



# Military Construction: A Snapshot of the President's FY2013 Appropriations Request

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## Summary

The Military Construction, Veterans Affairs, and Related Agencies appropriations bill provides funding for the planning, design, construction, alteration, and improvement of facilities used by active and reserve military components worldwide. Title I of the bill capitalizes military family housing and the U.S. share of the NATO Security Investment Program and finances the implementation of installation closures and realignments. Other titles within the legislation fund veterans benefit and health care programs administered by the Department of Veterans Affairs (VA), provide for the creation and maintenance of U.S. cemeteries and battlefield monuments within the United States and abroad, and support the U.S. Court of Appeals for Veterans Claims, Armed Forces Retirement Homes, and Arlington National Cemetery. The bill also funds advance appropriations for veterans' medical services.

President Barack Obama submitted his request to Congress for FY2013 appropriations on February 13, 2013. For the appropriations accounts included in this bill, his request totaled \$145.2 billion in new budget authority, divided into three major categories: Title I (military construction and family housing) at \$11.2 billion; Title II (veterans affairs) at \$135.6 billion; and Title III (related agencies) at \$219.5 million. Of the total, \$74.4 billion (49.9%) would be discretionary appropriations, with the remainder considered mandatory.

Military construction funding amounts requested by the President and enacted by Congress have fallen off as the 2005 Defense Base Closure and Realignment (BRAC) round has reached completion, although Secretary of Defense Leon Panetta has requested statutory authority to carry out two new BRAC rounds in 2013 and 2015. Funding support for military family housing construction has also declined as the military departments (Army, Navy, and Air Force) continue their efforts to privatize formerly government-owned accommodations.

The House Committee on Appropriations reported its FY2013 bill (H.R. 5854) on May 16, 2012 (H.Rept. 112-491) and passed the bill on May 31. It was received in the Senate on June 5. The Senate Committee on Appropriations reported its bill (S. 3215) on May 22 (S.Rept. 112-168), and the bill was placed on the Legislative Calendar under General Orders.

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## Military Construction Appropriations, FY2011-FY2013

Military construction funding requested by President and recommended in the various appropriations bills, along with that enacted for FY2011 and FY2012, are shown in **Table 1** and **Table 2**.

**Table 1. Military Construction Appropriations Accounts, FY2011-FY2013**

Budget Authority in thousands of dollars

Account	FY2011 Full-Year Continuing Appropriation (P.L. 112-10, Div B, Title X)	FY2012 Enacted (P.L. 112-74, Div. H)	FY2013 Request	FY2013 House Bill (H.R. 5854)	FY2013 Senate Bill (S. 3215)
Military Construction, Army	3,787,598	3,006,491	1,923,323	1,820,323	1,684,323
Rescissions	-263,000	—	—	—	—
Reduction	-7,575	—	—	—	—
Total New BA	3,517,023	3,006,491	1,923,323	1,820,323	1,684,323
Military Construction, Navy and Marine Corps	3,303,611	2,112,823	1,701,985	1,551,217	1,650,240
Rescissions	-61,050	—	—	—	—
Reduction	-6,607	—	—	—	—
Total New BA	3,235,954	2,112,823	1,701,985	1,551,217	1,650,240
Military Construction, Air Force	1,106,995	1,227,058	388,200	388,200	322,543
Rescissions	-121,700	—	—	—	—
Reduction	-2,214	—	—	—	—
Total New BA	983,081	1,227,058	388,200	388,200	322,543
Military Construction, Defense-wide	2,873,062	3,431,957	3,654,623	3,569,623	3,442,123
Rescissions	-148,500	—	—	—	—
Reduction	-5,746	—	—	—	—
Total New BA	2,718,816	3,431,957	3,654,623	3,569,623	3,442,123
<b>Total, Active Components</b>	<b>10,454,874</b>	<b>9,778,329</b>	<b>7,668,131</b>	<b>7,329,363</b>	<b>7,099,229</b>

<b>Account</b>	<b>FY2011 Full-Year Continuing Appropriation (P.L. 112-10, Div B, Title X)</b>	<b>FY2012 Enacted (P.L. 112-74, Div. H)</b>	<b>FY2013 Request</b>	<b>FY2013 House Bill (H.R. 5854)</b>	<b>FY2013 Senate Bill (S. 3215)</b>
Military Construction, Army National Guard	873,664	773,592	613,799	613,799	613,799
Rescissions	—	—	—	—	—
Reduction	-1,747	—	—	—	—
<b>Total New BA</b>	<b>871,917</b>	<b>773,592</b>	<b>613,799</b>	<b>613,799</b>	<b>613,799</b>
Military Construction, Air National Guard	194,986	116,246	42,386	42,386	42,386
Rescissions	—	—	—	—	—
Reduction	-390	—	—	—	—
<b>Total New BA</b>	<b>194,596</b>	<b>116,246</b>	<b>42,386</b>	<b>42,386</b>	<b>42,386</b>
Military Construction, Army Reserve	318,175	280,549	305,846	305,846	305,846
Reduction	-636	—	—	—	—
<b>Total New BA</b>	<b>317,539</b>	<b>280,549</b>	<b>305,846</b>	<b>305,846</b>	<b>305,846</b>
Military Construction, Navy Reserve	61,557	26,299	49,532	49,532	49,532
Reduction	-123	—	—	—	—
<b>Total New BA</b>	<b>61,434</b>	<b>26,299</b>	<b>49,532</b>	<b>49,532</b>	<b>49,532</b>
Military Construction, Air Force Reserve	7,832	33,620	10,979	10,979	10,979
Reduction	-16	—	—	—	—
<b>Total New BA</b>	<b>7,816</b>	<b>33,620</b>	<b>10,979</b>	<b>10,979</b>	<b>10,979</b>
<b>Total, Reserve Components</b>	<b>1,453,302</b>	<b>1,230,306</b>	<b>1,022,542</b>	<b>1,022,542</b>	<b>1,022,542</b>
<b>Total, Military Construction</b>	<b>11,908,176</b>	<b>11,008,635</b>	<b>8,690,673</b>	<b>8,351,905</b>	<b>8,121,771</b>
(Appropriations)	12,527,480	11,008,635	8,690,673	8,351,905	8,121,771
(Rescissions)	-594,250	—	—	—	—
(Reductions)	-25,054	—	—	—	—
<b>NATO Security Investment Program</b>	<b>258,884</b>	<b>247,611</b>	<b>254,163</b>	<b>254,163</b>	<b>254,163</b>
Reduction	-518	—	—	—	—

