



# Transfer and Reprogramming of Appropriations: An Overview of Authorities, Limitations, and Procedures

(name redacted)

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## Summary

Enacted appropriations and other budgetary legislation may vary in the level of detail they provide regarding how agencies should spend the funds that have been provided. Even when the purpose of appropriations is specified in great detail, agencies may be provided with some flexibility to make budgetary adjustments throughout the fiscal year. These adjustments may be necessary due to changing or unforeseen circumstances. In some instances, agencies are provided with transfer authority (i.e., authority to shift funds from one appropriations or fund account to another). In addition, agencies are generally permitted to shift funds from one purpose to another *within* an appropriations account. This practice, usually referred to as “reprogramming,” is subject to statutorily imposed limitations.

An agency may only transfer budgetary resources if Congress has provided the agency with the statutory authority to do so. Transfer authority may be provided either in authorizing statutes or in appropriations acts. Transfer authority may be broad or narrow in scope, and may apply to all agencies, to select agencies, or only to a single agency. Transfer authority may be limited to a specific dollar amount. Alternatively, transfer authority may be provided for an indefinite amount, but with specific restrictions on the circumstances under which the authority may be used.

Reprogramming is generally permitted unless otherwise restricted or prohibited by statute. An agency’s ability to reprogram may be restricted by including “limiting provisions” within its annual appropriations acts or other statutes. In addition, an agency may not reprogram funds if doing so would violate any other provisions of law.

In general, transferred and reprogrammed funds are subject to any limitations or conditions that were imposed by their original appropriations act. Statutes that provide transfer and reprogramming authority will commonly impose additional limitations or conditions, such as “not-to-exceed” limits, which place a cap on the amount of funds that may be transferred or reprogrammed, and “purpose” restrictions, which prohibit transferred or reprogrammed funds from being used for certain activities.

Agencies may be required by statute to notify Congress prior to (or shortly after) transferring or reprogramming funds. Such requirements usually involve notification to the relevant House and Senate Appropriations Committees a certain number of days (often 15, 30, or 45 calendar days) prior to transferring or reprogramming funds. Typically, all account-to-account transfers will require prior notification to Congress. Reprogramming actions generally require prior notification only when they exceed a certain dollar amount or “threshold.”

When done so in accordance with the applicable authorities and procedures, transferring or reprogramming funds may enable agencies to operate more effectively or efficiently, and in a manner that is consistent with congressional intent. When transfers or reprogramming actions deviate from the applicable authorities, procedures, and limitations, however, it is possible that funds may be used in ways contrary to congressional intent.

This report provides an overview of transfers and reprogramming, and describes the statutory limitations and requirements for congressional notification that are applicable to each. This report concludes by discussing some of the challenges that transfers and reprogramming may pose for congressional oversight of budget execution.

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## Introduction

The U.S. Constitution vests Congress with the “power of the purse,” and funds may only be drawn from the Treasury in consequence of appropriations made by law.<sup>1</sup> Enacted appropriations and other budgetary legislation<sup>2</sup> may vary in the level of detail they provide regarding how agencies should spend the funds that have been provided. Even when the purpose of appropriations has been specified in great detail, agencies have often been provided with some flexibility to decide how they will use their available budgetary resources during the fiscal year. In some instances, agencies are provided with limited authority to shift funds from one appropriations account<sup>3</sup> or fund account<sup>4</sup> to another—commonly referred to as “transfer authority.” In addition, agencies are generally permitted to shift funds from one purpose to another *within* an appropriations account. This practice, usually referred to as “reprogramming,” may be restricted by statute.

While the terms *reprogramming* and *transfer* are sometimes used interchangeably,<sup>5</sup> the two terms each represent distinct budgetary actions with different statutory limitations. In order to differentiate between a reprogramming action and a transfer action, it may be necessary to understand the structure of the accounts involved and the range of activities and programs typically funded by each account.

For example, in FY2013 there were more than 30 accounts within the Department of Justice Appropriations Act, including an account for “Federal Bureau of Investigation (FBI), Salaries and Expenses” and an account for “Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Salaries and Expenses.”<sup>6</sup> Given the range of activities typically funded by these two accounts, a *transfer* would occur if funds originally appropriated for FBI salaries and expenses were moved and then used to pay for ATF salaries and expenses.

The Department of Justice Appropriations Act also includes an account for “U.S. Attorneys, Salaries and Expenses.” This account provides funding for a range of activities, including criminal litigation, civil litigation, and continuing legal education of U.S. attorneys. In this example, a *reprogramming* would occur if funds originally allocated for criminal litigation

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<sup>1</sup> U.S. Constitution, Article I, §9.

<sup>2</sup> Other budgetary legislation includes direct spending (i.e., budget authority provided outside the appropriations process, by authorizing statute, for example), as well as revenue and debt-limit legislation. See CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by (name redacted)

<sup>3</sup> An “appropriations account” is the basic unit of an appropriation of funds. In the case of funds provided in an appropriations act, each “account” reflects a paragraph in the appropriations act that provides budget authority (i.e., the authority to enter into obligations such as contracts or the hiring of personnel and the ability to make payments from the U.S. Treasury) for a related group of programs, projects, and activities. U.S. Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 2-3, <http://www.gao.gov/products/GAO-05-734SP> (hereinafter, *GAO Glossary*).

<sup>4</sup> A “fund account” generally refers to accounts that contain funds not provided for in appropriations acts. Fund accounts may also include deposit accounts, trust fund accounts, and accounts used solely for accounting purposes. *GAO Glossary*, pp. 2-3.

<sup>5</sup> For example, the Department of Defense uses the term “reprogramming” to refer to both reprogramming and transfers. Prior to the mid-1950s, the terms “adjustments” and “interchangeability” were used to refer to both reprogramming and transfers. (name redacted), “Reprogramming of Funds by the Defense Department,” *Journal of Politics*, vol. 36, no. 1 (February 1974), p. 78.

<sup>6</sup> Commerce, Justice, Science, and Related Agencies Appropriations Act, 2013 (Division B of P.L. 113-6).

expenses were shifted and then used to pay for civil litigation expenses or for continuing legal education expenses.

In the first example, funds are transferred from the “FBI, Salaries and Expenses” account to the “ATF, Salaries and Expenses” account, while in the second example funds are reprogrammed from one activity to another within the “U.S. Attorneys, Salaries and Expenses” account. In each example, whether the budgetary transaction is a transfer or a reprogramming depends, in part, on the structure and contents of the appropriations accounts involved.

This report provides an overview of transfers and reprogramming, and describes the statutory limitations and requirements for congressional notification that are applicable to each.<sup>7</sup> This report concludes with a brief discussion of the following possible issues for Congress: (1) agency reporting and congressional oversight of transfers and reprogramming actions, (2) the potential burden of transfer and reprogramming notifications, (3) excessive or improper use of transfer and reprogramming authorities, and (4) financial management and budgetary treatment of transferred funds.

## **Transfer Authority**

Transfers (i.e., the shift of budgetary resources from one appropriations or fund account to another) typically involve movement of funds within an agency or department, but may also involve movement of funds between two or more agencies or departments.<sup>8</sup> An agency or department may only transfer budgetary resources if it has been provided the statutory authority to do so. A general restriction on transfers may be found in 31 U.S.C. Section 1532, which provides, in part, “An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law.”<sup>9</sup> According to the Government Accountability Office (GAO), all transfers are prohibited without statutory authority, including “(1) transfers from one agency to another, (2) transfers from one account to another within the same agency, and (3) transfers to an interagency or intra-agency working fund. In each instance statutory authority is required.”<sup>10</sup>

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<sup>7</sup> There are two types of transfers: “expenditure” and “nonexpenditure” transfers. Expenditure transfers occur when one agency or program “purchases” goods or services from another agency or program. Such transfers are subject to the procedures established by the Economy Act (31 U.S.C. §1535). Nonexpenditure transfers are all other transfers, including movement of funds from one account to another for the purpose of increasing the budgetary resources available to a specific program or activity. This report primarily covers nonexpenditure transfers. For discussion of Economy Act transactions and other interagency procurement, see CRS Report R40814, *Interagency Contracting: An Overview of Federal Procurement and Appropriations Law*, by (name redacted) and (name redacted).

<sup>8</sup> In addition, when multiple agencies are responsible for carrying out a program or activity, the Department of the Treasury may establish a “transfer appropriation account.” Each transfer account is made up of funds from the “parent account” to which budget authority for the program or activity was originally appropriated. The agency responsible for carrying out the program may then obligate from the account as needed and up to the amount that it has been allocated. Each transfer account contains codes identifying both the parent account and the receiving agency. *GAO Glossary*, pp. 6-7, 9-10.

<sup>9</sup> 31 U.S.C. §1532.

<sup>10</sup> U.S. Government Accountability Office (then the U.S. General Accounting Office), *Principles of Federal Appropriations Law*, Third Edition, Volume I, GAO-04-261SP, January 2004, p. 2-24, at <http://www.gao.gov/products/GAO-04-261SP>.

Without prior statutory authority, an agency may not use budget authority from one appropriations account to pay for programs, projects, or activities (PPAs)<sup>11</sup> that are typically funded by another account. Without statutory authority, an agency may not use excess funds in one account to offset potential deficiencies in another account, or shift funds from a project it considers a low priority to a project funded by a different account that it considers a higher priority.

