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## Authorization and Appropriations for FY2004: Defense

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Appropriations are one part of a complex federal budget process that includes budget resolutions, appropriations (regular, supplemental, and continuing) bills, rescissions, and budget reconciliation bills. The process begins with the President's budget request and is bounded by the rules of the House and Senate, the Congressional Budget and Impoundment Control Act of 1974 (as amended), the Budget Enforcement Act of 1990, and current program authorizations.

This report is a guide to one of the 13 regular appropriations bills that Congress passes each year. It is designed to supplement the information provided by the House and Senate Appropriations Subcommittees on Energy and Water. It summarizes the current legislative status of the bill, its scope, major issues, funding levels, and related legislative activity. The report lists the key CRS staff relevant to the issues covered and related CRS products.

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# Authorization and Appropriations for FY2004: Defense

## Summary

Congress is now considering the FY2004 budget for the Department of Defense (DOD). The Administration requested \$399.7 billion for national defense. In their respective versions of the FY2004 DOD Authorization Act passed on May 22, 2003, both houses authorized \$400.5 billion for national defense, an amount consistent with the FY2004 Budget Resolution but \$800 million more than the request. Neither chamber has yet begun formal action on annual defense appropriations bills though press reports suggest that markup may occur by the end of June.

On May 22, 2003, the House passed H.R. 1588, the FY2004 DOD Authorization Act by a vote of 361 to 68. On June 4 after considering three additional amendments to S. 1050, its version, the Senate passed the bill by voice vote. On that day the Senate adopted by voice vote amendments providing full concurrent receipt of both VA disability benefits and military retirement for military retirees (S.Admt. 848, Reid), a provision that could trigger a presidential veto, as well as an amendment providing citizenship rights to immediate relatives of activated reservists who die in combat (S.Admt. 847, Kennedy/Brownback). By a vote of 42 to 53, the Senate rejected an amendment to cancel the 2005 round of base closures, an amendment that could have triggered a presidential veto of the entire bill. The Senate then substituted S. 1050 into the House bill, H.R. 1588, and appointed its conferees. The House has not yet appointed its conferees.

Debate on the FY2004 DOD Authorization Act began May 19 in the Senate and May 21st in the House. The Senate completed marking up its bill on May 8 and reported its bill on May 13 (S.Rept. 108-46). The House completed its markup on May 14 and reported its bill on May 16th (H.Rept. 108-106).

Potential major issues in conference on the authorization bill may be how to address the Administration's request to give the Secretary of Defense wide-ranging new authority to set up a new National Security Personnel System (NSPS) for the 750,000 civilians working in the Department of Defense. The House-reported version of the bill approves much of what the Administration requested, while the Senate-reported version does not include any proposed changes. On June 4, 2003, the Senate's Governmental Affairs Committee held a hearing on S. 1166, a bill that includes some but not all of the Administration's proposal for a new personnel system for DOD.

The Senate version of the FY2004 DOD Authorization Act includes two provisions with significant cost implications: new health benefits for non-active duty reservists that could cost \$470 million in FY2004 and \$7.3 billion over the next five years and concurrent receipts for military retirees that could cost the government \$4.4 billion in FY2004 and \$56.5 billion over the next ten years. Other programs would need to be cut to cover some of the cost. These provisions are not in the House bill. Other potential conference issues include provisions that would restrict R&D on low yield nuclear weapons and the nuclear earth penetrator weapon, provisions exempting DOD from certain environmental statutes.

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# Authorization and Appropriations for FY2004: Defense

## Most Recent Developments

After adopting two amendments to S. 1050, its version of the FY2004 DOD Authorization Act, the Senate passed the bill by voice vote on June 4, 2003. The first amendment, the Reid amendment, would provide concurrent receipt of military retirement and VA disability benefits for military retirees (S.Admt. 848), and the second would provide expedited naturalization for activated reservists and for their families should the reservist die in wartime. By a vote of 53 to 42, the Senate defeated an amendment that would have canceled the 2005 round of base closures. The Senate then substituted its version into the House bill, H.R. 1588, and appointed conferees.

Before recessing for Memorial Day on May 23, 2003, the House passed H.R. 1588, its version of the FY2004 DOD Authorization Act by 361 to 68. The House has not yet appointed conferees. The Administration generally supports the House bill but threatened to veto any version of the FY2004 DOD Authorization Act that delayed or cancelled the 2005 round of base closures. Last year, the Administration threatened to veto the DOD authorization act if concurrent receipt was included.

During floor debate, several amendments with significant cost or policy implications were adopted. On the Senate side, the Graham/Daschle amendment would expand access to TRICARE health care benefits to non-active duty reservists and could cost an average of \$1.5 billion annually and about \$7.4 billion over five years. This provision is not in the House bill.

Both the House and Senate adopted provisions that would lift or modify the current ten-year ban on R&D of low-yield nuclear weapons. The House version modifies the ban and would permit research while the Senate version requires specific authorization for DOE to proceed to engineering development of low yield nuclear weapons or a nuclear earth penetrating weapon. An attempt to add civil service protections to the House bill, which includes much of the Administration's request to set up a new National Security Personnel System, was also defeated. The Senate bill does not include these provisions although the Senate Governmental Affairs Committee held hearings on June 4 on S. 1166, a bill to set up a National Security Personnel System.

Both bills authorize \$400.5 billion for national defense, an amount consistent in the FY2004 Congressional Budget Resolution (H.Con.Res. 95) but \$800 million more than the amount requested by the President.

## Status of Legislation

### FY2004 Defense Authorization Bills

On May 22, the House and the Senate passed their respective versions of the FY2004 DOD Authorization bills after several days of floor debate. The House version, H.R. 1588, passed by 361 to 68. Although the Senate passed its version, S. 1050, by 98 to 1 on the same date, the Senate adopted a unanimous consent agreement the next day providing for consideration of several specific amendments. On June 4 after the Memorial Day recess, the Senate adopted amendments on concurrent receipt and expedited immigration for selected reservists and their families during wartime and rejected an amendment to cancel the 2005 round of base closures before passing the bill by voice vote and appointing its conferees.<sup>1</sup> Debate in the House took place on May 20 and May 21, and in the Senate on May 19, 20, 21, 22, and June 4, 2003.

On May 13, the Senate Armed Services Committee (SASC) reported S. 1050, after completing markup on May 9 (S.Rept. 108-46). The bill does not include the DOD proposal to design its own civilian personnel system. The House Armed Services Committee (HASC) reported its bill on May 16 after completing markup on May 14 (H.Rept. 108-106). On May 21, the House adopted a rule (H.Res. 245) that limited general debate to two hours and amendments to those specified in the rule. The Senate rule required that all amendments be considered relevant by the Parliamentarian. The House bill includes much of DOD's legislative proposal for a new civilian personnel system as initially marked up by the House Government Reform Committee (H.R. 1836).<sup>2</sup>

**Additional Amendments Considered by the Senate.** After its return from the Memorial Day Recess on June 2, 2003, the Senate considered several amendments to S. 1050, which were ruled earlier as not relevant by the Senate Parliamentarian.<sup>3</sup> The Dorgan/Lott amendment to cancel the 2005 round of base closures was defeated by a vote of 42 to 53.<sup>4</sup> The Secretary of Defense and other senior advisors would recommend a veto of the FY2004 DOD Authorization Act if

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<sup>1</sup> *Congressional Record*, May 23, 2003, p. S7115 and *Congressional Record*, June 4, p. S7280-S7295.

<sup>2</sup> For a comparison of all the Administration's proposed legislative provisions compared to current law, see CRS Report RL31916, *Defense Department Transformation Proposal: Original DOD Proposal Compared to Existing Law*, by Robert L. Goldich, Gary J. Pagliano, Barbara L. Schwemle, and Thomas J. Nicola. Other bills that would reform the current civil service system are S. 129 (introduced by Senator Voinovich) and H.R. 1601 (introduced by Representative JoAnn Davis). For a review of these measures, see CRS Report RL31516, *Civil Service Reform Proposals: A Side-by-Side Comparison of S. 129 and H.R. 1601 (108<sup>th</sup> Congress) with Current Law*, by Barbara L. Schwemle and L. Elaine Halchin.

<sup>3</sup> *Congressional Record*, May 20, 2003, p. S6645 and p. S6648.

<sup>4</sup> *Congressional Record*, May 23, p. S7115, and *Congressional Record*, June 4, p. S7286-S7295. Senator Warner had reserved the right to offer two amendments on base closures but did not do so after the Dorgan amendment was defeated.

Congress included a cancellation of the 2005 round, according to a statement of Administration policy.<sup>5</sup>

Another amendment that could trigger a veto threat by the Administration was passed on June 4: Senator Reid's amendment on concurrent receipt that would provide both VA disability and retirement benefits to about 700,000 military retirees with 20 or more years of service.<sup>6</sup> Faced with a veto threat by the Administration last year to similar congressional proposals, Congress adopted a targeted special compensation that would provide benefits to about 40,000 retirees whose disabilities reflect either combat or combat-related disabilities.<sup>7</sup> That special compensation benefit will be available to those retirees who are eligible as of June 1, 2003.

Recently, CBO estimated that providing full concurrent receipt would cost the government a total of about \$4.1 billion in FY2004, including \$1.1 billion that would be financed through DOD appropriations and about \$3 billion that would be financed by the Treasury.<sup>8</sup> CBO estimates that about 700,000 would be eligible for a blanket version of concurrent receipt. Over 600,000 of those who would be eligible for benefits would be non-disability retirees, who receive VA disability ratings after leaving military service. Over ten years, CBO estimates that full concurrent receipt would cost the government about \$56.5 billion, including about \$41 billion in direct spending and \$15.4 billion in accrual payments to cover the future cost of today's military workforce.<sup>9</sup> The FY2004 congressional budget resolution does not include

<sup>5</sup> OMB, *Statement of Administration Policy on H.R. 1588 - National Defense Authorization Act for Fiscal Year 2004*, May 22, 2003, p. 1; available on the White House website at [<http://whitehouse.gov/omb/legislative/sap/108-1/hr1588sap-h.pdf>]. Completion of the FY2002 DOD Authorization Act was stymied by the Administration's threatened veto because of congressional unwillingness to authorize another round of base closures.

<sup>6</sup> Except for those eligible for the new combat or combat-related special compensation, military retirees who opt to receive VA disability benefits must take an offset to their military retirement of the same amount. See *Congressional Record*, May 19, 2003, p. S6637, for Reid amendment. Senate Amendment 697 is the same as S. 392, the Retired Pay Restoration Act of 2003, introduced by Senator Reid and others on February 13, 2003.

<sup>7</sup> See CBO testimony by Sarah T. Jennings before the Subcommittee on Personnel, Senate Armed Services Committee, March 27, 2003; CRS Report RL31305, *Authorization and Appropriations for FY2003: Defense* by Stephen Daggett and Amy Belasco; and CRS Report RS21327, *Concurrent Receipt of Military Retirement and VA Disability Benefits: Budgetary Issues*, by Amy Belasco.

<sup>8</sup> See CBO, *Cost Estimate on S. 1050, National Defense Authorization Act for Fiscal Year 2004*, June 2, 2003; see [<http://www.cbo.gov>]. Payments for current beneficiaries would be paid by the Treasury (direct or mandatory spending), whereas accrual costs to cover the future cost of the benefits for DOD's current military personnel would be paid for by DOD. The cost reflects the offsets against retirement benefits currently taken by about 695,000 military retirees who would be eligible and about 7,000 from the other uniformed services (Public Health Service, National Oceanic and Atmospheric Administration).

<sup>9</sup> See CBO testimony by Sarah T. Jennings before the Subcommittee on Personnel, Senate Armed Services Committee, March 27, 2003, and CRS Report RS21327, *Concurrent Receipt of Military Retirement and VA Disability Benefits: Budgetary Issues*, by Amy Belasco (continued...)

an allowance for concurrent receipt. If enacted, other programs would have to be decreased to finance the DOD portion and spending for current beneficiaries would increase the deficit by \$3 billion in FY2004.

An amendment offered by Senators Kennedy and Brownback to extend citizenship to the spouse, children, and parents of selected reservists who are non-citizens or permanent resident aliens and who die while in active-duty status was adopted by voice vote. Currently, citizenship is available to such relatives of active-duty military personnel who die in wartime.<sup>10</sup>

**Major Amendments Considered During Senate Floor Action.** Several amendments were added during floor debate in each house with significant cost or policy implications. (Additional discussion of major issues is included in individual sections below.)