<b>Account</b>	<b>FY2011 Full-Year Continuing Appropriation (P.L. 112-10, Div B, Title X)</b>	<b>FY2012 Enacted (P.L. 112-74, Div. H)</b>	<b>FY2013 Request</b>	<b>FY2013 House Bill (H.R. 5854)</b>	<b>FY2013 Senate Bill (S. 3215)</b>
<b>Total New BA</b>	<b>258,366</b>	<b>247,611</b>	<b>254,163</b>	<b>254,163</b>	<b>254,163</b>
Family Housing Construction, Army	92,369	176,897	4,641	4,641	4,641
Reduction	-185	—			
Total New BA	92,184	176,897	4,641	4,641	4,641
Family Housing Ops and Debt, Army	518,140	493,458	530,051	530,051	530,051
Reduction	-1,036	—	—	—	—
Total New BA	517,104	493,458	530,051	530,051	530,051
Family Housing Construction, Navy and Marine Corps	186,444	110,972	102,182	102,182	102,182
Reduction	-373	—	—	—	—
Total New BA	186,071	110,972	102,182	102,182	102,182
Family Housing Ops and Debt, Navy and Marine Corps	366,346	367,863	378,230	378,230	378,230
Reduction	-733	—	—	—	—
Total New BA	365,613	367,863	378,230	378,230	378,230
Family Housing Construction, Air Force	78,025	60,042	83,824	83,824	83,824
Reduction	-156	—	—	—	—
Total New BA	77,869	60,042	83,824	83,824	83,824
Family Housing Ops and Debt, Air Force	513,792	429,523	497,829	497,829	497,829
Reduction	-1,028	—	—	—	—
Total New BA	512,764	429,523	497,829	497,829	497,829
Family Housing Construction, Defense-Wide	—	—	—	—	—
Family Housing Ops and Debt, Defense-Wide	50,464	50,723	52,238	52,238	52,238
Reduction	-101	—	—	—	—

Account	FY2011 Full-Year Continuing Appropriation (P.L. 112-10, Div B, Title X)	FY2012 Enacted (P.L. 112-74, Div. H)	FY2013 Request	FY2013 House Bill (H.R. 5854)	FY2013 Senate Bill (S. 3215)
Total New BA	50,363	50,723	52,238	52,238	52,238
DOD Family Housing Improvement Fund	1,096	2,184	1,786	1,786	1,786
Reduction	-2	—	—	—	—
Total New BA	1,094	2,184	1,786	1,786	1,786
Homeowners Assistance Fund	16,515	1,284	—	—	—
Reduction	-33	—	—	—	—
Total New BA	16,482	1,284	—	—	—
<b>Total, Family Housing</b>	<b>1,819,544</b>	<b>1,682,946</b>	<b>1,650,781</b>	<b>1,650,781</b>	<b>1,650,781</b>
(Appropriations)	1,823,191	1,682,946	1,650,781	1,650,781	1,650,781
(Reductions)	-3,647	0	0	0	0
<b>Chemical Demilitarization Construction, Defense-wide</b>	124,971	75,312	151,000	151,000	151,000
Reduction	-250	—	—	—	—
<b>Total New BA</b>	<b>124,721</b>	<b>75,312</b>	<b>151,000</b>	<b>151,000</b>	<b>151,000</b>
<b>Base Realignment and Closure</b>					
BRAC,1990	360,474	323,543	349,396	349,396	349,396
Rescissions	—	—	—	—	—
Reduction	-721	—	—	—	—
Total New BA	359,753	323,543	349,396	349,396	349,396
BRAC,2005	2,354,285	258,776	126,697	126,697	126,697
Rescissions	-232,363	—	—	—	—
Reduction	-4,709	—	—	—	—
Total New BA	2,117,213	258,776	126,697	126,697	126,697
<b>Total, BRAC</b>	<b>2,476,966</b>	<b>582,319</b>	<b>476,093</b>	<b>476,093</b>	<b>476,093</b>
(Appropriations)	2,714,759	582,319	476,093	476,093	476,093
(Rescissions)	-232,363	—	—	—	—
(Reductions)	-5,430	—	—	—	—

<b>Account</b>	<b>FY2011 Full-Year Continuing Appropriation (P.L. 112-10, Div B, Title X)</b>	<b>FY2012 Enacted (P.L. 112-74, Div. H)</b>	<b>FY2013 Request</b>	<b>FY2013 House Bill (H.R. 5854)</b>	<b>FY2013 Senate Bill (S. 3215)</b>
<b>Rescissions (Sec. 131)</b>					
Military Construction, Army	—	-100,000	—	—	—
Military Construction, Navy and Marine Corps	—	-25,000	—	—	—
Military Construction, Air Force	—	-32,000	—	—	—
Military Construction, Defense-Wide	—	-131,400	—	—	—
<b>Rescissions (Sec. 132)</b>					
Base Realignment and Closure, 2005	—	-258,776	—	—	—
<b>Cancellation (Sec. 127)</b>					
Military Construction, Defense-Wide	—	—	—	-20,000	—
<b>Cancellation (Sec. 128)</b>					
BRAC 2005	—	—	—	-212,291	—
<b>Reduction (Sec. 129)</b>					
Civilian Pay Raise Reduction	—	—	—	-2,334	—
<b>Grand Total, Title I</b>	<b>16,587,773</b>	<b>13,049,647</b>	<b>11,222,710</b>	<b>10,649,317</b>	<b>10,653,808</b>
(Appropriations)	17,449,285	13,596,823	11,222,710	10,883,942	10,653,808
(Rescissions)	-826,613	-547,176	0	-234,625	0
(Reductions)	-34,899	—	0	0	0

**Sources:** P.L. 112-10; P.L. 112-74; H.Rept. 112-491, S.Rept. 112-168.



**Table 2. OCO Military Construction Appropriations Accounts, FY2012-FY2013**

Budget Authority in thousands of dollars

Account	FY2011 Full-Year Continuing Appropriation (P.L. 112-10, Div B, Title X)	FY2012 Enacted (P.L. 112-74, Div. H)	FY2013 Request	FY2013 House Bill (H.R. 5854)	FY2013 Senate Bill (S. 3215)
Military Construction, Army	981,346	80,000	—	—	—
Military Construction, Navy and Marine Corps	—	189,703	—	150,768	—
Military Construction, Air Force	195,006	—	—	—	—
Military Construction, Defense-wide	46,500	—	—	—	—
<b>Grand Total, Title IV</b>	<b>1,222,852</b>	<b>0</b>	<b>—</b>	<b>0</b>	<b>—</b>
Rescission (P.L. 111-117)	—	-269,703	—	—	—
Rescission (P.L. 112-10 and P.L. 112-74)	—	—	—	-150,768	—
(Appropriations)	—	269,703	—	150,768	—
(Rescissions)	—	-269,703	—	-150,768	—

**Sources:** P.L. 112-10; P.L. 112-74; H.Rept. 112-491; S.Rept. 112-168.

**Notes:** This construction in U.S. Central Command was initially requested by the President as part of his “base” budget (Title I of the appropriation bill), but was moved (into Title IV, the appropriations category dedicated to Overseas Contingency Operations) by congressional appropriators.

