

## Appendix A

### Department of Defense Legislation for Fiscal Year 2007

#### Department of Defense Appropriations Act, 2007

President Bush signed into law the Department of Defense (DoD) Appropriations Act, 2007, on 29 September 2006.<sup>1</sup> The Act appropriates over \$453 billion<sup>2</sup> to the DoD for fiscal year (FY) 2007, an amount which includes a \$70 billion “bridge fund”<sup>3</sup> to fund military operations in Iraq and Afghanistan. The amount is an increase from the approximately \$358 billion<sup>4</sup> that Congress appropriated in the FY 2006 Defense Appropriations Act<sup>5</sup> and is approximately \$4.1 billion less than President George W. Bush requested for the current fiscal year.<sup>6</sup>

#### Basic Yearly Appropriations

While this year’s appropriations increased from FY 2006, there are some appropriations that actually decreased from last year. Congress appropriated over \$86 billion<sup>7</sup> for Military Personnel (MILPER), a decrease from almost \$96 billion<sup>8</sup> appropriated last fiscal year. Congress decreased Operation and Maintenance (O&M) as well, appropriating \$119.8 billion,<sup>9</sup> a decrease from approximately \$121.7<sup>10</sup> billion last fiscal year. While Congress decreased its appropriations for MILPER and O&M, appropriations for Procurement and Research, Development, Test, and Evaluation (RDT&E) increased. Congress appropriated \$80.9 billion<sup>11</sup> for Procurement, an increase from \$76.5<sup>12</sup> billion last year; while RDT&E increased to \$75.7 billion,<sup>13</sup> an increase from \$71.9 billion last year.<sup>14</sup>

#### Emergency and Extraordinary Expenses (EEE) and Combatant Commander Initiative Fund (CCIF)

Congress again authorized the Secretary of Defense (SECDEF) and the service secretaries to use a portion of their Operation and Maintenance (O&M) appropriations for “emergencies and extraordinary expenses” (EEE), in an amount totaling \$61,306,000,<sup>15</sup> increasing last year’s appropriation for the DoD and the service secretaries for EEE by approximately \$10.5 million.<sup>16</sup> In addition, Congress again authorized the use of \$25 million of the DoD O&M appropriation for the Combatant Commander Initiative Fund (CCIF), authorized under the provisions of 10 U.S.C. § 166a.<sup>17</sup>

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<sup>1</sup> Department of Defense Appropriations Act, 2007, Pub. L. No. 109-289, 120 Stat. 1257 (2006).

<sup>2</sup> S. REP. NO. 109-292, at 1 (2006).

<sup>3</sup> House Appropriations Comm., Press Release, *Conferees Approve FY07 Defense Appropriations Bill*, available at [http://appropriations.house.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease\\_id=646](http://appropriations.house.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=646).

<sup>4</sup> Department of Defense Appropriations Act, 2006, Pub. L. No. 109-148, 119 Stat. 2680 (2005)

<sup>5</sup> Including supplemental appropriations, Congress appropriated a total of \$510,941,226,000 in FY06. S. REP. NO. 109-292, at 1.

<sup>6</sup> *Id.*

<sup>7</sup> Department of Defense Appropriations Act, 2007, Pub. L. No. 109-289, tit I.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* tit. II.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* tit. III.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* tit. IV.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* tit. II.

<sup>16</sup> *Id.* The DoD may use its O&M for EEE in an amount not to exceed \$36 million; the Army, \$11,478,000; the Navy, \$6,129,000; and the Air Force, \$7,699,000. The Marine Corps does not receive special authority to expend EEE funds. *Id.*; see also 10 U.S.C.S § 127 (LEXIS 2004), which authorizes the Secretary of Defense and the Secretary of a military department to spend EEE funds for “any purpose [they] determine to be proper, and such a

## The United States Court of Appeals for the Armed Forces

The United States Court of Appeals for the Armed Forces again received an appropriation for salaries and expenses in the amount of \$11,721,000,<sup>18</sup> up from \$11,236,000<sup>19</sup> last fiscal year.

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determination is final and conclusive.” The most commonly used subset of EEE is “official representation funds,” which are available to extend official courtesies to authorized guests, including dignitaries and officials of foreign governments, senior U.S. Government officials, senior officials of state and local governments, and certain other distinguished and prominent citizens.

<sup>17</sup> Department of Defense Appropriations Act, 2007, tit. II; *see also* 10 U.S.C.S. § 166a (LEXIS 2006) (providing the underlying authority for the Combatant Commander Initiative Fund), which provides:

(a) Combatant Commander Initiative Fund.— From funds made available in any fiscal year for the budget account in the Department of Defense known as the “Combatant Commander Initiative Fund”, the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose. The Chairman may provide such funds for any of the activities named in subsection (b).

(b) Authorized Activities.— Activities for which funds may be provided under subsection (a) are the following:

- (1) Force training.
- (2) Contingencies.
- (3) Selected operations.
- (4) Command and control.
- (5) Joint exercises (including activities of participating foreign countries).
- (6) Humanitarian and civil assistance.
- (7) Military education and training to military and related civilian personnel of foreign countries (including transportation, translation, and administrative expenses).
- (8) Personnel expenses of defense personnel for bilateral or regional cooperation programs.
- (9) Force protection.
- (10) Joint warfighting capabilities.

(c) Priority.— The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the Combatant Commander Initiative Fund, should give priority consideration to—

(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States.

(d) Relationship to Other Funding.— Any amount provided by the Chairman of the Joint Chiefs of Staff during any fiscal year out of the Combatant Commander Initiative Fund for an activity referred to in subsection (b) shall be in addition to amounts otherwise available for that activity for that fiscal year.

(e) Limitations.—

(1) Of funds made available under this section for any fiscal year—

(A) not more than \$10,000,000 may be used to purchase items with a unit cost in excess of \$15,000;

(B) not more than \$10,000,000 may be used to pay for any expenses of foreign countries participating in joint exercises as authorized by subsection (b)(5); and

(C) not more than \$5,000,000 may be used to provide military education and training (including transportation, translation, and administrative expenses) to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).

(2) Funds may not be provided under this section for any activity that has been denied authorization by Congress.

*Id.*

<sup>18</sup> Department of Defense Appropriations Act, 2007 tit. II. The appropriation also authorizes the use of up to \$5,000 of this appropriation for official representation purposes. *Id.*

<sup>19</sup> Department of Defense Appropriations Act, 2006.

## Overseas, Humanitarian, Disaster, and Civic Aid (OHDACA)

Congress provided \$63,204,000 in funds, which are available until 30 September 2008, for the programs authorized under a number of sections of Title 10 relating to humanitarian assistance, to include demining, excess property programs, and “Humanitarian Assistance (Other)” or HAO.<sup>20</sup> The appropriation is up slightly from \$61.5 million last fiscal year.<sup>21</sup>

## Former Soviet Union Threat Reduction

Congress appropriated \$372,128,000 for assistance to the republics of the former Soviet Union.<sup>22</sup> This assistance is limited to activities related to the elimination, safety and security transportation, and storage of nuclear, chemical, and other weapons in those countries, which also includes efforts aimed at non-proliferation of these weapons.<sup>23</sup> Of the amount appropriated, \$15 million specifically supports the dismantling and disposal of nuclear submarines, submarine reactor components and warheads in the Russian Far East.<sup>24</sup> Congress again included authority to use these funds for “defense and military contacts.”<sup>25</sup> These funds are available until 30 September 2009.<sup>26</sup>

## Revolving Funds

Congress appropriated \$1.3 billion for the Defense Working Capital Fund, \$1.1 billion for the National Defense Sealift Fund, and \$18.5 billion for the Pentagon Reservation Maintenance Revolving Fund.<sup>27</sup>

## Drug Interdiction and Counter-Drug Activities

Congress again appropriated funds (\$977,632,000) for DoD drug interdiction and counter-drug activities.<sup>28</sup> The funds are transferable to other appropriations, to include: military personnel of the reserve components, O&M, procurement, and RDT&E.<sup>29</sup>

## General Transfer Authority

Over the past three years, Congress increased the level of DoD’s general transfer authority from \$3.5 billion (FY 2005) to \$3.75 billion (FY 2006) to \$4.5 billion for FY 2007.<sup>30</sup> General transfer authority Congress also provided \$2.7 billion of additional DoD O&M.<sup>31</sup>

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<sup>20</sup> *Id.*; see also 10 U.S.C.S. §§ 401, 402, 404, 2557, 2561 (LEXIS 2004).

