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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.

NOTE: A Web version of this document with active links is available to congressional staff at: [http://www.crs.gov/products/appropriations/apppage.shtml].

Authorization and Appropriations for FY2004: Defense

Summary

With passage of the FY2004 DOD Authorization Act by the House on November 7 and by the Senate on November 12, 2003, Congress completed action on this year's defense authorization (H.R. 1588/H.Rept. 108-384). The President signed the bill on November 24, 2003 (P.L. 108-384). On September 30, just in time for the new fiscal year, the President signed H.R. 2658, the FY2004 DOD Appropriations Act (P.L. 108-87), completing action on FY2004 defense appropriations.

The recently enacted FY2004 DOD authorization bill provides a total of $401.3 billion for defense programs, including funds in the DOD and military construction appropriations as well as several other defense-related programs funded in other appropriations measures. The total authorized for these defense and defense-related programs that make up the national defense function is $1.5 billion above the Administration's request and $9.3 billion above the FY2003 enacted level.

The conference version of the FY2004 DOD authorization is the culmination of months of negotiation about several contentious issues: Buy American provisions, the Air Force's controversial tanker lease proposal, a new concurrent receipt benefit for military retirees, a new National Security Personnel System, a new health benefit for reservists, and special exemptions for DOD to certain environmental regulations. Substantial differences about these issues between the houses and with the Administration had stymied completion of the authorization bill.

In conference, Buy American restrictions mandating that DOD rely exclusively on U.S. suppliers for certain items were dropped in favor of provisions that require DOD to assess the U.S. industrial base and possibly provide incentives to certain U.S. producers. In the case of the Boeing 767 tanker aircraft, DOD accepted a Senate-proposed compromise allowing them to lease 20 and buy 80 rather than lease100 aircraft.

After the Administration dropped its veto threat, Congress passed a new concurrent receipt benefit that is expected to provide about 200,000 military retirees with both their military retirement and disability benefits, reversing a prohibition in effect for over 100 years. DOD also received new authority to design and implement its own civilian personnel system and new exemptions to certain environmental rules. The bill also provides access to DOD's TRICARE health care to unemployed, non-deployed reservists and maintains current higher levels of imminent danger pay and family separation allowance for eligible military personnel through December 2004.

The FY2004 DOD Appropriations Act provides appropriations totaling $368.7 billion for the defense programs it covers. That total is $3.5 billion below the Administration's request and $4.0 billion above last year's enacted level. The programmatic impact of the cut is cushioned, however, because the bill receives credit for $3.5 billion rescinded from funds provided in the $62.6 billion FY2003 supplemental appropriations bill that Congress approved in April 2003.

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Most Recent Developments

On November 7, 2003, the House passed the conference report on H.R. 1588, the FY2004 DOD authorization, by a vote of 362 to 40, after the conference report was filed early Thursday morning. The Senate passed the bill by 95 to 3 on November 12. On November 24, the President signed the bill (P.L. 108-136). Compromises were reached on the main issues that had held up the conference for several months: Buy American provisions, the Air Force lease of Boeing KC767 aircraft, a new National Security Personnel System, concurrent receipt, and TRICARE for non-deployed reservists.

The conference version (H.Rept. 108-283) of H.R. 2658, the FY2004 Department of Defense (DOD) appropriations bill, provided $368.7 billion in funding. It passed the House on September 23, 2003, and the Senate on the following day, in both cases quickly and with little debate. On September 30, 2003, the President signed the bill into law (P.L. 108-87).

The FY2004 DOD Authorization Act included several contentious issues, which were settled only after long negotiations. On domestic preference restrictions in the Buy American Act and the Berry Amendment, the DOD authorization added provisions to assess the U.S. defense industrial base and the extent of U.S. reliance on foreign suppliers but dropped proposals to require DOD to purchase certain items only from American suppliers. In the case of the tanker lease, DOD agreed to a proposal by Senator Warner to lease 20 and buy 80 Boeing KC767 tankers rather than lease 100 aircraft, a proposal less costly than the original lease but more costly than a straight multiyear buy. The fate of the deal remains uncertain in light of Boeing's recent firing of high-level officials for improprieties and an ongoing investigation by the DOD Inspector General.

Compromises were also brokered on other contentious issues on which the Administration had threatened a veto. The Administration agreed to a new benefit that provides concurrent receipt of military retirement and disability payments to all military retirees with disability ratings of 50% or higher as well as an expansion of those eligible under the "Purple Hearts Plus" program enacted last year that provides benefits to military retirees with combat or combat-related disabilities. The Administration also agreed to a 15-month pilot program to offer access to TRICARE to non-deployed reservists who are unemployed or do not qualify for health benefits offered by their employer.

H.R. 1588 also authorizes the Secretary of Defense to develop a new National Security Personnel System for DOD's civilian employees, gives DOD special exemptions to certain environmental statutes, and lifts the current ban on development of low-yield nuclear weapons.

Both the House and Senate versions of H.R. 1588, the authorization bill, provide $400.5 billion for national defense programs, about $1.5 billion 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.

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 and Senate versions. The total in the conference agreement is slightly below the amounts provided for defense by the budget committees under Section 302(b) allocations of the Congressional Budget Act and $3.1 billion below the request. This decrease freed up the same amount for other appropriations bills while staying within the cap on discretionary spending established by the FY2004 budget resolution (H.Con.Res. 95). Final funding for DOD could also be affected by a $1.8 billion rescission included in the conference version of the FY2004 Omnibus Appropriations bill (H.R. 2673) that was passed by the House on December 8 but is unlikely to be considered by the Senate until January 2004.

The final version of DOD's FY2004 appropriations cushioned the programmatic impact of the $3.5 billion cut to the request 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 appropriators to meet their FY2004 targets without reducing funding for FY2004 programs by $3.5 billion.

Major Issues in the FY2004 DOD Authorization Act

After a conference that spanned over five months, the conferees reached agreement and filed a report on November 7, 2003, on H.R. 1588, the FY2004 DOD Authorization Act (H.Rept. 108-354). The bill was passed by the House by a vote of 362 to 40 on that same day and by the Senate by a vote of 95 to 3 on November 12, the following week. The President signed the bill on November 24, 2003 (P.L. 108-136).

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 on 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 again by voice vote and appointing its conferees (see **Table 1A**).[1] 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 included 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).[2]

Table 1A. 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]	11/6/03 H.Rept. 108-354	11/7/03 (362-0)	11/12/03 (95-3)	11/24/03 P.L. 108-136

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.

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

[2] 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 (name redacted), (name redacted), (name redacted), and (name redacted). 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 (name redacted) and (name redacted).

The conference report reached compromises on seven major issues that held up the authorization bill for several months:

- Buy American restrictions proposed by the House and opposed by the Senate and the Administration;
- proposals to provide costly concurrent receipt of military retirement and Veterans Administration (VA) disability benefits;
- proposals to allow the Air Force to initiate acquisition of a $29 billion program to lease and buy 100 Boeing KC767 tanker airplanes;
- fashioning of the new National Security Personnel System requested by DOD;
- expanding access to DOD's TRICARE health system to non-deployed reservists;
- exempting DOD from certain environmental statutes; and
- changing current restrictions on research on low-yield nuclear weapons.

