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Congressional Direction of Military Infrastructure Funding

Congress has a variety of legislative and budgetary options for directing U.S. Department of Defense (DOD) infrastructure spending. During the past 10 years, Congress has used statutory provisions to direct infrastructure spending to support construction or renovation of DOD research laboratories, child development centers, unaccompanied housing facilities, and certain projects in the Indo-Pacific region.

Funding for DOD's infrastructure generally comes from one of two types of DOD appropriations accounts: 1) military construction (MILCON) accounts, which provide for construction of new facilities; and 2) accounts known as Facilities Sustainment, Restoration and Modernization (FSRM), which are primarily intended for renovation of existing facilities. FSRM is a component of Operation and Maintenance (O&M) accounts.

Both MILCON and FSRM provide mechanisms for Congress to direct budget authority or expedite infrastructure investment for a particular purpose or for certain types of facilities.

Military Construction

Congress annually reviews DOD's budget request and determines whether or not to fund individual major MILCON projects, among other budgetary line items. In making the determination of which projects to provide line item-level authorization and appropriation in annual defense budget legislation, Congress may prioritize funding for specific individual projects or for certain types of facilities. (The list of individual projects that Congress funds each year is typically contained in the Joint Explanatory Statement for the annual Military Construction, Veterans Affairs, and Related Agencies Act.)

Congress may also exercise its discretion regarding DOD's unfunded priorities lists (UPLs), which generally refer to reports submitted to the congressional defense committees by the highest-ranking officers of the U.S. military services and combatant commands. In deciding whether or not to fund particular MILCON projects in the UPLs, Congress has an additional opportunity to prioritize funding for certain types of facilities.

Beyond approving individual MILCON projects, Congress may enact new authorities for DOD to carry out certain types of MILCON projects. For example, Section 2835 of the National Defense Authorization Act for Fiscal Year 2024 (FY2024 NDAA; P.L. 118-31) authorized a pilot program that allows the Secretaries of the military departments (Army, Navy and Air Force) to carry out MILCON projects to replace certain substandard enlisted barracks, also known as unaccompanied housing facilities. Such MILCON projects do not need further authorization

and the Secretary concerned may, in some cases, use O&M or unspecified minor MILCON funding authority.

Unspecified Minor Military Construction

Unspecified minor military construction (sometimes referred to as UMMC) is defined under 10 U.S.C. §2805 as projects whose total cost does not exceed a certain threshold, currently \$9 million in most instances. UMMC differs from larger construction projects in that the law does not require individual UMMC projects to receive authorization and appropriation at the line-item level in the annual DOD budget process. Instead, Congress provides lump-sum funding for the military services and DOD components, providing defense officials with the discretion to make decisions about which individual UMMC projects to prioritize and carry out.

When seeking to direct infrastructure spending to certain types of projects, Congress can increase UMMC thresholds as applied to those specific types of projects. For example, Section 2810 of the FY2006 NDAA (P.L. 109-163) authorized a temporary increase in the cost thresholds for UMMC as applied to child development center (CDC) construction projects. Similarly, Section 2810 of the FY2024 NDAA authorized the commander of U.S. Indo-Pacific Command (INDOPACOM) to carry out UMMC projects that cost up to \$15 million.

Another way to direct infrastructure spending via minor military construction is by providing dedicated appropriations for certain types of UMMC projects. For example, the FY2024 MILCON-VA Act (P.L. 118-42) provided \$62 million in UMMC funding for projects in the INDOPACOM area of responsibility. Similarly, Section 129 of the FY2024 MILCON-VA Act provided \$10 million to each of the military departments for UMMC projects to improve DOD laboratory facilities.

Planning and Design

Congress provides military departments and DOD components with funding to support planning and design activities, which are essential to developing the detailed budget justification and cost estimate that Congress typically requires when DOD requests full funding for a MILCON project. Generally, Congress provides the military departments and DOD components with a lump sum annual amount for planning and design that military leaders can use at their discretion. In some instances, Congress may appropriate funding for planning and design to be dedicated to a particular purpose or to a certain type of facility. Investment of planning and design funding for certain types of projects can help DOD move more projects into the early development stage, which in subsequent years can provide DOD and Congress with additional options for funding full military construction projects.

For example, in the FY2024 MILCON-VA Act, Section 131 provided each of the military departments with \$15 million to be used for planning and design of CDCs. Section 132 of the same law appropriated \$15 million for each of the services for planning and design of barracks.

