

FY 2009 Congressional Budget Request

Fees and Expenses of Witnesses

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Overview Summary Statement
Fees and Expenses of Witnesses

For the Fees and Expenses of Witnesses (FEW) appropriation, the Department requests a total funding level of \$168,300,000 for FY 2009 to remain available until expended. This resource level does not include any program increases for FY 2009 and keeps this appropriation at the FY 2008 President's request level. The (FEW) appropriation is under Strategic Goal III to ensure the Fair and Efficient Administration of Justice. Beginning in FY 2007, 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:
<http://www.usdoj.gov/jmd/2009justification/>.

The Fees and Expenses of Witnesses activity provides funding for all fees and expenses associated with the provision of testimony on behalf of the Federal Government. Specifically, there are two types of witnesses that are compensated under the provisions of this activity. Fact witnesses testify as to events or facts about which they have personal knowledge. These witnesses are paid a statutorily established rate of \$40 per day plus reasonable amounts for travel and certain other costs associated with their appearance. Expert witnesses provide technical or scientific testimony and are compensated based on negotiations with the respective Federal Government attorney. Funding allocated to this activity is also used to pay the fees of physicians and psychiatrists who examine defendants upon order of the court to determine their fitness to stand trial.

The Emergency Witness Assistance Program allows the government to aid witnesses who might not otherwise testify because of perceived threats surrounding the litigation. This program started in 1997 and is limited to a participation period not to exceed 30 days. The services provided include transportation needs, temporary housing, temporary subsistence, emergency telephone calls, and child/elder care.

The Protection of Witnesses activity provides funding for the security of government witnesses, or potential government witnesses, and their families when their testimony, concerning organized criminal activity, may jeopardize their personal security. Typical expenses include, but are not limited to, subsistence, housing, medical and dental care, travel, documentation, identity changes, one-time relocation, costs associated with obtaining employment, and other miscellaneous expenses.

The Victim Compensation Fund was established by Section 1208 of the Comprehensive Crime Control Act (Title II of P.L. 98-473). The Fund is used by the Attorney General to "pay restitution to, or in the case of death, compensation for the death of any victim of a crime that causes or threatens death or serious bodily injury and that is committed by any person during a period in which that person is provided protection under this chapter." In the case of death, an amount not to exceed \$50,000 may be paid to the victim's estate. Moreover, the act authorizes payment of an amount not to exceed \$25,000 to the estate of any individual whose death was caused by a protected witness before the enactment of this law.

The Private Counsel activity was established under 28 C.F.R. 50.15 and 50.16, whereby, the Civil Division is authorized to retain private counsel to represent government officers and employees who are sued, charged or subpoenaed for actions taken while performing their official duties. Further, funding allotted to this activity is used to pay private legal representation expenses associated with the provision of testimony before Congressional committees in instances wherein government counsel is precluded from representing Federal Government employees, or in instances wherein private counsel is otherwise appropriate.

The District of Columbia Superior Court Informant Program (SCIP) was established upon passage of the 1991 Dire Emergency Supplemental Appropriations Act. Unlike the Witness Security program, which provides permanent relocations and identity changes, the SCIP provides temporary relocation and limited protective services to witnesses who provide prosecution testimony in District of Columbia Superior Court cases.

The Alternative Dispute Resolution activity funds the expenses of hiring third party neutrals and witnesses in resolution proceedings.

The Foreign Counsel activity was established under 28 C.F.R. § 0.46, whereby, the Civil Division is authorized to all other civil litigation including claims by or against the United States, its agencies or officers, in domestic or foreign courts, special proceedings, and similar civil matters not otherwise assigned, and shall employ foreign counsel to represent before foreign criminal courts, commissions or administrative agencies of the Department of Justice and all other law enforcement officers of the United States who are charged with violations of foreign law as a result of acts which they performed in the course and scope of Government services.

No programs in this budget account have been subject to a PART review.

III. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

For fees and expenses of witnesses, for expenses of contracts for the procurement and supervision of expert witnesses, for private counsel expenses, including advances, and for expenses of foreign counsel, \$168,300,000, to remain available until expended[: Provided, That], *of which* not to exceed \$10,000,000 *is for* the construction of buildings for protected safesites[: Provided further, That]; not to exceed \$3,000,000[may be made available] *is* for the purchase and maintenance of armored and other vehicles for witness security caravans[: Provided further, That]; *and* not to exceed \$9,000,000 may be made available for the purchase, installation, maintenance and upgrade of secure telecommunications equipment and a secure automated information network to store and retrieve the identities and locations of protected witnesses. (Department of Justice Appropriations Act, 2008.)

Analysis of Appropriations Language

No substantive change.

Legal Activities
Fees and Expenses of Witnesses
Program Performance Justification
Activity Resource Summary
(In thousands of dollars)

Activity: Fees and Expenses of Witnesses

<i>Fees and Expenses Of Witnesses</i> TOTAL	Perm. Pos.	FTE	Amount
2007 Enacted			126,000
2008 Enacted			122,583
Adjustments to Base and Technical Adjustments			
2009 Current Services			122,583
2009 Program Increases			
2009 Request			122,583
Total Change 2008-2009			

Base Program Description:

This program provides for payment of fees and expenses of expert witnesses who appear on behalf of the Federal Government when scientific or technical expertise is required in the prosecution or defense of a case. The pursuit of complex litigation by the Department would not be possible without qualified experts to testify and to refute the non-legal particulars of individual cases. The testimony of expert witnesses is essential to the successful outcome of such litigation. While a wide array of specialized disciplines are involved in the Department's litigation, experts from certain disciplines are used extensively. For example, approximately seventy percent of expert witnesses used by the Department in 2007 were physicians, psychiatrists, appraisers, engineers, or economists. Also, the testimony of fact witnesses is used in court proceedings by the Department's legal divisions and the United States Attorneys. Fact witnesses are needed in a wide range of court proceedings, as well as pre-trial conferences. Daily attendance fees and other expenses paid to fact witnesses are intended to defray the costs of appearing to testify. The attendance fee is set by law. Courts often order the Federal Government to pay the costs associated with mental competency examinations conducted by physicians or psychiatrists. These examinations are performed in an attempt to determine whether an accused person is mentally competent to stand trial and/or was mentally competent at the time of the offense.

Planned Base Initiatives:

To continue to provide adequate funding for payment of fees and related expenses incurred by individuals who provide factual, technical or scientific testimony on behalf of the United States or court designated indigent individuals, as provided by law. Funds provided for this activity also guarantee the right of accused persons to a fair and impartial trial by ensuring that the accused is mentally competent to stand trial and that the court has testimony regarding the mental competency of the accused at the time of the alleged offense.

To provide reasonable compensation for expert witnesses, who testify on behalf of the United States, at rates established by the Attorney General or the Assistant Attorney General for Administration, pursuant to 28 U.S.C. § 524.

To provide adequate resources to compensate fact witnesses who testify on behalf of the Federal Government for the expenses associated with the attendance at legal proceedings.

The court-attendance fee paid to fact witnesses is set by law (28 U.S.C. § 1821). As a result of Public Law 96-346 (September 10, 1980), the amounts authorized for travel, per diem and mileage are set by regulations governing official travel by federal employees and promulgated by the Administrator of the General Services Administration.

To provide adequate resources to compensate fact witnesses used by those defendants designated as indigent by the courts. Expenses are paid to those witnesses who appear in criminal proceedings in Federal court for the indigent defendants.

To provide payment for the fees and expenses of psychiatrists who perform court-ordered evaluations to determine the mental competency of defendants, pursuant to 18 U.S.C. § 4241, § 4242, and § 4248.

