

## DEPARTMENT OF JUSTICE OFFICE OF LEGAL COUNSEL

# Application of 10 U.S.C. § 191 and Section 8044 of Pub. L. No. 118-47 to the Defense Innovation Unit and Strategic Capabilities Office

50 Op. O.L.C. \_\_ (Apr. 22, 2026) · Decided April 22, 2026

### SUMMARY

This memorandum opinion of the Office of Legal Counsel addresses whether the Secretary of War may designate the Defense Innovation Unit and Strategic Capabilities Office as Department of War Field Activities under 10 U.S.C. § 191. It concludes that the Secretary may designate existing organizations when their governing statutes are compatible with Field Activity requirements, and that the procedural requirements in section 8044 of Public Law 118-47 are not triggered because the designation did not establish a new field operating agency.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Department of Justice Office of Legal Counsel                                                                                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Lanora C. Pettit                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | April 22, 2026                                                                                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | The Office of Legal Counsel issued a memorandum opinion to the General Counsel of the Department of War addressing whether the Secretary could designate the Defense Innovation Unit and Strategic Capabilities Office as Department of War Field Activities under 10 U.S.C. § 191 and whether that designation would trigger procedural requirements under section 8044 of the 2024 appropriations act. |
| PRECEDENTIAL VALUE    | Persuasive executive-branch legal opinion; not a judicial precedent                                                                                                                                                                                                                                                                                                                                      |

### TOPICS

[statutory interpretation](#)[administrative law](#)[military law](#)[federal spending](#)[appropriations](#)

### PRACTICE AREAS

[administrative law](#)[statutory interpretation](#)[military law](#)[federal appropriations](#)

### QUESTIONS PRESENTED

1. Whether the Secretary may designate an existing Department of War organization as a Field Activity under 10 U.S.C. § 191 when the organization's structure or mission is at least partly governed by statute.
2. Whether the statutory reporting and supervisory requirements governing the Defense Innovation Unit and Strategic Capabilities Office are consistent with designation of those organizations as Field Activities.
3. Whether designating the existing Defense Innovation Unit and Strategic Capabilities Office as Field Activities established new Field Operating Agencies and thereby triggered the procedural requirements of section 8044 of Public Law 118-47.

## HOLDINGS

1. The Secretary may designate an existing Department of War organization as a Field Activity under 10 U.S.C. § 191, provided that the organization's governing statute is not inconsistent with the statutory requirements for a Field Activity.
2. The Secretary may designate the Defense Innovation Unit and Strategic Capabilities Office as Field Activities because each is a single Department of War organization, performs a service or activity common to more than one military department, and can be supervised by an Office of the Secretary of War official as required by 10 U.S.C. § 192.
3. Designating the DIU and SCO as Field Activities did not establish new Field Operating Agencies and therefore did not trigger the procedural requirements of section 8044.

## KEY QUOTATIONS

*“The Secretary of War may designate an existing Department of War organization as a defense field activity pursuant to 10 U.S.C. § 191 so long as the organization’s governing statute is not inconsistent with the requirements of a defense field activity.” (at 1)*

*“Whether an organization is a Field Operating Agency thus turns on the organization’s structure and mission—that is, whether it is a specialized subdivision of the OSW or of an Armed Service and whether it carries out noncombat activities under the OSW or the relevant Armed Service’s headquarters.” (at 17)*

*“As a result, the Secretary could take the actions detailed in the January Memo without triggering the procedural requirements of section 8044.” (at 20)*

## FACTUAL BACKGROUND

The Secretary of War created the Defense Innovation Unit and Strategic Capabilities Office in 2015 as noncombat Department of War organizations focused on developing, procuring, and integrating advanced technologies. Congress later enacted statutes governing each organization, including reporting and supervisory requirements. In January 2026, the Secretary designated both organizations as Field Activities under 10 U.S.C. § 191 without changing their missions, internal structures, personnel levels, or budgets. OLC concluded that both organizations had already existed as Field Operating Agencies, so the designations did not establish new Field Operating Agencies for purposes of section 8044.

## PROCEDURAL HISTORY

The General Counsel requested advice concerning the Secretary's proposed designation of the Defense Innovation Unit and Strategic Capabilities Office as Field Activities. OLC advised that the designations were permissible and later memorialized the basis for that advice in this memorandum opinion.

## DISPOSITION

other

## CASES CITED

- Liquidation of Reconstruction Finance Corporation—Disclosure of Information, 41 Op. Att'y Gen. 166, 169–70 (1953)
- FCC v. Consumers' Research, 145 S. Ct. 2482, 2496–97 (2025)
- Williams v. Taylor, 529 U.S. 420, 431 (2000)
- Salinas v. United States, 522 U.S. 52, 63 (1997)
- Epic Systems Corp. v. Lewis, 584 U.S. 497, 502 (2018)
- Kemp v. United States, 142 S. Ct. 1856, 1863–64 (2022)
- RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012)
- Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992)
- Marx v. General Revenue Corp., 568 U.S. 371, 381 (2013)
- Federal Election Commission v. Cruz, 142 S. Ct. 1638, 1649 (2022)
- Louisiana Public Service Commission v. FCC, 476 U.S. 355, 374 (1986)
- United States v. Hansen, 143 S. Ct. 1932, 1943–44 (2023)
- Hubbard v. United States, 514 U.S. 695, 708 (1995)
- Lincoln v. Vigil, 508 U.S. 182, 192 (1993)
- Radzanower v. Touche Ross & Co., 426 U.S. 148, 155 (1976)
- Harmonizing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and Section 214 of the Housing and Community Development Act of 1980, 50 Op. O.L.C. \_\_\_, at \*7 (Feb. 18, 2026)
- Reconsidering the Application of the Hyde Amendment to the Provision of Transportation for Women Seeking Abortions, 49 Op. O.L.C. \_\_\_, at \*9 (July 11, 2025)
- Use of General Agency Appropriations to Purchase Employee Business Cards, 21 Op. O.L.C. 150, 153 (1997)