

Fiscal Year (FY) 2005 Budget Estimates Defense Legal Services Agency (DLSA)



February 2004

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2005 Budget Estimates
Budget Activity 4: Administration and Service-Wide Activities

APPROPRIATION HIGHLIGHTS

(\$ in Millions)

<u>Appropriation Summary:</u>	<u>FY 2003</u>	<u>Price</u>	<u>Program</u>	<u>FY 2004</u>	<u>Price</u>	<u>Program</u>	<u>FY 2005</u>
	<u>Actual</u>	<u>Growth</u>	<u>Growth</u>	<u>Estimate</u>	<u>Growth</u>	<u>Growth</u>	<u>Estimate</u>
<u>Budget Activity 4</u>							
O&M, Defense-wide							
DLSA	20.683	0.665	-3.787	17.561	0.360	7.563	25.484
Memo: FY 2004 excludes Supplemental of \$12.307 million							

Description of Operations Financed:

The Defense Legal Services Agency (DLSA) provides legal services to the Office of the Secretary of Defense, DoD Field Activities, and the Defense Agencies. The largest component of DLSA, the Defense Office of Hearing and Appeals (DOHA), adjudicates many types of cases that arise from all military departments and defense agencies. It is anticipated that the increasing number of referrals of completed industry security clearance cases from the Defense Security Service will continue through FY 2005, which will subsequently result in more cases requiring review and participation by DOHA. Budget estimates provide for additional personnel and related costs to eliminate the

Pursuant to the Secretary of Defense's issuance of Military Commission Order Number 1 on March 21, 2002, the Office of Military Commissions was established under DLSA to facilitate preparation for and trial of cases before military commissions. The supplemental funds are provided for costs associated with the OMC.

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Narrative Explanation of Changes:

FY 2004 to FY 2005

The program reflects an increase of \$9.7 million for the Office of Military Commissions, including 25 positions and increased travel for prosecution, defense, commission members, and witnesses required in the conduct of cases against accused terrorists held at Guantanamo Bay. To date, the President has designated six cases for trial; additional cases are pending. The increase is offset by a decrease of \$2.4 million due to reduction in personnel for DOHA operations.

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(\$ in Thousands)

	<u>Amount</u>	<u>Totals</u>
FY 2004 President's Budget Request		17,757
1. Congressional Adjustments		
a. Distributed Adjustments	-	-
b. Undistributed Adjustments	-	-
c. Adjustments to meet Congressional intent	-	-
d. General Provisions		-185
1. Section 8094 Prorate Prof Spt Services	-100	
2. Section 8126 Prorate Mgt Efficiencies	-85	
e. Congressional Earmarks	-	-11
Section 8044 Indian Land Environmental Impact	-11	
 FY 2004 Appropriated Amount		 17,561
 2. Program Changes (CY to CY only)		 -
a. Functional Transfers	-	
b. Technical Adjustments	-	
c. Emergent Requirements	-	
 Baseline Funding		 17,561
 3. Reprogrammings (requiring 1415 action)		 -
 4. Price Change		 360

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(\$ in Thousands)

	<u>Amount</u>	<u>Totals</u>
(continued)		
5. Functional Transfers		-
6. Program Increases		9,969
a. Two FTE personnel attorney positions from the Office of the Inspector General to DLSA to provide full time operational law	267	
b. Funding to support the Office of Military Commissions stand up and operations	9,702	
7. Program Decreases		-2,406
a. Decrease in personnel costs due to reduction in DOHA personnel	-2,406	
FY 2005 Budget Request		25,484

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Manpower Changes in Full-Time Equivalent
FY 2003 through FY 2005

	<u>US Direct Hire</u>	<u>Total</u>
1. FY 2003 FTEs	141	141
Underexecution of DOHA corrected	19	19
Office of Military Commissions	25	25
Functional Transfers		
Attorney positions from the	2	2
Office of the Inspector General		
2. FY 2004 FTEs	187	187
DOHA augmentation	-26	-26
3. FY 2005 FTEs	161	161

