



Military Base Closures: BRAC in Congress and Proposed Legislation

Agenda

Friday, October 7, 2005

- 9:00 **Welcome and Introductions**
Dan Else, Specialist in National Defense, CRS
- 9:15 **Highlights of the 2005 BRAC Round**
David Lockwood, Specialist in National Defense and Foreign Affairs, CRS
- Congressional “Fast-Track” Procedure, Fate of Joint Resolutions**
Christopher Davis, Analyst in American National Government, CRS
- Legislative Proposal: Future of the BRAC Process**
Daniel Else, Specialist in National Defense, CRS
- Legislative Proposal: Impact of Closed or Realigned Military Installations**
David Bearden, Analyst in Economics, CRS
Aaron Flynn, Legislative Attorney, CRS
Baird Webel, Analyst in Economics, CRS
- 11:00 **Questions & Answers**

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Evaluation

Prior BRAC Rounds: Fate of Joint Resolutions

October 7, 2005

Speaker: David Lockwood

Name _____

Office _____

Title: LA LC Staff Asst/Aid Cmte Staff Press AA Staff Dir
 Other (please specify) _____

Hill Experience: 0-6 mos. 7 mos. - 1 yr. 1-2 yrs. 3-5 yrs. 5+ yrs.

E - Excellent, G - Good, F - Fair, P - Poor

E G F P

How do you rate this session?

How effective was the speaker in enhancing your understanding of the issue?

How effective was the speaker in making the content relevant to your job?

Was there sufficient time for questions and answers?

If used, did the graphic / audiovisual materials enhance the presentation?

Additional comments / suggestions: _____



Evaluation

Congressional "Fast-Track" Procedure

October 7, 2005

Speaker: Christopher Davis

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Hill Experience: 0-6 mos. 7 mos. - 1 yr. 1-2 yrs. 3-5 yrs. 5+ yrs.

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Evaluation

Legislative Proposal: Feature of the BRAC Process

October 7 , 2005

Speaker: Daniel Else

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 Other (please specify) _____

Hill Experience: 0-6 mos. 7 mos. - 1 yr. 1-2 yrs. 3-5 yrs. 5+ yrs.

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Evaluation

Legislative Proposal: Impact of Closed or Realigned Military Installations

October 7, 2005

Speakers: David Bearden, Aaron Flynn, Tadlock Cowan, Baird Webel

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Title: LA LC Staff Asst/Aid Cmte Staff Press AA Staff Dir
 Other (please specify) _____

Hill Experience: 0-6 mos. 7 mos. - 1 yr. 1-2 yrs. 3-5 yrs. 5+ yrs.

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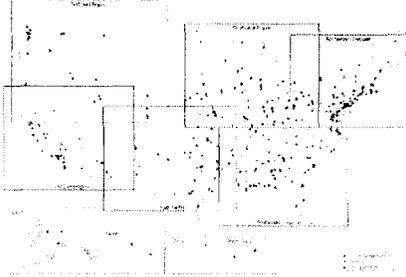

Military Base Closures: BRAC in Congress and Proposed Legislation
CRS Policy Seminar
Friday, October 7, 2005

Presentations

- Intro: Daniel Else
- 2005 Round Highlights: David Lockwood
- Resolution Process/Status: Christopher Davis
- Environmental Cleanup: David Bearden
- Land Transfer Authorities: Aaron Flynn
- Economic Redevelopment: Baird Webel
- Court Cases: Aaron Flynn
- Proposed Legislation: Daniel Else

The Measles Map

2005 Defense Base Closure & Realignment Commission Actions



2005 Round Highlights

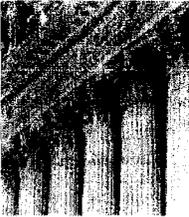
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Resolution Process/Status

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What Are Rulemaking Statutes?

- Laws establishing procedures for consideration of legislation
- Possess the same force as standing rules
- Rulemaking statutes put measures on a "fast track"



Examples of Rulemaking Statutes



- The Congressional Budget Act of 1974
- War Powers Act
- Trade Act of 1974
- Nuclear Waste Policy Act of 1982
- Congressional Review Act

A "Fast Track" Procedure for BRAC: Why?

- Shields base closing recommendations from the "political" lawmaking process
- Shifts decision making power to the executive, but gives Congress the ability to quickly disapprove its recommendations
- Sets the bar high enough so as not to make the BRAC recommendations easy to overturn
- Establishes a "backstop" set of ground rules while permitting either chamber to tailor the terms of consideration to meet its needs

Congress Can "Rewrite" the Procedure

- Rulemaking statutes such as BRAC can be set aside or changed by either chamber at any time
- These changes can be accomplished by UC, by special rule, by resolution, or by suspension of the rules

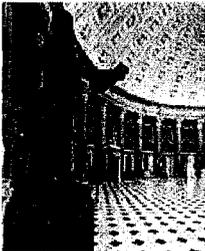


Features of the BRAC Procedure

- ❑ Recommendations take effect unless, within 45 days after submission, Congress adopts a joint resolution of disapproval rejecting the entire package
- ❑ Adjournments of more than three days stop the clock
- ❑ Sub-deadlines, limits on debate, amendments, and motions



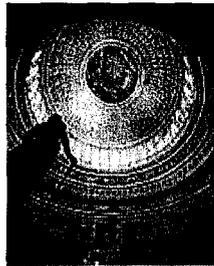
Joint Resolution: Introduction



- ❑ Disapproval resolution must be introduced within the 10-day period beginning on the date of transmittal
- ❑ Resolutions may be introduced in either chamber
- ❑ Text of the joint resolution is specified
- ❑ Measures are referred to the Committee on Armed Services

Joint Resolution: Committee Action

- ❑ Armed Services committee may not amend the resolution
- ❑ Must report within the 20 day period beginning on date of transmittal, or be automatically discharged
- ❑ Upon report or discharge, a resolution is placed on the House's Union Calendar or the Senate's Calendar of Business



Joint Resolution: Calling Up



- ❑ On or after the third day following report or discharge, a Member may move to proceed to the consideration of the joint resolution (*Note H.Res. 469*)
- ❑ If not making the motion at the direction of the House Committee on Armed Services, a day's notice is required
- ❑ Motion to proceed may be repeated even if previously defeated
- ❑ If the motion is adopted, the chamber considers the joint resolution without intervening business until disposition

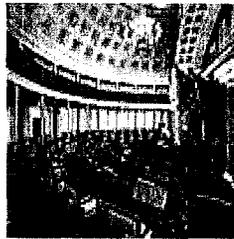
Joint Resolution: Debate & Voting

- ❑ Debate is limited to not more than two hours
- ❑ A motion to further limit debate is in order
- ❑ Amendments to the measure, motions to postpone its consideration or to proceed to other business are barred
- ❑ Adoption of the joint resolution is by simple majority vote



Joint Resolution: Final Steps

- ❑ Automatic "hook-up" provisions
- ❑ If the joint resolution is vetoed, override requires a vote of 2/3rds of each chamber



Fate of Prior Disapproval Resolutions

- ❑ 10 joint disapproval resolutions have been introduced in the House and Senate since 1989 – 5 by Democrats, 5 by Republicans
- ❑ 6 were reported by the Armed Services Committee to their respective chamber – all adversely
- ❑ 4 resolutions received floor consideration – 3 in the House, 1 in the Senate
- ❑ All 4 joint resolutions receiving a floor vote were defeated by large bipartisan margins

Environmental Cleanup

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**Relevance of Cleanup
to Redevelopment**

Environmental cleanup can be key to economic redevelopment of a closed base, as the property must be cleaned up to a degree that is safe for its intended reuse before it can be redeveloped.

**Land Use
Determines Cleanup**

Different land uses, with different levels of human exposure to contaminants, will require different degrees of cleanup.

Potential Delays

- ❑ Economic redevelopment can be delayed if there is a disagreement over land use.

- ❑ Certain land uses could be less practical, or infeasible in some cases, because of the cost or technical complexity of the degree of cleanup that would be required.

Major Closures in 2005

Estimates from DOD's FY2004 environmental report to Congress indicate that cleanup of the 22 major installations approved for closure in the 2005 round by the BRAC Commission would cost about \$500 million from FY2005 to site completion.

**Minor Closures and
Realigned Installations**

Significant cleanup also could be needed at other minor installations proposed for closure, and at installations recommended for realignment, if contaminated parcels of land are to be disposed of because of the change in military mission.

**Variables Affecting
Cleanup Costs**

Costs could be higher than estimated if contamination is more extensive than originally thought, or the land is used for less restrictive purposes, such as residential development, requiring a greater degree of cleanup.

Accuracy of DOD Estimates

Members of Congress, states, and environmental organizations have questioned DOD's cleanup cost estimates, arguing that contamination is more extensive, and that the estimates do not reflect stricter cleanup that may be needed to make the land safe for civilian reuse.

**Cleanup and Other Costs
Could Offset Savings**

The BRAC Commission commented that the possibly higher costs of cleanup, and numerous other costs, could offset much of the projected savings from the 2005 round and potentially result in “only marginal net savings” over the long-term.

Land Transfer Authorities

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**Redevelopment Planning &
Property Transfer**

- ❑ Upon closure approval, two roughly simultaneous processes begin:
 - local redevelopment planning
 - DOD analysis
- ❑ Local Redevelopment Authority (LRA)
 - responsible for Redevelopment Plan
 - may acquire property and implement Redevelopment Plan

LRA Formation

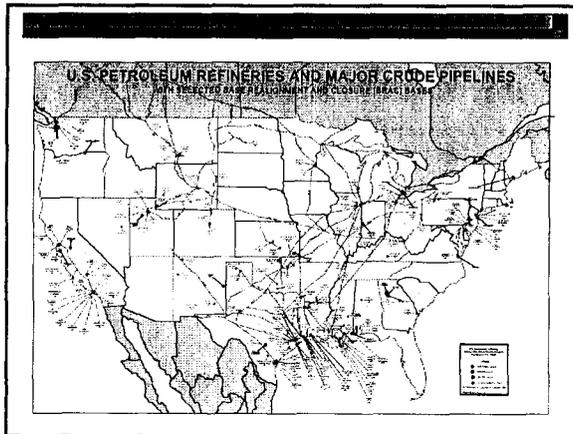
- Primarily state and local responsibility
- DOD/OEA recognition
- Should have broad-based membership & include entities with zoning authority

Transfer Analysis

- DOD & Federal Agency Screening
- LRA Homeless Assistance Screening
- Public Benefit Transfers
- Public Auctions
- Negotiated Sales
- Economic Development Conveyances
- Leases & Leasebacks

Economic Redevelopment

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Court Cases
CT, IL, MA, MO, & TN

- Rell v. Rumsfeld (CT): no final agency action = unreviewable
- Blagojevich v. Rumsfeld (IL): no standing because no injury
- Romney v. Rumsfeld (MA): no temporary restraining order because no irreparable harm
- State of MO v. Rumsfeld (MO): case not ripe
- Bredeesen v. Rumsfeld (TN): no irreparable harm

Court Cases
Corzine v. 2005 BRAC Commission

- Not National Guard related
- Regarding legality of conditional closure
- Relied on *Dalton v. Spector*
- Cited Souter's broad concurrence that all claims under the Base Closure Act are unreviewable

Court Cases
Rendell v. Rumsfeld

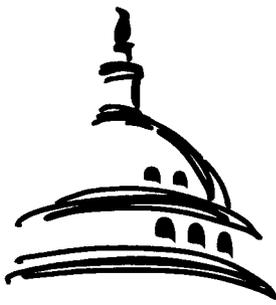
- Challenge to deactivation of Air National Guard unit
- Declaratory judgment, jurisdiction under 28 U.S.C. 2201
- Dalton* held inapplicable
- Applied 104(c) broadly
- Base Closure Act did not repeal statute
- Decision not appealed

Proposed Legislation
A 2014-2015 Round?

- BRAC in Strategic Context
- Continuing the Commission
- Monitoring, Studying, and Reporting Requirements
- Other
 - Penalties for not submitting data
 - Subpoena power
 - Sole ethics counsel
 - Transparency
 - Repeal some existing provisions



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CRS Report for Congress

Military Base Closures: Highlights of the 2005 BRAC Commission Report and Proposed Legislation

Daniel Else
Specialist in National Defense
Foreign Affairs, Defense, and Trade

David Lockwood
Specialist in Foreign Affairs and National Defense
Foreign Affairs, Defense, and Trade

Summary

The 2005 Defense Base Closure and Realignment Commission (Commonly referred to as the BRAC Commission) submitted to the President its report on domestic military base closures and realignments on September 8, 2005. The President approved the list and forwarded it to Congress on September 15. This report summarizes some of the report's highlights and examines in detail the Commission's proposed legislation for the conduct of a potential future BRAC round. It will not be updated.¹

Highlights of the 2005 BRAC Commission Report

Closures and Realignments. In the 2005 BRAC round, the Department of Defense (DOD) recommended 190 closures and realignments. Of this number, the BRAC Commission approved 119 with no changes and accepted 45 with amendments. These figures represented 86% of the Department of Defense's overall proposed recommendations. In other words, only 14% of DOD's list was significantly altered by the Commission. Of the rest, the Commission rejected 13 DOD recommendations in their entirety and significantly modified another 13. It should be pointed out that the BRAC Commission approved 21 of DOD's 33 major closures, recommended realignment of 7 major closures, and rejected another 5.

¹ Other BRAC-related CRS products are listed on the CRS website under the Defense Current Legislative Issue: "Military Base Closures." Online video presentations and VHS-format videotapes of CRS seminars, including those associated with military base closures, can be found in the CRS Multimedia Library, which is also available at the CRS website.



Costs and Savings. Over the next 20 years, the total savings of the Commission's recommendations are estimated at \$35.6 billion – significantly smaller than DOD's earlier estimate of \$47.8 billion. The difference between Commission and DOD estimates has proved controversial.

Results of Jointness. According to the Commission, DOD achieved only minor success in promoting increased jointness with its recommendations. Most of the proposed consolidations and reorganizations were within, not across, the military departments.

Air National Guard. Among the most difficult issues faced by the 2005 BRAC Commission were DOD's proposals to close or realign Air National Guard bases. 37 of 42 DOD Air Force proposals involved Air National Guard units.

Commission Process. According to the Commission, its process was open, transparent, apolitical, and fair. It made 182 site visits to 173 separate installations. It conducted 20 regional hearings to obtain public input and 20 deliberative hearings for input on, or discussion of, policy issues.

Differences between Current and Prior Rounds

In 2005, DOD adopted an approach supporting an emphasis on joint operations. The 1998, 1991, and 1993 rounds did not include a Joint Cross-Service element. The 1995 round did utilize Joint Cross-Service Groups in its analytical process, but the three military departments were permitted to reject their recommendations. In 2005, the Joint Cross-Service Groups were elevated to become peers of the military departments.

The 2005 Commission consisted of nine members rather than eight, thereby minimizing the possibility of tie votes. For the 2005 round, the time horizon for assessing future threats in preparing DOD's Force Structure Plan was 20 years rather than six. The 1995 selection criteria stated that the "environmental impact" was to be considered in any base closure or realignment. The 2005 criteria required the Department of Defense (and ultimately the Commission) to consider "the impact of costs related to potential environmental restorations, waste management and environmental compliance activities."

Existing BRAC law specifies eight installation selection criteria. The 2005 Commission emphasized the sixth, which directed consideration of economic impact on local communities. In prior rounds, homeland defense was not considered a selection criterion. It is now a significant element among the military value selection criteria.

The 1991 Commission added 35 bases to the DOD list of recommendations, the 1993 Commission added 72, and the 1995 Commission added 36 – where as the 2005 Commission added only 8.

Finally, prior BRAC rounds did not take place in the face of the planned movement of tens of thousands of troops from abroad back to the United States.

Recommended Legislation

Overview. The 2005 Defense Base Closure and Realignment Commission recommends various changes to the existing statute governing its creation, organization, process, and outcome. The proposed revision of the governing Act, if enacted, would arguably represent a significant change in scope of the BRAC law. It would expand the Commission's lifespan and mission. It would explicitly link reconsideration of the defense infrastructure "footprint" to security threat analysis by the new Director of National Intelligence (DNI) and the periodic study of the nation's defense strategy known as the Quadrennial Defense Review. It would also formalize BRAC consideration of international treaty obligations undertaken by the United States, such as the scheduled demilitarization of chemical munitions. By passing legislation containing the Commission's recommended language, Congress would authorize the Secretary of Defense to conduct a 2014-2015 BRAC round, should he or she deem it necessary.

