

## **OLC Guidelines for Preparation of Legislative Proposals for the Fiscal Year 2014 DoD Legislative Program**

### **I. TIMELINE AND REVIEW PROCESS FOR DOD LEGISLATIVE PROGRAM:**

As directed by the Deputy Secretary of Defense in his memorandum of July 5, 2014, captioned “Call for Legislative Proposals for FY 2014” (generally known as the “Call Memo”), all legislative proposals for the Fiscal Year (FY) 2014 legislative cycle must be submitted to the Office of Legislative Counsel (OLC) by August 6, 2012. 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. The full timeline for the FY 2014 DoD legislative program is set forth in the accompanying document captioned “Timeline for FY 2014 DoD Legislative Program.”

To reiterate the long-standing Department policy on the submission of legislative proposals to Congress, legislative proposals from any element of the Department for FY 2014 must be coordinated through the DoD legislative program. Further, any DoD legislative proposal may be transmitted to Congress only by the Assistant Secretary of Defense for Legislative Affairs. The transmittal of a legislative proposal outside of the legislative program is unauthorized. If any legislative proposal initiated in the Department subsequently appears in a congressional bill or is otherwise circulated on the Hill without having been cleared through the legislative program, the Deputy Secretary of Defense will expect an explanation from the head of the responsible component. A component responsible for any such unauthorized transmittal should also be aware that the Department may state its opposition to the proposal in communications with Congress.

Each proposal submitted by the military departments, the combatant commands, and other components outside of the Office of the Secretary of Defense (OSD) will be specifically reviewed by the OSD component with the responsibility for the issue involved to ensure the proposal aligns with OSD priorities. OSD components will have a set period of time in which to review and render an opinion on each proposal. A non-OSD proposal will not move forward without the affirmative support of the relevant OSD component, so it is in the best interest of non-OSD components to work with the relevant OSD component prior to the submission of a proposal to OLC.

Each year, components submit a significant number of legislative proposals designed to encourage building partnership capacity (BPC). The significant increase in the number of such proposals, as well as the establishment of the Global Security Contingency Fund in the FY 2012 National Defense Authorization Act (NDAA), led the House Committee on Armed Services, in its report to accompany the FY 2013 NDAA, to state that it “does not support, at this time, the extension of temporary authorities that could be covered by the [Global Security Contingency Fund]” and that the “committee will not favorably consider any new requests for building partnership capacity authorities in a unique, stand-alone provision at this time.” Because of the proliferation of requests for authorities and the need to prioritize the efforts of the Department with respect to BPC proposals, the Deputy Secretary of Defense directed the Director of Cost Assessment and Program Evaluation (CAPE) to conduct a strategic portfolio review to clarify the resource and authorities baselines, establish context for new BPC proposals, and discuss

mechanisms for prioritizing BPC activities. Therefore, concepts for BPC proposals for the FY 2014 cycle should align with the findings of CAPE’s strategic portfolio review to the maximum extent possible.

Please note that any authorization provision that has traditionally been included in either the NDAA “shell” or the Military Construction “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 OLC as a regular legislative proposal by the above date. Any such provision submitted only as part of one of the “shells” (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 either authorize appropriations for regular Department of Defense accounts or prescribe military personnel strengths.

Lastly, the Legislative Review Panel (LRP) will enforce firm deadlines (both for the submission of proposals and for budget information) to ensure that only proposals submitted in response to actual exigencies or unforeseeable needs are accepted late. A sponsoring component’s failure to identify an issue or a needed extension of expiring authority is neither an actual exigency nor an unforeseeable need.

## **II. REQUIRED ELEMENTS OF A PROPOSAL:**

A component sponsoring a proposal must ensure that the proposal includes all of the required elements at the time of the submission of the proposal to OLC.

The first section of the proposal should set forth the proposed legislative language. This language should be drafted to achieve the desired policy objective in clear and concise sentences. The proposed text should include a descriptive title of what the proposal substantively accomplishes (e.g., “TWO-YEAR EXTENSION OF ABC PROGRAM”, not “AMENDMENT OF XYZ ACT”) at the beginning of that section. In drafting the legislative language, use previous NDAs as enacted into law as a reference on how to draft a potential amendment to an existing law and review the accompanying “Office of Legislative Counsel Guidance for Drafting Legislative Text for Proposals for the Annual NDAA” document.