The compromises reached are described below. Details on other conference action, including RDT&E and weapon system funding, will be included in a later update.

Buy American Restrictions[3]

In its request, the Administration proposed a series of changes to long-standing domestic preference restrictions codified in the Buy American Act and the Berry Amendment in order to give DOD additional flexibility to buy from foreign sources. Since 1933, the federal government has been required in the Buy American Act to purchase from American producers unless the head of the agency finds that it is in the "public interest" to waive the restriction and purchase items from foreign sources.[4]

For specific types of items — food, clothing, tents, textiles, specialty metals and measuring tools — the Berry Amendment requires that DOD buy from U.S. sources unless the purchases are in support of combat operations outside the United States.[5] In the case of other items such as machine tools and ball bearings, DOD can buy from foreign sources if the foreign country is part of the U.S. national technology and industrial base (defined as the United States and Canada), if it is in the "national security interests of the United States," or if DOD would face unreasonable costs or

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[3] This section was prepared with the help of CRS analyst Daniel Else.

[4] Agencies may also waive the domestic sources preference because of unreasonable cost or use outside the United States; see CRS Report 97-765A, *The Buy American Act: Requiring Government Procurements to Come from Domestic Sources* by John Luckey.

[5] CRS Report RL31236, *The Berry Amendment: Requiring Defense Procurement To Come From Domestic Sources*, by (name redacted).

delays. The Secretary of Defense has waived these various domestic preference restrictions in certain circumstances.[6]

This year's debate focused on the extent of DOD's waiver authorities in terms of both the criteria and the items that could be covered. The Administration sought to widen circumstances permitting waivers, whereas the House would have either required domestic purchase of additional items (such as machine tools) or made it more difficult for the Secretary of Defense to waive current restrictions.[7] For example, the House bill required DOD to identify and then buy from U.S. sources items considered to be "critical" to the U.S. defense industrial base as well as assess the extent of U.S. dependence on foreign suppliers. The House version also would have prohibited DOD from purchasing from foreign countries who had restricted sales of military goods or services because of U.S. operations in Iraq, a provision that could have affected both France and Germany.

The Secretary of Defense had signaled that the Administration would veto the bill if the House provisions were included. Concerned about the effects of these provisions on U.S. trade relations, Senator Warner requested the State Department, the U.S. Trade Representative, and OMB to address the potential effects of the legislation on trade relationships and cooperative defense relationships.[8]

Reflecting a compromise between the House's desire to expand protections for the defense industrial base and Senate's concerns about potential effects on U.S. trade relations, the conference version dropped the new restrictions on certain items but required DOD to assess potential U.S. vulnerabilities. To meet Senate and Administration concerns about potential effects on U.S. trade relations, the conference bill stated that none of the provisions in this industrial base section would apply if the Secretary of Defense and Secretary of State determine that U.S. international agreements would be violated.[9]

To get a better understanding of the extent of DOD dependence on foreign sources or single domestic sources for critical items or components of military systems, the Defense Department is to develop a "Military System Essential Item Breakout List" and identify where these items or components are produced. DOD is to contract for a study that will define the criteria for "critical" and recommend items to be included on the list.

To give additional support to domestic producers of critical items, the conference agreement establishes a new Defense Industrial Base Capabilities Fund that DOD can use to provide incentive payments to domestic contractors. No funds are specifically authorized (or appropriated) for this fund in FY2004, however.

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[6] The relevant statutes are in U.S. Code, Title 41, Section 10a-10b (Buy American), Title 10, Section 2533a (Berry Amendment) and Title 10, Section 2534 (Miscellaneous restrictions).

[7] See H.Rept. 108-354, p. 729 - 730 for provisions not adopted.

[8] *Congress Daily*, "Surprised Warner Seeks Clarification," September 26, 2003.

[9] See Section 811 of H.R. 1588 as enacted and H.Rept. 108-354, p. 722.

Another new industrial base tool for DOD is authority to give preference in source selection to domestic producers of machine tools or other capital assets used to make defense goods. The bill also requires a study of the adequacy of U.S. producers in meeting defense needs for beryllium industrial base.[10]

To protect U.S. trade relationships, the conference agreement also softened the House's proposed prohibition on buying from countries who opposed U.S. actions in Iraq. Instead, the Secretary of Defense, in coordination with the Secretary of State, is to identify foreign countries who now restrict military sales to the United States because of U.S. counterterrorism or military operations; that list can be revised periodically. Even for those countries, DOD can purchase goods if the department has a "compelling and urgent" need for the item.[11] Congress agreed to broaden waivers to Berry Amendment restrictions on purchases of food, clothing, and similar items from combat operations only to include contingency operations as well.

This issue is likely to resurface in the next year or two. By February 2005, DOD is required to complete an interim report that assesses which items are deemed essential and the extent of U.S. dependence on foreign sources for those items. At that point, the debate could revolve around whether additional protections or incentives should be provided to domestic producers of those items.[12]

Concurrent Receipt Adopted

Until recently, the Administration threatened to veto congressional proposals to provide concurrent receipt of military retirement and VA disability benefits to military retirees because of concerns about the cost and the precedents for other benefit programs. Military retirees now must reduce their military retirement on a dollar-for-dollar basis if they wish to receive tax-exempt disability payments, a type of offset that is required in many benefit programs.

The conference bill provides new benefits to military retirees with twenty or more years of service and disability ratings of 50% or higher. The conference bill also expands those who would be eligible for special compensation under the "Purple Hearts Plus" program enacted last year for those whose disabilities are due to combat or combat-related activities. The conference version was reached when the Senate dropped its proposal for full concurrent receipt and the Administration dropped its veto threat. In response to Administration concerns, the House had not included a concurrent receipt in its version of the bill even though support among members was widespread.

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[10] See Sections 812, 813, 814, 822, and 824 of H.R. 1588 as enacted and H.Rept. 108-354, p. 723 - p. 725.

[11] See Section 821 of H.R. 1588 as enacted and H.Rept. 108-354, p. 724.

[12] Section 812 requires DOD to contract with a federally funded R&D center to assess the criteria and the items on the military essential list.

Eligibility Criteria and Phase-In of Benefit. Over 200,000 military retirees are likely to qualify for the new concurrent receipt including military retirees with 20 years of service if they

- have disability ratings of 50% or above;
- have any disability ratings as long as they meet the criteria for a combat-related disability, popularly known as "Purple Hearts Plus;"
- are Guard and Reserve retirees who meet the criteria under "Purple Hearts Plus" if they have 20 or more years of "creditable" service, defined as 50 points for performing their annual reserve duties; and
- are disability retirees whose payments exceed their retirement benefits had they retired under regular retirement.