Other recommended provisions would enable the Commission to suggest new vehicles for the expeditious transfer of title of real property designated for disposal through the BRAC process. In addition, recommended legislative language suggests expanding the requirement for Department of Defense release of analytical data and strengthens the penalty for failure to do so. It would increase the responsibilities of the Commission's General Counsel and would exempt the Commission from the Federal Advisory Committee Act (FACA) while retaining conformity with the Freedom of Information (FOIA) and Government in the Sunshine Acts. The recommended legislation would also make permanent the existing temporary authority granted to the Department of Defense to enter into environmental cooperative agreements with Federal, State, and local entities (including Indian tribes).

Finally, the recommended legislation, while it retains many of the features new to the 2005 round (such as the super majority requirement), it repeals others, such as statutory selection criteria.

Placing BRAC in the Broader Security Context. The 2005 BRAC round was the fourth in which an independent commission reviewed recommendations drawn up by the Department of Defense, amended them, and submitted the revised list to the President for approval. While the 2005 process resembled the previous three rounds, it was profoundly different in many respects.

For example, the DOD's analytical process attempted to reduce former rounds' emphasis on individual military departments by enhancing the joint and cross-service evaluation of installations. BRAC analysis in 2005 also attempted to project defense needs out to 20 years whereas previous rounds used a much shorter analytical horizon. This encouraged DOD analytical teams to base their assessments on assumptions of the needs of transformed military services, not formations created for the Cold War. These assumptions were embodied in the force-structure plan and infrastructure inventory submitted by the Secretary of Defense.

In its legislative recommendation, the Commission suggested that a potential 2014-2015 BRAC round be placed in a strategic sequence of defense review, independent threat analysis, and base realignment. The new statute would couple the existing Quadrennial Defense Review (QDR, currently required every four years) with consideration of a new

BRAC round. If the QDR leads the Secretary of Defense to initiate a new BRAC round, the DNI would produce and forward to Congress an independent threat assessment.

BRAC Commission. Under current statute, the BRAC Commission terminates on April 16, 2006. The proposed legislation would extend the life of a subset of the current Commission (Chairman, Executive Director, and staff of not more than 50). The continued staff would maintain the Commission's documentation and could form the core of an expanded staff for a possible 2014-2015 Commission.

In addition, the continued Commission would be tasked to monitor and report on: (1) the use of BRAC appropriations; (2) the implementation and savings of 2005 BRAC recommendations; (3) the execution of privatizations-in-place at BRAC sites; (4) the remediation of environmental degradation and its associated cost at BRAC sites; and (5) the impact of BRAC actions on international treaty obligations of the United States.²

Commission Reports. The proposed law requires the prolonged Commission to prepare and submit three reports to Congress and the President: an Annual Report, a Special Report (due on June 30, 2007), and a Final Report (due on October 31, 2011).

Annual Reports. The Commission would report not later than October 31 of each year on Department of Defense utilization of the Defense Base Closure and Realignment Account 2005, implementation of BRAC recommendations, the carrying out of privatizations-in-place by local redevelopment authorities, environmental remediation undertaken by the Department (including its cost), and the impact of BRAC actions on international treaty obligations of the United States.

Special Report. The legislation would authorize the Commission to study and analyze the execution of BRAC 2005 recommendations. This report, undertaken if the Commission considers it beneficial, would be completed not later than June 30, 2007. It would focus on actions taken and planned for those properties whose disposal proves to be problematic, including:

Properties Requiring Special Financing. Some properties planned for transfer to local redevelopment authorities or others may require special financial arrangements in the form of loans, loan guarantees, investments, environmental bonds and insurance, or other options.

National Priorities List (NPL) Sites. NPL sites and other installations present particularly difficult environmental remediation challenges necessitating long-term management and oversight.

² BRAC recommendations dealing with certain installations are driven by chemical weapon and other international treaty obligations external to the BRAC process itself. The proposed legislation authorizes the Commission's Executive Director to request staff detailees from the Government Accountability Office, the Environmental Protection Agency (EPA), and the Arms Control and Disarmament Agency (ACDA), who would monitor and track use of the Defense Base Closure and Realignment Account 2005 (the BRAC appropriation), environmental remediation, restoration, and compliance, and international treaty compliance, respectively.

The 2005 Commission report suggests that this study examine freeing the Department, after a set period, to withdraw from unsuccessful title transfer negotiations with local redevelopment authorities in order to seek other partners. It also envisions potential Department contracts with private environmental insurance carriers after the completion of remediation in order to mitigate risk of future liability.

The study may also consider the advisability of crafting a financial “toolbox,” similar in concept to the special authorizations granted to the Department of Defense in the creation of the Military Housing Privatization Initiative, in order to expedite the disposal of challenging properties. Other alternatives studied could include the creation of public-private partnerships, limited-liability corporations, or independent trusteeships to take title to and responsibility for properties.³

The Commission would consult with the Department of Defense, the military departments, the Comptroller General of the United States, the Environmental Protection Agency, and the Bureau of Land Management, Department of the Interior, in preparing its study and report.

Final Report. Existing law requires all BRAC implementation actions to be completed not later than six years after the date that the President transmitted the current Commission’s report, or September 15, 2011. The recommended legislation would require the Commission to submit a final report on the execution of these actions not later than October 31, 2011.

Other Considerations. The recommended legislation includes other provisions suggested by the experience of the 2005 round.

Submission of Certified Data. The proposed legislation would require the Secretary of Defense to release the supporting certified data not later than seven (7) days after forwarding his base closure and realignment recommendations to the congressional defense committees and the Commission. Failure to do so would terminate the BRAC round.

Prolongation of Commission Analysis and Recommendation Period. The 2005 Commission report notes that the four months allotted by statute for the Commission to complete its work was shortened considerably by delays in staffing the Commission, the appointment of Commissioners, and the release of Defense Department certified data, among other considerations. The proposed legislation extends this period to seven (7) months.

Commission Subpoena Power. Recommended legislation would grant the Commission the power to subpoena witness for its hearings.

Commission General Counsel as Sole Ethics Counselor. The Commission recommendation would place into statute the designation of the Commission’s General Counsel as its sole ethics counselor. The 2005 Commission found

³ See CRS Report RL31039, *Military Housing Privatization Initiative: Background and Issues*, by Daniel H. Else, for more information.

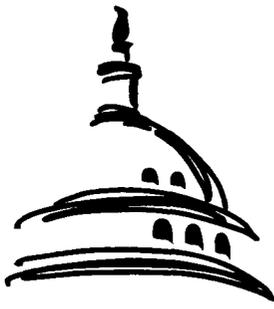
that questions concerning recusal from consideration, potential conflicts of interest, etc., were not materially assisted by consultation with other agency counsel.

Transparency. Legislation recommended by the Commission states that the “records, reports, transcripts, minutes, correspondence, working papers, drafts, studies or other documents that were furnished to or made available to the Commission shall be available for public inspection and copying at one or more locations to be designated by the Commission. Copies may be furnished to members of the public at cost upon request and may also be provided via electronic media in a form that may be designated by the Commission.” It continues the current practice of opening all unclassified hearings and meetings of the Commission to the public and provides for official transcripts, certified by the Chairman, to be made available to the public.

Repeal of Existing Law. The recommended legislation would repeal Sec. 2912-2914 of the existing law. These sections authorized the 2005 round and include, among other provisions, the statutory installation selection criteria.

Timeline of Proposed 2014-2015 BRAC Round

Date	Event
September 30, 2013	Secretary of Defense issues 2013 QDR
January 31, 2014	Director of National Intelligence issues threat assessment report
February 2014	Presidential budget request, including force-structure plan and defense infrastructure inventory
March 15, 2014	Secretary of Defense certification of need for BRAC round
April 15, 2014	Secretary of Defense draft selection criteria publication in <i>Federal Register</i>
May 30, 2014	GAO report on force-structure plan
June 30, 2014	Final BRAC selection criteria publication in <i>Federal Register</i>
September 30, 2014	Presidential nomination of Commissioners (failure terminates process)
October 1, 2014	Secretary of Defense final force-structure plan submission
November 30, 2014	Secretary of Defense BRAC recommendation list submission
December 7, 2014	Secretary of Defense submission of certified data (failure terminates process)
January 15, 2014	GAO report on BRAC process
June 30, 2015	BRAC Commission report submission to President
July 15, 2015	Presidential approval/disapproval of BRAC Commission report
August 15, 2015	BRAC Commission revised submission to President (if needed)
August 30, 2015	Presidential submission of recommendations/certification of approval to Congress (failure terminates process)
Submission + 45 days	Enactment of recommendations unless joint resolution of disapproval passed



CRS Report for Congress

“Fast Track” Congressional Consideration of Recommendations of the Base Realignment and Closure (BRAC) Commission

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Analyst in American National Government
Government and Finance Division

Summary

The recommendations of the 2005 Base Realignment and Closure (BRAC) Commission will automatically take effect unless, within a stated period after the recommendations are submitted to the House and Senate, Congress adopts a joint resolution of disapproval rejecting them in their entirety. Congressional consideration of this resolution is not governed by the regular rules of the House and Senate, but by special expedited or “fast track” procedures laid out in statute. This report describes these expedited parliamentary procedures and explains how they differ from the regular legislative processes of Congress. This report will be updated as needed.

BRAC Recommendations on “Fast Track”

In response to concern about the government’s inability to close unneeded military facilities, Congress in 1988, and again in 1990, enacted statutory provisions establishing a process intended to insulate base closings from the “political” considerations that are part of the regular lawmaking process. Under this process, the recommendations of a bipartisan Base Realignment and Closure (BRAC) Commission would be submitted to Congress, and automatically take effect unless Congress passed legislation disapproving them. To ensure that Congress could promptly act if it so chose, the statute created special “fast track” or expedited legislative procedures laying out the terms for House and Senate consideration of legislation striking down the BRAC Commission’s report. Such “fast track” procedures governed congressional consideration of four previous rounds of base closures and also govern consideration of the recommendations of the 2005 BRAC Commission.

On May 13, 2005, the Department of Defense (DOD) announced its recommendations of domestic military installations to be closed or realigned. After reviewing them, the BRAC Commission forwarded its revised findings to the President. President George W. Bush certified these recommendations and submitted them to



Congress on September 15, 2005. This package of suggested base closures will automatically take effect unless Congress adopts a joint resolution of disapproval rejecting the entire package within the 45 day¹ period beginning on the date of the President's submission, or the sine die adjournment of the session, whichever occurs earlier.

Congressional consideration of a BRAC resolution of disapproval is governed not by the standing rules of the House and Senate, but by special expedited procedures laid out in the Defense Base Closure and Realignment Act of 1990, as amended, (P.L. 101-510, 10 U.S.C. 2687 note). The procedures have the same force and effect as standing House and Senate rules, and exempt the joint resolution of disapproval from many of the time-consuming steps and obstacles that apply to most measures Congress considers. For example, the act states when a joint resolution may be introduced, dictates its text, limits committee and floor consideration of the measure, prohibits amendments, and establishes an automatic "hook-up" of joint resolutions passed by both chambers.

Features of the BRAC Expedited Procedure²

Introduction. Ordinarily, Members of either house of Congress may introduce legislation at any time that their chamber is in session during a two-year Congress. Under the BRAC law, however, a joint resolution of disapproval must be introduced within the 10-day period beginning on the date the President transmits a certified BRAC report to Congress. A respective joint disapproval resolution may be introduced by any Member in either chamber and when it is, it is referred to the House or Senate Committee on Armed Services. There is no limit to the number of measures that can be introduced, and in the past, multiple disapproval resolutions have been introduced aimed at the same BRAC report.

Text of the Joint Resolution. Provisions are included in the law specifying the text of the disapproval resolution. These are meant to make it clear to Members exactly which legislation is eligible to be considered under the expedited procedure. The joint resolution of disapproval must not contain a preamble. The title of the measure is to read: "Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission." The text of the joint resolution after the resolving clause is to read: "That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on *BLANK*," with the appropriate date filled in the blank.

Committee Action. With certain exceptions — for example, when time limits are placed on the sequential referral of a bill by the Speaker — Congress generally does not mandate that a committee act on a bill referred to it within a specified time frame, or at all. The BRAC statute, however, places deadlines on the Armed Services Committee to act, and creates a mechanism to take the resolution away from them if they do not report it. These expediting provisions are intended to make it impossible for a joint resolution of disapproval to be long delayed or killed outright in committee.

¹ In calculating the 45-days, recesses of more than three days by either chamber are not counted.

² The Defense Base Closure and Realignment Act of 1990 is part A of title XXIX of P.L. 101-510; 10 U.S.C. 2687 note. Congressional disapproval procedures are located in §2908.

As noted, upon introduction, a joint resolution of disapproval is referred to the House or Senate Committee on Armed Services. If the committee does not report a joint resolution of disapproval by the end of a 20-day period beginning on the date the President transmits the BRAC report to Congress, the panel is automatically discharged from its further consideration, and the measure is placed directly on the House's Union Calendar or the Senate's Calendar of Business.

It is important to note that, under the terms of the BRAC statute, the Armed Services Committee must report just one resolution of disapproval; if multiple joint resolutions of disapproval are introduced by several Members and referred to committee, the panel must only report one resolution or a substitute for it within the 20-day time frame in order to forestall the automatic discharge of all of the others.

Calling Up the Joint Resolution on the Floor. On or after the third day following the day the House or Senate Armed Services Committee reports the joint resolution, or is discharged from its consideration, any Member may move in their chamber to proceed to the consideration of the joint resolution.³ The BRAC law stipulates, however, that a Member must first, on the preceding calendar day, have given notice of the intention to offer the motion to proceed. This notice can be avoided in the House of Representatives if the motion is being made at the direction of the committee of referral. The motion can be made even if the body has previously rejected an identical motion to the same effect. This provision serves as incentive for the chamber to get to an up-or-down vote on the underlying joint resolution; if a motion to proceed is defeated, supporters can simply re-offer it until it passes, or force the chamber to expend time and energy disposing of repeated motions. Points of order against the resolution and its consideration are waived.

In the Senate, under most circumstances, a motion to proceed to the consideration of a measure is debatable. Under the BRAC statute, however, the motion to proceed to the consideration of the joint resolution of disapproval is not debatable in either chamber, and it cannot be amended or postponed. Appeals of the decision of the chair relating to consideration of the joint resolution are decided without debate. If the motion is adopted, the chamber immediately considers the joint resolution without intervening motion, order, or other business. Once the chamber has chosen to take up the joint resolution by adopting the motion to proceed, consideration of the measure is, in a sense, "locked in." It remains the unfinished business of the chamber until disposed of. Other business cannot intervene, the joint resolution can not be laid aside, and it must be disposed of before other business can be taken up.

Floor Debate. In the absence of a special rule dictating otherwise, the House ordinarily debates measures under the one hour rule. In the Senate, debate is ordinarily

³ On September 29, 2005, the House adopted H.Res. 469. Section 3 of the resolution altered this provision by barring rank and file House Members from making the motion to proceed to the consideration of a joint resolution disapproving the recommendations of the BRAC. H.Res. 469 stated, "A motion to proceed pursuant to section 2908 of the Defense Base Closure and Realignment Act of 1990 shall be in order only if offered by the Majority Leader or his designee." These new provisions apply only to the House during the 109th Congress. For a fuller discussion of either chamber's ability to change the terms of consideration specified in the base closure statute, see page 4 for of this report.

unlimited except by unanimous consent, by the invocation of cloture, or by some other special procedure, such as that governing budget reconciliation. In keeping with its “fast track” nature, floor consideration of the BRAC joint resolution of disapproval is limited. Debate in a chamber on the joint resolution, and all debatable motions and appeals connected with it, is limited to not more than two hours, equally divided. A non-debatable motion to further limit debate is in order.

Motions and Amendments. The BRAC statute limits Members’ ability to delay consideration of the joint resolution of disapproval by barring amendments and motions which would ordinarily be permissible under House and Senate rules. Amendments to the measure, a motion to postpone its consideration, or motions to proceed to the consideration of other business are not permitted. A motion to recommit the joint resolution to committee is not in order nor is a motion to reconsider the vote by which the joint resolution is agreed to or disagreed to.