On the Senate side, the following major amendments to S. 1050 were adopted:

- Graham/Daschle amendment that would provide access to TRICARE health care benefits to non-active duty reservists with an estimated annual cost of \$1.5 billion (by a vote of 85-10);
- Warner amendment that would require specific authorization by Congress for DOD to begin engineering development of a low-yield nuclear weapon (by a vote of 59 to 38);
- Nelson (Ben) amendment that would require specific authorization for DOD to begin engineering development of a Robust Nuclear Earth Penetrator weapon (voice vote);<sup>11</sup>
- Lautenberg/Jeffords amendment that would require a determination by the Secretary of Interior for DOD to substitute an integrated resources management plan to protect endangered species (by vote of 51 to 48);
- Modified Bingaman amendment that would prohibit funding for ballistic missile defense interceptors to be used in space (by voice vote);
- Reid amendment to transfer \$20 million from special operations forces to modifications of 23 B-1 bombers slated for retirement (by voice vote); and
- Warner/Boxer/Lautenberg amendment to express the sense of the Senate that by August 31, 2003, DOD should have a competitive contract in place for the reconstruction of Iraq's oil industries (by a vote of 99 to 0).

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<sup>9</sup> (...continued)  
Belasco.

<sup>10</sup> See Section 661 to Sec. 665, H.R. 1588, engrossed as passed by the Senate, June 4, 2003.

<sup>11</sup> See CRS Report RS20834, *Nuclear Earth Penetrator Weapons*, by Jonathan Medalia, and CRS Report RS21133, *The Nuclear Posture Review: Overview and Emerging Issues*, by Amy F. Woolf.

Senate amendments that were defeated include:

- Feinstein/Kennedy amendment to re-institute the ban on R&D on low-yield nuclear weapons;
- Dorgan amendment prohibiting funds for the Robust Nuclear Earth Penetrator (tabled by a vote of 56 to 41); and
- Murray amendment that would have permitted overseas DOD facilities to be used for abortions if no DOD funds were used.

**Major Amendments Considered During House Floor Action.** Several amendments with significant policy or cost implications were adopted during House debate of the FY2004 DOD Authorization Act:

- Goode amendment to authorize the Secretary of Defense to assign military personnel to assist the U.S. Customs Service in carrying out border patrol if the Secretary of Homeland Security certifies that the assistance is necessary to meet national security threats from terrorists, drug traffickers, or illegal aliens (vote of 250-179);
- Upton amendment to authorize imminent danger pay for military personnel assigned duty as first responders (included in Hunter en bloc, agreed to by voice vote); and
- Hunter amendment to add \$100 million to enhance the capability of the fourth Stryker brigade (included in Hunter en bloc, agreed to by voice vote).

Several House amendments to H.R. 1588 were rejected:

- Tauscher amendment to transfer \$15 million from the Robust Nuclear Earth Penetrator to a R&D on a conventional bunker-busting bomb (by a vote of 199-226);
- Loretta Sanchez amendment to permit military personnel to receive abortions in DOD medical facilities overseas (by a vote of 201-227); and
- Cooper amendment to recommit the bill with instructions to add various civil service protections to the proposed National Security Personnel System and to delete language that would allow the Secretary of Defense to bargain with employees without being subject to dispute resolution procedures (by a vote of 204 to 224).

**Major Changes During Markup.** The Senate markup of S. 1050 did not include DOD's request for broad new authority to design its own civilian personnel system. The House markup of H.R. 1588 includes some but not all of DOD's request, generally tailoring the new authorities to be consistent to those granted to the Department of Homeland Security allowing the agency to set its own pay scales and devise a new appeals procedures for employees but retaining some of the civil service protections in the current system (see CRS Report RL31924, *Civil Service Reform — H.R. 1836, Homeland Security Act, and Current Law* by Barbara L. Schwemle and Thomas J. Nicola and section below on "New Civil Service System for DOD?"). Neither the House Armed Services Committee (HASC) nor the Senate Armed Services Committee (SASC) endorses DOD's request for broad authority to manage

senior level military officers, proposing expansions of current provisions instead. Also controversial may be the HASC proposal to grant DOD exemptions to certain environmental laws, which Congress has rejected in previous years (see section on *Environmental Provisions*, below).

**Table 1a. Status of FY2004 Defense Authorization  
(H.R. 1588/S. 1050)**

Subcommittee Markup		House Report	House Passage	Senate Report	Senate Passage	Conf. Report	Conference Report Approval		Public Law
House	Senate						House	Senate	
5/14/03	5/9/03	5/16/03 H.Rept. 108-106	5/22/03 361-68	5/13/03 S.Rept. 108-46	6/4/03 voice vote <sup>a</sup>	—	—	—	—

<sup>a</sup> The Senate initially passed S. 1050 by 98 to 1 on May 22, 2003, but then adopted a unanimous consent agreement on May 23, 2003, to continue debate on selected amendments after the recess; see *Congressional Record*, p. S7115. Those amendments were considered on June 4, and the bill was then passed by voice vote.

**Table 1b. Status of FY2004 Defense Appropriations**

Subcommittee Markup		House Report	House Passage	Senate Report	Senate Passage	Conf. Report	Conference Report Approval		Public Law
House	Senate						House	Senate	
—	—	—	—	—	—	—	—	—	—

## Overview and Budget Trends

On February 3, 2003, the Administration submitted its FY2004 budget request to Congress. The Administration proposed \$399.7 billion for the national defense budget function, about \$7 billion above the estimated FY2003 level. (Note: This includes in the FY2003 total \$10 billion that Congress appropriated for DOD in the FY2003 Consolidated Appropriations Act — most OMB and DOD tables prepared for the February budget release do not include these additional funds.<sup>12</sup> This does

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<sup>12</sup> DOD has received \$93.1 billion in supplemental funding to combat terrorism since the September 11 attacks; see below.

not include in FY2003 level, however, \$62.6 billion in supplemental appropriations that DOD recently received for the Iraq war and other costs.<sup>13</sup>

The FY2004 increase is in addition to substantial increases in FY2002 and FY2003. The new request is more than \$100 billion above the 1999 level for defense spending, which reflects an increase over five years of 20% in inflation-adjusted constant FY2004 dollars. The FY2004 defense request is almost 25% higher in real terms than the budget in FY1996 when DOD's draw down in spending and military personnel in response to the end of the Cold War was completed. The number of military personnel has remained level since 1996 and is not projected to increase.

The Administration is proposing continued increases of about \$20 billion annually in the defense budget for the next five years, which would increase national defense budget authority to \$480 billion by FY2008. **Table 2** shows ten-year FY1999-FY2008 trend in defense spending under the Administration's plan for both the national defense budget function and the Department of Defense budget.<sup>14</sup>

Of the \$399.7 billion requested for national defense in FY2004, \$370.6 billion is for programs covered by the defense appropriations bill, \$9.0 billion by the military construction appropriations bill, \$17.3 billion for Department of Energy defense-related activities funded in the energy and water appropriations bill, and the remaining \$2.8 billion in other appropriations bills.

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<sup>13</sup> OMB, *Fiscal Year 2004 Historical Tables*, Table 5.1 (February 2003) and H.Rept. 108-10, *Conference Report on FY2003 Consolidated Appropriations Resolution*, p. 1498.

<sup>14</sup> The National Defense budget function (050 in OMB budget documents) is made up primarily of the Department of Defense (051), plus about \$18 billion in other defense-related activities, primarily weapons-related activities in the Department of Energy (see Table 2 for a breakout of these categories).

**Table 2. National Defense Budget Function and Department of Defense Budget, FY1999-FY2008, Administration Projections**

(current and constant FY2004 dollars in billions)

Fiscal Year:	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Enacted 2003 <sup>a</sup>	Req. 2004	Proj. 2005	Proj. 2006	Proj. 2007	Proj. 2008
<b>National Defense Budget Function</b>										
Budget Authority										
Current year dollars	292.3	304.1	335.5	362.1	392.7	<b>399.7</b>	420.0	440.0	460.3	480.7
Constant FY2004 dollars	331.1	335.8	360.1	378.5	401.8	<b>399.7</b>	410.4	420.0	429.0	437.5
Real growth/decline	5.1%	1.4%	7.2%	5.1%	6.2%	<b>-0.5%</b>	2.7%	2.3%	2.1%	2.0%
Outlays/b/										
Current year dollars	274.9	294.5	305.5	348.6	376.3	<b>390.4</b>	410.1	423.2	436.4	460.5
Constant FY2004 dollars	312.2	325.3	327.4	363.4	385.1	<b>390.4</b>	400.9	394.6	397.3	409.3
Real growth/decline	12.1%	4.2%	0.6%	11.0%	6.0%	<b>1.4%</b>	2.7%	-1.6%	0.7%	3.0%
<b>Department of Defense</b>										
Budget Authority										
Current year dollars	278.6	290.5	319.5	345.0	374.0	<b>379.6</b>	399.6	419.6	440.3	461.6
Constant FY2004 dollars	315.5	320.8	343.0	360.6	382.7	<b>379.6</b>	390.5	400.5	410.4	420.1
Real growth/decline	5.1%	1.7%	6.9%	5.1%	6.1%	<b>-0.8%</b>	2.9%	2.6%	2.5%	2.4%
Outlays/b/										
Current year dollars	261.4	281.2	291.0	332.0	358.2	<b>370.7</b>	389.6	402.7	416.3	441.1
Constant FY2004 dollars	296.9	310.7	311.9	346.1	366.5	<b>370.7</b>	380.8	375.5	379.0	392.1
Real growth/decline	11.7%	4.7%	0.4%	11.0%	5.9%	<b>1.1%</b>	2.7%	-1.4%	0.9%	3.5%

**Source:** Office of Management and Budget, F2004 Historical Tables, and FY2003 Consolidated Appropriations Resolution (P.L. 108-11).

<sup>a</sup> Includes \$10 billion in budget authority appropriated to DOD in the FY2003 Consolidated Appropriations Resolution (see P.L. 108-11) but not the outlay effects of that addition because OMB has not re-estimated outlays. Does not include \$62.6 billion in FY2003 supplemental appropriations for defense provided in H.R. 1559, P.L. 108-11.

## Annual Growth for DOD Slows In Later Years in FY2004 Budget Resolution

Passed by both houses on April 11 just before the April recess, the FY2004 budget resolution (H.Con.Res. 95, H.Rept. 108-71) endorses the Administration's proposed growth of \$20 billion annually for defense over the next five years (see **Table 3**). Over the following five years, however, defense would grow by about \$10 billion annually; the Administration does not project beyond FY2008. The chief issue in this year's budget resolution was the amount to be provided for tax cuts.

**Table 3. Status of FY2004 Budget Resolution  
(H.Con.Res. 95, S.Con.Res. 23)**

Subcommittee Markup		House Report	House Passage	Senate Report	Senate Passage	Conf. Report	Conference Report Approval		Public Law
							House	Senate	
NA <sup>a</sup>	NA	4/10/03 H.Rept. 108-37	3/21/03 215-212	3/26/03 S.Rept. No rept.	3/26/03 56-44	4/11/03 H.Rept. 108-71	4/11/03 216-211	4/11/03 51-50	NA <sup>b</sup>

**Note** : Senate substituted S.Con.Res. 23 into H.Con.Res. 95 after passage.

<sup>a</sup> Budget resolutions are only marked up in full committee.

<sup>b</sup> Budget resolutions guide the action of the authorizing and appropriating committees but are not signed into law by the President.

Although there has been considerable congressional support for increases for defense, some observers have questioned whether increases can be sustained with reduced federal revenues because of tax cuts, high federal budget deficits, and the dramatic increases in costs associated with the retirement of the baby boom generation.<sup>15</sup> The FY2004 budget resolution projects a 40% increase in entitlement programs by 2008 and an 80% increase by 2013.<sup>16</sup>

<sup>15</sup> Center for Strategic and Budgetary Assessment, *Analysis of the 2004 Defense Budget Request* by Steven M. Kosiak, p. 5-p.7

<sup>16</sup> CRS calculations based on table in H.Rept. 108-71, *Conference Report on Concurrent Resolution on the Budget For Fiscal Year 2004*, p. 68.

