

FY2016 DoD Appropriation Anomalies

I. Office of Personnel Management (OPM) Data Breach

Transfer Authority: Under normal circumstances, the Congress has not permitted the Department to transfer funds during a continuing resolution because the Department will not have provided a baseline for reprogramming (which is submitted only after the full Defense Appropriations bill is enacted) as is usually required under the reprogramming provisions. This special transfer authority would permit a reprogramming to occur during the CR to support the response to the unprecedented scope of the breach of sensitive information of DoD and former DoD personnel at OPM. At a minimum, the Defense Security Services account would need far more additional funding than is normally requested to cover the costs of credit monitoring for affected contractor personnel.

Proposed language:

SEC.____. Notwithstanding any other provision of this joint resolution or any other provision of law, the Secretary of Defense may, with the approval of the Office of Management and Budget, transfer up to \$300,000,000 between the appropriations or funds made available to the Department of Defense by section 101(a)(3) of this joint resolution: *Provided*, That such authority shall be available only to transfer amounts for the purpose of paying expenses associated with actions to mitigate risks and damages to current, former, and prospective employees of the Department of Defense, including members of the Armed Forces, and their immediate family members, and current, former, and prospective Department of Defense contractor employees, and their immediate family members, resulting from the disclosure of personally identifiable information collected or maintained by or on behalf of the Department of Defense; and for expenses to improve protection from unauthorized access, use, disclosure, disruption, modification, or destruction of information maintained by the Department of Defense, or information systems used or operated by the Department of Defense or by a contractor on behalf of the Department of Defense: *Provided further*, That the transfer authority provided in this section is in addition to any other transfer authority available to the Department of Defense

II. Space Procurement, Air Force

In the event of a FY 2016 CR, language is needed to implement and fund the Space Procurement, Air Force appropriation requested in the FY 2016 President’s Budget Request, an anomaly is necessary. Failure to create the account under a CR will result in wholesale accounting corrections following enactment of an appropriation and could result in contract award and scheduling delays to satellite Major Defense Acquisition Programs. This will create cost growth and delays in fielding assets for the warfighter, the opposite of what was intended by creating this account. Both House and Senate Defense Appropriations Subcommittee bills provide for this new account.

Proposed language:

SEC.____. Notwithstanding any other provision of this act, except sections 106 and 107, for “Department of Defense—Procurement—Space Procurement, Air Force”, at a rate for operations not to exceed \$2,584,061,000, to be derived by reducing the amount otherwise made available by section 101 for “Missile Procurement, Air Force”: *Provided*, That such funds shall be available for construction, procurement, production, and modification of spacecraft, rockets, and related equipment, including spare parts and accessories therefor; ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things.

III. Advanced Procurement:

Navy requires authorization for advanced procurement in Shipbuilding and Conversion, Navy for CVN 80 to fund long lead time nuclear components, material, and engineering efforts. Without

congressional approval, contract awards will be delayed until well beyond enactment of an appropriation for FY 2016 for Shipbuilding and Conversion, Navy appropriation. This will impact production line, delivery schedules, and potentially cost. The Shipbuilding and Conversion, Navy appropriation is enacted on a line-item basis, and the appropriation for FY2015 did not include an advanced procurement line for carrier replacement.

Proposed language:

SEC. _____. Notwithstanding sections 101, 102 and 104, from within the funds provided by section 101 for “Shipbuilding and Conversion, Navy”, funds are provided for “Carrier Replacement (AP)” at a rate for operations of \$874,658,000.”

IV. Navy Shipbuilding Authority:

The Completion of Prior Year Shipbuilding Program is appropriated as current year funding as a statutory line item in the “Shipbuilding and Conversion, Navy” (SC,N) appropriation. The execution of those funds is dependent on a special transfer authority that earmarks specific prior year appropriations to which current SC,N funds may transferred. Section 8075 in the Department of Defense Appropriations Act, 2015, will not provide sufficient authority under the CR for transfers to the correct accounts or in the needed amounts. This anomaly is needed to establish special transfer authority under the CR to transfer the funding to the specific program/year to complete specific ships funded in prior years. Under a CR the Navy has no authority for the necessary transfers to complete the ships. The Joint High Speed Vessel (JHV) 8 and JHSV 9 and the Littoral Combat Ships 9, 10, 11 and 12 all have shortfalls. The inability to fund the shortfalls in the first quarter of FY 2016 may slow or stop construction, causing deliveries to slip and additional costs to be incurred. This is a subset of the shipbuilding completion items included in the President’s budget and both items were included in the House and Senate Defense Appropriations Subcommittee bills.

