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Military Construction: Authorities and Processes

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Military Construction: Authorities and Processes

Congress appropriates several billion dollars annually to support construction projects for the Department of Defense's (DOD's) worldwide military installations. The military construction (MILCON) program enables the DOD to plan, program, design, and build infrastructure including runways, piers, warehouses, barracks, schools, hospitals, child development centers, and other facilities intended to support U.S. military forces at home and abroad. The MILCON process involves DOD and Congress acting together to build military facilities, beginning with development of new military infrastructure requirements and culminating in a completed facility. The lengthy and complex process can take five to seven years or more. Summarized, the MILCON process encompasses multiple steps, to include:

- Identifying the need for a new facility, which can involve input from installation commanders, military department headquarters, weapon system program offices, and combatant commanders;
- Prioritizing construction projects within the military chain of command for the military departments or other DOD components;
- Consolidation and budgeting within the Office of the Secretary of Defense to create the military construction portion of the annual budget request and Future Years Defense Program (FYDP);
- Finalizing the annual President's budget request to Congress with a final list of projects seeking funding for the current budget year;
- Reviewing and adjusting the list of projects by congressional defense committees;
- Passage and enactment of authorization and appropriation acts; and
- Design and execution of the construction projects by a designated DOD construction agent.

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Introduction

The military missions of Department of Defense (DOD) and the three military departments—the Army, the Navy and the Air Force—drive requirements for facilities and infrastructure at military installations around the world.¹ As missions and technologies change, or as organizations move to or away from installations, the departments may need to build or dispose of facilities and infrastructure to meet new requirements. Similarly, the departments may need to replace, reconfigure, or modernize facilities and supporting infrastructure as buildings age or become obsolete. Typically, military construction (MILCON) accounts for less than 2% of the total DOD budget.²

While each of the military departments has a unique process for vetting and setting MILCON priorities, in general the process conforms with DOD’s Planning, Programming, Budgeting, and Execution (PPBE) process for resource allocation.³ Most projects can take three to five years or more to move from the time when senior military officials identify the need for construction of a new facility (i.e., a requirements determination) through the planning, programming, and budgeting processes. When adding the time required for congressional approval, implementation of the federal contracting process (e.g., soliciting bids, awarding a contract), and executing the construction project, the overall process could span five to seven years or more.

This report describes and explains the life cycle of the MILCON process that involves both DOD and Congress. The cycle typically begins with DOD identifying a new construction requirement and developing cost estimates. It involves Congress’ reviewing, adjusting and approving military construction plans. After the President signs into law the authorizations and appropriations for new military construction projects, the DOD and military departments manage and execute those projects. This report provides details about the various federal statutes that govern the process, and outlines some of the legal and institutional challenges that can arise.

The Legal and Budgetary Framework

Title 10, Chapter 169, of the *United States Code* (hereafter *U.S. Code* or U.S.C.) is titled, “Military Construction and Military Family Housing,” and contains most of the provisions governing military construction. Section 2801 of Chapter 169 provides definitions of certain terms used throughout the chapter and elsewhere in law. In general, military construction applies to all buildings, structures, training ranges, and other improvements to real property that are

¹ Military departments include the Department of the Army, Department of the Navy (including the Navy and Marine Corps), and the Department of the Air Force (including the Air Force and the Space Force).

² The DOD portion of the FY2023 President’s budget request included a total of \$12.2 billion for MILCON accounts (including family housing), about 1.6% of the department’s total requested discretionary budget authority of \$773 billion. For more information, see DOD, Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, *Defense Budget Overview: United States Department of Defense Fiscal Year 2023 Budget Request*, Table A-1, “DoD Total (Base + Supplemental) Budget by Appropriation Title,” April 2022, at https://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2023/FY2023_Budget_Request_Overview_Book.pdf#page=135.

³ Exceptions include DOD authorities under 10 U.S.C. §§2803, 2804, 2808, and 2854, which are generally not part of the PPBE process. See DOD, Department of Defense Directive (DODD) 4270.5, *Military Construction*, updated August 31, 2018, p. 3, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/427005p.pdf>. For more information on the PPBE process, see CRS In Focus IF10429, *Defense Primer: Planning, Programming, Budgeting, and Execution (PPBE) Process*, by Brendan W. McGarry and CRS Report R47178, *DOD Planning, Programming, Budgeting, and Execution (PPBE): Overview and Selected Issues for Congress*, by Brendan W. McGarry.

located on a military installation.⁴ The term *military installation* is defined in 10 U.S.C. §2801(c)(4) to mean “a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense, without regard to the duration of operational control.”⁵

For the reserve components, Chapter 1803 of Title 10, “Facilities for Reserve Components,” provides additional information pertaining to joint construction, real property exchange, and other items related to Reserve Component facilities.

Each year, the DOD submits a detailed list of MILCON project funding requests as part of the annual President’s budget request. In most instances, Congress appropriates and authorizes in a single budget year MILCON funding for individual projects in a lump sum for the entire project duration, regardless of how long the construction duration. Normally, the money remains available for obligation for five years.

The legal authorities and requirements for projects vary depending on a host of factors, including the size of the project and the circumstances that may require it. Unique authorities exist for national emergencies, for projects supporting contingency operations, and for projects that foster energy resilience and energy conservation.

Several MILCON-related statutes require DOD officials to notify Congress, specifically the “appropriate committees of Congress,” about the intent to exercise legal or budgetary authorities. Title 10 U.S.C. §2801 defines such committees to mean the congressional defense committees (i.e., the House and Senate Committees on Armed Services and Appropriations) and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate. Those statutes may also impose a required waiting period before the Secretary concerned can move forward with the project. This waiting period provides Congress an opportunity for oversight, allowing time for Members or committees to ask questions or provide additional direction about individual projects.

Authority for MILCON Projects

The annual National Defense Authorization Act (NDAA) provides authority for DOD’s construction activities.⁶ Pursuant to 10 U.S.C. §2802, the Secretary of Defense and the Secretaries of the military departments may carry out such MILCON projects, land acquisitions, and defense

⁴ See 10 U.S.C. §2801. The statute defines the term military construction as “any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy temporary or permanent requirements, or any acquisition of land or construction of a defense access road.” The statute also specifies that a MILCON project include “all military construction work ... necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility (or to produce such portion of a complete and usable facility or improvement as is specifically authorized by law).”

⁵ In addition to the definition in Chapter 169 of Title 10, the term military installation under 16 U.S.C. §670(1)(A) means “any land, or interest in land owned by the United States and administered by the Secretary of Defense or the Secretary of a military department, except land under the jurisdiction of the Assistant Secretary of the Army having responsibility for civil works.”

⁶ The MILCON-unique authorization requirements specified in this section of law are in addition to those established by 10 U.S.C. §114, which states that, for specified DOD programs including MILCON, “no funds may be appropriated for any fiscal year ... unless funds therefor have been specifically authorized in law.”

access road projects “as are authorized by law.”⁷ The section goes on to authorize the following activities:

- surveys and site preparation;
- construction, acquisition, conversion, rehabilitation, and installation of facilities;
- acquisition and installation of equipment and appurtenances integral to the project;
- acquisition and installation of supporting facilities (including utilities) incident to the project; and
- planning, supervision, administration, and overhead incident to the project.

In the practical application of these statutes, Congress typically authorizes individual military construction projects, at a line item level, in the annual NDAA, which originates in the House and Senate Committees on Armed Services (HASC and SASC). Separately, Congress typically appropriates funding for such projects in the annual Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, which originates in the House and Senate Committees on Appropriations (HAC and SAC).⁸

Activities Funded Through MILCON Appropriations

The annual Military Construction, Veterans Affairs, and Related Agencies Appropriations Act provides funding (i.e., budgetary authority) for DOD military construction activities. Often referred to as the *MILCON-VA appropriations bill*, this piece of legislation, in general, appropriates project-specific amounts for major MILCON projects and a variety of other construction and construction-related activities. Components of the legislation include:

- **Military Construction.** Includes funding for specific major construction projects for various military components; the legislation typically lists specific dollar amounts for each individual project.⁹
- **Unspecified Minor Construction.** Includes funding for smaller construction projects—that is, those estimated to cost no more than the current threshold of \$9 million as specified in 10 U.S.C §2805. Unlike major MILCON projects, which by definition exceed that threshold, unspecified minor construction projects are not subject to specific congressional authorization; therefore, the amounts are appropriated as a lump sum for *unspecified minor construction*. These funds can be allocated to specific projects at the discretion of the Secretary concerned in accordance with congressional notification requirements and other restrictions.
- **Planning and Design.** Includes funding for certain activities related to planning and design of military construction projects. Prior to authorizing and appropriating funding for a MILCON project, Congress requires that the project

⁷ 10 U.S.C. §2821 holds a similar requirement for the construction and acquisition of military family housing.

⁸ For more information on authorizations and appropriations, see CRS Report R46497, *Authorizations and the Appropriations Process*, by James V. Saturno; and U.S. Government Accountability Office (GAO), *Principals of Federal Appropriations Law, Fourth Edition, Chapter 2, 2016 Rev.*, GAO-16-464SP, March 10, 2016, pp. 2-54, at <https://www.gao.gov/legal/red-book/overview>.

⁹ MILCON appropriations are usually only available for obligation for five fiscal years from the start of the fiscal year in which they are initially appropriated, after which time the appropriation expires (though remains available for certain limited purposes). After an additional five years, any unexpended MILCON funds are canceled and returned to the U.S. Treasury.

planning and design to be sufficiently developed to include a reliable cost estimate and ready for near-term execution during the current budget year. To meet these requirements, the design phase usually begins before a project is submitted for consideration in the authorization and appropriations process.

- **Family Housing (New Construction and Construction Improvements).** Includes funding for replacement, acquisition, expansion, addition, extension, and alteration of government-owned military family housing.¹⁰
- **Family Housing (Operations and Maintenance).** Includes funding for debt payment, leasing, minor construction, principal and interest charges, insurance premiums, as well as the provision of routine maintenance, utilities, and the general management of government-owned family housing.
- **Military Privatized Housing.** Congress appropriates funding for the *Family Housing Improvement Fund (FHIF)* and the *Military Unaccompanied Housing Improvement Fund (MUHIF)*, separately.¹¹ Appropriations to these funds allow the military services to enter into agreements with private housing companies selected in a competitive process to own, maintain, and operate family housing through a long-term lease. DOD calls these activities the Military Housing Privatization Initiative (MHPI).¹²
- **Base Realignment and Closure (BRAC).** Includes funding for functions associated with the implementation of past BRAC rounds (i.e., continuing environmental restoration and caretaker costs) or, if authorized by Congress, any new BRAC round.¹³
- **North Atlantic Treaty Organization (NATO) Security Investment Program.** Includes U.S. contributions to the acquisition and construction of common-use military facilities and installations (including international military headquarters), and for related expenses for the collective defense of the North Atlantic Treaty Area.¹⁴

Selected MILCON Authorities

Title 10, Chapter 169, of the U.S. Code establishes several distinct authorities that allow DOD to execute MILCON projects and expend funds for other facilities-related activities.¹⁵ Each authority typically has a monetary threshold or other limitation and these restrictions set the

¹⁰ Construction of government-owned military housing for single service members (often referred to as *Unaccompanied Housing*) is typically funded as major MILCON (e.g., a new barracks). However, military family housing is funded through a separate subcategory of the Military Construction budget that is titled “Family Housing.”

¹¹ See subchapter IV of 10 U.S.C. Ch. 169. Treasury funds for FHIF and MUHIF are established under 10 U.S.C. §2883.

¹² See 10 U.S.C. §2883, “Department of Defense Housing Funds.”

¹³ Congress continues to provide funding for the implementation of fiscal year (FY) 2005 BRAC decisions. FY2023 appropriations for BRAC totaled \$435 million. For more information on BRAC implementation, see the U.S. Government Accountability Office (GAO) report GAO-22-105207, *Base Realignment and Closure: DOD Should Provide Congress More Complete and Transparent Information*,” Sep 28, 2022, at <https://www.gao.gov/products/gao-22-105207>.

¹⁴ Title 10 U.S.C. §2806. The 29 member states of NATO share the expense of common-use facilities by a formula under which the United States is responsible for about 21% of the annual construction budget of the alliance.

¹⁵ Chapter 169 of Title 10 also includes authorities that support military housing.

framework for the MILCON budget and authorization process. They are directly tied to congressional oversight of DOD's MILCON-related activities.

In prescribing the various MILCON authorities and responsibilities, Chapter 169 regularly uses the term *Secretary concerned*, referring to the Secretaries of the military departments, or the Secretary of Defense in the case of a defense agency.¹⁶ When examining notification requirements, monetary thresholds, and other statutory limitations, it is important to note whether the specific authority applies to the Secretary of Defense, or to each *Secretary concerned* individually.

Most military construction activities are limited to funding that Congress authorizes and appropriates in MILCON accounts. However, there are certain authorities that allow DOD to use funds from Operation and Maintenance (O&M) accounts for military construction activities in certain situations. The services cite “minor construction” in numerous budget justification documents related to O&M accounts. For example, in the FY2023 budget submission, the Army cited “minor construction” as a component of its request for “Base Operations Support.”¹⁷ The Navy cited “minor construction” in its FY2023 justification documents for Sustainment, Restoration and Modernization.” These are examples of accounts that might use O&M funding for construction projects executed under MILCON-related authorities. Statutes also allow for the use of money from Research, Development, Test and Evaluation (RDT&E) accounts in certain circumstances. **Appendix A** provides a reference table of selected statutes governing MILCON and repair authorities, lists their limitations, where applicable, and notes instances where O&M or RDT&E funds may be used under MILCON authority.

Unspecified Minor Construction (10 U.S.C. §2805)

Title 10, Section 2805, of the *U.S. Code* authorizes the Secretary concerned to use an expedited process for the authorization of *Unspecified Minor Military Construction* projects—currently defined as MILCON projects costing \$9 million or less (adjusted annually to reflect the area cost factor).¹⁸ Construction of new military family housing units is specifically prohibited under this section.¹⁹

In general, the Secretary concerned may allocate funds for specific projects from the Unspecified Minor Construction accounts, which Congress authorizes in the NDAA and funds in the annual appropriations act for this purpose. Examples of Unspecified Minor Military Construction might include the construction of new security gates at the entrance to an installation, new vehicle

¹⁶ 10 U.S.C. §2801.

¹⁷ Department of the Army, Fiscal Year (FY) 2023 Budget Estimates; Operation and Maintenance, Army; see page 191, Budget Activity 01: Operating Forces; Activity Group 13: Land Forces Readiness Support; Detail by Subactivity Group 131: Base Operations Support. At https://www.asafm.army.mil/Portals/72/Documents/BudgetMaterial/2023/Base%20Budget/Operation%20and%20Maintenance/OMA_Volume_1.pdf#page=195.

¹⁸ Through FY2027, the Secretary concerned is required to adjust the dollar limitations specified in 10 U.S.C. §2805 for unspecified minor military construction projects inside the United States to reflect the local area construction cost index for military construction projects; no limitation may exceed \$10 million. An area cost factor, also called a construction cost index, is an indicator of the average cost over time of representative goods and services related to construction cost variations. It serves as a reflection of the inflationary or deflationary changes of a specific sector of construction industry. For more information on unspecified minor military construction, see DOD, *Financial Management Regulation* (7000.14-R), Volume 3, Chapter 17, p. 17-15, July 2021, at https://comptroller.defense.gov/Portals/45/documents/fmr/current/03/03_17.pdf.

