

An Update on Military Funding for the Border Wall

May 21, 2021

In a [proclamation](#) released on his first day in office, January 20, 2021, President Joseph Biden declared,

“Like every nation, the United States has a right and a duty to secure its borders and protect its people against threats. But building a massive wall that spans the entire southern border is not a serious policy solution...It shall be the policy of my Administration that no more American taxpayer dollars be diverted to construct a border wall.”

The President’s proclamation directed a series of steps designed to interrupt southern border barrier construction, and included:

- terminating the state of national emergency on the southern border
- pausing border barrier funding and construction activity, and
- developing a plan for redirection of funds managed by the U.S. Army Corps of Engineers (USACE) for border projects. (In a subsequent implementation memorandum, the USACE Commander was [authorized to approve](#) exceptions to avert immediate physical dangers.)

On April 30, 2021, the Department of Defense (DOD) issued a [statement](#) announcing the cancellation of border barrier projects funded with redirected military funds. The Department of Homeland Security (DHS) [announced](#) that its projects remain paused with the exception of certain projects in Texas and California.

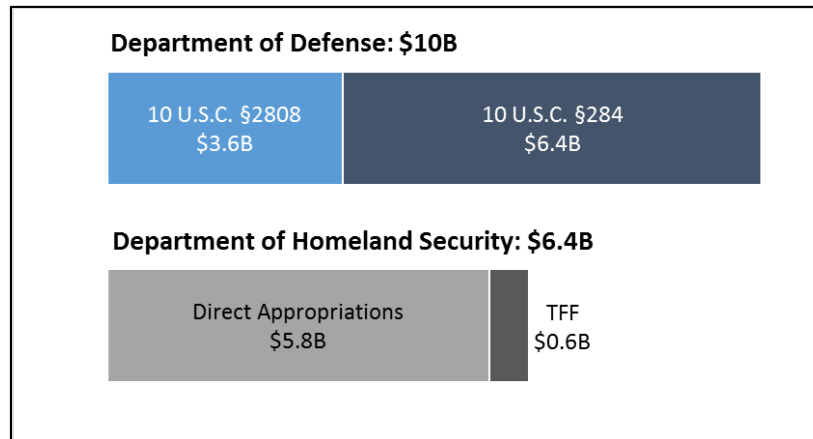
DOD has provided few details about how it intends to redirect military funds, which accounts might receive redirected appropriations, or the cost of terminating USACE contracts. However, materials released as part of ongoing litigation provide additional context.

Background

The Trump Administration directed \$16.4 billion in funding to barrier construction along the southern border. Most of these funds, approximately \$10 billion, came from DOD.

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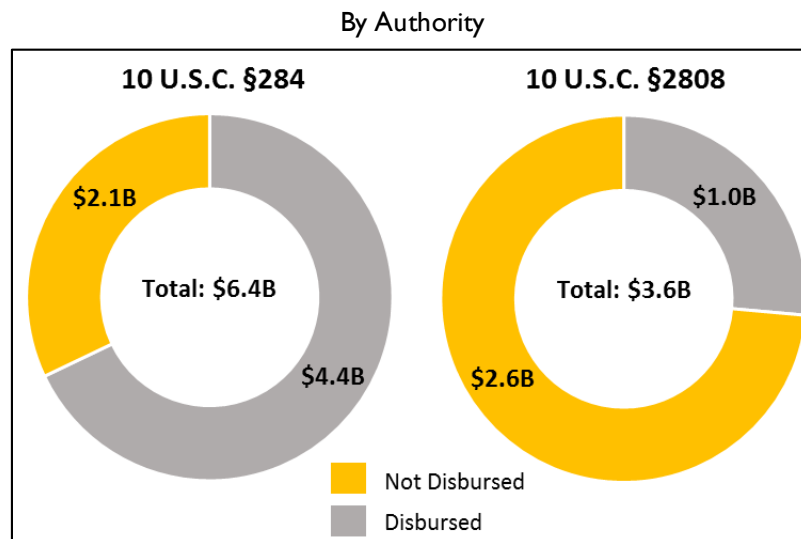
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Figure 1. The Trump Administration's \$16.4 Billion for Border Barriers

Source: CRS analysis.

Notes: Transfers from Treasury Forfeiture Funds (TFF) in dark gray.

Of the approximately **\$10 billion in DOD** border wall funds, \$5.3 billion (53%) had been disbursed by January 20, 2021, leaving \$4.75 billion not yet disbursed. **Figure 2** describes these amounts according to the authority DOD used to redirect funds.

