

CRS Report for Congress

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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 conference version of the FY2004 DOD Appropriations Act (H.R. 2658/H.Rept. 108-283) was passed by the House by a vote of 407 to 15 on September 24, 2003, and by the Senate on the following day by 95 to 0. The bill provides a total of \$368.7 billion for the defense programs it covers. The Senate substituted the text of the committee-reported version of the bill, S. 1382, into the House version, H.R. 2658 and passed its version on July 17, 2003. The House passed its version of the bill on July 8 by a vote of 399 to 19. Both the House and Senate versions of the bill provided \$369.2 billion for defense programs.

There are some reports that the House could take up the conference version of H.R. 1588, the FY2004 defense authorization next week. It is not clear, however, whether the two houses have reconciled several contentious issues, which have stalled completion of the conference for some time. A conference report has not been filed so no details are available. Both the House and Senate versions of the bill provide \$400.5 billion for national defense programs; the authorization covers not only defense programs funded in the defense appropriations bills but also programs funded in the military construction, energy and water, and some other appropriations measures. The House and Senate authorization measure provides \$800 more than the \$399.7 billion the Administration requested for national defense in February.

The amount provided in the conference version of the FY2004 DOD appropriations bills is \$3.6 billion below the Administration request and \$4 billion above the FY2003 appropriations. The programmatic impact of the cut is cushioned, however, because conferees rescinded \$3.5 billion from funds earlier provided in the \$62.6 billion in the FY2003 supplemental appropriations bill that Congress approved in April. That reduction in the defense request frees up funds for non-defense appropriations bills while staying within overall caps on discretionary spending.

The authorization conference began in July, and there are reports that the conference version could emerge next week. Issues in the conference include how to address the Administration's request to give the Secretary of Defense wide-ranging authority to set up a new National Security Personnel System (NSPS) for the 750,000 civilians working in the Department of Defense, R&D restrictions on new and modified nuclear weapons, expansion of Buy America Act restrictions, and proposed exemptions to certain environmental regulations.

The Senate version of the FY2004 DOD Authorization Act includes two provisions with significant cost implications that the Secretary of Defense has said would be likely to trigger a presidential veto: (1) 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 (2) concurrent receipt of retirement and disability benefits for military retirees that could cost the government \$4.4 billion in FY2004 and \$56.5 billion over the next ten years.

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Authorization and Appropriations for FY2004: Defense

Most Recent Developments

The conference version of H.R. 2658, the FY2004 DOD appropriations bill, was passed by the House on September 23, 2003, and by the Senate on the following day quickly and with little debate. The vote was 407 to 15 in the House and 95 to 0 in the Senate. With the DOD appropriations bill completed, Congress can turn its attention to the FY2004 supplemental, which may be marked up as early as next week in the Senate. The FY2004 DOD appropriations bill provides a total of \$368.7 billion for the defense programs it covers, \$500 million less than the \$369.2 billion that was included in both the House or Senate versions.

There are also reports that the conference version of the FY2004 DOD Authorization bill, H.R. 1588, could emerge and reach the House floor next week. Several contentious issues would need to be resolved, and no conference report has been issued, so details are not available. Senate Armed Services Committee Warner has asked the Administration to clarify its position on controversial Buy American provisions proposed by the House that have held up the conference.¹ It is also not clear whether a compromise version of concurrent receipt has been developed that would be acceptable to the Administration, which earlier threatened a veto. Nor is it clear whether proposed new health care benefits for non-active duty reservists, also subject to a veto threat and included by the conferees, are acceptable to the Administration.²

The total in the conference version of the DOD appropriations bill is slightly below the amounts that each appropriations committee provided for defense in their respective allocations of funds under Section 302(b) of the Congressional Budget Act. The allocations to the defense subcommittees are \$3.1 billion below the request, which frees up the same amount for other appropriations bills while staying within the cap on discretionary spending established by the FY2004 budget resolution (H.J.Res. 95).

The conference version cushioned the programmatic impact of the cuts, however, by making an offsetting rescission of \$3.6 billion from the \$62.6 billion in FY2003 supplemental appropriations that Congress approved in April. Under budget scoring rules, rescissions are counted as a credit in the year when they are enacted, even though prior year monies — in this case, FY2003 — are cut. This allowed the

¹ *Congress Daily*, "Defense: Surprised Warner Seeks A Clarification," September 26, 2003.

² *Congressional Record*, September 24, 2003, p. H. 8887 and p. H.8923.

appropriators to meet their FY2004 targets without reducing requested funding for FY2004 programs by the full amount of the reductions in the subcommittee totals. Both houses had anticipated that an FY2004 supplemental, now under consideration in both houses, could offset cuts if necessary.

Earlier the House approved its version of the FY2004 defense authorization bill, H.R. 1588, on May 22, and the Senate approved its version of the bill, S. 1050, on June 4. Both the House and Senate versions of the bill provide \$400.5 billion for national defense programs, about \$800 million above the request of \$399.7 billion that the Administration submitted in February. The authorization covers not only defense programs funded in the defense appropriations bill but also programs funded in the military construction, energy and water, and some other appropriations measures.

Although the formal conference on the authorization began on July 22, conferees face several potentially contentious issues including differences over the Administration's request for a new National Security Personnel System for DOD's civilian employees, restrictions on R&D for new and modified nuclear weapons, proposed exemptions to environmental statutes for DOD, and Buy America Act provisions.

Conference negotiations may also be difficult because of potential Administration veto threats if any of the following four provisions are included: restrictions on base closures or Buy America provisions that are in the House version, or concurrent receipt and TRICARE for non-activated reservists that are in the Senate version.³

Status of Legislation and Summary of Major Action

FY2004 DOD Appropriations Bills

Action on the FY2004 DOD appropriations act was completed before the end of the fiscal year on September 30.

Conference on H.R. 2658. Conferees resolved their issues and the bill was passed on September 23 by the House and September 24 by the Senate after the two-day hiatus in business caused by Hurricane Isabel. Differences in funding levels were resolved. Further details on the appropriation conference will be provided in a later update.

The conferees adopted restrictions on the Terrorism Information Awareness System (TIA), which transferred unspecified components of the program from the Defense Advanced Research Projects Agency (DARPA) to classified venues where research could continue but would be subject to safeguards in the National Foreign Intelligence Program that restrict the sharing of information on U.S. citizens. Less

³ Letter from Secretary of Defense Rumsfeld to House Armed Services Committee Chairman Duncan Hunter dated July 8, 2003.

controversial components of the program, such as machine translation of languages, were retained in DARPA. The components that were transferred and the amount of funding remaining cannot be determined because details are in a classified annex.⁴

**Table 1A. Status of FY2004 Defense Appropriations:
H.R. 2658 and S. 1382**

Subcommittee Markup		House Report	House Passage	Senate Report	Senate Passage	Conf. Report	Conference Report Approval		Public Law
House	Senate						House	Senate	
6/18/03	7/9/03	7/2/03 H.Rept. 108-187 ^a	7/8/03 (399-19)	7/10/03. S.Rept. 108-87	7/17/03 (95-0)	9/24/03 H.Rept. 108-283	9/24/03 (405-15)	9/25/03 (95-0)	—

a. Full committee markup was completed on June 26, 2003; the report was filed on July 2, 2003.

b. Full committee markup was completed on July 9, 2003; the report was filed on July 10, 2003.

Senate Floor Action. On July 17, the Senate approved its version of the FY2004 defense appropriations bill following four days of debate. Before beginning floor debate on July 14, the Senate took up the House-passed bill, H.R. 2658, and substituted the text of S. 1382, the committee-reported version of the bill, into the text. Action proceeded on H.R. 2658 as amended.

Debate in the Senate focused on the availability of information on current and future costs of Iraq and Afghanistan and the effect of ongoing operations on the federal budget deficit, the quality and availability of intelligence information related to Iraq, and the effects of extended callups for the war on reservists. Several amendments were considered on these topics.

The Senate took the following actions on amendments related to the cost of U.S. military operations and occupation in Iraq and Afghanistan:

- ! By a vote of 53 to 41, tabled the Dorgan amendment (S.Amdt. 1246) that would have required the President to submit a budget amendment for the cost of U.S. military operations in Iraq and Afghanistan;
- ! By a vote of 50 to 45, tabled the Boxer amendment (S.Amdt. 1271) requiring monthly reports on the cost, number of U.S. military personnel, foreign contributions of personnel and defense goods, number of casualties and contracts in Iraq;

⁴ Statement by Senator Inouye in *Congressional Record*, September 25, 2003, p. S11939. For statutory and conference, see Section 8131 in conference version of H.R. 2658 and p. H8771, respectively, in *Congressional Record*, September 24, 2004.

- ! By a vote of 52 to 43, tabled the Kennedy amendment (S.Amdt. 1273) requiring a report by the President within 30 days on U.S. strategy for reconstruction, security, and humanitarian assistance in Iraq and a schedule for the U.S. to seek U.N. approval of a multinational force and NATO participation in Iraq;
- ! Approved, without objection, an amendment by Senators Wyden and Byrd (S.Amdt. 1312) to require a report on the reconstruction of Iraq and an amendment by Senators Schumer and Bingaman (S.Amdt. 1315) to require a report on the establishment of police and military forces in Iraq.

The Senate considered the following amendments about the effects of deployments on reservists.

- ! By a vote of 93 to 2, adopted the Daschle amendment (S.Amdt. 1269) that stated the Senate's support for providing TRICARE medical benefits to non active-duty reservists as provided in the Senate version of the FY2004 DOD Authorization Act, H.R. 1588;⁵
- ! By a vote of 64 to 31, rejected the Byrd amendment (S.Amdt. 1244) that would have limited overseas deployments for reservists to 180 days within a one-year period compared to the current statutory limit on reserve mobilizations of 24 consecutive months at any one time;
- ! Tabled the Stevens amendment (S.Amdt. 1255) that would have established a commission to examine the effects of overseas deployments on reservists.⁶

The Senate also considered amendments related to enemy combatant detainees and intelligence related to Iraq and took the following actions, listed below.

- ! By a vote of 52 to 48, tabled the Bingaman amendment (S.Amdt. 1268) requiring a report on individual detained as enemy combatants by the U.S. government;
- ! By a vote of 51 to 45, tabled the Corzine amendment (S.Amdt. 1275) setting up a national commission to review intelligence information to review the development and use of intelligence information on Iraq;

⁵ Neither the Senate nor the House version of the FY2004 defense appropriations bills provides the funding because the authorization bill has not been finalized.

⁶ *Congressional Record*, July 15, p. S9371 - S9391. The statutory limit of 24 consecutive months applies to the activation authority known as partial mobilization which is currently in effect.

- ! By a vote of 62-34, tabled a Durbin amendment (S.Amdt. 1277) to limit funds for intelligence community management pending a report on Iraq related intelligence.

On some other issues, by a vote of 79 to 16, the Senate tabled a McCain amendment (S.Amdt. 1270) to delete funding for specific projects in the FY2004 DOD appropriations bill; by voice vote, the Senate agreed to a Stevens amendment (S.Amdt. 1244) to provide full funding for 12 additional weapons of mass destruction civil support teams in the National Guard; by a vote of 71 to 24, the Senate tabled a Byrd amendment (S.Amdt. 1283) to rescind \$1.1 billion for procurement and R&D and appropriate the same amount to combat AIDS/HIV, tuberculosis, and malaria.

Senate Markup. On July 9, the Senate Appropriations Committee marked up and ordered reported its version of the FY2004 DOD appropriations bill, (S. 1382, S.Rept. 108-87) providing a total of \$369.2 billion, the same amount as is included in H.R. 2658, the House-passed bill. Floor debate began on July 14. (See **Table 1A** for congressional action by appropriators. See **Table 2A** and section below for congressional action by authorizers.)

To meet its 302 (b) allocation from the Appropriations Committee, the Senate bill proposes to rescind \$3.2 billion from the Iraq Freedom Fund, a flexible fund set up in the FY2003 Emergency Supplemental for Iraq to provide for costs occurring later in the year (P.L. 108-11).⁷ The Senate bill cuts \$3.2 billion from unobligated funds in the Iraq Freedom Fund, \$1 billion more than the \$2 billion rescission in the House bill. The Administration opposed the House rescission and is therefore likely to oppose the Senate rescission for reducing its flexibility (see below).⁸ (See **Table 2** for funding effects of appropriations markups.)