¹⁹ 10 U.S.C. §2805(e).

maintenance sheds or additions to existing buildings. Under this authority, any project costing more than \$750,000 requires advance approval by the Secretary concerned. In instances where the estimated total cost of a project is \$4 million or less, the funds may be drawn from MILCON accounts or O&M accounts such as “Base Support Operations,” “Sustainment, Restoration and Modernization,” or other accounts.

For Unspecified Minor Military Construction projects exceeding \$4 million, 10 U.S.C. §2805 requires the Secretary concerned to submit a notification to the *appropriate committees of Congress*.²⁰ This notification is to include a justification for the project as well as the estimated cost. Following a 14-day waiting period, and pending resolution of any questions or concerns from Congress, the project can then be executed.

Laboratory Modernization and Revitalization (10 U.S.C. §2805(d) and §2805(g))

The Secretary of Defense has authority that provides flexibility for funding military construction projects that support the DOD’s laboratories and research facilities. The James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 authorized and funded the “Defense Laboratory Modernization Program,” which grants authority for the Secretary of Defense to use funds from RDT&E accounts to carry out certain military construction projects supporting technology research that are authorized in law.²¹ The statute requires the Defense Secretary to submit project descriptions, justifications and cost estimates with the annual President’s budget request for inclusion in the annual MILCON authorization and appropriations acts. While there is no specific limit on funding for individual projects carried out under this authority, the statute does impose a maximum amount of \$150 million for RDT&E funds that may be obligated in any fiscal year for military construction projects.²² In addition, 10 U.S.C. §2805 provides authority for the use of O&M money to fund certain unspecified minor construction projects intended to enhance DOD laboratories that conduct research, engineering, testing and evaluation activities.²³

Architectural, Engineering, and Design Services (10 U.S.C. §2807)

Title 10, Section 2807, of the *U.S. Code* allows the Secretary concerned to obtain architectural and engineering services, and to initiate construction design, in connection with MILCON projects that are not otherwise authorized by law.²⁴ If the required services are estimated to exceed \$1 million, congressional notification is required and the Secretary concerned must wait

²⁰ 10 U.S.C. §2801 defines the term *appropriate committees of Congress* as the “congressional defense committees and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.” 10 U.S.C. §101 defines the term *congressional defense committees* as “the Committee on Armed Services and the Committee on Appropriations of the Senate; and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

²¹ See 10 U.S.C. §2805(g). Also see FY2023 NDAA (P.L. 117-263). The use of RDT&E money for military construction projects under the Sect. 2805 authority is limited to projects at the statutorily defined DOD Science and Technology Reinvention Laboratories; projects for a DOD federally funded Research and Development Centers that functions primarily as a research laboratory, and projects at DOD facilities in support of a technology development program that is consistent with the fielding of offset technologies [defined as the Advanced Sensor Applications Program].

²² See 10 U.S.C. §2805(g). Also see FY2023 NDAA (P.L. 117-263)

²³ 10 U.S.C. §2805 defines the term *laboratory* to include “a research, engineering, and development center” and “a test and evaluation activity.”

²⁴ The statute allows for the secretary concerned to obtain architectural and engineering services, and to initiate construction design for projects related to family housing, and projects undertaken in connection with 10 U.S.C. §2854, “Restoration or replacement of damaged or destroyed facilities.”

14 days before obligating funding for such purposes. Funding under this authority allows for the DOD to develop a project's planning documents so that the project has a reliable cost estimate to provide to Congress when it is submitted for a funding request during the current year budget cycle and so the project is potentially ready for execution during the fiscal year of its funding.

Initial activities of the MILCON planning process—activities such as installation master planning, project identification, and initial environmental reviews—may not be paid for with MILCON funds. Instead, these activities are typically funded with appropriations from O&M accounts, Research, Development, Testing and Evaluation (RDT&E) or Procurement accounts. Those activities—often called “advance planning”—can occur during the initial analysis of an emerging military requirement and before the service determines the need for a major MILCON project to meet that requirement. Only after the project development gets underway, and planners identify a clear requirement for a new construction project, are MILCON funds used to pay for certain essential parts of the design process, such as engineering and architectural documents for the bidding or construction phase. Funding for these activities are typically authorized and appropriated under a category within the MILCON budget known as “Planning and Design.”

Repair of Facilities (10 U.S.C. §2811)

Title 10, Section 2811, of the *U.S. Code* allows the Secretary concerned to carry out certain “repair” projects on facilities using O&M appropriations.²⁵ The statute defines a repair project as a project “(1) to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose; or (2) to convert a real property facility, system, or component to a new functional purpose without increasing its external dimensions.” There are no budgetary limitations or caps on this authority, but repair projects costing more than \$7.5 million must be approved in advance by the Secretary concerned, and Congress must be notified of the decision to carry out the project. The notification must include a cost estimate and a justification for the project. If the cost estimate exceeds 75% of the estimated cost of a MILCON project to replace the facility, the statute also requires the congressional notification to include an explanation as to why replacement of the facility is not in the best interest of the government. This authority prohibits the construction of new facilities or additions to existing facilities.

The statute for “Repair of Facilities” is broadly written and can be used for a range of projects that do not include expanding the square footage of a structure. For example, converting a warehouse into office space might be characterized as a repair if it meets the statutory requirements. This statute may also provide for the upgrading of HVAC systems or utility systems. The authority to use O&M funds for repairs may provide budget flexibility for the military departments, allowing for the execution of improvements and fixes on a more rapid timeline compared to the traditional MILCON process. The approval process for repair projects is less complex and time consuming, in part because repair projects do not necessarily have to directly compete for priority funding with military construction projects across the entire service.

Examples of exercising this authority include a Navy project using \$7.9 million in O&M money for projects that included converting a barracks at Marine Corps Base Camp Pendleton into a Consolidated Training Facility for the 1st Marine Division schools.²⁶ Another Navy example was

²⁵ The O&M sub-accounts associated with this type of maintenance work are generally referred to as Facilities Sustainment, Restoration, and Modernization, or FSRM.

²⁶ Department of the Navy Installation Energy Resilience Strategy, p. 24, February 2020, at <https://www.secnav.navy.mil/eie/Documents/DON-Installation-Energy-Resilience-Strategy.pdf>

a \$5.3 million project at the Navy base in Rota, Spain, which converted a vacant administration facility into a command and control space supporting forward deployed Naval forces.²⁷

Military Construction Projects for Energy Resilience, Energy Security, and Energy Conservation (10 U.S.C. §2914)

The Energy Resilience and Conservation Investment Program (ERCIP) is funded as a subset of the Military Construction, Defense-Wide account. The ERCIP is intended to fund projects for the military services and other components that improve energy resilience, contribute to mission assurance, save energy, and reduce DOD's energy costs.²⁸ ERCIP accomplishes this through construction of high-efficiency energy systems and technologies or through modernizing existing energy systems.

ERCIP activities are authorized under Title 10, Section 2914, of the U.S. Code, which allows the Secretary of Defense to improve the energy resilience, energy security, and energy conservation of its fixed installations. Energy resilience is defined as “the ability to avoid, prepare for, minimize, adapt to, and recover from anticipated and unanticipated energy disruptions in order to ensure energy availability and reliability sufficient to provide for mission assurance and readiness, including mission essential operations related to readiness, and to execute or rapidly reestablish mission essential requirements.”²⁹

The ERCIP, authorized by Congress in the John Warner National Defense Authorization Act for Fiscal Year 2007 (P.L. 109-364), has focused on projects that support energy resilience for critical mission requirements to help ensure that military installations can continue to maintain operational readiness in the event a crisis, such as a natural disaster or cyberattack that damages the traditional energy grid.³⁰ The department has sought to prioritize energy resilience improvement projects on installations listed on the DOD Mission Assurance Priority List, which is a list of installations across the military that are considered most critical to readiness.³¹

Examples of ERCIP projects authorized in the FY2023 NDAA include \$30 million for a new electrical distribution system at Joint Base Pearl Harbor-Hickam. Another example was authorization of \$27 million for a new power generation and microgrid system for Camp Arifjan in Kuwait.³²

²⁷ Ibid.

²⁸ Mission assurance is a term to describe the ability of a unit or facility to continue performing and achieving military mission's despite any unexpected challenge that may arise, such as a deliberate attack or natural disaster. The statutory definition of energy resilience is included in 10 U.S.C. §101.

²⁹ Statutory definition of energy resilience is included in 10 U.S.C. §101.

³⁰ Statement of Mr. Paul Cramer, performing the duties of Assistant Secretary of Defense (Energy, Installations & Environment), testimony before the Senate Committee on Appropriations Subcommittee on Military Construction and Veterans Affairs, May 18, 2022, at

[https://www.appropriations.senate.gov/imo/media/doc/ASD\(EIE\)%20Cramer_OSD_%20SAC-M%20MILCON%20and%20Family%20Housing%20Hearing%20Statement%20\(5.18.22\).pdf](https://www.appropriations.senate.gov/imo/media/doc/ASD(EIE)%20Cramer_OSD_%20SAC-M%20MILCON%20and%20Family%20Housing%20Hearing%20Statement%20(5.18.22).pdf).

³¹ DOD, Office of the Under Secretary of Defense for Sustainment, *Fiscal Year 2024 Energy Resilience and Conservation Investment Program Guidance from the Deputy Assistant Secretary of Defense (Environment and Energy Resilience)*, October 15, 2021, at

<https://www.acq.osd.mil/eie/Downloads/IE/FY2024%20ERCIP%20Program%20Guidance.pdf>.

³² Fiscal Year 2023 National Defense Authorization Act, PDF page 790, at <https://www.congress.gov/117/bills/hr7776/BILLS-117hr7776enr.pdf#page=790>

ERCIP also funds water resilience projects that improve or enable access to water in support of mission functions; however, ERCIP does not fund projects that are solely for water compliance, meaning a project whose sole objective is to enable installations to meet environmental and permitting standards.³³

The law allows for the Secretary concerned to use MILCON funding for these projects. It also allows for the use of O&M funding for energy conservation and resilience projects if the Secretary concerned notifies the congressional defense committees about the intent to do so. Such notifications require detailed information that includes: the source of those O&M funds to be used; the reasons why the project needs to be prioritized; and, in the case of projects designed specifically for energy conservation, a savings-to-investment ratio that would result from the improved energy efficiencies. The Secretary concerned is limited to a maximum obligation of \$100 million in O&M funding under this authority for any fiscal year. Projects can be carried out only after a seven-day waiting period following notification of the appropriate congressional defense committees.

Projects Supporting Installation Resilience (10 U.S.C. §2815)

The Secretary of Defense has certain authorities to carry out projects that the Secretary determines would enhance military installation resilience, energy security, and energy conservation or address known vulnerabilities of fixed installations.³⁴ Under 10 U.S.C. §2815, the Secretary may carry out projects *at locations outside of a military installation or facility* if the project would “preserve or enhance” the resilience of a military installation or community infrastructure that the Secretary determines is “necessary to maintain, improve or rapidly establish installation mission assurance and mission-essential functions.” The Secretary may also carry out stormwater management projects if those projects support the resilience of a military installation, a defense access road, or “other essential civilian infrastructure.” Such stormwater management projects may also be carried out for the purpose of “protecting nearby waterways and stormwater-stressed ecosystems.”

For projects in support of military installation resilience, the Secretary may use funding from O&M accounts if the Secretary notifies Congress about the estimated cost of the project, the source of funds for the project, and a certification that waiting to seek funding in the next budget cycle under the next Military Construction Authorization Act “would be inconsistent with national security or the protection of health, safety or environmental quality.” Such projects are subject to a seven-day waiting period following congressional notification (and pending resolution of any concerns articulated by Congress). The total maximum amount of O&M funding that can be obligated under Section 2815 cannot exceed \$100 million in any fiscal year.

³³ According to DOD policy guidance, proposed projects that are solely for water compliance (i.e., a project whose sole objective is to enable installations to meet environmental and permitting standards) will not be considered or selected for submission to Congress. DOD will consider water resilience and water security projects for submission when they contribute to overall energy resilience. See DOD, Office of the Under Secretary of Defense for Sustainment, *Fiscal Year 2024 Energy Resilience and Conservation Investment Program Guidance from the Deputy Assistant Secretary of Defense (Environment and Energy Resilience)*, Section 2.4, October 15, 2021, at <https://www.acq.osd.mil/eie/Downloads/IE/FY2024%20ERCIP%20Program%20Guidance.pdf#page=8>.

³⁴ 10 U.S.C. §101(e)(8) defines the term *military installation resilience* as “the capability of a military installation to avoid, prepare for, minimize the effect of, adapt to, and recover from extreme weather events, or from anticipated or unanticipated changes in environmental conditions, that do, or have the potential to, adversely affect the military installation or essential transportation, logistical, or other necessary resources outside of the military installation that are necessary in order to maintain, improve, or rapidly reestablish installation mission assurance and mission-essential functions.” For more information, see CRS Insight IN11566, *Military Installation Resilience: What Does It Mean?*

Emergency Authorities³⁵

The following DOD authorities are intended to be exercised in the event of a national emergency, declaration of war, or other acute circumstance in which the Secretary concerned determines a MILCON project is immediately required to meet national security needs, or in which waiting for the next MILCON authorization act would be inconsistent with national security or national interest.³⁶ These authorities allow for funding and executing MILCON projects outside the traditional PPBE process in certain circumstances.

Emergency Construction (10 U.S.C. §2803)

Under Title 10, Section 2803, of the *U.S. Code*, the Secretary concerned may carry out a MILCON project not otherwise authorized in law if he or she determines that (1) it is vital to national security or to the protection of health, safety, or the quality of the environment, and (2) the project is of such urgency that it cannot wait for the next military construction authorization act (i.e., the NDAA).³⁷ When the Secretary concerned initiates a project under this section, the statute requires the Secretary concerned to notify the appropriate congressional committees in writing. The congressional notification must include the justification for the project, the estimated cost of the project, the reason for invoking Section 2803, and the source of the funds to be used. Accordingly, when requesting approval for an emergency construction project, DOD submits a notification and request for the reprogramming of MILCON funds in accordance with this statute.³⁸ There is a limit of \$50 million that can be obligated under this authority during any given fiscal year. Additionally, a project carried out under this authority must be funded within the total amount of available (unobligated) MILCON appropriations that have not been obligated.³⁹ There is also a mandatory waiting period of five days, beginning on the date the Secretary concerned notifies the appropriate committees of Congress, before the emergency construction project may begin.

Contingency Construction (10 U.S.C. §2804)

Section 2804 of Title 10 of U.S. Code permits the Secretary of Defense to use MILCON funds *appropriated specifically for use under this authority* to carry out a MILCON project without prior congressional authorization, if the Secretary determines that waiting to include it in the next MILCON authorization act would be “inconsistent with national security or national interest.”

³⁵ These authorities are generally not applicable to the planning, programming, and budgeting process.

³⁶ 10 U.S.C. §2804.

