



BUDGET EXECUTION FLEXIBILITIES

Office of the Under Secretary of Defense (Comptroller)

1996

Budget Execution Flexibilities

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Reprogramming DoD Appropriations Act Accounts

Example of Use

During FY 1995, an Army National Guard Equipment reprogramming request was approved to procure a new Controlled Humidity Preservation System which would reduce corrosion, decrease system/component failures and extend the service life of equipment through a dehumidification process. This action was funded from within the National Guard and Reserve Equipment, 93/95 appropriation from funds excess to 5-Ton Truck and MLRS Launcher requirements.

Reprogramming

- **Applies to appropriations in the annual DoD Appropriation Acts.**
- **Based upon agreements between DoD and the congressional Authorization and Appropriations Committees.**
- **Provides flexibility to revise the programs within an appropriation.**
- **Provides a means of seeking approval from the congressional committees to fund a requirement in an appropriation by transfer from another appropriation based on higher priority requirements.**
- **Some actions may be approved by the Military Departments and Defense Agencies; others require approval by the Secretary of Defense and notification of, or prior approval by, the specified congressional committees.**
- **A summary report of all reprogramming actions is submitted to the Congress semi-annually.**
- **Considerable pressure applied by the committees to minimize reprogramming. An annual recurring general provision in the Appropriations Acts states that “no part of the funds in this act shall be available to prepare or present a request to the committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress.”**

Approval and/or Notification Requirements for Reprogramming Actions

DoD Component Action	OSD Action			
<p>DoD Budget Guidance Manual 7110-1-M (Change 1), dated June 1992, Chapter 431, as amended, “Implementation of Reprogramming of DoD Appropriated Funds,” to be replaced by FMR, Volume 2, Chapter 6, requires prior approval of the Secretary of Defense (Under Secretary of Defense (Comptroller)) for the following:</p>	Prior Approval of House and Senate Committees on		Notify House and Senate Committees on	
	Author-ization	Appro-priations	Author-ization	Appro-priations
<p>1. <u>Actions requiring prior congressional committee approval are actions involving the application of funds, regardless of the amount, which:</u></p> <p>A. Increase the procurement quantity of a major end item, such as, an individual aircraft, missile, naval vessel, tracked combat vehicle, and other weapon or torpedo and related support equipment for which funds are authorized. (Exceptions to the use of a prior approval reprogramming action may apply when congressional language allows for procurement of as many missiles as funds will buy. In this case, increases to missile quantities shall be submitted and approved as an internal reprogramming action.)</p> <p>B. Affect an item that is known to be or has been designated as a matter of special interest to one or more of the congressional committees.</p> <p>C. Involve the use of general transfer authority. The DoD Appropriations Acts and DoD Authorization Acts provide a general provision to transfer funds, known as general transfer authority. Transfers may be made between appropriations, or appropriation subdivisions approved in the Acts, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred. Transfers may be made upon determination by the Secretary of Defense that such action is necessary in the national interest; provided that such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than the items for which funds were originally appropriated, and in no case where the item for which funds are requested has been denied by the Congress. The Congress must be notified promptly of all transfers made under this authority. The general provisions of the Appropriations Acts require approval of the transfers from the OMB. (Exceptions to the use of a prior approval reprogramming action may apply for reclassification of programs to the proper appropriation for execution of the intended program or congressional add and do not change the purpose for which the funds were originally appropriated. These actions, however, still require the use of general transfer authority and compliance with the provision in law.)</p>	Yes	Yes		
	Yes	Yes		
	Yes	Yes		

Approval and/or Notification Requirements for Reprogramming Actions

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	Author-ization	Appro-priations	Author-ization	Appro-priations
<p><u>II. Reprogrammings requiring notification to congressional committees are actions involving changes in the application of funds within an appropriation in amounts (thresholds) greater than those agreed upon between the committees and the Department, as follows:</u></p> <p>A. Military Personnel: A cumulative increase of \$10 million or more in a budget activity.</p> <p>B. Operation and Maintenance: A cumulative increase of \$20 million or more in a budget activity. (In the past, the congressional committees have imposed a reprogramming decrease threshold from specific subactivity group categories. When this is the case, these threshold amounts are separately identified on the Base for Reprogramming Actions, DD 1414.)</p> <p>C. Procurement: For any program year, a cumulative increase of \$10 million or more in a procurement line item; the addition to a procurement line item of \$2 million or more; an addition to a procurement line item estimated to cost \$10 million or more within a 3 year period; a cumulative decrease of more than \$10 million, or 20 percent of the appropriated amount (inclusive of supplemental appropriations and rescissions), whichever of the two is greater; or the termination of any program which results in the elimination of a P-1 line item, or elimination of a subprogram \$10 million or greater within such a line item. (For new start programs less than \$2 million for the entire effort, a notification letter to the congressional committees is required in advance of initiating the program. For termination costs of programs falling within the amounts normally allowed by "below threshold" reprogramming, then notification prior to any reprogramming may be made by letter. programs falling within the amounts normally allowed by "below threshold" reprogramming, then notification prior to any reprogramming may be made by letter.</p>			Yes	Yes
			Yes	Yes
			Yes	Yes

