

An Overview of DoD's Legislation
Program

Department of Defense
Office of Legislative Counsel

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I. Introduction

Every year, the Department of Defense (DoD) considers hundreds of new legislative initiatives for inclusion in its annual Legislative Cycle presented to the Congress. Using a system designed and operated by the Department of Defense Office of Legislative Counsel (OLC), every year nearly 700 DoD employees participate in conceiving, drafting, and reviewing a broad array of legislative initiatives covering every aspect of DoD operations, including, but not limited to, the national strategic direction pertaining to the Global War on Terrorism, the development and procurement of major weapon systems, the acquisition of goods and services, military and civilian personnel policy, military justice, compensation, health care policy, DoD organization and management, finance, intelligence operations, policy matters relating to other nations, and military construction authorizations.

II. Role of the Office of Legislative Counsel

A. Views Letters

Periodically, the Chairman of the House or Senate Armed Services Committee requests that DoD review a bill and provide an official position, or “views” of the Department via a formal letter on the merits of the subject bill. Such a letter declaring DoD’s official position, or “views,” is commonly referred to as a “Views Letter.” OLC receives the requests for Departmental views letters and coordinates them with all concerned DoD components. Once a letter is drafted on a subject bill, OLC coordinates it within the Department, and then transmits it to OMB for interagency coordination and clearance. If DoD leadership determines that a letter on a bill should be sent to the Congress, OLC will prepare it for signature and then the Office of the Assistant Secretary of Defense for Legislative Affairs (ASD(LA)) will transmit it to the Hill.

B. Testimony

Congress frequently invites DoD leaders to testify before various committees and subcommittees. Because the subject of the testimony often crosses jurisdictional boundaries with other DoD components and government agencies, once again extensive coordination is required to ensure that DoD, and ultimately the entire Administration, speak with one voice. OLC facilitates this process.

As soon as a DoD official learns that he will testify before Congress, his staff should notify OLC. The DoD official often will seek to present a prepared statement at the congressional hearing. In such event, the DoD official must send the draft prepared statement to OLC at the earliest opportunity, preferably at least 3 days prior to the hearing. Simultaneously, the Directorate for Freedom of Information and Security Review inspects the draft testimony to ensure it does not inadvertently compromise classified or otherwise protected non-public information. This process commonly is referred to as receiving “security review.” Additionally, the same office coordinates the draft prepared statement with all concerned and interested parties in DoD. Following receipt of security review clearance, OLC forwards the draft testimony to OMB if mandated by OMB directives. OMB coordinates the testimony throughout the Executive Branch and, as appropriate, gives DoD clearance to present the prepared statement during the congressional hearing.

C. Hearings

Starting in February of each year, the House and Senate Armed Services Committees hold hearings on the transmitted and completed draft version of the National Defense Authorization bill. The hearings are designed to facilitate each committee’s work, the final product of which is the annual defense authorization bill. The Committees normally invite the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Secretaries of the Military Departments, senior military leaders, and other DoD officials, to testify concerning DoD’s proposed legislative initiatives. The ASD(LA) supervises hearing preparation for all DoD officials, providing recommendations concerning strategy and administrative support. As described earlier in this document,

OLC also plays a pivotal role facilitating OMB clearance of all prospective and relevant DoD testimony.

D. Liaison with the Office of Management and Budget (OMB)

OLC also functions as the primary liaison with the Office of Management and Budget (OMB) concerning DoD legislation. OMB's function is nearly identical to OLC's role described above, but with one key difference: while OLC strives to achieve consensus throughout DoD, OMB ensures that proposal legislation is acceptable to Federal Departments and Agencies in the Executive Branch and that it embodies the Administration's Policy objectives. This process in its entirety guarantees appropriate review and consideration of legislative proposals, ensuring that the Administration speaks with one voice. Only upon completion of this interagency coordination process does OMB give DoD clearance to forward legislation to the Congress.

E. Congressional Relations

The ASD(LA) is responsible for managing all DoD interaction with the Congress. Working with all concerned parties in DoD, the ASD(LA) arranges briefings with members of Congress and their staffs; assists DoD principals called to testify at Congressional hearings; and generally develops tactics and strategies to persuade the Congress to include each proposal in the DoD Legislation Program in the final version of the annual National Defense Authorization bill to be signed into law by the President. OLC supports ASD(LA) by providing legal, technical, and occasional political counsel regarding DoD's individual legislative provisions. The Director of OLC also serves as the legal advisor to the ASD(LA), under the Deputy General Counsel (Legal Counsel) on behalf of the General Counsel and Principal Deputy General Counsel of the Department of Defense, on issues affecting the ASD(LA).