## The Military Construction Appropriations Account

The military construction appropriations account includes a number of appropriations subaccounts:

- *Military Construction* accounts provide funds for new construction, construction improvements, and facility planning and design in support of active and reserve military forces and Department of Defense (DOD) agencies.
- The *North Atlantic Treaty Organization Security Investment Program* (NSIP) is the U.S. contribution to a common fund in which all NATO members participate to defray the costs of construction (airfields, fuel pipelines, military headquarters, etc.) needed to support major NATO commands.
- *Family housing* accounts fund new construction, construction improvements, federal government costs for family housing privatization, maintenance and repair, furnishings, management, services, utilities, and other expenses incurred

- in providing suitable accommodation for military personnel and their families where needed.
- The *DOD Housing Improvement Fund* is the vehicle by which DOD provides the seed money, both directly appropriated and transferred from other accounts, needed to initiate public-private arrangements for the privatization of military housing.
  - The *Homeowners Assistance Fund* aids federal personnel stationed at or near an installation scheduled for closure or realignment who are unable to sell their homes by allowing the Secretary of Defense to subsidize the sale or to purchase homes outright. The American Recovery and Reinvestment Act of 2009 (P.L. 111-5), or ARRA (the Stimulus Bill), permanently expanded eligibility for the Homeowner Assistance Program to some classes of wounded and injured DOD and Coast Guard personnel or their surviving spouses.<sup>1</sup>
  - The *Chemical Demilitarization Construction, Defense-Wide*, account provides for the design and construction of disposal facilities required for the destruction of chemical weapons stockpiles, as required under international treaty.
  - The *Base Realignment and Closure Account 1990* funds the remaining environmental remediation requirements (including the disposal of unexploded ordnance) arising from the first four base realignment and closure (BRAC) rounds (1988, 1991, 1993, and 1995).
  - The *Base Realignment and Closure Account 2005* provides funding for the military construction, relocation, and environmental requirements of the implementation of both the 2005 BRAC round and the DOD Integrated Global Presence and Basing Strategy/Global Defense Posture Realignment (military construction only).

## **Appropriation Legislation**

On February 14, 2012, President Barack Obama submitted to Congress his request for military construction appropriations to support federal government operations during the fiscal year beginning on October 1, 2012 (FY2013). Military construction projects are funded through Title I and Title IV of the broader Military Construction, Veterans Affairs, and Related Agencies Appropriations Act.

The House Committee on Appropriations introduced its Military Construction, Veterans Affairs, and Related Agencies Appropriations Act for 2013 (H.R. 5854, H.Rept. 112-491) on May 23, 2012. The House began debate on May 31 (*Congressional Record (CR)* H3309-H3359) and passed the bill on the same day by the Yeas and Nays, 407-12 (Roll No. 305). H.R. 5854 was received in the Senate on June 5, 2012, read twice, and placed on the Legislative Calendar under General Orders (Calendar No. 421).

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<sup>1</sup> The ARRA also authorized the Secretary of Defense to extend HAP eligibility to some military personnel ordered to change their permanent duty stations who found themselves having to sell their homes in a depressed housing market. Eligibility under those provisions expired on September 30, 2010.

In a Statement of Administration Policy (SAP) issued on May 30, 2012, the Office of Management and Budget (OMB) stated that the President's senior advisors would recommend a veto of H.R. 5854. Among the reasons cited relevant to military construction were

- the bill's incremental funding of the construction of an Aegis Ashore Missile Complex in Romania, and
- language governing the inclusion of Project Labor Agreements (PLAs) in federal construction projects.

These issues will be addressed later in this report.

The Senate Committee on Appropriations introduced its own draft of the bill (S. 3215, S. Rept. 112-168) on May 22. The bill was placed on the Legislative Calendar under General Orders (Calendar No. 408).

## **National Defense Authorization Legislation**

Section 114 of Title 10, *United States Code*, requires that Congress authorize the appropriation of funding to DOD for certain purposes, including military construction, as part of the annual appropriations cycle. This authorization is effected through the enactment of the annual National Defense Authorization Act (NDAA), of which one division constitutes the Military Construction Authorization Act. While appropriations bills fall within the jurisdiction of the two chambers' Committees on Appropriations, writing the NDAA is the responsibility of the Committees on Armed Services.

The House version of the NDAA for FY2013 (H.R. 4310) was introduced in the House on March 29, 2012. The House Committee on Armed Services reported its amendment of the bill on May 11 (H.Rept. 112-479, with a supplemental report, H.Rept. 112-479, Part 2, submitted on May 15). The House began debate of the bill on May 16 and passed it by recorded vote, 219-10 (Roll no. 291), on May 18 (CR H2787-H2796, H2847-H3038, H3049-H3097, H3109-H3145). H.R. 4310 was received in the Senate on June 19 and referred to the Committee on Armed Services.

OMB issued an SAP on H.R. 4310 on May 15, 2012. OMB cited a number of objections to the legislation and stated that "If the cumulative effects of the bill impede the ability of the Administration to execute the new defense strategy and to properly direct scarce resources, the President's senior advisors would recommend to the President that he veto the bill." Among the issues cited in its statement, OMB noted

- the bill's prohibition on the use of funds to propose or plan for additional rounds of BRAC;
- language that would effectively freeze certain Air Force command structures, capabilities, and functions as they existed in 2011;
- reductions in the funding authorized for construction of the Aegis Ashore Missile Defense Complex in Romania and requirement for new missile defense construction on the U.S. East Coast;
- the absence of an authorization for two new base closure (BRAC) rounds; and

- the inclusion of language enabling retroactive DOD liability for environmental conditions at military installations closed outside the BRAC process after October 24, 1988.

Each of these issues will be expanded upon in subsequent sections of this report.

The Senate version of the NDAA (S. 3254) was introduced to the Senate on June 4, 2012, accompanied by its report (S.Rept. 112-173), and was placed on the legislative calendar under general orders (Calendar No. 419).