<sup>21</sup> Department of Defense Appropriations Act, 2006, tit. II.

<sup>22</sup> Department of Defense Appropriations Act, 2007, tit. II (Former Soviet Union Threat Reduction Account). Department of Defense Appropriations Act, 2006 tit. II.

<sup>23</sup> Department of Defense Appropriations Act, 2007, tit. II.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* tit. v. The funds appropriated for the Pentagon Reservation Maintenance Revolving Fund remain available until 30 September 2011.

<sup>28</sup> *Id.* tit. vi.

<sup>29</sup> *Id.* The appropriation includes transfer to military personnel appropriations for the reserve component serving in either Title 10 or Title 32 status. *Id.* The transferred funds take on the attributes of the appropriation to which they are transferred with regard to purpose and time. *Id.*

<sup>30</sup> *Id.* § 8005. In the fiscal years preceding FY 2005, the level of the DoD’s general transfer authority had been between \$2 and \$2.5 billion. See Department of Defense Appropriations Act, 2004, Pub. L. No. 108-87, § 8005, 117 Stat. 1054, 1071 (2003); Department of Defense Appropriations Act, 2003, Pub. L. No. 107-248, § 8005, 116 Stat. 1519, 1537 (2002); Department of Defense Appropriations Act, 2002, Pub. L. No. 107-117, § 8005, 115 Stat. 2230, 2247 (2002); Department of Defense Appropriations Act, 2001, Pub. L. No. 106-259, § 8005, 114 Stat. 656, 674 (2000).

<sup>31</sup> Department of Defense Appropriations Act, 2007, tit. IX (Additional Appropriations).

## Congressional Prohibitions

As in previous years, Congress placed prohibitions in Title VII of the Appropriations Act. Section 8001 of the Bill prohibits the use funds for “publicity or propaganda not authorized by Congress,”<sup>32</sup> and for the purpose of influencing congressional action on any legislation or appropriation matters, either directly or indirectly.<sup>33</sup> Congress also limited the ability of the SECDEF and the Service Secretaries to obligate funds during the last two months of the fiscal year to twenty percent of one-year appropriations contained in the Act.<sup>34</sup> Congress again limited the availability of funds for the conversion of functions of the DoD to contractors.<sup>35</sup> Further, Congress directed that no “funds appropriated by [the Act] shall be available to perform any [A-76 study] if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 30 months [for a multi-function activity].”<sup>36</sup> Congress also prohibited the sale of the F/A-22 advanced tactical fighter to any foreign country.<sup>37</sup>

## Investment Threshold

Congress again directed that O&M funds may be used “to purchase items having an investment unit cost of not more than \$250,000.”<sup>38</sup>

## Limitations of Transfer of Defense Articles and Services

During an international peacekeeping, peace enforcement, or humanitarian assistance operation, Congress prohibits the DoD from using its authority to obligate any funds to transfer defense articles and services to other countries or international organizations, “unless the congressional defense committees, the Committee on International Relations of the House of Representative, and the Committee on Foreign Relations of the Senate are notified 15 days in advance of such transfer.”<sup>39</sup>

## Human Rights Vetting Requirement

As in previous years, Congress placed a requirement for human rights vetting prior to the use of any appropriated funds for the training of security forces of a foreign country.<sup>40</sup> The section prohibits DoD support of such training, “if the [SECDEF] has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.”<sup>41</sup>

## Government Credit Card Refunds

The FY 2007 Appropriations Act allows refunds from government travel cards, Government Purchase Cards, official travel arranged by Government Contracted Travel Management Centers, to “be credited to operation and maintenance, and

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<sup>32</sup> *Id.* tit. VIII, § 8001.

<sup>33</sup> *Id.* § 8011.

<sup>34</sup> *Id.* § 8004, not to include “obligations for support of active duty training of reserve components or summer camp training of the Reserve Officers’ Training Corps.” *Id.*

<sup>35</sup> The Appropriations Act uses the language in the first paragraph of section 8013, “performed by more than 10 Department of Defense civilian employees . . .,” *Id.* § 8014. Note, however, that the Authorization Act language for the same paragraph indicates “10 or more.” Department of Defense Appropriations Act, 2006 § 341. The Authorization Act amends subsection (a) of the controlling statute, 10 U.S.C.S. § 2461 (LEXIS 2004), while the Appropriations Act does not.

<sup>36</sup> *Id.* § 8019.

<sup>37</sup> *Id.* § 8058.

<sup>38</sup> *Id.* § 8031.

<sup>39</sup> *Id.* § 8050.

<sup>40</sup> *Id.* § 8060.

<sup>41</sup> *Id.*

research, development, test, and evaluation accounts of the Department of Defense which are current when the funds are received.”<sup>42</sup>

### **Financing and Fielding of Key Army Capabilities**

Congress directed the DoD and the Department of the Army to “make future budgetary and programming plans to fully finance the Non-Line of Sight Future Force Cannon and resupply vehicle program (NLOS-C) in order to field this system in FY 2010, consistent with the broader plan to field the Future Combat System (FCS) in FY 2010.”<sup>43</sup> Additionally, Congress provided that if the Army is unable to field the FCS by 2010, that the NLOS-C will still be developed independent of the FCS timeline.<sup>44</sup> Further, Congress requires the Army to have eight “combat operational pre-production” NLOS-C systems by the end of calendar year 2008.<sup>45</sup> Finally, Congress dictated that the Army “shall ensure that budgetary and programmatic plans will provide for no fewer than seven (7) Stryker Brigade Combat Teams.”<sup>46</sup>

### **Promotional Materials for Operations in Iraq and Afghanistan**

The SECDEF is authorized to present “promotional materials, to include a United States flag . . . to any member . . . who . . . participates in Operation Enduring Freedom or Operation Iraqi Freedom, along with other recognition items in conjunction with any week-long national observation and day of national celebration, if established by Presidential proclamation. . . .”<sup>47</sup>

### **Additional and Special Appropriations**

#### *Basic Appropriations*

Through the DoD, Congress appropriated \$5,386,505,000<sup>48</sup> of additional MILPER. Congress also appropriated an additional \$39,090,034,000<sup>49</sup> of O&M, of which up to \$900,000,000 of the portion appropriated to DoD (\$2,774,963,000) are no-year funds<sup>50</sup> and “may be used to reimburse Pakistan, Jordan, and other key cooperating nations, for logistical, military, and other support provided, or to be provided to United States military operations.”<sup>51</sup> Congress appropriated additional funding for procurement in the amount of \$19,825,782,000 and for RDT&E in the amount of \$407,714,000.<sup>52</sup>

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<sup>42</sup> *Id.* § 8065.

<sup>43</sup> *Id.* § 8086.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* § 8104.

<sup>48</sup> *Id.* § tit. IX (Army, \$4,346,710,000; Navy, \$143,296,000; Marine Corps, \$145,576,000; Air Force, \$351,788,000; Reserve Personnel, Army, \$87,756,000; Reserve Personnel, Marine Corps, \$15,420,000; National Guard Personnel, Army, \$295,959,000).

<sup>49</sup> *Id.* Army, \$28,364,102,000; Navy, \$1,615,288,000 (up to \$90,000,000 shall be transferred to the Coast Guard “Operating Expenses” account); Marine Corps, \$2,689,006,000; Air Force, \$2,688,189,000; Defense-Wide, \$2,774,963,000; Army Reserve, \$211,600,000; Navy Reserve, \$9,886,000; Marine Corps Reserve, \$48,000,000; Air Force Reserve, \$65,000,000; Army National Guard, \$424,000,000; Air National Guard, \$200,000,000.

<sup>50</sup> These funds are not subject to the regular time requirements of most appropriations and are available until expended.