The first phase of the new benefits are slated to go into effect on January 1, 2004, with full concurrent receipt for those eligible by December 31, 2013.[13]

In the first year, monthly benefits for those eligible will be:

- $100 for those with a 50% disability rating;
- $125 for those with a 60% disability rating;
- $250 for those with a 70% disability rating;
- $350 for those with an 80% disability rating;
- $500 for those with a 90% disability rating; and
- $750 for those with an 100% disability rating.

In the following year, those eligible would receive 10% of the difference between the benefit for the previous year and the lesser of their monthly retirement benefit or their monthly disability payment. In each succeeding year, retirees will receive an additional 10% of that difference until the retiree receives the full amount of both disability payments and retirement benefits.

Cost of New Benefit. CBO estimates that the new benefit would cost $800 million in FY2004 and $22.1 billion over ten years in outlays for current beneficiaries. The annual cost would increase steadily to $2 billion by FY2008 and $3.5 billion by 2013.[14] Although DOD does not need to include funds in its budget to cover the costs because the legislation creates a new entitlement program, the deficit would increase by annual outlays for current beneficiaries.

Unlike current military retirement, H.R. 1588 does not require that DOD provide funds to cover the accrual cost of the new benefit for today's military personnel, a practice designed to capture fully the cost of military personnel. This means that general revenues would cover this cost rather than the Defense Department because DOD would not need to budget for this cost.[15]

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[13] See Section 641 of H.R. 1588 as enacted and H.Rept. 108-354, p. 711.

[14] Cost estimate provided by CBO, October 22, 2003.

[15] Accrual funding puts aside today the estimated amount to cover future benefits and is intended to ensure that agencies understand the full cost of their personnel.

New Commission on VA Benefits. H.R. 1588 also sets up a 13-member Veterans Disability Benefits Commission to evaluate and make recommendations about VA benefits for combat-related disabilities or deaths. The Commission is to report by February 2005, 15 months after enactment.[16]

Prospect for Next Year. The concurrent receipt issue could well be revisited next year because of pressures from those not covered by the new benefit — i.e. those with disability ratings below 50% whose disability is not due to combat or combat-related circumstances. Budget impacts would continue to be a concern. Those concerned with the loss of DOD visibility of the full cost of military personnel that is part of the current provision could also press to require DOD to budget for the accrual cost of the benefit for its current military personnel.

Tanker Lease Compromise

Another controversial provision included in the FY2004 DOD Authorization conference is language that would allow the Air Force to proceed with a plan to lease 20 KC767 Boeing tanker aircraft and subsequently buy an additional 80 aircraft as proposed by the Senate Armed Services Committee Chairman Warner in early September.[17] Signing of the contract has been held up because of questions of impropriety by two Boeing officials, Darlene Druyan, formerly in charge of Air Force acquisition, and Michael Sears, the Chief Financial Officer; Ms. Druyan is alleged to have discussed employment opportunities with Boeing at a time when she was also negotiating the tanker deal.[18] In the past week, Deputy Secretary of Defense Wolfowitz asked the DOD Inspector General to review this matter, and Senate Armed Services Committee Chairman Warner called for a broader review.[19]

Although the conference bill authorizes the lease 20, buy 80 proposal, there continues to be controversy between the House and Senate interpretation of what the language requires: a House colloquy between members says that the Air Force can use options included in the current contract and a Senate colloquy suggests that the Air Force must negotiate two new contracts, one for the lease and one for the buy.[20]

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[16] See Sections 1501 - 1507 and p. 780 of H.Rept. 108-354.

[17] This leasing proposal was originally authorized in Section 8169 of the FY2002 DOD Appropriations (P.L. 107-117). See hearing and testimony before the Senate Armed Services Committee on September 4, 2003, for proposal by Senator Warner. For analysis of the original Air Force proposal, see CRS Report RL32056, *The Air Force KC-767 Lease Proposal: Key Issues For Congress*, coordinated by (name redacted),

[18] *Wall Street Journal*, "Boeing Dismisses Two Executives for Violating Ethical Standards," November 25, 2003.

[19] *New York Times*, "Air Force Pursued Boeing Deal Despite Concerns of Rumsfeld," December 6, 2003; *Washington Post*, "Pentagon Delays Tanker Contract," December 3, 2003.

[20] For House colloquy, see *Congressional Record*, November 7, 2003, p. H10986 - H10987, p. H10993 - H109994; for Senate colloquy, see *Congressional Record*, November 12, p. S14482 - S14483, and p. S14485.

One contract could be implemented more quickly but could mean that the Air Force would pay unnecessary costs associated with the lease.[21]

The lease 20, buy 80 alternative differs from the Air Force's original unprecedented proposal to contract with Boeing to lease and then buy100 aircraft for a cost of $29 billion over a 15-year period, including support costs. The Air Force finds leasing attractive because major funding would not be required until 2006, and the bulk of the funding would not be needed until 2010-2017. The Air Force argues that this approach would cause less disruption to current Air Force programs than would a traditional buy. In later years when the program would cost $2 billion to $3.7 billion annually, however, competition with other Air Force programs could be substantial.[22]

It is not clear, however, whether the Air Force will be able to delay paying for the planes until delivery as proposed by Under Secretary Wolfowitz in a letter to Senator Warner on November 5, 2003.[23] In his confirmation hearing to be Deputy Under Secretary of Defense for Acquisition, Technology and Logistics, Michael Wynne suggested that the conference language may require that the Air Force pay for the aircraft when ordered rather than delaying payment by three years when the aircraft are delivered. The Air Force has not identified how to fund the tanker within its current budget plans, which did not anticipate the tanker lease.

This proposal has been controversial because leases are substantially more expensive than buying: the Air Force, CBO, CRS, and GAO all found that the lease would cost $5 billion to more than $6 billion more than a multiyear buy of the aircraft, because the Air Force planned to rely on a special purpose entity to finance the deal and because congressional agencies and others have suggested that the proposed lease did not meet the criteria for an operating lease.[24]

Under the conference agreement that would allow the Air Force to lease 20 Boeing KC767 aircraft and incrementally buy the remaining 80 aircraft, the Air Force

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[21] Congressional Budget Office (CBO), "Letter to Senator John McCain on cost of two alternative ways to lease 20 tanker aircraft and buy 80 tanker aircraft," November 13, 2003; and CBO, "Letter to Senator Warner with CBO evaluation of alternate strategies for acquiring 100 KC-767A tanker aircraft," October 16, 2003; see cost estimates in [http://www.cbo.gov].

[22] For an analysis of the budgetary issues, see "Congressional Oversight and Budgetary Issues," by (name redacted) in CRS Report RL32056, *The Air Force KC-767 Lease Proposal: Key Issues For Congress*, coordinated by (name redacted) on p. 53ff. Section 8159 of the FY2002 DOD Appropriations Act (P.L. 107-117) allows the Air Force to lease up to 100 Boeing KC767 tankers once a new start notification has been approved by the four defense committees.

[23] See *Congressional Record*, November 7, 2003, p. H. 10896 for Wolfowitz letter.