Major Changes to Investment Programs. The Senate increased funding for procurement programs above the request by \$1.2 billion. Major changes to the request include:

- ! approval of a five-ship multiyear contract for the Virginia class submarines, two below the DOD request;
- ! a \$70 million add for seven addition Blackhawk helicopters;
- ! a \$35 million add for long-lead items for the Stryker brigades and \$100 million more for fielding and equipment for the Stryker Brigade signaling its support;
- ! an additional \$236.3 million for the LHD-8;
- ! a \$450 million addition for refueling of two Los Angeles class submarines;

⁷ See CRS Report RL31829, *Supplemental Appropriations FY2003: Iraq Conflict, Afghanistan, Global War on Terrorism, and Homeland Security*.

⁸ See Section 8119 in S. 1382 for rescission. See OMB, "Statement of Administration Policy on H.R. 2658," July 8, 2003 for Administration position on House rescission; see [<http://www.whitehouse.gov/omb/legislative/sap/108-1/hr2658sap-h.pdf>.]

- ! full funding of the Littoral Combat System, a new, smaller ship designed for coastal operations despite concerns about the fast-track acquisition approach;
- ! retained a buy of 22 F-22 Raptor aircraft as requested but reduced funding by \$161 million for anticipated savings;
- ! supported DOD's plans to phase out funding for Bradley Fighting vehicles and M1 tank upgrades, setting up an issue with the House which provided additional funding and rejected DOD's plans to phase out these "legacy" programs;
- ! a \$700 million addition for equipment for National Guard and Reserve units.⁹

For a more extended discussion of congressional changes to investment programs, see below, the section entitled, "Affordability and Mix of DOD's FY2004 Investment Programs," including **Table 8A, 8B, 9A, 9B, 10A, 10B, and 11**.

Changes to R&D Programs. The Senate appropriators increased funding for R&D programs by over \$1.7 billion, \$1 billion less than the House's addition. The Senate bill includes:

- ! an additional \$200 million for more interceptors for the Ground Based Mid-Course Missile Defense System;
- ! an addition of \$150 million for breast cancer research and \$85 million for prostate cancer research; and
- ! numerous changes to other programs.

Funding Prohibition And Restrictions On Total Information Awareness (Terrorist Information Awareness) R&D Program. As passed by the Senate, H.R. 2658 prohibits funding for R&D for the Total Information Awareness program (renamed the Terrorism Information Awareness system in DOD's FY2004 submission), a controversial R&D program designed develop a system to collect and analyze a wide assortment of information to detect potential terrorists. The Senate bill also includes restrictions on implementation or deployment of Total Information Awareness (TIA) programs similar to those included in the House version of the FY2004 DOD Appropriations Act, H.R. 2658. The Administration objected to the Senate cutoff of funding.¹⁰

Similar restrictions on deployment were originally included in the Consolidated Appropriations Resolution of FY2003 (P.L. 108-7).¹¹ On May 20, 2003, the Defense

⁹ Senate Appropriations Committee handout at markup, July 9, 2003, and Niels C. Sorrells and Joseph J. Schatz, "Appropriations: Defense Spending Bill Easily Passes House, Remains on Fast Track in Senate," *CQ Today*, July 8, 2003.

¹⁰ OMB, "Statement of Administration Policy on S. 1382, Department of Defense Appropriations Bill, FY2004," July 14, 2003; [<http://www.whitehouse.gov/omb/legislative/sap/108-1/s1382sap-s.pdf>].

¹¹ See Section 8120 in S. 1382 and Section 8124 in H.R. 2658; for previous language, see Section 111 of P.L. 108-7. For a discussion of the original controversy about this program, (continued...)

Advanced Research Projects Agency (DARPA) avoided a cutoff in funding for TIA by submitting the report required by P.L. 108-7. On August 29, 2003, retired Admiral Poindexter, the head of the program, is slated to resign, partly in response to recent controversy about a TIA program, FutureMAP, which was designed to set up a “market” to collect predictions about potential terrorist or terrorist-related events.¹² The program was cancelled in response to public and congressional concerns.

Military Personnel Changes. The Senate bill makes minor changes to the DOD request for funding of military personnel pay and benefits, supporting the 4.1% average military pay raise and ongoing improvements in housing and other benefits for military personnel (see section below on Administration request). The Senate version of the bill does, however, make other changes to the DOD request (see below).

Senate Bill Refuses to Consolidate Accounts of Active Duty and Reserve Personnel. S. 1382 does not consolidate accounts that fund pay and benefits for National Guard and Reserve with those for active-duty military personnel as requested by DOD, endorsing the action of Senate authorizers and the House authorizers and appropriators. The Senate Appropriations Committee rejected the DOD’s contention that additional flexibility was needed to manage those accounts. Instead, the Senate appropriators consolidated budget activities within the reserve accounts to give additional flexibility to Guard and Reserve commanders without reducing congressional oversight.

No Funding of Concurrent Receipt. The Senate appropriations bill did not provide funding for the full concurrent receipt that was authorized in the Senate version of the FY2004 defense authorization bill because of uncertainty about whether the proposed new benefit to provide both retirement and disability benefits to military retirees would be included in the final version of the measure. If the benefit — or some form of it — is provided, payments to current retirees would be made mainly from the military retirement trust fund and not directly from the Defense Department. DOD would be required to pay into the trust fund to cover the actuarially determined cost of future benefits for current personnel, however, and this amount would have to be covered either by transferring monies from existing programs or requesting additional funds. Last year, the Administration threatened to veto the DOD authorization if concurrent receipt was included, and the Secretary

¹¹ (...continued)

see CRS Report RL31786, *Total Information Awareness Programs: Funding, Composition, and Oversight Issues* by Amy Belasco.

¹² Washington Post, “Poindexter Resigns But Defends Programs,” August 13, 2003; Defense Advanced Research Projects Agency, *Report to Congress Regarding The Terrorism Information Awareness Program*, In Response to Consolidated Appropriations Resolution 2003, P.L. 108-7, Division M, Section 111 (b); see the DARPA website at [http://www.darpa.mil/body/tia/tia_report_page.htm].

of Defense reiterated that position this year in a July 8 letter to authorization conferees.¹³

According to recent press accounts, House Republican leaders are proposing a compromise that would allow concurrent receipt in return for restricting in some fashion benefits to current and future retirees. The nature of the compromise is unclear, and no legislative language has emerged making it clear whether the proposal could pay for itself.¹⁴

Reductions to O&M. The Senate version of the appropriations bill reduces O&M funding by \$1.4 billion compared to the \$3.6 billion decrease in the House bill (see **Table 2**). Like the House, most of the Senate decreases reflect fact-of-life changes, such as the \$1.0 billion cut for Southwest Asia operations in and around Iraq that are no longer needed, or for prices of support services that are likely to be lower than anticipated. The Senate did not, however, adopt cuts for efficiencies in base operations support, use of consultants, services contracts, and other administrative activities that were taken by the House appropriators.

House Floor Action. The House passed its version of the defense appropriations bill by a vote of 399 to 19 on July 8. Several amendments were offered by members and then withdrawn after the chairman and ranking member of the House Appropriations Committee offered to work with the members to meet their concerns. By a vote of 358 to 57, the House rejected an amendment proposed by Congressman Hostettler that would have prohibited spending to implement the 2005 base closure round.¹⁵ Earlier, the House passed by voice vote the Lewis amendment to reduce Navy Operation and Maintenance Funding by \$96 million and transfer \$31 million to various other programs.¹⁶

The Administration supported H.R. 2658 but objected to the decision by House appropriators to rescind \$2 billion in funds from the Iraq Freedom Fund in the FY2003 Supplemental (P.L. 108-11), contending that it would reduce “flexibility to address emerging urgent security and reconstruction requirements.”¹⁷

House Markup. On June 26, 2003, the House Appropriations Committee completed its markup of the FY2004 defense appropriations bill and reported the bill by voice vote (see **Table 1A**). The bill provides \$369.2 billion for DOD, a total that is consistent with the 302 (b) allocation of funds to the defense subcommittee by the House and Senate Appropriations Committees but \$3 billion below the amount

¹³ Letter from Secretary of Defense Rumsfeld to House Armed Services Committee Chairman Duncan Hunter, July 8, 2003.

¹⁴ Newport News Daily Press, “Concurrent Receipt Deal Tied To Disability Pay ‘Reform’,” September 12, 2003.

¹⁵ *Congressional Record*, July 8, 2003, p. H.6302 - p. H6303 and p. H.6318.

¹⁶ *Congressional Record*, July 8, 2003, p. H. 6300 - p. H6302.

¹⁷ OMB, “Statement of Administration Policy on H.R. 2658,” July 8, 2003; see [<http://www.whitehouse.gov/omb/legislative/sap/108-1/hr2658sap-h.pdf>.]

assumed by the budget committees in the FY2004 budget resolution.¹⁸ The House Appropriations Committee filed its report on July 2, 2003 (H.Rept. 108-187).

The total funding provided reflects a \$3.1 billion reduction to the Administration's request and is \$4.5 billion over the FY2003 enacted level (including the \$10 billion provided in P.L. 108-7, the FY2003 Consolidated Appropriations Resolution, but excluding the \$62.6 billion provided in P.L. 108-11, the FY2003 Emergency Wartime Supplemental).

There is some controversy at this time about whether the \$3 billion reduction will be restored in a later supplemental. The FY2004 DOD request did not include funding for operations in either Afghanistan or Iraq. After markup, Defense Subcommittee Chairman Jerry Lewis told reporters that he expected an additional supplemental request from the Administration within a few weeks to cover ongoing operations in Iraq.¹⁹ DOD Comptroller Dov Zakheim, however, has said that the \$62.6 billion FY2003 supplemental funding is sufficient for FY2003. More recently, Under Secretary of Defense Paul Wolfowitz suggested that a supplemental for DOD may be needed but that estimating costs at this time is difficult, particularly for Iraq.²⁰ That comment, however, appears to refer to costs in FY2004 for Iraq and Afghanistan that presumably will be addressed in a supplemental appropriations request that would be proposed in the next fiscal year that begins on October 1.²¹

Of the \$3.1 billion decrease, \$2 billion is from a rescission of unobligated funds in the Iraq Freedom Fund, a flexible account set up in the FY2003 Emergency Supplemental (P.L. 108-11) to fund later occurring costs in Iraq. Although the rescission is counted against the total budget authority needed for FY2004 appropriations (reflecting when the change is made), the effect is to reduce FY2003 funding. This cushions the programmatic effect of the cut in FY2004.

To reach the lower level, the House markup also cut funding by \$1 billion to reflect the end of U.S. efforts to maintain the no-fly zone in Iraq and by about \$3.3 billion for various financing and efficiency measures in operation and maintenance and military personnel accounts. At the same time, the House appropriators added \$2.8 billion for various RDT&E programs and almost \$1 billion for procurement programs (see **Table 2**). Many of the actions of the House appropriators endorsed previous action by the House Armed Services Committee in its markup.

¹⁸ The Appropriations Committees are not required to adopt the amounts assumed in the budget resolution. See H.Rept. 108-171 and S.Rept. 108-77.

¹⁹ *Inside Defense*, "Lewis: DOD Likely to Need 2004 Supplemental for Iraq Costs," Jun 26, 2003.

²⁰ *Inside Defense*, "Wolfowitz: 'Very Possible' DOD Will Need Supplemental Spending Bill," June 18, 2003.

²¹ *Congressional Quarterly Weekly*, "Defense Panel Struggles With Shortfall in Funding For Overseas Campaigns," by Niels C. Sorrels, June 21, 2003.

Table 2. FY2004 DOD Appropriations: Congressional Action
(in billions of dollars)

Title	FY2003 Enacted	FY2004 Request	House	House vs. Request	Senate	Senate vs. Request	Senate vs. House
Military Personnel	93.0	98.9	98.3	-0.7	98.9	0.0	+0.7
Operation and Maintenance ^a	112.9	117.0	113.3	-3.7	115.6	-1.4	+2.2
Procurement	70.5	72.7	73.6	+0.9	73.8	-1.1	+0.2
RDT&E	57.9	61.8	64.6	+2.8	63.6	+1.7	-1.1
Revolving & Management Funds	2.6	3.5	2.8	-0.7	1.7	-1.8	-1.1
Other DOD Programs	17.4	17.8	18.1	+0.3	18.3	+0.5	+0.2
Related Agencies	0.5	0.4	0.4	0.0	0.4	-0.0	-0
General Provisions ^a	[-4.0]	[0.1]	[-4.1]	[-4.0]	[-3.4]	[-3.3]	[+0.7]
Iraq Freedom Fund Rescission ^b	0	0	-2.0	-2.0	-3.2	-3.2	-1.2
Scorekeeping Adjustment	0.0	0.1	0.0	-0.1	0.0	-0.1	0.0
Consolidated Appropriations	10.0	—	—	—	—	—	—
TOTAL^c	364.7	372.2	369.2	-3.0	369.1	-3.1	-0.1

Sources: H.Rept. 108-187; S.Rept. 108-87.