³⁷ There is no provision in Title 10 that explicitly grants this authority to the reserve components of the armed forces (as they are defined in Chapter 1003 of Title 10), and the DOD does not consider emergency construction authority as applicable to the reserve components. The reserve component’s real property acquisition authorities are provided in Chapter 1803 of Title 10. See DOD, *Financial Management Regulation* (7000.14-R), Volume 3, Chapter 17, p. 17-19, July 2021, at https://comptroller.defense.gov/Portals/45/documents/fmr/current/03/03_17.pdf.

³⁸ For more information on DOD regulations pertaining to emergency construction authority, see DOD, *Financial Management Regulation* (7000.14-R), Volume 3, Chapter 17, pp. 17-18, July 2021, at https://comptroller.defense.gov/Portals/45/documents/fmr/current/03/03_17.pdf.

³⁹ The Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2023, Division J, Sec. 116, states: “...any funds made available to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, time before the end of the fourth fiscal year after the fiscal year for which funds for such project were made available.” Found at <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf#page=486>.

The authority under Section 2804 is rarely invoked and is generally reserved for projects requested by combatant commands supporting multi-service requirements.⁴⁰ Projects must be carried out using funds specifically appropriated for this authority (which historically have been appropriated as a line item under the Military Construction, Defense-Wide account.)⁴¹ The DOD has a unique process for approving and prioritizing requests under this authority. Combatant commanders verify requests and forward them through the Chairman of the Joint Chiefs of Staff (CJCS), who is responsible for assigning priority among competing requests.⁴² The CJCS then forwards them to the Office of the Secretary of Defense (OSD). OSD may also receive requests from the individual military departments and is responsible for coordinating the congressional notifications.⁴³

Section 2804 requires the Secretary to submit a report in writing to the appropriate congressional committees justifying the project and the invocation of this authority and including cost estimate. Further, although DOD may initiate a MILCON project under this authority without specific congressional authorization, actual construction may not begin prior to the receipt of appropriate DOD and congressional approval.⁴⁴

Construction Authority in the Event of a Declaration of War or National Emergency (10 U.S.C. §2808)

In the event of a declaration of war or declaration of a national emergency by the President *that requires the use of the armed forces*, 10 U.S.C. §2808 permits the Secretary of Defense to initiate, or to authorize the Secretaries of the military departments to carry out, MILCON projects not yet authorized in law.⁴⁵ Any unobligated MILCON or family housing appropriations may be used for construction projects that are “necessary to support such use of the armed forces.” According to the statute, this authority may be exercised “without regard to any other provision of law.” The Secretary of Defense must report to Congress the decision to use this authority, along with the estimated costs of the projects, including any associated real estate transactions. The authority terminates at the end of the war or national emergency.

In the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283), Congress imposed caps on the amount of total funding that the Secretary may initiate under 10 U.S.C. §2808 and also imposed additional congressional notification

⁴⁰ See GAO, *Defense Infrastructure: Actions Needed to Enhance Oversight of Construction Projects Supporting Military Contingency Operations*, GAO 16-406, September 8, 2016, at <https://www.gao.gov/products/gao-16-406>.

⁴¹ For example, the conference report (H.Rept. 112-331) accompanying the Consolidated Appropriations Act, 2012 (P.L. 112-74) listed \$10 million for contingency construction, within the Military Construction, Defense-Wide account. See H.Rept. 112-331, p. 1283. Versions of the legislation since 2012 have not included appropriations for contingency construction under 10 U.S.C. §2804.

⁴² See GAO, *Defense Infrastructure: Actions Needed to Enhance Oversight of Construction Projects Supporting Military Contingency Operations*, GAO-16-406, September 8, 2016, at <https://www.gao.gov/products/gao-16-406>.

⁴³ *Ibid.*

⁴⁴ For more information on Contingency Construction, see DOD, *Financial Management Regulation (7000.14-R)*, Volume 3, Chapter 17, Section 3.3.3, pp. 17-19 to 17-20, July 2021, at https://comptroller.defense.gov/Portals/45/documents/fmr/current/03/03_17.pdf.

⁴⁵ 10 U.S.C. §2808 states that a declaration of a national emergency must be in accordance with the National Emergencies Act of 1976 (50 U.S.C. §1601 et seq.). The National Emergencies Act does not define the term “national emergency.” See CRS Legal Sidebar LSB10267, *Definition of National Emergency under the National Emergencies Act*, by Jennifer K. Elsea.

requirements.⁴⁶ Currently, the total cost of all military construction projects undertaken using the authority during the national emergency may not exceed \$500 million. For funding used for projects only within the United States, the total cost may not exceed \$100 million.

The statute requires the Secretary of Defense to provide a detailed notification that includes the cost of the projects planned under this authority and the impact that would have on previously planned MILCON projects that may be delayed or canceled to fund the emergency project requested.⁴⁷ The Secretary may carry out the project after a five-day waiting period.

For more information on use of 10 U.S.C. §2808 authority, see CRS Insight IN11017, *Military Construction Funding in the Event of a National Emergency*; and CRS Report R45937, *Military Funding for Southwest Border Barriers*.

Restoration or Replacement of Damaged or Destroyed Facilities (10 U.S.C. §2854)

Title 10, Section 2854, of the *U.S. Code* provides unique authorities to fund the restoration or replacement of damaged or destroyed facilities. The Secretary concerned may authorize the use of MILCON funding for projects under this authority subject to notification of the appropriate congressional committees. The notification must include the project's current cost estimate, a justification for carrying out the project under this authority and notification of the source of the funds intended for use. Projects using MILCON funding under this authority are subject to a 14-day waiting period following congressional notification.

The Secretary concerned also may authorize the use of O&M funding for MILCON projects under this authority if the damage at issue was the result of a natural disaster or a terrorism incident. For example, after Hurricane Michael inflicted damage on Tyndall Air Force Base in Florida in 2018, the Air Force invoked this authority for the first time to expedite some new construction.⁴⁸ To exercise this authority, the Secretary concerned must notify the appropriate congressional committees and provide information that includes: the project's current cost estimate; certification that waiting for authorization under the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality; and, in the case of damage to a facility rather than destruction, a certification that the replacement project is more cost-effective than repair or restoration. Use of O&M funds under this authority are subject to a seven-day waiting period following congressional notification. The statute also limits the Secretary concerned to a maximum of \$100 million in O&M funding under this authority for any fiscal year.

Planning, Programming, and Budgeting⁴⁹

Initial ideas for a potential MILCON project can come from a variety of sources. The need for a particular construction project may be part of a top-down initiative (e.g., the creation of new

⁴⁶ P.L. 116-283, §2801; 134 Stat. 4317-4319.

⁴⁷ See §2808(e) Notification Requirement.

⁴⁸ Defense Department, "Tyndall Rebuild taps into unique funding for New Fire Stations," Oct. 17, 2022, at <https://www.dvidshub.net/news/431910/tyndall-rebuild-taps-into-unique-funding-new-fire-stations>.

⁴⁹ This section intentionally condenses the DOD's lengthy and complex process for MILCON design and planning, programming, and budgeting. An expanded and more detailed description of the MILCON process can be found within the report, RAND, *Obtaining Life-Cycle Cost-Effective Facilities in the Department of Defense*, 2013, at https://www.rand.org/pubs/research_reports/RR169.html. For more information on the PPBE process, see CRS In

missions for a given military installation or the movement of units or offices between installations) or it may be the result of modernization or replacement of existing facilities determined at the local level (i.e., by installation commanders and other local stakeholders).

Some planning and design work must begin before DOD will prioritize a project for a funding request in the PPBE process. Congress requires requests for authorization and appropriation to include only those projects that have a reliable cost estimate and projects that can realistically be executed during the fiscal year authorized, so requests must show documented progress on planning and design. Insufficient planning and design development can prevent a project from receiving approval for the current budget year.

The progress of a particular project's planning and design is considered to be an indicator of the accuracy of its cost estimate. Senior military leaders and the OMB may be reluctant to put forth a particular project for the current budget year if the planning and design work remains in its early phase, because incomplete design work increases the risk that a projected cost will increase and result in the need for reprogramming or additional authorization. Projects and their cost estimates are rated in accordance with a standardized cost estimating classification system.⁵⁰ This rating, on a scale of one to five, offers a metric for the maturity of a project's planning and design work. (For example, a Class 5 estimate indicates the most limited planning and design development, and is therefore more likely to see a change in the cost estimate as the project progresses. Conversely, a Class 1 estimate reflects a fuller project definition, with design and engineering work that is near completion, and likely reflects a more accurate estimate of the final construction costs.) While OSD does not have a policy requirement for projects to meet a certain class rating for inclusion in the current year's budget, a rating that reflects more advanced planning and design work can weigh in favor of a project in the final decision-making for the list of MILCON projects to be included in the annual President's budget request.⁵¹

DD Form 1391

Central to the planning-programming-and-budgeting-process for MILCON projects is the Defense Department (DD) Form 1391, a key document that will accompany the individual project through the entire budget approval and legislative process. (See **Appendix B** for an example DD Form 1391). Development of the DD Form 1391 for a particular project starts at the early planning stage and continues as work advances on design, architectural documents, and engineering documents. The form's main components include:

- a cost estimate;

Focus IF10429, *Defense Primer: Planning, Programming, Budgeting, and Execution (PPBE) Process*, by Brendan W. McGarry and CRS Report R47178, *DOD Planning, Programming, Budgeting, and Execution (PPBE): Overview and Selected Issues for Congress*, by Brendan W. McGarry.

⁵⁰ The Cost Estimating Classification System is a commonly accepted standard across the construction industry and is set by the American Association of Cost Engineers (AACE). For additional information, see AACE International Recommended Practice No. 10S-90, *Cost Engineering Terminology*, p. 35, at <https://web.aacei.org/docs/default-source/rps/10s-90.pdf?sfvrsn=70>. For DOD policy, see Under Secretary of Defense for Acquisition and Sustainment, Memorandum "New Military Construction Budget Estimate Requirements," May 17, 2020, as included in the U.S. Army Corps of Engineers, *Instructions for Army MILCON Code 2 Design: Process and Procedures*, see PDF page 61 in Appendix G, at https://rfpwizard.mrsi.erdcdren.mil/MRSI/content/PDRS/Policy/FY25%20Guidance%20and%20Templates/1_Instructions%20for%20FY25%20Army%20MILCON%20Code%202.pdf#page=61

⁵¹ Ibid.

- a description of the proposed construction;
- the specific military requirement for the project (e.g., a change in mission or deterioration of facilities already in use);
- the current facility situation at the installation; and
- the impact on military missions if the project is not approved, and any other needed justification information.⁵²

Note in **Appendix B** that the DD Form 1391 requires supplemental information that includes the status of the project's design work. The forms must specifically state the date that the project reached the status of 35 percent design completion, the percent completion at the time of submission, and the date when the design is scheduled to be 100 percent complete.

Advance Planning

The planning and design process for a military construction project includes two distinct phases. The first phase involves advance planning, which examines the military requirements for a potential project and includes potential site analysis. As part of the initial advance planning phase (see **Figure 1**), installation engineers and other public works staff evaluate the proposed *need* for new or improved facilities—such as training classrooms, firing ranges, barracks, or housing—and compare that to the facilities that already exist.⁵³ During the initial consideration of the new requirement, military officials may consider alternatives to the MILCON process, such as renovating existing infrastructure or leasing a facility. The installation's engineering team weighs the costs and time required to meet the military requirement by rehabilitating or altering existing structures on site compared to the cost and time required to execute new construction.⁵⁴ Engineers and other members of the installation's planning team then make a preliminary determination whether renovation of an existing facility, new construction, or leasing is more appropriate to satisfy the military need.⁵⁵ This initial phase is funded using money from the military's O&M accounts. In some cases, this work is carried out by existing staff. In some instances, a service may specifically request O&M funding for this purpose. For example, in justifying its FY2023 budget request, the Navy requested \$214.8 million for a budget item (technically known as a budget sub-activity group, or SAG) called Air Operations and Safety Support. This line finances several operations, including Aviation Facilities and Landing Aids, which supports the "development/revision of aviation facilities planning and design criteria."⁵⁶

⁵² DD Form 1391 is associated with several other required DOD forms and their corresponding processes that help to populate, or are informed by, the document. For example, the ENG FORM 3086 is a tool that cost engineers use to estimate project costs for the DD Form 1391.

⁵³ Installation engineers are the principal officers responsible for providing authoritative analysis and strategic program recommendations for MILCON needs and priorities. Installation engineers may be referred to in various titles according to each military service: the Post Engineer in the Army, Base Civil Engineer (BCE) in the Air Force and Air National Guard, the Resident/Regional Officer in Charge of Construction (ROICC) in the Navy and Marine Corps, and the Construction and Facilities Management Officer (CFMO) in the Army National Guard.

⁵⁴ Rehabilitation, renovation, or alternation of existing structures may be potentially funded with O&M money using a less time-consuming budget approval process. For example, the Repair of Facilities (10 U.S.C. §2811) authority can fund certain types of construction projects without requiring line item-level budget authority and authorization.

⁵⁵ Constantine Samaras, et al., *Development, Construction, and Operating Process and Barriers to Life-Cycle Cost-Effectiveness*, RAND Corporation, 2013, Ch. 2, p. 7, at https://www.rand.org/pubs/research_reports/RR169.html.

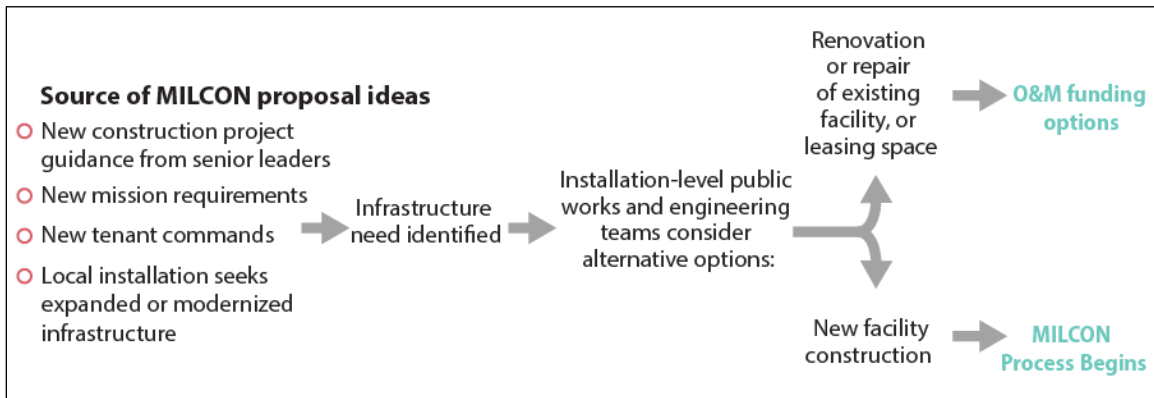
⁵⁶ For more information, see DOD, Department of the Navy, Fiscal Year (FY) 2023 Budget Estimates, Justification of Estimates, Operation and Maintenance, Navy, April 2022, p. 1A4A, available at https://www.secnav.navy.mil/fmc/fmb/Documents/23pres/OMN_Book.pdf#page=79.