F. Legislative Program

Hundreds of DoD employees participate in conceiving, drafting, and reviewing a myriad of legislative initiatives covering every aspect of DoD operations. OLC's mission is to ensure that DoD leadership has endorsed the submission of a proposal, and that

proposals are properly drafted, fully coordinated within DoD, and successfully coordinated in the OMB interagency process. Most importantly, all DoD-proposed legislation must advance the President's and the Secretary of Defense's agenda. To this end, OLC conducts research and analysis; perfects draft statutory and explanatory language; shares information and comments; offers education regarding specific administrative requirements and the legislative process; facilitates resolution of disparate positions; and, in partnership with the Assistant Secretary of Defense for Legislative Affairs, presents possible political concerns to DoD leadership for review.

G. Transparency and Accountability

Because DoD is comprised of roughly 2.9 million people spread through multiple Military Departments, Defense Agencies, and Field Offices, it executes an annual budget which exceeds \$450 billion. Transparency of the DoD coordination process concerning all legislative initiatives is an indispensable feature of a successful Legislation Program. OLC strives to keep all participants informed of important developments.

H. Annual Call Memo

To initiate the annual legislative cycle, a Call Memorandum -- or a memo calling for the submission of legislative proposals to OLC -- is issued. The details and requirements of the Legislation Program are set out in the Call Memo, which include a list of the Department's subject legislative priorities, timelines for submission and comment, drafting guidelines, and OMB guidance.

I. OLC Internet-Based Computer System

OLC manages and operates an Internet-based computer system that fosters transparency and accountability regarding every DoD legislative proposal. Despite numerous new inputs on any given day, the OLC staff places a premium on ensuring that all new information is available on the system in a timely fashion. What follows is a very brief explanation of how the system operates.

With the concurrence of their respective chains-of-command, new participants in the DoD Legislation Program apply for an OLC account that will give them access to the

system. Once individual accounts are approved and activated by OLC, participants may view every legislative proposal presently under consideration, as well as copies of related documents and comments of concerned and interested parties. For example, if the Air Force has offered a new proposal concerning a reenlistment bonus for airmen with particular qualifications, participants in the system could log in to see the actual proposal and the Air Force's justification of the same. Additionally, participants likely would see comments regarding the proposal from Navy, Army, the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), and the Under Secretary of Defense (Comptroller), among others. Should one or more of these Military Departments, Under Secretaries, or other concerned parties disagree with the Air Force's proposal, the opposing party is required to specify the reason for disagreement in writing using the OLC computer system.

Once a non-concurring comment is posted on the system, it is forwarded to the sponsor of the proposal for review and comment. OLC will attempt to either assist in the revision of the proposal so that it can become acceptable to the non-concurring agency, or attempt remediation between the sponsor and that agency in order to determine whether there is adequate justification for the proposal to go forward. Ultimately, if resolution cannot be achieved, both parties will submit memos signed by their principals explaining why the proposal should or should not go forward. If a proposal can transit the entire course of the coordination process without a serious non-concurrence, it is judged to enjoy Departmental support and can be forwarded to OMB as a "DoD legislative proposal."

All participants may view and partake in the debate, and dissenters may not thwart proposals in secret. Through this process the twin goals of transparency and accountability are promoted. In sum, the OLC computer system serves as a hub of information, allowing each participant in the DoD Legislation Program to keep abreast of all significant developments regarding every legislative proposal.

J. The Coordination Process

Legislative proposals are categorized as budgetary or non-budgetary proposals, and the commencement of their coordination and clearance depends on this distinction. On July 7, DoD components are required to submit all budgetary proposals to OLC for department clearance and coordination; all non-budgetary proposals must be submitted to OLC by August 7th.

