

CRS Report for Congress

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

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Summary

On December 18, 2007, the Senate, and on December 19, the House, approved a consolidated FY2008 appropriations bill, H.R. 2764, that includes \$70 billion in emergency supplemental appropriations for the Department of Defense for military operations in Iraq, Afghanistan and elsewhere. The President signed the bill into law on December 26. Congress's agreement to provide \$70 billion for overseas military operations resolved a dispute over war funding that had led the Defense Department to announce plans to shut down all but essential Army and Marine Corps operations early in 2008. In the absence of supplemental appropriations, officials warned that money for Army operations would run out by the end of February and for the Marine Corps in March, even after a transfer of \$4.1 billion to the Army. On November 15, 2007, Secretary of Defense Gates said that the Defense Department would "cease operations at all Army bases by mid-February next year," which would result in furloughs of 100,000 civilian and another 100,000 contractor personnel.

The consolidated appropriations bill averted the need for such steps. It provided \$35.2 billion for Army and \$4.0 billion for Marine Corp operation and maintenance accounts. These amounts are in addition to \$27.4 billion for the Army and \$4.8 billion for the Marine Corps in the regular FY2008 Defense Appropriations Act (P.L. 110-116). The supplemental funding, added to regular appropriations, provided enough money to sustain Army operations until the end of June or early July, 2008, and Marine Corp operations until the end of August at planned rates of obligation.

While Congress's agreement to provide funds resolves the debate for the present, it did not settle the underlying controversy. A recurring issue for Congress has been how much flexibility the Defense Department has to delay, if not to avoid entirely, shutting down operations when Congress does not provide full-year defense appropriations. In the absence of supplemental appropriations, the Defense Department relied on funds in the regular FY2008 Defense Appropriations Act to finance both day-to-day peacetime activities and war-related operations abroad. CRS calculated that these funds would be exhausted by February for the Army and by early April for the Marine Corps, which is about what the Defense Department projected. DOD's proposed transfer of \$4.1 billion to the Army would have extend its operations for another two to three weeks.

Without supplemental appropriations, the Defense Department could have extended operations for about another month by transferring limited additional amounts to the Army and Marine Corps and by slowing down spending through measures such as those the Army began to implement in April 2007. Such measures would reduce remaining financial flexibility and might disrupt day-to-day operations. The Defense Department might have been able to sustain operations longer by invoking the Feed and Forage Act or by using novel, unprecedented measures, such as assigning the Navy and Air Force to pay costs of Army support operations abroad. Such measures might weaken congressional war powers and erode congressional controls on the use of funds. This report will not be updated.

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

Most Recent Developments

On December 19 the House, and on December 18, the Senate, approved an omnibus FY2008 appropriations bill, H.R. 2764, providing \$485 billion in regular FY2008 appropriations for most agencies of the government. The President signed the bill into law, P.L. 110-161, on December 26. The bill includes a Senate amendment to provide \$70 billion in emergency supplemental appropriations for the Department of Defense for military operations in Iraq, Afghanistan and elsewhere.

The Defense Department now projects that the funding provided in the bill will sustain Army military personnel accounts until about the middle of June and Army operation and maintenance accounts until about the end of June or early July at planned rates of obligation. Funding for the Marine Corps and the other services will last somewhat longer.

Background

Until the very end of Congress's 2007 session, action on supplemental funding appeared to be at an impasse. On November 14, the House approved a bill, H.R. 4156, to provide \$50 billion in supplemental appropriations as a temporary "bridge fund" to cover war costs for part of the year, with a requirement that the President begin withdrawing troops from Iraq. The Senate rejected cloture on a motion to bring the bill up for debate, however, and the White House threatened a veto.

On December 17, in place of the \$50 billion bridge fund, the House approved a measure providing \$31 billion in emergency FY2008 supplemental appropriations for Operation Enduring Freedom as part of FY2008 omnibus appropriations, H.R. 2764. On December 18, the Senate took up the bill and, by a vote of 70-25, approved an amendment by Senator McConnell to replace the House-approved \$31 billion measure with \$70 billion in supplemental appropriations without limits on where the money could be spent. The House approved that measure on December 19, clearing it for the President.