## Key Issues

### Base Realignment and Closure (BRAC)

#### Completing the 2005 BRAC Round

The Department of Defense has completed implementation of the recommendations made by the 2005 Defense Base Closure and Realignment Commission (also known as the BRAC Commission) and approved by President George W. Bush. Since the President approved the commission's recommendations on September 15, 2005, the defense agencies and military departments have carried out a highly complex—and often contentious—program of construction and movement to prepare new facilities at bases gaining military missions, to wind down operations and close facilities no longer needed by the military departments, and to transfer personnel and equipment to new locations.<sup>2</sup> In the detailed documentation submitted by DOD to accompany the President's FY2011 appropriations request, DOD estimated that its one-time implementation costs for BRAC 2005 totaled \$34.5 billion.<sup>3</sup>

The House version of the NDAA (H.R. 4310) contains a provision (Section 2711) that would establish a single "Department of Defense Base Closure Account" on the books of the Treasury that would consolidate all existing BRAC Treasury accounts (including the Defense Base Closure Account funding the 1988 BRAC round; the Defense Base Closure Account 1990 funding the 1991, 1993, and 1995 BRAC rounds; and the Defense Base Closure Account 2005 funding the 2005 BRAC round). This account would constitute the sole source of federal funding for

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<sup>2</sup> Perhaps the last implementation action, the movement of staff of the U.S. Navy's Bureau of Medicine and Surgery from its long-standing location at the original Naval Observatory between the Department of State headquarters and the United States Institute of Peace on 23<sup>rd</sup> Street in the District of Columbia to a new Defense Health Headquarters in Falls Church, VA, began on May 30, 2012. For more information on the decision to create this new tri-service medical headquarters, see U.S. Government Accountability Office, *DOD Needs to Address the Expected Benefits, Costs, and Risks for Its Newly Approved Medical Command Structure*, GAO-08-122, October 12, 2007, <http://www.gao.gov/products/GAO-08-122>.

<sup>3</sup> Office of the Secretary of Defense, *DOD Base Realignment and Closure, 2005, BRAC Commission Executive Summary*, Fiscal Year (FY) 2011 Budget Estimates, Program Year 2011, Exhibit BC-02, BRAC Implementation Costs and Savings, Washington, DC, February 2010, p. 8, [http://comptroller.defense.gov/defbudget/fy2011/budget\\_justification/pdfs/05\\_BRAC/BRAC%202005%20Executive%20Summary/BRAC\\_2005\\_Exec\\_Sum\\_FY2011\\_PresBud\\_FINAL\\_26Jan10.pdf](http://comptroller.defense.gov/defbudget/fy2011/budget_justification/pdfs/05_BRAC/BRAC%202005%20Executive%20Summary/BRAC_2005_Exec_Sum_FY2011_PresBud_FINAL_26Jan10.pdf).

- environmental restoration and mediation, property management and disposal and caretaker costs incurred at military installations closed or realigned under the various BRAC rounds;
- supervision, inspection, overhead, engineering, and design of military construction projects and subsequent claims undertaken before September 30, 2013, as part of any BRAC round; or
- record, adjust, and liquidate obligations properly chargeable to the former BRAC accounts.

The Senate version of the NDAA (S. 3254) contains no such provision.

### **Requesting New BRAC Rounds**

Secretary of Defense Leon Panetta announced on January 26, 2012, that the President would request congressional authorization to carry out two new BRAC rounds, in 2013 and 2015.<sup>4</sup> Citing his belief that impending military troop reductions could similarly reduce the need for infrastructure to support them, the Secretary concluded that

The best approach to reducing that infrastructure politically on Capitol Hill has been to work it through the BRAC process and to develop an approach whereby, you know, we would submit recommendations, the commission would look at those recommendations and then make a complete presentation to the Congress, and it would be voted up or down with one vote. So obviously, the BRAC process provides that kind of process.<sup>5</sup>

The President submitted his recommendation for the necessary legislative language to Congress on March 28, 2012. The proposed legislation, titled “the Defense Base Closure and Realignment Act of 2012,” would authorize a process closely resembling the one that evolved in the enactment and subsequent amendment of the similarly titled act of 1990.<sup>6</sup> That process required the Secretary of Defense to undertake a detailed analysis of the infrastructure requirements of the nation’s future military forces and an assessment of the infrastructure inventory on hand to meet those requirements. The Secretary then formulated a series of recommended actions by which the infrastructure inventory could be brought into line with those projected future needs.

These recommendations were submitted to an independent commission whose members were appointed by the President and confirmed by the Senate. That commission and its staff then assessed the adequacy of those recommendations, using the supporting data provided by DOD and additional information accepted from the public, gained through site visits, and gathered through public hearings. The commission was given limited power to revise or reject the Secretary’s recommendations or to create its own. The commission then submitted the adjusted list of recommendations to the President for approval.

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<sup>4</sup> Secretary Leon E. Panetta was a Member of Congress representing the area around Monterey, California, between 1977 and 1993, when he resigned in order to become the Director of the Office of Management and Budget. A major military installation in his district, Fort Ord, was recommended by the Army for closure in the 1991 BRAC round, experienced a partial closure in the 1993 round and was fully closed in the 1995 round.

<sup>5</sup> See Department of Defense, “Major Budget Decisions Briefing from the Pentagon,” press release, January 26, 2012, <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4962>.

<sup>6</sup> The Defense Base Closure and Realignment Act of 1990, as amended, is codified as 10 U.S.C. 2687.

The governing statute gave the President only three options for disposing of the commission's recommendations list: reject it, return it for revision, or approve it. He was not empowered to amend the recommendation list. Once the President approved the list, the governing statute gave Congress up to 45 days to pass a joint resolution of disapproval that would halt the BRAC process. This resolution would be considered under an expedited legislative process and the President would have to enact it for there to be any legal effect. Otherwise, the statute required the Secretary to implement all recommendations within six years of the date of presidential approval.

Sunset provisions were written into the law, in both its first iteration in 1990 and in its reauthorization in late 2001.<sup>7</sup> The Defense Base Closure and Realignment Act of 1990, which authorized three BRAC rounds in 1991, 1993, and 1995, terminated the 1990 BRAC Commission on December 31, 1995. The 2001 reauthorization terminated the 2005 BRAC Commission on April 15, 2006.<sup>8</sup> Therefore, these acts created special, temporary processes by which domestic military installations could be closed, or their missions and manning could be significantly adjusted. In fact, Section 2909 of the act specified that between November 5, 1990 (the original date of enactment) and April 15, 2006, "this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States," thereby supplanting the permanent authorities found elsewhere in statute and discussed in the following section of this report.

The President's recommendation for two new BRAC rounds preserves the established BRAC process essentially as seen in the single 2005 round and combines it with creation of a multi-round commission as seen in the 1991-1995 rounds. Under the new recommendation, the new BRAC Commission would terminate on April 15, 2016.

However, the President's legislative request did not appear in either the House or the Senate committee-reported drafts of the NDAA for FY2013.

The version of the NDAA reported by the House Committee on Armed Services (H.R. 4310) contained a provision (Section 2713) that would prohibit the use of any appropriations authorized under the bill to be used to propose, plan for, or execute an additional BRAC round.