Transfer authority may be broad or narrow in scope and it may apply to all agencies, to select agencies, or only to a single agency. Transfer authority may also be limited to a specific dollar amount. Alternatively, transfer authority may be “indefinite” (i.e., provided without a specific limit on the dollar amount that may be transferred).<sup>12</sup> Indefinite transfer authority is typically provided with specific restrictions on the circumstances under which the authority may be used.

Transfer authority may be provided either in authorizing statutes or in appropriations acts. In addition, statutory provisions that provide transfer authority will typically require the agency or department to notify Congress a certain number of days (often 15, 30, or 45 calendar days) prior to transferring funds.<sup>13</sup>

## **Transfer Authority in Annual Appropriations Acts**

Transfer authority in annual appropriations acts provides agencies with limited discretion to shift budget authority from one appropriations account or fund account to another. Within annual appropriations acts, transfer authority may be provided to a specific department or agency. Transfer authority may also be provided for a specific account, program, or purpose.

## **Department-Wide and Agency-Wide Transfer Authority**

Department-wide and agency-wide transfer authorities are often found in the sections of appropriations acts titled “General Provisions.” Department-wide and agency-wide transfer authorities are typically provided with specific limitations on the overall amount that a department or agency may transfer amongst its accounts in a given fiscal year. Additionally, there may be limits on the amount that any single account may be augmented by incoming transfers. For example, the FY2013 department-wide transfer authority provision for the Department of Commerce states “not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers.”<sup>14</sup>

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<sup>11</sup> A PPA is “an element within a budget account. For annually appropriated accounts, the Office of Management and Budget (OMB) and agencies identify PPAs by reference to committee reports and budget justifications.” *GAO Glossary*, p. 80.

<sup>12</sup> The term *indefinite transfer authority* is used in this report to refer to transfer authority that has been provided without a specific dollar limit on the amount of funds that may be transferred.

<sup>13</sup> Generally, such provisions require agencies to notify the House and Senate Appropriations Committees, though in some instances agencies are also required to notify the relevant authorizing committees.

<sup>14</sup> Commerce, Justice, Science, and Related Agencies Appropriations Act, 2013 (Division B of P.L. 113-6, at 127 Stat. 241).

In the above example, 5% is the limit on how much may be transferred out in total. In other words, the total amount of transfers carried out by the Department of Commerce may not exceed 5% of the total amount the department was appropriated for FY2013. The 10% figure is the maximum amount that any single account may be augmented by incoming transfers. In other words, each account for the Department of Commerce may be increased by a maximum of 10% of its original appropriation. For example, an account that was originally appropriated \$10 million may accept a maximum of \$1 million in incoming transfers.

### **Account-Specific Transfer Authority**

Transfer authority may also be found in the paragraphs of an appropriations act that specify the amount of budget authority being provided to each account.<sup>15</sup> Account-specific transfer authorities allow agencies to transfer funds among specific accounts. Account-specific transfer authority may be limited to a specific dollar amount. For example, in FY2012 the Secretary of the Interior and the Secretary of Agriculture were authorized to transfer up to \$50,000,000 of funds appropriated for wildland fire management “when such transfers would facilitate and expedite wildland fire management programs and projects.”<sup>16</sup> Alternatively, account-specific transfer authority may be indefinite with respect to amount, and limited only to the amount of funds available. In such cases, the authority is often provided with specific restrictions on the purposes for which the authority may be used. For example, in FY2012 the Secretary of the Treasury was provided indefinite authority to “transfer funds from Financial Management Service, Salaries and Expenses to the Debt Collection Fund as necessary to cover the costs of debt collection.”<sup>17</sup>

### **Transfer Authority in Authorizing Statutes**

While transfer authority provided in annual appropriations acts is often limited to a specific dollar amount or percentage of the total budget authority provided, transfer authority in authorizing statutes is often broad or indefinite (i.e., provided without explicit caps on the amount of funds that may be transferred).<sup>18</sup> Generally, when indefinite transfer authority is provided in authorizing statutes, it is accompanied by specific restrictions on the circumstances under which the authority may be used. In addition, restrictions on indefinite transfer authority may be imposed by subsequently enacted legislation, such as annual appropriations acts.

### **Transfer Authority for Governmental Reorganization**

Under 31 U.S.C. Section 1531(a), executive agencies may transfer funds when the responsibility to carry out the functions or activities for which the funds were provided is transferred from one agency to another.<sup>19</sup> This provision also applies when a function or activity that was previously

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<sup>15</sup> In such cases, the title of the account will typically state, in parentheses, that the paragraph includes “transfer of funds.”

<sup>16</sup> Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012 (Division E of P.L. 112-74, at 125 Stat. 1004).

<sup>17</sup> Financial Services and General Government Appropriations Act, 2012 (Division C of P.L. 112-74, at 125 Stat. 890).

<sup>18</sup> For selected examples of transfer authority provided in authorizing statutes, see this report’s **Appendix**.

<sup>19</sup> A similar provision, which applies specifically to the Department of Defense, may be found in 10 U.S.C. §126.

under the jurisdiction of a single agency becomes the shared responsibility of two or more agencies.

The balance of an appropriation available and necessary to finance or discharge a function or activity transferred or assigned under law within an executive agency or from one executive agency to another may be transferred to and used (1) by the organizational unit or agency to which the function or activity was transferred or assigned; and (2) for a purpose for which the appropriation was originally available.<sup>20</sup>

It is important to note that the above provision provides executive agencies with authority to transfer funds only when there is a corresponding transfer of function authorized by law.<sup>21</sup> In cases of governmental reorganization, the authority to transfer funds may be temporary, periodic, or both—whichever is best suited for the associated transfer of function authorized by law. Generally, the authority to transfer funds ceases when the associated transfer of function or transition period is complete.

One recent example of government reorganization was the establishment of the Department of Homeland Security. The Homeland Security Act of 2002 (HSA, P.L. 107-296; 116 Stat. 2135) provided for the transfer of multiple functions to the newly created Department of Homeland Security (DHS). To facilitate the transfer of functions, the HSA included multiple provisions authorizing the transfer of funds from these departments and agencies to DHS.<sup>22</sup>

### **Transfer Authority for Inter- and Intra-agency Coordination of Activities and Functions**

Transfer authority may be provided when there exists an ongoing need for coordinated funding of activities. When multiple agencies (or separately funded components of an agency) are responsible for achieving a specific policy objective over an extended period of time, permanent authority may be provided to facilitate ongoing, coordinated funding of certain activities.<sup>23</sup>

For example, the Central Intelligence Agency Act of 1949 allows the Central Intelligence Agency (CIA) to transfer or accept funds from any government agency if those transfers further the performance of certain functions, such as collection of intelligence through human sources, evaluation of intelligence related to national security, and coordination of intelligence collection activities outside the United States.<sup>24</sup> The Intelligence Reform and Terrorism Prevention Act of 2004 gives the Director of National Intelligence authority to manage (and in some cases approve)

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<sup>20</sup> 31 U.S.C. §1531(a).

<sup>21</sup> In addition, a statute that authorizes a transfer of function will typically require the agencies involved to enter into a transfer agreement prior to transferring functions or funds. Transfer agreements generally include (1) a detailed description of the functions, personnel, budgetary resources, and other assets that will be transferred, and (2) an estimate of the anticipated duration of the transition period.

<sup>22</sup> In addition, select provisions of the Homeland Security Act of 2002 provided authority to transfer personnel and assets such as property, facilities, contracts, and records. Selected examples of transfer authority granted as part of the DHS reorganization are discussed in the **Appendix**.

<sup>23</sup> Similar authority may be provided in annual appropriations acts, though the authority will frequently apply only to the funds provided by the appropriations and typically only for a single fiscal year. This section of the report focuses on the permanent authority that has been provided in authorizing statutes and which has, in some cases, been codified in the *U.S. Code*.

<sup>24</sup> 50 U.S.C. §3506(a).



transfers and reprogramming of certain intelligence-related funds, including funds made available under the National Intelligence Program and the Joint Military Intelligence Program.<sup>25</sup> The Foreign Assistance Act of 1961, as amended, includes multiple provisions that allow the President to authorize transfers of select foreign assistance funds, if such transfers are “in the national interest.”<sup>26</sup>

## Reprogramming

Reprogramming is the shifting of funds *within* an appropriations account “to use them for purposes other than those contemplated at the time of appropriation; it is the shifting of funds from one object class to another within an appropriation or from one program activity to another.”<sup>27</sup> Unlike transfers, reprogramming of funds is generally permitted unless such actions are otherwise restricted by statute, and an agency may not reprogram funds if doing so would violate any other provisions of law.<sup>28</sup>

According to GAO, reprogramming “is implicit in an agency’s responsibility to manage its funds.”<sup>29</sup> GAO has also stated that Congress implicitly confers upon agencies the authority to reprogram whenever it enacts “lump-sum” appropriations without including statutory restrictions on the use of the funds provided. It is important to note, however, that an agency may not circumvent the general prohibition against transfers by characterizing the movement of funds from one account to another as a “reprogramming,” either intentionally or unintentionally. According to GAO, “an agency’s erroneous characterization of a proposed transfer as a ‘reprogramming’ is irrelevant,” and such actions are prohibited without prior statutory authority.<sup>30</sup>

An agency’s ability to reprogram may be restricted by including “limiting provisions” within its annual appropriations acts or other statutes. For example, provisions in the Department of Homeland Security Appropriations Act, 2013, established the following limitations and notification requirements on reprogramming actions by DHS:

(a) None of the funds provided by this Act, provided by previous appropriations Acts to the agencies in or transferred to the Department of Homeland Security that remain available for obligation or expenditure in fiscal year 2013, or provided from any accounts in the Treasury

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<sup>25</sup> P.L. 108-458, §1011(d); 118 Stat. 3638.

