

# Department of Defense Office of Legislative Counsel

## An Overview of DoD's Legislation Program

### Introduction

Purpose. The purpose of this document is to provide the reader with a basic primer on how DoD manages its Legislation Program.

Applicability. Each year, DoD considers hundreds of new legislative initiatives for inclusion in its annual Legislative Program presented to the Congress. Using a system designed and operated by the DoD Office of Legislative Counsel (OLC), nearly 700 DoD employees participate in conceiving, drafting, and reviewing myriad legislative initiatives covering every aspect of DoD, including acquisition of goods and services, personnel rules, finance regulations, intelligence operations, organizational matters, and foreign relations policy.

Authorization vs. Appropriations. Congress has organized itself around a committee system to provide the division of labor and specialization it needs to handle the roughly 10,000 measures that it receives biennially, and to facilitate its oversight of executive branch programs. To address a given subject matter, such as military requirements or Federal highways, Congress provides two separate and distinct committees to conduct its work: an authorization committee and an appropriation committee. In theory, authorizations establish programs or policies, while appropriations provide funds to authorized programs or policies. It is not uncommon, however, for Congress to appropriate funds even in the absence of an authorization, or to place authorization language in an appropriations bill. The good news for DoD is that almost every year Congress passes both a defense authorization bill and a defense appropriations bill. With few exceptions, the bills properly adhere to their respective subjects. The annual defense authorization bill establishes, revises, or discontinues defense programs or policies.

The DoD Legislation Program managed by OLC is designed to produce legislative initiatives for inclusion in the annual defense authorization bill.

In contrast, the annual defense appropriations process largely is an enormous budget exercise—the critical determination of how much money Congress will allocate to already established DoD programs or policies and to new programs and policies proposed by the Administration through the DoD Legislation Program. Given the profound budget implications of the defense appropriations bill, it should come as no surprise that the Under Secretary of Defense (Comptroller) exercises primary responsibility for all appropriations

matters.

**This document focuses only on the DoD Legislation Program designed to produce policy-related legislative initiatives for inclusion in the annual defense authorization bill.**

## Role of the Office of Legislative Counsel

Guidance and Analysis. As noted previously, nearly 700 DoD employees participate in conceiving, drafting, and reviewing myriad legislative initiatives covering every aspect of DoD. Viewing each of these nearly 700 employees as highly professional and very talented musicians in a virtual orchestra, OLC is the conductor. It is OLC's mission to assist each musician to work together to produce beautiful music—namely, legislation that advances the President's and the Secretary of Defense's agenda to improve and transform DoD. 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 addresses political concerns with DoD leadership.

Liaison with OMB. OLC also functions as the primary liaison with the President's Administration, represented by 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—where OLC strives to achieve consensus throughout DoD, OMB strives to achieve consensus throughout the Federal government. This process, while cumbersome at times, guarantees appropriate circumspection and ensures the Administration speaks with one voice. Only upon completion of this inter-agency coordination process does OMB give DoD clearance to forward legislation to the Congress.

Congressional Relations. The Assistant Secretary of Defense for Legislative Affairs (ASD(LA)) is responsible for managing all DoD interaction with the Congress. Working with all concerned parties in DoD, 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 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.

## Program Notes

Transparency and Accountability. Because DoD is comprised of roughly 2.9 million people spread through multiple Military Departments, Defense Agencies, and Field Offices, and executes an annual budget that exceeds \$400 billion, transparency of goals and intentions, accountability, open communication, and intra-agency coordination concerning all legislative initiatives are indispensable prerequisites to a successful Legislation Program. OLC strives to keep all participants in the Legislation Program informed of important developments, including concerns expressed by other DoD participants, as well as key actions taken by members of Congress or their staffs that may impact particular DoD legislative proposals. Although complete transparency of goals and intentions is not always possible due to concerns involving classified information or highly-sensitive political considerations, such concerns are the exception, not the rule. Only in the most extraordinary circumstances does OLC decline to publicize information regarding legislative initiatives.

OLC Computer System. OLC manages and operates an internet-based computer system that fosters transparency and accountability regarding every DoD legislative proposal. Despite hundreds of new inputs on any given day, the OLC staff places a premium on ensuring that it posts all new inputs in a timely fashion, and that the entire system always remains current. What follows is a very brief explanation of how the system works.