The Senate Committee on Armed Services noted in the report on its version of the NDAA testimony from the Deputy Under Secretary of Defense for Installations and Environment, Dr. Dorothy Robyn. During a March 2012 hearing, Dr. Robyn had stated that the 2005 BRAC round had eliminated only a small percentage of the excess infrastructure carried by DOD. The committee further noted that senior Army officials had been quoted expressing no interest in another BRAC round and that senior Air Force officers had been quoted as saying that the Air Force has too many bases, despite the fact that few Air Force installations had been recommended for closure during BRAC 2005. The committee directed the Comptroller General to conduct a review of the systems and processes used by DOD to identify the extent to which bases or

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<sup>7</sup> The original act appeared as Title XXIX of the National Defense Authorization Act for Fiscal Year 1991 (P.L. 101-510). The authorization for the 2005 BRAC round was enacted at Title XXX of the National Defense Authorization Act for Fiscal Year 2002 (P.L. 107-107).

<sup>8</sup> The text of the act may be found as a note to Title 10 of the United States Code, Section 2687 (10 U.S.C. §2687 note).

facilities are excess to needs and report his findings to the congressional defense committees by May 7, 2013.<sup>9</sup>

## **Permanent Authorities to Close or Realign Military Installations**

The Constitution shares the authority to direct, regulate, and govern the nation's federal military establishment between the executive and legislative branches of government. Article I, Section 8, grants Congress the power

- To raise and support Armies ...;
- To provide and maintain a Navy;
- To make Rules for the Government and Regulation of the land and naval Forces;
- To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
- To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

Article II, Section 2, creates the President as “Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”

Thus, the fundamental compact that called the United States into being empowered Congress to create the nation's military forces and appointed a President as their commander, with the authority to deploy and employ them as necessary for national defense. This arrangement constructs a natural tension between the two.

This tension, at least with respect to DOD real property management, rose dramatically during the 1960s and 1970s when the Kennedy, Johnson, Nixon, and Ford Administrations undertook to trim the infrastructure created during World War II and the early years of the Cold War. Congressional resistance to military base closures and reductions in operational activity came to a head in 1965 when President Lyndon B. Johnson vetoed a military construction authorization bill because it contained a provision increasing congressional control over military base realignments.<sup>10</sup>

The veto, though, merely delayed by a decade a return to the issue. The military construction authorization bill for FY1977 (H.R. 94-12384) sent to President Gerald R. Ford contained language that would impose a delay of one year on the proposed closure or major realignment of military installations that would affect a specified number of DOD civilian employee positions. President Ford vetoed the bill on July 2, 1976. Congress subsequently passed a new bill (H.R. 94-

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<sup>9</sup> U.S. Congress, Senate Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2012*, report to accompany S. 3254, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 4, 2012, S.Rept. 112-173 (Washington: GPO, 2012), pp. 272-273.

<sup>10</sup> Pat Towell, “Ford Vetoes Military Construction Bill Over Base Closings Issue,” *Congressional Quarterly Weekly Edition*, July 10, 1976, p. 1829.

14846) that was identical except that the advance notification to congressional armed services committees was reduced to 60 days.<sup>11</sup> This new bill was enacted as P.L. 94-431, but its provisions expired at the end of FY1977. The following year, the Senate Committee on Armed Services inserted language into its military construction authorization bill (S. 95-1474) making those restrictions permanent. The provisions survived conference and were enacted as Section 612(a) of P.L. 95-82 on August 1, 1977.

That statutory restriction on the President's authority was codified as Section 2687 of Title 10 of the United States Code (10 U.S.C. § 2687). Amended a number of times over the years (most recently in P.L. 112-81, the National Defense Authorization Act for Fiscal Year 2012), the statute retains its essential elements, barring any action to close a military installation at which at least 300 civilian personnel are authorized to be employed, or to realign one involving a reduction by more than 1,000, or by more than 50%, in the number of civilian employees authorized to be employed, at the time the Secretary of Defense or the military department concerned makes his decision unless he

- notifies the Committees on Armed Services as part of an annual appropriation authorization request;
- includes with that notification an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment and the criteria used to reach that decision; and
- waits for a period of 30 legislative days or 60 calendar days, whichever is longer.<sup>12</sup>

The section imposes some additional requirements on the Secretary if he determines, in the course of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), that a significant transportation impact will occur at a result of his action.

The NDAA for FY2012 created a new restriction on the ability of the Secretaries to change the operational activity at a military installation through the codification of 10 U.S.C. 993. While 10 U.S.C. 2687 keys on the civilian personnel positions affected by a closure or realignment, this statute requires the Secretary concerned to notify Congress of any plan to reduce by more than 1,000 the members of the armed forces assigned to duty at a military installation. The provision bars the Secretary from taking any irrevocable action regarding such a reduction until he

- notifies the Committees on Armed Services,
- submits a justification for the reduction and an evaluation of the local strategic and operational impact of such reduction, and
- a period of 21 days has passed following notification (14 days if submitted electronically).<sup>13</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> The statute waives these requirements if the President certifies to Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.

<sup>13</sup> The statute is waived if the realignment is undertaken pursuant to a base closure law or if the President certifies to Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.



Therefore, neither the President nor his defense secretaries require specific authorization from Congress before initiating the closure or realignment of a domestic military installation.

## **Overseas Installations**

### **Europe: Consolidation within Germany and Troop Redeployment to the United States**

Army and Air Force personnel in the Federal Republic of Germany are being consolidated into two large military communities centered at Kaiserslautern (known to many servicemembers as “K-Town”) in the country’s southwest near Frankfurt, and Grafenwöhr-Vilseck in eastern Bavaria near the Czech border. For the past several years, military construction supporting this relocation has been concentrated in these areas.

A significant portion of the combat power remaining in the Army portion of EUCOM was scheduled to redeploy to new posts in the southwestern United States as part of an ongoing defense-wide reevaluation of troop garrisoning strategy, but the Secretary of Defense agreed to reconsider the movement of two brigade combat teams (BCT) from Germany to the United States after the most recent Quadrennial Defense Review reconsidered the U.S. interest in supporting NATO.<sup>14</sup> Nevertheless, in a May 7, 2012, press release, DOD announced that the U.S. military presence in Europe would be reduced by approximately 15% over the coming decade. As part of that plan, a number of units will be recalled and inactivated, including

- two of the four Army brigade combat teams currently garrisoned in Germany, the 170<sup>th</sup> and 172<sup>nd</sup> Infantry Brigades, by FY2014;
- the Air Force’s 81<sup>st</sup> Fighter Squadron (A-10 aircraft) during FY2013;
- the Air Force’s 603<sup>rd</sup> Air Control Squadron in FY2013; and
- the Army’s 5<sup>th</sup> Corps Headquarters in Wiesbaden, Germany, into which U.S. Army Europe headquarters will move from Heidelberg; plus
- approximately 2,500 additional Army personnel over the course of the next five years.

