

Fiscal Year (FY) 2012 Budget Estimates

Defense Legal Services Agency (DLSA)



February 2011

DEFENSE LEGAL SERVICES AGENCY
Operation and Maintenance, Defense-Wide
Fiscal Year (FY) 2012 President's Budget

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

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

	FY 2010 <u>Actuals</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2011 <u>Estimate</u>	Price <u>Change</u>	Program <u>Change</u>	FY 2012 <u>Estimate</u>
DLSA	128,753	958	-87,307	42,404	105	-5,142	37,367

* The FY 2010 Actual column includes \$87,581 thousand of FY 2010 Overseas Contingency Operations (OCO) Appropriations funding (P.L. 111-118).

* The FY 2011 Estimate column excludes \$120,469 thousand requested in the FY 2011 Defense-Wide OCO Budget Request.

* The FY 2011 Estimate column reflects the FY 2011 President's Budget request.

* The FY 2012 Estimate column excludes \$102,322 thousand requested in the FY 2012 Defense-Wide 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 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

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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 2011 to FY 2012: Price change increases total \$105 thousand. After considering the effects of inflation, the net program change is a decrease of \$-5,142 thousand.

Program decrease is in accordance with Secretary Gates' reform agenda to identify efficiency savings throughout the Department. The efficiency reduction is achievable through employee attrition. As attorneys leave the Agency, three of the positions will not be filled. Civilian personnel compensation will decrease by \$-102 thousand to account for the one less compensable work day. The program decrease of \$-1,987 thousand will decrease Management and Professional Support Services, in support of higher priorities.

II. Force Structure Summary: N/A

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III. Financial Summary (\$ in thousands)

	FY 2011							
	FY 2010 <u>Actuals</u>	Budget <u>Request</u>	<u>Congressional Action</u>			Current <u>Estimate</u>	FY 2012 <u>Estimate</u>	
			<u>Amount</u>	<u>Percent</u>	<u>Appropriated</u>			
A. BA Subactivities								
1. DLSA HQ	14,246	12,885	0	0	0	12,885	11,354	
2. DOHA	26,926	29,519	0	0	0	29,519	26,013	
3. OMC/HC	87,581	0	0	0	0	0	0	
Total	128,753	42,404	0	0	0	42,404	37,367	

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III. Financial Summary (\$ in thousands)

<u>B. Reconciliation Summary</u>	<u>Change</u> <u>FY 2011/FY 2011</u>	<u>Change</u> <u>FY 2011/FY 2012</u>
Baseline Funding	42,404	42,404
Congressional Adjustments (Distributed)		
Congressional Adjustments (Undistributed)		
Adjustments to Meet Congressional Intent		
Congressional Adjustments (General Provisions)		
Subtotal Appropriated Amount	42,404	
Fact-of-Life Changes (CY to CY Only)		
Subtotal Baseline Funding	42,404	
Anticipated Supplemental	120,469	
Reprogrammings		
Price Changes		105
Functional Transfers		
Program Changes		-5,142
Current Estimate	162,873	37,367
Less: Wartime Supplemental	-120,469	
Normalized Current Estimate	42,404	

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III. Financial Summary (\$ in thousands)

	Amount	Totals
C. Reconciliation of Increases and Decreases		
FY 2011 President's Budget Request (Amended, if applicable)		42,404
1. Congressional Adjustments		
a. Distributed Adjustments		
b. Undistributed Adjustments		
c. Adjustments to meet Congressional Intent		
d. General Provisions		
e. Congressional Earmarks		
FY 2011 Appropriated Amount		42,404
2. War-Related and Disaster Supplemental Appropriations		
3. Fact of Life Changes		
FY 2011 Baseline Funding		42,404
4. Reprogrammings (requiring 1415 Actions)		
Revised FY 2011 Estimate		
5. Less: Item 2, War-Related and Disaster Supplemental Appropriations; and Item 4, Reprogrammings, Iraq Freedom Fund Transfers		
FY 2011 Normalized Current Estimate		42,404
6. Price Change		105
7. Functional Transfers		
8. Program Increases		848
a. Annualization of New FY 2011 Program		
b. One-Time FY 2011 Increases		
c. Program Growth in FY 2012		
1) <u>Rent (non-GSA)</u> . Increase of \$842 thousand as an adjustment to realign proper object class from GSA rent to non-GSA rent. (FY 2011 baseline: \$62)	842	
2) <u>Supplies and Materials</u> . Increase of \$6 thousand to offset costs for supplies and materials. (FY 2011 baseline: \$77)	6	

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III. Financial Summary (\$ in thousands)

