

Guidelines for the FY 2011 DoD Legislative Program

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

A. Proposals with Budget Implications: August 21, 2009.

- A proposal with budget implications is one that 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 meet 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.
- The above definition covers proposals that would generate new or recurring costs or savings. It also covers proposals that extend an authorization that is annually funded in the President's budget.
- OMB, with very few exceptions, will not clear a proposal with budget implications that is not included in the President's budget.
- All proposals identified as having budget implications must be reflected in the Component's FY 2011-FY 2015 Integrated Program and Budget submission.

B. Proposals without Budget Implications: September 14, 2009.

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

II. Deadlines for DoD to Submit Proposals to OMB

- A. Proposals with Budget Implications: September 25, 2009.
- B. Proposals without Budget Implications: October 30, 2009.

III. Determination of Budget Implications of Every Proposal

- A. For the Department to maintain control of future costs, it is essential that every legislative proposal with budget implications be identified at the beginning of the legislative cycle.
- B. To achieve this goal, the sponsoring component needs to expressly address all of the budget implications, including costs and savings, for each of its proposals. The sponsoring component needs to address the budget implications for a proposal whether or not the proposal qualifies as a budget proposal according to the above definition. For example, if a proposal has budget implications of less than \$500,000, the sponsoring component still must provide the information set forth below. If a proposal has no budgetary impact, the proposal should so state, along with the rationale for that determination.
- C. The sponsoring component should identify offsetting savings or the funding source to accompany the proposal (including appropriation, budget activity, and line item); OMB will not clear a budget proposal unless the proposal includes an explanation of how DoD is funding the proposal within the current topline (including appropriation, budget activity, and line item). Therefore, components should include funding for their budget proposals in their budget submissions to USD(Comptroller).
- D. Proposals that fail to adequately address their budget implications, including the information set forth below, will be returned to the sponsoring component for resubmission with the required information. OLC will not coordinate within the Department any proposal that fails to address its budget implications. In addition, OLC will not accept any proposal with budget implications that is submitted too late for inclusion in the President's budget.
- E. Each proposal should set forth the following elements:
 - the account from which the sponsoring component would fully fund the proposal, including the appropriation, budget activity, and line item from which it is being funded;
 - the Unified Legislative Budget (ULB) proposal number, if applicable;

- a five-year projection (FY 2011-FY 2015), with year-by-year costs or savings, for the entire Department of Defense, with a breakdown by military department where applicable, including confirmation that each military department will fund the proposal;
 - a five-year projection (FY 2011-FY 2015), with year-by-year estimates, of the number of personnel (both military and civilian) who would be affected by the proposal; and
 - the cost methodology used to calculate the above figures, including, as appropriate, an explanation of why a proposal that would increase spending authority would not generate increased topline.
- F. If one of the military departments proposes a new authority that would apply only to itself, the proposed authority may be expanded to apply to other military departments only if the other military departments provide the information specified above.
- G. Authorization provisions traditionally included in the NDAA “shell,” including multiyear procurement authorities, 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 Congress.

IV. Disposition of Proposals of Submitted Late

- A. The best way to maximize the chances of enactment by Congress is to submit proposed legislation by the deadlines detailed above.
- B. When circumstances make this impossible, the DoD component must explain the circumstances that prevented the submission of the proposal by the original submission deadline in a cover memorandum signed by the component head, with supporting documentation as necessary.
- C. For example, a DoD component may resubmit an Administration-cleared proposal that was adopted by the House of Representatives and/or the Senate, but then dropped during the NDAA conference. A component also may submit a new proposal drafted in response to a provision in the NDAA if the component provides a memorandum signed by its agency head which explains:

- how the proposal would address the NDAA provision;
 - the circumstances that prevented the submission of the proposal by the original submission deadline; and
 - why the proposal is essential for enactment in the current legislative cycle.
- D. 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 regarding whether to accept the proposal.
- E. If a component justifies the late submission of a proposal, OLC will expedite its coordination for possible incorporation in the NDAA bill to be delivered to Congress. If a component 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 specified above. OMB will not expedite its review of a proposal submitted after OLC's initial submission, thus hindering the possible incorporation of a late proposal into the NDAA bill.
- F. OLC will not accept a proposal submitted after OMB's final deadline for submissions unless the proposal is certified by the component head as essential for enactment in the FY 2011 legislative cycle.

