



COMPTROLLER

(Program/Budget)

OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

OCT 18 2004

MEMORANDUM FOR DIRECTOR ACQUISITION RESOURCE AND ANALYSIS,
OUSD (AT&L)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
FOR ARMY BUDGET
DIRECTOR OF BUDGET/FISCAL MANAGEMENT
ASN (FM&C)
DEPUTY ASSISTANCE SECRETARY BUDGET
(SAF/FMB)
COMPTROLLER, MISSILE DEFENSE AGENCY
DIRECTOR FOR INVESTMENT

SUBJECT: Senior Level Working Group – Reprogramming Policies

In accordance with the attached House of Representatives, Department of Defense Appropriations Bill, 2005, report, 108-553, and the Conference Report, 108-622, I am establishing a working group at the Senior Executive Service level to review the Department's current reprogramming and withholding practices. The working group will review alternative and improved methods for providing visibility, flexibility, accountability, and oversight in the management of the Department of Defense appropriations. The Department's report is due to the congressional committees on February 1, 2005.

Therefore, please provide the names of your senior level member and one action officer to Mr. Brian Snyder, Office of the Under Secretary of Defense (Comptroller), Program and Financial Control Directorate (brian.snyder@osd.mil) no later than October 27, 2004. Thank you for your cooperation in establishing this working group.



John P. Roth
Deputy Comptroller

Attachments:
As stated

DEPARTMENT OF DEFENSE
APPROPRIATIONS BILL, 2005

R E P O R T
OF THE
COMMITTEE ON APPROPRIATIONS

[TO ACCOMPANY H.R. 4613]

together with
ADDITIONAL VIEWS



JUNE 18, 2004.—Committed to the Committee of the Whole House on
the State of the Union and ordered to be printed

\$253,164,000 for V-22 Osprey development and test flights
 \$557,398,000 for the VXX Executive helicopter replacement program
 \$50,000,000 for future bomber development
 \$458,860,000 for development of E-10A and MP-RTIP radar
 \$50,000,000 for improvements to the B-2 bomber
 \$344,538,000 for continued development of F/A-22 capability
 \$674,836,000 for the Advanced Wideband System (AWS) Satellite
 \$612,049,000 for the Advanced EHF Satellite
 \$599,488,000 for the Space Based Infrared System (SBIRS) High Satellite
 \$307,668,000 for the National Polar-Orbiting Operational Environmental Satellite

OTHER ITEMS OF INTEREST FUNDED IN THE BILL

\$1,694,338,000 for the Chemical Biological Defense Program
 \$8,688,772,000 for the programs of the Ballistic Missile Defense Agency

REPROGRAMMING, WITHHOLDING, AND "TAXING" APPROPRIATED FUNDS

In recent years, the Committee has become increasingly troubled with practices of the Department of Defense (DoD) which involve the withholding and redirection of appropriated funds from activities provided for by the Congress. Recent developments with respect to the research, development, test and evaluation appropriations are of special concern. The following discussion addresses how DoD executes the movement of a significant level of appropriated funds among programs through mechanisms such as reprogramming funds, withholding funds, and charging "taxes" on funds that pass through the control of various departmental organizations.

Reprogrammings.—This is the process by which DoD formally transfers funds from one program or activity—as approved in an appropriations act and delineated in a committee report—to another program or activity. The Congress understands there are instances in which DoD should be allowed to make such funding shifts, and this has manifested itself in the provision of transfer authority in appropriations acts and the establishment of reprogramming guidelines by the congressional defense committees. These guidelines include setting both dollar thresholds and "item of special interest" designations, under which DoD is obliged to seek the prior approval of the congressional defense committees before executing the movement of funds. An above-threshold reprogramming (ATR) requires approval of the congressional defense committees. A below-threshold reprogramming (BTR) does not, except in limited instances, include any requirement for congressional notification or approval.

In both fiscal years 2003 and 2004, the Committees on Appropriations temporarily raised the threshold for a BTR movement of funds. The new BTR guidance was raised to \$20,000,000 for procurement (P-1 items) and \$10,000,000 for Research, Development, Test and Evaluation (R-1 items), with current direction stating that the threshold shall be the specific dollar limitation (\$20,000,000 for procurement and \$10,000,000 for RDT&E) or 20 percent of the line, whichever is less.

The Committee believes these reprogramming guidelines provide sufficient management flexibility for DoD, but is concerned that the guidelines are not applied consistently within the Department. Indeed, the Committee has observed increased use of BTRs by both the Office of the Secretary of Defense (OSD) and the military services in a manner which is often inconsistent and in clear violation of congressional intent. Especially troubling is evidence suggesting below threshold reprogrammings have been used to initiate new start development programs without congressional notification.