Between mid-November, when Congress began actively considering supplemental funding for the war, and the end of the year, a major element in the debate was how long the Army and Marine Corps could continue to carry on operations without additional supplemental funding.

How Long Regular FY2008 Defense Appropriations Will Last

Until supplemental appropriations for FY2008 were enacted, the Department of Defense was financing both day-to-day peacetime operations of U.S. military forces and overseas military operations in Iraq and elsewhere with funds appropriated in the regular FY2008 Defense Appropriations Act, P.L. 110-116, which was signed into law on November 13. The measure provided \$460 billion for the Defense Department to cover the costs of baseline, non-war-related programs in FY2008. The Administration also requested a total of \$189.3 billion in FY2008 supplemental appropriations for the Department of Defense to cover war-related costs. By mid-November of 2007, Congress had approved \$16.8 billion of that amount, all for Mine Resistant Ambush Protected (MRAP) vehicles.¹ Action on the remainder, however, was held up by the ongoing congressional debate over Iraq policy.

Administration Estimates

With enactment of supplemental appropriations in doubt, the critical issue became how soon the Defense Department would have to rein in operations before it ran out of money. At a press conference on November 15, Secretary of Defense Gates warned that the Army would be out of money by the beginning of February, and the Marine Corps some time in March, and he announced that preliminary steps needed to shut down Army operations, and not merely to slow down spending, would begin almost immediately. “The least undesirable” option, he said, would be to “cease operations at all Army bases by mid-February next year.” This would result, he said, in furloughs of 100,000 civilian and another 100,000 contractor personnel. Because some layoffs require 60 days advance notice, he said, the Pentagon would have to begin sending notifications to personnel in December.²

In the same press conference, Secretary Gates said that the Defense Department would take steps to extend Army and Marine Corps funding by “reprogramming” or “transferring” funds.³ On November 20, the Defense Department announced that it

¹ The First Continuing Resolution, H.J.Res. 52, P.L. 110-92, provided \$5.2 billion for MRAPs and the defense appropriations bill, H.R. 3222, P.L. 110-116, provided \$11.6 billion.

² Department of Defense, "DoD News Briefing with Secretary of Defense Gates and Chairman of the Joint Chiefs of Staff Adm. Mullen from the Pentagon Briefing Room, Arlington, Va.," November 15, 2007, at [<http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4089>].

³ In general a “transfer” of funds is a shift of money from one appropriations account to another. Because appropriations laws provide specific amounts for each account, a shift of funds is permissible only to the extent Congress allows a transfer in statutory language. As part of each appropriations bill, Congress usually specifies that a limited amount may be transferred, subject to certain conditions. Section 8005 of the FY2008 Defense Appropriations Act permits DOD to transfer up to \$3.7 billion between accounts. This is referred to as “General Transfer Authority” or “GTA.” In most agencies the term “reprogramming” refers to shifts of funds within accounts, rather than a “transfer” between
(continued...)

was requesting approval from the congressional defense committees to transfer \$4.5 billion of funds from other accounts to the Army and to the Joint IED Defeat Organization. The transfers, officials said, would extend Army operations for two or three weeks.⁴ Subsequently, the Army circulated estimates that funding from the regular Defense Appropriations Act plus planned transfers would run out on February 23.⁵

CRS Estimates

CRS calculations of the length of time the Army and Marine Corps could continue to operate only with funds in the regular FY2008 defense appropriations bill and without slowing down operations were in line with Defense Department estimates. The determining factor in this calculation is how long money in Army and Marine Corps Operation and Maintenance (O&M) accounts would last at projected obligation rates. The O&M accounts finance a broad range of activities, including recruitment, training, transportation, clothing, subsistence, fuel, facility operation and repair, and equipment maintenance. Funding for Army and Marine Corps O&M supports both peacetime activities and war-related operations.