With the concurrence of their respective chains-of-command, new participants in the DoD Legislation Program apply to OLC for an account that gives them access to the system. Once accepted as subscribers, participants may view every legislative proposal presently under consideration, as well as copies of related documents and comments of concerned and interested parties, to name but a few of the system's features. For example, if the Air Force has offered a new proposal concerning a re-enlistment 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 the Army, the Navy, 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. In this way, all participants may view and partake in the debate, and dissenters may not thwart proposals secretly—thus, promoting the twin goals of transparency and accountability. In sum, the OLC computer system serves as the hub of information, allowing each of the nearly 700 participants in the DoD Legislation Program to keep abreast of all significant developments regarding every legislative proposal.

Annual Call Memo. In accordance with [DoD Directive 5500.1](#), the DoD General Counsel is "responsible for all matters concerning or relating to legislation, Executive Orders and Proclamations, other than liaison with the Congress. His responsibility includes: developing an overall legislative program for the DoD; coordinating the views of

appropriate elements of the DoD on all matters relating to legislation, Executive Orders and Proclamations; determining the relationship of the DoD position on all such matters to that of the Executive Branch of the Government as a whole; and providing for the preparation of necessary reports to transmit the position of the DoD on all such matters to the Congress and other interested persons." **Consistent with this authority, the DoD General Counsel initiates and oversees all aspects of the DoD Legislation Program.** The DoD General Counsel kicks off the Program each year by issuing a "Call for Legislative Proposals," *i.e.* the annual "Call Memo." The "Call Memo" promulgates the administrative requirements of the Program and establishes mandatory timelines. In addition, the memorandum normally includes an attachment issued by the Secretary of Defense that specifies the overarching legislative "top priorities" for that particular year. Participants must ensure each proposal is consistent with the "top priorities" identified by the Secretary, and complies with the DoD General Counsel's administrative guidance and mandatory timelines.

Timelines. Although specific timelines change annually for a variety of reasons, in general the timelines adhere to the following schedule:

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| ● Call Memo   | August               |
| ● Draft Budget-Related Proposals to OLC                 | Early September      |
| ● Final Budget-Related Proposals to OMB                 | October 15           |
| ● Drafts of All Other Proposals to OLC                  | Mid-October          |
| ● All Other Proposals to OMB                            | Mid-December         |
| ● President's Budget                                    | February             |
| ● OMB-Cleared Proposals to Congress                     | March 1              |
| ● Congressional Hearings on DoD Proposals               | March – June         |
| ● House and Senate Votes on Defense Authorization Bills | May – July           |
| ● Conference Committee Vote                             | September – November |
| ● President Signs Defense Authorization Act             | Late November        |

Number of Proposals. In a typical year, OLC receives more than 300 new draft legislative proposals. Following close legal scrutiny and intra-agency coordination, OLC forwards roughly 225 proposals to OMB. Upon completion of required coordination throughout the Federal government, OMB clears some 140 proposals for delivery to the Congress. Ultimately, Congress adopts approximately 100 of DoD's proposals, many with significant revisions, in its final version of the annual defense authorization bill.

Views Reports. Many defense-related legislative proposals originate outside DoD. For example, a Senator or Congressman may introduce a bill concerning base infrastructure. Normally, the Chairman of the House or Senate Armed Services Committee requests DoD to review the bill and provide an official position—the "views" of DoD—concerning the bill's merits. DoD may elect to write a formal letter in response. These letters declaring DoD's official position, or "views," commonly are referred to as "Views Reports." OLC posts detailed information concerning all defense-related legislative proposals and requests for DoD "views" on the OLC computer system. Following extensive coordination among all concerned and interested DoD parties, and clearance by OMB, the DoD General Counsel is the official who signs most "Views Reports."

Testimony. Congress frequently invites or summons 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 only with one voice. OLC facilitates this process. As soon as a DoD leader learns that he will testify before Congress, his staff should notify OLC. The DoD leader often will seek to present a prepared statement at the congressional hearing. In such event, the DoD leader 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" and conclusion of the intra-agency coordination process, OLC forwards the draft testimony to OMB. At a minimum, OLC must have the testimony ready to forward to OMB at least 36 hours prior to the hearing. OMB once again initiates coordination throughout the Federal government and, as appropriate, gives DoD clearance to present the prepared statement during the congressional hearing.

