

## CHAPTER 11

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## CHAPTER 11

### REPROGRAMMING

**I. INTRODUCTION.** Upon completing this instruction, the student will understand:

- A. The difference between reprogramming and transferring funds.
- B. The procedural rules involved in reprogramming funds.
- C. The special rules involved in reprogramming for military construction purposes.

**II. REFERENCES.**

- A. Department of Defense Appropriations Act (Annually).
- B. DOD 7000.14-R, Financial Management Regulations (hereinafter “DOD FMR”).
- C. DFAS-IN 37-1, Finance and Accounting Policy and Implementation, ch. 3, para. 0306 (Jan. 2000).
- D. Department of Air Force, Instr. 65-601, Volume I, ch. 2, para. 2.3, Budget Guidance and Procedures (17 Nov. 2000)[hereinafter AFI 65-601, vol. I], available at <http://afpubs.hq.af.mil/pubfiles/af/65/afi65-601v1>.
- E. GAO, Principles of Fed. Appropriations Law, 2-25 to 2-28 (2d ed., vol. I, 1992), available [www.gao.gov/special.pubs/og92013.pdf](http://www.gao.gov/special.pubs/og92013.pdf).

### III. DEFINITIONS.

- A. Reprogramming. Reprogramming is the use of funds in an appropriations account for purposes other than those contemplated by the agency at the time of the appropriation. DOD FMR, vol. 2A, ch. 1 (June 2000).
- B. Transfer. A transfer of budget authority from one appropriation or fund account to another. DOD FMR, vol. 2A, ch. 1 (June 2000).

### IV. TRANSFERS DISTINGUISHED FROM REPROGRAMMING.

- A. Transfers. GAO, Principles of Fed. Appropriations Law, 2-20 (2d ed., vol. 1, 1992).
  - 1. Transfers shift money between appropriations accounts.
  - 2. There are three types of transfers.
    - a. Transfers between accounts within the same agency, e.g., Operation and Maintenance account to Military Personnel account.
    - b. Transfers between agencies, e.g., Department of Defense to Department of State.
    - c. Transfers within accounts, e.g., when Congress has enacted legal subdivisions of funds (line items) within an account. Matter of John D. Webster, B-278121, 98-1 CPD ¶ 19.
  - 3. Transfers require statutory authority. 31 U.S.C. § 1532; The Honorable Peter Hoekstra, B-279886, 1998 WL 229292 (C.G.).
    - a. 31 U.S.C. § 1532 prohibits transfers without statutory authority.
    - b. There are generally two types of transfer authority: general and specific.

- (1) General Transfer Authority. General Transfer Authority is provided in either appropriations acts or in permanent legislation.
    - (a) Congress provides general transfer authority to DOD in each of its appropriations acts. See, e.g., Department of Defense Appropriations Act, 2001, Pub. L. No. 106-259, § 8005, 114 Stat. 674 (2001).
    - (b) Permanent Legislation.
  - (2) Specific Transfer Authority. Congress authorizes or directs the movement of funds between specific programs. See, e.g., Overseas Contingency Operations Transfer Fund, Department of Defense Appropriations Act, 2001, Pub. L. No. 106-259, Title II, 114 Stat. 661 (2000). See also id. at § 8082, 114 Stat. 703 (authorizing transfers within Navy's Shipbuilding and Conversion accounts).
- c. The statutory prohibition applies even though the transfer is intended as a temporary expedient and the agency contemplates reimbursement. To the Secretary of Commerce, B-129401, 36 Comp. Gen. 386 (1956).
  - d. An unauthorized transfer violates the purpose statute, 31 U.S.C. § 1301(a), and constitutes an unauthorized augmentation of the receiving appropriation.
  - e. Exception. 31 U.S.C. § 1534 authorizes an agency to charge one appropriation for expenditure benefiting another appropriation of the same agency. See Use of Agencies' Appropriations to Purchase Computer Hardware for Department of Labor's Executive Computer Network, 70 Comp. Gen. 592 (1991).

