



June 7, 2019

Defense Primer: DOD Transfer and Reprogramming Authorities

In the *United States Code* and annual authorization and appropriations acts, Congress provides the Department of Defense (DOD) limited authority to obligate funds for purposes other than originally approved. These authorities allow the department to *transfer* or *reprogram* funds. A transfer involves shifting funds from one appropriations account to another, while a reprogramming involves shifting funds within the same account. DOD uses the term *reprogramming action* to describe both types of transactions. This primer focuses on authorities provided in the fiscal year ending September 30, 2018.

Background

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

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

In addition to these notification requirements, DOD Financial Management Regulation (FMR) requires some reprogramming actions to be approved by certain congressional committees.

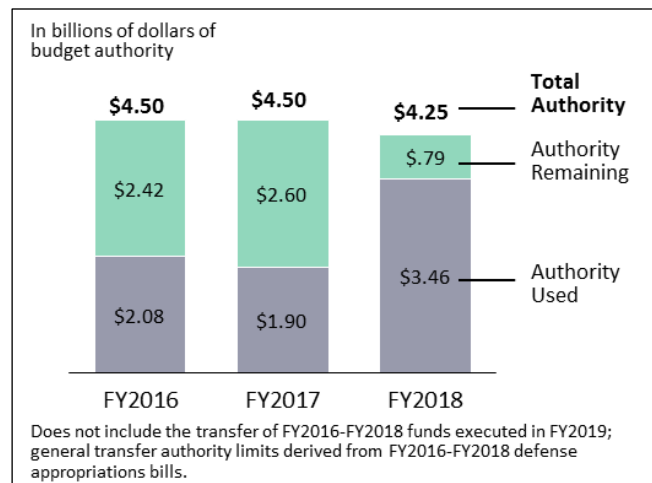
Transfer Authorities

In recent years, defense authorization and appropriations acts have included transfer authority of a certain amount for a general purpose and additional amounts for specific purposes. For example, the authorizing legislation, as well as FMR and DOD budget execution documents, makes a

distinction between *general transfer authority* and *special transfer authority*.

General Transfer Authority. Section 8005 of the FY2018 defense appropriations act (P.L. 115-141) allows the Secretary of Defense, with the approval of the Office of Management and Budget, to transfer up to \$4.25 billion of “funds made available in this Act ... for military functions (except military construction) between such appropriations or funds or any subdivision.” Section 1001, “General Transfer Authority,” of the FY2018 National Defense Authorization Act (NDAA; P.L. 115-91) is the accompanying authorizing language. See **Figure 1**. (Separate reprogramming authorities and processes are used for military construction and family housing appropriations and for National Intelligence Program/Military Intelligence Program appropriations.)

Figure 1. DOD General Transfer Authority, FY2016-FY2018



Sources: FY2016-FY2018 defense appropriations acts (P.L. 114-113, P.L. 115-31, and P.L. 115-141); email from the Office of the Under Secretary of Defense (Comptroller), June 6, 2019.

Note: Amounts exclude Military Personnel adjustments.

Special Transfer Authority. Section 9002 of the FY2018 defense appropriations act allows the SECDEF to transfer up to \$2.25 billion in Overseas Contingency Operations (OCO) funding “between the appropriations or funds” made available in Title IX of the act. Section 1512 of the FY2018 NDAA is the accompanying authorizing language.

Reprogramming Action Types

The Office of the Under Secretary of Defense-Comptroller (OSD-C) describes reprogramming as “a change in the

application of funds.” According to the department, types of reprogramming actions can include the following:

Prior-Approval (PA). Reprogramming actions that require prior approval from the chairman and the ranking member of the House Appropriations Committee (HAC), House Armed Services Committee (HASC), Senate Appropriations Committee (SAC), and Senate Armed Services Committee (SASC). Prior-approval reprogramming actions can involve the following:

- increasing procurement quantity of a major end item (e.g., aircraft, missile, naval vessel);
- involving congressional special interest items;
- using general or special transfer authority;
- exceeding established thresholds (see the “Below Threshold Reprogramming” heading below);
- establishing a new program or canceling an existing one; or
- using proceeds to replace certain items sold from inventory.