C. Reconciliation of Increases and Decreases	Amount	Totals
9. Program Decreases		
a. Annualization of FY 2011 Program Decreases		
b. One-Time FY 2011 Increases		
c. Program Decreases in FY 2012		-5,990
1) <u>Management & Professional Support Services</u> . Decrease of \$-1,987 thousand in management and professional support services to support higher priorities. This includes a reduction of DOHA support contract(\$-439) and a decrease in operating costs(\$-300), per Secretary of Defense Initiatives, as well as a decrease to align resources to the most critical priorities and eliminate lower priority functions (\$-1,248). (FY 2011 baseline: \$4,527)	-1,987	
2) <u>Compensable Work Days</u> . Decrease of \$-102 thousand in civilian personnel compensation for one less compensable work day.	-102	
3) <u>Manpower Adjustment, Civilian Pay Freeze</u> . Decrease of \$-2,250 thousand for the elimination of Civilian pay raise, elimination of 10 (ten) Full Time Equivalent (FTE), 1 (one) consultant, and manpower adjustment as part of the Department of Defense reform agenda to maintain, with limited exceptions, civilian staffing at the FY 2010 level. (FY 2011 baseline: \$34,741)	-2,250	
4) <u>Efficiency Reductions</u> . Decrease of \$-491 thousand efficiency reduction in accordance with the Secretary of Defense initiatives and internal realignments to adequately meet mission needs: Travel (\$-7), Communications (\$-35), Postal Services(\$-69), and other intra-government purchases (\$-380). (FY 2011 baseline: \$1,287)	-491	
5) <u>Pentagon Rent and Maintenance</u> . Decrease of \$-1,160 thousand in rent payments and maintenance adjustment to align proper object class. (FY 2011 baseline: \$1,212)	-1,160	
FY 2012 Budget Request		37,367

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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 DOHA is headquartered in Arlington, Virginia and maintains field offices in Boston, Massachusetts; Los Angeles, California; and Columbus, Ohio. The Director, Appeal Board, Administrative Judges, a small cadre of Security Specialists, the Claims Division, and Support Staff reside at headquarters.

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The Los Angeles office has Administrative Judges, Department Counsel and Support Staff. The Boston office has an Administrative Judge. The Columbus office has Security Specialists, an Attorney-Adviser, and Support Staff.

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 requirements of Executive Order 10865. Section 203 of Executive Order 12829 continues the process mandated by Executive Order 10865.

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IV. Performance Criteria and Evaluation Summary

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 DoD entity with experience providing a clearance applicant with the opportunity to appear personally as a regular part of due process.

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IV. Performance Criteria and Evaluation Summary

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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Claims Appeals Board workload is expected to maintain the same level of effort as in FY 2010. 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 2010.

Workload	<u>FY 2010</u> <u>Actuals</u>	<u>FY 2011</u> <u>Estimates</u>	<u>FY 2012</u> <u>Estimates</u>
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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VI. OP 32 Line Items as Applicable (\$ in thousands):

V. <u>Personnel Summary</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	Change <u>FY 2010/ FY 2011</u>	Change <u>FY 2011/ FY 2012</u>
<u>Active Military End Strength (E/S)</u> (Total)	135	206	206	71	0
Officer	70	114	114	44	0
Enlisted	65	92	92	27	0
<u>Civilian End Strength (Total)</u>	281	191	181	-90	-10
U.S. Direct Hire	281	191	181	-90	-10
<u>Active Military Average Strength (A/S)</u> (Total)	135	206	206	71	0
Officer	70	114	114	44	0
Enlisted	65	92	92	27	0
Civilian FTEs (Total)	230	191	181	-39	-10
U.S. Direct Hire	230	191	181	-39	-10
Average Annual Civilian Salary (\$ in thousands)	145*	143	143	-2	0
<u>Contractor FTEs (Total)</u>	35	35	35	0	0

*The FY 2010 Average Annual Civilian Salary reflects FY 2010 OCO Appropriations funding (P.L. 111-118)

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VI. OP 32 Line Items as Applicable (\$ in thousands):

<u>OP 32 Line</u>	FY 2010	Change		FY 2011	Change		FY 2012
	<u>Actuals*</u>	<u>FY 2010/FY 2011</u>	<u>Price</u>	<u>Program</u>	<u>Estimate</u>	<u>FY 2011/FY 2012</u>	<u>Estimate</u>
101 Exec, General & Specialty Schedules	43,802	219	-9,280	34,741	0	-2,352	32,389
107 Voluntary Separation Incentive Pay	50	0	-50	0	0	0	0
199 Total Civilian Compensation	43,852	219	-9,330	34,741	0	-2,352	32,389
308 Travel of Persons	3,165	44	-3,107	102	2	-7	97
672 Pentagon Reservation Maintenance	1,894	-423	-1,394	77	-8	-8	61
912 Rental Payments to GSA	6,304	88	-5,257	1,135	17	-1,152	0
914 Purchase Communications	498	7	-403	102	2	-35	69
915 Rents (non GSA)	260	4	-202	62	1	842	905
917 Postal Services	0	0	69	69	0	-69	0
920 Supplies/Materials	1,781	25	-1,729	77	1	6	84
921 Printing & Reproduction	11	0	76	87	1	0	88
922 Equipment Maintenance By Contract	312	4	-316	0	0	0	0
923 Facility Sustainment, Restoration, and Modernization by Contract	289	4	-293	0	0	0	0
925 Equipment Purchases by Contract	9	0	-9	0	0	0	0
932 Management & Professional Support Services	46,291	648	-42,412	4,527	68	-1,987	2,608
934 Engineering & Technical Services	6,298	88	-6,386	0	0	0	0
957 Other Costs (Land and Structures)	16	0	-16	0	0	0	0
987 Other Intra-Government Purchases	1,893	27	-906	1,014	15	-380	649
988 Grants/ subsidies, and Contributions	0	0	411	411	6	0	417
989 Other Services	15,880	223	-16,103	0	0	0	0
999 Total Other Purchases	79,842	1,118	-73,476	7,484	111	-2,775	4,820
Total	128,753	958	-87,307	42,404	105	-5,142	37,367

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