

# **DOD Transfer and Reprogramming Authorities: Background, Status, and Issues for Congress**

**Brendan W. McGarry**  
Analyst in U.S. Defense Budget

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**Brendan W. McGarry**  
Analyst in U.S. Defense  
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bmcgarry@crs.loc.gov

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In provisions of the *U.S. Code* and on an annual basis through authorization and appropriations acts, Congress provides the Department of Defense (DOD) limited authority to obligate funds for purposes other than originally approved. These authorities allow the department to *transfer* or *reprogram* funds. A transfer involves shifting funds from one appropriation account to another, while a reprogramming involves shifting funds within the same account. DOD uses the term *reprogramming action* to describe both types of transactions.

DOD transfer and reprogramming authorities have emerged as central in a debate over the department's use of the authorities to transfer, without congressional prior approval, fiscal year (FY) 2019 and FY2020 defense funds to construct barriers along the U.S.-Mexico border. The debate has involved questions over constitutional separation of powers, statutory design and interpretation, and congressional procedure, as well as political disagreements over spending and border security. Critics say the use of such authorities for such activities denies Congress its constitutional prerogatives. They point to Article I of the Constitution, which states, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." In addition, critics say the executive branch's decision to transfer certain DOD funds in FY2019 and FY2020 without congressional prior approval was a divergence from longstanding practice and understandings between the executive and legislative branches, and may have represented a violation of DOD regulation, if not law. Proponents have defended the President's actions to address unlawful migration through the U.S.-Mexico border.

Agencies may transfer funds only as authorized by law. Title 10, Section 2214, of the *United States Code* generally covers transfers within DOD "whenever authority is provided in an appropriation Act to transfer amounts in working capital funds or to transfer amounts provided in appropriation Acts for military functions of the Department of Defense (other than military construction)." The statute limits use of transfers and reprogrammings to "a higher priority item, based on unforeseen military requirements," and prohibits their use for an item for which Congress has denied funds. The statute also requires the Secretary of Defense to "promptly notify" Congress "of each transfer made under such authority." Other notification requirements reside in specific appropriations provisions. In addition to these statutory notification requirements, DOD Financial Management Regulation 7000.14-R (FMR) requires some transfers to be approved by the congressional defense committees.

Some policymakers say the ability to transfer or reprogram funds provides DOD with necessary and frequently used flexibility to respond to unanticipated budgetary or national security conditions. Changes in financial or operational circumstances can generate costs or savings for the department. For example, costs may arise from the need to replenish expended munitions, expand combat medical training, or cover a price increase that exceeds the budgeted amount for a weapon system. Savings may accrue from military recruitment shortfalls, canceled programs or renegotiated contracts, or favorable fluctuations in foreign exchange rates, fuel prices, or inflation. Congress may choose to address such scenarios by enacting supplemental appropriations or rescissions of budget authority; in turn, DOD may respond by using authorities provided by Congress to transfer or reprogram funds.

While DOD regulation requires congressional prior approval of certain reprogramming actions, the department does not view the requirement as legally binding. The ability of Congress to create *legally* binding prior approval requirements on reprogramming actions may be limited by the 1983 U.S. Supreme Court case *Immigration and Naturalization Service (INS) v. Chadha*. Some observers may view approval requirements as *practically* binding, however, because the annual appropriations process provides a means for Congress to impose sanctions on violations of comity and trust.

In FY2016 and FY2017, DOD used, on average, less than half of the combined limit for general and special transfer authority provided in the annual Department of Defense Appropriations Act. In FY2019, DOD used \$5.1 billion (85%) of the \$6 billion limit for general and special transfer authority. The percentage increase was driven by DOD's two border barrier-related transfers totaling \$2.5 billion pursuant to 10 U.S.C. §284 and the enactment of lower general and special transfer authority limits. In a single border-barrier transfer totaling \$3.8 billion in FY2020, DOD used nearly two-thirds (63%) of the combined limit for general and special transfer authority.

The Office of the Under Secretary of Defense-Comptroller (OUSD-C) typically categorizes reprogramming actions in the following types: prior approval (PA), internal reprogramming (IR), below threshold reprogramming (BTR), letter transfer

(LTR), and military construction-family housing (MILCON/FH). The DOD Comptroller categorized each of the border-barrier transfers pursuant to 10 U.S.C. §284 as a “reprogramming action,” a categorization that was not previously used for implemented reprogramming actions since at least FY1999. According to CRS analysis of department reprogramming actions and regulation, these transactions met DOD criteria for requiring congressional prior approval because they used general transfer authority (either in whole or in part) and exceeded reprogramming thresholds (based on explanatory statements accompanying defense appropriations acts).

To illustrate how frequently DOD seeks congressional prior approval for reallocating funds, CRS analyzed implemented reprogramming actions published on the DOD Comptroller website. From FY1999 through FY2019, DOD published 2,233 implemented reprogramming actions, averaging more than a 100 a year, according to the CRS analysis (which excluded a certain type of reprogramming action called below threshold reprogrammings). Of that total, DOD categorized more than half (1,168 actions or 52%) as internal reprogrammings (IR); more than a quarter (581 actions or 26%) as prior approval (PA); almost one in six (357 actions or 16%) as letter directed (LTR); 125 actions (or 6%) as military construction-family housing, and two as “reprogramming actions.” During that 21-year period, the quantity of implemented reprogramming actions peaked at 198 in FY2005 during the wars in Iraq and Afghanistan, trended downward in subsequent fiscal years, and declined to 68 in FY2018. Similarly, from FY2000 through FY2019, the value of prior approval and internal DOD reprogramming actions peaked at \$48.9 billion in FY2008 during the surge of U.S. forces into Iraq, trended downward in subsequent fiscal years, and decreased to \$10.4 billion in FY2017.

In the first session of the 116<sup>th</sup> Congress, the House passed authorization and appropriations bills intended to reduce the department’s transfer authority limits; the Senate did not. As part of the Bipartisan Budget Act of 2019 (BBA 2019; P.L. 116-37), which increased statutory caps on defense and nondefense discretionary spending for FY2020 and FY2021, leaders in Congress and the White House agreed to maintain existing transfer authorities. The Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) kept DOD general and special transfer authority limits unchanged and totaling \$6 billion. As part of the explanatory report accompanying P.L. 116-93, Congress directed the Secretary of Defense to seek prior approval when transferring more than \$10 million into or out of a line item in most appropriation titles—a decrease in the dollar amount reprogramming threshold from \$20 million for procurement and from \$15 million for operation and maintenance in FY2019.

In the second session of the 116<sup>th</sup> Congress, lawmakers are again debating the Administration’s additional transfer of DOD funds for border barrier construction, and may consider a proposal to expand transfer authority for the Space Force. As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136), Congress authorized DOD to transfer \$10.5 billion in FY2020 emergency funding to other appropriations for expenses incurred in preventing, preparing for, or responding to the pandemic of Coronavirus Disease 2019 (COVID-19).

Potential issues for Congress relating to DOD transfer and reprogramming authorities include the following:

- DOD does not view congressional prior approval requirements as legally binding;
- Balancing congressional control and DOD fiscal flexibility;
- DOD opportunity costs in transferring and reprogramming funds;
- The level of effort needed for Congress to monitor DOD reprogramming actions may be high; and
- DOD response to contingencies and emergencies, such as COVID-19.

Congress may consider how much transfer and reprogramming authority to provide DOD and whether to approve, reject, or modify the Trump Administration’s requested FY2021 limits for general and special transfer authority. Congress’s decisions could affect, on the one hand, its ability to control DOD action through appropriations and, on the other hand, DOD’s ability to respond to unanticipated budgetary or national security conditions.

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## Introduction

At times throughout history, entities in the legislative and executive branches have disagreed over the extent to which federal agencies can obligate funds for purposes other than originally approved. Nevertheless, Congress has provided the Department of Defense (DOD) limited authority to do so in recognition of the department's need to respond to unanticipated budgetary or national security conditions.

From fiscal year (FY) 1999 through FY2019, DOD published a total of 2,233 implemented reprogramming actions, averaging more than a 100 a year, according to CRS analysis of the actions (excluding a certain type called below threshold reprogrammings). DOD categorized more than a quarter of these transactions (581 actions or 26%) as "prior approval" (PA), meaning the department first sought approval from the congressional defense committees—the House and Senate Appropriations and Armed Services Committees—before transferring funds based in part on criteria agreed by the committees. The transfer of certain DOD funds in FY2019 and FY2020 to construct barriers along the southern border of the United States, without congressional prior approval, marked a divergence from this practice.<sup>1</sup>

On February 13, 2020, DOD transferred \$3.8 billion from defense procurement programs to the Operation and Maintenance, Army account for use by the Army Corps of Engineers to construct barriers and roads along the southern border.<sup>2</sup> The reprogramming repeated, in part, a process the department undertook twice in 2019 (totaling \$2.5 billion) in support of Department of Homeland Security (DHS) counter-drug activities pursuant to 10 U.S.C. §284, in conjunction with a separate set of emergency transfers (\$3.6 billion) under 10 U.S.C. §2808.<sup>3</sup>

DOD did not seek prior approval from the congressional defense committees for border-barrier transfers pursuant to 10 U.S.C. §284. According to CRS analysis of department reprogramming actions and regulation, these transactions met DOD criteria for requiring congressional prior approval because they used general transfer authority (either in whole or in part) and exceeded reprogramming thresholds (based on explanatory statements accompanying defense appropriations acts).<sup>4</sup> DOD officials have argued that such transfer authority is provided by the

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<sup>1</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, DOD Financial Management Regulation 7000.14-R (FMR), Volume 3, Chapter 6, Paragraph 060401, "Reprogramming Actions Requiring Written Congressional Approval," subparagraph C, p. 6-7, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1374](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1374).

<sup>2</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Budget Execution, Implemented Reprogramming Actions – FY2020, "Support for DHS Counter Drug Activity," February 13, 2020, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2020/reprogramming\\_action/20-01\\_RA\\_Support\\_for\\_DHS\\_Counter\\_Drug\\_Activity.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2020/reprogramming_action/20-01_RA_Support_for_DHS_Counter_Drug_Activity.pdf).

<sup>3</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Budget Execution, Implemented Reprogramming Actions – FY2019, "Support for DHS Counter-Drug Activity Reprogramming Action," March 25, 2019, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2019/reprogramming\\_action/19-01\\_RA\\_Support\\_for\\_DHS\\_Counter\\_Drug\\_Activity.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2019/reprogramming_action/19-01_RA_Support_for_DHS_Counter_Drug_Activity.pdf); "Support for DHS Counter-Drug Activity Reprogramming Action," May 9, 2019, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2019/reprogramming\\_action/19-02\\_RA\\_Support\\_for\\_DHS\\_Counter\\_Drug\\_Activity.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2019/reprogramming_action/19-02_RA_Support_for_DHS_Counter_Drug_Activity.pdf); and White House, "President Donald J. Trump's Border Security Victory," fact sheet, February 15, 2019, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-border-security-victory/>.

<sup>4</sup> For DOD prior-approval criteria, see Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 6, Paragraph 060401, "Reprogramming Actions Requiring Written Congressional Approval," subparagraph C, p. 6-7,

defense appropriations act, among other federal laws.<sup>5</sup> The disagreement is the subject of lawsuits in federal courts.<sup>6</sup>

Debate on these transfers of DOD funds has involved questions over constitutional separation of powers, statutory design and interpretation, and congressional procedure, as well as political disagreements over spending and border security.

In 2019, after the first of two DOD transfers pursuant to 10 U.S.C. §284, Representative Pete Visclosky, chairman of the House Appropriations Defense Subcommittee, argued that the department's actions denied the Congress its prerogatives set forth in Article I of the Constitution, which states, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."<sup>7</sup> Visclosky argued "these funds were neither requested nor appropriated for the activities described in the reprogramming. With this unilateral action, the historic and unprecedented comity that has existed between the Committee and the Department has been breached."<sup>8</sup> Other Members have defended the President's actions to address unlawful migration through the U.S.-Mexico border. Representative Andy Biggs said, "There is a real emergency at our southern border."<sup>9</sup>

In response to the DOD transfers, the House passed an FY2020 defense appropriations bill (H.R. 2740) that would have reduced DOD's combined general and special transfer authority limits, from \$6 billion to \$1.5 billion, and thus its ability to reallocate funds for border-barrier construction and other activities. The House legislation would have established transfer authority limits below those that DOD has used in recent years for reallocating funds unrelated to border-barrier construction (e.g., in FY2018—before wall-related transfers occurred—the department used \$3.6 billion of general and special transfer authority, after accounting for military personnel adjustments).

Robert Hale, a former Under Secretary of Defense-Comptroller, has said restricting or eliminating transfer and reprogramming authorities would "significantly harm" DOD's ability to manage funds to meet national security needs effectively, as the department prepares its budget more than two years in advance: "Inevitably, needs change, creating higher priorities for some projects and

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[https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1374](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1374). For FY2019 and FY2020 reprogramming thresholds, see the explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10613, <https://www.govinfo.gov/content/pkg/CREC-2019-12-17/pdf/CREC-2019-12-17-house-bk2.pdf>, and the joint explanatory statement accompanying the Department of Defense Appropriations Act, 2019 (Division A of P.L. 115-245), p. 2, <https://www.appropriations.senate.gov/imo/media/doc/Joint%20Explanatory%20Statement%20-%20HR%206157.pdf#page=4>.

<sup>5</sup> Testimony of then-Assistant Defense Secretary for Sustainment Robert H. McMahon, in U.S. Congress, House Committee on the Appropriations, Subcommittee on Military Construction and Veterans Affairs, *The President's 2019 National Emergency Declaration Circumventing Congress to Build a Border Wall & its Effect on Military Construction and Readiness*, hearings, 116th Cong., 1st sess., February 27, 2019, text from Congressional Quarterly, <https://plus.cq.com/doc/congressionaltranscripts-5473281?4>.

<sup>6</sup> For more information, see CRS Report R45908, *Legal Authority to Repurpose Funds for Border Barrier Construction*, by Jennifer K. Elsea and Edward C. Liu.

<sup>7</sup> Letter from Representative Peter J. Visclosky to then-Under Secretary of Defense-Comptroller David Norquist, March 26, 2019, on file with the author of this report.

<sup>8</sup> Ibid.

<sup>9</sup> Representative Andy Biggs, "Congressman Biggs Upholds President Trump's Lawful Right to Declare a National Emergency," press release, March 26, 2019, <https://biggs.house.gov/media/press-releases/congressman-biggs-upholds-president-trump-s-lawful-right-declare-national>.



lowering them for others. In these cases, reprogramming permits effective management. In different circumstances, reprogramming can avert crises.”<sup>10</sup>

As part of the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93), Congress kept DOD’s combined limit for general and special transfer authority at \$6 billion. As part of the accompanying explanatory report, Congress directed the Secretary of Defense to seek prior approval when reprogramming more than \$10 million into or out of a line item in most appropriation titles. The dollar threshold for reprogramming funds represented a decrease from \$20 million for procurement and from \$15 million for operation and maintenance.

In March, after the third DOD transfer pursuant to 10 U.S.C. §284 for border-barrier construction, some lawmakers in the House and Senate criticized the move. Senator Patrick Leahy, ranking member of the Senate Appropriations Committee, said: “It is Congress—the representatives of the American people—who hold the power of the purse under the Constitution. Time and again, this President has subverted that constitutional authority and bipartisan majorities of Congress to pay for his vanity wall.”<sup>11</sup> Representative Mac Thornberry, ranking member of the House Armed Services Committee (HASC), said: “The re-programming announced today is contrary to Congress’s constitutional authority, and I believe that it requires Congress to take action.”<sup>12</sup>

This report provides information and analysis on DOD transfer and reprogramming authorities, as well as reprogramming actions. This report does not cover functional transfers—that is, funding realignments to reflect a transfer of function, responsibility, or duty from one major command to another within a military department or defense agency.<sup>13</sup>

## Background

### Historical Context

Disagreements over the extent to which entities in the executive branch can use funds appropriated by Congress for purposes other than those for which appropriated can be traced to the first presidency. In 1793, during President George Washington’s second term, Representative William Giles of Virginia accused Treasury Secretary Alexander Hamilton of improperly using federal funds.<sup>14</sup> Representative Giles introduced resolutions that stated, in part, “... it is essential to the due administration of Government of the United States, that laws making specific

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<sup>10</sup> Robert Hale, “A serious financial problem looms at the Pentagon,” *Defense News*, May 9, 2019, <https://www.defensenews.com/opinion/commentary/2019/05/09/a-serious-financial-problem-looms-at-the-pentagon/>.

<sup>11</sup> Senator Patrick Leahy, “Statement on President Trump’s Latest Raid on the Military,” press release, February 13, 2020, <https://www.leahy.senate.gov/press/statement-on-president-trumps-latest-raid-on-the-military>.

<sup>12</sup> Representative Mac Thornberry, “Thornberry on DOD Reprogramming: Congress Must Act,” press release, February 13, 2020, <https://republicans-armedservices.house.gov/news/press-releases/thornberry-dod-reprogramming-congress-must-act>.

<sup>13</sup> For a broader look at transfer and reprogramming authorities across the federal government, see CRS Report R43098, *Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures*, by Michelle D. Christensen. For additional information and analysis on the construction of barriers along the U.S.-Mexico border, see CRS Insight IN11052, *The Defense Department and 10 U.S.C. 284: Legislative Origins and Funding Questions*, by Liana W. Rosen; CRS Insight IN11193, *Funding U.S.-Mexico Border Barrier Construction: Current Issues*, coordinated by William L. Painter; CRS Report R45937, *Military Funding for Southwest Border Barriers*, by Christopher T. Mann; and CRS Report R45908, *Legal Authority to Repurpose Funds for Border Barrier Construction*, by Jennifer K. Elsea and Edward C. Liu.

<sup>14</sup> Louis Fisher, Presidential Spending Discretion and Congressional Controls, *37 Law and Contemporary Problems* 135-172 (Winter 1972), p. 147, <https://scholarship.law.duke.edu/lcp/vol37/iss1/6>.

appropriations of money should be strictly observed by the administrator of the finances thereof.”<sup>15</sup> In a rebuttal, Representative William Smith of South Carolina argued that certain cases may require a departure from the “general rule” of appropriations, such as those relating to public credit and safety.<sup>16</sup> Ultimately, the House did not approve the resolutions.