The advance planning phase, funded through O&M accounts, may include:

- Developing and documenting the military requirements underpinning the proposed military construction project;
- Developing or revising an installation’s master plan to ensure the proposed project comports with the base’s long-term needs;
- Conducting site studies to identify a location for a proposed project;
- Preparing engineering analysis and development of technical design parameters; and
- Preparing environmental impact statements or other requirements under the National Environmental Policy Act (NEPA; P.L. 91-190);

Figure 1. Advance Planning for Military Facilities

Preliminary Analysis will determine whether a MILCON project is needed.



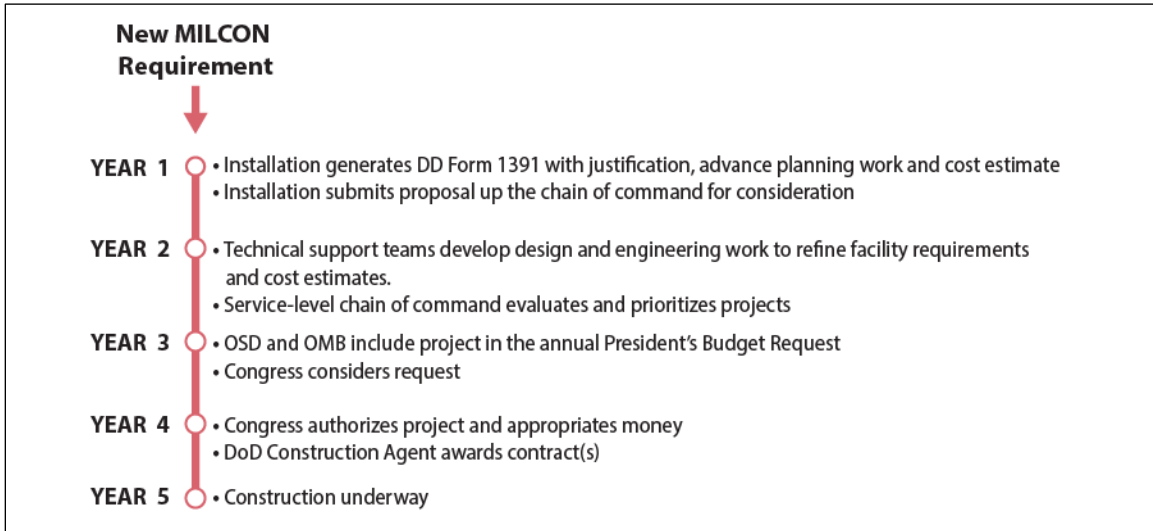
Source: CRS analysis of Department of Defense documents. See for example, DOD, Financial Management Regulation (7000.14-R), Volume 3, Chapter 17, page 17-25, Also see Air Force Instruction 32-1021, February 25, 2016, page 10.

This advance planning process is led by the uniformed installation commander and the installation’s public works department, which may consist of engineers, community planners, environmental specialists, and other public works professionals. When an individual installation has competing prospective MILCON projects, the prioritization at the installation level generally begins with meetings between the installation’s engineers and representatives of all major resident organizations and other installation tenants. This group is sometimes referred to as an *Installation Facilities Board*. The result of these meetings—a prioritized list of construction needs—is presented to the installation commander, who then accepts or adjusts the priorities to create a final list of proposed projects for service-level review.

If and when the installation commander determines that a new construction project is necessary, and requires funding through the MILCON process, the team creates a DD Form 1391. From that point of initial determination that a new MILCON project is needed, the formal process can take about five years until the project is approved and construction completed (see **Figure 2**).

Figure 2. Military Construction Timeline

The MILCON process begins with the determination that an emerging military requirement warrants a new construction project.



Source: CRS analysis of Department of Defense documents. See for example Department of Defense Directive 4270.5, “Military Construction,” updated Aug. 13, 2018, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/427005p.pdf>. Also see Commander, Naval Facilities Engineering Systems Command, NAVFAC Instruction 7045.1, “Proper Use of Military Construction Funds.”

Notes: Timelines for specific projects will vary depending on their complexity to develop and construct as well as their prioritization by decision-makers at the Defense Department, White House and Congress.

Design and Engineering

As a project progresses, the advance planning (funded by O&M accounts) transitions to the design phase (funded by MILCON accounts).⁵⁷ Funds authorized and appropriated for MILCON “planning and design” may support continuing development of the DD Form 1391, as well as detailed design and construction deliverables, such as request for proposal (RFP) documents or construction drawings and specifications.⁵⁸

The department’s annual defense budget typically includes lump-sum appropriations for planning and design that are budgeted for specific components, such as a service branch, a combatant

⁵⁷ Depending on the size and cost of the project, moving into the design phase—and receiving MILCON Planning and Design money—typically requires approval from the military service leadership, secretary’s office, or congressional notification. For example, in the Army, authorization to use MILCON Planning and Design funds is based on Army headquarters issuance of a “design code” – See Army Regulation 420-1, page 4-36d(1) “(1) Army planning and design funds will be used for USACE project design activities after issuance of a design code.” https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN15517_R420_1_admin_FINAL.pdf#page=196. Also see the DOD’s Financial Management Regulation notes that the secretary concerned has authority to allocate Planning and Design funding as long as the design costs do not exceed the threshold for reporting (see https://comptroller.defense.gov/Portals/45/documents/fmr/archive/03arch/03_17_Dec96.pdf.)

⁵⁸ As noted previously, funding for additions or alterations to existing buildings and the construction of new buildings, where costs exceed \$4 million, is generally provided through annual MILCON appropriations. Facility repair at a military base is generally supported through the O&M accounts in the annual defense appropriation bill. The O&M sub-accounts associated with this type of maintenance work are generally referred to as Facilities Sustainment, Restoration, and Modernization, or FSRM.

command, or a defense agency.⁵⁹ Such funding generally is not tied to any specific project; rather, it is intended to be used to fund progress on planning and design efforts on projects that have not yet been fully funded and authorized by law, or design for projects that remain in the development and prioritization phase.⁶⁰ The design phase aims to finalize a reliable cost estimate for Congress to consider in the authorization and appropriations process and also to achieve a level of detailed design that will enable the DOD to award a construction contract (or contracts) for the project to potentially begin construction early in the fiscal year of its authorization. The design phase may include:

- Site surveys and mapping;
- Detailed architectural drawings and engineering plans; and
- Pre-construction contract award activities, including the preparation of bid documents and liaison with prospective bidders and construction teams.

DOD Vetting and Prioritization

While most MILCON projects involve initial input from the local installation commander, from there the requests follow different paths depending on the DOD organization responsible for managing a given military installation. **Figure 3** depicts these paths. In short, the service branches internally prioritize their MILCON projects and send a final list of top priorities to OSD as part of the annual defense budgeting process. A key part of this process is ensuring that the individual projects have sufficient documentation of planning and design to ensure the reliability of the cost estimate and viability of near-term execution.

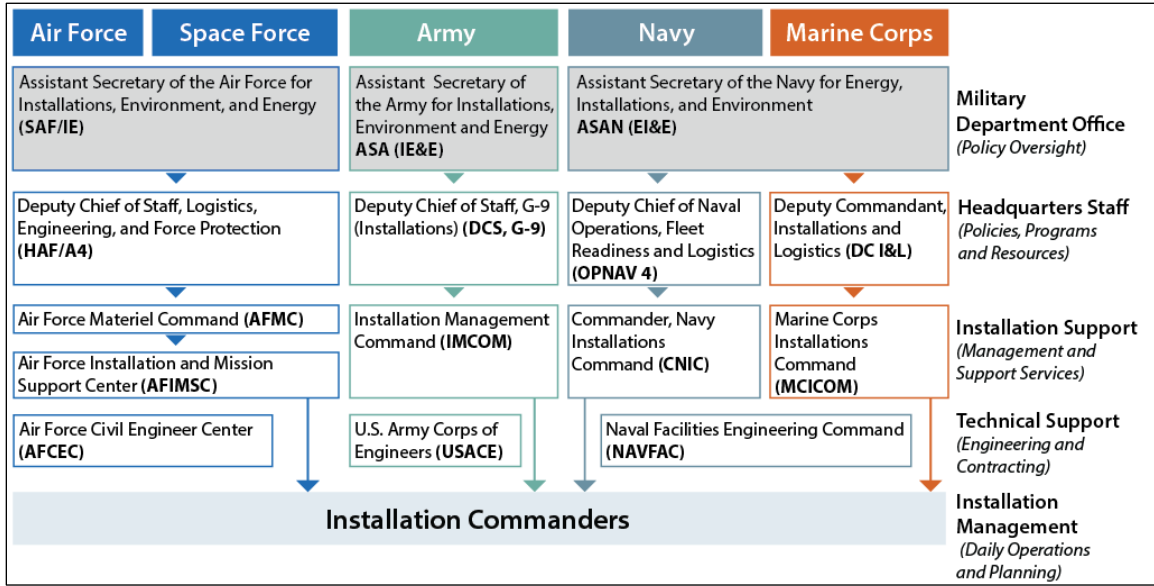
When developing MILCON plans, the military services typically work several years in advance of the current budget cycle. (See **Figure 4**) While finalizing a list of MILCON projects for inclusion in the upcoming President’s budget request, the services are regularly developing and revising the Future Years Defense Program (FYDP), which summarizes the military’s five-year plan for the forces, resources, and programs associated with DOD operations.⁶¹ That involves making preliminary decisions about likely priorities two-, three-, and four-years into the future to ensure that upcoming projects have time to develop and meet the planning and design requirements (and accurate cost estimates) when they are ready for inclusion in an authorization and appropriation request.

⁵⁹ To avoid confusion between O&M funds used for advance planning and the MILCON “planning and design” funds used for design, some DOD officials describe the money appropriated under 10 U.S.C. § 2807 as “MILCON-D.” As an example see NAVFACINST 7045.1, “Proper Use of Military Construction Funds,” Dec. 6 2020.

⁶⁰ 10 U.S.C. §2807 requires congressional notification if design services are estimated to exceed \$1 million.

⁶¹ 10 U.S.C. §221 requires that the Secretary of Defense submit, at about the same time as the President’s annual budget request, a “future-years defense program ... reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.” DOD develops its FYDP according to policies and procedures outlined in Office of the Under Secretary of Defense (Comptroller), Department of Defense, *Directive 7045.14, The Planning, Programming, Budgeting, and Execution Process (PPBE) Process*, January 25, 2013 (Incorporating Change 1, August 29, 2017). For more information on the FYDP see CRS In Focus IF10831, *Defense Primer: Future Years Defense Program (FYDP)*, by Brendan W. McGarry and Heidi M. Peters For more information on the PPBE process, see CRS In Focus IF10429, *Defense Primer: Planning, Programming, Budgeting, and Execution (PPBE) Process*, by Brendan W. McGarry and CRS Report R47178, *DOD Planning, Programming, Budgeting, and Execution (PPBE): Overview and Selected Issues for Congress*, by Brendan W. McGarry.

Figure 3. Military Construction Oversight Structures



Source: CRS graphic based on DOD component documentation.

Notes: The technical support agencies (USACE, NAVFAC and AFIMSC) provide technical expertise in developing MILCON projects, but they are not directly involved in the planning and prioritization of MILCON budgets.

Department of the Army

The Army’s single agency responsible for worldwide installation management is Installation Management Command (IMCOM), which is a major subordinate command of Army Materiel Command (AMC).⁶² In 2016, the Department of the Army reorganized IMCOM’s two domestic regions—known then as the Atlantic Region and Central Region—into its current structure of three functionally aligned directorates that are co-located with three major Army commands. Those directorates include IMCOM Readiness, which is co-located with Army Forces Command (FORSCOM); IMCOM Training, co-located with Army Training and Doctrine Command (TRADOC); and IMCOM Sustainment, co-located with AMC.⁶³ The two overseas directorates—IMCOM Europe and IMCOM Pacific—remain regionally aligned and are located in Sembach Kaserne, Germany, and Fort Shafter, Hawaii, respectively.

The IMCOM directorates work with local installation commanders to develop MILCON requests, which the directorate compiles, prioritizes, and forwards to IMCOM’s headquarters, located at Fort Sam Houston in San Antonio, Texas. The headquarters consolidates and prioritizes the project lists from across the Army and submits a list for further review by the Deputy Chief of Staff (DCS), G9 Installations, the service’s senior officer responsible for setting installations-related policy and administering installation resource programming.⁶⁴

⁶² Army Materiel Command, AMC Major Subordinate Commands, at <https://www.amc.army.mil/Organization/Major-Subordinate-Commands/>. Also see Susan A. Merkner, “IMCOM transitions to Army Materiel Command,” *The Real McCoy*, March 22, 2019, at https://static.dvidshub.net/media/pubs/pdf_46766.pdf.

⁶³ U.S. Army, “IMCOM transforms regions into new directorates,” press release, January 24, 2017, at https://www.army.mil/article/181181/imcom_transforms_regions_into_new_directorates.

⁶⁴ U.S. Army, Deputy Chief of Staff, G-9 (Installations), About Us website, at <https://www.acsim.army.mil/about.html>.

The U.S. Army Corps of Engineers (USACE) supports the process of developing the DD Form 1391 and offering architectural, engineering, and construction services and support in the development and use of new facilities.⁶⁵ The Centers of Standardization (COS) is the USACE element assigned to assist Army headquarters. The COS advises senior Army leaders on the technical aspects of the MILCON program.⁶⁶

As part of DOD's annual budgeting process, the Army's G-9 office forwards a final list of MILCON requests to the Army's Deputy Chief of Staff, G-8 (Financial Management), which assesses and integrates the installations-related resourcing requirements into the overall budget of the Army.

At this point, Army's construction requests shift to the civilian Army secretariat (the staff supporting the Secretary of the Army). Responsibility for further review and consideration falls to the Assistant Secretary of the Army for Installations, Energy, and Environment (ASA(IE&E)). Once approved, the Assistant Secretary forwards the Army's proposed construction projects to OSD, where senior officials consolidate the Army's list of proposed projects with those of the other services and defense agencies into a prioritized DOD master list.

Department of the Air Force⁶⁷

Air Force installation commanders and Major Commands (MAJCOMs) provide MILCON requests to the Air Force Installation and Mission Support Center (AFIMSC), a subordinate unit of the Air Force Materiel Command (AFMC). The AFIMSC helps develop the justifications for individual projects, compile the DD Form 1391s, and create an Integrated Priorities List (IPL) for the Air Force.⁶⁸ These tasks involve working through the Air Force Corporate Structure (AFCS) and with the Facility Management Division of the Air Staff (HAF/A4).⁶⁹ HAF/A4 Civil Engineer, Facilities Division reviews MILCON programs, integrates Total Force (Active Air Force, Air National Guard, Air Force Reserve) MILCON projects into a single program and presents the MILCON program to the AFCS for approval.⁷⁰ A list of MILCON projects then moves through an approval process involving the Assistant Secretary of the Air Force for Energy, Installations, and Environment (SAF/IE), and finally to the Assistant Secretary of the Air Force for Budget (SAF/FMB), who is responsible for sending a final list of Air Force MILCON projects to OSD.

⁶⁵ U.S. Army, U.S. Army Corps of Engineers, "Fact Sheet," at <https://www.usace.army.mil/Media/Fact-Sheets/Fact-Sheets-View/Article/475469/installation-support/>.

