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JUN - 1 2007

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
ASSISTANT SECRETARIES OF DEFENSE  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION  
DIRECTOR, NET ASSESSMENT  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Building on Success -- Call for Legislative Proposals for FY 2009

The new legislative process that the Department of Defense (DoD) implemented for the FY 2008 legislative cycle resulted in the delivery of the DoD National Defense Authorization bill to Congress two months earlier than in past years. This allowed additional time for senior leadership review, interagency clearance through the Office of Management and Budget (OMB), and successful engagement with the Congress. The FY 2009 legislative program detailed in the attachments includes Departmental priorities, an accelerated timeline for proposals with budget implications, and more detailed submission guidelines for proposals with budget implications.

To ensure success, legislation proposed by your respective DoD component needs to reflect your signature initiatives that cannot be otherwise achieved. The process will be delayed if DoD asks for new legislative authority when, in reality, adequate legislative authority already exists. Your proposals should include changes that would make concrete differences within the Department.

The first step in the DoD legislative process is that you identify to the DoD Office of Legislative Counsel (OLC) (Christian Marrone) by June 15, 2007, an empowered representative to develop and coordinate your initiatives. That representative should work closely with OLC to ensure your active participation throughout the legislative



cycle. The representative will also work closely, when requested, with the Legislative Review Panel to ensure our final legislative package accurately reflects the Department's priorities.

Thank you for your continuing commitment and support.

Attachment:  
As stated

A handwritten signature in black ink, appearing to read "Andrew G. ...". The signature is written in a cursive style with a large, prominent initial letter.

## Guidelines for the FY 2009 DoD Legislative Program

### I. Deadlines to Submit New Proposals to the DoD Office of Legislative Counsel

#### A. New Proposals with Budget Implications: June 29, 2007.

- A proposal with budget implications would implicate more than \$500,000, in one-year costs or savings across the Department of Defense, in the President's budget. A proposal that does any of the following generally would satisfy this definition:
  - (1) Creates or changes an entitlement.
  - (2) Has tax implications.
  - (3) Has budget or resource implications for another federal agency.
  - (4) Creates or changes pays and benefits.
  - (5) Creates or changes lease terms or baseline authorities.
  - (6) Creates or changes procurement authorities or time thresholds.
  - (7) Creates or changes receipts or user fees.
  - (8) Creates or changes funding levels for a program or activity.
- Even proposals for which the sponsoring component only seeks authorization, but which meet the above definition, need to be forwarded by the date indicated because OMB, with very few exceptions, will not clear a proposal with budget implications that is submitted too late for inclusion in the President's budget.
- All proposals identified as having budget implications must be reflected in a Program Budget Decision.

#### B. New Proposals without Budget Implications: August 7, 2007.

- A proposal that is not covered by the above definition for proposals with budget implications falls under this category. If a proponent determines that a proposal has no budgetary impact, the proposal should so state and provide a rationale for that determination.
- If there is doubt whether a proposal has budgetary impact, the sponsoring component should submit the proposal by the deadline for proposals with budget implications. Please contact OLC if you have any specific questions.

## II. Deadlines for DoD to Submit New Proposals to OMB

A. Proposals with Budget Implications: August 21, 2007.

B. Proposals without Budget Implications: October 5, 2007.

## III. Determination of Budget Implications of Every Proposal

For the Department to maintain control of future costs, we must identify every legislative proposal with budget implications at the beginning of the legislative cycle.

To achieve this goal, each proposal needs to expressly address any and all budget implications, including costs and savings. If a proposal has no budgetary impact, the proposal should so state, along with the rationale for that determination. Whenever possible, the proponent should identify offsetting savings to accompany the proposal. Proposals that fail to adequately address their budget implications will be returned to the sponsoring component for resubmission with the required information. OLC, after consulting with USD(Comptroller), will not accept any proposal with budget implications that is submitted too late for inclusion in the President's budget.

