

Fiscal Year (FY) 2022 President's Budget

Direct War and Enduring Cost Appendix

Defense Legal Services Agency



May 2021

**Defense Legal Services Agency
Direct War and Enduring Costs
Operation and Maintenance, Defense-Wide
Budget Activity 04: Administrative and Service-Wide Activities**

I. Description of Operations Financed:

The Defense Legal Services Agency (DLSA) provides legal advice, services, and support to the Defense Agencies, the Department of Defense Field Activities, and, as assigned, other organizational entities within the DoD. Among other legal services, the 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, 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 FY 2022 Direct War and Enduring Costs accounted for in the base budget are as follows:

- Direct War costs accounted for in the Base Budget: \$83,957 thousand: Direct War costs are those combat or direct combat support costs that will not continue to be expended once combat operations end at major contingency locations.
- Enduring costs accounted for in the Base Budget: \$110,804 thousand: Enduring Requirements are enduring in-theater and in-CONUS costs that will likely remain after combat operations cease.

The DLSA's mission is unique within the Fourth Estate and, more broadly, the DoD, in administering statutory authorities and implementing regulations in support of the Services and other Federal Agencies.

The largest component of the DLSA, the Defense Office of Hearings and Appeals (DOHA), adjudicates personnel security clearance cases for contractor personnel performing classified work for the DOHA-serviced DoD Components and 30 other Federal Agencies and Departments; conducts personal appearance hearings and issues decisions in security clearance and sensitive national security position cases for the DOHA-serviced DoD civilian employees and military personnel; provides legal reviews, approves statements of reasons, conducts hearings, and issues decisions in cases under the DOHA jurisdiction requiring trustworthiness decisions for contractor performance of sensitive duties; and on behalf of the DoD (the executive agent for the entire federal government's implementation of the National Industrial Security Program), the DOHA implements the administrative due process requirements of Executive Order 10865.

Increased litigation and voluminous documentary discovery involved in litigation and other inquiries combined with Federal Court expectations for electronic discovery capabilities requires the DLSA to acquire electronic discovery technology.

The DLSA also has two significant legal efforts related to the continued detention of 40 people at Guantanamo Bay, Cuba – Habeas Corpus (HC) and Military Commissions. Each of the 40 detainees has ongoing legal rights to challenge the lawfulness of their detention through habeas corpus challenges in Federal District Court. The Office of Military Commissions (OMC), established by the Secretary of Defense on March 21, 2002, under the DLSA, handles the trials of enemy combatants pursuant to the Military Commissions Act of 2009. There are currently eight detainees with active charges pending before military commissions, most notably, five alleged 9-11 defendants and the alleged United States Ship (USS) Cole bomber, and four detainees with activity within military commissions.

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I. Description of Operations Financed: (Cont.)

Operating support funding for the OMC & HC includes civilian pay and allowance, contract support, interagency reimbursable agreements (e.g., U.S. Marshals Service), reimbursable costs to the DoD components providing support (e.g., document declassification and information security), rent, TDY travel costs, supplies, furniture, training, Information Technology (IT) support, telecommunications, and security. Military commissions is a unique judicial system with jurisdiction at a military installation in a foreign country and, as such, presents unique challenges for ensuring security, support, and logistics are available for holding court hearings as determined by the judges.

The FY 2022 request includes funds in support of the Department's continued initiative to shift Enduring costs into the baseline.

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II. Force Structure Summary:

Not Applicable.

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III. Financial Summary (\$ in Thousands):

<u>BA Subactivities</u>	<u>FY 2020 Actuals</u>	<u>Budget Request</u>	<u>FY 2021</u>			<u>Current Enacted</u>	<u>FY 2022 Request</u>
			<u>Congressional Action</u>				
			<u>Amount</u>	<u>Percent</u>	<u>Appropriated</u>		
Defense Office of Hearings and Appeals(DOHA)	\$6,313	\$9,395	\$0	0.00%	\$9,395	\$9,395	\$9,623
HABEAS Corpus	\$35,627	\$35,312	\$0	0.00%	\$35,312	\$35,312	\$54,814
OMC	\$131,142	\$111,666	\$-5,000	-4.48%	\$106,666	\$106,666	\$130,324
SUBACTIVITY GROUP TOTAL	\$173,082	\$156,373	\$-5,000	-3.20%	\$151,373	\$151,373	\$194,761
<u>Summary by Operation</u>			<u>FY 2020 Actuals</u>		<u>FY 2021 Enacted</u>		<u>FY 2022 Request</u>
Operation FREEDOM'S SENTINEL (OFS)			\$173,082		\$151,373		\$194,761
Operation Totals			\$173,082		\$151,373		\$194,761
<u>Summary by Funding Category</u>			<u>FY 2020 Actuals</u>		<u>FY 2021 Enacted</u>		<u>FY 2022 Request</u>
Direct War Costs			\$166,745		\$40,000		\$83,957
Enduring Requirements			\$6,337		\$111,373		\$110,804
Category Totals			\$173,082		\$151,373		\$194,761