<sup>26</sup> P.L. 87-195; 77 Stat. 424.

<sup>27</sup> *GAO Glossary*, p. 85. According to OMB, object classes are “categories in a classification system that presents obligations by the items or services purchased by the Federal Government,” such as personnel compensation, acquisition of assets, and grants. U.S. Office of Management and Budget, Circular No. A-11, “Preparation, Submission and Execution of the Budget,” August 3, 2012, §83, p.2, at [http://www.whitehouse.gov/omb/circulars\\_default](http://www.whitehouse.gov/omb/circulars_default).

<sup>28</sup> U.S. Government Accountability Office (then the U.S. General Accounting Office), *Principles of Federal Appropriations Law*, Third Edition, Volume I, GAO-04-261SP, January 2004, p. 2-31, <http://www.gao.gov/products/GAO-04-261SP>.

<sup>29</sup> U.S. Government Accountability Office (then the U.S. General Accounting Office), *Principles of Federal Appropriations Law*, Third Edition, Volume I, GAO-04-261SP, January 2004, pp. 2-24 – 2-30, <http://www.gao.gov/products/GAO-04-261SP>. Also see *In re LTV Aerospace Corp.*, 55 Comp. Gen. 307 (B-183851), October 1, 1975, <http://www.gao.gov/products/428015#mt=e-report>. The 1975 decision by the Comptroller General was later quoted in two Supreme Court opinions: *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993) and *Hein v. Freedom*, 511 U.S. 587, 608 (2007).

<sup>30</sup> *Ibid.*

of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that:

(1) creates a new program, project, or activity; (2) eliminates a program, project, office, or activity; (3) increases funds for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by either of the Committees on Appropriations of the Senate or the House of Representatives for a different purpose; or (5) contracts out any function or activity for which funding levels were requested for Federal full-time equivalents in the object classification tables contained in the fiscal year 2013 Budget Appendix for the Department of Homeland Security, as modified by the joint explanatory statement accompanying this Act,

unless the Committees on Appropriations of the Senate and the House of Representatives are notified 15 days in advance of such reprogramming of funds.<sup>31</sup>

Congress may also include restrictive language within the conference committee explanatory statements<sup>32</sup> that accompany appropriations acts. These limitations and procedures, sometimes referred to as “nonstatutory understandings,” may be developed in consultation with officials from the agencies to which they apply.<sup>33</sup> Unlike language included in the text of appropriations and other statutes, these informal, nonstatutory understandings are typically not legally binding upon agencies.<sup>34</sup> Nevertheless, nonstatutory understandings may be influential on an agency’s behavior, and agencies may integrate these informal agreements into their internal budget execution policies and procedures.<sup>35</sup>

Further, certain nonstatutory information contained within an accompanying conference committee explanatory statement may be “incorporated by reference” by language in the

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<sup>31</sup> Department of Homeland Security Appropriations Act, 2013 (Division D of P.L. 113-6, at 127 Stat. 366).

<sup>32</sup> See CRS Report 98-382, *Conference Reports and Joint Explanatory Statements*, by (name redacted).

<sup>33</sup> Nonstatutory understandings and other informal arrangements may be found in committee report language, conference committee explanatory statements, and in the budget justification materials that agencies submit to Congress. For further information, see CRS Report RL33151, *Committee Controls of Agency Decisions*, by (name redacted).

<sup>34</sup> A 1975 decision by the Comptroller General held “[a]ccordingly, it is our view that when Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on federal agencies.” *In re LTV Aerospace Corp.*, 55 Comp. Gen. 307 (B-183851), October 1, 1975, <http://www.gao.gov/products/428015#mt=e-report>.

<sup>35</sup> For example, internal budget guidance for the Department of Energy states that “for changes in program execution or unforeseen events that do not warrant formal or internal/limited reprogramming procedures and for areas known to be of interest or concern to Congress, DOE intends to notify congressional committees promptly to ensure they are fully informed as prescribed in paragraph 4, below.” Office of the Chief Financial Officer, *Budget Execution—Funds Distribution and Control Manual*, U.S. Department of Energy, January 1, 2006, p. V-1, <http://www.directives.doe.gov>. The budget execution tutorial issued by DOD states that “movement of funds within an account are governed by agreements between DoD and the congressional authorization and appropriations committees.” Office of the Under Secretary of Defense (Comptroller) / CFO, *Budget Execution: Processes and Flexibility*, U.S. Department of Defense, May 2012, p. 6, [http://comptroller.defense.gov/execution/Budget\\_Execution\\_Tutorial.ppt](http://comptroller.defense.gov/execution/Budget_Execution_Tutorial.ppt). The informal agreements governing reprogramming actions are included in DOD’s *Financial Management Regulation*. Office of the Under Secretary of Defense (Comptroller), “Chapter 6: Reprogramming of DoD Appropriated Funds,” in *Financial Management Regulation*, DoD 7000.14-R, U.S. Department of Defense, March 2011, [http://comptroller.defense.gov/fmr/current/03/03\\_06.pdf](http://comptroller.defense.gov/fmr/current/03/03_06.pdf).

appropriations act.<sup>36</sup> For example, Section 301(c) of the Energy and Water Development and Related Agencies Appropriations Act, 2012, incorporated by reference the allocation tables in the accompanying joint explanatory statement, which specified the amounts and purposes for which funds should be spent *within* each appropriations account for the Department of Energy.

Except as provided in this section, the amounts made available by this title shall be expended as authorized by law for the projects and activities specified in the “Conference” column in the “Department of Energy” table included under the heading “Title III—Department of Energy” in the joint explanatory statement accompanying this Act.<sup>37</sup>

This legislative method allows the specified nonstatutory materials, such as amounts allocated in a conference committee explanatory statement, to be treated as if they were part of the statutory text of the appropriations act.<sup>38</sup> GAO has found that when statutory language “clearly and unambiguously expresses an intent to appropriate amounts as allocated in the explanatory statement” the referenced allocations become legally binding and “the affected agencies are required to obligate and expend amounts appropriated ... in accordance with the referenced allocations in the explanatory statement.”<sup>39</sup>

## Limitations on Transfers and Reprogramming

### General Restriction

In general, transferred and reprogrammed funds are subject to any limitations or conditions that were imposed by their original appropriations act. All original restrictions remain in effect on transferred funds regardless of whether the funds in the “receiving” appropriations account have different restrictions or characteristics than the funds being transferred. In other words, limitations and restrictions follow the funds. This general restriction is found in Title 31, Section 1532 of the *U.S. Code*.

Except as specifically provided by law, an amount authorized to be withdrawn and credited [transferred] is available for the same purpose and subject to the same limitations provided by the law appropriating the amount.<sup>40</sup>

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<sup>36</sup> According to GAO, “as a legislative tool, incorporation by reference is the use of legislative language to make extra-statutory material part of the legislation by indicating that the extra-statutory material should be treated as if it were written out in full in the legislation.” U.S. Government Accountability Office, *Consolidated Appropriations Act, 2008—Incorporation by Reference*, B-316010, February 25, 2008, p. 4, <http://gao.gov/assets/390/382368.pdf>.

<sup>37</sup> Energy and Water Development and Related Agencies Appropriations Act, 2012 (Division B of P.L. 112-74, at 125 Stat. 875).

<sup>38</sup> *Ibid.*, p. 8.

<sup>39</sup> U.S. Government Accountability Office, *Consolidated Appropriations Act, 2008—Incorporation by Reference*, B-316010, February 25, 2008, p. 8, <http://gao.gov/assets/390/382368.pdf>. See also U.S. Government Accountability Office, *U.S. Secret Service—Statutory Restriction on Availability of Funds Involving Presidential Candidate Nominee Protection*, B-319009, April 27, 2010, <http://gao.gov/assets/390/388698.pdf>. In this decision, GAO found that “amounts set forth in the explanatory statement were incorporated by reference in the appropriations act, creating a fixed amount for section 503’s reprogramming reporting requirements and the Antideficiency Act.”

<sup>40</sup> 31 U.S.C. §1532 (bracketed text added by CRS).

As a matter of appropriations law, there are three principles an agency must adhere to when obligating and expending appropriated funds. First, the amounts obligated and expended must be within the amounts appropriated by law. Second, funds may only be used for the purpose for which they were appropriated. Third, appropriated funds may only be used to pay for obligations made during the fiscal year(s) or other period of time for which they were provided.<sup>41</sup> Unless otherwise provided by law, these same three principles—amount, purpose, and timing—apply to appropriated funds even after they are transferred or reprogrammed.

Finally, additional restrictions are commonly imposed by the statutes that provide transfer or reprogramming authority. Selected examples of the types of limitations and restrictions that may accompany transfer authority or reprogramming provisions are discussed below using the three-principle framework (i.e., amount, purpose, and timing) as categories.

## **Additional Restrictions**

### **Amount: “Not-to-Exceed” Limits**

Statutes that provide authority to transfer funds may place a cap on the amounts that may be transferred. Such caps are commonly referred to as “not-to-exceed” limitations.

For example, in FY2012 the authority to transfer up to \$300 million of certain appropriated funds was provided to the Environmental Protection Agency.

The Administrator is authorized to transfer up to \$300,000,000 of the funds appropriated for the Great Lakes Restoration Initiative under the heading “Environmental Programs and Management” to the head of any Federal department or agency, with the concurrence of such head, to carry out activities that would support the Great Lakes Restoration Initiative and Great Lakes Water Quality Agreement programs, projects, or activities.<sup>42</sup>

Alternatively, transfers may be limited to a certain percentage of the total amount of budget authority appropriated or available. For example, the Department of Justice Appropriations Act, 2012, included the following restriction on the amount of funds that maybe transferred between accounts.

Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers.<sup>43</sup>

Similar “not-to-exceed” limitations may also be imposed upon an agency’s authority to reprogram funds. More frequently, however, the “not-to-exceed” limitations imposed on reprogramming are used to establish a threshold for congressional notification.

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<sup>41</sup> See U.S. Government Accountability Office (then the U.S. General Accounting Office), *Principles of Federal Appropriations Law*, Third Edition, Volume I, GAO-04-261SP, January 2004, <http://www.gao.gov/products/GAO-04-261SP>.

<sup>42</sup> Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012 (Division E of P.L. 112-74, at 125 Stat. 1019).

<sup>43</sup> Department of Justice Appropriations Act (Division B of P.L. 112-55, §205, at 125 Stat. 619).

### **Amount: “No-Less-Than” Provisions**

Statutes may also mandate that a specific dollar amount (or no less than a specific dollar amount) be transferred from one account to another. Such provisions have been used to provide funds for special interagency fund accounts, where each participating agency is instructed to transfer a specific dollar amount or percentage of its appropriation to the fund.<sup>44</sup> “No-less-than” provisions have also been used to transfer funds necessary for administrative expenses from a “program” account to the applicable “salaries and expenses” account.<sup>45</sup> “No-less-than” provisions have also been used to provide funds for Inspectors General offices.<sup>46</sup> Typically, these “mandatory” transfers happen automatically, under special accounting procedures established by OMB and Treasury, rather than by a transfer request initiated by an individual agency or department. Such authorities are typically provided for accounting or administrative purposes rather than for the purpose of providing additional budgetary flexibility.

### **Purpose: Restrictions on the Use of Transferred or Reprogrammed Funds**

The general restriction in 31 U.S.C. Section 1532, whereby “an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law,” also applies to “policy restrictions,” or language from an appropriations act that prohibits funds from being used for certain activities. For example, a provision of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, states that “none of the funds appropriated or otherwise made available by this Act may be used for first-class travel by the employees of agencies funded by this Act in contravention of sections 301–10.122 through 301–10.124 of title 41, Code of Federal Regulations.”<sup>47</sup> Unless Congress explicitly provides otherwise, this policy restriction would remain in effect against the funds made available by this appropriations act even if those funds are transferred to a different account or reprogrammed within an account.

New restrictions on the use of funds may be imposed by the provisions of law that provide transfer authority. For example, provisions granting transfer authority to the Department of Defense (DOD) have typically limited the use of transferred funds to items that are of a higher priority than the items for which the funds were originally appropriated.<sup>48</sup> Other provisions have prohibited DOD from using its transfer authority to fund projects, programs, or activities for which Congress had previously denied funds.<sup>49</sup>

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<sup>44</sup> Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2013 (Division E of P.L. 113-6, at 127 Stat. 406).

<sup>45</sup> Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2013 (Division A of P.L. 113-6, at 127 Stat. 212).

<sup>46</sup> Commerce, Justice, Science, and Related Agencies Appropriations Act, 2013 (Division B of P.L. 113-6, at 127 Stat. 236).

<sup>47</sup> Department of Agriculture Appropriations Act, 2012 (Division A of P.L. 112-55, §713, at 125 Stat. 581-582).

<sup>48</sup> National Defense Authorization Act for Fiscal Year 1991 (P.L. 101-510; 10 U.S.C. §2214); National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239, at 126 Stat. 1902); and Department of Defense Appropriations Act, 2013 (Division C of P.L. 113-6, at 127 Stat. 296).

<sup>49</sup> *Ibid.*

## **Timing: Prohibition Against “Parking” or “Banking” Transferred Funds**

The general restriction in 31 U.S.C. Section 1532, whereby “an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law,” also applies to the period of time for which appropriated funds were originally provided. For example, funds provided for a single fiscal year (commonly referred to as “fixed-year” or “one-year” funds) remain available only for that fiscal year even if those funds are transferred to an account that contains “multi-year” or “no-year” funds.<sup>50</sup> Transferring “one-year” funds in an attempt to keep those funds available beyond the fiscal year for which they were provided is referred to as “parking” or “banking” the funds.<sup>51</sup> According to GAO, this practice is prohibited unless specifically authorized by law.<sup>52</sup> In order to extend the period of availability of appropriated funds, transfer authority may be provided with a proviso stating that the transferred funds will be “available for the same time period” as the appropriations to which they are transferred.<sup>53</sup>

## **Congressional Notification**

Agencies may be required by statute to notify Congress prior to (or shortly after) carrying out certain transfers and reprogramming transactions. Often, such requirements involve agencies notifying the relevant House and Senate Appropriations Committees a certain number of days (often 15, 30, or 45 calendar days) prior to transferring or reprogramming funds.

Within annual appropriations acts, the requirements for congressional notification of transfer and reprogramming actions are often found in the “General Provisions” section that is applicable to each department or agency. For example, Section 7015(b) of the FY2012 Department of State, Foreign Operations, and Related Programs Appropriations Act restricted certain reprogramming actions, including those in excess of \$1 million, “unless the Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.”<sup>54</sup>

Transfer authority provisions may also include language stating that transfers are to be treated as “reprogrammings” and are thereby subject to the same limitations and notification requirements imposed on reprogrammings by the applicable “General Provisions” section. For example, Section 103, Division B of P.L. 113-6 provides the Department of Commerce with limited authority to transfer funds between accounts provided that “any transfer pursuant to this section shall be treated as a reprogramming of funds under section 505 of this Act and shall not be

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<sup>50</sup> Multi-year funds are appropriations that remain available for obligation for a fixed period of more than one fiscal year. No-year funds are appropriations that remain available until expended. U.S. Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, <http://www.gao.gov/products/GAO-05-734SP>.

<sup>51</sup> U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Annual Update of the Third Edition*, GAO-12-413SP, March 2012, p. 5-2, <http://www.gao.gov/products/GAO-12-413SP>.

<sup>52</sup> *Ibid.*

<sup>53</sup> For example, the FY2013 provision that provides NASA with authority to transfer up to 5% between its appropriations accounts contains the following proviso: “Balances so transferred shall be merged with and available for the same purposes and the same time period as the appropriations to which transferred.” Commerce, Justice, Science, and Related Agencies Appropriations Act, 2013 (Division B of P.L. 113-6, at 127 Stat. 264).

<sup>54</sup> Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I of P.L. 112-74, §7015(b), at 125 Stat. 1200-1201).

available for obligation or expenditure except in compliance with the procedures set forth in that section.”<sup>55</sup>

Typically, all account-to-account transfers will require prior notification to Congress. Reprogramming actions generally require notification only when they exceed a certain dollar amount or “threshold.”<sup>56</sup> Reprogramming actions that fall below the threshold are handled internally and, in some cases, without any notification or prior approval required by Congress.

## **Agency Procedures and the Role of the Office of Management and Budget (OMB)**

Agencies generally have internal procedures for determining when and how a transfer or reprogramming of funds will take place. Departments and agencies may be required to obtain approval from the head of the agency, from the department secretary (e.g., if the transfer or reprogramming were to take place across multiple components of a department), and in some cases, from the Director of the Office of Management and Budget (OMB) prior to transferring or reprogramming funds. In most instances these internal procedures are governed by agency directives and OMB guidance.

Internal procedures for determining when and how to transfer or reprogram funds vary by department and agency. For example, transfer and reprogramming actions within the U.S. Air Force must be approved by the Deputy Assistant Secretary of the Air Force prior to notification of Congress.<sup>57</sup> Transfers by agencies within the U.S. Department of Agriculture (USDA) are generally subject to a multi-stage process including preparation by USDA’s Budget and Finance Division and approval by the USDA’s Office of Budget and Program Analysis prior to submission to OMB and Congress.<sup>58</sup>

Finally, in some cases, specific department and agency procedures are required by statute. For example, the Director of National Intelligence may only transfer or reprogram National Intelligence Program funds (1) with the approval of the Director of OMB, and (2) after consulting with the heads of the affected agencies including the Director of the CIA if the adjustment involves CIA funding.<sup>59</sup>

Executive branch agencies are also subject to guidance and procedures established by OMB. For example, OMB Circular A-11 states “unless a specific exemption is approved by OMB” all reprogramming requests are “subject to OMB clearance.”<sup>60</sup> The circular instructs executive

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<sup>55</sup> Commerce, Justice, Science, and Related Agencies Appropriations Act, 2013 (Division B of P.L. 113-6, at 127 Stat 241).

<sup>56</sup> This generally only applies to reprogramming actions, which do not require prior statutory authority from Congress.

<sup>57</sup> U.S. Air Force, Instruction 65-601, Volume 1, “Budget Guidance and Procedures,” August 16, 2012, p. 24.

<sup>58</sup> For example, see U.S. Department of Agriculture, Food Safety and Inspection Service, FSIS Directive 3230.1, “Availability and Control of Appropriations and Funds,” July 28, 1989, p. 5.

<sup>59</sup> P.L. 108-458, §1011(d)(3). Additional restrictions, such as limitations on cumulative amounts of transfers and congressional notification procedures, may be found in §§1011(d)(5), 1011(d)(6), and 1011(d)(7).