For the first few months of the fiscal year, the Army appeared to be planning obligations of about \$6.5 billion per month and the Marine Corps of about \$800 million per month. The FY2008 Defense Appropriations Act, P.L. 110-116, provided \$27.4 billion in O&M for the Army and \$4.8 billion for the Marine Corps. At planned monthly obligation rates, therefore, the Army could operate with baseline appropriations for about four months of the fiscal year (which began on October 1, 2007) or until the beginning of February, and the Marine Corps could operate for about six months, or until the end of March or the beginning of April, which is generally consistent with Defense Department estimates. The requested transfer of \$4.1 billion to the Army, would extend the time the Army can operate for another two to three weeks, or until the end of February. **Table 1** shows the calculations.

³ (...continued)

accounts. The Defense Department, however, uses the term “reprogramming” to refer to all shifts of funds, including those that involve a transfer between accounts. All transfers, along with reprogramming actions over certain threshold amounts, also require advance approval by the four congressional defense committees.

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

⁵ Office of the Chief of Legislative Liaison, Office of the Secretary of the Army, “Information for Members of Congress: Army Prepares Instructions for Funding Shortfall,” November 28, 2007, and memo from Vice Chief of Staff of the Army General Richard A. Cody, “Contingency Budget Planning,” November 26, 2007.

Table 1. Army and Marine Corps O&M Funding with Baseline FY2008 Defense Appropriations and Proposed Transfers

(amounts in millions of dollars)

	(1) FY2008 Base Budget Defense Appropriations	(2) Transfers	(3) FY2008 Available Funding (1) + (2)	(4) Average Funding Per Month	(5) Months of Funding Available (3) ÷ (4)	(6) Month Available Funding Would Run Out
Army Operation & Maintenance	\$ 27,362	\$ 4,056	\$ 31,418	\$ 6,500	4.9	End-February
Marine Corps Operation & Maintenance	\$ 4,792	\$ -	\$ 4,792	\$ 790	6.1	Beginning-April

Source: CRS calculations based on amounts in the FY2008 Defense Appropriations Act, P.L. 110-116 and obligations rates based on Army estimates.

Alternatives for Extending Operations Longer

In the absence of FY2008 supplemental appropriations, the Defense Department would have been able to extend Army and Marine Corps operations for an additional month or so, either by transferring additional amounts to O&M accounts or by slowing the pace at which the services are obligating funds. The Defense Department could also extend operations further by invoking the Feed and Forage Act or by using provisions of standing law that may allow other services to pay for Army and Marine Corps operations.

Service Objections to Budget Maneuvers

In the Army's official view, all of these kinds of budget maneuvers are detrimental. In a presentation at the Brookings Institution on December 4, Army Chief of Staff George Casey complained that any measures that would make the flow of money unstable or uncertain were disruptive to the Army and discouraging to military personnel:

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

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

essential tasks at a time when they're coming home from being gone for 15 months is very difficult for them.⁶

These objections are not new. On the contrary, the Army and the other military services have consistently been critical of measures to manipulate budgets to stretch out funding, including Administration steps to use money from later in the year to finance operations at the start of the year, a practice known as "cash flowing." Disputes over the use of cash flowing for the Iraq war began as early as January, 2004. At that time, the Administration decided not to request FY2005 supplemental appropriations until after the start of calendar year 2005, and instead to rely on cash flowing to sustain operations until well into the spring. When senior service leaders expressed concern about that decision in congressional hearings, DOD Comptroller Dov Zakheim called a press conference to defend the practice.⁷ Subsequently Congress initiated the practice of providing part-of-the year bridge funding when it added \$25 billion in unrequested funds for war related expenses to the FY2005 Defense Appropriations Act. Later, Congress provided an unrequested bridge fund of \$50 billion in FY2006. The Administration only began to request appropriations for a bridge fund in the FY2007 budget.

Alternatives for extending Army and Marine Corps operations include –

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

The following discussion reviews the potential amount of time that might be gained, and the possible costs, of each of these measures.