<sup>51</sup> *Id.* “Key cooperating nation support” expenditures require the approval of the Secretary of Defense, with the concurrence of the Secretary of State, in coordination with the Director of the Office of Management and Budget, and the fifteen-day prior notification to the appropriate committees. *Id.*

<sup>52</sup> *Id.* (Procurement: Army Aircraft, \$1,461,300,000; Army Weapons and Tracked Vehicles, \$3,393,230,000; Army Ammunition, \$237,750,000; Other Procurement, Army, \$5,003,995,000; Navy Aircraft, \$486,881,000; Navy Weapons, \$109,400,000; Navy and Marine Corps Ammunition, \$127,880,000; Other Procurement, Navy, \$319,965,000; Marine Corps, \$4,898,269,000; Air Force Aircraft, \$2,291,300,000; Air Force Missile, \$32,650,000; Other Procurement, Air Force, \$1,317,607,000; Defense-wide, \$145,555,000. RDT&E: Navy, \$231,106,000; Air Force, \$36,964,000; and Defense-wide, \$139,644,000). *Id.*

### *Iraqi Freedom Fund*

Congress this year appropriated \$50,000,000<sup>53</sup> for the “Iraq Freedom Fund,” down from \$4.658 billion last year. These funds may be transferred into military personnel, O&M, OHDACA, procurement, RDT&E, or working capital funds.<sup>54</sup> In the appropriation, Congress mandates quarterly reports “summarizing the details of the transfer of funds from this appropriation.”<sup>55</sup>

### *Afghan Security Forces Fund and Iraq Security Forces Fund*

In the Afghan Security Forces Fund (ASFF) and Iraq Security Forces Fund (ISFF) appropriations, Congress provided funds to “provide assistance” to Iraq and Afghan security forces.<sup>56</sup> Congress appropriated \$1.5 billion for the ASFF and \$1.7 billion for the ISFF. In Afghanistan, the Commander, Office of Security Cooperation—Afghanistan is responsible for coordinating the assistance, while in Iraq, the Commander, Multinational Security Transition Command—Iraq (MNSTC-I) is responsible.<sup>57</sup>

### *Joint Improvised Explosive Device Defeat Fund (JIEDDF)*

This year, Congress made a separate appropriation for the Joint Improvised Explosive Device Defeat Fund (JIEDDF) in the amount of \$1,920,700,000.<sup>58</sup> The appropriation is for two years and is for “the purpose of allowing the Director of the Joint Improvised Explosive Device Defeat Organization to investigate, develop and provide equipment, supplies, services, training facilities, personnel and funds to assist United States forces in the defeat of improvised explosive devices.”<sup>59</sup> Congress requires within 60 days of the enactment of the Appropriations Act that SECDEF provide a plan “for the intended management and use of the Fund” and further requires quarterly reporting to the congressional defense committees.<sup>60</sup> The funds in the appropriation may be transferred to MILPER, O&M, procurement, RDT&E, or working capital funds if they “accomplish the purpose provided [for in the appropriation].”<sup>61</sup>

### *Drug Interdiction and Counter-Drug Activities*

Congress appropriated an additional \$100,000,000 for general drug interdiction and counter-drug activities.<sup>62</sup>

### *The Commander’s Emergency Response Program*

Congress continues to provide funding authority, this year again up to \$500 million in DoD O&M, for the Commander’s Emergency Response Program (CERP) for “the purpose of enabling military commanders in Iraq [and Afghanistan] to respond to urgent relief and reconstruction efforts within their areas of responsibility by carrying out programs that will immediately assist the Iraqi [and Afghan] people.”<sup>63</sup> Congress continues to require the DoD to submit quarterly reports and

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* Congress requires, however, that no fewer than 5 days before any transfer, that SECDEF notify the congressional defense committees. *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* § 9007.

requires the DoD to provide guidance to the field.<sup>64</sup> The most recent guidance was issued in July of 2005.<sup>65</sup> Of note, too, is that last year, in addition to the \$500,000,000 in authority from the Defense Appropriations Act,<sup>66</sup> Congress provided \$432,000,000 in authority in the Emergency Supplemental for the Global War on Terrorism (GWOT).<sup>67</sup>

#### *Force Protection Vehicles*

Just as it did last year, Congress provided for the purchase of up to twenty heavy and light armored vehicles for force protection, “notwithstanding price or other limitations . . . or any other provision of law,” to be paid for with any funding provided to the DoD “for operations in Iraq and Afghanistan.”<sup>68</sup>

#### *Lift and Sustain*

Congress again provided for the use of DoD O&M for “supplies, support, services, transportation, including airlift and sealift, and other logistical support to coalition forces supporting military and stability operations in Iraq and Afghanistan.”<sup>69</sup> This authority continues without a specific dollar limitation; however, quarterly reporting on expenditures for lifting and sustaining coalition forces is required.<sup>70</sup> Before invoking this authority, judge advocates in the field should check with their resource management or comptroller personnel to determine whether the authority has been implemented.

#### *Supervision and Administration Costs in O&M Funded Construction Projects*

Congress directed that “[s]upervision and administration costs associated with a construction project funded with [O&M], and executed in direct support of the Global War on Terrorism only in Iraq and Afghanistan, may be obligated at the time a construction contract is awarded.”<sup>71</sup>

#### *Reporting Requirements*

As last year, Congress is requiring extensive reporting of a “comprehensive set of performance indicators and measures for progress toward military and political stability in Iraq.”<sup>72</sup> Some of the indicators required to be reported on stability and security are “key measures of political stability,” “indicators of a stable security environment,” an estimate of the “strength of the insurgency,” “[a] description of all the militias in Iraq,” “[k]ey indicators of economic activity,” and the “criteria the

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<sup>64</sup> *Id.* The Senate Armed Services Committee explained its expectations in the report accompanying last year’s Bill, as follows:

The provision would require the Secretary to provide quarterly reports to the Congressional Defense Committees on the source, allocation, and use of funds pursuant to this authority. The Committee expects the quarterly reports to include detailed information regarding the amount of funds spent, the recipients of the funds, and the specific purposes for which the funds were used. The committee directs that funds made available pursuant to this authority be used in a manner consistent with the CERP guidance that the Under Secretary of Defense (Comptroller) issued in a memorandum dated February 18, 2005. This guidance directs that CERP funds be used to assist the Iraqi and Afghan people in the following representative areas: water and sanitation; food production and distribution; agriculture; electricity; healthcare; education; telecommunications; economic, financial and management improvements; transportation; irrigation; rule of law and governance; civic cleanup activities; civic support vehicles; repair of civic and cultural facilities; and other urgent humanitarian or reconstruction projects.

S. REP. NO. 109-69, at 383 (2005).

<sup>65</sup> Memorandum, Under Secretary of Defense (Comptroller), to Secretaries of the Military Departments, et. al, subject: Commanders’ Emergency Response Program Guidance (27 July 2005).

<sup>66</sup> Department of Defense Appropriations Act, 2007 § 9006.

<sup>67</sup> Emergency Supplemental Appropriations Act, 2007, Pub. L. No.109-234, 120 Stat. 418 (2006).

<sup>68</sup> Department of Defense Appropriations Act, 2007 § 9007.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* § 9008.

<sup>71</sup> *Id.* § 9009. Congress added the proviso that “for the purpose of [the] section, supervision and administration costs include all in-house Government costs.

<sup>72</sup> *Id.* § 9010.