Notes: CRS adjusted title totals for both FY2003 and FY2004 to allocate funding in general provisions. [] Square brackets indicate the total amount of funding for general provisions that is allocated by title in the table and is not added into the total. For FY2004, see H.R. 2658 and S. 1382. For FY2003, see P.L. 107-248.

- Of the \$4.0 billion decrease for general provisions in the House version of the FY2004 DOD appropriations act, H.R. 2658 allocates \$2.0 billion to O&M appropriations and \$2 billion is a rescission to the \$15.7 billion provided in the Iraq Freedom Fund for later costs of the war and occupation in the FY2003 supplemental. According to scoring rules, that decrease counts as a reduction to FY2004 appropriations. Of the \$3.4 billion in reductions from general provisions in S. 1382, \$3.2 billion is from a rescission to the Iraq Freedom Fund. About \$1.8 billion of the decreases in FY2003 that were made in general provisions affected O&M appropriations.
- The Iraq Freedom Fund is a flexible account set up to cover later costs of the war, which could not be allocated to specific appropriation accounts.
- Difference is rounding: total funding is \$369.193 billion in the House bill and \$3.143 billion in the Senate bill.

Military Construction Appropriations Bills

The House passed H.R. 2559, its version of the FY2004 military construction appropriations on May 22, 2003, providing \$9.2 billion for military construction and family housing as requested by the Administration. The Senate Appropriations Committee reported S. 1357, its version, on June 26, 2003. On July 11, 2003, the Senate passed the bill by 91 to 0.²²

²² See CRS Report RL31810, *Appropriations for FY2004: Military Construction*, by Daniel (continued...)

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 approval 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 (see **Table 1b**).²³ 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 as reported did not include the DOD proposal to redesign its 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).²⁴

²² (...continued)

H. Else.

²³ *Congressional Record*, May 23, 2003, p. S7115 and *Congressional Record*, June 4, p. S7280-S7295.

²⁴ 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 (108th Congress) with Current Law*, by Barbara L. Schwemle and L. Elaine Halchin.

**Table 1B. Status of FY2004 Defense Authorization:
H.R. 1588 and 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 ^a)	—	—	—	—

a. 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.

Major DOD Authorization Conference Issues.

Key issues in the FY2004 authorization conference include:

- ! restrictions on R&D for new and modified nuclear weapons;
- ! the proposed new National Security Personnel System;
- ! exemptions to environmental statutes for DOD; and
- ! broadening the application of Buy America Act restrictions.

Low Yield Nuclear Weapons. Both the House and Senate adopted provisions that would lift or modify a ban on R&D of low-yield nuclear weapons that was enacted in 1989. The House version of the authorization bill modifies the ban to permit research up to engineering development. So the House measure preserves a ban on engineering development and production in standing law. The Senate version repeals the 1989 ban on R&D but requires specific congressional authorization for DOE to proceed to engineering development of low yield nuclear weapons or a nuclear earth penetrating weapon (see additional discussion below in the section entitled “Modify Restrictions on R&D for Low-Yield Nuclear Weapons”). A parallel debate may take place in the conference on the Energy and Water appropriations bill. House appropriators reduced funding for the Robust Nuclear Earth Penetrator from \$15 million to \$5 million and eliminated funding for the Advanced Concepts Initiative, which would fund concept studies on low yield nuclear weapons. Senate appropriators did not reduce funding in their markup, so this appears likely to be a conference issue.²⁵

New Personnel System for DOD Civilians. The House version of the authorization includes much of the legislative language the Administration proposed allowing DOD to establish a new National Security Personnel System (NSPS) for the department’s 746,000 civilian employees. An attempt to add civil service protections

²⁵ *National Journal*, “Energy and Water Spending Bill Clears Senate Subcommittee,” July 16, 2003.

to the House bill was defeated on the floor. The Senate bill does not include these provisions. The Senate Governmental Affairs Committee held hearings on June 4 on S. 1166, a bill to establish a National Security Personnel System. The Senate committee bill includes some of what the Administration proposed, but includes additional protections for civil servants (see the section below entitled, “A New Civilian Personnel System for DOD?”).

Environmental Exemptions for DOD. The Administration proposed a wide range of exemptions to various environmental laws for DOD, but only two are addressed in the House or Senate bills: exemptions to the Endangered Species Act and the Marine Mammal Protection Act. The House version is closer to the Administration’s request. The House version also would allow the Secretary of Defense to exempt DOD’s readiness activities from compliance with Marine Mammal Protection Act requirements and redefines what constitutes harassment under that Act. The Senate bill does not include changes to that Act.

Buy America Act Restrictions. The Administration proposed a series of changes to current Buy America Act restrictions to give DOD additional flexibility to purchase from foreign sources. The House version of the bill would place additional limits on the circumstances in which DOD can purchase from foreign sources whereas the Senate version would allow DOD some additional flexibility.

Amendments to the FY2004 Authorization Acts

The two sections below describe major floor amendments to the House and Senate versions of the FY2004 DOD Authorization Act.

Major Floor Amendments Considered by the House. Several amendments with significant policy or cost implications were adopted during House debate on 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* amendment 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* amendment and 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);

- ! L. 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 Floor Amendments Considered by the Senate. After its return from the Memorial Day Recess on June 2, 2003, the Senate considered several additional amendments to S. 1050, which were earlier ruled earlier as not relevant by the Senate Parliamentarian.²⁶ The Dorgan/Lott amendment to cancel the 2005 round of base closures was defeated by a vote of 42 to 53.²⁷ The Statement of Administration Policy on the bill threatened a veto if Congress included cancellation of the 2005 round.²⁸

Another amendment that the Administration warned could trigger a veto, however, 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.²⁹ 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.³⁰

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

²⁶ *Congressional Record*, May 20, 2003, p. S6645 and p. S6648.

²⁷ *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.

²⁸ 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>].

²⁹ 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.

³⁰ 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).

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.³¹

The FY2004 congressional budget resolution does not include an allowance for concurrent receipt. If enacted, other programs within DOD would have to be decreased to finance the costs of contributing to the military retirement fund, and spending for current beneficiaries would increase the deficit by \$3 billion in FY2004. Last year, faced with an Administration threat to veto the authorization bill if it included a similar provision, Congress adopted a measure providing special compensation benefits to about 40,000 retirees whose disabilities reflect either combat or combat-related disabilities.³² That special compensation benefit is available to those eligible retirees as of June 1, 2003.

During earlier floor debate on May 19, 21, and 22, the Senate added several amendments to S. 1050 (the Senate-reported version) with significant cost or policy implications. (Additional discussion of major issues is included in individual sections below.)

- ! 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);
- ! B. Nelson amendment that would require specific authorization for DOD to begin engineering development of a Robust Nuclear Earth Penetrator weapon (voice vote);³³
- ! 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);

³¹ 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.

³² 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.

³³ 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.

- ! 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).

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 Changes During Markup. The Senate markup of S. 1050 did not include provisions that DOD requested to provide broad new authority to redesign its civilian personnel system. The House markup of H.R. 1588 includes some but not all that DOD requested, generally tailoring the new authorities to be consistent with those granted to the Department of Homeland Security. The measures adopted allow the agency to set its own pay scales and devise a new appeals procedures for employees but retain 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 the section below entitled “New Civil Service System for DOD?”). Neither the House Armed Services Committee nor the Senate Armed Services Committee agreed to DOD's request for broad authority to manage senior level military officers.

Also controversial may be the House approval of proposals to grant DOD exemptions to certain environmental laws, which Congress has rejected in previous years (see section on *Environmental Provisions*, below).

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.³⁴ This does not include in the FY2003 level, however, \$62.6 billion in supplemental defense appropriations that Congress approved in April for the Iraq war and other costs.³⁵

The FY2004 increase is in addition to substantial increases in FY2002 and FY2003. The new request is more than \$100 billion above the FY1999 level for defense spending, and it represents 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 drawdown in spending and military personnel after the end of the Cold War was completed.

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 3** shows the ten-year FY1999-FY2008 trend in defense spending under the Administration's plan both for the national defense budget function and for the Department of Defense budget.³⁶

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.

³⁴ DOD has received \$93.1 billion in supplemental funding to combat terrorism since the September 11 attacks; see below.

³⁵ 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.

³⁶ 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 3 for a breakout of these categories).

Table 3. National Defense Budget Function and DOD Budget, FY1999-FY2008, Administration Projections
(current and constant FY2004 dollars in billions)

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

a. 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

The conference agreement on the FY2004 congressional budget resolution (H.Con.Res. 95, H.Rept. 108-71), which was passed by both houses on April 11, just before the April recess, endorses the Administration's proposed growth of \$20 billion annually for defense over the next five years (see **Table 4**). 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 4. 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						House	Senate	
NA ^a	NA	4/10/03 H.Rept. 108-37	3/21/03 215-212	3/26/03 (no report)	3/26/03 56-44	4/11/03 H.Rept. 108-71	4/11/03 216-211	4/11/03 51-50	NA ^b

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

a. Budget resolutions are only marked up in full committee.

b. 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 in defense, some observers have questioned whether increases can be sustained in the future because of high federal budget deficits and the dramatic increases in costs associated with the retirement of the baby boom generation.³⁷ The FY2004 budget resolution projects a 40% increase spending on entitlement programs by FY2008 and an 80% increase by FY2013.³⁸

³⁷ Center for Strategic and Budgetary Assessment, *Analysis of the 2004 Defense Budget Request* by Steven M. Kosiak, p. 5-p.7

³⁸ 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 5. FY2004 Budget Resolution: National Defense Request and Congressional Action
(billions of dollars)

	FY2003 Est. ^a	FY2004 Proj.	FY2005 Proj.	FY2006 Proj.	FY2007 Proj.	FY2008 Proj.	FY2004- FY2008 Proj.	FY2009- FY2013 Proj.	FY2004- FY2013 Proj. ^b
Budget Authority									
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
Annual Change In Dollars									
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
Annual Change In Percent									
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
Defense Share Of Discretionary BA									
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
Outlays									
Admin. Request ^a	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
Estimates Of The Surplus/Deficit									
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.

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

b. 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 projection and matching levels approved in both houses. In later years, however, the House projected higher funding for defense than the Senate, and the conference compromised at \$4.758 trillion through FY2013, about the midpoint between the two houses.³⁹

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.⁴⁰ 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 military retired pay and Veterans Administration disability benefits, a proposal considered but rejected in the final version of the FY2003 DOD Authorization Act. Instead, last year, Congress provided special compensation for military retirees whose disabilities are a result of combat or combat-related activities in the FY2003 Authorization Act.⁴¹ The conference version of the resolution deleted both provisions. Without an allocation in the budget resolution, it appears less likely 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 4 and Table 5**). 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,

³⁹ 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.

⁴⁰ See H.Rept. 108-71, p. 73.

⁴¹ See H.Rept. 108-71, p. 109 and *Congressional Record*, March 20, 2003, p. S4209 for S.Amdt. 341.

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 appropriation” is to allow DOD to cover the difference between the amount budgeted for fuel costs and actual market prices.⁴² 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.⁴³ Instead, both houses transfer that \$675 million in the CBO estimate for that account to other programs. The House and Senate appropriators also rejected DOD’s proposal for this new fund and eliminated the \$675 million for the account.

DOD’s Appropriations Allocation. A sign of potential pressure on DOD’s budget top line in the future is the outcome of decisions about the distribution of funds to the various appropriations subcommittees to guide their markup, a process known as setting 302(b) allocations.⁴⁴ 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.