Legal Activities
Fees and Expenses of Witnesses
Justification of Program and Performance
Activity Resources Summary
(In thousands of dollars)

Activity: Protection of Witnesses

<i>Protection of Witnesses</i> TOTAL	Perm. Pos.	FTE	Amount
2007 Enacted			33,000
2008 Enacted			33,000
Adjustments to Base and Technical Adjustments			
2009 Current Services			33,000
2009 Program Increases			
2009 Request			33,000
Total Change 2008-2009			

Base Program Description:

The procedure for designating a person as a protected witness is set forth in Department of Justice OBD Order 2110.2 "Witness Protection and Maintenance Policy and Procedures." This order places within the United States Marshals Service the responsibility for the security of these witnesses and their families. This program provides for their financial maintenance including the following: subsistence expenses; housing; medical and dental expenses; travel; documentation expenses for identity changes; one-time relocation; costs for obtaining employment; and other miscellaneous expenses. This activity also provides for construction and maintenance of strategically located safesite facilities to house protected witnesses before and during trial.

Planned Base Initiatives:

To increase the effectiveness of the Department's efforts to combat criminal activity in such areas as organized crime, drugs or narcotics, and murder or conspiracy to commit murder, by ensuring the safety of endangered or threatened witnesses.

To protect witnesses and their families when the testimony of the witnesses may jeopardize their personal security.

To compensate witnesses for subsistence costs such as housing, food, relocation, and incidental expenses as provided by the Witnesses Security Reform Act of 1984.

To provide orientation, documentation, and family-oriented services to new WITSEC Program entrants.

Legal Activities
Fees and Expenses of Witnesses
Program Performance Information
Activity Resource Summary
(In thousands of dollars)

Activity: Victim Compensation Fund

<i>Victim Compensation Fund</i> TOTAL	Perm. Pos.	FTE	Amount
2007 Enacted			
2008 Enacted			
Adjustments to Base and Technical Adjustments			
2009 Current Services			
2009 Program Increases			
2009 Request			
Total Change 2008-2009			

Base Program Description:

This program provides resources to compensate individuals who are victimized by protected witnesses. The Fund was initially funded by the 1985 Supplemental Appropriations Act (P.L. 99-88).

Restitution will not exceed \$50,000 for those victimized since the establishment of the Fund. Restitution not to exceed \$25,000 shall be paid to the estate of victims killed as a result of crimes committed by persons who have been enrolled in the Witness Security Program if such crimes were committed prior to enactment of P.L. 98-473. The Department paid \$22,500 from this program in FY 2006 and 2007. No costs are anticipated for this program in FY 2008 and FY 2009.

Planned Base Initiative:

To provide compensation to those individuals, or, in the case of death, to the individual's estate, who are victimized by a protected witness.

Legal Activities
Fees and Expenses of Witnesses
Program Performance Information
Activity Resource Summary
(In thousands of dollars)

Activity: Private Counsel

<i>Private Counsel</i> TOTAL	Perm. Pos.	FTE	Amount
2007 Enacted			7,000
2008 Enacted			7,000
Adjustments to Base and Technical Adjustments			
2009 Current Services			7,000
2009 Program Increases			
2009 Request			7,000
Total Change 2008-2009			

Base Program Description:

This activity provides funding to allow the Department to retain outside private counsel to represent Government officers and employees who are sued for actions taken while performing their official duties. As provided for under 28 C.F.R. 50.15 and 50.16, the Civil Division is delegated the authority to retain such counsel and further provided that payments for such services will be payable from the Department of Justice appropriations.

Planned Base Initiatives:

To continue to defend Federal employees personally sued for carrying out official duties. To retain private counsel to represent Government officers and employees who are sued for actions taken while performing their official duties.

Legal Activities
Fees and Expenses of Witnesses
Program Performance Information
Activity Resource Summary
(In thousands of dollars)

Activity: Superior Court Informant Program

<i>Superior Court Informants</i> TOTAL	Perm. Pos.	FTE	Amount
2007 Enacted			1,000
2008 Enacted			1,000
Adjustments to Base and Technical Adjustments			
2009 Current Services			1,000
2009 Program Increases			
2009 Offsets			
2009 Request			1,000
Total Change 2008-2009			

Base Program Description:

This program provides for funding for the protective services offered to the District of Columbia Superior Court witnesses. Specifically, funding is provided for subsistence expenses; travel; temporary relocation and other miscellaneous expenses. Funding in 1996 was provided from available balances.