Proposed language:

SEC. _____. Notwithstanding section 101, authority provided by section 8075 of division C of Public Law 113-235 to fund prior year shipbuilding cost increases may be used to transfer amounts provided by this act [or “this joint resolution”] for "Department of Defense— Shipbuilding and Conversion, Navy” to the following appropriations in the amounts specified:

- (1) Under the heading “Shipbuilding and Conversion, Navy, 2012/2016”: Joint High Speed Vessel \$22,597,000;
- (2) Under the heading “Shipbuilding and Conversion, Navy, 2012/2016”: Littoral Combat Ship \$82,674,000.

V. Military Construction New Starts

In the event of a FY 2016 CR, the Department requires authority to begin construction projects authorized in the 2016 National Defense Authorization Act.

Proposed CR language for MILCON Projects:

SEC. _____. Notwithstanding any other provision of this act [or “this joint resolution”], funds made available by this joint resolution for military construction, land acquisition, and family housing projects and activities may be obligated and expended to carry out planning and design and military construction and family housing projects for which authorization is provided for in the National Defense Authorization Act for Fiscal Year 2016: *Provided*, That this authority is in addition to any other authorization by law for such projects and related programs and activities: *Provided Further*, That funds and authority provided by this section may be used notwithstanding sections 102 and 104. *Provided Further*, That the congressional defense committees shall be notified 15 days in advance of obligating funds to carry out a military construction or family housing project under this authority.

VI. New Starts and Production Increases:

VI.a (Preferred alternative) In the event of an FY 2016 CR, the Department requires authority for new starts and production increases. The following language is proposed to allow the Department to move forward without delay on all new starts and rate production increases approved by the appropriation committees to date.

Proposed language for Global New Starts and Production Increases for use in lieu of Section 102

SEC. _____. No appropriation or funds made available or authority granted pursuant to section 101 for the Department of Defense shall be used for (1) the new production of items not funded for production in fiscal year 2015 or prior years, unless such new production items are provided for within amounts in either the lower of the President's budget estimate for fiscal year 2016 or H.R. 2685 as passed by the House on June 11, 2015; or (2) the increase in production rates above those sustained with fiscal year 2015 funds, unless such increased production rates are provided for within amounts in either the lower of the President's budget estimate for fiscal year 2016 or H.R. 2685 as passed by the House on June 11, 2015.

If the Congress objects to a global exemption to new starts/section 104 rate of production, the following is the proposed language that would list key programs, projects or activities (PPA).

VI.b Limited New Starts and Production Increases

In the event of a FY 2016 CR, the Department requires authority for new starts and production increases. Programs, projects and activities, and accompanying justifications, provided for in tables set forth below.

Proposed language for New Starts and Production Increases:

SEC. _____. Notwithstanding sections 102 and 104, amounts provided by section 101 for the following accounts are available for the following specified projects, programs, and activities at production rates that are provided within amounts in either the lower of the President's budget estimate for fiscal year 2016 or H.R. 2685 as passed by the House on June 11, 2015:

2016 New Starts

Account	Budget Line Item/Specific Project	Impact if Not Approved	Date Needed
Aircraft Procurement, Navy	C-2A	Delays in FY 2016 New Start programs. Without congressional approval to start, these programs will be delayed until the continuing resolution is over, impacting production line, delivery schedules, and potentially cost.	1 Oct 15
Aircraft Procurement, Navy	RQ-7 Series	Delays in FY 2016 New Start programs. Without congressional approval to start, these programs will be delayed until the continuing resolution is over, impacting production line, delivery schedules, and potentially cost.	1 Oct 15
Aircraft Procurement, Navy	QRC	Delays in FY 2016 New Start programs. Without congressional approval to start, these programs will be delayed until the continuing resolution is over, impacting production line, delivery schedules, and potentially cost.	1 Oct 15
Aircraft Procurement, Air Force	P-1 Line 57 HAWK00 RQ-4 Mods/ASIP Increment I	Delayed capability for the warfighter. Global Hawk Airborne Signals Intelligence Payload Inc 1 (ASIP Inc 1) upgrade is a follow-on to a developmental contract that will perform essential system engineering, cybersecurity, First Article Testing (FAT) and procure and integrate the Hardware and Software changes into the Global Hawk platform. Interdependencies between the contract actions are such that a delay in the retrofit award will cause cost increases to both contract efforts, estimated at over \$1M for proposal prep and other applicable costs. The business cycle to de-scope the current proposal and turn-around a revised proposal is estimated to range 6-8 months. Delay would also drive significant government costs in maintenance and upkeep for the U-2 platform currently scheduled for divestiture in 2019. Retrofits will be awarded on the GH Indefinite Delivery Indefinite Quantity (IDIQ) contract. Retrofit upgrades and deliveries must be completed by Mar	1 Dec 15

Account	Budget Line Item/Specific Project	Impact if Not Approved	Date Needed
		<p>2018 based on the delivery expiration on the contract. If the retrofit effort does not award by 1 Jan 2016, the production schedule may be jeopardized and will result in a 6-8 month delay to account for contractor re-proposal and contracting cycle. Retrofits will be awarded on the GH Indefinite Delivery Indefinite Quantity (IDIQ) contract. Retrofit upgrades and deliveries must be completed by Mar 2018 based on the delivery expiration on the contract. If the retrofit effort does not award by 1 Jan 2016, the production schedule may be jeopardized and will result in a 6-8 month delay to account for contractor re-proposal and contracting cycle. Funding is needed at least 1 month ahead of planned contract award date for administrative processing purposes.</p>	
Other Procurement, Air Force	P-1 Line 57 Comm Elect Mods / High-Altitude Electromagnetic Pulse (HEMP) Protection Program	<p>Funds are required to provide High-Altitude Electromagnetic Pulse (HEMP) protection to the Ballistic Missile Early Warning System (BMEWS) radar complex at Thule, Greenland. This site was identified as needing the critical upgrade in Government Accounting Office (GAO) Report 14-88C and the upgrade will bring it into compliance with the directives in the National Security Presidential Directive 28. Due to the remote arctic location of Thule, Greenland; funds are needed by Dec 2015 to ensure contract award in the second quarter of FY2016. This allows for the delivery of long-lead time equipment items and schedules delivery at the beginning of the “summer” season for Greenland. Crews are only able to work a few months out of the year so it is imperative not to miss the first “work season” and delay the upgrade of this critical Northern tier radar site. Funding is needed at least</p>	1 Dec 15

Account	Budget Line Item/Specific Project	Impact if Not Approved	Date Needed
		1 month ahead of planned contract award date for administrative processing purposes.	
Other Procurement, Air Force	Strategic Command and Control, Cyber Command Activities	Without this funding, the operational community will be left with their current manual processes and notifications from the Service and National operations centers for cyber situational awareness.	1 Dec 15
Research, Development, Test & Evaluation, Army	Area Denial Capabilities	Delays in FY 2016 New Start programs. Without congressional approval to start, these programs will be delayed until the continuing resolution is over, impacting project start for this important project start. This is an urgent VCJCS effort.	1 Dec 15
Research, Development, Test & Evaluation, Navy	Air-to-Ground (AGM)-88E Extended Range (ER) Upgrade	New start delay in FY 2016. Without congressional approval to start, these programs will be delayed until continuing resolution is over. This will impact development and test schedules, and potentially result in increased cost.	1 Oct 15
Research, Development, Test & Evaluation, Navy	Next Generation Jammer – NGJ Increment 2	New start delays for all programs in FY 2016. Without congressional approval to start, these programs will be delayed until continuing resolution is over. This will impact development and test schedules, and potentially result in increased cost.	1 Oct 15
Research, Development, Test & Evaluation, Navy	Strategic Sub and Weapons Systems Support – Multi-Star Enhanced Prelaunch (MEP)	New start delays for all programs in FY 2016. Without congressional approval to start, these programs will be delayed until continuing resolution is over. This will impact development and test schedules, and potentially result in increased cost.	1 Oct 15
Research, Development, Test & Evaluation, Navy	Distributed Common Ground System – Distributed Common Ground System (DCGS) Increment	New start delays for all programs in FY 2016. Without congressional approval to start, these programs will be delayed until continuing resolution is over. This will impact development and test schedules, and potentially result in increased cost.	1 Oct 15