<sup>60</sup> U.S. Office of Management and Budget, Circular No. A-11, “Preparation, Submission and Execution of the Budget,” August 3, 2012, §22, pp.22-2 – 22-3, at [http://www.whitehouse.gov/omb/circulars\\_default](http://www.whitehouse.gov/omb/circulars_default). Note that Circular A-11 only applies to executive branch agencies.

branch agencies to provide information to OMB five working days in advance to “allow adequate review time.”<sup>61</sup> According to the circular, “OMB review of reprogramming requests may take longer in some circumstances (e.g., if the request has not been coordinated or if supporting materials have not been provided concurrently).”<sup>62</sup>

An April 2013 OMB memorandum on agency implementation of the Joint Committee sequestration instructs executive agencies to “consult with their OMB Resource Management Office (RMO) to assess options for utilizing existing [transfer and reprogramming] authorities and ensure that any proposed actions appropriately balance short-term and long-term mission priorities.”<sup>63</sup>

Transfers and reprogrammings may also trigger certain accounting or financial management procedures. For example, increases or decreases in budget authority resulting from a transfer of funds may require a reapportionment of appropriated funds. With certain exceptions, the Antideficiency Act<sup>64</sup> requires that appropriated funds be apportioned (or divided)—by time period, function, or program—in order to prevent agencies from exhausting their appropriated funds prematurely.<sup>65</sup> Funds appropriated to executive agencies are apportioned by OMB, and Circular A-11 instructs executive agencies to submit a reapportionment request to OMB when a transfer is over “\$400,000 or two percent of the amount of total budgetary resources, whichever is lower.”<sup>66</sup> In addition, transfers must also be entered into agencies’ budget data entry systems.<sup>67</sup>

## Possible Issues for Congress

Transfer and reprogramming of appropriations provide agencies with the ability to make budgetary adjustments throughout the fiscal year. These adjustments may be necessary due to changing or unforeseen circumstances. Under such conditions, authority to transfer or reprogram funds may provide agencies with the flexibility needed to carry out the essential functions of the programs and activities for which funds have been provided. When done so in accordance with the applicable authority, procedures, and limitations, transfers and reprogramming may enable agencies to operate more effectively or efficiently, while still adhering to congressional intent, thereby preserving Congress’s “power of the purse.” When transfers and reprogramming actions

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<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Danny Werfel, Controller, “Memorandum for the Heads of Executive Departments and Agencies: Ongoing Implementation of the Joint Committee Sequestration,” Office of Management and Budget, April 4, 2013, pp. 2-3, <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-11.pdf>.

<sup>64</sup> The collection of statutes commonly referred to as the Antideficiency Act have been codified in multiple sections of Title 31 of the *U.S. Code* (31 U.S.C. §§1341-1342, 1349-1350, 1511-1519).

<sup>65</sup> Under 31 U.S.C. §1513(b)(1), the President is statutorily responsible for apportioning funds for executive branch agencies. This responsibility has been delegated to OMB. For the legislative and judicial branches, apportionments are made by the officials who maintain administrative control of each appropriations account. Select government entities are exempted from the apportionment requirements of the Antideficiency Act, including the Senate, the House of Representatives, congressional committees, and the Office of the Architect of the Capitol (31 U.S.C. §1511(b)(3)).

<sup>66</sup> OMB Circular No. A-11, §120.50, p. 120-21.

<sup>67</sup> For example, transfers by executive branch agencies are entered into the MAX A-11 Data Entry (MAX), which is a computer system used to collect and process much of the information required for preparing the President’s budget. See <https://max.omb.gov/maxportal>.



deviate from the applicable authorities, procedures, and limitations, however, it is possible that funds may be used in ways contrary to congressional intent.

In addition, transfers and reprogramming of appropriated funds may have ramifications for congressional oversight of agency execution of enacted appropriations throughout the fiscal year. The sections below highlight some of the possible issues for Congress related to agency use of transfer and reprogramming authorities.

## **Agency Reporting and Congressional Oversight of Transfers and Reprogramming**

Generally, agencies are required by statute to notify Congress prior to (or shortly after) transferring funds between appropriations accounts. Notification for reprogramming actions, however, is typically triggered only when the reprogramming exceeds a certain dollar amount or “threshold.” Substantial transfers, such as a request by the Department of Defense (DOD) to transfer or reprogram nearly \$7 billion in FY2012 budget authority,<sup>68</sup> may be more visible and subject to congressional oversight, due to established procedures—both statutory and nonstatutory—for congressional notification. Transfers or reprogramming of relatively smaller amounts may be less evident, in part because smaller budgetary adjustments may have fewer or less restrictive notification requirements.<sup>69</sup> In many cases, reprogramming actions that fall below a certain threshold are handled internally, without any notification or prior approval required by Congress. As a consequence, such transactions may be less subject to congressional oversight.

Also, departments and agencies are typically required to submit reports related to transfers and reprogramming actions to the relevant House and Senate Appropriations Committees.<sup>70</sup> While some departments and agencies make these reports publicly available,<sup>71</sup> others do not. For this reason, Members not serving on the House and Senate Appropriations Committees may not have the same access to information on transfers and reprogramming actions. If Congress were interested in expanding agency reporting of transfers and reprogramming actions, Congress might consider options that would change existing statutory and nonstatutory procedures for congressional notification. Such options might include lowering the threshold for notification of reprogrammings, expanding notification to include authorizing committees, or requiring agencies to make information on transfer and reprogramming actions publicly available.

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<sup>68</sup> Department of Defense, *Omnibus 2012 Reprogramming Action - Prior Approval*, FY 12-18 PA, June 26, 2006, [http://comptroller.defense.gov/execution/reprogramming/fy2012/prior1415s/12-18\\_PA\\_Omnibus\\_2012-Implementation-10-10-12.pdf](http://comptroller.defense.gov/execution/reprogramming/fy2012/prior1415s/12-18_PA_Omnibus_2012-Implementation-10-10-12.pdf).

<sup>69</sup> See U.S. Governmental Accountability Office (then, U.S. General Accounting Office), *Opportunities Exist to Better Explain Family Housing O&M Budget Requests and Increase Visibility Over Reprogramming of Funds*, GAO-04-583, May 27, 2004, <http://gao.gov/assets/250/242464.pdf>; U.S. General Accounting Office, *Opportunities to Improve DOD's Reprogramming Process*, NSIAD-89-138, July 24, 1989, <http://gao.gov/assets/150/147914.pdf>.

<sup>70</sup> In some instances, agencies are also required to notify the relevant authorizing committees.

<sup>71</sup> For example, all reprogramming actions implemented by DOD for the past 15 fiscal years are available at <http://comptroller.defense.gov/BudgetExecution.html>.

## Potential Burden of Transfer and Reprogramming Notifications

Additional reporting of transfers and reprogramming actions may enhance congressional oversight and identification of improper use of appropriated funds. On the other hand, the ability to adequately review transfers or reprogramming actions might become more difficult if reporting requirements were expanded. If Congress were to expand or otherwise modify existing notification requirements, one issue to consider would be the effect that the change might have on the number of notifications submitted in a given fiscal year, and the resulting impact on congressional oversight.

For example, a GAO report on ways to reduce the burden of reprogramming notification requirements found that modest changes to reporting thresholds could significantly alter the number of notifications submitted in a given fiscal year.<sup>72</sup> The report also identified certain notification requirements that could be altered or eliminated without “significantly changing the current approach to congressional oversight.”<sup>73</sup> The report concluded, however, that “given the various needs and concerns of individual Members, there is no clear consensus on how best to change the system.”<sup>74</sup>

## Excessive or Improper Use of Transfer or Reprogramming Authorities

Overreliance on transfers or reprogramming actions may increase the administrative burden on agencies or, possibly, the oversight burden on congressional committees. GAO has noted several instances of overreliance on reprogramming in response to unsound budgetary planning and financial management. For example, GAO found “in fiscal years 2003 and 2004, the [Army Corps of Engineers] reprogrammed funds over 7,000 times and moved over \$2.1 billion among investigations and construction projects.”<sup>75</sup> In this instance, GAO recommended that the Army Corps of Engineers “eliminate the use of excessive reprogramming actions” and “provide better financial management of project funds.”<sup>76</sup>

In addition, misuse of transfer or reprogramming authorities (including a failure to adhere to congressional notification requirements) may cause an agency to spend funds in excess of its available appropriations. For example, in FY2009 the Department of Homeland Security (DHS) failed to notify the House and Senate Appropriations Committees at least 15 days prior to reprogramming \$5.1 million to cover a shortfall in the U.S. Secret Service Presidential Candidate Campaign Protection PPA.<sup>77</sup> In 2010 GAO found that DHS had violated the notification

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<sup>72</sup> See U.S. Governmental Accountability Office (then, U.S. General Accounting Office), *Ways to Reduce the Reprogramming Notification Burden and Improve Congressional Oversight*, NSIAD-89-202, September 21, 1989, p. 11, <http://gao.gov/assets/220/211646.pdf>.

<sup>73</sup> *Ibid.*, pp. 1, 11.

<sup>74</sup> *Ibid.*, p. 12.

<sup>75</sup> U.S. Government Accountability Office, *Improved Planning and Financial Management Should Replace Reliance on Reprogramming Actions to Manage Project Funds*, GAO-05-946, September 16, 2005, pp. 3-6, <http://gao.gov/assets/250/247774.pdf>.

<sup>76</sup> *Ibid.* Also see U.S. Government Accountability Office, *Additional Guidance Would Enhance Financial Management and Communication of Candidate Protection Spending to Congress*, GAO-10-762, June 30, 2010, <http://gao.gov/assets/310/306263.pdf>.

