

Fiscal Year 2011 Budget Estimates

Defense Legal Services Agency (DLSA)



February 2010

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2011 Budget Estimates

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Operation and Maintenance, Defense-Wide Summary (\$ in thousands)

Budget Activity (BA) 4: Administration and Service-wide Support

	<u>FY 2009</u> <u>Actuals</u>	<u>Price</u> <u>Change</u>	<u>Program</u> <u>Change</u>	<u>FY 2010</u> <u>Estimate</u>	<u>Price</u> <u>Change</u>	<u>Program</u> <u>Change</u>	<u>FY 2011</u> <u>Estimate</u>
DLSA	107,472	1,783	-66,794	42,461	624	-681	42,404

* The FY 2009 Actual column includes \$39,900 thousand of FY 2009 Bridge Funding Appropriations (PL 110-252); and \$33,929 thousand of FY 2009 Supplemental Appropriations Act funding (PL 111-32).

* The FY 2010 Estimate column excludes \$115,000 thousand requested in the FY 2010 Defense-Wide Overseas Contingency Operations Budget Request.

I. Description of Operations Financed: The Defense Legal Services Agency (DLSA) provides legal services to the Office of the Secretary of Defense, Department of Defense (DoD) Field Activities, and the Defense Agencies.

The largest component of DLSA, the Defense Office of Hearings and Appeals (DOHA), adjudicates numerous types of cases that arise from all Military Departments and Defense Agencies. DOHA provides hearings and issues decisions in personnel security clearance cases for contractors performing classified work for all DoD components and 23 other Federal Agencies.

DOHA conducts personal appearances and issues decisions in security clearance cases for DoD civilian employees and military personnel. DOHA also conducts hearings and issues decisions in cases involving claims for DoD Dependents Schools Activity benefits and TRICARE payment for medical services. DOHA's claims function includes review of uniformed service and carrier claims for loss or damage of household goods and review of waiver applications. DOHA provides support to the Deputy General Counsel (Legal Counsel) and is the point of contact for selection of third party neutrals in DOHA alternative dispute resolution processes. DOHA expects more cases requiring due process to result from the referrals of completed industrial security clearance investigations.

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Pursuant to the Secretary of Defense's issuance of Military Commission Order Number 1 on March 21, 2002, the Office of Military Commissions (OMC) was established under DLSA to facilitate preparation for and trial of cases before military commissions. Starting in FY 2011 OMC funding is included in an Overseas Contingency Operation request.

DLSA's budget includes all customary expenses required to operate a government activity, including salaries and benefits, travel, rental of office space, rental of equipment, communications, and the cost of supplies and equipment.

Changes from FY 2010 to FY 2011: Price change total \$624 thousand. Program decreases total \$-681 thousand. Program growth in civilian pay of \$+18 thousand will be used to stabilize baseline funding for civilian payroll. After considering the effects of inflation, the net program change is a decrease of \$-699 thousand.

II. Force Structure Summary: None

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III. Financial Summary (\$ in thousands)

	FY 2009 <u>Actuals</u>	Budget <u>Request</u>	FY 2010			Current <u>Estimate</u>	FY 2011 <u>Estimate</u>
			<u>Congressional Action</u>				
<u>A. BA Subactivities</u>			<u>Amount</u>	<u>Percent</u>	<u>Appropriated</u>		
1. DLSA HQ	12,420	12,735	-21	0.2	12,714	12,714	12,885
2. DOHA	23,164	29,797	-50	0.2	29,747	29,747	29,519
3. OMC	71,888	0	0	0	0	0	0
Total	107,472	42,532	-71	0.2	42,461	42,461	42,404

* The FY 2009 Actual column includes \$39,900 thousand of FY 2009 Bridge Funding Appropriations (PL 110-252); and \$34,000 thousand of FY 2009 Supplemental Appropriations Act funding (PL 111-32).

