

**Fiscal Year (FY) 2019 President's Budget
Operation and Maintenance, Defense-Wide
Defense Legal Services Agency**



February 2018

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**Defense Legal Services Agency
Operation and Maintenance, Defense-Wide
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**Operation and Maintenance, Defense-Wide Summary (\$ in thousands)
Budget Activity (BA) 4: Administration and Service-wide Support**

	FY 2017 <u>Actuals</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2018 <u>Estimate</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2019 <u>Estimate</u>
DLSA	135,896	2,431	-114,120	24,207	137	3,059	27,403

* The FY 2017 Actual column includes \$111,132.0 thousand of FY 2017 Overseas Contingency Operations (OCO) Appropriations Funding (PL 115-31).

* The FY 2018 Estimate column excludes \$115,000.0 thousand of FY 2018 OCO Appropriations Funding.

* The FY 2019 Estimate column excludes \$127,023.0 thousand of FY 2019 OCO Appropriations funding.

I. Description of Operations Financed: The Defense Legal Services Agency (DLSA) provides legal services to the Office of the Secretary of Defense (OSD), Department of Defense (DoD) Field Activities, and Defense Agencies. Among other responsibilities, DLSA administers the DoD Standards of Conduct Program; supports and assists the Assistant Secretary of Defense for Legislative Affairs in developing the DoD Legislative Program. The largest component of DLSA, the Defense Office of Hearings and Appeals (DOHA), adjudicates cases that arise across all Military Departments and Defense Agencies.

DOHA Functions Include:

- Conducts hearings and issues decisions in personnel security clearance cases for contractors performing classified work for DOHA-serviced DoD components and 30 other Federal Agencies. The DOHA conducts personal appearances hearings and issues decisions in security clearance and sensitive national security position cases for DOHA-serviced DoD civilian employees and military.
- Conducts hearings and issues decisions in cases involving disputes over the provision of special educational services by the DoD Education Activity or the provision of early intervention or related services by the other DoD Components. Additionally, the DOHA

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I. Description of Operations Financed (cont.)

conducts hearings and issues decisions in cases involving TRICARE payment for medical services.

- Issues appeal decisions for claims involving uniformed service member (within and outside of the DoD) pay and allowances; unused leave; transportation; travel; retired pay; survivor's benefits; and other financial claims. The DOHA issues initial and appeal decisions granting or denying waivers of collection of overpayments made to, or on behalf of, uniformed service members (within and outside of the DoD) and employees within DoD.
- Coordinates and monitors policies and procedures pertaining to DoD alternative dispute resolution (ADR) activities and conflict management within the DoD; and serves as a source of training, obtaining and providing third-party neutrals for ADR. DOHA conducts hearings and issues decisions for revocation of DoD credentials to non-cleared contractors pursuant to Homeland Security Presidential Directive 12 (HSPD-12).

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

Changes from FY 2018 to FY 2019: The FY 2019 budget reflects a net increase of \$3,196 thousand (price change of \$+137 thousand and a program change of \$3,059 thousand) attributable to the following areas: compensation and benefits; contractor support; administrative support, other intra-governmental purchases.

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II. Force Structure Summary:

N/A

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III. Financial Summary (\$ in thousands)

A. BA Subactivities	FY 2018						
	FY 2017 <u>Actuals</u>	Budget <u>Request</u>	<u>Congressional Action</u>			Current <u>Estimate</u>	FY 2019 <u>Estimate</u>
			<u>Amount</u>	<u>Percent</u>	<u>Appropriated</u>		
DLSA HQ	115,181	8,652	0	0.0	0	8,652	11,783
DOHA	20,715	15,555	0	0.0	0	15,555	15,620
Total	135,896	24,207	0	0.0	0	24,207	27,403

* The FY 2017 Actual column includes \$111,132.0 thousand of FY 2017 Overseas Contingency Operations (OCO) Appropriations Funding (PL 115-31).

* The FY 2018 Estimate column excludes \$115,000.0 thousand of FY 2018 OCO Appropriations Funding.