OLC then determines whether a proposal meets all mandatory criteria. Once legislative requirements are satisfied, the proposal is then formally included in the DoD Legislation Program by assigning it an OLC designator number. The proposal is then posted on the OLC Internet computer system for circulation, during which time participants have the chance to review and comment. The opportunity for non-sponsoring participants to review and comment on proposals commonly is referred to as the “coordination” process. Given the enormous size of DoD, it is not surprising that proper, thorough coordination of new legislative proposals takes time. Although coordination sometimes seems cumbersome, OLC considers the process absolutely indispensable because it allows essential vetting of a proposal by tapping the deep reservoir of knowledge and talent that exists within DoD. In such a large organization the identification of both consistent and conflicting equities embodied by proposed legislation is impossible without thorough coordination and the commentary it provides; it grants DoD components the ability to know what the other is doing, and either concur or object as the situation requires. Successful coordination ensures a proposal is appropriate, necessary, and consistent in its impact and implications for all of DoD, while safeguarding against the circumstance in which one segment of the Department may undermine another part via proposed legislation. Once OLC initiates the coordination process, a failure to respond by the specified deadline constitutes a “no comment.”

K. Resolution of Disparate Positions

When a participant in the coordination process objects to a proposal or raises significant concerns, OLC urges and facilitates, as necessary, a meeting between the participant and the sponsor of the proposal to resolve their differences. If a stalemate should ensue, the DoD General Counsel serves as an arbiter. The contesting parties must

set forth their respective positions in writing to the DoD General Counsel. Each position paper must be concise, persuasive, limited to one page, and signed by the leader of the respective contesting parties. The DoD General Counsel's decision is final and not subject to appeal.

L. Review by the DoD General Counsel

After OLC completes the coordination process, OLC presents selected proposals to the Legislative Review Panel (LRP). The LRP, comprised of senior-level DoD members, is assigned the tasks of reviewing proposals and recommending necessary changes to the Deputy Secretary of Defense for final approval before transmission to OMB and Congress. This group ensures accurate reflection of the Secretary's priorities in the National Defense Authorization bill and provides the means through which departmental priorities are recognized. If DoD General Counsel is satisfied that a proposal meets all mandatory Legislation Program criteria, and the proposal otherwise is unobjectionable, he authorizes OLC to send it to OMB for review. If he is not satisfied with a proposal, he may choose to require a revised draft; direct further coordination and legal review; or to remove the proposal from the Legislation Program.

M. Partnership with the Office of Legislative Affairs

OLC and the Office of the Assistant Secretary of Defense for Legislative Affairs have a critical partnership that ensures that all of the proposed legislation advances the President's and the Secretary of Defense's agenda. The Assistant Secretary of Defense for Legislative Affairs is responsible for managing all DoD interaction with Congress. Working with all concerned parties in DoD, the ASD(LA) arranges briefings with members of Congress and their staffs; assists DoD principals called to testify at Congressional hearings; and generally develops tactics and strategy to persuade the Congress to include each proposal in the DoD Legislation Program in the final version of the annual National Defense Authorization bill to be signed into law by the President. OLC supports ASD(LA) by providing legal, technical, and general counsel regarding DoD's individual legislative provisions. In turn, the ASD(LA) provides OLC with valued Congressional input on proposals to help ensure successful passage with

Congress. Moreover, the OLC Director serves the important role as legal advisor to the ASD(LA), which further adds to their partnership.

N. Partnership with the Under Secretary of Defense (Comptroller)

OLC and the Under Secretary of Defense (Comptroller) (USD(C)) have a critical partnership that ensures that proposed legislation is aligned with the President's and the Secretary of Defense's budgets. USD(C) provides OLC with budgetary input on proposals to ensure their fiscal impact does not adversely affect the Department.

O. The Role of the Unified Legislation and Budgeting Process (ULB)

Many policy-related legislative proposals that have cost implications also involve personnel matters. Such issues fall squarely within the purview of USD(P&R). In order to identify and evaluate such legislative proposals, the USD(P&R) has established a formal procedure -- the Unified Legislation and Budgeting (ULB) process. The ULB is comprised of representatives from components throughout DoD who have major equities in personnel policy. Each year the ULB meets in December and June to review new legislative initiatives and vote on which ones to pursue.

It is important to recognize, however, that the mere fact that an initiative was approved by the ULB does not guarantee it will be forwarded to OMB as a Department proposal. The converse also holds true: a personnel-related proposal which does not go through the ULB process is not necessarily precluded from being transmitted to OMB. There are many proposals which are generated from the field and the Combatant Commands which fall into this category. As one would expect, however, great deference is given to P&R on all matters pertaining to personnel.