⁶⁶ U.S. Army, Department of the Army Pamphlet 420-1-2, "Army Military Construction and Nonappropriated-Funded Construction Program, Development and Execution," at https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/PAM%20420-1-2.pdf.

⁶⁷ For more detailed information on how the Air Force manages its MILCON program, see U.S. Air Force, HQ/AFIMSC/AFCEC, *Program Management Plan for Air Force MILCON Execution*, September 25, 2017, archived at https://www.wbdg.org/FFC/AF/POLICY/PgMP_MILCON_HAF_AFCEC_AFIMSC_Final.pdf.

⁶⁸ U.S. Air Force, HQ/AFIMSC/AFCEC, *Program Management Plan for Air Force MILCON Execution*, September 25, 2017, pp. 4-5, archived at https://www.wbdg.org/FFC/AF/POLICY/PgMP_MILCON_HAF_AFCEC_AFIMSC_Final.pdf.

⁶⁹ The Air Force Corporate Structure is a formal body consisting of civilian and military personnel from the Air Staff or Secretariat, Core Function Lead representatives and the major commands (MAJCOMs). It is established under the Air Force Council, which is chaired by the Vice Chief of Staff of the Air Force and the Under Secretary of the Air Force. See U.S. Air Force, *Planning, Programming, Budgeting, and Execution System Training Program Reference Manual*, pp. 43-46, at <http://afacpo.com/AQDocs/PPBE.pdf>.

⁷⁰ Additional information on Air Force MILCON program and project roles and responsibilities can be found in U.S. Air Force, Instruction (AFI) 32-1021, *Planning and Programming Military Construction (MILCON) Projects*, at https://www.wbdg.org/FFC/AF/AFI/afi_32_1021.pdf.

The AFIMSC houses the Air Force Civil Engineer Center (AFCEC), which provides engineering services to Air Force installations. AFCEC supports installation-level planning, documents design and construction schedules, and oversight of construction contracts.⁷¹ Though AFCEC is not technically a DOD-designated *construction agent* (i.e., an approved DOD activity assigned the design or construction execution responsibilities associated with a service’s MILCON program⁷²), AFCEC serves as the design/construction manager for active component projects.⁷³ In many instances, USACE or Naval Facilities Engineering Systems Command (NAVFAC), as the DOD’s designated Construction Agents, provide support for Air Force construction projects.

Department of the Navy

The Navy’s installation commanders and their chain of command within Commander, Navy Installations Command (CNIC), initially prioritize Navy MILCON projects. The CNIC is responsible for worldwide management of the Navy’s shore installations. Within CNIC, two divisions—Facilities and Environmental (N4) and Strategy and Future Shore Integrated Requirements, (N5)—coordinate efforts to plan and prepare MILCON priority lists. The Shore Mission Integration Group (SMIG) evaluates regional priority lists to determine the Navy priorities for MILCON. CNIC consolidates, reviews, and prioritizes the projects for submission to the Navy’s senior leadership.⁷⁴

The execution agent for Navy MILCON projects is the Naval Facilities Engineering Systems Command (NAVFAC), which operates worldwide to plan, build, and maintain Navy facilities, and deliver base services. NAVFAC is organized under two regional commands—NAVFAC Atlantic in Norfolk, Virginia, and NAVFAC Pacific in Pearl Harbor, Hawaii—to which a total of nine subordinate Facilities Engineering Commands (FECs) report.⁷⁵ Each Navy shore installation (i.e., Navy base) is assigned to one of the FECs. At most Navy bases, NAVFAC has a Resident Officer in Charge of Construction (ROICC) to oversee MILCON projects for the base. NAVFAC helps prepare and refine the DD Form 1391s and provides input on whether individual projects have sufficient planning and design work completed to execute the construction project during the current budget cycles and their authorization and appropriations window. NAVFAC reviews and confirms the readiness and executability of submitted construction projects; NAVFAC does not prioritize projects. Project prioritization is the role of CNIC and the Navy leadership. NAVFAC’s input on the status of a project’s planning and design development can be a factor in the Navy’s prioritization decisions for the current year budget submissions.

⁷¹ Ibid., p. 5.

⁷² DOD, Department of Defense Directive (DODD) 4270.5, *Military Construction*, updated August 31, 2018, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/427005p.pdf>.

⁷³ The MILDEP’s *Construction Agents*, according to DOD Directive 4270.5, are the Naval Facilities Engineering Command (NAVFAC) for the Navy and Marine Corps, and the Army Corps of Engineers (USACE) for the Army. Historically, either NAVFAC or USACE have executed design and construction for the Air Force MILCON program, but more in some instances, AFCEC has provided management and oversight via *Design Manager/Construction Manager* (DM/CMs). See U.S. Air Force, Air Force Instruction (AFI) 32-1023, *Designing and Constructing Military Construction Projects*, December 23, 2020, at https://static.e-publishing.af.mil/production/1/af_a4/publication/afi32-1023/afi32-1023.pdf.

⁷⁴ CNIC provides oversight on all shore installation management, exercises authority as the Budget Submitting Office for installation support, and acts as the Navy point of contact for program execution oversight and installation policy. See “Commander, Navy Installations Command website, “History of CNIC,” at <https://www.cnic.navy.mil/About/History/>

⁷⁵ For a list of engineering commands by region see https://www.navfac.navy.mil/about_us.html.

After CNIC compiles a list of prioritized projects (and NAVFAC evaluates the readiness of those projects) CNIC submits the list to the Chief of Naval Operations (CNO) through the Deputy Chief of Naval Operations (Fleet Readiness and Logistics, OPNAV N4) and, more specifically, the Director, Shore Readiness Division (OPNAV N4I). Upon evaluation and approval, the CNO's staff passes the list to the Assistant Secretary of the Navy for Energy, Installations, and Environment (ASN(EI&E)) for submission to OSD.

Marine Corps

The Marine Corps, as a component of the Department of the Navy, has no installation engineering staff; it relies on NAVFAC and the Navy's ROICCs to plan and administer construction on its installations. Throughout the process, NAVFAC supports the Marine Corps in the same way it supports the Navy, by refining the DD Form 1391 documentation for each project and confirming its readiness and executability.

At the same time, the Marines do channel their construction requests through their own chain of command for requirements screening and project prioritization. After Marine Corps installation commanders determine construction requirements, the Marine Corps Installations Command (MCICOM) screens and consolidates the projects and their requisite DD Form 1391.⁷⁶ MCICOM reviews and prioritizes the projects and forwards the list to their respective Fleet Marine Force (FMF) headquarters.⁷⁷ After the FMF headquarters review, proposed MILCON projects move to the Headquarters, Marine Corps, Installations and Logistics (HQMC/I&L) office. There, Marines finalize a list of MILCON priorities and submit that to the ASN(EI&E) for presentation to OSD.

National Guard

The National Guard (Army and Air) is a state-based reserve component of the armed forces.⁷⁸ Unless the National Guard is federalized (i.e., called to active duty according to statutory provision), each state's National Guard is its own distinct military organization, with the governor as its commander in chief and The Adjutant General, or TAG, as its senior military officer.⁷⁹ Each National Guard is a joint organization under the TAG. Army National Guard (ARNG) and Air National Guard (ANG) MILCON requirements are handled somewhat differently.

In many instances, federal statute requires the federal government and state government to share the cost of construction for state-based Guard facilities, with the federal government contributing no more than 75 percent of the total estimated cost of the project.⁸⁰ As a result, state governments

⁷⁶ MCICOM is the single authority for all Marine Corps installations matters. It exercises command and control of regional installation commands, establishes policy, exercises oversight and prioritizes resources in order to optimize installation support to the operating forces, tenant commands, and Marine families. See <https://www.mcicom.marines.mil/>.

⁷⁷ There are two FMFs—Atlantic (FMFLANT) and Pacific (FMFPAC)—commanding the deploying Marine Expeditionary Forces. FMFLANT is headquartered at Naval Station Norfolk, Virginia, while FMFPAC is headquartered at Camp H.M. Smith, Hawaii.

⁷⁸ For background information on the Reserve Forces, see CRS In Focus IF10540, *Defense Primer: Reserve Forces*, by Lawrence Kapp, at <https://crsreports.congress.gov/product/pdf/IF/IF10540>.

⁷⁹ With the exception of the District of Columbia, territories (including Guam, U.S. Virgin Islands, and Puerto Rico) also have elected governors. For more information on federalization of the National Guard and other Reserve Forces, see CRS In Focus IF10540, *Defense Primer: Reserve Forces*, by Lawrence Kapp.

⁸⁰ The unique authorities for funding construction of National Guard facilities are outlined in by 10 U.S.C. §§18231-18240. Specifically, the state contribution requirement is outlined in §18236, "Contributions to States; other use permitted by States," which states in section (b): "(b) A contribution made for an armory or readiness center under

are often required to provide matching funds equal to at least 25 percent of the cost of a National Guard construction project. There are numerous exceptions to this rule. The federal government may fund up to 100 percent of a project's cost if the Guard's federal mission or other DOD requirement is primarily driving the construction requirement. States may submit requests for federal funding that exceed 75 percent of an individual project through the Army (for the ARNG) or the Air Force (for the ANG).⁸¹

*Army National Guard*⁸²

Within a state's joint National Guard headquarters organization (sometimes called a Military Department or Department of Military Affairs), the Army section of the headquarters staff includes a Construction and Facilities Management Officer (CFMO) who administers the state's Military Construction Army National Guard (MCNG) program. CFMOs are the installation engineers of the ARNG and the principal advisors to the TAG regarding all real property, facilities, construction, and environmental management programs.⁸³ CFMOs conduct Master Planning and develop a Long Range Construction Plan (LRCP). CFMOs also prepare DD Form 1391 for each proposed MILCON project. Following the CFMO's review of the projects and submission to the TAG for approval, the TAG sends a final project list (which includes the DD Form 1391s) to the National Guard Bureau (NGB), an agency that acts as the liaison between the states' National Guard headquarters organizations and the Departments of the Army and Air Force.

Within NGB, ARNG staff (such as those in the Installations Division, or ARNG-ILI) review the submitted MILCON projects from all jurisdictions and prioritize those into an Infrastructure Requirements Plan (IRP). The IRP serves as the prioritized list of Army Guard MILCON projects for federal funding. The director of the ARNG provides the IRP to the Army Staff, for review by the DCS, G-9.⁸⁴ From this point, the ARNG's MILCON projects list moves through the review and approval process within the Department of the Army and Army Secretary's office. ARNG projects follow the Army scoring process for prioritization within the ARNG portion of the MILCON Total Obligation Authority (TOA) for inclusion the FYDP.⁸⁵

paragraph ... may not exceed the sum of... a percentage of the cost of construction (exclusive of the cost of architectural, engineering and design services) calculated so that upon completion of construction the total contribution (including the contribution for architectural, engineering and design services) equals 75 percent of the total cost of construction (including the cost of architectural, engineering and design services)." This section of the statute also notes the contribution is required "[e]xcept as otherwise agreed when the contribution is made."

⁸¹ Information Paper provided to CRS by the National Guard Bureau, "Army National Guard Major Military Construction (MILCON) – State Share Requirements," dated April 5, 2022. On file with the author.

⁸² For more detailed information on Army National Guard MILCON program development and execution, see National Guard Regulation 415-5, *Construction, Army National Guard Military Construction Program Development and Execution*, March 6, 2015, at <https://www.ngbpmc.ng.mil/Portals/27/Publications/ngr/ngr%20415-5.pdf?ver=2018-09-07-082540-720>.

⁸³ Sometimes the CFMO is represented by an office within a state military department. In these cases the term CFMO may be understood as "Construction and Facilities Management Office" rather than officer. However, per National Guard Regulation 415-5, responsibility for ARNG MILCON lies with the state-designated officers. See, for example, the Texas Military Department CFMO at <https://tmd.texas.gov/construction-and-facilities-management-office>.

⁸⁴ National Guard Pamphlet 210-20, "Real Property Development Planning Procedures for The Army National Guard," at <https://www.ngbpmc.ng.mil/Portals/27/Publications/NGPAM/ngpam%20210-20.pdf?ver=oRUMEnfm1FpHJTogOKusk%3d%3d>

⁸⁵ Ibid.

*Air National Guard*⁸⁶

MILCON projects for the ANG are primarily intended to meet current and new missions stemming from the Department of the Air Force's corporate Air Force strategic basing process. The Base Civil Engineers (BCEs) for each state's ANG installations initiate MILCON projects through a process similar to that of the ARNG. BCEs produce DD Form 1391s for each MILCON project. The Air Staff within the state's joint National Guard headquarters compiles and prioritizes the projects within the state according to the TAG's general guidance. After approving a final list, the TAG sends the state's highest priority ANG projects to the NGB for evaluation by the ANG Headquarters Air Staff.⁸⁷ The ANG Air Staff combines and refines the list for the Director of the ANG, who approves and forwards a final list of ANG MILCON projects to Headquarters, Air Force (HAF) staff.⁸⁸ From that point, the ANG MILCON projects list is integrated into the broader review and approval process for the entire Department of the Air Force. The Facility Management Division, AF/A4CF, reviews MILCON programs, and integrates Total Force (Active Air Force, Air National Guard, Air Force Reserve) MILCON projects into a single prioritized list.⁸⁹ The Deputy Assistant Secretary of the Air Force for Installations (SAF/IEI) oversees all Air Force and ANG MILCON programs for the Department of the Air Force.⁹⁰

Office of Management and Budget (OMB) Review

The joint review of the DOD's annual budget by the OSD and the White House's Office of Management and Budget (OMB) generally occurs between September and December, and focuses on the administration's priorities; aspects of this process may vary year to year depending on current events or leadership preferences.⁹¹ This review includes MILCON programs and the review of DD Form 1391 submissions for projects proposed by OSD.

The highest priority projects that fit within the budgetary guidance provided by the OMB will be included in the President's budget request. Some of the approved projects assigned a lower priority are slated for funding in future years and are typically included in the Future Years Defense Program (FYDP).⁹² One reason that some projects may be scheduled in the FYDP rather

⁸⁶ For more detailed information on Air National Guard MILCON program policies, responsibilities, and execution, see Air National Guard Instruction 32-1023, *Criteria and Standards for Air National Guard Design and Construction*, January 21, 2015, at https://www.wbdg.org/FFC/ANG/ANGI/ANGI_32-1023.pdf.

⁸⁷ Air Force Policy Directive 32-10, 20 JULY 2020, Civil Engineering Installations and Facilities, see page 4, section 3.4, at https://static.e-publishing.af.mil/production/1/saf_ie/publication/afpd32-10/afpd32-10.pdf#page=4

⁸⁸ ⁸⁸ Air Force Instruction 32-102, Planning and Programming Military Construction (MILCON) Projects, February 2016, see page 5, at https://www.wbdg.org/FFC/AF/AFI/afi_32_1021.pdf#page=5

⁸⁹ Ibid.

⁹⁰ For more detailed information on Air National Guard MILCON program policies, responsibilities, and execution, see Air National Guard Instruction 32-1023, *Criteria and Standards for Air National Guard Design and Construction*, January 21, 2015, at https://www.wbdg.org/FFC/ANG/ANGI/ANGI_32-1023.pdf#page=7.