The conference agreement on the budget resolution allocates \$784.7 billion in discretionary budget authority to the appropriations committees. For several weeks after the budget resolution was agreed to, committee leaders debated how to allocate funds among the subcommittees and, especially, how to absorb what they identified as a \$5 to \$7 billion gap in spending requirements and amounts available. Departing from traditional practices where House and Senate Committees work separately on subcommittee allocations, committee leaders negotiated across both houses with their leadership and with the White House to establish a common framework within which to base their initial allocations.

On June 11, House and Senate Appropriations Committee Chairmen announced an agreed package that would free up sufficient resources to address the funding gap and remain within the overall FY2004 discretionary budget cap of \$784.7 billion. As

⁴² OMB, *Fiscal Year 2004 Appendix to the Budget of the United States*, p. 298.

⁴³ 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.

⁴⁴ The 302(b) allocation process was established by the Congressional Budget Act of 1974. For a brief discussion, see CRS Report 98-815, *Budget Resolution Enforcement*.

approved by all parties, including the President, the appropriations committees reduced defense spending by \$3.1 billion and moved \$2.2 billion in FY2004 advance appropriations to FY2003.

Trends in DOD Spending Plans

Assessing long-term trends in the defense 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, which is included in figures in **Table 6**, makes comparisons difficult, particularly for operation and maintenance spending that received the bulk of supplemental funding (see below).

**Table 6. Administration Request: National Defense Budget
Function by Title, FY2001-FY2008**
(in billions of dollars)

Fiscal Year	Actual 2001	Actual 2002	Est. 2003*	Req. 2004	Proj. 2005	Proj. 2006	Proj. 2007	Proj. 2008
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
Subtotal, DOD	319.5	345.0	374.0	379.6	399.6	419.6	440.3	461.6
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
Total, National Defense	335.5	362.1	392.7	399.7	420.0	440.0	460.3	480.7

Source: Office of Management and Budget, *Budget of the U.S. Government, FY2004: Historical Tables* and *Budget of the U.S. Government, FY2004: 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 appropriations.

Figures for FY2003 also include an additional \$10 billion provided for DOD in the FY2003 Consolidated Appropriations Resolution for classified intelligence programs and for 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 to continue the ramp-up in R&D. By FY2008, however, DOD plans to increase funding for procurement by about 40% and RDT&E by over 15% compared to FY2003.

DOD Receives \$103.1 Billion in Supplemental Appropriations Since September 11 Attacks

Since the September 11 attacks, DOD has received \$103.3 billion in supplemental or regular appropriations for the war in Afghanistan, the war in Iraq, enhanced security at DOD installations, and the global war on terrorism (see **Table 7**). 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 its FY2004 budget, however, which suggests that the Administration will propose either a supplemental or a budget amendment for FY2004. In addition to funding in supplementals, DOD received \$10 billion in the FY2003 Consolidated Appropriations Resolution to fund the occupation of Afghanistan and classified/intelligence programs.

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. Congress rejected DOD's request that about 95% of the funding be provided in a flexible account, choosing instead to allocate 45% of the funds in flexible accounts (see below).

Of the \$40 billion appropriated in the Emergency Terrorism Response supplemental (ETR) passed on September 14, 2001, 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 7. Flexibility in DOD's Supplemental Funding Since September 11 Attacks
(Dollars in Billions)

Funding Level & Amount of Flexibility	Emergency Terrorism Response Supplemental (P.L. 107-38 and P.L. 107-117)	FY2002 Supplemental (P.L. 107-206)	FY2003 Supplemental (P.L. 108-11)	Total ETR-FY2003 Supp.
Flexible Fund^a				
Request	21.16	11.30	59.86	92.33
Enacted	15.00	11.30	15.68	41.98
Regular Appropriations				
Request	0.00	2.72	2.72	5.45
Enacted	2.30	2.08	46.91	51.29
Total Funding				
Request	21.16	14.02	62.59	97.77
Enacted	17.30	13.38	62.59	93.27
As Percent of Total Funding				
Flexible Fund				
Request	100.0%	80.6%	95.6%	94.4%
Enacted	86.7%	84.4%	25.1%	45.0%
Regular Appropriations				
Request	0.0%	19.4%	4.4%	5.5%
Enacted	13.3%	15.6%	74.9%	55.0%
Total Funding Received				
Request vs. Enacted	81.7%	95.4%	100.0%	95.4%

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.

- a. 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,"⁴⁵ including the global war on terrorism.

To meet this goal, the Administration delivered a broad ranging legislative proposal, entitled the "Defense Transformation for the 21st 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 redesign 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 defense authorization bill was planned. Although DOD witnesses discussed their plans to submit the proposal earlier in the year and met with congressional staff in the preceding couple of months, the specific proposals were not available before April 10⁴⁶ (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 its 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.⁴⁷ DOD contends that transformation is now fully

⁴⁵ 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.

⁴⁶ Statement of Deputy Secretary of Defense Paul Wolfowitz before the House Committee on Government Reform, May 6, 2003, p. 4.

⁴⁷ Secretary of Defense Rumsfeld testifying before the Senate Armed Services Committee, (continued...)

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 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

Some major issues in 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 21st 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

⁴⁷ (...continued)

FY2004 Budget, February 13, 2003; transcript available from Reuters.

rationale for its proposal is the need to provide additional flexibility to DOD in carrying out its missions.

Status of Bills Addressing DOD Proposal. In the House, the DOD civilian personnel proposals were addressed initially by the Government Reform Committee in H.R. 1836, which the committee marked up and ordered to be reported on May 7 (H.Rept. 108-116, filed on May 19). Much of that bill was then incorporated into H.R. 1588, the FY2004 defense authorization bill, as reported by the House Armed Services Committee on May 14.⁴⁸ The committee version of the defense authorization bill approved changes in DOD civilian personnel management proposal that were included in the Government Reform Committee markup but did not approve the main Administration proposals to change laws governing senior uniformed officers. The committee bill also addressed only some of the Administration's environmental proposals. On the Senate side, the Armed Services Committee did not include any of the major Administration personnel proposals in S. 1050, its version of the FY2004 authorization bill. Instead, those provisions were addressed by the Governmental Affairs Committee. On June 2, Senator Collins, the chair of the committee, submitted a bill, S. 1166, to establish a DOD national security personnel system. The committee held hearings on the measure but did not mark it up or report a 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.⁴⁹

⁴⁸ The Armed Services Committee did not include sections of H.R. 1836 on NASA and the SEC but did include some government-wide provisions.

⁴⁹ 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 the DOD website at [<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.

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.⁵⁰

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 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.⁵¹

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.⁵²

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. It has been used by DOD to attract and reward scientific and technical personnel working at DOD's research facilities.⁵³ 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.⁵⁴

⁵⁰ House Government Reform Committee, Hearing on Civil Service and National Security Personnel, May 6, 2003; transcript available from Reuters.

⁵¹ 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>]

⁵² 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.

⁵³ Statement by Deputy Secretary Paul Wolfowitz before the House Committee on Government Reform, May 6, 2003.

⁵⁴ Statement by David M. Walker, Comptroller General of the United States, "Defense (continued...)

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. 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, to 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.

⁵⁴ (...continued)

Transformation: DOD’s Proposed Civilian Personnel System and Government-wide Human Capital Reform,” before the House Armed Services Committee, May 1, 2003, p. 3.

DOD would also be allowed to bargain at the national level, an authority not provided to DHS, and one that may 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 the 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
- ! provides DOD with the same total level of funding as would be needed under the current system between FY2004 and FY2008.⁵⁵

DOD's Proposed Changes in Managing Senior Military and Reservists. As part of its "transformational" package, DOD also requested 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 to 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.⁵⁶

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

⁵⁵ See S. 1166. Prepared with the help of Barbara Schwemle, CRS.

⁵⁶ Testimony of Under Secretary of Defense David Chu before the House Armed Services Committee, May 2, 2003, transcript; available from Reuters.

disasters, accidents, or catastrophes. DOD would also be allowed to provide medical and dental screening of reservists preparing for mobilization.⁵⁷

Congressional Action: Senate and House Markup. The Senate Armed Services Committee 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 committee agreed only to expand existing authority to use reserves in terrorist-related incidents. The committee did agree to provide medical and dental screening for reservists likely to deploy.

Like the Senate committee, the House Armed Services Committee did not grant the Secretary of Defense broad discretion to manage senior level military officers. The House 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 did not approve DOD's request to add up to 90 days to reserve training requirements but did agree to provide medical and dental screening of reservists likely to deploy.

Proposed Acquisition Changes. In its legislative package, DOD included several provisions designed to increase its flexibility to contract for major defense weapons systems and information technology programs, receive waivers from Buy America and domestic content requirements, and buy standardized items.⁵⁸

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".⁵⁹

Congressional Action: Senate and House Markup. The Senate Armed Services Committee was willing to lift the prohibition on contracting out for one year

⁵⁷ 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>].

⁵⁸ General Counsel, DOD, William J. Haynes III, letter to Speaker of the House Hastert, April 10, 2003, Title 10, Sections 201-206; see [<http://defenselink.mil/dodgc/lrs/legispro.html>].

⁵⁹ 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://defenselink.mil/dodgc/lrs/legispro.html>].

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 committee recommended that depot work performed by a public-private partnership in a center of excellence would be excluded from the tally.

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

Other Organizational And Financial Proposals To Increase Flexibility. Other DOD 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 requested that the limit on transfers between appropriation accounts be raised from 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%.)⁶⁰

DOD also proposed changing the standard governing awards of contracts to government entities versus private companies based on the A-76 competitive sourcing rules. DOD proposed using a "best value" assessment rather than the current lowest cost standard. A less controversial proposal, which has been endorsed by both OPM and DOD, would transfer the DOD civilian personnel currently performing security investigations to OPM. DOD also proposed eliminating 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.⁶¹

Congressional Action: Senate and House Markup. The Senate Armed Services Committee did not agree to give the Secretary of Defense authority to reorganize the department, transfer personnel, or be exempt from ceilings on headquarters staff. The committee 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.

The House Armed Services Committee also did not give the Secretary of Defense authority to reorganize DOD, and it 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 asked Congress to give it permanent authority to allocate up to \$200 million to support "coalition forces," or foreign military forces. Although this

⁶⁰ 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>].

⁶¹ 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>].

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 included no provision for congressional oversight. In the FY2003 supplemental, Congress required DOD to report by July 1, 2003 on its plan to allocate funding for coalition forces.⁶²

Congressional Action. None of the approved versions of either the authorization or appropriations bill approved DOD's request for authority to spend up to \$200 million for coalition forces.

DOD Again Requests Environmental Exemptions. As it did last year, DOD requested that military readiness-related activities be exempted from certain provisions of a number of federal environmental laws, including the Clean Air Act, the Endangered Species Act, the Marine Mammal Protection Act, the Solid Waste Disposal Act, and the "Superfund" law. 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.

DOD has argued that environmental provisions significantly affect military training, and hence readiness. Critics have questioned the extent of the impact on readiness activities and DOD's limited use of waiver authorities already included in current law. A recent GAO report found that environmental restrictions are only one of several factors, including urban growth and pollution, that affect DOD's ability to carry out training activities and that DOD continues to be unable to measure its impact.⁶³ The debate centers on whether and to what extent DOD should be exempt from current environmental statutes.⁶⁴

Congressional Action: House And Senate Proposed Changes to Current Law. This year, both House and Senate versions of the defense authorization bill included modifications of the Administration's proposal for exemptions for DOD to the Endangered Species Act, and the House also included exemptions from the Marine Mammal Protection Act that are close to the Administration's proposals.

⁶² General Counsel, DOD, William J. Haynes III, letter to Speaker of the House Hastert, April 10, 2003, Title 10, Section 441; see [<http://defenseink.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.

⁶³ GAO-03-621T, *Military Training: DOD Approach to Managing Encroachment on Training Ranges Still Evolving*, April 2, 2003.

⁶⁴ Hearings were held by the Senate Subcommittee on Fisheries, Wildlife and Water, Committee on the Environment, May 6, 2003 and by the House Committee on Resources, May 6, 2003; see also CRS RL31415, *The Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Department of Defense (DOD) Readiness Activities: Current Law and Legislative Proposals* by Pamela Baldwin, and Issue Brief 10072, *Endangered Species: Difficult Choices* by M. Lynne Corn, Eugene H. Buck and Pamela Baldwin.