**Table 4. FY2004 Budget Resolution: DOD Request and Congressional Action**

(billions of dollars)

	FY2003 Est. <sup>a</sup>	FY2004 Proj.	FY2005 Proj.	FY2006 Proj.	FY2007 Proj.	FY2008 Proj.	FY2004- FY2008 Proj.	FY2009- FY2013 Proj.	FY2004- FY2013 Proj. <sup>b</sup>
<b>Budget Authority</b>									
Administration Request	392.7	399.7	420.0	440.0	460.3	480.7	2,200.8	NA	NA
FY2004 Budget Res.	392.5	400.5	420.1	440.2	460.4	480.9	2,202.0	2556.1	4758.2
<b>Annual Change In Dollars</b>									
Administration Request	30.6	7.0	20.3	20.0	20.3	20.4	88.1	NA	NA
FY2004 Budget Res.	NA	8.1	19.5	20.1	20.3	20.5	88.4	48.5	136.9
<b>Annual Change In Percent</b>									
Administration Request	8.5%	1.8%	5.1%	4.8%	4.6%	4.4%	NA	NA	NA
FY2004 Budget Res.	NA	2.1%	4.9%	4.8%	4.6%	4.4%	NA	NA	NA
<b>Defense Share Of Discretionary BA</b>									
Administration Request	48.8%	47.6%	48.2%	48.6%	48.9%	49.7%	NA	NA	NA
FY2004 Budget Res.	51.5%	50.9%	51.7%	52.2%	52.6%	53.2%	NA	NA	NA
<b>Outlays</b>									
Admin. Request <sup>a</sup>	376.3	390.4	410.1	423.2	436.4	460.5	2,120.7	NA	NA
FY2004 Budget Res.	386.2	400.9	414.2	426.0	438.7	462.9	2,142.7	2,515.6	4,658.3
<b>Estimates Of The Surplus/Deficit</b>									
Administration Request	-304.0	-307.0	-208.0	-201.0	-178.0	-190.0	NA	NA	NA
FY2004 Budget Res.	-282.5	-287.3	-218.1	-169.4	-128.1	-113.9	NA	118.8	-798.1

**Source:** CRS calculations based on OMB, FY2004 Historical Tables, and DOD, Office of the Secretary of Defense, Comptroller, Briefing, FY2004 Defense Budget (February 6, 2003); Conference Report on FY2004 Budget Resolution, H.Rept. 108-71, and House report on H. Con. Res. 95, H.Rept. 108-71, p. 6.

<sup>a</sup> Administration request does not reflect outlays from the \$10 billion enacted in the FY2003 Consolidated Appropriations Resolution.

<sup>b</sup> OMB does not project budget authority or outlays beyond five years.

**House and Senate Differences about Defense Spending.** The final version of the FY2004 budget resolution projects a five-year total for defense spending of \$2.2 trillion, a level comparable to the Administration and matching levels passed in both houses. In later years, the House provided larger funding for defense than the Senate and the conference compromised at \$4.758 trillion, at about the midpoint between the two houses.<sup>17</sup>

The conference version of the budget resolution also deleted two provisions proposed by the Senate:

- a measure to set aside \$100 billion over the next ten years in a reserve fund to pay for costs associated with the war in Iraq; and
- a measure to include \$182 million in FY2004 and \$12.8 billion in FY2004-FY2013 to cover the cost of phasing in concurrent receipt benefits for military retirees with disability levels of 60% or higher.

The Senate bill had included a defense reserve fund that decreased by \$100 billion the funds set aside for a tax cut in order to provide \$10 billion annually to cover continued costs of military action or reconstruction in Iraq.<sup>18</sup> Funding for Iraq in FY2003 was provided in the FY2003 supplemental, but there is no funding for occupation costs in the FY2004 budget, which was submitted before the initiation of hostilities. Nor is there funding in the FY2004 budget to cover the costs of the continued U.S. presence in Afghanistan.

The Senate version of the resolution also would have allowed all military retirees whose disabilities are 60% or higher to receive both their military retirement and VA disability payments, a proposal considered but rejected in the final version of the FY2003 DOD Authorization Act. Instead, Congress provided special compensation for military retirees whose disabilities are a result of combat or combat-related activities in the FY2003 Authorization Act.<sup>19</sup> The conference version of the resolution deleted both provisions. Without an allocation in the budget resolution, it appears unlikely that benefits for military retirees with disabilities will be expanded.

***Scoring Differences Between Congress and the Administration.***

CBO scored the cost of DOD's request as \$400.5 billion, \$800 million higher than the Administration's estimate (see **Table 2 and Table 4**). The difference between the two estimates reflects primarily CBO's assessment that a DOD legislative proposal to set up a new account, the Refined Petroleum Products transfer account, would cost about \$675 million compared to zero expenditures assumed by DOD. According to DOD, the rationale for setting up this new account with an "indefinite

<sup>17</sup> As passed by the House, H.Con.Res. 95 recommended \$4.8 trillion for defense and the Senate recommended \$4.6 trillion with a midpoint of \$4.7 trillion; CRS calculation based on House Budget Committee, Majority staffs, *Budget Conference for Fiscal Year 2004: Side-By-Side Comparison of House and Senate Resolutions*, April 2, 2003, p. 11.

<sup>18</sup> See H.Rept. 108-71, p. 73.

<sup>19</sup> See H.Rept. 108-71, p. 109 and *Congressional Record*, March 20, 2003, p. S4209 for S.Amdt. 341.

appropriation” is to allow DOD to cover the difference between the amount budgeted for fuel costs and actual market prices.<sup>20</sup> Since DOD assumes that its estimate is correct, the Administration provided no funds for the account. CBO, however, believes that fuel prices in FY2004 are likely to be about \$5 higher per barrel than DOD assumes — \$27 a barrel compared to \$22 barrel — and scores the likely cost of the new account at \$675 million based on the level of DOD’s annual fuel purchases.

Although the FY2004 congressional budget resolution adopted CBO’s higher scoring, it appears that Congress is unlikely to agree to set up the new account. Neither the House nor the Senate version of the FY2004 DOD Authorization Act includes funds for the account.<sup>21</sup> Instead, both houses transfer that \$675 million to other programs.

**DOD’s Appropriations Allocation.** A sign of potential pressure on DOD’s budget top line is the difficulty in reaching decisions about the distribution of funds to the various appropriations subcommittees to guide their markup, a process known as setting 302(b) allocations markup.<sup>22</sup> The annual congressional budget resolution sets the total amount of discretionary spending available to the appropriations committees and recommends spending allocations for each budget function. The appropriations committees, however, have discretion to set allocations for each subcommittee.

According to press reports, the total for discretionary spending adopted by Congress in the FY2004 resolution is \$7 billion to \$10 billion below the amount needed to fund domestic programs. To provide these funds, the House and Senate Appropriations Committees are considering rescinding and transferring unobligated DOD funds from the FY2003 supplemental and reducing DOD’s allocation in the FY2004 budget resolution by about \$3 billion.<sup>23</sup> A similar process is under consideration for some domestic programs.<sup>24</sup> According to a recent press reports, the committees are considering consulting with the White House before adopting allocations for individual subcommittees, an unusual procedure.<sup>25</sup>

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<sup>20</sup> OMB, *Fiscal Year 2004 Appendix to the Budget of the United States*, p. 298.

<sup>21</sup> The Senate report, S.Rept. 108-46, includes the CBO scoring for the account in its estimate of the request for working capital funds and then deletes that funding, see p. 10 and p. 298. The House report, H.Rept. 108-106, does not adjust the scoring of working capital funds and therefore does not include any funding for the new account; see p. 7 and p. 306.

<sup>22</sup> The 302(b) allocation process was established by the Congressional Budget Act of 1974.

<sup>23</sup> Congress Daily, “House Juggling Allocations for Approps Subcommittees,” May 9, 2003; Congress Daily, “Appropriations Impasse Continues Over Spending Allocations,” May 21, 2003.

<sup>24</sup> Congress Daily, “Appropriations: Hill Leaders, White House to Meet Today on FY04 Approps,” June 10, 2003.

<sup>25</sup> Alexander Bolton and Jonathan E. Kaplan, “Congress Veils Appropriations Spending Totals,” *The Hill*, May 28, 2003.

## Trends in DOD Spending Plans

Understanding the trends in DOD's FY2004 budget is difficult because of the effect of the large amount of supplemental funding received since September 11, 2001, in the Emergency Terrorism Response Supplemental of 2001 and the FY2002 Supplemental. That funding is shown in **Table 5** and makes comparisons difficult, particularly for operation and maintenance spending which received the bulk of supplemental funding (see below).

**Table 5. Administration Request: National Defense Budget  
Function by Title, FY2001-FY2008**  
(in billions of dollars)

<b>Fiscal Year</b>	<b>Actual 2001</b>	<b>Actual 2002</b>	<b>Est. 2003<sup>a</sup></b>	<b>Req. 2004</b>	<b>Proj. 2005</b>	<b>Proj. 2006</b>	<b>Proj. 2007</b>	<b>Proj. 2008</b>
Military Personnel	76.9	87.0	95.1	99.0	103.1	107.4	111.0	114.6
Operation & Maintenance	115.8	133.2	134.8	133.5	139.3	145.2	150.3	157.6
Procurement	62.6	62.7	73.8	74.4	78.6	85.8	96.1	105.3
RDT&E	41.6	48.7	57.5	61.8	67.1	64.3	64.6	67.0
Military Construction	5.4	6.6	6.3	5.0	6.1	10.4	13.2	12.2
Family Housing	3.7	4.0	4.2	4.0	4.8	5.1	4.8	3.8
Other	13.5	2.7	2.2	2.0	0.6	1.4	0.3	1.2
<b>Subtotal, DOD</b>	<b>319.5</b>	<b>345.0</b>	<b>374.0</b>	<b>379.6</b>	<b>399.6</b>	<b>419.6</b>	<b>440.3</b>	<b>461.6</b>
Atomic Energy Defense Activities	14.4	15.3	16.6	17.3	17.7	17.7	17.1	16.2
Defense-Related Activities	1.6	1.8	2.1	2.8	2.8	2.8	2.9	2.9
<b>Total, National Defense</b>	<b>335.5</b>	<b>362.1</b>	<b>392.7</b>	<b>399.7</b>	<b>420.0</b>	<b>440.0</b>	<b>460.3</b>	<b>480.7</b>

**Source:** OMB, FY2004 Historical Tables and Analytical Perspectives (February 2003), and H.Rept. 108-10, Conference report on FY2003 Consolidated Appropriations Resolution for final enacted levels, and House Appropriations Committee. OMB figures include DOD's supplemental appropriations of \$17.3 billion in the FY2001 Emergency Terrorism Response Supplemental and \$14.0 billion in the FY2002 Supplemental.

**Note:** Does not include \$62.6 billion received by DOD in FY2003 Supplemental.

Figures for FY2003 also include an additional \$10 billion provided for DOD in the FY2003 Consolidated Appropriations Resolution to cover intelligence and costs associated with the U.S. presence in Afghanistan and the global war on terrorism. The \$62.6 billion provided to DOD in the FY2003 Supplemental, however, is not included. DOD's procurement funding shows little increase in FY2004. Much of the increase in RDT&E reflects an increase from \$7.6 billion to \$9.1 billion in DOD's Missile Defense Program reflecting DOD's plan to begin deployment of 10 land-

based interceptors as well as continue the ramp-up in R&D. By 2008, however, DOD plans to ramp up funding for procurement by about 40% and RDT&E by over 15% compared to FY2003.

## **DOD Receives \$93.1 Billion in Supplemental Appropriations Since September 11 Attacks**

Since the September 11 attacks, DOD has received \$93.1 billion in supplemental appropriations for the war in Afghanistan, the war in Iraq, enhanced security at DOD installations, and the global war on terrorism (see **Table 6**). The most recent supplemental for the Iraq war provides funding for the U.S. presence in Afghanistan and continued operations in Iraq through FY2003. The Administration did not include any funding for these costs in the FY2004 budget, however, which suggests that the Administration will propose either a supplemental or a budget amendment for FY2004.

In its post-September 11 requests for supplemental funding, DOD has requested substantial flexibility in its use of funds, citing the uncertainty of estimating the cost of war and the global war on terrorism. The Administration has reiterated that theme in its FY2004 request as well, calling for transformation of not only weapon systems to meet new threats but also transformation of DOD's business practices and personnel management systems (see discussion of *Major Administration Themes* below).

