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The Administration's FY2005 Request for \$25 Billion for Operations in Iraq and Afghanistan: Precedents, Options, and Congressional Action

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name redacted and name redacted
Specialists in National Defense
Foreign Affairs, Defense, and Trade Division

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Summary

Administrations have periodically asked Congress to give the Department of Defense flexibility in allocating funds to cover the costs of military operations. Most recently, on May 12, 2004, the White House requested \$25 billion as a "contingent emergency reserve fund" for FY2005 to cover the costs of operations in Iraq and Afghanistan for part of the fiscal year. If enacted in its current form, DOD could transfer funds, in any amounts, to individual accounts as long as the Office of Management and Budget agreed and Congress received a five-day advance notification. The issue for Congress is a perennial one: to determine how much flexibility the Defense Department may need to carry out military operations Congress intends to support while also ensuring that funds are used for purposes and in amounts that Congress endorses.

Faced with the challenge of balancing DOD's need for some funding flexibility for operations with congressional oversight responsibilities, Congress has responded in various ways to DOD requests. In general, Congress has rejected Administration requests to provide broad authority to finance military operations in advance. In the run-up to the first Persian Gulf War in 1990, for example, Congress rejected an Administration request for blanket authority to spend money contributed by allies.

Congress has, however, periodically appropriated money for ongoing or anticipated military operations into flexible "transfer accounts," where DOD can then move funds into regular accounts to meet evolving requirements. At the same time, Congress has generally imposed various restrictions and reporting requirements.

The least restrictive requirements Congress has imposed in recent years applied to \$20 billion that Congress appropriated in the immediate aftermath of the terrorist attacks of September 11, 2001. Although the Administration requested similar flexibility in later supplementals, Congress gradually reverted to normal practices by limiting the amount of funding in flexible accounts and by requiring advance notification if DOD decides to spend monies in ways that differ from those specified in statutory or report language.

By the standards of earlier congressional action, the Administration's current request for a contingency reserve would allow the Defense Department broad flexibility comparable to that granted by Congress immediately after September 11. In congressional action on the FY2005 DOD authorization (H.R. 4200 and S. 2400), and appropriations bills (H.R. 4613), both houses limited DOD's flexibility by allocating most of the \$25 billion to regular appropriation accounts, and setting various reporting requirements. This report reviews recent precedents for funding military operations, outlines options for monitoring that spending, and analyzes congressional action on the Administration's \$25 billion request for FY2005. Congress is expected to vote on the conference version of the FY2005 DOD Appropriations bill, H.R. 4613, which includes the \$25 billion, before going on recess on July 26, 2004.

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The Administration's FY2005 Request for \$25 Billion for Operations in Iraq and Afghanistan: Precedents, Options, and Congressional Action

Balancing Flexibility with Oversight

Administrations have frequently asked Congress to give the Department of Defense flexibility in allocating funds to cover costs of military operations. Most recently, on May 12, 2004, the White House requested \$25 billion in a "contingent emergency reserve fund" for FY2005 to cover costs of operations in Iraq and Afghanistan during part of the fiscal year. Although the request sets illustrative ceilings by appropriation accounts within the total, as written, DOD could transfer the \$25 billion for DOD's expenses for Iraq and Afghanistan to any appropriation account and in any amount after notifying Congress five days in advance. The issue for Congress is to determine how much flexibility the Defense Department may need to carry out operations Congress intends to support, while also ensuring that funds are used in amounts and for purposes that Congress has approved.

Faced with the challenge of balancing DOD's need for flexibility to respond to the uncertainties of military operations with congressional oversight responsibilities, Congress has responded to similar requests for DOD in different ways in recent years. Before the September 11, 2001, terrorist attacks, Congress generally balked at proposals to provide blanket authority for the Defense Department to finance military operations without specific, advance congressional approval. Since 9/11, however, Congress has been more willing to provide the Administration with considerable flexibility to allocate funds for the "global war on terrorism" without detailed congressional oversight. Since then, Congress has continued to provide the Administration with funding flexibility, but it has gradually pared back the amount of funding placed in flexible accounts, and it has also imposed a variety of reporting requirements. This report

- (1) briefly reviews the Administration's request for flexibility in the \$25 billion contingent emergency reserve fund that it has requested for FY2005;
- (2) discusses options Congress has to provide flexible funding for military operations based on precedents discussed in more detail later in the report;
- (3) reviews standard peacetime procedures governing reprogramming of defense funds as a benchmark against which to assess flexibility Congress has often provided for wartime or contingency operations;

- (4) reviews congressional responses to Administration requests for funding flexibility from the first Persian Gulf War in 1990 through post-9/11 wartime appropriations to date; and
- (5) analyzes congressional action and current issues.

Although Congress has provided most of the DOD funding requested by the Administration for the “global war on terrorism,” Congress has not provided most of that funding in flexible accounts despite Administration requests. Of the \$173 billion that the Administration has requested for Iraq, Afghanistan and enhanced security for defense installations since the 9/11 terrorist attacks, the Administration requested \$104 billion in flexible funds and the remaining \$69 billion in regular appropriation accounts. In response, Congress appropriated a total of about \$165 billion including \$40 billion in flexible accounts and \$124 billion in regular accounts (see **Appendix A**).

The current request for \$25 billion in a flexible account is larger than any amount that DOD has received thus far. Since 1990, DOD has received between \$2 billion and \$14 billion in monies in *any individual bill* that can be moved after enactment for war and war-related funding, with the remainder of the funding placed in regular appropriation accounts.¹ In the most recent FY2004 Emergency Supplemental, Congress provided \$2 billion in flexible funding requested by DOD, or about 3% of the total in the bill. (see **Appendix A**).

Appendix A includes tables comparing the amounts that Congress has provided for military operations since 9/11 in flexible spending accounts and in regular appropriations accounts. **Appendix B** provides a list of legislation with flexible accounts.

The discussion below and **Table 1** analyze the Administration’s request and congressional action on the FY2004 Administration request. Both the authorization and appropriation bills reject the Administration’s request for broad discretion and set allocations for most of the \$25 billion requested, as well as require additional reporting of how funds are spent, with advance notification of spending of unallocated funds and after-the-fact reporting of funds allocated in appropriation accounts or titles.

Congress is likely to vote on the conference version of the FY2005 DOD Appropriations bill, H.R. 4613, before going on recess on July 26, 2004 but is not likely to address the FY2005 DOD Authorization until after the recess. See the section on congressional action below for an update of provisions on funding and monitoring of the \$25 billion for Iraq and Afghanistan in the conference version of H.R. 4613 and a comparison of the House and Senate version of the authorization bills.

¹ In the FY2003 Emergency Supplemental, DOD received \$15.7 billion in the Iraq Freedom Fund but within that total, DOD had flexibility to use about \$10 billion to \$11 billion (see discussion below). In the FY2001 Emergency Supplemental, DOD received \$14 billion of the \$20 billion that the President could allocate at his discretion.

Proposed FY2005 Budget Amendment

On May 12, 2004, the White House sent Congress an amendment to its FY2005 budget request, asking Congress to appropriate \$25 billion as “contingent emergency funds” in the Iraq Freedom Fund (IFF), a transfer account that Congress established in the FY2003 Emergency Supplemental, to be available until expended (see text in next section).² Within the total in the IFF, the Administration proposed the following *illustrative* ceilings by appropriation account:

- \$14 billion for Operation and Maintenance, Army;
- \$1 billion for Operation and Maintenance, Navy;
- \$2 billion for Operation and Maintenance, Marine Corps;
- \$1 billion for Operation and Maintenance, Air Force;
- \$2 billion for Operation and Maintenance, Defense-Wide; and
- \$5 billion for other appropriations or DOD funds or classified programs.

After consultation with the Director of the Office of Management and Budget (OMB), however, the Secretary of Defense could transfer funds to *other* accounts or to classified programs as long as the defense authorizing and appropriations committees were notified five days in advance.

If enacted, this language would give the Secretary of Defense complete discretion to transfer \$25 billion among appropriation accounts to fund operations in Iraq and Afghanistan, or related activities. Although the language sets *illustrative* ceilings by appropriations account within the \$25 billion total, the Secretary of Defense could alter those ceilings, with the approval of OMB and five days after notifying the defense committees. The language also provides that up to \$5 billion of appropriations could be transferred to any appropriation account or classified activity, presumably including intelligence agencies. The language also permits the Secretary of Defense to transfer any funds not needed back to the IFF, to be available for subsequent retransfer. There is no time limit on the availability of the funds.

Once transferred, funds would be available for the same purposes and for the same periods of time as the accounts to which they were transferred, and these transfers would not count against DOD’s overall annual limits on general transfer authority — standard language for transfer accounts. The request requires the White House to submit an official budget request to Congress for the funds and designate the funds as emergency. Other than the five-day notification to congressional defense committees before transferring funds, no reports to Congress are required either before or after transfers take place (see below). The Administration does not plan to submit any justification materials for the \$25 billion until that official budget request is submitted.³

² Most funding for DOD is available for from one to three years depending on the type of expense. Operation and Maintenance funding is available for one year.

³ Testimony of Joel Kaplan, Deputy Director of OMB before the Senate Appropriations Committee, Defense Subcommittee, June 2, 2004.

Language of the Request

The specific language of the request is as follows:

For additional expenses, not otherwise provided for, necessary to support operations in Iraq or Afghanistan, \$25,000,000,000, available October 1, 2004, and to remain available until expended: *Provided*, That the funds made available under this heading shall be available only to the extent that an official budget request for all or part of the funds is transmitted by the President to the Congress and includes designation of the amount of that request as an emergency and essential to support activities and agencies in Iraq or Afghanistan: *Provided further*, That funds made available under this heading, may be available for transfer for the following activities:

Up to \$14,000,000,000 for “Operation and Maintenance, Army”;

Up to \$1,000,000,000 for “Operation and Maintenance, Navy”;

Up to \$2,000,000,000 for “Operation and Maintenance, Marine Corps”;

Up to \$1,000,000,000 for “Operation and Maintenance, Air Force”;

Up to \$2,000,000,000 for “Operation and Maintenance, Defense-Wide;

Up to \$5,000,000,000 may be used to reimburse other appropriations or funds of the Department of Defense and classified programs:

Provided further, That in addition to the transfers authorized in the previous proviso, after consultation with the Director of the Office of Management and Budget, the Secretary of Defense may transfer the funds provided herein to any appropriation or fund of the Department of Defense or classified programs, to be merged with and available for the same purposes and for the same time period as the appropriation to which transferred: *Provided further*, the Secretary of Defense shall notify the Committees on Appropriations and the Authorizing Committees five days prior to the transfer of funds made available under the previous proviso: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority available to the Department of Defense.⁴

Congressional Concerns

Before submission of the request, congressional concerns about funding for Iraq and Afghanistan centered on DOD’s initial plan to wait until January 2005 to submit a supplemental request, and rely on peacetime funding to finance or “cash flow” occupation costs for the first six months of FY2005. During hearings, members have also asked about the full amount of funding likely to be needed in FY2005.