Planned Base Initiatives:

To increase the effectiveness of Federal prosecutions in the District of Columbia by providing funding to temporarily relocate District of Columbia Superior witnesses who face potential danger as a result of their participation in Superior Court prosecutions.

To provide funding to temporarily protect Superior Court witnesses and their families when the testimony of the witnesses may jeopardize their personal security.

To compensate Superior Court witnesses for subsistence costs such as food, temporary relocation, and other expenses incidental to their protection.

Legal Activities
Fees and Expenses of Witnesses
Program Performance Information
Activity Resource Summary
(In thousands of dollars)

Activity: Alternative Dispute Resolution (ADR)

<i>Alternative Dispute Resolution</i> TOTAL	Perm. Pos.	FTE	Amount
2007 Enacted			1,300
2008 Enacted			1,300
Adjustments to Base and Technical Adjustments			
2009 Current Services			1,300
2009 Program Increases			
2009 Offsets			
2009 Request			1,300
Total Change 2008-2009			

Base Program Description:

Alternative Dispute Resolution (ADR) encompasses a wide range of problem-solving and conflict management techniques including mediation, early neutral evaluation, arbitration and mini-trials. ADR processes offer the opportunity to settle pending civil litigation in ways that can be more efficient than unassisted negotiations, and on terms that can be more advantageous to the parties. According to the National Performance Review, ADR can enhance the public's access to justice by reducing delays and costs associated with government litigation. ADR can provide quick solutions in government disputes which, in turn, produce savings in interest payments on outstanding debts that the government owes in cases in litigation. ADR can provide quick solutions in government disputes which, in turn, produce savings in interest payments on outstanding debts that the government owes in cases in litigation. ADR can provide flexibility, creativity, and control that lawyers and clients do not enjoy in litigation. Moreover, ADR often produces better, more comprehensive long-term solutions to problems.

Planned Base Initiatives:

To attempt resolution of civil disputes and litigation by using professional services of a mediator, arbitrator or other alternative dispute resolution provider.

To provide funding to pay the Government's share of the costs incurred during ADR proceedings.

Legal Activities
Fees and Expenses of Witnesses
Program Performance Information
Activity Resource Summary
(In thousands of dollars)

Activity: Foreign Counsel

<i>Foreign Counsel</i> TOTAL	Perm. Pos.	FTE	Amount
2007 Enacted			0
2008 Enacted			3,417
Adjustments to Base and Technical Adjustments			
2009 Current Services			3,417
2009 Program Increases			
2009 Offsets			
2009 Request			3,417
Total Change 2008-2009			

Base Program Description:

This activity provides funding to allow the Department to retain outside foreign counsel to represent Government officers and employees who are sued in a foreign country while performing their official duties. As provided under 28 C.F.R. § 0.46, the Civil Division is delegated the authority to retain such counsel and further provided that payment for such services will be payable from the Department of Justice appropriations.

Planned Base Initiatives:

To continue to defend Federal employees personally sued for carrying out official duties.
To retain foreign counsel to represent Government officers and employees who are sued for actions taken while performing their official duties in a foreign country.

B: Summary of Requirements

Summary of Requirements
 Fees and Expenses of Witnesses
 Salaries and Expenses
 (Dollars in Thousands)

	FY 2009 Request		
	Perm. Pos.	FTE	Amount
2007 Enacted	0	0	168,300
2008 Enacted	0	0	168,300
2009 Current Services	0	0	168,300
2009 Total Request	0	0	\$168,300
2008 - 2009 Total Change	0	0	0