Although Congress has generally provided the amounts requested by DOD in its supplemental requests, it has been reluctant to provide the amount of flexibility requested by DOD. In fact, with each supplemental request, Congress has been less willing to accept the flexibility proposed by DOD.

Of the \$40 billion appropriated in the Emergency Terrorism Response Supplemental (ETR) passed on September 14, 2001 to combat terrorism, DOD received \$17.3 billion, almost entirely within the Defense Emergency Response Fund, a flexible account. Of that total, DOD had discretion to allocate funds as long as Congress was informed. For the remainder, Congress set levels within ten broad categories for DOD spending. Congress also permitted DOD to move funding into various appropriation accounts at its discretion in the FY2002 supplemental for the bulk of the funding requested.

In the most recent supplemental, for FY2003, DOD requested that Congress provide 95% of the funding in the Defense Emergency Response Fund (DERF) so that DOD could transfer funds to various accounts as needs arise. Instead Congress set up a new fund, the Iraq Freedom Fund, and allocated 25% of the funds requested to that fund but required five-day advance notifications.

**Table 6. Flexibility in DOD's Supplemental Funding Since September 11 Attacks**

<b>Funding Level &amp; Amount of Flexibility</b>	<b>Emergency Terrorism Response Supplemental (P.L. 107-38 and P.L. 107-117)</b>	<b>FY2002 Supplemental (P.L. 107-206)</b>	<b>FY2003 Supplemental (P.L. 18-11)</b>
<b>In Billions of Dollars</b>			
<b>Flexible Fund<sup>a</sup></b>			
Request	21.163	11.300	59.863
Enacted	15.000	11.300	15.679
<b>Regular Appropriations</b>			
Request	0.000	2.722	2.724
Enacted	2.300	2.722	46.908
<b>Total Funding</b>			
Request	21.163	14.022	62.587
Enacted	17.300	14.022	62.587
<b>As Percent of Total Funding</b>			
<b>Flexible Fund</b>			
Request	100.0%	80.6%	95.6%
Enacted	86.7%	80.6%	25.1%
<b>Regular Appropriations</b>			
Request	0.0%	19.4%	4.4%
Enacted	13.3%	19.4%	74.9%
<b>Total Funding Received</b>			
Request vs. Enacted	81.7%	100.0%	100.0%

**Source:** CRS calculations from CRS Report RL31829, CRS Report RL31005, CRS Report RL31406, and appropriations conference reports and GAO Report, *Defense Budget: Tracking of Emergency Response Funds for the War on Terrorism*, April 2003.

<sup>a</sup> In the ETR, DOD funds were appropriated into the Defense Emergency Response Fund (DERF) except for a small amount of military construction funds, procurement funding, and Pentagon Renovation Revolving Funds. In the FY2002 Supplemental, DOD funds were appropriated to the DERF, which was made into a transfer account. In the FY2003 supplemental, funds were appropriated into a new Iraq Freedom Fund, set up as a transfer account, or into regular appropriations accounts.

## Major Themes in the Administration's FY2004 Request

The overarching theme in the Administration's FY2004 request is a call for flexibility to transform not only U.S. military doctrine and technology, but also military and civilian personnel systems and defense acquisition practices. According to Secretary of Defense Rumsfeld, not only do "our armed forces need to be flexible, light and agile," but also "the same is true of the men and women who support them," in meeting the "frequent, sudden changes in our security environment,"<sup>26</sup> including the global war on terrorism.

To meet this goal, the Administration delivered a broad ranging legislative proposal, entitled the "Defense Transformation for the 21<sup>st</sup> Century Act," to Congress on April 10, 2003 shortly before Congress's two-week April recess. Among other things, the legislative proposal would give the Secretary of Defense authority to re-design the civil service system governing the 700,000 civilian employees in the Department of Defense, provide additional flexibility in managing senior military officers, modify certain acquisition requirements, and exempt DOD from certain environmental statutes.

Some members of Congress expressed concern that DOD had delivered such an ambitious proposal at a time when Congress was about to recess and shortly before markup of the DOD authorization act was planned. Although DOD witnesses discussed their plans to submit the proposal earlier in the year and met with congressional staff over the past couple of months, the specific proposals were not available before April 10<sup>27</sup> (as noted above, CRS compares all of the proposed new measures with current law in CRS Report RL31916, *Defense Department Transformation Proposal: Side by Side with Current Law*, by Robert L. Goldich, Gary J. Pagliano, Barbara L. Schwemle, and Thomas J. Nicola).

The Administration characterizes these proposals as the logical followup to earlier efforts to transform weapons modernization and operational practices. According to DOD, the FY2004 budget is the first budget to reflect fully President Bush's commitment to "challenge the status quo" and balance the need to meet current challenges from the global war on terrorism and near-term threats with the need to transform DOD in the longer term.<sup>28</sup> DOD contends that transformation is now fully underway with new emphasis placed on unmanned vehicles, precision guided munitions, special operations forces, command, control, and communications and missile defense (see discussion on modernization below), as well as the

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<sup>26</sup> Secretary of Defense Rumsfeld testifying before the Senate Armed Services Committee, *Defense Authorization Request for Fiscal Year 2004 and the Future Years Defense Program*, February 13, 2003, transcript; available from Reuters.

<sup>27</sup> Statement of Deputy Secretary of Defense Paul Wolfowitz before the House Committee on Government Reform, May 6, 2003, p. 4.

<sup>28</sup> Secretary of Defense Rumsfeld testifying before the Senate Armed Services Committee, FY2004 Budget, February 13, 2003; transcript available from Reuters.

establishment of a new command, NORTHCOM to focus on homeland security and changes in training practices to emphasize joint operations.

DOD also argues that its proposals for military pay raises and other benefits and its funding of operational training will ensure that recruitment and retention remain high and that readiness goals continue to be met. Over the longer term, DOD plans to review its current basing strategies in Europe and review the role of reserve forces but these areas are currently under study and not incorporated in the FY2004 budget.

## Key Issues in Congress

The major issues likely to be the focus of this year's congressional debate are:

- DOD's request for broad ranging authority to manage its civilian workforce and senior military personnel as well as exemptions for DOD to certain environmental laws;
- Whether DOD's investment priorities are transformational, affordable, and consistent with "lessons learned" from the war in Iraq;
- Possibly revisiting the FY2005 base closure round due to be initiated next year; and
- Longer-term Administration proposals that could affect global troop deployments, the mix of active and reserve forces, and the mix of civilian, contractor, and uniformed personnel.

## Issues for Congress in DOD's Legislative Package

Sent to Congress on April 10, 2003, DOD's legislative proposal, the "Defense Transformation for the 21<sup>st</sup> Century Act," includes far-ranging provisions that would allow the Secretary of Defense to set up a new personnel system for its 700,000 civilians, give the Secretary new flexibility to retain, move, and retire senior military personnel, exempt DOD from certain environmental provisions, and change certain acquisition rules.

The budget implications of DOD's proposal are not obvious because DOD has provided only the broadest outlines of its plans to reform its civilian personnel system. Until that system is defined, it is not possible to know whether DOD's proposal would raise or lower its costs for civilian personnel. DOD did not present its acquisition proposals as cost-saving measures. According to DOD, the main rationale for its proposal is the need to provide additional flexibility to DOD in carrying out its missions.

**Status of Bills Addressing DOD Proposal.** H.R. 1836 is the markup by the House Government Reform Committee of DOD's proposed new civilian personnel system. Much of that bill was then incorporated in H.R. 1050, the FY2004 defense authorization bill as reported by the House Armed Services Committee on

May 14.<sup>29</sup> The HASC approves changes to DOD civilian personnel management proposal that were included in the Government Reform Committee markup, but does not approve the major Administration proposals to change laws governing senior uniformed officers and addresses only some of the Administration's environmental proposals. On the Senate side, the Armed Services Committee does not include any of the major Administration personnel proposals in S. 1050, its version of FY2004 authorization bill.

**A New Civilian Personnel System for DOD?** Perhaps the most controversial provisions in DOD's 205-page legislative proposal would permit the Secretary of Defense to design and implement a new personnel system for the 700,000 civilians working for the Department of Defense. DOD's proposal calls for the Secretary of Defense to develop a system that is "flexible," and "contemporary" to meet DOD's needs. Requesting discretion even broader than the temporary authority given to the new Department of Homeland Security, DOD proposed that the Secretary of Defense be permitted to develop its own rules for:

- defining positions,
- setting pay scales,
- designing hiring and firing systems,
- bargaining with employees,
- expanding early retirement options,
- hiring consultants and employees overseas,
- rewarding senior level employees.<sup>30</sup>

DOD's proposal has been opposed by government employee unions and has raised concerns among some Members of Congress, while it has been supported by other organizations and some other legislators. Some are concerned about the breadth of the authority requested by DOD, the decision to apply changes selectively to almost half of the total civilian workforce, potential effects on government workers, and the lack of specificity in DOD's proposals. Others observers commend DOD for addressing longstanding concerns about laws and regulations governing the federal civilian work force and for proposing to develop a new system.<sup>31</sup>

Like the new Department of Homeland Security, DOD is seeking the authority to design its own National Security Personnel System jointly with the Office of

<sup>29</sup> The HASC did not include sections on NASA and the SEC but did include some government wide provisions.

<sup>30</sup> This section was prepared with the help of CRS analysts, Barbara Schwemle, Thomas Nicola, Sharon Gressle, and Jon Shimabukuro. General Counsel, DOD, William J. Haynes III, letter to Speaker of the House Hastert, April 10, 2003; see [<http://www.defenselink.mil/dodgc/lrs/legispro.html>]; See also CRS Report RL31916, Defense Department Transformation Proposal: Original DOD Proposal Compared to Existing Law by Gary J. Pagliano, Robert L. Goldich, Barbara L. Schwemle, and Thomas J. Nicola; see also CRS Report RL31924, *Civil Service Reform: H.R. 1836, Homeland Security Act and Current Law*, by Barbara Schwemle and Thomas Nicola.

<sup>31</sup> House Government Reform Committee, Hearing on Civil Service and National Security Personnel, May 6, 2003; transcript available from Reuters.

Personnel Management. Compared to DHS's authority, however, DOD's proposal includes broader discretion because the Secretary of Defense could unilaterally institute rules and procedures that DOD certifies are "essential for national security," would receive the authority permanently rather than temporarily, and could bargain with employees at the national rather than the local level.<sup>32</sup>

DOD's proposal, however, does not include specific provisions outlining how it would design or implement its new system. For further information, DOD witness, Under Secretary of Defense for Personnel and Readiness, David Chu, referred Congress to DOD's "Best Practices" plan for its demonstration projects that was published in the Federal Register on April 2, 2003. Under its proposal, DOD would continue to follow some of the current merit system principles and would be subject to anti-discrimination statutes, but would be exempt from certain statutes governing competitive hiring as well as laws defining procedures to discipline or remove personnel.<sup>33</sup>

DOD is proposing to develop a new system for all its civilian personnel that builds on its experience over the past twenty years with practices like pay banding which gives managers greater flexibility to hire at different pay levels and to reward performance, and has been used by DOD to attract and reward scientific and technical personnel working at DOD's research facilities.<sup>34</sup> Some observers are concerned about the expansion of "pay for performance," systems because of the difficulties in measuring employee performance. According to GAO's work, most of these systems, including those used by DOD, do not do a meaningful evaluation.<sup>35</sup> Although DOD has had the authority to expand its personnel demonstration projects to 120,000 civilians, over 15% of its workforce, DOD has only used its authority for 30,000 personnel.

To gain additional flexibility to remove, suspend, or discipline employees, DOD seeks the authority to re-write the appeals process, though they do not specify the changes they would seek. Employees could no longer appeal decisions to the current Merit System Protection Board. To give greater ability to manage its workforce, DOD is also requesting authority to offer buyouts. To simplify bargaining with employees, DOD is also requesting the authority to bargain at the national rather than the local level as is the current practice and would also be required to consult, but not necessarily reach agreement with OPM thirty days in advance of negotiations.

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<sup>32</sup> General Counsel, DOD, William J. Haynes III, Letter to Speaker of the House Hastert, April 10, 2003, Section 5 U.S.C. 9902 (a); see [<http://www.defenselink.mil/dodgc/lrs/legispro.html>]

<sup>33</sup> For example, DOD would no longer be required to follow the "rule of three, that requires an agency to re-advertise if they don't select a candidate from the top three. DOD would also not need to follow current procedures governing adverse actions against employees.