Two heavy brigade combat teams will remain in garrison in Germany – the 173<sup>rd</sup> Airborne Brigade Combat Team at Vicenza, Italy, and 2<sup>nd</sup> Stryker Cavalry Regiment at Vilseck, Germany.

Though the overall number of U.S. personnel permanently garrisoned in Europe will be drawn down, the U.S. presence is planned to be reconfigured to include:

- a rotational U.S.-based heavy brigade combat team to support the NATO Response Force;<sup>15</sup>

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<sup>14</sup> Jason Sherman, “QDR Reconsidering Plan to Move Two Brigades from Europe to U.S.,” *Inside the Pentagon*, August 13, 2009, vol. 25, no. 32.

<sup>15</sup> A “rotational” unit is not placed in permanent garrison, but rather deploys temporarily from its garrison to a forward location for a specific purpose, returning to its garrison when that task is completed.

- a battalion-size element from the rotational brigade to participate in joint exercises and operations;
- four ballistic missile defense-capable destroyers to be home-ported in Rota, Spain;
- a squadron of new V-22 aircraft to be based in Europe to support special operations;
- a small aviation detachment in Poland to support rotational deployments of F-16 and C-130 units as they promote interoperability with Polish air forces;
- a ground-based radar in Turkey (part of a missile defense deployment); and
- additional Special Forces units stationed in Germany.<sup>16</sup>

The President's FY2013 request includes \$243 million for construction in Germany. It includes \$2.4 million for an upgrade to a Defense Information Systems Agency (DISA) facility at Patch Barracks (Stuttgart), \$61.4 million to replace an elementary school at the garrison in Vogelweh, another \$52.2 million to add to a high school in Wiesbaden, and \$127.0 million for the second funding increment of a \$1.2 billion replacement project for the medical center at the Rhine Ordnance Barracks in the Kaiserslautern Military Community.<sup>17</sup>

### **Japan: The Futenma Replacement Facility, Redeployment Within Japan, and Marine Movement to Guam**

As the result of intergovernmental agreements, Japan has undertaken the construction of a new air facility in the Prefecture of Okinawa for the use of U.S. Marine Corps aviation units now operating from Marine Corps Air Station (MCAS) Futenma, near the prefecture capital of Naha. Upon completion of the new station, the existing facility is to be returned to Japanese control.

The selection of a new site for the Futenma Replacement Facility (FRF) and other Japanese domestic political considerations have delayed initiation of construction of the new facility.<sup>18</sup> Nevertheless, the Japanese press recently announced agreement between the two national governments on a potential site and runway configuration.<sup>19</sup> These plans were formalized at a joint U.S.-Japan ministerial meeting on June 21, 2011, though both governments concluded that adherence to the original 2014 completion date would be impossible, announcing afterward that the FRF would be completed "at the earliest possible date after 2014."<sup>20</sup>

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<sup>16</sup> Unattributed, "Force Changes in Europe to Preserve Strategic Edge," *Department of Defense Press Releases*, May 7, 2012.

<sup>17</sup> Rhine Ordnance Barracks, part of the Kaiserslautern Military Community, is a major deployment terminus for U.S. forces stationed in the European Central Region. Located adjacent to Ramstein Air Base and near major ammunition storage sites, the barracks will act as a major outfitting and processing station for any unit being deployed from the region on a military operation. The new medical center will replace the existing Landstuhl Regional Medical Center located several miles distant.

<sup>18</sup> For additional information and analysis of U.S.-Japanese security relations, see CRS Report RL33436, *Japan-U.S. Relations: Issues for Congress*, coordinated by Emma Chanlett-Avery.

<sup>19</sup> "Minister Tells Okinawa Gov. of Plan to Proceed with Futenma Relocation," *Kyodo News*, June 13, 2011.

<sup>20</sup> William Wan, "U.S., Japan Agree to Delay Relocation of Air Base on Okinawa," *The Washington Post*, June 22, 2011, p. A9.

In its report on military construction for FY2013, the Senate Committee on Appropriations noted these changes, stating

Nowhere is the evolving nature of United States force posture overseas more apparent than in the Pacific Area of Operation [AOR]. For the past 6 years, the Department has been struggling to implement a PACOM strategy that called for the relocation of 8,500 U.S. marines from Okinawa to Guam, construction of a new U.S. military base in Okinawa, and tour normalization in Korea, by which unaccompanied tours would be migrated to permanent tours to include all military personnel and their families. Today, that strategy has been turned on its head.

In the past year, the administration has decided to limit the number of U.S. marines scheduled to relocate from Okinawa to Guam, re-negotiate the relocation plan with the Government of Japan, de-link Guam relocation from the timing of construction of a new U.S. military base in Okinawa, and scrap future tour normalization for Korea. Instead, the Administration has proposed a new strategic plan for the Pacific AOR that provides for U.S. rotational forces in Australia, Singapore and the Philippines, a reduced presence of U.S. marines permanently based in Guam, and a planned shift of 2,500 marines from Okinawa to Hawaii. These changes have profound implications for military construction requirements in the PACOM AOR. As the Department continues to refine its military construction requirements to adapt to this new strategy, the Committee looks forward to a revised and comprehensive basing plan that will encompass these changes. In the interim, the Committee has deferred funding additional military construction related to the relocation of U.S. marines to Guam.<sup>21</sup>

The House Committee on Armed Services recommended that the Secretary of Defense be temporarily authorized to use operation and maintenance funds to assist the Government of Guam in its preparations to supply the additional municipal services and facilities needed to accommodate the Marine redeployment. The committee also recommended that the creation of a firing range on Guam be prohibited until DOD certifies that the range is required to meet a national security need. The committee further suggested that an existing statutory bar to continuing with the redeployment pending submission of a coordinated federal agency plan for civilian infrastructure development on Guam and evidence of “tangible progress” regarding the creation of an MCAS Futenma replacement facility on Okinawa be repealed.<sup>22</sup>

The Senate Committee on Armed Services noted that the President’s request for defense operation and maintenance funding included \$139.4 million for DOD’s Office of Economic Adjustment that was intended for “socioeconomic and water/wastewater infrastructure improvements” on Guam related to the Marine relocation. Citing the ongoing reevaluation of the project, the committee assessed that the request precedes the actual need and recommended against this funding.<sup>23</sup>

In addition, the committee expressed its unease with the level of uncertainty manifested in Guam relocation planning.

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<sup>21</sup> U.S. Congress, Senate Committee on Appropriations, *Military Construction and Veterans Affairs, and Related Agencies Appropriations Bill, 2013*, report to accompany S. 3215, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 22, 2012, S.Rept. 112-168 (Washington: GPO, 2012), pp. 12-13.