	FY 2007 Enacted			FY 2008 Enacted			FY 2009 Adjustments to Base and Technical			FY 2009 Current Services			FY 2009 Increases			FY 2009 Offsets			FY 2009 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Estimates by budget activity																					
Fees and Expenses for Witnesses			126,000			122,583				0	0	122,583							0	0	122,583
Protection of Witnesses			33,000			33,000				0	0	33,000							0	0	33,000
Victim Compensation			0			0				0	0	0							0	0	0
Private Counsel			7,000			7,000				0	0	7,000							0	0	7,000
Superior Court Informant			1,000			1,000				0	0	1,000							0	0	1,000
Alternative Dispute Resolution			1,300			1,300				0	0	1,300							0	0	1,300
Foreign Counsel			0			3,417				0	0	3,417							0	0	3,417
Total	0	0	\$168,300	0	0	\$168,300	0	0	\$0	0	0	\$168,300	0	0	\$0	0	0	\$0	0	0	\$168,300
Reimbursable FTE										0											0
Total FTE		0			0			0			0			0			0			0	
Other FTE:																					
LEAP																					
Overtime																					
Total Comp. FTE		0			0			0			0			0			0			0	

D: Resources by DOJ Strategic Goal and Strategic Objective

**Resources by Department of Justice Strategic Goal/Objective
Fees and Expenses of Witnesses
(Dollars in Thousands)**

	FY 2007 Enacted		FY 2008 Enacted		FY 2009 Current Services		FY 2009				FY 2009 Request	
	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Increases		Offsets		Direct, Reimb. Other FTE	Direct Amount \$000s
							Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s		
Strategic Goal and Strategic Objective												
Goal 1: Prevent Terrorism and Promote the Nation's Security												
1.1 Prevent, disrupt, and defeat terrorist operations before they occur												
1.2 Strengthen partnerships to prevent, deter, and respond to terrorist incidents												
1.3 Prosecute those who have committed, or intend to commit, terrorist acts in the United States												
1.4 Combat espionage against the United States												
Subtotal, Goal 1	0	0	0	0	0	0	0	0	0	0	0	0
Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People												
2.1 Strengthen partnerships for safer communities and enhance the Nation's capacity to prevent, solve, and control crime												
2.2 Reduce the threat, incidence, and prevalence of violent crime												
2.3 Prevent, suppress, and intervene in crimes against children												
2.4 Reduce the threat, trafficking, use, and related violence of illegal drugs												
2.5 Combat public and corporate corruption, fraud, economic crime, and cybercrime												
2.6 Uphold the civil and Constitutional rights of all Americans												
2.7 Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction												
2.8 Protect the integrity and ensure the effective operation of the Nation's bankruptcy system												
Subtotal, Goal 2	0	0	0	0	0	0	0	0	0	0	0	0
Goal 3: Ensure the Fair and Efficient Administration of Justice												
3.1 Protect judges, witnesses, and other participants in federal proceedings, and ensure the appearance of criminal defendants for judicial proceedings or confinement												
3.2 Ensure the apprehension of fugitives from justice												
3.3 Provide for the safe, secure, and humane confinement of detained persons awaiting trial and/or sentencing, and those in the custody of the Federal Prison System												
3.4 Provide services and programs to facilitate inmates' successful reintegration into society, consistent with community expectations and standards												
3.5 Adjudicate all immigration cases promptly and impartially in accordance with due process		168,300		168,300		168,300					0	168,300
3.6 Promote and strengthen innovative strategies in the administration of State and local justice systems												
3.7 Uphold the rights and improve services to America's crime victims												
Subtotal, Goal 3	0	168,300	0	168,300	0	168,300	0	0	0	0	0	168,300
GRAND TOTAL	0	\$168,300	0	\$168,300	0	\$168,300	0	\$0	0	\$0	0	\$168,300

F: Crosswalk of 2007 Availability

Crosswalk of 2007 Availability
 Fees and Expenses of Witnesses
 Salaries and Expenses
 (Dollars in Thousands)

Decision Unit	FY 2007 Enacted		Rescissions		Supplementals		Reprogrammings / Transfers		Carryover/ Recoveries		2007 Availability				
	Pos.	FTE Amount	Pos.	FTE Amount	Pos.	FTE Amount	Pos.	FTE Amount	Pos.	FTE Amount	Pos.	FTE Amount			
Fees and Expenses of Witnesses		126,000								114,661	0	0	240,661		
Protection of Witnesses		33,000								2,958	0	0	35,958		
Victim Compensation		0									0	0	0		
Private Counsel		7,000								8,558	0	0	15,558		
Superior Court Informant		1,000									0	0	1,000		
Alternative Dispute Resolution		1,300								494	0	0	1,794		
TOTAL	0	0	\$168,300	0	0	\$0	0	0	\$0	0	0	\$126,671	0	0	\$294,971
Reimbursable FTE													0		
Total FTE		0		0		0		0		0		0	0		
Other FTE															
LEAP													0		
Overtime													0		
Total Compensable FTE		0		0		0		0		0		0	0		