Endangered Species Act. The Administration’s proposal would prohibit the Secretary of the Interior from designating DOD lands as critical habitat for endangered species if DOD developed an Integrated Resources Management Plan under the Sikes Act.⁶⁵ The House provision modifies the Administration proposal: it allows DOD to develop and administer an “Integrated Resources Management Plan” to protect certain DOD lands, but it gives the Secretary of the Interior final say as to whether the plan “addresses protective issues” as a condition for exempting lands from the Endangered Species Act.⁶⁶ The Senate language is similar. It would exempt DOD lands from designation as critical habitat only if the Secretary of the Interior determines in writing that DOD’s integrated management plan would “effectively conserve the threatened species and endangered species.”⁶⁷ In addition, the Senate proposal would amend Title 10 of the U.S. Code, which governs the Department of Defense, rather than the Endangered Species Act itself. This is considered more acceptable to environmental interests.

Under current law, integrated management plans are not accepted as substitutes for designating lands as critical habitat to protect endangered species. An integrated management plan is intended, rather, to provide both for the protection of fish and wildlife and for the military mission of the base. The goal of critical habitat designations is solely to protect endangered species.⁶⁸ According to the Senate Armed Services Committee, portions of about 150 DOD bases could be designated as critical habitat.⁶⁹

Marine Mammal Protection Act. The House version adopts two of the Administration’s proposed changes to the Marine Mammal Protection Act. In the House version, the Secretary of Defense would be granted broad authority to “exempt any action or category of actions” from compliance with any provisions of the Marine Mammal Protection Act for two years if the Secretary determines “it is necessary for national defense.”⁷⁰ At his discretion, the Secretary of Defense could renew such exemptions for additional two-year periods.

In addition, the House version adopts an Administration proposal that would apply a narrower definitions of harassment of marine mammals to military readiness

⁶⁵ General Counsel, DOD, William J. Haynes III, Letter to Speaker of the House Hastert, April 10, 2003, proposing legislation, see Title 10, U.S. Code, new Chapter 101A, Section 2017 in draft legislation; see [<http://defenselink.mil/dodgc/lrs/legispro.html>].

⁶⁶ See Section 317 in *Congressional Record*, May 21, 2003, p. H4428.

⁶⁷ See proposed new Chapter 101A-Readiness and Range Preservation in Title 10, Section 2020 in H.R. 1588 as passed by the Senate. The House bill amends the Endangered Species Act and the Senate amends Title 10.

⁶⁸ See CRS Report RL31415, *The Endangered Species Act (ESA), The Migratory Bird Treaty Act (MBTA), and Department of Defense (DOD) Readiness Activities: Current Law and Legislative Proposals* by Pamela Baldwin, p. 12 - p. 18.

⁶⁹ S.Rept. 108-46, p. 286.

⁷⁰ General Counsel, DOD, William J. Haynes III, “Letter to Speaker of the House Hastert,” April 10, 2003, Title 10, Chapter 101A, Section 2019, Subsection b, p. 92 - p.98; see [<http://defenselink.mil/dodgc/lrs/legispro.html>].

activities than to activities of other agencies. The standard under current law is that activities are prohibited if they would have a “potential to injure or disturb” marine mammals.⁷¹ The House language, in contrast, defines activities as “harassment” only if disruptions to the normal activities of marine mammals reach a point at which “behavioral patterns are abandoned or significantly altered.” Amendments to delete both measures were rejected in the House committee markup.

The Senate version of H.R. 1588 does not include any changes to 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.⁷²

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 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

⁷¹ See Section 318 in *Congressional Record*, May 21, 2003, p. H4428.

⁷² Briefing by DOD Comptroller Dov Zakheim, “FY2004 Defense Budget,” February 6, 2003.

“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. **Table 8A** shows action on major Army programs in the House and Senate defense authorization bills, and **Table 8B** shows action in the House and Senate versions of the defense appropriations bill. A few issues stand out.

- ! **Legacy force modernization:** The House authorization adds \$258.8 million for Bradley Fighting Vehicle upgrades and \$424 million for M1 tank upgrades (offset by cuts of \$140 million in other M1 projects). These are among the programs that the Administration wants to terminate as part of the \$82 billion in 6-year savings that officials announced when the budget was released. The House appropriations bill adds the same amount for Bradley upgrades and \$155 million for M1 upgrades. The House appropriators also urged DOD to budget for enough M1 upgrades in the future to complete equipping the 3rd Armored Cavalry Regiment with modernized tanks. In effect, the House rejected DOD plans to cut back on Army “legacy force” upgrades, though House appropriators also indicated that they may be satisfied once sufficient upgraded Bradleys and M1s are procured to equip 2 and 1/3 divisions of what the Army calls its “counterattack” force of heavy armored units.
- ! **Stryker interim combat brigades:** The House appropriations also added \$35 million for long lead items for Stryker armored vehicle procurement to equip the 5th and 6th Stryker brigades. DOD has, in the past at least, considered halting the interim combat brigade program after four brigades are deployed. House appropriators sent a strong message that they expect DOD to fill out the planned six-brigade force. The Senate Appropriations Committee also added \$35 million for long lead items for Stryker procurement, though its report language did not specify that it was for the 5th and 6th brigades. In addition, Senate appropriators added \$100 million in other Army procurement — for communications and other equipment — to accelerate Stryker brigade deployment, a strong vote of support for the Army program.

- ! **Helicopters:** All of the committees add money for UH-60 utility helicopters, largely for the National Guard, though there are some differences in how the money is allocated. This is a perennial congressional addition to proposed budgets. All of the committees also support continued Comanche helicopter development despite cost growth and substantial cuts in the planned program.

Table 8A. House and Senate Action on Major Army Acquisition Programs: Authorization
(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 million for 9 aircraft for Army National Guard. Senate adds \$70.7 million for 7 aircraft in accordance with Army priorities and for air inlet upgrades (\$0.8 million) and \$3.9 million 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 million from proc. to R&D for UH-60M upgrade.
CH-47 Upgrades	—	516.0	—	—	522.0	—	—	531.0	—	House adds \$6 million for crashworthy seats. Senate adds \$15 million for MH-47G mods.
AH-64 Mods	—	58.9	—	—	74.4	—	—	58.9	—	House adds \$15.5 million 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 million for Bradley M3A2 Operation Desert Storm ``D+`` upgrades.
M1 Abrams Mods/Upgrades	—	361.6	—	—	645.6	—	—	361.6	—	House adds \$424 million for M1A2 to M1A2 SEP upgrades, cuts \$108 million from new engine program due to delays and \$32 million from other upgrades — net add \$284 million.
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 million 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 million 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; Senate cuts all funds.

	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
Logistic/Theater Support Vessel	—	—	65.7	1	33.0	65.7	—	—	73.2	House adds \$33 million in proc. for Logistic Support Vessel (Army now has 8); Senate adds \$7.5 million in R&D for composite hull design Theater Support Vessel to replace LSVs.

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

Note: Figures reflect committee-reported versions of the bills and not changes made in subsequent floor action.

Table 8B. House and Senate Action on Major Army Acquisition Programs: Appropriations
(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	—	279.8	79.2	17	215.7	70.2	House adds \$112.8 million in proc. as in House authorization. Senate adds \$70.7 million for 7 aircraft, cuts \$20.0 million for MYP savings and \$2.0 million from management costs.
UH-60 Blackhawk mods.	—	138.5	—	—	38.5	73.0	—	44.4	92.0	House cuts \$100 million from proc. and adds \$73 million to R&D for UH-60M upgrade program. Senate cuts \$100 million from proc. and adds \$92 million to R&D for UH-60M. Senate adds \$6.0 million for specified units.
CH-47 Upgrades	—	516.0	—	—	516.0	—	—	474.9	—	House rescinds \$39.1 million of FY2003 funds. Senate cuts \$41.1 million from unexpended balances and support costs.
AH-64 Mods	—	58.9	—	—	64.9	—	—	64.1	—	House adds \$15.5 million for blade/kit. Senate adds \$5.2 million for other upgrades.
AH-64D Apache Longbow	—	776.7	—	—	781.0	—	—	766.7	—	House adds \$4.3 million for radar upgrades earmarked for 2

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	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
										South Carolina National Guard AH-64Ds. Senate cuts \$10.0 million from support costs.
Bradley Base Sustainment	—	113.3	—	—	372.1	—	—	175.2	—	House adds \$258.8 million for Bradley M3A2 Operation Desert Storm ‘‘D+’’ upgrades. Senate adds \$61.9 million for ODS upgrades for National Guard.
M1 Abrams Mods/Upgrades	—	361.6	—	—	376.6	—	—	291.6	—	House adds \$155 million for M1A2 to M1A2 SEP upgrades (vs \$424 million in House authorization), cuts \$108 million from new engine program due to delays and \$32 million from other upgrades — net add \$15 million. Senate cuts \$75 million from new engine program, adds \$3 million for X1100-3B engine and \$2 million for diagnostics.
Stryker Interim Armored Vehicle	301	955.0	61.4	—	990.0	61.4	301	955.0	61.4	House adds \$35 million for long lead items for 5th and 6th brigades. Senate adds \$35 million for long lead items.
HIMARS (Rocket Launcher)	24	124.2	87.4	—	124.2	87.4	24	124.2	87.4	Note: C-130 air transportable version of MLRS.
Hellfire Missiles	—	33.1	—	—	33.1	—	—	25.1	—	No add in House, which follows House authorization. Senate cuts \$8 million from ‘‘CAP kits.’’
Javelin (Anti-Tank Missile)	901	140.7	—	—	140.7	—	901	140.7	—	—
Future Combat System	—	—	1,701.3	—	—	1,701.3	—	—	1,701.3	House directs more detailed breakdown of projects in justification material.
ATACMS Penetrator	—	—	55.1	—	—	2.0	—	—	55.1	House and Senate cut all funds for ATACMS penetrator. House adds \$2 million and Senate adds \$4 million for Viper Strike Munition.
Logistic/Theater Support Vessel	—	—	65.7	—	—	65.7	—	—	73.2	House does not follow House authorization add. Senate adds \$7.5 million for Theater Support Vessel development, following Senate authorization.

Sources: H.Rept. 108-187; S.Rept. 108-87.

Note: Figures reflect committee-reported versions of the bills and not changes made in subsequent floor action. Note: Future Combat System funding includes PE 0604645A - Armored Systems Modernization (ASM)-Eng. Dev. only.

Navy Programs.⁷³ 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 9A shows action on major Navy programs in the House and Senate defense authorization bills, and Table 9B shows House action in the committee-reported version of the defense appropriations bill. In action on key issues:

- ! Carrier replacement program: A major budget decision in the FY2004-FY2009 defense plan was to accelerate the transition to the next generation of carriers by incorporating more advanced technology into the next carrier to be fully funded in FY2007 or

⁷³ This section was written by Ronald O'Rourke.

FY2008. In all, the new carrier is projected to cost almost \$12 billion for development and production, of which about \$5 billion is for R&D. All of the congressional defense committees supported the Administration's revised carrier development program.

- ! Virginia-Class Attack Submarines: The House Appropriations Committee denied funds requested to sign a multi-year procurement (MYP) contract for new submarines, saying (1) that the schedule for delivery of the first submarine remains too uncertain and (2) that the requirement to buy two submarines each year in FY2007 and FY2008 may be unaffordable given the \$2.6 billion price of each boat. The Senate Appropriations Committee approved multi-year procurement of Virginia-Class submarines, but only for 5 boats over the FY2004-FY2009 planning period rather than the 7 boats that the Navy had requested. Subsequently, on August 14, the Navy announced an agreement with contractors on a multi-year procurement deal for 7 boats, but with an option to reduce procurement to 5 or 6 boats with some increase in costs per ship.
- ! Attack Submarine Refueling Overhaul: The Senate Armed Services Committee added \$248 million to refuel one Los Angeles-class attack submarine; the Navy did not request funding for any overhauls. The Senate Appropriations Committee added \$450 million for two refueling overhauls. Neither House defense committee added any funds.
- ! Littoral Combat Ship: All of the defense committees expressed some concern about the status of the Littoral Combat Ship (LCS) development program, though none eliminated funding. The Senate Armed Services Committee issued the most critical report language, though it also added \$35 million for more experimentation to determine the utility of the concept. The committee said (1) a Navy report on the program that Congress required last year did not adequately review alternatives or establish priorities among Navy combat requirements, (2) that Navy cost estimates did not include firm figures on the various modules that would be installed in the common sea frame, and (3) that costs of the program could compete with higher priority Navy shipbuilding in a constrained budget environment in the future. The House Armed Services Committee added \$35 million for module design, while the House Appropriations Committee added \$25 million for module design but cut \$10 million from the overall program. The Senate Appropriations Committee added funds for module design.
- ! LPD-17 Class Amphibious Ship: The House Appropriations Committee added \$175 million for advance procurement for the next ship of the class, the LPD-23, and told the Navy to provide full funding for the ship in FY2005, as had been planned, rather than in FY2006, as the Navy projected this year. The Senate Appropriations Committee added \$75 million for the LPD-23.