During the 20<sup>th</sup> century, Congress has provided broad authority to the executive branch to transfer funds among purposes and entities, particularly during times of emergency or war. During World War II, Congress passed the Military Appropriation Act, 1944 (P.L. 78-108), which authorized the Director of the Bureau of the Budget—the predecessor organization to the Office of Management and Budget (OMB), an entity in the Executive Office of the President—to transfer, with certain restrictions, up to 10% of the “appropriations for the Military Establishment ... to any other such appropriations.”<sup>17</sup> At the same time, Congress sought to establish legislative controls over wartime construction. The executive and legislative branches agreed to a unique type of committee veto (a type of *legislative veto*), in which the Department of the Navy would “come into agreement” with the House and Senate Naval Affairs Committees before finalizing land acquisitions.<sup>18</sup> This World War II-era process, sometimes described as informal and a “handshake” agreement, evolved and was later adopted by the Appropriations and Armed Services committees for transactions in excess of certain dollar thresholds and involving other types of appropriations.<sup>19</sup>

Some observers have traced the current DOD process for seeking congressional prior approval for certain reprogramming actions to 1960 when, during the Eisenhower Administration, the Air Force attempted to procure additional Jet Star aircraft without congressional permission.<sup>20</sup> As the Kennedy Administration took office, in correspondence to then-Defense Secretary Robert McNamara in 1961, then-House Appropriations Defense Subcommittee Chairman George Mahon reportedly requested that future reprogrammings for the “procurement of items omitted or deleted by the Congress ... or specifically reduced ... or not previously presented or considered by Congress, or quantitative program increases” be undertaken only after congressional approval.<sup>21</sup>

In 1983, in the case of *Immigration and Naturalization Service (INS) v. Chadha*, the Supreme Court struck down a type of legislative veto—a one-house veto provision then included in the Immigration and National Act. Even so, the DOD Financial Management Regulation 7000.14-R (FMR) continues to reflect guidance and instruction from the congressional defense committees and administratively requires committee notification and approval for certain transactions.

### **What is a Legislative Veto?**

“Beginning in 1932, Congress delegated authority to the executive branch with the condition that proposed executive actions would be first submitted to Congress and subjected to disapproval by a committee, a single house, or both houses. Over the years, other types of legislative veto were added, allowing Congress to control executive branch actions without having to enact a law. In 1983, the Supreme Court ruled that the legislative veto was unconstitutional on the grounds that all exercises of legislative power that affect the rights, duties, and

<sup>15</sup> Ibid., p. 148; and “Proceedings and Debates of the House of Representatives of the United States, at the Second Session of the Second Congress, begun at the City of Philadelphia, November 5, 1792,” *Annals of the Congress of the United States* 3 (1791-1793), p. 900.

<sup>16</sup> Ibid., p. 901.

<sup>17</sup> P.L. 78-108, Ch. 185, §3, 57 Stat. 367.

<sup>18</sup> For more information, see CRS Report RL33151, *Committee Controls of Agency Decisions*, by Louis Fisher.

<sup>19</sup> Ibid.

<sup>20</sup> David W. Roberts, “A Historical Analysis of the Defense Reprogramming Process,” *Armed Forces Comptroller*, Fall 1985, p. 22.

<sup>21</sup> Ibid.

relations of persons outside the legislative branch must satisfy the constitutional requirements of bicameralism and presentment of a bill or resolution to the President for his signature or veto. Despite this ruling, Congress has continued to enact proscribed legislative vetoes, and it has also relied on informal arrangements to provide comparable controls.”

**Source:** CRS Report RL30240, *Congressional Oversight Manual*, coordinated by Christopher M. Davis, Walter J. Oleszek, and Ben Wilhelm.

## Terms and Definitions

Different entities within the legislative and executive branches may use certain budgetary terms with somewhat different emphases. According to the Government Accountability Office (GAO), there is a distinction between a *transfer* and a *reprogramming*.<sup>22</sup> A *transfer* involves shifting funds from one appropriation account to another, while a *reprogramming* involves shifting funds within the same account.<sup>23</sup> While the DOD Financial Management Regulation defines the terms transfer and reprogramming in language similar to the GAO language, the Office of the Under Secretary of Defense-Comptroller (OUSD-C) uses the term *reprogramming action* to categorize both of these types of transactions.<sup>24</sup>

### Transfer

GAO defines a transfer in part as the “[s]hifting of all or part of the budget authority in one appropriation or fund account to another. Agencies may transfer budget authority only as specifically authorized by law.”<sup>25</sup>

The DOD Financial Management Regulation defines the term in similar language: “Transfer means the movement or shifting of budgetary resources from one budget account to another. Agencies may transfer budget authority only as specifically authorized by law.”<sup>26</sup>

<sup>22</sup> Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, September 2005, <https://www.gao.gov/new.items/d05734sp.pdf>.

<sup>23</sup> GAO defines an appropriation account as, “The basic unit of an appropriation generally reflecting each unnumbered paragraph in an appropriation act. An appropriation account typically encompasses a number of activities or projects and may be subject to restrictions or conditions applicable to only the account, the appropriation act, titles within an appropriation act, other appropriation acts, or the government as a whole.” See GAO Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, September 2005, p. 2, <https://www.gao.gov/new.items/d05734sp.pdf#page=6>. According to DOD regulation: “Appropriation accounts form the structure for the President’s budget request and are the basis for congressional action. The appropriations are subdivided into budget activities of appropriations with programs, projects or activities of similar purposes.” See Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 2A, Chapter 1, Paragraph 0102, Subparagraph 010201, p. 1-20, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=114](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=114). For information on how reprogramming thresholds apply to line items in the defense budget, see the “Defense Authorization and Appropriations Acts” section below.

<sup>24</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Budget Execution website, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2020/>.

<sup>25</sup> Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, September 2005, p. 95, p. 95, <https://www.gao.gov/new.items/d05734sp.pdf#page=99>.

<sup>26</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Glossary, p. G-28, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=7383](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=7383).

For example, in the DOD budget, shifting funds provided in a defense appropriations act from the Aircraft Procurement, Navy account to the Research, Development, Test, and Evaluation (RDT&E), Navy account would be a transfer.

## **Reprogramming**

The ways in which various entities describe reprogramming may have somewhat different emphases. GAO defines a reprogramming in part as “[s]hifting funds within an appropriation or fund account to use them for purposes other than those contemplated at the time of appropriation.... Unlike transfers, agencies may reprogram without additional statutory authority.”<sup>27</sup>

The DOD Financial Management Regulation defines the term in similar language: “Realignment of budget authority from the purpose for which appropriated to finance another (usually emergent, unfunded) requirement. A necessary, desirable, and timely device during execution of Defense programs for achieving flexibility in the use of DoD funds provided in appropriation acts.”<sup>28</sup> In another section that describes concepts applicable to budget formulation, the regulation states, “[r]eprogramming is generally accomplished pursuant to consultation with and approval by appropriate congressional committees.”<sup>29</sup>

For example, shifting funds provided in a defense appropriations act within the Shipbuilding and Conversion, Navy account—for instance, from the Arleigh Burke-class guided-missile destroyer (DDG-51) program to the Ford-class (CVN-78) aircraft carrier program—would be a reprogramming.<sup>30</sup>

## **Reprogramming Action**

The DOD Comptroller uses the term *reprogramming action* to categorize transactions that transfer or reprogram funds.<sup>31</sup> Before carrying out most types of reprogramming actions, the department submits to the congressional defense committees a Defense Department (DD) Form 1415 or letter detailing the proposed funding changes on a line-item or project level.<sup>32</sup> After carrying out below threshold reprogrammings (BTRs), the department submits quarterly or annual reports (DD Form 1416) to the congressional defense committees. The DOD Comptroller publishes these documents and others on the Budget Execution portion of its website.<sup>33</sup>

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<sup>27</sup> Ibid., 85, <https://www.gao.gov/new.items/d05734sp.pdf#page=89>. GAO also states, “Sometimes committee oversight of reprogramming actions is prescribed by statute and requires formal notification of one or more committees before a reprogramming action may be implemented.”

<sup>28</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Glossary, p. G-26, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=7381](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=7381).

<sup>29</sup> Ibid., p. 1-16, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=110](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=110).

<sup>30</sup> See CRS Report RL32109, *Navy DDG-51 and DDG-1000 Destroyer Programs: Background and Issues for Congress*, by Ronald O'Rourke and CRS Report RS20643, *Navy Ford (CVN-78) Class Aircraft Carrier Program: Background and Issues for Congress*, by Ronald O'Rourke.

<sup>31</sup> Department of Defense, Under Secretary of Defense (Comptroller), Budget Execution website, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2020/>.

<sup>32</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 3, p. 3-5, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1353](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1353).

<sup>33</sup> Department of Defense, Under Secretary of Defense (Comptroller), Budget Execution website, accessed December 31, 2019, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2020/>.

## **Selected DOD Transfer and Reprogramming Authorities**

In provisions of the U.S. Code and on an annual basis through authorization and appropriations acts, Congress provides DOD limited authority to obligate funds for purposes other than originally authorized and appropriated. DOD uses separate authorities and processes for department functions (other than construction projects), military construction and family housing projects, and the National Intelligence Program (NIP) and Military Intelligence Program (MIP).

### **Provisions in U.S. Code**

#### ***10 U.S.C. §2214, “Transfer of Funds: Procedure and Limitations”<sup>34</sup>***

Title 10, Section 2214, of the *United States Code* generally covers transfers within DOD “whenever authority is provided in an appropriation Act to transfer amounts in working capital funds or to transfer amounts provided in appropriation Acts for military functions of the Department of Defense (other than military construction).” The statute limits use of transfers or reprogrammings to “a higher priority item, based on unforeseen military requirements,” and prohibits their use for an item for which Congress has denied funds. The statute also requires the Secretary of Defense to “promptly notify” Congress “of each transfer made under such authority.” Other notification requirements reside in specific appropriations provisions.

#### ***10 U.S.C. §2853, “Authorized Cost and Scope of Work Variations”***

In practice, DOD reprograms military construction and family housing appropriations to respond to emergencies, restore or replace damaged or destroyed facilities, accommodate unexpected price increases, and implement specific program provisions provided by congressional committees. DOD reprogramming actions involving military construction and family housing appropriations can occur under multiple sections of permanent law.<sup>35</sup> Title 10, Section 2853, of *United States Code* allows for the cost authorized for a military construction or family housing project to be increased or decreased by up to 25% of the appropriated amount to meet “unusual variations in cost” that could not have been anticipated.

#### ***50 U.S.C. §3024, “Responsibilities and Authorities of the Director of National Intelligence”***

Title 50, Section 3024, of the *United States Code* authorizes the Director of National Intelligence to transfer or reprogram funds appropriated for a program within the National Intelligence

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<sup>34</sup> This section of the *U.S. Code* is reprinted in its entirety in **Appendix A**.

<sup>35</sup> Other sections of permanent law referenced in the DOD Financial Management Regulation, Volume 3, Chapter 7, “Reprogramming of Military Construction and Family Housing Appropriated Funds,” include 10 U.S.C. §2803, “Emergency Construction;” 10 U.S.C. §2854, “Restoration or Replacement of Damaged or Destroyed Facilities;” 10 U.S.C. §2663(d), “Acquisition of Interests in Land When Need Is Urgent;” 10 U.S.C. §2827, “Relocation of Military Family Housing Units;” and 10 U.S.C. §2883, “Department of Defense Housing Funds.” A section of permanent law used to transfer defense funds for border-barrier construction, 10 U.S.C. §2808, appears in a different chapter of the FMR—Volume 3, Chapter 17, “Accounting Requirements for Military Construction Projects.” DOD Directive (DODD) 4270.5 does not require submission of reprogramming requests to fund construction projects under 10 U.S.C. §2808. See Department of Defense, Office of the Secretary of Defense, Executive Services Directorate, DOD Directive (DODD) 4270.5, “Military Construction,” p. 3, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/427005p.pdf#page=3>.

Program (NIP) to another NIP effort.<sup>36</sup> The statute caps the cumulative transfer or reprogramming of funds in the NIP in a single fiscal year at \$150 million or less than 5% of amounts available to a department or agency. The statute also requires the Secretary of Defense to consult with the Director of National Intelligence before transferring or reprogramming funds made available under the Military Intelligence Program.

## **Provisions in Legislation**

Congress provides DOD transfer authority in permanent, one-time or recurring provisions of law, including annual defense authorization and appropriations acts, military construction and family housing appropriations acts, and supplemental appropriations acts. While transfer authorities can be included in multiple provisions of law, DOD in practice transfers most funds pursuant to authority granted in the annual Department of Defense Appropriations Act.<sup>37</sup>

In recent decades, Congress has not supported DOD requests to limit general transfer authority to a percentage of appropriations rather than to a specific dollar amount. For example, in 2003, DOD requested from Congress “enhanced” general transfer authority that would have allowed the department to transfer of up to 2.5% of funds appropriated to the department each fiscal year, and up to 5% in time of war or national emergency.<sup>38</sup> Instead, Congress has generally limited DOD general and special transfer authority to dollar amounts.<sup>39</sup>

## ***Defense Authorization and Appropriations Acts***

### **General and Special Transfer Authority**

Over the past decade, defense authorization and appropriations acts have included separate recurring provisions that permit DOD to transfer a certain amount of funding (excluding military construction appropriations) from the department’s *base* budget and an additional amount of department funds designated for *Overseas Contingency Operations*, or *OCO*.<sup>40</sup> The term base budget generally refers to funding for planned or regularly occurring costs to man, train, and equip the military force. Since 2009, executive branch entities have used the term Overseas Contingency Operations, or OCO, mainly to describe U.S. military operations in Afghanistan, Iraq, and Syria, among other locations.

Transfer authority for the base budget (except for military construction) typically appears in a recurring general provision (Section 8005) of the annual Department of Defense Appropriations

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<sup>36</sup> For more information, see CRS In Focus IF10428, *Intelligence Planning, Programming, Budgeting, and Evaluation (IPPBE) Process*, by Michael E. DeVine.

<sup>37</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 3, p. 3-3, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1351](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1351).

<sup>38</sup> Department of Defense, Office of the General Counsel, DOD Legislative Proposals, “Defense Transformation for the 21st Century Act of 2003 (Sent to Congress on April 11, 2003),” pp. 108-09, <https://ogc.osd.mil/olc/docs/April11.pdf#page=110>.

<sup>39</sup> Congress has limited certain specific DOD transfer authorities to a percentage. Title VI of Division A of P.L. 116-93 provides DOD authority to carry over up to 1% of FY2020 operation and maintenance appropriations of the Defense Health Program into FY2021. DOD describes the transaction as a “carryover transfer.”

<sup>40</sup> For more information, see CRS Report R44519, *Overseas Contingency Operations Funding: Background and Status*, by Brendan W. McGarry and Emily M. Morgenstern. The Budget Control Act (BCA; P.L. 112-25) allowed funding designated for Overseas Contingency Operations/Global War on Terrorism (OCO/GWOT) to be effectively exempt from spending limits, or caps. For more information, see CRS Report R44039, *The Defense Budget and the Budget Control Act: Frequently Asked Questions*, by Brendan W. McGarry.

Act and in the “General Transfer Authority” section of the annual National Defense Authorization Act (NDAA). For example, Section 8005 of the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) allows the Secretary of Defense, with the approval of the Office of Management and Budget, to transfer up to \$4 billion of “funds made available in this Act ... for military functions (except military construction) between such appropriations or funds or any subdivision.”<sup>41</sup> The language states that the Secretary must determine that the transfer is “in the national interest” and “based on unforeseen military requirements.” Section 1001, “General Transfer Authority,” of the NDAA for FY2020 (P.L. 116-92) is the accompanying authorizing language and states in part that the Secretary may transfer up to \$4 billion “of authorizations made available to the Department of Defense in this division.”

In turn, transfer authority for OCO funding typically appears in a recurring provision (Section 9002) of the defense appropriations act and in the “Special Transfer Authority” section of the NDAA.<sup>42</sup> Section 9002 of Division A of P.L. 116-93 allows the Secretary of Defense to transfer up to \$2 billion of OCO funding “between the appropriations or funds” made available in Title IX of the act. Section 1520A, “Special Transfer Authority,” of the FY2020 NDAA (P.L. 116-92) is the accompanying authorizing language. See **Table 1** for a listing of information related to FY2020 general and special transfer authority.

**Table 1. DOD General and Special Transfer Authority in Selected Provisions of Defense Authorization and Appropriations Acts, FY2020**  
(amounts in billions of dollars)

| Bill Type                        | Section | Funding Type | Transfer Authority         | Limit        |
|----------------------------------|---------|--------------|----------------------------|--------------|
| NDAAs                            | 1001    | Base         | General (GTA)              | \$4.0        |
| NDAAs                            | 1520A   | OCO          | Special (STA)              | \$2.0        |
| <b>Total, NDAA</b>               |         |              |                            | <b>\$6.0</b> |
| DOD Appropriations               | 8005    | Base         | General (GTA) <sup>a</sup> | \$4.0        |
| DOD Appropriations               | 9002    | OCO          | Special (STA) <sup>a</sup> | \$2.0        |
| <b>Total, DOD Appropriations</b> |         |              |                            | <b>\$6.0</b> |

**Source:** CRS analysis of National Defense Authorization Act for FY2020 (NDAA; P.L. 116-92) and Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93).

**Notes:** The DOD base budget generally refers to funding for planned or regularly occurring costs to man, train, and equip the military force. OCO is Overseas Contingency Operations; GTA is general transfer authority; STA is special transfer authority. The language in Sec. 1001 usually states that the Secretary must determine that the transfer is “in the national interest” and “based on unforeseen military requirements.”

- a. While the terms General Transfer Authority and Special Transfer Authority currently appear in the annual NDAA and not in the annual defense appropriations act, the provisions of each bill are related and typically referenced together in DOD reprogramming actions.

<sup>41</sup> Sections 8005 and 9002 of P.L. 116-93 are printed in their entirety in **Appendix A**.

<sup>42</sup> While the terms general transfer authority and special transfer authority generally appear in the annual NDAA and not in the annual defense appropriations act, the provisions of each bill are related and typically referenced together in DOD reprogramming actions. The NDAA authority does not require approval of the Office of Management and Budget (OMB); the appropriations act authority does.

In some years, Congress has authorized and appropriated different levels of general and special transfer authority. (For more information, see the “Requested and Appropriated General and Special Transfer Authority” section later in this report).

