
Enclosure II: Briefing to Congressional Requesters



Preliminary Observations on the Department of Defense's Use of Condolence and Solatia Payments in Iraq and Afghanistan

Briefing to Congressional Requesters
February 28, 2007



Introduction



- There are a number of ways that the U.S. government may compensate or provide assistance to Iraqi or Afghan nationals for damage, injury, or death that occurs due to U.S. or coalition forces' actions:
 - Foreign Claims Act (DOD)
 - Marla Ruzicka Iraqi War Victims Fund (USAID)
 - Afghan Civilian Assistance Program (USAID)
 - Claims and Condolence Payment Program (Department of State)
 - Solatia payments (DOD)
 - Condolence payments (DOD)

- At your request, we focused on solatia and condolence payments for death, injury, and property damage.

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	Condolence payments	Solatia payments
Purpose	Expression of sympathy for death, injury, or property damage caused by coalition or U.S. forces generally during combat. In addition, at commander discretion, payments may be made to Iraqi civilians who are harmed by enemy action when working with U.S. forces. Payment is not an admission of legal liability or fault.	Token or nominal payment for death, injury, or property damage caused by coalition or U.S. forces during combat. Payment is made in accordance with local custom as an expression of remorse or sympathy toward a victim or his/her family. Payment is not an admission of legal liability or fault.
Countries and dates used		
• Iraq	March 2004 to present	June 2003 to January 2005
• Afghanistan	November 2005 to present	October 2005 to present
Payment levels	Up to \$2,500 for each instance of death, injury, or property damage	<u>Iraq</u> : Up to \$2,500 for death; up to \$1,500 for serious injury; and \$200 or more for minor injury. <u>Afghanistan</u> : Up to 100,000 Afghani (\$2,336+/-) for death; up to 20,000 Afghani (\$467+/-) for serious injury; and up to 10,000 Afghani (\$236+/-) for nonserious injury or property damage.
Funding	Commander's Emergency Response Program (CERP) funds ^a	Unit Operations and Maintenance funds ^b

Source: DOD.

^aPrior to the authorization of appropriated CERP funds (Pub. L. No. 108-106, §1110 (2003)), Development Fund for Iraq (DFI) and seized Iraqi assets were available for MNC-I to fund CERP projects in Iraq. DFI is a fund established by the United Nations to assist with reconstruction and recovery operations in Iraq. Seized Iraqi assets are funds that have been captured during ongoing combat operations. Currently, funds are appropriated under Pub. L. No. 109-289, §9006 (2006).

^bSolatia payments are made under the authority to use appropriated funds found in 10 U.S.C. §2242.



Objectives, scope, and methodology



Objectives:

- (1) To what extent has DOD established guidance for making and documenting solatia and condolence payments in Iraq and Afghanistan?
- (2) How are commanders making and documenting solatia and condolence payments in Iraq and Afghanistan and what factors do commanders consider when determining whether to make payments and payment amounts?
- (3) To what extent does DOD collect and analyze solatia and condolence payment data?