The second section of the proposal is the section-by-section analysis. This section should summarize what the proposal would accomplish, explain the problem the proposal is designed to solve, elucidate, if not obvious, why a legislative solution is needed, describe the changes proposed to address the problem, and explain the consequences of these changes. If the proposal amends an existing law, this section should briefly describe the current law before it describes how the proposal would change that law. In this section, a component should avoid jargon and program-specific language and spell out each acronym the first time it is used. Write this section so that it would be understandable by a layman not familiar with the proposal or the policy background affected by the proposal. The sectional should be drafted to persuade the reader of the need for the proposed change. In particular, this analysis should include any information from sections four and five (below) that the sponsoring component believes would be of use to

Congress (since sections four and five will not be included in the proposal as transmitted to Congress).

The third section is the budget implications section. Each proposal must have a budget table as outlined more fully in Section III below. Please note that all budgetary implications of the proposal must be identified and included in the proposal. If a proposal has no budgetary implications, the sponsoring component must explain why that is so. If the component had submitted the proposal to the Unified Legislation and Budgeting (ULB) process, the component also should identify the ULB Proposal Number; otherwise, the proposal should state this is not applicable.

The fourth section is the Departmental priorities section. Legislative proposals transmitted to Congress for FY 2014 must be consistent with the strategic approach described in the Secretary of Defense's 2012 strategic guidance for the Department. Therefore, for each proposal the component must identify which of the priorities set forth in the Defense Strategic Guidance, "Sustaining U.S. Global Leadership: Priorities for 21st Century Defense" (January 5, 2012) the proposal is intended to address. Additionally, the component must prioritize each proposal relative to all of the other proposals submitted by that component (i.e., 1 of 15, 5 of 15, 15 of 15, etc.). Lastly, the component should identify whether the proposal is a "must have" proposal (i.e., it must be enacted in the FY 2014 cycle). If helpful, a sponsoring component may consider placing its proposals into three categories — proposals which (a) must be enacted this cycle; (b) would be helpful if enacted this cycle; or (c) would be helpful but do not address immediate needs.

The fifth section provides the justification for a resubmitted proposal. If a proposal was previously submitted to the OLC process for a prior NDAA cycle, the component should identify the cycle(s) in which the proposal was previously submitted and the proposal number (available on the OLC website) from the most recent cycle in which the proposal was submitted. In addition, the component must identify the outcome when the proposal was previously submitted and any barriers that were encountered (internal DoD non-concurrence, Office of Management and Budget (OMB) disapproval or deferral, Congressional opposition, Committee jurisdiction issue, Congressional staff questions, etc.). To ensure that the component has addressed these barriers, the component should identify any changes made to the proposal most recently submitted and explain how those changes would overcome any barriers previously encountered, or note external factors whose changes makes passage more likely. Finally, the component should provide a justification for the resubmission, including, if the proposal was previously submitted to Congress, why Congress would enact the proposal in this legislative cycle. If a proposal has been submitted three or more times previously and has not been enacted, there is a presumption that the proposal will likely not be enacted and, therefore, should not be transmitted to Congress. If a proposal was not previously submitted to the OLC process for a prior NDAA cycle, in this section the proposal should state that "This proposal is being submitted for the first time."

The sixth section provides contact information for the proposal. Each proposal should list the name and contact information for the sponsoring component's subject matter expert (SME), as well as the name and contact information for the person who will be the point of contact for

OMB (if different). The proposal should also state the name and contact information for the component or OSD/OGC attorney who reviewed and approved the proposal prior to its submission to OLC. Finally, if the proposal is funded by military department appropriations, the proposal must list the name and contact information for the Assistant Secretary for Financial Management & Comptroller (FM&C) point of contact(s) for the appropriate military department(s); if the proposal is funded by Defense-wide appropriations, the proposal must list the name and contact information for the Defense-wide Agency headquarters comptroller point of contact. In neither case may the proposal list an individual from the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) as the point of contact. Instead, the designated point(s) of contact must have worked on the related appropriation for submission to OUSD(C).

The last section shows the changes the proposal would make to existing law. If the legislative proposal would change the text of an existing statute, show how the text of the statute would be changed if the proposal were enacted. The component should identify all of the changes the proposal would make to the text of existing law (no matter how small). Deletions from existing law are shown as struck through (~~old~~); additions to existing law are shown as underlined (new). There are two exceptions. First, if the proposal will add a completely new section to title 10, U.S.C. (or another law), it is not necessary to repeat the text of the new section in the Changes to Existing Law section. Second, an amendment to a table of contents (or a Code table of sections) does not need to be shown. If the proposal would not change the text of an existing statute, in this section the proposal should state that “This proposal would not change the text of existing law.”