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PERSONNEL SUMMARY

	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	Change FY 2004/ FY 2005
<u>Active Military End Strength (Total)</u>				
Officer	18	26	26	0
Enlisted	13	21	21	0
 <u>Civilian End Strength (Total)</u>				
US Direct Hire	161	207	180	-27
 <u>Active Military Average Strength (A/S) (Total)</u>				
Officer	18	26	26	0
Enlisted	13	21	21	0
 <u>Civilian FTEs (Total)</u>				
US Direct Hire	141	187	161	-26

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2005 Budget Estimates Submission
Summary of Price and Program Changes - FY 2004
(Dollars in Thousands)

	FY 2003	Price Growth		Program	Normalized
	<u>Actuals</u>	<u>Percent</u>	<u>Amount</u>	<u>Growth</u>	<u>FY 2004</u>
					<u>Program</u>
<u>Civilian Personnel Compensation</u>					
101 Ex., Gen. & Special Schedules	14,094	.04148	584	-178	14,500
106 Benefits to Former Employees	18	.04148	0	32	50
199 Total Civ Personnel Comp	14,112		584	-146	14,550
<u>Travel</u>					
308 Travel of Persons	509	1.3	6	5	520
399 Total Travel	509		6	5	520
<u>Transportation</u>					
771 Commercial Transportation	0	1.3	0	25	25
799 Total Transportation	0		0	25	25
<u>Other Purchases</u>					
912 SLUC (GSA Leases)	794	1.5	11	5	810
914 Purchased Communications	142	1.3	1	2	145
915 Rents	200	1.3	2	3	205
920 Supplies & Materials	454	1.3	5	-159	300
922 Equipment Maintenance	0	1.3	0	18	18
921 Printing and Reproduction	55	1.3	0	5	60
925 Equipment (Non-Fund)	745	1.3	9	-404	350
989 Other Contracts	3,669	1.3	47	-3,142	574
998 Other Costs	3	1.3	0	1	4
999 Total Other Purchases	6,062		75	-3,671	2,466
9999 Total	20,683		665	-3,787	17,561

Notes: 1) FY 2003 actuals include \$4.475 million in FY 2003 supplemental funds.

2) FY 2004 program value does not include \$12.307 million FY 2004 supplemental funds.

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Summary of Price and Program Changes - FY 2005
(Dollars In Thousands)

	<u>FY 2004</u> <u>Estimates</u>	<u>Price Growth</u> <u>Percent</u>	<u>Amount</u>	<u>Program</u> <u>Growth</u>	<u>FY 2005</u> <u>Program</u>
<u>Civilian Personnel Compensation</u>					
101 Ex., Gen. & Special Schedules	14,500	.02207	320	2,332	17,152
106 Benefits to Former Employees	50	.02207	1	-1	50
199 Total Civ Personnel Comp	14,550		321	2,331	17,202
<u>Travel</u>					
308 Travel of Persons	520	1.4	7	1,935	2,462
399 Total Travel	520		7	1,935	2,462
<u>Transportation</u>					
771 Commercial Transportation	25	1.4	0	0	25
799 Total Transportation	25		0	0	25
<u>Other Purchases</u>					
912 SLUC (GSA Leases)	810	1.5	12	185	1,007
914 Purchased Communications	145	1.4	2	53	200
915 Rents	205	1.4	2	327	534
920 Supplies & Materials	300	1.4	4	1	305
922 Equipment Maintenance	18	1.4	0	1	19
921 Printing and Reproduction	60	1.4	0	40	100
925 Equipment (Non-Fund)	350	1.4	4	306	660
989 Other Contracts	574	1.4	8	2,384	2,966
998 Other Costs	4	1.4	0	0	4
999 Total Other Purchases	2,466		32	3,297	5,795
9999 Total	17,561		360	7,563	25,484

Note: Fy 2004 Estimates do not include \$12.307 million in FY 2004 supplemental funds.

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Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2005 Budget Estimates Submission
Budget Activity 4: Administration and Service-Wide Activities

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. Pursuant to the Secretary of Defense's issuance of Military Commission Order Number 1 on March 21, 2002, the Office of Military Commissions was established under DLSA to facilitate preparation for and trial of cases before military commissions. The commission's process consists of an appointing authority function and prosecution and defense functions. In addition, appellate review panels are mandated.

