

# CRS Report for Congress

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

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### 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.<sup>1</sup>

### 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.

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<sup>1</sup> 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. Thirty seven 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. Commissioners or staff members 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 1988, 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.

## Subsequent Commission-recommended Legislation

**Overview.** The 2005 Defense Base Closure and Realignment Commission recommended 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 six-year 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 the 2005 statute, the BRAC Commission was terminated on April 16, 2006. The proposed legislation would have extended the life of a subset of the Commission (Chairman, Executive Director, and staff of not more than 50), which would have maintained the Commission's documentation and formed the core of an expanded staff for a possible 2014-2015 Commission.

In addition, the continued Commission would have been 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.<sup>2</sup>

**Commission Reports.** The proposed law would have required 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 have reported 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 privatization-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 have authorized the Commission to study and analyze the execution of BRAC 2005 recommendations. This report, undertaken if the Commission considered it beneficial, would have been completed not later than June 30, 2007. It would have focused 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.

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<sup>2</sup> 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 would have authorized 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 proposed 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 envisioned potential Department contracts with private environmental insurance carriers after the completion of remediation in order to mitigate risk of future liability.

The study could have considered 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 were the creation of public-private partnerships, limited-liability corporations, or independent trusteeships to take title to and responsibility for properties.<sup>3</sup>

The Commission would have consulted closely 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 have required the Commission to submit a final report on the execution of these actions not later than October 31, 2011.

**Other Noteworthy Considerations.** The recommended legislation included 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 or her 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 Commission proposed legislation to extend the period to seven (7) months.

**Commission Subpoena Power.** The 2005 Commission suggested that a future body be granted the Commission the power to subpoena witness for its hearings.

**Commission General Counsel as Sole Ethics Counselor.** The Commission recommended a statutory designation of the Commission’s General Counsel as its sole ethics counselor. The 2005 Commission found that questions concerning

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

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

**Transparency.** Legislation recommended by the Commission stated 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 would continue the traditional 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 have repealed 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