Voting. It is virtually impossible to avoid a final vote on the joint resolution once a chamber has decided to take it up. At the conclusion of debate, and after a single quorum call (if requested), without intervening motion, a chamber immediately votes on passage of the joint resolution of disapproval. Passage of the joint resolution is by simple majority in each chamber, although, if the disapproval resolution is subsequently vetoed by the President — arguably a certainty — a two-thirds vote in each chamber would then be required to override the veto.

Automatic Legislative “Hookup.” If, before voting upon a disapproval resolution, either chamber receives a joint resolution passed by the other chamber, that engrossed joint resolution is not referred to committee. The second chamber proceeds to consider its own joint resolution as laid out in the statute, until the point of final disposition, when the vote taken will be on the engrossed resolution passed by the first chamber. After the second chamber votes on the first chamber’s joint resolution, it may no longer consider its own version. This provision is included to avoid the need to reconcile differences between the chambers’ versions or expend time choosing whether ultimately to act upon the House or Senate joint resolution.

Either Chamber May Alter The Expedited Procedure

The fact that an expedited procedure is contained in statute does not mean that another law must be passed in order to alter it. Article I, Section 5 of the Constitution gives each chamber of Congress the power to determine the rules of its proceedings; as a result, statutory expedited procedures like those in BRAC can (like all rules of the House or Senate) be set aside, altered, or amended by either chamber at any time. As House Parliamentarian Emeritus Charles W. Johnson observes, a chamber may “change or waive the rules governing its proceedings. This is so even with respect to rules enacted by statute.”⁴ These changes can be accomplished, for example, by the adoption of a special rule from the House Committee on Rules, by suspension of the rules, or by unanimous consent agreement.

⁴ William Holmes Brown and Charles W. Johnson, *House Practice, A Guide to the Rules, Precedents, and Procedures of the House*, 108th Cong., 1st sess. (Washington: GPO, 2003), ch.50, §4, p. 826.

Instances of this ability to “rewrite” expedited procedure statutes have occurred during consideration of base closure joint resolutions of disapproval. For example, in the 101st Congress, Representative George E. Brown, Jr. (D-CA) introduced H.J.Res. 165, a joint resolution disapproving the recommendations of the 1988 Commission on Base Realignment and Closure. Under the terms of the 1988 BRAC statute, the House Committee on Armed Services had to report a joint disapproval resolution prior to March 15, 1989, or be automatically discharged of it. The statute further permitted any Member, at any time three days after this report or discharge, to make a motion to proceed to the immediate consideration of the resolution. The House, however, “rewrote” these statutory terms as they related to the consideration of H.J.Res. 165. On March 21, 1989, Representative Les Aspin (D-WI) asked unanimous consent that, notwithstanding the provisions of the BRAC law, it not be in order to move to proceed to the consideration of H.J.Res. 165 prior to April 18, 1989.⁵ Still later, on April 11, 1989, a second unanimous consent request laid aside not only the terms of the BRAC expedited procedure statute, but the those of Representative Aspin’s March 21 unanimous consent request, as well.⁶

More recently, the House agreed to lay aside certain provisions of the BRAC statute governing its consideration of the 2005 round of closures. On September 29, 2005, the House adopted H.Res. 469, which stated that, despite the BRAC statute’s provision permitting any Member to make a motion to proceed to the consideration of a joint resolution of disapproval, that motion “shall be in order only if offered by the Majority Leader or his designee.”

In a sense, then, the expedited procedures in the BRAC statute establish a default set of ground rules for consideration of a disapproval resolution; these provisions can be tailored by Members in either chamber to meet specific situations or for their convenience. **Table 1** lists all joint resolutions of disapproval introduced in Congress relating to prior BRAC rounds and their disposition.

Table 1. Resolutions of Disapproval Introduced Under the Terms of Defense Base Realignment and Closure Commission Statutes

Measure	Date/ Congress Introduced	Sponsor	Committee Consideration	Floor Consideration	Final Disposition
H.J.Res. 165	03/01/89 101 st Cong.	Rep. George E. Brown, Jr. (D- CA)	Reported adversely 03/14/89 H.Rept. 101-7	Considered by unanimous consent 04/12/89 & 04/18/89 ^a	Rejected, 43- 381. 04/18/89 (Roll call #32)
S.J.Res. 80	03/15/89 101 st Cong.	Sen. John McCain (R-AZ)	—	—	—

⁵ *Journal of the House of Representatives*, 101st Cong., 1st sess., Mar. 21, 1989, p. 173.

⁶ *Journal of the House of Representatives*, 101st Cong., 1st sess., Apr. 11, 1989, p. 218.

Measure	Date/ Congress Introduced	Sponsor	Committee Consideration	Floor Consideration	Final Disposition
S.J.Res. 175	07/10/91 102 nd Cong.	Sen. Arlen Specter (R-PA)	Reported unfavorably 07/25/91 S.Rept. 102-123	—	Indefinitely postponed by unanimous consent 02/03/92 ^b
H.J.Res. 298	07/11/91 102 nd Cong.	Rep. Olympia J. Snowe (R-ME)	Marked up by subcommittee and forwarded to full committee 07/23/91	—	—
H.J.Res. 308	07/18/91 102 nd Cong.	Rep. Thomas M. Foglietta (D-PA)	Reported adversely 07/25/91 H.Rept. 102-163	Considered by motion 07/30/91 ^c	Rejected, 60- 364 07/30/91 (Roll call #232)
S.J.Res. 114	07/20/93 103 rd Cong.	Sen. Dianne Feinstein (D-CA)	Ordered to be reported unfavorably 07/30/93 S.Rept. 103-118	Considered by unanimous consent 09/20/93 ^d	Rejected, 12-83 09/20/93 (Roll call #271)
H.J.Res. 101	07/13/95 104 th Cong.	Rep. Vic Fazio (D- CA)	—	—	—
H.J.Res. 102	07/18/95 104 th Cong.	Rep. Frank Tejeda (R-TX)	Reported adversely 08/01/95 H.Rept. 104-220	Considered by unanimous consent 09/08/95 ^e	Rejected, 75- 343 09/08/95 (Roll call #647)
H.J.Res. 64	09/20/05 109 th Cong.	Rep. Harold E. Ford, Jr. (D-TN)	—	—	—
H.J.Res. 65	09/20/05 109 th Cong.	Rep. Ray LaHood (R-IL)	Reported adversely 09/29/05 H.Rept. 109-243	—	—

Notes: The 1988 base closure round was considered under the terms of P.L. 100-526. The 1991, 1993, 1995, and 2005 rounds were considered under the terms of P.L. 101-510, as amended.

a. *Congressional Record*, vol. 135, Apr. 12 & 18, 1989, pp. 6293-6319, 6845-6871.

b. *Congressional Record*, vol. 138, Feb. 3, 1992, p. 1215.

c. *Congressional Record*, vol. 137, Jul. 30, 1991, pp. 20333-20367.

d. *Congressional Record*, vol. 139, Sept. 20, 1993, pp. 21677-21694, 21717.

e. *Congressional Record*, vol. 141, Sept. 8, 1995, pp. 24129-24149.



CRS Report for Congress

Military Base Closures: The 2005 BRAC Commission

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Summary

The President and Congress have completed the selection of nine members to the 2005 Base Realignment and Closure Commission. On or about May 16, 2005, the Department of Defense (DOD) is to send the Commission its recommended list of installations to be closed or realigned. The Commission, in turn, is to spend several months reviewing DOD's list, and then forward its findings and recommendations to the President no later than September 8, 2005.

This report focuses exclusively on developments relating to the Base Realignment and Closure (BRAC) Commission. It examines relevant factors of interest, not only in regard to the current BRAC round, but also to the past four rounds. It should be noted that the 2005 Commission is likely to follow procedures that are, in large part, similar to those of the past three BRAC rounds. The Commission's role will expire no later than April 15, 2006. This report is to be updated.

Introduction

This report examines the role and current status of the independent 2005 Base Realignment and Closure (BRAC) Commission. It follows an earlier CRS report that provided important details about the Department of Defense's internal base closure/realignment selection process.¹

At this point, the 2005 BRAC schedule is well along — with Congress having already approved DOD's final selection criteria (February 2004) and its force structure plan, base inventory, and BRAC requirement certification (March 2004). The next important step in the BRAC schedule has been the President's appointment of nine members to the new independent Commission. Congressional leaders have selected six

¹ See CRS Report RS21822, *Military Base Closures: DOD's Internal Selection Process*, by Daniel H. Else and David E. Lockwood. In addition, see CRS Report RL32216, *Military Base Closures: Implementing the 2005 Round*, by David E. Lockwood.



individuals to be nominated, with the President choosing the remaining three. The completed list of nominees has been forwarded to the Senate Armed Services Committee, as of March 15, 2005. After considering the nominees' credentials, the committee will then make its recommendations to the full Senate chamber, where the final decision will be agreed to or not.²

It is important, at this juncture, to emphasize the extent to which the current 2005 BRAC Commission is likely to follow procedures similar to those used by past commissions in 1991, 1993, and 1995.³ The reason for this degree of replication can be attributed to the widely held view that the 1990 BRAC statute (P.L. 101-510, as amended) provides the most successful solution to an otherwise impossible dilemma — namely, how to avoid eternal wrangling over which bases should be closed or realigned.

Appointment of BRAC Commissioners

Although the President was entitled to appoint nine members to the new BRAC Commission, he also had the authority to ignore the directive — in which case the 2005 BRAC round would have been cancelled.⁴ The President will also have a second opportunity to terminate the process later, when he forwards the list of BRAC actions to Congress by November 7, 2005. In other words, the President exercises almost complete authority throughout the process, with one possible exception; after receiving the presidentially approved list of actions, Congress can pass a joint resolution of disapproval.

In appointing members to the Commission, the BRAC law states that the President *should* first consult with top congressional leaders on six of the nine candidates. The selection and allocation of the six candidates are outlined below:

House of Representatives	Senate
Speaker of the House — 2	Majority Leader of the Senate — 2
Minority Leader — 1	Minority Leader — 1

The President is under no obligation to consult with the Congress on the three remaining appointments.

In the past four BRAC rounds, members of the BRAC Commission have included:

- Former Members of Congress
- Retired military leaders

²The 1995 BRAC Commission consisted of eight members. The 2005 statute revised the number to avoid a tie vote.

³The 1988 and 1991 statutes (P.L. 100-526 and P.L. 101-510) differed to a considerable degree. See CRS Report 97-305 F, *Military Base Closures: A Historical Review from 1988 to 1995*, by David E. Lockwood and George Siehl.

⁴U.S. Congress, House, *National Defense Authorization Act for Fiscal Year 2002*, P.L. 107-107, December 12, 2001.

- Former U.S. ambassadors
- Business leaders — industry, banking, etc.
- Former House and Senate staff members
- Former White House staff members

On February 16, 2005, Congress completed its recommendations for six of the nine commissioners for the 2005 base closure and realignment round.

Speaker of the House J. Dennis Hastert recommended former *Representative James V. Hansen* and *Samuel K. Skinner*. Mr. Skinner served at various times as Secretary of Transportation and chief of staff to President George H. W. Bush.

House Minority Leader Nancy Pelosi recommended *Philip E. Coyle III*, a former Assistant Secretary of Defense and Director of Operational Test and Evaluation.

Senate Majority Leader William H. Frist recommended retired *General John G. Coburn* and retired *Admiral Harold W. Gehman, Jr.*

Senate Minority Leader Harry Reid recommended former *Representative James Bilbray*.⁵

On March 15, 2005, the President recommended *Anthony A. Principi* as the seventh member and chairman of the 2005 BRAC Commission. Mr. Principi most recently served as vice-president of the Pfizer Corporation. He is a decorated Vietnam war veteran, who later served as the Secretary of Veterans Affairs. He also has been chief counsel of the Senate Armed Services Committee and a top official with defense contractor Lockheed Martin.

The two remaining commissioners recommended by the President were *Brigadier General Sue Ellen Turner* and *General James T. Hill*.

1995 BRAC Commission Operation

The experience of the 1995 BRAC Commission may serve to establish a context for anticipating the operation of the 2005 Commission.

Commission Staff. Fifteen permanent employees formed the core of staff support for the 1995 BRAC Commission. This cadre had maintained continuity throughout the various BRAC rounds, providing legacy knowledge and experience to the augmentees brought in temporarily to perform the analysis required during BRAC. They also maintained the BRAC Library, which consisted of the research and reference materials and analytical tools used during previous rounds.

Within three weeks of the appointment of the BRAC Commission chairman, the staff was increased by a factor of five, to 75, by these temporary appointments. The augmentees were drawn primarily from the military services and the Defense Logistics

⁵ John M. Donnelly, "Hill Leaders Submit Nominees for Base Closure Commission," *CQ.com*, January 13, 2005.

Agency, but other relevant agencies were represented, including the Government Accountability Office (GAO). Augmentee selection was based on individual expertise required by the Commission and knowledge of their parent organizations. Office space, computer support, communication support, etc., were provided by the Department of Defense. The staff occupied an entire floor of the building immediately above the Rosslyn Metro station in Rosslyn, Virginia.

Staff Organization. The staff was organized into four sections: Analysis, Administration, Press Relations, and Congressional Liaison.

Analysis. Analysis constituted the largest section. Analysts accepted DOD-generated data and information from other sources, digested it, and presented it to the Commissioners, who were responsible for deliberating upon it and accepting, rejecting, or amending the DOD recommendations.

Administration. Administration was small but critical to the Commission's success — arranging travel, reimbursement, payroll, etc. — relieving the Commissioners and the rest of the staff of these responsibilities and allowing them to concentrate on their own duties.

Embedded within the Administration section was the *Executive Secretary*. The Executive Secretary controlled public access to the BRAC Library. The Library housed within a single large office all DOD and other documentation accepted by the Commission in paper and electronic form. The Library was equipped with computers available to the public for review of BRAC documentation from the current and previous rounds. This information was used by many communities and other outside organizations to gain an understanding of the process by which the Department of Defense had created its list of recommended actions and as a means of comparing the information compiled on various military installations.

Press Relations. This small section handled press inquiries.

Congressional Liaison. Congressional interest in the BRAC Commission's activities was intense throughout the period of active analysis and deliberation. This section was responsible for fielding all congressional inquiries.

Hearings. The 1995 Commission conducted hearings in Washington, D.C., geared to the recommendations made by the Department of Defense. Invited witnesses were primarily representatives of the military services, defense agencies, and the Office of the Secretary of Defense. The Commission also conducted a series of field hearings, grouped geographically by region. Witnesses who appeared at the field hearings usually represented communities affected by the DOD list of recommendations and installations later added by the BRAC Commission.

Base Visits. Commissioners were required to visit every installation added to the DOD List of Recommended Actions. In fact, the commissioners visited every installation on the BRAC list.⁶

Representations from Outside Groups. Many communities submitted impact studies of various kinds to the Commission. In addition, the Commission received many visits by interested individuals and organizations who met with the staff and made use of the BRAC Library.

Commission Deliberations. In a broad sense, the Commission's deliberations continued throughout its existence. Data regarding installations and communities was updated and analyzed as it was received. The Commission's list of recommendations was drawn up over a two-day public markup at which each recommendation was read aloud by the staff and deliberated by the commissioners before making a final determination. A majority vote was required to add an installation to the List of Recommended Actions.⁷

Submission to the President. Commission and White House staffs engaged in an extensive and continuing exchange of information throughout the process. The Commission submitted its list of recommendations to the White House. After due consideration, the President forwarded the list to Congress.

Congressional Action. In 1995, Congress did not pass a joint resolution of disapproval, thereby allowing the BRAC list to go into effect. Nevertheless, joint resolutions of disapproval were introduced during each of the previous rounds, though all failed passage, as shown below.⁸

<u>Round</u>	<u>Resolution</u>	<u>Vote (Yea-Nay)</u>
1995	H.J.Res. 102	House vote: 75-343
1993	S.J.Res. 114	Senate vote: 12-83
1991	H.J.Res. 308	House vote: 60-364

Standing Down. Commission staff began to disperse as soon as the analytical process was completed. Augmentees were released as soon as their services were no longer required. The core cadre disbanded at the end of December 1995.

