

**Fiscal Year 2013 Budget Estimates  
Defense Legal Services Agency (DLSA)**



February 2012

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**Defense Legal Services Agency  
Operation and Maintenance, Defense-Wide  
Fiscal Year (FY) 2013 Budget Estimates**

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

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

	FY 2011 <u>Actuals</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2012 <u>Estimate</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2013 <u>Estimate</u>
DLSA	122,441	1,173	-86,324	37,290	196	-2,349	35,137

\* The FY 2011 Actual column includes \$83,387 thousand of FY 2011 Overseas Contingency Operations (OCO) Appropriations funding (P.L.112-10).

\* The FY 2012 Estimate column excludes \$67,322 requested in the FY 2012 Defense-Wide OCO Appropriations funding (P.L.112-74).

\* The FY 2013 Estimate column excludes \$102,322 requested in the FY 2013 DefenseWide OCO Budget Request.

**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 (DoD) 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

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**I. Description of Operations Financed (cont.)**

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.

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 DLSA to facilitate preparation for and trial of cases before military commissions. Starting in FY 2010 OMC funding is included in an OCO request.

The DLSA's budget includes all customary expenses required to operate a government activity, including salaries and benefits, travel, rental of office space, rental of equipment, communications, and the cost of supplies and equipment.

**Changes from FY 2012 to FY 2013:** Price change increases total \$196 thousand to accommodate the FY 2013 0.5% pay raise and general inflation. After considering the effects of one extra compensable day, and the reduction of 6 FTEs, the net program change is a decrease of \$-2,349 thousand to meet fiscal guidance.

**II. Force Structure Summary:**

N/A

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III. Financial Summary (\$ in thousands)

	FY 2012							FY 2013 Estimate
	FY 2011 Actuals	Budget Request	Congressional Action		Current Estimate	FY 2012 Estimate		
			Amount	Percent Appropriated				
<b>A. BA Subactivities</b>								
1. DLSA HQ	44,030	10,385	-34	-0.3	10,351	10,351	9,261	
2. DOHA	76,675	26,921	-43	-0.2	26,878	26,878	25,814	
3. Pentagon Reservation	1,736	61	0	0.0	61	61	62	
<b>Total</b>	<b>122,441</b>	<b>37,367</b>	<b>-77</b>	<b>-0.2</b>	<b>37,290</b>	<b>37,290</b>	<b>35,137</b>	

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III. Financial Summary (\$ in thousands)

B. Reconciliation Summary

	Change FY 2012/FY 2012	Change FY 2012/FY 2013
<b>Baseline Funding</b>	<b>37,367</b>	<b>37,290</b>
Congressional Adjustments (Distributed)		
Congressional Adjustments (Undistributed)	-62	
Adjustments to Meet Congressional Intent		
Congressional Adjustments (General Provisions)	-15	
<b>Subtotal Appropriated Amount</b>	<b>37,290</b>	
Fact-of-Life Changes (2012 to 2012 Only)		
<b>Subtotal Baseline Funding</b>	<b>37,290</b>	
Supplemental	67,322	
Reprogrammings		
Price Changes		196
Functional Transfers		
Program Changes		-2,349
<b>Current Estimate</b>	<b>104,612</b>	<b>35,137</b>
Less: Wartime Supplemental	-67,322	
<b>Normalized Current Estimate</b>	<b>37,290</b>	

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**III. Financial Summary (\$ in thousands)**

	<b>Amount</b>	<b>Totals</b>
<b>C. Reconciliation of Increases and Decreases</b>		
<b>FY 2012 President's Budget Request (Amended, if applicable)</b>		<b>37,367</b>
1. Congressional Adjustments		-77
a. Distributed Adjustments		
b. Undistributed Adjustments		
1) Unobligated Balances	-62	
c. Adjustments to Meet Congressional Intent		
d. General Provisions		
1) Sec. 8034 Mitigation of Environment Impacts	-15	
<b>FY 2012 Appropriated Amount</b>		<b>37,290</b>
2. War-Related and Disaster Supplemental Appropriations		67,322
a. OCO Supplemental Funding		
1) FY12 OCO Funding	67,322	
3. Fact-of-Life Changes		
<b>FY 2012 Baseline Funding</b>		<b>104,612</b>
4. Reprogrammings (Requiring 1415 Actions)		
<b>Revised FY 2012 Estimate</b>		<b>104,612</b>
5. Less: Item 2, War-Related and Disaster Supplemental Appropriations and Item 4, Reprogrammings		-67,322
<b>FY 2012 Normalized Current Estimate</b>		<b>37,290</b>
6. Price Change		196
7. Functional Transfers		
8. Program Increases		177
a. Annualization of New FY 2012 Program		
b. One-Time FY 2013 Increases		
c. Program Growth in FY 2013		
1) One day extra compensable pay	121	
Reflects one additional compensable day in FY 2013. (FY 2012 Baseline \$32,389 thousand; +181 FTEs)		
2) Pentagon Reservation Maintenance/Communications/Rent	56	
Pentagon Reservation Maintenance - DLSA Budgeted for		

