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Briefing Report to the Chairman and
Ranking Minority Member,
Subcommittee on Oversight and
Investigations, Committee on Armed
Services, House of Representatives

April 1994

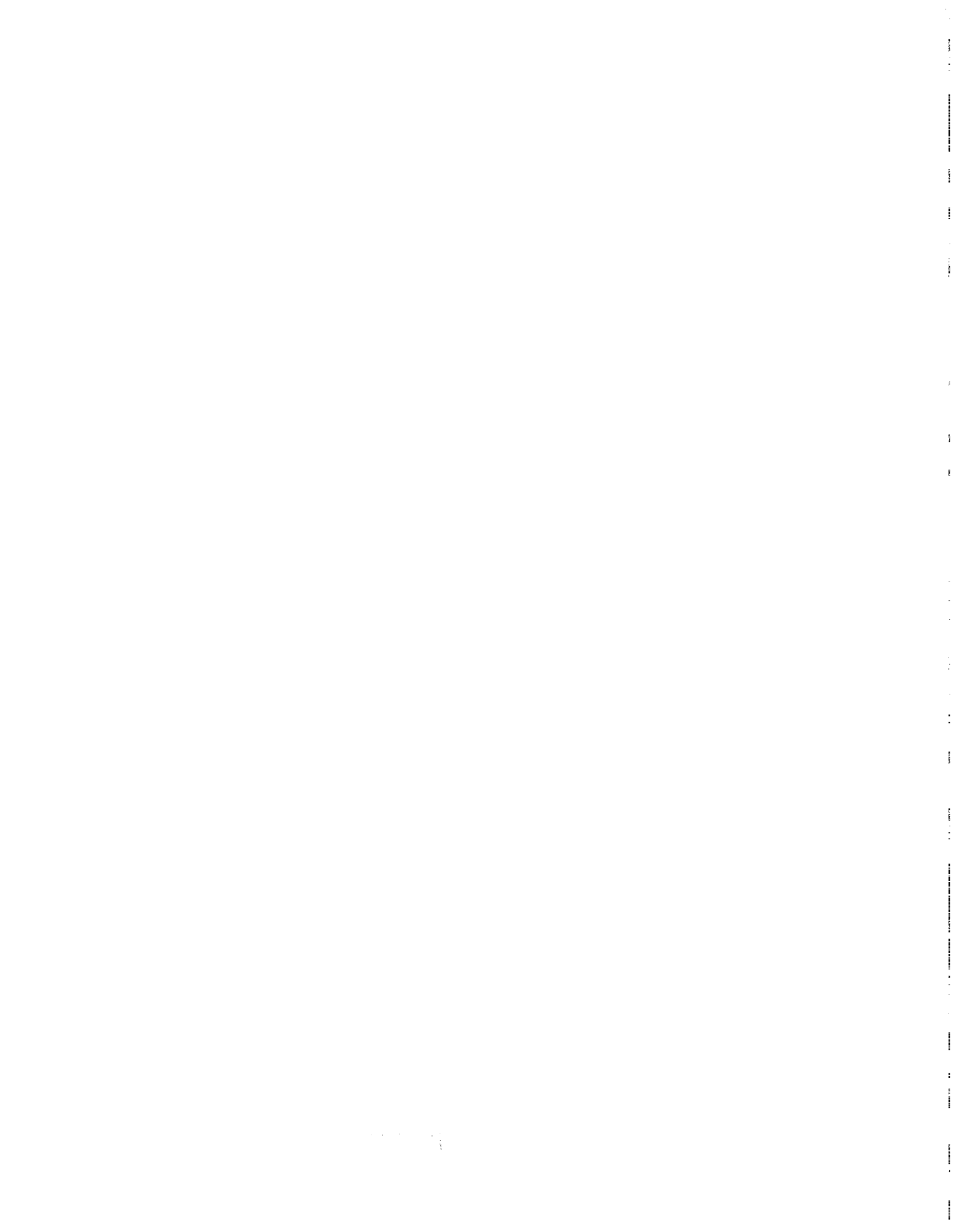
DOD BUDGET

Analysis of Options for Funding Contingency Operations



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National Security and
International Affairs Division