[24] Testimony of Robert A. Sunshine, CBO, before Senate Armed Services Committee, September 4, 2003; Testimony of (name redacted), CRS, before Senate Commerce Committee, September 3, 2003; and testimony of Neal P. Curtin before the Senate Armed Services Committee, September 4, 2003.

still plans to delay the lease funding until 2006 and the buy funding until 2008.[25] Although leasing 20 rather than 100 aircraft would be less costly than the original proposal, the extent of the savings depends on how the Air Force implements the proposal. According to press reports, the Air Force now plans to use two contracts — one for the lease and one for the buy — costing a total of $18.3 billion in acquisition costs. That total would be $3.2 billion less than the previous $21.5 billion contract to lease and buy 100 aircraft but still $3.5 billion more than CBO estimates a straight multiyear contract would cost.[26]

In its scoring of the FY2004 DOD Authorization Act, CBO considers the new proposal to lease and then buy 20 aircraft to be a lease/purchase that would require that the Air Force provide $3.6 billion in budgetary authority in FY2004, although none is provided in the Act. Because members did not raise a point of order under budget rules, however, the funding implied by the bill's language was not challenged.[27]

Although the conference reports includes language permitting incremental funding of the multiyear contract — which would allow the Air Force to spread out the payments rather than providing the full amount for each year's buy as is required under standard acquisition rules — it is not clear whether the new language permits that. The Air Force has voiced concerns that the compromise could jeopardize ongoing defense programs.

New Personnel System for DOD Civilians

As part of its April 10, 2003, bill proposal, the Defense Transformation for the 21st Century, the Defense Department requested broad authority to set up a new National Security Personnel System (NSPS) governing its 735,000 civilian employees. DOD requested authority to develop a new personnel system that was "flexible" and "contemporary," allowing the Secretary of Defense to define positions, set pay scales, establish hiring and firing rules, bargain with employees at the national level, and set separate scales for rewarding senior level employees. Although DOD's proposal did not include specifics, Under Secretary of Defense for Personnel and Readiness David Chu stated that it intended to follow "best practices" for current personnel projects, including pay banding and the use of numerical ratings to link pay with job performance.[28]

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[25] *Congressional* Record, October 23, 2003, p. S13113.

[26] *Seattle Times*, "Delay in Tanker Deal Could Put 500 Jobs 'At Risk,'" December 6, 2003; CBO, "Letter to Senator Warner with CBO evaluation of alternate strategies for acquiring 100 KC-767A tanker aircraft;" see cost estimates in [http://www.cbo.gov].

[27] Conversation with CBO staff. With the tanker lease, the bill would be above the spending levels allocated to the Senate Armed Services Committee in the FY2004 Budget Resolution (H.Con.Res. 95) and thus could be subject to a 302(f) point of order under the 1974 Budget Control and Impoundment Act; that point of order could be waived with 60 votes.

[28] Statement of David S.C. Chu, Under Secretary of Defense for Personnel and Readiness before the House Subcommittee on Civil Service and Agency Organization on April 289, 2003. Washington Post, "Big Changes In Store For Defense Workers Under New Personnel

The chief issues raised about the DOD proposal were

- the nature of the proposed new system;
- the difficulties in designing an equitable performance rating system that would be linked to pay;
- the appeals system for employees in case of disputes; and
- the level of bargaining between employees and DOD.

DOD's proposal was debated within both the armed services and the governmental affairs committees with concerns raised by both Members of Congress and government employee unions about the breadth of authority requested and the potential effects on government workers. In defending new authority, others cited long-standing calls for reform of the civil service, the broad personnel management authorities granted to new Department of Homeland Security, and DOD's twenty years of experience with alternative "pay for performance" systems for the 30,000 employees in the national labs.

The conference version of the FY2004 DOD authorization modified many of the Administration provisions that were included in the House version of H.R. 1588. The Senate version of the FY2004 DOD Authorization bill did not include any provisions dealing with a new personnel system, but many of the provisions proposed by the Senate Governmental Affairs Committee in S. 1166, a bill to establish a National Security Personnel System, were ultimately adopted in the final version (see CRS Report RL31954, *Civil Service Reform: Analysis of the National Defense Authorization Act for FY2004* coordinated by Barbara Schwemle).[29]

Phase-In Period, Collaboration, and Criteria for the New Personnel System. Although H.R 1588 gives the Secretary of Defense broad discretion to set up the new system, DOD is required to develop its regulations jointly with the Director of the Office of Personnel Management and to conform those regulations with criteria included in the law. In addition, any disputed parts of the new system could not go into effect until 90 days after the proposed system is presented for comment to labor organizations representing DOD's civilian employees.

During that period, labor organizations would have 30 days to review the proposal, DOD would have 30 days to resolve disputes, and Congress would be notified of remaining disputes 30 days before implementation.[30] After this 90-day period, the new system could be put into place for up to 300,000 DOD civilian employees but could not be expanded to the remaining employees until DOD has a performance management system in place that meets criteria in the law.[31]

System," November 25, 2003.

[29] See General Counsel, DOD, William J. Haynes III, Letter to Speaker of the House Hastert, April 10, 2003, for DOD's proposal; [http://www.defenselink.mil/dodgc/lrs/legispro.html]. S. 1166 was reported from the Senate Governmental Affairs Committee without a written report.

[30] See Section 9902 (f) of H.R. 1588 as enacted.

[31] See Section 9902 (b) and (l) of H.R. 1588.

In addition to being consistent with merit system principles and anti-discrimination laws, this new system to hire, assign, transfer, evaluate, and fire employees is required meet the following criteria:

- to be "fair, credible, and transparent;"
- to link employee performance to agency plans and include safeguards to ensure fairness;
- to involve employees, supervisors and managers in the design, evaluation, and training for the new system;
- to include an "equitable method for appraising and compensating employees" in the pay-for-performance evaluation system.[32]

In report language, the conferees calls on DOD to set up a pay-for-performance evaluation system that:

- groups employees into pay bands with upper and lower bounds based on position responsibilities and types of work;
- sets up a performance rating system with rating periods and a feedback process;
- includes a scoring system that is tied to salary changes and a review process that addresses those failing to meet performance goals; and
- links individual performance factors to agency's goals and ensures scoring comparability.

Although this conference report language is not binding, it signals legislative intent.[33] In hearings, DOD policy makers stated that it intended to design a system like the pay banding system used by DOD's laboratories for the past twenty years; the labs are, however, exempt from the new system until 2008 and beyond that unless the new system gives them greater flexibility.[34] Details about the new personnel system are likely to emerge in the next year.[35]

New Appeals Process and Labor Management Relations Systems. As long as it complies with employment anti-discrimination laws, merit principles, and due process, DOD can set up a new, internal appeals process for handling disputes about personnel actions. In designing this system, DOD is to consult with the Merit System Protection Board, the current government-wide appeals board. Although employees may appeal the decisions of DOD's new internal board to the Merit System Protection Board (MSPB), the government-wide board would only hear

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[32] See Section 9902 (b) of H.R. 1588 as enacted.