The largest component of DLSA, the Defense Office of Hearings and Appeals (DOHA), adjudicates many types of cases that arise from all Military Departments and Defense Agencies:

- DOHA conducts personal appearances and issues decisions in security clearance cases for DoD civilian employees and military personnel.
- DOHA conducts hearings and issues decisions in cases involving claims for DoD Dependents Schools Activity benefits and CHAMPUS payment for medical services.
- DOHA's recently added claims function includes review of uniformed service and carrier claims for loss or damage of household goods and review of waiver applications.
- DOHA traditionally provides support to the Deputy General Counsel (Legal Counsel).
- DOHA functions as the point of contact for selection of third party neutrals in DOHA alternative dispute resolution processes.
- DOHA provides hearings and issues decisions in personnel security clearance cases for contractors performing classified work for all DoD components and twenty other Federal Agencies and Departments. As experienced in FY 2003, it is anticipated that the increasing number of referrals of completed industrial security clearance cases from the Defense Security Service (DSS) will continue through FY 2005, which will subsequently result in more cases requiring review and participation by the DOHA. Since DOHA's personnel security missions are essential to national security, budget estimates provide

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I. Description of Operations Financed: (continued)

for additional personnel and related costs to adjudicate the cases generated by the DSS elimination of periodic reinvestigation backlogs.

All customary expenses required to operate a government activity are financed, including salaries and benefits, travel, rental of office space, rental of equipment, communications, and the cost of supplies and equipment.

II. Financial Summary:

FY 2004

	FY 2003	Budget	FY 2004	Current	FY 2005
A. Activity Groups:	<u>Actuals</u>	<u>Request</u>	<u>Appropriation</u>	<u>Estimate</u>	<u>Estimate</u>
1. DLSA HQ	3,868	3,550	3,512	3,512	13,150
2. DOHA	16,815	14,207	14,049	14,049	12,334
Total	20,683	17,757	17,561	17,561	25,484

DEFENSE LEGAL SERVICES AGENCY
 Operation and Maintenance, Defense-Wide
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 Budget Activity 4: Administration and Service-Wide Activities

II. Financial Summary: (continued)

B. Reconciliation Summary:	Change <u>FY 2004/FY 2004</u>	Change <u>FY 2004/FY 2005</u>
Baseline Funding	17,757	17,561
Congressional Adjustments (General Provisions)	-185	-
Congressional Earmarks	-11	-
Subtotal Appropriated Amount	17,561	-
Emergency Supplemental (memo)	(12,307)	-
Price Changes	-	360
Program Changes	-	7,563
Current Estimate	17,561	25,484

C. Reconciliation of Increases and Decreases:

	(\$ in Thousands)	
	<u>Amount</u>	<u>Totals</u>
FY 2004 President's Budget Request		17,757
1. Congressional Adjustments		
a. Distributed Adjustments		-
b. Undistributed Adjustments		-
c. Adjustments to meet Congressional intent		-
d. General Provisions		-196
1. Section 8094 Prorate Prof Spt Services	-100	
2. Section 8126 Prorate Mgt Efficiencies	-85	
e. Congressional Earmarks		
Section 8044 Indian Land Environmental Impact	-11	

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II. Financial Summary: (continued)

C. Reconciliation of Increases and Decreases:

	(\$ in Thousands)	
	Amount	Totals
FY 2004 Appropriated Amount		17,561
2. Emergency Supplemental		
a. Emergency Supplemental Carryover		-
b. FY 2004 Emergency Supplemental Appropriations Act (P.L. 108-106)		12,307
3. Fact-of-Life Changes		
a. Functional Transfers		-
b. Technical Adjustments		-
c. Emergent Requirements		
1. Program Increases		
2. Program Decreases		
Baseline Funding		29,868
4. Reprogrammings (requiring 1415 action)		-
Revised FY 2004 Estimate		29,868
5. Less: Emergency Supplemental funding		-12,307
Normalized Current Estimate for FY 2004		17,561
6. Price Change		360

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II. Financial Summary: (continued)