The total requested amount in FY 2022 for DLSA matches the O-1; however, the total Direct War/Enduring Costs are lower in FY 2022 than reflected on the O-1. The correct amount of Direct War/Enduring is \$194.761 million rather than the \$206.331 million that is displayed on the O-1.

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III. Financial Summary (\$ in Thousands): (Cont.)

<u>B. Reconciliation Summary</u>	<u>Change</u> <u>FY 2021/FY 2021</u>	<u>Change</u> <u>FY 2021/FY 2022</u>
OCO FUNDING	\$156,373	\$151,373
Congressional Adjustments (Distributed)	-5,000	
Congressional Adjustments (Undistributed)	0	
Adjustments to Meet Congressional Intent	0	
Congressional Adjustments (General Provisions)	0	
Carryover	0	
SUBTOTAL APPROPRIATED AMOUNT	151,373	
Fact-of-Life Changes (2021 to 2021 Only)	0	
SUBTOTAL OCO FUNDING	151,373	
Baseline Appropriation	0	
Reprogrammings	0	
Price Changes		3,064
Functional Transfers		0
Program Changes		40,324
CURRENT ESTIMATE	151,373	194,761
Less: Baseline Appropriation	0	
NORMALIZED CURRENT ESTIMATE	\$151,373	\$194,761

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III. Financial Summary (\$ in Thousands): (Cont.)

FY 2021 President's Budget Request (Amended, if applicable)	\$156,373
1. Congressional Adjustments	\$-5,000
a) Distributed Adjustments.....	\$-5,000
1) Program decrease unaccounted for.....	\$-5,000
b) Undistributed Adjustments	\$0
c) Adjustments to Meet Congressional Intent.....	\$0
d) General Provisions	\$0
e) Carryover.....	\$0
FY 2021 Appropriated Amount	\$151,373
2. Baseline Appropriations	\$0
a) Baseline Appropriation	\$0
3. Fact-of-Life Changes.....	\$0
a) Functional Transfers.....	\$0
b) Technical Adjustments	\$0
c) Emergent Requirements.....	\$0
FY 2021 OCO Funding	\$151,373

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III. Financial Summary (\$ in Thousands): (Cont.)

4. Reprogrammings (Requiring 1415 Actions).....	\$0
a) Increases	\$0
b) Decreases	\$0
Revised FY 2021 Estimate.....	\$151,373
5. Less: Baseline Appropriations	\$0
a) Less: Baseline Appropriations.....	\$0
FY 2021 Normalized Current Estimate	\$151,373
6. Price Change	\$3,064
7. Functional Transfers	\$0
a) Transfers In	\$0
b) Transfers Out.....	\$0
8. Program Increases.....	\$57,589
a) Annualization of New FY 2021 Program	\$0
b) One-Time FY 2022 Increases	\$0
c) Program Growth in FY 2022.....	\$57,589
1) Operating Support for Habeas Corpus and OMC	\$57,589
The increase reflects expansion to service contracts, building and facility maintenance contracts services costs. These costs are due to the preparation of legal trials of enemy combatants to begin in FY 2022 at	

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III. Financial Summary (\$ in Thousands): (Cont.)

Guantanamo Bay, Cuba.

(FY 2021 Baseline: \$100,531 thousand)

9. Program Decreases	\$-17,265
a) Annualization of FY 2021 Program Decreases	\$0
b) One-Time FY 2021 Costs	\$0
c) Program Decreases in FY 2022	\$-17,265
1) Compensation and Benefits	\$-17,265
The decrease is attributed to a lower Civilian Annual Average Rate (AAR), as well as a reduction of eighteen Full Time Equivalent (FTEs) and associated resources. The reduction of personnel from the Defense Legal Services Agency (DLSA) to better align the full-time equivalent (FTE) requirements associated with the Office of Military Commission based on projected requirements to support the trials of enemy combatants at Guantanamo Bay. (FY 2021 Baseline: \$50,842 thousand; 188 FTEs; -18 FTEs)	
FY 2022 Budget Request	\$194,761

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IV. Performance Criteria and Evaluation Summary:

Not Applicable.