Table 9A. House and Senate Action on Major Navy Acquisition Programs: Authorization
(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	339.2	—
Carrier Refueling Overhauls	—	367.8	—		367.8	—	—	367.8	—	—
Virginia Class Submarine	1	2,528.1	112.4	1	2,528.1	112.4	1	2,528.1	138.6	House adds \$10.0 million in R&D for multi-mission module. Senate adds \$26.2 million in R&D for that and other specified equipment.
Cruiser Conversion Program	1	194.4	—	1	194.4	—	1	194.4	—	—
Missile Submarine Conversion	2	1,167.3	—	2	1,167.3	—	2	1,167.3	—	—
Submarine Refueling Overhauls	—	164.4	—		164.4	—	1	412.4	—	Senate adds \$248 million for one overhaul 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 million in R&D for S-band radar and \$10 million for open Aegis architecture. Senate adds \$21 million 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 million for knowledge projection for maintenance.
Littoral Combat Ship	—	—	158.1	—	—	—	—	—	188.1	Senate adds \$35 million for experimentation to determine the value of the concept.
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.

Note: Figures reflect committee-reported versions of the bills and not changes made in subsequent floor action.

Table 9B. House and Senate Action on Major Navy Acquisition Programs: Appropriations

(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	339.2	—
Carrier Refueling Overhauls	—	367.8	—	—	367.8	—	—	232.8	—	Senate cuts \$135 million as premature request.
Virginia Class Submarine	1	2,528.1	112.4	1	2,123.2	158.9	1	2,339.1	141.6	House cuts \$390.0 million in proc. for Multi-Year Procurement (MYP), adds back \$115.0 million for MYP savings, cuts \$129.9 million for advance proc. for FY2008 boats, and adds \$46.5 million in R&D for specific equipment and for overall program. Senate cuts \$130.0 million in proc. for MYP, approving MYP for 5 rather than 7 boats, cuts \$59.0 million in advance proc. due to inadequate Navy justification of request, and adds \$29.2 million in R&D for specified equipment.
Cruiser Conversion Program	1	194.4	—	1	194.4	—	—	—	—	Senate eliminates funding.
Missile Submarine Conversion	2	1,167.3	—	2	1,167.3	—	2	1,167.3	—	—
Submarine Refueling Overhauls	—	164.4	—	—	164.4	—	2	470.4	—	Senate adds \$450.0 million for 2 attack submarine overhauls, cuts \$144.0 million from advance procurement.
DDG-51 Destroyer	3	3,198.3	205.7	3	3,198.3	205.7	3	3,218.3	205.7	House does not follow House authorization add. Senate adds \$20.0 million for a pricing adjustment.
LPD-17 Amphibious Transport	1	1,192.0	8.0	1	1,367.0	8.0	1	1,192.0	8.0	House adds \$175 million to restore FY2005 date for full funding. Senate adds \$75 million in advance procurement.
LHD-8 Amphibious Assault Ship	—	355.0	—	—	355.0	—	—	591.3	—	Senate adds \$236.3 million for FY2005 incremental funding for LHD-8.
Prior Year Shipbuilding Costs	—	635.5	—	—	899.5	—	—	635.5	—	House adds \$264 million to accelerate FY2005 payments.
DD (X) Destroyer	—	—	1,038.0	—	—	928.0	—	—	1,038.0	House cuts \$110 million of which \$100 million is for ship design for lack of definitive requirements and slow release of prior year funds.
Littoral Combat Ship	—	—	158.1	—	—	168.1	—	—	158.1	House adds \$25 million for module design and cuts \$15 million due to lack of final design. Senate adds no funds,

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	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
										but directs \$76.0 million be used for module design.
T-AKE Auxiliary Cargo Ship	2	722.3	—	2	722.3	—	—	—	—	Senate eliminates funds due to program delays. Note: In National Defense Sealift Fund, not in Navy Procurement.

Source: H.Rept. 108-187, S.Rept. 108-87.

Note: Figures reflect reported bills only, not subsequent floor action.

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 Congress is continuing to review whether to approve 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 desire to expand it. The Air Force sees the F/A-22 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 approved only 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, plus aircraft in repair and transit, 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 Congress to lift.

Another issue that remains contentious is whether to permit the Air Force to lease commercially produced aircraft for use as tankers. In the FY2002 defense appropriations act, Congress approved a proposal to allow the Air Force to begin negotiations with Boeing to lease 100 767 aircraft to be converted to operate as air-to-air refueling tankers. This measure was controversial in part 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. After much internal debate within the Administration, on May 23, the Defense Department announced that it had approved an agreement under which the Air Force will lease 100 767s through 2017. Delivery will begin in 2006 and will be completed by 2011, and the cost through 2017 will total about \$13 billion in constant FY2002 dollars. Purchasing the aircraft would cost an additional \$4 billion.

Congressional Action. Table 10A shows action on selected major weapons programs in the House and Senate versions of the defense authorization bill. Table 10B shows changes made in the House Appropriations Committee markup of the defense appropriations bill. In action on key issues:

- ! **F-22 Fighter:** 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 dramatic a way. The Senate bill reduces procurement from the 22 aircraft requested to 20 in order to allow the Air Force to adjust planned production and delivery dates. None of the other defense committees, however, made cuts in the number of aircraft.

- ! **Boeing 767 Tanker Leases:** On May 23, the Defense Department announced approval of a proposal to lease 100 Boeing 767 aircraft equipped as tankers to replace existing KC-135 tankers in the Air Force, as approved by Congress in Section 8159 of the FY2002 defense appropriations act (P.L. 107-117). On July 14, the Air Force submitted a report to Congress on the lease as required by Section 8159 and subsequently requested approval of the four congressional defense committees (Armed Services and Appropriations in each chamber) to reprogram funds to cover initial costs of the lease. Three of the four committees approved the lease reprogramming, but the Senate Armed Services Committee has not, pending hearings on the proposal.⁷⁴

- ! **Next Generation Bomber Development:** The House authorizers and appropriators both added \$100 million in a new R&D line item to begin development of a new bomber. The Senate defense committees did not provide funds.

⁷⁴ For a detailed CRS review of the proposed leasing agreement, see Christopher Bolkcom, Coordinator, *The Air Force KC-767 Tanker Lease Proposal: Key Issues For Congress*, CRS Report RL32056, September 2, 2003. The Congressional Budget Office and the General Accounting Office have also released studies of the issue.

Table 10A. House and Senate Action on Major Aircraft Programs: Authorization
(amounts in millions of dollars)

	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
Air Force Programs										
F-22	22	4,225.4	936.5	22	4,064.4	936.5	20	4,008.4	936.5	House cuts \$161 million Senate cuts 2 aircraft and \$217 million
F-35 Joint Strike Fighter	—	—	2,194.1	—	—	2,194.1	—	—	2,194.1	—
F-16C/D Mods./Post Production	—	314.5	87.5	—	328.7	107.5	—	372.7	87.5	House adds \$14.2 million in proc. and \$20 million in R&D for upgrades. Senate adds \$48 million in proc. for engines and \$10 million for upgrades.
F-15 Mods./Post Production	—	204.9	112.1	—	244.9	128.6	—	241.4	128.6	House adds \$40 million in proc. and \$16.5 million in R&D for upgrades. Senate adds \$36.5 million in proc. and \$16.5 million 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 adds \$182 million for 1 aircraft. House and Senate cut \$10 million in proc., add \$6.3 million for mods.
C-130/C130J Airlift Aircraft/Mods.	5	660.0	164.2	5	666.1	164.2	5	672.9	164.2	House adds \$6.1 million for radar upgrades. Senate adds \$6.1 for radar and \$6.8 million for satellite comm.
Next Generation Bomber	—	—	—	—	—	100.0	—	—	—	House adds \$100 million for new R&D program.
B1-B Bomber Mods.	—	100.1	88.7	—	120.4	88.7	—	100.1	88.7	House adds \$20.3 million for mods.
B-2 Stealth Bomber Mods.	—	114.9	176.8	—	166.7	185.6	—	139.6	152.1	House and Senate transfer \$24.7 million from R&D to proc. House adds \$27.1 million in proc. for upgrades, and \$33.5 million in R&D.
Navy/Marine Corps Programs										
F/A-18	42	3,031.1	179.0	42	3,056.1	179.0	42	3,031.1	179.0	House adds \$25 million for armament equip.
V-22*	9	875.2	543.3	9	875.2	543.3	9	875.2	543.3	—

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	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
F-35 Joint Strike Fighter	—	—	2,171.7	—	—	2,171.7		—	2,227.7	Senate adds \$56 million for interchangeable engine devel.
UH-1/AH-1Z Helicopter	9	320.1	90.6	9	320.1	90.6	9	320.1	90.6	—
MH-60S Helicopter	13	431.5	59.1	13	431.5	59.1	13	431.5	59.1	—
MH-60R Helicopter	6	398.5	77.1	6	398.5	77.1	6	402.0	77.1	Senate adds \$3.5 million in proc. for low freq. sonar.
E-2C Early Warning Aircft.	2	271.6	361.4	2	271.6	361.4	2	271.6	361.4	—
UC-35 Support Aircraft	2	15.6	—	2	15.6	—	4	31.2	—	Senate adds \$15.6 million for 2 additional aircraft.
T-45TS Trainer	15	339.2	—	15	339.2	—	15	339.2	—	—
JPATS Trainer	—	2.4	—	—	17.1	—	5	37.4	—	House adds \$14.7 million for aircraft and ground systems. Senate adds \$35.0 million for 5 aircraft.
KC-130J Airlift Aircraft	—	79.2	—	—	79.2	—	—	79.2	—	—
EA-6 Series Mods.	—	207.1	36.6	—	339.5	36.6	—	207.1	36.6	House adds \$132.4 million for specified upgrades.
AV-8 Series Mods.	—	20.9	10.5	—	20.9	17.5	—	70.9	10.5	Senate adds \$50.0 million for specified upgrades. House and Senate add \$7.0 million in R&D for engine devel.
F-18 Series Mods.	—	335.9	—	—	335.9	—	—	335.9	—	—
P-3 Series Mods.	—	95.0	7.3	—	104.0	24.8	—	134.4	19.6	House adds \$9.0 million in proc. for comm. upgrades, Senate adds \$39.4 million for Anti-Surface Warfare Improvement Program (AIP). House adds \$17.5 million and Senate adds \$12.3 million in R&D for AIP.
T-45 Series Mods.	—	22.3	3.0	—	41.4	3.0	—	22.3	3.0	House adds \$19.1 million for conversions to Model C.

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

Note: Figures reflect committee-reported versions of the bills and not changes made in subsequent floor action.