Internal Reprogramming (IR). Actions that do not require congressional approval and that are used to move funds without changing their purpose or congressional intent. Internal reprogramming actions can involve the following:

- reclassifying funds to a different line item, program element, or appropriation without changing the substance of the program;
- using transfer authority to execute funds from designated transfer accounts (e.g., Environmental Restoration accounts; Drug Interdiction and Counter-Drug Activities, Defense; Overseas Contingency Operations Transfer Fund; Foreign Currency Fluctuations, Defense); and
- reflecting approval to increase procurement quantities for major end items not requiring prior approval of the congressional defense committees.

Below Threshold Reprogramming (BTR). Minor reprogramming actions that do not require congressional approval because they do not meet certain dollar thresholds. The explanatory statement accompanying the FY2018 defense appropriations act included the following thresholds:

- \$10 million for military personnel;
- \$20 million for operation and maintenance;
- \$20 million for procurement; and
- \$10 million for research, development, test, and evaluation.

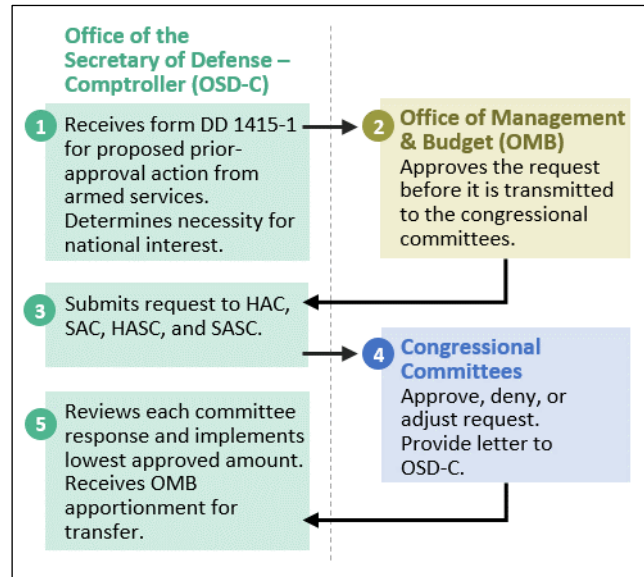
Letter Transfer (LTR). Reprogramming actions that are used to process congressionally directed transfers, such as transfers from the Defense Health Program to the Department of Veterans Affairs.

Process

Section 8007 of the FY2018 defense appropriations act directs the DOD to submit a report (DD Form 1414) to the congressional committees within 60 days after enactment to establish a baseline against which the department can transfer or reprogram funds. The baseline reflects adjustments since the initial appropriation, to include rescissions, supplemental appropriations, and approved reprogramming actions to date. Section 8007 prohibits DOD from reprogramming or transferring funds until the report is submitted to the congressional committees, unless the SECDEF certifies that the action is an emergency

requirement. For internal reprogramming actions, OSD-C notifies the committees using DD Form 1415-3. For prior-approval reprogramming actions, OSD-C typically submits to the committees DD Form 1415-1 in one of two ways: (1) as needed for specific requirements, usually on a monthly basis, and (2) as part of a single request for multiple reprogramming actions due prior to June 30 each year. The latter is intended to streamline the process for the committees and DOD. Typically, the committees either approve, deny, or adjust the requested amounts before DOD transfers or reprograms funds. See **Figure 2**.

Figure 2. DOD Process for Prior Approval Reprogramming Actions



Source: CRS based on DOD 7000.14-R FMR.

Issue for Congress

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

Selected References

- 10 U.S.C. 2214, *Transfer of funds: procedure and limitations*
- DOD 7000.14-R, *Financial Management Regulation (FMR)*, Volume 3, Chapter 6, September 2015
- CRS Report R43098, *Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures*

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