### **Specific Transfer Authority**

Congress provides additional transfer authorities to DOD in other provisions of defense authorization and appropriations acts for specific purposes. For example, Congress provides authority for transfer accounts intended to receive and disburse allocations, such as the DOD’s Drug Interdiction and Counter-Drug Activities account and the military departments’ Environmental Restoration accounts.<sup>43</sup> Congress authorizes the transfer of excess cash balances from Working Capital Funds to the Foreign Currency Fluctuations, Defense or to the Operation and Maintenance (O&M) appropriation accounts.<sup>44</sup> Congress has also allowed DOD to transfer funds to support the Sexual Assault Special Victims’ Counsel Program, to assist Israeli procurement of the Iron Dome missile defense system to counter short-range rocket threats, and to improve near-term intelligence, surveillance, and reconnaissance capabilities, among other activities.<sup>45</sup> If transfer authorities for specific purposes are “in addition to any other transfer authority provided by law,” they do not count toward general or special transfer authority limits.<sup>46</sup>

### **Reprogramming Thresholds**

Through procedures developed between the congressional defense committees and DOD, the department requires the committees’ prior approval of reprogramming actions in excess of certain dollar or percentage thresholds. These thresholds are typically included in committee reports and the conference report or explanatory statement accompanying the annual Department of Defense Appropriations Act.

In the explanatory statement accompanying the Department of Defense Appropriations Act, 2020 defense (Division A of P.L. 116-93), Congress directed a \$10 million threshold for reprogramming military personnel (MILPERS); O&M; procurement; and RDT&E funds at a line-item level.<sup>47</sup> The FY2020 dollar threshold for reprogramming funds represented a decrease from \$20 million for procurement and from \$15 million for operation and maintenance in the previous year.<sup>48</sup> The reprogramming threshold is cumulative or “zero-sum,” based on the combined value of transfers into or out of a procurement line, RDT&E program element, and MILPERS or O&M budget activity.<sup>49</sup> For a procurement line or RDT&E program element, the FY2020

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<sup>43</sup> DOD’s counterdrug activities, including those carried out pursuant to 10 U.S.C. §284, are funded out of the “Drug Interdiction and Counter-Drug Activities” central transfer account (CTA) in annual DOD appropriations for Defense-wide operations and maintenance (O&M). For more information, see CRS Insight IN11052, *The Defense Department and 10 U.S.C. 284: Legislative Origins and Funding Questions*, by Liana W. Rosen.

<sup>44</sup> A working capital fund is a type of revolving fund intended to operate as a self-supporting entity to fund business-like activities (e.g., acquiring parts and supplies, maintaining equipment). For more information on defense working capital funds, see CRS In Focus IF11233, *Defense Primer: Defense Working Capital Funds*, by G. James Herrera. For more information on the Defense Environmental Restoration Program, see CRS Report R45986, *Federal Role in Responding to Potential Risks of Per- and Polyfluoroalkyl Substances (PFAS)*, coordinated by David M. Bearden.

<sup>45</sup> See, for example, Sections 8057, 8072, and 9018 of Division A of P.L. 116-93.

<sup>46</sup> *Ibid.*

<sup>47</sup> Explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10613, <https://www.govinfo.gov/content/pkg/CREC-2019-12-17/pdf/CREC-2019-12-17-house-bk2.pdf>.

<sup>48</sup> Joint explanatory statement accompanying the Department of Defense Appropriations Act, 2019 (Division A of P.L. 115-245), p. 2, <https://docs.house.gov/billsthisweek/20180924/Joint%20Statement.pdf#page=4>.

<sup>49</sup> Congress also imposes reprogramming thresholds on certain O&M subactivity groups (SAGs). For a full list of



reprogramming threshold is \$10 million or 20%—“whichever is less.”<sup>50</sup> Thus, under the explanatory report language, reprogramming funds to or from a procurement line or RDT&E program element of \$50 million or less requires congressional prior approval.

According to the explanatory statement:

... if the combined value of transfers into or out of a military personnel (M-1); an operation and maintenance (O-1); a procurement (P-1); or a research, development, test and evaluation (R-1) line exceeds the identified threshold, the Secretary of Defense must submit a prior approval reprogramming to the congressional defense committees.<sup>51</sup>

### ***Military Construction Appropriations***

Congress typically provides additional DOD transfer authorities in annual Military Construction, Veterans Affairs, and Related Agencies appropriations. For example, the FY2020 appropriations (Division F of P.L. 116-94) includes language that allows the Secretary of Defense to transfer amounts within the Military Construction, Defense-Wide account “to such appropriations of the Department of Defense available for military construction or family housing.”

### ***Supplemental Appropriations***

Congress sometimes includes provisions in supplemental appropriations acts that permit DOD to transfer funding designated for emergency requirements. For example, Section 13001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136)—the third FY2020 supplemental appropriations that Congress passed in response to the Coronavirus Disease 2019 (COVID-19) pandemic—allowed DOD to transfer the \$10.5 billion provided to the department in Title III of the act to other appropriations for expenses incurred in preventing, preparing for, or responding to COVID-19.<sup>52</sup> The authority is “in addition to any other transfer authority provided by law” and thus does not count against the department’s general or special transfer authority limits.

## **Selected Types of DOD ‘Reprogramming Actions’**

GAO has described reprogramming as “a cumbersome process within both DOD and the Congress because of the many levels of review and the wide variety of congressional committee review procedures.”<sup>53</sup> DOD Financial Management Regulation incorporates guidance and instruction from congressional committees on transferring or reprogramming funds. As previously discussed, the DOD Comptroller uses the term *reprogramming action* to categorize

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operation and maintenance (O&M) subactivity groups (SAGs) subject to the \$10 million reprogramming threshold for FY2020, see **Table B-4** in **Appendix B**.

<sup>50</sup> Explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10613. The percentage reprogramming threshold is sometimes referred to as the *lesser of 20% rule*. For more information, see the “Reprogramming Thresholds” heading in the “Defense Authorization and Appropriations Acts” section later in this report.

<sup>51</sup> Explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10613, <https://www.govinfo.gov/content/pkg/CREC-2019-12-17/pdf/CREC-2019-12-17-house-bk2.pdf>.

<sup>52</sup> Section 13001 of P.L. 116-136. For more information, see the “Emergency Supplemental” section later in this report.

<sup>53</sup> Government Accountability Office, *BUDGET REPROGRAMMING: Department of Defense Process for Reprogramming Funds*, July 1986, p. 3, <https://www.gao.gov/assets/80/75702.pdf>.

both of these types of transactions. The DOD Comptroller generally categorizes reprogramming actions in the following types: prior approval (PA); internal reprogramming (IR); below threshold reprogramming (BTR); letter transfer (LTR); and military construction/family housing (MILCON/FH).<sup>54</sup> **Table 2** shows these and other types of reprogramming actions and some of their qualifying conditions.

### **Prior Approval (PA)**<sup>55</sup>

Under DOD regulation, prior-approval reprogramming actions require prior approval from the chairman and the ranking member of the House Appropriations Committee (HAC), House Armed Services Committee, Senate Appropriations Committee (SAC), and Senate Armed Services Committee (SASC).<sup>56</sup> Criteria for a prior-approval reprogramming as defined by DOD regulation include actions that would:

- increase the procurement quantity of a major end item (e.g., aircraft, missile, naval vessel);
- impact an item or program designated as being of special interest to one or more of the congressional committees;<sup>57</sup>
- use general or special transfer authorities provided in annual defense authorization and appropriations acts;<sup>58</sup>
- exceed previously established appropriation-specific thresholds;
- initiate a new start program element or project;<sup>59</sup>
- terminate appropriated programs; or
- use sale proceeds for replacement of certain items sold from the DOD's inventory.

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<sup>54</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller (OUSD-C), Budget Execution, Implemented Reprogramming Actions, accessed March 3, 2020, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2020/>.

<sup>55</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 6, Paragraph 060401, p. 6-6, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1373](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1373).

<sup>56</sup> National Intelligence Program (NIP) reprogramming actions require prior approval from the House Permanent Select Committee on Intelligence (HPSCI), Senate Select Committee on Intelligence (SSCI), House Appropriations Committee (HAC), and Senate Appropriations Committee (SAC); Military Intelligence Program (MIP) reprogramming actions require prior approval from HPSCI, House Armed Services Committee (HASC), Senate Armed Services Committee (SASC), HAC, and SAC. See Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 6, p. 6-18, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1385](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1385).

<sup>57</sup> Congressional special interest items are designated by items in paragraphs using the phrase “only for” or “only to,” and by increased or decreased amounts in project-level funding tables. According to the explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93), as part of FY2020 appropriations for the Defense Health Program, the Operation and Maintenance (O&M) subactivity groups (SAGs) for In-House Care and Private Sector Care were designated as special interest items. See the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10897, <https://www.govinfo.gov/content/pkg/CREC-2019-12-17/pdf/CREC-2019-12-17-house-bk2.pdf#page=285>.

<sup>58</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 6, Paragraph 060405, Subparagraphs (C) and (E), pp. 6-12 and 6-13, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1380](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1380).

<sup>59</sup> A program not explicitly justified to, and funded by, the Congress is considered to be a new start program.

In FY2019 and FY2020, however, DOD conducted reprogramming actions for the construction of barriers along the U.S.-Mexico border using general transfer authority and exceeding certain reprogramming thresholds but did not seek congressional prior approval, as required by department regulation (see box below). Congress responded in part by debating whether to prohibit DOD from transferring funds to construct border-barriers and whether to reduce the department's general and special transfer authority limits, but ultimately only agreed to reduce certain reprogramming thresholds. (For more information, see the ““Legislative Activity”” section later in this report.)

**DOD Did Not Categorize Border Barrier Transfers as “Prior Approval”  
Reprogramming Actions**

As of March 2020, the DOD Comptroller website had published three “reprogramming actions” related to the Trump Administration’s transfers of funding for constructing barriers on the southern border (separate from military construction appropriations). Each of these actions involved redirecting funds to DOD’s Drug Interdiction and Counter-Drug Activities account in support of Department of Homeland Security (DHS) pursuant to 10 U.S.C. §284:<sup>60</sup>

- \$1.0 billion in FY2019 appropriations on March 25, 2019 (using general transfer authority);<sup>61</sup>
- \$1.5 billion in FY2019 appropriations on May 9, 2019 (using \$818.5 million of general transfer authority and \$681.5 million of special transfer authority);<sup>62</sup> and
- \$3.8 billion in FY2020 appropriations on February 13, 2020 (using \$2.2 billion of general transfer authority and \$1.6 billion of special transfer authority).<sup>63</sup>

The department did not seek prior approval from the congressional defense committees for these transactions. Based on CRS analysis of department reprogramming actions and regulation, these transactions met DOD criteria for requiring congressional prior approval because they used general transfer authority (either in whole or in part) and exceeded reprogramming thresholds (based on explanatory statements accompanying defense appropriations acts).<sup>64</sup> In addition, the DOD Comptroller did not categorize these transactions as a specific type of

<sup>60</sup> For more information and analysis on this topic, see CRS Insight IN11052, *The Defense Department and 10 U.S.C. 284: Legislative Origins and Funding Questions*, by Liana W. Rosen, CRS Report R45937, *Military Funding for Southwest Border Barriers*, by Christopher T. Mann, CRS Report R46002, *Military Funding for Border Barriers: Catalogue of Interagency Decisionmaking*, by Christopher T. Mann and Sofia Plagakis, and CRS Insight IN11210, *Possible Use of FY2020 Defense Funds for Border Barrier Construction: Context and Questions*, by Christopher T. Mann.

<sup>61</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Budget Execution, Implemented Reprogramming Actions – FY2019, “Support for DHS Counter-Drug Activity Reprogramming Action,” March 25, 2019, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2019/reprogramming\\_action/19-01\\_RA\\_Support\\_for\\_DHS\\_Counter\\_Drug\\_Activity.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2019/reprogramming_action/19-01_RA_Support_for_DHS_Counter_Drug_Activity.pdf).

<sup>62</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Budget Execution, Implemented Reprogramming Actions – FY2019, “Support for DHS Counter-Drug Activity Reprogramming Action,” May 9, 2019, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2019/reprogramming\\_action/19-02\\_RA\\_Support\\_for\\_DHS\\_Counter\\_Drug\\_Activity.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2019/reprogramming_action/19-02_RA_Support_for_DHS_Counter_Drug_Activity.pdf).

<sup>63</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Budget Execution, Implemented Reprogramming Actions – FY2020, “Support for DHS Counter-Drug Activity Reprogramming Action,” February 13, 2020, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2020/reprogramming\\_action/20-01\\_RA\\_Support\\_for\\_DHS\\_Counter\\_Drug\\_Activity.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2020/reprogramming_action/20-01_RA_Support_for_DHS_Counter_Drug_Activity.pdf).

<sup>64</sup> For DOD prior-approval criteria, see Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 6, Paragraph 060401, “Reprogramming Actions Requiring Written Congressional Approval,” subparagraph C, p. 6-7, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1374](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1374). For FY2019 and FY2020 reprogramming thresholds, see the explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10613, <https://www.govinfo.gov/content/pkg/CREC-2019-12-17/pdf/CREC-2019-12-17-house-bk2.pdf>.

reprogramming action—that is, prior approval (PA). Rather, the DOD Comptroller categorized them as a “reprogramming action,” a designation that was not previously used for implemented reprogramming actions since at least FY1999. For more information, see “DOD does not view congressional prior approval requirements as legally binding” heading in the “Issues for Congress” section.

In addition to the aforementioned amounts, in 2019, DOD redirected \$3.6 billion in military construction appropriations for border barrier construction using a separate authority, 10 U.S.C. §2808.<sup>65</sup> According to DOD Directive (DODD) 4270.5, the department does not require submission of reprogramming requests to fund construction projects under 10 U.S.C. §2808.<sup>66</sup>

## **Internal Reprogramming (IR)<sup>67</sup>**

Internal reprogramming actions do not change the congressional intent behind the original appropriation—and thus do not require new congressional approval. Criteria for internal reprogramming actions as defined by DOD regulation include actions that would:

- reclassify funds into a different line item, program element, or appropriation than that in which the funds were appropriated;
- use transfer authority to execute funds from designated transfer accounts (e.g., Environmental Restoration accounts; Drug Interdiction and Counter-Drug Activities, Defense; Overseas Contingency Operations Transfer Fund; Foreign Currency Fluctuations, Defense); or
- increase procurement quantities for major end items not requiring congressional approval.

## **Below Threshold Reprogramming (BTR)**

Below threshold reprogramming actions move funds in a manner that changes their purpose from original congressional intent; however, they do not require congressional approval under DOD regulation because they generally fall below certain monetary thresholds (e.g., \$10 million for most appropriation titles in FY2020). Considered minor actions, below threshold reprogrammings are approved by the military services and defense agencies, and are reported in aggregate on a quarterly or annual basis, depending on the appropriation title.

For more information on reprogramming thresholds, see the “Reprogramming Thresholds” heading in the “Defense Authorization and Appropriations Acts” section earlier in this report and the “Reprogramming Threshold Changes” section later in this report.

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and the joint explanatory statement accompanying the Department of Defense Appropriations Act, 2019 (Division A of P.L. 115-245), p. 2, <https://www.appropriations.senate.gov/imo/media/doc/Joint%20Explanatory%20Statement%20-%20HR%206157.pdf#page=4>.

<sup>65</sup> White House, “President Donald J. Trump’s Border Security Victory,” fact sheet, February 15, 2019, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-border-security-victory/>.

<sup>66</sup> Department of Defense, Office of the Secretary of Defense, Executive Services Directorate, DOD Directive (DODD) 4270.5, “Military Construction,” p. 3, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/427005p.pdf#page=3>.

<sup>67</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 6, Paragraph 060401, p. 6-10, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1377](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1377).

## **Letter Transfer Reprogramming (LTR)**

A letter transfer reprogramming (LTR) is used to process transfers specifically authorized in legislation, including transfers between agencies. For example, DOD regularly transfers funding from the Defense Health Program, Operation and Maintenance appropriation account to the Department of Veterans Affairs for the DOD-VA Medical Facility Demonstration Fund, which supports a federal health care center in North Chicago, Illinois.<sup>68</sup>

## **Military Construction/Family Housing (MILCON/FH)**

As previously discussed, DOD transfers and reprogrammings of military construction and family housing appropriations can occur under multiple sections of permanent law. DOD Financial Management Regulation requires congressional prior approval of such reprogramming actions in certain scenarios, including the following:

- an increase exceeding 25% or \$2 million, whichever is less, to military construction projects, family housing new construction projects, or family housing improvement projects;
- a project to be performed under 10 U.S.C. §2803, “Emergency construction;”
- a project to be undertaken with military construction funds under 10 U.S.C. §2854, “Restoration or replacement of damaged or destroyed facilities;”
- land acquisition under 10 U.S.C. §2663(d), “Acquisition of Interests in Land When Need Is Urgent;” or
- a project to be accomplished under 10 U.S.C. §2827, “Relocation of military family housing units.”<sup>69</sup>

A section of permanent law used to transfer defense funds for border-barrier construction, 10 U.S.C. §2808, requires congressional notification but not approval.<sup>70</sup> DOD Directive (DODD) 4270.5 does not require the submission of reprogramming requests to fund construction projects under 10 U.S.C. §2808.<sup>71</sup>

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<sup>68</sup> Title XVII of the National Defense Authorization Act for Fiscal Year 2010 (NDAA; P.L. 111-84) authorized the creation of demonstration project to integrate VA and DOD facilities into a single health system, the DOD/VA Medical Facility Demonstration Project, Federal Health Care Center. For more information, see Government Accountability Office, *VA AND DOD HEALTH CARE: First Federal Health Care Center Established, but Implementation Concerns Need to Be Addressed*, GAO-11-570, July 2011, <https://www.gao.gov/assets/330/321187.pdf>.

<sup>69</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 7, Paragraph 070302, “Determining Reprogramming Actions Requiring Prior Notification and Approval of Congressional Committees,” subparagraph B, p. 7-4, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1410](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1410).

<sup>70</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 17, Paragraph 170303(A), “Construction in the Event of a Declaration of War or National Emergency,” p. 17-17, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1611](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1611).

<sup>71</sup> Department of Defense, Office of the Secretary of Defense, Executive Services Directorate, Washington Headquarters Services, DoD Directives, DODD 4270.5, “Military Construction,” p. 3, updated August 31, 2018, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/427005p.pdf?ver=2018-11-08-080607-280#page=3>.

## DOD Reporting of Reprogramming Actions

In general, DOD notifies Congress and other stakeholders of reprogramming actions using certain forms and procedures. This section of the report briefly describes some of the key documents and processes that may be of note for congressional oversight of department implementation of reprogramming actions.