Administration will use to determine when it is safe to begin withdrawing United States forces from Iraq.”<sup>73</sup> Some of the indicators required to be reported on training and performance of the security forces include: “training provided Iraqi military,” “criteria for assessing the capabilities and readiness of the Iraqi military,” “operational readiness status of the Iraqi military forces,” “the rates of absenteeism in the Iraqi military forces and the extent to which insurgents have infiltrated such forces,” “training provided [to the] Iraqi police,” and “the effectiveness of the Iraqi military and police officer cadres and the chain of command.”<sup>74</sup>

### **Additional Prohibitions**

This year, Congress included language in the Appropriations Act specifically prohibiting the DoD from “establish[ing] any military installation or base for the purpose of providing for the permanent stationing of United States Armed Forces in Iraq,” and from “exercis[ing] United States control over any oil resource in Iraq.”<sup>75</sup> In addition, Congress included a prohibition on the payment of award fees to defense contractors in the event of the contractor’s non-performance, and stated that no funds “may be obligated of expended to provide award fees to any defense contractor for performance that does not meet the requirements of the contract.”<sup>76</sup> Congress also prohibited funding from being used “to enter into an agreement with the Government of Iraq that would subject members of the Armed Forces of the United States to the jurisdiction of Iraq criminal courts or punishment under Iraq law.”<sup>77</sup>

### **Reimbursement of Preparation for or Execution of Military Orders Expenditures**

Using broad language, Congress granted the Secretary of the Army the authority “notwithstanding any other provision of law,”<sup>78</sup> to “reimburse a member for expenses incurred by the member or family member when such expenses are otherwise not reimbursable under law.”<sup>79</sup> Congress provided further that reimbursement would only be allowed “in situations wherein other authorities are insufficient to remedy a hardship determined by the Secretary [of the Army] and only when the Secretary determines that reimbursement of the expense is in the best interest of the member and the United States.”<sup>80</sup>

### **National Defense Authorization Act for Fiscal Year 2007**

On 17 October 2006, the President signed into law the John Warner National Defense Authorization Act for FY 2007 (Authorization Act).<sup>81</sup> Upon signing the Authorization Act, the President issued his “signing statement,” in which he declared that he would construe certain provisions in a certain manner.<sup>82</sup> Specifically, “[s]everal provisions of the Act call for executive branch officials to submit to the Congress recommendations for legislation, or purport to regulate the manner in which the President formulates recommendations to the Congress for legislation.”<sup>83</sup> The signing statement further explains that “[t]he executive branch shall construe [certain sections] of the Act, which purport to make consultation with specified member of Congress a precondition to the execution of the law, as calling for but not mandating such consultation, as is consistent with the Constitution’s provisions concerning the separate powers of the Congress to legislate and the President to

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* § 9012

<sup>76</sup> *Id.* § 9016

<sup>77</sup> *Id.* § 9017

<sup>78</sup> *Id.* § 9018.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> John Warner National Defense Authorization Act, 2007, Pub. L. No. 109-364, 120 Stat. 2083 (2007).

<sup>82</sup> White House, Press Release, President’s Statement on H.R. 5122, the “*John Warner National Defense Authorization Act for Fiscal Year 2007*,” available at <http://www.whitehouse.gov/news/releases/2006/10/prin/20061017-9.html>.

<sup>83</sup> *Id.*

execute the laws.”<sup>84</sup> Congress also required the executive branch to provide information on a number of other subjects, and the President directed that “the executive branch shall construe such provisions in a manner consistent with the President’s constitutional authority to withhold information the disclosure of which could impair foreign relations, the national security, the deliberative process of the Executive, or the performance of the Executive’s constitutional duties.”<sup>85</sup>

## Procurement

### *Army*

Congress authorized a total of \$17,048,719,000 for the Army procurements of aircraft, missiles, weapons and tracked combat vehicles, ammunition, other procurement and for National Guard equipment.<sup>86</sup>

Congress also authorized the Secretary of the Army to enter into multiyear contracts for the procurement of MH-60R Blackhawk helicopters and mission equipment<sup>87</sup> and suggested that “the Secretary of the Army should request from Congress authority by law to enter into a multiyear procurement (MYP) contract for the Family of Medium Tactical Vehicles (FMTV) program.”<sup>88</sup> Congress directed the Secretary of the Army to “set forth in the budget presentation materials of the Army . . . for any fiscal year after fiscal year 2007 . . . all amounts for procurement for the M1A2 Abrams tank System Enhancement Program (SEP) and for the Bradley A3 fighting vehicle as elements within the amounts requested for the Modular Force Initiative.”<sup>89</sup>

Congress also directed that the Comptroller General submit a report to the congressional defense committees “on the participation and activities of the lead systems integrator in the Future Combat Systems (FCS) program under the contract of the Army for the [FCS].”<sup>90</sup>

### *Navy and Marine Corps*

Congress authorized the Navy and Marine Corps a total of \$31,351,433,000 for the procurement of aircraft, weapons (including missiles and torpedoes), shipbuilding and conversion, ammunition, and for other procurement.<sup>91</sup> They also provided multiyear procurement authority for the V-22 Tiltrotor Aircraft Program<sup>92</sup> and directed that the Navy “take all reasonable efforts to accelerate the construction of Virginia Class submarines to maintain the attack submarine force structure at not less than 48 submarines.”<sup>93</sup>

### *Air Force*

Congress authorized the Air Force a total of \$32,867,075,000 in procurement for aircraft, ammunition, missiles and other procurement.<sup>94</sup>

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> John Warner National Defense Authorization Act, 2007 § 101.

<sup>87</sup> *Id.* § 112.

<sup>88</sup> *Id.* § 111.

<sup>89</sup> *Id.* § 113

<sup>90</sup> *Id.* § 115

<sup>91</sup> *Id.* § 102

<sup>92</sup> *Id.* § 127.

<sup>93</sup> *Id.* § 129.

<sup>94</sup> *Id.* § 103.

Like the Army, Congress also granted the Air Force the authority to enter into multiyear contracts for F-22A Raptor fighter aircraft<sup>95</sup> and limited the retirement of several aircraft, namely the U-2, KC-135E, F-117A, and C-130.<sup>96</sup>

### *Defense-Wide*

Congress authorized \$2,886,361,000 in funding for Defense-wide procurement.<sup>97</sup> They directed that SECDEF “shall ensure that priority for the distribution of new and combat-serviceable replacement equipment . . . is given to operational units (regardless of component) based on combat mission deployment schedule.”<sup>98</sup>

### **Research, Development, Test, and Evaluation**

Congress authorized the following amount for RDT&E: \$10,876,609,000 for the Army, \$17,383,857,000 for the Navy, \$24,235,951,000, and \$21,111,559,000 for Defense-wide activities (of which \$181,520,000 is authorized for the Director of Operational Test and Evaluation).<sup>99</sup>

### **Operation and Maintenance**

In Title III, Congress authorized the following amounts for O&M funding: Army, \$24,416,352,000; Navy, \$31,157,639,000; Marine Corps, \$3,863,462,000; Air Force, \$31,081,257,000; Defense-wide activities, \$20,093,876,000; Army Reserve, \$2,260,802,000; Naval Reserve, \$1,275,764,000; Marine Corps Reserve, \$211,311,000; Air Force Reserve, \$2,698,400,000; Army National Guard, \$4,776,421,000; Air National Guard, \$5,292,517,000; United States Court of Appeals for the Armed Forces, \$11,721,000; Environmental Restoration, Army, \$413,794,000; Environmental Restoration, Navy, \$304,409,000; Environmental Restoration, Air Force, \$423,871,000; Environmental Restoration, Defense-wide, \$18,431,000; Environmental Restoration, Formerly Used Defense Sites, \$282,790,000; Former Soviet Union Threat Reduction programs, \$372,128,000; Overseas Humanitarian Disaster and Civic Aid, \$63,204,000.<sup>100</sup> Additionally, Congress provided for the following funding for working capital funds and other DoD programs: Defense Working Capital Funds, \$161,998,000; National Defense Sealift Fund, \$1,071,932,000; Defense Working Capital Fund, Defense Commissary, \$1,184,000,000; Pentagon Reservation Maintenance Revolving Fund, \$18,500,000; Defense Health Program, \$21,426,621,000 (of which \$20,894,663,000 is for Operation and Maintenance; \$135,603,000 is for Research, Development, Test, and Evaluation; and \$396,355,000 is for Procurement); Chemical Agents and Munitions Destruction, Defense, \$1,277,304,000 (of which \$1,046,290,000 is for Operation and Maintenance and \$231,014,000 is for Research, Development, Test, and Evaluation); Drug Interdiction and Counter-Drug Activities, Defense-Wide, \$926,890,000; Defense Inspector General, \$216,297,000 (of which \$214,897,000 is for Operation and Maintenance; and \$1,400,000 is for Procurement).<sup>101</sup>

### **Extensions of Authority**

As in past years, Congress extended temporary authority for contractor performance of security guard functions until 2009.<sup>102</sup> Interestingly, included in this year’s extension, Congress limited the number of contracted security personnel to the number of contractor security guard personnel employed on 1 October 2006, and further limits the numbers for FYs 2008 and 2009 to ninety percent and eighty percent of the 1 October 2006 number respectively.<sup>103</sup> Congress directed the SECDEF to

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<sup>95</sup> *Id.* § 134.

