

Fiscal Year 2010 Budget Estimates Defense Legal Services Agency (DLSA)



May 2009

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DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

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

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

	<u>FY 2008</u> <u>Actuals</u>	<u>Price</u> <u>Change</u>	<u>Program</u> <u>Change</u>	<u>FY 2009</u> <u>Estimate</u>	<u>Price</u> <u>Change</u>	<u>Program</u> <u>Change</u>	<u>FY 2010</u> <u>Estimate</u>
Agency	85,464	1,972	-55,211	32,225	690	9,617	42,532

* The FY 2008 Actual column includes \$0.0 thousand of Consolidated Appropriations Act, 2008, Division L, Supplemental Appropriations, Defense (P.L. 110-161) and \$52.7 thousand of FY 2008 Emergency Supplemental funds for the Global War (PL 110-252).

* The FY 2009 Estimate column excludes \$39.9 thousand of Bridge Funding Appropriations for FY 2009 (PL 110-329).

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.

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

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 FY 2010 OMC funding is included in the Overseas Contingency Operation request.

The budget includes all customary expenses required to operate a government activity, including salaries and benefits, travel, office and equipment rental, communications, and supplies and equipment.

II. Force Structure Summary: None

III. Financial Summary (\$ in Thousands):

	FY 2009							FY 2010 Estimate
	FY 2008 Actuals	Budget Request	Congressional Action			Current Estimate		
			Amount	Percent	Appropriated			
A. BA Subactivities								
1. DLSA HQ	8,228	10,034	400	4.0	10,434	10,434	12,735	
2. DOHA	24,535	21,871	-80	0.4	21,791	21,791	29,797	
3. OMC	52,701	0	0	0	0	0	0	
Total	85,464	31,905	320	1.0	32,225	32,225	42,532	

* The FY 2009 Actual column includes \$0.0 thousand of Consolidated Appropriations Act, 2008, Division L, Supplemental Appropriations, Defense (P.L. 110-161) and \$52.7 thousand of FY 2009 Emergency Supplemental funds for the Global War (PL 110-252).

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DEFENSE LEGAL SERVICES AGENCY
 Operation and Maintenance, Defense-Wide
 Fiscal Year (FY) 2010 Budget Estimates

III. Financial Summary (\$ in thousands)

<u>B. Reconciliation Summary</u>	<u>Change</u> <u>FY 2009/FY 2009</u>	<u>Change</u> <u>FY 2009/FY 2010</u>
Baseline Funding	31,905	32,225
Congressional Adjustments (Distributed)	400	
Congressional Adjustments (Undistributed)	-65	
Adjustments to Meet Congressional Intent	0	
Congressional Adjustments (General Provisions)	-15	
Subtotal Appropriated Amount	32,225	
Fact-of-Life Changes (CY to CY Only)		
Subtotal Baseline Funding	32,225	
Bridge Supplemental	39,900	
Reprogrammings		
Price Changes		690
Functional Transfers		
Program Changes		9,617
Current Estimate	72,125	42,532
Less: Bridge Supplemental	-39,900	
Normalized Current Estimate	32,225	

DEFENSE LEGAL SERVICES AGENCY
 Operation and Maintenance, Defense-Wide
 Fiscal Year (FY) 2010 Budget Estimates

III. Financial Summary (\$ in thousands)

	Amount	Totals
C. Reconciliation of Increases and Decreases		
FY 2009 President's Budget Request (Amended, if applicable)		31,905
1. Congressional Adjustments		320
a. Distributed Adjustments	400	
b. Undistributed Adjustments		
c. Adjustments to meet Congressional Intent		
d. General Provisions		
1) Sec 8101 - Economic Assumptions	-65	
2) Sec 8037 - Mitigation to Environment Impacts	-15	
FY 2009 Appropriated Amount		32,225
2. War-Related and Disaster Supplemental Appropriations		39,900
3. Fact of Life Changes		
FY 2009 Baseline Funding		72,125
4. Reprogrammings (requiring 1415 Actions)		
Revised FY 2009 Estimate		72,125
5. Less: Item 2, War-Related and Disaster Supplemental Appropriations and Item 4, Reprogrammings, Iraq Freedom Fund Transfers		-39,900
FY 2009 Normalized Current Estimate		32,225
6. Price Change		690
7. Functional Transfers		
8. Program Increases		10,865
a. Annualization of New FY 2009 Program		
b. One-Time FY 2010 Increases		
c. Program Growth in FY 2010		
1) Rental Payment to GSA (SLUC). (FY 2009 Baseline: \$1,880)	865	

