

OLC Guidelines for Preparation of Legislative Proposals for the Fiscal Year 2012 DoD Legislative Program

I. TIMELINE FOR DOD LEGISLATIVE PROGRAM:

August 1, 2010	<i>Deadline for submission of proposals by DoD components to the Office of Legislative Counsel for consideration in the FY 2012 NDAA legislative cycle.</i>
October 1, 2010	<i>Deadline for completion of internal coordination of all DoD proposals and submission of cleared proposals to OMB.</i>
December 31, 2010	<i>OMB will not accept any DoD proposals after this point for the FY 2012 NDAA legislative cycle.</i>

All legislative proposals for the FY 2012 NDAA legislative cycle must be submitted to the Office of Legislative Counsel (OLC) by August 1, 2010. Each proposal, whether or not it has budgetary implications, must be submitted by this date. Any proposal submitted after this date will be considered late and subject to the process set forth in the memo on the disposition of late submissions.

Please note that any authorization provision traditionally included in either the NDAA “shell” or the MilCon “shell” – including a request for multiyear procurement authority, a request for new use of unobligated funds, and a request to extend the use of funds beyond the current fiscal year – must be submitted to the OLC as a regular legislative proposal by the above date. Any such provision submitted only as part of the “shell” (which will not be submitted to OLC until several months after the above deadline) will be subject to the process for the disposition of proposals that are submitted late. However, this requirement does not apply to the recurring, core provisions of either shell, those that authorize appropriations for regular Department of Defense accounts or prescribe military personnel strengths.

II. DETERMINATION OF BUDGET IMPLICATIONS FOR EVERY PROPOSAL:

In order to implement the Secretary of Defense’s strategic priority to foster a “culture of savings” throughout the Department, each DoD component -- as part of their preparation of legislative proposals for FY 2012 -- will take a hard, unsparing look at how it operates and submit proposals that would eliminate programs within its purview that are no longer essential, combine similar existing authorities, allow for a more efficient execution of existing authorities, or otherwise reduce overhead costs and produce savings that can be used for force structure and modernization within the programmed budget.

For the Department to maintain control of future costs, it is essential that every legislative proposal with budget implications (1) be identified at the beginning of the legislative cycle, and (2) be submitted on time. To achieve this, the sponsoring component must expressly address all of the budget implications, including specific costs and savings, for each proposal it submits.

The sponsoring component must address the budget implications of a proposal, whether or not the proposal has a budgetary implication. For example, if a proposal has no budgetary impact, the proposal should so state, along with stating the rationale for that determination. If a proposal has a budgetary impact, the sponsoring component must identify the specific funding costs and source to accompany the proposal (including appropriation, budget activity, and line item).

The proposal needs to include an explanation of how the component proposes to fund the proposal (including appropriation, budget activity, and line item). Components should also be aware that, if a proposal has budgetary implications, OMB, with very few exceptions, will not clear the proposal unless it is consistent with the President's budget.

Components should include five-year funding information for each proposal. Additionally, each proposal identified as having budget implications must be reflected in the component's FY 2012-FY 2016 Integrated Program and Budget submission to USD(Comptroller) (USD(C)).

The USD(C) will assess the Pay-As-You-Go (or PAYGO) effects and budget implications of each legislative proposal. USD(C) will work with the sponsoring component comptrollers to determine whether a given proposal is funded in the President's budget. USD(C) requires the identification of the budget implications of all proposals by Labor Day, September 6, 2010. As a result, OLC will not accept any proposal after that date unless USD(C) already has assessed the proposal's budget implications.

Each proposal should set forth the following budgetary impact elements:

- The account from which the sponsoring component would fund the specific costs for the proposal, including the appropriation, budget activity, and line item from which the proposal would be funded (note that components should identify the exact cost of the proposal, not simply identify the total amount of the relevant line item).
- The Unified Legislative Budget (ULB) proposal number, if applicable.
- A five-year projection (FY 2012-FY 2016), 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 specific costs for the proposal.
- A five-year projection (FY 2012-FY 2016), with year-by-year estimates, of the specific number of personnel (both military and civilian) who would be affected by the proposal.
- 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 an increased topline.

If one of the military departments submits a proposal that, as proposed, would apply only to that military department, the proposal may be expanded to apply to another military department only if the other military department provides the information specified above.

III. RESUBMISSIONS:

A sponsoring component should provide a detailed justification for any proposal resubmitted from an earlier legislative cycle, including the fiscal year(s) for which the proposal was submitted, the proposal number(s) of the prior submission(s), and a description of any changes the component has made to the proposal.