III. Obtaining OMB Clearance

OLC is the primary liaison between OMB and DoD legislative concerns. OLC forwards each new legislative proposal to OMB and requests official Administration "clearance" -- that is, approval to send the proposal to Congress as an official legislative

initiative of the President and his Administration. Budgetary proposals are sent to OMB on August 21 and non-budgetary are sent on October 9. Before OMB determines whether to clear a proposal, it forwards each proposal to interested parties throughout the Executive Branch for review and comment. The goal is straightforward: OMB must ensure the entire Administration speaks with only one voice.

A. OMB Coordination

The OMB interagency coordination process is very similar to the coordination process DoD follows, as indicated earlier in this document. Where OLC strives to achieve consensus throughout DoD, OMB strives to achieve consensus throughout the Executive Branch. Other Federal Agencies may require time to provide comments. No one is authorized to contact other agencies without specific approval from OLC, which remains the primary liaison with OMB to articulate DoD concerns and to monitor the status of proposals; reaching Administration consensus is sometimes a competitive process and it is important that the Department project a thoughtful and united consensus on its proposed legislation upon inquiries from other Federal agencies. If another agency objects to a DoD proposal, OLC immediately notifies the sponsor and initiates efforts to resolve the issue. OLC and OMB work together to ensure the opposing parties meet or otherwise discuss their differences.

B. OMB Review and Decision

Following completion of the interagency coordination process, OMB reviews each proposal, including DoD's justification (as stated in the section-by-section analysis) and the comments and concerns provided by other interested Federal Agencies. OMB then conducts its own analysis to ensure the proposal is consistent with the President's agenda, does not interfere with other Administration legislative priorities, and is feasible in terms of its costs. OMB renders a decision in one of three ways:

- **Approval:** OMB informs OLC that DoD may submit the proposal to Congress as it was submitted.

- **Approval as modified:** OMB revises the proposal and informs OLC that DoD may submit the modified proposal to Congress.
- **Disapproval:** OMB informs OLC that DoD may not submit the proposal to Congress because it is inconsistent with the Administration's legislative agenda.

Should the sponsor disagree with OMB's decision to modify or disapprove, the sponsor may appeal. This decision belongs exclusively to either the senior leader of the sponsor's component (e.g., the decision to appeal an Army proposal lies with the Secretary of the Army, not an Assistant Secretary or other high-level employee of the Department of the Army). Such appeals are reserved for only the most critical, top priority proposals. Also, the DoD General Counsel can weigh in on the propriety of submitting an appeal to OMB. OMB decisions are final, and can only be reconsidered in extraordinary circumstances.

Once OMB renders a decision on each proposal, they are sent back to OLC for final review before compilation of the National Defense Authorization bill. OLC receives the initial OMB budgetary proposal pass-backs on October 30, with OMB non-budgetary proposals following on November 29.

IV. Interaction with the Congress

The ASD(LA) is responsible for maintaining liaison and relationships with members of Congress. As a rule, all DoD employees must consult ASD(LA) before briefing members of Congress or their staff on any topic, including proposed legislation. With regard to the annual DoD Legislation Program, ASD(LA) plays an instrumental role from the outset in assisting the Secretary of Defense to identify top priorities, shaping overall strategy, and providing keen insight regarding specific tactics. Before OMB clears a particular DoD legislative proposal, DoD employees may not discuss specifics of that proposal with Congress absent express authority from OMB, ASD(LA), and OLC.

After OMB provides clearance, DoD employees may discuss the matter with members of Congress and their staff, consistent with ASD(LA)'s guidance.

A. Markup

Once DoD submits its draft version of the National Defense Authorization bill to Congress, the bill is referred to the House and Senate Armed Services Committees for action. The Armed Services subcommittees work on the portions of the bill that fall under their subject matter jurisdiction. Each subcommittee chairman prepares a "mark" (i.e., draft) which forms the basis for the subcommittee's portion of the overall bill. The mark includes proposals provided by the chairman, subcommittee members, and DoD. During the "markup," subcommittee members may propose amendments, which the entire subcommittee will approve or disapprove. The subcommittee then votes to send the finished product to the full committee for inclusion in the overall bill. During the full committee markup, committee members may propose additional amendments. The full committee then votes separately to include the portion drafted by each subcommittee in the authorization bill. After approving each portion, the full committee votes to approve the entire bill and send it to the full House or Senate for action.