Approval and/or Notification Requirements for Reprogramming Actions

DoD Component Action	OSD Action			
<p>DoD Budget Guidance Manual 71101-1-M (Change 1), dated June 1992, Chapter 431, as amended, "Implementation of Reprogramming of DoD Appropriated Funds," to be replaced by FMR, Volume 2, Chapter 6, requires prior approval of the Secretary of Defense (Under Secretary of Defense (Comptroller)) for the following:</p>	Prior Approval of House and Senate Committees on		Notify House and Senate Committees on	
	Author-ization	Appro-priations	Author-ization	Appro-priations
<p><u>II. Reprogrammings requiring notification to congressional committees are actions involving changes in the application of funds within an appropriation in amounts (thresholds) greater than those agreed upon between the committees and the Department (continued):</u></p> <p>D. RDT&E: For any program year, a cumulative increase of \$4 million or more in an existing program element; the initiation of a new program of \$2 million or more, the addition of a new program whose cost is estimated to be \$10 million or more within a 3-year period; a cumulative decrease of more than \$4 million, or 20 percent of the appropriated amount (inclusive of supplemental appropriations and rescissions), whichever of the two is greater; or the termination of any program which results in the elimination of an R-1 line item, or elimination of a subprogram or project \$10 million or greater within such a line item. (For new start programs less than \$2 million for the entire effort, a notification letter to the congressional committees is required in advance of initiating the program. For termination costs of programs falling within the amounts normally allowed by "below threshold" reprogramming, then notification prior to any reprogramming may be made by letter.</p>			Yes	Yes

Approval and/or Notification Requirements for Reprogramming Actions

DoD Component Action	OSD Action			
<p>DoD Budget Guidance Manual 71101-1-M (Change 1), dated June 1992, Chapter 431, as amended, "Implementation of Reprogramming of DoD Appropriated Funds," to be replaced by FMR, Volume 2, Chapter 6, requires prior approval of the Secretary of Defense (Under Secretary of Defense (Comptroller)) for the following:</p>	Prior Approval of House and Senate Committees on		Notify House and Senate Committees on	
	Author-ization	Appro-priations	Author-ization	Appro-priations
<p>III. <u>Reprogramming actions internal to the Department are audit-trail-type actions processed within the Department and serve various needs:</u></p> <p>A. Reclassification Actions. In certain instances, it is necessary to reclassify the application of funds, different from that shown in the budget justification material presented to the Congress and subsequently appropriated by the Congress. Such reclassifications do not involve any change in the substance of the program or amounts from the purposes originally contemplated and budgeted for, testified to, and described in the justifications submitted to the congressional committees, and subsequently appropriated by the Congress. These actions may also involve realignment of congressionally added programs that are more appropriately executed in a different program line or in a different account from which the funds were appropriated. In cases where the realignment is between DoD appropriations, then the use of general transfer authority would be involved, along with the legal requirements thereof.</p> <p>B. Foreign Currency. Transfers are approved pursuant to authority provided by the Foreign Currency Fluctuations, Defense appropriation, as enacted in Public Laws 95-457 (92 Stat. 1236), 96-38 (93 Stat. 100), 97-377 (96 Stat. 1865), and 99-500/591 (100 Stat. 3341-116), to reflect fluctuations in currency exchange rates.</p> <p>C. Environmental Restoration. Transfers are approved pursuant to the authority provided in the appropriation language for the Environmental Restoration, Defense appropriation, as enacted in DoD Appropriations Acts.</p> <p>D. Drug Interdiction. Transfers are approved pursuant to the authority provided in the appropriation language for the Drug Interdiction and Counter-Drug Activities, Defense appropriation, as enacted in DoD Appropriations Acts.</p> <p>E. Missile Quantities. Approval for increases to missile quantities, without any dollar impact, will be provided through the use of an internal reprogramming action. This policy will apply as long as the congressional committees continue to encourage that as many missiles as may be purchased within the dollars appropriated be procured.</p>				