<sup>96</sup> *Id.* §§ 133, 135, 136, 137.

<sup>97</sup> *Id.* § 104.

<sup>98</sup> *Id.* § 116.

<sup>99</sup> *Id.* § 201.

<sup>100</sup> *Id.* at 301.

<sup>101</sup> *Id.* at 302-03.

<sup>102</sup> *Id.* at 333.

<sup>103</sup> *Id.*

“submit to [Senate and House Armed Services Committees] a report on contractor performance of security guard functions,”<sup>104</sup> which has been a requirement since 2003.<sup>105</sup> Congress also extended the funding for the DoD Telecommunications Benefit Program<sup>106</sup> and the Commemoration of Success of the Armed Forces in Operations Enduring and Iraqi Freedom program.<sup>107</sup>

## Reports

Congress directed that the DoD submit reports to include the Navy Fleet Response Plan,<sup>108</sup> Navy surface ship rotational crew programs,<sup>109</sup> Army live-fire ranges in Hawaii,<sup>110</sup> Air Force safety requirements for Air Force flight training operations at Pueblo Memorial Airport in Colorado,<sup>111</sup> Personnel Security Investigations for Industry and National Industrial Security Program,<sup>112</sup> training range sustainment and inventory,<sup>113</sup> withdrawal or diversion of equipment from reserve units for support of reserve units being mobilized and other units,<sup>114</sup> and directed that the GAO report on joint standards and protocols for access control systems at DoD installations,<sup>115</sup> and the readiness of the Army and Marine Corps ground forces.<sup>116</sup>

## Military Horses Included in Adoption Section

In § 352, Congress amended 10 U.S.C. § 2583 to allow horses to be adopted under the same provisions as military working dogs.<sup>117</sup>

## Sale and Use of Proceeds of Recyclable Munitions Materials

This year, Congress amended Title 10 U.S.C. Chapter 443 to allow the Army, with certain restrictions, to “sell recyclable munitions materials resulting from the demilitarization of conventional military munitions.”<sup>118</sup> Congress further directed that the Army “shall use competitive procedures . . . in a manner consistent with Federal procurement laws and regulations,”<sup>119</sup> and that the “[a]mounts credited . . . shall be available for obligation for the fiscal year during which the funds are so credited and for three subsequent fiscal years.”<sup>120</sup>

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<sup>104</sup> *Id.*

<sup>105</sup> Bob Stump National Defense Authorization Act, 2003, Pub. L. 107-314, § 332, 116 Stat. 2458 (Nov. 23, 2003).

<sup>106</sup> John Warner National Defense Authorization Act, 2007 § 355.

<sup>107</sup> *Id.* § 356.

<sup>108</sup> *Id.* § 341. The Secretary of the Navy (SECNAV) is responsible for submitting this report. *Id.*

<sup>109</sup> *Id.* § 342. The SECNAV is responsible for this report. *Id.*

<sup>110</sup> *Id.* § 343. The SECARMY is responsible for this report. *Id.*

<sup>111</sup> *Id.* § 346. The Secretary of the Air Force (SECAF) is responsible for the submission of this report. *Id.*

<sup>112</sup> *Id.* § 347. The SECDEF is responsible for this report. *Id.*

<sup>113</sup> *Id.* § 348.

<sup>114</sup> *Id.* § 349. This section applies to “the Secretary concerned (as that term is defined in section 101(a)(9) of Title 10, United States Code.” *Id.*

<sup>115</sup> *Id.* § 344.

<sup>116</sup> *Id.* § 345.

<sup>117</sup> *Id.* § 352. *See also* 10 U.S.C.S. § 2583 (LEXIS 2006), which this section amends.

<sup>118</sup> John Warner National Defense Authorization Act, 2007 § 353. The sales may be made “notwithstanding section 2577 of [Title 10]” and “without regard to chapter 5 of title 40.”

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

## Storage of Personal Property Outside of Family Housing Units

Congress recognized the fact that many families move out of military family housing when one member of the family deploys and directed that the Service Secretaries must provide “adequate storage space to secure personal property that the member is unable to secure”<sup>121</sup> when the member is deployed to a special pay area for more than one hundred eighty days and where the dependent family members move out of the family housing unit for more than thirty days.

## Military Personnel Authorizations and Policy

### *End Strengths*

Congress authorized the following active duty end strengths for the DoD: Army, 512,400; Navy, 340,700; Marine Corps, 180,000; and Air Force, 334,200.<sup>122</sup> Congress placed limitations on these end strength numbers, namely that any personnel numbering over 482,400 for the Army and 175,000 for the Marine Corps must be funded out of a “contingency emergency reserve fund or [from an] emergency supplemental appropriation.”<sup>123</sup> Congress also authorized additional authority for 2008 and 2009 to increase the Army and Marine Corps number of active duty personnel.<sup>124</sup> For Selected Reserve Personnel, Congress authorized the following: Army National Guard of the United States, 350,000; Army Reserve, 200,000; Navy Reserve, 71,300; Marine Corps Reserve, 39,600; Air National Guard of the United States, 107,000; Air Force Reserve, 74,900; and Coast Guard Reserve, 10,000.<sup>125</sup> End strengths for reserve component personnel serving on active duty in support of the Reserves are authorized as follows: Army National Guard of the United States, 27,441; Army Reserve, 15,416; Navy Reserve, 12,564; Marine Corps Reserve, 2,261; Air National Guard of the United States, 13,291; and the Air Force Reserve, 2,707.<sup>126</sup> The maximum number of reserve component personnel authorized to be on active duty in support of an operation (under the provisions of § 115(b) of Title 10) is 17,000 for the Army National Guard of the United States; 13,000 for the Army Reserve; 6,200 for the Navy Reserve; 3,000 for the Marine Corps Reserve; 16,000 for the Air National Guard of the United States; and 14,000 for the Air Force Reserve.<sup>127</sup>

### *Expansion of Authority*

Congress passed many provisions with regard to extending authority or lessening restrictions for personnel, to include extending the age for mandatory retirements for active duty general and flag officers<sup>128</sup> and reserve officers.<sup>129</sup> Congress also temporarily reduced the time-in-grade requirements for eligibility for promotion for certain active duty first lieutenants and lieutenants (junior grade).<sup>130</sup>

### *Reserve Call-Up Authority Increase*

Congress increased the maximum number of days allowed under reserve call-up authority from 270 to 365 days.<sup>131</sup>

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<sup>121</sup> *Id.* § 362.

<sup>122</sup> *Id.* § 401.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* § 403.

<sup>125</sup> *Id.* § 411.

<sup>126</sup> *Id.* § 412.

<sup>127</sup> *Id.* § 420.

<sup>128</sup> *Id.* § 502.

<sup>129</sup> *Id.* § 503.

<sup>130</sup> *Id.* § 506.

<sup>131</sup> *Id.* § 522 (amending section 12304 of Title 10, United States Code).

*Report on Extent of Provision of Timely Notice of Long-Term Deployments*

By March of 2007, the SECDEF must provide a report to Congress on the number of servicemembers<sup>132</sup> who did not receive notice by way of official orders of any deployment that would last more than one hundred days. The SECDEF is further directed to “describe the degree of compliance (or noncompliance) with [DoD] policy concerning the amount of notice to be provided before long-term mobilizations or deployments,”<sup>133</sup> for reserve component deployments.