<sup>22</sup> This authority would expire on September 30, 2020, and is written into Section 2831 of H.R. 4310, as reported to the House. See H.Rept. 112-479, p. 318.

<sup>23</sup> S.Rept. 12-173, p. 86.

The committee remains concerned with the lack of comprehensive cost and schedule data associated with this important U.S. force posture issue. The strategic implications of the realignment are the subject of an ongoing independent assessment commissioned by the Secretary of Defense pursuant to section 346 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81).

Accordingly, the committee directs the Comptroller General of the United States to assess the costs associated with the revised plan to realign marines in the Asia-Pacific region as set forth in the joint statement of the United States-Japan Security Consultative Committee dated April 27, 2012. The assessment shall identify and assess costs associated with the initiatives' projected movement of marines to Guam, Hawaii, and Australia. To the extent possible, the assessment shall distinguish between costs that are known, costs that are estimated, and costs that are not yet known and cannot yet be estimated. The assessment should also include an estimate of the recurring annual costs of the moves that will affect future budgets for the Department of the Defense, including costs for the sustainment of forces, base operating support, and other operations and maintenance requirements.<sup>24</sup>

### **South Korea: Tour Normalization and Relocation**

Since the Armistice on the Korean Peninsula ended combat in 1954, U.S. ground forces have been concentrated in a number of forward bases distributed along the demarcation line between South Korea and North Korea, with a major headquarters complex at Yongsan, adjacent to the capital of Seoul.

Following agreements between South Korea and the United States, the headquarters of U.S. Forces, Korea (USFK) and U.S. Army and Air Force units are being concentrated into two large military communities centered on Osan Air Base and Camp Humphreys, south of the capital. Additionally, tours of duty for military personnel are being lengthened, and servicemembers will soon be permitted to bring their families with them, significantly increasing the size of those communities. In its May 2011 report on the military posture in Asia, the GAO noted that it

obtained DOD cost estimates that total \$17.6 billion through 2020 for initiatives in South Korea, but DOD cost estimates are incomplete. One initiative, to extend the tour length of military service members and move thousands of dependents to South Korea ... could cost DOD \$5 billion by 2020 and \$22 billion or more through 2050, but this initiative was not supported by a business case analysis that would have considered alternative courses of action and their associated costs and benefits. As a result, DOD is unable to demonstrate that tour normalization is the most cost-effective approach to meeting its strategic objectives. This omission raises concerns about the investments being made in a \$13 billion construction program at Camp Humphreys, where tour normalization is largely being implemented.<sup>25</sup>

The House Committee on Appropriations expressed its views on the issue of “tour normalization” in its report on the FY2012 military construction appropriations bill, stating

The Department of Defense has taken on an arduous and expensive task to normalize deployments to Korea by establishing a two-year tour for single members of the service and three-year tours for married servicemembers to include their families. The task will require

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<sup>24</sup> Ibid., p. 257. The report would be due to the committees on armed services by March 1, 2013.

<sup>25</sup> GAO-11-316, frontispiece. Additional details on the relocation of U.S. forces on the Korean Peninsula may be found in CRS Report R41481, *U.S.-South Korea Relations*, coordinated by Mark E. Manyin.

great investment in military construction for schools, family housing and child development centers just to name a few. The Committee is concerned that this investment may be an expense that the United States should not incur. The Committee directs the Secretary of Defense to report to the Committee on Appropriations within 60 days of enactment of this Act the total cost and plan for Tour Normalization in Korea.<sup>26</sup>

The Senate Committee on Appropriations voiced its concerns with both tour normalization and the redeployment of U.S. forces on the peninsula in its report on H.R. 2055, which appropriated military construction funds for FY2012.

This lack of a business case analysis ... raises concerns about the investments being made in a \$13,000,000,000 construction program at Camp Humphreys, Korea, to accommodate the relocation of United States troops south of Seoul and the first phase of tour normalization. Full tour normalization would require additional land, housing, schools and other facilities at Camp Humphreys, which would require a revised master plan for the base and would likely require changes to the current construction program. Given the extent of construction currently underway at Camp Humphreys, any substantive change in the plan could impact efficiency and drive up costs considerably.... No funding was requested in the fiscal year 2012 budget for military construction related to tour normalization in Korea, but the Committee will expect detailed cost information and a completed business case analysis, approved by the Secretary of Defense, for the strategic objectives that to this point have driven the decision to implement tour normalization, before approving any funding requests in future years. This business case analysis should clearly articulate the strategic objectives, identify and evaluate alternative courses of action to achieve those objectives, and recommend the most cost-effective alternative.<sup>27</sup>

Finally, the Senate Committee on Armed Services incorporated into S. 1253, its version of the NDAA for FY2012, Section 2113, which would bar any funds from being obligated or expended in support of tour normalization until

- DOD's Director of Cost Assessment and Program Evaluation (CAPE) conducts an appropriate analysis of alternatives to the program being pursued by the Army,
- the Secretary of the Army submits a master plan detailing the schedule and costs for the needed facility and infrastructure construction, and
- subsequent legislation authorizes such obligation.

This provision had originally been enacted as Section 2111 of the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81).

Section 2107 of the House version of the NDAA for FY2013 (H.R. 4310) continues this prohibition through FY2013, while the Senate bill (S. 3254) contains no such provision. Nevertheless, Senator Carl Levin, chair of the Senate Committee on Armed Services, while discussing defense budget cuts at a public forum, was quoted at a National Press Club forum on national security as saying, "We cannot afford to be spending – I believe it was a figure like \$10,000 a month for family housing that was planned in order to have families – more families come over and be with our troops in Korea. We cannot afford that."<sup>28</sup>

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<sup>26</sup> H.Rept. 112-94, pp. 21-22.

<sup>27</sup> S.Rept. 112-29, pp. 8, 10.

<sup>28</sup> Unattributed, "Sen. Carl Levin, D-Mich., Participates in a Discussion on National Security at the National Press (continued...)"

## Project Labor Agreements

In construction projects, Project Labor Agreements (PLAs) are arrangements between the contractors and labor organizations arrived at before hiring that establish employment terms and conditions for a specific construction project. PLAs have been used in public construction projects since the 1930s. In issuing Executive Order (E.O.) 13502 on February 6, 2009, President Barack Obama directed that, under certain circumstances, “In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor ... .” Later in the E.O., the President stipulated that

This order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.<sup>29</sup>

That notwithstanding, Section 517 of the House-passed version of the military construction appropriation (H.R. 5854) states

None of the funds made available by this Act may be used by any Government authority or agent thereof awarding a construction contract on behalf of the Government, in any solicitations, bid specifications, project agreements, or other controlling documents, to require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations; nor shall such funds be used to discriminate against or give preference to such bidders, offerors, contractors, or subcontractors based on their entering or refusing to enter into such agreements. The previous sentence does not apply to construction contracts awarded before the date of the enactment of this Act.