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**III. Financial Summary (\$ in thousands)**

<b>C. Reconciliation of Increases and Decreases</b>	<b>Amount</b>	<b>Totals</b>
<ul style="list-style-type: none"> <li>additional space for IT requirements. Purchased</li> <li>Communications - Increases support necessary upgrades.</li> <li>Rent - the Litigation Division is relocating from Franklin Court to Crystal City, increasing the rent requirement. (Baseline \$1,035 thousand)</li> </ul>		
9. Program Decreases		-2,526
<ul style="list-style-type: none"> <li>a. Annualization of FY 2012 Program Decreases</li> <li>b. One-Time FY 2012 Increases</li> <li>c. Program Decreases in FY 2013 <ul style="list-style-type: none"> <li>1) Civilian pay adjustments, reduction of 6 FTEs. Reduction of 6 FTEs are in support of DoD's effort to make better use of resources. (FY 2012 Baseline \$32,389 thousand; 181 FTEs)</li> <li>2) Other Legal Administrative Support Costs Reduces administration costs of contract services and eliminates upgrades for application software maintenance and development, and database maintenance that is used for tracking treaties with foreign governments; and licensing fees. (FY 2012 Baseline \$3,025 thousand)</li> <li>3) Other Intra-gov't purchases Decreases Non-GSA leasing as a result of efficiencies in reducing the number of off-site litigation activities, support agreements to assist other governmental agencies, such as the Department of Justice, and minimizing subscription costs for specialized research library portals. (FY 2012 baseline: \$572 thousand)</li> <li>4) Printing and Reproduction Services DLSA will reduce printing and reproduction services by using electronic media.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>-1,070</li> <li>-884</li> <li>-510</li> <li>-43</li> </ul>	



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**III. Financial Summary (\$ in thousands)**

<b>C. Reconciliation of Increases and Decreases</b>	<b>Amount</b>	<b>Totals</b>
(FY 2012, \$88 thousand)		
5) Travel	-19	
DLSA will reduce discretionary travel costs by identifying alternatives to traveling such as teleconferencing and web-conferencing.		
(FY 2012 baseline: \$97 thousand)		
<b>FY 2013 Budget Request</b>		<b>35,137</b>

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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; participating in developing the Department's legislative program, including drafting legislation and comments; negotiating on behalf of DoD clients with private entities and other Government agencies; ensuring proper use of Government funds and property; adhering to ethical standards; and participating 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 Base Realignment and Closure Act led to reorganizations of Field Offices to Fort Meade, Maryland and Arlington, VA. The Director,

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**IV. Performance Criteria and Evaluation Summary:**

Appeal Board, Administrative Judges, a small cadre of Security Specialists, the Claims Division, and Support Staff reside at headquarters.

The Los Angeles office has Administrative Judges, Department Counsel and Support Staff. The Boston office has an Administrative Judge.

The DLSA is evaluated on the basis of the quality and timeliness of its myriad of services; adherence to appropriate standards of professional conduct and DoD 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

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**IV. Performance Criteria and Evaluation Summary:**

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 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. 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 (DSS). Therefore, the Department uses a three year historical average as the measurement for budgeting 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. The 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 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

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**IV. Performance Criteria and Evaluation Summary:**

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 because 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 the Secretary of Defense, among others. 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.

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**IV. Performance Criteria and Evaluation Summary:**

Claims Appeals Board workload is expected to maintain the same level of effort as in FY 2012. Due to the increase in the number of carrier claims regarding loss and damage, last year, claims were considered at GAO. Changes to GAO's statutory authority to relieve certifying, disbursing, and other accountable officers of financial liability may result in added responsibilities. However at this point, the Claims Appeal Board workload should remain the same as FY 2012.