[33] See H.Rept. 108-354, p. 759.

[34] See Section 9902(c) of H.R. 1588 as enacted; DOD was first given the authority to set up a flexible personnel management system at the national labs in 1995.

[35] DOD Pentagram, "New Pay System for Defense Civilians" by Spc. Joshua McPhie, November 28, 2003; available online from the Department of the Army's website at [http://www.dcmilitary.com/army/pentagram/8_47/national_news/26448-1.html].

cases involving "arbitrary or capricious" actions, violation of due process, or those not supported by evidence. Decisions by that Board can be reviewed by a court.[36]

Jointly with the Director of the Office of Personnel Management and in collaboration with the unions, DOD will also be able to develop its own labor management system under the new law.[37] This "collaborative issue-based approach to labor management relations" would go into effect 90 days after DOD provides a written description to unions. During that period, unions have 30 days to review the proposed system, 30 days to discuss recommended changes, and 30 days of notification to Congress of disputed areas. To resolve differences, either DOD or employee representatives can request help from the Federal Mediation and Conciliation Service.

The new law provides for review of the proposed new system by an unspecified independent third party. The authority of this new labor-management process appears to be broad because its decisions can "*supercede all other collective bargaining agreements*" in the department if the Secretary of Defense desires [italics added].[38] Unless renewed, however, this new process would only be in effect for a six-year period. This new system would also not be subject to the collective bargaining procedures and deadlines that apply to other federal agencies.[39]

DOD could also continue to bargain with employee unions and follow the statutory procedures and deadlines for collective bargaining affecting all other government agencies.[40] In another major change, H.R. 1588 gives DOD new authority to bargain at the national rather than the local level and makes those decisions binding on all levels. Some critics have raised concerns about how local circumstances will be taken into account in national decisions. These decisions could also be reviewed by an unspecified third party.

H.R. 1588 appears to endorse two parallel systems of labor-management relations: one, a new "collaborative" system, and the other, a traditional collective bargaining system as defined in current statute. The legislation does not specify what types of issues would be covered or how responsibilities will be divided between these two systems. To the extent that the two systems overlap, the law gives precedence to the new system. The new law appears to adopt a similar approach in the case of appeals process for employee grievances, allowing DOD to set up its own board but also permitting a review of those decisions by the Merit System Protection Board in certain circumstances.

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[36] See Section 9902 (h) and CRS Report RL31954, p.13 - 16.

[37] The law allows the Secretary to collaborate with unions "above the level of exclusive recognition," a term that refers to local unions.

[38] See Section 9902(m)(8) in H.R. 1588 as enacted.

[39] See Section 9902(m) in H.R. 1588; other federal agencies are subject to the labor management relations in U.S. Code, Chapter 71; see also Section 9902

[40] See Section 9902(g) of H.R. 1588 as enacted and U.S. Code, Chapter 71.

Funding Levels and Separation Incentive Authorities. Although increases for individual employees would be likely to vary from the current system, the new law calls on DOD to "the maximum extent practicable" to budget the same amount for civilian employees under the National Security Personnel System as would be the case under the current system so that overall, employees are not "disadvantaged."[41] At the same time, the law calls on DOD to give civilian employees the same pay raises as are received by military personnel. As an additional workforce management tool, the law allows DOD to give separation incentives of $25,000 to up to 25,000 civilian employees annually for early retirement.[42]

The budgetary implications of the new system are not obvious. It is also not clear whether these provisions would significantly limit DOD's current plans to transfer substantial numbers of military jobs to civilian personnel or contract employees.

Other Civilian Personnel Changes. The new law also provides several new authorities that would be available to all federal agencies including authorizing

- pay for performance pilot projects;
- higher pay caps for Senior Executive Service employees; and
- $500 million for a new Human Capital Fund to reward exceptional performance.[43]

The appropriators have only provided $1 million for this new fund in the final version of the FY2004 Omnibus Appropriations Act currently awaiting final congressional action.

Environmental Exemptions for DOD

As it did last year, DOD requested that military readiness-related activities be exempted from certain provisions of five 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 that governs cleanup of hazardous waste. This year, Congress proved to be receptive to proposals to modify DOD's responsibilities to protect endangered species and marine mammals, both very controversial provisions. H.R. 1588 also gives DOD new authority to use wetlands mitigation banks and modifies regulations governing Restoration Advisory Boards that inform citizens about environmental cleanup.

DOD has argued that compliance with environmental requirements significantly affect military training, and hence readiness, while critics have questioned the extent

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[41] See Section 9902(k) and 9902(e) in H.R. 1588 as enacted.

[42] See Section 9902(i) in H.R. 1588 as enacted; early retirement is defined as at least 50 years of age and 20 years of service; "early-outs" for base closures could be in addition to the 25,000 employees annually.

[43] See Sections 1125, 1126 and 1129 of H.R. 1588 as enacted.

of the impact and DOD's limited use of current waiver authorities. 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 the impact of environmental laws.[44] The debate centers on whether or to what extent DOD should be exempt from current environmental statutes.[45]

Congressional Action on Endangered Species Act.[46] Both the Senate and the House agreed that DOD needed additional authority to consider military training requirements as well as wildlife protection in managing land on DOD installations. For that reason, the new law permits DOD to substitute an Integrated Natural Resources Management Plan (INRMP), required under the Sikes Act, for a designation of lands as "Critical Habitat" under the Endangered Species Act, as a way to protect endangered species.[47] The authority to substitute a resource management plan for a critical habitat designation has been under dispute. Environmental groups are concerned that protection for endangered species may be weakened with this change.

Under the Sikes Act, the INRMP, which guides the conservation, protection, and management of fish and wildlife resources, is prepared by the Secretary of the military department in cooperation with the U.S. fish and Wildlife Service. The "use of military installations to ensure the preparedness of the Armed Forces," or military readiness, however, takes precedence.[48] Under the Endangered Species Act, once land has been designated as "critical habitat," federal agencies must "consult" regarding actions that would destroy or adversely affect those habitats or face penalties.

The substitution is permitted only if the Secretary of the Interior determines in writing that DOD's plan provides a "benefit for the species."[49] Critics have

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

[45] 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 Report RL31415, *The Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Department of Defense (DOD) Readiness Activities: Background and Current Law* by (name redacted), p. 12-18, and CRS Issue Brief 10072, *Endangered Species: Difficult Choices* by (name redacted), (name redacted) and (name redacted). See also, CRS Issue Brief IB10072,*Endangered Species: Difficult Choices* by (name redacted) and (name redacted).

[46] This section was prepared with the help of CRS analysts, (name redacted) and (name red acted). See CRS Report RL31415,*The Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Department of Defense (DOD) Readiness Activities: Background and Current Law*, by (name redacted).

[47] For Sikes Act, see 16 U.S.C., Section 670a.

[48] 16 U.S. Code, Section 670a (a) (3).