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April 26, 1994

The Honorable Norman Sisisky
Chairman, Subcommittee on Oversight
and Investigations
Committee on Armed Services
House of Representatives

The Honorable James V. Hansen
Ranking Minority Member
Subcommittee on Oversight and
Investigations
Committee on Armed Services
House of Representatives

In response to your February 3, 1994, letter asking that we review various mechanisms for funding contingency operations, we are providing information on (1) some of the issues that should be considered before the Congress makes any decisions regarding funding mechanisms (see app. I), (2) use of the Defense Business Operations Fund to finance contingencies (see app. II), and (3) our views on the advantages and disadvantages of the budgetary mechanisms that could be used to fund these operations (see app. III). We briefed your staff on April 18, 1994, on these issues.

RESULTS IN BRIEF

In paying for contingency operations, the Congress should first consider whether the funds for these operations would come from existing appropriations or from supplemental appropriations. If the funds come from existing appropriations, spending plans are disrupted because funding for other planned requirements have to be reduced. Additional resources received through supplemental legislation would not have this same impact, but such legislation could be subject to the discretionary spending limits of the Budget Enforcement Act unless designated as "emergency" funding. Once this decision is made, the Congress can then focus on the mechanisms for using the funds. There are several mechanisms that are readily available for both the Department of Defense (DOD)

and the Congress to use. The Congress also has the option to amend currently available mechanisms or create some mechanisms specifically for contingency operations.

BACKGROUND

Providing budgetary resources to finance contingency operations is a common problem throughout the federal government. For example, according to an Office of the Secretary of Defense (OSD) official, DOD does not budget for the cost of military operations or contingencies. It budgets to be ready to conduct such operations. Because of the somewhat unique operational requirements facing DOD, the Congress has provided the Department with substantial flexibility to move funds and to incur obligations as needed. Billions of dollars in transfer authority, access to revolving funds coupled with delayed reimbursement authority, and the availability of broad scope and virtually unlimited contract authority under the Feed and Forage Act of 1861, which permits obligations to be incurred in advance of appropriations or receipts, provides DOD a range of options.

Based on our work on the costs of Operation Desert Shield/Storm and Operation Restore Hope, when the services have to conduct these operations, the planned budget execution cycle is necessarily disrupted. To meet these new requirements, the military services have postponed or canceled operational training exercises, used apportionments from future quarters, delayed executing planned programs, reprogrammed or transferred funds from other appropriations, used existing contract authority, or sought additional funding through supplemental appropriations.

SCOPE AND METHODOLOGY


We discussed these issues with Office of the Secretary of Defense officials and with service budget officials. We reviewed the legal aspects of various types of funding mechanisms and analyzed the advantages and disadvantages of each. We also reviewed work from our previous reviews to determine how DOD funded other contingency operations, such as Operation Desert Shield/Storm and Operation Restore Hope. We informally reviewed the results of our work with pertinent DOD officials and incorporated their comments as appropriate.

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We conducted our review from February through March 1994 in accordance with generally accepted government auditing standards.

As arranged with your staff, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to the Chairmen, House and Senate Committees on Armed Services, Appropriations, and the Budget. We will also send a copy to the Secretary of Defense. Copies will also be made available to others upon request.

The major contributors to this report are listed in appendix IV. If you or your staff have any questions about this report, please call me on (202) 512-3504.