⁶ The 2005 statute requires that at least two commissioners must *visit* any installation the Commission contemplates *adding* to DOD's list.

⁷ The 2005 statute requires at least seven of the nine commissioners to agree in order to add an installation not on DOD's list.

⁸ A joint resolution of disapproval is treated as if it is a bill and is subject to veto. Once vetoed, a two-thirds majority in each chamber is required to override.

Table 1. 2005 BRAC Timetable

1. Sec/Def sends initial selection criteria to defense committees ^a	December 31, 2003
2. Sec/Def sends <i>final</i> selection criteria to defense committees ^b	February 16, 2004
3. President forms new BRAC Commission; sends nominees to Senate ^c	March 15, 2005
4. Sec/Def sends closure/realignment list to Commission/defense committees	May 16, 2005
5. GAO reviews DOD's list; reports findings to President/defense committees	July 1, 2005
6. Commission sends its findings and recommendations to President	September 8, 2005
7. President reviews Sec/Def's and Commission's list of recommendations ^d	September 23, 2005
8. Commission may submit <i>revised</i> list in response to President's review	October 20, 2005
9. President certifies closure/realignment list and transmits approval to Congress (or process is terminated) ^e	November 7, 2005
10. Work of the closure/realignment Commission must be completed	April 15, 2006

Source: U.S. Congress, House of Representatives, *National Defense Authorization Act for Fiscal Year 2002*, Conference Report, December 12, 2001.

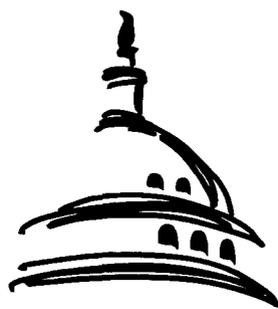
a. Also, Secretary of Defense publishes criteria in *Federal Register*.

b. Criteria are final, unless disapproved by an act of Congress by March 15, 2004.

c. If President does not send nominations by the required date, the process is terminated.

d. President prepares report containing approval or disapproval.

e. Congress has 45 days to pass joint resolution of disapproval, or the Commission's list becomes law.



CRS Report for Congress

Military Base Closures: DOD's 2005 Internal Selection Process

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Summary

The Department of Defense (DOD) is going through a process which will result in recommended actions for base realignment and closure (BRAC) in the United States. DOD is now preparing a list of BRAC actions designed to change the uses of its installations to conform to the current and future needs of its military forces. This list, after approval by the President, must be presented to Congress no later than November 2005. Congress can halt the execution of these actions by then enacting a joint resolution of disapproval within 45 days or before the adjournment sine die of the session, whichever occurs first. This report outlines how DOD has organized to gather and analyze BRAC-related data and document the process. It also describes DOD's selection criteria process, and the Secretary of Defense's requirement to certify the need for a BRAC round. The report then explains how the list of recommended BRAC actions will be drawn together for submission by the Secretary of Defense to the President. This report will be updated as necessary.

Introduction

Through the BRAC process, DOD is responding to statutory requirements while attempting to transform the U.S. military services. The Defense Base Closure and Realignment Act of 1990 (as amended) provides the exclusive statutory authority and outlines the process for the 2005 round of base realignment and closure (BRAC 2005) in the United States. This authority expires on April 15, 2006. In addition to reducing excess capacity of its bases, the Department of Defense, through BRAC 2005, intends to transform its installation infrastructure to coincide with its other transformation initiatives — changing an organization created to fight the Cold War to one that will provide a military security to the United States for the foreseeable future.

The Department of Defense has already taken significant steps in the process to implement BRAC 2005 by preparing three major analytical documents: a list of BRAC selection criteria; a Force Structure Plan; and a Comprehensive Base Inventory. The



Selection Criteria provide the general guidance from which detailed measures for creating BRAC actions will be drawn. The **Force Structure Plan (FSP)** assesses the long-term security threats to the United States, and the projects the means necessary to counter them. The **Comprehensive Base Inventory** describes the “baseline footprint” of installations that will be affected by BRAC 2005.¹

In assessing the need for a new round of base closures and realignments, DOD projected the force structure that will exist in 2009 and compared it to the much larger force that existed in 1988, the year just prior to the commencement of the first round of base closures. The Department then compared the base inventory existing then with the current inventory. The Secretary then concluded that the base infrastructure that exists now exceeds the requirements of the force that will exist in 2009, justifying BRAC 2005.

On March 25, 2004, the General Accounting Office (GAO) testified before Congress on the new BRAC round. It reported that the 2005 selection criteria follow a framework that is similar to that employed in prior BRAC rounds, with “more specificity” in selected areas — especially in those regarding military value.² It also said that, while the criteria were sound, DOD needed to consider total costs to DOD and other federal agencies, as well as environmental costs, in its analyses.

Organization of BRAC within the Office of the Secretary of Defense

The Secretary of Defense has delegated broad BRAC policy and decision making responsibilities to the Deputy Secretary of Defense, who chairs an **Infrastructure Executive Council (IEC)**. The council consists of 10 members, including the secretaries of the military departments, the chiefs of staff of the military services, the Chairman of the Joint Chiefs of Staff, and the Under Secretary of Defense for Acquisition, Technology, and Logistics. The council creates the BRAC selection criteria, makes policy decisions regarding the BRAC process, coordinates the efforts of the analytical organizations, and recommends the resulting list of actions to the Secretary of Defense.

Each military department (Army, Navy, and Air Force) is responsible for BRAC data analysis relevant to *military operations*, and each has formed appropriate analyst teams.

An **Infrastructure Steering Group (ISG)**, created within the Office of the Secretary of Defense, is responsible for BRAC analysis relevant to *defense functions*. This ISG is chaired by the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Vice Chairman of the Joint Chiefs of Staff, the military department assistant secretaries for installations, the military service vice chiefs of staff, and the Deputy Under Secretary of Defense for Installations and Environment are also members.

¹ U.S. Department of Defense. “Report Required by Section 2912 of the Defense Base Closure and Realignment Act of 1990, as amended through the National Defense Authorization Act for FY2003,” March 2004, p. 2.

² U.S. General Accounting Office. “Military Base Closures: Observations on Preparations for the Upcoming Base Realignment and Closure Round,” (GAO-04-558T), March 25, 2004, p. 3.

Seven functional analysis teams subordinate to the Infrastructure Steering Group will perform the actual analysis. They include (1) education and training; (2) industry; (3) supply and storage; (4) headquarters and support; (5) medicine; (6) technology; and (7) intelligence. Three of these seven Joint Cross-Service Groups are headed by uniformed officers, while the other four are chaired by civilians.

A Base Realignment and Closure Office exists within the Office of the Principal Assistant Deputy Under Secretary of Defense for Installations and Environment. Its director is responsible for providing support to the seven analysis teams. The Inspector General of the Department of Defense is available to the defense agencies, military departments, and the Joint Cross-Service Groups, to provide advice and review the accuracy of BRAC data as well as the certification process (as explained below).

Selection Criteria, Force Structure Plan, and Certification

The Secretary of Defense has published a list of eight discrete “selection criteria” created by the Infrastructure Steering Group.³ These will guide the collection of defense installation data and analysis by the military services and the Joint Cross-Service Groups within the Office of the Secretary of Defense. This will lead to the creation of the list of recommended BRAC actions to be released in May 2005. These criteria form the basis for the measures and factors used by the military departments and Joint Cross-Service Groups in their analyses.

As required by the legislation creating BRAC 2005, the Secretary has submitted a 20-year Force Structure Plan to Congress. The Chairman of the Joint Chiefs of Staff was responsible for the writing of this classified document. It broadly outlines the defense organization that the future base infrastructure will support. A revised Force Structure Plan, if needed, is to be submitted with the Department of Defense budget for FY2006. All BRAC 2005 recommendations are to be based on the final Force Structure Plan.

The BRAC enabling legislation requires the Secretary of Defense to certify that the 2005 BRAC round is necessary. The Secretary issued that certification on March 23, 2004, stating:

I hereby certify that the need exists for the closure or realignment of additional military installations, and that the additional round of closures and realignments that was authorized by Public Law 101-510, as amended, would result in annual net savings for each of the military departments beginning not later than fiscal year 2011.

To make this determination, the Department established a baseline force and major installation inventory as of 1988 (reflecting the Department as it existed before the first BRAC round). It then calculated the likely size of the force in 2009 and used that to estimate the infrastructure then needed. This notional future infrastructure was found to be smaller than the current inventory of installations, thereby justifying the Secretary’s certification to Congress.

³ The list of selection criteria can be found on line at the DOD BRAC website: [<http://www.dod.mil/brac/>].

Creating the Recommended BRAC Action List

DOD has created an internal BRAC process that includes extensive documentation and analysis of defense functions (supply, training, etc.) and military operations. The Infrastructure Executive Council will combine these analyses with additional considerations in creating the recommended BRAC action list.

Documentation

Records. Each of the defense organizations and the Joint Cross-Service Groups are required to develop and keep:

- Descriptions of how BRAC policies, analyses, and recommendations are being made, including minutes of all deliberative meetings;
- All policy, data, information, and analyses considered in making BRAC recommendations;
- Descriptions of how recommendations meet BRAC selection criteria and follow the Force Structure Plan and current base infrastructure inventory; and
- Documentation for each BRAC recommendation.

These records will be released to the BRAC Commission along with the Secretary's list of BRAC recommendations.

Additional Deliberative Considerations

The military departments and Joint Cross-Service Groups are considering consolidating or relocating active and reserve component (federal or National Guard) activities onto any retained base where it make operational and economic sense. Before recommending changes to **reserve component** activities, the analyzing organization must complete a demographic study to ensure that a new location will satisfy the recruiting requirements of the reserve component unit.

The data and analyses used in creating BRAC recommendations **will not be released** until the Secretary has forwarded his list to the 2005 BRAC Commission. The Department of Defense includes the factors and measures used to generate data calls in its definition of "data and analyses."

The statute establishing the 2005 BRAC requires the Secretary of Defense to consider any **notice received from a local government** in the vicinity of a military installation that the government would approve of the closure or realignment of the installation. Recommendations not supporting such community requests must be explained in the documentation provided to the Commission and congressional defense committees.

Internal Control Plan. Each element involved in the process is required to develop a written plan, the Internal Control Plan, that lays out the process by which the accuracy of all data collection and analysis is to be carried out. The intent of this requirement is to create a "chain of custody" for the information used in BRAC analysis and to establish uniform guidance for defining each data element and the sources from

which it is derived, the methods for verifying the accuracy of data, the procedures for checking its accuracy, and the protection of data from premature release. The military departments, defense agencies, and the Office of the Secretary of Defense are required to incorporate comprehensive auditor participation to ensure a thorough assessment of the data and the process. Also, audits will assess the specific applications of data calls and the accuracy of the data collection process.

Collection of Data

All data used by the Department of Defense in generating BRAC recommendations must be “certifiable.” This means that they must be generated by, and traceable to, officials within the military departments (installation managers) who are specifically appointed to the tasks of data collection and certification. This data must be submitted in response to electronic or hard copy requests (“data calls”) issued by the Joint Cross-Service Groups to the military departments. Once created, this data must be certified as true and accurate by the designated official before it is forwarded to the analytical organizations.

The initial call for data was issued during January 2004. Additional calls are anticipated as new factors and measures are adopted throughout the analytical stage of the process.

Analysis of Data

Three principal analytical tools are used during the BRAC process, an Optimization Methodology, an Installation Visualization Tool, and the updated COBRA.

Installation Visualization Tool. The Air Force has been given responsibility to develop computer programs combining satellite and other imagery, graphics and analytical tools to enable the user to visualize and analyze current and future uses of each installation’s resources. This will be of use principally during the base reuse and realignment portion of the BRAC process and is not described further here.

Optimization Methodology. The Navy is responsible for creating the linear programming tools that will be used by the Joint Cross-Service Groups in analyzing military value. The service has subcontracted this task to the Center for Naval Analyses, a federally funded research and development center. These computer models will be customized for the requirements of each Joint Cross-Service Group (medical, technology, education and training, etc.) and will be run repeatedly to assess alternative distributions of functions across various basing configurations in order to determine the optimal distribution of functional capability. This will be the principal analytical tool guiding the creation of recommended BRAC actions.

COBRA. An updated version of the Cost of Base Realignment Actions, or COBRA, will be used by the Joint Cross-Service Groups and Department of Defense agencies to calculate the costs, savings, and return on investment of each proposed realignment and closure action.

Each analysis team or group will use the same pool of certified data in its deliberations, subjecting it to analysis by its own customized version of the Optimization Methodology and the COBRA.

Merging Operations and Functions into a List of BRAC Actions

The Infrastructure Executive Council, chaired by the Deputy Secretary of Defense, will be responsible for using the analyses generated by the Joint Cross-Service Groups and the military departments to create a list of recommended BRAC actions for the Secretary of Defense. The Secretary will, in turn, forward his approved list of recommendations, along with the supporting documentation described above, to the BRAC Commission.

For additional information on BRAC, see CRS Report RL30051, *Military Base Closures: Agreement on a 2005 Round*, and CRS Report RL32216, *Military Base Closures: Implementing the 2005 Round*, both by David Lockwood, and the CRS web page, *Defense: Base Closure/Defense Conversion*, maintained by Linwood Carter, at [<http://www.crs.gov/reference/topics/defense/closure.shtml>].

Steps in the BRAC Process	
Dec. 03	Initial base selection criteria
Feb. 04	Final base selection criteria
Mar. 04	Force Structure Plan, Base Inventory, and BRAC requirement certification submission *
May 04	GAO certification evaluation
Mar. 05	Commission nominations sent to Senate *
May 05	DOD-recommended actions list due to Commission
July 05	GAO report on DOD list
Sept. 05	Commission actions list to President
Sept. 05	Presidential review complete
Oct. 05	Revised Commission actions list to President (if needed)
Nov. 05	Presidential actions list to Congress, potential for joint resolution of disapproval *
Apr. 06	Commission terminates
2005-2011	BRAC actions carried out

* Failure terminates BRAC process.



CRS Report for Congress

Military Base Closures: Role and Costs of Environmental Cleanup

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Summary

The President submitted a list of proposed military base closures and realignments to Congress on September 15, 2005, which will become effective unless Congress adopts a joint resolution of disapproval. The consideration of a new round of base closings has stimulated interest among potentially affected communities in how these bases might be redeveloped to replace lost jobs. Environmental contamination can present a challenge to economic redevelopment, if funding or technological constraints would limit the degree of cleanup needed to make the land safe for its intended use. Most of the lands on bases closed under the past four rounds have been cleaned up and transferred for redevelopment. However, some bases have yet to be cleaned up to an extent that would be adequate for the planned land use, presenting an obstacle to replacing lost jobs. Bases closed under the 2005 round could face similar delays in redevelopment, if a community's preferred land use would necessitate a costly and time-consuming degree of cleanup. This report provides an overview of cleanup requirements for the transfer and reuse of base closure properties, discusses the status of property transfer on bases closed under prior rounds, examines costs to clean up bases closed under these prior rounds, and discusses cleanup costs and issues for the 2005 round. It will be updated as events warrant.

Introduction

Following the collapse of the former Soviet Union, Congress authorized four rounds of military base closings and realignments in 1988, 1991, 1993, and 1995. Although closure of installations under all four rounds is complete, environmental cleanup and economic redevelopment of some of these properties continues. The pace and cost of cleaning up environmental contamination on closed bases has been an ongoing issue, because of concern about human health and environmental risks and the public's desire to redevelop these properties for civilian uses. The completion of cleanup is often a key factor in economic redevelopment, because the land cannot be used for its intended purpose until it is cleaned up to a degree that would be safe for reuse.