Approval and/or Notification Requirements for Reprogramming Actions

DoD Component Action	OSD Action			
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	Author-ization	Appro-priations	Author-ization	Appro-priations
<p>IV. Advance notification by letter is required for any new program or line item and for any program termination, not otherwise requiring prior approval (DD 1415-1) or notification action (DD 1415-2). Letters will be signed by the DoD Component involved to the House and Senate Committees on Appropriations and the House National Security and Senate Armed Services Committees after advance coordination by the Office of the Under Secretary of Defense (Comptroller) for the following:</p> <p>A. New Starts:</p> <p style="padding-left: 40px;">1. A program not previously justified and appropriated by the Congress through the normal budget process is considered to be a new start. Funding for new programs may not be done without some type of prior notification, either by letter for those new starts under \$2 million for the entire cost of the new effort, or by notification reprogramming (DD 1415-2) for new starts \$2 million or more for the entire effort, or more than \$10 million over a three-year period.</p> <p style="padding-left: 40px;">2. The congressional committees expect to be notified on any occasion that any Defense Component intends to initiate any new modification, except for those safety modifications which are expected to cost less than \$10 million over three years.</p> <p>B. Program Terminations: If the amount of the termination falls within those amounts normally allowed through below threshold reprogrammings, then notification prior to any reprogramming may be made by letter.</p>				

**Department of Defense Reprogramming Actions Applicable
to the DoD Appropriations Act
FY 1986 - FY 1995
(\$ Millions)**

	<u>FY 1986</u>	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1989</u>	<u>FY 1990</u>	<u>FY 1991</u>	<u>FY 1992</u>	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>
<u>Requested</u>										
Number of actions*	60	56	55	45	36	12	3	5	11	6
(Prior approval actions)	(40)	(40)	(35)	(35)	(29)	(7)	(3)	(5)	(10)	(4)
(Notification actions)	(20)	(16)	(20)	(10)	(7)	(5)			(1)	(2)
Number of line items	80	119	116	109	112	119	106	118	111	73
Military Personnel	\$235	\$894	\$865	\$275	\$1,024	\$737	\$1,314	\$207	\$665	\$546
Operation & Maintenance	277	115	2,055	1,323	1,286	527	118	1,333	1,346	306
Procurement	875	653	473	949	761	3,143	909	598	456	218
RDT&E	198	418	515	466	291	438	287	191	345	108
Revolving & Mgt Funds						44		70	462	
	\$1,585	\$2,081	\$3,908	\$3,013	\$3,407	\$4,845	\$2,628	\$2,399	\$3,274	\$1,178
(Prior approval actions)	(1,183)	(1,732)	(2,707)	(2,644)	(2,572)	(4,449)	(2,628)	(2,399)	(3,174)	(1,166)
(Notification actions)	(402)	(349)	(1,201)	(369)	(655)	(396)			(100)	(12)
(General transfers)	(1,009)	(1,470)	(2,244)	(2,220)	(2,899)	(1,721)	(1,826)	(1,941)	(2,135)	(643)
<u>Approved</u>										
Dollar value	\$1,401	\$1,705	\$3,506	\$2,564	\$3,185	\$3,296	\$1,238	\$1,822	\$1,979	\$772
(Prior approval actions)	(1,029)	(1,400)	(2,421)	(2,262)	(2,538)	(2,900)	(1,238)	(1,822)	(1,879)	(762)
(Notification actions)	(372)	(305)	(1,085)	(302)	(647)	(396)			(100)	(10)
(General transfers)	(936)	(1,338)	(1,958)	(1,916)	(2,670)	(995)	(713)	(1,539)	(1,071)	(263)

NOTE:

* An "Omnibus" reprogramming process was implemented in FY 1991, resulting in fewer actions.

Transfer Authority

Example of Use

An FY 1995 reprogramming request was approved to transfer funds to the RDT&E, Navy, 94/95 appropriation for evaluation of the Vectored Thrust Ducted Propeller as a candidate for possible insertion in the Super Cobra Mid-Life Upgrade Program within the Aircraft Technology program element. This action was funded from the RDT&E, Army, 94/95 appropriation. Army funds were available from the Aviation Technology program element from funds appropriated to the Army for the Advanced Rotorcraft Vectored Thrust Combat Agility Demonstrator program within the RDT&E, Army, 94/95 appropriation. The Army did not have an explicit requirement for vectored thrust technology at that time.