### Base for Reprogramming Actions Report (DD Form 1414)

The Reprogramming Actions Report (DD Form 1414) establishes a baseline—that is, a statement of amounts at the line-item level—for transferring and reprogramming funds. The report includes amounts for each appropriation provided in defense appropriations acts and reflects adjustments since the initial appropriation, including rescissions, supplemental appropriations, and approved reprogramming actions. A recurring provision in the annual Department of Defense Appropriations Act prohibits DOD from reprogramming or transferring funds until the report is submitted to the congressional defense committees, unless the Secretary of Defense certifies that the action is an emergency requirement.<sup>72</sup> The report is due to the committees 60 days after enactment of annual defense appropriations.

### Reprogramming Action Form (DD Form 1415)

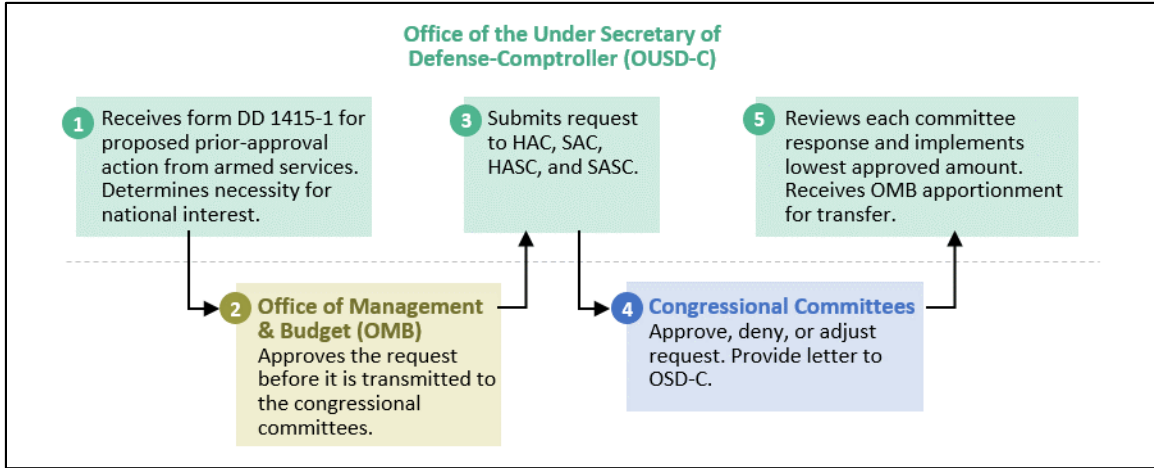
The DOD Comptroller, with the approval of OMB, submits prior-approval reprogramming requests from the Departments of the Army, Navy, and Air Force to the congressional defense committees using the DD Form 1415-1. The Comptroller typically submits the form in one of two ways: (1) as needed for specific requirements, or on a monthly basis, and (2) as part of a single request for multiple reprogramming actions (known as an *omnibus* reprogramming action), due prior to June 30 each year.<sup>73</sup> The omnibus reprogramming action was adopted by DOD in FY1991 in part to streamline the process for the committees and the department. Typically, the committees either approve, deny, or adjust the requested amounts before DOD transfers or reprograms funds. For a visual representation of the process, see **Figure 1**.

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<sup>72</sup> See language in Section 8005 of P.L. 116-93.

<sup>73</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 6, Paragraph 060401, p. 6-6, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1373](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1373). Statutory language relating to the omnibus reprogramming request typically appears in Section 8005 of the annual Department of Defense Appropriations Act: “... *Provided further*, That a request for multiple reprogrammings of funds using authority provided in this section shall be made prior to June 30 ...” This section is printed in its entirety in **Appendix A**.

**Figure 1. DOD Process for Prior-Approval Reprogramming Actions**



**Source:** CRS description based on Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation (7000.14-R FMR).

**Notes:** The congressional defense committees refer to the chairman and the ranking member of the House Appropriations Committee (HAC), House Armed Services Committee (HASC), Senate Appropriations Committee (SAC), and Senate Armed Services Committee (SASC).

The DOD Comptroller typically uses DD Form 1415-3 for internal reprogramming actions to document the transfer of funds out of a transfer account (e.g., the Drug Interdiction and Counter-Drug Activities, Defense), reclassify funds in a way that does not change congressional intent, or change procurement quantities in a way that does not require congressional approval.<sup>74</sup>

The office also provides quarterly reports on budget allocation and execution of funds for the active, Guard, reserve, and defense-wide operation and maintenance accounts.<sup>75</sup> In the past, the department has resisted congressional reporting requirements for more frequent reports on the allocation of funds within O&M budget sub-activity groups (SAGs), arguing in part that doing so would be “overly redundant and burdensome” because such information is already provided by DD Form 1415, among other documentation.<sup>76</sup>

### Report of Programs (DD Form 1416)

The DOD Comptroller also submits to the congressional defense committees a report (DD Form 1416) on the status of reprogramming actions. The report breaks down funding for enacted programs, approved reprogramming actions, congressionally directed transfers, and department-implemented below threshold reprogramming of funds. DOD provides the report to the committees on a quarterly basis—that is, 30 days after the end of each quarter—for procurement and RDT&E appropriations, and on an annual basis for MILPERS and O&M appropriations.

<sup>74</sup> According to archived versions of the DOD Financial Management Regulation, DD Form 1415-2 was previously used to provide congressional prior notification of certain reprogramming actions.

<sup>75</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Operations and maintenance (O&M) Budget Execution Reports website, accessed May 11, 2020, [https://comptroller.defense.gov/Budget-Execution/OM\\_Reports/](https://comptroller.defense.gov/Budget-Execution/OM_Reports/).

<sup>76</sup> Department of Defense, Office of the General Counsel, DOD Legislative Proposals, “Defense Transformation for the 21st Century Act of 2003 (Sent to Congress on April 11, 2003),” pp. 121-122, <https://ogc.osd.mil/olc/docs/April11.pdf#page=124>.

**Table 2** shows the types of documents used to notify Congress and other stakeholders of certain types of DOD reprogramming actions.

**Table 2. Selected DOD Reprogramming Actions and Reporting Documents**

| Type                                  | Form      | Reporting Frequency                                      | Qualifying Condition(s)   | Notification/Approval   |
|---------------------------------------|-----------|--|---|---|
| Prior Approval (PA)                   | DD 1415-1 | as needed, monthly, or annually (omnibus)                | increases procurement quantities;<br>starts or ends a program;<br>involves congressional special interest items;<br>uses general or special transfer authority;<br>exceeds below-threshold-reprogramming thresholds | requires committee approval   |
| Internal Reprogramming (IR)           | DD 1415-3 | as needed, or monthly                                    | may use general transfer authority;<br>reallocates funds without changing purpose;<br>processes transactions out of transfer accounts   | does not require committee approval, but requires committee notification  |
| “Reprogramming Action” (RA)           | DD 1415   | not established  | used to process border-barrier transfers  | disagreement between Congress and DOD (actions were carried out without committee approval despite department regulation and report language) |
| Below Threshold Reprogramming (BTR)   | DD 1416   | quarterly (procurement, RDT&E); annually (MILPERS, O&M). | reprograms less than \$10 million;<br>changes purpose;<br>approved at the military service or agency level  | require committee notification  |
| Letter Transfer Reprogramming (LTR)   | Letter    | as needed  | used to process funding transfers enacted in legislation  | transfers posted on Comptroller website   |
| Military Construction, Family Housing | Letter    | as needed  | an increase exceeding 25% or \$2 million, whichever is less<br>an emergency project under 10 U.S.C. §2803<br>land acquisition under 10 U.S.C. §2663(d)  | stated conditions require committee approval (other conditions do not require committee approval)   |
| Congressional Notification Letters    | Letter    | as needed  | reallocates less than \$10 million;<br>changes purpose;<br>starts or ends a program   | requires committee approval   |



**Source:** CRS analysis of Department of Defense, Office of the Under Secretary of Defense-Comptroller (OUSD-C) website, Budget Execution, Implemented Reprogramming Actions, and DOD Financial Management Regulation (7000.14-R FMR), Volume 3, Chapter 6; and Defense Technical Information Center, “Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 3 of 3 (Part I),” Figure 4-4, January 2019, p. 179, [https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel\\_Vol3-Report\\_Jan2019\\_part-1\\_0509.pdf#page=379](https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel_Vol3-Report_Jan2019_part-1_0509.pdf#page=379).

**Note:** Table includes “Reprogramming Action” as shown on DOD Comptroller website to categorize border barrier transfers. Table excludes “Above Threshold Reprogramming” (ATR), which is not an official category of reprogramming as defined by the Department of Defense (DOD) but is commonly used to describe actions other than “Below Threshold Reprogramming” (BTR), according to the Section 809 Panel report cited above.

## **Analysis of Selected DOD Transfer Authorities and Reprogramming Actions**

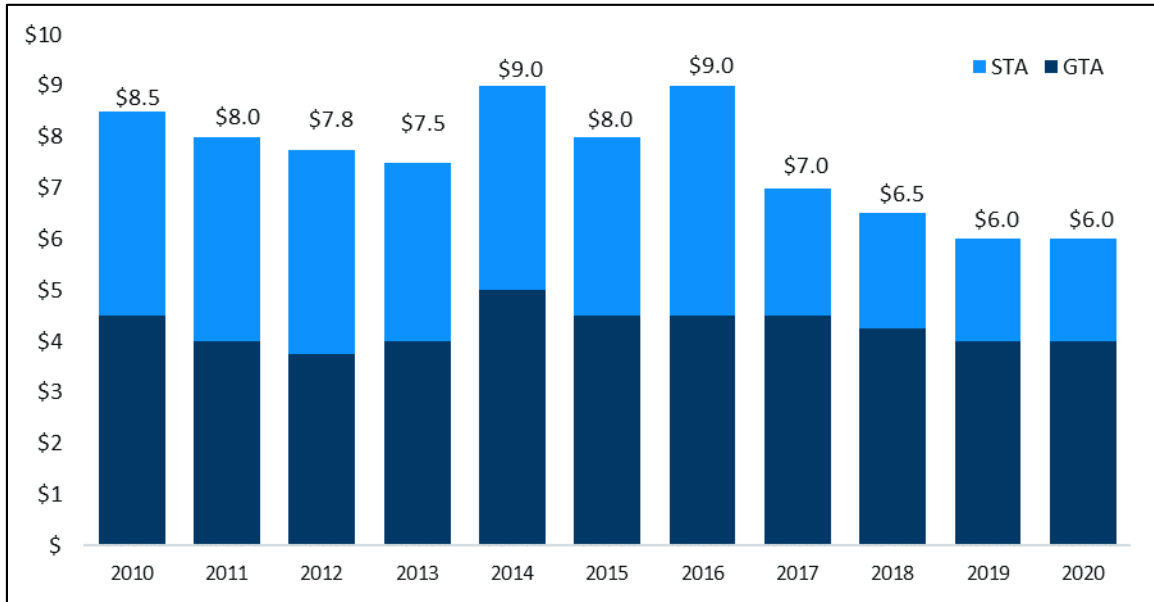
### **General and Special Transfer Authority**

#### **Evolution of Authorities After 9/11**

In the years following the September 11, 2001, terrorist attacks, Congress provided broad authority to DOD to transfer and reprograms funds in support of military operations in Afghanistan and Iraq. In addition to increasing transfer authority limits provided in Section 8005 of the annual Department of Defense Appropriations Act, Congress provided transfer authority in other legislative provisions, including emergency appropriations. For example, as part of the Emergency Wartime Supplemental Appropriations Act, 2003 (P.L. 108-11), Congress provided \$15.7 billion in emergency funding for the Iraq Freedom Fund, a special transfer account to fund expenses related to military operations in Iraq and other countries. This transfer authority was in addition to general transfer authority provided in Section 8005 of the regular defense appropriations act.

Beginning with the FY2010 President’s budget request, the Obama Administration requested funding for Overseas Contingency Operations (OCO) as part of the annual budget submission to Congress rather than as part of a separate supplemental request. This approach implied that while the funds might be war-related, they largely supported predictable ongoing activities rather than unanticipated needs. As a result, Congress enacted a separate transfer authority limit for OCO funding in a recurring provision, Section 9002, of the annual Department of Defense Appropriations Act (i.e., special transfer authority). **Figure 2** shows how the department’s general and special transfer authority limits have changed over the past decade.

**Figure 2. General and Special Transfer Authority Limits in Selected Provisions of Defense Appropriations Acts, FY2010-FY2020**  
(in billions of dollars)



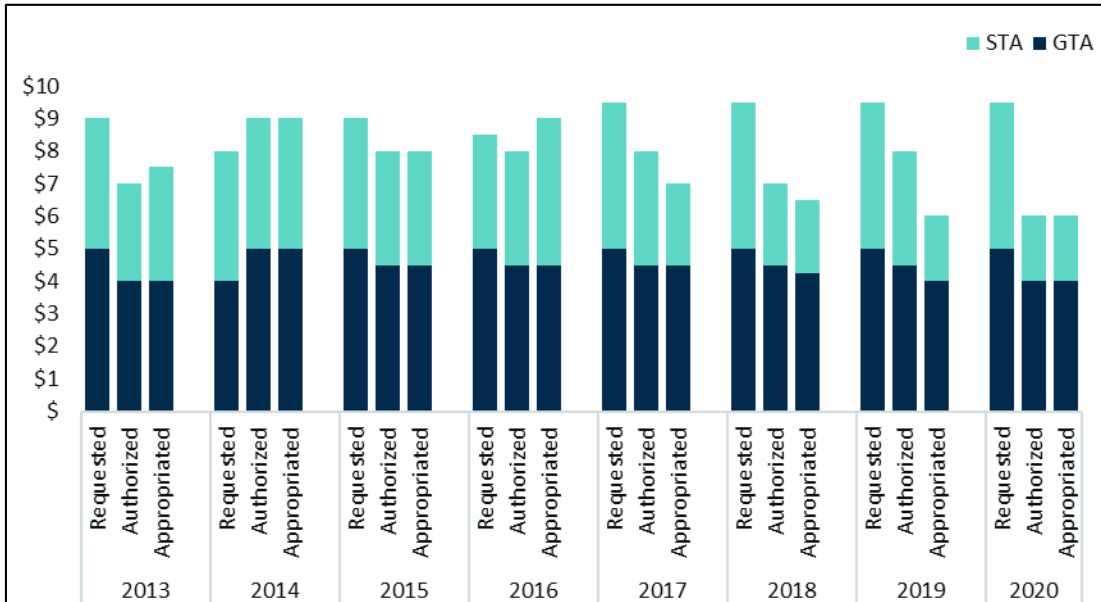
**Source:** CRS analysis of recurring provisions (Sections 8005 and 9002) of the annual Department of Defense Appropriations Act for the fiscal years FY2010-FY2020. For a full list of referenced provisions, see **Table B-1** in **Appendix B**.

**Notes:** GTA is general transfer authority; STA is special transfer authority; FY is fiscal year. Figures exclude additional transfer authority amounts in certain other provisions, including for transfer accounts, working capital funds, and emergency requirements.

### Requested and Appropriated General and Special Transfer Authority

Since FY2013, Congress has appropriated general and special transfer authority limits less than those requested by DOD. For the eight-year period through FY2020, Congress limited DOD transfer authorities in these provisions, on average, to 73% of the amounts requested, according to a CRS analysis of defense authorization and appropriation legislation and accompanying reports over the period. In recent years, the gap between these requested and enacted limits has widened. In FY2020, Congress appropriated general and special transfer authority limits, on average, to 60% of the amount requested. See **Figure 3**.

**Figure 3. Requested, Authorized, and Appropriated DOD General and Special Transfer Authority Limits, FY2013-FY2020**  
(in billions of dollars)



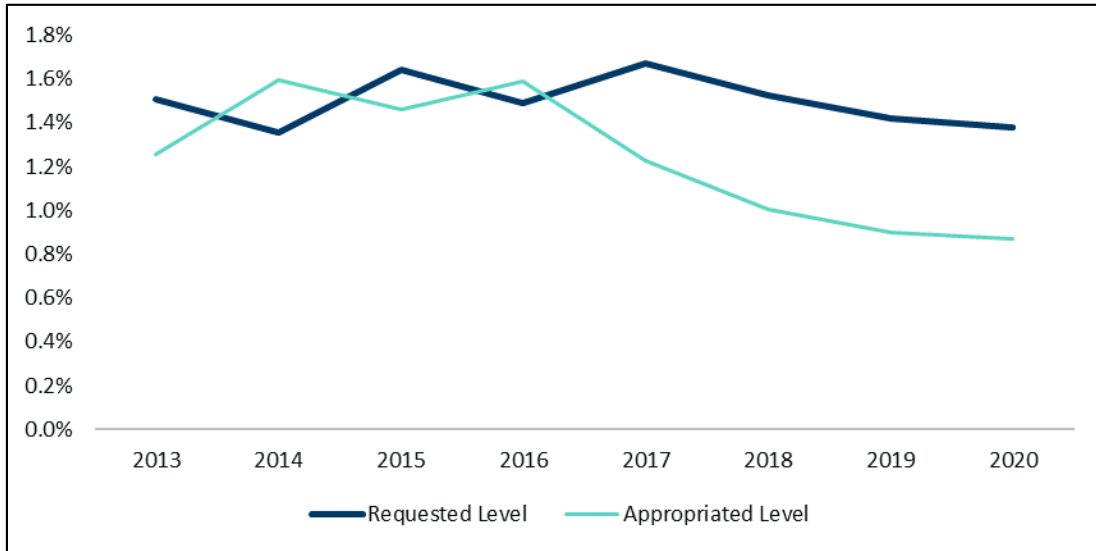
**Source:** CRS analysis of recurring provision (Section 8005) of the annual Department of Defense Appropriations Act and the “General Transfer Authority” section of the annual National Defense Authorization Act (NDAA), and recurring provision (Section 9002) of the defense appropriations act and the “Special Transfer Authority” section of the NDAA, for the fiscal years FY2013-FY2020, as well as accompanying conference reports or explanatory statements. For a full list of referenced sections and tables of bills and reports, see **Table B-2 in Appendix B**.

**Notes:** GTA is general transfer authority; STA is special transfer authority; FY is fiscal year. Figures exclude additional transfer authority amounts in certain other provisions, including for transfer accounts, working capital funds, and emergency requirements.