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V. Personnel Summary:

	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>Change FY 2020/ FY 2021</u>	<u>Change FY 2021/ FY 2022</u>
<u>Civilian End Strength (Total)</u>	135	188	170	53	-18
U.S. Direct Hire	135	188	170	53	-18
Total Direct Hire	135	188	170	53	-18
<u>Civilian FTEs (Total)</u>	135	188	170	53	-18
U.S. Direct Hire	135	188	170	53	-18
Total Direct Hire	135	188	170	53	-18
<u>Average Annual Civilian Salary (\$ in thousands)</u>	207.5	270.4	198.2	62.9	-72.2

V. Personnel Summary Explanations:

The FY 2022 Civilian End Strength and Civilian FTEs reflect Direct War and Enduring Cost requirements for civilian personnel to support the Military Commissions Convening Authority. Decrease also supports the National Defense Strategy and the Department's strategic guidance efforts.

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VI. OP-32 Line Items:

	FY 2020 <u>Program</u>	<u>Change from FY 2020 to FY 2021</u>		FY 2021 <u>Program</u>	<u>Change from FY 2021 to FY 2022</u>		FY 2022 <u>Program</u>
		<u>Price Growth</u>	<u>Program Growth</u>		<u>Price Growth</u>	<u>Program Growth</u>	
101 EXEC, GEN'L & SPEC SCHEDS	28,011	431	22,400	50,842	1,154	-18,297	33,699
TOTAL CIVILIAN PERSONNEL COMPENSATION	28,011	431	22,400	50,842	1,154	-18,297	33,699
308 TRAVEL OF PERSONS	1,386	28	1,770	3,184	60	-544	2,700
TOTAL TRAVEL	1,386	28	1,770	3,184	60	-544	2,700
671 DISA DISN SUBSCRIPTION SERVICES (DSS)	3,897	187	-4,084	0	0	2,470	2,470
TOTAL OTHER FUND PURCHASES	3,897	187	-4,084	0	0	2,470	2,470
771 COMMERCIAL TRANSPORT	5	0	5	10	0	-7	3
TOTAL TRANSPORTATION	5	0	5	10	0	-7	3
912 RENTAL PAYMENTS TO GSA (SLUC)	132	3	67	202	4	-51	155
913 PURCHASED UTILITIES (NON-FUND)	1,019	20	-746	293	6	321	620
914 PURCHASED COMMUNICATIONS (NON-FUND)	614	12	1,073	1,699	32	-577	1,154
915 RENTS (NON-GSA)	8,753	175	6,491	15,419	293	-152	15,560
920 SUPPLIES & MATERIALS (NON-FUND)	853	17	105	975	19	265	1,259
922 EQUIPMENT MAINTENANCE BY CONTRACT	0	0	7,545	7,545	143	-2,874	4,814
923 FACILITIES SUST, REST, & MOD BY CONTRACT	3,507	70	731	4,308	82	118	4,508
925 EQUIPMENT PURCHASES (NON-FUND)	32	1	-33	0	0	20	20
932 MGT PROF SUPPORT SVCS	20,030	401	21,958	42,389	805	9,151	52,345
934 ENGINEERING & TECH SVCS	318	6	9,465	9,789	186	-2,055	7,920
957 OTHER COSTS (LAND AND STRUCTURES)	12,050	241	-12,291	0	0	0	0
959 OTHER COSTS (INSURANCE CLAIMS/INDMNTIES)	0	0	47	47	1	-26	22
986 MEDICAL CARE CONTRACTS	21	1	-22	0	0	0	0
987 OTHER INTRA-GOVT PURCH	414	8	1,959	2,381	45	-269	2,157
989 OTHER SERVICES	85,439	1,709	-76,840	10,308	196	48,020	58,524
990 IT CONTRACT SUPPORT SERVICES	6,601	132	-4,751	1,982	38	4,811	6,831

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VI. OP-32 Line Items:

	<u>FY 2020 Program</u>	<u>Change from FY 2020 to FY 2021</u>		<u>FY 2021 Program</u>	<u>Change from FY 2021 to FY 2022</u>		<u>FY 2022 Program</u>
		<u>Price Growth</u>	<u>Program Growth</u>		<u>Price Growth</u>	<u>Program Growth</u>	
TOTAL OTHER PURCHASES	139,783	2,796	-45,242	97,337	1,850	56,702	155,889
GRAND TOTAL	173,082	3,442	-25,151	151,373	3,064	40,324	194,761