

CRS Report for Congress

How Long Can the Defense Department Finance FY2008 Operations in Advance of Supplemental Appropriations?

Updated December 10, 2007

Amy Belasco, Stephen Daggett, and Pat Towell
Specialists in Defense Policy and Budgets
Foreign Affairs, Defense, and Trade Division



Prepared for Members and
Committees of Congress

How Long Can the Defense Department Finance FY2008 Operations in Advance of Supplemental Appropriations?

Summary

The Department of Defense is currently financing both day-to-day peacetime activities and overseas military operations in Iraq and elsewhere with funds appropriated in the regular FY2008 Defense Appropriations Act, P.L. 110-116. That measure provides \$460 billion for the Defense Department to cover the costs of baseline, non-war-related programs in FY2008. The Administration has also requested \$189.3 billion in FY2008 supplemental appropriations for the Department of Defense to cover war-related costs. Congress has approved \$16.8 billion of that amount, all for Mine Resistant Ambush Protected (MRAP) vehicles. The remainder has been held up pending debate over Iraq policy.

For the present, action on supplemental funding appears to be at an impasse. On November 14, the House approved a bill, H.R. 4156, to provide \$50 billion in supplemental appropriations as a temporary "bridge fund" to cover war costs for part of the year, with a requirement that the President begin withdrawing troops from Iraq. The Senate rejected cloture on a motion to bring the bill up for debate, however, and the White House has threatened a veto. There has been no action in Congress to date on a full-year supplemental.

In the absence of supplemental appropriations, the Defense Department has said that money for Army operations will run out in mid-February and for the Marine Corps in March, even after a transfer of \$4.1 billion from other accounts to sustain Army operations. On November 15, Secretary of Defense Gates announced plans to "cease operations at all Army bases by mid-February next year." This would result, he said, in furloughs of 100,000 civilian and another 100,000 contractor personnel.

CRS calculates that money in the FY2008 Defense Appropriations Act, together with planned transfers, will sustain Army and Marine Corps operations about as long as the Defense Department projects. The Defense Department may be able to extend operations further by transferring limited additional amounts to the Army and Marine Corps and by slowing down spending through measures such as those the Army began to implement last April. With these steps, money would still eventually run out, but the Army might be able to continue operating until about the end of March, 2008, and the Marine Corps, until the end of April. Such measures would reduce remaining financial flexibility and might disrupt day-to-day operations. The Defense Department may be able to sustain operations longer by invoking the Feed and Forage Act or by using novel, unprecedented measures, such as assigning the Navy and Air Force to pay costs of Army operations abroad. Such measures may weaken congressional war powers and erode congressional controls on the use of funds.

This report reviews the status of funding for military operations in advance of FY2008 supplemental appropriations. It will be updated as events warrant.

Contents

How Long Regular FY2008 Defense Appropriations Will Last	1
Effects of H.R. 4156, a \$50 Billion “Bridge Fund”	2
Alternatives for Extending Operations Longer	3
Transfer Additional Funds to the Army and Marine Corps	4
Slow the Pace of Army and Marine Corps Operations	5
Invoke the Feed and Forage Act	7
Use Unprecedented Title 10 Authorities to Assign Support Operations to Other Services	9
Pros and Cons of Measures to Extend Operations	10

List of Tables

Table 1. Uses of the Feed and Forage Act Since FY1960	8
---	---

How Long Can the Defense Department Finance FY2008 Operations in Advance of Supplemental Appropriations?

The Department of Defense is currently financing both the day-to-day peacetime operation of U.S. military forces and overseas military operations in Iraq and elsewhere with funds appropriated in the regular FY2008 Defense Appropriations Act, P.L. 110-116. That measure provides \$460 billion for the Defense Department to cover the costs of baseline, non-war-related programs in FY2008. The Administration has also requested \$189.3 billion in FY2008 supplemental appropriations for the Department of Defense to cover war-related costs. Congress has approved \$16.8 billion of that amount, all for Mine Resistant Ambush Protected (MRAP) vehicles. The remainder has been held up pending debate over Iraq policy.

For the present, action on supplemental funding appears to be at an impasse. On November 14, the House approved a bill, H.R. 4156, to provide \$50 billion in supplemental appropriations as a temporary "bridge fund" to cover war costs for part of the year, with a requirement that the President begin withdrawing troops from Iraq. The Senate rejected cloture on a motion to bring the bill up for debate, however, and the White House has threatened a veto. There has been no action in Congress to date on a full-year supplemental.