While submission of the amendment responds to that initial concern, members have continued to ask about the total funding likely to be needed in FY2005. In its transmittal letter, the Administration states that the contingent emergency reserve fund is requested at a time when “we do not know the precise costs for operations next year” but that “developments on the ground in Iraq indicate the need to plan for contingencies...”; the letter also states that “we plan to pursue a full FY2005

⁴ Letter from President George Bush to Speaker of the House J. Dennis Hastert, May 12, 2004; see [http://www.whitehouse.gov/omb/budget/amendments/amendment_5_12_04.pdf].

supplemental request when we can better estimate precise costs.”⁵ In testimony on May 12, 2004, Secretary of Defense Rumsfeld stated because of the recent upsurge in violence in Iraq and the decision to keep an additional 20,000 troops in Iraq, the Administration decided to submit a request for \$25 billion to ensure “there’s no disruption in the resources for the troops.”⁶

In a hearing on May 13, 2004 about the request itself, both majority and minority members of the Senate Armed Services Committee voiced considerable concern about the amount of discretion in the request — some legislators characterized it as a “blank check.”⁷ In response to questions from members, Deputy Director of OMB, Joel Kaplan stated that the intent of the request was to identify “those areas where we think there’ll be the greatest pressure points ... in particular, the Army O&M [Operation and Maintenance] accounts,” but he acknowledged that the language of the request was also designed “to make sure that commanders and the secretary and the president have the flexibility, after notification to the Congress, to direct those resources to the needs and the requirements.”⁸

In recent months, congressional concern about flexible funding available to DOD for war and occupation-related funding has mounted. Such concerns have grown with allegations of abuses in large support contracts and a recent allegation by author Bob Woodward that the Administration spent funds appropriated in 2001 and 2002 for Afghanistan to prepare for the war in Iraq.⁹ Administration spokesman, Deputy Secretary of Defense Wolfowitz, denied the charge, saying that the funds were “to strengthen our [U.S.] capabilities in the region,” rather than strictly to prepare for a war with Iraq.¹⁰

Members have also questioned DOD’s spending priorities for war and occupation spending because of initial shortages of force protection equipment, particularly body armor for troops and uparmored Humvees. The Administration has also provided sparse information about the allocation of spending between Iraq, Afghanistan, and enhanced security for defense installations, as well as the number of troops deployed and current and future plans. For example, DOD has only

⁵ Letter from President George Bush to Speaker of the House J. Dennis Hastert, May 12, 2004; see [http://www.whitehouse.gov/omb/budget/amendments/amendment_5_12_04.pdf].

⁶ Testimony of Secretary Rumsfeld, *Hearing on DOD FY05 Budget Request before the Subcommittee on Defense, Senate Appropriations Committee*, May 12, 2004, p. 5; transcript available from Reuters.

⁷ Senate Armed Services Committee, *Hearing on Contingency Reserve Fund*, transcript, May 13, 2004, passim; available from Reuters; see also, BNA, *Daily Report for Executives*, “House, Senate Lawmakers Take Steps to Oversee Iraq, Afghanistan War Spending,” June 3, 2004.

⁸ Senate Armed Services Committee, *Hearing on Contingency Reserve Fund*, transcript, May 13, 2004, p. 10; available from Reuters.

⁹ CRS Report RL32229, *Iraq: Frequently Asked Questions About Contracting*, by (name redacted).

¹⁰ *Boston Globe*, “White House Accused of Mishandling Fund Targeting Terror,” April 27, 2004; and *Washington Post*, “Wolfowitz Denies Woodward Report,” April 21, 2004.

provided the distribution of funding by mission to Congress in the FY2004 Emergency Supplemental request, and only for FY2004, but not for earlier years or for the current request.¹¹ Some have expressed dissatisfaction with the quality and level of detail in DOD reporting on previous flexible funding. While flexible funding gives DOD a special tool to respond to the uncertainties of operations, it may reduce the information available to Congress on U.S. plans, actions and options, and hence may make oversight more difficult.

Congressional Action

Both the House and Senate provide the \$25 billion requested by the Administration for operations in Iraq and Afghanistan in the FY2005 DOD authorization bill (H.R. 4200 and S. 2400) and the FY2005 DOD appropriation bills (H.R. 4613 for both houses, H.Rept. 108-533 and S.Rept. 108-284), passed on June 22 and June 24 respectively. Appropriations conferees met July 15, 2004, to resolve differences, and a conference report was filed on July 20 (H.Rept. 108-622). The House and Senate are expected to vote on the FY2005 DOD Appropriations bill, H.R. 4613, before the recess that begins on July 26, 2004. **Table 1** below compares the request with congressional action to date. Congress is not expected to address the conference version of the FY2005 DOD Authorization until after the recess.

The conference version of the appropriations bill provides most of the funding in regular appropriation account, giving DOD flexibility to allocate about 14% of the \$25 billion with funding levels that reflect a compromise between the House and Senate version (see **Table 1**). The bill also includes more extensive reporting requirements on operations in Iraq and Afghanistan than are currently in effect.

Authorization Issues. In the authorization bills, the chief differences in their treatment of the \$25 billion request are the:

- extent of funding flexibility for DOD;
- mix of funding provided;
- type of reporting requirements; and
- military manpower levels.

Funding Flexibility. Although both houses authorize the amount requested, neither provides the Administration with the funding flexibility requested. Both the House and Senate versions of the FY2005 DOD Authorization Act provide all but \$2.5 billion, or 10%, of the funds in individual appropriation accounts or by

¹¹ Department of Defense, *FY 2004 Supplemental Request for Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Operation Noble Eagle (ONE)*, September 21, 2003; [http://www.defenselink.mil/comptroller/defbudget/FY_2004_Supplemental.pdf]. In its FY2005 justification materials for contingency operations, DOD also provided a mission breakout as required by the FY2004 DOD Appropriations Act, but only for FY2004; see DOD, *FY2005 Justification for Component Contingency Operations and the Overseas Contingency Operations Transfer Fund (OCOTF)*, February 2004; see the DOD website at [http://www.defenselink.mil/comptroller/defbudget/fy2005/budget_justification/pdfs/overseas/FY_2005_PB_Contingency_Operations_Justification.pdf].

appropriation title (e.g. operation and maintenance) (see **Table 1**). The House authorization bill (H.R. 2400) distributes all the funds but gives DOD \$2.5 billion in general transfer authority, subject to the standard criteria governing transfers, including prompt notification of transfers.¹² The Senate version (S. 2400) allocates \$2.5 billion for transfers and also requires a five-day advance notification and consultation with the Chair and ranking members of the four congressional defense committees before transfers can be made.

The House designates the \$25 billion for “emergency contingency operations” for the global war on terrorism, consistent with the House version of the FY2005 budget resolution.¹³ In the Senate version, funding would not be available until the Administration submits a request and designates the funding as emergency.

The House included its provision for the \$25 billion in the reported version of the bill, while the Senate adopted an amendment proposed by Senators Warner and Stevens.¹⁴

Funding Mix Differs. Unlike the Administration and the Senate authorizers, the House authorizers provide \$3.4 billion for procurement of force protection equipment, with types of equipment specified in report language (e.g., \$1 billion for uparmored HUMVees and bolt-on equipment for vehicles).¹⁵ The Senate authorizers instead allocate higher amounts for operation and maintenance funding and no procurement funding. The Administration has generally been reluctant to provide reconstitution funding in supplementals, although DOD has transferred funds provided in the FY2003 and FY2004 supplementals for force protection items such as body armor and uparmored HUMVees. The House also allocates funds by appropriation account, except for military personnel, whereas the Senate allocates funds at the more general title levels and adopts the Administration’s funding guidelines (see **Table 1**).

Reporting Requirements and Funding Limits. The Senate requires more extensive reporting requirements than the House. The Senate requires both monthly reports on the use of the \$25 billion — by cost, purpose and amount and operation — and quarterly reports on all funds expended for Operation Iraqi Freedom, Operation Enduring Freedom (Afghanistan), and Operation Noble Eagle (enhanced security for defense installation), and any other operation of the “Global War on Terrorism.”¹⁶ Neither bill requires reporting on past, current, or future funding by mission or operation (i.e. Iraq vs. Afghanistan), information that has been of

¹² Congress must be notified promptly, transfer must be to an activity of higher priority and that has not been denied by Congress (see below for discussion of standard reprogramming rules).

¹³ See Section 1520 in H.R. 4200, H.Rept. 108-491; see also Section 402 in S.Con.Res. 95, conference version as passed by the House.

¹⁴ See Section 1006 in S. 2400 engrossed as passed by the Senate. The Warner/Stevens amendment (S.Amdt. 3260) was adopted on June 2, 2004.

¹⁵ See H.Rept. 108-491, pp. 376ff.

¹⁶ See Sections 1006 (e) and Section 1029D in S. 2400 as passed.

considerable interest to members. Nor do the bills require information on past, current, or future troop levels, which plays a major factor in driving costs.

Both houses set a funding limit of \$300 million and require reporting on the Commanders Emergency Response Fund, a fund where local commanding officers can dispense funds for community and small reconstruction projects.¹⁷ Both houses also require reports on contractor personnel.¹⁸ And both houses provide for reimbursement for body armor or protective gear within certain limits.¹⁹

Post Major-Combat Operations Report. The Senate also requires an extensive report, by March 31, 2005, assessing goals, performance, lessons learned, strategy, and participation of allies during the post-major combat operations period after May 1, 2003, through December 31, 2004.²⁰ The Senate also requires a report on DOD's prisoner population and facilities.²¹ This reporting requirement is similar to the "lessons learned" report required after the first Gulf war (see below).

Funding for Irregular Forces. The House provides additional flexibility in use of these funds by allowing the Secretary of Defense to spend up to \$25 million to support irregular forces, a controversial previous Administration request that was rejected by Congress.²² Both the House and the Senate authorizers refused, however, to give the Administration the authority it requested to "train and equip" foreign forces for peace enforcement missions.²³ The Senate did provide up to \$150 million to train Iraqi security forces.²⁴

Military Manpower Levels. A chief bone of contention between the Administration and Congress this year has been whether to increase the number of active-duty personnel in the Army and the Marine Corps on a temporary or a permanent basis in order to deal with the stresses created by the Iraq and Afghanistan conflicts. By setting endstrength levels — which are then funded in the DOD appropriation bill — the authorization bills play a key role in this issue. Both authorization bills provide that higher endstrength levels are funded in the \$25 billion for Iraq and Afghanistan.

Although both authorization bills would increase active-duty endstrength by 10,000 in the Army and and 3,000 in the Marine Corps each year for the next three years, the House bill mandates these increases (although only through FY2007) and

¹⁷ See Sec. 1203 in H.R. 4200 and Sec. 311 and Sec. 864 in S. 2400.

¹⁸ See Sec. 1205 in H.R. 4200 and Sec. 102 in S. 2400.

¹⁹ See Sec. 304 in H.R. 4200 and Sec. 1072 in S. 2400.

²⁰ See Sec. 1028 in S. 2400.

²¹ See Sec. 1029F in S. 2400.

²² See Sc. 1202 in H.R. 4200 and CRS Report RL31829, *Supplemental Appropriations GFY2003: Iraq Conflict, Afghanistan, Global War on Terrorism, and Homeland Security* by (name redacted) and (name redacted), p. 26.

