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MILITARY OPERATIONS

The Department of Defense's Use of Solatia and Condolence Payments in Iraq and Afghanistan



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United States Government Accountability Office
Washington, DC 20548

May 23, 2007

The Honorable Edward Kennedy
Chairman
Subcommittee on Seapower
Committee on Armed Services
United States Senate

The Honorable Patrick Leahy
Chairman
Subcommittee on State, Foreign Operations, and Related Programs
Committee on Appropriations
United States Senate

There are a number of ways that the U.S. government provides assistance to Iraqi or Afghan civilians who are killed, injured, or suffer property damage as a result of U.S. and coalition forces' actions. For instance, the U.S. Agency for International Development funds projects to assist Iraqi and Afghan civilians and communities directly impacted by actions of U.S. or coalition forces. Also, the Department of State administers a program that makes payments, in accordance with local custom, to Iraqi civilians who are harmed in incidents involving U.S. protective security details. In addition, the Department of Defense (DOD) administers a program that provides compensation under the Foreign Claims Act to inhabitants of foreign countries for death, injury, or property damage caused by noncombat activities of U.S. military personnel overseas.¹ Further, DOD provides monetary assistance in the form of solatia and condolence payments to Iraqi and Afghan nationals who are killed, injured, or incur property damage as a result of U.S. or coalition forces' actions during combat. From fiscal years 2003 to 2006, DOD has reported about \$1.9 million in solatia payments and more than \$29 million in condolence payments² to Iraqi and Afghan civilians who are killed, injured, or incur

¹10 U.S.C. § 2734.

²Guidance issued by the Office of the Secretary of Defense (Comptroller) establishes 19 uses for Commander's Emergency Response Program funds including condolence payments and battle damage payments. For purposes of this report, we use the term condolence payment to refer to condolence payments and battle damage payments which we have combined when calculating total condolence payments. We did this because DOD guidance does not clearly define when payments for property damage should be recorded as condolence payments or as battle damage payments.

property damage as a result of U.S. or coalition forces' actions during combat.³ These payments are expressions of sympathy or remorse based on local culture and customs, but not an admission of legal liability or fault. Commanders make condolence payments using funds provided by Congress for the Commander's Emergency Response Program (CERP), whereas solatia payments are funded from unit operations and maintenance accounts. Pub. L. No. 108-106 (2003) requires DOD to provide quarterly reports on the source, allocation, and use of CERP funds. To administer the CERP, DOD has established 19 project categories for the use of funds, including categories for condolence payments and battle damage payments.

At your request, we reviewed DOD's solatia and condolence payment programs in Iraq and Afghanistan. Specifically, we examined the following questions: (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 or payment amounts? (3) To what extent does DOD collect and analyze solatia and condolence payment data? We also are providing information on the other aforementioned programs established by the U.S. government to provide assistance to Iraqi and Afghan civilians who have been affected by U.S. or coalition forces' actions. These programs include (1) DOD's Foreign Claims Act, (2) the Department of State's Claims and Condolence Payment Program, and (3) the U.S. Agency for International Development's Marla Ruzicka Iraqi War Victims Fund and the Afghan Civilian Assistance Program.

To address your questions, we identified and reviewed guidance for solatia and condolence payment programs and interviewed knowledgeable officials at commands in Iraq and Afghanistan. Additionally, we interviewed officials from selected units that returned recently from Iraq and Afghanistan about their experiences making and documenting solatia and condolence payments. We obtained payment information for solatia payments in Iraq and Afghanistan and found these data sufficiently reliable for purposes of this report. Additionally, we obtained summary obligation

³Condolence payments have been made in Iraq since March 2004 and in Afghanistan since November 2005. Solatia payments were made in Iraq from June 2003 to January 2005. Solatia payments have been made in Afghanistan since October 2005.

and disbursement data for condolence payments made in Iraq and Afghanistan. To gain an understanding of the reliability of these data, we spoke with knowledgeable officials about how these data were generated. Additionally, we compared condolence payment documentation from one unit with data contained in quarterly reports provided by the Office of the Assistant Secretary of the Army (Financial Management & Comptroller) to Congress. Of the files we compared, we found a minor discrepancy in one record of about \$30. However, we did not compare other records from other units because information needed to do so is generally not available from a centralized source. The recommendations we make in this report address this limitation. Finally, we interviewed officials at the Department of State and U.S. Agency for International Development about assistance these agencies provide to Iraqi and Afghan civilians affected by U.S. and coalition actions. A detailed scope and methodology is included in enclosure I. We conducted our review from September 2006 through May 2007 in accordance with generally accepted government auditing standards.

On February 28, 2007, we briefed your offices on the results of this review. This report summarizes the information discussed at that briefing, transmits the briefing slides describing our work at that point (see enclosure II), and provides updated information.