⁹¹ CRS In Focus IF10429, *Defense Primer: Planning, Programming, Budgeting, and Execution (PPBE) Process*, by Brendan W. McGarry

⁹² 10 U.S.C. §221 requires that the Secretary of Defense submit, at about the same time as the President's annual budget request, a "future-years defense program ... reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years." DOD develops its FYDP according to policies and procedures outlined in Office of the Under Secretary of Defense (Comptroller), Department of Defense, *Directive 7045.14, The Planning, Programming, Budgeting, and Execution Process (PPBE) Process*, January 25, 2013 (Incorporating Change 1, August 29, 2017). For more information on the PPBE process, see CRS In Focus IF10429,

than the current-year budget is their planning and development is not sufficiently developed, raising questions about the reliability of the existing cost estimate or making it unlikely the projects could be executed on the timeline of current appropriations.⁹³ Therefore, some MILCON projects may survive the screening process and reach high-level review only to be placed in the budgeting queue for a future year's submission. While the FYDP is an indicator of future priorities, it is also possible that a MILCON project's priority may diminish in a later year because budget levels fluctuate, missions change, and the entire construction list is reviewed and reevaluated every year.

Authorizations, Appropriations, and Enactment⁹⁴

The annual budgeting cycle formally begins with the release of the President's budget request (traditionally in February, but sometimes later), which includes a list of military construction projects prioritized by the DOD and White House. The annual process ends with enactment of two key pieces of legislation – the NDAA and the Military Construction, Veterans Affairs and Related Agencies Appropriations Act. See **Figure 5**.

A list of the military construction projects authorized each year along with the specific amount of funding authorized is contained in the NDAA. A similar but separate list of military construction appropriations (i.e., projects that receive budgetary authority) is contained in the explanatory statement that accompanies the annual Military Construction, Veterans Affairs and Related Agencies Appropriations Act.⁹⁵

The two pieces of legislation may also provide policy guidance relevant to MILCON matters. In addition to what is included in the bills themselves, committee reports accompanying the armed services and appropriations bills may provide useful information. For example, the accompanying reports may direct military leaders to provide reports to Congress about certain matters; may set guidance for funding policies or express the views of the defense committees on policy matters not directly addressed in the legislation.

While the committees and subcommittees exercise jurisdiction over the legislation, they also typically provide opportunities for individual Members of Congress not assigned to the committees of jurisdiction to provide input regarding specific MILCON projects. During the period when the committees are drafting the legislation, the committees may issue guidance for Members wishing to submit input for on MILCON matters. The committees' guidance might suggest additional documentation that could prove useful to the committee in its deliberations, or may also set a deadline for submission of such information. Often that deadline is set for late March, when the subcommittee staffs begin to prepare for markup of the necessary legislation.

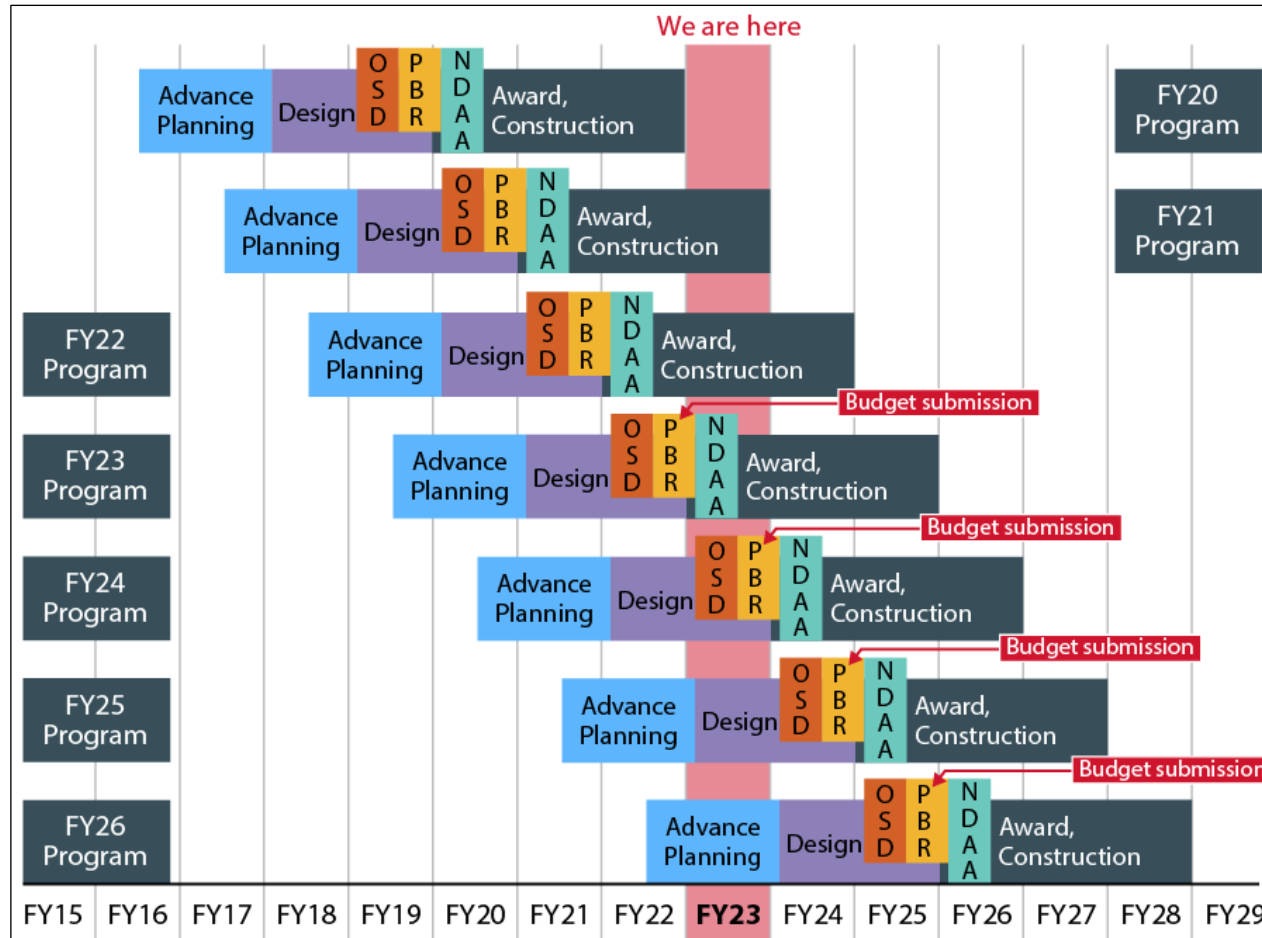
Defense Primer: Planning, Programming, Budgeting, and Execution (PPBE) Process, by Brendan W. McGarry and CRS Report R47178, *DOD Planning, Programming, Budgeting, and Execution (PPBE): Overview and Selected Issues for Congress*, by Brendan W. McGarry.

⁹³ CRS In Focus IF10831, *Defense Primer: Future Years Defense Program (FYDP)*, by Brendan W. McGarry and Heidi M. Peters

⁹⁴ For more information on the MILCON appropriation and obligation process, see GAO, *Defense Infrastructure: Action Needed to Increase the Reliability of Construction Cost Estimates*, GAO-18-101, March 2018, at <https://www.gao.gov/assets/700/690892.pdf>.

⁹⁵ For general information on the federal budgeting, appropriations, and authorization processes, see CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by James V. Saturno, and CRS Report RS20371, *Overview of the Authorization-Appropriations Process*, by Bill Heniff Jr.

Figure 4. Military Construction Planning, Programming, Budgeting and Execution Cycles



Source: Derived from Department of the Army briefing information provided to CRS. On file with the author.

Notes: The blue-green box labeled “OSD” illustrates the stage at which the Office of the Secretary of Defense (OSD) reviews and provides input on the annual MILCON budget requests. The yellow box labeled “PBR” reflects the process of incorporating Defense Department requests into the final President’s budget request (PBR) that the White House submits to Congress each year.

Alternative Paths to Approval for MILCON Projects

In some instances, Congress may insert into the authorization and appropriations acts MILCON projects that were not included in the President’s budget request. In consideration of specific military construction projects that the DOD and White House did not prioritize for the current budget cycle, Congress often defers to a set of guidelines known as the “McCain Rules.” These rules are not codified in statute. They were approved by the Senate in a non-binding resolution included in the FY1995 NDAA (P.L. 103-337; §2856). The “McCain Rules” state that consideration of authorization and appropriations for any military construction project not included in the annual budget submission from the White House should be limited to MILCON projects that are:

1. Considered essential to the DOD’s national security mission;
2. Consistent with past actions under the Base Realignment and Closure Act (BRAC);
3. In the services’ Future Years Defense Program;
4. Executable in the year they are authorized and appropriated; and
5. Offset by reductions in other defense accounts, through advice from the Secretary of Defense.

DOD applies these rules in the formulation of the annual report to Congress on unfunded priorities required by 10 U.S.C. §222a, generally known as the unfunded priorities lists (UPL) or unfunded requirements (UFRs).

The defense committees may issue guidance to Members as a part of the annual budget cycle. For example, in March 2022, the House Appropriations Committee’s subcommittee on Military Construction, Veterans Affairs and Related Agencies issued a “Fiscal Year 2023 Member Request Guide.” That guidance stated in part: “The eligible lists of community projects are those that are submitted to Congress by the Secretary of Defense or his/her designee. Projects that only appear on a project list provided by a base commander, as opposed to the Secretary or his/her designee, will not be accepted.”⁹⁶ In addition, the guidance describes such eligible lists as the Future Years Defense Program (FYDP) or Unfunded Requirements/Unfunded Priorities Lists (UFRs/UPLs).

The practice of Congress inserting earmarks—known as “Congressionally Directed Spending” in the Senate and “Community Project Funding Items” in the House of Representatives—was suspended in 2011 but resumed in 2021. Members of the 117th Congress had to meet certain requirements under Senate and House rules to have their requests included as provisions in defense authorization and appropriations acts.⁹⁷ Such requirements included Members posting

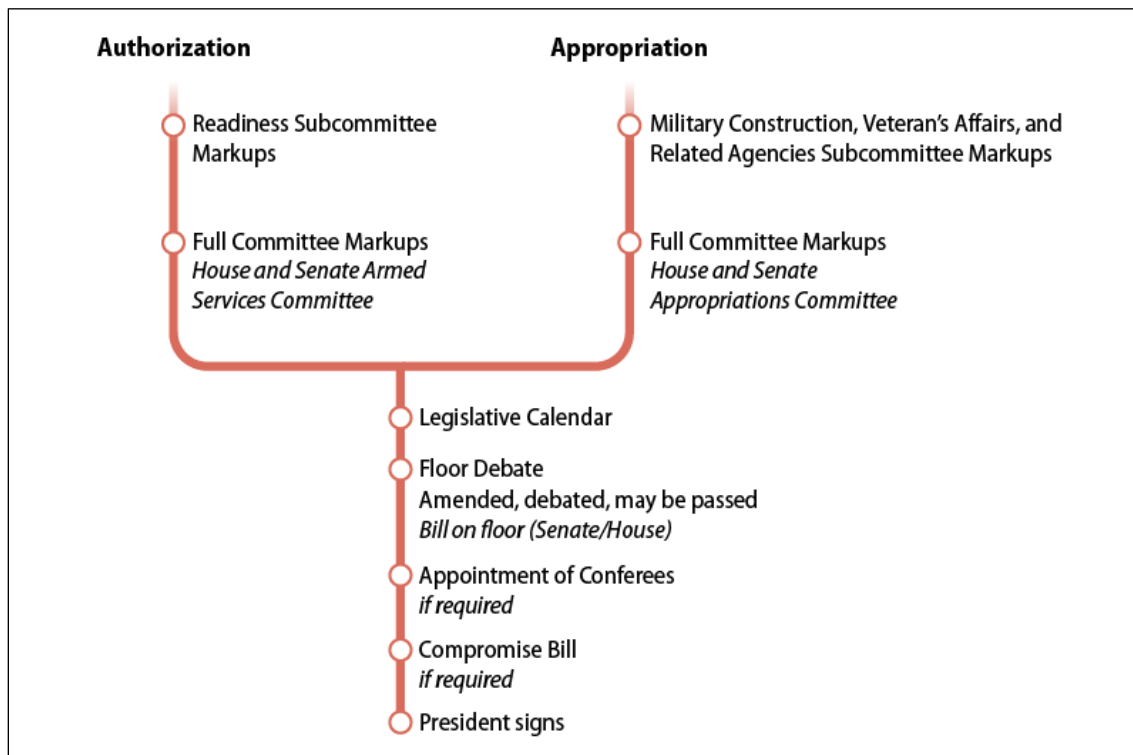
⁹⁶ Fiscal Year 2023 Member Request Guide Subcommittee on Military Construction, Veterans Affairs and Related Agencies, at <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/FY23%20MilConVa%20Member%20Request%20Guide.pdf>

⁹⁷ See, for example, guidance promulgated by the House Appropriations Committee, Transparency website, “Appropriations Requests,” at <https://appropriations.house.gov/transparency/appropriations-requests-2023>. For more background, see CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by Megan S. Lynch and CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.

requests online and certifying that they had no financial interest in the projects.⁹⁸ The House also required Members to demonstrate community support for requests.

In total, 72 additional MILCON projects totaling nearly \$1.3 billion were included in the MILCON-VA Appropriations Act for 2022, (Division J of P.L. 117-103).⁹⁹ Before enactment of the FY2022 MILCON-VA appropriations act that included those projects, DOD identified its priority military construction projects that had not yet been funded by Congress, had undergone some preliminary design, and would be ready for execution within the fiscal year. Congress reviewed these potential projects, discussed them with DOD officials, and decided which ones to include in the appropriations act.¹⁰⁰

Figure 5. Legislative Process / Congressional Operations



Source: House and Senate committee websites, CRS Report RS21363, *Legislative Procedure and Process Resources for Congressional Staff*, by Jennifer E. Manning and Maura Mullins, CRS graphics.

⁹⁸ GAO, *Tracking the Funds: Specific Fiscal Year 2022 Provisions for Department of Defense*, GAO-23-105914, October 4, 2022, at <https://www.gao.gov/products/gao-23-105914>.

⁹⁹ Ibid. See also the table, “Community Project Funding/Congressionally Directed Spending Items,” in the joint explanatory statement to accompany the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2022, (Division J of P.L. 117-103), published in House Committee Print 47-048, *Committee Print of the Committee on Appropriations, U.S. House of Representatives, on H.R. 2471/P.L. 117-103, [Legislative Text and Explanatory Statement]*, Book 2 of 2, Divisions G-L, pp. 2197-2202.

¹⁰⁰ GAO, *Tracking the Funds: Specific Fiscal Year 2022 Provisions for Department of Defense*, GAO-23-105914, October 4, 2022, at <https://www.gao.gov/products/gao-23-105914>.

MILCON Execution

Execution of the construction for MILCON projects may begin after the President signs the authorization and appropriations legislation into law. Construction encompasses several phases, including the solicitation of bids from prospective general contractors, awarding of contracts, construction of the facility or infrastructure, outfitting of equipment, and any warranty period provided by contractors involved in the project.