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III. Financial Summary (\$ in thousands)

B. <u>Reconciliation Summary</u>	Change	Change
	<u>FY 2018/FY 2018</u>	<u>FY 2018/FY 2019</u>
Baseline Funding	24,207	24,207
Congressional Adjustments (Distributed)		
Congressional Adjustments (Undistributed)		
Adjustments to Meet Congressional Intent		
Congressional Adjustments (General Provisions)		
Subtotal Appropriated Amount	24,207	
Fact-of-Life Changes (2018 to 2018 Only)		
Subtotal Baseline Funding	24,207	
Supplemental		
Reprogrammings		
Price Changes		137
Functional Transfers		
Program Changes		3,059
Current Estimate	24,207	27,403
Less: Wartime Supplemental		
Normalized Current Estimate	24,207	

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III. Financial Summary (\$ in thousands)

<u>C. Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
FY 2018 President's Budget Request (Amended, if applicable)		24,207
1. Congressional Adjustments		
a. Distributed Adjustments		
b. Undistributed Adjustments		
c. Adjustments to Meet Congressional Intent		
d. General Provisions		
FY 2018 Appropriated Amount		24,207
2. War-Related and Disaster Supplemental Appropriations		
a. OCO Supplemental Funding		
1) OCO Supplemental		
OCO Supplemental (FY 2018 Baseline: \$0 thousand; +0 FTEs)		
3. Fact-of-Life Changes		
FY 2018 Baseline Funding		24,207
4. Reprogrammings (Requiring 1415 Actions)		
Revised FY 2018 Estimate		24,207
5. Less: Item 2, War-Related and Disaster Supplemental Appropriations and Item 4, Reprogrammings		
FY 2018 Normalized Current Estimate		24,207
6. Price Change		137
7. Functional Transfers		
8. Program Increases		3,062
a. Annualization of New FY 2018 Program		
b. One-Time FY 2019 Increases		
c. Program Growth in FY 2019		
1) Compensation and Benefits - Major DoD Headquarters Activities (MHA)	2,937	
Increase reflects the continued plan to influence major headquarters as part of the DoD agenda and		

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III. Financial Summary (\$ in thousands)

<u>C. Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
maintain appropriate levels of workforce. The increase supports 15 additional FTEs and allows support to the Defense Agencies, DoD Field Activities, and, as assigned, other organizational entities within the DoD. (FY 2018 Baseline: \$8,652 thousand; +15 FTEs)		
2) Compensation and Benefits - One Additional Compensable Day One additional compensable day is added for FY 2019. The number of paid work days changes from 260 in FY 2018 to 261 in FY 2019. (FY 2018 Baseline: \$23,265 thousand; +0 FTEs)	70	
3) Supplies and Materials The increases supports additional supplies and materials for legal administration, resulting from the increased volume and frequency of DOHA hearings that will be conducted in FY 2019. (FY 2018 Baseline: \$145 thousand; +0 FTEs)	42	
4) Other Costs and Purchases The increase in funding supports additional off-site litigation activities which satisfies support agreements to assist other governmental agencies. Specifically, the funds reimburse the Department of Justice (DOJ) for attorneys detailed to provide prosecutorial assistance associated with the Military Commissions hearings. In addition, the increase supports administration costs of contract services and transportation benefits, utilities, postal services and communication requirements needed to	13	

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III. Financial Summary (\$ in thousands)

<u>C. Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
support the mission. (FY 2018 Baseline: \$797 thousand; +0 FTEs)		
9. Program Decreases		-3
a. Annualization of FY 2018 Program Decreases		
b. One-Time FY 2018 Increases		
c. Program Decreases in FY 2019		
1) Service Requirements Review Board (SRRB)		
As part of the Department of Defense reform agenda, savings were identified during the SRRB process. Savings reflect a reduction in Purchased Communications. (FY 2018 Baseline: \$347 thousand; +0 FTEs)	-3	
FY 2019 Budget Request		27,403

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IV. Performance Criteria and Evaluation Summary:

The DLSA provides legal advice, services, and support to the Defense Agencies, DoD Field Activities, and other organizational entities within the DoD. Services include administering the DoD Standards of Conduct Program; support and assist the Assistant Secretary of Defense for Legislative Affairs in developing the DoD Legislative Program, including drafting legislation and comments; negotiating on behalf of the DoD clients with private entities and other Government agencies; ensuring proper use of Government funds and property; providing opinions and counseling on legal compliance issues; and participating in contractual matters. The DLSA is evaluated on the basis of the quality of its many 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.