Transfer Additional Funds to the Army and Marine Corps

As Secretary Gates announced on November 15, the Defense Department planned, subject to approval by the congressional defense committees, to transfer

⁶ General George William Casey, Jr., Chief of Staff of the Army, "Maintaining Quality in the Force: A Briefing by General George W. Casey, Jr.," Brookings Institution Transcript, December 4, 2007, p. 33, at [http://www.brookings.edu/~media/Files/events/2007/1204_casey/20071204casey.pdf].

⁷ See "Department of Defense Special Briefing: Purpose of Budget Supplementals," February 11, 2004, at [<http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=2062>].

\$3.7 billion of funds from Air Force and Navy personnel accounts to the Army and to JIEDDO and to shift \$800 million of cash balances from working capital funds to the Army. The \$3.7 billion transfer from the Air Force and the Navy would exhaust the total amount of General Transfer Authority provided by Section 8005 of the FY2008 Defense Appropriations Act. Additional funds were available for transfer, however, in cash balances of working capital funds, and the Defense Department might have extended operations longer by using these amounts.

The transfer of excess cash balances in working capital funds is permitted by Section 8008 of the FY2008 Defense Appropriations Act.⁸ Working capital funds are business-like activities of the Defense Department that are funded primarily through revenues from sales to the military services. Some working capital fund activities maintain inventories of products that they sell to military units. Others provide industrial services, such as depot maintenance of equipment. The military services use appropriated funds, mostly in the operation and maintenance accounts, to make the purchases. Section 8008 allows the funds to maintain sufficient cash balances to meet projected requirements for disbursements. Excess cash balances may then be available for transfer to other accounts, including service operation and maintenance accounts.

Amounts of excess cash balances vary from fund to fund and from year to year. As of the beginning of December, 2007, the Defense Department had tapped FY2008 excess cash balances twice. The FY2008 Defense Appropriations Act used \$628 million to offset Army, Navy, Air Force, and Defense-Wide operation and maintenance accounts. And, as noted, on November 20 the Defense Department proposed using \$800 million for the Army. So about \$1.4 billion had been used.

Pros and Cons. The Government Accountability Office (GAO) reported to congressional defense committees that DOD had as much as \$3.5 billion in excess cash balances in the working capital funds at the start of FY2008.⁹ With \$1.4 billion having been used, another \$2.1 billion appeared to be available. By tapping all of the remaining funds to finance Army and Marine Corps O&M accounts, the Defense Department could have extend operations for a week or two. This would have further reduced DOD's remaining financial flexibility to respond to future developments, though perhaps only temporarily. In its November 20 transfer request, DOD asked Congress to restore the \$3.7 billion in transfers to the Air Force and Navy, and Congress has, in the past, agreed to forgive amounts transferred because of delays in making supplemental appropriations.¹⁰ While waiting for Congress to act, however, the Defense Department would have little, if any, remaining transfer authority.

⁸ Like Section 8005, Section 8008 is a recurring provision in annual defense appropriations acts.

⁹ CRS calculation based on DOD data provided by GAO analyst by e-mail, November 30, 2007.

¹⁰ The Defense Department also opposed House and Senate use of excess cash balances in the FY2008 defense appropriations bills. See Department of Defense, "Budget Appeal, FY2008 Defense Appropriations Bill," #RF-2, October 15, 2007. The appropriations conference agreement rejected the appeal.

Slow the Pace of Army and Marine Corps Obligations

To the extent that Army obligations of O&M funds could be reduced below about \$6.5 billion per month, and Marine Corps obligations below \$750 million, the services could operate longer with available funds. In April, 2007, when Congress was considering FY2007 supplemental funding, the Army planned a series of increasingly restrictive limits on activities to be implemented if supplemental appropriations were further delayed.¹¹ The Army projected that these measures could reduce obligations by as much as \$3.6 billion over three months out of FY2007 obligations of about \$6 billion per month.¹² The Army and Marine Corps might also have been able to defer some other funding by, for example, delaying orders for depot maintenance of equipment, for which the Army planned average obligations of about \$400 million per month in FY2008 – i.e., about \$1.6 billion over the first four months of the year or \$2.0 billion over five months.