Each proposal needs to include sufficient information for USD(Comptroller) and OMB to properly review its budget implications. Each sponsor should:

- identify the account from which they would fund the proposal, regardless of whether the component is asking for additional funds;
- identify the Unified Legislative Budget (ULB) proposal number, if applicable;
- provide a five-year projection, with year-by-year costs or savings, for the entire Department of Defense, with a breakdown by military department where applicable;
- provide a five-year projection, with year-by-year estimates, of the number of personnel who would be affected by the proposal; and
- outline the cost methodology used to calculate the above figures and, as appropriate, explain why a proposal that would increase spending authority would not generate increased topline.

Authorization provisions traditionally included in the NDAA "shell" must be submitted to OLC by the above deadline for proposals with budget implications. Authorization provisions submitted only as part of the "shell" will be subject to the guidelines below for proposals submitted late. The responsible DoD components need to submit the NDAA and Military Construction "shells" to OLC as soon as possible after the President's budget is locked to ensure their incorporation in the NDAA bill to be delivered to the Congress.

#### IV. Disposition of Proposals Submitted Late

The best way to maximize the chances of enactment by the Congress is to submit proposed legislation by the deadlines detailed above.

When circumstances make this impossible, the DoD component must explain the circumstances justifying a late submission in cover memoranda signed by the agency head, with supporting documentation as necessary. For example, DoD components may resubmit Administration-cleared proposals that were adopted by the House of Representatives and/or the Senate, but then dropped during the NDAA conference. Components also may submit new proposals drafted in response to provisions in the NDAA if they provide a memorandum signed by their agency head which explains:

- how their proposal would address the NDAA provision;
- the circumstances that prevented the submission of the proposal by the original submission deadline; and
- why their proposal is essential for enactment in the current legislative cycle.

OLC will not accept any new proposal that does not satisfy these conditions, except as described below. The Legislative Review Panel will review every proposal submitted late and advise OLC on whether to accept the proposal.

If an agency justifies the late submission of a proposal, OLC will expedite its coordination for possible incorporation in the NDAA bill to be delivered to the Congress. If an agency does not justify the proposal's lateness, OLC will not coordinate the proposal until after it submits to OMB the proposals submitted by the deadlines detailed above. OMB will not expedite its review of proposals submitted after OLC's initial submission, thus hindering the possible incorporation of those proposals into the NDAA bill.

OLC will not accept any proposals submitted after OMB's final deadline for submissions unless they are certified by the agency head as essential for enactment in the current legislative cycle.

#### V. Resubmissions

A sponsoring agency should provide a detailed justification for any proposal resubmitted from an earlier legislative cycle, including the year of the prior submission and any changes the agency has made to the proposal. If the proposal was not approved by DoD or OMB, the sponsoring agency should detail the adjustments made in response to the non-concurrences, and/or detail discussions with the non-concurring parties that have mitigated previous concerns. If the proposal was not adopted by the Congress, then the sponsor should articulate a convincing legislative strategy explaining why the Congress will enact the legislation in this legislative cycle. Once accepted, proposals

previously cleared by OMB will be given a streamlined review by OMB. If a sponsoring agency makes any changes to a proposal previously cleared by OMB, the sponsor needs to provide a description of, and rationale for, the changes.

## VI. Legislative Review Panel

The Department must identify its top legislative priorities to enable us to craft a successful legislative strategy for the eventual enactment of these priorities into law. To achieve these goals, each DoD component needs to identify its top legislative priorities when they submit their proposals to OLC. The Legislative Review Panel will convene periodically during the legislative cycle to identify and review DoD's top legislative priorities, including each of the component's top priorities, and recommend necessary changes to the Deputy Secretary for final approval before transmission to OMB and Congress to ensure that the NDAA bill accurately reflects the Secretary's priorities. To aid in this process, each DoD component will need to prioritize all of the proposals they submit to OLC. The Panel also will help resolve disputes and advise on whether to accept late submissions.

## VII. General Legislative Drafting Guidelines (for specific submission requirements, see following attachment)

Each proposal needs to be aligned with the President's agenda and the Department's priorities. To this end, explain in two to three sentences how each of the proposals submitted satisfies at least one of the attached priorities.