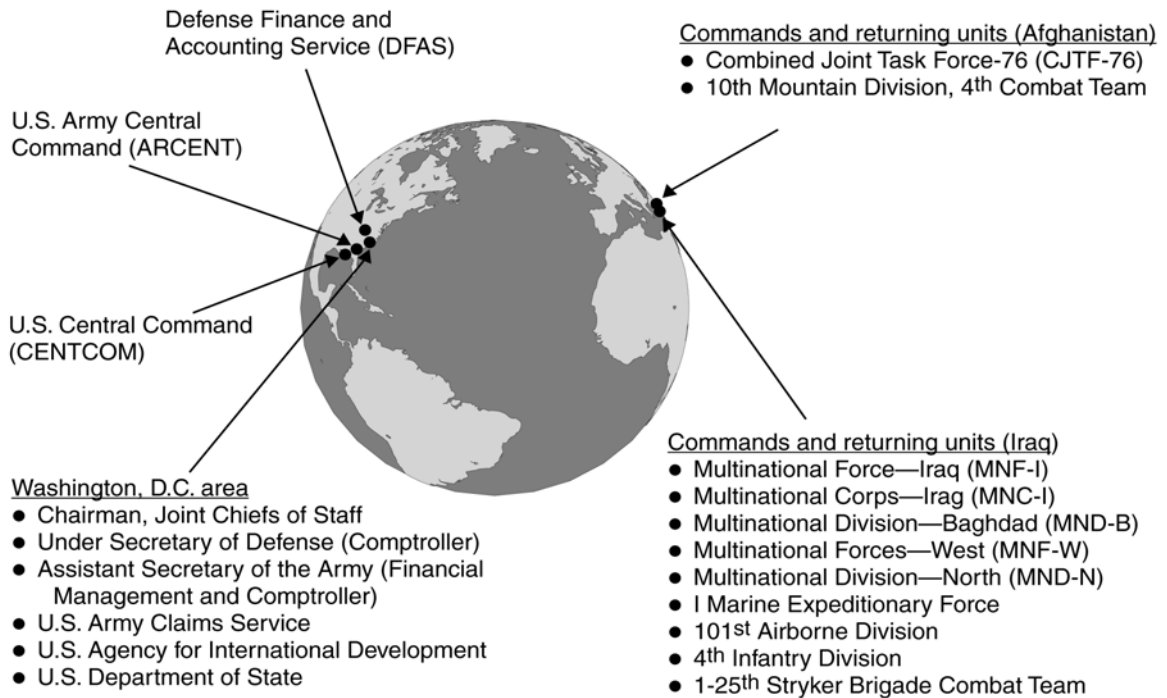


To meet our objectives, we:

- identified and reviewed guidance for solatia and condolence payment programs in Iraq and Afghanistan
- met with or talked to officials about how programs work
 - higher headquarters and major subordinate commands in Iraq and Afghanistan
 - units recently returned from Iraq and Afghanistan
- determined extent to which individual solatia and condolence payment documents are available from DOD
- obtained and reviewed some financial documentation for condolence payments from units recently returned from Iraq
- gathered information on assistance the U.S government provides through other programs to Iraqi and Afghan civilians affected by U.S. or coalition actions



Figure 1: Organizations Contacted:



Source: GAO.



Background



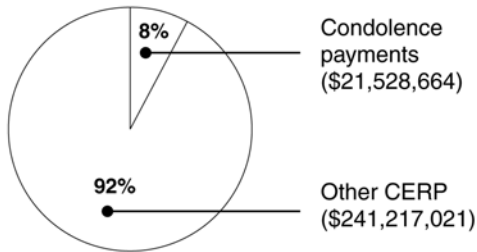
Guidance establishes 19 uses for Commander's Emergency Response Program funds

1. water and sanitation
2. food production and distribution
3. agriculture
4. electricity
5. healthcare
6. education
7. telecommunications
8. economic, financial and management improvements
9. transportation
10. rule of law and governance
11. irrigation
12. civic cleanup activities
13. civic support vehicles
14. repair of civic and cultural facilities
15. battle damage—repair of damage that results from U.S., coalition, or supporting military operations and is not compensable under the Foreign Claims Act
16. condolence payments to individual civilians for death, injury, or property damage resulting from U.S., coalition or supporting military operations
17. payments to individuals upon release from detention
18. protective measures to enhance the durability and survivability of a critical infrastructure site
19. other urgent humanitarian or reconstruction projects

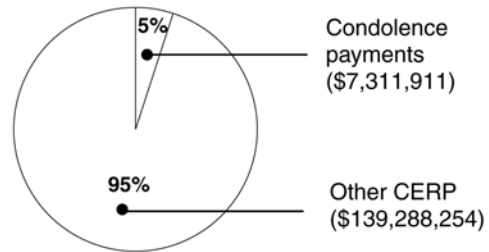


Figure 2: Condolence Payments Comprise a Small Percentage of Annual CERP Disbursements