Pros and Cons. If implemented over four months, slowing operations and delaying depot maintenance orders might have reduce obligations by as much as \$5 billion (\$3.6 billion from measures like those identified last April, plus \$1.6 billion from deferring depot maintenance), though less if they were pursued selectively. This would have been enough for an additional three weeks or so of operations. Some of these measures might have been less disruptive to the day-to-day operations of the force than others, particularly if undertaken on only a temporary basis. The Army reportedly had a depot maintenance backlog of about 7 ½ months, so there might have been some room to defer new orders without disrupting depot work flows.¹³ It is uncertain how reduced obligations of funds would affect military readiness or how disruptive cuts would be to facilities management, civilian and contractor employment, materiel inventories, equipment orders to industry, DOD travel, or depot maintenance workloads. Congress may wish to consider these matters more fully through hearings and other means.

Defense Department officials said that cuts such as those planned last spring were not sufficient in the present circumstances because of greater uncertainty about supplemental funding. In his November 20 press briefing, DOD spokesman Geoff Morrell insisted that the issue was not simply how to free up money to extend

¹¹ Army Memorandum, “Operation and Maintenance, Army Spending Restrictions Plan for FY07,” April 14, 2007. The text of the Memorandum is available at [<http://www.comw.org/warreport/fulltext/0704armyspending.pdf>]. See also, Army Press Release, “Funding Needs Prompt Army Spending Constraints,” April 16, 2007, at [<http://www.army.mil/-newsreleases/2007/04/16/2698-funding-needs-prompt-army-spending-constraints/>]. The Army Memorandum is also discussed in CRS Report RL33900, *FY2007 Supplemental Appropriations for Defense, Foreign Affairs, and Other Purposes*, by Stephen Daggett, Amy Belasco, Pat Towell, Susan B. Epstein, Connie Veillette, Curt Tarnoff, Rhoda Margesson, and Bart Elias. See subsection entitled “Financing Army Operations Until Passage of the Supplemental.”

¹² Army Budget Office, PowerPoint Slides entitled “Operation and Maintenance, Army Spending Restrictions Will Extend Fund Availability” and “OMA FY07 Execution,” April 2007.

¹³ E-mail communication from GAO analyst, November 30, 2007.

operations, but, rather, what steps the Defense Department would have to take to shut down operations almost completely in the absence of funding. “All that will happen on the [military] bases,” he said, “is that the most basic security and safety personnel – fire, police, and so forth – will be operating. Day care centers, libraries, all of the additional benefits that are there for families living on the base will cease to operate, because we will not have the funds to keep them going.” The steps taken in April, 2007, he explained, were designed to extend operations on the assumption that Congress would provide additional appropriations quite soon. This time, however, defense officials insisted that the challenge was not how to cope with a delay in funding, but, rather, how to implement a shut off of funds.¹⁴

Invoke the Feed and Forage Act

The Feed and Forage Act, 41 USC 11,¹⁵ is a long-standing law, with antecedents from well before the Civil War,¹⁶ that gives the Defense Department authority to finance some costs of military operations in advance of congressional appropriations. In the past 40 years, the act has been used periodically to pay for unplanned military contingencies and to sustain military operations when supplemental appropriations have been delayed.

The Feed and Forage Act permits the Department of Defense to obligate funds in advance of appropriations for “clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies.” Obligations may not, however, “exceed the necessities of the current year.” These categories are broad enough to encompass most activities financed in operation and maintenance accounts. The “transportation” category, for example, has been interpreted to allow operation of weapons engaged in combat, including aircraft carrying out bombing missions in Southeast Asia, and funding of repairs of equipment, including purchases of spare parts.¹⁷ The law does not, however, permit pay of uniformed personnel or purchases of munitions or other weapons.

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

¹⁴ Department of Defense, “DoD News Briefing with Press Secretary Geoff Morrell from the Pentagon,” November 20, 2007, at [<http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4091>].

¹⁵ It is also frequently cited as Revised Statute 3732. The “Feed and Forage Act” as codified in 41 USC 11 is an express exception to the “Adequacy of Appropriations Act,” which states that “No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment.”