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III. Financial Summary (\$ in thousands)

<u>B. Reconciliation Summary</u>	<u>Change</u> <u>FY 2010/FY 2010</u>	<u>Change</u> <u>FY 2010/FY 2011</u>
Baseline Funding	42,532	42,461
Congressional Adjustments (Distributed)		
Congressional Adjustments (Undistributed)		
Adjustments to Meet Congressional Intent		
Congressional Adjustments (General Provisions)	-71	
Subtotal Appropriated Amount	42,461	
Fact-of-Life Changes (CY to CY Only)		
Subtotal Baseline Funding	42,461	
Anticipated Supplemental	115,000	
Reprogrammings		
Price Changes		624
Functional Transfers		
Program Changes		-681
Current Estimate	157,461	42,404
Less: Wartime Supplemental	-115,000	
Normalized Current Estimate	42,461	42,404

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III. Financial Summary (\$ in thousands)

	Amount	Totals
C. Reconciliation of Increases and Decreases		
FY 2010 President's Budget Request (Amended, if applicable)		42,532
1. Congressional Adjustments		-71
a. Distributed Adjustments		
b. Undistributed Adjustments		
c. Adjustments to meet Congressional Intent		
d. General Provisions - Sec 8097 Economic Assumptions	-53	
e. Congressional Earmarks - Sec 8037 Indian Lands Environmental Impact	-18	
FY 2010 Appropriated Amount		42,461
2. War-Related and Disaster Supplemental Appropriations		115,000
3. Fact of Life Changes		
FY 2010 Baseline Funding		157,461
4. Reprogrammings (requiring 1415 Actions)		
Revised FY 2010 Estimate		157,461
5. Less: Item 2, War-Related and Disaster Supplemental Appropriations and Item 4, Reprogrammings, Iraq Freedom Fund Transfers		-115,000
FY 2010 Normalized Current Estimate		42,461
6. Price Change		624
7. Functional Transfers		
8. Program Increases		18
a. Annualization of New FY 2010 Program		
b. One-Time FY 2011 Increases		
c. Program Growth in FY 2011		
1) <u>Compensation and Benefits</u> . Program growth in civilian pay of \$18 thousand will be used to stabilize baseline funding for civilian payroll. (FY 2010 Baseline: \$34,723 thousand)	18	
9. Program Decreases		-699

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C. Reconciliation of Increases and Decreases	Amount	Totals
a. Annualization of FY 2010 Program Decreases		
b. One-Time FY 2010 Increases		
c. Program Decreases in FY 2011		
1) <u>Management & Professional Support Services</u> . Decrease of \$-699 thousand in management and professional support services to fund higher priority items within the DLSA baseline. (FY 2010 Baseline: \$5,226 thousand)	-699	
FY 2011 Budget Request		42,404

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IV. Performance Criteria and Evaluation Summary

The Defense Legal Services Agency (DLSA) provides legal services to the staff elements of the Office of the Secretary of Defense and the Defense Agencies. DLSA's activities include providing opinions and counseling on legal compliance issues affecting policy formulation and implementation; participation in developing the Department's legislative program, including drafting legislation and comments; negotiations on behalf of DoD clients with private entities and other Government agencies; ensuring proper use of Government funds and property; adherence to ethical standards; and participation in contractual matters.

The Defense Office of Hearings and Appeals (DOHA), the largest component of the Defense Legal Services Agency, provides hearings and issues decisions in personnel security clearance cases for contractor personnel doing classified work for all DoD components and 20 other Federal Agencies and Departments; conducts personal appearances and issues decisions in security clearance cases for DoD civilian employees and military personnel; settles claims for uniformed service pay and allowances, and claims of transportation carriers for amounts deducted from them for loss or damage; conducts hearings and issues decisions in cases involving claims for DoD School Activity benefits, and TRICARE/CHAMPUS payment for medical services; and functions as a central clearing house for DoD alternative dispute resolution activities and as a source of third party neutrals for such activities.

DOHA has several elements: the Director, an Appeal Board, Administrative Judges, Department Counsel, Security Specialists, the Claims Division including the Claims Appeals Board, and Support Staff. DOHA has its headquarters in Arlington, Virginia and maintains field offices in Boston, Massachusetts; Los Angeles, California and Columbus, Ohio. The Director, Appeal Board, Administrative Judges, a small cadre of Security Specialists, the Claims Division, and Support Staff reside at headquarters.

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The Los Angeles office has Administrative Judges, Department Counsel and Support Staff. The Boston office has an Administrative Judge. The Columbus office has Security Specialists, an Attorney-Adviser, and Support Staff.