The Defense Office of Hearings and Appeals (DOHA): DOHA provides administrative procedures involving fair and impartial decision making, including, but not limited to: (1) performing legal reviews and approvals of statements of reasons, conducting hearings, and issuing Administrative Judge and appellate decisions in personnel security clearance cases for contractor personnel doing classified work for DOHA-serviced DoD Components and 30 other Federal Agencies and Departments; (2) conducting personal appearance hearings and issuing decisions in security clearance and sensitive national security position cases for DOHA-serviced DoD civilian employees and military personnel serviced by DOHA; (3) performing legal reviews and approvals of statements of reasons, conducting hearings, and issuing decisions in cases under DOHA jurisdiction requiring trustworthiness decisions for contractor performance of sensitive duties; (4) conducting hearings and issuing decisions in cases involving disputes over the provision of special educational services by the DoD Education Activity or the provision of early intervention or related

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IV. Performance Criteria and Evaluation Summary:

services by the other DoD Components; (5) conducting hearings and issuing decisions in cases involving TRICARE payment for medical services; (6) issuing appeal decisions for claims involving uniformed service members (within and outside of the DoD) pay and allowances, unused leave, transportation, travel, retired pay, survivor's benefits, and other financial claims; (7) issuing initial and appeal decisions granting or denying waivers of collection of overpayments made to, or on behalf of, uniformed service members (within and outside of the DoD) and employees within the DoD; (8) coordinating and monitoring policies and procedures pertaining to DoD alternative dispute resolution (ADR) activities and conflict management within the DoD; and serving as a source of training and obtaining and providing third-party neutrals for ADR; (9) performing such further missions as may be assigned to the DOHA, including, but not limited to, the conduct of hearings and issuance of decisions for the denial or revocation of DoD credentials to non-cleared contractors pursuant to Homeland Security Presidential Directive 12 (HSPD-12); and (10) providing legal advice and services for assigned organizations, as deemed necessary and appropriate, through DOHA Department Counsel. DOHA has several elements: a Director; a Deputy Director; an Appeal Board; Administrative Judges; Department Counsel; Security Specialists; the Claims Division including the Claims Appeals Board; the Center for Alternative Dispute Resolution; and Support Staff.

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), which noted the need for basic due process rights for contractors. In response to the *Greene* decision, President Eisenhower signed Executive Order 10865 on February 20, 1960, providing contractors with clearance due process.

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IV. Performance Criteria and Evaluation Summary:

Executive Order 10865 requires a hearing in which contractor employees are given the opportunity to appear before the decision-maker to confront and cross-examine witnesses and attempt to rebut or mitigate the Government's case. The DoD is 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. DOHA implements these established administrative due process requirements for the Department.

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. The 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 provide the established administrative due process in cases involving employees of Defense contractors and NISP 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 under the Department's established administrative due process requirements.

Uncleared Contractor CAC Eligibility Process: The due process hearings and appeals for uncleared contractors whose jobs require them to be eligible to hold a Common Access Card (CAC) pursuant to Homeland Security Presidential Directive 12 (HSPD-12) are provided by DOHA under Department of Defense Instruction 5200.46 (2014) using the established administrative procedures found in DoD Directive 5220.6. DOHA implements these established administrative due process requirements for the Department.

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IV. Performance Criteria and Evaluation Summary:

Sunken Craft Process: The Department of the Navy may issue notices of violation and assess penalties against anyone that violates permitting requirements or otherwise disturbs, injures, or damages protected sunken military craft, to include certain government and foreign craft. Pursuant to the due process standards associated with this statutory authority and implementing regulations at 32 CFR Part 767, DOHA provides impartial Administrative Hearings before DOHA Administrative Judges, final written decisions and Department Counsel to represent the Government.

