

Fiscal Year (FY) 2008/FY 2009 Budget Estimates Defense Legal Services Agency (DLSA)



February 2007

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DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) FY 2008/FY 2009 Budget Estimates Submission

Operation and Maintenance, Defense-Wide Summary (\$ in thousands)
Budget Activity (BA) 4: Administration and Service-wide Activities

	<u>FY 2006</u> <u>Actuals</u>	<u>Price</u> <u>Change</u>	<u>Program</u> <u>Change</u>	<u>FY 2007</u> <u>Estimate</u>	<u>Price</u> <u>Change</u>	<u>Program</u> <u>Change</u>	<u>FY 2008</u> <u>Estimate</u>	<u>Price</u> <u>Change</u>	<u>Program</u> <u>Change</u>	<u>FY 2009</u> <u>Estimate</u>
Agency	39,415	907	-5,137	35,185	957	208	36,350	986	-5,540	31,796

* The FY 2006 Actual column includes \$9.6 thousand of FY 2006 Emergency Supplemental funds for the Global War (PL 109-234), \$X.0 thousand of FY 2006 Hurricane Supplemental funds (PL 109-148 and PL 109-234), and \$0 thousand of FY 2006 Title IX obligations (PL 109-148).

* The FY 2007 Estimate column excludes \$11.0 thousand of FY 2007 Title IX obligations (PL 109-289).

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 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. The 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. The DOHA conducts personal appearances and issues decisions in security clearance cases for DoD civilian employees and military personnel. The DOHA also conducts hearings and issues decisions in cases involving claims for DoD Dependents Schools Activity benefits and TRICARE payment for medical services.

The DOHA's claims function includes review of uniformed service and carrier claims for loss or damage of household goods and review of waiver applications. The 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. The DOHA expects more cases requiring due process to result from the referrals of completed industrial security clearance investigations.

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I. Description of Operations Financed: (continued)

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 the DLSA to facilitate preparation for and trial of cases before military commissions. The commissions process consists of an appointing authority function, prosecution and defense functions. Appellate review panels are also mandated. The 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.

II. Force Structure Summary: None

III. Financial Summary (\$ in Thousands)

	FY 2007							
	FY 2006 Actuals	Budget Request	Congressional Action			Current Estimate	FY 2008 Estimate	FY 2009 Estimate
			Amount	Percent	Appropriated			
A. BA Subactivities								
1. DLSA HQ	9,742	4,800	-48	-1.0	4,752	9,956	10,826	10,864
2. DOHA	25,257	16,000	-159	-1.0	15,841	20,716	20,904	20,932
3. OMC	4,416	14,738	-146	-1.0	14,592	4,513	4,620	0
Total	39,415	35,538	-353	-1.0	35,185	35,185	36,350	31,796

* The FY 2006 Actual column includes \$9.6 thousand of FY 2006 Supplemental funds (PL 109-13), \$X.0 thousand of FY 2006 Hurricane Supplemental funds (PL 109-xxx, PL 109-61, and PL 109-62), \$X.0 thousand of Iraq Freedom Fund transfers, and \$X.0 thousand of FY 2006 Title IX obligations (PL 109-xxx).

* The FY 2007 Estimate column excludes \$11,0 thousand of FY 2007 Title IX obligations (PL 109-289).

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III. Financial Summary (continued):

B. Reconciliation Summary

	<u>Change</u> <u>FY 2007/FY 2007</u>	<u>Change</u> <u>FY 2007/FY 2008</u>	<u>Change</u> <u>FY 2008/FY 2009</u>
Baseline Funding	35,538	35,185	36,350
Congressional Adjustments (Distributed)	0	n/a	n/a
Congressional Adjustments (Undistributed)	-191	n/a	n/a
Adjustments to Meet Congressional Intent	0	n/a	n/a
Congressional Adjustments (General Provisions)	-162	n/a	n/a
Subtotal Appropriated Amount	35,185	n/a	n/a
Fact-of-Life Changes (CY to CY Only)	0	n/a	n/a
Subtotal Baseline Funding	35,185	n/a	n/a
Anticipated Supplemental	11,000	n/a	n/a
Reprogrammings	0	n/a	n/a
Price Changes	0	957	986
Functional Transfers	n/a	0	0
Program Changes	n/a	208	-5,540
Current Estimate	46,185	36,350	31,796
Less: Wartime Supplemental	-11,000	0	0
Normalized Current Estimate	35,185	36,350	31,796

