

Fiscal Year 2009 Budget Estimates

Defense Legal Services Agency (DLSA)



February 2008

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

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

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

	FY 2007	Price	Program	FY 2008	Price	Program	FY 2009
	<u>Actuals</u>	<u>Change</u>	<u>Change</u>	<u>Estimate</u>	<u>Change</u>	<u>Change</u>	<u>Estimate</u>
DLSA	45,036	1,166	-14,970	31,232	905	-232	31,905

* The FY 2007 Actual column includes \$11,000. thousand of FY 2007 Title IX obligations (PL 109-289).

* The FY 2008 Estimate column excludes \$9,900.0 thousand of FY 2008 GWOT Funding.

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, and 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. 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 military commissions process

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I. Description of Operations Financed (continued):

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 <u>Actuals</u>	Budget <u>Request</u>	FY 2008			Current <u>Estimate</u>	FY 2009 <u>Estimate</u>
			<u>Congressional Action</u>				
			<u>Amount</u>	<u>Percent</u>	<u>Appropriated</u>		
A. <u>BA Subactivities</u>							
1. DLSA HQ	12,283	10,826	-249	-2.3	10,577	10,577	10,109
2. DOHA	26,049	20,904	-249	-1.2	20,655	20,655	21,796
3. OMC	6,704	4,620	-4,620	-100.0	-	-	-
Total	45,036	36,350	-5,118	-14.1	31,232	31,232	31,905

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III. Financial Summary (\$ in thousands) (continued):

B. Reconciliation Summary

	<u>Change FY 2008/FY 2008</u>	<u>Change FY 2008/FY 2009</u>
Baseline Funding	36,350	31,232
Congressional Adjustments (Distributed)	-4,620	
Congressional Adjustments (Undistributed)	-300	
Adjustments to Meet Congressional Intent	-16	
Congressional Adjustments (General Provisions)	-182	
Subtotal Appropriated Amount	31,232	
Fact-of-Life Changes (CY to CY Only)	0	
Subtotal Baseline Funding	31,232	
Anticipated Supplemental	22,862	
Reprogrammings		
Price Changes		
Functional Transfers	n/a	905
Program Changes	n/a	-232
Current Estimate	54,094	31,905
Less: Wartime Supplemental	-22,862	
Normalized Current Estimate	31,232	31,905

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III. Financial Summary (\$ in thousands) (continued):

<u>C. Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
FY 2008 President's Budget Request		36,350
1. Congressional Adjustments		-5,118
a. Distributed Adjustments - Transfer to FY 08 GWOT	-4,620	
b. Undistributed Adjustments - Unobligated Balances	-300	
c. Adjustments to meet Congressional Intent		
d. General Provisions		
1) Sec 8104 - Economic Assumptions	-123	
2) Sec 8097 - Contractor Efficiencies	-59	
e. Congressional Earmarks - Indian Lands Environmental Impact	-16	
FY 2008 Appropriated Amount		31,232
2. War-Related and Disaster Supplemental Appropriations		9,900
3. Fact of Life Changes		
FY 2008 Baseline Funding		41,132
4. Reprogrammings (requiring 1415 Actions)		
Revised FY 2008 Estimate		41,132
5. Less: Item 2, War-Related and Disaster Supplemental Appropriations		-9,900
FY 2008 Normalized Current Estimate		31,232
6. Price Change		905
7. Functional Transfers		
8. Program Increases		1,928
a. Annualization of New FY 2008 Program		
b. One-Time FY 2009 Increases		
c. Program Growth in FY 2009		
1) Travel - Increase related to Guantanamo Bay detainees. (FY 2008 Baseline: \$1,531)	480	
2) PRMRF Rent - Increased population within Pentagon will lead to this externally imposed cost share. (FY 2008 Baseline: \$625)	34	
3) All support cost associated the Rental Payments to GSA and Equipment Purchases and Other Intra-government Purchases. (FY 2008 Baseline: \$1,661)	1,414	
9. Program Decreases		-2,160

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III. Financial Summary (\$ in thousands) (continued):