[49] See Section 318 of H.R. 1588 as enacted and H.Rept. 108-354, p. 667 and General Counsel, DOD, William J. Haynes III, Letter to Speaker of the House Hastert, April 10,

questioned, however, whether the criterion of "benefit to the species" is likely to be adequate and whether implementation of the plans can be enforced since the Sikes Act does not provide for suits by individuals or citizen groups. The final version also amends the Endangered Species Act rather than Title 10 of the U.S. Code which governs DOD activities, a choice that created concern among environmental groups because of the potential precedent for other exemptions. Other environmental interests opposed amending Title 10 because doing so may give the Secretary of Defense rather than the Secretary of Interior the primary role in determining whether integrated management plans provide adequate protection.

According to the Senate Armed Services Committee, portions of about 150 DOD bases could be designated as critical habitat were this exception not permitted.[50] The conference report suggests that the new language will "provide a balance between military training requirements and protection of endangered or threatened species."[51]

Congressional Action on the Marine Mammal Protection Act. The conference agreement adopts two of the Administration's proposed changes to the Marine Mammal Protection Act, including new two-year exemption authority and a new definition of "harassment." Debate about the implications of both of these changes was heated.

New Exemption Authority. Under a new provision, the Secretary of Defense, after consulting with the Secretary of Commerce and the Secretary of the Interior, could "exempt any action or category of actions" from compliance with the Marine Mammal Protection Act for two years if the Secretary determines "it is necessary for national defense."[52] At his discretion and after consultation with the Commerce and Interior Departments, the Secretary of Defense could renew such exemptions for additional two-year periods.

The conference report suggested that this national security exemption parallels that included in other environmental laws, while environmental interests argued that a "national defense" exemption is broader than that provided in other statutes.[53] DOD has not, in fact, used existing exemption authorities, arguing that the threshold was too high for most activities. Exemptions under the new law must be reported to the armed services committees.[54]

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].

[50] S.Rept. 108-46, p. 286.

[51] H.Rept. 108-354, p. 668.

[52] See Sec. 319 of H.R. 1588; language is identical to DOD's request in General Counsel, DOD, William J. Haynes III, "Letter to Speaker of the House Hastert," April 10, 2003, Title 10, Chapter 101A, Section 2019, Subsection(e); see online version on the DOD website at [http://defenselink.mil/dodgc/lrs/legispro.html.]

[53] Other statutes include exemptions for "national security" interests or "paramount interests of the United States."

[54] H.Rept. 108-354, p. 669.

New Definition of Harassment. The conference agreement also adopted the Administration proposal to use narrower definitions of harassment of marine mammals for DOD's military readiness and scientific activities of federal agencies than are applied to other agencies. Under current law, the standard requires that activities be prohibited if they would have a "potential to injure or disturb" marine mammals.[55] The new language defines DOD's activities as "harassment" only if an act "injures or has the *significant* potential to injure" or disturbs the activities of marine mammals by *disrupting "natural behavior patterns"to a point where those patterns are "abandoned or significantly altered."*[italics added][56] To limit the application of the exemption, the Act defines readiness as training, combat operations, and testing, the definition that was included in the FY2003 DOD authorization. DOD had asked to broaden the application to include support activities.[57]

In reaction to a recent court case that limited DOD's deployment of the low-frequency SURTASS sonar because of the potential impact on marine mammals, the FY2004 DOD authorization exempts DOD from complying with current standards for evaluating the impact on marine mammals based on "specified geographical regions," or the "small numbers." DOD contended that these standards were inappropriate for marine mammals that migrate over broad expanses of the ocean and that using a "negligible impact" standard would be a more scientific way to make decisions rather than on the basis of the number of mammals affected.[58]

Other Changes and Future Actions. Congress also made other changes requested by the Administration, including allowing DOD purchase credits from a mitigation bank to offset those lost on DOD installations, and exempting DOD's Restoration Advisory Boards from issuing financial disclosure statements and from providing notice of their activities in the Federal Register.[59] These boards are the primary avenue through which local communities learn about cleanup decisions on military lands.

The issue of when and where to carve out exemptions from environmental statutes for DOD can be expected to re-surface next year as the Administration continues its efforts to provide special treatment for the department to protect DOD's readiness activities. While Congress did not approve DOD's requested exemptions

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[55] See Section 318 in *Congressional Record*, May 21, 2003, p. H4428.

[56] See Section 319 of H.R. 1588 as enacted.

[57] See Section 319 (a), which cites Section 315(f) of P.L. 107-314, the FY2003 DOD Authorization Act rather than the Administration's request, see DOD's request in General Counsel, DOD, William J. Haynes III, "Letter to Speaker of the House Hastert," April 10, 2003, Title 10, Chapter 101A, Section 2015,(b)(B), also available online at [http://defenselink.mil/dodgc/lrs/legispro.html.]

[58] See H.Rept. 108-354, p. 669. For Administration rationale, see DOD's request in General Counsel, DOD, William J. Haynes III, "Letter to Speaker of the House Hastert," April 10, 2003, Title 10, Chapter 101A, Section 2019 and section-by-section analysis at [http://defenselink.mil/dodgc/lrs/legispro.html.]

[59] H.Rept. 108-354, p. 667, H.Rept. 108-106, p. 307.

from other environmental laws, it did require DOD to report by January 31, 2004, on how environmental statutes and residential development surrounding military bases affect readiness activities.[60]

TRICARE For Non-Deployed Reservists

Because of the large number of reservists who have been in Afghanistan, Iraq, and the United States, Congress considered a number of ways to expand current benefits and decided to approve a demonstration project to provide access to DOD's TRICARE health care system to certain non-deployed reservists. Under current law and DOD policy, reservists become eligible for TRICARE once they are on active duty. The FY2004 DOD Authorization Act offers access to TRICARE to non-deployed reservists who receive unemployment compensation or who are not eligible for coverage offered by an employer. Reservists would be required to pay a premium set at 28% of the value of the actuarial cost of the plan as is currently required for civilian employees in the government's Federal Employees Health Benefits (FEHB) insurance plan.[61] The conference version of the FY2004 DOD authorization bill provides access to this targeted version of the new benefit through December 31, 2004, three months longer than is provided in the FY2004 supplemental.[62]

According to the report, CBO estimates that this demonstration project would cost about $200 million annually compared to the $2 billion annual cost of providing access to *all* non-deployed reservists that was proposed in the Senate version of the bill. Dropped in conference, the Senate proposal had triggered a veto threat from the Administration. The conferees set a ceiling of $400 million on the cost of the demonstration project.[63]

To help Congress assess the health care needs of reservists and their families, the conference report requires that GAO conduct an evaluation by May 1, 2004.[64] With significant numbers of reservists likely to be needed in the next few years for the occupation of Afghanistan and Iraq, proposals to expand benefits for reservists are likely to be revisited next year.

Lifting the Ban on Research on Low-Yield Nuclear Weapons

The conferees adopted the Senate version of this change to a ban on R&D of low-yield nuclear weapons that was enacted in 1989. Rather than modifying the ban

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[60] See H.Rept. 108-354, Section 320 and p. 670.