C. Reconciliation of Increases and Decreases

Amount

Totals

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III. Financial Summary (continued):

<u>C. Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
FY 2007 President's Budget Request		35,538
1. Congressional Adjustments		-353
a. Distributed Adjustments		
b. Undistributed Adjustments	-191	
c. Adjustments to meet Congressional Intent		
d. General Provisions		
1) Sec 8106 - Economic Assumptions	-119	
2) Sec 8097 - Excessive Growth in Travel and trans.	-25	
e. Congressional Earmarks - Indian Lands Environmental Impact	-18	
FY 2007 Appropriated Amount		35,185
2. War-Related and Disaster Supplemental Appropriations		11,000
3. Fact of Life Changes		
FY 2007 Baseline Funding		46,185
4. Reprogrammings (requiring 1415 Actions)		
Revised FY 2007 Estimate		46,185
5. Less: Item 2, War-Related and Disaster Supplemental Appropriations and Item 4, Reprogrammings, Iraq Freedom Fund Transfers		-11,000
FY 2007 Normalized Current Estimate		35,185
6. Price Change		957
7. Functional Transfers		
8. Program Increases		208
a. Annualization of New FY 2007 Program		
b. One-Time FY 2008 Increases		
c. Program Growth in FY 2008		

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III. Financial Summary (continued):

<u>C. Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
1) Two additional paid workdays; increase of five Civilian FTE in FY 2008; and associated PCS costs. (FY 2007 Base: 24,286)	641	
9. Program Decreases		
a. Annualization of FY 2007 Program Decreases		
b. One-Time FY 2007 Increases		
c. Program Decreases in FY 2008		
1) Purchased Communications (Non-DWCF); Supplies & Materials (Non-DWCF); and Printing/Reproduction - DoD assumed risk in these support programs in order to fund higher priority requirements. (FY 2007 baseline: 938)	-434	
FY 2008 Budget Request		36,350
10. Price Change		986
11. Functional Transfers		
12. Program Increases		0
a. Annualization of New FY 2008 Program		
b. One-Time FY 2009 Increases		
c. Program Growth in FY 2009		
13. Program Decreases		
a. Annualization of FY 2008 Program Decreases		
b. One-Time FY 2008 Increases		
c. Program Decreases in FY 2009		-5,540

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III. Financial Summary (continued):

<u>C. Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
1) Civilian Compensation/Benefits - OMC personnel reduction. Secretary of Defense decision that all OMC requirements will be requested as part of the DoD Supplemental funding request based on direct support to Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). (FY 2008 baseline: 27,735)	-4,410	
2) All support costs associated with the Secretary of Defense decision that all OMC requirements will be requested as part of the DoD Supplemental funding request based on direct support to Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) have been taken out of the DLSA baseline budget. Travel, Commercial Transportation, Rental Payments to GSA, Purchased Communication and Supplies and Material (Non-DWCF), Printing/Reproduction, Equipment Maintenance by Contract, Equipment Purchases (Non-DWCF), Other Intra-government Purchases, and Other Contracts - (FY 2008 baseline: 7,886)	-320	
3) Other intra-governmental Purchases - DoD assumed risk in order to fund higher priority requirements. (FY 2007 baseline: 2,100)	-211	
4) Other Contracts - DoD assumed risk in order to fund higher priority requirements. (FY 2007 baseline: 2,0871)	-599	
FY 2009 Budget Request		31,796

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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. The 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. 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.

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IV. Performance Criteria and Evaluation Summary:

The DLSA is evaluated on the basis of the quality and timeliness of its myriad of services; adherence to appropriate standards of professional conduct and Department of Defense 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 Department of Defense 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 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. The DOHA implements these personal appearances for the Department.

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IV. Performance Criteria and Evaluation Summary:

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" 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 the 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.