Table 10B. House and Senate Action on Major Aircraft Programs: Appropriations
(amounts in millions of dollars)

	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
Air Force Programs										
F-22	22	4,225.4	936.5	22	4,225.4	936.5	22	4,069.4	936.5	House cuts \$161 million from proc., following House authorization. Senate cuts \$161 million for efficiencies, adds \$5 million for producibility.
F-35 Joint Strike Fighter	—	—	2,194.1	—	—	2,128.1	—	—	2,166.1	House cuts \$66 million in overall system design. Senate cuts \$28.0 million for inflation adjustment.
F-16C/D Mods./Post Production	—	314.5	87.5	—	294.8	87.5	—	338.5	97.5	House cuts \$25.5 million in proc. for helmet display, adds \$5.8 million for other upgrades. Senate adds \$20.0 million for engine and \$4.0 million for other upgrades in proc. and adds \$10 million for radar upgrades in R&D.
F-15 Mods./Post Production	—	204.9	112.1	—	204.9	101.1	—	204.9	112.1	House cuts \$26.9 million in proc. for display processor, adds \$29.5 million for other upgrades, cuts \$11 million from R&D. Senate adds \$21.5 million in proc. for upgrades, cuts \$17.0 million for program delays and adds \$16.5 million for radar upgrade in R&D.
JPATS Trainer	52	280.6	—	52	280.6	—	52	280.6	—	—
C-17 Globemaster	11	3,502.1	184.1	11	3,343.1	184.1	11	3,552.1	184.1	House cuts \$5 million in proc. for slow execution, cuts \$10 million from multi-year proc., adds \$6.3 million for mods., cuts \$50 million from interim contractor support. Senate adds \$50 million in proc. for interim contractor support.
C-130/C130J Airlift Aircraft/Mods.	5	660.0	13.6	5	656.8	13.6	5	682.9	19.7	House cuts \$3.2 million in proc. from upgrades. Senate adds \$6.1 million in R&D for C-130 radar upgrades for National Guard. Senate adds \$6.8 million for SATCOM upgrades, \$3.1 million for radar upgrades for Nevada National Guard, and \$13 million

	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
										for infrared countermeasures for Alaska National Guard.
Next Generation Bomber	—	—	—	—	—	100.0	—	—	—	House adds \$100 million, following House authorization.
B1-B Bomber Mods.	—	100.1	88.7	—	105.4	88.7	—	100.1	88.7	House adds \$20.3 million for mods. as in House authorization, cuts \$15 million for Wind Corrected Munitions Dispenser (WCMD) kits. Senate cuts \$15 million for WCMD kits.
B-2 Stealth Bomber Mods.	—	114.9	176.8	—	166.7	185.6	—	134.6	152.1	House and Senate transfer \$24.7 million from R&D to in proc. House adds \$27.1 million in proc. for upgrades, and \$33.5 million in R&D, as in House auth. Senate cuts \$5.0 million in proc. for interim contractor support.
Navy/Marine Corps Programs										
F/A-18	42	3,031.1	179.0	42	3,031.1	179.0	42	3,031.1	179.0	House does not follow House authorization add of \$25 million. Senate adds \$29.0 million for aircraft equipment.
V-22*	9	875.2	543.3	9	875.2	543.3	9	875.2	543.3	Senate transfers \$43.0 million from R&D Navy to R&D for Special Operations Command.
F-35 Joint Strike Fighter	—	—	2,171.7	—	—	2,105.7	—	—	2,216.5	House cuts \$66 million in overall system design. Senate cuts \$28.0 million for inflation, adds \$72.8 million for interchangeable engine design.
UH-1/AH-1Z Helicopter	9	320.1	90.6	9	320.1	90.6	9	320.1	92.6	House adds \$5.0 million in proc. for AH-1W night targeting upgrade. Senate adds \$10.0 million in proc. for UH-1 upgrades and \$2.0 million in R&D for diagnostics.
MH-60S Helicopter	13	431.5	59.1	13	431.5	59.1	13	411.5	59.1	Senate cuts \$20.0 million in support costs.
MH-60R Helicopter	6	398.5	77.1	6	398.5	77.1	6	388.5	77.1	Senate cuts \$10.0 million in support costs.
E-2C Early Warning	2	271.6	361.4	2	271.6	356.4	2	271.6	361.4	House cuts \$5.0 million in R&D from management

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	Request			House Action			Senate Action			Comments
	Procurement		R&D	Procurement		R&D	Procurement		R&D	
	#	\$	\$	#	\$	\$	#	\$	\$	
Aircraft										costs. Senate adds \$5.0 million in R&D for Network Centric Warfare test bed.
UC-35 Support Aircraft	2	15.6	—	2	15.6	—	4	31.2	—	Senate adds \$15.6 million for 2 aircraft, as in auth.
T-45TS Trainer	15	339.2	—	15	339.2	—	15	339.2	—	—
JPATS Trainer	—	2.4	—	—	24.1	—	—	20.4	—	House adds \$21.7 million for aircraft and ground equipment. Senate adds \$18 million for aircraft.
KC-130J Airlift Aircraft	—	79.2	—	—	79.2	—	—	79.2	—	—
EA-6 Series Mods.	—	207.1	36.6	—	284.1	45.6	—	207.1	49.1	House adds \$77.0 million in proc. for specified upgrades and \$9 million for R&D. Senate adds \$12.5 million in R&D for upgrades.
AV-8 Series Mods.	—	20.9	10.5	—	57.9	8.0	—	57.9	10.5	House and Senate add \$37 million in proc. for targeting pods. House cuts \$2.5 million in R&D to reduce concurrency.
F-18 Series Mods.	—	335.9	—	—	341.9	—	—	370.9	—	House adds \$6.0 million for specified upgrades. Senate adds \$35 million for ongoing upgrade program.
P-3 Series Mods.	—	95.0	7.3	—	95.0	11.3	—	128.0	19.6	House adds \$30.0 million in proc. for upgrades, of which \$6 million is for Anti-Surface Warfare Improvement Program (AIP). House adds \$4 million in R&D for AIP. Senate adds \$26.0 million in proc. for AIP and \$7.0 million for other upgrades, and adds \$12.3 million in R&D for phased capability upgrade.
T-45 Series Mods.	—	22.3	3.0	—	22.3	3.0	—	22.3	3.0	House does not follow House authorization add.

Source: H.Rept. 108-187.

Notes: Figures reflect committee markup of the House bill only. V-22 total includes Air Force and Special Operations Command CV-22 R&D funding.

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.

Table 11 shows congressional action on funding for missile defense programs. Congress did not make major changes in the requested program. A few issues stand out, however.

- ! The Administration requested funding for Patriot PAC-3 and Medium Extended-Range Air Defense System (MEADS) R&D in the Army budget rather than in the Missile Defense Agency (MDA) budget. The Senate authorization and appropriations bills, however, transfer funding for PAC-3 to the MDA, and the House authorization transfers funding for MEADS.
- ! The House authorization and appropriations bills made a number of cuts in missile defense R&D programs and added about equal amounts to Patriot PAC-3 missile procurement. The Administration requested funds for 108 missiles. The House authorization adds \$126 million for 30 additional missiles, and the House appropriations bill adds \$90 million.

Table 11: House and Senate Action on Missile Defense Funding
(budget authority in thousands of dollars)

Program Element # and Title/Project Title	Request	House Auth.	Senate Auth.	House Approp.	Senate Approp.	Comments
0603175C Ballistic Missile Defense Technology						
Advanced Technology Development	189,056	189,056	189,056	189,056	189,056	—
Laser Technology	47,130	47,130	47,130	47,130	47,130	—
Kinetic Energy Anti-Satellite	—	—	—	7,500	7,500	House and Senate approp. add \$7.5 million
Extended Footprint Program	—	—	—	1,400	—	House approp. adds \$1.4 million
Advanced Metallized Gelled Propellants	—	—	—	—	3,800	Senate approp. add.
Massively Parallel Optical Interconnects for Microsatellites	—	—	—	—	4,500	Senate approp. add.
Chemical Vapor Deposition of Organic Materials	—	—	—	—	3,000	Senate approp. add.
COLD	—	—	—	—	3,000	Senate approp. add.
Improved Materials for Optical Memories	—	—	—	—	4,200	Senate approp. add.
Silicon Carbide Wide Band Gap Research	—	—	—	—	5,500	Senate approp. add.
Wide Bandgap Optoelectronics	—	—	—	—	8,000	Senate approp. add.
Multiple Target Tracking Optical Sensor Array Technology [MOST]	—	—	—	—	1,000	Senate approp. add.
AEOS MWIR Adaptive Optic	—	—	—	—	2,000	Senate approp. add.
Advanced RF Technology Development	—	—	—	—	4,000	Senate approp. add.
SiC Mirrors	—	—	—	—	2,000	Senate approp. add.
Porous Silicon	—	—	—	—	3,000	Senate approp. add.
Program Operations	4,634	4,634	4,634	4,634	4,634	—
Program Reduction	—	-55,800	—	-55,800	—	House auth. and approp. cut \$55.8 million from overall PE.
Program Element Total	240,820	185,020	240,820	193,920	292,320	—
0603879C Advanced Concepts, Evaluations And Systems /a/						
Program Element Total	151,696	151,696	151,696	151,696	151,696	—

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Program Element # and Title/Project Title	Request	House Auth.	Senate Auth.	House Approp.	Senate Approp.	Comments
0603881C Ballistic Missile Defense Terminal Defense Segment						
Theater High Altitude Area Defense (THAAD)	730,571	767,571	730,571	730,571	730,571	—
Israeli Arrow Program	64,803	64,803	74,803	64,803	154,803	Senate approp. adds \$90 million.
Medium Extended Air Defense (MEADS) /b/	—	276,259	—	—	—	House auth. transfers MEADS from Army. House approp. does not follow auth.
Program Operations	15,066	15,066	15,066	15,066	15,066	—
Program Element Total	810,440	1,123,699	820,440	810,440	900,440	—
0603882C Ballistic Missile Defense Midcourse Defense Segment						
Ground-Based Midcourse Defense (GMD) Test Bed	2,810,799	2,810,799	2,910,799	2,810,799	3,010,799	Senate auth. adds \$100.0 million. Senate approp. adds \$200 million for additional interceptors.
AEGIS Ballistic Missile Defense	672,165	679,165	660,465	672,165	672,165	House auth. adds \$7.0 million Senate auth. cuts \$11.7 million from program management.
Sea-Based X-Band Radar	—	22,900	—	22,900	—	House auth. and approp. add \$22.9 million
Common RF Scene Generation Capability (non-add)	—	[4,800]	—	—	—	House auth. earmarks \$4.8 million
Japanese Cooperative Program	54,000	54,000	54,000	54,000	54,000	—
Range Command and Control Display Upgrade	—	—	—	—	3,000	Senate approp. add.
Range Data Monitor/Analysis Tool	—	—	—	—	3,000	Senate approp. add.
SHOTS	—	—	—	—	5,000	Senate approp. add.
PMRF Upgrades	—	—	—	—	20,000	Senate approp. add.
Kauai Test Facility	—	—	—	—	[4,000]	Senate approp. earmark of appropriated funds.
Program Operations	76,302	76,302	76,302	69,302	76,302	House approp. cuts \$7.0 million
Program Element Total	3,613,266	3,643,166	3,701,566	3,629,166	3,844,266	—
0603883C Ballistic Missile Defense Boost Defense Segment						
Airborne Laser (ABL)	610,035	610,035	610,035	610,035	610,035	—
Program Operations	16,229	16,229	16,229	14,229	16,229	House approp. cuts \$2.0 million
Program Element Total	626,264	626,264	626,264	624,264	626,264	—

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Program Element # and Title/Project Title	Request	House Auth.	Senate Auth.	House Approp.	Senate Approp.	Comments
0603884C Ballistic Missile Defense Sensors						
Space Tracking and Surveillance System (STSS)	300,195	300,195	284,695	300,195	284,695	Senate auth. cuts \$15.5 from program management. Senate approp. cuts \$15.5 million by consolidating projects.
Russian-American Observation Satellite Program (RAMOS)	29,623	29,623	29,623	29,623	29,623	—
Ballistic Missile Defense Radars	101,000	101,000	101,000	101,000	101,000	—
Airborne Infrared System (AIRS)	—	—	10,000	—	15,000	Senate auth. adds \$10.0 million. Senate approp. adds \$15.0 million.
X-Band Radar	—	—	5,000	—	—	Senate auth. adds \$5.0 million
E-2 Infrared Search and Track (IRST)	—	—	3,750	—	—	Senate auth. adds \$3.75 million
Program Operations	7,424	7,424	7,424	7,424	7,424	—
Program Element Total	438,242	438,242	441,492	438,242	437,742	—
0603886C Ballistic Missile Defense System Interceptor						
Ballistic Missile Defense Interceptors	295,542	295,542	225,542	295,542	85,542	Senate auth. cuts \$70.0 million. Senate approp. cuts \$210.0 million.
Program Operations	5,510	5,510	5,510	5,510	5,510	—
Program Reduction	—	-150,000	—	-150,000	—	House auth. and approp. cut \$150 million from PE.
Program Element Total	301,052	151,052	231,052	151,052	91,052	—
0603888C Ballistic Missile Defense Test & Targets						
Test & Evaluation	355,857	355,857	355,857	355,857	355,857	—
Targets & Countermeasures	249,089	249,089	249,089	249,089	249,089	—
Proton-Neutron Pulse Research at Indiana University	—	—	—	2,100	—	House approp. adds \$2.1 million
Program Operations	6,576	6,576	6,576	6,576	6,576	—
Program Element Total	611,522	611,522	611,522	613,622	611,522	—
0603889C Ballistic Missile Defense Products						
Command and Control, Battle Management and Communications (C2BMC)	168,455	168,455	168,455	168,455	168,455	—
Hercules	56,452	56,452	56,452	56,452	56,452	—
Joint Warfighter Support Block 2004	24,139	24,139	24,139	24,139	24,139	—