Richard Davis
Director, National Security
Analysis

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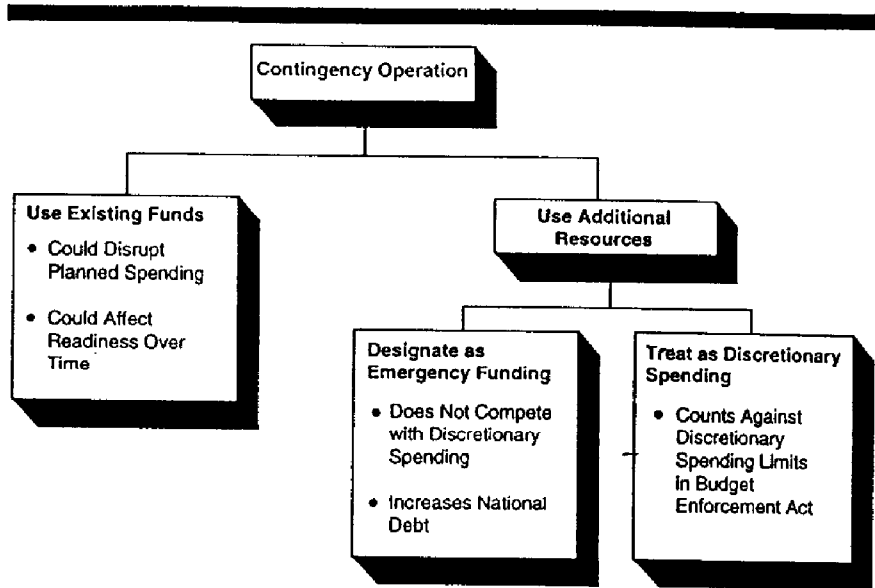
ABBREVIATIONS

DBOF	Defense Business Operations Fund
DOD	Department of Defense
OSD	Office of the Secretary of Defense

CONSIDERATIONS FOR FUNDING CONTINGENCY OPERATIONS

When confronted with the need to fund contingency operations, the Congress should make some important decisions before any mechanism can be successfully implemented. Figure I.1 summarizes these decisions. One important decision is whether or not the Congress should appropriate, through emergency supplemental legislation, additional resources to fund an operation. If an emergency supplemental appropriation is passed on a timely basis, DOD will be able to follow its normal spending plan and there will be little negative impact on readiness; however, the budget deficit will increase since emergency appropriations cause the spending caps established by the Budget Enforcement Act of 1990 (title XIII of P.L. 101-508) for that fiscal year to increase. If additional resources are appropriated but not marked as "emergency," they would be subject to the discretionary spending limits in the Budget Enforcement Act, which could mean that the amount of budget authority available for other discretionary spending could be reduced.

Figure I.1: Decisions to Make When Funding Contingency Operations.



If the Congress decides not to appropriate additional budgetary authority, funds must be found within the normal DOD appropriations, either from within the service operations and maintenance accounts or by transferring funds from other accounts, such as procurement and research and development. While this would not increase the budget deficit, both service and DOD officials believe that, over the long term, these funding disruptions have a serious negative impact on the ability to sustain force readiness at the necessary level, as well as on other programs that are canceled or postponed.

We would expect that any mechanism established and funded would be used for the initial costs of a contingency operation in its first fiscal year. If an operation continued into a new fiscal year, and if DOD had time within the budget and legislative cycle, it would seem appropriate that DOD would build the expected costs of that operation into its budget and allow the Congress to expressly authorize and appropriate funds for its continuation. Again, this would have implications based on the Budget Enforcement Act's discretionary spending limits. Specifically, any appropriation for contingency operations would have to be balanced by reducing or canceling budget authority in some other area of discretionary spending, unless the Congress designated any such appropriations as emergency funding.

ADVANTAGES AND DISADVANTAGES OF USING
THE DEFENSE BUSINESS OPERATIONS FUND
TO FINANCE CONTINGENCY OPERATIONS

In October 1991, DOD implemented the Defense Business Operations Fund (DBOF), which consolidated the nine existing industrial and stock funds operated by the military services as well as the Defense Finance and Accounting Service, the Defense Industrial Plant Equipment Services, the Defense Commissary Agency, the Defense Reutilization and Marketing Service, and the Defense Technical Information Service. To put the size of the fund in perspective, its fiscal year 1995 estimated sales of \$77 billion would make it one of the largest corporations in the world. The primary goal of DBOF is to focus management's attention on the cost of carrying out DOD's business operations and the handling of those costs.

The National Defense Authorization Act for Fiscal Year 1994 (P.L. 103-160) established the use of DBOF as a funding mechanism for any operation that is designated by the Secretary of Defense as a "National Contingency Operation." The act stated that any military unit participating in a designated National Contingency Operation could receive support from a unit that operates through DBOF without immediately reimbursing DBOF. It also stated that the services should account for these expenses separately and that the total for all such operations could not exceed \$300 million at any one time. The act required the Secretary of Defense to submit to the Congress within 2 months of the beginning of the operation a financial plan that describes how the Secretary plans to obtain funds for the operation, including how DBOF will be repaid.