The responsibility for executing and managing MILCON projects typically falls to one of the two DOD Construction Agents (DCA), NAVFAC or USACE, or to a designated Design Manager/Construction Manager (DM/CM).¹⁰¹ However, ARNG and ANG headquarters bureaus manage their respective MILCON projects separately.¹⁰² If additional architectural and engineering work is needed for the project, the DCA may complete the final design in-house, or the DCA may choose to contract with an external design firm to finalize the planning and design work. In instances where the service-designated construction agents/managers are not able to perform the design or construction work themselves, they are responsible for preparing, advertising, evaluating, and awarding design and construction contracts. Both NAVFAC and USACE have in-house design capabilities. Their MILCON workloads generally exceed their capacity, thus requiring architect/engineer (A/E) contracts for preparing some construction contract documents. With limited exceptions, notably U.S. Naval Construction Battalions (or CBs, known as “Seabees”), the armed services do not have in-house construction capabilities. Therefore, NAVFAC and USACE typically hire one or more general contractors to execute construction. These contracts are awarded through a specific Request for Proposal (RFP) process.¹⁰³

Typically, the DCAs opt for one of two general contracting approaches, Design-Bid-Build (DBB) or Design-Build (DB), to execute a MILCON project. The difference between these two methods will affect the type of RFP process used. For DBB projects, the full design is prepared either by in-house resources or via an A/E contract. This results in a full set of drawings and specifications on which the construction contractors may submit bids. This design strategy is most common when the government may want to provide significant input into the design process. For DB projects, the contractor is responsible for hiring and managing the design firm to complete the design. This type of contract is more typical for lower complexity projects. The executing agency

¹⁰¹ Traditionally, the USACE has supported the Army and NAVFAC supports the Navy and Marine Corps. Historically, either NAVFAC or USACE have executed design and construction for the Air Force MILCON program. In some instances, AFCEC has taken on these roles and responsibilities and is designated by the Air Force as its Design Manager/Construction Manager (DM/CM). See U.S. Air Force, Air Force Instruction (AFI) 32-1023, Designing and Constructing Military Construction Projects, December 23, 2020, at https://static.e-publishing.af.mil/production/1/af_a4/publication/afi32-1023/afi32-1023.pdf. Also, while this division of responsibility usually holds for construction within the United States, overseas construction responsibility is typically governed by the project’s location. DOD Directive 4270.5 designates specific construction agents by geographical area. Unspecified minor military construction may be executed by the Secretary concerned or, in the case of a Defense Agency or a DOD Field Activity, by the secretary concerned of the MILDEP having jurisdiction over the real property facility.

¹⁰² The Army and Air National Guard are authorized to use their United States Property and Fiscal Officer (USPFO) to perform the actions of the DCA.

¹⁰³ For more information on the RFP process, see *Step 6: Request for Proposal Preparation and Evaluation* in the report: RAND Corporation, *Obtaining Life-Cycle Cost-Effective Facilities in the Department of Defense*, 2013, p. 17, at https://www.rand.org/pubs/research_reports/RR169.html.

will decide which contracting method is in the best interest of the government and is the most feasible means to get a project completed in a timely manner within budget.¹⁰⁴

Contract Award, Contract Changes, and Construction Completion

After a project is authorized and funding is appropriated, the DCA may begin soliciting bids through the Request for Proposal (RFP) process in accordance with the project's DD Form 1391. The DCA will continue to manage the project and monitor construction throughout the process.

After construction contracts are awarded, construction contracts frequently need changes. For MILCON projects, in particular, extended timelines and unexpected changes to military missions can amplify the need for changes to original contracts. These changes can be due to oversights in the design process, updated regulations, unforeseen site conditions or mission changes that result in revised military requirements. The DCA must evaluate each potential change to determine if it is within the scope of the project and contract prior to the contracting officer formalizing a modification to the contract. These changes often lead to increased costs. For this reason, DOD adds a standard contingency rate of 5% to initial cost estimates and programs it into the original budget request.¹⁰⁵ If that contingency funding is insufficient to cover the project's needs, there are mechanisms for increasing the project's funding. Mechanisms include increasing the authorization through a reprogramming request in accordance with the DOD Financial Management Regulation or a formal request for additional funding authorization through the next annual NDAA and MILCON-VA appropriations bill.¹⁰⁶ The mechanisms for increasing the authorization are outlined in 10 U.S.C. §2853 and are based on specified thresholds.

Contract Changes: Cost Increase Thresholds

In some instances, the actual cost of executing a military construction project turns out to be less than the amount of money originally authorized and appropriated for that project. This leftover funding is sometimes referred to as "bid savings." In other instances, a project may ultimately cost more than the amount originally authorized and appropriated by Congress.

Under 10 U.S.C §2853, the Secretary concerned must notify the appropriate congressional committees if a project has cost increases or decreases of more than 25% of the total authorized cost of the project or 200 percent of the minor construction project ceiling, whichever is lower.. (This is often referred to as a "2853 notification.") The notification must include: the amount of the cost increase; the reasons for the increase; description of the funds to be used to cover the cost increase, and certification from the Secretary concerned that the cost increase is sufficient to meet the mission requirement identified in the justification data provided to Congress as part of the request for authorization of the project

In addition to or distinct from statutory notification requirements in 10 U.S.C. §2853, DOD may seek to have bid savings or other unobligated money transferred, or "reprogrammed" from one project to another. The requirements for reprogramming money depend on several factors. Each

¹⁰⁴ The federal regulations concerning Design-Bid-Build projects are outlined in portions of Title 40 of the *United States Code* (§1101 et seq.), and those relevant to Design-Build projects are in 10 U.S.C. §2305a. Both statutes apply to federal building contracts in general and are not unique to the MILCON process.

¹⁰⁵ Unified Facilities Criteria (UFC) Programming Cost Estimates for Military Construction, see page 8, section 4-6.1, at https://www.wbdg.org/FFC/DOD/UFC/ufc_3_730_01_2011_c2.pdf.

¹⁰⁶ Under 10 U.S.C. §2853, the cost authorized for a military construction project may be increased or decreased by not more than 25% of the total authorized cost of the project or 200% of the minor construction project ceiling specified in section 2805(a), whichever is less. The current project ceiling specified in section 2805(a) is \$9 million.

year, generally, the report accompanying the annual MILCON-VA appropriation bill includes language defining the threshold requiring prior approval for reprogramming funds within a military construction appropriations account.¹⁰⁷ In FY2023, the threshold was set at \$6 million or 25 percent of the original funded amount, whichever is less.¹⁰⁸ This threshold helps determine the process for seeking additional money: Key elements of that process include:

- For project cost increases within this threshold, Below Threshold Reprogramming (BTR) is permitted.¹⁰⁹ BTRs require internal service processing only, though they must still be funded with bid savings within the applicable MILCON appropriations.¹¹⁰
- If the required project cost increase exceeds the BTR limit and bid savings are available to cover the cost overrun, Congress requires a formal reprogramming of funds to assign available bid savings to the project. These Prior Approval (PA) reprogramming actions are typically routed from the service, through the Office of the Under Secretary of Defense Comptroller (OUSDC) for approval, and then sent to the appropriate congressional committees for final approval.¹¹¹
- If the required cost increase exceeds the BTR limit and bid savings are not available, the DOD may submit a request for the additional money to complete the project in the next budget cycle. This can be included as a specific line item in the next annual NDAA and MILCON-VA appropriations bill as a “Cost to Complete (CTC), assuming that the funds can be allocated within the military department’s total budget authority.

Contract Changes: Scope Change Thresholds

If the Secretary concerned determines that the scope of a defined facility within a project must be increased or decreased for some reason, the change may require, depending on the extent of the increase or decrease, the Secretary concerned to notify the appropriate congressional committees or seek additional authorization.¹¹²

If the increase in scope is 10% or less of the original scope reported in the DD Form 1391, the Secretary concerned may approve that increase with a required notification of the appropriate congressional committees and a 14-day waiting period. If the scope increase required exceeds 10%, OSD must submit a request to Congress for approval in the NDAA during the budget cycle with special authorization language to be included under Division B for the service in question.

Section 2853 also limits potential decreases in the scope of a MILCON project.¹¹³ If the scope of work for a military construction project is reduced by more than 25% from the amount specified

¹⁰⁷ Ibid.

¹⁰⁸ The threshold was updated for FY2023, see joint explanatory statement for the FY2023 Military Construction, Veterans Affairs and Related Agencies Appropriations Act (P.L. 117-328)

¹⁰⁹ See DOD, *Financial Management Regulation* (7000.14-R), Volume 3, Chapter 6, “Reprogramming of DoD Appropriated Funds,” at https://comptroller.defense.gov/Portals/45/documents/fmr/current/03/03_06.pdf.

¹¹⁰ “Bid savings” refers to any money remaining in the MILCON budget that results from contracts that ultimately (after implementation of the federal contracting process) cost less than the amount that Congress authorization and appropriated to fund the project.

¹¹¹ See DOD, *Financial Management Regulation* (7000.14-R), Volume 3, Chapter 7, “Reprogramming of Military Construction and Family Housing Appropriated Funds,” at https://comptroller.defense.gov/Portals/45/documents/fmr/current/03/03_07.pdf.

¹¹² See 10 U.S.C §2853, “Authorized cost and scope of work variations.”

¹¹³ 10 U.S.C. § 2853 defines the term “scope of work” to refer to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data provided to Congress as part of the request for

for that project, the Secretary concerned must grant a waiver for the reduction and is required to notify the appropriate congressional committees.¹¹⁴ The notification should describe the reduction in the scope of work and the reasons for the decrease; and certify that the project in its reduced scope can still meet the mission requirement originally identified in the justification data provided to Congress. The Secretary's waiver takes effect after a 14-day waiting period following the notification of the appropriate congressional committees.

Completion

Upon construction completion, the facility is inspected and turned over to the customer for outfitting of any specialized equipment or furnishings not included in the main construction contract. During the transfer of the facility, the DD Form 1354 documents the components of the construction with quantity and values, and provides the basis for the value of the property in the real property database system for the installation. Following turnover of the facility, the DCA continues to monitor the facility for any warranty issues prior to financial closeout of the project.

authorization of the project, construction, improvement, or acquisition.

¹¹⁴ The law limits the military's option to scale back the scope of the project to reduce costs. 10 U.S.C. §2853 states: "Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition."

Appendix A. Selected Statutes Governing Military Construction and Repair Authorities

Table A-1. Summary of Selected Military Construction and Repair Authorities

Authorities	Criteria	Limitations	Congressional Reporting Requirement	Waiting Period	Source Of Funding
Military Construction (10 U.S.C. §2802)	Provides funding for military construction projects, land acquisitions, and defense access road projects	Projects costing more than \$9 million are subject to specific authorization in law and budgetary authority through annual budget cycle	As part of the annual budget process, the Secretary concerned must provide information about the project's description, justification and cost estimate	No waiting period for projects authorized in law	MILCON appropriations as specifically authorized in law
Emergency Construction (10 U.S.C. §2803)	Provides funding for projects vital to the national security or to the protection of health, safety, or the quality of the environment; and So urgent that deferral of the project for inclusion in the next MILCON authorization act would be "inconsistent with national security or the protection of health, safety, or environmental quality"	Total obligations under this authority may not exceed \$50 million for any fiscal year (for each Secretary concerned)	Statute requires Secretary concerned to notify Congress when using this authority and to provide a justification for the project, cost estimate, source of funding and rational for using this authority	5 days from notification	Unobligated funding from MILCON appropriations
Contingency Construction^e (10 U.S.C. §2804)	Provides funding if the Secretary of Defense determines that deferral of the project for inclusion in the next MILCON authorization act would be "inconsistent with national security or national interest"	Subject to unique DOD approval process involving Joint Chiefs of Staff	Statute requires Secretary of Defense to notify Congress when using this authority and to provide a justification, a cost estimate and explanation for using this authority	7 days from notification	MILCON appropriations as specifically authorized for the "Contingency Construction" account.

Authorities	Criteria	Limitations	Congressional Reporting Requirement	Waiting Period	Source Of Funding
Unspecified Minor Construction^a <i>(10 U.S.C. §2805)</i>	Provides funding for Military Construction projects if total cost does not exceed \$9 million	If project costs more than \$750,000, statute requires prior approval from the Secretary concerned	If project costs more than \$4 million, statute requires Secretary concerned to notify Congress, provide justification and cost estimate	14 days from notification for projects with cost exceeding notification threshold	MILCON appropriations as specifically authorized for Unspecified Minor Military Construction accounts If project costs less than \$4 million, statute allows Secretary concerned to use O&M appropriations Money from Working Capital Funds may be used for projects revitalizing the Defense Industrial Base ^b
Laboratory Revitalization <i>(10 U.S.C. §2805(g))</i>	Provides funding for projects for the purpose of revitalization and recapitalization of DOD laboratories, which includes facilities conducting “test and evaluation activities” and “research, engineering and development centers”	The maximum amount of RDT&E funds appropriated or otherwise made available for military construction projects in any fiscal year for military construction projects is \$150 million.	Major MILCON projects using RDT&E funding under this statute must requested and justified through the annual defense budget process.	No waiting period when authorized and appropriated through annual defense budget process	RDT&E appropriations

Authorities	Criteria	Limitations	Congressional Reporting Requirement	Waiting Period	Source Of Funding
Laboratory Revitalization <i>(10 U.S.C. §2805(d))</i>	Provides funding for minor military construction projects (those costing less than \$9 million) for the purpose of revitalization and recapitalization of DOD laboratories, which includes facilities conducting “test and evaluation activities” and “research, engineering and development centers”	If project costs more than \$750,000, statute requires prior approval from the Secretary concerned	If project costs more than \$4 million, statute requires Secretary concerned to notify Congress, provide justification and cost estimate	14 days from notification	MILCON appropriations as specifically authorized for Unspecified Minor Military Construction accounts O&M appropriations, or amounts appropriated under 10 U.S.C. §4123g
Architectural and Engineering Services and Construction Design <i>(10 U.S.C. §2807)</i>	Provides funding for architectural and engineering services, as well as construction design performed in connection with MILCON and family housing projects ^c	Funding may not be used for activities related to advance planning ^d	If services for individual projects cost more than \$1 million, statute requires Secretary concerned to notify Congress, describing the scope of the project and estimated cost of services	14 days from notification for projects with cost exceeding notification threshold	MILCON appropriations as specifically authorized for “Planning & Design” accounts