Summary

We found that DOD has established guidance for making and documenting solatia and condolence payments in Iraq and Afghanistan, and that guidance has changed over time primarily in Iraq in terms of condolence payment amounts, approval levels, and payment eligibility. Within parameters established by guidance, commanders exercise broad discretion for determining whether a payment should be made and the appropriate payment amount. While guidance does not require commanders to make payments, commanders may do so if they choose. When determining whether to make payments and payment amounts, commanders told us they consider the severity of injury, type of damage, and property values based on the local economy as well as any other applicable cultural considerations. According to unit officials with whom we spoke, units generally follow a similar process for making solatia and condolence payments in Iraq and Afghanistan. Officials told us that they generally make payments to civilians at Civil Military Operations Centers—ad hoc organizations established by military commanders to assist in the coordination of civilian-related activities—or during personal visits.

DOD requires units to collect various types of detailed information related to condolence payments and, based on this information, reports certain summary level data to Congress. However, because its current guidance does not clearly distinguish between the types of payments to be reported under certain CERP categories, reporting entities are interpreting the guidance differently, and therefore inconsistent reporting has occurred. When a condolence payment is made, units record, among other data, information on the

- unit that made the payment,
- number of civilians killed or injured or whose property was damaged,⁴
- location of the incident, and
- dollar value of the payment.

Each payment also is assigned a document reference number for tracking purposes. In reporting to Congress on the use of CERP funds, DOD provides summary data on obligations, commitments, and disbursements for each of the 19 project categories, and by major subordinate command⁵ in Iraq or task force in Afghanistan. The project categories include (1) condolence payments to individual civilians for death, injury, or property damage and (2) repair of damage that results from U.S., coalition, or supporting military operations that is not compensable under the Foreign Claims Act, known as battle damage payments. Within the condolence payment category, DOD reports total dollar amounts and does not distinguish between payments made for death, injury, or personal property damage. Because DOD guidance does not clearly define when payments for property damage should be recorded as condolence payments or as payments for battle damage, some units are recording property damage as condolence payments while others record property damage as battle damage payments. Additionally, neither DOD nor the Army—which is the executive agent for CERP⁶—can easily determine that property damage is

⁴While data from condolence payment records 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 various reasons, such as Iraqi civilians not reporting incidents or accepting payments.

⁵Iraq is divided into major areas of responsibility referred to as major subordinate commands. These include (1) Multinational Division—Baghdad, (2) Multinational Division—North, (3) Multinational Force—West, (4) Multinational Division—Central South, and (5) Multinational Division—Southeast.

⁶As the executive agent for CERP, the Secretary of the Army promulgates detailed procedures to ensure that unit commanders carry out CERP in a manner consistent with applicable laws, regulations, and DOD guidance, including rules for expending CERP funds.

categorized appropriately because guidance does not require units to report certain detailed information, such as document reference numbers, which would facilitate verification.

In addition to solatia and condolence payments, there are a number of other ways the U.S. government provides assistance to Iraqi or Afghan civilians or communities affected by U.S. and coalition forces or who are harmed during incidents involving U.S. protective security details. The maximum dollar amount of assistance and the process for providing assistance differs among programs. For instance, foreign claims commissions adjudicate foreign claims generally up to \$100,000 for death, personal injury, or property damage caused during noncombat activities by U.S. military personnel overseas. In comparison, the Department of State's Claims and Condolence Payment Program generally provides up to \$2,500 for each instance of death, injury, or property damage to Iraqi civilians harmed in incidents involving protective security details. Department of State officials told us that payment amounts are based on the totality of facts surrounding the incident, such as degree of fault and the extent of the damage. Under programs administered by the U.S. Agency for International Development, projects do not have a monetary limit and no money is provided directly to Iraqi or Afghan civilians. Instead, the agency provides funds to its partner organizations that implement projects, such as vocational training and infrastructure development. Additional details on these programs are provided in enclosure II.

Recommendations for Executive Action

To provide greater transparency on the use of CERP funds for condolence payments, we are recommending that the Secretary of Defense direct the Under Secretary of Defense (Comptroller) to take the following two actions:

- Revise CERP guidance to clarify the definitions as to what is reported in the two CERP categories: (1) condolence payments and (2) battle damage payments.
- Require that document reference numbers be provided for payments to allow DOD to determine whether expenditures of CERP funds are appropriately categorized and to permit DOD to obtain detailed information for analysis and reporting, as appropriate.

Agency Comments and Our Evaluation

DOD provided written comments on a draft of this report (see enclosure III) and concurred with both recommendations. In its comments, DOD noted that it had issued revised guidance to reflect our recommendations. DOD also provided technical comments, which we included in the report, as appropriate. Additionally, officials from the U.S. Agency for International Development and Department of State provided technical comments on a draft of this report that we incorporated, where appropriate.

As agreed with your offices, unless you publicly announce the contents of this report, we plan no further distribution of it until 30 days from the date of this report. We will send copies to others who are interested and make copies available to others who request them.

If you or your staff have any questions on the matters discussed in this report, please contact me at (202) 512-9619. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report may be found in enclosure IV.



Sharon L. Pickup, Director
Defense Capabilities and Management

Enclosures