Table II.1 summarizes the advantages and disadvantages of using DBOF.

Table II.1: Using DBOF to Fund Contingencies

<p style="text-align: center;">Advantages</p>	<p style="text-align: center;">Disadvantages</p>
<p>There is a financial and organizational structure in place that would not change for contingency operations. The services would still order goods and services from DBOF. The major difference would be that DBOF is not immediately reimbursed for the goods and services as it should be in normal peacetime operations.</p>	<p>DBOF and its customers maintain a contractual-type (buyer-seller) relationship. The services receive appropriated funds to pay for goods and services received from DBOF. This relationship could be adversely affected if reimbursement for the goods and services provided were not received within a reasonable period of time. In that case, the fund could encounter a cash problem in paying its bills. If the overall DBOF cash balance becomes negative, DBOF would be in violation of the Antideficiency Act.</p> <p>DOD's pricing policy provides that the prices charged for goods and services will be adjusted to operate the fund on a break even basis. If the fund is not reimbursed as intended, DBOF would incur a loss for those items provided. Under current DOD policies, future prices would have to be adjusted to recover such losses.</p> <p>DBOF accounting data often lacks completeness and accuracy. Since this data is the basis for reimbursement to the fund, there is a risk that the fund will not receive the reimbursements it is due.</p> <p>Only a portion of the costs incurred in a contingency operation relate to goods and services available through DBOF. For example, of the \$692 million in incremental costs incurred in Operation Restore Hope, at least \$194 million, or 28 percent, was not related to DBOF goods and services.</p> <p>Since DOD has always had the ability to draw from DBOF without immediate reimbursement, capping that ability at \$300 million limits the flexibility that already existed.</p>

ALTERNATIVES TO USING DBOF TO FUND CONTINGENCIESALTERNATIVE 1. MAINTAIN STATUS QUO

Under existing law and practice, DOD currently has a number of options for funding the types of activities considered to be "contingencies." These include the following:

- DOD can use its reprogramming authority.
- DOD can use its transfer authority.
- DOD can use future quarterly budget apportionments as authorized by current legislation.
- DOD can exercise its contracting authority under the Feed and Forage Act of 1861 (41 U.S.C. 11), which allows DOD to contract for specific types of items beyond its current appropriated funds.
- DOD can request supplemental appropriations for requirements designated by the President as "emergencies." The Congress can then designate these supplemental appropriations as "emergency," in which case the additional budget authority would not count against the fiscal year discretionary spending limits and would allow DOD to execute its planned budget without disruption. These appropriations could also require that reimbursements from the United Nations or others be returned directly to the U.S. Treasury to offset some of the cost of the operation, as does the supplemental legislation (P.L. 103-211) passed in February 1994, providing emergency funding for disaster relief operations in California and the midwest and DOD costs for operations in Somalia, Bosnia, Haiti, and Southwest Asia.

Table III.1 summarizes the advantages and disadvantages of alternative 1.

Table III.1: Summary of Alternative 1--Maintain Status Quo

Advantages	Disadvantages
<p>No new legislation needs to be enacted or new account established.</p> <p>It does not appear that the existing mechanisms for funding these types of activities have prevented DOD from undertaking unanticipated, unbudgeted major operations like Desert Storm and Restore Hope. These existing mechanisms would presumably be adequate to fund the much smaller scale activities that DOD has the ability to fund through DBOF (see app. II).</p>	<p>Extensive use of reprogramming or transfer authority may disrupt other significant planned DOD activities and operations.</p> <p>Existing transfer authority set forth in DOD's annual appropriations act is limited and, if the operation involves large numbers of U.S. forces, could prove to be inadequate.</p> <p>If contingencies occur late in the fiscal year, DOD's ability to use apportionments from future quarters or to use reprogramming or transfer authority may be limited by the nonavailability of funds.</p> <p>If DOD uses existing appropriated funds to pay for these operations, moving funds from planned requirements could have a long-term impact on readiness.</p>

ALTERNATIVE 2. AMEND OR MODIFY EXISTING AUTHORITIES

The following changes to existing authorities could be accomplished separately or in combination.