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

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IV. Performance Criteria and Evaluation Summary:

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

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IV. Performance Criteria and Evaluation Summary:

	FY 2006	FY 2007	FY 2008	FY 2009
Workload:	Actuals	Estimates	Estimates	Estimates
Cases Reviewed (ISCR & ADP)	31,471	34,618	38,079	38,079
Due Process Cases	4,359	4,794	5,274	5,274
Claims Cases Reviewed	1,556	1,711	1,882	2,071
Mediations/ADR Consultations	45	49	54	54

V. Personnel Summary

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2006/ FY 2007	Change FY 2007/ FY 2008	FY 2008/ FY 2009
<u>Active Military End Strength (E/S)</u>	12	30	93	93	18	63	0
<u>(Total)</u>							
Officer	7	19	61	61	12	42	0
Enlisted	5	11	32	32	6	21	0
<u>Civilian End Strength (Total)</u>	173	235	240	191	62	5	-49
U.S. Direct Hire	173	235	240	191	62	5	-49
<u>Active Military Average Strength (A/S)</u>	12	30	93	93	18	63	0
<u>(Total)</u>							
Officer	7	19	61	61	12	42	0
Enlisted	5	11	32	32	6	21	0
<u>Civilian FTEs (Total)</u>							
U.S. Direct Hire	173	235	240	191	62	5	-49
Average Annual Civilian Salary (\$)	100,763	89,094	89,992	97,382	-11,669	898	7,390

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

<u>OP 32 Line</u>	<u>FY 2006</u> <u>Actuals</u>	<u>Change</u> <u>FY 2006/FY 2007</u>		<u>FY 2007</u> <u>Estimate</u>	<u>Change</u> <u>FY 2007/FY 2008</u>		<u>FY 2008</u> <u>Estimate</u>	<u>Change</u> <u>FY 2008/FY 2009</u>		<u>FY 2009</u> <u>Estimate</u>
		<u>Price</u>	<u>Program</u>		<u>Price</u>	<u>Program</u>		<u>Price</u>	<u>Program</u>	
101 Executive, Gen'l & Special Schedules	22,478	517	0	22,995	529	641	24,165	755	-4,410	20,510
308 Travel of Persons	1,846	42	-500	1,388	32	-55	1,365	46	-320	1,091
672 PRMRF Rent	783	18	0	801	18	-14	805	53	0	858
771 Commercial Transportation	0	0	0	0	0	0	0	0	0	0
912 Rental Paid to GSA	3,129	72	-1,000	2,201	89	-58	2,232	26	0	2,258
914 Purchd Communications	82	2	0	84	50	-48	86	6	0	92
915 Rents (Non GSA)	0	0	0	0	0	0	0	0	0	0
920 Supplies & Materials (Non-DWCF)	355	8	-75	288	100	-113	275	3	0	278
921 Printing/Reproduction	17	0	0	17	23	-23	18	2	0	20
922 Equipment Maintenance by Contract	81	2	-2	81	0	2	83	1	0	84
925 Equipment Purchases (Non- DWCF)	796	18	-60	754	0	17	772	2	0	774
932 Mgmt & Prof Spt Svc	4,341	100	-1,650	2,791	80	-16	2,855	0	0	2,855
987 Other intra- government Purchases	1,233	28	-350	911	0	21	932	46	-211	767
989 Other Contracts	4,266	98	-1,500	2,864	36	-145	2,755	46	-599	2,202
998 Other Costs	8	0	0	8	0	0	8	0	0	8
Total	39,415	907	-5,137	35,185	957	208	36,350	986	-5,540	31,796

* The FY 2006 Actual column includes \$9.6 thousand of FY 2006 Supplemental funds (PL 109-13), \$X.0 thousand of FY 2006 Hurricane Supplemental funds (PL 109-xxx, PL 109-61, and PL 109-62), \$X.0 thousand of Iraq Freedom Fund transfers, and \$X.0 thousand of FY 2006 Title IX obligations (PL 109-xxx).

* The FY 2007 Estimate column excludes \$11.0 thousand of FY 2007 Title IX obligations (PL 109-289).