- B. Reprogrammings. GAO, Principles of Fed. Appropriations Law, p. 2-25 (2d ed., vol. 1, July 1992).
1. Reprogramming shifts money within an appropriations account.
    - a. There is no change in the total amount available in the appropriations account.
    - b. Reprogramming is not a request for additional funds; rather, it is a reapplication of funds.
  2. When Congress appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions on the expenditure of the funds. LTV Aerospace Corp., B-183851, Oct. 1, 1975, 55 Comp. Gen. 307, 75-2 CPD ¶ 203.
  3. Subdivisions of an appropriation contained in the agency's budget request or in committee reports are not legally binding upon the department or agency concerned unless they are specified in the appropriations act itself. Newport News Shipbldg. and Dry Dock Co., B-184830, 55 Comp. Gen. 812 (1976).
  4. Reprogramming is an informal process.
    - a. Agencies must comply with the requirements of 31 U.S.C. § 1301.
    - b. Agencies must check appropriations acts for statutory prohibitions to proposed reprogramming.
  5. Items eligible for reprogramming. Agencies may submit actions only for higher priority items, based on unforeseen military requirements, than those for which the funds were originally appropriated. See Department of Defense Appropriations Act, 2001, Public Law No. 106-259, § 8005, 114 Stat. 674 (2000).

6. Items ineligible for reprogramming. Department of Defense Appropriations Act, 2001, Public Law No. 106-259, § 8005, 114 Stat. 674 (2000).

## V. REPROGRAMMING TYPES.

- A. Reprogramming Actions Requiring Prior Congressional Approval. DOD FMR vol. 3, ch. 6, para. 060401 (Jan 2001).
  1. Most shifting of funds that makes use of general transfer authority. See DOD FMR, vol. 3, ch. 6, para. 060401.A.3., for exceptions.
  2. Any reprogramming that involves an item designated as a Congressional interest item.
  3. Any increase in the procurement quantity of a major item, such as an individual aircraft, missile, naval vessel, tracked combat vehicle, and other weapon or torpedo and related support equipment.
- B. Reprogramming Actions That Require Congressional Notification. DOD FMR vol 3, ch 6, para. 060401 (December 1996). Any reprogramming that involves moving funds within an appropriation above the thresholds listed below requires Congressional notification.
  1. Military Personnel or Operations & Maintenance: cumulative increases in a budget activity<sup>1</sup> of \$10 million or more (Military Personnel) or cumulative increases in a budget activity of \$15 million or more (Operations & Maintenance) (e.g., moving funds out of the permanent change of station account into the pay account).

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<sup>1</sup>Budget activities are defined as categories within each appropriation and fund account which identify the purposes, projects, or types of activities financed by the appropriation or fund. DOD FMR, vol. 2A, ch. 1 (July 1998).

2. Procurement: cumulative increase of \$10 million in a procurement line item; addition to the procurement line item data base of a procurement line item of \$2 million or more; or creation of a new program<sup>2</sup> with a cost of at least \$10 million over its first three years (e.g., increasing the funding level for the Aircraft Carrier Replacement Program).
  3. Cumulative increase of \$4 million in an RDT&E program, or creation of a new RDT&E program with an annual cost of at least \$2 million, or with a cost of at least \$10 million over its first three years (e.g., increases in the Warfighter Advanced Technology Program).
- C. “Internal” Reprogrammings. DOD FMR, vol. 3, ch. 6, para. 060402 (Jan. 2001).
1. Internal reprogrammings are actions involving a reclassification or realignment of funds within budget activities or within budget line items/program elements.
  2. Funding changes within program elements are not regarded as “reprogramming.” The Honorable Roy Dyson, House of Representatives, B-220113, 65 Comp. Gen. 360 (1986).
  3. Internal reprogrammings are not subject to dollar thresholds.
  4. Internal reprogrammings do not require prior congressional approval or notification, but are approved by the Office of the Undersecretary of Defense, Comptroller.