## Preparing New Legislation

Advancing the President's Agenda. The starting point for all DoD legislation is the President's political agenda. While the President's agenda is a matter of public knowledge and is well-known to all participants in the DoD Legislation Program, OLC works closely with DoD's most senior political leaders to translate the President's agenda into specific goals and objectives applicable to DoD. The Secretary of Defense reviews these goals and objectives with his most senior and trusted advisors, the Senior Level Review Group (SLRG). Together, the Secretary of Defense and the SLRG identify and approve DoD's top legislative priorities, which the DoD General Counsel normally publishes as an

attachment to his annual "Call Memo." All participants in the DoD Legislation Program must familiarize themselves with DoD's top legislative priorities. In conceiving new initiatives for the DoD Legislation Program, participants should seek to advance DoD's top priorities. Conversely, participants may not offer legislative initiatives that contravene the President's agenda.

Threshold Considerations. The DoD General Counsel exercises with precision his responsibility to oversee all aspects of the DoD Legislation Program. He demands compliance with the following threshold considerations before allowing OLC to accept any legislative proposal:

- Legislation must be a matter of last resort only (administrative or other remedies must be unavailable or unavailing)
- Legislation should be used sparingly when required to meet specific requirements or goals and only after all other avenues have proven unsuccessful
- Proposals should be drafted for general application with broad authority to act
- Proposals may not limit the Secretary of Defense's authority to manage DoD
- Proposals may not create new reporting requirements
- It is better to request broad authority rather than specific statutory direction. Proposals should attempt to combine ministerial statutory adjustments into general management initiatives in which statutory restraints and prohibitions are removed.

Consistent with his authority concerning the DoD Legislation Program, the DoD General Counsel reserves the right to reject any legislative proposal he deems improper or unwise.

From Concept to Paper: Legislative Drafting. Once a participant settles on a new idea for legislation that would advance one or more of DoD's top priorities, and is consistent with the DoD General Counsel's threshold considerations, it is time to commit the idea to writing. Suffice it to say that legislative drafting is an art. The OLC staff contains a number of attorneys who have acquired commendable expertise in the art of legislative drafting. At the same time, however, the small size of the OLC staff precludes it from drafting from scratch each of the more than 300 proposals initiated each year. Instead, the OLC staff saves considerable time and effort by requiring participants in the DoD Legislation Program to provide their own preliminary drafts. One of the benefits of

this particular procedure is that it ensures the proponent of a draft proposal engages in appropriate circumspection before submitting the proposal to OLC. Of course, the OLC staff always is ready and willing to help perfect draft legislation, and OLC offers training to all who wish to enhance their own legislative-drafting proficiency. A separate primer on legislative drafting is available on OLC's website at <http://www.defenselink.mil/dodge/lrs>.

Specific Administrative Requirements. As noted previously, the DoD General Counsel promulgates specific administrative requirements in the annual "Call Memo." Before OLC accepts and posts a new legislative proposal on its computer system, the proponent of the proposal must comply with all of these administrative requirements. Standard requirements include:

- Clear and concise legislative language
- A section-by-section analysis of the legislative language written in a style that would be persuasive to a layman
- A brief section setting forth arguments for a proposal, as well as a section setting forth arguments against a proposal, *e.g.* "pro's and con's"
- The name and contact information for a designated expert who either wrote the proposal or understands it completely
- The name and contact information of the appointee or high-level official who will advocate for the proposal publicly
- A statement of budget implications, including costs, savings, and pay-as-you-go (Pay-Go) concerns
- Certification that the proposal has been reviewed by the proponent's own General Counsel and cleared by the Agency Head
- If the proposal is a resubmission from a previous year, the proponent must submit a detailed justification for resubmission

Pay-Go. For all budget-related legislative proposals, Congress routinely requires a detailed economic analysis. Any proposal that will either cost or save money must be accompanied by a cost/impact analysis. The only exception to this rule is a legislative proposal involving very minor operation and maintenance adjustments. If an initiative will cost money, the sponsor must identify offsets for the amount of the proposal (effectively paying for it). The sponsor must coordinate with the Comptroller to discuss potential offsets. Also, for each legislative proposal that costs money, the sponsor must include

specific information consistent with DoD's two-year budget cycle. During an "on" year, the sponsor must provide to the Comptroller a Budget Estimate Submission. During an "off" year, the sponsor must include and identify funding in the President's budget baseline, or include funding in a Component Budget Proposal and execution review. Ultimately, OMB incorporates all costs or savings associated with a new legislative proposal into the President's annual budget request. OMB will not clear any proposal that has cost implications without a budgetary impact estimate for the next five fiscal years.