Transfer Authority

- **Section 8005 of the FY 1996 DoD Appropriations Act provides a general authority for transfers, not to exceed \$2.4 billion, between DoD appropriations made available in that Act or any subdivision thereof available to DoD for military functions (except military construction). Section 1001 of the 1996 DoD Authorizations Act provides similar general transfer authority not to exceed \$2.0 billion.**
- **Authority to transfer funds may not be used unless for higher priority items based on unforeseen military requirements.**
- **Requires a determination by the Secretary of Defense that such action is in the National interest.**
- **Section 8005 requires approval by OMB; Section 1001 does not.**
- **Provides that the Secretary of Defense shall notify the Congress promptly of all transfers.**
- **The use of this authority is subject to the prior approval of the Appropriations and Authorization Committees under the reprogramming agreements between DoD and the Committees.**

Working Capital Funds Transfer Authority

Example of Use

During FY 1992, \$2.162 billion was transferred from the Defense Business Operations Fund to various Operation and Maintenance appropriations under Section 8007.

Working Capital Funds Transfer Authority

- **The DoD Appropriations Act annually authorizes the transfer of cash balances in Working Capital Funds of the Department of Defense to the Foreign Currency Fluctuations, Defense and Operation and Maintenance appropriation accounts. (This authority has not been used since FY 1992, Section 8007; authority for FY 1996 is Section 8006.)**
- **Use of this authority requires approval by the Secretary of Defense and OMB.**
- **Transfers may not be made unless the Secretary of Defense has notified Congress of the proposed transfer.**

Transfer Authority to Other Agencies

Examples of Use

P.L. 103-139, FY 1994 DoD Appropriations Act:

107 Stat. 1435 - Transfer of \$50.0 million from the National Defense Sealift Fund appropriation to the Department of Transportation Maritime Administration for shipbuilding loan guarantees.

P.L. 103-211, Emergency Supplemental Appropriations Act of 1994:

Section 411 - Transfer of \$20.0 million from the Procurement, Defense-Wide, 94/96 appropriation to the National Aeronautics and Space Administration (NASA) to be used only for LANDSAT 7.

P.L. 103-238, Marine Mammal Protection Act Amendments of 1994:

Section 25 - Transfer of \$8.0 million from the Shipbuilding and Conversion, Navy, 94/98 appropriation to the Department of Transportation, Maritime Administration for the conversion of the USNS CHAUVENET to a training ship for the Texas Maritime Academy.

Transfer Authority to Other Agencies

- **Transfers made to other Agencies vary from year-to-year depending on congressionally-legislated actions.**
- **In accordance with Section 2215 of Title 10, United States Code (added by Section 1106, P.L. 103-160, National Defense Authorization Act for FY 1994):**

“...funds available for military functions of the DoD may not be made available to any other department or agency of the Federal Government pursuant to a provision of law enacted after November 29, 1989, unless, not less than 30 days before such funds are made available to such other department or agency, the Secretary of Defense submits to the Authorization and Appropriation Committees a certification that making those funds available to such other department or agency is in the national security interest of the United States.”

Foreign Currency Fluctuations

Example of Use

The exchange rate used to compute the FY 1995 financing requirements for the approved program in Japan was 108.33 Yen per U.S. Dollar. However, throughout FY 1995, the exchange rate ranged from a low of 82.05 to a high of about 103.70 Yen per U.S. Dollar. The Foreign Currency Fluctuations account was used to provide additional dollars to buy the same program at the new rate.

Conversely, if the exchange rates used to compute the financing requirements for approved programs in a particular country were more favorable than the rates used at the time of disbursements, then, according to law, the additional funds generated by the higher rate could not be used to buy additional program. Instead, the gains would be used to partially finance the losses that occurred in other overseas programs due to the significant decline in the U.S. Dollar. In FY 1995, gains from favorable rates in Turkey were used to help finance foreign currency losses in Japan.

Foreign Currency Fluctuations

- **Funds in the Foreign Currency Fluctuations, Defense account are available for transfer to the Operation and Maintenance appropriations (for Defense activities in foreign countries) to finance increased obligations due to downward fluctuations in the currency exchange rates (from those approved for budget execution). By law, the maximum amount the account can contain is \$970 Million.**
- **Funds must be transferred into this account when upward fluctuations in currency exchange rates result in substantial net gains in the Operation and Maintenance appropriations.**
- **The intent is both to shield operating programs from significant losses and to recoup significant gains to prevent windfall increases from being used to finance what might be low priority programs, or programs which were not reviewed and approved by the Congress.**
- **The Secretary of Defense has authority to approve these transfers. An annual report to the Congress on all transfers made to or from this appropriation is required.**

Emergencies and Extraordinary Expenses Limitation

Example of Use

In addition to supporting programmed and target of opportunity intelligence efforts, this limitation also covers representation allowances.