The consideration of an additional round of base closings in 2005 has raised concern among communities as to whether the cleanup of environmental contamination may pose obstacles to redeveloping these bases for civilian use to replace lost jobs. The Base Realignment and Closure (BRAC) Commission submitted its report to President Bush on September 8, 2005. The President concurred with the Commission's report and forwarded it to Congress on September 15, 2005. The report lists the military installations that the BRAC Commission approved for closure or realignment and its reasons for either supporting or rejecting the recommendations of the Department of Defense (DOD). The Commission rejected 13 of DOD's recommendations, significantly modified the recommendations for 13 other installations, and approved 22 major closures.¹ The Commission's list of closures and realignments will become effective automatically, unless Congress adopts a joint resolution of disapproval rejecting the list in its entirety.²

Cleanup Requirements for Property Transfer and Reuse

Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund) generally requires the United States (in this case, DOD) to clean up closed bases prior to transfer out of federal ownership.³ Property on a closed base is typically transferred to a local redevelopment authority (LRA) responsible for implementing a plan for civilian reuse. To speed redevelopment, CERCLA authorizes early transfer under certain conditions.⁴ Early transfer can be advantageous in terms of redevelopment, if the intended land use would not present the potential for human exposure to contamination, and therefore not require cleanup. Conversely, redevelopment still could be delayed despite early transfer, if cleanup would be necessary to make the intended land use safe.

Whether a property is transferred after cleanup, or transferred early, the degree of cleanup can vary from site to site, depending on the cleanup standard used and the remedy selected to attain it. CERCLA does not specify cleanup standards for particular substances. Rather, it requires that cleanup comply with legally applicable, relevant and appropriate requirements (ARARs) to protect human health and the environment, which include a host of federal and state standards for various hazardous substances.⁵ Although CERCLA does not explicitly require the consideration of land use in determining the degree of cleanup, in practice, land use is a key factor in selecting a cleanup standard and remedy to attain it. Cleanup standards generally are stricter for land uses that would result in greater risk of human exposure to contamination. For example, cleanup is typically more stringent and more costly for land uses such as residential development, which could pose a higher risk of exposure to sensitive populations including children and the elderly. Cleanup is typically the least stringent and the least costly for industrial land uses, such as manufacturing, which could pose less risk of exposure.

¹ The full text of the BRAC Commission's report is available at [<http://www.brac.gov/>].

² See CRS Report RS22144, "*Fast Track*" Congressional Consideration of Recommendations of the Base Realignment and Closure (BRAC) Commission, by Christopher M. Davis.

³ 42 U.S.C. 9620(h)

⁴ 42 U.S.C. 9620(h)(3)(C)

⁵ 42 U.S.C. 9621(d)

Status of Property Transfer on Closed Bases⁹

The Government Accountability Office (GAO) reports that, as of the end of FY2003, 364,000 acres (72%) of the 504,000 acres of land on bases closed during the previous four rounds had been transferred for reuse. Approximately 95% of the transferred acreage had been transferred after cleanup was completed. Although early transfer has the potential to speed redevelopment, it has been used relatively infrequently for several reasons, such as the reluctance of a community to accept property before cleanup is finished and the lack of consensus within a community on reuse. DOD also may be hesitant to agree to early transfer if it would be required to expend more cleanup funds earlier than would be necessary otherwise, to make the land safe for reuse more quickly.

Of the 28% of land that had not been transferred, 18% (91,000 acres) had been leased for reuse prior to the completion of cleanup. However, pending cleanup had delayed the permanent transfer of these properties, with reuse limited to purposes that would be safe considering the degree of contamination still present on these lands and the potential risk of human exposure. The remaining 10% (49,000 acres) had not been leased or transferred for reuse primarily because of environmental cleanup challenges. GAO found that some cleanup was necessary before transfer could occur on 98% of Air Force, 82% of Army, and 65% of Navy lands still awaiting transfer at that time.

Cleanup Costs of Past Base Closure Rounds

DOD estimates that the closure of bases under the previous four rounds has resulted in an annual savings of \$7 billion in operational expenses. The costs of environmental cleanup have run into billions of dollars, discussed below, and have offset some of these savings gained from a reduced military infrastructure. However, a portion of the cleanup costs would have been incurred regardless, as DOD is required to clean up its operational installations at least to a degree that would be safe for military uses, somewhat reducing this offset. The incremental cost and time to clean up a closed base depends primarily on how extensive the cleanup must be to make the land safe for uses that would be less restrictive than military purposes, and pose a higher risk of human exposure. DOD reports that it had incurred approximately \$7 billion in cleanup costs through FY2004 at bases closed under the previous four rounds.¹⁰ This amount reflects the *actual* costs of the cleanup process.¹¹ About 44% of the \$7 billion was spent on cleanup in California, where DOD has identified more contaminated sites on closed bases than any other state.

Although the majority of the acreage on bases closed under the previous four rounds has been cleaned up and transferred, estimates of future costs to complete cleanup on

⁹ Government Accountability Office, *Military Base Closures: Updated Status of Prior Base Realignments and Closures*, GAO-05-138, January 2005. See pp. 10-19.

¹⁰ Department of Defense, *Defense Environmental Programs Annual Report to Congress for FY2004*, April 2005, Appendix K and Appendix L, various pages.

¹¹ In January 2005, GAO reported \$8.3 billion in cleanup expenses at closed bases through the end of FY2003. This included funding *obligated* for cleanup, which would be paid at a later date upon completion of specific actions, in addition to actual costs incurred through this period. GAO's reported amount also included other costs, such as program management and support.

The Environmental Protection Agency (EPA), or the state in which an installation is located, is responsible for determining whether the selected remedy would attain the cleanup standard for a specific site.⁶ EPA has issued non-binding guidance for considering the “reasonably anticipated land use” in selecting cleanup remedies.⁷ DOD and the community, usually through the LRA, are responsible for determining how the land will be reused, in negotiating the terms of the property transfer. However, the community’s ability to attain its preferred use is constrained, as the Defense Base Closure and Realignment Act does not require DOD to dispose of property on a closed base for a particular land use, nor within a certain time frame. Impediments to conveying the land for redevelopment may surface if DOD is resistant to transferring it for a purpose that the community desires, because of cost considerations or technological limitations affecting cleanup of the contamination. EPA’s guidance acknowledges that some land uses may not be practical due to such challenges, and indicates that the cleanup objective may need to be revised, which may result in “different, more reasonable land use(s).”⁸

In addition to land use, numerous other factors can determine the degree and cost of cleanup, raising further issues. For example, cleanup does not necessarily require the removal of contamination, if a safe method of containing it is available to prevent exposure. Although containment is typically less costly than removal, some of the savings of containment can be offset by the costs of maintaining the containment method over the long term to ensure that it remains effective in preventing exposure. Tensions may arise between DOD and the community, if there is disagreement over the method selected to prevent exposure. Communities frequently prefer removal rather than containment, because of concerns about lingering risks and continuing costs if the method of containment were to fail over time. However, DOD may prefer containment to save costs, due to limited funding for the cleanup of many closed bases across the country.

Once a land use is agreed upon between DOD and the community, and a cleanup remedy is selected to make it safe for that land use, DOD generally administers and pays for the cleanup, regardless of whether cleanup is completed prior to transfer, or subsequently under an early transfer. In the case of an early transfer, the property recipient may choose to administer the cleanup as a means to speed the reuse of the land, but DOD typically would still pay the costs. DOD remains obligated after cleanup is complete, if additional contamination is found later that requires remediation. However, DOD is obligated for further cleanup only to the extent that the degree of contamination found later would exceed applicable standards for the land use originally agreed upon for the transfer. If a community decides to use the land for another purpose that would require further cleanup, DOD would not be responsible for paying for it. In such cases, the additional costs of cleanup to make the land safe for a different purpose would be the responsibility of the property recipient.

⁶ Both EPA and states play a role in the oversight of cleanup on federal facilities, including military installations. EPA typically is the lead agency at sites listed on the National Priorities List (NPL) of the nation’s most hazardous waste sites, and states usually take the lead on those that are not listed on the NPL.

⁷ EPA. Office of Solid Waste and Emergency Response. *Land Use in the CERCLA Remedy Selection Process*. OSWER Directive No. 9355.7-04. May 25, 1995.

⁸ *Ibid.*, p. 7.

lands awaiting transfer, and on those transferred early, remain substantial. DOD estimates that over \$3 billion would be necessary to complete cleanup of known contamination on these lands,¹² with 59% of these costs attributed to cleanup in California. However, future costs could be higher than estimated, if new, or more stringent, regulations are issued that require a greater degree of cleanup than anticipated. Future costs also could be more than expected if unknown environmental threats, such as unexploded ordnance or additional hazardous substances, are discovered. On the other hand, costs at some sites may prove lower if more cost-effective cleanup technologies become available.

Cleanup Costs and Issues for the 2005 Round

The amount of money and time required to clean up additional bases proposed for closure in the 2005 round would depend on the type and extent of contamination present on those properties, and the actions that would be necessary to make the land safe for reuse. Cleanup can take many years, as the continuing remediation of certain bases closed between 1988 and 1995 demonstrates. As in prior rounds, availability of funding and capabilities of remediation technologies could limit the degree of cleanup of installations that may be closed in the 2005 round, making certain land uses infeasible and posing challenges to economic redevelopment. As indicated in the table below, DOD's most recent estimates, submitted to Congress in April, indicate that approximately \$500 million would be needed to complete cleanup at the 22 "major" installations that the BRAC Commission and the President have proposed for closure in the 2005 round. Significant cleanup also may be necessary at minor installations proposed for closure and on installations that may be realigned if the change in mission would result in the disposal of contaminated land that is no longer needed for military purposes.

The accuracy of DOD's cleanup cost estimates has been the topic of much debate. DOD asserts that its estimates are reasonably sound and that they reflect current knowledge of the extent of contamination and the actions that likely will be needed to address it. However, these estimates are based on a degree of cleanup that would be safe for the current military use of the land. If a property were to be used for less restrictive purposes that would result in a higher risk of human exposure to contamination, a greater degree of cleanup likely would be required to make the land safe for that use. In such circumstances, more funding and additional time may be needed to complete cleanup than DOD has planned. Some Members of Congress and the BRAC Commission have expressed concern that DOD did not consider the greater degree of cleanup that may be necessary to redevelop these properties when calculating its estimates. Some state environmental agencies also have argued that DOD's estimates do not fully reflect cleanup needs at certain sites. Due to these reasons, communities have expressed concern that significantly more funding may be required than DOD has estimated to clean up these properties to make them safe for civilian reuse. The BRAC Commission also commented that possibly higher cleanup costs may offset a portion of the savings in military operational costs that DOD hopes to realize from the 2005 round.

The cost estimates in the table below are from DOD's *Defense Environmental Programs Annual Report to Congress for FY2004*, submitted to Congress in April 2005.

¹² Department of Defense, *Defense Environmental Programs Annual Report to Congress for FY2004*, April 2005, Appendix K and Appendix L, various pages.

There are substantial discrepancies for certain installations between the estimates in DOD's FY2004 report and those indicated by the BRAC Commission in Appendix P of its report to the President. The Commission based its estimates on FY2003 cost data that DOD used to assess the environmental impacts of the 2005 round, rather than on more recent cost data submitted by DOD to Congress in the Department's FY2004 report.

Major Military Installations Proposed for Closure in 2005: Past Cleanup Costs and Estimates of Future Cleanup Costs

Installation	State	Actual Costs Through FY2004	Estimated Costs from FY2005 to Completion
Kulis Air Guard Station	Alaska	a	a
Onizuka Air Force Station b	California	\$139,000	\$0
Riverbank Army Ammunition Plant	California	\$53,664,000	\$5,091,000
Atlanta Naval Air Station	Georgia	\$1,473,000	\$2,596,000
Fort Gillem	Georgia	\$21,790,000	\$14,800,000
Fort McPherson	Georgia	\$7,924,000	\$7,301,000
Newport Chemical Depot	Indiana	\$19,366,000	\$4,874,000
Kansas Army Ammunition Plant	Kansas	\$32,165,000	\$25,271,000
Selfridge Army Activity	Michigan	\$17,000	\$13,202,000
Brunswick Naval Air Station	Maine	\$60,417,000	\$13,638,000
Mississippi Army Ammunition Plant	Mississippi	\$0	\$8,413,000
Pascagoula Naval Station	Mississippi	a	a
Fort Monmouth	New Jersey	\$24,490,000	\$3,642,000
Cannon Air Force Base b	New Mexico	\$11,111,000	\$0
Umatilla Chemical Depot	Oregon	\$53,560,000	\$10,390,000
Willow Grove Naval Air Station	Pennsylvania	\$6,867,000	\$6,235,000
Brooks City Base	Texas	\$7,044,000	\$3,415,000
Ingleside Naval Station	Texas	a	a
Lone Star Army Ammunition Plant	Texas	\$25,557,000	\$1,156,000
Deseret Chemical Depot	Utah	\$21,096,000	\$180,498,000
Fort Monroe	Virginia	\$1,830,000	\$201,165,000
General Mitchell Air Reserve Station	Wisconsin	c	c
All Installations		\$348,510,000	\$501,687,000

Source: Prepared by the Congressional Research Service using information from the Department of Defense, *Defense Environmental Programs Annual Report to Congress for FY2004*, April 2005, Appendix K and Appendix L, various pages. The above table is a revision of an earlier table contained in the June 27 edition of this CRS report. The earlier table listed the 33 major installations that DOD recommended for closure. The above table reflects changes to this list made by the BRAC Commission. The above amounts indicate costs for actions directly related to cleanup and do not include indirect costs such as program management and support. These amounts include costs for cleanup of munitions on closed training ranges but exclude costs to clean up operational ranges if an installation were to close, as DOD's annual environmental report does not include estimates of such costs. The BRAC Commission's report indicates estimates of cleanup costs on operational ranges, but they are wide ranges rather than specific costs.

- a. DOD did not indicate sites where cleanup was or is required as of the end of FY2004.
- b. DOD indicated that all planned cleanup actions were complete as of the end of FY2004.
- c. DOD reported that cleanup was complete at General Mitchell Air Force Base, but did not indicate cleanup at the Air Reserve Station.

CRS Report for Congress

The Availability of Judicial Review Regarding Military Base Closures and Realignments

Updated June 30, 2005

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**Prepared for Members and
Committees of Congress**



The Availability of Judicial Review Regarding Military Base Closures and Realignment

Summary

The 2005 round of military base realignments and closures (BRAC) is now underway. The Defense Base Closure and Realignment Act of 1990 (Base Closure Act), as amended, establishes mandatory procedures to be followed throughout the BRAC process and identifies criteria to be used in formulating BRAC recommendations. However, judicial review is unlikely to be available to remedy alleged failures to comply with the Base Closure Act's provisions. A synopsis of the relevant law regarding the availability of judicial review in this context is included below:

- The actions of the Secretary of Defense (Secretary) and the independent BRAC Commission (Commission) are not considered to be "final agency action," and thus cannot be judicially reviewed pursuant to the Administrative Procedure Act (APA).
- Even if a court determined that the actions of the Secretary and the Commission were "final agency action," the court would likely consider the case to fall under one of two APA exceptions to judicial review: (1) when statutes preclude judicial review or (2) when agency action is committed to agency discretion by law.
- The President's actions cannot be judicially reviewed under the APA, because the President is not an "agency" covered by the statute.
- A claim that the President exceeded his statutory authority under the Base Closure Act has been held to be judicially unreviewable, because the Base Closure Act gives the President broad discretion in approving or disapproving BRAC recommendations.

Thus, courts would likely allow the BRAC process to proceed even if the Department of Defense, the Commission, or the President did not comply with the Base Closure Act's requirements.

This report was prepared by Ryan J. Watson, Law Clerk, under the general supervision of Aaron M. Flynn, Legislative Attorney. It will be updated as case developments warrant.

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The Availability of Judicial Review Regarding Military Base Closures and Realignments

Introduction¹

The Defense Base Closure and Realignment Act of 1990 (Base Closure Act), as amended, generally governs the military base realignment and closure (BRAC) process.² After three previous BRAC rounds, Congress authorized a fourth round for 2005, which is now underway.³

The BRAC process involves a complex statutory scheme, under which numerous governmental entities play a role in recommending bases to be closed or realigned. A brief summary of the major steps in the process is illustrated in Figure 1 on the following page. In addition to establishing the basic framework for the BRAC process, the Base Closure Act sets forth a variety of selection criteria and mandatory procedures, such as the requirements that certain information be disclosed and that certain meetings be made open to the public

This report analyzes whether judicial review is available when plaintiffs allege that the Department of Defense (DOD), the independent BRAC Commission (Commission), or the President has either (1) failed to comply with procedural requirements of the Base Closure Act or (2) failed to properly apply specified selection criteria in making BRAC determinations. Congress could employ numerous strategies to attempt to “enforce” the Base Closure Act.⁴ However, this report focuses on the effect a failure to comply would have if Members of Congress or other parties sued based on an alleged failure to comply with the Act’s provisions.⁵ In particular, the report synthesizes key federal court decisions that address three

¹ This report was prepared by Ryan J. Watson, Law Clerk, under the general supervision of Aaron M. Flynn, Legislative Attorney. It will be updated as case developments warrant.