A floor amendment to the House version of the National Defense Authorization Act, 2013, proposed by Representative Roscoe G. Bartlett (MD/06), would amend Section 2852 of Title 10, United States Code to forbid contracting officers of the Department of Defense or any military department from requiring or prohibiting contractors from entering into or adhering to PLAs or to discriminate against or give preference to bids or contractors based on such agreements. This provision was adopted by recorded vote, 211-209, on May 19, 2012 (Roll No. 267) and subsequently precipitated the OMB objection in Statement of Administration Policy on the bill.<sup>30</sup>

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(...continued)

Club,” *Political Transcripts by CQ Transcriptions*, June 12, 2012.

<sup>29</sup> Executive Order 13502, “Use of Project Labor Agreements for Federal Construction Projects,” 74 *Federal Register* 6893, February 11, 2009.

<sup>30</sup> Frances Symes, “Labor Dustup,” *CQ Budget Tracker Newsletter*, May 31, 2012.

## **Extension of Authority to Use Operation and Maintenance (O&M) Funds for Military Construction**

Both of the Committees on Armed Services reported versions of the NDAA for 2013 that include a provision (Section 2803) that extends for a year the Secretary of Defense's authority to use up to \$200 million in O&M funds from the defense appropriation for the construction of facilities in the geographic areas of responsibility of U.S. Central Command (USCENTCOM) and those areas on the continent of Africa formerly under CENTCOM responsibility. For construction in Afghanistan, the Secretary may use up to an additional \$300 million in O&M funding for construction if he certifies the need. Congress originally granted this authority in FY2004 and has renewed it for each subsequent year.<sup>31</sup>

## **Objections in Statements of Administration Policy**

### **Incremental Funding of Construction Projects**

Congress funds governmental activity by providing "budget authority," making funds available to agencies from the Treasury for designated purposes. For military construction, this budget authority is requested and provided at 100% of the amount estimated to finish a complete construction project. At times, though, a large-scale project may require more budget authority than is prudent to commit in a single fiscal year. At this point, the project may be broken up into "phases" or it may be funded "incrementally."

Phased construction requires the completion of a usable structure at the end of each phase. So, for example, a large hospital may be built in phases, with each phase yielding a usable wing and the final phase completing the structure. Incremental funding does not require a usable structure. Funding, rather than construction, is staged.

This has led to controversy between the executive and legislative branches. The typical executive position has held that full budget authority should be allocated to projects when requested, while appropriators have suggested that this practice could over-commit limited budget authority in a given fiscal year to a few large projects to the detriment of other needed construction. Therefore, Congress has proven more receptive to incremental construction than the executive. This is reflected in a statement found in the report accompanying the Senate version of the military construction appropriation (S. 3215):

In general, the Committee supports full funding for military construction projects. However, it continues to be the practice of the Committee to provide incremental funding for certain large projects, despite administration policy to the contrary, to enable the services to more efficiently allocate military construction dollars among projects that can be executed in the year of appropriation. For fiscal year 2013, the Committee recommends incremental funding for the following projects: High Performance Computing Center, increment 2, Fort Meade, Maryland; U.S. STRATCOM Replacement Facility, Offutt Air Force Base, Nebraska; Cadet

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<sup>31</sup> More detailed discussions of this so-called "Section 2808" or "Contingency Construction Authority" are laid out in CRS Report R41232, *FY2010 Supplemental for Wars, Disaster Assistance, Haiti Relief, and Other Programs*, coordinated by Amy Belasco and CRS Report R41345, *Military Construction, Veterans Affairs, and Related Agencies: FY2011 Appropriations*, by Daniel H. Else, Christine Scott, and Sidath Viranga Panangala.

Barracks, U.S. Military Academy, West Point, New York; Hospital Replacement, Fort Bliss, Texas; and Explosives Handling Wharf 2, Kitsap, Washington.<sup>32</sup>

## **Air Force Reserve Component Command and Infrastructure**

Section 1701 through Section 1709 of the Senate-reported version of the NDAA would create a “National Commission on the Structure of the Air Force.” This eight-member commission, appointed by the chairs of the armed services committees and the President, and would study and report on the force structure needed to support certain goals. In order to prevent the Air Force from taking any actions that could preclude any potential commission findings or recommendations, the bill would prevent the expenditure of any FY2013 funding to remove, or prepare to remove, any Air Force aircraft from the Reserve Component units to which they were assigned as of May 31, 2012 (except C-5A aircraft under certain conditions). The bill would then authorize the appropriation of \$1.4 billion “for the purpose of freezing Air Force structure in place or as planned... ”<sup>33</sup> If enacted, this provision would retain at their current locations all Reserve Component aircraft through the end of FY2013. The commission’s report would be produced not later than March 31, 2013.

During the past several months, the Secretary of the Air Force has announced his intention to transfer the aircraft assigned to several reserve component (Air Force Reserve and Air National Guard) units and, in some instances, close their associated installations. In each case, the Secretary has insisted that these installations do not fall within the parameters of 10 U.S.C. 2687, the permanent base closure statute, which imposes limitations on actions to close or realign installations where a certain number of authorized civilian personnel actions would be affected. In Section 2704 of the bill, the committee charges the Comptroller General with submitting a report to the congressional defense committees that would include the “objective criteria to be used by the Department of Defense to make decisions relating to realignments of units employed at military installations that are not covered by the requirements of section 2687 of title 10, United States Code, and closures of military installations that are not covered by such requirements.”

Of more immediate effect, the section would bar any action prior to October 1, 2013, that “would result in a military installation covered under paragraph (1) of section 2687(a) of title 10, United States Code, to no longer be covered by such paragraph.” The cited subsection brings under the statute “the closure of any military installation at which at least 300 civilian personnel are authorized to be employed.” This refers to a change in the authorized civilian manning at any military installation currently exceeding 300 positions that would result in an authorization below that number. The closure of installations falling within Section 2687 requires notification to Congress at the time of the annual defense budget request with an accompanying detailed justification for the closure and a wait of a certain number of days before implementation. This provision could prevent certain actions that would have the effect of sidestepping this requirement. Nevertheless, because the Secretary has consistently maintained that the civilian manning at each of the installations slated for closure already does not meet Section 2687 levels, this proposed section by itself may not materially affect those closures.

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<sup>32</sup> U.S. Congress, Senate Committee on Appropriations, Subcommittee on Military Construction and Veterans Affairs, and Related Agencies, *Military Construction, Veterans Affairs, and Related Agencies Appropriation Bill, 2013*, report to accompany S. 3215, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 22, 2012, S.Rept. 112-168 (Washington: GPO, 2012), p. 7.

<sup>33</sup> S.Rept. 112-173, p. 246.



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