If the proposal as previously submitted was not approved by either DoD or OMB, the sponsoring component should describe in detail the changes that have been made in response to the previous non-concurrences and any discussions with the non-concurring parties that have mitigated the prior concerns.

Congress has informed DoD that they do not want to receive the same proposals that they have rejected over and over. Therefore, if the proposal was previously submitted to Congress, but not adopted by it, the sponsoring component should articulate a convincing legislative strategy explaining what has changed – specifically including how the proposal has been altered, what issues Congress raised in objection to the proposal, and why Congress could be expected to enact the proposal in this legislative cycle.

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

IV. GENERAL LEGISLATIVE DRAFTING GUIDELINES:

(for specific submission requirements, see separate Proposal Checklist)

- Each proposal needs to be aligned with the President’s agenda and the Department’s priorities. To this end, the sponsoring component should list the priority (or priorities) that the proposal addresses and also explain in two to three sentences how the proposal furthers priority or priorities.
- Each sponsoring component must prioritize each proposal it submits to OLC in terms of its relative priority with respect to all the other proposals submitted by that component. For example, if the component submits 15 proposals, it must prioritize each proposal as 1 of 15, 5 of 15, 15 of 15, etc. It is not sufficient to state that all of the proposals are priorities. Additionally, the component must specifically identify each of its proposals that is a “must have,” i.e., the proposal **must** be enacted during the FY12 cycle. If helpful, a component may consider placing its proposals into four categories, such as identifying each proposal as one which: (a) must be enacted this cycle; (b) would be helpful if enacted this cycle; (c) would be helpful, but does not meet immediate needs; or (d) would be a helpful addition, but is not realistic in the current cycle. A proposal that fails to adequately address its priority among its sponsor’s submissions and whether it is a “must have” proposal will be returned to the sponsoring component for resubmission with the required information. The Legislative Review Panel will use this information to determine the Department’s priority proposals.
- The legislative language of a proposal should be drafted for general application with broad authority to act. A proposal may not limit the Secretary of Defense’s authority to manage DoD, nor may it create a new reporting requirement for DoD.

- Instead, as part of the Secretary of Defense's initiative to streamline and promote efficiencies in the Congressional Reporting Requirement process, DoD components will review all existing reporting requirements and submit legislative proposals that would repeal out-of-date reporting requirements, combine similar existing requirements, allow a more efficient preparation of existing reports, or otherwise reduce the administrative burden on the Department.
- 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.
- A section-by-section analysis must follow the legislative language and be written in a style that would be understandable and persuasive to a layman. In many instances, a poorly written analysis loaded with technical language and acronyms will prevent a proposal from clearing DoD or OMB coordination. Each analysis needs to be clear, concise, and convincing. At a minimum, it should set out -- in as much detail as is necessary -- the factual and legal problems that require the legislative change, describe the proposed changes, and explain the beneficial consequences of these changes.
- As stated above, each proposal needs to expressly address any and all budget implications, including new and recurring costs and savings. An assertion that a proposal will not cost more than last year does not absolve the need to provide all budgetary information. USD(C) will work with the comptroller of the sponsoring component to address the budgetary information required for each proposal.
- The sponsoring component for each proposal must certify that the component's own general counsel has reviewed, and the agency head has cleared, each proposal. Please note that this is not an attorney from the Office of Legislative Counsel, but the component's own counsel.
- Each sponsoring component also must include all elements of the Proposal Checklist. OLC will return to the sponsoring component any proposal that fails to meet these requirements.
- If a sponsoring component submits to OLC a placeholder proposal, pending action on a provision in the FY 2011 NDAA, the sponsoring component shall identify it as a placeholder in its initial submission. Following the passage of the FY 2011 NDAA, a sponsor may submit changes to its proposal in response to provisions included in the NDAA or withdraw its proposal.

V. COORDINATION REQUIREMENT; RESOLUTION OF UNRESOLVED DIFFERENCES:

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. Accordingly, sponsors should monitor comments posted regarding their proposals and address any concerns raised.

If participants in the DoD Legislation Program are unable through the coordination process to resolve differences regarding a proposal, OLC may ask the differing components to set forth their respective positions in writing. These position papers should be concise, persuasive, and limited to one page. The sponsoring component should rebut any objections that have been raised. The information submitted will be reviewed by the Legislative Review Panel (LRP), in consultation with the DoD General Counsel, as appropriate. In rendering a final decision on the proposal, the LRP will take into consideration whether a component contesting the proposal submitted a position paper.