### **III. DETERMINATION OF BUDGET IMPLICATIONS FOR EVERY PROPOSAL:**

In light of the current budget environment, a legislative proposal should be submitted only if the component considers it to be necessary to the operation of the Department and the highest and best use for the Department’s resources. For the FY 2014 cycle, overall funding levels must be within the FY 2014 Revised Discretionary Spending Limitations for the security category of the Budget Control Act of 2011. As a result, a proposal that requests an increase to overall authorization levels must be offset by decreased funding levels for lower priority activities. The OUSD(C) will assess the Budget Control Act effects of each legislative proposal.

The Department will not submit to OMB a proposal that does not specifically explain how it would be incorporated into the President’s budget. Therefore, each proposal must identify the specific funding for any authority requested, as well as the specific program and budget line identifiers (e.g., program element, appropriation, budget activity, and Dash-1 line item) and the legislative title and the funding profile across the Future Years Defense Program (FYDP) for those proposals funded in the component Program Objective Memorandum/Budget Execution Submission (POM/BES). To expedite review by the OUSD(C), all required budget information must be included in the timely submitted proposal and the information must be the same as the information included in the Program/Budget Submission due in August 2012.

When components submit their legislative proposals to OLC, they also must submit – as a separate document – a copy of the PB-16 exhibit they will submit to OUSD(C) (pursuant to

Volume 2B, Chapter 19 of the DoD Financial Management Regulation and the FY 2014-FY 2018 Integrated Program/Budget Submission Guidance) in September 2012 with the President's Budget submission. A component should list all of their legislative proposals in one PB-16 exhibit, rather than a separate exhibit for each proposal. The PB-16 exhibit is required for all legislation being submitted for consideration by Congress in the President's Budget submission. In the FY 2015 legislative cycle, OUSD(C) will be requiring that the funding for legislative proposals be included in the Program Resources Collection Process (PRCP) system and in the next integrated budget guidance.

- In the PB-16 exhibit, amounts should reflect costs or savings included in the budget submission if the proposal is approved by Congress.
- It also should include a total for each proposal, a total for each appropriation/fund, and a grand total.
- All proposed legislation, including those submitted through the Unified Legislation and Budgeting (ULB) process, should be included in the component's budget submission.
- Each proposal must be fully funded for FY 2014 and throughout the FYDP.
- If the proposal affects manpower, the PB-16 exhibit should provide the end strength and workyear adjustments (average strength for military and full-time equivalents for civilians) by type of employment status.
- Finally, the proposal title listed in the PB-16 exhibit should reflect the same title of the proposal that the component submits to OLC.

Similar requirements for legislative proposals are set forth below. If none of the component's legislative proposals have budget implications, the PB-16 exhibit should reflect that the requirements for cost information are not applicable.

For the Department to maintain control of future costs, the sponsoring component must submit all of its legislative proposals on time and expressly address all of the budget implications, including specific costs and savings, for each proposal it submits. The sponsoring component should work closely with the Assistant Secretary for FM&C or Defense-wide Agency headquarters comptroller office (as appropriate), before it formally submits its proposals to OLC, to ensure that (1) each proposal contains complete and accurate budgetary information and (2) the legislation is accounted for in the component's POM, PB-16 exhibit, and its submission for the President's budget. In particular, if the proposal is funded by military department appropriations, the budget implications must be approved by the appropriate Assistant Secretary for FM&C.

The sponsoring component must address the budget implications of a proposal, whether or not the proposal actually has budgetary implications. If a proposal has no budgetary impact, the proposal should so state, along with the specific rationale for that determination. Please be

aware that a proposal has budgetary implications even if it does not propose a funding level for FY 2014 in excess of the funding level for FY 2013.

Because only the OUSD(C) can determine whether a proposal ultimately has budgetary implications, the sponsoring component must include a budget table with each proposal. If a proposal is determined not to have budgetary implications, it will go forward without a budget table. The budget table must include an explanation of how the component proposes to fund the proposal (including program element, appropriation, budget activity, and Dash-1 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 FY 2014 budget. Components should include five-year funding information for each proposal. Additionally, if a proposal is identified by the sponsor or by OUSD(C) as having budget implications, the budget information must be reflected in the component's FY 2014-FY 2018 Integrated Program/Budget Submission due to OUSD(C) in August 2012 and in the PB-16 exhibit due in September 2012. Any proposal submitted after September 2012 will not be submitted to the LRP for possible inclusion in the FY 2014 legislative program unless OUSD(C) has already assessed the proposal's budget implications and the proposal is included in the PB-16 exhibit.