²³ Section 1213 in H.R.. 4200.

²⁴ Section 1204 in S. 2400.

the Senate bill makes them permissive levels. Although the Administration has waived current ceilings, they oppose mandatory ceilings set by Congress, arguing that they need the flexibility to adjust levels.

Notes:

- ^a Administration request included non-binding illustrative ceilings and \$5.0 billion unspecified, amounts shown in brackets.
- ^b As passed by each house. Both appropriation bills would make the funds available upon enactment though the Senate bill requires that the Administration must first submit an official budget request.
- ^c Funds in Iraqi Freedom Fund (IFF) can be transferred to any account unless a ceiling is set; House appropriations bill includes \$2.0B in classified programs in IFF so flexible portion would be \$1.0 billion. Senate appropriations bill provides \$25.0 billion in the IFF but sets floors for all but \$2.5 billion of the funds; allocations shown in brackets. Within IFF total, appropriations conference includes \$1.8 billion for classified and \$100 million for the Coast Guard. In the House, Senate and conference appropriations bills, DOD must inform the Congressional defense committees of transfers from the IFF five days in advance and report transfers quarterly. Senate authorization puts \$2.5 billion in a transfer account to be allocated by DOD.
- ^d The bills include these categories rather than accounts.
- ^e Senate bill provides that “up to” the amounts shown in brackets would be available so DOD could choose to spend.
- ^f Transfer authority sets limit on the amount that DOD can move between accounts within reprogramming rules.
- ^g Funds would be transferred to the Coast Guard.
- ^h Classified funds are transferred to the intelligence community.
- * = Less than \$100 million.

NS = Not specified

Sources:

As passed by each house, H.R. 4200 and S. 2400; H.Rept. 108-491 and S.Rept. 108-260; Title IX in H.R. 4613 as passed each house and conference version; H.Rept. 108-284, S.Rept. 108-553, and H.Rept. 108-622.

Appropriation Issues. In the House and Senate versions of the FY2005 appropriation bill (H.R. 4613), the chief issues are

- differences in funding priorities;
- mechanisms for providing funding flexibility;
- extent of reporting requirements; and
- funding for Darfur region of Sudan and the new Iraqi embassy.

Funding Priorities. The conference version funding levels reflect a compromise between the levels in the two houses and lower funding for procurement. The conference version provides \$1.2 billion for military personnel, between the House and Senate proposals and close to the Senate’s amount for O&M. The conference version also provides less funding for procurement, primarily for Other procurement, Army, where force protection equipment such as uparmored HUMVees is funded.

The House version provided more funding for military personnel (\$3.9 billion) than the Senate (\$.5 billion). This reflects primarily funding the current higher special pays for personnel in combat and the House authorization bill requirement that the Army increase military endstrength by 10,000 in FY2005.²⁵ The House appropriators provide funds in specific military personnel accounts to cover costs for the first quarter of the year.

²⁵ See Sec. 1531 in H.R. 4200 and H.Rept. 108-553, p. 371.

The Senate version provided \$4 billion more in funding for operation and maintenance activities (see **Table 1**). Both appropriation bills provide additional funding for body armor for troops in the Army's O&M accounts (e.g. \$334 million in the House and \$295 million in the Senate) and over \$2 billion for procurement, much of it for force protection items (e.g., over \$850 million for new vehicles or kits to uparmor HUMVees).²⁶

Funding Flexibility. Of the \$25 billion total, the conference version provides \$3.4 billion or 14% in flexible funding. That \$3.4 billion total includes \$1.9 billion of unallocated funding in the Iraqi Freedom Fund (the IFF also includes \$1.8 billion for classified programs and \$100 million for the Coast Guard) and \$1.5 billion in transfer authority.

Both the House and the Senate appropriation bills provided about the same level of flexibility as the authorization bills, between \$2 billion and \$3 billion. The House version includes \$2 billion in the Iraq Freedom Fund (IFF) Committee but specifies that \$2.0 billion is for intelligence activities, leaving \$1.0 billion for DOD to allocate. To provide additional flexibility, the House appropriators include \$2.0 billion in transfer authority for the \$25 billion in war-related funding, subject to standard reprogramming rules. The Senate appropriators would give DOD \$2.5 billion in the Iraqi Freedom Fund to be allocated at DOD's discretion, but no additional transfer authority.

To ensure that the Army has sufficient funds available to finance its operations in FY2004 — a current concern — the conference version (reflecting both houses) makes the \$25 billion available upon enactment.²⁷ The conference version dropped the requirement in the Senate bill that the Administration submit an official request. Like both houses, the conference bill also designates the funds as emergency but no longer requires an emergency designation from the executive branch.²⁸

There is an ongoing debate about the size of the Army's shortfall in funds to finance its operations in Iraq in FY2004. DOD contends that sufficient funds will be available.²⁹ CRS estimated that the shortfall in operations and maintenance (O&M) funding would range from \$5.3 billion to \$7.1 billion but that DOD could tap about \$7.0 billion in lower-than-anticipated costs elsewhere to finance the shortfall.³⁰ Based on forecasts by the services, a new GAO report estimates that the Army will face an O&M shortfall of \$10.2 billion, with the other services reporting shortfalls of about \$3.0 billion more. To meet these shortfalls, GAO reports that the Army and

²⁶ See H.Rept. 108-553, p. 375; and S.Rept. 108-284, p. 203.

²⁷ See CRS Report RL32381, *Adequacy of the Army's FY2004 Funding for Operations in Iraq* by (name redacted).

²⁸ See Section 9001 for availability in FY2004 and Sec. 9015 in the conference version and Title IX in both the House and Senate versions of H.R. 4613 for emergency language.

²⁹ Washington Post, "War Funds Dwindling, Pentagon Needs Billions More This Year in Iraq and Afghanistan," July 22, 2004.

³⁰ CRS, CRS Report RL32381, *Adequacy of the Army's FY2004 Funding For Operations in Iraq*, by (name redacted).

the other services plan to transfer funds from other accounts with surpluses and defer some activities (like depot maintenance) to the following fiscal year.³¹ To accommodate these shifts in funding, the conference version of the FY2005 DOD appropriation bill (H.R. 4613) increases DOD's general transfer authority from \$2.1 billion to \$2.8 billion.³²

Reporting Requirements. The conference version of H.R. 4613 provides most of the funding in regular appropriations bills and \$2.0 billion in the Iraq Freedom Fund, which would be subject to the five-day advance notification and quarterly reporting that was included in both the House and Senate version of the bill. The conference version did not adopt the Senate approach where all funds were appropriated to the IFF with floors by appropriation account. Under that approach, all transfers would have been under the reporting requirement (see **Table 1**). Extending the availability of funds beyond one year also gives DOD additional flexibility. All funds, except for procurement funds and IFF funds, are available for one year in the conference version rather than one year in the House bill and two years in the Senate bill.³³

The conference bill adopted the extensive report to the Congress as a whole on military operations and reconstruction activities in Iraq that was required in the House bill. Required by April 30 and October 31, DOD is required to report on amounts expended for Iraq and Afghanistan, progress in preventing attacks on U.S. personnel, effects on readiness, recruitment, retention, and equipment, on reserve forces. The report on treatment of prisoners in Iraq included by the House was dropped in conference.³⁴ The conference version did retain the House provision (reflecting adoption of the Obey amendment on the floor) that the Administration provide estimates of costs for military operations and reconstruction for Iraqi and Afghanistan operations, reconstruction, and economic support for the period FY2006 to FY2011 unless the President certifies that the estimates cannot be provided because of national security.³⁵

The conference version also adopts the limits and reporting on the Commanders Emergency Response Fund (\$300 million), assistance to the Iraqi and Afghan armies (\$250 million), Afghan Freedom Support Fund (\$550 million), and quarterly reports on amounts spent on coalition support (no dollar limit) for countries aiding the U.S. in combating terrorism included by both houses. The conference also provides up to \$500 million in funds to "train and equip" *only* the Iraqi Army and the Afghan

³¹ GAO-04-915, *Military Operations: Fiscal Year 2004 Costs for the Global War on Terrorism Will Exceed Supplemental, Requiring DOD to Shift Funds from Other Uses*, July 2004.

³² See Sec. 9003 (b) in H.R. 4613, conference version.

³³ Procurement monies would be available for three years and IFF funds for two years in the conference version.

³⁴ See Sec. 9010 in conference version. See Sec. 9012 in H.R. 4613 as passed by the House, and H.Rept. 108-533, p. 369-p. 370.

³⁵ See Section 9012 in H.R. 4613 as passed by the House and the conference version.

National Army, with a 15-day advance notification, a modification of the House version that could be used for any Iraqi or Afghan military or security forces.³⁶

Funding for Embassy Operations and Darfur, Sudan. Like the House and Senate appropriation bills, the conference bill also provides \$70 million for disaster assistance and \$25 million for refugee assistance for Darfur, Sudan, to be transferred to the State Department, and like the Senate bill, \$665 million for embassy operations and \$20 million for construction. All of these funds are designated as emergency funding, and hence, are not subject to budget resolution limits.³⁷

The conference bill also includes \$100 million for wildfire management and \$400 million for suppression.³⁸

Flexible Funding: Options for Congress

Since 1990, Congress has periodically given DOD discretion to allocate appropriated funds after enactment by placing funds in flexible transfer accounts, with the remaining funding provided in regular appropriations accounts. For flexible transfer accounts, Congress has sometimes required advance notification for transfers ranging from 5 days to 15 days. For funding in regular accounts, Congress generally requires that DOD follow standard reprogramming practices under which DOD must receive prior approval for transfers above specified thresholds.

Based on precedents since 1990, and going from least restrictive to most restrictive, Congress could apply the following options to the FY2005 \$25 billion budget amendment for Iraq that is currently under consideration.

Option 1: Provide Extensive Flexibility as After 9/11. This option parallels the provisions governing the initial \$20 billion provided in the Emergency Terrorism Response Supplemental passed on September 18, 2001, in the immediate aftermath of the terrorist attacks (P.L. 107-38). That measure required only that the President consult with the chairmen and ranking minority members of the appropriations committees before transferring funds, that \$10 billion of the amount could not be transferred until 15 days after notifying the appropriations committees, and that the Office of Management and Budget (OMB) report on funding allocations quarterly to the appropriations committees.

Option 2: Split Funding Between a Transfer Account and Regular Appropriations with Brief Notification Period. This approach was followed, with some variations, in the FY2003 Iraq Emergency Supplemental (P.L. 108-11),

³⁶ See Section Title IX in both versions of H.R. 4613 and Sec. 9006 in conference version.

³⁷ See Sec. 14008 in Title X of conference version, Chapter 2 in Title IX of the House version, and Title X in the Senate version of H.R. 4613.

³⁸ See Chapter 3 in Title X of conference version of H.R. 4613.

and in the main appropriation of supplemental funding for the first Gulf War (P.L. 102-28). Both measures provided funding in regular appropriations accounts for those expenses that could be predicted, but provided relatively large amounts (\$10.0 billion to \$11.0 billion in the FY2003 supplemental and \$8 billion in the FY1991 Desert Storm supplemental) in a flexible transfer account for less predictable expenses. Both also required 5- or 7-day advance notification to the congressional defense committees for transfers from the flexible account and quarterly after-the-fact reporting to the four defense committees.