Figure 2. Funding Disbursed vs. Not Disbursed as of January 20, 2021

Source: CRS analysis of USACE, "Status of Fund for Southwest Border Requirements," as of January 20-22, 2021. Compilation available [here](#). Figures are rounded.

Notes: Amounts include contracts and project management costs of the *initial* project estimate for 10 U.S.C. §2808 funded projects. DOD updates provided to congressional defense committees on the status of obligated funds under each authority (on a by-project basis).

Table 1 details amounts summarized by the previous figure.

Table 1. Status of Military Funds for Barrier Construction

As of January 20, 2021

Authorities/Description	Contract Cost	Obligated	Disbursed
10 U.S.C. §2808 Subtotal	\$3,600,000,000	\$1,515,402,556	\$951,606,047
Project Funding	\$3,600,000,000	\$1,513,345,825	\$949,642,941
Project Management	-	\$2,056,731	\$1,963,106
10 U.S.C. §284 Subtotal	\$6,409,416,676	\$6,343,874,477	\$4,353,198,355
Project Funding	\$6,295,796,992	\$6,268,371,085	\$4,296,027,846
Project Management	\$113,619,684	\$75,503,392	\$57,170,509
Total	\$10,009,416,676	\$7,859,277,033	\$5,304,804,402

Source: CRS analysis of USACE, “Status of Fund for Southwest Border Requirements,” as of January 20-22, 2021. Compilation available as a pdf table.

Notes: Amounts include contracts and project management costs of the *initial* project estimate for 10 U.S.C. §2808 funded projects. DOD updates provided to congressional defense committees on the status of obligated funds under each authority (on a by-project basis).

Termination of National Emergency

President Biden’s proclamation terminated the national emergency at the southern border that President Donald Trump declared on [February 15, 2019](#), and extended twice, most recently on [January 15, 2021](#).

The termination suspended special Presidential authorities available during a national emergency, including [10 U.S.C. §2808](#), which authorizes the Secretary of Defense to redirect unobligated military construction funds to support armed forces engaged in an ongoing emergency. (President Biden’s January 2021 proclamation ended the national emergency but did not terminate existing contracts.)

DOD previously used 10 U.S.C. §2808 to defer approximately 125 Military Construction (MILCON) projects and redirect \$3.6 billion in MILCON funding for border barrier construction. Congress has not provided additional appropriations for these deferred projects.

Border Barrier Construction Pause

President Biden’s proclamation directed the Secretaries of DOD and DHS to pause border barrier construction and the obligation of funds related to the effort, regardless of whether such funds came from DHS or DOD accounts. Additionally, officials were directed to make a comprehensive inventory of existing projects and assess contractual obligations related to termination.

An internal [DOD memorandum](#) indicates the government may incur approximately \$1.4 billion in suspension and termination costs, though final amounts are subject to DOD negotiations with contractors.

Table 2. DOD Estimates of Termination and Suspension Fees

Costs	10 U.S.C. §2808	10 U.S.C. §284	Total
Termination	\$180,000,000	\$624,000,000	\$804,000,000
Suspension	\$160,000,000	\$415,000,000	\$575,000,000
Total	\$340,000,000	\$1,039,000,000	\$1,379,000,000

Source: Department of Defense, “Information Paper: Background and Next Steps on Border Barrier Project Termination,” April 27, 2021. See [Supreme Court](#), [Exhibit E](#).

Notes: Amounts are estimates that may be subject to negotiation with contractors. In some cases, termination may include de-scoping costs, outstanding contract claims, and other costs associated with contractor activities.

Plans for Repurposing Border Barrier Funds

Finally, the proclamation directed the Secretary of Defense and others to provide a plan within 60 days to assess the feasibility of terminating existing border barrier contracts and redirecting funds, insofar as such actions were “consistent with their appropriated purpose.” Neither DOD nor DHS have released such a plan.

On April 30, 2021, [DOD released a statement](#) indicating it would proceed with actions terminating border projects. “With this cancellation, unobligated military construction funds that had been diverted from military construction projects will be used for previously deferred military construction projects.” An internal DOD memorandum suggests that more than \$2.1 billion in MILCON (10 U.S.C. §2808) funding will be released to the services.

As of January 2021, approximately 99% of funds transferred using 10 U.S.C. §284 had been obligated and are now expired. This does not preclude their use, since expired appropriations are [still available](#) to liquidate existing obligations for a period of five years. However, they are no longer available for incurring new obligations.

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