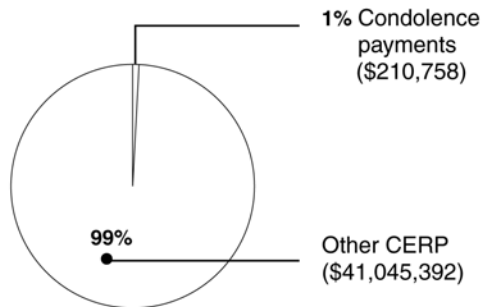
Reported condolence payment disbursements as a percentage of CERP in Iraq, fiscal year 2005



Reported condolence payment disbursements as a percentage of CERP in Iraq, fiscal year 2006



Reported condolence payment disbursements as a percentage of CERP in Afghanistan, fiscal year 2006



Source: GAO analysis of DOD data.



Objective 1



Objective

To what extent has DOD established guidance for making and documenting solatia and condolence payments in Iraq and Afghanistan?

Findings

DOD has established guidance for making and documenting solatia and condolence payments in Iraq and Afghanistan. In Iraq, guidance has changed over time in terms of payment amounts, approval levels, and payment eligibility. In Afghanistan, condolence payment guidance has not changed over time, whereas solatia payment guidance has become more descriptive.



Guidance for making solatia payments has become more specific in terms of payment amounts in Iraq. In Afghanistan, guidance has become more descriptive.

- In Iraq, solatia payment levels became more specific over time.
 - In 2003, \$2,500 was the maximum payment level regardless of type of harm.
 - In 2004, maximum payment levels were based on type and degree of harm:
 - death (\$2,500)
 - disabling injuries resulting in permanent disability or significant disfigurement (\$1,500)
 - minor injuries (\$200+)
- In Afghanistan, guidance for making and documenting solatia payments has become more descriptive in terms of processes and roles and responsibilities, but payment amounts have not changed over time.



Over time, maximum condolence payment amounts have become more flexible in Iraq.

- Initially (September 2004) MNC-I established maximum condolence payment levels in Iraq for each instance of death (\$2,500), serious injury (\$1,000), and property damage (\$500).
- In November 2004 guidance, MNC-I raised maximum condolence payment amounts for injury and damage in Iraq to match the maximum payment amount for each instance of death (\$2,500). According to guidance and officials, this change
 - provides commanders more flexibility,
 - acknowledges the serious nature of injuries and property damage, and
 - provides urgent and immediate humanitarian relief to minimize the impact of U.S. and coalition forces' actions on the Iraqi people.



Example: Two members of the same family are killed in a car hit by U.S. forces. The family could receive a maximum of \$7,500 in CERP condolence payments (\$2,500 for each death and up to \$2,500 for vehicle damage).

- In April 2006, MNC-I guidance permitted the division commanding general to approve in extraordinary circumstances condolence payments up to \$10,000 for each instance of death, injury, or property damage.



Over time, the use of condolence payments in Iraq has expanded.

- MNC-I expanded the use of condolence payments to allow payments to Iraqi security forces.
 - Prior to April 2006, condolence payments were not permitted to be made to Iraqi security forces except in rare circumstances and with the approval of the commanding general of Multinational Corps—Iraq.
 - Beginning in April 2006, MNC-I guidance established martyr payments as a subset of condolence payments to permit payments for Iraqi army or police or government civilians who are killed as a result of U.S., coalition, or supporting military operations. Payments require approval by general officers and are authorized in the same amounts as other types of condolence payments.



Approval authority levels for condolence payments in Iraq have become more specific over time.

- Initially, guidance specified that commanders must approve condolence payments and payment amounts.
- Beginning in April 2006, MNC-I established approval authority levels based on the amount and type of payment.
 - Brigade (regiment) commanders approve condolence and battle damage payments up to \$2,500.
 - General officers approve payments between \$2,500 and \$10,000 and all martyr payments regardless of payment amount.