FSRM Funding

Congress may consider directing DOD to allocate a specific level of FSRM funding to certain types of facilities and/or for certain purposes. FSRM funding from O&M accounts, unless otherwise specified, is available for the military services and components to use at their discretion. However, Congress may impose additional requirements on FSRM funding. For example, one option Congress has exercised is to set DOD investment requirements in terms of certain percentages of the total *plant replacement value* (PRV) of all facilities maintained by the department. PRV is a standardized method for valuing real estate and infrastructure; PRV is defined as the estimated cost to replace existing facilities using today's construction costs and standards. For instance, Section 2814 of the FY2022 NDAA (P.L. 117-81) required the Secretaries of the military departments to direct annual FSRM funding for improvements to military unaccompanied housing facilities in an amount equal to 5% of the estimated PRV of the total inventory of unaccompanied housing under the jurisdiction of the department's secretary. The requirement applies through FY2026.

Similarly, Section 2871 of the FY2023 NDAA (P.L. 117-263) directed the Secretaries of the military departments to allocate FSRM funding specifically to CDCs in an amount greater than or equal to 1% of the estimated replacement costs of the total inventory of CDCs under the jurisdiction of that Secretary.

Statutes

In some instances, Congress has amended the federal code to provide permanent authority for DOD to direct infrastructure funding to certain types of facilities or for certain purposes. For example, in the FY2007 NDAA (P.L. 109-364), Congress added 10 U.S.C. §2914, which provides the Secretary of Defense with authority to use O&M funding for MILCON projects that support energy resilience, energy security, and energy conservation. This provision may allow DOD to carry out certain construction projects without waiting for the annual legislative budget cycle to provide specific authorization and appropriation.

In Section 2803 of the FY2023 NDAA (P.L. 117-263), Congress permanently amended 10 U.S.C. §2805 to authorize the "Defense Laboratory Modernization Program," which grants authority for the Secretary of Defense to use funds from Research, Development, Technology and Evaluation (RDT&E) accounts to carry out certain MILCON projects supporting technology research. Congress first provided that authority under a pilot program created by Section 2803 of the FY2016 NDAA (P.L. 114-92.)

Considerations for Congress

FSRM Funding for Maintenance Backlogs

Congressional support agencies (e.g., the Congressional Budget Office and the Government Accountability Office)

have reported concerns about DOD's deferred maintenance backlogs, which reflect maintenance projects that have been postponed.

In its reported version of a FY2025 NDAA (S. 4638), the Senate Armed Services Committee (SASC) recommended requiring a minimum investment threshold for FSRM funding to address increasing maintenance backlogs. Section 2815 of the bill would add a new section of U.S. Code, 10 U.S.C. §2698, to require the military departments to dedicate funding for FSRM in an amount equal to certain percentages of the total PRV of all facilities maintained by the department. The provision would impose on DOD investment requirements starting in FY2026 and increasing through FY2029. Specifically, the provision would require DOD to invest FSRM funding in the following percentages of the PRV for the total inventory of all facilities owned and maintained by the military department: at least 1.75% in FY2026, 2.5% in FY2027, 3.25% in FY2028, and 4% in FY2029 and each subsequent year.

DOD has reportedly opposed this provision, stating, in a Sept. 26, 2024, letter, that it would "present an unfunded bill to the military departments starting at approximately \$12 billion in FY2026 and increasing to over \$50 billion in FY2029."

Balancing DOD Flexibility for UMMC and Congressional Oversight

Increasing current thresholds for UMMC projects may give DOD more flexibility, and the ability to carry out certain projects more quickly. That advantage may be weighed against the risks of reducing congressional oversight. When evaluating this option, Congress may consider coupling such increases with reporting requirements and waiting periods on the funds usage.

Institutional Support or Opposition to Congressional Intent

When evaluating options, Congress may consider whether DOD is institutionally supportive of Congress's legislative intent or whether DOD may be institutionally resistant to the funding priority that Congress is seeking to direct. In situations where DOD appears to be institutionally supportive, Congress may prefer measures to expand budget authorities, such as raising minor construction thresholds or raising appropriation levels. In situations where DOD appears to be institutionally resistant, Congress may consider measures that set minimum spending requirements or appropriate funding with specific parameters that would require DOD allocate the funding in accordance with congressional intent.

CRS Products

CRS In Focus IFI2773, *Defense Primer: Military Infrastructure Funding*, by Andrew Tilghman

CRS Report R44710, *Military Construction: Authorities and Processes*, by Andrew Tilghman

CRS In Focus IFI1964, *Defense Primer: Defense and Intelligence Unfunded Priorities*, by Brendan W. McGarry

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