Account	Budget Line Item/Specific Project	Impact if Not Approved	Date Needed
Research, Development, Test & Evaluation, Air Force	R-1 Line 220 JSPOC Mission System / Increment 3	JMS Increment 3 requires funds Oct 2015 to complete required pre-acquisition activities in preparation for Nov 2015 Material Development Decision (MDD). If funds are not provided until 31 Mar 2016 all activities will slip 6 months delaying contract award by 6 months or more. Additionally this delay would slip MSB from Fall 2016 to late Spring/Summer 2017 delaying needed USSTRATCOM capability to counter emerging threats.	1 Oct 15
Research, Development, Test & Evaluation, Air Force	R-1 Line 60 Space Situation Awareness Systems / Space Based Space Surveillance	SBSS Block 10 reaches end-of-life by 2018; therefore, SBSS Follow-On plans for launch in 4QFY20 to reduce critical Deep Space SSA coverage. If not approved, the program office will not have the sufficient staffing and risk reduction activities complete to achieve Milestone A/B and RFP release by April 2016. Risk reduction activities include funding MIT/LL and Aerospace Corp to conduct necessary algorithm modifications, transition of software code to industry, modeling and simulation, and manufacturing of long-lead items (Charge-coupled devices (CCDs). If the RFP is not released by April 2016, the program will have significant schedule risk to achieve a 4QFY20 launch.	31 Oct 15
Research, Development, Test & Evaluation, Air Force	R-1 Line 38 Hard and Deeply Buried Target Defeat System (HDBTDS) Program	Will not be able to complete the development and testing of MOP enhancements. Continuing the program after a 3-6 month delay an urgently needed capability and increase the cost.	1 Nov 15

2016 Production Increases

Account	Budget Line Item/Specific Project	FY 2015 Quantity	FY 2016 Quantity	Date Needed
Other Procurement, Army	Joint Light Tactical Vehicle (JLTV)	184	450	1 Dec 15
Weapons Procurement, Navy	AMRAAM	0	167	1 Oct 15
Shipbuilding and Conversion, Navy	Moored Training Ship Advance Procurement	1	2	1 Oct 15
Procurement, Marine Corps	Joint Light Tactical Vehicle (JLTV)	7	109	1 Dec 15
Procurement, Marine Corps	RQ21A Blackjack	3	4	1 Dec 15
Missile Procurement, Air Force	P-1 Line 7 SDB000 / Small Diameter Bomb	412	2,005	Oct 15
Missile Procurement, Air Force (FY 2015) Space Procurement, Air Force (FY 2016)	P-1 Line 23 MSEELV / Evolved Expendable Launch Veh (EELV)	4	5	Dec 16
Other Procurement, Air Force	P-1 Line 44 Space Base IR Sensor Pgm Space / SBIRS Survivable Endurable Evolution (S2E2)	1	2	1 Nov 15

Authorization Anomalies

DEFENSE BILL:

I. Authorization of Appropriations for the Intelligence Programs

The Intelligence Programs require reauthorization annually in accordance with the National Security Act of 1947 (50 U.S.C. 3094(a) (1)). Absent this authorization national security intelligence activities will be severely constrained.

Proposed CR language:

SEC. _____. Funds appropriated by this joint resolution may be obligated and expended notwithstanding section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 3094(a)(1)).

II. Modification of Authority for Afghan Special Immigrant Program

Currently, the Afghan Allies Protection Act of 2009 (8 U.S.C. 1101 note) restricts applicants to those who satisfy date restrictions for termination of qualifying employment or activity. The limitation has the unintended consequence of disqualifying certain individuals from applying for the program after September 30, 2015. Section 1216(b) of the FY 2016 Senate NDAA bill amends section 602(b) of the Afghan Allies Protection Act of 2009 to address this matter. This anomaly would resolve this issue pending enactment of the 2016 NDAA.