Program Funding Withholds.—Withheld funds are those funds appropriated to, but not released to, programs for some portion of their availability period. Withholds are executed at the OSD and Service level, and are often justified when a program is experiencing programmatic issues or when congressional adjustments require additional information. These amounts should be released for expenditure to the programs for which the funds were appropriated when either OSD or the service involved is confident the program can proceed.

"Taxes".—The term "taxes" refers euphemistically to amounts directed by either Departmental or Service entities to be set aside from amounts appropriated to programs, in order to be used for another purpose. Examples of taxes include reductions and redirection of funds resulting from statutory requirements, including those mandated to meet Small Business Innovative Research (SBIR) requirements, or "across-the-board" reductions applied in response to explicit direction in appropriations acts. However, according to a General Accounting Office (GAO) review, program managers do not apply statutory taxes in an equitable manner. Further, these items are not separately identified in budget documentation in support of each Research, Development, Test and Evaluation (RDT&E) appropriation request. It is therefore impossible to determine if the Department is properly executing the requirements of the law.

The Committee has also learned that other, so-called "non-statutory taxes", are being increasingly applied to programs by OSD or the Services, in order to generate funds to accommodate shortfalls in other programs or fund new requirements. GAO has informed the Committee that in both 2003 and 2004 program managers anticipated they would be required to set aside two to three percent of a program's appropriation to pay for taxes. Some of the amounts set aside as taxes are used to initiate new programs or new research that has not been presented to Congress, and for which an appropriation has not been approved.

The routine use of BTRs, withholds, and taxes is increasing and becoming more widespread, affecting nearly every program. Of particular concern is that the scope and the impact of their use are not readily visible to the Committee, and in some cases, not visible to OSD or Service headquarters. Moreover, according to GAO the use of these mechanisms can have a substantial impact on the funding levels for specific programs, and in some cases lead to a major redirection of a program after the appropriation has been enacted. There have been instances in which cumulatively, more than 10 percent of funding for a particular program has been shifted to other purposes.

The Department of Defense claims these mechanisms are necessary tools to effectively manage its acquisition-related appropriations. The Committee recognizes the need for the Department to have some flexibility to meet emergencies, react to unexpected opportunities, and make the most efficient use of funds. However, too much flexibility can encourage unrealistic budgeting and inefficient management practices, blur accountability, and weaken oversight. For example many program managers seek funding in excess of program requirements, to mitigate the financial impact of these mechanisms against their programs. The Committee concludes that while these actions may indeed provide flexibility, they constitute a terrible business practice and encourage poor management habits within the Department.

In addition, the lack of visibility into changes in appropriated funding levels for programs is of great concern. Current requirements for financial reports to the Committee provide information that is often late, inaccurate, and non-specific. Moreover, in many instances the Department does not have adequate internal systems for management tracking and analysis of this information. It is telling that while the DoD continually presses the Congress generally and the Committee specifically for more flexibility in the management of appropriated funds, it cannot provide itself or the Committee adequate and timely information on the current use or impact of such fiscal management mechanisms.

Most importantly, the Committee is concerned that the extensive use of these practices, coupled with a failure to provide adequate visibility into their use and impact, substantially increases the risk that the Department of Defense may be circumventing the intent of the Congress.

Committee Recommendation

Regarding so-called "non-statutory" taxes, the Committee believes that the two-to-three percent level noted by GAO in recent years has been assumed in the amounts requested in the fiscal year 2005 budget. Budgeting for amounts in anticipation that they will be redirected to other programs is not acceptable. Therefore, the Committee bill includes section 8020, which reduces the fiscal year 2005 budget request for the Research, Development, Test and Evaluation appropriations (Title IV of the committee bill) by \$685,000,000. This reduction shall be applied to each budgeted program element, project and activity. Appropriations made to programs in direct support of the National Foreign Intelligence Program (NFIP) are exempt from the application of section 8020.

Further, the Committee directs the Department of Defense to end the practice of setting aside funds—taxing appropriations made for particular programs—without a statutory requirement to do so. The amounts appropriated in 2005 for each program designated in the appropriate tables in this report shall not be altered by any departmental entity through the application of non-statutory taxes or set asides.

Finally, in order to determine the application of statutory taxes, the Committee directs that future budget requests include a separate identification of the amount of an RDT&E appropriation request that will be set aside as a tax to fulfill each statutory requirement.

Reporting Requirements

By February 1, 2005, the Secretary of Defense is directed to provide the Committee—

(a) Timely and complete data, by RDT&E program element, on the use of the Department's current flexibility mechanisms, including withholds, reprogrammings (i.e., actual BTRs as well as ATRs) and taxes during fiscal year 2004, as of September 30, 2004, and

(b) A proposal for reporting fiscal year 2005 data to the Committee on the BTRs and ATRs executed to funds appropriated for procurement and RDT&E programs, by program element, as part of the Accounting Report 1002 process, or some other method that provides regular and timely information.