### General and Special Transfer Authority as Share of Budget Authority

Since FY2013, Congress has enacted general and special transfer authority limits for DOD that, taken together and put into percentage terms, amount to an average of 1.2% of the total discretionary budget authority provided in regular annual defense appropriations acts. That figure is below the average percentage of 1.5% requested during that period and excludes additional transfer authority amounts in certain other provisions, including for transfer accounts, working capital funds, and emergency requirements. See **Figure 4**.

**Figure 4. Requested and Appropriated General and Special Transfer Authority Limits as Share of Budget Authority in Defense Appropriations Acts, FY2013-FY2020**  
(in percentages)



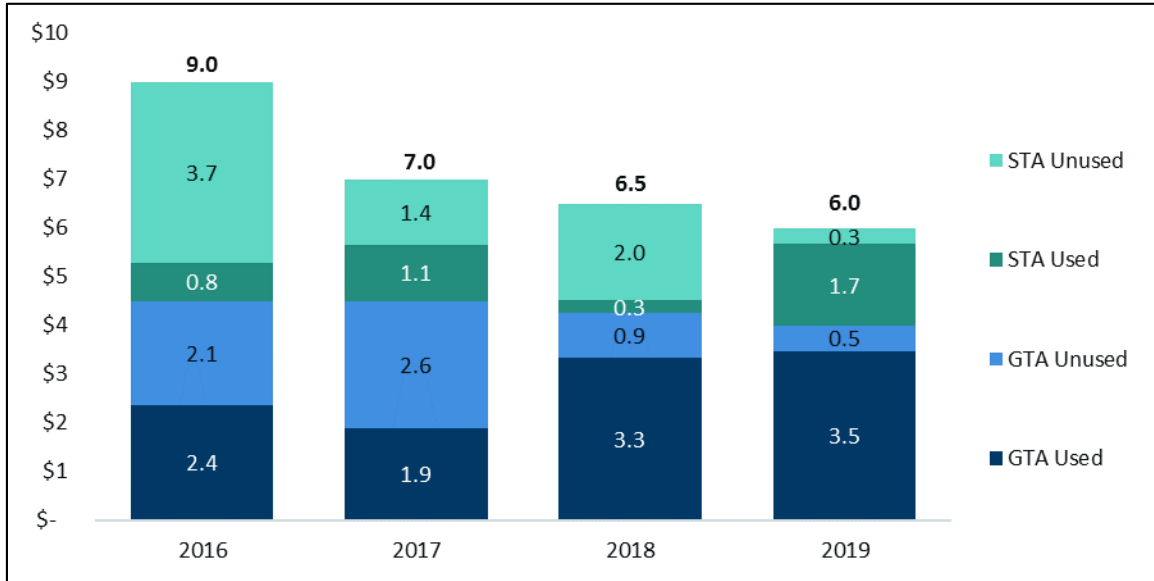
**Source:** CRS analysis of recurring provisions (Sections 8005 and 9002) of the annual Department of Defense Appropriations Act for the fiscal years FY2013-FY2020. For a full list of referenced sections and tables of bills and reports, see **Table B-3** in **Appendix B**.

**Notes:** GTA is general transfer authority; STA is special transfer authority; FY is fiscal year. Figures exclude additional transfer authority amounts in certain other provisions, including for transfer accounts, working capital funds, and emergency requirements.

### DOD Usage of General and Special Transfer Authority

From FY2016 to FY2018, DOD used, on average, less than half of the general and special transfer authority provided in the annual Department of Defense Appropriations Act. This trend noticeably changed in FY2019, when DOD used \$5.1 billion (85%) of the \$6 billion combined limit for general and special transfer authority (after accounting for military personnel adjustments). The increase on a percentage basis in FY2019 was driven in part by DOD’s two border barrier-related transfers totaling \$2.5 billion pursuant to 10 U.S.C. §284 and Congress enacting lower transfer authority limits for the fiscal year. In a single border-barrier transfer totaling \$3.8 billion in FY2020, DOD nearly two-thirds (63%) of the limit for general and special transfer authority (see **Figure 5**).

**Figure 5. DOD Usage of General and Special Transfer Authority, FY2016-FY2019**  
(in billions of dollars and percentages)



**Source:** CRS analysis of reprogramming action data provided by the Office of the Under Secretary of Defense (OUSD-C), as of February 18, 2020.

**Notes:** GTA is general transfer authority; STA is special transfer authority; FY is fiscal year. Amounts account for military personnel adjustments. Figures exclude additional transfer authority amounts in certain other provisions, including for transfer accounts, working capital funds, and emergency requirements. Totals may not sum due to rounding.

## DOD Reprogramming Actions

The following sections of the report provide additional information on:

- how Congress has changed DOD reprogramming thresholds over time;
- the number, value, and type of certain DOD reprogramming actions over time; and
- the value of certain DOD reprogramming actions for a selected fiscal year, including the percentage of prior-approval reprogramming actions supported by congressional committees.<sup>77</sup>

## Reprogramming Threshold Changes

In the latter half of the 20<sup>th</sup> century, amid concerns over unauthorized use of funds, Congress sought to establish greater control over DOD reprogramming actions.<sup>78</sup> In FY1959, the House Appropriations Committee directed DOD to report approved reprogramming actions of \$1

<sup>77</sup> In general, DOD transfers and reprograms discretionary budget authority. On occasion, DOD reprograms mandatory, or direct, spending for spectrum relocation, according to CRS communication with DOD-Comptroller personnel. The Spectrum Relocation Fund, created by the Commercial Spectrum Enhancement Act of 2004, reimburses federal agencies that must relocate or share wireless communications systems in federal spectrum that has been or will be reallocated to commercial use.

<sup>78</sup> For more information, see CRS Report RL33151, *Committee Controls of Agency Decisions*, by Louis Fisher.

million or more for O&M and RDT&E appropriations; and of \$5 million or more for procurement appropriations.<sup>79</sup>

In subsequent decades, Congress amended these dollar amount reprogramming thresholds. In FY2005, after reports that DOD used below threshold reprogramming actions to fund war-related priorities by reducing funding for many smaller programs,<sup>80</sup> Congress included a percentage limitation to reprogramming thresholds for procurement and RDT&E appropriations.<sup>81</sup> **Table 3** shows DOD reprogramming thresholds for selected fiscal years.

**Table 3. DOD Reprogramming Thresholds by Appropriation Title for Selected Fiscal Years**

| Fiscal Year       | MILPERS      | O&M                 | Procurement                             | RDT&E                                   |
|-------------------|--------------|---------------------|---|---|
| 2003 <sup>a</sup> | \$10 million | \$15 million        | \$20 million                            | \$10 million                            |
| 2005 <sup>b</sup> | \$10 million | \$15 million        | <b>\$20 million or 20%</b> <sup>c</sup> | <b>\$10 million or 20%</b> <sup>c</sup> |
| 2018 <sup>d</sup> | \$10 million | <b>\$20 million</b> | \$20 million or 20% <sup>c</sup>        | \$10 million or 20% <sup>c</sup>        |
| 2019 <sup>e</sup> | \$10 million | <b>\$15 million</b> | \$20 million or 20% <sup>c</sup>        | \$10 million or 20% <sup>c</sup>        |
| 2020 <sup>f</sup> | \$10 million | <b>\$10 million</b> | <b>\$10 million</b> or 20% <sup>c</sup> | \$10 million or 20% <sup>c</sup>        |

**Source:** Explanatory reports accompanying Department of Defense Appropriations Acts for selected fiscal years. For source documents for individual fiscal years, see table notes below.

**Notes:** Bold and shaded figures indicate change from previous threshold. Military Personnel (MILPERS) and Operation and Maintenance (O&M) thresholds apply to a budget activity; Procurement and Research, Development, Test, and Evaluation (RDT&E) thresholds apply to line items. Source documents for individual fiscal years are as follows:

- a. Department of Defense, Defense Technical Information Center, Section 809 Panel, “Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 3 of 3,” Figure 4-4, January 2019, p. 187, [https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel\\_Vol3-Report\\_Jan2019\\_part-1\\_0509.pdf#page=387](https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel_Vol3-Report_Jan2019_part-1_0509.pdf#page=387).
- b. Conference report (H.Rept. 108-622) accompanying the Department of Defense Appropriations Act, 2005 (P.L. 108-287), p. 87.
- c. Threshold applies to whichever is less.
- d. Explanatory statement accompanying the Department of Defense Appropriations Act, 2018 (Division C of P.L. 115-141) in the *Congressional Record*, daily edition, vol. 164 (March 22, 2018), p. H2116.
- e. Joint explanatory statement accompanying the Department of Defense Appropriations Act, 2019 (Division A of P.L. 115-245) released by the Senate Appropriations Committee on September 13, 2018, p. 2.
- f. Explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10613.

From a congressional standpoint, lower dollar amount reprogramming thresholds potentially provide greater oversight of individual reprogramming actions. From a DOD standpoint, the lower thresholds potentially create delays, with DOD arguing that the prior-approval process can

<sup>79</sup> H. Rept. No. 408, 86th Cong., 1st Sess. 20 (1959); Department of Defense Instruction, “Reprogramming of Appropriated Funds — Report on,” No. 7250.5 (October 23, 1959).

<sup>80</sup> Department of Defense, Defense Technical Information Center, “Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 3 of 3,” January 2019, p. 194, [https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel\\_Vol3-Report\\_Jan2019\\_part-1\\_0509.pdf#page=394](https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel_Vol3-Report_Jan2019_part-1_0509.pdf#page=394).

<sup>81</sup> Conference report (H.Rept. 108-622) accompanying the Department of Defense Appropriations Act, 2005 (P.L. 108-287), p. 87.

take months for both department and congressional approval.<sup>82</sup> Also, because of the percentage limitation, DOD contends it has less flexibility for smaller investment programs.<sup>83</sup>

In 2018, a bipartisan congressional panel known as the Section 809 panel and appointed to recommend defense acquisition reforms,<sup>84</sup> issued three recommendations related to DOD reprogramming policy: (1) delegate below threshold reprogramming decision authority from the military or department level to portfolio managers; (2) increase reprogramming dollar thresholds to match their previous levels relative to inflation and the DOD budget—including to \$20 million for RDT&E and to \$40 million for procurement; and (3) increase to 50% from 20% the percentage limitation in reprogramming thresholds for procurement and RDT&E.<sup>85</sup> Congress has not enacted these recommendations.

## Quantity and Type of DOD Reprogramming Actions

The following CRS analysis of the number, value, and type of DOD reprogramming actions is limited to the implemented reprogramming actions published on the Budget Execution section of the DOD Comptroller website, which often include reprogramming actions involving congressional notification and prior approval. Thus, the analysis excludes below threshold reprogramming actions, which are reported in aggregate in the department's Report of Programs (DD Form 1416).<sup>86</sup>

According to the CRS analysis, DOD published a total of 2,233 reprogramming actions over the 21-year period from FY1999 through FY2019, averaging more than 100 a year. The department categorized more than half of those (1,168 actions or 52%) as internal reprogrammings (IR); more than a quarter (581 actions or 26%) as prior approval (PA); almost one in six (357 actions or 16%) as letter directed (LTR); 125 actions (or 6%) as military construction-family housing, and two as “reprogramming action” for border barrier-related purposes (see **Figure 6**).

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<sup>82</sup> Department of Defense, Office of the General Counsel, DOD Legislative Proposals, “National Defense Authorization Act for Fiscal Year 2010 (Sent to Congress on May 12, 2009) -- Section-by-Section Analysis (.pdf),” p. 78, [https://ogc.osd.mil/olc/docs/FY10\\_NDAA\\_sectional\\_analysis.pdf#page=78](https://ogc.osd.mil/olc/docs/FY10_NDAA_sectional_analysis.pdf#page=78).

<sup>83</sup> David W. Roberts, “A Historical Analysis of the Defense Reprogramming Process,” *Armed Forces Comptroller*, Fall 1985, p. 21.

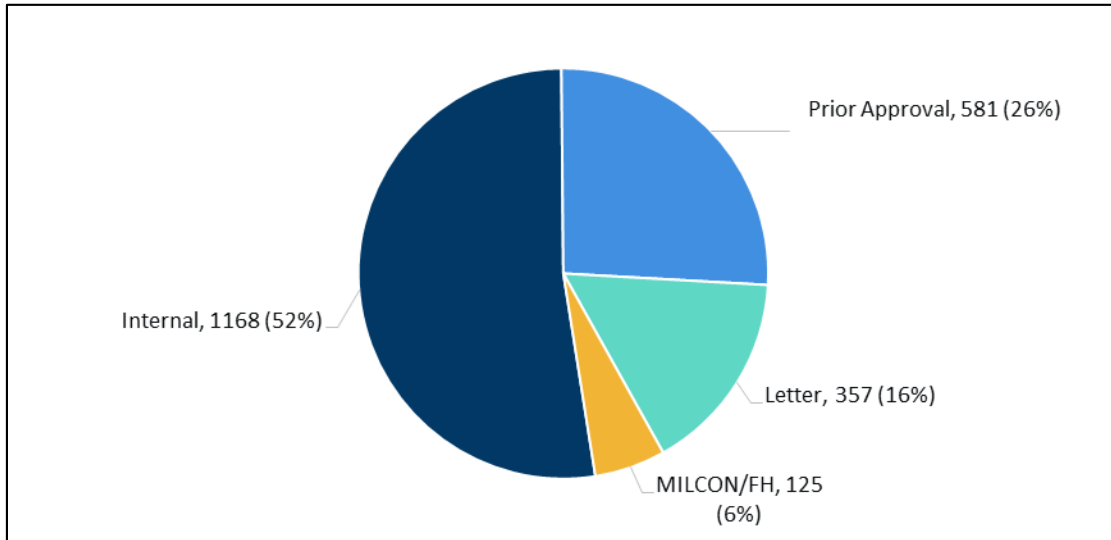
<sup>84</sup> See Section 809 of the National Defense Authorization Act for FY2016 (P.L. 114-92).

<sup>85</sup> Department of Defense, Defense Technical Information Center, Section 809 Panel, “List of Section 809 Panel Recommendations,” p. 8, <https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Promo-Outreach/ImplementationTracker.pdf#page=8>; and “Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 3 of 3,” January 2019, p. 192, [https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel\\_Vol3-Report\\_Jan2019\\_part-1\\_0509.pdf#page=392](https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel_Vol3-Report_Jan2019_part-1_0509.pdf#page=392).

<sup>86</sup> According to the Section 809 panel, the Air Force reported 128 below threshold reprogrammings in unclassified research, development, test, and evaluation (RDT&E) accounts in a single quarter in FY2018. See Department of Defense, Defense Technical Information Center, Section 809 Panel, “Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 3 of 3,” January 2019, p. 180, [https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel\\_Vol3-Report\\_Jan2019\\_part-1\\_0509.pdf#page=380](https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel_Vol3-Report_Jan2019_part-1_0509.pdf#page=380).

**Figure 6. Combined Quantity of Selected Types of DOD Reprogramming Actions, FY1999-FY2019**

(in numbers and percentages of the total)



**Source:** CRS analysis of Department of Defense, Office of the Under Secretary of Defense-Comptroller (OUSD-C), Budget Execution, Implemented Reprogramming Actions, as of March 3, 2020, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2020/>.

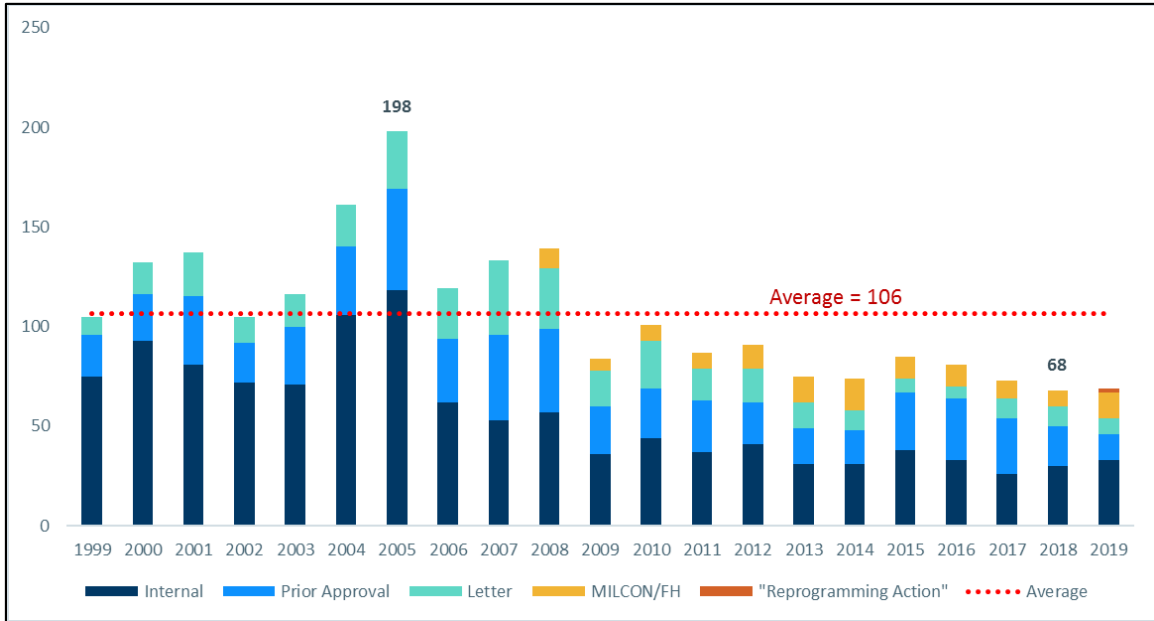
**Notes:** Figures include omnibus reprogrammings as a single reprogramming action. Figure excludes two uncategorized “reprogramming actions” relate to constructing barriers along the U.S.-Mexico border in FY2019 that met criteria for “prior approval” under DOD regulation; below threshold reprogrammings, policy letters, and memos.

During the 21-year period, the quantity of DOD reprogramming actions peaked at 198 in FY2005, trended downward in subsequent fiscal years, and decreased to 68 in FY2018 (see **Figure 7**). In FY2005, multiple funding transfers were intended to address war-related requirements from operations in Iraq and Afghanistan, such as additional armor kits for Army wheeled vehicles and Air Force MQ-1 Predator unmanned aerial vehicles (UAVs) with related weapons (e.g., Hellfire missiles).<sup>87</sup>

<sup>87</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller (OUSD-C), Budget Execution, Implemented Reprogramming Actions – FY2005, “Urgent Force Protection-Army,” November 19, 2004, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2005/prior1415s/05-02\\_PA\\_Army\\_Force\\_Protection.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2005/prior1415s/05-02_PA_Army_Force_Protection.pdf), and “Predator Unmanned Aerial Vehicle,” January 27, 2005, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2005/prior1415s/05-08\\_PA\\_AF\\_Predator\\_UAV.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2005/prior1415s/05-08_PA_AF_Predator_UAV.pdf).