The Role of the ULB. Normally, the majority of new policy-related legislative proposals that have cost implications involve personnel matters. Such matters fall squarely within the purview of USD(P&R). In order to identify and evaluate such legislative proposals, 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 February and June to review new legislative proposals and votes on which proposals to pursue. Proposals receiving a favorable, majority vote are sent to the USD(P&R) who decides whether to offer the proposal for inclusion in the annual DoD Legislation Program.

## Coordination and Legal Review

The Coordination Process. OLC is responsible for ensuring that all new legislative proposals advance the President's agenda, meet all threshold considerations, and satisfy all applicable administrative requirements and cost concerns, as discussed in the preceding paragraphs. Once OLC determines that a proposal meets all of the mandatory criteria, it formally includes the proposal in the DoD Legislation Program by assigning it a designation number and posting it on the OLC computer system. OLC then circulates the proposal for review and comment to all concerned participants in the Program. 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 at times is cumbersome, OLC considers the process to be absolutely indispensable—not only does it promote transparency and accountability, but it also allows essential vetting of a proposal by tapping the deep reservoir of knowledge and talent that exists in DoD. Successful coordination ensures a proposal is appropriate, necessary, and consistent in its impact and implications for all of DoD. Once OLC initiates the coordination process, a failure to respond by the specified deadline constitutes a "no comment."

Resolution of Disparate Positions. Where 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. Should a stalemate ensue, the DoD General Counsel serves as final arbiter. The contesting parties must set forth their respective positions in writing to the DoD General Counsel, who then renders a final decision. Each position paper must be concise, persuasive, limited to one page, and signed by the leader of the respective contesting parties.

Screening by DoD Deputy General Counsels. Eight separate Deputy General Counsels, organized by functional areas, serve within the Office of the DoD General Counsel. The Deputy General Counsels are legal subject matter experts, and provide tremendous insight regarding matters within their respective functional areas. For example, the Deputy General Counsel for Personnel and Health Policy is extremely knowledgeable concerning matters within the purview of USD(P&R). Following successful coordination of each personnel-related legislative proposal, OLC forwards the proposal to the Deputy General Counsel for Personnel and Health Policy for thorough legal screening to ensure the proposal is necessary, tailored to desired objectives, and written in measured language. Whenever a Deputy General Counsel makes a substantive change to a proposal, OLC returns the revised proposal to the sponsor to ensure the revision is acceptable.

Review by the DoD General Counsel. Upon completion of the coordination process and required screening by cognizant DoD Deputy General Counsels, OLC presents each proposal to the DoD General Counsel. If the 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. If he is not satisfied with a proposal, he may require a revised draft, direct further coordination and legal review, or he may remove the proposal from the Legislation Program.

## Obtaining OMB Clearance

Submission to OMB. OLC is the primary liaison with OMB concerning DoD legislation. With the assent of the DoD General Counsel, 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. Before OMB determines whether to clear a proposal, it forwards each proposal to interested parties throughout the U.S. Government for review and comment. The goal is straightforward: OMB must ensure the entire Administration speaks only with one voice.

OMB Coordination. The OMB interagency coordination process is markedly 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 Federal government. The process often takes no more than a few

days – in exigent circumstances, OMB even has been known to deliver clearance in a matter of a few hours. There are situations, however, where other government agencies take considerable time to provide detailed, substantive comments. In such circumstances, sponsors should refrain from contacting OMB directly. OLC remains the primary liaison with OMB to articulate DoD concerns and to monitor the status of particular proposals. In the event OMB notifies OLC that another agency objects to a DoD proposal, OLC immediately notifies the proposal's sponsor and initiates efforts to resolve the issue and eliminate any impasse. OLC and OMB work together to ensure the opposing parties meet or otherwise discuss their differences cordially. Only after the parties have made an effort to achieve consensus does OMB decide the fate of a new legislative proposal.