¹⁶ Louis Fisher, *Presidential Spending Power* (Princeton: Princeton University Press, 1985), pp. 238-247. The author cites one precedent as early as 1799 – see p. 240.

¹⁷ CRS has prepared an extensive compilation of background material, much of it provided, by the Department of Defense Comptroller, on uses of the Feed and Forage Act since 1960, on its history, and on associated issues, including war powers. Congressional staff and Members of Congress should contact Stephen Daggett at CRS for a copy.

we have extraordinary measures that can be taken in the eventuality that we find ourselves in a situation where we have no money – and no ability to move funds and we find ourselves with our men and women in uniform in the theater potentially unfunded. But all that we would be able to do in those circumstances is provide – is basically provide for their survival. It’s a “Feed and Forage” provision. It dates back before the Civil War. And it will allow us, really, just to provide for their feed and that’s it. So it’s an extraordinarily desperate situation. We are not there yet. We are not talking about invoking that yet.¹⁸

The Feed and Forage Act has been used in the past in circumstances quite similar to those facing the Defense Department in FY2008. It has been used, for instance, to sustain major military operations, including combat operations in Southeast Asia in the 1960s and transportation of personnel to the Persian Gulf during Operation Desert Shield/Desert Storm, when appropriated funds were not sufficient. **Table 2** summarizes uses of the Feed and Forage Act since 1960. As the table shows, when amounts are adjusted to today’s prices, the Feed and Forage Act has been invoked to finance quite substantial obligations of funds – in FY1968, for example, during the Vietnam War, when, in FY2008 prices, \$7.4 billion was used and in FY1991, for Operation Desert Shield/Desert Storm, when \$2.6 billion was used.

Table 2. Uses of the Feed and Forage Act Since FY1960
(amounts in millions of current year and constant FY2008 dollars)

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

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

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

¹⁸ Department of Defense, “DoD News Briefing with Press Secretary Geoff Morrell from the Pentagon,” November 20, 2007, at [http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=4091].

Pros and Cons. The Feed and Forage Act gives the Department of Defense considerable flexibility to marshal funding for military operations in the event of unexpected developments. The potential use of substantial amounts to carry on combat operations, particularly if Congress has denied or refused to act on funding for a war, may be of concern to Congress because of its implications for congressional war powers, including the power of the purse. During the Vietnam war, use of the Feed and Forage Act ignited a vigorous debate over war powers issues. In 1973 Senators Mathias and Church sponsored hearings on the law, and in 1974 and 1975, Senator Abourezk proposed repealing the act because, he argued, it eroded congressional authority.¹⁹ Use of the Feed and Forage Act under current circumstances may warrant similar concerns. Unless Congress were to enact language restricting funding for Iraq “in this or any other act,” use of funding under the Feed and Forage Act would not appear to be subject to any limitations.

The act has other limitations as well. Significantly, while the act permits the Defense Department to obligate funds (i.e., sign contracts or hire civilian personnel), in DOD’s interpretation, it does not permit actual expenditures (i.e., outlays) of funds without congressional appropriations.²⁰ This would require contractors to agree, likely at some cost to the government, to contracts that might defer actual payments. In effect, the law allows the Defense Department to obligate Congress to provide what are known as “deficiency appropriations,” which were quite frequently enacted up until the 1950s, but have not been used often since then. The enactment of deficiency appropriations may, however, be delayed.

Use Title 10 Authorities to Assign Support Operations to Other Services

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

¹⁹ John P. MacKenzie, “Pentagon Use of 1861 Law Scored,” *Washington Post*, September 30, 1973, p. 4. Remarks of Senator Abourezk, *Congressional Record*, June 5, 1975, pp. S17367-17369. Remarks of Senator Abourezk, *Congressional Record*, June 3, 1974, pp. S9417-S9422. Congressional concern about the act was piqued particularly when then-Secretary of Defense Melvin Laird asserted in congressional testimony that the Defense Department could use authority of the “deficiency authorization legislation,” meaning the Feed and Forage Act, to continue military operations in Southeast Asia in the absence of appropriations for the war; see MacKenzie article.