The OUSD(C) will assess the budget implications of each legislative proposal. OUSD(C) will work with the sponsoring component's Assistant Secretary for FM&C point of contact or Defense-wide Agency headquarters comptroller point of contact, as appropriate, to determine whether a given proposal is funded in the President's budget.

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 program element, appropriation, budget activity, and Dash-1 line item from which the proposal would be funded (note that components should identify the exact cost of the proposal, not simply the total amount of the relevant line item):
  - Program Element -- For example, 0603502N. The first and second digits are the DoD Major Force Program; the ending is the Service or a 1-3 digit code for the Agency.
  - Appropriation From -- Examples include: Operation and Maintenance, Navy; Research, Development, Test and Evaluation, Army; Other Procurement, Air Force; Operation and Maintenance, Defense-wide; etc.
  - Budget Activity -- This is the budget activity from which the effort is funded. Examples include: 01, 02, 03, 04, 06, and 07.
  - Dash-1 Line Item -- This is the budget line item that is assigned when the FM&C military department or Defense-wide Agency headquarters comptroller develops the FY 2014 budget for submission to OUSD(C). This information is important because it will be the same number that the Hill uses in the House, Senate and conference reports.

- A five-year projection (FY 2014-FY 2018), with year-by-year costs or savings, for the entire Department of Defense, with a breakdown by military department where applicable.
- A five-year projection (FY 2014-FY 2018), 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 top line.
- If the proposal is funded by military department appropriations, the name, email address and telephone number for the Assistant Secretary for FM&C point of contact(s) for the appropriate military department(s); if the proposal is funded by Defense-wide appropriations, the name, email address and telephone number for the Defense-wide Agency headquarters comptroller point of contact. In neither case may the proposal list an individual from OUSD(C) as the point of contact. Instead, the designated point(s) of contact must have worked on the related appropriation for submission to OUSD(C).
- The ULB proposal number, if applicable.

As set forth in section five, all legislative proposals should be drafted for general application throughout the Department. The sponsoring component is responsible for compiling all of the budgetary information required for the entire Department. However, if a proposed authority is not required for the entire Department, or for all of the military departments, the sponsoring component must include in the proposal a justification for this otherwise unequal treatment.

#### **IV. PROPOSALS THAT HAVE BEEN SUBMITTED PREVIOUSLY:**

A sponsoring component should provide a detailed justification for any proposal that is being resubmitted from an earlier legislative cycle, including the fiscal year(s) for which the proposal was submitted, the proposal number for at least the most recent prior submission, 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 made to the most recently submitted version of the proposal in response to the previous non-concurrences and any discussions with the non-concurring parties that have mitigated the prior concerns.

A proposal that has been submitted repeatedly by the Department and not enacted by Congress will bear close scrutiny from, and is unlikely to be approved by, Departmental leadership, absent compelling justification accompanying the proposal to indicate that Congress would be expected to give it favorable consideration. 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, how those issues have been addressed, and why Congress could be expected to enact the proposal in this legislative

cycle. If a proposal has been submitted three or more times previously and has not been enacted, the presumption will be that the proposal will likely not be enacted and, therefore, should not be transmitted to Congress.

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.

All previously submitted proposals will be sent to the appropriate Legislative Affairs Team Chief to review, to identify whether the information in the resubmission justification is consistent with the feedback received from Congress, and to provide a view on how Congress will likely respond to this resubmission. If the information is consistent and the Team Chief indicates the proposal has a good likelihood of success, then the proposal may proceed to full Departmental coordination. If, however, the information is inconsistent or the Team Chief indicates that the proposal has a low likelihood of success, the proposal will be returned to the sponsoring component for revisions and/or to reevaluate whether it is an identified Departmental need.

The submission deadline is earlier than the anticipated completion of Congressional action on the FY 2013 NDAA. Therefore, each component should include with its FY 2014 submission any FY 2013 Administration-cleared proposals that remain Departmental priorities and have been included in the bills passed by the House of Representatives and/or the Senate. Each carryover proposal should: (1) be identified as an FY 2013 resubmission; (2) note whether it was adopted by the House and/or Senate (including the section number(s) in the House and/or Senate NDAA); and (3) be updated as necessary (including the budget information). Once the FY 2013 NDAA is enacted, each carryover proposal will be reviewed and either be dropped from the FY 2014 legislative program or be referred back to the sponsoring component for reconsideration and possible modification in view of the congressional action.