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Program Element # and Title/Project Title	Request	House Auth.	Senate Auth.	House Approp.	Senate Approp.	Comments
Joint National Integration Center (JNIC)	79,122	79,122	79,122	79,122	79,122	—
Program Operations	15,476	15,476	15,476	15,476	15,476	—
Program Reduction	—	-31,100	—	-31,100	-40,000	House auth. and approp. cut \$31.1 million from PE. Senate approp. cuts \$40.0 million from engineering support.
Program Element Total	343,644	312,544	343,644	312,544	303,644	—
0603890C Ballistic Missile Defense Systems Core						
System Engineering & Integration	208,048	208,048	208,048	208,048	208,048	—
Command and Control, Battle Management and Communications Core	15,556	15,556	15,556	15,556	15,556	—
Intelligence	19,362	19,362	19,362	19,362	19,362	—
Joint Warfighter Support	245	245	245	245	245	—
Producibility & Manufacturing Technology	30,769	30,769	30,769	30,769	30,769	—
Countermeasures/Counter-Countermeasures (CM/CCM)	48,000	48,000	48,000	48,000	48,000	—
Hercules Core	24,079	24,079	24,079	24,079	24,079	—
Modeling and Simulation	98,173	98,173	98,173	98,173	98,173	—
BMD Information Management Systems	31,364	31,364	31,364	31,364	31,364	—
Program Reduction	—	-45,000	—	-45,000	-60,000	House auth. and approp. cut \$45.0 million from PE. Senate approp. cuts \$60.0 million from engineering and other support.
Wide Bandwidth Technology	—	[9,500]	—	5,000	—	House auth. earmarks \$9.5 million House approp. adds \$5.0 million
Ballistic Missile Launch Canister & Manufacturing Improvements (non-add)	—	[5,000]	—	—	—	House auth. earmarks \$5.0 million
Corporate Lethality Testing	—	—	-5,000	—	—	Senate auth. cuts \$5.0 million
Advanced Research Center	—	—	2,000	0	10,534	Senate auth. adds \$2.0 million. Senate approp. adds \$10.5 million.
Electro-Optic Components for Missile Defense	—	—	—	5,000	—	House approp. adds \$5.0 million
Pump Arrays for High Energy Lasers	—	—	—	2,500	—	House approp. adds \$2.5 million
Carbon Foam Program	—	—	—	—	2,500	Senate approp. add.

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Program Element # and Title/Project Title	Request	House Auth.	Senate Auth.	House Approp.	Senate Approp.	Comments
Program Operations	8,400	8,400	8,400	8,400	8,400	—
Program Element Total	483,996	438,996	480,996	451,496	437,030	—
0604865C Patriot PAC-3 Theater Missile Defense Acquisition						
Transfer from Army MEADS	—	—	241,325	—	—	Senate auth. transfers \$241.3 million from Army.
Transfer from Army PAC-3 TMD Acquisition	—	—	174,475	—	—	Senate auth. transfers \$174.5 million from Army.
Program Element Total	—	—	415,800	—	395,800	Senate approp. transfers PAC-3 and MEADS from Army and directs consolidating the programs.
0901585C Pentagon Reservation						
Program Element Total	14,481	14,481	14,481	14,481	14,481	—
0901598C Management Headquarters - MDA						
Program Element Total	93,441	93,441	93,441	93,441	93,441	—
Total RDT&E Missile Defense Agency	7,728,864	7,790,123	8,173,214	7,484,364	8,199,698	—
Other Agency Missile Defense R&D Programs						
Army						
0604865A Patriot PAC-3 Theater Missile Defense Acquisition	174,475	253,475	—	174,475	—	Senate auth. and approp. transfer all funding to MDA.
0203801A Missile/Air Defense Product Improvement Program	44,468	54,468	48,468	44,468	46,968	Senate auth. adds \$4.0 million for PAC-3 antenna mast group. Senate approp. adds \$1.0 million for mast group and \$1.5 million for radome.
0603869A Medium Extended Air Defense System (MEADS) Concepts /b/	276,259	—	—	276,259	—	House and Senate auth. and Senate approp. transfer all funding to MDA. Senate auth. cuts \$39.9 million.
Joint Staff						
0605126J Joint Theater Air and Missile Defense Organization	87,250	87,250	87,250	87,250	87,250	—
Total RDT&E Other Agencies	582,452	395,193	135,718	582,452	134,218	—

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Program Element # and Title/Project Title	Request	House Auth.	Senate Auth.	House Approp.	Senate Approp.	Comments
Missile Defense Procurement						
Army						
Patriot PAC-3 (Patriot System Summary)	561,555	687,555	561,555	651,555	561,555	House Auth. adds \$126.0 million for 30 missiles (request for 108). House approp. adds \$90.0 million.
Patriot Modifications	212,575	212,575	223,575	182,075	212,575	Senate auth. adds \$11.0 million for PAC-3 improvements. House approp. cuts \$30.5 million for Patriot-MEADS consolidation savings.
Total Missile Defense Procurement	774,130	900,130	785,130	833,630	774,130	—
Total RDT&E and Procurement /b/	9,085,446	9,085,446	9,094,062	8,900,446	9,108,046	—

Sources: H.Rept. 108-106; S.Rept. 108-46; H.Rept. 108-187.

Notes:

/a/ Project level detail classified.

/b/ Does not include Military Construction funding of \$2.6 million.

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.⁷⁵ The debate continued this year in response to an Administration request that Congress lift a ban on the conduct of R&D into low-yield nuclear weapons that has been in effect since 1993. Referred to the Spratt-Furse amendment, the provision was enacted as Section 3136 of the FY1993 defense authorization act (P.L. 103-160). 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.

As part of its *Nuclear Posture Review* issued in December 2001, the Administration announced that the United States would investigate the use of modified nuclear weapons to destroy deeply-buried and hardened targets in rogue nations such as North Korea and would pursue concept development studies for new low-yield nuclear weapons for that and some other missions.⁷⁶ 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.⁷⁷ To carry this out, DOD 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 weapons in the current inventory to be more able to penetrate hardened sites.

Congressional Action: Modify Restrictions on R&D for Low-Yield Nuclear Weapons. Both houses agreed to modify current restrictions on R&D on low-yield nuclear weapons (less than five kilotons), though the chambers adopted different approaches, 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.”⁷⁸ The Senate version

⁷⁵ 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.

⁷⁶ CRS Report RS21133, *The Nuclear Posture Review: Overview and Emerging Issues* by Amy F. Woolf, p. 5.

⁷⁷ General Counsel, DOD, William J. Haynes III, *Letter to Speaker of the House Hastert*, March 3, 2003, Subtitle C, Sec. 221; see [<http://defenselink.mil/dodgc/lrs/legispro.html>].

⁷⁸ Section 3111 in H.R. 1588 as engrossed and passed by the House, and H.Rept. 108-106, (continued...)

lifts the ban but states that the Department of Energy may not begin engineering development or any later phase of development or production of new weapons unless “specifically authorized” by Congress.⁷⁹ 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.⁸⁰

The Senate language was added on the floor in an amendment offered by Senator Warner and passed by 59 to 38 (S.Amdt. 752).⁸¹ Prior to that, the Senate debated but did not adopt an amendment offered by Senator Reed (S.Amdt. 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.⁸²

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.Amdt. 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.⁸³

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. 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 argued 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

⁷⁸ (...continued)
p. 434.

⁷⁹ Section 3131 in S. 1050 as reported, and S.Rept. 108-46, p. 447-p. 448.

⁸⁰ *Congressional Record*, May 21, 2003, p. S6805.

⁸¹ *Congressional Record*, May 20, 2003, p. S6692.

⁸² *Congressional Record*, May 20, 2003, p. S6690.

⁸³ *Congressional Record*, May 20, p. S6663-S6690, passim.

biological weapons.⁸⁴ 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.⁸⁵ 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.⁸⁶

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, Representative 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.Amdt. 4).⁸⁷

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 107th 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.

⁸⁴ *Congressional Record*, May 20, 2003, p. S6663 to p. S6690, passim.

⁸⁵ 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]; see also, Sidney Drell, James Goodby, Raymond Jeanlos, and Robert Peurifoy, "A Strategic Choice: New Bunker Busters Versus Nonproliferation," *Arms Control Today*, March 2003.

⁸⁶ Michael A. Levi, "The Case Against New Nuclear Weapons," *Issues in Science and Technology*, Spring 2003.

⁸⁷ *Congressional Record*, May 20, 2003, p. S6690, and *Congressional Record*, May 22, 2003, p. H4572.

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%.

The Senate version of the FY2004 DOD Authorization Act also includes several amendments with significant cost or policy implications: 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, and full concurrent receipt of both military retirement and disability payments, which is estimated to cost the government \$4.1 billion in FY2004 and \$56.5 billion over the next ten years.

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 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 11** below).⁸⁸ DOD opposed this provision last year suggesting

⁸⁸ 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.

that financing the benefit would hurt defense readiness by taking funds from other higher-priority programs.⁸⁹

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.⁹⁰ 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
- ! *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 12** 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.⁹¹

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

⁸⁹ 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.

⁹⁰ 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.

⁹¹ 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.

who had been mobilized once maintain private coverage and 80% of employers continue to pay their share of the premium.⁹²

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.

⁹² “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 12. Estimates of the Cost of Concurrent Receipt and TRICARE for Reservists
(in millions of current year dollars)

Type of Spending/Benefit	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004 - 2008	2004 - 2013
Discretionary Spending^a	1,569	2,226	2,969	3,323	3,558	8,819	1,641	1,748	1,864	1,968	6,372	14,151
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
Mandatory Spending^b	3,285	3,341	3,525	3,778	3,985	4,205	4,407	4,621	4,847	5,127	17,913	41,119
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
Total Government spending	4,854	5,567	6,494	7,101	7,543	13,024	6,048	6,369	6,711	7,095	24,285	NA

^a Discretionary spending is appropriated annually.

^b 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 key issue in Congress this year has been whether to impose 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.⁹³ 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.⁹⁴

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

⁹³ 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>].

⁹⁴ *Congressional Record*, May 20, page S644ff.

has resisted these measures. The Navy, in fact, wants to reduce 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.⁹⁵ 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: End-Strength. 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: Defense Personnel for Border Security. An amendment by Representative Goode passed on the floor would allow the Secretary of Homeland Security to request military personnel to assist in border patrols 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.

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.

⁹⁵ Testimony of Secretary of Defense Rumsfeld before Senate Armed Services Committee, FY2004 DOD Authorization Request, February 13, 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. Considered by the Senate, May 19-22, 2003. Approved by the Senate (98-1), May 22, 2003. Senate inserted the text of S. 1050, as amended, into H.R. 1588 by unanimous consent, June 4, 2003.

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. Laid before the Senate by unanimous consent, the Senate struck all after the enacting clause and substituted the text of S. 1050 and passed the bill by voice vote, June 4, 2003. Senate insisted on its amendments, asked for a conference, and appointed conferees, June 4, 2003. House agreed to a motion to instruct conferees, disagreed to the Senate amendments, agreed to a conference, and appointed conferees, July 16, 2003.

Defense Appropriations**Defense Appropriations.****H.R. 2658 (Lewis)**

A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes. Committee consideration and markup held on June 26, 2003. Reported July 2, 2003, H.Rept. 108-187. Considered on the House floor, agreed to by the House (399-19), and sent to the Senate, July 8, 2003. Laid before the Senate by unanimous consent, July 15, 2003. Considered by the Senate, July 16-17, 2003, and passed by the Senate (95-0), July 17, 2003. Senate insisted on its amendments, asked for a conference, and appointed conferees, July 21, 2003.

S. 1382 (Stevens)

A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes. Committee consideration and markup held on July 9, 2003. Reported (S.Rept. 108-87) July 10, 2003. Senate brought substituted the text of S. 1382 as reported into H.R. 2658 by unanimous consent, July 14, 2003.