²⁰ See, Department of Defense Comptroller, “Budget Execution Flexibility, FY2007,” at [http://www.defenselink.mil/comptroller/execution/Final_Budget_Execution.pdf], p. 19.

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

Pros and Cons. On its face, 10 USC 165 (c) would appear to allow the Defense Department considerable latitude to assign management and budget responsibility to the Air Force and Navy for such support activities as food and housing services handled by civilian contractors under what are known as LOGCAP contracts, for which \$6.2 billion is requested in FY2008; contracts for linguists, for which \$1.1 billion is requested; subsistence for DOD civilians and contractors, for which \$675 million is requested; or other war support activities. The Secretary also has authority to detail civilian personnel from one service to another as part of his general responsibility for managing the Department, so Army personnel currently managing these contracts could be detailed to another service to ensure continuity.²¹

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

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

Summary of Measures to Extend Operations

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

- Excess cash balances remaining in working capital funds might be as high as \$2.1 billion. Tapping these funds would, however, reduce

²¹ See Title 5, Section 3341 and Title 10, Sec. 113 (d).

DOD's remaining flexibility to respond to unexpected developments.

- The Army projected that measures it planned to slow down operations in April, 2007, might, at the upper limit, avoid \$3.6 billion or so of obligations over three months. Some of these measures, however, may disrupt day-to-day Army operations.
- Deferring new orders for depot maintenance might reduce planned obligations by \$400 million or so per month, or about \$1.6 billion over four months or \$2.0 billion over five months. CRS cannot, however, assess how this would affect depot work planning.

Taken together, all of these measures might temporarily reduce or offset Army and Marine Corps funding requirements by as much as \$2.1 billion (use remaining excess cash balances in working capital funds) + \$3.6 billion (slow operations) + \$1.6 billion (defer new depot maintenance orders) = \$7.3 billion, or a bit more than one month's worth of funding at the then-current obligation rates, which would allow the Army to extend operations until about the end of March, 2008 (see **Table 2**).

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

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

Table 3: Options for Extending Army Operations in Advance of FY2008 Supplemental Appropriations*

Options	Potential Additional Funds/Reduction in Obligation of Funds	Potential Number of Weeks or Days Financed at Obligation Rate Assumed by Army	Date Funding Might Run Out if Options Are Cumulative and Fully Implemented	Precedents/Notes	Potential Consequences
DOD Plan: Use all funds in regular FY2008 Defense Appropriations Act and transfer \$3.3 billion from Navy and Air Force under General Transfer Authority and \$800 million of working capital fund cash balances (\$4.1 billion total) to Army operation & maintenance	\$27.4 billion for Army O&M in FY2008 Defense Appropriations Act; + \$4.1 billion transfer; = \$31.5 billion	21 weeks according to Army calculations (assumes \$1.5 billion obligations per week)	February 23, 2008 (current official Army estimate)	“Cash flowing” – i.e., moving funds from the end of the year to the beginning has been common in recent years. General Transfer Authority used in FY2007 was later restored by Congress. Requires approval of congressional defense committees.	Services have long complained that “cash flowing” such large amounts is disruptive. Would exhaust all \$3.7 billion in General Transfer Authority (transfer of \$0.4 billion remainder is requested for JIEDDO), unless and until Congress were to restore it.
Use all remaining excess cash balances in working capital funds	\$2.1 billion	10 days	March 3, 2008	Cash balances a common source of funding for O&M accounts. Requires approval of congressional defense committees.	Would reduce remaining DOD financial flexibility unless and until Congress were to restore transferred funds.
Slow obligations of funds through progressively more restrictive limits over three months, as the Army planned and began to implement in April 2007	\$3.6 billion over three months (Army estimate of April 2007)	17 days	March 20, 2008	In April, DOD achieved savings from delaying contracts and other belt tightening measures. Monthly obligations often fluctuate.	Proposed measures appeared likely to become increasingly disruptive to Army operations over time. CRS did not assess their impact or alternatives.
Defer depot maintenance of \$400 million per month	\$1.6 billion over 4 months, \$2.0 billion over 5 months	7 to 9 days	March 27-29, 2008	Reducing current 7 and ½ month backlog of depot orders may not delay repair deliveries.	Depots need some backlog for planning purposes.