B. Statement of Administration Policy (SAP)

Before the full House or Senate acts on its own version of the bill, the Administration sends a Statement of Administration Policy (SAP) that provides the Administration's positions on the major provisions either left out of or incorporated into the respective House and Senate bills. OLC prepares the initial draft of the SAP after soliciting input from the other offices in the Office of the Secretary of Defense (OSD). OLC then works with ASD(LA) to refine the initial draft, which is then coordinated throughout DoD to incorporate all significant agency comments into the SAP at the highest levels of the Department. When DoD leadership reaches consensus on the Department's draft language for Executive Branch consideration, and following final approval by the Secretary of Defense, OLC forwards the draft SAP to OMB for coordination and White House review. OMB and DoD work together to refine the language and identify which provisions to include in the SAP. OMB then sends the SAP

to the White House for final coordination and approval. In the event a bill contains one or more provisions that the Administration strongly opposes, OMB may authorize language in the SAP stating that the President's senior advisors will recommend that he veto the bill if the offending provisions are not removed.

C. Conference Committee

The House and Senate usually appoint a Conference Committee to resolve differences between the two versions of the bill. After completing the compromised bill, the conferees prepare a report that describes their action on each provision passed by the House and Senate.

D. Secretary of Defense Heartburn Letter

Before the House and Senate conferees meet, the Secretary of Defense often sends the committee a letter (termed the "heartburn" letter) in which he states his opposition to or support for major provisions of the bills. OLC prepares the initial draft of the heartburn letter after soliciting input from the other offices in OSD. OLC then works with ASD(LA) to refine the initial draft, which is then coordinated with the highest levels of the Department. Upon the Secretary of Defense's final revisions and approval, OLC forwards the letter to OMB for appropriate review and final Administration clearance. With OMB approval, the letter may recommend a veto if the final bill contains one or more provisions that the Secretary of Defense and the Administration strongly oppose.

E. Conference Committee Action and Final Floor Votes

Because the House and Senate invariably pass different versions of the defense authorization bill, they usually appoint a Conference Committee to resolve differences between the two versions. The leaders of the House and Senate appoint the Conferees, who normally include most members of the respective Armed Services Committees. Once appointed, the conferees meet -- sometimes in public, sometimes in private -- to negotiate a final, compromise bill. Upon completion of the compromise bill, the conferees prepare a report that describes their action on each provision passed by the House and Senate. The conferees send the final, compromise bill back to the House and

Senate where each body holds a vote to approve or reject it without amendment. If either body rejects the bill, the conferees must reconvene and prepare a new version of the bill. Once the House and Senate pass the same version of the defense authorization bill, they send it to the President for signature.

F. Enrolled Bill Letter

Before the President decides whether to sign the bill, DoD prepares an “enrolled bill letter” which advises the President whether he should sign or veto the bill.

G. President’s Signing Statement

When the President signs a major bill -- such as the defense authorization bill -- into law, he often issues an official statement emphasizing provisions in the bill that he supports or opposes. This “signing statement” also might describe and record the President’s interpretation of certain provisions, including provisions with potential constitutional implications. Generally, preparation of a Presidential signing statement concerning the defense authorization bill follows the same process concerning SAPs and “heartburn” letters.

H. The Defense Authorization Bill Becomes Law

If the President has no objections to the defense authorization bill as enacted by the Congress that merit a veto, he signs it, making it the law of the land. If he does not favor the bill, he may elect to veto it, sending it back to Congress for further consideration or a possible veto override vote. In most circumstances, the President and his team, including key DoD advisors, resolve the most serious differences beforehand, so the President can sign the bill as he receives it from the Congress. The signed defense authorization bill officially becomes the National Defense Authorization Act (NDAA) for the applicable fiscal year. Many of the individual provisions of the Act are incorporated in the United States Code. Most, but certainly not all, Federal statutes governing DoD may be found in title 10, United States Code, “Armed Forces.”

V. Conclusion

Hopefully, you found this summary enlightening and useful, and will endeavor to keep it as a future reference aid. Whenever a question arises, please do not hesitate to contact my office -- the Office of Legislative Counsel stands by ready to assist you.

Christian P. Marrone
Director