OMB Review/Decision. Following completion of the interagency coordination process, OMB carefully reviews each proposal, including DoD's justification (as stated in the mandatory section-by-section analysis) and the comments and concerns provided by other interested Federal agencies. OMB then conducts its own analysis to ensure each proposal is consistent with the stated objectives of the President, does not interfere with other Administration legislative priorities, and is feasible in terms of its budgetary implications. In most circumstances, OMB renders a decision in one of three ways:

- **Approval:** OMB informs OLC that DoD may submit the proposal to Congress
- **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

Should the sponsor of a proposal disagree with OMB's decision to modify or disapprove a proposal, the sponsor may appeal. The decision to make such an appeal properly belongs to the senior leader of the sponsor's component (*e.g.* the decision to appeal an Air Force proposal lies with the Secretary of the Air Force, not an Assistant Secretary or other high-level employee of the Department of the Air Force). Such appeals should be reserved for only the most critical, top priority proposals. In general, OMB decisions are final.

## Final Approval and Transmission to the Congress

Throughout the coordination and clearance process, the OLC Director keeps the Secretary of Defense, the Assistant Secretary of Defense for Legislative Affairs (ASD(LA)), and their key assistants apprized of progress concerning those proposals the Secretary of Defense deems top priorities. If a top priority proposal undergoes substantive

change, the OLC Director and these key assistants make a recommendation regarding whether the proposal, as modified, remains in the best interest of DoD. Ultimately, final approval of the entire DoD Legislation Program resides with the Secretary of Defense.

Upon receipt of final approval from the Secretary of Defense, the DoD General Counsel executes letters to the Speaker of the House of Representatives and the President of the Senate (the Vice President of the United States) forwarding DoD's cleared legislative proposals and requesting enactment. The letters and the accompanying proposals are hand-delivered by staff members assigned to ASD(LA).

## Interaction with the Congress

Briefing Members and Their Staff. The Assistant Secretary of Defense for Legislative Affairs is responsible for maintaining liaison and relationships with members of Congress. To ensure DoD speaks only with one voice that advances the agenda of the Secretary of Defense and the Commander in Chief, ASD(LA) manages, controls, directs, and monitors all communications and activities by DoD personnel designed to influence members of Congress and their staff. 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 and ASD(LA). After OMB provides clearance, DoD employees may discuss the matter with members of Congress and their staff, consistent with ASD(LA)'s guidance.

The Role of Public Affairs. DoD is committed to providing the Congress, the news media, and the public timely and accurate information regarding DoD policies and initiatives. Every American is entitled to receive public information concerning our nation's security, our defense strategy, and prospective changes to Federal law that may affect DoD. To this end, the Assistant Secretary of Defense for Public Affairs (ASD(PA)) closely monitors the annual DoD Legislation Program and provides relevant information to the Congress, the news media, and the public as warranted. In accomplishing this vital mission to keep the American public informed, ASD(PA) unfailingly abides by the express provisions of the Anti-Lobbying Act, discussed in more detail below.

The Anti-Lobbying Act. The "Anti-Lobbying Act," 18 U.S.C. §1913, prohibits officers and employees of the executive branch from engaging in certain specific efforts to lobby the American public to contact Congress—in other words, encouraging individuals to generate a grassroots campaign—regarding pending legislative initiatives. The Act also

prohibits executive branch employees from "ghost-writing" articles under the guise of third parties seeking to influence pending legislation. The Act does not prohibit government employees from engaging in legitimate public information activities, such as responding to requests for information and providing information to those who regularly request information, including Congress and the news media. Additionally, the Act does not prohibit employees from discussing legislative issues with outside organizations, participating in conferences and symposia to promote public awareness of legislative proposals, and delivering speeches and making public remarks to explain proposed legislation and the Administration's position.

Hearings. Starting in February of each year the House and Senate Armed Services Committees hold hearings on DoD's annual Legislation Program. 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. 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 DoD testimony.