[61] For more detail, see CRS memo, "Health Care for Military Reservists," by Dick Best; available by calling the author at [redacted].

[62] See H.Rept. 108-354, Section 702 and p.716.

[63] See H.Rept. 108-354, Sections 702 and 706 and p. 716 - 717; Letter from Comptroller General David Walker to Senators Ted Stevens and John Warner and Representatives C.W. Bill Young and Duncan Hunter, September 29, 2003, attributes $5 billion annual cost estimate to DOD; and Table 12 of this report for CBO estimate of cost.

[64] See H.Rept. 108-354, Section 705 and p. 716 - p.717.

to apply only to R&D at the engineering and development stage, H.R. 1588 repeals the ban on R&D but requires specific congressional authorization for the Department of Energy (which funds this program) to proceed to engineering development of low-yield nuclear weapons or a nuclear earth penetrating weapon (see discussion in section on nuclear weapons for more detail).

In the conference version of the Energy and Water appropriations bill, funding for the Robust Nuclear Earth Penetrator was reduced from the $15 million request to $7.5 million; funding for the Advanced Concepts Initiative, which would fund concept studies on low-yield nuclear weapons, was set at $6 million.[65]

Maintaining Current Levels of Imminent Danger Pay and Family Separation Allowance

One less controversial provision was included in H.R. 1588: maintaining the higher levels of imminent danger pay and family separation allowance adopted in last year's supplemental. The DOD Authorization Act adopts the higher levels for all eligible service members through December 31, 2004. The FY2004 Emergency Supplemental continues the higher rates through September 30, 2003. At one point, the Administration had proposed alternative ways to maintain the higher levels, but these proposals were not adopted.

Major Action On FY2004 DOD Appropriations Bills

The FY2004 DOD Appropriations Act was signed into law (P.L. 108-87) on September 30, 2003, at the end of the fiscal year. 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.

[65] See H.Rept. 108-357, p. 156.

Table 1B. 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[b]	7/17/03 (95-0)	9/24/03 H.Rept. 108-283	9/24/03 (405-15)	9/25/03 (95-0)	9/30/03 P.L. 108-87

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.

Major Funding In FY2004 DOD Appropriations Act

The major changes to the Administration's request are shown in Table 2. Further details on the appropriation conference will be provided in a later update.

Table 2. FY2004 DOD Appropriations: Congressional Action

(in billions of dollars)

Title	FY2003 Enacted	FY2004 Request	House	Senate	Conf.	Conf. vs. Request
Military Personnel	93.0	98.9	98.3	98.9	98.5	-.4
Operation and Maintenance[a]	112.9	117.0	113.3	115.6	115.9	-1.1
Procurement	70.5	72.7	73.6	73.8	74.7	2.0
RDT&E	57.9	61.8	64.6	63.6	65.2	3.4
Revolving & Management Funds	2.6	3.5	2.8	1.7	2.7	-.8
Other DOD Programs	17.4	17.8	18.1	18.3	18.2	.4
Related Agencies	0.5	0.4	0.4	0.40	0.4	0
General Provisions[a]	[-4.0]	[0.1]	[-4.1]	[-3.4]	[-3.5]	[-3.5]
Iraq Freedom Fund Rescission[b]	0	0	-2.0	-3.2	-3.5	-3.5
Scorekeeping Adjustment	0.0	0.1	0.0	0.0	0.0	0
Consolidated Appropriations	10.0	—	—	—	—	na
TOTAL[c]	**364.7**	**372.2**	**369.2**	**369.1**	**368.7**	**-3.5**

Sources: H.Rept. 108-187; S.Rept. 108-87, H.Rept. 108-283.

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.

a. 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 deceases in FY2003 that were made in general provisions affected O&M appropriations. CRS will allocate these general provisions in a later update.

b. 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.

c. Difference is rounding: total funding is $369.193 billion in the House bill and $3.143 billion in the Senate bill.

Funding Prohibition And Restrictions On Total Information Awareness (Terrorist Information Awareness) R&D Program. In the FY2004 DOD Appropriations Act, the conferees dealt with the controversial Total Information Awareness (renamed Terrorism Information Awareness) or TIA program, which was, until recently, run by retired Admiral Poindexter in the Defense Advanced Research Projects Agency (DARPA). Conferees transferred unspecified components of the program's classified venues where research can continue but would be subject to safeguards in the National Foreign Intelligence Program that restrict the sharing of information on U.S. citizens. Less controversial components of the program, such as machine translation of languages, remain in DARPA. The components that were transferred and the amount of funding remaining cannot be determined because details are in a classified annex.[66]

This agreement was a compromise between Senate action that prohibited funding for R&D for the controversial Total Information Awareness R&D program and the Administration's objections to cutoff of funding. The TIA program is designed to develop a system to collect and analyze a wide assortment of information to detect potential terrorists, and included various restrictions on implementation or deployment of 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.[67]

Similar restrictions on deployment were originally included in the Consolidated Appropriations Resolution of FY2003 (P.L. 108-7).[68] On May 20, 2003, the Defense 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

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[66] 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.

[67] 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].

[68] 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, see CRS Report RL31786, *Total Information Awareness Programs: Funding, Composition, and Oversight Issues* by (name redacted).

Admiral Poindexter, the head of the program, resigned, partly in response to recent controversy about another TIA component, FutureMAP, which was designed to set up a "market" to collect predictions about potential terrorist or terrorist-related events.[69] That program was cancelled in response to public and congressional concerns.

Military Construction Appropriations Bills

Several months elapsed between the summer passage of H.R. 2559, the FY2004 military construction appropriations bill, and final conference action on November 22, 2003, an uncharacteristic delay for this bill (P.L. 108-132). The conference bill provides $9.3 billion, about $100 million more than the request.

The long hiatus between House and Senate action and the final conference reflected controversy about funding for overseas bases in Europe and Korea, which was opposed by the Senate because of uncertainties about their future. This issue was finally resolved by the establishment of an eight-member congressional commission to review overseas base structure and report back to Congress by December 31, 2004.[70] The Administration had signaled earlier that it plans to propose substantial changes in overseas bases as part of efforts to "reduce the footprint" of the U.S. military overseas.[71] With initial action on the domestic base closure process kicking off next year, debate about the future of overseas bases can be expected next year, perhaps even before the new report.

Overview of Administration Request 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.[72] This does not

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[69] *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].

[70] H.Rept. 108-342, Section 128 and p. 25.

[71] See CRS Report RL31810, *Appropriations for FY2004: Military Construction*, by (name redacted).

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

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.[73]

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.[74]

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

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[73] 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.

[74] 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.[75] The FY2004 budget resolution projects a 40% increase spending on entitlement programs by FY2008 and an 80% increase by FY2013.[76]

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

[76] 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.[77]

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.[78] 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.[79] 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,

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[77] 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.

[78] See H.Rept. 108-71, p. 73.