*Military Justice Matters*

By March of 2007, the Service Secretaries are required to promulgate regulations, or amend current regulations, “in order to provide that members of the Armed Forces who are ordered to duty at locations overseas in inactive duty for training status are subject to the jurisdiction of the Uniform Code of Military Justice . . . continuously from the commencement of execution of such orders to the conclusion of such orders.”<sup>134</sup> Additionally, Congress expanded the applicability of the UCMJ by amending Article 2(a) of the UCMJ to include “persons serving with or accompanying an armed force in the field,”<sup>135</sup> during both a time of war and during a contingency operation.<sup>136</sup>

*Report on DoD Awards Process for Reserve Component and Active Duty*

By 1 August 2007, the SECDEF is required to submit to the House and Senate Armed Services Committees a report detailing the “policy, procedures, and processes of the military departments for awarding decorations to members of the Armed Forces,”<sup>137</sup> to include comparing the time frames for both the active duty and reserve components from submission of the recommendation for award to approval and from approval to presentation.<sup>138</sup>

*Report on Omission of Social Security Account Numbers from Military ID Cards*

This year, Congress required the SECDEF to submit a report which will determine whether it is feasible to use military ID cards that do not have the social security account number of servicemembers.<sup>139</sup>

*Comptroller General Report on Military Conscientious Objectors*

By September of next year, Congress directed that the Comptroller General submit a report on those servicemembers who have “claimed status as a military conscientious objector between September 11, 2001, and December 31, 2006.”<sup>140</sup> Congress further requires that the Comptroller General “specifically address . . . [t]he number of all applications for status as a military conscientious objector, broken down by Armed Force, including the Coast Guard, and regular and reserve components.”<sup>141</sup> Some of the other requirements for the report include the “[n]umber of discharges or reassignments given . . . [t]he process . . . used . . . including average processing times and any provision for assignment or reassignment of members

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<sup>132</sup> “Shown by service and within each service by reserve component and active component.” *Id.* § 548.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* § 551.

<sup>135</sup> UCMJ art. 2(a)(10).

<sup>136</sup> John Warner National Defense Authorization Act, 2007, § 552. The section will now read, “[t]he following persons are subject to this chapter. . . . 10). In time of *declared war or a contingency operation*, persons serving with or accompanying an armed force in the field.” (emphasis added.) *Id.*

<sup>137</sup> *Id.* § 557.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* § 585.

<sup>140</sup> *Id.* § 587.

<sup>141</sup> *Id.*

while their application is pending . . . reasons for disapproval . . . any difference in benefits . . . compared to other discharges . . . [and] [p]re-war statistical comparisons.”<sup>142</sup>

### *Compensation and Other Personnel Benefits*

Congress authorized a total of \$110,098,628,000 for the military personnel appropriation for FY 07.<sup>143</sup> Effective on 1 January 2007, the monthly base pay of uniformed service members will increase by 2.2 percent,<sup>144</sup> down from a 3.1 percent increase last year<sup>145</sup> and 3.5 percent increase for fiscal year 2005.<sup>146</sup> As of 1 April 2007, Congress also directed targeted pay raises “for warrant officers and enlisted members serving in the E-5 to E-7 grades... and extension of the basic pay table to 40 years, providing longevity step increases for the highest officer, warrant officer, and enlisted grades.”<sup>147</sup> In the Committee Report accompanying the Authorization Act, the Senate also added that:

[it] supports the goal of [DoD], as recommended by the 9th Quadrennial Review of Military Compensation, to bring regular military compensation to the 70th percentile of private civilians when comparing experience and education. This provision contributes to its achievement. The provision would also accommodate longer career lengths and provide appropriate financial incentives for continued active-duty service beyond 30 years by the most experienced and capable military, officer and enlisted leaders of the armed forces.<sup>148</sup>

### *Special Operations Retention*

Congress directed that a study of Special Operations training costs, manning, operational temp and other factors be submitted not later than 1 August 2007.<sup>149</sup> In particular, Congress directed the SECDEF to report “[t]he percentage of members of the Armed Forces with a special operations forces designation who have accumulated over 48 months of hostile fire pay and the percentage who have accumulated over 60 months of such pay.”<sup>150</sup>

### *Legal Assistance Issues*

Congress amended 10 U.S.C. § 49 by adding a new section entitled, “Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents.”<sup>151</sup> Of note is that the annual percentage rate for a creditor extending credit to servicemembers and their dependents is capped at thirty-six percent, and the notice requirements under the Truth in Lending Act.<sup>152</sup> The amendment makes “[a]ny credit agreement, promissory note, or other contract prohibited under [the new section] void from the inception of [the] contract.”<sup>153</sup>

Congress also enhanced the authority to waive claims for overpayment of pay and allowances and travel and transportation allowances<sup>154</sup> and made an exception for notice to consumer reporting agencies regarding debts or erroneous

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<sup>142</sup> *Id.*

<sup>143</sup> *Id.* § 421.

<sup>144</sup> *Id.* § 601.

<sup>145</sup> Department of Defense Appropriations Act, 2006, Pub. L. No. 109-148, § 601, 119 Stat. 2680 (2006).

<sup>146</sup> Ronald W. Reagan National Defense Authorization Act, 2005, Pub. L. No. 108-375, § 601, 118 Stat. 1811 (2004).

<sup>147</sup> S. REP. NO. 109-254, § 601 (2006)

<sup>148</sup> *Id.*

<sup>149</sup> John Warner National Defense Authorization Act, 2007 § 645.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* § 670.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* § 671.

payments.<sup>155</sup> Congress also changed the requirements for recovery of overpayments of pay made to servicemembers,<sup>156</sup> established a joint family support assistance program,<sup>157</sup> and mandated the establishment of a special working group on transition to civilian employment of National Guard and reserve component members returning from deployments to Iraq and Afghanistan.<sup>158</sup> Congress further directed an audit of pay of Army servicemembers evacuated from a combat zone for inpatient care,<sup>159</sup> directed a report on the eligibility and provision of certain assignment incentive pay for Army National Guard and Army Reserve,<sup>160</sup> and called for the entire Congress to pass a bill paying World War II veterans who survived the Bataan Death march (indicating that survivors should receive adequate compensation).<sup>161</sup>

### *Health Care*

Among other reforms, Congress directed that SECDEF “establish within the [DoD] a task force to examine matters relating to the future of military health care.”<sup>162</sup> They also directed a study relating to chiropractic health care services<sup>163</sup> and instructed the Comptroller General to audit DoD health care costs and cost-saving measures<sup>164</sup> and the pharmacy benefits program.<sup>165</sup> Finally, Congress created enhanced programs for mental health screening and early diagnosis of post traumatic stress disorder.<sup>166</sup>

### **Major Defense Acquisition Programs**

Congress directed the SECDEF to create a panel of various acquisition representatives to “conduct reviews of progress made by the DoD to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur,” to review the Comptroller General report “relating to areas of vulnerability of [DoD] contracts to fraud, waste, and abuse” and to “recommend changes in law, regulations, and policy that [DoD] determines necessary to eliminate such areas of vulnerability.”<sup>167</sup>

Congress also directed the SECDEF to “establish a panel to be known as the ‘Panel on Contracting Integrity,’ composed of the Under Secretary of Defense for Acquisition, Technology, and Logistics, and representatives from the service acquisition executives from each service, the DoD Inspector General, the Inspectors General from each service, each “Defense Agency involved with contracting,” and “other representative as may be determined appropriate by the [SECDEF].”<sup>168</sup>

Congress went on to provide guidance on the linking of award and incentive fees to acquisition outcomes, and directed that the SECDEF report to the congressional defense committees on the established standards for ensuring that “all new contracts using award fees link such fees to acquisition outcomes (which shall be defined in terms of program cost, schedule, and performance.”<sup>169</sup>

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<sup>155</sup> *Id.* § 672.

<sup>156</sup> *Id.* § 674.

<sup>157</sup> *Id.* § 675.

<sup>158</sup> *Id.* § 676.

<sup>159</sup> *Id.* § 677.

<sup>160</sup> *Id.* § 678.

<sup>161</sup> *Id.* § 679.

<sup>162</sup> *Id.* § 711.

<sup>163</sup> *Id.* § 712.

<sup>164</sup> *Id.* § 713.

<sup>165</sup> *Id.* § 718.

<sup>166</sup> *Id.* §§ 738, 741.

<sup>167</sup> *Id.* § 813.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* § 814.