Sub-Committee Action. In the House and Senate Armed Services Committees, work on the defense authorization bill begins at the subcommittee level. Each subcommittee has chairman prepares what is commonly referred to as the chairman's "mark" that forms the basis for the subcommittee's portion of the overall authorization bill. The "mark" includes proposals submitted by DoD, members of the subcommittee, as well as proposals drafted by the chairman's own staff. During the process referred to as "markup," subcommittee members propose amendments to the chairman's "mark," which the entire subcommittee then votes to approve or disapprove. After the subcommittee finishes voting on changes to the chairman's "mark," it votes to send the finished product to the full committee for inclusion in the annual defense authorization bill.

Full Committee Action. After each subcommittee completes work on the portion of the authorization bill under its jurisdiction, the full Armed Services Committee meets to consolidate all of these pieces into the committee's version of the defense authorization bill. The full committee votes to approve or disapprove each subcommittee's portion of the bill. The committee also votes on any amendments offered by the chairman or other members of the committee. At the conclusion of these preliminary votes, the committee votes to approve the entire bill and send it to the full House or Senate for action.

The House Armed Services Committee holds its votes in public, unless it is working on classified material. By contrast, the Senate Armed Services Committee conducts both subcommittee and full committee action on the defense authorization bill in private. As a

result, no one outside the committee knows the contents of the Senate Armed Services Committee's bill until the committee reports it to the full Senate for action.

Committee Reports. The House and Senate Armed Services Committees prepare reports to accompany their respective versions of the defense authorization bill. The reports include descriptions of the sections of each bill, tables listing authorized spending (including changes to the President's budget request), and additional comments on matters of particular interest to the committee. Members of the committee also may provide supplemental comments for inclusion in the report.

Floor Action. House floor action on the annual defense authorization bill begins with adoption of a "rule" prepared by the House Rules Committee that governs floor action, including timing issues, permissible amendments, and other procedural and administrative matters. To ensure prompt action, and to exercise precise control over the process, the Rules Committee normally proposes a "modified closed rule" that specifies exactly which amendments members may offer. The full House first votes to adopt or reject the proposed rule. Once the House votes to adopt a rule, members debate and vote on the amendments permitted under the rule. The House then votes to pass the bill as amended.

In contrast to the House, the Senate uses a "unanimous consent" agreement to limit debate and amendments. The Majority and Minority Leaders of the Senate negotiate the terms of the agreement and enforce compliance by all Senators. Absent "unanimous consent," a Senator may offer an unlimited number of amendments, and a Senator also may engage in a filibuster. To defeat a filibuster, 3/5 of the members must vote to support a "cloture motion." It also is worth noting that the Senate often approves non-controversial amendments by voice vote, rather than a formal roll call vote. The Senate also occasionally avoids voting directly on the merits of an amendment by "tabling" it—that is, postponing action indefinitely. Once the Senate finishes work on all amendments, it votes to pass the bill as amended.

DoD's Legislative Rapid Response Team. During Congressional floor action, DoD depends on a Legislative Rapid Response Team to respond immediately to issues of substantive concern, including proposed amendments. Floor amendments often move with such speed that normal DoD coordination might cause DoD's response to arrive too late to influence the outcome of the debate. The Team provides expedited coordination by senior officials with policy expertise. It consists of representatives from the Military Departments, the Joint Staff, the Under Secretaries of Defense, ASD(LA), ASD(PA), the DoD General Counsel, and Defense Agencies and Field Activities, as needed. On any given floor amendment, the goal of the Team is to prepare an expedited, coordinated DoD position for OMB clearance in one hour. Assuming OMB provides equally rapid turnaround, the Team could allow DoD to influence imminent floor action favorably.

Statements of Administration Policy. After the House and Senate Armed Services Committees pass their respective versions of the defense authorization bill, and before the two bodies form a conference committee to reconcile differences, the Administration normally comments on key items in both bills that it either supports or does not support. Such comments take the form of a written Statement of Administration Policy (SAP). The Under Secretary of Defense (Comptroller), along with OLC and ASD(LA), solicits input for the SAP from throughout DoD. These offices work together closely with the Special Assistants to the Secretary of Defense to identify the handful of items that merit specific mention in the SAP. When the participants in the process reach consensus on preferred language, and following final approval by the Secretary of Defense, OLC forwards the draft SAP to OMB for review and clearance. 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.