Authorities	Criteria	Limitations	Congressional Reporting Requirement	Waiting Period	Source Of Funding
Construction Authority in the Event of a Declaration of War or National Emergency <i>(10 U.S.C. §2808)</i>	Provides funding in the event of a declaration of war, or declaration of a national emergency by the President requiring use of the armed forces for projects “necessary to support the use of such armed forces”	Total obligations under this authority may not exceed \$500 million for any fiscal year and may not exceed \$100 million for projects undertaken within the United States. Authority terminates “at the end of the war or national emergency”	Statute requires Secretary of Defense to notify Congress when using this authority and provide an explanation of “how each construction project directly supports the immediate security, logistical, or short-term housing and ancillary supporting facility needs of the members of the armed forces used in the national emergency.” Statute also requires notification of cost estimates and information about any projects that were canceled or modified to provide funding for the emergency projects.	5 days from notification	Unobligated funding from MILCON appropriations (excluding funds appropriated for family housing)
Repair of Facilities <i>(10 U.S.C. §2811)</i>	Provides funding for repairs or restoration of a real property facility or system for its original or designated functional purpose; or Conversion of a real property facility or system to a new functional purpose without increasing its external dimensions	Statute prohibits construction of new facilities or additions to existing facilities If project costs more than \$7,500,000, statute requires prior approval from the Secretary concerned	If project costs more than \$7.5 million, statute requires Secretary concerned to notify Congress regarding the project’s Justification and total cost estimate; If repair costs exceed 75% of the estimated replacement cost, notification must include an explanation of why the facility’s replacement is not in the best interest of the Government	None	O&M appropriations subject to availability

Authorities	Criteria	Limitations	Congressional Reporting Requirement	Waiting Period	Source Of Funding
Military Construction Projects for Energy Resilience, Energy Security, and Energy Conservation (10 U.S.C. §2914)	Provides funding for projects to improve an installation’s energy resilience or energy security, or to improve energy conservation	Obligated funding available from O&M accounts under this authority is limited to \$100 million in any fiscal year.	Statute requires Secretary seeking to use O&M funds for this purpose to notify Congress and provide justification for the project, cost estimates, the source of the O&M funds to be used, and, in the case of a military construction project for energy conservation, the most current projected savings-to-investment ratio.	7 days from notification	MILCON appropriations as specifically authorized in law under §2802 or Secretary may use O&M accounts subject to Congressional notification
Military Installation Resilience Projects (10 U.S.C. §2815)	May be carried out on a military installation <i>or outside of</i> a military installation if the Defense Secretary determines that the project would preserve or enhance the resilience of a military installation, military facility or community infrastructure necessary to maintain or rapidly reestablish an installation’s mission-essential functions	Must be carried out in accordance with §2802 and Secretary must provide the rationale for how the project would enhance military installation resilience; enhance mission assurance; support mission critical functions; or address known vulnerabilities or If the Secretary concerned seeks to use O&M funding for a project not previously authorized in law, <i>the Secretary concerned must certify that that waiting for next MILCON authorization act would be inconsistent with national security or the protection of health, safety, or environmental quality,</i>	Statute requires Secretary of Defense to notify Congress when using this authority and to provide a rational for using this authority If using O&M funding, statute requires Defense Secretary to notify Congress and provide cost estimates, source of funding and certification that waiting for next MILCON authorization act would be inconsistent with national security or the protection of health, safety, or environmental quality, Statute also requires Secretary of Defense to submit an annual report on the status of projects ^f	14 days from notification	MILCON appropriations as specifically authorized in law under §2802 or Secretary may use O&M accounts subject to Congressional notification

Authorities	Criteria	Limitations	Congressional Reporting Requirement	Waiting Period	Source Of Funding
Restoration or replacement of damaged or destroyed facilities (10 U.S.C. §2854)	<p>Provides funding for repair, restore, or replace a facility, including a family housing facility, that has been damaged or destroyed.</p> <p>O&M funding may be used if damage or destruction to the facility was the result of a natural disaster or a terrorism incident</p>	Total obligation in O&M funds under this authority may not exceed \$100 million in any fiscal year.	Statute requires the Secretary concerned to notify Congress if the cost of the repair project exceeds \$9 million. Notification should include cost estimates, the source of funds for the project, and of the justification for carrying out the project under this section	Waiting period varies depending on the type of funding used (MILCON vs. O&M)	Unobligated funding from MILCON appropriations or O&M appropriations subject to availability

Source: Title 10 of the *United States Code*, Congressional Research Service.

Notes:

- a. Through FY2022, the Secretary concerned is required to adjust the dollar limitations specified in 10 U.S.C. §2805 (Unspecified minor construction) for unspecified minor military construction projects inside the United States to reflect the area construction cost index for military construction projects (not to exceed \$10M).
- b. 10 U.S.C §2208 provides temporary authorization for the use of working capital funds to pay for minor military construction projects that aims to “revitalize or recapitalize defense industrial base facilities.” The statute defines defense industrial base facilities as “any Defense Department depot, arsenal, shipyard or plant located within the United States. That provision is scheduled to expire at the end of FY2025, per Sect. 372 of P.L. 117-263.
- c. Includes projects undertaken in connection with the authority provided under 10 U.S.C. § 2854 (Restoration or replacement of damaged or destroyed facilities).
- d. Funding under this statute provides for project-specific architectural and design work. Activities related to the evaluation of the initial military requirement, known as advance planning, are funded through O&M accounts. For more information about advance planning, see pages 6 and 14 of this report.
- e. Contingency Construction funding is not always included in the annual budget. For example, the conference report (H.Rept. 112-331) accompanying the Consolidated Appropriations Act, 2012 (P.L. 112-74) listed \$10 million for contingency construction, within the Military Construction, Defense-Wide account. See H.Rept. 112-331, p. 1283. Since 2012, the defense legislation has not included appropriations for contingency construction under 10 U.S.C. §2804.
- f. Statute requires Secretary of Defense to submit an annual report to the congressional defense committees, not later than 90 days after the end of each fiscal year until December 31, 2025, on the status of the planned and active projects carried out under this section (including completed projects). Reports should include the title, location, a brief description of the scope of work, the original project cost estimate, and the current working cost estimate, and explanation for how the project will or has enhanced military installation resilience
- g. 10 U.S.C. §4123 provides funding for use at the discretion of the directors of defense laboratories to fund innovation and development programs, to potentially include construction of infrastructure, in support of the defense laboratories’ military missions.

Appendix B. Example DD Form 1391: Joint Base Lewis-McChord Barracks.

Included in the figures below is the DD Form 1391 for a \$49 million barracks project for Joint Base Lewis-McChord, which the Army submitted to Congress as a supporting document in its FY2023 MILCON budget request.

According to the Army, the project is needed to provide adequate barracks for Soldiers stationed at Joint Base Lewis-McCord (JBLM). This project is required to meet current Army standards to provide a safe and secure environment that provides privacy and comfort. Quality barracks are essential to resilience and quality of life for Soldiers, and an important factor to preserve and enhance the all-volunteer force.”

The complete DD Form 1391 for this MILCON project consists of three pages and includes cost estimates, a description of the proposed construction, the Army’s requirements and justifications for the project, and other supplemental data. The bottom of the document includes details about the project’s timeline – when the design began, the current status of the design process, and projected dates for contract award, start date and completion date.

Figure B-1. Example of DD Form 1391: Joint Base Lewis-McChord Barracks (1 of 3).
 Copy of budget justification document submitted to Congress for FY2022

1. COMPONENT Army		FY 2023 MILITARY CONSTRUCTION PROJECT DATA			2. DATE 01 APR 2022	
3. INSTALLATION AND LOCATION Joint Base Lewis-McChord Washington				4. PROJECT TITLE Barracks		
5. PROGRAM ELEMENT 22096A		6. CATEGORY CODE 72111	7. PROJECT NUMBER 97456		8. PROJECT COST (\$000) Approp 49,000	
9. COST ESTIMATES						
ITEM		UM (M/E)	QUANTITY	UNIT COST	COST(\$000)	
PRIMARY FACILITY						
72111 Barracks		m2 (SF)	5,572 (59,975)	5,969	34,924 (33,260)	
00000 Cyber Security Measures		LS	--	--	(500)	
Sustainability/Energy Measures		LS	--	--	(665)	
Antiterrorism Measures		LS	--	--	(499)	
SUPPORTING FACILITIES					8,939	
Electric Service		LS	--	--	(2,829)	
Water, Sewer, Gas		LS	--	--	(321)	
Steam/Chilled Water Distribution		LS	--	--	(39)	
Paving, Walks, Curbs And Gutters		LS	--	--	(2,183)	
Storm Drainage		LS	--	--	(557)	
Site Imp(2,897) Demo()		LS	--	--	(2,897)	
Information Systems		LS	--	--	(113)	
ESTIMATED CONTRACT COST					43,863	
CONTINGENCY (5.00%)					2,193	
SUBTOTAL					46,056	
SUPPV, INSP & OVERHEAD (5.70%)					2,625	
TOTAL REQUEST					48,681	
TOTAL REQUEST (ROUNDED)					49,000	
INSTALLED EQT-OTHER APPROP					(0)	
10. Description of Proposed Construction Construct a barracks to accommodate 150 Soldiers. Primary facilities include living and sleeping quarters, baths, storage, service areas, information systems, fire protection and alarm systems, Intrusion Detection System (IDS) installation, and Energy Monitoring Control Systems (EMCS) connection. Supporting facilities include site development, utilities and connections, lighting, paving, parking, walks, curbs and gutters, storm drainage, information systems, landscaping, and signage. Antiterrorism Measures for this project are unique in nature and not included in the unit cost of the building. Heating and air conditioning will be provided by self-contained systems. Measures in accordance with the Department of Defense (DoD) Minimum Antiterrorism for Buildings standards will be provided. Comprehensive building and furnishings-related interior design services are required. Access for individuals with disabilities will be provided. Cyber Security Measures will be incorporated into this project. Sustainability/Energy measures will be provided. Facilities will be designed to a minimum life of 40 years in accordance with DoD's Unified Facilities Criteria (UFC 1-200-02) including energy efficiencies, building envelope and integrated building systems performance. Air Conditioning (Estimated 211 kW/60 Tons).						
11. REQ: 10,239 PN ADQT: 9,533 PN SUBSTD: 2,268 PN						
PROJECT: Construct a Barracks at Joint Base Lewis-McChord, Washington. (Current Mission)						
REQUIREMENT: This project is required to provide adequate barracks for Soldiers stationed at Joint Base Lewis-McChord (JBLM). This project is required to meet current						
DD FORM 1391, JUL 1999		PREVIOUS EDITION IS OBSOLETE			PAGE NO. 57	

Source: DoD Comptroller's Office, Department of the Army FY2022 Military Construction Program Budget Documents.

Figure B-2. Example of DD Form 1391: Joint Base Lewis-McChord Barracks (1 of 3).
 Copy of budget justification document submitted to Congress for FY2022

1. COMPONENT Army		FY 2023 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 01 APR 2022	
3. INSTALLATION AND LOCATION Joint Base Lewis-McChord Washington			4. PROJECT TITLE Barracks		
5. PROGRAM ELEMENT 22096A	6. CATEGORY CODE 72111	7. PROJECT NUMBER 97456	8. PROJECT COST (\$000) Approp 49,000		
<p>REQUIREMENT: (CONTINUED) Army standards to provide a safe and secure environment that provides privacy and comfort. Quality barracks are essential to resilience and quality of life for Soldiers, and an important factor to preserve and enhance the all-volunteer force. CURRENT SITUATION: Currently, JBLM lacks more than 700 barracks spaces. As a result, the installation is issuing Certificates of Non-Availability (CNAs) and housing allowances to house Soldiers off-base until adequate facilities are available. The lack of proper housing for Soldiers contributes to decreased morale. IMPACT IF NOT PROVIDED: If this project is not provided, mission readiness and Soldier resilience will degrade, and the need will continue to house Soldiers off-base. Soldiers living off-base have limited access to base support facilities, quality nutrition from dining facilities, and overall increased exposure to off-base risks. Also, lack of adequate barracks near unit compounds reduces Quality-of-Life, morale, equitable support, unit effectiveness, and is expected to degrade retention and Army readiness. ADDITIONAL: Utility connections are required to privatized electric, water, and wastewater systems. The Army intends to have the electric, water, and wastewater Utilities Privatization (UP) System Owners make and own the necessary connections up to the facility service disconnect or other defined point of demarcation. In the event of a future UP action, the Army intends to have the System Owner make and own the necessary connection supply to the facility disconnect or other defined point of demarcation. Required assessments have been made for supporting facilities and the project is not in a 100-year floodplain in accordance with Executive Order 11988. This project has been coordinated with the installation physical security plan, and all physical security measures are included. All required antiterrorism protection measures are included. Alternative methods of meeting this requirement have been explored during project development. This project is the only feasible option to meet the requirement. The Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships) certifies that this project has been considered for joint use potential. The facility will be available for use by other components. Sustainable principles, to include life cycle cost effective practices, will be integrated into the design, development and construction of the project and will follow the guidance detailed in the Army Sustainable Design and Development Policy - complying with applicable laws and executive orders.</p>					
12. SUPPLEMENTAL DATA:					
A. Estimated Design Data:					
(1) Status:					
(a) Date Design Started.....					JUL 2020
(b) Percent Complete as of January 2022.....					35.00
(c) Date 35% Designed.....					JUN 2021
(d) Date Design Complete.....					JUL 2022
(e) Parametric Cost Estimating Used to Develop Costs..					NO
(f) Type of Design Contract: Design-bid-build					
(2) Basis:					
(a) Standard or Definitive Design: YES					
(b) Where Design Was Most Recently Used:					

PAGE NO. 58

PREVIOUS EDITION IS OBSOLETE

DD FORM 1391C, JUL 1999

Source: DoD Comptroller's Office, Department of the Army FY2022 Military Construction Program Budget Documents.

Figure B-3. Example of DD Form 1391: Joint Base Lewis-McChord Barracks (1 of 3).
 Copy of budget justification document submitted to Congress for FY2022

1. COMPONENT Army		FY 2023 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 01 APR 2022	
3. INSTALLATION AND LOCATION Joint Base Lewis-McChord Washington			4. PROJECT TITLE Barracks		
5. PROGRAM ELEMENT 22096A	6. CATEGORY CODE 72111	7. PROJECT NUMBER 97456	8. PROJECT COST (\$000) Approp 49,000		
12. SUPPLEMENTAL DATA (CONTINUED..)					
A. Estimated Design Data: (CONTINUED..)					
Fort George G Meade					
(c) Percentage of Design utilizing Standard Design ...					100
(3) Total Design Cost (c) = (a)+(b) OR (d)+(e):					(\$000)
(a) Production of Plans and Specifications.....					2,695
(b) All Other Design Costs.....					674
(c) Total Design Cost.....					3,369
(d) Contract.....					2,695
(e) In-house.....					674
(4) Construction Contract Award.....					JAN 2023
(5) Construction Start.....					MAR 2023
(6) Construction Completion.....					NOV 2024
B. Equipment associated with this project which will be provided from other appropriations:					
<u>Equipment Nomenclature</u>	<u>Procuring Appropriation</u>	<u>Fiscal Year Appropriated Or Requested</u>	<u>Cost (\$000)</u>		
	NA				
Installation Engineer: Phone Number: 253-967-3191					
DD FORM 1391C, JUL 1999		PREVIOUS EDITION IS OBSOLETE		PAGE NO. 59	

Source: DoD Comptroller's Office, Department of the Army FY2022 Military Construction Program Budget Documents.

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This report was originally authored by Daniel H. Else, former CRS Specialist in National Defense; and subsequently updated by Lynn M. Williams, former CRS Specialist in Defense Readiness & Infrastructure; and G. James Herrera, former CRS Analyst in U.S. Defense Readiness and Infrastructure. It has been revised and updated several times to reflect current policy, practice, and law.

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