Emergencies and Extraordinary Expenses

- **10 U.S.C 127 provides to the Secretary of Defense and the Secretaries of the Military Departments, within the limitation of appropriations made for the purpose, the authority to provide for any emergency or extraordinary expense which cannot be anticipated or identified.**
- **Within the Operation and Maintenance appropriation for each of the Military Departments and Defense-Wide, an amount is specified as a limitation for emergencies and extraordinary expenses which may be incurred.**
- **Unless otherwise prohibited by law, these funds can be used for covert purposes and for any other expenses not otherwise authorized to be paid from Defense appropriations. They may be used on the approval of the Secretary of the respective Military Department, or the Secretary of Defense in the case of the Defense-Wide appropriation.**
- **10 U.S.C 127 requires the Secretary of Defense to submit a report of expenditures under these limitations on a quarterly basis to the Authorization and Appropriations Committees of the Senate and House of Representatives.**
- **Section 915 of the FY 1996 National Defense Authorization Act (P.L. 104-106) limits the obligation and expenditure of funds related to emergencies and extraordinary expenses to under \$500,000 unless the Secretary of Defense has notified the DoD authorization and appropriations oversight committees of the intent to obligate funds in excess of \$500,000. Upon Congressional notification, the Department is required to wait for a period of five days for those obligations greater than \$500,000 but not in excess of \$1 million, and for 15 days for obligations in excess of \$1 million. The waiting period is waived if the Secretary of Defense determines that the national security objectives of the U.S. will be compromised by the delay in the obligation of funds.**

Section 3732 Authority (41 U.S.C 11)

Example of Use

This authority, generally referred to as the “Feed and Forage Act,” was last invoked in FY 1994 in the Army Military Personnel and Operation and Maintenance appropriations. Its usage ensured adequate resourcing for U.S. Forces engaged in and supporting operations in Haiti.

Section 3732 Authority

- **Under Section 3732 of the revised statutes (41 U.S.C 11), the Department of Defense has limited authority to enter into additional obligations. The authority does not permit expenditures until a liquidating appropriation can be obtained from Congress.**
- **Its application is limited to the necessities of the current year under circumstances where it is necessary to incur additional obligations for clothing, subsistence, fuel, quarters, transportation, or medical and hospital supplies.**
- **Under Section 2201(c) of Title 10 U.S.C, members of the Armed Services on active duty may exceed the number for which funds were provided in Appropriations Acts based upon Secretary of Defense and Presidential determination. Incurring deficiencies for personnel costs is authorized under Section 3732.**
- **Approval by the Secretary of Defense and notification to the Congress are required.**
- **When the full extent of the obligation is known, a request must be submitted to the Congress for funds to cover such deficiencies.**

Exemption of Appropriations From Apportionment

Example of Use

On January 29, 1991, President Bush exempted the Military Personnel and Operation and Maintenance appropriations from apportionment to cover increased pay and allowances and operations costs for combat operations in the Middle East. This permitted the DoD to obligate funds for these costs at a higher rate in anticipation of supplemental funding in applicable appropriations.

Subsequently, on February 12, 1991, the Secretary of Defense authorized the use of Section 3732 deficiency authority to encompass these increased costs. This permitted the Military Departments to incur costs in excess of funds appropriated.

Exemption of appropriations from apportionment and Section 3732 deficiency authority are separate and distinct authorizations. Exemption from apportionment does not permit obligation of funds in excess of availability; Section 3732 does.

Exemption of Appropriations from Apportionment

- **10 U.S.C 2201 provides for the exemption of appropriations, funds, and contract authorizations from the provisions of 31 U.S.C 1512. This exempts specified accounts from apportionment controls.**
- **Permits obligations to be incurred at an increased rate, but does not permit obligation in excess of available resources.**
- **The President must determine appropriations that are exempt.**
- **The Secretary of Defense must notify the Congress that the authority has been invoked.**

Apportionment on a Deficiency Basis

Example of Use

The FY 1988 President's Budget included supplemental appropriation requests for FY 1987 for increases due to the enactment of the Federal Employees' Retirement System Act of 1986. This authority was last used on March 2, 1987, when the Deputy Secretary of Defense determined that apportionment on a deficiency basis was necessary.

Apportionment on a Deficiency Basis

- **Legal authority exists that permits apportionment of funds in anticipation of supplemental appropriations.**
- **A portion of the former Anti-Deficiency Act, now codified at 31 U.S.C 1515, permits this for emergencies involving safety of human life, property, or human welfare; and pay increases.**
- **Continuing Resolutions or Basic Appropriations Acts may authorize civilian and military pay increases.**
- **The Secretary of Defense must determine that apportionment on a deficiency basis is necessary.**
- **The apportionment document (S.F. 132) is footnoted to reflect the amount of the supplemental appropriation request.**

Permanent Authority Unfunded Contract Authority

Example of Use

Unfunded contract authority is used on a recurring basis in certain revolving funds, mainly, the Defense Business Operations Fund, to maintain required levels of inventory by obligating contracts and purchase orders in such amounts as to accommodate procurement and administrative lead times, rising inflation, other stockage requirements and capital costs to satisfy customer orders in a timely manner.