How Long Regular FY2008 Defense Appropriations Will Last

With enactment of supplemental appropriations in doubt, the immediate issue has become how soon the Defense Department will have to rein in operations before it runs out of money. At a press conference on November 15, Secretary of Defense Gates warned that the Army would run out of money by the beginning of February, and the Marine Corps some time in March, and he announced measures to limit spending beginning almost immediately. "The least undesirable" option, he said, would be to "cease operations at all Army bases by mid-February next year." This would result, he said, in furloughs of 100,000 civilian and another 100,000 contractor personnel. Because some layoffs require 60 days advance notice, he said, the Pentagon would have to begin sending notifications to personnel in December.¹

In the same press conference, Secretary Gates said that the Defense Department would take steps to extend Army and Marine Corps funding by "reprogramming" or

¹ Department of Defense, "DoD News Briefing with Secretary of Defense Gates and Chairman of the Joint Chiefs of Staff Adm. Mullen from the Pentagon Briefing Room, Arlington, Va.," November 15, 2007 at [<http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4089>].

“transferring” funds.² On November 20, the Defense Department announced that it was requesting approval from the congressional defense committees to transfer \$4.5 billion of funds from other accounts to the Army and to the Joint IED Defeat Organization. The transfers, officials said, would extend Army operations for two or three weeks.³

CRS calculations of the length of time the Army and Marine Corps can continue to operate without additional funding are in line with Defense Department estimates. At issue is how long money in Army and Marine Corps Operation and Maintenance (O&M) accounts will last at projected obligation rates. The O&M accounts finance a broad range of activities, including recruitment, training, transportation, clothing, subsistence, fuel, facility operation and repair, and equipment maintenance. Funding for Army and Marine Corps O&M supports both peacetime activities and war-related operations.

For the first few months of the fiscal year, the Army appears to be planning obligations of about \$6.6 billion per month and the Marine Corps of about \$800 million per month. The FY2008 Defense Appropriations Act, P.L. 110-116, provides \$27.4 billion in O&M for the Army and \$4.8 billion for the Marine Corps. At planned monthly obligation rates, therefore, the Army can operate with baseline appropriations for about four months of the fiscal year (which began on in October 1, 2007) or until the beginning of February, and the Marine Corps can operate for about six months, or until the end of March, consistent with Defense Department estimates.

Effects of H.R. 4156, a \$50 Billion “Bridge Fund”

The House-passed bridge fund, H.R. 4156, would provide \$50 billion in supplemental appropriations for FY2008. This is about one-fourth of the amount the Administration has requested to cover DOD war costs for all of FY2008. Most of the money in H.R. 4156, however, \$37.5 billion, is for operation and maintenance, of

² In general a “transfer” of funds is a shift of money from one appropriations account to another. Because appropriations laws provide specific amounts for each account, a shift of funds is permissible only to the extent Congress allows a transfer in statutory language. As part of each appropriations bill, Congress usually specifies that a limited amount may be transferred, subject to certain conditions. Section 8005 of the FY2008 Defense Appropriations Act permits DOD to transfer up to \$3.7 billion between accounts. This is referred to as “General Transfer Authority” or “GTA.” In most agencies the term “reprogramming” refers to shifts of funds within accounts, rather than a “transfer” between accounts. The Defense Department, however, uses the term “reprogramming” to refer to all shifts of funds, including those that involve a transfer between accounts. All transfers, along with reprogramming actions over certain threshold amounts, also require advance approval by the four congressional defense committees.

³ Department of Defense, “Reprogramming Action – Prior Approval,” Serial No. FY 08-02 PA, November 20, 2007. The proposal decreases Navy and Air Force personnel accounts by \$1.85 billion each, for a total of \$3.7 billion, decreases cash balances in the Army Working Capital Fund by \$800 million, increases Army Operation and Maintenance funding by \$4,055.6 million, and increases the Joint Improvised Explosive Device Defeat Fund by \$444.4 million.

which \$27.5 billion is for the Army and \$2.4 billion is for the Marine Corps. The Army O&M total is 50% of the \$54.9 billion that the Administration requested in FY2008 supplemental appropriations for Army operations abroad, and the Marine Corps total is 52% of the \$4.7 billion requested in FY2008 supplemental appropriations for Marine Corps operations abroad. The additional money for the Army would extend operations for about four months at the Army's projected monthly rate of obligations, or until about the end of May. The additional money for the Marine Corps would extend operations for about three months at the projected monthly rate of obligations, or until the end of June.