Option A: Expand Transfer Authority

DOD's statutory authority to transfer funds from one appropriation or working capital fund to another is set forth in DOD's annual appropriations act. For example, DOD has \$2.5 billion in total transfer authority under section 8006 of the fiscal year 1994 DOD Appropriations Act. This amount has varied from year to year. In fact, the amount associated with this authority for fiscal year 1994 is much greater than the \$1.5 billion in transfer authority for the previous fiscal year. This amount could be stabilized in the future or a proviso could be added that would allow for the transfer of greater amounts if needed to fund contingency operations. However, DOD officials stated that the transfer authority is sufficient at its current level and do not see a reason to expand it or add further provisions to its use. Table III.2 summarizes the advantages and disadvantages of expanding the transfer authority.

Table III.2: Summary of Alternative 2, Option A--Expand Transfer Authority

Advantages	Disadvantages
<p>No immediate increase in the size of DOD's budget would be required--no new budget authority.</p> <p>Expanding transfer authority would be relatively simple to accomplish.</p> <p>Congressional notification is already required for all transfers.</p>	<p>This could cause greater disruption in activities funded by the accounts from which funds are transferred, generally the procurement and research and development accounts. These disruptions could cause program costs to increase.</p> <p>DOD and service officials stated that transferring funds from one account to another can have a serious negative effect on readiness over the long term by taking away funds meant for upgrading old or purchasing new equipment.</p>

Option B: Amend the Feed and Forage Act, 41 U.S.C. 11

Under 41 U.S.C. 11, DOD is authorized to incur obligations on behalf of the United States "for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies" that exceed available appropriations, but which may not exceed the necessities of the current year.

The Secretary of Defense is required to advise the Congress immediately of the exercise of this authority and to report quarterly on estimated obligations incurred thereunder. Like other forms of contract authority, this authority is unfunded and requires a subsequent appropriation to liquidate any obligations that are incurred.

The language in 41 U.S.C. 11 is derived from legislation enacted in 1861 during the Civil War. The purposes for which DOD may incur obligations that exceed available appropriations under this provision without violating the Antideficiency Act, 31 U.S.C. 1341(a), have been largely unchanged since that time. DOD officials stated that they see no need to change the language of the Feed and Forage Act. These officials believe that the language is sufficiently broad and gives them the needed flexibility to interpret the law as needed within its intent. They also believe that any attempt to update the language to more specifically identify areas of items available for purchase would only narrow that flexibility. They were not aware of any instances during Operation Desert Shield where the services were unable to purchase necessary items because of the language of the act.

In our work on Operation Desert Shield, we also found that DOD was able to effectively utilize the Feed and Forage Act to meet its requirements. Therefore, we see no advantage to amending 41 U.S.C. 11.

ALTERNATIVE 3. ESTABLISH A REVOLVING-TYPE FUND

Legislation could be enacted to establish a permanent fund to finance the types of activities discussed. The Congress could establish an account, such as the Defense Emergency Response Fund, which receives reimbursements from other federal departments and agencies for DOD assistance in response to natural or man-made disasters. Funds would be transferred from this account to cover the incremental costs of contingency operations. An appropriated sum would provide initial funding, with the account being replenished by reimbursements from the United Nations (or other international organizations), contributions from other countries or individuals, or from other specified sources, such as the sale of fund assets. Should this income be insufficient to offset costs of contingency operations, additional congressional appropriations would be required.

Table III.3 summarizes the advantages and disadvantages of alternative 3.