- Per guidance, approval authority for condolence payments cannot be delegated below the brigade (regiment) commander.
 - However, in practice the Marine Corps Regiment Commander in Anbar Province has delegated authority for battle damage payments of \$500 or less to company commanders who are advised by project purchasing officers (generally judge advocates).
 - Although this practice does not comply with MNC-I policy, the Marine Corps is using CERP for approved purposes.
 - MNC-I anticipates providing a waiver to permit this practice for the Marine Corps.



Documentation requirements for condolence payments have not changed over time.

- In October 2004, guidance established documentation requirements for condolence payments:
 - Financial documentation that provides
 - name of the recipient
 - amount of payment and
 - signature indicating receipt of payment.
 - Descriptive memorandum signed by commander describing incident, including
 - name of recipient
 - date of incident
 - location where incident occurred and
 - detailed description of incident



Objective 2



Objective

How are commanders making and documenting solatia and condolence payments in Iraq and Afghanistan and what factors do commanders consider when determining whether to make payments and payment amounts?

Findings

Within parameters established by guidance, commanders exercise broad discretion for determining whether a payment should be made and appropriate payment amount. When determining whether to make payments and payment amounts, commanders consider the severity of injury or type of damage and property values based on the local economy.



Units generally follow a standard process for making condolence payments:

- Guidance does not require commanders to make payments, but instead permits commanders to make payments if they choose.
- Unit may provide claims card to a victim or family member or the victim or family member brings incident to attention of U.S. military.
- Judge advocates or project purchasing officers (PPO) review evidence and claims card and verify location and circumstances of incident against significant activity reports and determine whether a payment can be made under the Foreign Claims Act.
- If payment cannot be made under the Foreign Claims Act because harm resulted from combat activities, the judge advocate or PPO determines whether a condolence payment is appropriate.



- If a condolence payment is appropriate, the judge advocate or PPO recommends to the commander a payment amount based on the severity of injury or type of damage and local market value of property. Trusted local Iraqi nationals (attorneys and interpreters) provide input on local market values.
- According to unit officials and guidance, commanders review and approve all condolence payments. For approved payments, units document payment information including location, date, type of payment (death, injury, or property damage), and payment amount.
- Generally, payments are made at Civil Military Operation Centers (CMOC) or during personal visits. Less frequently, units in Iraq may make payments on-the-spot with the commander's verbal approval and financial documentation is completed at a later time.



Commanders consider a variety of factors when determining whether to make condolence payments and payment amounts.

- Commanders make final determinations about the appropriateness of payments and payment values within parameters of the guidance.
 - Condolence payments for each instance of death are generally \$2,500.
 - Condolence payments for each instance of injury and battle damage are generally less than \$2,500.
 - Commanders consider the severity of injury or type of damage, cost of living in the local community, and any other applicable cultural considerations.



Solatia and condolence payment program and process for making payments in Afghanistan is similar to program and process in Iraq.

- Factors commanders consider when determining whether to make a solatia or condolence payment and the payment amounts are similar in Afghanistan and Iraq. As noted earlier, these factors include
 - severity of injury,
 - cost of living in the local community, and
 - any other applicable cultural considerations.



- Approval and payment process in Afghanistan is also similar to condolence payment program in Iraq except
 - condolence and solatia payments in Afghanistan are generally made during personal visits to recipients,
 - guidance requires solatia payments to be made within 48 hours of an incident, and
 - regardless of payment amount, approval authority cannot be delegated below the battalion commander.

- According to Combined Joint Task Force-76 officials, commanders prefer to make solatia payments rather than condolence payments and use CERP funds for other types of assistance.



Objective 3



Objective

To what extent does DOD collect and analyze solatia and condolence payment data?

Findings

For approved payments, DOD documents information on the number of civilians killed or injured or whose property is damaged and the dollar value of payments, among other data. However, DOD does not track the number of requests for payment that are submitted or denied. DOD reports some information on condolence payment data to Congress. DOD does not analyze condolence payment data to determine reasons for payment fluctuations and uses other data to modify operations.