Alternatives for Extending Operations Longer

In the absence of a bridge fund, the Defense Department may be able to extend Army and Marine Corps operations beyond February or March, either by adding money from other sources to O&M accounts or by slowing the pace at which the services are obligating funds. Barring extensive use of the Feed and Forage Act or an unprecedented use of provisions of standing law that may allow other services to pay for Army and Marine Corps operations (see below for a discussion) options appear limited, and the services may be able to extend operations for an additional month or two.

Alternatives for extending Army and Marine Corps operations include –

- Transfer limited additional amounts that may be available from cash balances in working capital funds;
- Slow the pace of Army and Marine Corps obligations of funds, in part by using means the Army considered in April 2007 and in part by delaying depot maintenance funding;
- Invoke the Feed and Forage Act, which permits obligations of funds in advance of appropriations, and for which there are extensive precedents in the past 40 years; and finally,
- Consider using standing authorities for which there do not appear to be precedents to limit Army and Marine Corps costs, such as the authority in 10 USC 165 to assign support operations to other services.

Each of these alternatives may extend operations for some time, but each has limits and disadvantages as well.

In the Army's official view, moreover, all of these kinds of budget maneuvers are detrimental. In a presentation at the Brookings Institution on December 4, Army Chief of Staff George Casey complained about any kind of budgetary gamesmanship:

In general, as Chief of Staff of the Army, not having predictable, timely funding makes it harder for me to do my job: to organize, train and equip the Army. Every time you put something off or delay it or take some measures to get another week's worth of funding for the operations and maintenance account, it has second and third order effects that ricochet all through the organization, that you don't find the results for two or three months, and it just makes it harder.

The second thing is I think what's going on right now sends a terrible signal to soldiers and families. We have nine brigades that are redeploying from Iraq and Afghanistan right now after being gone for 15 months. They started in September. They'll come in through January. The notion that people are even discussing closing down or warm-basing their installations just minimum essential tasks at a time when they're coming home from being gone for 15 months is very difficult for them.⁴

Transfer Additional Funds to the Army and Marine Corps

The Defense Department may be able to transfer a limited amount of additional money to extend Army and Marine Corps operations. DOD already plans, subject to approval by the congressional defense committees, to transfer \$3.7 billion of funds from Air Force and Navy personnel accounts to the Army and to JIEDDO and to shift \$800 million of cash balances from working capital funds to the Army. The \$3.7 billion transfer from the Air Force and the Navy exhausts the total amount of General Transfer Authority provided by Section 8005 of the FY2008 Defense Appropriations Act. Additional funds may be available for transfer, however, in cash balances of working capital funds.

The transfer of excess cash balances in working capital funds is permitted by Section 8008 of the FY2008 Defense Appropriations Act.⁵ Working capital funds are business-like activities of the Defense Department that are funded primarily through revenues from sales to the military services. Some working capital fund activities maintain inventories of products that they sell to the services. Others provide industrial services, such as depot maintenance of equipment. The military services use appropriated funds, mostly in the operation and maintenance accounts, to make the purchases. Section 8008 allows the funds to maintain sufficient cash balances to meet projected requirements for disbursements. Excess cash balances

⁴ General George William Casey, Jr., Chief of Staff of the Army, "Maintaining Quality in the Force: a Briefing by General George W. Casey, Jr.," Brookings Institution Transcript, December 4, 2007, p. 33, on line at [http://www.brookings.edu/~media/Files/events/2007/1204_casey/20071204casey.pdf]. The military services have consistently been wary of budget maneuvers, including Administration steps to use money from later in the year to finance operations at the start of the year – a practice known as “cash flowing.” Disputes over the use of cash flowing for the Iraq war began as early as January, 2004. The Administration decided not to request FY2005 supplemental appropriations until after the start of calendar year 2005. When senior service leaders expressed concern about that decision in congressional hearings, DOD Comptroller Dov Zakheim called a press conference to defend the practice. See Department of Defense, "Defense Department Special Briefing: Purpose Of Budget Supplementals," February 11, 2004, available on line at [<http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=2062>]. Subsequently Congress initiated the practice of providing part-of-the year bridge funding when it added \$25 billion in unrequested funds for war related expenses to the FY2005 Defense Appropriations Act. Later, Congress provided an unrequested bridge fund of \$50 billion in FY2006. The Administration only began to request appropriations for a bridge fund in the FY2007 budget.