Option 3: Put Most Funds in Regular Accounts with Longer Notification and More Extensive Reporting. This approach parallels some features of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of FY1991 (P.L. 102-25) and the FY2004 Emergency Supplemental (P.L. 108-106). The FY2004 supplemental provided just \$2 billion of the \$65 billion for the Defense Department in a flexible transfer account with the remainder in regular appropriations accounts. Both measures on the first Persian Gulf war required extensive reports on strategy, force levels, time lines, and monthly reporting on transfers and allied contributions. Recent supplementals have required quarterly reporting to the four congressional defense committees.

Option 4: Provide All Funds in Regular Accounts with Some Flexibility, Longer Notification, and Require Planning Assumptions. Congress could provide additional general transfer authority and could create special higher reprogramming thresholds that would allow DOD to make changes to funding after enactment more easily. Funding categories could reflect current reporting on the costs of Iraq, Afghanistan and enhanced security for defense installations (Operation Noble Eagle). This also reflects some features of the FY2004 Emergency Supplemental (P.L. 108-106), which provided most funds in regular appropriations accounts and provided \$3 billion in general transfer authority. Legislative measures for the first Gulf war and recent legislation on contingencies required that DOD provide its planning assumptions. Reporting could be provided to the Congress as a whole.

Option 5: Provide All Funds in Regular Accounts with Some Flexibility, Require Longer Notification, Planning Assumptions and Extensive Reporting. Under this approach, standard peacetime reprogramming restrictions would apply, and DOD would have to submit extensive, monthly reports on the cost and planning assumptions underlying costs in categories similar to current reporting on contingency and war costs, and provide 15-day advance notice of transfers to Congress as a whole.

Table 2 below summarizes flexible funding, notification, and reporting requirements enacted by Congress for war, war-related, and contingency operations since 1990, and standard reprogramming rules, all of which serve as the basis for the options above.

Table 2. Precedents For Funding War, Occupation and Contingencies, FY1990-FY2004

Statute Appropriation or Authorization	Funding in Flexible Acc'ts for Contingencies	Line-Item Detail	Thresholds for Changes	Notification Requirements	Reporting Requirements
Continuing Appropriations and Supplemental Appropriations for Operation Desert Shield for FY1990 P.L. 101-403 Oct. 1, 1990	Establishes Defense Cooperation Acc't.	Requires that funds in Defense Cooperation Acc't can only be spent if authorized and appropriated.	Reprogramming rules applies to changes to funds in regular approp. acc'ts.	Prior approval for reprogramming of \$2 billion provided in regular acc'ts.	For property contributions by allies, requires quarterly reporting.
Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 P.L. 102-25 April 6, 1001	Establishes Defense Cooperation Acc't for allied contributions and Persian Gulf Working Capital Fund with \$15 billion.	None	Applies to all transfers.	seven-day advance notification to four defense committees.	For transfers, DOD reported monthly. For allied contributions, required periodic reports. For decreases in cost with draw down of forces, DOD required to report within 60 days of enactment.
Supplemental Appropriations for Operation Desert Shield and related expenses P.L. 102-28 April 10,1991	Provides \$8B for combat operations and procurement	No specifics for \$8B in combat operations.	No thresholds for combat operations.	seven-day advance notification to cong. defense committees for transfers for combat costs.	For reduction in costs due to draw down of forces, report due 60 days after enactment.

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Statute Appropriation or Authorization	Funding in Flexible Acc'ts for Contingencies	Line-Item Detail	Thresholds for Changes	Notification Requirements	Reporting Requirements
FY1996 Omnibus Appropriations Act P.L. 104-134 April 26, 1996	Admin. requests increase in 1996 general transfer authority from \$2.4B to \$3.1B.	Section 2701 in General Provisions section	Raises gen'l transfer authority in FY1996 DOD approps from \$2.4B to \$3.1B "only to the extent funds are transferred ... to cover costs associated with United States military operation in support of the NATO-led Peace Implementation Force (IFOR) in and around the former Yugoslavia."	Same as standard reprogramming requirements	Same as standard reprogramming requirements.
Emergency Terrorism Response Supplemental of 2001 P.L. 107-38 Sept. 18, 2001	\$20 billion for entire U.S. gov't. DOD share was \$14 billion.	None	None	No notification for first \$10 billion; 15-day notification for 2 nd \$20 billion.	Quarterly reporting on use of funds by OMB.
Emergency Terrorism Response Supplemental of 2001 attached to FY2002 DOD Appropriations Act P.L. 107-117 January 10, 2002	\$20 billion for entire U.S. gov't.. DOD share was \$3.5 billion.	Report language allocated funds by ten categories and some line-item detail.	Any change to amounts set in report language.	Prior approval for transfers and reprogrammings.	Quarterly reports on allocations of all funds provided under P.L. 107-38.
FY2002 Emergency Supplemental P.L. 107-206	\$11.3 billion in the Defense Emergency Response Fund, to be treated as a transfer acc't.	Report language provides appropriation acc't break with line-item detail.	Any change to amounts set in report language.	Prior notification for changes to allocations.	Quarterly reporting of transfers.
FY2003 Omnibus P.L. 108-7 Feb. 20, 2003	None.	Funds appropriated to regular acc'ts.	Subject to regular reprogramming rules.	Standard reprogramming rules apply.	Semi-annual reprogramming reports.

Statute Appropriation or Authorization	Funding in Flexible Acc'ts for Contingencies	Line-Item Detail	Thresholds for Changes	Notification Requirements	Reporting Requirements
FY2003 Emergency Supplemental P.L. 108-11 April 16, 2003	\$15.7 billion placed in Iraq Freedom Fund but DOD has discretion over \$10.0 billion to \$11.0 billion because of congressionally-imposed ceilings and floors.	Statutory ceilings and floors limit flexibility to \$10 billion to \$11 billion.	Not applicable.	5-day advance notification to congressional defense committees for transfers.	Quarterly reporting of transfers.
FY2004 Emergency Supplemental P.L. 108-106 Nov. 6, 2003	\$2.0 billion in Iraq Freedom Fund	None.	Not applicable.	5-day advance notification for transfers.	Quarterly reporting of transfers.
Peacetime Reprogramming Rules and FY2004 DOD Appropriations Act P.L. 108-87 Sept. 30, 2003	\$5 million for Overseas Contingency Operations Transfer Acc't (OCOTF)	For regular appropriations, line item detail provided in report language. No details for OCOTF.	For changes to regular approp, acc'ts, prior approval from congressional defense committees required for changes of \$10M-\$20M (varies by acc't) or for transfers betw. approp. acc'ts.	Notification required for new starts or program terminations. OCOTF transfers must be for contingencies.	For transfers and reprogramming changes, DOD reports semi- annually. For transfers of OCOTF funds, DOD reports quarterly. For contingency operations, requires detailed reporting with planning assumptions in annual budget justification materials.

Funding Flexibility In Regular Appropriations and Transfer Accounts

In providing flexibility for war and war-related spending, current restrictions applying to regular peacetime DOD spending may serve as a baseline. For most funds that are provided in regular appropriation bills, DOD can move monies after enactment but only within the bounds of restrictions that are established partly by statute, partly by language in congressional reports on annual defense funding bills, and partly by understandings with congressional defense committees that are reflected in Department of Defense financial management regulations.

In general, DOD must get prior approval from the congressional defense committees to move funds between accounts, and, for certain purposes and above certain threshold amounts, to change funding levels within appropriations accounts. For other changes to funding levels within accounts, DOD issues internal reprogramming reports.

Standard Statutory Restrictions on Moving Funds After Enactment

Congress provides most of DOD's annual funding in regular appropriation accounts, which cover fairly broad categories of expenses. Appropriations accounts include "Military Personnel, Army," "Operation and Maintenance, Navy," "Aircraft Procurement, Air Force," "Research, Development, Test, and Evaluation, Defense-Wide." The language of annual congressional appropriations acts specifies the amount available within each account, typically in the billions of dollars.

After enactment, DOD is permitted to move funds between appropriation accounts or between specific programs within accounts in a process referred to as the "transfer" or "reprogramming" of funds. In most government agencies, the term "transfer" refers to shifts of funds between appropriations accounts, while "reprogramming" refers to shifts of funds within accounts. The Defense Department, however, uses the term "reprogramming" to refer to both kinds of activities.

As a matter of law, transfers between accounts are subject to strict limits. Each year, in annual appropriations acts, Congress provides a specific amount of "general transfer authority" which sets limits the amounts that may be transferred between accounts. Section 8005 of the FY2004 Department of Defense Appropriations Act (P.L. 108-87), for example, sets an overall limit of \$2.1 billion on DOD's general transfer authority, requires prompt notification for transfers, requires that any transfer be "necessary in the national interest," and specifies that

"such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated

and in no case where the item for which funds are requested has been denied by the Congress.”³⁹

Standard Reprogramming Restrictions

In addition to limits established by statute, Congress has imposed other restrictions on DOD’s authority to change the funding levels that are specified in appropriation acts or in report language.⁴⁰ Though it is not stated in statutory language, Congress requires that the Defense Department receive prior approval from the four congressional defense committees for reprogramming of funds that would (1) move funds between appropriation accounts (i.e., amounts subject to overall general transfer authority limit), (2) start or end programs, or (3) change funding levels above certain congressionally established threshold amounts.

Reprogramming Thresholds. In addition to approving all transfers of funds between appropriation accounts, the congressional defense committees must approve all changes in funding above certain threshold amounts, which vary by appropriation account. The thresholds are:

- increases or decreases in funding for individual procurement programs above \$20 million;
- increases or decreases in funding for Research, Development, Test & Evaluation (RDT&E) programs above \$10 million;
- increases in funding to military personnel budget activities above \$10 million; or
- increases in funding to O&M activities at the budget activity level above \$15 million.⁴¹

DOD must also get prior approval for changes in any programs that are designated as “congressional interest items” by any one of the four congressional defense committees.⁴² Increases to a program Congress has cut or decreases to a program Congress has increased require advance congressional approval. For

³⁹ Section 8005 of FY2004 DOD Appropriations Act, P.L. 108-87.

⁴⁰ Although the statutory language in DOD’s appropriation bills sets funding amounts in the billions of dollars at the appropriation account level, report language indicates congressional intent for individual programs or budget activities.

⁴¹ DOD’s regulations require prior approval from the congressional committees for any of the following changes in funding: more than \$10 million for military personnel, more than \$15 million in a budget activity or depot maintenance funded in Operation and Maintenance accounts, an increase or decrease of \$20 million or a 20% decrease in a procurement line-item, sub-program, or modification, or \$10 million for increases or \$20 million for decreases to RDT&E; See Office of the Under Secretary of Defense (Comptroller), Budget Execution Flexibility, FY2003, available on the web at [http://www.defenselink.mil/comptroller/execution/Final_Budget_Execution_2003.pdf].