<sup>34</sup> Statement by Deputy Secretary Paul Wolfowitz before the House Committee on Government Reform, May 6, 2003.

<sup>35</sup> Statement by David M. Walker, Comptroller General of the United States, "Defense Transformation: DOD's Proposed Civilian Personnel System and Governmentwide Human Capital Reform," before the House Armed Services Committee, May 1, 2003, p. 3.

The new Department of Homeland Security did not receive national bargaining authority.

DOD is also seeking the flexibility to hire personnel outside of the U.S. “as determined by the Secretary to be necessary and appropriate,” and to negotiate personal services contracts for national security missions without any restrictions about the type of persons selected, an authority currently available to the CIA. Other provisions would allow DOD greater flexibility to set pay levels for senior executive service (SES) positions.

**Congressional Action: Senate and House Markup.** S. 1050, the Senate-reported version of the FY2004 DOD Authorization bill, does not include DOD’s request for authority to set up a new civilian personnel management system, ensuring that this will be a conference issue. H.R. 1588 as reported, the House version of the bill, modifies DOD’s proposal to make the authorities closer to those provided to the Department of Homeland Security (DHS) rather than permitting DOD the broader discretion that it requested. DOD would, however, be given a special waiver authority that would allow the Secretary of Defense, with the approval of the President, issue new rules without the agreement of the Office of Personnel Management if they are necessary for national security (Section 9990(a)). Like DHS, DOD would have flexibility to set pay scales and to change the appeals process but would be subject to anti-discrimination statutes.

The House-reported version changes DOD’s proposal in the following ways:

- requires DOD to establish an independent appeals board to hear employee grievances;
- limits DOD’s authority to waive current civil service rules on hiring procedures (e.g. DOD must continue to rate applications);
- sets criteria for DOD’s performance management system including that it follow merit principles, establish a link between the performance and the agency’s strategic plan, involve employees, and provide safeguards to employees.

DOD would also be allowed to bargain at the national level, an authority not provided to DHS, and one likely to be controversial.

On June 4, 2003, the Senate Governmental Affairs Committee held a hearing on S. 1166, a bipartisan bill to set up a National Security Personnel System. Since several members of that committee also serve on the Senate Armed Services Committees, the provisions in this bill may be taken into consideration during conference on the FY2004 DOD Authorization Act. The major differences between S. 1166 and the House-passed version in H.R. 1588 are:

- S. 1166 does not include the national security waiver that would allow the Secretary of Defense to set personnel rules without OPM agreement;
- specifies requirements for a pay-for-performance evaluation system;
- would not waive Title V, Chapter 71 on labor management relations;

- phases in coverage by the new system from 120,000 civilian employees in FY2004 to more than 240,000 employees in FY2005 if the Secretary of Defense determines that DOD has a performance management system and a pay formula that meet the criteria in the act; and
- DOD provides the same total level of funding as would be needed under the current system between FY2004 and FY2008.<sup>36</sup>

**DOD's Proposed Changes in Managing Senior Military and Reservists.** As part of its "transformational" package, DOD is also requesting a series of provisions that would give the President and the Secretary of Defense additional flexibility to select and retain DOD's senior military leadership. Examples include allowing the President to re-appoint Service Chiefs and the Chair and Vice-Chair of the Joint Chiefs of Staff for as many two-year terms as desired, to repeal mandatory terms for certain general and flag officers, and to re-assign many senior officers in Senate-confirmed positions without returning to Congress. To retain senior officers, DOD also wants to raise the normal maximum retirement age from 62 to 68 and modify retirement rules so that senior officers can retire after less than three years (known as a time-in-grade rule) but still receive retirement based on their highest rank.

According to DOD witnesses, these proposed changes would allow DOD to move senior military leaders to where they are needed, to retain those whose skills are important, and to retire those who may no longer be performing as needed. Critics voice concern that these changes could reduce incentives for younger officers who could see their opportunities limited by older officers who stay longer.<sup>37</sup>

Other proposals in this package would add flexibility to use reservists by allowing DOD to activate reservists for an additional 90 days of training and by expanding the reasons that the President can call up reservists to include domestic disasters, accidents or catastrophes. DOD would also be allowed to provide medical and dental screening of reservists preparing for mobilization.<sup>38</sup>

**Congressional Action: Senate and House Markup.** The Senate Armed Services Committee (SASC) was unwilling to grant DOD broad ranging authority to move, set retirement terms, and raise age limits for senior level military officers, but did make permanent an existing authority that allows the Secretary of Defense to permit officers above the grade of major to retire and still receive benefits based on their current pay grade after two rather than three years in grade. In response to DOD's request for broad authority to use reserves in domestic crises, the SASC only agrees to expand existing authority to use reserves in terrorist-related incidents. The

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<sup>36</sup> See S. 1166. Prepared with the help of Barbara Schwemle, CRS.

<sup>37</sup> Testimony of Under Secretary of Defense David Chu before the House Armed Services Committee, May 2, 2003, transcript; available from Reuters.

<sup>38</sup> General Counsel, DOD, William J. Haynes III, letter to Speaker of the House Hastert, April 10, 2003, Title 10, Sections 135, 136, and 137; see [<http://defenselink.mil/dodgc/lrs/legispro.html>].

SASC does agree to provide medical and dental screening for reservists likely to deploy.

Like the SASC, the HASC did not grant the Secretary of Defense broad discretion to manage senior level military officers. The HASC bill would make permanent a current authority to allow two rather than three years in grade for Lt. Colonels and Colonels, and Commanders and Captains (O-5s and O-6s), and would also permit DOD to reduce the requirement of three years in grade to one-year for senior military officers (general and flag officers) as long as the Secretary certified that their performance was satisfactory, a requirement that applies to about half of DOD's senior officer corps (O-8s to O-10s). The HASC also does not approve DOD's request to add up to 90 days to reserve training requirements but does agree to provide medical and dental screening of reservists likely to deploy.

**Proposed Acquisition Changes.** In its legislative package, DOD includes a variety of provisions designed to increase its flexibility to contract for major defense weapons systems and information technology programs, receive waivers from Buy American and domestic content requirements, and buy standardized items.<sup>39</sup>

Two potentially controversial proposals would allow DOD to contract out for firefighting and security guards at bases and would allow DOD to count work performed by contractors at federally owned facilities as part of the 50% minimum for in-house performance of depot work. Congress has consistently opposed allowing DOD to hire private security guards and loosening the definition of work that could be counted as "in-house".<sup>40</sup>

**Congressional Action: Senate and House Markup.** The SASC was willing to lift the prohibition on contracting out for one year only for firefighters who were deployed. Concerning DOD's request to expand the definition of depot work that would be counted as in-house, the SASC recommends that only depot work performed by a public-private partnership in a center of excellence would be excluded from the tally.

The HASC did not include either of DOD's requests to contract out firefighters or security guards or expand the depot work that could be counted as "in-house."

**Other Organizational And Financial Proposals To Increase Flexibility.** Other potentially controversial proposals would give the Secretary of Defense broad discretion to reorganize the department, transfer personnel, and be exempt from current personnel caps. To increase financial flexibility, DOD is requesting that the limit on transfers between appropriation accounts be raised from

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<sup>39</sup> General Counsel, DOD, William J. Haynes III, letter to Speaker of the House Hastert, April 10, 2003, Title 10, Sections 201-206; see [<http://defenseink.mil/dodgc/lrs/legispro.html>].

<sup>40</sup> General Counsel, DOD, William J. Haynes III, letter to Speaker of the House Hastert, April 10, 2003, Title 10, Sections 211 and 214; see [<http://defenseink.mil/dodgc/lrs/legispro.html>],

the current level of \$2.5 billion to 2.5% of total DOD spending or about \$9 billion. (DoD made this same request in the FY2003 supplemental, and received a higher transfer limit but not the 2.5%.)<sup>41</sup>

Equally controversial may be DOD's proposal to change the standard governing awards of contracts to government entities versus private companies based on the A-76 competitive sourcing rules. DOD proposes to use a "best value" rather than the current lowest cost standard. A proposal that has been endorsed by both OPM and DOD that is not likely to be controversial would transfer the DOD civilian personnel currently performing security investigations to OPM. DOD also proposes to eliminate 184 reports to Congress that are currently required, ranging from reports on specialized topics to more general reports on readiness levels and operation and maintenance funding.<sup>42</sup>

**Congressional Action: Senate and House Markup.** The SASC did not agree to give the Secretary of Defense authority to reorganize the department, transfer personnel, or be exempt from ceilings on headquarters. The SASC did agree to increase DOD's transfer authority to \$3 billion, \$500 million higher than the limit in the regular DOD bill but below the \$9 billion level requested by DOD.

The HASC also did not give the Secretary of Defense authority to reorganize DOD and set the annual transfer limit at the current \$2.5 billion level.

**Authority To Spend \$200 million To Support Foreign Militaries.** In its request, DOD asks Congress to give it permanent authority to allocate up to \$200 million to support "coalition forces," or foreign military forces. Although this request is similar to the request enacted in the FY2003 supplemental for \$1.4 billion for coalition forces who help the U.S. to combat terrorism, DOD's request for permanent authority could be controversial because it includes no provision for congressional oversight. In the FY2003 supplemental, Congress requires DOD to report by July 1, 2003 on its plan to allocate funding for coalition forces.<sup>43</sup>

**Congressional Action: Senate and House Markup.** Neither the SASC nor the HASC approves DOD's request for authority to spend up to \$200 million for coalition forces.

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<sup>41</sup> General Counsel, DOD, William J. Haynes III, letter to Speaker of the House Hastert, April 10, 2003, Title 10, Sections 401-405, 411; [<http://defenselink.mil/dodgc/lrs/legispro.html>].

<sup>42</sup> General Counsel, DOD, William J. Haynes III, letter to Speaker of the House Hastert, April 10, 2003, Title 10, Sections 404, 405, and 421; see [<http://defenselink.mil/dodgc/lrs/legispro.html>].

<sup>43</sup> General Counsel, DOD, William J. Haynes III, letter to Speaker of the House Hastert, April 10, 2003, Title 10, Section 441; see [<http://defenselink.mil/dodgc/lrs/legispro.html>], and CRS Report RL31829, *Supplemental Appropriations FY2003: Iraq Conflict, Afghanistan, Global War on Terrorism, and Homeland Security*, by Amy Belasco and Larry Nowels.

**DOD Again Requests Environmental Exemptions.** As it did last year, DOD again requests that military readiness-related activities be exempted from provisions of a number of federal environmental laws, including the Clean Air Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Solid Waste Disposal Act and “Superfund.” Last year, Congress was receptive to only one of DOD’s environmental proposals, providing DOD with a targeted exemption from the Migratory Bird Treaty Act. Critics have questioned DOD about the extent of the impact on readiness activities and its limited use of waiver authorities included in current law.

This year, environmental provisions again appear likely to be contentious on the House and Senate floor. The House-reported version of the bill includes the Administration’s proposed readiness exemptions from provisions of the Endangered Species Act and the Marine Mammal Protection Act, while the Senate-reported bill includes exemptions from the Endangered Species Act. Amendments to delete both measures were rejected in the House committee markup.

***Congressional Action: Senate and House Armed Services Committee Markup.*** The SASC agrees only to allow DOD bases to be exempt from critical habitat requirements under the Endangered Species Act only if it has submitted an integrated natural resource management plan that addresses the protections required under the Act.

The HASC agrees to modified versions of DOD’s requests for exemptions from provisions of the Endangered Species and the Marine Mammal Protection Act.

## **Affordability and Mix of DOD’s FY2004 Investment Programs**

A perennial issue in defense policy has been whether the Defense Department will be able to afford all of the major weapons modernization programs that have been on the drawing boards, particularly toward the end of the decade, when a number of new programs are planned to be in full scale production. The issue has been complicated by the Defense Department’s growing commitment to defense transformation, which implies an effort to accelerate selected programs and perhaps add some entirely new ones. During the 2000 presidential election campaign, then-Governor Bush promised to “skip a generation” of weapons programs in order to free up funds for more transformational priorities.

