

**Fiscal Year 2017 President's Budget
Defense Legal Services Agency (DLSA)**



February 2016

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**Defense Legal Services Agency
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2017 President's Budget**

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

	FY 2015 <u>Actual</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2016 <u>Enacted</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2017 <u>Estimate</u>
DLSA	126,576	1,919	-102,432	26,063	397	-1,476	24,984

*The FY 2015 Estimate column **includes** \$ 94,151 thousand of FY 2015 OCO appropriations funding (PL 113-235).

*The FY 2016 Estimate column **excludes** \$110,000 thousand of FY 2016 OCO appropriations funding (PL 114-113).

*The FY 2017 Estimate column **excludes** \$111,986 thousand of FY 2017 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 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 DOHA-serviced DoD components and 23 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 personnel serviced by DOHA.
- The DOHA conducts 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 services by the other DoD Components. The DOHA conducts hearings and issuing decisions in cases involving TRICARE payment for medical services.
- The DOHA 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

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I. Description of Operations Financed (cont.)

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.

- The DOHA coordinates and monitors 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. The DOHA conducts hearings and issuance of 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 2016 to FY 2017: The FY 2017 budget reflects a net decrease of \$-1,079 thousand (the net of a price change of \$+397 thousand and a program change of \$-1,476 thousand) attributable to the following areas: compensation and benefits; contractor support; administrative support and other intra-governmental purchases.

II. Force Structure Summary:

N/A

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III. Financial Summary (\$ in thousands)

	FY 2015	Budget	FY 2016			Current	FY 2017
			Congressional Action				
<u>A. BA Subactivities</u>	<u>Actual</u>	<u>Request</u>	<u>Amount</u>	<u>Percent</u>	<u>Appropriated</u>	<u>Enacted</u>	<u>Estimate</u>
DLSA HQ	115,469	2,754	0	0.0	2,754	2,754	9,374
DOHA	11,107	23,319	-10	0.0	23,309	23,309	15,610
Total	126,576	26,073	-10	-0.0	26,063	26,063	24,984

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 *The FY 2016 Estimate column **excludes** \$110,000 thousand of FY 2016 OCO appropriations funding (PL 114-113).
 *The FY 2017 Estimate column **excludes** \$111,986 thousand of FY 2017 OCO appropriations funding.

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III. Financial Summary (\$ in thousands)

B. <u>Reconciliation Summary</u>	Change	Change
	<u>FY 2016/FY 2016</u>	<u>FY 2016/FY 2017</u>
Baseline Funding	26,073	26,063
Congressional Adjustments (Distributed)		
Congressional Adjustments (Undistributed)		
Adjustments to Meet Congressional Intent		
Congressional Adjustments (General Provisions)	-10	
Subtotal Appropriated Amount	26,063	
Fact-of-Life Changes (2016 to 2016 Only)		
Subtotal Baseline Funding	26,063	
Supplemental	110,000	
Reprogrammings		
Price Changes		397
Functional Transfers		
Program Changes		-1,476
Current Estimate	136,063	24,984
Less: Wartime Supplemental	-110,000	
Normalized Current Estimate	26,063	

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III. Financial Summary (\$ in thousands)

<u>C. Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
FY 2016 President's Budget Request (Amended, if applicable)		26,073
1. Congressional Adjustments		-10
a. Distributed Adjustments		
b. Undistributed Adjustments		
c. Adjustments to Meet Congressional Intent		
d. General Provisions		
1) Section 8037 (Indian Lands)	-10	
Indian Lands (FY 2016 Baseline: \$0 thousand; +0 FTEs)		
FY 2016 Appropriated Amount		26,063
2. War-Related and Disaster Supplemental Appropriations		110,000
a. OCO Supplemental Funding		
1) OCO Supplemental	110,000	
OCO Supplemental (FY 2016 Baseline: \$0 thousand; +0 FTEs)		
3. Fact-of-Life Changes		
FY 2016 Baseline Funding		136,063
4. Reprogrammings (Requiring 1415 Actions)		
Revised FY 2016 Estimate		136,063
5. Less: Item 2, War-Related and Disaster Supplemental Appropriations and Item 4, Reprogrammings		-110,000
FY 2016 Normalized Current Estimate		26,063
6. Price Change		397
7. Functional Transfers		
8. Program Increases		121
a. Annualization of New FY 2016 Program		
b. One-Time FY 2017 Increases		
c. Program Growth in FY 2017		
1) Purchased Utilities, Communications, and Postal Increase of costs of utilities, communications, and postal services.	103	

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III. Financial Summary (\$ in thousands)