DLSA is evaluated on the basis of the quality and timeliness of its myriad of services; adherence to appropriate standards of professional conduct and DoD ethical and adjudicative standards; the professional independence, impartiality and competence exhibited by its attorneys; and its overall responsiveness to the needs of its clients.

Industrial Security Clearance Review (ISCR) Program: The due process hearings and appeals of the Industrial Security Program are DOHA's central mission implementing Department of Defense Directive 5220.6. The Industrial Security Program was created as a result of the Supreme Court's decision in *Greene v. McElroy*, 360 US 474, 79 S. Ct. 1400, 3 L. Ed.2d 1377 (1959). In response to the *Greene* decision, President Eisenhower signed Executive Order 10865 on February 20, 1960. Executive Order 10865 requires a hearing in which contractor employees be given the opportunity to appear before the decision-maker to confront and cross-examine witnesses and attempt to rebut the Government's case.

Executive Order 10865, as amended by Executive Order 10909, Executive Order 11382 and Executive Order 12829 mandate the due process regulation found in DoD Directive 5220.6. Executive Order 12829, January 6, 1993, established DoD as the executive agent for the entire federal government's implementation of the National Industrial Security Program (NISP) along with continuing responsibility for implementation of the procedural requirements of Executive Order 10865. Section 203 of Executive Order 12829 continues the process mandated by Executive Order 10865.

Finally, Executive Order 12968, signed August 2, 1995, by President Clinton did not

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affect the industrial security program and was specifically designed not to change the full due process given to contractors. However, as noted below, Executive Order 12968 did extend the opportunity to appear personally before a decision maker to all clearance holders and applicants. DOHA implements these personal appearances for the Department. The due process workload associated with the Industrial Security (ISCR) cases and Personal Appearance (PA) cases DOHA handles is currently increasing because of past security clearance investigation backlogs. While the number of cases requiring due process is likely to increase, the number of cases received for initial adjudication is harder to predict, given unresolved policy variables as to the distribution of initial adjudications between the DOHA and the Defense Industrial Security Clearance Office (DISCO) of the Defense Security Service. Therefore, the Department uses a three year historical average as the measurement for budgeting for ISCR and PA cases.

Personal Appearance (PA) Program: Executive Order 12968 mandates that the "opportunity to appear personally" shall be part of security clearance due process for all military and civilian clearance applicants. DoD Regulation 5200.2-R provides for "personal appearances" by military and civilian clearance applicants which are handled by the same DOHA Administrative Judges who handle cases involving employees of Defense contractors and of other contractors.

This decision was made in part due to the collective experience of DOHA Administrative Judges in convening industrial security clearance hearings and the logic of centralizing security clearance due process proceedings generally in the Department. DOHA is the only DoD entity with experience providing a clearance applicant with the opportunity to appear personally as a regular part of due process.

The workload associated with the personal appearance cases DOHA handles is currently increasing as a result of security clearance reinvestigation backlogs being worked.

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Claims Appeals Board: The Claims Appeals Board has ultimate settlement authority over many different types of claims and related matters. This authority is relatively new within the Department of Defense (DoD), and resulted from legislation in 1995 and 1996 which transferred claim settlement responsibility from the Comptroller General to, among others, the Secretary of Defense. The Board is a streamlined reconstitution of the portion of the GAO/OGC division which considered uniformed service and carrier claims. Under Title 31, United States Code, Section 3702, the Secretary of Defense now settles claims involving uniformed service members' pay, allowances, travel, transportation, retired pay, and survivor benefits. Additionally, the Secretary of Defense settles claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipments at government expense.

The Secretary's responsibilities in these areas are not restricted to DoD. The Secretary also has the statutory responsibility for settling the accounts of deceased DoD service members. As a result of a recent Office of Management and Budget (OMB) Determination Order, the Secretary was given the OMB Director's general claims settlement authority over most activities within DoD, and the bulk of the waiver authority within the Federal government; that is, the Secretary now exercises the former authority of the Comptroller General to consider applications by service members and DoD employees to waive overpayment debts exceeding \$1,500, and upon request advises non-DoD agencies on waiver applications by their civilian employees.