Last year, and again this year, the Defense Department has tried to calculate the amount that is being devoted to modernization programs that it regards as particularly transformational. According to DOD Comptroller Dov Zakheim, these programs add up to \$24.3 billion in the FY2004 budget and \$239 billion over the period of the six-year FY2004-FY2009 future years defense plan (FYDP). Under Secretary Zakheim said that DOD made room for these programs in part by cutting about \$82 billion from projected service budgets over the course of the FYDP. The cuts include termination of a number of Army programs to upgrade current weapons, early retirement of 26 Navy ships and 259 aircraft and an attendant reduction of 10,000 in

the Navy's personnel end-strength, and early retirement of 115 Air Force fighter aircraft and 115 mobility/tanker aircraft, as well as efficiencies.<sup>44</sup>

In the FY2004 budget, the Defense Department requested \$74.4 billion for weapons procurement and \$61.8 billion for research, development, test, and evaluation (RDT&E). Major aspects of the Administration request, and some key potentially controversial issues include the following.

**Army Transformation.** In recent years, the Army has been pursuing three major initiatives simultaneously: (1) upgrades to the current "legacy" force, including improvements in M1 tanks and Bradley Fighting Vehicles; (2) development and deployment of an "interim" force made up of six brigades equipped with Stryker wheeled armored vehicles and designed to be more rapidly deployable than heavy armored forces; and (3) pursuit of an "Objective Force" include the "Future Combat System," a family of new armored vehicles and other systems designed to fundamentally change the way the Army will fight in the future. In addition, the Army has been continuing to develop the Comanche helicopter, though late last year, the Defense Department decided to cut planned total Comanche procurement by about half.

In the FY2004 budget request, the Defense Department cut back a number of planned upgrades of Army legacy systems, including high-profile M1 and Bradley upgrades. In the wake of the Army's success in the Iraq war, there was extensive discussion in Congress about the wisdom of these planned cuts. The House Armed Services Committee-reported version of the authorization adds \$727 million to the request to continue M1 and Bradley upgrades along with some related Army upgrade programs.

***Congressional Action: Senate and House Markup.*** Table 7 shows changes made during markup by the House and Senate Armed Services Committee.

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<sup>44</sup> Briefing by DOD Comptroller Dov Zakheim, "FY2004 Defense Budget," February 6, 2003.

**Table 7: House and Senate Armed Services Markup of Major Army Acquisition Programs**  
(amounts in millions of dollars)

	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
RAH-66 Comanche	—	—	1,079.3	—	—	1,079.3	—	—	1,079.3	—
UH-60 Blackhawk	10	167.0	70.2	19	279.8	70.2	17	237.0	74.1	House adds \$112.8 mn. for 9 aircraft for Army National Guard. Senate adds \$70.7 mn. for 7 aircraft in accordance with Army priorities and for air inlet upgrades (\$0.8 mn.) and \$3.9 mn. for R&D for C2 integration..
UH-60 Blackhawk mods.	—	138.5	—	—	38.5	100.0	—	38.5	100.0	Both House and Senate transfer \$100 mn. from proc. to R&D for UH-60M upgrade.
CH-47 Upgrades	—	516.0	—	—	522.0	—	—	531.0	—	House adds \$6 mn. for crashworthy seats. Senate adds \$15 mn. for MH-47G mods.
AH-64 Mods	—	58.9	—	—	74.4	—	—	58.9	—	House adds \$15.5 mn. for bladefold kits.
AH-64D Apache Longbow	—	776.7	—	—	776.7	—	—	776.7	—	—
Bradley Base Sustainment	—	113.3	—	—	372.1	—	—	113.3	—	House adds \$258.8 mn. for Bradley M3A2 Operation Desert Storm ``D+'' upgrades.
M1 Abrams Mods/Upgrades	—	361.6	—	—	645.6	—	—	361.6	—	House adds \$424 mn. for M1A2 to M1A2 SEP upgrades, cuts \$108 mn. from new engine program due to delays and \$32 mn. from other upgrades — net add \$284 mn.
Stryker Interim Armored Vehicle	301	955.0	46.0	301	955.0	46.0	301	955.0	46.0	—
HIMARS (Rocket Launcher)	24	124.2	87.4	24	124.2	87.4	24	124.2	—	Note: C-130 air transportable version of MLRS.
Hellfire Missiles	—	33.1	—	—	33.1	—	—	76.1	—	Senate adds \$43 mn. for laser Hellfire II missiles — request was just for Longbow Hellfires.
Javelin (Anti-Tank Missile)	901	140.7	—	901	140.7	—	901	180.7	—	Senate adds \$40 mn. for command launch units for Army National Guard.
ATACMS Penetrator	—	—	55.1	—	—	55.1	—	—	—	House urges no obligation of funds until DOD explores more cost effective options to attack hardened sites.

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	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
Logistic/Theater Support Vessel	—	—	3.8	1	33.0	3.8	—	—	11.3	House adds \$33 mn. in proc. for Logistic Support Vessel (Army now has 8); Senate adds \$7.5 mn. in R&D for composite hull design Theater Support Vessel to replace LSVs.

Sources: H.Rept. 108-106; S.Rept. 108-46.

**Navy Programs.**<sup>45</sup> Key Navy ship-acquisition programs for FY2004 include the Virginia (SSN-774) class submarine program, the Littoral Combat Ship (LCS) program, the Arleigh Burke (DDG-51) class Aegis destroyer, the DD(X) next-generation destroyer program, the San Antonio (LPD-17) class amphibious ship program, the Lewis and Clark (TAKE-1) auxiliary ship program, the Trident cruise-missile submarine (SSGN) conversion program, and the Aegis cruiser (CG-47 class) conversion program. The FY2004 budget also includes, among other things, continued advanced procurement funding for CVN-21, an aircraft carrier to be procured in FY2007.

One issue in congressional hearings on the FY2004 Navy program concerns the planned size and structure of the Navy. The 2001 Quadrennial Defense Review (QDR) revalidated the plan for a 310-ship Navy established by the 1997 QDR, but also stated that force-structure goals in the 2001 QDR, including the 310-ship goal, were subject to change pending the maturation of DOD's transformation efforts. In February 2003, in submitting its proposed FY2004 defense budget, DOD officials stated that they had launched studies on future requirements for undersea warfare and future options for forcibly entering overseas military theaters. These studies have the potential for changing, among other things, the planned number of attack submarines and the planned size and structure of the amphibious fleet. Since attack submarines and amphibious ships are two of the four major building blocks of the Navy (the others being aircraft carriers and surface combatants), DoD, by launching these two studies, appears to have taken steps to back away from the 310-ship plan. At the same time, the Secretary of Defense has explicitly declined to endorse a plan for a 375-ship fleet that has been put forward in recent months by Navy leaders.

As a result of these events, there is now uncertainty concerning the planned size and structure of the Navy: DoD may no longer support the 310-ship plan, but neither has it endorsed the 375-ship plan or any other replacement plan. This uncertainty over the planned size and structure of the Navy affects surface combatants as well as submarines and amphibious ships, because the biggest single difference between the 310-ship and 375-ship plans is in the area of surface combatants. The 310-ship plan includes 116 surface combatants, all of which are cruisers, destroyers, and frigates, while the 375-ship plan includes 160 surface combatants, including not only cruisers, destroyers, and frigates, but as many as 60 smaller Littoral Combat Ships as well.

***Congressional Action: Senate and House Markup.*** Table 8 shows changes to the Administration's request made by the House and Senate Armed Services Committees during markup.

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<sup>45</sup> This section was written by Ronald O'Rourke.

**Table 8: House and Senate Armed Services Markup of Major Navy Acquisition Programs**

(amounts in millions of dollars)

	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
Carrier Replacement Program	—	1,186.6	339.2		1,186.6	339.2	—	1,186.6	—	—
Carrier Refueling Overhauls	—	367.8	—		367.8	—	—	367.8	—	—
Missile Submarine Conversion	2	1,167.3	—	2	1,167.3	—	2	1,167.3	—	—
Submarine Refueling Overhauls	—	164.4	—		164.4	—	—	412.4	—	Senate adds \$248 mn. for overhauls in FY2004
DDG-51 Destroyer	3	3,198.3	205.7	3	3,198.3	250.7	1	3,219.3	205.7	House adds \$35 mn. in R&D for S-band radar and \$10 mn. for open Aegis architecture. Senate adds \$21 mn. in proc. for ship modernization.
LPD-17 Amphibious Transport	1	1,192.0	8.0	1	1,192.0	8.0	1	1,192.0	8.0	—
LHD-8 Amphibious Assault Ship	—	355.0	—	—	355.0	—	—	355.0	—	—
Prior Year Shipbuilding Costs	—	635.5	—	—	635.5	—	—	635.5	—	—
DD (X) Destroyer	—	—	1,038.0	—	—	1,042.0	—	—	1,038.0	House adds \$4 mn. for knowledge projection for maintenance.
T-AKE Auxiliary Cargo Ship	2	722.3	—	2	722.3	—	2	722.3	—	Note: In National Defense Sealift Fund, not in Navy Procurement.

Sources: H.Rept. 108-106; S.Rept. 108-46.

**Aircraft Programs.** One of the most expensive elements of the Defense Department's long-term modernization plan is procurement of a number of new advanced aircraft, including the Air Force F/A-22 fighter, the Navy/Marine Corps F/A-18E/F aircraft; and the multi-service F-35 Joint Strike Fighter. In addition, the Air Force is continuing to procure C-17 airlift aircraft, and the Marine Corps is continuing to develop the V-22 tilt rotor aircraft, while DOD is continuing to review whether to go ahead with a proposal to allow the Air Force to lease Boeing 767s as tanker aircraft.

The F/A-22 has been a particular focus of attention recently because of continued cost growth in the program and because of the Air Force's continued desire to expand the program. For its part, the Air Force sees the program as its highest priority and, in the long run, would like to increase the total number of aircraft to be procured, particularly to build a version of the aircraft configured especially for a deep strike ground attack role to replace F-15E aircraft as they retire in the future. The Air Force even changed the formal designation of the aircraft from the F-22 to the F/A-22 to emphasize its ground attack capabilities.

The Department of Defense, however, has continued to approve only enough aircraft for about three wings of aircraft for the air superiority mission, and a key budget decision in the FY2004-FY2009 FYDP was that the Air Force may plan to buy only as many aircraft as it can with the total funds projected last year to be available for the program. With continued cost growth, this number has shrunk from the 330 aircraft the Air Force has wanted to outfit three wings (each with 72 deployable aircraft, plus attrition reserves, aircraft in repair, etc.), to 295 and most recently to 276. For its part, Congress has imposed a cap on the total development cost of the program, which the Air Force wants to Congress to lift.

A few years ago, the House Appropriations Committee proposed terminating F-22 development, though funding was eventually provided. This year, the F-22 has been an issue in the Senate, though not in nearly so drastic a way. The Senate committee-reported bill reduces procurement from the 22 aircraft requested to 20 in order to allow the Air Force to adjust planned production and delivery dates.

The issue of tanker leasing continues to be unresolved. In the FY2002 defense appropriations conference report, Congress approved a proposal to allow the Air Force to begin negotiations with Boeing to lease as many as 100 767 aircraft to be converted to operate as air-to-air refueling tankers. This measure was controversial because Federal budget rules generally discourage leases on the premise that direct purchase will be cheaper for the government in the long run, though it may require more up-front money in agency budgets. Through all the controversy, the Air Force and Boeing continued to try to hammer out the details of a lease agreement. The resulting agreement, apparently with several options, has now been under review in the Office of the Secretary of Defense for the past few months, but Secretary Rumsfeld has declined to speculate when he will make a final decision and recommendation to Congress on the issue.

***Congressional Action: Senate and House Markup.*** Table 8 shows changes to the Administration's request made by the House and Senate Armed Services Committees during markup.