Proposals should be drafted for general application with broad authority to act. Proposals may neither limit the Secretary of Defense's authority to manage DoD nor create reporting requirements for DoD.

Legislation is to be used sparingly when required to meet specific requirements or goals and, then, only after all other avenues (including administrative remedies) have proven unsuccessful. If a legal determination is made that proposals include unnecessary legislation, such proposals will be returned to the respective sponsor with a request for further explanation of why it should be included in this year's DoD Legislative Program.

Section-by-section analyses must follow legislative language and be written in a style that would be understandable and persuasive to a layman (in many instances, poorly written analyses laden with specialists' language and acronyms cause proposals to fail to clear both DoD and OMB coordination). Each analysis needs to be clear and convincing. It should set out the factual and legal problems that require legislative relief, describe proposed changes, and explain beneficial consequences. If a sponsoring agency submits additional documents that further explain or justify a proposal, the sponsor needs to include relevant information from these documents in the proposal's section-by-section analysis.

Each proposal needs to expressly address any and all budget implications, including costs and savings. If a proposal has no budgetary impact, the proposal should so state, along with the assumptions behind that determination. Proposals that fail to adequately address their budget implications will be returned to the sponsoring component for resubmission with the required information. OLC, after consulting with USD(Comptroller), will not accept any proposal with budget implications that is submitted too late for inclusion in the President's budget.

Each sponsor must certify that the sponsor's own general counsel has reviewed, and the agency head has cleared, each proposal.

Each sponsor must prioritize all of the proposals they submit to OLC.

Each sponsor needs to identify every proposal they submit to OLC as a placeholder, pending action on the provision in the FY 2008 NDAA. Following the passage of the FY 2008 NDAA, a sponsor may submit changes to its proposal in response to provisions included in the NDAA or withdraw its proposal.

#### VIII. Coordination Requirement

The coordination process requires that all participants engage in full and frank discussions of legislative proposals. Pursuant to DoD Directive 5500.1 and OMB Circular No. A-19, DoD will forward to OMB and Congress only those proposals that reflect a single and fully-coordinated DoD position.

#### IX. Resolution of Unresolved Coordination Issues

In the event participants in the DoD Legislation Program are unable to resolve differences regarding a specific proposal, contesting parties need to set forth their respective positions in writing to the DoD General Counsel, who will consult with the Deputy Secretary of Defense, as appropriate. These position papers should be concise, persuasive, and limited to one page.

## **Requirements for Submission of Legislative Proposals to OLC in the FY 2009 DoD Legislative Program**

Every proposal forwarded to OLC must meet each of the following requirements. Those that fail to meet the following criteria will be returned to the sponsoring component for resubmission:

- 1) Each proposal needs to be authorized by signed memorandum of the agency head of the respective DoD component.
- 2) Each proposal needs to be submitted in MS Word.
- 3) Each proposal needs to identify which Departmental priority it addresses.
- 4) A sponsoring agency that resubmits a proposal from a previous legislative cycle should identify that previous cycle, including the previous proposal number (which is accessible via the OLC Internet system).
- 5) Each proposal that is a resubmission needs to be accompanied by a resubmission justification as detailed above.
- 6) Each proposal should expressly address any and all budget implications, including costs and savings. If a proposal has no budgetary impact, the proposal should so state.
- 7) Each proposal needs to be drafted in clear and concise legislative language.
- 8) Each proposal should contain a section-by-section analysis that follows its legislative language and is written in a style that would be understandable and persuasive to a layman.
- 9) Each proposal that recommends changes to existing law should contain a line-in/line-out version of the existing law as amended by the proposal.
- 10) Each proposal submitted needs to be accompanied by the name and contact information of a designated subject matter expert (SME) who will represent the sponsor during the entire coordination process; these SMEs are distinct from the “empowered representative” to be designated by each DoD component per the body of this memorandum.
- 11) Each proposal submitted needs to contain the name and contact information for the reviewing attorney.
- 12) Pros and cons are no longer required.