

Fiscal Year (FY) 2007 Budget Estimates

Defense Legal Services Agency (DLSA)



February 2006

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DEFENSE LEGAL SERVICES AGENCY
Operations and Maintenance, Defense-Wide
Fiscal Year (FY) 2007 Budget Estimates

Operation and Maintenance, Defense-Wide Summary (\$ in thousands)
Budget Activity (BA) #: Administration and Service-Wide Activities

	*FY 2005 <u>Actuals</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2006 <u>Estimate</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2007 <u>Estimate</u>
DLSA	44,035	1,102	-7,360	37,777	1,273	-3,512	35,538

* The FY 2005 Actual column includes \$11,000 thousand of FY 2005 Supplemental funds (PL 109-13).

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. DOHA provides hearings and issues decisions in personnel security clearance cases for contractors performing classified work for all DoD components and over 20 other Federal Agencies and Departments. In addition, DOHA 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 claims for DoD Dependent Schools benefits and TRICARE payment for medical services. DOHA's 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.

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I. Description of Operations Financed: (Continued)

The number of referrals to DOHA for completed industrial security clearance investigations is increasing, resulting in a backlog of cases requiring due process. In FY 2006 additional personnel and related costs are provided to adjudicate the personnel security clearance case backlog. FY 2007 reflects a decrease in personnel associated with the decrease in the case backlog.

Pursuant to the Secretary of Defense's issuance of Military Commission Order Number 1 (March 21, 2002), the Office of Military Commissions (OMC) was established under DLSA to facilitate preparation for and trial of cases before military commissions. The OMC is responsible for the appointing authority function, the prosecution function, and the defense function. In addition, appellate review panels are mandated. The OMC deals with the trials of enemy combatants who violate the laws of war. It is comprised of four sections; 1) the appointing authority (similar to a convening authority), which includes the Office of the Legal Advisor, 2) the prosecution office, 3) the defense office, and 4) the Review Panel (Judges who consider appeals). The OMC has a total of 65 military and 51 civilians assigned. The OMC originated by Presidential Order and was implemented by order of the Secretary of Defense. Tribunals are now in their initial stages, with ten cases presently referred for trial. Some are in various stages of collateral constitutional litigation. The OMC is expected to last a number of years and encompass heavy logistical and travel costs.

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. Force Structure Summary: N/A

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III. Financial Summary: (\$ in Thousands)

A. BA Subactivities	*FY 2005 <u>Actuals</u>	Budget <u>Request</u>	FY 2006 Congressional Action				Current <u>Estimate</u>	FY 2007 <u>Estimate</u>
			<u>Amount</u>	<u>Percent</u>	<u>Appropriated</u>			
DLSA HQ	5,138	5,000	-83	-1.6	4,917	4,917	4,800	
DOHA	27,616	17,000	-279	-1.6	16,721	16,721	16,000	
OMC	11,281	16,412	-273	-1.6	16,139	16,139	14,738	
Total	44,035	38,412	-635	-1.6	37,777	37,777	35,538	

* The FY 2005 Actual column includes \$11,000 thousand of FY 2005 Supplemental funds (PL 109-13).

B. <u>Reconciliation Summary</u>	<u>Change</u>	<u>Change</u>
	<u>FY 2006/FY 2006</u>	<u>FY 2006/FY 2007</u>
Baseline Funding	38,412	37,777
Congressional Adjustments (Distributed)		
Congressional Adjustments (Undistributed)	-72	
Congressional Adjustments (Earmarks)	-21	
Congressional Adjustments (General Provisions)	-542	
Subtotal Appropriated Amount	37,777	
Fact-of-Life Changes (CY to CY Only)		
Subtotal Baseline Funding	37,777	37,777
Anticipated Supplemental Reprogrammings		
Price Changes		1,273
Functional Transfers		
Program Changes		-3,512
Current Estimate	37,777	35,538
Less: Wartime Supplemental		
Normalized Current Estimate	37,777	

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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 2006 President's Budget Request		38,412
1. Congressional Adjustments		-635
a. Distributed Adjustments		
b. Undistributed Adjustments - Unobligated Balances	-72	
c. Earmarks - Mitigation of environmental impacts on Indian lands	-21	
d. General Provisions	-542	
1) Sec 8087 - Advisory and Assistance Services	-72	
2) Sec 8125 - Economic Assumptions	-60	
3) Sec 8109 - Excessive Growth in Travel and Transportation	-28	
4) 1 percent Rescission	-382	
FY 2006 Appropriated Amount		37,777
2. War-Related and Disaster Supplemental Appropriations		
3. Fact of Life Changes		
FY 2006 Baseline Funding		37,777
4. Reprogramming (requiring 1415 Actions)		
Revised FY 2006 Estimate		37,777
5. Less: Item 2, War-Related and Disaster Supplemental Appropriations and Item 4, Reprogrammings, Iraq Freedom Fund Transfers		
FY 2006 Normalized Current Estimate		37,777
6. Price Change		1,273
7. Functional Transfers		