The outstanding balance of unfunded contract authority at the end of FY 1995 was \$9.5 billion.

Permanent Authority

Unfunded Contract Authority

- **10 U.S.C 2210(b) provides that “obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to Revolving Funds in such amounts and for such period as the Secretary of Defense, with the approval of the President, may determine to be necessary to maintain stock levels consistent with planned operations for the next fiscal year.”**
- **Unfunded contract authority obligations are liquidated by reimbursements from customer orders or appropriations.**
- **10 U.S.C 2685(c) provides contract authority for construction and improvement of commissary store facilities from amounts collected as commissary surcharges.**

Environmental Restoration

Example of Use

In FY 1995, \$1.482 billion was transferred from the Environmental Restoration, Defense appropriation to various Defense appropriations.

Environmental Restoration

- **Funds in the Environmental Restoration, Defense appropriation are available for transfer to other Defense appropriations for environmental efforts. Such efforts include environmental restoration, reduction and recycling of hazardous wastes, and removal of unsafe buildings and debris on both currently owned DoD sites and sites formerly used by DoD.**
- **The Secretary of Defense makes the determination that funds are required for environmental efforts.**
- **Beginning in FY 1977, DoD will establish 4 separate Environmental Restoration transfer accounts, one for each Service and one for Defense Agencies and Formerly Used Defense Sites (FUDS). These accounts cover all the functions formerly funded in the centralized Defense Environmental Restoration Account (DERA).**

Functional Transfers

Example of Use

This authority has not been used since 1988.

Functional Transfers

- **10 U.S.C 126 provides authority to transfer funds from one appropriation account to another in connection with the transfer of responsibilities from one organization to another.**
- **This authority has been used in the case of reorganization actions.**
- **Such transfers are subject to approval by the Secretary of Defense and the President.**

Reprogramming - Military Construction Appropriations Act Accounts

DoD Component Action	OSD Action			
<p>DoD Budget Guidance Manual 71101-1-M (Change 1), dated June 1992, Chapter 431, as amended, “Implementation of Reprogramming of Appropriated Funds,” requires prior approval of the Secretary of Defense, Office of the Under Secretary of Defense (Comptroller) for the following:</p>	Obtain prior approval of House and Senate Committees on		Notify House and Senate Committees on	
	Author-ization	Appro-riations	Author-ization	Appro-riations
<p><u>Actions requiring prior Committee approval:</u></p> <p>(1) For any increase exceeding 25 percent of the reprogramming base or \$2.0 million, whichever is less, to military construction projects, family housing new construction projects, or family housing improvement projects (exceeding \$2.0 million base value), (2) For any increase, regardless of percentage or dollar value, to a project or effort whose base has been increased by a previously approved congressional reprogramming action, (3) For any increase, regardless of percentage or dollar amount, to a project whose base has been decreased by a previously approved congressional reprogramming action, (4) For any increase, regardless of percentage or dollar value, to a project that has been previously reduced in scope by the Congress in acting on the appropriation request, (5) For any emergency construction project to be performed under 10 U.S.C., Section 2803, (6) For any restoration or replacement of damaged or destroyed facilities to be undertaken with military construction funds under 10 U.S.C., Section 2854. (7) For any acquisition of interests in land under 10 U.S.C., Section 2672a, (8) For any family housing relocation project to be accomplished under 10 U.S.C., Section 2827, (9) For any project authorized to be accomplished from savings, unless specifically exempted from such requirement by the Committees on Appropriations. (10) For any National Guard and Reserve major construction project, regardless of amount, that was not among those justified to and approved by the Congress, or for an increase to an appropriated project that exceeds 25 percent of the reprogramming base, or \$2.0 million, whichever is less, (11) For any amount above that is appropriated for unspecified minor construction, or (12) For any amount above that is appropriated for architectural and engineering services and construction design. (* Component requirement)</p>	No *	Yes	Yes	Yes

**Department of Defense Reprogramming Actions Applicable
to the Military Construction Appropriations Act
FY 1986 - FY 1995
(\$ Millions)**