**Figure 7. Annual Quantity of Selected Types of DOD Reprogramming Actions, FY1999-FY2019**



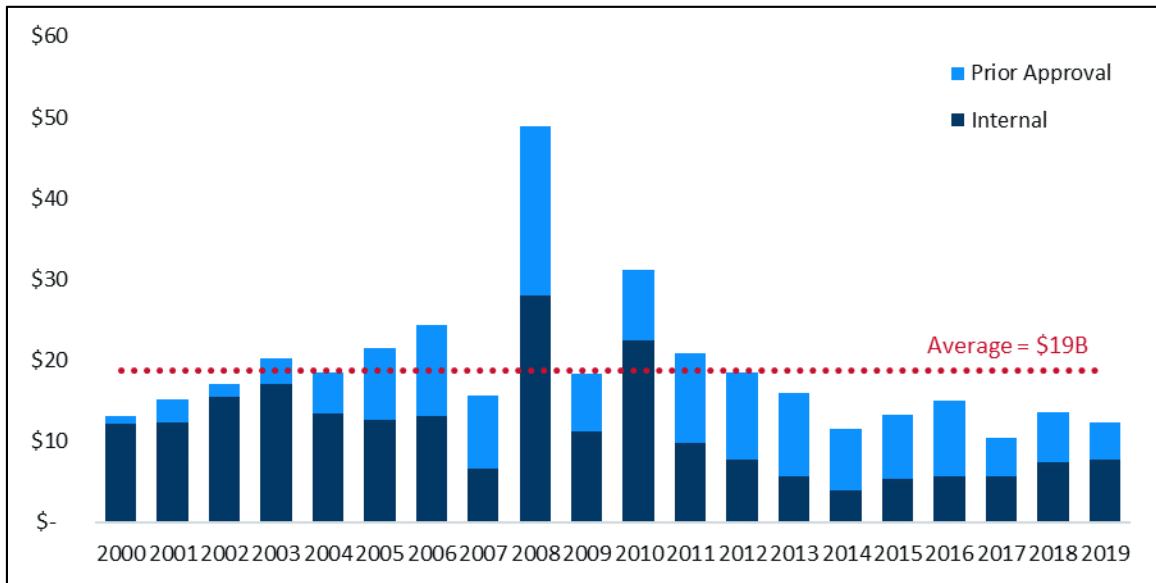
**Source:** CRS analysis of Department of Defense, Office of the Under Secretary of Defense-Comptroller (OUSD-C), Budget Execution, Implemented Reprogramming Actions, as of March 3, 2020, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2020/>.

**Notes:** MILCON/FH is military construction/family housing. CR is continuing resolution. The two uncategorized “reprogramming actions” in FY2019 relate to constructing barriers along the U.S.-Mexico border and met criteria for “prior approval” under DOD regulation. Figures include omnibus reprogrammings as a single reprogramming action. Figures exclude below threshold reprogrammings, policy letters, and memos. Years in fiscal years.

### Value of Prior Approval and Internal DOD Reprogramming Actions

From FY2000 through FY2019, the single-year value of prior approval and internal DOD reprogramming actions peaked at \$48.9 billion in FY2008, trended downward in subsequent fiscal years, and decreased to \$10.4 billion in FY2017 (see **Figure 8**). Following the surge of U.S. forces in Iraq, multiple reprogramming actions in FY2008 realigned funds for combat operations in the country, including ammunition, generators, mine-detection systems, unmanned aerial vehicles (UAVs), and telecommunications technology.

**Figure 8. Annual Value of DOD Prior Approval and Internal Reprogramming Actions, FY2000-FY2019**  
(in billions of dollars)



**Source:** CRS analysis of Department of Defense, Office of the Under Secretary of Defense-Comptroller (OUSD-C), Budget Execution, Implemented Reprogramming Actions, as of March 3, 2020, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2020/>; and Budget Execution Flexibility Tutorial, [https://comptroller.defense.gov/Portals/45/Documents/execution/Budget\\_Execution\\_Tutorial.pptx](https://comptroller.defense.gov/Portals/45/Documents/execution/Budget_Execution_Tutorial.pptx).

**Notes:** FY2000-FY2014 data from DOD Budget Execution Flexibility Tutorial; FY2015-FY2019 data from CRS analysis of DOD Implemented Reprogramming Actions. Years in fiscal years.

### Congressionally Denied DOD Reprogramming Actions, FY2019

In FY2019, DOD transferred and reprogrammed more than \$17 billion (excluding below threshold reprogrammings), amounting to 2.5% of the department’s discretionary budget authority, according to CRS analysis of DOD reprogramming actions and budget documentation.<sup>88</sup>

In general, DOD documentation for prior-approval reprogramming actions reflect approval, denial, or adjustments from the congressional defense committees. For example, denials or adjustments will include a strikethrough of requested changes to line-items and/or amounts. According to DOD regulation, the department implements a prior-approval reprogramming action after receiving written guidance from the congressional defense committees to reflect “the lowest

<sup>88</sup> CRS analysis of Department of Defense, Office of the Under Secretary of Defense-Comptroller, Budget Execution, Implemented Reprogramming Actions, as of March 3, 2020, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2019/>; and White House Office of Management and Budget, Analytical Perspectives, Table 24-1, “Budget Authority and Outlays by Function, Category, and Program,” [https://www.whitehouse.gov/wp-content/uploads/2020/02/24-1\\_fy21.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/02/24-1_fy21.pdf). The dollar figure includes \$7.8 billion of internal reprogramming actions (44% of the total amount), \$4.5 billion of prior approval actions (26%), \$2.5 billion of uncategorized “reprogramming actions” for border-barrier transfers (14%), \$2.2 billion in letter transfers for congressionally directed transfers; and \$0.6 billion in military construction and family housing reprogramming actions (4%).

of the approvals received for proposed sources and increases. The action may be implemented for less than originally requested due to the denial of increases or sources.”<sup>89</sup>

In FY2019, DOD submitted for congressional prior approval 13 reprogramming actions with a combined value of \$5.9 billion. Of those, committees approved \$4.5 billion (76%). Committees denied the reprogramming of some funds within four actions, including for the Cyber Excepted Service (CES), a personnel system for managing civilian employees in cybersecurity jobs; a classified project within the Military Intelligence Program; the deployment of forces to U.S. Central Command; and the Presidential Aircraft Recapitalization program to develop new Air Force One aircraft, among other activities.

In response to DOD’s decision mentioned earlier not to submit for congressional prior approval FY2019 transfers for barrier construction on the U.S.-Mexico border, Representatives Adam Smith and Peter J. Visclosky, the respective chairmen of the House Armed Services Committee and House Appropriations Defense Subcommittee, wrote letters to then-DOD Comptroller David Norquist, denying the department’s reprogramming “request.”<sup>90</sup> In his letter, Visclosky wrote:

Article [I] states, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law”. The reprogramming transmitted by the Department denies the Congress and the Committee on Appropriations those stated Constitutional prerogatives; these funds were neither requested nor appropriated for the activities described in the reprogramming. With this unilateral action, the historic and unprecedented comity that has existed between the Committee and the Department has been breached.

## Legislative Activity

As the Smith and Visclosky letters suggest, in the 116th Congress, debate over DOD transfer authority has largely centered on the legislative branch’s constitutional “power of the purse” in the context of the Trump Administration’s decision to transfer FY2019 and FY2020 defense appropriations for barrier construction on the southern border. Despite such concerns, however, Congress has not decreased DOD general and special transfer authority limits primarily because of a bipartisan compromise over unrelated spending caps.

### **Bipartisan Budget Act of 2019 (BBA 2019; P.L. 116-37)**

As part of the Bipartisan Budget Act of 2019 (P.L. 116-37), which increased statutory caps on defense and nondefense spending for FY2020 and FY2021, leaders in Congress and the White House agreed to maintain existing transfer authorities, including those applicable to DOD.<sup>91</sup> A statement circulated by some Members describing the bill stated, in part: “Current transfer funding levels and authorities shall be maintained, and any modifications must be agreed to on a bipartisan basis by the four leaders with the approval of the President.”<sup>92</sup>

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<sup>89</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 6, Paragraph 060411, “Congressional Committee Approval of DD 1415 Requests,” p. 6-15, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1382](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1382).

<sup>90</sup> Letters from Representatives Adam Smith and Peter J. Visclosky to then-Under Secretary of Defense Comptroller David Norquist, March 26, 2019, on file with the author.

<sup>91</sup> The Bipartisan Budget Act of 2019 (BBA 2019; P.L. 116-37) increased statutory spending caps initially established by the Budget Control Act of 2011 (BCA; P.L. 112-25). For more information, see CRS Report R44039, *The Defense Budget and the Budget Control Act: Frequently Asked Questions*, by Brendan W. McGarry.

<sup>92</sup> Rep. Joe Courtney, “Bipartisan Budget Agreement for Fiscal Years 2020 and 2021,” link from press release, July 25,

## FY2020 National Defense Authorization Act

In addition to prohibiting DOD from transferring funds to construct barriers along the U.S. - Mexico border,<sup>93</sup> the House-passed version of the National Defense Authorization Act for FY2020 (H.R. 2500) would have reduced the department’s authorized general and special transfer authority limits from FY2019 levels. As part of the enacted bill (P.L. 116-92), Congress authorized a general transfer authority limit of \$4 billion and a special transfer authority limit of \$2 billion (see **Table 4**).

**Table 4. General and Special Transfer Authority Limits in the National Defense Authorization Act, FY2020: Legislative Comparison**  
(amounts in billions)

| Transfer Authority (Section)  | FY2019 Authorized (P.L. 115-232) | FY2020 Requested | House-Passed (H.R. 2500) | Senate-Passed (S. 1790) | FY2020 Authorized (P.L. 116-92) |
|-------------------------------|----------------------------------|------------------|--------------------------|-------------------------|---------------------------------|
| GTA (Sec. 1001)               | \$4.5                            | \$5.0            | \$1.0                    | \$4.0                   | \$4.0                           |
| STA (Sec. 1520A) <sup>a</sup> | \$3.5                            | \$4.5            | \$0.5                    | \$2.5 <sup>a</sup>      | \$2.0 <sup>a</sup>              |
| <b>Total</b>                  | <b>\$8.0</b>                     | <b>\$9.5</b>     | <b>\$1.5</b>             | <b>\$6.5</b>            | <b>\$6.0</b>                    |

**Source:** H.Rept. 115-874, conference report accompanying the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232); S.Rept. 116-48, Senate Armed Services Committee report accompanying the National Defense Authorization Act for FY2020 (S. 1790); House-passed National Defense Authorization Act for FY2020 (H.R. 2500); and National Defense Authorization Act for FY2020 (P.L. 116-92).

**Notes:**

- a. GTA is general transfer authority; STA is special transfer authority. The special transfer authority limit appeared in Sec. 1512 of the FY2019 NDAA and House-passed FY2020 NDAA; Sec. 1522 of the Senate-passed NDAA, and Sec. 1520A of the FY2020 NDAA (P.L. 116-92).

## Selected FY2020 Appropriations

### Defense

The House passed a Department of Defense Appropriations Bill, FY2020 (H.R. 2740) that, in addition to prohibiting DOD from transferring funds to construct barriers along the U.S.-Mexico border,<sup>94</sup> would have reduced the department’s general and special transfer authority limits from FY2019 levels. As part of the enacted version of the Department of Defense Appropriations Bill, FY2020 (Division A of P.L. 116-93), the House agreed with the Senate’s version of the bill (S. 2474) to maintain a general transfer authority limit of \$4 billion and a special transfer authority limit of \$2 billion (see **Table 5**).

2019, <https://courtney.house.gov/sites/courtney.house.gov/files/Bipartisan%20Budget%20Act%202019.pdf>.

<sup>93</sup> Other sections of the bill would have prohibited or restricted funding for border barrier construction. For more information, see Table 4 in CRS Report R45937, *Military Funding for Southwest Border Barriers*, by Christopher T. Mann.

<sup>94</sup> Ibid.

**Table 5. General and Special Transfer Authority Limits in the DOD Appropriations Act, 2020: Legislative Comparison**  
(amounts in billions)

| Transfer Authority (section) | FY2019 Enacted (P.L. 115-245) | FY2020 Requested | House-passed (H.R. 2740) | Senate-introduced (S. 2474) | FY2020 Enacted (P.L. 116-93) |
|------------------------------|-------------------------------|------------------|--------------------------|-----------------------------|------------------------------|
| GTA (Sec. 8005)              | \$4.0                         | \$5.0            | \$1.0                    | \$4.0                       | \$4.0                        |
| STA (Sec. 9002)              | \$2.0                         | \$4.5            | \$0.5                    | \$2.0                       | \$2.0                        |
| <b>Total</b>                 | <b>\$6.0</b>                  | <b>\$9.5</b>     | <b>\$1.5</b>             | <b>\$6.0</b>                | <b>\$6.0</b>                 |

**Sources:** The Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (P.L. 115-245); S.Rept. 116-48, Senate Armed Services Committee report accompanying the National Defense Authorization Act for FY2020 (S. 1790); House-passed version of the Department of Defense Appropriations Act, 2020 (H.R. 2740); Senate-introduced version of the Department of Defense Appropriations Act, 2020 (S. 2474); and Consolidated Appropriations Act, 2020 (P.L. 116-93).

**Notes:** GTA is general transfer authority; STA is special transfer authority. The Labor, Health and Human Services, Education, Defense, State, Foreign Operations, and Energy and Water Development Appropriations Act, 2020 (H.R. 2740) incorporated multiple regular appropriations, including the House Appropriation Committee-reported version of the Department of Defense Appropriations Act, 2020 (H.R. 2968).

The House Appropriations Committee report (H.Rept. 116-84) accompanying its version of the Department of Defense Appropriations Act, 2020 (H.R. 2968) directed the Secretary of Defense to submit a prior approval reprogramming to the congressional defense committees for any reprogramming of funding above a dollar amount threshold of \$10 million for military personnel, operation and maintenance, procurement, or research, development, test and evaluation lines. The Senate Appropriations Committee report (S.Rept. 116-103) accompanying its version of the Department of Defense Appropriations Act, 2020 (S. 2474) kept the dollar amount reprogramming thresholds unchanged from FY2019 at \$10 million for MILPERS and RDT&E, \$15 million for O&M, and \$20 million for procurement. The reprogramming thresholds in the explanatory statement accompanying the enacted version of the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) matched those in the House Appropriations Committee report (see **Table 6**).

**Table 6. Reprogramming Thresholds by Appropriation Title, FY2020: Legislative Comparison**  
(dollar amounts in millions)

| Appropriation Title | FY2019 Guidance <sup>a</sup>     | FY2020 House Guidance            | FY2020 Senate Guidance           | FY2020 Guidance <sup>b</sup>     |
|---------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| MILPERS             | \$10 million                     | \$10 million                     | \$10 million                     | \$10 million                     |
| O&M                 | \$15 million                     | \$10 million                     | \$15 million                     | \$10 million                     |
| Procurement         | \$20 million or 20% <sup>c</sup> | \$10 million or 20% <sup>c</sup> | \$20 million or 20% <sup>c</sup> | \$10 million or 20% <sup>c</sup> |
| RDT&E               | \$10 million or 20% <sup>c</sup> | \$10 million or 20% <sup>c</sup> | \$10 million or 20% <sup>c</sup> | \$10 million or 20% <sup>c</sup> |

**Source:** Joint explanatory statement accompanying the Department of Defense Appropriations Act, 2019 (Division A of P.L. 115-245); House Appropriations Committee report (H.Rept. 116-84) accompanying its version of the Department of Defense Appropriations Act, 2020 (H.R. 2968); Senate Appropriations Committee report (S.Rept. 116-103) accompanying its version of the Department of Defense Appropriations Act, 2020 (S.

2474 ); and explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93).

**Notes:**

- a. Joint explanatory statement accompanying the Department of Defense Appropriations Act, 2019 (Division A of P.L. 115-245) released by the Senate Appropriations Committee on September 13, 2018, p. 2.
- b. Explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) published in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10613.
- c. Threshold applies to whichever is less.

## Emergency Supplemental

As previously mentioned, Section 13001 of the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136)—the third FY2020 supplemental appropriations act that Congress passed in response to COVID-19—allows DOD to transfer, with an exception, the \$10.5 billion provided to the department in Title III of the act to other appropriation accounts for expenses incurred in preventing, preparing for, or responding to COVID-19.

The exception applies to DOD’s Drug Interdiction and Counter-Drug Activities, Defense account, which the department has used to transfer defense funds to construct barriers along the U.S.-Mexico border in support of the Department of Homeland Security pursuant to 10 U.S.C. §284. This provision effectively prevents DOD from transferring coronavirus relief funds to the Army Corps of Engineers for the purpose of constructing additional barriers along the southwest border.

Of the \$10.5 billion, DOD identified a total \$3.2 billion for reallocation, including \$1.9 billion for transfer and \$1.3 billion for reprogramming, according to a copy of the department’s CARES Act spend plan published by *The Washington Post*.<sup>95</sup> The department has detailed these transactions in five internal reprogramming actions published on the DOD Comptroller website.

## Context to FY2021 President’s Budget Request

### Border Barrier

Congressional action on the FY2021 appropriations bills comes amid ongoing efforts by the Trump Administration to redirect DOD funding to construct barriers along the U.S.-Mexico border.<sup>96</sup> On February 13, 2020, the DOD transferred \$3.8 billion from defense procurement programs to the Army Operation and Maintenance account for use by the Army Corps of Engineers to construct additional barriers along the southern border.<sup>97</sup> The reprogramming repeated, in part, a process the department undertook twice in 2019 (totaling \$2.5 billion) in

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<sup>95</sup> Aaron Gregg and Erica Werner, “Pentagon’s coronavirus plan includes millions for missile tubes and body armor,” *The Washington Post*, June 4, 2020, <https://www.washingtonpost.com/business/2020/06/04/pentagons-coronavirus-plan-includes-millions-missile-tubes-body-armor/> (see link to “Read the Pentagon’s Cares Act spending plan in full” at [https://www.washingtonpost.com/context/defense-department-cares-act-spending-plan-may-29-2020/c3fcd775-711d-440c-b198-f9caa8ce0687/?itid=lk\\_interstitial\\_manual\\_14](https://www.washingtonpost.com/context/defense-department-cares-act-spending-plan-may-29-2020/c3fcd775-711d-440c-b198-f9caa8ce0687/?itid=lk_interstitial_manual_14)).