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

C. <u>Reconciliation of Increases and Decreases</u>	<u>Amount</u>	<u>Totals</u>
8. Program Increases		888
a. Annualization of New FY 2006 Program		
b. One-Time FY 2007 Increases		
c. Program Growth in FY 2007	888	
1) Travel - Increase related to Guantanamo Bay detainees. (Baseline FY 2006: \$1,950 thousand)	49	
2) Commercial Transportation - Increase for transportation of household goods for new hires. (Baseline FY 2006: \$4 thousand)	31	
3) Other Intra-Government Purchases - Increase to support document scanning and retrieving support (Baseline FY 2006: \$1,746 thousand)	25	
4) Other Contracts - Increase to support technology and translation support for Guantanamo trials. (Baseline FY 2006: \$1,192 thousand)	783	
9. Program Decreases		-4,400
a. Annualization of FY 2006 Program Decreases		
b. One-Time FY 2006 Increases		
c. Program Decreases in FY 2007	-4,400	
1) Manpower - Full time equivalents are reduced from 259 to 235. Reflecting progress of Guantanamo trials and reduced backlog. (Baseline FY 2006: \$28,942 thousand)	-2,953	
2) Decreases for rent, communications, equipment and supplies associated with the labor reductions. (Baseline FY 2006: \$3,939 thousand)	-1,447	
FY 2007 Budget Request		35,538

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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. 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 over 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 TRICARE 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 waivers of debts owed by employees to the Government. DOHA also provides Alternative Dispute Resolution Services.

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 and adjudicative 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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IV. Performance Criteria and Evaluation Summary:

Industrial Security Clearance Review (ISCR) Program

The due process hearings and appeals of the Industrial Security Program are DOHA's central mission. 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. 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. Executive Order 12968, signed August 2, 1995 by President Clinton extended the opportunity to appear personally before a decision maker to all clearance holders and applicants. DOHA implements these personal appearances for the Department.

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. The appearances are handled by the same DOHA Administrative Judges who handle cases involving Defense 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

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IV. Performance Criteria and Evaluation Summary:

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 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 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. 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.

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IV. Performance Criteria and Evaluation Summary:

Claims appeals board workload is expected to increase. 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>V. Personnel Summary:</u>	<u>FY</u> <u>2005</u>	<u>FY</u> <u>2006</u>	<u>FY</u> <u>2007</u>	<u>Change</u> <u>FY 2005/</u> <u>FY 2006</u>	<u>Change</u> <u>FY 2006/</u> <u>FY 2007</u>
<u>Active Military End Strength (E/S)</u>	17	59	57	42	-2
(Total)					
Officer	8	30	30	22	
Enlisted	9	29	27	20	
					-2
<u>Civilian End Strength (Total)</u>	158	259	235	101	-24
U.S. Direct Hire	158	259	235	101	-24
<u>Active Military Average Strength (A/S)</u>	17	59	57	42	-2
(Total)					
Officer	8	30	30	22	
Enlisted	9	29	27	20	
					-2
<u>Civilian FTEs (Total)</u>	159	259	235	100	-24
U.S. Direct Hire	159	259	235	100	-24
Average Annual Civilian Salary (\$ in thousands)	97	91	93	-6	2

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

<u>OP 32 Line</u>	<u>*FY 2005 Actuals</u>	<u>Change from FY 2005 to FY 2006</u>		<u>FY 2006 Estimate</u>	<u>Change from FY 2006 to FY 2007</u>		<u>FY 2007 Estimate</u>
		<u>Price Growth</u>	<u>Program Growth</u>		<u>Price Growth</u>	<u>Program Growth</u>	
101 Executive, General and Special Schedules	19,049	667	9,226	28,942	897	-2,953	26,886
308 Travel	1,440	35	475	1,950	43	49	2,042
672 PRMRF Rent	712	-150	404	966	203	-187	982
771 Commercial Transportation	0	0	4	4	0	31	35
912 Rental Payments to GSA	1,900	48	-13	1,935	43	-953	1,025
914 Purchased Communications	101	2	197	300	7	-32	275
920 Supplies & Materials	215	5	-100	120	3	-1	122
921 Printing/Reproduc tion	8	0	92	100	2	-17	85
922 Equipment Maintenance	4,026	97	-4,078	45	1	-3	43
925 Equipment	468	11	-6	473	10	-254	229
987 Other Intra-Govt Purchases	6,370	153	-4,777	1,746	38	25	1,809
989 Other Contracts	9,738	234	-8,780	1,192	26	783	2,001
998 Other Costs	8	0	-4	4	0	0	4
Total	44,035	1,102	-7,360	37,777	1,273	-3,512	35,538

The FY 2005 Actual column includes \$11.0 thousand of FY 2005 Supplemental funds (PL 109-13).