Claims Appeals Board: The Claims Appeals Board has ultimate settlement authority over many different types of claims and related matters. The DoD settles claims involving uniformed service members' pay, allowances, travel, transportation, retired pay, and survivor benefits. For some of these claims, DOHA has been delegated the authority of the Secretary of Defense to waive the statute of limitations for amounts up to \$25,000. Additionally, the DoD settles claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipments at government expense. The Department's responsibilities in these areas are not restricted to DoD. The DoD also has the statutory responsibility for settling the accounts of deceased DoD service members. As a result of an Office of Management and Budget (OMB) Determination Order, the Secretary of Defense 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 for civilians and \$10,000 for military members and upon request advises non-DoD agencies on waiver applications by their civilian employees.

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<u>V. Personnel Summary</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>Change FY 2017/ FY 2018</u>	<u>Change FY 2018/ FY 2019</u>
<u>Active Military End Strength (E/S) (Total)</u>	<u>205</u>	<u>205</u>	<u>205</u>	<u>0</u>	<u>0</u>
Officer	114	114	114	0	0
Enlisted	91	91	91	0	0
<u>Civilian End Strength (Total)</u>	<u>239</u>	<u>125</u>	<u>140</u>	<u>-114</u>	<u>15</u>
U.S. Direct Hire	239	125	140	-114	15
Total Direct Hire	239	125	140	-114	15
<u>Civilian FTEs (Total)</u>	<u>239</u>	<u>125</u>	<u>140</u>	<u>-114</u>	<u>15</u>
U.S. Direct Hire	239	125	140	-114	15
Total Direct Hire	239	125	140	-114	15
Average Annual Civilian Salary (\$ in thousands)	198.5	186.1	188.5	-12.4	2.4

FY 2017 reflects both Base and OCO FTEs. The FY 2019 Compensation and Benefits program increased by 15 FTEs to ensure that the Department's client-driven legal services are provided to the greatest extent possible.

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

<u>OP 32 Line</u>	<u>FY 2017</u> <u>Actuals</u>	<u>Change</u> <u>FY 2017/FY 2018</u>		<u>FY 2018</u> <u>Estimate</u>	<u>Change</u> <u>FY 2018/FY 2019</u>		<u>FY 2019</u> <u>Estimate</u>
		<u>Price</u>	<u>Program</u>		<u>Price</u>	<u>Program</u>	
101 Exec, Gen'l & Spec Scheds	47,438	927	-25,100	23,265	119	3,007	26,391
199 Total Civ Compensation	47,438	927	-25,100	23,265	119	3,007	26,391
308 Travel of Persons	2,658	45	-2,616	87	2	1	90
399 Total Travel	2,658	45	-2,616	87	2	1	90
771 Commercial Transport	29	0	19	48	1	1	50
799 Total Transportation	29	0	19	48	1	1	50
912 Rental Payments to GSA (SLUC)	140	2	-142	0	0	0	0
913 Purchased Utilities (Non-Fund)	746	13	-729	30	1	8	39
914 Purchased Communications (Non-Fund)	2,793	48	-2,494	347	6	-13	340
915 Rents (Non-GSA)	10,831	184	-11,015	0	0	0	0
917 Postal Services (U.S.P.S)	4	0	36	40	1	1	42
920 Supplies & Materials (Non-Fund)	816	14	-685	145	3	42	190
921 Printing & Reproduction	38	1	-39	0	0	0	0
922 Equipment Maintenance By Contract	8,039	136	-8,175	0	0	0	0
923 Facilities Sust, Rest, & Mod by Contract	4,211	72	-4,283	0	0	0	0
925 Equipment Purchases (Non-Fund)	29	0	-29	0	0	0	0
932 Mgt Prof Support Svcs	39,457	671	-40,128	0	0	0	0
934 Engineering & Tech Svcs	6,170	105	-6,275	0	0	0	0
959 Other Costs (Insurance Claims/Indmnties)	70	1	-71	0	0	0	0
960 Other Costs (Interest and Dividends)	5	0	20	25	0	6	31
987 Other Intra-Govt Purch	1,303	23	-1,191	135	2	6	143
989 Other Services	9,616	163	-9,694	85	2	0	87
990 IT Contract Support Services	1,503	26	-1,529	0	0	0	0
999 Total Other Purchases	85,771	1,459	-86,423	807	15	50	872
Total	135,896	2,431	-114,120	24,207	137	3,059	27,403

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