⁴² According to DOD’s financial regulations, a Congressional interest item is one where the committees use the phrases “only for” or “only to” or where items are identified in conference report tables; see “Reprogramming of DOD Appropriated Funds, *DOD Financial Management Regulation*, Volume 3, Chapter 6, p. 6-1.

changes in funding below the thresholds and for programs that are not congressional interest items, DOD issues internal reprogramming reports.⁴³

It is important to note that the definition of a “program” or “budget activity” subject to the thresholds varies between accounts. For procurement and RDT&E programs, reprogramming limits are fairly restrictive because the thresholds apply to individual “line items” or “program elements” that are defined very narrowly both in Department of Defense budget justification material and in congressional committee reports. The thresholds for both military personnel and O&M “budget activities,” in contrast, apply to broad budget groupings in the billions of dollars that encompass many activities, giving the services considerable flexibility.

Effect of Thresholds on O&M Activities. In Operation and Maintenance (O&M), for example, the \$15 million O&M threshold applies to four budget activities within each service, each of which includes billions of dollars:

- Operating Forces;
- Mobilization;
- Training and Recruiting; and
- Administrative and Servicewide.⁴⁴

Within these limits, the services have discretion to move funds between Activity Groups (AGs) and Subactivity Groups (SAGs) such as Air Force flying hours and base operations support for military installations.

Because of concerns that DOD has sometimes moved funds out of readiness-related activities, such as combat training for Army units, Congress has recently required DOD to provide written notification of changes in funding to certain “sub activity groups” (SAGs) within budget activities for O&M, such as Primary combat forces, Air Force; or Aircraft depot maintenance, Navy.⁴⁵ Prior approval of changes is not required, however, except at the broader budget activity level.

Alternative Thresholds for War-Related Reprogramming

In order to give DOD greater flexibility to adjust appropriations in response to changing circumstances, Congress could choose to establish new reprogramming rules specifically for war and war-related spending. For example, the criteria for war-related spending could require that funding must be directly related to combat or occupation costs, be limited to incremental costs, and identify and take into account savings in peacetime operations. These criteria are similar to the those that apply to contingency costs funded in the Overseas Contingency Operations Transfer Account

⁴³ These are known as internal reprogramming reports. For examples, see the DOD website at [<http://www.defenselink.mil/comptroller/execution/reprogramming/>].

⁴⁴ Office of the Under Secretary of Defense (Comptroller), Department of Defense Budget, Fiscal Year 2004, *Operations Programs (O-1)*, February 2004; see [http://www.defenselink.mil/comptroller/defbudget/fy2005/fy2005_o1.pdf].

⁴⁵ See H.Rept. 108-187, p. 54.

(OCOTF), and that are covered in DOD's financial regulations governing contingency costing.⁴⁶

Congress could also adopt special thresholds for war and occupation-related expenses that could be applied to DOD's current categories for reporting those costs. DOD currently reports war and contingency costs monthly in categories such as personnel, personnel support, operating support, and transportation, which are further divided into type of personnel (active, reserve, civilians), type of support (personnel vs. equipment), and type of transportation (air, sea, other).⁴⁷ In addition, Congress could require that DOD provide its current planning assumptions and then require that DOD report changes to its underlying planning assumptions. This would provide a mechanism that could aid congressional oversight of ongoing operations.

Important planning assumptions that underlie cost estimates include current and anticipated manpower levels, mix of active-duty and reserve forces, planned rotations of personnel, and anticipated operating tempo. DOD currently has a model, the Contingency Operations Support Tool, that uses such assumptions to estimate operational costs, but DOD has been unwilling to provide Congress with access to this model or information about its assumptions. The Congressional Budget Office (CBO) has been provided access to similar models in the past.⁴⁸

Flexible Transfer Accounts

To provide the Defense Department with greater flexibility in carrying out peacetime activities for which costs are likely to fluctuate after funds have been appropriated, Congress has set up transfer accounts into which funding is appropriated for subsequent transfer to regular appropriations accounts for execution. In annual defense appropriations bills, for example, funds for drug interdiction and for environmental restoration are normally provided in transfer accounts. The FY2004 Department of Defense Appropriations Act, for example, provides \$396 million for the Army's environmental restoration programs that can be transferred to other accounts

Provided, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Army, or for similar purposes, transfer the funds made available by this appropriation.

⁴⁶ See P.L. 107-117, Section 8115, and Chapter 23 in DOD, *Financial Management Regulations*; see [http://www.defenselink.mil/comptroller/fmr/12/12_23.pdf].

⁴⁷ See Defense Finance and Accounting Service, *Consolidated Department of Defense (DOD) Terrorist Response Cost Report*, monthly reports.

⁴⁸ Letter from Jim Nussle, Chairman, House Budget Committee and John Spratt, Ranking Member, HBC, to Under Secretary of Defense (Comptroller), Dov S. Zakheim, November 3, 2003; in a subsequent meeting in February, 2004, DOD informed Congressional staff that DOD would not provide the model or the additional information requested on personnel levels, rotation plans, air and sea operations, aircraft deployed, transportation, maintenance, coalition support or amount of recurring costs.

Some transfer accounts, like the Foreign Currency Fluctuation Account, set up to allow the services to respond to shifts in exchange rates, are noncontroversial. Others, like the Overseas Contingency Operations Transfer Fund (OCOTF), established in the mid-1990s to centralize funding in regular appropriations bills for contingency operations in Bosnia, Kosovo, and Southwest Asia, and the Defense Emergency Response Fund (DERF), set up originally to financing overseas disaster cleanup activities but used as a vehicle for DOD's emergency funding after September 11, have proved to be more problematic.⁴⁹

While transfer accounts have the advantage that DOD can respond to unanticipated changes in circumstances, they may have the disadvantage that Congress may be unaware of, or disapprove of, particular uses of the funds provided in the accounts. For example, controversy recently erupted when investigative reporter Bob Woodward alleged that DOD used funds provided in the first post 9/11 Emergency Terrorism Response Supplemental for projects that were intended to prepare for a future war with Iraq, an allegation denied by the Administration.⁵⁰

Earlier in 2001, controversy developed about the Overseas Contingency Operations Fund (OCOTF), a flexible transfer account used to fund contingencies, when GAO found that some of those funds had been used for expenses that were not truly incremental costs, or not related to contingency operations such as purchases of cappuccino machines, golf memberships, and decorator furniture.⁵¹

After the 9/11 attacks, Congress again turned to flexible accounts to give DOD discretion to move funds after enactment to fund combat operations in Afghanistan. In later supplementals, Congress split funding between flexible accounts and regular appropriations, a practice that was also adopted in funding for the first Gulf War.

Precedents for Flexible Funding Since 1990

Since 1990, Congress has provided DOD with substantial amounts of flexible funding — ranging from \$2 billion most recently to \$14 billion in the first post 9/11 supplemental — using various special accounts, and has used a variety of tools for oversight of those funds, including prior notification of transfers ranging from 5 days to 15 days and various after-the-fact reporting in varying levels of detail. Typically, Administrations have requested broad discretion, which Congress has rejected even in the midst of combat operations as was the case during the first Persian Gulf War.

⁴⁹ DOD initially spent funds directly out of this account rather than using it as a transfer account. Starting in FY2002, in response to congressional direction, DOD returned to transferring funds from this account to the services regular accounts.

⁵⁰ CBS Television, Transcript, "Woodward Shares War Secrets" *60 Minutes*, April 18, 2004; *Washington Post*, "Wolfowitz Denies Woodward Report," April 21, 2004.

⁵¹ GAO-02-450, *Defense Budget: Need to Strengthen Guidance and Oversight of Contingency Operations Costs*, May 2002, p. 2; [<http://www.gao.gov/new.items/d02450.pdf>]

First Persian Gulf War: Flexibility for Combat Operations But with Extensive Reporting

In 1990 and 1991, in the midst of the initial deployment of forces for the first Gulf War and during combat operations, the Administration submitted two requests that would allow the Defense Department full freedom to allocate funds contributed by allies for Operation Desert Shield/Desert Storm. Congress rejected both Administration requests.

Creation of the Defense Cooperation Account. On September 17, 1990, six weeks after Iraq's invasion of Kuwait and the dispatch of some 50,000 U.S. forces to Saudi Arabia to prevent an invasion of that country, the first Bush Administration submitted a request for supplemental appropriations of \$2.1 billion to cover FY1990 costs of Operation Desert Shield.⁵² At that point, the Administration requested the funding in regular defense appropriation accounts despite the uncertainties in costs.

Relying on the analogy that contributions by allies were like gifts received by the government, however, the Administration also requested that Congress establish a trust fund in the Treasury to be known as the "National Defense Gift Fund," into which monetary contributions from allies or others would be deposited.

Under this proposal, the Secretary of Defense, with the approval of the Office of Management and Budget, would have authority to transfer any amounts received by the fund to the regular operating accounts of the Department of Defense without further congressional action. In effect, the Administration requested that the Secretary of Defense be given general authority to allocate all amounts received in either money or properties from allies without further specific appropriations action from the Congress.

Congress did not agree, however. At the end of September 1990, Congress provided \$2.1 billion in supplemental appropriations for Operation Desert Shield and related expenses in H.J.Res. 655 (P.L. 101-403), a measure providing continuing appropriations for FY1991. It appropriated the funds in regular defense accounts. Moreover, Congress explicitly refused to provide general authority to the Secretary of Defense to allocate funds received from allies. Instead, P.L. 101-403 established the "Defense Cooperation Account" in the Treasury to receive contributions from allied nations or from individuals, but it also provided that transfers from the account could be made only as provided in subsequent appropriations acts. Only two weeks later in mid-October, 1990, the U.S. would have 200,000 troops deployed in the Persian Gulf.⁵³

Creation of the Persian Gulf Working Capital Fund. Later, on February 25, 1991, when the air war was complete and the ground phase had just begun, the Administration submitted its second supplemental appropriations request to cover the

⁵² CQ, 1990 CQ Almanac, "Gulf Crisis Grows Into War with Iraq," p.719, 1990.

⁵³ CQ, 1990 CQ Almanac, "Gulf Crisis Grows Into War with Iraq," p.719, 1990.

incremental costs of operations in and around the Persian Gulf, and it again asked for broad authority for the Secretary of Defense to allocate funds for costs of the war.

As a hedge to provide funds if allied contributions were not available, the Administration requested that Congress establish another new account, to be called the “Desert Shield Working Capital Account,” with \$15 billion in appropriated funds, on which the Secretary of Defense could draw, with the approval of the Office of Management and Budget, to cover war costs. Funds were to be transferred from that account to regular appropriation accounts, and the initial appropriation was to be “replenished” from previous and future contributions from allies deposited in the Defense Cooperation Account. In early September 1990, the Saudis had agreed to help defray the cost of Operation Desert Shield.⁵⁴

In this request, DOD provided extensive justification materials to underpin requested funding levels, including planning assumptions for manpower levels for active and reserves, operating tempo rates, transportation, and support costs, as well as projections of contributions from allies.⁵⁵ These justification materials — totaling 96 pages — are far more detailed and extensive than those provided for any of the supplementals after 9/11.

Enacted April 6, 1991, the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 set up a Persian Gulf Conflict Working Capital Fund with \$15 billion to act as a “bridge loan” until allied contributions became available. Senate report language called on DOD to provide Congress with seven-day advance notifications of transfers, to certify that amounts were incremental costs, to list amounts and accounts for transfers, and to describe transfers at the program, project and activity level.⁵⁶ The House report required that reporting of transfers follow regular reprogramming procedures including congressional approval.⁵⁷ A conference report was not issued.