- Specific data are documented for individual condolence and solatia payments.
 - Individual condolence and solatia payment records for each incident identify:
 - dates of incident and payment
 - location of incident
 - names of each recipient
 - individual dollar value of payments
 - reasons for making payments (death, injury, damage)
 - brief explanation of circumstances surrounding incident
 - unit making payment
 - approving official
 - document reference number that identifies the type of transaction and unit
 - DOD does not collect or maintain information on the number of condolence or solatia payments submitted or denied.



DOD reports some summary information to Congress on condolence payments, but is not required to report information on solatia payments.

- Over time, DOD has changed the information it reports on condolence payments to Congress:
 - During fiscal year 2004, DOD reported
 - total obligated funds
 - unit that made payment
 - date
 - location of payment
 - Since fiscal year 2005, DOD has reported
 - total committed, obligated, and disbursed funds for condolence and battle damage payments
 - DOD does not break out values for death versus injury
 - location of payment
 - organization (major subordinate command or task force) that made payment
 - project numbers
 - Beginning in fiscal year 2006, DOD stopped reporting payment dates. According to a DOD official, these data were inaccurate because some units reported the payment date and other units reported the date paperwork was processed.



- DOD does not report other information such as the total number of civilians who receive payments or the number of condolence payments made for death, injury, or property damage.
- As of September 2006, DOD reported data that would facilitate obtaining documentation for individual payments. These data could enable DOD to determine the total number of condolence payments made, but gathering this information for past payments would be difficult.
- There is no requirement for DOD to report data for solatia payments, and the department does not do so although commands in Afghanistan track this information.



Solatia payments were used in Iraq for a short period of time. The Marine Corps reported that units in Iraq made \$1,732,002 in solatia payments between fiscal years 2003 and 2005.



Condolence payment levels have varied in Iraq over time.

Table 1: Reported condolence payments in Iraq by major subordinate command, fiscal years 2005 and 2006

Major subordinate commands	Disbursements (in dollars)		Percentage change fiscal years 2005 to 2006
	Fiscal year 2005	Fiscal year 2006	
Multinational Division—Baghdad	\$1,877,139	\$1,082,307	-42%
Multinational Division—North	9,645,772	1,866,966	-81
Multinational Force—West	9,637,262	4,033,272	-58
Other commands	368,500	309,366	-16
Total	\$21,528,664	\$7,311,911	-66%

Source: GAO analysis of DOD data.



Data for solatia and condolence payments made in Afghanistan are available beginning in fiscal year 2006.

Table 2: Reported solatia payments in Afghanistan, fiscal year 2006

Fiscal year	Obligations
2006	\$141,466

Source: GAO analysis of DOD data.

Table 3: Reported condolence payments in Afghanistan, fiscal year 2006

Fiscal year	Disbursements
2006	\$210,758

Source: GAO analysis of DOD data.



Condolence payment levels have fluctuated over time, but DOD does not analyze underlying reasons.

- DOD has not analyzed fluctuations in condolence payment levels to determine potential causes.
- However, command and unit officials with whom we spoke suggested several factors that could affect payment levels.
 - Nature of operations has changed, including number of major military offensives and tactics.
 - Iraqi security forces assumed more responsibility for security.
 - Number of units within an area of operations changed.
- We are unable to determine the extent to which these factors affected aggregate condolence payment levels.



While data from condolence payment records in Iraq include information on Iraqi civilians, these data do not provide a complete picture of the number of civilians affected by U.S. forces' actions. For example:

- Commanders may decide not to make payments, therefore no records exist.
- Condolence payment records identify only those civilians who received payments.
- Iraqi civilians may not report incidents or accept payments.
- Despite investigations by unit officials, some payments may be duplicative due to misrepresentations by Iraqi civilians.
- Records include payments made by coalition forces for harm they cause.
- Commanders may approve payments in some instances when U.S. forces did not cause harm:
 - Iraqi civilians are affected by enemy action as a result of employment with U.S. armed forces.
 - In rare cases, commanders may approve payments for harm caused by insurgents (e.g., child harmed when U.S. forces clear incendiary explosive devices set by insurgents).
 - Iraqi civilians are affected by Iraqi security forces conducting combined operations with U.S. forces.