With regard to contractor personnel, Congress directed the SECDEF to submit a report including “[i]nformation on the status of the implementation of [DoD Instruction 3020.41]<sup>170</sup> . . . [and a] discussion of how the instruction is being applied. . . .”<sup>171</sup>

Congress set a goal for “critical acquisition functions,” and dictated that “each of the military departments [will ensure] that [within five years] for each major defense acquisition program and each major automated information systems program, each of the following positions is performed by a properly qualified member of the Armed Forces of full-time employee of [the DoD]: (1) Program manager[] (2) Deputy program manager[] (3) Chief Engineer[] (4) Systems engineer[] (5) Cost estimator.”<sup>172</sup>

#### *Use of Federal Supply Schedules by State and Local Governments*

The Administrator of the General Services, “may provide for the use by State or local governments of Federal supply schedules of the General Services Administration for goods or services that are to be used to facilitate recovery from a major disaster declared by the President under the [Stafford Act] or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.”<sup>173</sup>

#### *Former DoD Officials Employed by DoD Contractors*

By 1 December 2007, the Comptroller General is required to submit to the House and Senate Armed Services Committees, “a report on the employment of former officials of [the DoD] by major defense contractors during the most recent calendar year for which, in the judgment of the Comptroller General, data are reasonably available.”<sup>174</sup>

#### *Program Manager Empowerment and Accountability*

Congress directed the SECDEF to “develop a comprehensive strategy for enhancing the role of [DoD] program managers in developing and carrying out defense acquisition programs.”<sup>175</sup> The strategy must include “enhanced training and educational opportunities for program managers,” “increased emphasis on the mentoring of current and future program managers by experience senior executives and program managers within the Department,” “improved career paths and career opportunities for program managers,” “additional incentives for recruitment and retention of highly qualified individuals to serve as program managers,” “improved resources and support. . . .,” “improved means of collecting and disseminating best practices and lessons learned to enhance program management . . . .,” “increased accountability of program managers for the results of defense acquisition programs,” and “enhanced monetary and nonmonetary awards for successful accomplishment of program objectives by program manager.”<sup>176</sup>

<sup>170</sup> U.S. DEP’T OF DEF., INSTR. 3020.41, CONTRACTOR PERSONNEL AUTHORIZED TO ACCOMPANY THE U.S. ARMED FORCES (3 Oct. 2006). The instruction is available at [http://www.dtic.mil/whs/directives/corres/pdf/i302041\\_100305/i302041p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/i302041_100305/i302041p.pdf), and provides its “purpose” as:

Under the authority of references (a) and (b), this Instruction establishes and implements policy and guidance, assigns responsibilities, and serves as a comprehensive source of DoD policy and procedures concerning DoD contractor personnel authorized to accompany the U.S. Armed Forces. This includes defense contractors and employees of defense contractors and their subcontractors at all tiers under DoD contracts, including third country national (TCN) and host nation (HN) personnel, who are authorized to accompany the U.S. Armed Forces under such contracts. Collectively, these persons are hereafter referred to as contingency contractor personnel. One significant sub-category of contingency contractor personnel, called contractors deploying with the force (CDF), is subject to special deployment, redeployment, and accountability requirements and responsibilities.

*Id.*

<sup>171</sup> John Warner National Defense Authorization Act, 2007 § 815.

<sup>172</sup> *Id.* § 818.

<sup>173</sup> *Id.* § 833.

<sup>174</sup> *Id.* § 851.

<sup>175</sup> *Id.* § 853.

<sup>176</sup> *Id.*

*Joint Policies on Requirements Definition, Contingency Program Management and Contingency Contracting*

Congress amended Chapter 137 of Title 10, requiring SECDEF, “in consultation with the Chairman of the Joint Chiefs of Staff . . . [to] develop joint policies for requirements definition, contingency program management, and contingency contracting during combat operations and post-conflict operations.”<sup>177</sup> The policy must, in part, include, “[a] preplanned organizational approach to program management during combat operations, post-conflict operations, and contingency operations,” identifying a “deployable cadre of experts” in program management, training provided by the Defense Acquisition University to include the “use of laws, regulations, policies, and directives related to program management in combat or contingency environments,” “the integration of cost, schedule, and performance objectives into practical acquisition strategies aligned with available resources and subject to effective oversight,” and “procedures of [the DoD] related to funding mechanisms and contingency contract management.”<sup>178</sup>

*Modifications to the Combatant Commanders’ Initiative Fund*

Prior to this year’s funding authority, § 166a of Title 10 defined what activities can be accomplished with Combatant Commanders’ Initiative Funds (CCIF). The authorized activities included force training, contingencies, selected operations, command and control, joint exercises (including activities of participating foreign countries, military education and training to military and related civilian personnel of foreign countries (including transportation, translation, and administrative expenses), personnel expenses of defense personnel for bilateral or regional cooperation programs, force protection, joint warfighting capabilities and humanitarian and civil assistance.<sup>179</sup> This year, Congress amended “humanitarian and civil assistance,” to read, “humanitarian and civic assistance, to include urgent and unanticipated humanitarian relief and reconstruction assistance,” and by adding to the priority consideration list, “the provision of funds to be used for urgent and unanticipated humanitarian relief and reconstruction assistance, particularly in a foreign country where the armed forces are engaged in a contingency operation.”<sup>180</sup>

*Report on Defense Travel System (DTS)*

Congress has directed the SECDEF to submit to the defense committees a report on the “results and recommendations of an independent study of the Defense Travel System . . . to determine the most cost-effective method of meeting [DoD] travel requirements.”<sup>181</sup>

*Report on the Posture of the Special Operations Command to Conduct the Global War on Terrorism*

The 2006 Quadrennial Defense Review (QDR) recommended an increase in the size of the Special Operations Command (SOCOM) “as a fundamental part of the efforts of [the DoD] to fight the global war on terrorism.”<sup>182</sup> As a result, this year Congress directed SECDEF to submit a report to the defense committees on “whether [SOCOM] is appropriately manned, resourced, and equipped to successfully meet the long-term requirements of the global war on terrorism.” “whether the expansion of that command . . . provides an appropriate balance between active and reserve component capabilities,” “whether [SOCOM] has sufficient Army Special Forces to meet the 2006 [QDR] objective of building allied and partner nation capacity through security assistance and other training missions such as the Joint Combined Exchange Training program,” “the efforts of the commander of [SOCOM] to provide special operations forces personnel with specialized environmental training in preparation for operations across the globe and in extreme and varied operational environments such as mountain, jungle, or desert environments.”<sup>183</sup>

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<sup>177</sup> *Id.* § 854.

<sup>178</sup> *Id.* (amending 10 U.S.C. § 137).

<sup>179</sup> 10 U.S.C.S. § 166a (LEXIS 2006).

<sup>180</sup> John Warner National Defense Authorization Act, 2007 § 902.

<sup>181</sup> *Id.* § 943.

<sup>182</sup> *Id.* § 946.

<sup>183</sup> *Id.*

### General Provisions

For every year after FY 07, Congress directed that the President's budget "shall include . . . a request for the appropriation of funds for . . . ongoing military operations in Afghanistan and Iraq," "an estimate of all funds expected to be required . . . for such operations," and "a detailed justification of the funds requested."<sup>184</sup>

Congress extended DoD authority to provide support for counterdrug activities for another two fiscal years and expanded the list of nations eligible to receive this support to include Azerbaijan, Kazakhstan, Kyrgyzstan, Armenia, Guatemala, Belize, and Panama.<sup>185</sup> Congress also extended the authority to support unified counterdrug expenditures in Columbia was also extended by two years, along with the already established reporting requirements.<sup>186</sup>

Congress directed that the SECDEF submit a report to the House and Senate Armed Services Committees on the feasibility of establishing a regional combatant command for Africa no later than six months after the enactment of the Authorization Act.<sup>187</sup> The report will include "an assessment of the benefits and problems associated with establishing" the command and "an estimate of the costs, time, and resources needed to establish such a command."<sup>188</sup>

No later than April 2007, the President must submit a report to Congress on "building interagency capacity and enhancing the integration of civilian capabilities of the executive branch with the capabilities of the Armed Forces to enhance the achievement of Unites States national security goals and objectives."<sup>189</sup> Issues which must be in the report include planning and assessment capabilities, leadership issues, acquisition authorities, budgetary impediments, personnel policies, and integration of civilians.<sup>190</sup>

Congress amended chapter 134 of Title 10 to accept and retain funds collected from non-federal sources to defray the costs of conferences.<sup>191</sup> The DoD is now authorized to collect fees for conferences, which fees "shall be available to pay the costs of [the DoD] with respect to the conference or to reimburse [the DoD] for costs incurred with respect to the conference."<sup>192</sup> Any funds in excess of the reimbursement amounts, however, must be deposited into the Treasury as miscellaneous receipts.<sup>193</sup> While the authority has been granted, the actual procedures are not yet in place. According to the Act, only the SECDEF has the authority to invoke the statute.