Table III.3: Summary of Alternative 3--Establish a Revolving-Type Fund

Advantages	Disadvantages
<p>Monies in the revolving fund could be no-year funds and so would not expire.</p> <p>In establishing the revolving fund, the Congress could impose whatever restrictions or limitations it deemed desirable.</p> <p>Amounts in the fund would generally be available for obligation to the extent provided in the fund's enabling legislation or in subsequent legislation.</p> <p>Money received from other authorized sources, such as foreign contributions or reimbursements from the United Nations, could be retained in the fund and could reduce the need for future appropriations.</p> <p>Establishment of a revolving fund would enhance DOD's ability to respond promptly to emergencies without disrupting other planned activities or operations.</p> <p>The fund could easily be infused with additional appropriations when and if it became necessary to do so.</p>	<p>It would require enactment of separate legislation.</p> <p>Unlike other revolving funds, there would not be an ensured funding stream for replenishing amounts in the fund.</p> <p>DOD has had difficulties in managing revolving funds in the past, most recently the Defense Business Operations Fund.</p> <p>Additional direct appropriations to replenish the fund would count as new budget authority, would be subject to the Budget Enforcement Act, and could have other budgetary implications, such as reducing the amount available for other discretionary spending, if not designated as emergency funding.</p>

ALTERNATIVE 4. ESTABLISH A TRANSFER ACCOUNT

Legislation could be enacted to establish an account at the Office of the Secretary of Defense level that could be used for funding contingency operations. When the Secretary of Defense determined it was necessary, funds would be transferred from this account to other DOD appropriations or funds from which expenditures had been made to pay for the operation.

This type of account would be similar to the Defense Cooperation Account, which was established during Operation Desert Shield to accept contributions from other nations to offset the costs of U.S. activities in the operation. Contributors deposited funds into the Defense Cooperation Account; the Congress then appropriated money from that account to DOD for the operation's funding needs.

Rather than creating another transfer-type account, the Congress could modify the Defense Cooperation Account, or any other similar existing transfer account, to allow DOD to use this account to fund contingency operations. The account could be funded through annual appropriations and could also continue to receive money from other sources, such as voluntary contributions and reimbursements from organizations such as the United Nations. Table III.4 summarizes the advantages and disadvantages of alternative 4.

Table III.4: Summary of Alternative 4--Establish a Transfer Account

Advantages	Disadvantages
<p>The account would provide an additional specified amount of funds for certain activities, thus enhancing DOD's ability to respond promptly to emergencies without disrupting other planned activities or operations.</p> <p>Congress could establish any limitations or restrictions on the account it deemed desirable. The language establishing such an account should, at a minimum, specifically require that Congress be notified of transfers from the account within a stated period of time.</p> <p>Congress could also establish the funds for any period (1 year, multiple-year, or no-year) it deemed desirable.</p> <p>If any portion of transferred funds was not needed, it could be transferred back to the account.</p> <p>The account could be established to receive deposits from other sources, such as contributions from other nations or reimbursements from the United Nations, to be used in the same manner as the appropriated funds.</p>	<p>Because the timing, nature, and size of a contingency cannot be known in advance, the amount of funding provided would have to be somewhat arbitrary. If the account was not sufficiently funded, money would need to come from other sources, such as a transfer, reprogramming, or supplemental appropriation.</p> <p>Appropriations for this account would count as budget authority and would be subject to the Budget Enforcement Act, which, among other budgetary implications, could mean that the amount of budget authority available for other discretionary spending could be reduced, unless designated as emergency funding.</p>

ALTERNATIVE 5. PROVIDE DIRECT APPROPRIATIONS TO EACH SERVICE

The Congress could, for each service, either establish a specific appropriation account to fund a particular operation or include a provision in an existing appropriation to fund the operation. For example, the Congress could establish a provision in the operations and maintenance, Army, appropriation for contingency operations. Table III.5 summarizes the advantages and disadvantages of alternative 5.

Table III.5: Summary of Alternative 5--Provide Direct Appropriations to Each Service

Advantages	Disadvantages
<p>Since expenditures would be made directly from these accounts, there would be no need to transfer funds from other programs or accounts.</p> <p>The Congress could readily establish any restrictions or limitations concerning the purposes for which funds could be expended or the period of availability for obligation (1 year, multiple-year, or no-year) that it deemed desirable.</p>	<p>Additional direct appropriations for these activities would count as budget authority, would be subject to the Budget Enforcement Act, and could have other budgetary implications, such as reducing the amount available for other discretionary spending, unless designated as emergency funding.</p> <p>Prior to identifying a need, it is difficult to estimate how much to appropriate for unanticipated disasters and other unpredictable emergencies.</p> <p>It would be difficult to determine how to allocate amounts to each service, since the level of involvement in each operation may vary by service.</p>