	<u>FY</u> <u>1986</u>	<u>FY</u> <u>1987</u>	<u>FY</u> <u>1988</u>	<u>FY</u> <u>1989</u>	<u>FY</u> <u>1990</u>	<u>FY</u> <u>1991</u>	<u>FY</u> <u>1992</u>	<u>FY</u> <u>1993</u>	<u>FY</u> <u>1994</u>	<u>FY</u> <u>1995</u>
<u>Requested</u>										
Number of actions*	11	8	10	13	10	9	11	11	9	7
(Prior approval actions)	(11)	(8)	(10)	(13)	(10)	(9)	(11)	(11)	(9)	(7)
(Notification actions)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
Number of projects	84	104	84	94	63	39	62	56	72	52
Military Construction (\$M)	\$193	\$181	\$218	\$324	\$194	\$154	\$211	\$153	\$251	\$133
Family Housing (\$M)	\$86	\$38	\$7	\$3	\$7	\$4	\$29	\$49	\$3	\$13
(Prior approval actions)	(\$279)	(\$219)	(\$225)	(\$327)	(\$201)	(\$158)	(\$240)	(\$202)	(\$254)	(\$146)
(Notification actions)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
(General transfers)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
<u>Approved</u>										
Dollar value	\$260	\$169	\$156	\$286	\$157	\$155	\$140	\$135	\$250	\$109
(Prior approval actions)	(260)	(169)	(156)	(286)	(157)	(155)	(140)	(135)	(250)	(109)
(Notification actions)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
(General transfers)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)

* Number of Yearly Requests

Emergency Military Construction

Example of Use

The last time this authority was used was in FY 1996 to construct a \$2.7 million Child Development Center in Menwith Hill Station in England which was urgently needed to correct health and safety deficiencies associated with the current structure.

Emergency Military Construction

- **10 U.S.C 2803 provides the Secretary of Defense and each of the Secretaries of the Military Departments with authority of \$30 million annually to carry out military construction projects not otherwise authorized by law if the Secretary concerned determines (1) that the project is vital to national security; and (2) that the requirement is so urgent that deferral of the project for inclusion in the next National Defense (Military Construction) Authorization Act would be inconsistent with national security.**
- **Each decision to use this authority requires that the Secretary concerned submit a written report to the appropriate committees of Congress including:**
 - (A) Justification for the project,**
 - (B) Justification for the use of this authority,**
 - (C) The estimated cost of the project, and**
 - (D) The source of funds to be used to finance the project (i.e., from savings or from lesser priority military construction projects).**
- **Projects initiated under this authority may not be carried out until 21 days have elapsed following receipt of notification by the congressional committees unless each such committee has approved the project prior to the end of the 21-day period.**

Military Construction Contingency Authority and Funds

Example of Use

In FY 1996, \$3.7 million was approved by the Deputy Secretary of Defense to construct a forward headquarters facility for USCENTCOM at a classified location.

Military Construction Contingency Authority and Funds

- **10 U.S.C 2804 and the annual Military Construction Appropriation Acts contain authority which permits the transfer of funds from the Military Construction, Defense-Wide appropriation to other appropriations of the Department of Defense which are available for military construction. A project financed under this authority requires a determination that deferral of the project for inclusion in the next National Defense (Military Construction) Authorization Act would be inconsistent with national security or national interest.**
- **For FY 1996, an additional \$11.037 million is available under the Military Construction, Defense-Wide appropriation to provide financing for this authority.**
- **Use of this authority requires approval by the Secretary of Defense and notification of the Authorization and Appropriations Committees of both the House and Senate. In addition, there is a statutory waiting period of 21 days following congressional notification before funds may be obligated for any project approved under this authority.**

Construction Projects Cost Variations

Example of Use

In FY 1995, this authority was used to accommodate unanticipated construction costs associated with a Barracks Renewal project at Fort Bragg, North Carolina. Increased costs were associated with higher than expected bids resulting from the larger volume of construction work underway in the Fort Bragg area.

Construction Projects Cost Variations

- **10 U.S.C 2853** authorizes the Secretary of Defense and the Secretaries of the Military Departments to increase the cost authorized for a construction project above the amount appropriated if the Secretary concerned determines: (a) that such an increase is required for the sole purpose of meeting unusual variations in cost, and (b) that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress. Military construction projects, family housing new construction projects, or family housing improvement projects (exceeding \$1.5 million base value) may be increased up to 25 percent over the amount originally approved, or \$2 million, whichever is the lesser, at the discretion of the Secretary concerned.
- Increases in excess of the above amounts can be incurred after: approval by the Secretary concerned; notification of the House and Senate Authorization and Appropriations Committees, including the reasons for the cost increase; and, 21 days have elapsed from the date of submission.
- Such increases are to be funded from savings from other construction projects. Those exceeding the 25 percent/\$2 million limitations are subject to prior approval reprogramming by the Committees on Appropriations.
- In no event may the total amount authorized for an appropriation for the active forces and Defense-Wide be exceeded because of cost variations. An exception is the NATO Infrastructure appropriation which may be increased by not more than 25 percent of the amount appropriated.