Commanders rely on information other than condolence payments to modify military operations.

- Military officials in Afghanistan and Iraq told us they rely on “significant activity” (SIGACT) reporting that could be used to adjust operational activities.
- For example, in Iraq DOD tracks numerous types of events that may result in civilian death or injury, including:
 - enemy-initiated attacks against U.S. and coalition forces and their Iraqi partners
 - escalation of force incidents involving U.S. and coalition or Iraqi security forces and Iraqi civilians



Additional information

Description of other programs established by the U.S. government to provide assistance to Iraqi and Afghan civilians who have been harmed by U.S. or coalition actions.

Findings

The U.S. government has established several programs to provide program or monetary assistance to Iraqi and Afghan civilians who have been affected by U.S. or coalition actions. These programs include:

- Foreign Claims Act (DOD)
- Claims and Condolence Payment Program (Department of State) in Iraq
- Marla Ruzicka Iraqi War Victims Fund (USAID)
- Afghan Civilian Assistance Program (USAID)



Foreign Claims Act (DOD) in Iraq and Afghanistan

- Compensates inhabitants of foreign countries for personal injury, death, or property damage caused by noncombat activities of U.S. military personnel overseas.
 - Foreign claims commissions adjudicate claims up to \$100,000 in Iraq and Afghanistan. Settlement approval based on dollar limits and composition of the adjudicating teams.
 - One-member commissions without attorneys can award up to \$2,500.
 - Judge advocate one-member commissions can award up to \$15,000.
 - Three-member commissions can award up to \$50,000.
 - U.S. Army Claims Service or Judge Advocate General's office adjudicates claims of \$50,000 to \$100,000.
 - The Army General Counsel approves claims greater than \$100,000.
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Foreign Claims Act (DOD) in Iraq and Afghanistan (continued)

- Claimants are responsible for providing evidence to substantiate claims under the Foreign Claims Act.
- DOD paid about \$26 million to settle approximately 21,450 claims filed between fiscal year 2003 and fiscal year 2006 in Iraq and Afghanistan.
- According to the U.S. Army Claims Service, the primary reasons DOD paid claims under the Foreign Claims Act in Iraq include
 - (1) automobile accidents,
 - (2) detainee property claims or injuries, and
 - (3) damage resulting from negligent discharges.



Claims and Condolence Payment Program (Department of State) in Iraq

- Initiated in 2005, makes condolence payments, in accordance with local custom, to Iraqi civilians for death, injury, or damage resulting from harm caused in incidents involving Department of State protective security details (PSD).
 - No maximum payment level, but generally follow maximum condolence payment amount (\$2,500) established by DOD.
 - Payment amount is based on the totality of facts surrounding the incident, such as degree to which PSDs or Iraqi civilians involved in the incident are at fault and the extent of damage.
 - By accepting payment, claimant releases the U.S. government, and its employees and contractors, from future liability or claims.



Claims and Condolence Payment Program (Department of State) in Iraq (continued)

- According to the Department of State, it has not generated its own written policies or procedures for this program.
- Since fiscal year 2006, the department approved payment for 8 claims totaling \$26,000.
- No comparable program exists in Afghanistan.



United States Agency for International Development

Marla Ruzicka Iraqi War Victims Fund

- Initiated in 2005
- 768 projects totaling more than \$17.8 million

Afghan Civilian Assistance Program

- Initiated in 2003
- 51 projects totaling \$2.3 million

- Fund projects to assist Iraqi and Afghan civilians, institutions, and communities directly impacted by actions of U.S. or coalition forces.
- Projects include medical assistance, vocational training, and infrastructure projects.
- No money is provided directly to Iraqi or Afghan civilians. The U.S. Agency for International Development provides funds to its partner organizations in country.
- No written program guidance or spending ceilings for individual project.