<sup>77</sup> U.S. Government Accountability Office, *U.S. Secret Service—Statutory Restriction on Availability of Funds* (continued...)

requirements contained in its annual appropriations act, and as a result, the funds that DHS had reprogrammed and then spent for the U.S. Secret Service program were “unavailable for obligation.”<sup>78</sup> For this reason, GAO concluded that DHS had violated the Antideficiency Act, which prohibits agencies from incurring obligations in excess or in advance of the amount of funds legally available.<sup>79</sup>

## **Financial Management and Budgetary Treatment of Transferred Funds**

Guidance from OMB and the Department of the Treasury provides agencies with standards for recording and tracking transactions involving transfers or reprogramming of funds.<sup>80</sup> Accurate and timely recording of transfers or reprogramming transactions is central to ensuring that agencies do not make budgetary adjustments in excess of the statutorily allowed limits. In addition, sound financial management of these transactions is necessary to ensure that transactions are not double-counted by the agencies involved in the transactions, and that each account accurately reflects the amount of available budget authority. Failure to properly record transfers or reprogramming transactions could lead to under- or over-estimating the amount of budgetary resources available, miscalculations in budgetary planning, and overspending at either the account or the PPA level. This, in turn, may pose challenges for congressional oversight of budget execution and agency operations.

Gradual or periodic transfers may pose additional challenges for financial management and auditing of both the parent and receiving agencies’ accounts. For example, during a governmental reorganization, the transfer of multiple functions and their associated funds may take years to accomplish. The associated transfers of budgetary resources may be complex, particularly if funds will be transferred gradually throughout the transition period. This may pose unique problems for agencies as they develop and submit their budget requests in subsequent years.<sup>81</sup>

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(...continued)

*Involving Presidential Candidate Nominee Protection*, B-319009, April 27, 2010, <http://gao.gov/assets/390/388698.pdf>.

<sup>78</sup> Ibid., pp. 3-4.

<sup>79</sup> Ibid., p. 5.

<sup>80</sup> OMB Circular A-11 §20.4; U.S. Office of Management and Budget, *OMB Internet Apportionment System [MAX] User Guide*, Executive Office of the President, June 2007, <https://max.omb.gov/maxportal/webData/apportionment/webusertraining>; Financial Management Service, Department of the Treasury, “Chapter 2000: Warrant and Nonexpenditure Transfer (NET) Transactions,” in *Treasury Financial Manual*, Volume I, Part 2, March 5, 2012, <http://www.fms.treas.gov/tfm/vol1/v1p2c200.pdf>.

<sup>81</sup> OMB Circular A-11 acknowledges the difficulties surrounding these types of transfers, stating that “transfers between agencies resulting from Presidential reorganization plans or enacted reorganization legislation may involve unique problems.” For example, in some cases it may be appropriate for the parent agency to exclude the related appropriations account from their submission while the receiving agency adds the account to their submission. In cases where the parent agency will continue to maintain funds for the transferred activities throughout the transition period, both the parent and receiving agencies may need to include the relevant accounts in their submissions. In Circular A-11 §82.14, OMB states that agency staff are required to consult with OMB in all instances where transfers of funds have resulted from government reorganization, possibly due to the complexity of those transactions.

## **Appendix. Selected Examples of Transfer Authority in Authorizing Statutes<sup>82</sup>**

### **Transfers of Function and Governmental Reorganization**

#### **Transfers of functions and activities (31 U.S.C. §1531)**

(a) The balance of an appropriation available and necessary to finance or discharge a function or activity transferred or assigned under law within an executive agency or from one executive agency to another may be transferred to and used—

(1) by the organizational unit or agency to which the function or activity was transferred or assigned; and (2) for a purpose for which the appropriation was originally available.

(b) The head of the executive agency determines the amount that, with the approval of the President, is necessary to be transferred when the transfer or assignment of the function or activity is within the agency. The President determines the amount necessary to be transferred when the transfer or assignment of the function or activity is from one executive agency to another.

(c) A balance transferred under this section is—

(1) credited to an applicable existing or new appropriation account; (2) merged with the amount in an account to which the balance is credited; and (3) with the amount with which the balance is merged, accounted for as one amount.

(d) New appropriation accounts may be established to carry out subsection (c)(1) of this section.

#### **Withdrawal and credit (31 U.S.C. §1532)**

An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law. Except as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount. A withdrawal and credit is made by check and without a warrant.

#### **Transfer of funds and employees (10 U.S.C. §126)**

(a) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred or assigned to another department or agency of that department, balances of appropriations that the Secretary of Defense determines are available and needed to finance or discharge that function, power, duty, or activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which

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<sup>82</sup> This appendix includes selected examples of transfer authority provided in authorizing statutes. The purpose of this appendix is to provide the full text of selected provisions, including those which were cited in the body of this report. The appendix is not intended to provide an exhaustive list of all transfer authorities provided in authorizing statutes.

that function, power, duty or activity, as the case may be, is transferred, and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(1) be credited to any applicable appropriation account of the receiving department or agency; or (2) be credited to a new account that may be established on the books of the Department of the Treasury; and be merged with the funds already credited to that account and accounted for as one fund. Balances of appropriations credited to an account under clause (1) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under clause (2) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred to another department or agency of that department, those civilian employees of the department or agency from which the transfer is made that the Secretary of Defense determines are needed to perform that function, power, or duty, or for that activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty, or activity, as the case may be, is transferred. The authorized strength in civilian employees of a department or agency from which employees are transferred under this section is reduced by the number of employees so transferred. The authorized strength in civilian employees of a department or agency to which employees are transferred under this section is increased by the number of employees so transferred.

### **The Homeland Security Act of 2002 (P.L. 107-296; 116 Stat. 2135)**

The Homeland Security Act of 2002 (HSA, P.L. 107-296; 116 Stat. 2135) provided for the transfer of multiple functions to the newly created Department of Homeland Security (DHS).<sup>83</sup> In total, the functions of all or part of 22 different federal departments and agencies were transferred to DHS. The HSA also abolished certain government entities, such as the Office of Science and Technology and the Immigration and Naturalization Service, and transferred their functions to newly created entities within DHS (e.g., the Science and Technology Directorate and U.S. Immigration and Customs Enforcement). To facilitate the transfer of functions, the HSA included multiple provisions authorizing the transfer of funds from these departments and agencies to DHS. Most of the statutory authorizations to transfer funds applied only during the transition period, which the act defined as “the 12-month period beginning on the effective date of this Act.”<sup>84</sup>

For example, in conjunction with the transfer of certain functions related to inspection of agricultural imports, the HSA provided for periodic transfer of funds from the Department of Agriculture to DHS.<sup>85</sup>

Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under

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<sup>83</sup> Additional information and documents relating to the creation of the Department of Homeland Security and subsequent reorganizations are available at <http://www.dhs.gov/creation-department-homeland-security>.

<sup>84</sup> P.L. 107-296, Title XV, Subtitle A, §1501(2); 6 U.S.C. §541.

<sup>85</sup> P.L. 107-296, Title IV, Subtitle C, §421(d); 6 U.S.C. §231.

subsection (e), to the Secretary funds for activities carried out by the Secretary for which such fees were collected.<sup>86</sup>

The HSA also provided authority for transfers of functions and funds from the Immigration and Naturalization Service to DHS. Title IV of the act reads, in part,

unexpended balance[s] of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subtitle ... shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.<sup>87</sup>

Elsewhere, the HSA granted the Director of the Office of Management and Budget broad authority to make “incidental transfers.” The “Transitional Provisions” section of the act (Title XV, Subtitle B) reads in part,

The Director of the Office of Management and Budget, in consultation with the Secretary [of DHS], is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.<sup>88</sup>

## **Provisions for Interagency Coordination and Select Military and Intelligence Activities**

### **Operations for which funds are not provided in advance: funding mechanisms—transfer authority (10 U.S.C. §127a(c))**

(1) Whenever there is an operation of the Department of Defense described in subsection (a), the Secretary of Defense may transfer amounts described in paragraph (3) to accounts from which incremental expenses for that operation were incurred in order to reimburse those accounts for those incremental expenses. Amounts so transferred shall be merged with and be available for the same purposes as the accounts to which transferred.

(2) The total amount that the Secretary of Defense may transfer under the authority of this section in any fiscal year is \$200,000,000.

(3) Transfers under this subsection may only be made from amounts appropriated to the Department of Defense for any fiscal year that remain available for obligation, other than amounts within any operation and maintenance appropriation that are available for

(A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

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<sup>86</sup> P.L. 107-296, Title IV, Subtitle C, §421(f); 6 U.S.C. §231(f)(1).

<sup>87</sup> P.L. 107-296, Title IV, Subtitle C, §456 (b)(2); 6 U.S.C. §275(b)(2).

<sup>88</sup> P.L. 107-296, Title XV, Subtitle B, §1516; 6 U.S.C. §556.

(4) The authority provided by this subsection is in addition to any other authority provided by law authorizing the transfer of amounts available to the Department of Defense. However, the Secretary may not use any such authority under another provision of law for a purpose described in paragraph (1) if there is authority available under this subsection for that purpose.

(5) The authority provided by this subsection to transfer amounts may not be used to provide authority for an activity that has been denied authorization by Congress.