² Defense Base Closure & Realignment Act of 1990, P. L. 101-510; *see also* P.L. 107-107. For ease of reference, all citations to the Base Closure Act refer to the relevant sections of the Base Closure Act as it appears in the note following 10 U.S.C. § 2687 (Supp. 2003).

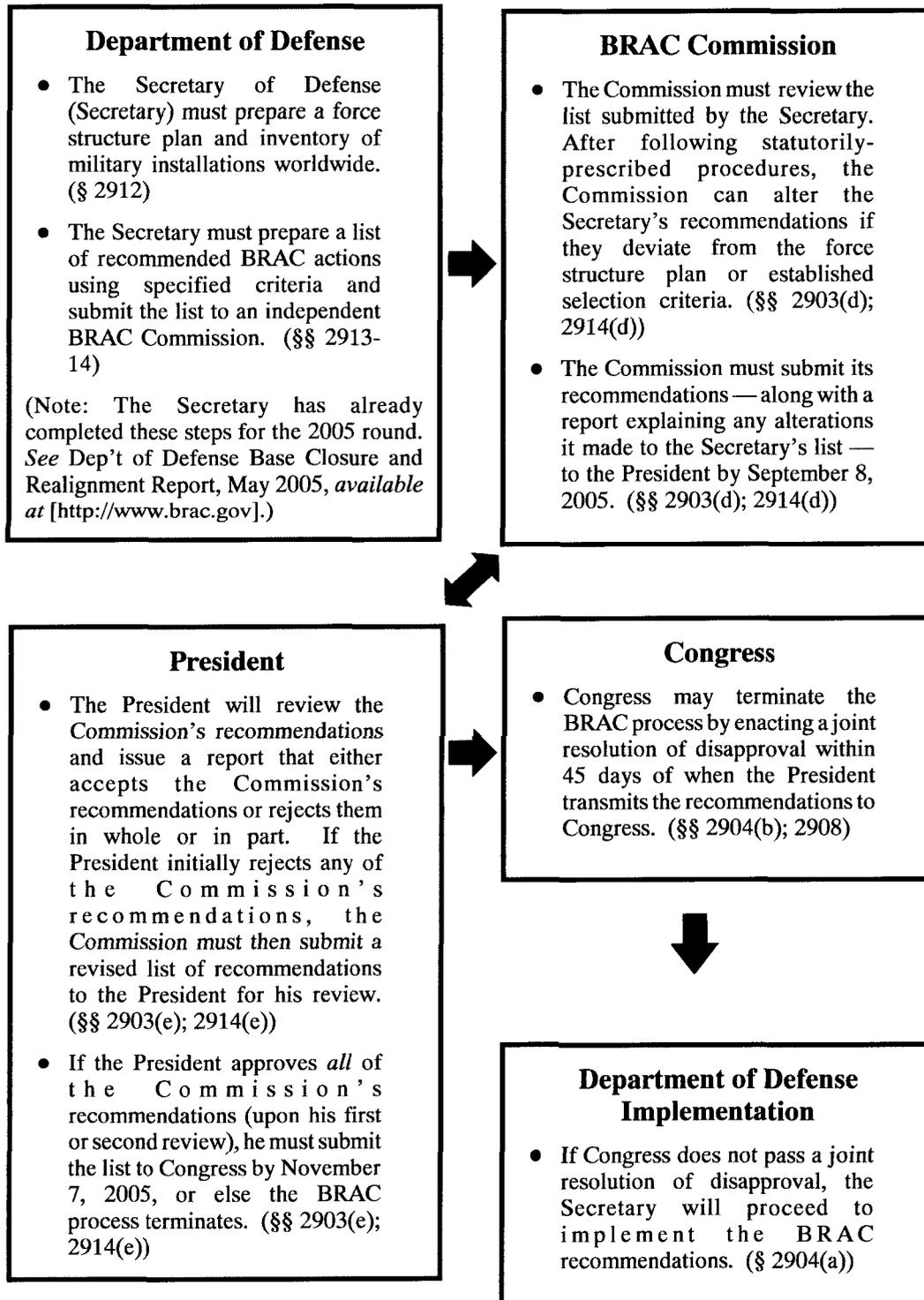
³ P.L. 107-107, § 3001, 115 Stat. 1012 (2001).

⁴ For example, Congress could use its subpoena power to obtain undisclosed information or use the appropriations process to affect BRAC actions.

⁵ This report does not analyze standing. In its most basic form, Article III standing requires a showing that plaintiffs suffered “injury in fact” that was caused by the challenged action, and that such injury would likely be redressed by a favorable judicial determination. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Standing of Members of Congress to sue raises other questions as well. *See Raines v. Byrd*, 521 U.S. 811 (1997).

potential bases for judicial review of BRAC-related actions: the Administrative Procedure Act (APA), the Base Closure Act, and the U.S. Constitution.

Figure 1: The BRAC Process⁶



⁶ All citations in Figure 1 are to the Base Closure Act, unless otherwise noted.

Additional CRS reports addressing a variety of BRAC issues are also available.⁷

Administrative Procedure Act Claims

The Administrative Procedure Act (APA) provides for judicial review of “final agency action,”⁸ unless either of two exceptions applies: (1) when a statute precludes judicial review or (2) when “agency action is committed to agency discretion by law.”⁹

Determining the Finality of Agency Action

In *Dalton v. Specter*, Members of Congress and other plaintiffs sought to enjoin the Secretary of Defense (Secretary) from closing a military installation during a previous BRAC round because of alleged substantive and procedural violations of the Base Closure Act.¹⁰ Specifically, plaintiffs alleged that the Secretary’s report and the Commission’s report were subject to judicial review under the APA.¹¹

In *Dalton*, the Supreme Court held that the issuances of the Secretary’s report and the Commission’s report were not judicially reviewable actions under the APA because they were not “final agency action[s].”¹² The Court explained that “[t]he core question’ for determining finality [of agency action under the APA is] ‘whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties.’”¹³ Because the Base Closure Act established a process under which the President takes the final action that affects military installations (see Figure 1 on the previous page), the actions of the Secretary

⁷ For information regarding BRAC processes and issues, see CRS Report RL32216, *Military Base Closures: Implementing the 2005 Round*, by David E. Lockwood; CRS Report RS22061, *Military Base Closures: The 2005 BRAC Commission*, by Daniel H. Else and David E. Lockwood; and CRS Report 97-305, *Military Base Closures: A Historical View from 1988 to 1995*, by David E. Lockwood and George Siehl. For information regarding issues such as property disposal and environmental cleanup, see CRS Report RS22066, *Base Realignment and Closure (BRAC): Property Transfer and Disposal*, by Aaron M. Flynn; CRS Report RS22065, *Military Base Closures: Role and Costs of Environmental Cleanup*, by David M. Bearden; and CRS Report RS22147, *Military Base Closure: Socioeconomic Impacts*, by Tadlock Cowan and Baird Webel.

⁸ 5 U.S.C. § 704 (2000).

⁹ *Id.* § 701(a).

¹⁰ *Dalton v. Specter*, 511 U.S. 462, 464, 466 (1994).

¹¹ *Id.* at 466; see also 5 U.S.C. § 701 *et seq.* (2000).

¹² *Dalton*, 511 U.S. at 469.

¹³ *Id.* at 470 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 796-97 (1992)).

and the Commission did not directly affect the parties.¹⁴ Thus, the Court held that they were unreviewable under the APA.¹⁵

The *Dalton* decision affirmed the analysis in *Cohen v. Rice*, in which the First Circuit stated that the President's statutory right to affect the BRAC process meant that previous steps of the BRAC process were not final.¹⁶ As the *Cohen* court explained:

Under the 1990 Act, the President is not required to submit the Commission's report to Congress. In addition, the 1990 Act gives the President the power to order the Commission to revise its report, and, in the final analysis, the President has the power to terminate a base closure cycle altogether via a second rejection of a Commission report.¹⁷

In addition, a subsequent Supreme Court decision described the BRAC reports as "purely advisory" and subject to the "absolute discretion" of the President, thus making them non-final agency action for APA purposes.¹⁸

Importantly, the *Dalton* Court applied its analysis of finality under the APA to both substantive claims (applying improper selection criteria) and procedural claims (e.g., failing to make certain information public).¹⁹ Therefore, the lack of finality in BRAC actions taken by the Secretary or the Commission bars judicial review of such actions under the APA.²⁰

Statutory Preclusion of Judicial Review

Four Justices concurred in the *Dalton* Court's judgment that judicial review was not available under the APA, but argued in a separate concurring opinion that the Court should not have decided the issue of whether the agency actions were final.²¹ The foundation for this argument is that under the APA, judicial review is not available if statutes preclude judicial review.²²

Justice Souter — writing for these four Justices — argued that "the text, structure, and purpose of the Act compel the conclusion that judicial review of the Commission's or the Secretary's compliance with it is precluded" (except for certain

¹⁴ *Id.* at 469-70; accord *Cohen v. Rice*, 992 F.2d 376, 381-82 (1st Cir. 1993).

¹⁵ *Dalton*, 511 U.S. at 470-71.

¹⁶ *See id.*

¹⁷ *Cohen*, 992 F.2d at 381-82.

¹⁸ *See Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citing *Dalton*, 511 U.S. at 478).

¹⁹ *See Dalton*, 511 U.S. at 466, 468-71; accord *Cohen*, 992 F.2d at 381-82.

²⁰ *Dalton*, 511 U.S. at 468-71.

²¹ *See id.* at 478-84 (Souter, J., concurring in judgment).

²² *See* 5 U.S.C. § 701(a)(1).

environmental objections to base closure implementation plans).²³ Souter’s opinion concluded that Congress intended for BRAC actions to be “quick and final, or [for] no action [to] be taken at all.”²⁴

Souter cited a variety of evidence to support the contention that Congress generally intended to preclude judicial review under the Base Closure Act.²⁵

- statutorily-mandated strict time deadlines for making and implementing BRAC decisions
- “the all-or-nothing base-closing requirement at the core of the Act”
- congressional frustration resulting from previous attempts to close military bases
- “nonjudicial opportunities to assess any procedural (or other) irregularities,” (i.e., the opportunities for the Commission and the Comptroller General to review the Secretary’s recommendations, the President’s opportunity to consider procedural flaws, and Congress’s opportunity to disapprove the recommendations)
- “the temporary nature of the Commission”
- the fact that the Act expressly provides for judicial review regarding objections to base closure implementation plans under the National Environmental Policy Act of 1969 (NEPA) that are brought “within a narrow time frame,” but the Act does not explicitly provide for any other judicial review

Importantly, whether the Supreme Court applies the rationale of the *Dalton* majority or Justice Souter’s *Dalton* concurrence, the Court would likely decide *not* to review the BRAC actions of the Secretary or the Commission under the APA in the 2005 round.

Agency Actions Committed to Agency Discretion by Law

Under the APA, judicial review of agency action is not available if “agency action is committed to agency discretion by law.”²⁶ Even if the actions of the Secretary or the Commission were held to be final agency action (which would be unlikely, given the *Dalton* decision), courts might consider those agency actions to be committed to agency discretion by law — thus making them judicially unreviewable.²⁷ Because there is a “strong presumption that Congress intends judicial review of administrative action,” “clear and convincing evidence” of contrary

²³ *Id.* at 479, 483 (Souter, J., concurring in judgment).

²⁴ *Id.* at 479 (Souter, J., concurring in judgment).

²⁵ *Id.* at 479, 482-83 (Souter, J., concurring in judgment).

²⁶ 5 U.S.C. § 701(a)(2).

²⁷ See *Nat’l Fed’n of Fed. Employees v. United States*, 905 F.2d 400, 405-06 (D.C. Cir. 1990).

congressional intent must exist in order for this exception to judicial review to apply.²⁸

The issue of whether actions of the Secretary or the Commission under the Base Closure Act are committed to agency discretion by law has not been adjudicated by the Supreme Court. Instead, several Supreme Court cases have addressed this issue in non-BRAC contexts and one D.C. Circuit case addressed the applicability of the exception to the Base Closure Act. These cases are analyzed in the following paragraphs.

In *Heckler v. Chaney*, the Supreme Court explained that the exception for agency action being committed to agency discretion applies if “a court would have no meaningful standard against which to judge the agency’s exercise of discretion.”²⁹ The Court continued, saying that “if no *judicially manageable standards* are available for judging how and when an agency should exercise its discretion, then it is impossible to evaluate agency action for ‘abuse of discretion,’ [as provided for in 5 U.S.C. § 706].”³⁰

In *National Federation*, the D.C. Circuit found that the criteria DOD and the Commission use for making BRAC determinations do not provide judicially manageable standards, as required by the *Heckler* test.³¹ The D.C. Circuit articulated the rationale for its finding:

[T]he subject matter of those criteria is not ‘judicially manageable’ [because] judicial review of the decisions of the Secretary and the Commission would necessarily involve second-guessing the Secretary’s assessment of the nation’s military force structure and the military value of the bases within that structure. We think the federal judiciary is ill-equipped to conduct reviews of the nation’s military policy.³²

Based on this finding, the *National Federation* court held that application of the selection criteria to military installations during the BRAC process is agency action

²⁸ *Franklin*, 505 U.S. at 816 (Stevens, J., concurring in judgment) (internal citations and quotation marks omitted); see also 5 U.S.C. § 701(a)(2).

²⁹ *Heckler v. Chaney*, 470 U.S. 821, 830 (1985).

³⁰ *Id.* (emphasis added). The Supreme Court has also stated that the exception in 5 U.S.C. § 701(a)(2) applies when there is no law available for the court to apply. See *Webster v. Doe*, 486 U.S. 592, 599 (1988). However, in the BRAC context, the Base Closure Act provides the relevant law. Thus, the critical question is whether that law contains a “meaningful standard,” as required by *Heckler*. See *Heckler*, 470 U.S. at 830.

³¹ *Nat’l Fed’n*, 905 F.2d at 405; see *Heckler*, 470 U.S. at 830. The criteria used during the BRAC round at issue in *National Federation* were substantially similar to those being used in the 2005 BRAC round. Compare Base Closure Act § 2913 with *Nat’l Fed’n*, 905 F.2d at 402.

³² *Nat’l Fed’n*, 905 F.2d at 405-06.

committed to agency discretion by law, thus making it judicially unreviewable under the APA.³³

More recently, the Supreme Court observed that this exception has generally applied in three categories of cases:

- (1) cases involving national security;
- (2) cases where plaintiffs sought judicial review of an agency's refusal to pursue enforcement actions; and
- (3) cases where plaintiffs sought review of "an agency's refusal to grant reconsideration of an action because of material error."³⁴

Although the Base Closure Act may not fit squarely within any of those three categories, the Supreme Court might adopt the D.C. Circuit's construction of the exception from *National Federation* were it to construe the exception in the context of BRAC.

Review of Presidential Action Under the APA

In *Dalton*, the Supreme Court held that the President's approval of the Secretary's BRAC recommendations was not judicially reviewable under the APA, because the President is not an agency.³⁵ Although the APA's definition of an "agency" does not explicitly include or exclude the President,³⁶ the Court had previously held that the President is not subject to the APA, due to separation of powers principles.³⁷

Base Closure Act Claims

The *Dalton* Court distinguished between two types of potential claims: (1) claims that the President exceeded his statutory authority and (2) claims challenging

³³ *Id.*

³⁴ See *Lincoln v. Vigil*, 508 U.S. 182, 191-92 (1993).

³⁵ *Dalton*, 511 U.S. at 470; accord *Franklin*, 505 U.S. at 801.

³⁶ See 5 U.S.C. § 701(b)(1) (emphasis added): "[A]gency means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include — (A) the Congress; (B) the courts of the United States; (c) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia; (E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them; (F) courts martial and military commissions; (G) military authority exercised in the field in time of war or in occupied territory; or (H) functions conferred by [certain statutes]."