This year, Congress specifically prohibited the "parking" of funds, by adding chapter 165 to title 10 of the US Code. The new section, § 2773a states that "[a]n officer or employee of [The DoD] may not direct the designation of funds for a particular purpose in the budget of the President . . . with the knowledge or intent that such funds, if made available to the Department, will not be used for the purpose for which they are designated."<sup>194</sup> If an officer or employee does direct the funds in this manner, it is a violation of § 1341(a)(1)(A), which is part of the Antideficiency Act.<sup>195</sup>

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<sup>184</sup> *Id.* § 1008.

<sup>185</sup> *Id.* § 1022.

<sup>186</sup> *Id.* §§ 1023-26.

<sup>187</sup> *Id.* § 1033.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* § 1040.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* § 1051.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* § 1053

<sup>195</sup> *Id.*

*Matters Relating to Foreign Nations*

Congress added § 127c to Title 10, which gives SECDEF the authority to provide logistic support, supplies, and services to allied forces during combined operations.<sup>196</sup> The new section limits the authority to operations “carried out during active hostilities or as part of a contingency operation or a noncombat operation (including an operation in support of the provision of humanitarian or foreign disaster assistance, a country stabilization operation, or a peacekeeping operation under chapter VI or VII of the [UN Charter].”<sup>197</sup>

Congress provided temporary authority (until the end of FY 2008) to use acquisition and cross-servicing agreements (ACSAs) to “lend certain military equipment to foreign forces in Iraq and Afghanistan for personnel protection and survivability,” for not longer than a year.<sup>198</sup> The section provides for semiannual reporting to the Senate Armed Services and the Senate Foreign Relations Committees and the House Armed Services and International Relations Committees.<sup>199</sup>

During FY 2007, Congress authorized DoD military and civilian personnel, with the concurrence of the Secretary of State, to participate in any multinational military center of excellence for the purpose of “enhancing the capabilities of military forces and civilian personnel of the nations participating in such center to engage in joint exercises or coalition or international military operations,” or to “improv[e] interoperability between the Armed Forces of the United States and the military forces of friendly foreign nations.”<sup>200</sup> Funding is available from the O&M appropriations “[t]o pay the United States share of the operating expenses of any multinational military center of excellence in which the United States participates under this section,” and “[t]o pay the costs of the participation of members of the Armed Forces and Department of Defense civilian personnel in multinational military centers of excellence under this section, including the costs of expenses of such participants.”<sup>201</sup>

As long as it increases interoperability between the US Armed Forces and friendly foreign forces, Congress has authorized SECDEF to provide “military and civilian personnel of a friendly foreign government”<sup>202</sup> training materials, to include “electronically-distributed learning content for education and training . . . for the development and enhancement of allied and friendly military capabilities for multinational operations, including joint exercises and coalition operations . . . [and to] provide information technology, including computer software developed for such purpose, but only to the extent necessary to support the use of such learning content for the education and training of such personnel.”<sup>203</sup>

Congress commended the SECDEF “for his initiative in providing for the safe return of [110 Iraqi] children to Iraq by military aircraft”<sup>204</sup> pursuant to his authority to permit space-available travel for humanitarian purposes. The children needed medical care and traveled by bus to Amman, Jordan. On the way there, armed insurgents attacked the children. For their return trip, SECDEF authorized the military flight.<sup>205</sup> Congress was apparently pleased with the decision, and stated, “[i]t is the sense of Congress that the [SECDEF] should continue to provide space-available travel on military aircraft for humanitarian reasons to Iraqi children who would otherwise have no means available to seek urgently needed medical care such as that provided by a humanitarian organization in Amman, Jordan.”<sup>206</sup>

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<sup>196</sup> *Id.* § 1201.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* § 1202.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* § 1205.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* § 1207 (the friendly foreign government must also approve the training).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

### *Enhanced Rewards Authority*

Section 127b of Title 10 provides the authority for the DoD to pay rewards for, “information or nonlethal assistance that is beneficial to: (1) an operation or activity of the armed forces conducted outside the United States against international terrorism; or (2) force protection of the armed forces.”<sup>207</sup> Prior to this year’s Authorization Act, the provision further detailed that “[a] commander of a combatant command to whom authority to provide rewards under this section is delegated under paragraph (1) may further delegate that authority, but only for a reward in an amount or with a value not in excess of \$2,500. . . .”<sup>208</sup> In the Authorization Act, Congress increased the \$2,500 limit to \$10,000.<sup>209</sup>

### *Wheeled Vehicle Improvised Explosive Device (IED) Jammer Requirement*

Congress directed the SECDEF to “ensure that by the end of fiscal year 2007 all United States military wheeled vehicles used in Iraq and Afghanistan outside of secure military operating bases are protected by Improvised Explosive Device (IED) jammers.”<sup>210</sup> Funding authority is provided in § XV of the Authorization Act.<sup>211</sup>

### *Authorization for Increased Costs Due to Operation Iraqi Freedom and Operation Enduring Freedom*

Title XV provides authority for increased GWOT funding, to include increased authority for The DoD, Army, Navy and Marine Corps, and Air Force Procurement; RDT&E; O&M; the Defense Health Program; classified programs; MILPER; and several Iraq and Afghanistan specific authorities.<sup>212</sup>

One of the specific authorities is the Joint Improvised Explosive Device Defeat Fund (JIEDDF).<sup>213</sup> The JIEDDF authorizes \$2.1 billion dollars to be used to “investigate, develop, and provide equipment, supplies, services, training, facilities, personnel, and funds to assist United States forces in the defeat of improvised explosive devices.”<sup>214</sup> The section contains transfer authority, under which funds may be transferred from the JIEDDF to MILPER, O&M, procurement, RDT&E and/or Defense Working Capital Funds.<sup>215</sup> This authority is in addition to other general and specific transfer authority in the Authorization Act.<sup>216</sup>

Congress again provided authority for the Iraq Freedom Fund in the amount of \$50,000,000.<sup>217</sup> Like the JIEDDF, the provision contains transfer authority, allowing transfer of funds into Service O&M, MILPER, DoD RDT&E, DoD procurement, classified programs, and Coast Guard operating expenses.<sup>218</sup>

The Act also contains authority for the Iraq Security Forces Fund (ISFF) and the Afghanistan Security Forces Fund (ASFF).<sup>219</sup> The two funds provide authority for “the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, construction, and funding.”<sup>220</sup> The two sections provide transfer authority to MILPER,

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<sup>207</sup> 10 U.S.C.S. § 127b (LEXIS 2006).

<sup>208</sup> *Id.*

<sup>209</sup> John Warner National Defense Authorization Act, 2007 § 1401.

<sup>210</sup> *Id.* § 1403.

<sup>211</sup> *Id.* tit. XV.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* § 1514.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* § 1515.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* §§ 1516, 1517 (The ISFF provides for \$1.7 billion in authority and the ASFF, \$1.5 billion).

<sup>220</sup> *Id.*

O&M, procurement, RDT&E, Defense Working Capital Funds, and Overseas Humanitarian, Disaster, and Civic Aid accounts.<sup>221</sup> Interestingly, for both funds, Congress provided authority to accept contributions to the accounts from “any person, foreign government, or international organization,” unless the contribution would “compromise, or appear to compromise the integrity of any program of [the DoD].”<sup>222</sup>

Like the Appropriations Act, the Authorization Act limits the availability of funds for certain purposes relating to Iraq, namely prohibiting the establishment of “any military installation or base for the purpose of providing for the permanent stationing of United States Armed Forces in Iraq,” and prohibiting the exercise of “economic control of the oil resources of Iraq.”<sup>223</sup>

#### *Military Construction Authorizations*

Division B of the Authorization Act contains authorizations for military construction.<sup>224</sup> Of note is the increase in the maximum annual amount authorized to be obligated for emergency military construction from \$45,000,000 to \$50,000,000.<sup>225</sup> Additionally, Congress again provided for a one-year extension of temporary, limited authority to use O&M funds for construction outside the United States.<sup>226</sup>

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<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* § 1519.

<sup>224</sup> *Id.* div. B.

<sup>225</sup> *Id.* § 2801.

<sup>226</sup> *Id.* § 2802.