



SECRETARY OF DEFENSE
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FEB 6 2009

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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UNDER SECRETARIES OF DEFENSE
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DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Call for Additional Legislative Proposals for FY 2010

The FY 2010 Legislative process will continue with the submission of additional proposals by DoD components for inclusion in the FY 2010 DoD National Defense Authorization Act (NDAA). The deadline for submission, as detailed in the attachment, is **February 23, 2009**. All budgetary and non-budgetary proposals will be due on this date. This expedited process is necessary due to the tight legislative calendar resulting from the ongoing transition process. The timeframes set forth in the attached guidelines will ensure that the Office of Management and Budget has adequate time to coordinate and clear budget proposals for inclusion in the President's budget, which it is anticipated will be submitted to Congress in April 2009. DoD components should only submit additional proposals that require consideration by Congress this year, including proposals regarding acquisition reform or enhanced transparency in government. Proposals that would repeal, modify, or consolidate existing Congressional reporting requirements will also be considered for inclusion in the NDAA. DoD components should defer all other initiatives until the FY 2011 legislative cycle, which will begin with a request for proposals in June 2009.

Thank you for your continuing commitment and support.

Attachment:
As stated



OSD 01268-09



Guidelines for the FY 2010 DoD Legislative Program

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

A. All New Proposals: February 23, 2009.

B. New Proposals with Budget Implications.

- A proposal with budget implications 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 satisfy 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 2010-FY 2015 Integrated Program and Budget submission.

C. New Proposals without Budget Implications.

- A proposal that is not covered by the above definition for proposals with budget implications falls under this category. If a proponent determines that a proposal has no budgetary impact, the proposal should so state and provide a rationale for that determination.
- If there is doubt whether a proposal has a budgetary impact, the sponsoring component should submit the proposal by the deadline for proposals with

budget implications. Please contact OLC if you have any specific questions regarding whether your proposal fits within the definition for proposals with budget implications.

II. Determination of Budget Implications of Every Proposal

- A. For the Department to maintain control of future costs, we must identify every legislative proposal with budget implications at the beginning of the legislative cycle.
- B. To achieve this goal, each proposal needs to expressly address any and all budget implications, including costs and savings. If a proposal has no budgetary impact, the proposal should so state, along with the rationale for that determination.
- C. The proponent should identify offsetting savings 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 each proposal within the current topline (including appropriation, budget activity, and line item). Therefore, DoD 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:
 - identify the accounts from which they would fully fund the proposal, including the appropriation, budget activity, and line item from which it is being funded;
 - identify the Unified Legislative Budget (ULB) proposal number, if applicable;
 - provide a six-year projection (FY 2010-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;
 - provide a six-year projection, with year-by-year estimates, of the number of personnel who would be affected by the proposal; and

- outline 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. When one of the military departments proposes a new authority which 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 listed 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 the Congress.

III. Disposition of Proposals Submitted Late

- A. The best way to maximize the chances of enactment by the 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 agency head, with supporting documentation as necessary. The DoD component also must explain why their proposal is essential for enactment in the current legislative cycle.
- C. 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 on whether to accept the proposal.
- D. If an agency justifies the late submission of a proposal, OLC will expedite its coordination for possible incorporation in the NDAA bill to be delivered to the Congress. If an agency 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 detailed above. OMB will not expedite its review of proposals submitted after OLC’s initial submission, thus hindering the possible incorporation of those proposals into the NDAA bill.

- E. OLC will not accept any proposals submitted after OMB's final deadline for submissions unless they are certified by the agency head as essential for enactment in the current legislative cycle.

IV. Resubmissions

- A. A sponsoring agency 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 any changes the agency has made to the proposal.
- B. If the proposal was not approved by DoD or OMB, the sponsoring agency should detail the adjustments made in response to the non-concurrences, and/or detail discussions with the non-concurring parties that have mitigated previous concerns.
- C. If the proposal was not adopted by the Congress, then the sponsor should articulate a convincing legislative strategy explaining why the Congress will enact the legislation in this legislative cycle. Once accepted, proposals previously cleared by OMB will be given a streamlined review by OMB.
- D. If a sponsoring agency makes any changes to a proposal previously cleared by OMB, the sponsor needs to provide a description of, and rationale for, the changes.

V. 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 will convene periodically during the legislative cycle to identify and review DoD's top legislative priorities, including each of the component's 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 DoD component will need to prioritize all of the proposals they submit to OLC.
- C. The Panel also will help resolve disputes and advise on whether to accept late submissions.

VI. General Legislative Drafting Guidelines (for specific submission requirements, see following attachment)

- A. Proposals should be drafted for general application with broad authority to act. Proposals may neither limit the Secretary of Defense's authority to manage DoD nor create reporting requirements for DoD.
- B. 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 proposals include unnecessary legislation, such proposals 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.
- C. Section-by-section analyses must follow legislative language and be written in a style that would be understandable and persuasive to a layman (in many instances, poorly written analyses laden with specialists' language and acronyms cause proposals to fail to clear 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.
- D. 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. Proposals that fail to adequately address their 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.
- E. Each sponsor must certify that the sponsor's own general counsel has reviewed, and the agency head has cleared, each proposal.
- F. 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 which fails to satisfy these requirements.

VII. 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.

VIII. Resolution of Unresolved Coordination Issues

- A. In the event 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 Secretary of Defense, as appropriate.
- B. These position papers should be concise, persuasive, and limited to one page. Sponsors should rebut any objections which have been raised.

Requirements for Submission of Legislative Proposals to OLC in the FY 2010 DoD Legislative Program

Every proposal forwarded 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) Each proposal needs to be authorized by signed memorandum of the agency head of the respective DoD component.
- 2) Each proposal needs to be submitted in MS Word.
- 3) Each proposal needs to identify how it ranks among all of the proposals submitted by the sponsoring component.
- 4) A sponsoring component that resubmits a proposal from a previous legislative cycle should identify that previous cycle, including the previous proposal number (which is available on the OLC Internet system).
- 5) Each proposal that is a resubmission needs to be accompanied by a resubmission justification as detailed above.
- 6) Each proposal should expressly address any and all budget implications, including new or recurring costs and savings, and supply the information listed above. If a proposal has no budgetary impact, the proposal should so state.
- 7) Each proposal needs to be drafted in clear and concise legislative language and include a title that describes what the proposal would accomplish.
- 8) Each proposal should contain a section-by-section analysis that follows its legislative language and is written in a style that would be understandable and persuasive to a layman.
- 9) Each proposal that recommends changes to existing law, no matter how minor, should contain a line-in/line-out version of how the existing law 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.

- 10) Each proposal submitted needs to be accompanied by the name and contact information of a designated subject matter expert (SME) who will represent the sponsor during the entire coordination process; these SME's are distinct from the "empowered representative" to be designated by each DoD component per the body of this memorandum.
- 11) Each proposal submitted needs to contain the name of and contact information for the reviewing attorney.