DOD was also required to provide extensive monthly reports on both incremental war costs and allied contributions using a set of cost categories that were defined in statute, and that have since become the basis for current reporting of contingency and war and war-related costs. The legislation required that DOD distinguish between recurring and non-recurring costs, and report costs in functional categories including personnel, personnel support, transportation, and operating tempo.⁵⁸

⁵⁴ CQ, *1990 CQ Almanac*, “Gulf Crisis Grows Into War with Iraq,” p.719, 1990.

⁵⁵ Communication from the President of the United States, *Request for Fiscal Year 1991 Supplemental Appropriations for the Department of Defense in support of Operation Desert Shield./Desert Storm Pursuant to 31 U.S.C. 1107*, February 25, 1991.

⁵⁶ S.Rept. 102-18, p. 4.

⁵⁷ See H.Rept. 102-16, p. 5.

⁵⁸ P.L. 102-25, Sec. 101 to Sec. 106, and Sec. 401 and Sec. 402.

Appropriators Require That Funds Be Allocated to Regular Accounts. Signed into law on April 10, 1991, about six weeks after the conclusion of the war, the FY1991 Operation Desert Shield/Desert Storm Appropriations Act (P.L. 102-28) rejected the Administration's request for broad funding flexibility, and set up Persian Gulf Regional Defense Fund with \$15 billion in appropriated funds. At the same time, however, Congress required that those funds could be used only if allied contributions — to be transferred from the Defense Cooperation Account — were not adequate, and only in amounts specified by appropriation account in the act.⁵⁹ The act allocated a total of \$34.6 billion by account. In effect, Congress insisted on appropriating funds in the regular manner for specific, established defense operating accounts for most of the funds, though there was one exception.

Special Flexibility For Combat Operations. To give DOD some flexibility, Congress provided \$6.0 billion for operation and maintenance and \$1.9 billion for procurement “to finance the estimated partial costs of combat and other related costs of Operation Desert Shield/Desert Storm,” with a requirement that the Secretary of Defense could not transfer these funds until seven days after informing the congressional defense committees.⁶⁰ Although Congress appropriated these funds by title (O&M and Procurement) rather than at the appropriation account level, the amount was based on DOD information about potential combat operations plans.

At the time Congress acted on the FY1991 supplemental, DOD had estimated “baseline” costs for the deployment of forces to the Gulf, but had not fully identified combat costs. In its request, DOD presented a range of estimates for combat including a daily rate that would vary depending on the scenario.⁶¹ In their respective reports, the House and Senate used these estimates to recommend the amount to be included in the combat cost fund.⁶²

As it turned out, combat and some other funding requirements subsequently changed and Congress responded in the 1992 supplemental appropriations bill (P.L. 102-229) by giving DOD discretion to move about 20% of the funds appropriated in the previous supplemental into different accounts, including about \$2.9 billion from the Persian Gulf Regional Defense Fund and \$6.6 billion in previously transferred funds from the FY1991 Desert Storm Supplemental Appropriations Act.

⁵⁹ DOD could draw on the \$15 billion appropriated to the fund to the extent that contributions from allies were not yet available but those funds had to be spent in individual appropriation accounts specified in the act. Thus, the \$15 billion provided a hedge to cover any gap between the deposit of contributions and incurring of expenses for the war but its allocation by account was specified.

⁶⁰ P.L. 102-28, Combat Costs of Operation Desert Shield/Desert Storm.

⁶¹ Communication from the President of the United States, *Request for Fiscal Year 1991 Supplemental Appropriations for the Department of Defense in support of Operation Deserted Shield./Desert Storm Pursuant to 31 U.S.C. 1107*, February 25, 1991, p. 72.

⁶² See H.Rept. 102-10, p. 2- p.3, and S.Rept. 102-23, p. 4.

Providing Flexibility for Unanticipated Contingencies in the 1990s

At the end of FY1994, the United States unexpectedly deployed forces simultaneously to Haiti and Southwest Asia, financed by funds that had been slated for peacetime training and equipment maintenance. To meet immediate needs, the Administration obligated \$126 million under the Feed and Forage Act (41 U.S.C. 11), an emergency authority which allows the Defense Department to obligate funds in excess of available appropriations for certain operational purposes, and ultimately drew several hundred million in funds from the services' peacetime operating accounts.⁶³ As a result, several operational units reported reduced levels of readiness at the end of the fiscal year.

“Readiness Preservation Authority” Proposal Is Rejected. In reaction to this experience, the Clinton Administration requested, in a FY1995 supplemental submitted along with its FY1996 budget, that the Secretary of Defense be given authority to obligate substantial funds for certain readiness-related military activities in advance of congressional appropriations, which the Administration called a “Readiness Preservation Authority.”⁶⁴ Under this proposal, if the Secretary of Defense, determines it is in the “national interest,” he could, with the approval of OMB, incur obligations 50% “in excess of” the total amount appropriated for Operating Forces in Operation and Maintenance accounts (O&M) to fund certain “essential readiness functions and activities of the Armed Forces” in the second half of the fiscal year. These additional obligations were to be offset by rescissions “unless the President determines that emergency conditions exist.”⁶⁵

So if the Readiness Preservation Authority were in effect now, the Defense Department would have authority to obligate half of the \$75 billion provided for operating accounts, or \$37.5 billion, in the second half of FY2005, for readiness-related military activities without specific congressional approval. The funding could cover the cost of operational training of all kinds, weapons repair and maintenance, and operation of facilities that support operational forces, which together make up about half of DOD's O&M funding.⁶⁶ Unless the President determined that there was

⁶³ See CRS Report 98-823F, *Military Contingency Funding for Bosnia, Southwest Asia, and Other Operations: Questions and Answers*, March 29, 1999. The Feed and Forage Act permits obligation of funds only for “for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year.”

⁶⁴ This authority was requested in a general provision attached to the FY1995 supplemental appropriations request (see Appendix A for language).

⁶⁵ Operating Forces refers to Budget Activity 1 in the O&M title. For request, see Office of Management and Budget, *Budget of the U.S. government Fiscal Year 1996, Appendix*, “Readiness Preservation Authority,” p. 1089.

⁶⁶ The other O&M Budget Activities are BA 02: Mobilization; BA 03: Training and Recruiting (includes individual training, not operational training, which is in BA 01); and BA 04: Administration and Servicewide Activities.

an emergency, however, the Administration would have to propose offsetting rescissions to other programs.

In 1995, Secretary of Defense William Perry and Undersecretary of Defense (Comptroller) John Hamre testified in support of the Readiness Preservation Authority in congressional hearings. But neither the Armed Services Committees nor the Appropriations Committees took any action on the proposal.⁶⁷

Congress Adopts the Overseas Contingency Operations Transfer Fund. Although Congress was unsympathetic to DOD's request for broad authority to increase O&M spending above the levels appropriated, concerns re-surfaced the following year. As an interim measure, Congress agreed to DOD's request to raise its general transfer authority from \$2.4 billion to \$3.1 billion to "cover costs associated with United States military operations in support of the NATO-led Peace Implementation Force (FOR) in and around former Yugoslavia."⁶⁸

The following year, Congress provided a more permanent solution by setting up the Overseas Contingency Operations Transfer Fund (OCOTF), to be drawn upon by DOD to fund contingency operations. Between FY1997 and FY2001, Congress appropriated from \$1 billion to \$5 billion annually to the OCOTF to cover the costs of operations Bosnia and Southwest Asia (including Northern Watch and Southern Watch in Iraq).

For OCOTF funding provided in regular appropriations, the Secretary of Defense could transfer funds to operations at his discretion; for funds provided in supplementals, both Congress and the Administration also had to designate the funds as an emergency.⁶⁹ Congress also initially limited transfers to military personnel and operations and maintenance accounts, which fund operational expenses.

In FY2000, Congress added the requirement that OCOTF funds be spent strictly on contingency operations, and required that DOD submit specific justification materials for all contingency operations, including extensive reporting on manpower levels for active and reserve forces, costs by type of expense, and weapon systems deployed.⁷⁰ DOD incorporated these reporting categories in its Contingency Operations Support Tool (COST) model, and established reporting mechanisms to capture the costs of individual contingencies. Both these categories and the reporting mechanisms are currently used in reporting on the cost of Iraq, Afghanistan, and other contingencies.

Over several years, Congress gradually became disenchanted with the OCOTF, in part because GAO reports found consistent overestimates in costs. The final blow came in 2001, when GAO found that some of those funds had been used for

⁶⁷ For a more extensive discussion of the proposal, see (name redacted), "Department of Defense Readiness Preservation Authority," CRS Report 95-447, March 31, 1995.

⁶⁸ See Section 2701 of the FY1996 DOD Appropriations Act, P.L. 104-134 .

⁶⁹ This requirement was included in the FY1997 through FY2000 DOD appropriation acts.

⁷⁰ P.L. 106-79, OCOTF provision and Sec. 8110.

expenses that were regular expenses rather than incremental costs, or were not related to contingency operations, such as purchases of cappuccino machines, golf memberships, and decorator furniture.⁷¹ In reaction, Congress cut funding for the OCOTF in FY2002 to from \$3.9 billion to \$5 million, and transferred funding for Balkan operations and Southwest Asia to regular appropriation accounts.⁷²

Flexible Funding After September 11, 2001

After the terrorist attacks of September 11, 2001, Congress provided the Administration with broad authority to provide funds for disaster assistance, local preparedness, countering terrorism, improving airport security, repairing damage and supporting national security. In the next three emergency supplementals that provided funds for the occupation of Iraq and Afghanistan and enhanced security for defense installations (known as Operation Noble Eagle), Congress continued to use flexible transfer accounts but gradually reduced the amount of flexible funding and increased restrictions.

FY2001 Emergency Terrorism Response Supplemental Gives President Broad Discretion. On September 12, 2001, the Administration formally requested that Congress immediately appropriate \$20 billion to respond to the previous day's terrorist attacks. As requested, the President would have had complete discretion to allocate the funds to federal agencies to provide assistance to victims, fund the cost of preparedness, support efforts to counter terrorism, increase transit security, repair facilities, and "support national security."⁷³ This request is similar to the discretion requested in the current FY2005 budget amendment.

Congress took swift action on the Administration's request by providing \$40 billion in emergency supplemental appropriations on September 14th, two days after the Administration's request and four days after the attacks. The President signed the act into law (P.L. 107-38) on September 18, 2001, six days after the attacks.

In this first emergency supplemental, Congress gave the Administration unprecedented discretion to allocate \$20 billion in funds to any federal agency in response to the terrorist attacks. At the same time, however, Congress provided double the amount of funding requested and required that the allocation of the second \$20 billion be included in a subsequent appropriations act, thus re-asserting congressional prerogatives.

The first \$20 billion in funding was initially placed in a government-wide Emergency Response Fund, to be transferred later to individual agencies. All transfers from that fund were subject to four general requirements:

⁷¹ GAO-02-450, *Defense Budget: Need to Strengthen Guidance and Oversight of Contingency Operations Costs*, May 2002, p. 2; available on the GAO website at [<http://www.gao.gov/new.items/d02450.pdf>].