³⁷ See *Franklin*, 505 U.S. at 800-01.

the constitutionality of the President's actions.³⁸ The Court stated that not every case of *ultra vires* conduct by an executive official was *ipso facto* unconstitutional.³⁹

In *Dalton*, the lower court had held that the President would be acting in excess of his statutory authority under the Base Closure Act if the Secretary or the Commission had failed to comply with statutorily-required procedures during previous stages of the BRAC process.⁴⁰ On appeal, the Supreme Court characterized this claim as a statutory claim — not as a constitutional claim.⁴¹

The Court assumed *arguendo* that some statutory claims against the President could be judicially reviewable apart from the APA.⁴² However, it stated that statutory claims are not judicially reviewable apart from the APA “when the statute in question commits the decision to the discretion of the President.”⁴³ According to the Court, the Base Closure Act did not limit the President's discretion in any way.⁴⁴ Thus, the President's authority to approve the BRAC recommendations was “not contingent on the Secretary's and Commission's fulfillment of all the procedural requirements imposed upon them by the [Base Closure] Act.”⁴⁵ Therefore, the issue of how the President chose to exercise his discretion under the Base Closure Act was held to be judicially unreviewable.⁴⁶

Justice Blackmun, concurring in part and concurring in the judgment, attempted to narrowly define the scope of the *Dalton* decision.⁴⁷ He considered the decision to be one that would allow judicial review of a claim (1) if the President acted in contravention of his statutory authority (e.g., adding a base to the Commission's BRAC recommendations list) or (2) if a plaintiff brought “a timely claim seeking direct relief from a procedural violation” (e.g., a claim that a Commission meeting should be public or that the Secretary should publish proposed selection criteria and allow for public comment).⁴⁸

However, Justice Blackmun's argument that plaintiffs could seek relief from a procedural violation of the Base Closure Act appears to directly conflict with Chief Justice Rehnquist's opinion on behalf of the *Dalton* majority, which stated:

³⁸ *Dalton*, 511 U.S. at 472-75.

³⁹ *Id.* at 472-74.

⁴⁰ *Dalton*, 511 U.S. at 466, 474.

⁴¹ *Id.* at 474-75. See the following section of this report for an analysis of potential constitutional claims.

⁴² *Id.* at 474.

⁴³ *Id.*

⁴⁴ *Id.* at 476-77; see Base Closure Act § 2903(e).

⁴⁵ *Dalton*, 511 U.S. at 476.

⁴⁶ *Id.*

⁴⁷ *Id.* at 477-78 (Blackmun, J., concurring in judgment).

⁴⁸ *Id.* (Blackmun, J., concurring in judgment).

The President's authority to act is not contingent on the Secretary's and Commission's fulfillment of all the procedural requirements imposed upon them by the [Base Closure] Act. Nothing in § 2903(e) requires the President to determine whether the Secretary or Commission committed any procedural violations in making their recommendations, nor does § 2903(e) prohibit the President from approving recommendations that are procedurally flawed.⁴⁹

Constitutional Claims

As mentioned in the preceding section of this report, the *Dalton* Court explained that claims that the President acted in *excess* of his statutory authority differ from claims that the President unconstitutionally acted in the *absence* of statutory authority.⁵⁰ Specifically, the Court distinguished the issues in *Dalton* from those in *Youngstown Sheet & Tube Co. v. Sawyer*, a landmark case on presidential powers.⁵¹ The Court said that *Youngstown* “involved the conceded *absence* of *any* statutory authority, not a claim that the President acted in excess of such authority.”⁵² Because the Base Closure Act provides statutory authority to the President, the *Dalton* Court did not find it necessary to examine the constitutional powers of the President (e.g., the President's powers as Commander-in-Chief).

A litigant could also challenge the constitutionality of the Base Closure Act itself. For example, in *National Federation*, plaintiffs unsuccessfully argued that the 1988 Base Closure Act violated the non-delegation doctrine and the separation of powers doctrine.⁵³ However, the Base Closure Act has not yet been held unconstitutional by any federal appellate courts.

⁴⁹ *Id.* at 476-77.

⁵⁰ *Id.* at 472-75.

⁵¹ *Id.* at 473; see *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

⁵² *Id.* (citing *Youngstown*, 343 U.S. 579). Indeed, Justice Jackson's *Youngstown* concurrence also attempted to articulate several categories of presidential action: “1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum 2. When the President acts in absence of either a congressional grant or denial of authority [and] 3. When the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.” *Youngstown*, 343 U.S. at 637-38 (Jackson, J., concurring). Using Justice Jackson's framework, the *Dalton* case would fall within the first category, because the Base Closure Act granted the President discretion in approving or disapproving the BRAC recommendations. See *Dalton*, 511 U.S. at 472-75.

⁵³ *Nat'l Fed'n*, 905 F.2d at 404-05.



CRS Report for Congress

Military Base Closures: Socioeconomic Impacts

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Summary

The Base Realignment and Closure (BRAC) Commission submitted its final report to the Administration on September 8, 2005. The President concurred with the Commission report and forwarded it to Congress on September 15, 2005. The report lists the military installations that the BRAC Commission approved for closing or realigning and their reasons for either supporting or rejecting the Department of Defense's original list of recommended closures and realignments. The Commission rejected 13 of the Department's recommendations, significantly modified the recommendations for 13 other installations, and approved 22 major closures. The loss of related jobs, and efforts to replace them and implement a viable base reuse plan, can pose significant challenges for affected communities. While base closures and realignments often create socioeconomic distress in communities initially, research has shown that they generally have not had the dire effects that many communities expected. For rural areas, however, the impacts can be greater and the economic recovery slower. Drawing from existing studies, this report assesses the potential community impacts and proposals for minimizing those impacts.

Background. To better confront the military demands of a post-Cold War world, as well as to reduce costs of maintaining excess military infrastructure, Congress authorizes the Department of Defense to realign or close military bases.¹ Following an examination of its military forces and installations, the department compiles a list of

¹ 10 U.S.C. Section 2687 authorizes the Base Realignment and Closing (BRAC) process for military installations at which at least 300 civilian personnel are authorized to be employed, or the realignment of any military installation where at least 300 civilian personnel are authorized to be employed and where it is intended to reduce the work force by more than 1,000 or by more than 50% of the number of civilian personnel authorized to be employed at the installation.



recommended Base Realignment and Closing (BRAC) actions. This proposed list of base closures and realignments is presented to an independent BRAC Commission, which reviews the proposed actions and sends the list to the President with any recommended changes. After the President reviews and approves the list, it is sent to Congress. The recommended list is automatically enacted unless Congress passes a joint resolution disapproving the list as a whole and sustains it over a potential presidential veto. Following the actual base closings and realignments, the Department of Defense carries out an environmental remediation plan to enable the conveyance of surplus federal land to other entities.²

Four separate BRAC rounds were initiated in 1988, 1991, 1993, and 1995.³ In total, 97 bases were closed or realigned by these rounds. By 2001, the Department of Defense had implemented the recommendations from the previous rounds, although in 2005, significant environmental remediation and asset transfers remain unfinished in many of the affected communities. Congress authorized a fifth round of military base realignments and closures for 2005 through the National Defense Authorization Act of 2002 (P.L.107-107). A primary objective of the 2005 BRAC round is what the department calls “joint activity.” This involves integration and realignment of cross-service functions in such areas as industrial, supply and storage facilities, technical, training, headquarters, and support activities (e.g., medical and intelligence). The list of recommended actions to achieve these objectives was presented to the BRAC Commission on May 13, 2005. Following a review of the Secretary’s recommendations, the Commission submitted its report to the Administration on September 8, 2005. Concurring with the Commission’s report, the President sent the report to Congress for legislative approval on September 15. The report becomes law unless Congress enacts a joint resolution of disapproval within 45 days.

Community Economic Impact Analyses. Small-area economic impact analysis can be a difficult undertaking. Assumptions and supporting statistical reasoning may lead to predictions that are, in hindsight at least, inaccurate. For example, multiplier effects, which measure the rate at which a direct effect (e.g., base job losses) creates indirect effects, are important elements in estimating the impacts of a base closing. If, for example, one assumes that a base job has a large indirect employment multiplier (e.g., 2.5-3.0), then for each direct base job lost, indirectly related jobs in some defined geographic area are also predicted to be lost as a result. Similarly, an income multiplier allows one to estimate total income generated by a military base. Assumptions about the extent to which incomes are spent within a community can lead to very different assessments of the impacts from the loss of that income.

A shift to a smaller employment multiplier will show a much reduced total employment loss from closure. Using data from military base closings between 1971 and 1994, a 2001 study estimated multipliers of less than one and concluded that employment costs were mostly limited to the direct job loss associated with military transfers out of

² For a detailed examination of the BRAC process, see CRS Report RS22061, *Military Base Closures: The 2005 BRAC Commission*, and CRS Report RS21822, *Military Base Closures: DOD’s 2005 Internal Selection Process*.

³ Military bases were also closed between 1960 and 1987, but not under the BRAC process as authorized by Congress.

the region. On average, the study found that per capita income was little affected by the closures.⁴ Base closings in communities that have been declining economically for some time may produce impacts different from (and possibly more severe than) those of base closings in communities where growth and economic diversification are more in evidence. The relative strength or weakness of the national or regional economy also can strongly influence the magnitude of community effects from base closure or realignment and the length of time for economic recovery. Evidence from earlier base closures further suggests that the impacts are often less than expected because, unlike many other major employers, military bases can be relatively isolated economic entities, purchasing base needs outside the community and spending income on bases rather than in the local community.⁵

Local communities are also concerned about the fiscal impacts borne by local governments, especially rural governments. Because of population loss and changes in local income, base closures also affect the ability of local governments to raise revenue. Revenue from property taxes, sales tax, licenses and permits, and state and federal aid are influenced by population gains and losses. Local government expenditures and services, such as water and sewerage costs, highways, public safety, and education, can also be affected by closure and realignment, depending on the extent to which the military base is integrated into the community's fiscal planning. Here as well, statistical assumptions can lead to significant differences in estimated impact. For example, an economic development analyst estimated that the closure of Hanscom Air Force Base would mean the loss of about \$200 million in defense contracts to Massachusetts's firms. Another analysis estimated the same losses at \$3 billion.⁶ A review of impacts on local government revenue and expenditures, however, generally confirmed that these impacts were, like those impacts affecting the economy, not as severe as had been originally anticipated.⁷

The announcements of previous BRAC Commissions have been greeted in affected communities and elsewhere by significant concern over the potential consequences of closing or significantly realigning a base. Military bases in many rural areas, for example, often provide an economic anchor to local communities. Even where the local and regional economy is more diversified, military bases provide a strong social and cultural identification that may be shaken by the announcement that a base is closing or being downsized. Not only can there be an immediate impact from the loss of military and

⁴ Mark A. Hooker and Michael M. Knetter, "Measuring the economic effects of military base closures," *Economic Inquiry*, 39(4), 2001.

⁵ D. Daicoff, D. D. McCluggage, C. K. Warriner, and R. R. Olsen, "Economic impact of military base closings," *Arms Control/Disarmament Agency/E-90, I and II* (Washington, D.C: U.S. Arms Control and Disarmament Agency, April 1970); D. A. MacKinnon, "Military base closures: Long range economic effects and implications for industrial development," *American Industrial Development Council Journal* 13(3), 1978; T. Muller, R. Hansen, and R. A. Hutchinson, *The Local Economic and Fiscal Impact of New DOD Facilities: A Retrospective Analysis* (Bethesda, MD: Logistics Management Institute, 1991).

⁶ Matt Viser, "Analyst: Don't overestimate impact of Hanscom closure," *Boston Globe*, April 3, 2005.

⁷ M. Hattery and R. Koch, "The fiscal impacts of base closures: Insights for rural local governments," *Government Finance Review*, April 1995.

civilian jobs, but local tax revenues can decline, leaving counties and communities less able to provide public services. School districts with a high proportion of children from military families can experience significant declines in enrollment. With these effects can come related reductions in state and/or federal funding. With the importance given to joint service activity in this BRAC round, some bases would see their functions moved to other bases. Other bases, however, would expand, creating potential impacts on schools, housing, traffic, and local government services.

The timeline for implementing the recommendations in the 2005 BRAC is six years. Communities will have until 2011 to adjust to the changes and plan for transfer of the base to the community for redevelopment. While it is predictable that communities will react to news of a base's closing with concern and anxiety, evidence from past BRAC rounds shows that local economies are, in many cases, more resilient after an economic shock than they expected. Some worst-case scenarios predicted for communities did not occur, perhaps because they were based, in part, on assumptions about economic multipliers, the perceived versus actual role of a base in the local economy, and over-generalization from individual cases where there was significant economic dislocation. Many communities that developed a comprehensive and realistic plan for economic redevelopment were able to replace many of the lost jobs and restore lost income. The Department of Defense's programs for assisting communities with base redevelopment (e.g., the Office of Economic Adjustment) are also likely to have played a role in mitigating some of the effects of base closure. Some communities came to regard the closing as an opportunity for revitalizing and diversifying their economies. Other communities found they were in stronger economic shape after several years than they thought possible on first learning their bases were closing.

Coping with the closure in the short term and revitalizing communities over the long haul can, nonetheless, be daunting tasks. Not all communities recover, and for those that do, the recovery can be uneven.⁸ The Government Accountability Office (GAO) found that many communities in 2005 were still recovering from prior closures. Rural areas in particular can find the loss of a base and the revitalization of their communities especially difficult challenges.⁹ The effects on individuals may also vary. For example, persons who lose jobs in a closure may not have the kinds of skills that are needed by the economic activity generated by the redevelopment. Individuals may relocate to other regions where the jobs they find may not match the wages of the jobs lost. Significant environmental cleanup costs from toxic elements on bases can delay the transfer of the

⁸ The Government Accountability Office (GAO) has monitored the BRAC process since 1988. Part of that effort has been to assess how communities fared since a base was closed or realigned. Using data on the number of jobs recovered, unemployment rates, and per capita income, the GAO concluded that nearly 70% of jobs lost to base closings between 1988 and 1995 had been recovered by 2004. See Government Accountability Office, *Military Base Closures: Updated Status of Prior Base Realignments and Closures*, GAO-05-138, January 5, 2005, at [<http://www.gao.gov/new.items/d05138.pdf>].

⁹ In counties where military bases closed between 1969 and 1988, two-thirds of the communities regained as many civilian jobs as were lost. However, rural (i.e., non-metropolitan) base-closing counties lost more than twice as large a proportion of total county employment through civilian on-base job cuts as did metro base-closing counties. See Peter L. Sternberg and Thomas D. Rowley, "A comparison of military base closures in metro and nonmetro counties," *Government Finance Review*, October 1993.

base to local authorities and limit the kinds of redevelopment options available to a community.¹⁰

Planning for Economic Redevelopment. In some respects, a closed military base shares similarities with other closed industrial facilities such as steel mills, oil refineries, or port facilities. Research and previous economic development experience suggest that converting a closed military base into a source of new competitive advantage is a major community effort, but that research also shows that the closure sometimes represents an opportunity for the affected community. Bases closed in earlier BRAC rounds have been successfully redeveloped into manufacturing facilities, airports, and research laboratories. Bases also may hold certain advantages for redevelopment that are not shared by other industrial sites. Pricing for the closed bases might be steeply discounted and liability for environmental protection indemnified. Federal grants and incentives also exist to aid community redevelopment efforts.¹¹

Once a base is slated for closing, consideration of property transfer mechanisms, the extent of environmental cleanup necessary, and a realistic base reuse plan for the transferred property become central elements in organizing the economic development process. The Office of Economic Adjustment (OEA), located in the Office of the Assistant Secretary of Defense for Economic Security in the Department of Defense, is a resource available to communities seeking assistance in managing the impact of a base closing or realignment. The OEA awards planning grants to communities and also provides technical and planning assistance to local redevelopment authorities. By 2002, a cumulative \$1.9 billion in Department of Defense and other federal funds had been expended to assist communities affected by base closures.¹² Other sources of federal assistance are also available to assist communities in recovering from a base closure.¹³

With the wide variety of economic circumstance in the local areas and usable facilities left behind, there is no single template for redeveloping a closed military base. One generality that might be applied to almost all cases, however, is that the sooner economic redevelopment can begin after base closure, the better for local communities. Base closure can be economically very difficult for a community, but closure with a long lag in which the closed base is essentially a hole in the local economy is worse. While

¹⁰ For a discussion of the particular issues surrounding environmental cleanup on military bases, see Governmental Accountability Office, *Military Bases Closures: Overview of Economic Recovery, Property Transfer, and Environmental Cleanup*, GAO-01-1054T, August 28, 2001, at [<http://www.gao.gov/new.items/d011054t.pdf>]; and CRS Report RS22065, *Military Base Closures: Role and Costs of Environmental Cleanup*.