Also, the Committee believes that not later than 90 days after enactment of the Department of Defense Appropriation Act, 2005, the Undersecretary of Defense (Comptroller) should establish a working group of members of the Senior Executive Service with extensive experience in financial management and budgetary execution. This group should work to develop alternative and improved methods for providing visibility, flexibility, accountability, and oversight (both internal to the Department and to the Congress) in the management of research and development appropriations. This group should provide, through the Office of the Secretary of Defense, an interim and final report on the alternatives and methods explored, including the advantages and disadvantages of each, and provide recommendations for the establishment of new guidelines for the Department of Defense.

SECURITY AND FINANCIAL REVIEWS REGARDING IRAQI NATIONAL CONGRESS

The Committee is gravely concerned about recent allegations of security compromises associated with members of the Iraqi National Congress (INC), who may have provided highly sensitive U.S. intelligence information to a foreign government. Additional allegations of financial improprieties have been brought to light from recent Iraqi justice system proceedings. In the portion of this report dealing with funds provided for title IX, the Committee directs that the Office of Management and Budget provide a comprehensive report addressing all sources of funding and other support provided to the INC between 1998 and the current fiscal year. Further direction to the Intelligence Community regarding these matters is included in the classified annex accompanying this report.

FORCES TO BE SUPPORTED

DEPARTMENT OF THE ARMY

The fiscal year 2005 budget request is designed to support active Army forces of 10 divisions, 2 armored cavalry regiments, 2 separate brigades, and reserve forces of 8 divisions, 3 separate brigades, and 15 enhanced National Guard brigades (6 enhanced brigades will be aligned under 2 AC/ARNG integrated division headquarters). These forces provide the minimum force necessary to meet enduring defense needs and execute the National Military Strategy. The Army is in the process of converting to a modular brigade based force. At end state, the active Army force will con-

**MAKING APPROPRIATIONS FOR THE DE-
PARTMENT OF DEFENSE FOR THE FISCAL
YEAR ENDING SEPTEMBER 30, 2005, AND
FOR OTHER PURPOSES**

CONFERENCE REPORT

TO ACCOMPANY

H.R. 4613



JULY 20, 2004.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 2004

REPROGRAMMING, WITHHOLDING, AND "TAXING" APPROPRIATED FUNDS

The conferees agree to continue the existing below-threshold reprogramming guidelines which are as follows: \$20 million for procurement accounts and \$10 million for research, development, test and evaluation (RDT&E) accounts. The conferees further agree that these thresholds are to be applied to the specific dollar threshold or 20 percent of each P-1 or R-1 line, whichever is the lesser level. Furthermore, the dollar or 20 percent threshold is to be considered in a cumulative fashion. Therefore if the combined values of transfers into or out of a procurement (P-1) or research and development (R-1) line exceed the identified threshold, the Department of Defense must submit a prior approval reprogramming request.

The conferees agree with the Senate position that the Department of Defense is to abide by legal requirements for congressional notification of new starts. Section 8106 of this conference agreement establishes a requirement for written notification for initiating a new start program. The conferees agree with both the Senate and the House position on the inappropriate nature of "taxing" an appropriation to generate funds to support a new start project not previously disclosed to Congress. This practice violates these requirements and is therefore prohibited.

The conferees agree to a prohibition on the practice of setting aside funds—the taxing of appropriations made for particular programs—to fund shortfalls in other programs, or initiate new programs. This includes the practice of "taxing" funds appropriated for congressional interest items to pay for laboratory overhead or management costs. The conferees direct that funds shall not be included in a budget request for any program, project and activity to accommodate the application of non-statutory withholds and taxes, or to reimburse other programs as "repayment" for funds transferred to a program in a previous year. Statutory withholds such as Small Business Innovative Research, shall be applied uniformly to each program element, project and activity within an account.

The conferees direct the Secretary of Defense to provide data by January 31, 2005 on the adequacy and use of the Department's current reprogramming and withholding practices. Furthermore, the conferees direct the Department to work with the congressional defense committees on a method of providing timely and accurate data on reprogramming activity (above threshold and below threshold), and the application of statutory and administrative withholds. The conferees further direct that reprogramming data should be available on at least a monthly basis, potentially in conjunction with DoD 1002 reports and that the Department should transmit the data electronically, if feasible, to the congressional defense committees.

NEW START PROGRAMS

The conferees agree to amend Section 8106 to ensure that written notification is provided prior to initiation of new start programs. The conferees direct that such notification be provided to