C. <u>Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
a. Annualization of FY 2008 Program Decreases		
b. One-Time FY 2008 Increases		
c. Program Decreases in FY 2009		
1) Civilian Compensation/Benefits - One less paid day and OMC personnel staff reduction. Additional GWOT funding may be requested for FY 2009 OMC requirements based on direct support to Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). (FY 2008 Baseline: \$24,735)	-1,776	
2) Supplemental funding has been taken out of DLSA baseline budget. Additional GWOT funding may be requested for FY 2009 support costs associated with OMC support requirements for Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF)(FY 2008 Baseline: \$429)	-14	
3) Other Intra-government Purchases. DOD assumed risk in order to fund higher priority requirements. (FY 2008 Baseline: \$2,251)	-370	
FY 2009 Budget Request		31,905

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IV. Performance Criteria and Evaluation:

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 DLSA, 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

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IV. Performance Criteria and Evaluation:

Boston office has an Administrative Judge. The Columbus office has Security Specialists, an Attorney-Adviser, and Support Staff.

The DLSA is evaluated on the quality and timeliness of its myriad 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

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IV. Performance Criteria and Evaluation:

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.

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

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IV. Performance Criteria and Evaluation:

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 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. The Secretary of Defense also 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

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IV. Performance Criteria and Evaluation:

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.

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

V. Personnel Summary

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Change</u> <u>FY 2007/</u> <u>FY 2008</u>	<u>Change</u> <u>FY 2008/</u> <u>FY 2009</u>
<u>Active Military End Strength (E/S) (Total)</u>	64	92	92		
Officer	39	60	60	21	0
Enlisted	25	32	32	7	0
<u>Civilian End Strength (Total)</u>	198	191	191	-7	0
U.S. Direct Hire	198	191	191	-7	0
<u>Active Military Average Strength (A/S) (Total)</u>	64	92	92	28	0
Officer	39	60	60	21	0
Enlisted	25	32	32	7	0
<u>Civilian FTEs (Total)</u>	198	191	191	-7	0
U.S. Direct Hire	198	191	191	-7	0
Average Annual Civilian Salary (\$)	129,702	129,503	124,220	-199	-5,283

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

<u>OP 32 Line</u>	<u>FY 2007</u> <u>Actuals</u>	<u>Change from</u> <u>FY 2007 to FY 2008</u>		<u>FY 2008</u> <u>Estimate</u>	<u>Change from</u> <u>FY 2008 to FY 2009</u>		<u>FY 2009</u> <u>Estimate</u>
		<u>Price</u> <u>Growth</u>	<u>Program</u> <u>Growth</u>		<u>Price</u> <u>Growth</u>	<u>Program</u> <u>Growth</u>	
101 Executive, General and Special Schedules	25,681	822	-1,768	24,735	767	-1,776	23,726
199 Total Civilian Personnel	25,681	822	-1,768	24,735	767	-1,776	23,726
308 Travel of Persons	1,471	28	32	1,531	31	480	2,042
672 PRMRF Rent	662	-32	-5	625	19	34	678
771 Commercial Transportation	0	0	35	35	1	-1	35
912 Rental Payments to GSA (SLUC)	3,439	86	-3,525	0	0	651	651
914 Purchased Communications (Non-Fund)	268	5	2	275	6	-6	275
920 Supplies & Materials (Non-Fund)	687	13	-499	201	4	27	232
921 Printing & Reproduction	21	0	64	85	2	-2	85
922 Equipment Maintenance by Contract	2,882	55	-2,907	30	1	-1	30
925 Equipment Purchases (Non-Fund)	86	2	-23	65	1	19	85
932 Management & Professional Support Service	4,982	95	-5,077	0	0	0	0
987 Other Intra-Government Purchases	1,369	26	856	2,251	45	-370	1,926
989 Other Contracts	3,483	66	-2,154	1,395	28	717	2,140
998 Other Cost	5	0	-1	4	0	-4	0
Total	45,036	1,166	-14,970	31,232	905	-232	31,905

* The FY 2007 Actual column includes \$11,000. thousand of FY 2007 Title IX obligations (PL 109-289).

* The FY 2008 Estimate column excludes \$9,900.0 thousand of FY 2008 GWOT Funding.

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