(6) A transfer made from one account to another under the authority of this subsection shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

### **Appropriations for Defense intelligence elements: accounts for transfers; transfer authority (10 U.S.C. §429)**

(a) Accounts for Appropriations for Defense Intelligence Elements.—The Secretary of Defense may transfer appropriations of the Department of Defense which are available for the activities of Defense intelligence elements to an account or accounts established for receipt of such transfers. Each such account may also receive transfers from the Director of National Intelligence if made pursuant to Section 102A of the National Security Act of 1947 (50 U.S.C. 403–1), and transfers and reimbursements arising from transactions, as authorized by law, between a Defense intelligence element and another entity. Appropriation balances in each such account may be transferred back to the account or accounts from which such appropriations originated as appropriation refunds.

(b) Recordation of Transfers.—Transfers made pursuant to subsection (a) shall be recorded as expenditure transfers.

(c) Availability of Funds.—Funds transferred pursuant to subsection (a) shall remain available for the same time period and for the same purpose as the appropriation from which transferred, and shall remain subject to the same limitations provided in the act making the appropriation.

(d) Obligation and Expenditure of Funds.—Unless otherwise specifically authorized by law, funds transferred pursuant to subsection (a) shall only be obligated and expended in accordance with chapter 15 of title 31 and all other applicable provisions of law.

(e) Defense Intelligence Element Defined.—In this section, the term “Defense intelligence element” means any of the Department of Defense agencies, offices, and elements included within the definition of “intelligence community” under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

### **Support from Central Intelligence Agency (10 U.S.C. §444)**

(a) Support Authorized.—The Director of the Central Intelligence Agency may provide support in accordance with this section to the Director of the National Geospatial-Intelligence Agency. The Director of the National Geospatial-Intelligence Agency may accept support provided under this section.

(b) Administrative and Contract Services.—

(1) In furtherance of the national intelligence effort, the Director of the Central Intelligence Agency may provide administrative and contract services to the National Geospatial-Intelligence Agency as if that agency were an organizational element of the Central Intelligence Agency. (2) Services provided under paragraph (1) may include the services of security police. For purposes of section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o), an installation of the National Geospatial-Intelligence Agency that is provided security police services under this section shall be considered an installation of the Central Intelligence Agency. (3) Support provided under this subsection shall be provided under terms and conditions agreed upon by the Secretary of Defense and the Director of the Central Intelligence Agency.

(c) Detail of Personnel.—The Director of the Central Intelligence Agency may detail personnel of the Central Intelligence Agency indefinitely to the National Geospatial-Intelligence Agency without regard to any limitation on the duration of interagency details of Federal Government personnel.

(d) Reimbursable or Nonreimbursable Support.—Support under this section may be provided and accepted on either a reimbursable basis or a nonreimbursable basis.

(e) Authority To Transfer Funds.—

(1) The Director of the National Geospatial-Intelligence Agency may transfer funds available for that agency to the Director of the Central Intelligence Agency for the Central Intelligence Agency. (2) The Director of the Central Intelligence Agency—(A) may accept funds transferred under paragraph (1); and (B) shall expend such funds, in accordance with the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), to provide administrative and contract services or detail personnel to the National Geospatial-Intelligence Agency under this section.

### **Transfer of funds: procedure and limitations (10 U.S.C. §2214)**

(a) Procedure for Transfer of Funds.—Whenever authority is provided in an appropriation Act to transfer amounts in working capital funds or to transfer amounts provided in appropriation Acts for military functions of the Department of Defense (other than military construction) between such funds or appropriations (or any subdivision thereof), amounts transferred under such authority shall be merged with and be available for the same purposes and for the same time period as the fund or appropriations to which transferred.

(b) Limitations on Programs for Which Authority May Be Used.—Such authority to transfer amounts—

(1) may not be used except to provide funds for a higher priority item, based on unforeseen military requirements, than the items for which the funds were originally appropriated; and (2) may not be used if the item to which the funds would be transferred is an item for which Congress has denied funds.

(c) Notice to Congress.—The Secretary of Defense shall promptly notify the Congress of each transfer made under such authority to transfer amounts.

(d) Limitations on Requests to Congress for Reprogrammings.—Neither the Secretary of Defense nor the Secretary of a military department may prepare or present to the Congress, or to any committee of either House of the Congress, a request with respect to a reprogramming of funds—



- (1) unless the funds to be transferred are to be used for a higher priority item, based on unforeseen military requirements, than the item for which the funds were originally appropriated; or
- (2) if the request would be for authority to reprogram amounts to an item for which the Congress has denied funds.

### **General Authorities of [Central Intelligence] Agency (50 U.S.C. §§3506(a)(1)-(3))**

(a) In general, in the performance of its functions, the Central Intelligence Agency is authorized to—

(1) Transfer to and receive from other Government agencies such sums as may be approved by the Office of Management and Budget, for the performance of any of the functions or activities authorized under section 3036 of this title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of this chapter without regard to limitations of appropriations from which transferred;

(2) Exchange funds without regard to section 3651 of the Revised Statutes;

(3) Reimburse other Government agencies for services of personnel assigned to the Agency, and such other Government agencies are authorized, without regard to provisions of law to the contrary, so to assign or detail any officer or employee for duty with the Agency.

### **The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458; 118 Stat. 3638)**

The Intelligence Reform and Terrorism Prevention Act of 2004 established the Office of the Director of National Intelligence (ODNI) and provided the Director with certain authorities to manage (and in some cases approve) transfers and reprogramming. Section 1011(d) of the act describes the role of Director of National Intelligence (DNI) in the transfer and reprogramming of intelligence fund, including multiple duties that had previously been the responsibility of the Secretary of Defense or the Director of the Central Intelligence Agency.

No funds made available under the National Intelligence Program may be transferred or reprogrammed without the prior approval of the Director of National Intelligence, except in accordance with procedures prescribed by the Director of National Intelligence... (d)(2) Subject to the succeeding provisions of this subsection, the Director of National Intelligence may transfer or reprogram funds appropriated for a program within the National Intelligence Program to another such program.<sup>89</sup>

The Secretary of Defense shall consult with the Director of National Intelligence before transferring or reprogramming funds made available under the Joint Military Intelligence Program.<sup>90</sup>

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<sup>89</sup> P.L. 108-458, §§1011(d)(1)(A) and 1011(d)(2).

<sup>90</sup> P.L. 108-458, §1011(d)(1)(B).

The act also established the limits and restrictions on the transfer authority of the DNI. For example, under certain circumstances, the DNI must consult with the Director of the CIA and the heads of other intelligence agencies.

(3) The Director of National Intelligence may only transfer or reprogram funds referred to in subparagraph (A)—(A) with the approval of the Director of the Office of Management and Budget; and (B) after consultation with the heads of departments containing agencies or organizations within the intelligence community to the extent such agencies or organizations are affected, and, in the case of the Central Intelligence Agency, after consultation with the Director of the Central Intelligence Agency.<sup>91</sup>

The act also established “not-to-exceed” and programmatic restrictions on funds available for transfer and reprogramming.

(4) The amounts available for transfer or reprogramming in the National Intelligence Program in any given fiscal year, and the terms and conditions governing such transfers and reprogrammings, are subject to the provisions of annual appropriations Acts and this subsection.

(5)(A) A transfer or reprogramming of funds or personnel may be made under this subsection only if—(i) the funds are being transferred to an activity that is a higher priority intelligence activity; (ii) the transfer or reprogramming supports an emergent need, improves program effectiveness, or increases efficiency; (iii) the transfer or reprogramming does not involve a transfer or reprogramming of funds to a Reserve for Contingencies of the Director of National Intelligence or the Reserve for Contingencies of the Central Intelligence Agency; (iv) the transfer or reprogramming results in a cumulative transfer or reprogramming of funds out of any department or agency, as appropriate, funded in the National Intelligence Program in a single fiscal year—(I) that is less than \$150,000,000, and (II) that is less than 5 percent of amounts available to a department or agency under the National Intelligence Program; and (v) the transfer or reprogramming does not terminate an acquisition program.

(5)(B) A transfer or reprogramming may be made without regard to a limitation set forth in clause (iv) or (v) of subparagraph (A) if the transfer has the concurrence of the head of the department involved or the Director of the Central Intelligence Agency (in the case of the Central Intelligence Agency). The authority to provide such concurrence may only be delegated by the head of the department or agency involved to the deputy of such officer.

(6) Funds transferred or reprogrammed under this subsection shall remain available for the same period as the appropriations account to which transferred or reprogrammed.<sup>92</sup>

Finally, the act established the following procedures for congressional notification of transfer or reprogramming of funds.

(7) Any transfer or reprogramming of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer or reprogramming for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer or reprogramming and how it satisfies the requirements of this subsection. In addition, the congressional intelligence committees shall

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<sup>91</sup> P.L. 108-458, §1011(d)(3).