<b>Workload</b>	<b><u>FY 2011</u></b> <b><u>Actuals</u></b>	<b><u>FY 2012</u></b> <b><u>Estimates</u></b>	<b><u>FY 2013</u></b> <b><u>Estimates</u></b>
Cases Reviewed (ISCR & ADP)	18,350	18,350	18,350
Due Process Cases	2,008	2,008	2,008
Claims Cases Reviewed	670	670	670
Mediations/ADR Consultations	77	77	77

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<u>V. Personnel Summary</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	Change FY 2011/ FY 2012	Change FY 2012/ FY 2013
<u>Active Military End Strength (E/S) (Total)</u>	206	206	206	0	0
Officer	114	114	114	0	0
Enlisted	92	92	92	0	0
<u>Civilian End Strength (Total)</u>	270	181	175	-89	-6
U.S. Direct Hire	270	181	175	-89	-6
Total Direct Hire	270	181	175	-89	-6
<u>Active Military Average Strength (A/S) (Total)</u>	206	206	206	0	0
Officer	114	114	114	0	0
Enlisted	92	92	92	0	0
<u>Civilian FTEs (Total)</u>	265	181	175	-84	-6
U.S. Direct Hire	265	181	175	-84	-6
Total Direct Hire	265	181	175	-84	-6
Average Annual Civilian Salary (\$ in thousands)	163.0	178.9	180.3	15.9	1.4
<u>Contractor FTEs (Total)</u>	<u>31</u>	<u>11</u>	<u>11</u>	<u>-20</u>	<u>0</u>

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

<u>OP 32 Line</u>	FY 2011 <u>Actuals</u>	Change		FY 2012 <u>Estimate</u>	Change		FY 2013 <u>Estimate</u>
		FY 2011/FY 2012 <u>Price</u>	<u>Program</u>		FY 2012/FY 2013 <u>Price</u>	<u>Program</u>	
101 Exec, Gen'l & Spec Scheds	43,189	0	-10,800	32,389	121	-949	31,561
<b>199 Total Civ Compensation</b>	<b>43,189</b>	<b>0</b>	<b>-10,800</b>	<b>32,389</b>	<b>121</b>	<b>-949</b>	<b>31,561</b>
308 Travel of Persons	2,304	41	-2,248	97	2	-19	80
<b>399 Total Travel</b>	<b>2,304</b>	<b>41</b>	<b>-2,248</b>	<b>97</b>	<b>2</b>	<b>-19</b>	<b>80</b>
417 Local Purch Supplies & Mat	125	2	-127	0	0	0	0
<b>499 Total Supplies &amp; Materials</b>	<b>125</b>	<b>2</b>	<b>-127</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
672 Pentagon Reserv Maint	1,736	-221	-1,454	61	-6	7	62
<b>699 Total DWCF Purchases</b>	<b>1,736</b>	<b>-221</b>	<b>-1,454</b>	<b>61</b>	<b>-6</b>	<b>7</b>	<b>62</b>
771 Commercial Transport	64	1	-65	0	0	0	0
<b>799 Total Transportation</b>	<b>64</b>	<b>1</b>	<b>-65</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
912 GSA Leases (SLUC)	6,299	114	-6,413	0	0	0	0
913 Purch Util (non fund)	103	2	-105	0	0	0	0
914 Purch Com (non fund)	681	12	-624	69	1	2	72
915 Rents, Leases (non GSA)	181	3	721	905	15	47	967
917 Postal Svc (USPS)	64	1	-65	0	0	0	0
920 Supplies/Matl (non fund)	1,336	24	-1,276	84	1	0	85
921 Print & Reproduction	0	0	88	88	1	-43	46
922 Eqt Maint Contract	4,052	73	-4,125	0	0	0	0
923 Facilities Maint by Contr	14	0	-14	0	0	0	0
925 Eqt Purch (Non-Fund)	2,131	39	-2,170	0	0	0	0
932 Mgt Prof Support Svcs	38,316	690	-36,398	2,608	44	-884	1,768
933 Studies, Analysis & Eval	15,773	284	-16,057	0	0	0	0
934 Engineering & Tech Svcs	11	0	-11	0	0	0	0
957 Lands and Structures	1,071	19	-1,090	0	0	0	0



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<b>OP 32 Line</b>	FY 2011	Change		FY 2012	Change		FY 2013
	<u>Actuals</u>	<u>FY 2011/FY 2012</u>		<u>Estimate</u>	<u>FY 2012/FY 2013</u>		<u>Estimate</u>
		<u>Price</u>	<u>Program</u>		<u>Price</u>	<u>Program</u>	
959 Insurance	7	0	-7	0	0	0	0
Claims/Indmnties							
960 Interest and Dividends	5	0	-5	0	0	0	0
987 Other IntraGovt Purch	4,503	81	-3,595	989	17	-510	496
989 Other Services	476	8	-484	0	0	0	0
<b>999 Total Other Purchases</b>	<b>75,023</b>	<b>1,350</b>	<b>-71,630</b>	<b>4,743</b>	<b>79</b>	<b>-1,388</b>	<b>3,434</b>
<b>Total</b>	<b>122,441</b>	<b>1,173</b>	<b>-86,324</b>	<b>37,290</b>	<b>196</b>	<b>-2,349</b>	<b>35,137</b>

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