Enacted Rescissions. Funds rescinded as required by the Revised Continuing Appropriations Resolution, 2007 (P.L. 110-5).

Includes total carry-over of unobligated balances of \$96,231,814.72 from 2006 from Fees and Expenses of Witnesses, No-year account, \$30,379,813.27 in recoveries realized in FY 2007 from prior year deobligations and \$52,044.73 from collections earned.

G: Crosswalk of 2008 Availability

**Crosswalk of 2008 Availability
Fees and Expenses of Witnesses
Salaries and Expenses
(Dollars in Thousands)**

Decision Unit	FY 2008 Enacted			Rescissions			Supplementals			Reprogrammings / Transfers			Carryover/ Recoveries			FY 2008 Availability			
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	
Fees and Expenses of Witnesses			122,583											90,629	0	0	213,212		
Protection of Witnesses			33,000											8,841	0	0	41,841		
Victim Compensation			0											22	0	0	22		
Private Counsel			7,000											1,204	0	0	8,204		
Superior Court Informant			1,000											0	0	0	1,000		
Alternative Dispute Resolution			1,300											516	0	0	1,816		
Foreign Counsel			3,417											0	0	0	3,417		
TOTAL	0		168,300	0	0	0	0	0	0	0	0	0	0	0	0	101,212	0	0	\$269,512
Reimbursable FTE																			0
Total FTE			0			0			0					0					0
Other FTE																			
LEAP																			0
Overtime																			0
Total Compensable FTE			0			0			0					0					0

Includes total unobligated balance of \$90,669,792 carried over from FY 2007 to the Fees and Expenses of Witnesses no year account, \$10,506,530 in recoveries realized in FY 2008 from prior year deobligations and \$35,403.00 from collections earned.

L: Summary of Requirements by Object Class

Summary of Requirements by Object Class
 Fees and Expenses of Witnesses
 Salaries and Expenses
 (Dollars in Thousands)

Object Classes	2007 Actuals		FY 2008 Enacted		FY 2009 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Direct FTE & personnel compensation							0	0
11.3 Other than full-time permanent		0			0	0	0	0
11.5 Total, Other personnel compensation	0	0	0	0	0	0	0	0
<i>Overtime</i>							0	0
<i>Other Compensation</i>							0	0
11.8 Special personal services payments		176,201		159,300		159,300	0	0
Total	0	176,201	0	159,300	0	159,300	0	0
Other Object Classes:								
21.0 Travel and transportation of persons		11,279		1,952		1,952		0
22.0 Transportation of things		0		0		0		0
23.3 Comm., util., & other misc. charges		0		0		0		0
25.1 Advisory and assistance services		457		800		800		0
25.2 Other services		11,984		4,250		4,250		0
25.3 Purchases of goods & services from Government acco		2,330		700		700		0
25.7 Operation and maintenance of equipment		0				0		0
25.8 Subsistence and Support of Persons		2,035		1,298		1,298		0
26.0 Supplies and materials		6		0		0		0
31.0 Equipment		2		0		0		0
42.0 Insurance Claims and Indemnities		23		0		0		0
Total obligations		\$204,294		\$168,300		\$168,300		\$0
Unobligated balance, start of year		(96,232)		(90,669)		(90,669)		
Unobligated balance, end of year		90,669		90,669		90,669		
Recoveries of prior year obligations		30,431						
Total DIRECT requirements		168,300		168,300		168,300		
Reimbursable FTE:								
Full-time permanent							0	0
23.1 GSA rent (Reimbursable)								0
25.3 DHS Security (Reimbursable)								0