<u>C. Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
(FY 2016 Baseline: \$190 thousand; +0 FTEs)		
2) Other Costs, Services, and Travel	18	
Increase of administration costs of contract services and travel costs. (FY 2016 Baseline: \$63 thousand; +0 FTEs)		
9. Program Decreases		-1,597
a. Annualization of FY 2016 Program Decreases		
b. One-Time FY 2016 Increases		
c. Program Decreases in FY 2017		
1) Core Operating Program	-981	
As part of the Department of Defense reform agenda, eliminates 5 civilian full-time equivalent positions and resources to maintain civilian staffing at reduced level. Decrease reflects the DLSA's plan for Streamlining Management Headquarters.		
(FY 2016 Baseline: \$25,132 thousand; -5 FTEs)		
2) Other Intra-Governmental Purchases	-225	
Reduces the number of off-site litigation activities and support agreements to assist other governmental agencies.		
(FY 2016 Baseline: \$295 thousand; +0 FTEs)		
3) Supplies and Materials	-203	
reduces supplies and materials for legal administration and decreases subscription for specialized research library portals.		
(FY 2016 Baseline: \$300 thousand; +0 FTEs)		

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III. Financial Summary (\$ in thousands)

C. Reconciliation of Increases and Decreases

	<u>Amount</u>	<u>Totals</u>
4) Core Operating Program- Two less Compensable days Decrease in civilian personnel funding due to two less working days in FY 2017. (FY 2016 Baseline: \$25,132 thousand; +0 FTEs)	-188	
FY 2017 Budget Request		24,984

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IV. Performance Criteria and Evaluation Summary:

The DLSA provides legal services to the staff elements of the Office of the OSD and the Defense Agencies. The DLSA's activities include providing opinions and counseling on legal compliance issues affecting policy formulation and implementation; participating in developing the Department's legislative program, including drafting legislation and comments; negotiating on behalf of the Department of Defense (DoD) clients with private entities and other Government agencies; ensuring proper use of Government funds and property; adhering to ethical standards; 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 23 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 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 member (within and outside of the DoD) pay and

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IV. Performance Criteria and Evaluation Summary:

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 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; 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). 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. 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.

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IV. Performance Criteria and Evaluation Summary:

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.

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

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IV. Performance Criteria and Evaluation Summary:

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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V. <u>Personnel Summary</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>Change FY 2015/ FY 2016</u>	<u>Change FY 2016/ FY 2017</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>289</u>	<u>136</u>	<u>131</u>	<u>-153</u>	<u>-5</u>
U.S. Direct Hire	289	136	131	-153	-5
Total Direct Hire	289	136	131	-153	-5
<u>Civilian FTEs (Total)</u>	<u>289</u>	<u>136</u>	<u>131</u>	<u>-153</u>	<u>-5</u>
U.S. Direct Hire	289	136	131	-153	-5
Total Direct Hire	289	136	131	-153	-5
Average Annual Civilian Salary (\$ in thousands)	169.5	184.8	185.8	15.3	1.0

The FY 2015 Civilian End Strength and Civilian FTEs reflect both Base and OCO resources as reflected in the OP-8 exhibit. The FY 2017 Compensation and Benefits program nets a decrease of \$-787 thousand and a reduction of 5 direct funding Full Time Equivalents (FTEs). A strategic efficiency reduction in management headquarters funding and staffing for better alignment and to provide support to a smaller military force.

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

<u>OP 32 Line</u>	<u>FY 2015</u>	<u>Change</u>		<u>FY 2016</u>	<u>Change</u>		<u>FY 2017</u>
		<u>FY 2015/FY 2016</u>			<u>FY 2016/FY 2017</u>		
	<u>Actual</u>	<u>Price</u>	<u>Program</u>	<u>Enacted</u>	<u>Price</u>	<u>Program</u>	<u>Estimate</u>
101 Exec, Gen'l & Spec Scheds	48,995	601	-24,464	25,132	382	-1,169	24,345
199 Total Civ Compensation	48,995	601	-24,464	25,132	382	-1,169	24,345
308 Travel of Persons	2,561	43	-2,521	83	1	3	87
399 Total Travel	2,561	43	-2,521	83	1	3	87
417 Local Purch Supplies & Mat	0	0	12	12	0	15	27
499 Total Supplies & Materials	0	0	12	12	0	15	27
771 Commercial Transport	10,446	177	-10,623	0	0	60	60
799 Total Transportation	10,446	177	-10,623	0	0	60	60
913 Purchased Utilities (Non-Fund)	296	5	-291	10	0	10	20
914 Purchased Communications (Non-Fund)	0	0	165	165	3	28	196
917 Postal Services (U.S.P.S)	6	0	9	15	0	5	20
920 Supplies & Materials (Non-Fund)	0	0	288	288	5	-219	74
932 Mgt Prof Support Svcs	31,924	543	-32,467	0	0	0	0
934 Engineering & Tech Svcs	31,726	539	-32,265	0	0	0	0
960 Other Costs (Interest and Dividends)	0	0	3	3	0	7	10
987 Other Intra-Govt Purch	0	0	295	295	5	-225	75
989 Other Services	622	11	-573	60	1	9	70
999 Total Other Purchases	64,574	1,098	-64,836	836	14	-385	465
Total	126,576	1,919	-102,432	26,063	397	-1,476	24,984

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