⁷² H.Rept. 107-350, p. 209 and S.Rept. 107-109, p. 53.

⁷³ Letter from President George W. Bush to Speaker of the House J. Dennis Hastert, September 12, 2001.

- that “the President shall consult with the chairmen and ranking minority members of the Committees on Appropriations prior to the transfer of these funds”;
- that the funds may be transferred only for specified purposes, including “supporting national security,”
- that not less than half of the \$40 billion shall be for “disaster recovery activities and assistance related to the terrorist acts in New York, Virginia, and Pennsylvania on September 11, 2001”; and
- that the Office of Management and Budget provide quarterly reports to the Appropriations Committees on use of the funds.⁷⁴

Under P.L. 107-38, the President had discretion to transfer \$10 billion of that total immediately to any federal agency, and to transfer a second \$10 billion to any federal agency 15 days after OMB submitted a proposed allocation of the funds and a plan for use of the funds by each agency to the appropriations committees. The remaining \$20 billion, however, was available only after the President submitted an additional supplemental appropriations request for the funds, and Congress passed, and the President signed, a subsequent appropriations bill.

At the time, there was considerable debate about whether the 50% floor for recovery and assistance activities was met. More recently, some members have raised questions about whether the requirement for consultation was met.⁷⁵

Of the \$20 billion to be allocated at the President’s discretion, DOD received \$14.0 billion with most of the funds dedicated to upgrading intelligence systems and prosecuting the war in Afghanistan. These funds were deposited into the Defense Emergency Response Fund (DERF), a fund originally set up for unanticipated DOD assistance provided during disasters.⁷⁶

Some Appropriation Controls Apply To Second \$20 Billion. In the supplemental attached to the regular FY2002 defense appropriations bill, P.L. 107-117, Congress appropriated the remaining \$20 billion to various federal agencies. Of that total, DOD received \$3.5 billion that was appropriated to the Defense Emergency Response Fund (DERF) in amounts specified using a unique set of 10 major functional categories developed by DOD in the aftermath of the attack rather than regular appropriation accounts. These categories included, for example,

⁷⁴ P.L. 107-387; see also CRS Report RL31187, *Combating Terrorism: 2001 Congressional Debate on Emergency Supplemental* by (name redacted) and (name redacted), September 27, 2002, for debate about whether the 50% floor for assistance activities was met.

⁷⁵ *Ibid.*, and Senator Byrd, Press Release, “Statement by Senator Robert C. Byrd,” April 20, 2004; see also, Senate Armed Services Committee, “Transcript of hearing on Contingency Reserve Fund,” May 13, 2004, p. 4; transcript available from Reuters.

⁷⁶ See CRS Report RL31187, *Combating Terrorism: 2001 Congressional Debate on Emergency Supplemental Appropriations* by (name redacted) and (name redacted), September 27, 2002.

“increased worldwide posture,” which funded combat operations in Afghanistan, and “Increased Situational Awareness” for intelligence and reconnaissance activities.⁷⁷

Within these functional categories, Congress set specific program amounts in the conference report and designated those funding allocations as congressional interest items, “for purposes of complying with established procedures regarding transfers and proposed reprogramming of funds.”⁷⁸ In other words, DOD would need to get prior approval for any transfers of funds that differed from amounts specified in the report. But because DOD chose to spend funds directly out of the DERF account, this provision did not have any effect.⁷⁹

After-the-Fact Reporting Requirements. P.L. 107-38 required that OMB provide quarterly reports to the appropriations committees on the use of the \$40 billion in funds originally appropriated. For DOD, OMB’s quarterly reports only included the total funds obligated under each of the ten categories with no details on specific purposes, projects, activities, or appropriation accounts.⁸⁰

In order to improve visibility over *all* spending under P.L. 107-38, Congress also required in the conference report that within 45 days of enactment and quarterly thereafter, DOD provide the appropriations committees with a

“revised, comprehensive and detailed report, using the guidelines in the House report, regarding the overall allocation of all appropriations for defense and intelligence activities (including obligations up to that point, and forecasted expenditures) made available from Public Law 107-38.”⁸¹

For the \$3.5 billion appropriated to the DERF from the second \$20 billion, Congress required in statutory language that DOD provide Congress with a report “specifying the projects and accounts to which funds provided in this chapter are to be transferred,” suggesting that Congress assumed that the DERF would operate as a transfer account.

The House report also stated that all funding provided under P.L. 107-38 was to be “subject to traditional reprogramming procedures,” with DOD required to submit an allocation plan for previous funding, and later a Base for Reprogramming”

⁷⁷ Congress set amounts by either appropriation accounts, or, in the case of DOD, by the ten major categories adopted by DOD in the aftermath of the attacks; see Emergency Terrorism Response supplemental attached to the F2002 DOD Appropriations Act, P.L. 107-117; see H.Rept. 107-350.

⁷⁸ See H.Rept. 107-350, p. 424.

⁷⁹ See for example, Office of the Under Secretary of Defense, Comptroller, *Defense Emergency Response Fund, Execution Report, September 11, 2001 to January 31, 2002*.

⁸⁰ See for example, OMB, *Letter transmitting first quarterly report on the use of the Emergency Response Fund (ERF) appropriations (with enclosure)*, January 23, 2002.

⁸¹ See H.Rept. 107-350, p. 425.

to be used as the baseline for any later transfers.⁸² Based on that assumption, the House report also required that DOD provide quarterly reports with an allocation plan for both the \$14.0 billion provided to DOD from the first \$20 billion and the \$3.5 billion provided in the FY2002 DOD Appropriation Act, including details typical for reprogramming reports, such as:

- funds available;
- funds transferred by appropriation account;
- amounts obligated and expended;
- amounts for O&M and military personnel using categories for ongoing contingency operation since Bosnia and Kosovo.

In addition, DOD was to “identify savings due to cancellation or downsizing or normal peacetime education, training, professional development, or other activities due to individual and unit activations or deployments in the war on terrorism.”⁸³ Again, although DOD provided periodic reporting, DOD did not submit any prior approval reprogramming requests because no funds were transferred between DOD accounts.

Congressional Dissatisfaction with DOD Reporting. Although DOD did give periodic briefings to the appropriations committees, using the ten broad functional categories adopted immediately after the terrorist attacks, considerable dissatisfaction was voiced about the quality of DOD’s reporting. In the House report issued in November 2001, two months after the terrorist attacks, DOD reporting was characterized as “at best, intermittent and scattershot,” and both the House report and the conference report called on DOD to return to reliance on traditional appropriation accounts in future requests and provide “similarly configured, detailed supporting materials,” in order to ensure proper program review, fiscal discipline and controls, and oversight by both the executive and legislative branches.”⁸⁴

Although DOD’s decision to spend funds directly from the DERF and use ten new functional categories was an untraditional approach, it may have also given DOD more visibility on war and war-related funds than is the case when DOD uses traditional appropriation accounts. In that traditional approach, the services sometimes have difficulty in segregating peacetime from wartime costs, making it all the more difficult to see trends in either peacetime or wartime costs over time.

Assessing DOD spending for war and occupation-related spending has also become problematic, not only because of inconsistent reporting categories, but also because DOD has not provided information on the its planning factors for this spending — for example, operating tempo measures such as tank miles or flying hours, how frequently forces will be rotated, or active and reserve manpower levels

⁸² H.Rept. 107-298, p. 295.

⁸³ See H.Rept. 107-298, p. 296.

⁸⁴ H.Rept. 107-298, p. 294 to p. 295; H.Rept. 107-350, p. 425.

for forces in-country and those providing support to Iraq, Afghanistan, and enhanced security for defense installations.⁸⁵

FY2002 Emergency Supplemental: Considerable Flexibility But In A Transfer Account. In the FY2002 Emergency Supplemental, DOD requested that Congress provide \$11.3 billion of the \$13.4 billion total for DOD in the Defense Emergency Response Fund (DERF) because of the “dynamic nature of these [Afghanistan] operations,” and because “the global war on terrorism will be variable and dynamic and, as the President has said, will more than likely go on for years.”⁸⁶ By the time Congress considered the supplemental in the spring and summer of 2002, the Taliban regime in Afghanistan had fallen several months earlier, but combat operations were underway to eliminate small groups of Al Qaeda and Taliban fighters (P.L. 107-206).⁸⁷

Congress agreed, nonetheless, to provide \$11.3 billion in the DERF but required that the DERF operate as a transfer account so that funds would be transferred to regular appropriation accounts and under the control of the services rather than being spent directly from the DERF. Congress also required that DOD report quarterly on transfers from the DERF. Congress was also to be notified in advance — no specified number of days — if DOD planned to spend the funds in ways that differed from allocations in conference report language.⁸⁸

Like the proposed FY2005 budget amendment, as enacted, the FY2002 Emergency Supplemental included “contingent emergency funding.” For funding to be exempt from caps on discretionary spending that applied in FY2002, both the Administration and Congress have to designate that funding as emergency. The Administration designated all funding in its request as emergency funding.

In its action on the Administration’s \$28 billion request, however, Congress re-allocated \$5.1 billion to other programs so that those funds no longer had an executive branch emergency designation. For that reason, Congress designated the funds as “contingent emergency funding,” that would only be available to agencies if the Administration also designated the funds as emergency. The president chose not to do so, so those funds never became available to agencies.

FY2003 Emergency Supplemental Provides Some Flexibility to Fund Iraq War. In its FY2003 Emergency Supplemental request, submitted shortly after the war in Iraq began, DOD asked that Congress provide \$59.9 billion in the

⁸⁵ DOD has periodically briefed Congressional committee staffs and provided snapshots at individual points in time but has been required to provide any consistent reporting on either past experience or future plans.

⁸⁶ Department of Defense, *FY2002 Supplemental Request to Continue the Global War on Terrorism*, March 2002, p6-p.7 and p. 166-p.17; see [http://www.dtic.mil/comptroller/fy2003budget/fy2002_supp.pdf]

⁸⁷ See CRS Report RL30588, *Afghanistan: Post-War Governance, Security, and U.S. Policy*, by (name redacted), p. 9- p.10.

⁸⁸ *H. Report 107-593*, p. 129-p.130.

DERF and \$2.9 billion in regular appropriation accounts to fund combat and post war operations in Iraq as well as ongoing operations in Afghanistan and enhanced security for defense installations.

Submitted on March 25, 2003, two days after the war with Iraq began, DOD's request was to cover the costs of four to five months of pre-deployment buildup that had already occurred, combat operations that had just begun, transitional costs during the post war period, and reconstitution of forces after the war. In its justification materials, DOD argued that "because we cannot know exactly what military operations might look like, it is impossible to know exactly the pace, scope, and accounts related to expenditures," and "for this reason, we are requesting that the majority of the funding [should] be appropriated in a [flexible DERF] transfer account."⁸⁹

Preferring to accelerate allocation of funds to the services, the appropriators moved \$44.0 billion of the requested funds to individual accounts, but kept \$15.7 billion in a newly-established flexible transfer fund, the Iraqi Freedom Fund (IFF) in order to give DOD "flexibility to manage the war effort" and the "many unknowns in the conduct of combat operations."⁹⁰

To provide additional flexibility, Congress also provided \$2 billion in general transfer authority for funds in the FY2003 Emergency Supplemental.⁹¹ At the same time, Congress required that DOD follow standard reprogramming procedures, including prior approval procedures when appropriate.⁹² As in the previous supplemental, DOD was required to provide five-day advance notification of transfers from the IFF.