<sup>92</sup> P.L. 108-458, §§1011(d)(4), 1011(d)(5)(A), 1011(d)(5)(B), and 1011(d)(6).

be promptly notified of any transfer or reprogramming of funds made pursuant to this subsection in any case in which the transfer or reprogramming would not have otherwise required reprogramming notification under procedures in effect as of the date of the enactment of this subsection.<sup>93</sup>

## **Transfer Authority for the Coordination of Foreign Assistance and Development Activities**

### **The Foreign Assistance Act of 1961 (P.L. 87-195; 75 Stat. 424)**

The Foreign Assistance Act of 1961 (FAA), as amended, provides the President with the authority to transfer select foreign assistance funds. The Foreign Assistance Act of 1962 (P.L. 87-565; 76 Stat. 255) added the following provision to the FAA:

Sec. 610. Transfer Between Accounts.—(a) Whenever the President determines it to be necessary for the purposes of this Act, not to exceed 10 per centum of the funds made available for any provision of this Act (except funds made available pursuant to title IV of chapter 2 of part I or for section 23 of the Arms Export Control Act) may be transferred to, and consolidated with, the funds made available for any provision of this Act, (except funds made available under chapter 2 of part II of this Act) and may be used for any of the purposes for which such funds may be used, except that the total in the provision for the benefit of which the transfer is made shall not be increased by more than 20 per centum of the amount of funds made available for such provision. (b) The authority contained in this section and in sections 451, 506, and 614 shall not be used to augment appropriations made available pursuant to sections 636(g)(1) and 637 or used otherwise to finance activities which normally would be financed from appropriations for administrative expenses.<sup>94</sup>

### **The Foreign Assistance Act of 1973 (P.L. 93-189; 87 Stat. 714)**

The Foreign Assistance Act of 1973 amended the FAA, in part by adding a provision that provides the President with the authority to transfer select foreign assistance funds. This authority is in addition to the transfer authority already provided under Sections 610(a). This provision is now Section 109 of the FAA.

Sec. 109. Transfer of Funds.—Whenever the President determines it to be necessary for the purposes of this chapter, not to exceed 15 per centum of the funds made available for any provision of this chapter may be transferred to, and consolidated with, the funds made available for any other provision of this chapter, and may be used for any of the purposes for which such funds may be used, except that the total in the provision for the benefit of which the transfer is made shall not be increased by more than 25 per centum of the amount of funds made available for such provision. The authority of sections 610(a) and 614(a) of this Act may not be used to transfer funds made available under this chapter for use for purposes of any other provision of this Act except that the authority of such sections may be used to transfer for the purposes of section 667 not to exceed five per centum of the amount of funds made available for section 667(a)(1).<sup>95</sup>

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<sup>93</sup> P.L. 108-458, §1011(d)(7).

<sup>94</sup> Foreign Assistance Act of 1962 (P.L. 87-565, §301(a); 76 Stat. 255).

<sup>95</sup> Foreign Assistance Act of 1973 (P.L. 93-189, §2(3); 87 Stat. 714).

Finally, in a subsequent appropriations act, Congress added an additional reporting requirement that applies to funds transferred pursuant to select sections of the FAA. These additional reporting requirements were included in Section 509 of the FY2003 Foreign Operations Appropriations Act.

(a) None of the funds made available by this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

(b) Notwithstanding subsection (a), in addition to transfers made by, or authorized elsewhere in, this Act, funds appropriated by this Act to carry out the purposes of the Foreign Assistance Act of 1961 may be allocated or transferred to agencies of the United States Government pursuant to the provisions of sections 109, 610, and 632 of the Foreign Assistance Act of 1961.

(c) None of the funds made available by this Act may be obligated under an appropriation account to which they were not appropriated, except for transfers specifically provided for in this Act, unless the President, not less than five days prior to the exercise of any authority contained in the Foreign Assistance Act of 1961 to transfer funds, consults with and provides a written policy justification to the Committees on Appropriations of the House of Representatives and the Senate.

(d) Any agreement for the transfer or allocation of funds appropriated by this Act, or prior Acts, entered into between the United States Agency for International Development and another agency of the United States Government under the authority of section 632(a) of the Foreign Assistance Act of 1961 or any comparable provision of law, shall expressly provide that the Office of the Inspector General for the agency receiving the transfer or allocation of such funds shall perform periodic program and financial audits of the use of such funds: Provided, That funds transferred under such authority may be made available for the cost of such audits.<sup>96</sup>

## **Provisions Authorizing Transfers of Certain Unobligated Balances**

### **Department of Agriculture, Rural Development Disaster Assistance Fund (7 U.S.C. §6945)**

(a) Rural Development Disaster Assistance Fund—On and after September 30, 2008, there is established in the Treasury a fund entitled the “Rural Development Disaster Assistance Fund”....

(e) Transfer of prior appropriations to Fund—The Secretary of Agriculture may transfer to the Rural Development Disaster Assistance Fund, and merge with other amounts generally appropriated to the Fund, the available unobligated balance of any amounts that were appropriated before September 30, 2008, for programs and activities of the Rural Development Mission Area to respond to a disaster and were designated by the Congress as an emergency requirement if, in advance of the transfer, the Secretary determines that the unobligated amounts are no longer needed to respond to the disaster for which the amounts

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<sup>96</sup> Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 (Division E of P.L. 108-7, §509, at 117 Stat. 182).

were originally appropriated and the Secretary provides a certification of this determination to the Committees on Appropriations of the House of Representatives and the Senate.

### **Department of Defense Acquisition Workforce Development Fund (10 U.S.C. §1705)**

(a) Establishment.—The Secretary of Defense shall establish a fund to be known as the “Department of Defense Acquisition Workforce Development Fund” (in this section referred to as the “Fund”) to provide funds, in addition to other funds that may be available, for the recruitment, training, and retention of acquisition personnel of the Department of Defense....

(3) Transfer of certain unobligated balances.—To the extent provided in appropriations Acts, the Secretary of Defense may, during the 24-month period following the expiration of availability for obligation of any appropriations made to the Department of Defense for procurement, research, development, test, and evaluation, or operation and maintenance, transfer to the Fund any unobligated balance of such appropriations. Any amount so transferred shall be credited to the Fund.

### **Department of State, Nondiscretionary personnel costs, currency fluctuations, and other contingencies (22 U.S.C. §2696)**

(b) Appropriations authorization based on currency fluctuations

(1) In order to maintain the levels of program activity for the Department of State provided for each fiscal year by the annual authorizing legislation, there are authorized to be appropriated for the Department of State such sums as may be necessary to offset adverse fluctuations in foreign currency exchange rates, or overseas wage and price changes, which occur after November 30 of the earlier of—(A) the calendar year which ended during the fiscal year preceding such fiscal year, or (B) the calendar year which preceded the calendar year during which the authorization of appropriations for such fiscal year was enacted....

(7) (A) Subject to the limitations contained in this paragraph, not later than the end of the fifth fiscal year after the fiscal year for which funds are appropriated or otherwise made available for an account under “Administration of Foreign Affairs”, the Secretary of State may transfer any unobligated balance of such funds to the Buying Power Maintenance account. (B) The balance of the Buying Power Maintenance account may not exceed \$100,000,000 as a result of any transfer under this paragraph. (C) Any transfer pursuant to this paragraph shall be treated as a reprogramming of funds under section 2706 of this title and shall be available for obligation or expenditure only in accordance with the procedures under such section. (D) The authorities contained in this paragraph may be exercised only with respect to funds appropriated or otherwise made available after fiscal year 2008.

### **Department of Labor, Working capital fund; establishment; availability; capitalization; reimbursement (29 U.S.C. §563)**

There is established a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of

(1) a central reproduction service; (2) a central visual exhibit service; (3) a central supply service for supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department; (4) a central tabulating service; (5) telephone, mail and messenger services; (6) a central accounting and payroll service; and (7) a central laborers' service:

*Provided*, That any stocks of supplies and equipment on hand or on order shall be used to capitalize such fund: *Provided further*, That such fund shall be reimbursed in advance from funds available to bureaus, offices, and agencies for which such centralized services are performed at rates which will return in full all expenses of operation, including reserves for accrued annual leave and depreciation of equipment:

*Provided further*, That the Secretary of Labor may transfer annually an amount not to exceed \$3,000,000 from unobligated balances in the Department's salaries and expenses accounts, to the unobligated balance of the Working Capital Fund, to be merged with such Fund and used for the acquisition of capital equipment and the improvement of financial management, information technology and other support systems, and to remain available until expended:

*Provided further*, That the unobligated balance of the Fund shall not exceed \$20,000,000.

### **Department of the Treasury, Foreign Currency Fluctuations Account, American Battle Monuments Commission Account (36 U.S.C. §2109)**

(a) Establishment and Purpose.—There is an account in the Treasury known as the “Foreign Currency Fluctuations, American Battle Monuments Commission, Account”. The Account shall be used to provide amounts, in addition to amounts appropriated for salaries and expenses of the Commission, to pay the cost of salaries and expenses that exceeds the amount appropriated for salaries and expenses because of fluctuations in currency exchange rates of foreign countries occurring after a budget request for the Commission is submitted to Congress. The Account may not be used for any other purpose....

(e) Unobligated Balances.—The unobligated balance of an appropriation for salaries and expenses may be transferred to the Account not later than the end of the second fiscal year following the fiscal year for which the appropriation was made. The unobligated balance shall be merged with, and be available for the same period and purposes as, the Account.

### **Department of Justice, Working Capital Fund (P.L. 102-140; 28 U.S.C. §527 note)<sup>97</sup>**

In addition, for fiscal year 1992 and thereafter, at no later than the end of the fifth fiscal year after the fiscal year for which funds are appropriated or otherwise made available, unobligated balances of appropriations available to the Department of Justice during such fiscal year may be transferred into the capital account of the Working Capital Fund to be available for the departmentwide acquisition of capital equipment, development and implementation of law enforcement or litigation related automated data processing systems, and for the improvement and implementation of the Department's financial management and payroll/personnel systems: *Provided*, That any proposed use of these transferred funds in fiscal year 1992 and thereafter shall only be made after notification to the Committees on

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<sup>97</sup> This permanent provision was enacted as part of the Department of Justice and Related Agencies Appropriations Act, 1992 (P.L. 102-140, at 105 Stat. 784).

Appropriations of the House of Representatives and the Senate in accordance with section 606 of this Act.

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