#### **V. GENERAL LEGISLATIVE DRAFTING GUIDELINES:**

(for specific submission requirements, see separate “Checklist for Preparation of Legislative Proposals for Submission to OLC for the FY 2014 Legislative Program”)

- Each proposal must be consistent with the strategic approach described in the Secretary’s 2012 strategic guidance for the Department. To this end, the sponsoring component should list the priority (or priorities) that the proposal addresses and explain in two to three sentences how the proposal furthers the priority or priorities.
- The legislative language of a proposal should be drafted for general application with broad authority to act. A proposal may not propose a limitation on the Secretary of Defense’s authority to manage DoD, nor may it propose the creation of a new reporting requirement or the extension of an expiring reporting requirement.
- In early 2011, Congress passed the GPRA Modernization Act of 2010, which requires each agency to identify for OMB plans and reports that are outdated or duplicative. In light of this requirement, and to continue the Department’s efforts to reduce the burden of Congressional Reports, each component should review existing reporting requirements and submit legislative proposals that would repeal outdated reporting requirements, combine duplicative



requirements, propose amendments to more efficiently prepare existing reports, or otherwise reduce the administrative burden on the Department of congressionally-mandated reporting requirements.

- DoD components should review all of the existing laws they regularly utilize and submit legislative proposals to extend any laws they wish to extend if existing authority would expire on or before December 31, 2013.
- 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 should set out – in as much detail as is necessary – the factual and legal problems that necessitate the proposed legislative change, describe the proposed changes, and explain the beneficial consequences of these changes. Each analysis must follow the legislative language and be written in a style that would be understandable and persuasive to a layman. It should also be clear, concise, and convincing. In many instances, a poorly written analysis loaded with technical language and acronyms – or an analysis that fails to adequately address every significant issue raised by the proposal – will prevent a proposal from clearing DoD or OMB coordination.
- As stated above, each proposal needs to address expressly 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. OUSD(C) will work with the sponsoring component's Assistant Secretary for FM&C's point of contact or Defense-wide Agency headquarters comptroller point of contact, as appropriate, 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 approved, and the agency head has cleared, each proposal. Approval by the agency head must be shown by a memorandum accompanying the proposal that is signed by the agency head. Please note that the reviewing attorney is not an attorney from the Office of Legislative Counsel, but the component's own counsel.
- Each sponsoring component must include every element listed in the "Checklist for Preparation of Legislative Proposals for Submission to OLC for the FY 2014 Legislative Program." OLC will return to the sponsoring component any proposal that fails to meet these requirements.
- Each proposal must conform to the format as set forth in the sample proposal template OLC provides to each component.

- Before a sponsoring component submits its legislative proposals to OLC, the component should consider combining any proposals that involve similar issues to help streamline the coordination process not only within DoD, but also with OMB.
- Pursuant to Executive Order 13175 (November 6, 2000), agencies may not transmit legislation to Congress that has “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes” unless the agency satisfies certain requirements set forth in section 3 of the executive order. OMB will not provide the Department with final clearance to transmit any proposal to Congress until the Department provides this certification. Therefore, a sponsoring component must review each of its proposals and inform OLC – at the time of submission to OLC – whether the requirements of Executive Order 13175 apply to any of them.

## **VI. COORDINATION REQUIREMENT; RESOLUTION OF UNRESOLVED DIFFERENCES:**

OLC will post on the OLC website, and coordinate throughout the Department, every legislative proposal that is accepted into the FY 2014 legislative program. Components will have the opportunity to review and comment on each proposal.

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 legislative 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 (which must be signed by the agency head) should be concise, persuasive, and limited to one page. The sponsoring component should rebut any objections that have been raised.

If, after exhausting all options for resolution, the proposal remains in dispute, the proposal may be slated for review at the next standing meeting of the LRP. As part of its review, the LRP will consider the position papers submitted by the differing components, including whether a component did not submit a position paper. Should a proposal be scheduled for a LRP meeting, the LRP may request that the sponsoring component have a representative appear at the meeting to advocate its position and answer any questions from the LRP. Sponsoring components should be prepared for that situation to occur. Further information is available in the “Disposition of Late Proposals; Legislative Review Panel” document.