<sup>96</sup> For more information and analysis on this topic, see CRS Report R45937, *Military Funding for Southwest Border Barriers*, by Christopher T. Mann, CRS Report R46002, *Military Funding for Border Barriers: Catalogue of Interagency Decisionmaking*, by Christopher T. Mann and Sofia Plagakis, and CRS Insight IN11210, *Possible Use of FY2020 Defense Funds for Border Barrier Construction: Context and Questions*, by Christopher T. Mann.

<sup>97</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Budget Execution, Implemented Reprogramming Actions – FY2020, “Support for DHS Counter Drug Activity,” February 13, 2020, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2020/reprogramming\\_action/20-01\\_RA\\_Support\\_for\\_DHS\\_Counter\\_Drug\\_Activity.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2020/reprogramming_action/20-01_RA_Support_for_DHS_Counter_Drug_Activity.pdf).

conjunction with a separate set of emergency transfers (\$3.6 billion). DOD did not seek prior approval from the congressional defense committees for the transfers in support of DHS counter-drug activities pursuant to 10 U.S.C. §284, as required by DOD Financial Management Regulation.<sup>98</sup>

The February 13, 2020, reprogramming action for border barrier construction drew bipartisan criticism from Representatives Adam Smith, chairman the House Armed Services Committee, and Mac Thornberry, ranking member of the panel.

Smith said of the action:

The Trump Administration claims that every military decision they make is in support of the National Defense Strategy, and that their primary focus is the great power competition with Russia and China. But their policy simply does not match their rhetoric. Rather than investing in the procurement of critical platforms, this administration would rather dump another \$3.8 billion into a wall on our southern border.<sup>99</sup>

Thornberry said of the action:

Congress has the constitutional responsibility to determine how defense dollars are spent. We take the Pentagon's recommendations seriously during our deliberations, but the final decisions are contained in the bills passed by Congress and signed into law. Once those choices have been made, the Department of Defense cannot change them in pursuit of their own priorities without the approval of Congress. Attempts to do so undermines the principle of civilian control of the military and is in violation of the separation of powers within the Constitution. The re-programming announced today is contrary to Congress's constitutional authority, and I believe that it requires Congress to take action. I will be working with my colleagues to determine the appropriate steps to take.<sup>100</sup>

The Administration has argued that funding transfers for border-barrier construction are authorized by Sections 8005 and 9002 of the annual defense appropriations act, among other federal laws. Defense Secretary Mark Esper said of the February 13, 2020, reprogramming action: "I know that is legally available to us."<sup>101</sup> In 2019, then-Assistant Defense Secretary for Sustainment Robert H. McMahan defended the decision to transfer the funds without seeking congressional prior approval in part by citing authority provided in Section 8005 of the defense appropriations act: "It's customary for DoD to share reprogramming documents with the Congress, once they're approved by OMB. My understanding is based on Section 8005, sir, that DoD needs OMB's approval, but approval from the Congress is not required by law in a reprogramming a §284."<sup>102</sup> A DOD spokesman reportedly said of the decision: "When the

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<sup>98</sup> Department of Defense, Office of the Under Secretary of Defense-Comptroller, Financial Management Regulation, Volume 3, Chapter 6, Paragraph 060401, "Reprogramming Actions Requiring Written Congressional Approval," subparagraph C, p. 6-7, [https://comptroller.defense.gov/Portals/45/documents/fmr/Combined\\_Volume1-16.pdf#page=1374](https://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf#page=1374).

<sup>99</sup> Representative Adam Smith, "Smith Condemns Waste of DoD Funds on the Border Wall," press release, February 13, 2020, <https://armedservices.house.gov/press-releases?ID=39753EB6-44F7-4DF7-92CA-AEA9B0E8F1A6>.

<sup>100</sup> Representative Mac Thornberry, "Thornberry on DoD Reprogramming: Congress Must Act," press release, February 13, 2020, <https://republicans-armedservices.house.gov/news/press-releases/thornberry-dod-reprogramming-congress-must-act>.

<sup>101</sup> Testimony of Secretary of Defense Mark Esper, in U.S. Congress, House Committee on the Armed Services, *The Fiscal Year 2021 National Defense Authorization Budget Request from the Department of Defense*, hearings, 116th Cong., 2nd sess., February 26, 2020, text from Congressional Quarterly, <https://plus.cq.com/doc/congressionaltranscripts-5844728?4>.

<sup>102</sup> Testimony of then-Assistant Defense Secretary for Sustainment Robert H. McMahan, in U.S. Congress, House Committee on the Appropriations, Subcommittee on Military Construction and Veterans Affairs, *The President's 2019*

Department seeks committee approval, it does so as a matter of comity, not because it is required by law.”<sup>103</sup> The disagreement is the subject of lawsuits in federal courts.<sup>104</sup>

## Space Force

Dr. Will Roper, assistant secretary of the Air Force for acquisition, technology, and logistics, reportedly said the Air Force plans to request authority from Congress in FY2021 to fund multiple space-related RDT&E projects within a single program element (PE) to more easily transfer funds between the activities.<sup>105</sup>

## Issues for Congress

DOD transfer and reprogramming authorities present potential issues for Congress, including the following:

### **DOD does not view congressional prior approval requirements as legally binding**

While DOD Financial Management Regulation requires congressional prior approval of certain reprogramming actions, the department does not view the requirement as legally binding. Although explanatory statement language accompanying the annual Department of Defense Appropriations Act typically directs the Secretary of Defense to seek congressional prior approval for reprogrammings above certain thresholds, the Supreme Court has held that report language, alone, is not law and therefore not legally binding.<sup>106</sup> GAO has reached a similar conclusion.<sup>107</sup> The ability of Congress to create *legally* binding prior approval requirements on reprogramming actions may be limited by the 1983 U.S. Supreme Court case *Immigration and Naturalization Service (INS) v. Chadha*. In that case, the Supreme Court struck down a type of legislative veto—a one-house veto provision then included in the Immigration and National Act. Even so, DOD Financial Management Regulation reflects guidance and instruction from the congressional defense committees and continues to require committee notification and approval for certain

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*National Emergency Declaration Circumventing Congress to Build a Border Wall & its Effect on Military Construction and Readiness*, hearings, 116th Cong., 1st sess., February 27, 2019, text from Congressional Quarterly, <https://plus.cq.com/doc/congressionaltranscripts-5473281?4>.

<sup>103</sup> Wesley Morgan, “Pentagon still plans to move \$1B for border barriers, calling it ‘a matter of comity,’” *Politico Pro*, March 27, 2019, <https://subscriber.politicopro.com/article/2019/03/pentagon-still-plans-to-move-1b-for-border-barriers-calling-it-a-matter-of-comity-2953914>.

<sup>104</sup> For more information, see CRS Report R45908, *Legal Authority to Repurpose Funds for Border Barrier Construction*, by Jennifer K. Elsea and Edward C. Liu.

<sup>105</sup> Theresa Hitchens, “AF Seeks Freedom to Shift \$\$ Between Space Programs,” *Breaking Defense*, April 16, 2020, <https://breakingdefense.com/2020/04/af-seeks-freedom-to-shift-between-space-programs/>.

<sup>106</sup> *Lincoln v. Vigil*, 508 U.S. 182, 192-193 (1993) (“Expressions of committees dealing with requests for appropriations cannot be equated with statutes enacted by Congress” (quoting *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 191 (1978))). For more information, see CRS Report R46417, *Congress’s Power Over Appropriations: Constitutional and Statutory Provisions*, by Sean M. Stiff.

<sup>107</sup> *Matter of the LTV Aero. Corp.*, 55 Comp. Gen. 307 (Comp. Gen. 1975) (“it is our view that when Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on Federal agencies”).



transactions involving the use of funds for another purpose. In addition, some observers may view prior approval requirements as *practically* binding because the annual appropriations process provides a means for Congress to impose sanctions on violations of comity and trust.

Some Members have raised concerns that the use of DOD transfer and reprogramming authorities to construct barriers along the U.S.-Mexico border may set a precedent for future presidents. Senator Jack Reed, ranking member of the Senate Armed Services Committee, has said: “If Congress allows President Trump to continue down this path, it will set a precedent that emboldens future presidents to disregard Congress and redirect military spending to questionable causes.”<sup>108</sup> Representative Mac Thornberry, ranking member of the House Armed Services Committee pointed to institutional consequences.<sup>109</sup> At least one committee staff member once described the reprogramming process as requiring “a degree of trust” between Congress and DOD.<sup>110</sup> The Section 809 Panel stated one of its reprogramming recommendations “would require a certain degree of trust” on the part of the Office of the Secretary of Defense, the military services and defense agencies, and the congressional committees.<sup>111</sup>

Questions may include: How may Congress impose sanctions on violations of comity and trust? How may efforts to do so be constrained? How may Congress and DOD seek to build comity and trust?

## **Balancing congressional control and DOD fiscal flexibility**

In the past, some Members have expressed concerns that DOD has relied more on transferring and reprogramming funds and less on undertaking a deliberative budget formulation and fiscal management process.<sup>112</sup> The conference report accompanying the Department of Defense Appropriations Act, 2008, states, “The conferees have long held that better management and budget preparation is the solution to DoD’s needs, not greater fiscal flexibility which would result in less accountability to America’s taxpayers.”<sup>113</sup>

As a way to balance congressional control and DOD fiscal flexibility, Congress has generally limited DOD general and special transfer authority to a specific dollar amount rather than a percentage of the total budget authority.

Questions may include: Would a shift to percentage limits for transfer authority provide more or less flexibility to DOD? Would a shift to percentage limits for transfer authority change incentives for DOD or the President, or affect the ability of Congress to exercise its power of the purse?

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<sup>108</sup> Senator Jack Reed, “Reed Blasts Trump’s Effort to Divert Another \$7.2 Billion from U.S. Military for a Wasteful Border Wall,” press release, January 15, 2020, <https://www.reed.senate.gov/news/releases/reed-blasts-trumps-effort-to-divert-another-72-billion-from-us-military-for-a-wasteful-border-wall>.

<sup>109</sup> Connor O’Brien, “On NDAA, progressive House lawmakers ready for battle,” *Politico*, March 6, 2020, <https://subscriber.politicopro.com/article/2020/03/on-ndaa-progressive-house-lawmakers-ready-for-battle-1884570>.

<sup>110</sup> Government Accountability Office, *BUDGET REPROGRAMMING: Department of Defense Process for Reprogramming Funds*, July 1986, p. 23, <https://www.gao.gov/assets/80/75702.pdf>.

<sup>111</sup> Department of Defense, Defense Technical Information Center, Section 809 Panel, “Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 3 of 3,” January 2019, p. 185, [https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel\\_Vol3-Report\\_Jan2019\\_part-1\\_0509.pdf#page=385](https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel_Vol3-Report_Jan2019_part-1_0509.pdf#page=385).

<sup>112</sup> H.Rept. 110-279, p. 9.

<sup>113</sup> H.Rept. 108-283, p. 60.

Similarly, while some observers argue lower reprogramming thresholds allow for greater oversight, others say they potentially create delays and less flexibility for smaller programs.

Questions may include: Should Congress increase dollar amount reprogramming thresholds to match their previous levels relative to inflation and the DOD budget, including to \$20 million for RDT&E and to \$40 million for procurement, as recommended by the Section 809 panel?<sup>114</sup> Should Congress increase to 50% from 20% the percentage limitation in reprogramming thresholds for RDT&E and procurement, as recommended by the panel?

## **DOD opportunity costs in transferring and reprogramming funds**

Dollar amount limits on DOD general and special transfer authority create a finite amount of funding that DOD can transfer or reprogram in a given fiscal year. As a result, funding used for certain reprogramming actions is funding that cannot be used on others.

Questions may include: What are the opportunity costs for transferring and reprogramming funds—that is, what reprogramming actions were deferred or canceled to redirect FY2019 and FY2020 funds for barrier construction along the U.S.-Mexico border? Did any of these transfers result in disruptions to procurement or RDT&E programs? If so, how were programs and/or contractors impacted? On the other hand, to what degree did these transfers enhance U.S. national security? How does DOD determine which reprogramming actions should take priority over others?

## **Level of effort needed for Congress to monitor DOD reprogramming actions may be high**

Some observers say the level of effort in Congress necessary to monitor DOD reprogramming actions is high because of the manner in which the department provides the information to Congress. Others argue that DOD has improved the quality and timeliness of reporting certain types of reprogramming actions. The DOD Comptroller publishes DD 1415 reprogramming action forms in portable document format (PDF). This format may make it difficult to search and analyze reprogramming actions on a line-item level. As GAO has previously noted, improvements in the forms used to process reprogramming actions may reduce the level of effort needed for congressional review and oversight.<sup>115</sup> To improve oversight, therefore, Congress may wish to encourage or require DOD to publish reprogramming actions in a standardized, machine-readable format—such as a comma-separated file, spreadsheet, or database—to reduce the level of effort necessary for Congress and nonfederal stakeholders to monitor and analyze the information.

## **DOD response to contingencies and emergencies, such as COVID-19**

DOD typically responds to contingencies and emergencies, such as COVID-19, in part by transferring and reprogramming funds to support higher priorities. As previously discussed, DOD

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<sup>114</sup> Department of Defense, Defense Technical Information Center, Section 809 Panel, “List of Section 809 Panel Recommendations,” <https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Promo-Outreach/ImplementationTracker.pdf>.

<sup>115</sup> Government Accountability Office, *BUDGET REPROGRAMMING, Opportunities to Review DOD’s Reprogramming Process*, July 1989, <https://www.gao.gov/products/GAO/NSIAD-89-138>.

identified 30% in department funding from the CARES Act for reallocation.<sup>116</sup> Ellen Lord, under secretary of defense for acquisition and sustainment, has said the department may transfer O&M funding for COVID-19 response: “There is the potential ... to use some of our O&M money for that. However, we do have pretty significant needs in terms of readiness and modernization in order to perform our primary mission, which is national security.”<sup>117</sup> In response to the slowdown in military training and recruiting during the pandemic, some analysts have said the department may seek to transfer before the end of the fiscal year unobligated FY2020 operation and maintenance and military personnel appropriations to other accounts for contracting purposes.<sup>118</sup>

## Outlook

Debates in Congress over defense authorization and appropriations legislation may provide opportunities for Members to influence DOD policy on transfer and reprogramming authorities.

Congress may consider how much transfer and reprogramming authority to provide DOD in FY2021 and whether to approve, reject, or modify the Trump Administration’s requested FY2021 limits for general and special transfer authority. Congressional efforts to increase or decrease DOD general and special transfer authority in FY2021 may be constrained by an agreement to maintain existing transfer authorities for FY2020 and FY2021 as part of the Bipartisan Budget Act of 2019 (P.L. 116-37).<sup>119</sup> The version of the FY2021 National Defense Authorization Act reported by the Senate Armed Services Committee would keep DOD general and special transfer authority limits unchanged and totaling \$6 billion (\$4 billion for general transfer authority and \$2 billion for special transfer authority), according to an executive summary of the legislation.<sup>120</sup>

U.S. policymakers may consider how changing DOD general and transfer authority limits could affect, on one hand, its ability to control DOD action through appropriations and, on the other hand, DOD’s ability to respond to unanticipated budgetary or national security conditions. U.S. policymakers may also consider how changing DOD reprogramming thresholds—either by increasing or decreasing dollar amount or percentage thresholds—could affect, on one hand, its ability to direct and oversee DOD action through report language and, on the other hand, DOD’s ability to respond to unanticipated budgetary or national security conditions. In FY2020, Congress agreed to set the dollar amount reprogramming threshold at \$10 million, which represented a decrease for certain appropriation titles.<sup>121</sup> The Section 809 Panel has recommended

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<sup>116</sup> Aaron Gregg and Erica Werner, “Pentagon’s coronavirus plan includes millions for missile tubes and body armor,” *The Washington Post*, June 4, 2020, <https://www.washingtonpost.com/business/2020/06/04/pentagons-coronavirus-plan-includes-millions-missile-tubes-body-armor/> (see link to “Read the Pentagon’s Cares Act spending plan in full” at [https://www.washingtonpost.com/context/defense-department-cares-act-spending-plan-may-29-2020/c3fcd775-711d-440c-b198-f9caa8ce0687/?itid=lk\\_interstitial\\_manual\\_14](https://www.washingtonpost.com/context/defense-department-cares-act-spending-plan-may-29-2020/c3fcd775-711d-440c-b198-f9caa8ce0687/?itid=lk_interstitial_manual_14)).

<sup>117</sup> Department of Defense, “Undersecretary Of Defense (A&S) Ellen Lord Holds a Press Briefing on COVID-19 Response Efforts,” transcript, April 30, 2020, <https://www.defense.gov/Newsroom/Transcripts/Transcript/Article/2172171/undersecretary-of-defense-as-ellen-lord-holds-a-press-briefing-on-covid-19-resp/>.

<sup>118</sup> Tony Bertuca, “DOD sets internal deadline for budget reprogramming proposals,” *Inside Defense*, April 28, 2020, <https://insidedefense.com/daily-news/dod-sets-internal-deadline-budget-reprogramming-proposals>.

<sup>119</sup> Rep. Joe Courtney, “Bipartisan Budget Agreement for Fiscal Years 2020 and 2021,” link from press release, July 25, 2019, <https://courtney.house.gov/sites/courtney.house.gov/files/Bipartisan%20Budget%20Act%202019.pdf>.

<sup>120</sup> Senate Armed Services Committee, “SASC Complete Markup of Fiscal Year 2021 National Defense Authorization Act,” press release, June 11, 2020, <https://www.armed-services.senate.gov/press-releases/sasc-complete-markup-of-fiscal-year-2021-national-defense-authorization-act> (see link at the bottom of the release to the Executive Summary at <https://www.armed-services.senate.gov/imo/media/doc/FY%2021%20NDAA%20Summary.pdf>).

<sup>121</sup> Explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-

increasing dollar amount reprogramming thresholds to account for inflation and to match previous levels of reprogramming thresholds relative to the DOD budget, including to \$20 million for RDT&E and to \$40 million for procurement.<sup>122</sup>

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93) in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10613, <https://www.govinfo.gov/content/pkg/CREC-2019-12-17/pdf/CREC-2019-12-17-house-bk2.pdf>.