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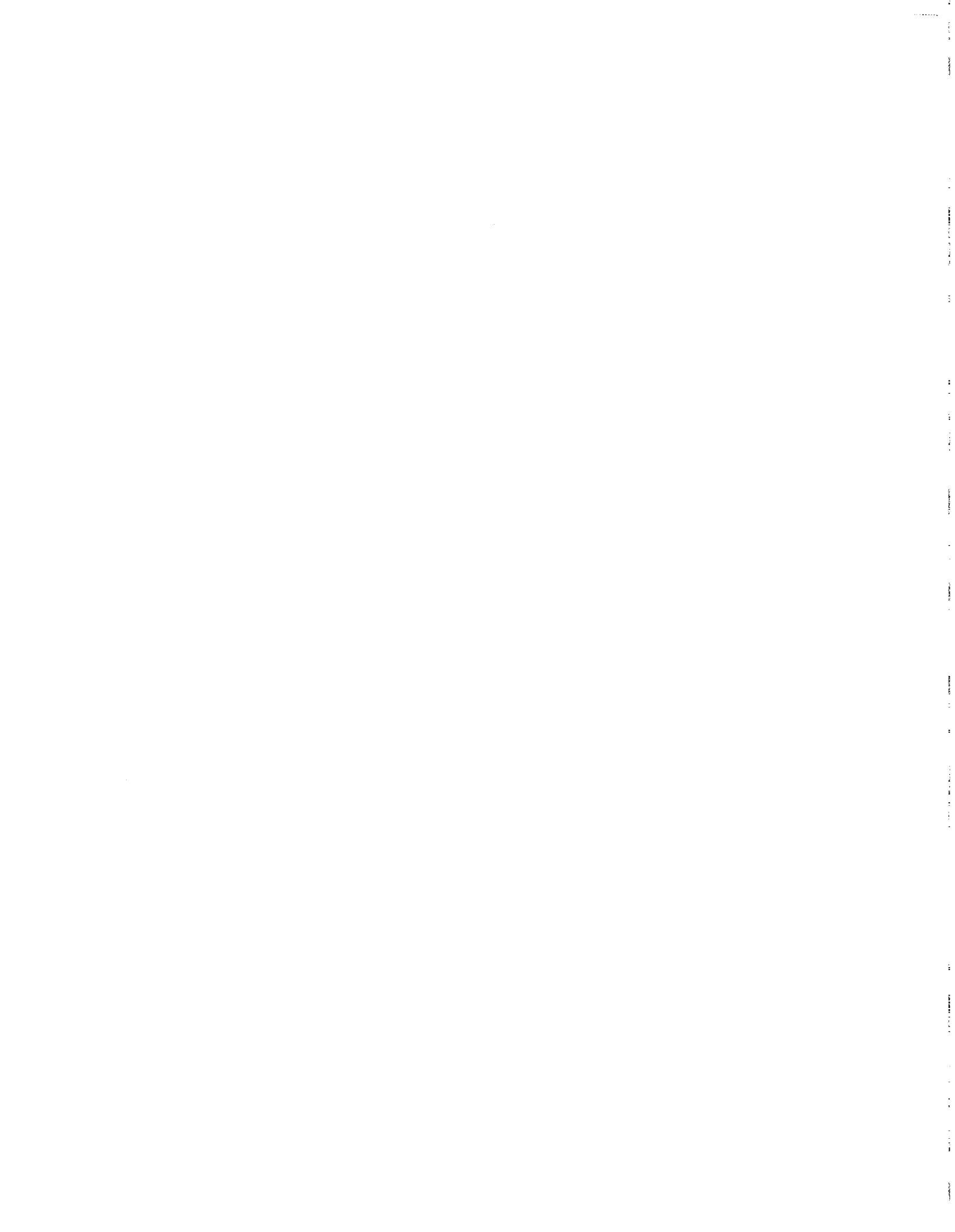
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