Claims Appeals Board workload is expected to increase. For example, the number of carrier claims regarding loss and damage increased dramatically during the last year that such claims were considered at GAO, and they continue to increase. Changes to GAO's

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statutory authority to relieve certifying, disbursing and other accountable officers of financial liability may result in added responsibilities.

Workload:	FY 2009 <u>Actuals</u>	FY 2010 <u>Estimates</u>	FY 2011 <u>Estimates</u>
Cases Reviewed (ISCR & ADP)	10,303	11,333	12,466
Due Process Cases	1,320	1,452	1,597
Claims Cases Reviewed	596	656	722
Mediations/ADR Consultations	73	80	88

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<u>V. Personnel Summary</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	Change FY 2009/ FY 2010	Change FY 2010/ FY 2011
<u>Active Military End Strength (E/S)</u> (Total)	92	206	206	114	0
Officer	60	114	114	54	0
Enlisted	32	92	92	60	0
 <u>Civilian End Strength (Total)</u>	 265	 191	 191	 -74	 0
U.S. Direct Hire	265	191	191	-74	0
 <u>Active Military Average Strength (A/S)</u> (Total)	 92	 206	 206	 114	 0
Officer	60	114	114	54	0
Enlisted	32	92	92	60	0
 Civilian FTEs (Total)	 191	 191	 191	 0	 0
U.S. Direct Hire	191	191	191	0	0
Average Annual Civilian Salary (\$ in thousands)	148	179	200	31	21

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VI. OP 32 Line Items as Applicable (\$ in thousands):

<u>OP 32 Line</u>	FY 2009 <u>Actuals</u>	Change <u>FY 2009/FY 2010</u>		FY 2010 <u>Estimate</u>	Change <u>FY 2010/FY 2011</u>		FY 2011 <u>Estimate</u>
		<u>Price</u>	<u>Program</u>		<u>Price</u>	<u>Program</u>	
101 Exec, Gen'l & Spec Scheds	39,643	981	-6,431	34,193	530	18	34,741
199 Total Civ Compensation	39,643	981	-6,431	34,193	530	18	34,741
308 Travel of Persons	3,606	43	-3,548	101	1	0	102
399 Total Travel	3,606	43	-3,548	101	1	0	102
672 PRMRF Rent	1,734	-71	-1,567	96	-19	0	77
680 Purchases from BMF	13	0	-13	0	0	0	0
771 Commercial Transportation	23	0	-23	0	0	0	0
912 Rental Payments to GSA	6,890	172	-5,943	1,119	16	0	1,135
914 Purch Communications	381	5	-285	101	1	0	102
915 Rents (non GSA)	235	3	-177	61	1	0	62
917 Postal Services (U.S.P.S.)	54	1	14	69	0	0	69
920 Supplies/Materials	880	0	-804	76	1	0	77
921 Printing and Reproduction	23	0	63	86	1	0	87
922 Equipment Maintenance	129	2	-131	0	0	0	0
925 Equipment Purch by Cont	1,859	22	-1,881	0	0	0	0
932 Mgt & Professional Spt Svc	33,339	401	-28,586	5,154	72	-699	4,527
933 Studies Analysis & Eval	0	0	0	0	0	0	0
934 Engineering & Tech Svcs	13,170	158	-13,328	0	0	0	0
987 Other Intra-Govt. Purch	2,978	36	-2,014	1,000	14	0	1,014
988 Grants	400	5	0	405	6	0	411
000 Interest & dividends	10	0	-10	0	0	0	0
989 Other Contracts	1,430	17	-1,447	0	0	0	0

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VI. OP 32 Line Items as Applicable (\$ in thousands):

<u>OP 32 Line</u>	FY 2009	Change		FY 2010	Change		FY 2011
	<u>Actuals</u>	<u>Price</u>	<u>Program</u>	<u>Estimate</u>	<u>Price</u>	<u>Program</u>	<u>Estimate</u>
998 Other Costs	675	8	-683	0	0	0	0
999 Total Other Purchases	64,223	759	-56,815	8,167	93	-699	7,561
Total	107,472	1,783	-66,794	42,461	624	-681	42,404

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