**Table 8: House and Senate Armed Services Markup of Major Air Force Acquisition Programs**  
(amounts in millions of dollars)

	Request			House Authorization			Senate Authorization			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
F-22	22	4,225.4	936.5	22	4,064.4	936.5	20	4,008.4	936.5	House cuts \$161 mn. Senate cuts 2 aircraft and \$217 mn.
E-8C Joint STARS mods.	—	36.0	58.4	—	63.0	58.4	—	36.0	58.4	House adds \$27 mn. in proc. for reengining.
F-16C/D Mods./Post Production	—	314.5	87.5	—	328.7	107.5	—	372.7	87.5	House adds \$14.2 mn. in proc. and \$20 mn. in R&D for upgrades. Senate adds \$48 mn. in proc. for engines and \$10 mn. for upgrades.
F-15 Mods./Post Production	—	204.9	112.1	—	244.9	128.6	—	241.4	128.6	House adds \$40 mn. in proc. and \$16.5 mn. in R&D for upgrades. Senate adds \$36.5 mn. in proc. and \$16.5 mn. in R&D for upgrades.
JPATS Trainer	52	280.6	—	52	280.6	—	52	280.6	—	—
C-17 Globemaster	11	3,502.1	184.1	12	3,680.4	—	11	3,498.4	—	House added \$182 mn. for 1 aircraft. House and Senate transferred -\$10 mn. for Multi-Year Procurement and +\$6.3 mn. for mods. at AF request.
C-130/C130J Airlift Aircraft	5	641.7	13.6	5	647.8	13.6	5	654.6	13.6	House adds \$6.1 mn. for radar upgrades for Air Guard. Senate adds \$6.1 for radar. upgrades and \$6.8 mn. for satellite comm.
F-35 Joint Strike Fighter	—	—	2,194.1	—	—	2,194.1	—	—	2,194.1	—
B1-B Bomber Mods.	—	100.1	—	—	120.4	—	—	100.1	—	House adds \$20.3 mn. for mods.
B-2 Stealth Bomber Mods.	—	114.9	176.8	—	166.7	176.8	—	136.6	176.8	House adds \$24.7 mn. AF transfer request and \$27.1 mn. for upgrades. Senate adds \$24.7 mn. AF transfer request.

Sources: H.Rept. 108-106; S.Rept. 108-46.

**Missile Defense.** The Administration requested a total of \$9.1 billion in FY2004 for missile defense programs, including development programs that it requests be funded through the Missile Defense Agency and procurement of the Patriot PAC-3 missile that it requests in the Army budget. The Administration's major new initiative has been to pursue accelerated fielding of a limited National Missile Defense capability to include, among other things, up to 20 ground-based interceptor missiles based in Alaska and California.

Last year, with the Senate under Democratic control, a major issue was the acquisition process that the Administration has proposed for missile defense programs. The FY2003 defense authorization included measures requiring more detailed reports on costs and on planned missile defense tests to Congress. The authorization also prohibited development of a nuclear-tipped interceptor for missile defense. And Congress reduced funding for some space-based programs and increased funding for some ground-based theater missile defense systems.

**Nuclear Weapons Programs.** Last year, a major debate in Congress concerned an Administration proposal to study development of a new "Robust Nuclear Earth Penetrator" warhead and to set limits on R&D on any new or modified nuclear weapons.<sup>46</sup> The debate continued this year in response to the Administration's request that Congress lift the ban on conduct of R&D into low-yield nuclear weapons that has been in effect since 1993 known as the Spratt-Furze provision, Section 3136. That section states:

It shall be the policy of the United States not to conduct research and development which could lead to production by the United States of a new low-yield nuclear weapons, including a precision low-yield warhead.<sup>47</sup>

As part of its new Nuclear Posture Review issued in 2002, some Administration officials suggested that the United States should investigate the use of modified nuclear weapons to destroy deeply-buried and hardened targets in rogue nations such as North Korea.<sup>48</sup> In its legislative request this year, DOD argues that lifting the ban is necessary to train the next generation of nuclear weapons scientists and engineers and explore "the full range of technical options" to respond to "new or emerging threats," including using low-yield nuclear weapons against buried and hardened bunkers that could contain chemical and biological agents.<sup>49</sup> To carry this out, DOD

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<sup>46</sup> *H.Rept. 107-772, Conference Report on National Defense Authorization Act for Fiscal Year, 2003*, p. 786-p.788. Sec. 3143 of the FY2003 DOD Authorization Act required that DOE specifically request funds for R&D for research, development or that could lead to production of any new nuclear weapon. Section 3146 provided \$15 million for the Robust Nuclear Earth Penetrator program 30 days after the Secretary of Defense submitted a report that specified military requirements, described targets and assessed conventional alternatives.

<sup>47</sup> Section 3136, P.L. 103-160.

<sup>48</sup> CRS Report RS21133, *The Nuclear Posture Review: Overview and Emerging Issues* by Amy F. Woolf, p. 5.

<sup>49</sup> General Counsel, DOD, William J. Haynes III, *Letter to Speaker of the House Hastert*, (continued...)

requested \$6 million to conduct “advanced concepts” research into low-yield nuclear weapons and \$15 million to continue R&D to do research on a Robust Nuclear Earth Penetrator that could modify either the B61 or the B83 nuclear weapon, large nuclear weapons in the current inventory to a lower-yield version.

***Congressional Action: Modify Restrictions on R&D for Low-Yield Nuclear Weapons.*** Although both houses agreed to modify the current restrictions on conducting R&D on low-yield nuclear weapons (less than five kilotons), each house adopted a different approach with different policy implications, making this likely to be a significant conference issue. In the House version, U.S. policy would be modified to ban “development and production” of low-yield nuclear weapons but DOE would be allowed to conduct “concept definition, feasibility studies and detailed engineering design.”<sup>50</sup>

As passed, the Senate version lifts the ban but states that the Department of Energy would not be authorized to conduct testing, acquisition or deployment, and requires that DOE may not begin engineering development or any later phase unless “specifically authorized” by Congress.<sup>51</sup> The Senate also adopted by voice vote an amendment that would require specific authorization for DOE to pursue engineering development of a Robust Nuclear Earth Penetrator weapon.<sup>52</sup>

Although the language in both houses appears to permit DOE to conduct basic research and feasibility studies, the language in the House continues the general policy prohibition on low-yield nuclear weapons but modifies the point at which it applies, whereas the Senate changes U.S. policy and requires specific congressional action to proceed to engineering development or beyond. There may be some ambiguity about exactly where the line is drawn in terms of when DOE would need to return to Congress either to lift the ban (House) or receive specific authorization (Senate).

The language in the Senate version requiring that DOE could not begin engineering development of a low-yield nuclear weapon unless specifically authorized by Congress was added on the floor in an amendment offered by Senator Warner and passed by 59 to 38 (S.Admt. 752).<sup>53</sup> Prior to that, the Senate debated but did not adopt an amendment offered by Senator Reed (S.Admt. 751) that would have modified the ban on R&D of low yield nuclear weapons by applying it to development engineering, an approach closer to the House version.<sup>54</sup>

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<sup>49</sup> (...continued)

March 3, 2003, Subtitle C, Sec. 221; see [<http://defenselink.mil/dodgc/lrs/legispro.html>].

<sup>50</sup> Section 3111 in H.R.1588 as engrossed and passed by the House, and HRept. 108-106, p. 434.

<sup>51</sup> Section 3131 in S. 1050 as reported, and S.Rept. 108-46, p. 447-p. 448.

<sup>52</sup> *Congressional Record*, May 21, 2003, p. S6805.

<sup>53</sup> *Congressional Record*, May 20, 2003, p. S6692.

<sup>54</sup> *Congressional Record*, May 20, 2003, p. S6690.

On the floor, an unsuccessful attempt occurred in the Senate to restore the ban and reverse the action taken in markup. After a wide-ranging debate on the amendment offered by Senators Feinstein and Kennedy to restore the ban, the amendment was tabled by a vote of 51 to 43 (S.Admt. 715). Both supporters and opponents of the ban focused on the Administration's interest in exploring the possibility of using low yield nuclear weapons as a way to attack deeply buried, hardened bunkers that could contain chemical or biological weapons, a new mission for nuclear weapons beyond their original purpose of deterrence. Although military leaders support lifting the ban, they have not identified a specific requirement for a low-yield nuclear weapon.<sup>55</sup>

To those who oppose the ban, research to explore the use of a low-yield nuclear weapon or a nuclear earth penetrator weapon against hardened, underground bunkers should be explored as a method that could be effective and could generate less collateral damage. On the other hand, supporters of continuing the ban argued that even a 5-kiloton nuclear weapon would generate large losses of life and much collateral damage.

Supporters of the ban also argue that exploring this new mission for nuclear weapons could lead to requirements to test new nuclear weapons and undercut the U.S. commitment to the underground nuclear testing moratorium as well as U.S. policy to prevent the spread of nuclear weapons to other nations. Those who want to lift the ban argue that U.S. actions to re-institute research on new nuclear weapons would not affect U.S. efforts to discourage nations from pursuing nuclear weapons.

Whether a nuclear weapon is necessary for this mission is also controversial. Some observers believe that only a nuclear version could destroy hardened, deeply-buried bunkers, and others argue that the U.S. could develop precise conventional bunker-busting weapons or other approaches that could be equally or more effective than nuclear weapons in disabling a hardened bunker or containing chemical or biological weapons.<sup>56</sup> Some scientists and engineers have questioned whether a low yield nuclear weapon could be effective against a deeply-buried underground facility, particularly if its precise location is not known.<sup>57</sup> Other conventional alternatives could include developing non-nuclear bunker-busting weapons with more precise targeting capability, using several penetrating missiles simultaneously to increase destructive capability, disabling facilities with electromagnetic pulse weapons, or monitoring any movement of material by maintaining surveillance on exits of underground bunkers.<sup>58</sup>

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<sup>55</sup> *Congressional Record*, May 20, p. S6663-S6690, passim.

<sup>56</sup> *Congressional Record*, May 20, 2003, p. S6663 to p. S6690, passim.

<sup>57</sup> Geoffrey Forden, "USA Looks at Nuclear Role in Bunker Busting," *Jane's Intelligence Review*, March 12, 2002, p. 1, 3, 4-5; see [[http://www.janes.com/press/pc020312\\_1.shtml](http://www.janes.com/press/pc020312_1.shtml)]; see also, Sidney Drell, James Goodby, Raymond Jeanlos, and Robert Peurifoy, "A Strategic Choice: New Bunker Busters Versus Nonproliferation," *Arms Control Today*, March 2003.

<sup>58</sup> Michael A. Levi, "The Case Against New Nuclear Weapons," *Issues in Science and Technology*, Spring 2003.

Opponents of the ban also argue that this new research is necessary to train a new generation of nuclear scientists, a point cited by the Administration in its request. Supporters argue that nuclear scientists can be trained in other ways.

On the House side, Congresswoman Tauscher's proposed amendment to transfer \$21 million from research into nuclear versions of low yield weapons to R&D on conventional bunker-busting weapons was defeated by a vote of 199 to 226 (H.Admt. 4).<sup>59</sup>

## **Personnel Pay and Benefits Issues and Readiness Issues**

As it did last year, DOD has proposed a mixture of across-the-board and targeted pay raises along with continuation of a plan initiated in the Clinton Administration to reduce out-of-pocket housing costs for military personnel living in private housing. The Administration is proposing pay raises for uniformed personnel ranging from 2% to as high as 6.5% for targeted grades and skills with an overall average 4.1%. The FY2004 budget also includes funds to reduce out-of-pocket off-base housing costs from a maximum of 7.5% of pay to 3.5%, with costs reduced to zero in FY2005.

Permitting concurrent receipt of military retirement and disability payments was not included in the FY2004 budget resolution passed by both houses. In the 107<sup>th</sup> Congress, concurrent receipt was a critical personnel issue that was strongly opposed by the Administration and stymied passage of the defense authorization bill. DOD is currently implementing a compromise proposal passed by Congress last year, which provides special compensation benefits to a targeted group of military retirees whose disabilities are a product of combat or combat-related activities.

Overall funding for operation and maintenance is continuing to grow at more than 2.5% per year above inflation under Administration projections — about the historical rate of growth per active duty troop. Although concerns about military readiness appear to have abated, some have questioned how long DOD can sustain the deployment of substantial numbers of troops in Iraq, Afghanistan, and elsewhere without jeopardizing morale and readiness goals.

**Congressional Action on Pay and Benefits for Active-Duty and Reservists.** As in the past, Congress opted for a larger pay raise than the Administration has proposed. The Senate committee-reported bill approves a 3.7% minimum across-the-board pay raise for all uniformed service personnel, though it approves targeted pay raises ranging from 5.25 to 6.25%. The overall average pay raise in the Senate bill is 4.15%. The House version includes pay raises ranging from 2% to 6.5% with an average of 4.1%.

**Senate Adds Concurrent Receipt for Military Retirees On The Floor.** On June 4, 2003, the Senate adopted by voice vote the Reid amendment that would provide full concurrent receipt for all military retirees with twenty or more years of

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<sup>59</sup> *Congressional Record*, May 20, 2003, p. S6690, and *Congressional Record*, May 22, 2003, p. H4572.

service who are eligible for VA disability benefits. Currently, military retirees must take a dollar-for-dollar offset against their military retirement in order to receive non-taxed VA disability benefits related to their military service.