Source: CRS calculations based on Army estimate of end date of February 23, 2008 and estimates of funding amounts from sources cited above.

***Note:** Use of the Feed and Forage Act of other authorities might extend funding further, but potential amounts could vary. Please refer to the full text of this report for a full review of potential sources of funds and limitations on their use.

Appendix: Availability of Funding with Baseline Defense Appropriations and with \$70 billion Unrestricted Bridge Fund

For purposes of comparison, **Table A1** shows how long Army and Marine Corps funding would last at planned obligation rates in the absence of additional supplemental appropriations or transfers of funds beyond the \$4.1 billion initially planned (it is the same as **Table 1** above). **Table A2** shows how long Army and Marine Corps funding is now expected to last at somewhat higher planned obligation rates with the additional amounts included in the final, enacted version of the FY2008 consolidated appropriations bill, H.R. 2764, which includes the McConnell \$70 billion defense bridge fund.

**Table A1. Army and Marine Corps O&M Funding with Baseline
FY2008 Defense Appropriations and Proposed Transfers**

(amounts in millions of dollars)

	(1) FY2008 Base Budget Defense Appropriations	(2) Transfers	(3) FY2008 Available Funding (1) + (2)	(4) Assumed Average Funding Per Month	(5) Months of Funding Available (3) ÷ (4)	(6) Month Available Funding Would Run Out
Army Operation & Maintenance	\$ 27,362	\$ 4,056	\$ 31,418	\$ 6,500	4.9	End-February
Marine Corps Operation & Maintenance	\$ 4,792	\$ -	\$ 4,792	\$ 790	6.1	Beginning-April

Table A2. Army and Marine Corps O&M Funding with Baseline FY2008 Defense Appropriations and FY2008 Omnibus Appropriations with \$70 Billion in Supplemental Funds
(amounts in millions of dollars)

	(1) FY2008 Base Budget Defense Appropriations	(2) FY2008 Emergency Appropriations	(3) FY2008 Total Appropriations (1) + (2)	(4) Average Funding Per Month*	(5) Months of Funding Available (3) ÷ (4)	(6) Month Funding Would Run Out
Army Military Personnel	\$ 31,535	\$ 783	\$ 32,318	\$ 3,662	8.8	Mid-June
Army Operation and Maintenance	\$ 27,362	\$ 35,152	\$ 62,514	\$ 6,988	8.9	End-June
Marine Corps Military Personnel	\$ 10,280	\$ 56	\$ 10,336	\$ 1,006	10.3	Early-August
Marine Corps Operation and Maintenance	\$ 4,792	\$ 3,966	\$ 8,758	\$ 803	10.9	End-August

***Note:** See below for a discussion of planned obligation rates.

A word about assumed obligation rates. The estimates in **Table A1** are based on assumed monthly obligation rates (shown in Column 4 of each table) of \$6.5 billion per month for the Army and \$790 million a month for the Marine Corps. The assumed Army obligation rate is based on Army estimates that it would exhaust funding available in the regular FY2008 defense appropriations act plus funding transferred from other accounts by February 23. This monthly obligation rate appears reasonable, though it is somewhat below the average monthly rate that would result from the amount provided in the regular FY2008 defense appropriations act plus the amended supplemental appropriations request for Army O&M. The assumed Marine Corps obligation rate is the level the Marine Corps appeared to be assuming early in the fiscal year, which is quite close to the average monthly rate reflected in Marine Corps budget requests.

The estimates in **Table A2** reflect DOD briefings to congressional staff in March 2008. The projected obligation rates reflect the average monthly rate of funding that would result from amounts requested in the regular FY2008 defense appropriations act and in the amended supplemental appropriations request for each budget account. If obligations rates were slower – as they were earlier in the year – money would last longer.