<sup>122</sup> Department of Defense, Defense Technical Information Center, Section 809 Panel, “Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 3 of 3,” January 2019, p. 192, [https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel\\_Vol3-Report\\_Jan2019\\_part-1\\_0509.pdf#page=392](https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume3/Sec809Panel_Vol3-Report_Jan2019_part-1_0509.pdf#page=392).

## Appendix A. Selected Law

### 10 U.S.C. §2214, “Transfer of Funds: Procedure and Limitations”

(a) PROCEDURE FOR TRANSFER OF FUNDS.-Whenever authority is provided in an appropriation Act to transfer amounts in working capital funds or to transfer amounts provided in appropriation Acts for military functions of the Department of Defense (other than military construction) between such funds or appropriations (or any subdivision thereof), amounts transferred under such authority shall be merged with and be available for the same purposes and for the same time period as the fund or appropriations to which transferred.

(b) LIMITATIONS ON PROGRAMS FOR WHICH AUTHORITY MAY BE USED.-Such authority to transfer amounts-

(1) may not be used except to provide funds for a higher priority item, based on unforeseen military requirements, than the items for which the funds were originally appropriated; and

(2) may not be used if the item to which the funds would be transferred is an item for which Congress has denied funds.

(c) NOTICE TO CONGRESS.-The Secretary of Defense shall promptly notify the Congress of each transfer made under such authority to transfer amounts.

(d) Limitations on Requests to Congress for Reprogrammings.-Neither the Secretary of Defense nor the Secretary of a military department may prepare or present to the Congress, or to any committee of either House of the Congress, a request with respect to a reprogramming of funds-

(1) unless the funds to be transferred are to be used for a higher priority item, based on unforeseen military requirements, than the item for which the funds were originally appropriated; or

(2) if the request would be for authority to reprogram amounts to an item for which the Congress has denied funds.

### Section 8005 of P.L. 116-93

SEC. 8005—Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed \$4,000,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, 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: *Provided*, That such authority to transfer may not be used 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 funds are requested has been denied by the Congress: *Provided further*, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act: *Provided further*, 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:

*Provided further*, That a request for multiple reprogrammings of funds using authority provided in this section shall be made prior to June 30, 2020: *Provided further*, That transfers among military personnel appropriations shall not be taken into account for purposes of the limitation on the amount of funds that may be transferred under this section.

### **Section 9002 of P.L. 116-93**

SEC. 9002. Upon the determination of the Secretary of Defense that such action is necessary in the national interest, the Secretary may, with the approval of the Office of Management and Budget, transfer up to \$2,000,000,000 between the appropriations or funds made available to the Department of Defense in this title: *Provided*, That the Secretary shall notify the Congress promptly of each transfer made pursuant to the authority in this section: *Provided further*, That the authority provided in this section is in addition to any other transfer authority available to the Department of Defense and is subject to the same terms and conditions as the authority provided in section 8005 of this Act.

## Appendix B. Supporting Data Tables

**Table B-1. DOD Transfer Authority Limits for Base and Non-Base Funding in Selected Provisions of Defense and Supplemental Appropriations Acts, FY2001 - FY2020**

(dollars amounts in billions)

| Fiscal Year | Amount             | Limit Type     | Section | Public Law   | Bill Type    |
|-------------|--------------------|----------------|---------|--------------|--------------|
| 2010        | \$4.5 <sup>a</sup> | Base Limit     | 302     | P.L. 111-212 | Supplemental |
|             | \$4.0              | Non-Base Limit | 9002    | P.L. 111-118 | Regular      |
| 2011        | \$4.0              | Base Limit     | 8005    | P.L. 112-10  | Regular      |
|             | \$4.0              | Non-Base Limit | 9002    | P.L. 112-10  | Regular      |
| 2012        | \$3.75             | Base Limit     | 8005    | P.L. 112-74  | Regular      |
|             | \$4.0              | Non-Base Limit | 9002    | P.L. 112-74  | Regular      |
| 2013        | \$4.0              | Base Limit     | 8005    | P.L. 113-6   | Regular      |
|             | \$3.5              | Non-Base Limit | 9002    | P.L. 113-6   | Regular      |
| 2014        | \$5.0              | Base Limit     | 8005    | P.L. 113-76  | Regular      |
|             | \$4.0              | Non-Base Limit | 9002    | P.L. 113-76  | Regular      |
| 2015        | \$4.5              | Base Limit     | 8005    | P.L. 113-235 | Regular      |
|             | \$3.5              | Non-Base Limit | 9002    | P.L. 113-235 | Regular      |
| 2016        | \$4.5              | Base Limit     | 8005    | P.L. 114-113 | Regular      |
|             | \$4.5              | Non-Base Limit | 9002    | P.L. 114-113 | Regular      |
| 2017        | \$4.5              | Base Limit     | 8005    | P.L. 115-31  | Regular      |
|             | \$2.5              | Non-Base Limit | 9002    | P.L. 115-31  | Regular      |
| 2018        | \$4.25             | Base Limit     | 8005    | P.L. 115-141 | Regular      |
|             | \$2.25             | Non-Base Limit | 9002    | P.L. 115-141 | Regular      |
| 2019        | \$4.0              | Base Limit     | 8005    | P.L. 115-245 | Regular      |
|             | \$2.0              | Non-Base Limit | 9002    | P.L. 115-245 | Regular      |
| 2020        | \$4.0              | Base Limit     | 8005    | P.L. 116-93  | Regular      |
|             | \$2.0              | Non-Base Limit | 9002    | P.L. 116-93  | Regular      |

**Source:** Regular Department of Defense Appropriations Acts and supplemental appropriations for FY2001 - FY2020.

**Notes:** Figures exclude additional transfer authority amounts in certain other provisions, including for transfer accounts, working capital funds, and emergency requirements.

a. Original transfer authority limit revised in subsequent legislation.

**Table B-2. Requested, Authorized, and Appropriated DOD General and Special Transfer Authority Limits, and Related Legislative Provisions, FY2013-FY2019**  
(amounts in billions of dollars)

| Fiscal Year | Authority Type             | Req. Amount  | Related Provision                            | Auth. Amount | Related Provision       | Approp. Amount | Related Provision       |
|-------------|----------------------------|--------------|--|--------------|-------------------------|----------------|-------------------------|
| 2013        | General Transfer Authority | \$5.0        | Table, H.Rept. 112-705                       | \$4.0        | Sec. 1001, P.L. 112-239 | \$4.0          | Sec. 8005, P.L. 113-6   |
|             | Special Transfer Authority | \$4.0        | Table, H.Rept. 112-705                       | \$3.0        | Sec. 1522, P.L. 112-239 | \$3.5          | Sec. 9002, P.L. 113-6   |
|             | <b>Subtotal</b>            | <b>\$9.0</b> |  | <b>\$7.0</b> |                         | <b>\$7.5</b>   |                         |
| 2014        | General Transfer Authority | \$4.0        | Table, Committee Print (86-280) <sup>a</sup> | \$5.0        | Sec. 1001, P.L. 113-66  | \$5.0          | Sec. 8005, P.L. 113-76  |
|             | Special Transfer Authority | \$4.0        | Table, Committee Print (86-280) <sup>a</sup> | \$4.0        | Sec. 1522, P.L. 113-66  | \$4.0          | Sec. 9002, P.L. 113-76  |
|             | <b>Subtotal</b>            | <b>\$8.0</b> |  | <b>\$9.0</b> |                         | <b>\$9.0</b>   |                         |
| 2015        | General Transfer Authority | \$5.0        | Table, Committee Print (92-738) <sup>a</sup> | \$4.5        | Sec. 1001, P.L. 113-291 | \$4.5          | Sec. 8005, P.L. 113-235 |
|             | Special Transfer Authority | \$4.0        | Table, Committee Print (92-738) <sup>a</sup> | \$3.5        | Sec. 1522, P.L. 113-291 | \$3.5          | Sec. 9002, P.L. 113-235 |
|             | <b>Subtotal</b>            | <b>\$9.0</b> |  | <b>\$8.0</b> |                         | <b>\$8.0</b>   |                         |
| 2016        | General Transfer Authority | \$5.0        | Table, Committee Print (97-637) <sup>a</sup> | \$4.5        | Sec. 1001, P.L. 114-92  | \$4.5          | Sec. 8005, P.L. 114-113 |
|             | Special Transfer Authority | \$3.5        | Table, Committee Print (97-637) <sup>a</sup> | \$3.5        | Sec. 1522, P.L. 114-92  | \$4.5          | Sec. 9002, P.L. 114-113 |
|             | <b>Subtotal</b>            | <b>\$8.5</b> |  | <b>\$8.0</b> |                         | <b>\$9.0</b>   |                         |
| 2017        | General Transfer Authority | \$5.0        | Table, H.Rept. 114-840                       | \$4.5        | Sec. 1001, P.L. 114-328 | \$4.5          | Sec. 8005, P.L. 115-31  |
|             | Special Transfer Authority | \$4.5        | Table, H.Rept. 114-840                       | \$3.5        | Sec. 1512, P.L. 114-328 | \$2.5          | Sec. 9002, P.L. 115-31  |
|             | <b>Subtotal</b>            | <b>\$9.5</b> |  | <b>\$8.0</b> |                         | <b>\$7.0</b>   |                         |
| 2018        | General Transfer Authority | \$5.0        | Table, H.Rept. 115-404                       | \$4.5        | Sec. 1001, P.L. 115-91  | \$4.25         | Sec. 8005, P.L. 115-141 |



| Fiscal Year | Authority Type             | Req. Amount  | Related Provision      | Auth. Amount | Related Provision       | Approp. Amount | Related Provision       |
|-------------|----------------------------|--------------|------------------------|--------------|-------------------------|----------------|-------------------------|
|             | Special Transfer Authority | \$4.5        | Table, H.Rept. 115-404 | \$2.5        | Sec. 1512, P.L. 115-91  | \$2.25         | Sec. 9002, P.L. 115-141 |
|             | <b>Subtotal</b>            | <b>\$9.5</b> |                        | <b>\$7.0</b> |                         | <b>\$6.5</b>   |                         |
| 2019        | General Transfer Authority | \$5.0        | Table, H.Rept. 115-874 | \$4.5        | Sec. 1001, P.L. 115-232 | \$4.0          | Sec. 8005, P.L. 115-245 |
|             | Special Transfer Authority | \$4.5        | Table, H.Rept. 115-874 | \$3.5        | Sec. 1512, P.L. 115-232 | \$2.0          | Sec. 9002, P.L. 115-245 |
|             | <b>Subtotal</b>            | <b>\$9.5</b> |                        | <b>\$8.0</b> |                         | <b>\$6.0</b>   |                         |
| 2020        | General Transfer Authority | \$5.0        | Table, S.Rept. 116-48  | \$4.0        | Sec. 1001, P.L. 116-92  | \$4.0          | Sec. 8005, P.L. 116-93  |
|             | Special Transfer Authority | \$4.5        | Table, S.Rept. 116-48  | \$2.0        | Sec. 1520A, P.L. 116-92 | \$2.0          | Sec. 9002, P.L. 116-93  |
|             | <b>Subtotal</b>            | <b>\$9.5</b> |                        | <b>\$6.0</b> |                         | <b>\$6.0</b>   |                         |

**Source:** CRS analysis of recurring general provision (Section 8005) of the annual Department of Defense Appropriations Act and the “General Transfer Authority” section of the annual National Defense Authorization Act (NDAA), and recurring provision (Section 9002) of the defense appropriations act and the “Special Transfer Authority” section of the NDAA, for the fiscal years FY2013-FY2020, as well as accompanying conference reports or explanatory statements.

**Notes:** Req. is requested; Auth. is authorized; Approp. is appropriated. Figures exclude additional transfer authority amounts in certain other provisions, including for transfer accounts, working capital funds, and emergency requirements.

- a. Number refers to jacket identification (jacket ID) as listed on the Government Printing Office (GPO) GovInfo.gov website.

**Table B-3. Requested and Appropriated General and Special Transfer Authority Limits (Combined) and as a Percentage of Budget Authority in DOD Appropriations Acts, FY2013-FY2020**  
(dollar amounts in billions)

| Fiscal Year | Requested          |                      |                      | Appropriated       |                      |                      |
|-------------|--------------------|----------------------|----------------------|--------------------|----------------------|----------------------|
|             | Transfer Authority | DOD Appropriations   | Transfer Authority % | Transfer Authority | DOD Appropriations   | Transfer Authority % |
| 2013        | \$9.0              | \$596.8 <sup>a</sup> | 1.5%                 | \$7.5              | \$597.1 <sup>a</sup> | 1.3%                 |
| 2014        | \$8.0              | \$589.4 <sup>b</sup> | 1.4%                 | \$9.0              | \$565.1 <sup>b</sup> | 1.6%                 |
| 2015        | \$9.0              | \$547.9 <sup>c</sup> | 1.6%                 | \$8.0              | \$547.8 <sup>c</sup> | 1.5%                 |
| 2016        | \$8.5              | \$571.7 <sup>d</sup> | 1.5%                 | \$9.0              | \$566.6 <sup>d</sup> | 1.6%                 |
| 2017        | \$9.5              | \$569.9 <sup>e</sup> | 1.7%                 | \$7.0              | \$571.5 <sup>e</sup> | 1.2%                 |
| 2018        | \$9.5              | \$623.3 <sup>f</sup> | 1.5%                 | \$6.5              | \$647.4 <sup>f</sup> | 1.0%                 |
| 2019        | \$9.5              | \$668.4 <sup>g</sup> | 1.4%                 | \$6.0              | \$667.3 <sup>g</sup> | 0.9%                 |

| Fiscal Year | Requested          |                      |                      | Appropriated       |                      |                      |
|-------------|--------------------|----------------------|----------------------|--------------------|----------------------|----------------------|
|             | Transfer Authority | DOD Appropriations   | Transfer Authority % | Transfer Authority | DOD Appropriations   | Transfer Authority % |
| 2020        | \$9.5              | \$690.6 <sup>h</sup> | 1.4%                 | \$6.0              | \$687.8 <sup>h</sup> | 0.9%                 |

**Source:** CRS analysis of recurring general provision (Section 8005) of the annual Department of Defense Appropriations Act and the “General Transfer Authority” section of the annual National Defense Authorization Act (NDAA), and recurring provision (Section 9002) of the defense appropriations act and the “Special Transfer Authority” section of the NDAA, for the fiscal years FY2013-FY2020, as well as accompanying conference reports or explanatory statements. For links to primary sources for requested and enacted transfer authority amounts, see **Table B-2**. For links to conference reports or explanatory statements detailing enacted amounts in the annual defense appropriations act, see table notes below.

**Notes:** DOD Appropriations is Department of Defense Appropriations Act. Figures exclude additional transfer authority amounts in certain other provisions, including for transfer accounts, working capital funds, and emergency requirements.

- a. Figure from funding table in Senate explanatory statement accompanying the Department of Defense Appropriations Act, 2013 (Division C of P.L. 113-6) in the *Congressional Record*, daily edition, vol. 159 (March 11, 2013), p. S1546.
- b. Figure from funding table in joint explanatory statement accompanying the Department of Defense Appropriations Act, 2014 (Division C of P.L. 113-76) in the *Congressional Record*, daily edition, vol. 160 (January 15, 2014), p. H832.
- c. Figure from funding table in explanatory statement accompanying the Department of Defense Appropriations Act, 2015 (Division C of P.L. 113-235) in the *Congressional Record*, daily edition, vol. 160 (December 11, 2014), p. H9647.
- d. Figure from funding table in explanatory statement accompanying the Department of Defense Appropriations Act, 2016 (Division C of P.L. 114-113) in the *Congressional Record*, daily edition, vol. 161 (December 17, 2015), p. H10055.
- e. Figure from funding table in explanatory statement accompanying the Department of Defense Appropriations Act, 2017 (Division C of P.L. 115-31) in the *Congressional Record*, daily edition, vol. 163 (May 3, 2017), p. H3702.
- f. Figure from funding table in explanatory statement accompanying the Department of Defense Appropriations Act, 2018 (Division C of P.L. 115-141) in the *Congressional Record*, daily edition, vol. 164 (March 22, 2018), p. H2434.
- g. Figure from funding table in joint explanatory statement accompanying the Department of Defense Appropriations Act, 2019 (Division A of P.L. 115-245) released by the Senate Appropriations Committee on September 13, 2018, p. 147.
- h. Figure from funding table in explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H. 10960.

**Table B-4. DOD Operation and Maintenance (O&M) Budget Subactivity Groups (SAGs) Subject to Reprogramming Threshold, FY2020**

| Appropriation Account           | Subactivity Group (SAG)            |
|---------------------------------|------------------------------------|
| Operation and Maintenance, Army | Maneuver units                     |
|                                 | Modular support brigades           |
|                                 | Land forces operations support     |
|                                 | Aviation assets                    |
|                                 | Force readiness operations support |
|                                 | Land forces depot maintenance      |
|                                 | Base operations support            |

| <b>Appropriation Account</b>                   | <b>Subactivity Group (SAG)</b>   |
|--|--|
|  | Facilities sustainment, restoration, and modernization<br>Specialized skill training<br>Recruiting and advertising   |
| Operation and Maintenance, Army National Guard | Other personnel support/recruiting and advertising   |
| Operation and Maintenance, Navy                | Mission and other flight operations<br>Fleet air training<br>Aircraft depot maintenance<br>Mission and other ship operations<br>Ship depot maintenance<br>Facilities sustainment, restoration, and modernization               |
| Operation and Maintenance, Marine Corps        | Operational forces<br>Field logistics<br>Depot maintenance<br>Facilities sustainment, restoration, and modernization   |
| Operation and Maintenance, Air Force           | Primary combat forces<br>Combat enhancement forces<br>Depot purchase equipment maintenance<br>Facilities sustainment, restoration, and modernization<br>Contractor logistics support and system support<br>Flying hour program |
| Operation and Maintenance, Air Force Reserve   | Primary combat forces  |
| Operation and Maintenance, Air National Guard  | Aircraft operations  |

**Source:** Figures from funding table in explanatory statement accompanying the Department of Defense Appropriations Act, 2020 (Division A of P.L. 116-93) in the *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H10652.

**Notes:** These reprogramming thresholds are subject to change in conference reports or explanatory statements accompanying future appropriations acts.

## Author Contact Information

Brendan W. McGarry  
Analyst in U.S. Defense Budget  
bmcgarry@crs.loc.gov, 7-2023

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