The Administration opposes lifting the 111-year old prohibition against concurrent receipt of benefits that stem from the same period of service because of both its high cost and the precedent for other federal benefit programs with similar provisions. This provision is likely to be a major issue during conference and thereafter if it is included in the final bill.

Estimated by CBO to cost the government \$4.4 billion in FY2004 and \$56.5 billion over ten years, Congress would have to find offsets of \$1.1 billion in discretionary budget authority in FY2004 within the defense budget to fund the cost of accrual payments for current active-duty personnel and \$15.4 billion over the next ten years (see **Table 9** below).<sup>60</sup> DOD opposed this provision last year suggesting that financing the benefit would hurt defense readiness by taking funds from other higher-priority programs.<sup>61</sup>

The bulk of the cost of this new benefit would be payments of about \$17.9 billion over the next five years and \$41.1 billion over the next ten years to about 700,000 current beneficiaries, which would be financed by general revenues from the Treasury. Since these funds outlay immediately, this would have immediate effects on the deficit. According to CBO, over 90% of the \$41.1 billion in payments over the next ten years would go to military retirees whose disabilities stem from service but developed after they left military service.<sup>62</sup> Military retirees with twenty or more years of service may receive disability ratings from the Veterans Administration at any time after they leave military service, ratings that can be revised over the course of their lifetime as they grow older.

**Senate Adds New health Care Benefit For Non-active Duty Reservists.** Another provision added on the Senate floor with major cost implications is the Graham/Daschle amendment that would provide:

- *for non-active duty reservists:* access to TRICARE medical benefits for enlisted personnel who pay annual premiums of \$330 for an individual and \$560 for a family, and officers who pay \$380 for individuals and \$610 for families; and

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<sup>60</sup> Like military retirement, DOD would pay for the estimated cost of the benefit to current active-duty personnel in its annual budget and Treasury general revenues would finance the cost for current beneficiaries. CBO Testimony to Subcommittee on Personnel, Senate Armed Services Committee, "The Cost of Providing Retirement Annuities and Veterans' Disability Compensation to Certain Retirees of the Uniformed Services," March 27, 2003.

<sup>61</sup> See CRS Report RS21327, *Concurrent Receipt of Military retirement and VA Disability Benefits: Budgetary Issues*, by Amy Belasco for last year's debate; and CRS Issue Brief IB85159, *Military Retirement: Major Legislative Issues*, by Robert Goldich.

<sup>62</sup> CBO Testimony to Subcommittee on Personnel, Senate Armed Services Committee, "The Cost of Providing Retirement Annuities and Veterans' Disability Compensation to Certain Retirees of the Uniformed Services," March 27, 2003, p. 12.

- *for activated reservists*: payment of their current health care premiums up to the per capita costs of TRICARE.

If enacted, CBO estimates that this provision would cost \$466 million in FY2004 rising to \$2.1 billion by FY2008 as more non-active duty reservists opt for the coverage because of the attractiveness of the rates (see **Table 9** below). The proposed annual premium of \$560 is less than one-third of the national average of \$1,800 for family coverage in 2000. Most of the cost is to pay for access to TRICARE benefits for non-active duty reservists, 80% of whom already have health care coverage according to a DOD survey.<sup>63</sup>

Recent DOD regulations provide that activated reservists and their families are eligible for TRICARE health care coverage when called up for 30 days or more. For the first thirty days, employers are required to continue health care coverage, and employers sometimes continue coverage during longer activations, including paying the employer premium. According to a 2000 DOD survey, most activated reservists who had been mobilized once maintain private coverage and 80% of employers continue to pay their share of the premium.<sup>64</sup>

If both these provisions are enacted, the government would have to cover additional cost of \$4.8 billion in FY2004 and \$24.3 billion in the next five years.

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<sup>63</sup> GAO-02-829. *Defense Health Care; Most Reservists Have Civilian Health Coverage But More Assistance Is Needed When TRICARE Is Used*, September 2002, p. 8.

<sup>64</sup> “Reserve Component Health Care;” see the Department of Defense web page on TRICARE at [<http://www.tricare.osd.mil/reserve>]; GAO-02-829. *Defense Health Care; Most Reservists Have Civilian Health Coverage But More Assistance Is Needed When TRICARE Is Used*, September 2002, p. 5-6, p. 10.

**Table 9. Estimates of the Cost of Concurrent Receipt and TRICARE for Reservists**  
(in millions of dollars)

Type of Spending/Benefit	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004 - 2008	2004 - 2013
<b>Discretionary Spending<sup>a</sup></b>	<b>1,569</b>	<b>2,226</b>	<b>2,969</b>	<b>3,323</b>	<b>3,558</b>	<b>8,819</b>	<b>1,641</b>	<b>1,748</b>	<b>1,864</b>	<b>1,968</b>	<b>6,372</b>	<b>14,151</b>
Concurrent Receipt	1,103	1,185	1,274	1,359	1,452	1,547	1,641	1,748	1,864	1,968	6,372	14,151
TRICARE for reservists	466	1,041	1,695	1,964	2,106	NA	NA	NA	NA	NA	7,272	NA
Non-active Duty	[393]	[994]	[1,678]	[1,953]	[2,099]	NA	NA	NA	NA	NA	[7,117]	NA
Active-duty	[73]	[47]	[17]	[11]	[7]	NA	NA	NA	NA	NA	[155]	NA
<b>Mandatory Spending<sup>b</sup></b>	<b>3,285</b>	<b>3,341</b>	<b>3,525</b>	<b>3,778</b>	<b>3,985</b>	<b>4,205</b>	<b>4,407</b>	<b>4,621</b>	<b>4,847</b>	<b>5,127</b>	<b>17,913</b>	<b>41,119</b>
Concurrent Receipt	3,285	3,341	3,525	3,778	3,985	4,205	4,407	4,621	4,847	5,127	17,913	41,119
TRICARE for reservists	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Government spending</b>	<b>4,854</b>	<b>5,567</b>	<b>6,494</b>	<b>7,101</b>	<b>7,543</b>	<b>13,024</b>	<b>6,048</b>	<b>6,369</b>	<b>6,711</b>	<b>7,095</b>	<b>24,285</b>	<b>NA</b>

<sup>a</sup> Discretionary spending is appropriated annually.

<sup>b</sup> Mandatory spending is generally for entitlement programs and financed by Treasury general revenues.

## Basing Structure, Role of the Reserves, and Force Mix Issues

In congressional testimony, Secretary of Defense Rumsfeld raised two additional issues that may arise in future years: changing DOD's overseas basing structure to give DOD a smaller "footprint" with potentially fewer forces located in western Europe, and reviewing the role of the reserves in light of homeland security needs and DOD's heavy reliance on reserves for the Global War on Terrorism and the Iraq war. DOD is currently studying both issues. Re-locating U.S. overseas bases to eastern European countries and increasing the number of unaccompanied tours could potentially save money but DOD has not fleshed out its proposals.

In the FY2004 budget, DOD asks Congress to merge funding for active-duty and reserve forces in order to increase flexibility in allocating funds. This proposal has sparked opposition from reserve proponents who see it as a way to reduce the authority of the heads of the National Guard and Reserves.

A major issue this year may be possible restrictions on the next military base closure round. Two years ago, Congress approved a new round of military base closures in 2005, following procedures that were used in earlier rounds in 1991, 1993, and 1995.

**Congressional Action.** The Senate rejected an amendment that was offered by Senators Dorgan and Lott that would cancel the 2005 round of base closures. The Administration has signaled that a veto is likely if Congress includes either a delay or a cancellation of the 2005 round, which the Administration considers essential to its plans to reduce the size and cost of DOD's infrastructure and free up funds for transformational programs.<sup>65</sup> During floor debate, Senator Dorgan argued that a new round should be delayed because of the uncertainties of determining the size and make-up of DOD's force structure after the September 11th terrorist attacks and because of the economic effects on communities of potential base closures.<sup>66</sup>

The House Armed Services Committee-reported authorization bill includes a provision that would require the Defense Department to preserve a sufficient basing structure to support a possible expansion of the force in the future, though the full committee reversed a subcommittee measure that would have eliminated the 2005 round.

The House and Senate authorizers did not include the Administration's proposal to merge personnel accounts of the active-duty and reserve forces.

**Number of Active and Reserve Duty Personnel.** A frequent issue in recent years has been whether current active duty end-strength is sufficient. Some legislators have proposed increases in end-strength, particularly for the Army, to fill out deployable units and thus ease pressures on the force. The Defense Department

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<sup>65</sup> OMB, *Statement of Administration Policy on H.R. 1588 - National Defense Authorization Act for Fiscal Year 2004*, May 22, 2003, p. 1; available on the White House web site at [<http://whitehouse.gov/omb/legislative/sap/108-1/hr1588sap-h.pdf>].

<sup>66</sup> *Congressional Record*, May 20, page S644ff.

has resisted these measures. The Navy, in fact, reduces its end-strength by 10,000 over the next five years reflecting a reduction in the number of ships. In congressional testimony this year, DOD witnesses have said that a broader review of the mix of active-duty, reserve, civilian, and contractor personnel has been under way and some far-reaching proposals could be in the works. Secretary of Defense Rumsfeld testified that DOD has determined that some 300,000 military personnel are currently performing non-military duties.<sup>67</sup> DOD is looking to rely more heavily on contractors within the Army in particular, setting ambitious goals for its competitive sourcing or contracting-out program.

***Congressional Action: Senate and House Markup.*** The House Armed Services Committee did not agree to a proposed Navy reduction of 1,900 in active duty end-strength (which was part of the 6-year savings from early retirement of some ships that the Administration emphasized in its initial budget request). The committee also added 4,340 positions to authorized end-strength for the other services for a total increase of 6,240 compared to the Administration request. The committee also cited substantial shortfalls in end-strength identified by each of the services and criticized the Administration's opposition to any increases in the size of the force in the future. The Senate Armed Services Committee agreed to the Administration's end-strength request.

***Congressional Action: House and Senate Floor Action.*** An amendment by Representative Goode passed on the floor would allow the Secretary of Homeland Security to place a request for military personnel to assist in border patrol to deal with national security threats posed by terrorist, drug trafficking, or illegal aliens. The Senate did not include a comparable provision. This proposal could prove controversial because DOD is likely to object to additional missions for its forces levied by the Department of Homeland Security.

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<sup>67</sup> Testimony of Secretary of Defense Rumsfeld before Senate Armed Services Committee, FY2004 DOD Authorization Request, February 13, 2003.

## Legislation

### Congressional Budget Resolution

#### **H.Con.Res. 95 (Nussle)**

A concurrent resolution establishing the congressional budget for the United States Government for fiscal year 2004 and setting forth appropriate budgetary levels for fiscal years 2003 and 2005 through 2013. Reported by the House Budget Committee (H.Rept. 108-37), March 17, 2003. Approved by the House (215-212), March 21, 2003. Senate struck all after the enacting clause and substituted the language of S.Con.Res. 23, as amended, and agreed to the measure by unanimous consent in lieu of S.Con.Res. 23. Conference report filed (H.Rept. 108-71), April 10, 2003. Conference report agreed to in the House (216-211), April 11, 2003. Conference report agreed to in the Senate (51-50), April 11, 2003.

#### **S.Con.Res. 23 (Nickles)**

An original concurrent resolution setting forth the congressional budget for the United States government for fiscal year 2004 and including the appropriate budgetary levels for fiscal year 2003 and for fiscal years 2005 through 2013. Resolution agreed to in the Senate (56-44), March 26, 2003. Senate incorporated this measure into H.Con.Res. 95 as an amendment and agreed to H.Con.Res. 95 in lieu of this measure (unanimous consent), March 26, 2003.

### Defense Authorization

#### **S. 1050 (Warner)**

An original bill to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes. Ordered to be reported by the Senate Armed Services Committee, May 8, 2003. Reported by the Senate Armed Services Committee (S.Rept. 108-46), and placed on the Senate Legislative Calendar, May 13, 2003. Passed the Senate on June 4, 2003, by voice vote and inserted into H.R. 1588 as received from the House. Conferees appointed on June 4.

#### **H.R. 1588 (Hunter)**

A bill to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2004, and for other purposes. Committee consideration and markup held and ordered to be reported, May 14, 2003. Passed the House on May 22, 2003, and sent to the Senate.