⁵ Like Section 8005, Section 8008 is a recurring provision in annual defense appropriations acts.

may then be available for transfer to other accounts, including service operation and maintenance accounts.

The amount of excess cash balances varies from fund to fund and from year to year. So far, the Defense Department has tapped FY2008 excess cash balances twice. The FY2008 Defense Appropriations Act used \$628 million to offset Army, Navy, Air Force, and Defense-Wide operation and maintenance accounts. And now the Defense Department is using \$800 million for the Army. So about \$1.4 billion has been used.

Pros and Cons. The Government Accountability Office (GAO) has reported to congressional defense committees that DOD had as much as \$3.5 billion in excess cash balances in the working capital funds at the start of FY2008.⁶ With \$1.4 billion having been used, another \$2.1 billion or so may be available. To tap all of the remaining funds to finance Army and Marine Corps O&M accounts would extend operations for a week or two. It would also, however, further reduce DOD's remaining financial flexibility to respond to future developments, at least temporarily. DOD has asked Congress to restore the \$3.7 billion in transfers it requested on November 20, and Congress has, in the past, agreed to forgive amounts transferred because of delays in making supplemental appropriations.⁷

Slow the Pace of Army and Marine Corps Operations

To the extent that Army obligations of O&M funds can be reduced below about \$6.6 billion per month, and Marine Corps obligations below \$790 million, the services can operate longer with available funds. Last April, the Army planned a series of increasingly restrictive limits on activities to be implemented if FY2007 supplemental appropriations were further delayed.⁸ The Army projected that these measures could reduce obligations by as much as \$3.6 billion over three months out of FY2007 obligations of about \$6 billion per month.⁹ The Army and Marine Corps

⁶ CRS calculation based on DOD data provided by GAO analyst by e-mail, November 30, 2007.

⁷ The Defense Department also opposed House and Senate use of excess cash balances in the FY2008 defense appropriations bills – see Department of Defense, “Budget Appeal, FY2008 Defense Appropriations Bill,” #RF-2, October 15, 2007. The appropriations conference agreement rejected the appeal.

⁸ Army Memorandum, “Operation and Maintenance, Army Spending Restrictions Plan for FY07,” April 14, 2007. The text of the Memorandum is available on line at [<http://www.comw.org/warreport/fulltext/0704armyspending.pdf>]. See also, Army Press Release “Funding Needs Prompt Army Spending Constraints,” April 16, 2007, at [<http://www.army.mil/-newsreleases/2007/04/16/2698-funding-needs-prompt-army-spending-constraints/>]. The Army Memorandum is also discussed in CRS Report RL33900, *FY2007 Supplemental Appropriations for Defense, Foreign Affairs, and Other Purposes*, by Stephen Daggett, Amy Belasco, Pat Towell, Susan B. Epstein, Connie Veillette, Curt Tarnoff, Rhoda Margesson, and Bart Elias, updated July 2, 2007 – see subsection entitled “Financing Army Operations Until Passage of the Supplemental.”

⁹ Army Budget Office, PowerPoint Slides entitled “Operation and Maintenance, Army
(continued...) ”

may also be able to defer some other funding by, for example, delaying orders for depot maintenance of equipment, for which the Army plans average obligations of about \$400 million per month in FY2008 – i.e., about \$1.6 billion over the first four months of the year.

Pros and Cons. If implemented over the next four months, these steps might reduce obligations by as much as \$5 billion (\$3.6 billion from measures like those identified last April, plus \$1.6 billion from deferring depot maintenance), though less if they were pursued selectively. This is enough for an additional three weeks or so of operations. Some of these measures may be less disruptive to the day-to-day operations of the force than others, particularly if undertaken on only a temporary basis. The Army reportedly has a depot maintenance backlog of about 7 ½ months, so there may be some room to defer new orders without disrupting depot work flows.¹⁰ It is uncertain how reduced obligations of funds would affect military readiness or how disruptive cuts would be to facilities management, civilian and contractor employment, materiel inventories, equipment orders to industry, DOD travel, or depot maintenance workloads. Congress may wish to consider these matters more fully through hearings and other means.