C. Reconciliation of Increases and Decreases:

	(\$ in Thousands)	
	Amount	Totals
7. Functional Transfers		-
8. Program Increases		9,969
a. Two FTE personnel attorney positions from the Office of the Inspector General to DLSA to provide full time operational law support	267	
b. Funding to support the Office of Military Commissions stand up and operations	9,702	
9. Program Decreases		-2,406
a. Decrease in personnel costs due to reduction in DOHA personnel		
	-2,406	
 FY 2005 Budget Request		 25,484

III. Performance Criteria and Evaluation Summary:

As the provider of legal services to the Office of the Secretary of Defense, Department of Defense Field Activities, and the Defense Agencies, 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 standards;
- the professional independence, impartiality and competence exhibited by its attorneys; and
- its overall responsiveness to the needs of its clients.

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III. Performance Criteria and Evaluation Summary (continued)

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 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 and conducts personal appearances and issues decisions in security clearance cases for DoD civilian employees and military personnel. DOHA also conducts hearings and issues decisions in cases involving the special education programs of the Department of Defense's overseas and domestic school systems, and CHAMPUS payment for medical services. DOHA also adjudicates various financial claims including, but not limited to, claims related to uniform services members' pay, allowances, travel, transportation, retired pay, and survivor benefits; claims by transportation carriers for amounts collected from them for loss and damage incurred to property incident to shipment at Government expense; claims for proceeds of sale of unclaimed property coming into the custody or control of the Army, Navy, Air Force or Coast Guard; and petitions for waiver of debts owed by employees to the Government.

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.

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III. Performance Criteria and Evaluation Summary (continued)

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 new 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 program and was specifically designed not to change the full due process given to contractors. The workload associated with the Industrial Security (ISCR) cases DOHA handles is currently increasing as a result of security reinvestigation backlogs anticipated during FY 2004.

Personal Appearance (PA) Program

Executive Order 12968, which President Clinton signed on August 2, 1995, mandated 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 reinvestigation backlogs anticipated during FY 2004.

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III. Performance Criteria and Evaluation Summary (continued)

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, he 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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III. Performance Criteria and Evaluation Summary (continued)

Workload:	FY 2003 Actuals	FY 2004 Estimates	FY 2005 Estimates
Cases Reviewed (ISCR & PA)	30,875	34,305	36,841
Hearing Cases (ISCR/PA/TRICARE/DODEA)	1,500	1,666	1,822
Claims Cases Reviewed	1,625	1,805	2,053
Mediations	30	33	36

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IV. Personnel Summary:

Personnel Summary:	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	Change <u>FY 2004/2005</u>
Total Active Military End Strength (E/S)				
Officer	18	26	26	0
Enlisted	13	21	21	0
Total	31	47	47	0
Total Civilian End Strength				
U.S. Direct Hire	161	207	180	-27
Total Active Military Average Strength (A/S)				
Officer	18	26	26	0
Enlisted	13	21	21	0
Total	31	47	47	0
Total Civilian FTEs				
U.S. Direct Hire	141	187	161	-26

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V. OP 32 Line Items as Applicable (\$ in Thousands):

	FY 2003 Actuals	Price Growth	Change FY 2003/FY 2004		FY 2004 Program	Price Growth	Change FY 2004/FY 2005		FY 2005 Program
			Program Growth	Program			Program Growth	Program	
101 Ex., Gen. & Special Schedules	14,094	584	-178		14,500	320	2,332		17,152
106 Benefits to Former Employees	18	0	32		50	1	-1		50
308 Travel of Persons	509	6	5		520	7	1,935		2,462
771 Commercial Transportation	0	0	25		25	0	0		25
912 SLUC (GSA Leases)	794	11	5		810	12	185		1,007
914 Purchased Communications	142	1	2		145	2	53		200
915 Rents	200	2	3		205	2	327		534
920 Supplies & Materials	454	5	-159		300	4	1		305
922 Equipment Maintenance	0	0	18		18	0	1		19
921 Printing and Reproduction	55	0	5		60	0	40		100
925 Equipment (Non-Fund)	745	9	-404		350	4	306		660
989 Other Contracts	3,669	47	-3,142		574	8	2,384		2,966
998 Other Costs	3	0	1		4	0	0		4
9999 Total	20,683	665	-3,787		17,561	360	7,563		25,484