[79] 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.[80] 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.[81] 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.[82] 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

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

[81] 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.

[82] 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 an 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 was 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,"[83] 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 have given the Secretary of Defense authority to redesign the civil service system governing the 700,000 civilian employees in the Department of Defense, provided additional flexibility in managing senior military officers, modify certain acquisition requirements, and exempted 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 10[84] (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 (name redacted), (name redacted), (name redacted) , and (name redacted)).

The Administration characterized its proposals as the logical followup to earlier efforts to transform weapons modernization and operational practices. According to DOD, the FY2004 budget was 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.[85] DOD contended that transformation is now fully underway with new emphasis placed on unmanned vehicles, precision guided munitions, special operations forces, command, control, and communications, and missile defense (see discussion on modernization below), as well as the

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[83] 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.

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

[85] Secretary of Defense Rumsfeld testifying before the Senate Armed Services Committee, FY2004 Budget, February 13, 2003; transcript available from Reuters.

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

DOD also argued 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.

Investment and Other Issues

The major issues in this year's congressional debate — for example, DOD's request for broad ranging authority to manage its civilian workforce, exemptions for DOD to certain environmental laws — are discussed above. Other issues raised include

- whether DOD's investment priorities are transformational, affordable, and consistent with "lessons learned" from the war in Iraq;
- revising criteria governing the FY2005 base closure round due to be initiated next year;
- various organizational and acquisition changes; and
- DOD's proposed changes for management of military personnel.

An update for conference action will be included in a later update.

Proposed Acquisition and Organizational 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.[86]

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".[87] A later update will provide the details about conference action.

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[86] 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].

[87] 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].

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%.)[88]

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.[89] A later update will summarize conference action.

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 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.[90] Final action will be included in a later update.

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

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[88] 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].

[89] 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].

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

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. A full update for conference action will be in a later update.

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.[91] Final conference action will be addressed in a later update.

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 "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

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[91] Briefing by DOD Comptroller Dov Zakheim, "FY2004 Defense Budget," February 6, 2003.

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 bladefold kits. 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

	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. [92] 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 amphibius 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

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[92] 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,

	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.[93]

- 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.

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[93] For a detailed CRS review of the proposed leasing agreement, see (name redacted), 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	—

	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	3,3437.1	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

	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 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	—

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	—

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	—

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.

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	—

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.[94] 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.[95] 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.[96] 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. 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."[97] The Senate version lifts the ban but states that the Department of Energy

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[94] 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.

[95] CRS Report RS21133, *The Nuclear Posture Review: Overview and Emerging Issues* by (name redacted), p. 5.

[96] 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].

[97] Section 3111 in H.R. 1588 as engrossed and passed by the House, and H.Rept. 108-106, p. 434.

may not begin engineering development or any later phase of development or production of new weapons unless "specifically authorized" by Congress.[98] 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.[99]

There was a wide-ranging debate in the Senate about an amendment offered by Senators Feinstein and Kennedy to restore the ban, but 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.[100]

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 biological weapons.[101] 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.[102] 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

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

[99] *Congressional Record*, May 21, 2003, p. S6805.

[100] *Congressional Record*, May 20, p. S6663-S6690, passim.

[101] *Congressional Record*, May 20, 2003, p. S6663 to p. S6690, passim.

[102] 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.

monitoring any movement of material by maintaining surveillance on exits of underground bunkers.[103]

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).[104]

Personnel Pay and Benefits Issues and Readiness Issues

Proposals to Change Selection of Senior Military Leadership. As part of its "transformational" package, DOD 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.[105]

Other proposals in this package would add flexibility to use reservists by allowing DOD to activate reservists for an additional 90 days of training and by expanding the reasons that the President can call up reservists to include domestic disasters, accidents, or catastrophes. DOD would also be allowed to provide medical and dental screening of reservists preparing for mobilization, a change endorsed by the authorizers.[106]

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

[104] *Congressional Record*, May 20, 2003, p. S6690, and *Congressional Record*, May 22, 2003, p. H4572.

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

[106] See Section 701 in H.Rept. 108-354 and 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].

Neither the House nor the Senate Armed Services Committees were willing to grant DOD broad ranging authority to move, set retirement terms, and raise age limits for senior level military officers, though each house permitted certain changes. A later update will include the changes adopted in conference.

Pay and Benefit Levels. 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 proposed 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.

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

Senate proposals in the FY2004 DOD Authorization Act to expand benefits that would have significant cost or policy implications were modified in conference. The Graham/Daschle amendment, which 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, was targeted to unemployed reservists in conference. Similarly, the Senate proposal for full concurrent receipt of both military retirement and disability payments, estimated by CBO to cost the government $4.1 billion in FY2004 and $56.5 billion over the next ten years, was modified in conference to cover those with disability levels of 50% or greater. The immediate costs were reduced by phasing in benefits (see **Table 12** below).[107]

The Administration opposed 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. The resolution in conference is described earlier. DOD opposed this provision last year suggesting that financing the benefit would hurt defense readiness by taking funds from other higher-priority programs.[108]

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[107] 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.

[108] See CRS Report RS21327, *Concurrent Receipt of Military retirement and VA Disability Benefits: Budgetary Issues*, by (name redacted) for last year's debate; and CRS Issue Brief IB85159, *Military Retirement: Major Legislative Issues*, by Robert Goldich.

The bulk of the cost of the benefit would be payments of about 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 for full concurrent receipt would go to military retirees whose disabilities stem from service but developed after they left military service.[109] 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.

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.[110] That special compensation benefit is available to those eligible retirees as of June 1, 2003.

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**). 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.[111]

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

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[109] 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.

[110] 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 (name redacted) and (name redacted); and CRS Report RS21327, *Concurrent Receipt of Military Retirement and VA Disability Benefits: Budgetary Issues*, by (name redacted).

[111] 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.

employers sometimes continue coverage during longer activations, including paying the employer premium. According to a 2000 DOD survey, most activated reservists who had been mobilized once maintain private coverage and 80% of employers continue to pay their share of the premium.[112]

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

Operation and Maintenance Funding. 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.

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[112] "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 miliary 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.[113] 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.[114]

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

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

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

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[113] 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].

[114] *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.[115] 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.

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[115] Testimony of Secretary of Defense Rumsfeld before Senate Armed Services Committee, FY2004 DOD Authorization Request, February 13, 2003.

Legislation

Congressional Budget Resolution

H.Con.Res. 95 (Nussle)

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

S.Con.Res. 23 (Nickles)

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

Defense Authorization

P. L. 108-136, 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. On November 7, 2003, the conference report was filed. The House agreed to H.Rept. 108-354 (362 to 40) on November 7, and the Senate agreed (95 to 3) on November 24. Signed into law November 24, 2003.

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.

Defense Appropriations

P.L. 108-187, 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. The conference report, H.Rept. 108-283, was filed and passed by the House (407-15) on September 24, 2003, and by the Senate on September 25, 2003 (95-0). Signed into law September 30, 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.