Defense Department officials have said that cuts such as those planned last spring are not sufficient in the present circumstances because of greater uncertainty about supplemental funding. In his November 20 press briefing, DOD spokesman Geoff Morrell insisted that the issue was not simply how to free up money to extend operations, but, rather, what steps the Defense Department would have to take to shut down operations almost completely in the absence of funding. “All that will happen on the [military] bases,” he said, “is that the most basic security and safety personnel – fire, police, and so forth – will be operating. Day care centers, libraries, all of the additional benefits that are there for families living on the base will cease to operate, because we will not have the funds to keep them going.” The steps taken last spring, he explained, were designed to extend operations on the assumption that Congress would provide additional appropriations quite soon. Now, however, defense officials are not coping with a delay in funding, but with a shut off of funds.¹¹

⁹ (...continued)

Spending Restrictions Will Extend Fund Availability” and “OMA FY07 Execution,” April 2007.

¹⁰ E-mail communication from GAO analyst, November 30, 2007.

¹¹ Department of Defense, “DoD News Briefing with Press Secretary Geoff Morrell from the Pentagon,” November 20, 2007 at – [<http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4091>].

Invoke the Feed and Forage Act

The Feed and Forage Act, 41 USC 11,¹² is a long-standing law, with antecedents from well before the Civil War,¹³ that gives the Defense Department authority to finance some costs of military operations in advance of congressional appropriations. In the past 40 years, the act has been used periodically to pay for unplanned military contingencies and to sustain military operations when supplemental appropriations have been delayed.

The Feed and Forage Act permits the Department of Defense to obligate funds in advance of appropriations for “clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies.” Obligations may not, however, “exceed the necessities of the current year.” These categories are broad enough to encompass most activities financed in operation and maintenance accounts. The “transportation” category, for example, has been interpreted to allow operation of weapons engaged in combat, including aircraft carrying out bombing missions in Southeast Asia, and funding of repairs of equipment, including purchases of spare parts.¹⁴ The law does not, however, permit pay of uniformed personnel or purchases of munitions or other weapons.

When queried about the use of the Feed and Forage Act, Pentagon spokesperson Geoff Morrell all but dismissed its potential use except in extraordinary circumstances –

we have extraordinary measures that can be taken in the eventuality that we find ourselves in a situation where we have no money – and no ability to move funds and we find ourselves with our men and women in uniform in the theater potentially unfunded. But all that we would be able to do in those circumstances is provide – is basically provide for their survival. It’s a “Feed and Forage” provision. It dates back before the Civil War. And it will allow us, really, just to provide for their feed and that’s it. So it’s an extraordinarily desperate situation. We are not there yet. We are not talking about invoking that yet.¹⁵

The Feed and Forage Act has been used in the past in circumstances quite similar to those today. It has been used, for instance, to sustain major military

¹² It is also frequently cited as Revised Statute 3732. The “Feed and Forage Act” as codified in 41 USC 11 is an express exception to the “Adequacy of Appropriations Act,” which states that “No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment.”

¹³ Louis Fisher, *Presidential Spending Power* (Princeton: Princeton University Press, 1985), pp. 238-247. The author cites one precedent as early as 1799 – see p. 240.

¹⁴ CRS has prepared an extensive compilation of background material, much of it provided, by the Department of Defense Comptroller, on uses of the Feed and Forage Act since 1960, on its history, and on associated issues, including war powers. Congressional staff and Members of Congress should contact Stephen Daggett at CRS for a copy.

¹⁵ Department of Defense, “DoD News Briefing with Press Secretary Geoff Morrell from the Pentagon,” November 20, 2007 at [<http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4091>].

operations, including combat operations in Southeast Asia in the 1960s and transportation of personnel to the Persian Gulf during Operation Desert Shield/Desert Storm, when appropriated funds were not sufficient. **Table 1** summarizes uses of the Feed and Forage Act since 1960. As the table shows, when amounts are adjusted to today's prices, the Feed and Forage Act has been invoked to finance quite substantial obligations of funds – in FY1968, for example, during the Vietnam War, when, in FY2008 prices, \$7.4 billion was used and in FY1991, for Operation Desert Shield/Desert Storm, when \$2.6 billion was used.