Within the IFF, Congress set statutory ceilings and floors on various types of expenses, (e.g. fuel and classified programs).⁹³ Once the amounts governed by the ceilings were taken into account, the Secretary of Defense had flexibility to transfer a total of between \$10 billion and \$11 billion to respond to the uncertainty of major combat operations.⁹⁴ The FY2005 Budget Amendment requests a larger amount of flexible funds for DOD.

⁸⁹ DOD, *FY2003 Supplemental request for Military Operations in Iraq and the Global War on Terrorism*, March 25, 2003, p. 4; see [http://www.defenselink.mil/comptroller/defbudget/fy2004/DoD_Justification-FY03_Iraqi_Freedom_Supplemental.pdf].

⁹⁰ S.Rept. 108-33, p. 12.

⁹¹ P.L. 108-11, Section 1311.

⁹² H.Rept. 108-76, p.66.

⁹³ P.L. 108-11, Iraq Freedom Fund.

⁹⁴ CRS Report RL31829, *Supplemental Appropriations FY2003: Iraq Conflict, Afghanistan, Global War on Terrorism, and Homeland Security* by (name redacted) and (name redacted), p. 11.

Reporting Requirements. As in previous supplementals, DOD was required to report transfers of funds quarterly. The appropriators also stated that they expected DOD to be able to produce “better, more refined projections of expected costs,” later in the year and to provide the committees with a “comprehensive financial analysis and update for FY2003,” including both actual and projected obligations for both peacetime and war-related spending.⁹⁵ Although these reporting requirements were more extensive than in the previous two supplementals, the reports were not required to include planning assumptions or cost drivers as Congress required in monthly reports after the first Gulf War.

In addition, the appropriators added several new restrictions to ensure that funds in the supplemental were not used to fund programs previously denied by Congress or for items that would not be available within four years.⁹⁶ In report language, the appropriators required advance approval of funding for any investment items that would be fielded more than 18 months from enactment.⁹⁷

FY2003 Regular Budget Requests \$10 Billion for Contingencies. Earlier in 2002, in its regular FY2003 budget, DOD requested discretion to transfer \$20.1 billion from the Defense Emergency Response Fund either for force protection, communication, or other projects, including up to \$10 billion to be “used to fund continued operations for the war on terrorism.”⁹⁸ Congress initially refused to provide the \$10 billion for unspecified war costs.

The Administration later provided an allocation of the \$10.0 billion by appropriations title (for example, “Military Personnel” for all services). Although the Armed Services committees authorized the funds, Congress initially refused to appropriate funds. Later in the year in response to DOD concerns that there could be a shortfall of funding for Afghanistan and intelligence activities, Congress included these funds in the FY2003 Consolidated enacted on February 20, 2003, (P.L. 108-7) but provided the funds in regular appropriation accounts.⁹⁹

FY2004 Emergency Supplemental Limits Amount of Flexible Funding. Reversing course in the FY2004 Emergency Supplemental, DOD requested all but \$2.0 billion of the \$65.6 billion for DOD in regular appropriation accounts to fund ongoing operations in Iraq and Afghanistan and enhanced security. The only exception was \$2.0 billion requested in the Iraq Freedom Fund to cover the cost of foreign forces or to pay for U.S. troops if foreign forces did not become available. Congress accepted this rationale (P.L. 108-337).

⁹⁵ H.Rept. 108-76, p. 61.

⁹⁶ P.L. 108-11, Sec. 1302 and Sec. 1303.

⁹⁷ H.Rept. 108-76, p.64.

⁹⁸ Office of Management and Budget, *Appendix to the FY2003 Budget*, February 2002, p. 277; see [<http://www.gpoaccess.gov/usbudget/fy03/pdf/app07.pdf>].

⁹⁹ See H.Rept. 108-10; See P.L. 108-7, Division M, Sec. 107.

Submitted in September 2003, the FY2004 Emergency Supplemental was intended to “sustain the level of support necessary to continue our operations in Iraq and Afghanistan ... “and “other areas around the world,” and to pay for a force structure that was expected to decline from five to two-plus active U.S. Army divisions in Iraq.¹⁰⁰ DOD’s reduced request for flexible funds was predicated on the greater predictability of costs after the end of the war.

With the recent upsurge in violence, and the decision to keep an additional 20,000 troops in Iraq for the indefinite future, the Army has expressed concern that it will not have sufficient funds to last the year. Others observers, including DOD officials, believe that funds can be transferred from other activities where expenses have been lower than anticipated. Although the Army’s costs are likely to be higher than anticipated, their needs may be able to be accommodated by transferring funds from other services and other areas within the Army. Rather than relying on a flexible account, DOD may be able to use the additional transfer authority that it was provided in the FY2004 Emergency Supplemental.¹⁰¹ Expanding general transfer authority, but requiring that reprogramming practices are followed, may be an alternative approach to giving DOD flexibility while maintaining traditional oversight mechanisms.

As in the previous two supplementals, DOD was required to provide five-day advance notification of transfers from the IFF (or the DERF in FY2002), and to report quarterly to the congressional defense committees on all transfers. In addition, the FY2004 supplemental also formally closed the Defense Emergency Response Fund.¹⁰²

¹⁰⁰ Department of Defense, FY2004 Supplemental Request for Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Operation Noble Eagle (ONE), September 21, 2003; available on the DOD website at [http://www.defenselink.mil/comptroller/defbudget/FY_2004_Supplemental.pdf]

¹⁰¹ CRS Report RL32381, *Adequacy of the Army’s Funding for Operations in Iraq*.

¹⁰² See P.L. 108-106, Sec. 1105 (b).

Appendix A: Extent of Flexible Funding Since 9/11 Attacks

In the two and a half years since the September 11, 2001 terrorist attacks, the Department of Defense (DOD) has received \$165 billion in supplemental funding for the war and occupation of Iraq and Afghanistan and enhanced security for defense installations (referred to by DOD as Operation Noble Eagle). The Administration requested much of this funding for the “global war on terror” in flexible accounts, emphasizing the difficulties of predicting the cost of combat operations and occupation costs.

Amount of Flexible Funding in Post 9/11 Supplementals. Although Congress has provided most of the DOD funding requested by the Administration for the “global war on terrorism,” Congress has not provided most of that funding in flexible accounts despite Administration requests (see **Table A1**). Of the \$173 billion that the Administration has requested for operations in Iraq and Afghanistan and for enhanced security for defense installations since the 9/11 attacks, the Administration requested \$104 billion in flexible funds and the remaining \$69 billion in regular appropriation accounts. In response, Congress appropriated \$44 billion in flexible accounts and \$127 billion in regular accounts.

**Table A1. Extent of DOD Flexibility in Supplementals Since 9/11
Attacks: Funding Amounts**
(in billions of dollars)

Funding Level & Amount of Flexibility	Emergency Terrorism Response Supp. P.L. 107-38 & P.L. 107-117	FY2002 Suppl. P.L. 107-206	FY2003 Supp. P.L. 108-11	FY2003 Omnibus P.L. 108-7	FY2004 Supp. P.L. 108-106	Total
Provided in Flexible Fund						
Request	21.2	11.3	59.9	10.0	2.0	104.4
Enacted	15.0	11.3	12.2	0.0	2.0	40.5
Provided in Regular Appropriation Accounts						
Request	0.0	2.7	2.7	0.0	63.6	69.0
Enacted	2.3	2.1	46.9	10.0	65.3	124.5
Total Funding						
Request	21.2	14.0	62.6	10.0	65.6	173.4
Enacted	17.3	13.4	59.1	10.0	65.2	165.0

Notes and Sources: Includes effects of later rescissions. CRS calculations based on requests and enacted levels.

Share of Flexible Funding in Post 9/11 Supplementals. In previous supplementals, the Administration requested that between 80% and 100% of DOD’s funding be provided in a flexible fund (see **Table A2** below). While Congress has generally provided the amount of funds requested, with the exception of the P.L. 107-38, the supplemental passed in the aftermath of the attacks, and the FY2002 Emergency Supplemental (P.L. 107-206), Congress, has not been willing to provide the degree of flexibility requested.

Since then, Congress has pared back DOD’s requests, providing about 20% in a flexible account in the FY2003 Supplemental (P.L. 108-11) and 3% in the FY2004 Supplemental (P.L. 108-106).

Table A2. Extent of DOD Flexibility in Supplementals Since 9/11 Attacks: Share of Total Funding
(as percent of total)

Funding Level & Amount of Flexibility	Emergency Terrorism Response Suppl. P.L. 107-38 & P.L. 107-117	FY2002 Suppl. P.L. 107-206	FY2003 Suppl. P.L. 108-11	FY2003 Omnibus P.L. 108-7	FY2004 Suppl. P.L. 108-106	Total
Provided in Flexible Fund						
Request	100.0%	80.7%	95.7%	100.0%	3.0%	60.2%
Enacted	86.7%	84.3%	20.6%	0.0%	3.1%	24.5%
Provided in Regular Appropriation Accounts						
Request	0.0%	19.3%	4.3%	0.0%	97.0%	39.8%
Enacted	13.3%	15.7%	79.4%	100.0%	96.9%	75.5%
Total Funding Received						
Enacted vs. Request	81.6%	95.7%	94.4%	100.0%	99.4%	95.2%

Notes and Sources: Includes effects of later rescissions. CRS calculations based on requests and enacted levels.

Appendix B: Legislation

P.L. 101-403, October 1, 1990 (H.J.Res. 655)

Making continuing appropriations for the FY1991, supplemental appropriations for “Operation Desert Shield” for the FY1990, and for other purposes.

P.L. 102-25, April 6, 1991 (S. 725)

Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991.

P.L. 102-28, April 10, 1991 (H.R. 1282)

Making supplemental appropriations and transfers for “Operation Desert Shield/Desert Storm” for the fiscal year ending September 30, 1991, and for other purposes.

P.L. 104-134, April 26, 1996 (H.R. 3019)

Omnibus Consolidated Rescissions and Appropriations Act of 1996.

P.L. 107-38, September 18, 2001 (H.R. 2888)

2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States.

P.L. 107-117, January 10, 2002 (H.R. 3338)

Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002.

P.L. 107-206, August 2, 2002 (H.R. 4775)

2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States.

P.L. 107-248, October 23, 2002 (H.R. 5010)

Department of Defense Appropriations Act, 2003.

P.L. 108-7, February 20, 2003 (H.J.Res. 2)

Consolidated Appropriations Resolution, 2003.

P.L. 108-11, April 16, 2003 (H.R. 1559)

Emergency Wartime Supplemental Appropriations Act, 2003.

P.L. 108-87, September 30, 2003 (H.R. 2658)

Department of Defense Appropriations Act, 2004.

P.L. 108-106, November 6, 2003 (H.R. 3289)

Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004.

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