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<sup>2</sup>A new program is defined as any new program which the agency has not justified previously to Congress. DOD FMR, vol. 3, ch. 6, para. 060401E (August 2000).

- D. Below Threshold Reprogrammings. DOD FMR, vol. 3, ch. 6, para. 0608 (Jan. 2001).
1. Below threshold reprogrammings are those reprogrammings that do not exceed the thresholds identified above, in paragraph V.B., individually or when combined with other below-threshold reprogrammings.
  2. Congress performs oversight through the DOD's semiannual submission of its DD 1416, Report of Programs.
- E. Letter Notifications. DOD FMR, vol. 3, ch. 6, para. 060905 (Jan. 2001).
1. Letter notifications apply to below threshold reprogramming for new programs or line items not otherwise requiring prior approval or notification.
  2. The comptroller or budget officer of the component notifies the appropriate House and Senate Committees on Appropriations.
- F. Intelligence Related Reprogrammings. DOD FMR, vol. 3, ch. 6, para. 0606 (Jan. 2001).
1. Generally, the same rules apply as for other reprogramming actions.
  2. Some special rules do apply:
    - a. The Intelligence Program Support Group (ISG), Office of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (OASD C3I), must be made aware of all adjustments to intelligence programs, to include below-threshold actions, prior to initiation.
    - b. The agency must obtain prior approval for:
      - (1) any action that is an item of special congressional interest;

- (2) any proposed action that has not been specifically authorized;
  - (3) any action which could have significant international implications; and
  - (4) any proposed action that transfers funds between appropriations.
3. Congressional notification is required for actions that exceed established thresholds, or represent new starts that exceed thresholds.

**VI. MILITARY CONSTRUCTION REPROGRAMMING.** DOD FMR, vol. 3, ch. 7 (Jan. 2001).

- A. General. The congressional subcommittees concerned with the appropriation and authorization of military construction and family housing funds have agreed that, in executing approved programs, some flexibility is required in adjusting approved funding levels to comply with new conditions and to effectively plan programs to support assigned missions. Departmental adjustments or reprogrammings may be required for a number of reasons including:
  1. Responding to emergencies;
  2. Restoring or replacing damaged or destroyed facilities;
  3. Accommodating unexpected price increases; and
  4. Implementing specific program provisions provided for by congressional committees.

B. Authority.

1. 10 U.S.C. § 2853. Authorizes a reprogramming request when the cost of an approved project must be increased over certain thresholds, or in certain circumstances.
2. 10 U.S.C. § 2803. Provides permanent authority to obligate and reprogram up to \$30 million annually for emergency construction if a project is:
  - a. Not otherwise authorized by law;
  - b. Vital to national security; and
  - c. So urgent that waiting until the next budget submission would be inconsistent with national security.
3. 10 U.S.C. § 2854. Provides permanent authorization for the restoration or replacement of facilities due to natural disasters.
4. 10 U.S.C. § 2672a. Provides permanent authority to acquire interest in land that:
  - a. Is needed in the interest of national defense;
  - b. Is required to maintain the operational integrity of military installations; and
  - c. Urgency does not permit the time necessary to include the required acquisition in an annual Military Construction Authorization Act.
5. 10 U.S.C. § 2827. Provides permanent authority to relocate existing military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage.

C. Restrictions on Reprogrammings.

1. DOD will not submit a request for reprogramming:
  - a. For any project or effort that has not been authorized;
  - b. For any project or effort that has been denied specifically by Congress; or
  - c. To initiate programs of major scope or base realignment actions, when Congress has not authorized such efforts.
  
2. MILCON reprogrammings are sent to the House and Senate Armed Services Committees and the House and Senate Appropriations Committees for approval.
  - a. Generally, committee review process is non-statutory.
  
  - b. An agency generally will observe committee review and approval procedures as part of its informal arrangements with the various committees, although they are not legally binding. GAO, Principles of Fed. Appropriations Law, p. 2-25 (2d ed., vol. I, 1992).

**VII. CONCLUSION.**