"Heartburn" Letters. Before House and Senate conferees begin meeting to resolve the differences between their respective versions of the defense authorization bill, the Secretary of Defense often elects to send a letter to the conferees discussing major provisions in the bills that he opposes. This letter euphemistically is known as the "heartburn" letter. Preparation of a "heartburn" letter nearly is identical to the process that exists for SAPs. The same offices and participants work closely together on the initial draft, the Secretary of Defense makes revisions and gives final approval, and OMB reviews and provides clearance. While a SAP and a "heartburn" letter often cover identical subject matter, a major difference is this: while OMB issues each SAP, the Secretary of Defense personally signs and issues a "heartburn" letter. With OMB approval, a "heartburn" letter may contain language that recommends a veto if a bill contains one or more provisions that the Secretary of Defense and the Administration strongly oppose.

Appeals. Between the time that the House and Senate pass their versions of the defense authorization bill, and prior to completion of work by the inevitable Conference Committee, DoD subject matter experts carefully review every word of both versions to learn what provisions of the DoD Legislation Program that Congress has adopted, deleted, or modified. Additionally, the same experts identify all of the new items proposed by Congress that were not part of DoD's Program. When the experts complete their review, they draft a series of one-page statements expressing concern or disagreement with the language or numbers passed by the House and Senate. OMB and DoD participants refer to these often highly-technical statements as "appeals."

Because fiscal concerns normally comprise the bulk of defense authorization bill appeals, the Under Secretary of Defense (Comptroller) is responsible for soliciting and collecting these appeals from throughout DoD. Once the Comptroller staff finishes gathering the appeals and revising content as appropriate, the Comptroller forwards the appeals to OMB for review and clearance. Simultaneously, the Comptroller forwards the

appeals to the DoD Deputy General Counsel (Fiscal) for legal review. The DoD Deputy General Counsel (Fiscal) coordinates legal review by all other DoD Deputy General Counsels depending on their subject matter expertise. When OMB clears the appeals, the Comptroller provides them to the other Under Secretaries of Defense and the DoD General Counsel for a final review and approval. DoD then forwards the cleared, approved appeals directly to Congress. Recent experience suggests that DoD appeals receive careful consideration by Professional Staff Members of both the House and Senate Armed Services Committees.

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.

## The Defense Authorization Bill Becomes Law

If the President favors the defense authorization bill he receives from the Congress, 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 work 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 normally is ready and willing to sign the bill he receives 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."

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

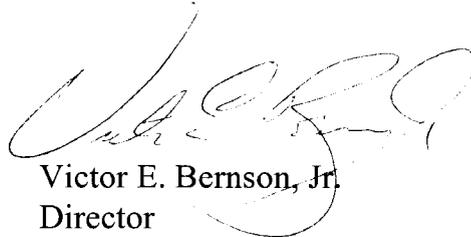
with potential constitutional implications. Generally, preparation of a Presidential signing statement concerning the defense authorization bill follows the same process described earlier in this document concerning SAPs and "heartburn" letters.

Dissemination of NDAA and Title 10. The Government Printing Office (GPO) publishes the NDAA after the President signs it into law. OLC orders copies for the staff of the DoD General Counsel. Others in DoD seeking copies should place their orders directly with GPO at the earliest opportunity to ensure timely receipt.

Apart from the annual NDAA, the House Office of Legislative Counsel compiles an updated official version of title 10, United States Code, every two years. Once again, GPO publishes the volume. While the Military Departments order their own copies directly from GPO, OLC provides a service for all interested personnel in the Office of the Secretary Defense by ordering several hundred copies. OLC distributes the volumes at the traditional "Title 10 Party," held shortly after GPO publishes the updated volume, normally in the Spring of odd-numbered years.

## Conclusion

The preceding discussion attempts to provide a general overview of the entire process DoD follows to produce its annual Legislation Program. Hopefully the reader finds this document enlightening and useful, and endeavors to keep it as a future reference aide. Whenever a question regarding the DoD Legislation Program arises, please do not hesitate to contact my office—the Office of Legislative Counsel always is standing by to assist you.



Victor E. Bernson, Jr.  
Director