¹¹ In response to protracted negotiations over property values in many communities, Congress created the “No Cost Economic Development Conveyance” and a “No Cost Rural Economic Development Conveyance” to convey the bases to local redevelopment authorities at virtually no cost. (National Defense Authorization Act of 2000, P.L. 106-65). The 2005 BRAC legislation requires the Department of Defense to seek fair market value for the property, but does permit the Secretary to convey the bases at no cost for economic development.

¹² Government Accountability Office, *Military Base Closures: Updated Status of Prior Base Realignments and Closings*, GAO 05-138, January 5, 2005.

¹³ See CRS Report to Congress RS22184, *Military Base Closures: Redevelopment Assistance Programs*.

many factors can delay the economic redevelopment of a closed base, the most common may be the need for environmental cleanup of the closed property.

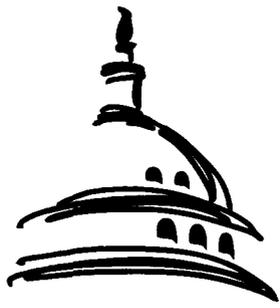
Environmental Cleanup. Except for limited circumstances, property from a closed military base must be cleaned of environmental contamination before being transferred for redevelopment. The degree of cleanup and the timetable for completion, however, is left to the Department of Defense (DOD), which is operating under the appropriations approved by Congress. Because of the magnitude of costs involved and the time involved in cleaning up environmental damage once funds are allocated, cleanup times can be lengthy.¹⁴ Approximately 10% of property from bases closed in prior BRAC rounds has yet to be cleaned for transfer.¹⁵ A complicating factor in the cleanup process can be the different levels of cleanup that might be completed. Land intended for use as housing or schools, for example, must be cleaned to a greater degree than land intended for industrial use. DOD, however, is not legally required to clean land past the point needed for industrial use. When a community desires an ultimate land use that would require a greater level of cleanup than that done by DOD, this may result in a property being left vacant until either another use is found or until additional cleanup is done.

In general, previous base closures suggest that communities face many specialized challenges, but there is little strong evidence that the closing of a base is the definitive cause of a general economic calamity in local economies.¹⁶ On the other hand, many rural areas may experience substantially greater and longer-term economic dislocation from a base closing than urban and suburban areas. Rural areas with less diversified local economies may be more dependent on the base as a key economic asset than urban/suburban economies. Communities where bases are recommended for significant expansion can also find the effects of growth a major challenge. Over the five- to six-year phasing out of a base, however, successful property transfers to a local redevelopment authority, environmental cleanup, and widespread community commitment to a sound base reuse plan have been shown to be crucial elements in positioning communities for life without a military base.

¹⁴ Total cleanup costs remaining from the previous BRAC rounds have been estimated by CRS using DOD data at \$3.6 billion. See CRS Report RS22065, *Military Base Closures: Role and Costs of Environmental Cleanup*.

¹⁵ Government Accountability Office, *Military Base Closures: Updated Status of Prior Base Realignments and Closures*, GAO-05-138, January 2005. See pp. 10-19.

¹⁶ A study by the RAND Corporation of the effect on communities of three base closures in California (Castle Air Force Base, George Air Force Base, and Fort Ord) found that the impacts, while not benign, were also not the nightmare that many had feared. The study, however, could be faulted on the grounds that the research was done before the base closures were completed, and thus the impact was understated. See M. Dardia, K. F. McCarthy, J. Malkin, and G. Vernez, *The Effects of Base Closures on Local Communities: A Short Term Perspective* (Santa Monica: RAND Corporation, 1996).



CRS Report for Congress

Military Base Closures: Redevelopment Assistance Programs

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Summary

On September 15, 2005, President Bush approved the list¹ of military facilities that the Defense Base Closure and Realignment Commission recommended be closed or realigned in the current round of base closures, known generally as “BRAC.” The list includes 22 major base closures and 33 major realignments and would result in a net reduction of over 8,000 military and civilian personnel.² While the list still faces a final congressional hurdle,³ unless both the Senate and the House vote to disapprove the list, the recommendations will take effect over the next six years. Despite the difficulties inherent in a base closure, communities near facilities on the list must now face a very high probability of life without a local military base. Recognizing that closures and realignments can have a major impact on the economies of the affected regions, Congress has created a variety of different resources available both to communities and individual workers to help mitigate the resulting economic dislocation. This report is intended to summarize these various programs. It will be updated as events warrant.

Aid to Communities

Federal aid to communities affected by base closures and realignments covers a wide range of activities and agencies: planning and economic adjustment assistance provided by the Office of Economic Adjustment of Department of Defense (DOD), the Economic Development Administration, and the Rural Development Administration; environmental cleanup at military bases; disposal of surplus federal properties; the Federal Airport

¹ See [<http://www.brac.gov/finalreport.asp>].

² The original BRAC list from DOD indicated a reduction of over 26,000 personnel, but this included over 13,000 from overseas deployments that are not included in the BRAC Commission recommendations.

³ See CRS Report RL32216, *Military Base Closures: Implementing the 2005 Round*, by David E. Lockwood, for additional information on the BRAC process.



Improvement Program; community development block grants; and community service grants.

Office of Economic Adjustment

The Office of Economic Adjustment (OEA), [<http://www.oea.gov>], is the primary source within DOD for assistance to communities affected by both increases and decreases in military spending. It also serves as a focal point for assistance from other federal agencies. The OEA has provided at total of \$280 million in funding for previous BRAC rounds, primarily with the intent of preparing strategies for local development efforts and other federal funding.

Over the years, the OEA has provided planning and implementation assistance to communities, regions, and states in an effort to alleviate serious economic impacts that result from defense program changes, such as base closings, expansions, and openings; contract changes affecting firms; and personnel reductions or increases at military facilities. The OEA has also maintained close working relationships with other federal agencies that have programs that can be utilized to assist communities adversely affected by defense cutbacks or realignments. By design, the OEA plays a facilitating role in the economic adjustment process. The affected community, however, must play the principal role in initiating and carrying out the adjustment and conversion plan.

Currently, the OEA operates with a staff of 45 civilian and 3 military personnel. Funding for the office has been provided in the Defense Appropriations bill under the general operations and maintenance account. In previous budget estimates, the OEA has indicated that most communities affected by a BRAC round receive assistance averaging \$400,000 to \$500,000 a year for three to five years depending on individual circumstances. In addition, there have been a number of congressional adjustments for specific sites over the years, in amounts as high as \$10,000,000 in a single year. **Table 1** lists the amounts requested by the administration for OEA grants and administrative expenses, the amounts appropriated for OEA, including congressional adjustments, and the actual amounts spent by the OEA for fiscal years 1999-2006.

Table 1. Office of Economic Assistance Budget FY1999-FY2006
(in millions of \$)

	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06
Requested	31.2	30.9	22.5	17.0	14.7	14.1	44.8	30.5
Appropriated	56.7	90.7	56.8	46.6	49.6	60.2	88.8	
Actual	34.1	72.1	43.2	36.6	41.8	57.5		

Source: Successive OEA budget estimates FY2000-FY2006

Economic Development Administration

Title IX of the Public Works and Economic Development Act of 1965,⁴ calls for economic adjustment grants to eligible communities to help them respond to sudden changes in economic conditions including those resulting from natural disasters, changing trade patterns and military base closures. The Economic Development Administration (EDA), [<http://www.eda.gov>], has provided grants from their appropriated funds in excess of \$640 million since the first BRAC round in 1988, as well as administering \$274 million of DOD funds and \$8 million from the Department of Energy for defense adjustment projects that have included some closed military bases. EDA grants are made on a cost-share basis with local governments, redevelopment agencies, and private or non-profit organizations. The grants include monies for planning and technical assistance, infrastructure improvement, and revolving loan funds for private business development.

President Bush's FY2006 budget request included the "Strengthening America's Communities Initiative, which outlined substantial changes and realignment in federal economic development programs, including the EDA. Exactly what these changes might mean for assistance to BRAC communities is unclear. Congress has not acted on the President's proposals, nor set any timetable to do so.⁵

Other Assistance

In addition to the OEA and EDA, there are a number of other federal agencies and activities that may help communities adversely affected by base closures and realignments. They include the following:

- DOD responsibility and funding for environmental review and cleanup at closing military facilities, which may support local jobs after a base is designated for closure but before federal land is actually transferred.
- Below market value transfer of land from closed military bases under the DOD's authority to make public benefit transfers and economic development conveyances.
- The potential transfer of military airports to civilian use under the Federal Airport Improvement Program of the Federal Aviation Administration (FAA).
- The provision of financial grants to eligible communities under the Community Development Block Grants Program of the Department of Housing and Urban Development to promote neighborhood revitalization and community and economic development that principally benefit low- and moderate-income persons.

⁴ 42 USC 3201 *et seq.*

⁵ See CRS Report RL32823, *An Overview of the Administration's Strengthening America's Communities Initiative*, coordinated by Eugene Boyd.

- Programs to promote economic development in rural communities with populations of less than 50,000, administered by the Rural Development Administration of the Department of Agriculture. Such assistance includes community facilities loans, rural business enterprise grants, business and industrial guaranteed loans, and intermediary relending programs.

Worker Assistance

There are a number of federal programs that can provide transition assistance to workers displaced by base closures. These include various forms of transition assistance and benefits provided by DOD to its workers as well as other types of assistance available to all dislocated workers (e.g., the dislocated worker job training program of the Department of Labor, unemployment compensation, and food stamps).

DOD Programs

DOD has the authority to provide numerous incentives and transition benefits to departing *military* personnel. These include early retirement incentives, temporary continuation of medical care benefits, pre-separation counseling for separating service members, employment counseling and placement assistance, relocation assistance, and special GI bill education benefits. In addition, the Pentagon is also authorized to provide special benefits and incentives to *civilian* personnel displaced by a defense drawdown. These include advance notification of a reduction in force, pre-separation counseling, a hiring preference system (including the maintenance of a government-wide list of vacant positions) with federal agencies to re-employ qualified displaced DOD employees, financial incentives to encourage early retirement of eligible employees, and continued health insurance coverage for up to 18 months following involuntary separation.⁶

Department of Labor (DOL) Job Training Program for Dislocated Workers⁷

Overview. The Workforce Investment Act of 1998⁸ (WIA), authorizes, among other programs, a program specifically for providing training and other services to dislocated workers. Dislocated workers are generally characterized as workers with an established work history who have lost their jobs as a result of structural changes in the economy and who are not likely to find new jobs in their former industries or occupations. The WIA program provides services to dislocated workers regardless of the cause of dislocation, and has been utilized in the past by workers affected by base closures.

⁶ For more information, see DOD's webpage on assistance for civilian employees at [<http://www.cpms.osd.mil/bractransition>].

⁷ This section authored by CRS Specialist in Social Legislation Ann Lordeman.

⁸ P.L. 105-220, 29 U.S.C. 2811 *et seq.*

All WIA programs operate on a July 1 to June 30 program year (i.e., appropriations for FY2004 are for program year 2004, which is from July 1, 2004 through June 30, 2005). The FY2004 appropriation for dislocated workers was \$1.4 billion. The FY2005 amount is \$1.5 billion. The authorization for WIA programs expired on September 30, 2003; Congress, however, has continued to fund the programs through annual appropriations.

Formula Grants. Of the funds appropriated for the dislocated worker program, approximately 80% are for formula grants to states and 20% are for a national reserve, which primarily funds National Emergency Grants (NEGs). (NEGs are discussed below.) The governor can reserve not more than 15% of the state's formula grant for state level activities, and not more than 25% for "rapid response" activities. At least 60% must be allocated to local workforce investment boards (WIBs) by a formula prescribed by the governor. Rapid response activities are provided by specialists in the state's dislocated worker unit⁹ in the state's workforce agency as soon as possible after learning of a projected permanent closure or mass layoff. Activities include establishing onsite contact with employers and employee representatives, providing information and access to available employment and training activities, and providing assistance to the local community in developing a coordinated response and in obtaining access to state economic development assistance.

In addition to rapid response activities, there are three levels of services, provided sequentially, available to dislocated workers: core, intensive, and training. To be eligible to receive intensive services, such as comprehensive assessments and development of individual employment plans, an individual must first receive at least one core service, such as job search, and have been unable to either obtain employment or retain employment that allows for self-sufficiency. To be eligible to receive training services, such as occupational skills training and on-the-job training, an individual must have received at least one intensive service, and must have been unable to obtain or retain employment. Individuals receive these services through a coordinated service delivery system called the "one-stop" system. Each one-stop system in a local area must include at least one physical center, which may be supplemented by affiliated sites.¹⁰ In addition to these services, local WIBs can decide whether to provide supportive services, such as transportation and child care, and need-related payments. Supportive services can be provided to individuals who are participating in core, intensive, or training services, and who are unable to obtain them through other programs.

National Emergency Grants (NEGs). NEGs, which are funded through the 20% of the dislocated worker appropriation allotted to the national reserve, provide supplemental dislocated worker funds to state workforce agencies and local WIBs in order to meet the needs of dislocated workers and communities affected by significant dislocation events that cannot be met with the formula allotments. In its May 24, 2005

⁹ For a list of state dislocated worker unit coordinators, see: [http://www.doleta.gov/layoff/e_sdwuc.cfm]

¹⁰ To find the location of one-stop centers, see America's Service Locator at [<http://www.servicelocator.org/>]

Training and Guidance Letter,¹¹ DOL announced the availability of NEG funds for Phase I planning grants to states that may be affected by the 2005 BRAC. The purpose of these grants is to plan a comprehensive response to a BRAC closure or realignment. States eligible to receive the Phase I planning grants are those states listed in the Secretary of Defense's May 13, 2005 announcement of installations being recommended for closure or realignment. It is expected that no state will receive Phase I planning funds in excess of \$1 million. Awards will be made in consultation with DOD. Phase II grants will be made to states to provide employment and training assistance to affected workers, beginning in November 2005 when current BRAC actions are finalized.¹²

Other Assistance

In addition to the various federal programs designed to provide transition assistance to displaced workers, a variety of other programs might also provide assistance to those affected by base closure. These include the following:

- Post-secondary education and training assistance for students under Title IV of the Higher Education Act¹³; and vocational education programs under the Carl D. Perkins Vocational and Technical Education Act.¹⁴
- Benefits related to past employment: Unemployment Compensation¹⁵ and temporary health insurance continuation.¹⁶
- Benefits related to financial need: Temporary Assistance to Needy Families,¹⁷ Food Stamps, subsidized school meals,¹⁸ Medicaid¹⁹ and housing assistance furnished by the Department of Housing and Urban Development.

¹¹ For more information, see [http://www.doleta.gov/directives/attach/TEGL16-03_Ch2.pdf] and NEG BRAC Planning Grant Q and A's at [<http://www.doleta.gov/neg/Faqs.cfm>].

¹² For additional DOL resources to assist workers who may be affected by local base realignment or closure, see [<http://www.doleta.gov/BRAC>] or [<http://www.brac-coach.org>].

¹³ See CRS Issue Brief IB10097, *The Higher Education Act: Reauthorization Status and Issues*, by Adam Stoll.

¹⁴ See CRS Report RL31747, *The Carl D. Perkins Vocational and Technical Education Act of 1998: Background and Implementation*, by Rebecca R. Skinner and Richard N. Apling.

¹⁵ See CRS Report RS21964, *Military Service and Unemployment Compensation Insurance*, by Julie Whittaker.

¹⁶ See CRS Report RL30626, *Health Insurance Continuation Coverage Under COBRA*, by Heidi G. Yacker.

¹⁷ See CRS Report RL32748, *The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on Financing and Requirements for State Programs*, by Gene Falk.

¹⁸ See [<http://www.fns.usda.gov/fns>] for information on food stamps and subsidized meals.

¹⁹ See CRS Report RL32277, *How Medicaid Works: Program Basics*, coordinated by Elicia Herz.