Table 1. Uses of the Feed and Forage Act Since FY1960
(amounts in millions of current year and constant FY2008 dollars)

Fiscal Year		Current Year Dollars	Constant FY2008 Dollars
1962	Berlin Airlift	53	441
1966	Southeast Asia	277	1,943
1968	Southeast Asia: Late enactment of supplemental appropriations	1,136	7,427
1969	Southeast Asia: Late enactment of supplemental appropriations	4	23
1972	Southeast Asia	137	700
1978	Escalating foreign currency rates: Late enactment of supplemental appropriations	80	252
1980	Middle East oil crisis	664	1,719
1991	Gulf War	1,642	2,562
1994	Haiti	126	185
1996	Saudi Arabia Khobar Towers*	–	–
2001	Terrorist Attacks of 9/11/01*	–	–

Source: Current year dollars figures from Department of Defense Comptroller, constant dollar totals calculated by CRS using deflators from Department of Defense Comptroller.

***Note:** The act was invoked in 1996 following the Khobar Towers bombing in Saudi Arabia and in 2001 just after the attacks of 9/11, but no funds were used.

Pros and Cons. The Feed and Forage Act gives the Department of Defense considerable flexibility to mobilize funding for military operations in the event of unexpected developments. The potential use of substantial amounts to carry on combat operations, particularly if Congress has denied or refused to act on funding for a war, may be of concern to Congress because of its implications for congressional war powers, including the power of the purse. During the Vietnam war, use of the Feed and Forage Act ignited a vigorous debate over war powers issues. In 1973 Senators Mathias and Church sponsored hearings on the law, and in 1974 and 1975, Senator Abourezk proposed repealing the act because, he argued, it eroded congressional authority.¹⁶ Use of the Feed and Forage Act under current

¹⁶ John P. MacKenzie, "Pentagon Use of 1861 Law Scored," *Washington Post*, September (continued...)

circumstances may warrant similar concerns. Unless Congress were to enact language restricting funding for Iraq “in this or any other act,” use of funding under the Feed and Forage Act would not appear to be subject to any limitations.

The act has other limitations as well. Significantly, while the act permits the Defense Department to obligate funds (i.e., sign contracts or hire civilian personnel), in DOD’s interpretation, it does not permit actual expenditures (i.e., outlays) of funds without congressional appropriations.¹⁷ This would require contractors to agree, likely with some compensation, to contracts that might delay actual payments. In effect, the law allows the Defense Department to obligate Congress to provide what are known as “deficiency appropriations,” which were quite frequently enacted up until the 1950s, but have not been used often since then. The enactment of deficiency appropriations may, however, be delayed.

Use Unprecedented Title 10 Authorities to Assign Support Operations to Other Services

While the use of the Feed and Forage Act has an extensive history, there are some other authorities in standing law that might be used to extend Army and Marine Corps operations, but for which CRS is not aware of any precedents. One such provision is 10 USC 165. Title 10 U.S. Code is the standing law that establishes the Department of Defense and includes most of the statutory language that governs its organization and operations. Section 165 (c) specifically permits the Secretary of Defense to assign responsibility for administration and support of forces assigned to combatant commands (including the Central Command responsible for operations in Iraq and Afghanistan), to other components of the Defense Department. The term “components” includes the active duty element of each military service, as well as each of the reserve elements, as well as defense agencies. The full text of the provision reads –

(c) Assignment of Responsibility to Other Components of DOD.— After consultation with the Secretaries of the military departments, the Secretary of Defense may assign the responsibility (or any part of the responsibility) for the administration and support of forces assigned to the combatant commands to other components of the Department of Defense (including Defense Agencies and combatant commands). A component assigned such a responsibility shall discharge that responsibility subject to the authority, direction, and control of the Secretary of Defense and subject to the authority of commanders of the combatant commands under section 164 (c) of this title.