Restoration or Replacement of Facilities Damaged or Destroyed

Example of Use

In FY 1995, this authority was used for a \$1.9 million project to upgrade the capability of the roof system for a communications security facility at Tobyhanna Army Depot, Pennsylvania because severe storms caused the roof to sag noticeably, overstressing many structural members leaving them in a weakened state.

Restoration or Replacement of Facilities Damaged or Destroyed

- **10 U.S.C 2854 provides the Secretary of Defense and the Secretaries of the Military Departments with authority to repair, restore or replace facilities that have been damaged or destroyed (normally as a result of natural disaster).**
- **Restoration/replacement projects can be undertaken only after the Secretary concerned notifies the House and Senate Authorization and Appropriations Committees of that decision, the justification for the project and use of the authority, the estimated cost of the project, and the source of funds for the project. The project may then be carried out only after the end of a 21-day waiting period following receipt of notification by the committees.**
- **Funds to finance such construction must be reprogrammed from savings or from lower priority projects. Such reprogramming requires the prior approval of House and Senate Committees on Appropriations.**

Minor Construction

Example of Use

In FY 1995, \$0.5 million was provided to the Navy for the installation of pipes associated with a Migrant Sanitation Facility project at Guantanamo Bay Naval Station, Cuba.

Minor Construction

- **10 U.S.C 2805 provides the Secretary of Defense and Secretaries of the Military Departments authority for unspecified minor construction projects which are not otherwise authorized by law. The amount is authorized annually in the National Defense (Military Construction) Authorization Acts and is currently \$1.5 million. However, the FY 1996 National Defense Authorization Act revised 10 U.S.C 2805 by raising the threshold for unspecified minor construction projects intended solely to correct life, health, or safety deficiencies to \$3.0 million, or less.**
- **Appropriations available for Military Construction may be used for such construction. In addition, funds available from appropriations for Operation and Maintenance may be used for any project costing not more than \$300,000. The FY 1996 National Defense Authorization Act revised this provision by raising the threshold from \$300,000 to \$1.0 million in the case of unspecified minor construction projects funded from an O&M appropriation when the project is intended to correct life-threatening, health-threatening, or safety-threatening deficiencies.**
- **The legislation requires that projects costing \$500,000 or more be approved by the Secretary concerned. Upon approval, the Secretary concerned must notify the Authorization and Appropriations Committees of the Service Secretary's decision, the justification for the project and the estimated cost of the project. The project may then be carried out only after the end of a 21-day waiting period following receipt of the notification by the committees.**
- **An annual report is required to be submitted to the Authorization and Appropriations Committees of the Senate and House on the use of this authority.**

Construction Authority Under National Emergencies Act

Example of Use

This authority was first defined in the FY 1982 Military Construction Authorization Act and was invoked during Desert Shield/Desert Storm.

Construction Authority Under National Emergencies Act

- **10 U.S.C 2808 defines the flexibility in military construction provided to the Secretary of Defense in the event of a declaration of war or declaration by the President of a national emergency requiring use of the armed forces.**
- **Under this authority, the Secretary of Defense may, without regard to any other provision of law, undertake military construction necessary to support such use within any available unobligated Military Construction funds (including funds available for Family Housing).**
- **The Secretary of Defense is required by the statute to notify the House and Senate Authorization and Appropriations Committees of any construction undertaken pursuant to this authority.**

Foreign Currency Fluctuations, Construction, Defense

Example of Use

In FY 1995, transfers into the Foreign Currency Fluctuations, Construction, Defense account were \$110.1 million and transfers from the account during the same period were \$134.1 million. These transfers are being used to help offset foreign currency exchange fluctuations losses in the Family Housing and Military Construction appropriations.

Foreign Currency Fluctuations, Construction, Defense

- **Section 121 of the FY 1987 Military Construction Appropriations Act provides that funds in the Foreign Currency Fluctuations, Defense, account are available for transfer to the Military Construction and Family Housing appropriations (for Defense activities in foreign countries) to finance increased obligations due to downward fluctuations in the currency exchange rates (from those used in budget preparation).**
- **Funds must be transferred into this account when upward fluctuations in currency exchange rates result in substantial net gains in these appropriations.**
- **The intent is both to shield operating programs from significant losses and to recoup significant gains to prevent windfall increases from being used to finance what might be low priority programs, or programs which were not reviewed and approved by the Congress.**
- **The Secretary of Defense has authority to approve these transfers. An annual report to the Congress on all transfers made to or from this appropriation is required.**