V. Resubmissions

- A. A sponsoring component should provide a detailed justification for any proposal resubmitted from an earlier legislative cycle, including the year and proposal number of the prior submission and a description of any changes the component has made to the proposal.
- B. If the proposal as previously submitted was not approved by DoD or OMB, the sponsoring component should detail the adjustments made in response to the non-concurrences and any discussions with the non-concurring parties that have mitigated previous concerns.
- C. If the proposal as previously submitted was submitted to, but not adopted by Congress, the sponsoring component should articulate a convincing legislative strategy explaining why Congress will enact the proposal in this legislative cycle. Once accepted, a proposal previously cleared by OMB will be given a streamlined review by OMB.

- D. If a sponsoring component makes any changes to a proposal previously cleared by OMB, the component needs to provide a description of, and rationale for, the changes.

VI. Legislative Review Panel

- A. 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.
- B. The Legislative Review Panel (LRP) will convene periodically during the legislative cycle to identify and review DoD's top legislative priorities, including each of the components' top priorities, and recommend necessary changes to the 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 component will need to prioritize all of the proposals it submits to OLC.
- C. The LRP 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)

- A. Each proposal needs to be aligned with the President's agenda and the Department's priorities. To this end, the sponsoring component should explain in two to three sentences how the proposal meets at least one of the attached priorities.
- B. A proposal should be drafted for general application with broad authority to act. A proposal may neither limit the Secretary of Defense's authority to manage DoD nor create reporting requirements for DoD. Instead, DoD components are encouraged to submit legislative proposals that would repeal, modify, or consolidate existing Congressional reporting requirements.
- C. 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 a proposal includes unnecessary legislation, such a proposal 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.
- D. A section-by-section analysis must follow legislative language and be written in a style that would be understandable and persuasive to a layman (in many instances, a

poorly written analysis laden with specialists' language and acronyms will prevent a proposal from clearing 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.

- E. Each proposal needs to expressly address any and all budget implications, including new and recurring costs and savings. If a proposal has no budgetary impact, the proposal should so state, along with the assumptions behind that determination. A proposal that fails to adequately address its budget implications will be returned to the sponsoring component for resubmission with the required information. OLC will not coordinate within the Department any proposal that fails to address its budget implications. In addition, 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.
- F. Each sponsor must certify that the sponsor's own general counsel has reviewed, and the agency head has cleared, each proposal.
- G. Each sponsor must prioritize all of the proposals it submits to OLC. Each sponsor also must satisfy the Requirements for Submission listed below. OLC will return to the sponsoring component any proposal that fails to satisfy these requirements.
- H. Each sponsor needs to identify every proposal they submit to OLC as a placeholder, pending action on the provision in the FY 2010 NDAA. Following the passage of the FY 2010 NDAA, a sponsor may submit changes to its proposal in response to provisions included in the NDAA or withdraw its proposal.

VIII. Coordination Requirement

- A. The coordination process requires that all participants engage in full and frank discussions of legislative proposals.
- B. 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

- A. In the event that participants in the DoD Legislation Program are unable to resolve their 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 Legislative Review Panel, as appropriate.

- B. These position papers should be concise, persuasive, and limited to one page. Sponsors should rebut any objections which have been raised.
- C. In rendering a final decision, the DoD General Counsel will take into consideration whether a contesting party submitted a position paper.

Requirements for Submission of Legislative Proposals to OLC in the FY 2011 DoD Legislative Program

Every proposal submitted 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) The proposal must be authorized by a signed memorandum of the head of the sponsoring component.
- 2) The proposal must be submitted in MS Word.
- 3) The proposal must identify which Departmental priority it addresses.
- 4) The proposal must identify its ranks among all of the proposals submitted by the sponsoring component.
- 5) The proposal, if a resubmission from a previous legislative cycle, must identify that previous cycle, including the previous proposal number (which is available on the OLC Internet system).
- 6) The proposal, if a resubmission, must be accompanied by a resubmission justification as detailed above.
- 7) The proposal must expressly address all of its budget implications, including new or recurring costs and savings, and must supply the information listed above. If a proposal has no budgetary implications, the proposal should so state.
- 8) The portion of the proposal setting forth the proposed legislative language should be drafted in clear and concise legislative language and should include a title that describes what the proposal would accomplish.
- 9) The proposal must set forth after the legislative language a section-by-section analysis that is written in a style that would be understandable and persuasive to a layman.
- 10) The proposal, if it recommends changes to existing law, no matter how minor, must contain a line-in/line-out version of the existing law as it would appear after being amended by the proposal. The proposal should include the updated version of existing law, with the proposed changes highlighted via strikethroughs (for deleted language) and underlines (for proposed new language). If a proposal recommends only minor or isolated

changes, the sponsoring component may include only the portions of existing law being amended.

- 11) The proposal must include the name and contact information of a subject matter expert (SME) for the proposal.
- 12) The proposal must include the name and contact information for the reviewing attorney.