¹⁶ (...continued)

30, 1973, p. 4. Remarks of Senator Abourezk, *Congressional Record*, June 5, 1975, pp. S17367-17369. Remarks of Senator Abourezk, *Congressional Record*, June 3, 1974, pp. S9417-S9422. Congressional concern about the act was piqued particularly when then-Secretary of Defense Melvin Laird asserted in congressional testimony that the Defense Department could use authority of the “deficiency authorization legislation,” meaning the Feed and Forage Act, to continue military operations in Southeast Asia in the absence of appropriations for the war – see MacKenzie article.

¹⁷ See, Department of Defense Comptroller, “Budget Execution Flexibility, FY2007,” at [http://www.defenselink.mil/comptroller/execution/Final_Budget_Execution.pdf], p. 19.

Pros and Cons. On its face, 10 USC 165 (c) would appear to allow the Defense Department considerable latitude to assign management and budget responsibility to the Air Force and Navy for such support activities as food and housing services handled by civilian contractors under what are known as LOGCAP contracts, for which \$6.2 billion is requested in FY2008; contracts for linguists, for which \$1.1 billion is requested; subsistence for DOD civilians and contractors, for which \$675 million is requested; or other war support activities. The Secretary also has authority to detail civilian personnel from one service to another as part of his general responsibility for managing the Department, so Army personnel currently managing these contracts could be detailed to another service to ensure continuity.¹⁸

Since Air Force and Navy O&M budgets are less limited than Army and Marine Corps budgets, this would further extend the amount of time the Army and Marine Corps could operate without FY2008 supplemental funding. The FY2008 Defense Appropriations Act provides \$32.2 billion for Air Force O&M and \$33.1 billion for Navy O&M. If the Air Force and Navy were each assigned responsibility for \$5 billion of activities currently handled by the Army, it would extend Army operations by a month-and-a-half, while funding for Air Force and Navy operations would be reduced by about two months.

Since the use of this provision is unprecedented, it is not known whether a shift of responsibilities could quickly and efficiently be implemented. Use of this authority might also be a matter of considerable concern to Congress, since it would appear to undermine congressional limitations on the use of funds. If the Navy can support Army operations with large amounts of money, then the integrity of the account structure into which Congress appropriates money is clearly at issue.

Pros and Cons of Measures to Extend Operations

The Defense Department has warned that money available to sustain Army and Marine Corps operations will run out in February or March, and CRS calculations are consistent with this projection. The Defense Department may be able to extend military operations further by transferring limited additional amounts to the Army and Marine Corps and by slowing down operations, but each alternative has some disadvantages.

- Excess cash balances remaining in working capital funds might be as high as \$2.1 billion. Tapping these funds would, however, reduce DOD's remaining flexibility to respond to unexpected developments.
- The Army projected that measures it planned to slow down operations last April might, at the upper limit, avoid \$3.6 billion or so of obligations over three months. Some of these measures, however, may disrupt day-to-day Army operations.
- Deferring new orders for depot maintenance might reduce planned obligations by \$400 million or so per month, or about \$1.6 billion

¹⁸ See Title 5, Section 3341 and Title 10, Sec. 113 (d).

over four months. CRS cannot, however, assess how this would affect depot work planning.

Taken together, all of these measures might temporarily reduce or offset Army and Marine Corps funding requirements by as much as \$2.1 billion (use remaining excess cash balances in working capital funds) + \$3.6 billion (slow operations) + \$1.6 billion (defer new depot maintenance orders) = \$7.3 billion, or about one month's worth of funding at current obligation rates, which would allow the Army to extend operations until about the end of March, 2008, and the Marine Corps until about the end of April.

A potentially more significant source of funds may be to invoke the Feed and Forage Act. In the past, it has been used to finance as much as \$7.4 billion of war-related operations in today's prices. That amount would finance Army and Marine Corps operations for about another month. Operations might be sustained longer if larger amounts were used. There may be some problems negotiating contracts, however. And use of the Feed and Forage Act raises significant war powers issues. For Congress to recommend use of the Feed and Forage Act appears particularly ironic – it is, in a sense, to write the script for the Executive Branch to evade legislative restrictions on the use of funds to carry on the war in Iraq.

The potential for DOD to use unprecedented measures, such as the flexibility given to the Secretary of Defense to reassign responsibility for support activities to other services, is particularly hard to assess. It might be difficult to administer, or it might involve only paper changes that could be implemented quickly. It would appear, however, to undermine congressional controls on the use of funds.