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

III. Financial Summary (\$ in thousands)

C. Reconciliation of Increases and Decreases	Amount	Totals
2) Purchased Communications - Telephone bills for local/long distance services and internet service for three locations - Arlington, VA, Woodland Hills, CA and Columbus, OH Support of Video Teleconference Equipment. (FY 2009 Base: \$115)	159	
3) Supplies and Materials/Equipment Maintenance by Contract/Management and Professional Support Services - Increase is due to replacement of office & VTC equipment through Corps of Engineers for new office space for 65 adjudicators administrative judges and contracts at Ft. Meade under BRAC Recommendation #130 (FY 2009 Base: \$1,080)	1,162	
4) Other Contracts - Increase for IT support, SAIC Technical Support and other Intra-government purchases. New purchase and installation of computer cabling, equipment, i.e., monitors, servers, laptops, printers to support BRAC Recommendation #130 at Ft. Meade. (FY 2009 Base: \$1,471)	8,679	
9. Program Decreases		-1,248
a. Annualization of FY 2009 Program Decreases		
b. One-Time FY 2009 Increases		
c. Program Decreases in FY 2010		
1) Civilian Personnel Compensation/Benefits (FY 2009 Base: \$24,958)	-174	
2) Travel (FY 2009 Baseline: \$450)	-2	
3) Rents (Non GSA) (FY 2009 Base: \$248)	-251	
4) PRMRF Purchases - Decrease directly related to externally assessed to WHS as DLSA shared cost. (FY 2009 Base: \$707)	-44	
5) Management and Professional Support Services (FY 2009 Base: \$1,301)	-777	
FY 2010 Budget Request		42,532

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

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.

The 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. The 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.

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

IV. Performance Criteria and Evaluation Summary

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.

The DLSA is evaluated on the basis of the quality and timeliness of its 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 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.

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

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Finally, Executive Order 12968, signed August 2, 1995, 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. 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 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.

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

IV. Performance Criteria and Evaluation Summary

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 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.

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

IV. Performance Criteria and Evaluation Summary

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.

	<u>FY 2008</u> <u>Actuals</u>	<u>FY 2009</u> <u>Estimates</u>	<u>FY 2010</u> <u>Estimates</u>
Workload:			
Cases Reviewed (ISCR & ADP)	16,561	17,432	18,350
Due Process Cases	1,813	1,908	2,008
Claims Cases Reviewed	605	636	670
Mediations/ADR Consultations	70	73	77

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

<u>V. Personnel Summary</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>Change FY 2008/ FY 2009</u>	<u>Change FY 2009/ FY 2010</u>
<u>Active Military End Strength (E/S)</u> (Total)	119	92	206	-27	114
Officer	70	60	114	-10	54
Enlisted	49	32	92	-17	60
<u>Civilian End Strength (Total)</u>	191	191	191	0	0
U.S. Direct Hire	191	191	191	0	0
Foreign National Direct Hire					
Total Direct Hire					
Foreign National Indirect Hire					
Memo: Reimbursable Civilians Included					
<u>Active Military Average Strength (A/S)</u> (Total)	119	92	206	-27	114
Officer	70	60	114	-10	54
Enlisted	49	32	92	-17	60
 <u>Civilian FTEs (Total)</u>	 191	 191	 191	 0	 0
U.S. Direct Hire	191	191	191	0	0
Foreign National Direct Hire					
Total Direct Hire					
Foreign National Indirect Hire					
Memo: Reimbursable Civilians Included					
Average Annual Civilian Salary (\$)	151,832	130,670	132,990	-21,164	2,322

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2010 Budget Estimates

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

<u>OP 32 Line</u>	FY 2008 <u>Actuals</u>	Change FY 2008/FY 2009		FY 2009 <u>Estimate</u>	Change FY 2009/FY 2010		FY 2010 <u>Estimate</u>
		<u>Price</u>	<u>Program</u>		<u>Price</u>	<u>Program</u>	
101 Exec, Gen'l & Spec Scheds	29,000	1,102	-5,144	24,958	617	-174	25,401
199 Total Civ Compensation	29,000	1,102	-5,144	24,958	617	-174	25,401
308 Travel of Persons	2,548	33	-2,131	450	5	-2	453
399 Total Travel	2,548	33	-2,131	450	5	-2	453
672 Pentagon Reserv Maint	615	85	7	707	-29	-44	634
699 Total Purchases	615	85	7	707	-29	-44	634
912 GSA Leases	4,876	122	-3,118	1,880	47	865	2,792
914 Purch Communications	229	3	-117	115	1	159	275
915 Rents, Leases (non GSA)	0	0	248	248	3	-251	0
920 Supplies/Matl (non fund)	1,080	14	-554	540	6	670	1,216
921 Print & Reproduction	9	0	1	10	0	0	10
922 Eqt Maint Contractl,079	1,079	14	-553	540	6	492	1,038
932 Mgt Prof Support Svcs	1,441	19	-159	1,301	16	-777	540
989 Other Contracts	44,582	580	-43,691	1,471	18	8,679	10,168
998 Other Costs	5	0	0	5	0	0	5
999 Total Other Purchases	53,301	752	-47,943	6,110	97	9,837	16,044
Total	85,464	1,972	-55,211	32,225	690	9,617	42,532

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