending testing initiative to support the Administration's objectives to increase fair housing and fair lending enforcement. FHEO anticipates that testing will yield systemic cases for investigation and litigation, requiring significant assistance from OGC. FHEO and OGC are also undertaking investigations of complaints alleging discriminatory appraisal services. Consistent with President Biden's Memorandum on Redressing Our Nation's and the Federal Government's history of discriminatory housing practices and policies, HUD has begun examining its disparate impact and Affirmatively Furthering Fair Housing (AFFH) rules and is required to take all necessary steps to implement the Fair Housing Act's requirements that HUD administer its programs in a manner that affirmatively further fair housing. This will likely include in-depth training and technical assistance to program participants to ensure that they are able to meet their fair housing obligations. This will necessitate a large commitment of resources by OGC, in creating the program, providing training and technical assistance, and in enforcing the program. To support these goals, OGC has had and will continue to have a significant need for resources and to add additional staff as requested in this Budget.

Priority 2: Legislation and Regulations

In 2022, the OGC Office of Legislation and Regulations is slated to be a key office in advancing the Administration's regulatory and legislative agendas, and in collaborating with the Office of Information and Regulatory Affairs in reviewing HUD's regulatory agenda and in cultivating the support and coordinating with congressional leaders in support of HUD's legislative priorities. OGC has seen a significant increase in TDS requests and sees an increase in the workload going forward in furtherance of the Office of Congressional and Intergovernmental Relations and the Secretary's efforts to build a more robust relationship with the Congress and the authorizing committees. This legislative work will continue as additional legislation is developed to address the pandemic and the Administration's furtherance of a large infrastructure legislative package. HUD anticipates drafting a significant number of authorizing statutes. Among other items, this work will include key rules to ensure compliance with the Fair Housing Act and other civil rights laws. This work also includes activities to implement Executive Order 13992 entitled, "Revocation of Certain Executive Orders Concerning Federal Regulation" and Executive Order 13985 entitled, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." In addition to this work, the Office is also working on more than forty other regulatory actions to strengthen and broaden the Federal housing safety net for people in need, such as updating the Manufactured Housing Construction Standards, updating the standards for use of Federal properties to assist the Homeless, and amending the Federal Housing Administration (FHA) single family mortgage insurance servicing and claim requirements for FHA-Insured mortgages. To support these new initiatives, OGC has a significant need for resources and additional staff requested in this Budget.

Priority 3: Ethics and Personnel

Personnel and ethics are two of the most critical components of any Federal agency. This is especially true given the Executive Orders on Equity, Ethics, and the Federal workforce. Without timely and sound legal advice in these two areas, an agency's ability to effectively carry out its mission is significantly compromised. Indeed, without sound advice being provided to help the Agency hire and retain personnel, hold them accountable, and ensure they are carrying out their duties in an ethical manner, HUD's ability to support this Administration's agenda of strengthening and broadening the Federal housing safety net for people in need; advancing housing equity as a means to improve housing choices and greater economic opportunity; strengthening HUD's internal institutional capacity to deliver on mission; increasing the production of an access to affordable housing, and promoting climate resiliency, environmental justice, and energy efficiency across the housing sector will be negatively impacted. To support this vital agency work, OGC has a need for additional staff attorneys requested in this Budget.

Priority 4: Legal Honors and Succession Planning

Currently, 114 of OGC's current employees are eligible for full retirement. This represents approximately 19 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. OGC anticipates onboarding up to 10 Legal Honors in September 2021 and their salaries will be paid largely from 2022 funding. OGC's funding request in 2022 will allow OGC to continue its Legal Honors program and bring a class of at least 15 Legal Honors to start in September 2022 and whose salaries will largely be paid in 2023.

Priority 5: 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.

Priority 6: Reclassify Regional Counsel Position as an SES

The 10 Regional Counsel positions in the Field should be reclassified as SES positions. The position of Regional Counsel meets the OPM criteria to be classified as an SES position. The Regional Counsel are field managers where the bulk of OGC's staff is located. At the end of February 2021, OGC had 209 staff in Headquarters compared to 268 staff in the Field, excluding the DEC staff. The Regional Counsels report to the Deputy General Counsel for Operations in Headquarters (an SES position) and head each Office of General Counsel Regional Office. Regional Counsel direct all of HUD's legal activities in multi-state regions which cover all the United States, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. For example, two Regions have over 40 staff, and two Regions have over 30 staff. Regional Counsel perform numerous leadership roles, such as: (1) the Chief Legal Officer for the Region; (2) the Agency Ethics Officer within the jurisdiction; (3) the Regional Attesting Officer responsible for certifying the authenticity of all HUD documents from every program office in the region; and (4) the Civil Rights Enforcement role for Fair Housing and Equal Opportunity within the region. Note that FHEO investigates complaints, while Regional Counsel charges and prosecutes the cases and enforces the law. The Regional Counsel provides legal counsel, review, assistance, and recommendations at all levels of the organization, from the Office of the Secretary, General Counsel, Assistant Secretaries, Regional Inspector General Offices, Regional Administrator, Field Office Directors, program managers and directors, and heads of various centers. The Office of Regional Counsel is necessary and essential to

accomplish the goals and fulfill the mission of the Department and support program delivery across the country.

Priority 7: 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; 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.

Priority 8: Departmental Enforcement Center

In 2022, OGC DEC will be in its 24th year and most of the employees who started with the DEC when it was created will be retiring. Resources will be dedicated to maintaining, and backfilling attrition as it occurs, the 112 FTEs needed to fulfill the DEC's mission.

Program Oversight Reviews: In a typical year, the DEC completes 26 program oversight reviews. These reviews are targeted regulatory compliance reviews. At the request of HUD's program areas such as Public and Indian Housing, Community Planning and Development, DEC oversight reviews focus on key areas of program compliance. Key review areas include Financial, Internal Controls, Governance and Physical. As a result of the reviews, the DEC annually makes over 200 recommendations to the program areas pertaining to improved oversight and/or repayment accountability for violations. Additionally, on average \$68 million in misused funds (e.g., unsupported, ineligible, unallowed and/or unreasonable) are identified. The DEC anticipates an increase in the number of referrals due to the 2020 pandemic, which saw limited monitoring by the program areas. By performing these reviews, the DEC supports the program area mission of affordable housing and viable communities through enforceable program adherence and compliance.

Multifamily Housing and Office of Healthcare Program Referrals: The DEC receives 3098 automatic/elective referrals from the Office of Multifamily Housing and the Office of Healthcare Programs in a typical year. The referrals focus on late filing of annual financial statements, regulatory compliance, and substandard physical conditions of assisted and non-assisted properties. The results of the DEC reviews on average result in over \$12.3 million in Civil Money Penalties, \$78.9 million in Recoveries and \$5.9 million Directed Payments. Actions by the DEC ensure that affordable housing is being preserved and that owners are aware that non-compliance is not to be taken lightly.

Suspensions and Debarments: The DEC pursues suspension and debarment actions that result in the exclusion of a sanctioned party from further participation in HUD procurement and non-procurement programs and other Federal Government programs. Suspensions and debarments seek to ensure the highest standards of professional conduct and ethical business practices by the Federal Government's business partners. Annually, the DEC receives on average over 200 referrals resulting in the DEC issuing 87 Suspensions, 145 Proposes Debarments and 146 Final Debarments in a typical year.