Proposed CR language:

SEC. _____. Section 602(b)(2)(A)(ii) of the Afghan Allies Protection Act of 2009 (8 U.S.C. 1101 note) is amended by striking “year—” and inserting “year, or, if submitting a petition after September 30, 2015, for a period of not less than 2 years—”

III. Availability of Operation and Maintenance Funds to Build the Capacity of Foreign Security Forces

Section 1205 of the FY 2015 NDAA, P.L. 113-291, codified at 10 U.S.C. § 2282, provides authority to build the capacity of foreign security forces, however, we still require a provision annually to make FY 2016 O&M funds available to support the effort.

Proposed CR language:

SEC. _____. Of the amounts appropriated in Section 101 for Operation and Maintenance, \$350,000,000 may be used for programs under subsection (a) of section 2282 of title 10, United States Code.

IV. Extend Other Expiring Defense Authorities:

The following authorities will expire between September 30, and December 31, 2015, and in the absence of an NDAA require extension under CR:

- Expiring Authorities Related to Overseas Contingency Operation:
 1. Authority to Transfer Defense Articles and Provide Defense Services to the Military and Security Forces of Iraq and Afghanistan, provided by P.L. 112-239, sec. 1222 (National Defense Authorization Act for Fiscal Year 2013), as amended, expires December 31, 2015.
 2. Authority to Make Rewards for Combating Terrorism, provided by 10 U.S.C. 127b, expires September 30, 2015.
- Expiring Military Pay Authorities; each expires December 31, 2015:

- Expiring Bonus and Special Pay Authorities provided by P.L. 113-291, section 602, and sections 611-615 (National Defense Authorization Act for Fiscal Year 2015).
- North Atlantic Treaty Organization Security Investment Program Authority; requires reauthorization annually.

Proposed CR language for all expiring authorities:

SEC. _____. (a) Notwithstanding section 106 of this joint resolution, the following authorities shall continue in effect through the earlier of the date specified in section ____ of this joint resolution or the date of enactment of the National Defense Authorization Act for Fiscal Year 2016, and are deemed to have continued in effect during the period from October 1, 2015, through the date of enactment of this joint resolution:

- (1) Section 1222 of the National Defense Authorization Act for Fiscal Year 2013, as most recently amended by section 1231 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291);
- (2) Section 127b(c)(3)(C) of title 10, United States Code;
- (3) Sections 602, 611, 612, 613, 614, and 615 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291);
- (4) Sections 2501 and 2502 of Division B of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291).

(b) A program, project, or activity carried out pursuant to the authority of this section that is not otherwise subsequently authorized by such authorization Act for fiscal year 2016 may be completed under the authority provided by this section.

Crosswalk of language above to Source Authority for Other Expiring Authorities in IV above:

Overseas Contingency Operations		<u>Source Authority</u>	<u># Within Draft Legislation</u>
1	Authority to Transfer Defense Articles and Provide Defense Services to the Military and Security Forces of Iraq and Afghanistan	P.L. 112-239 Sec. 1222	1
2	Rewards Combatting Terror	10 U.S.C. 127b	2
Other Expiring Authorities			
Military Pay Bonus and Special Pay Authorities: Temporary Increase in Rates of Basic Allowance for Housing Bonus and Special Pay for Reserve Forces Bonus and Special Pay for Health Care Professionals Bonus and Special Pay for Nuclear Officers Title 37 Consolidated Special and Incentive Pay, and Bonus Authorities (includes general bonuses for enlisted & officer; special bonus & incentive pay for nuclear, aviation and health care officers; contracting bonus for cadets & midshipment; hazard pay; assignment & special duty pay; skill incentive & proficiency bonus; retention incentives in critical skills or high priority units) Other Title 37 Bonuses and Special Pays (includes aviation officer retention, assignment incentive, enlistment & reenlistment bonuses, incentive - foreign language proficiency, accession bonus - new officers in critical skills, incentive bonus - conversion to specialty fields to ease shortages, incentive bonus - transfer between branches, accession bonus - officer candidates)		P.L. 113-291 Sec. 602 Sec. 611 Sec. 612 Sec. 613 Sec. 614 Sec. 615	3
NATO Investment Authority: Authorization of Construction & Land Projects Authorization of Appropriations		P.L. 113-291 Sec. 2501 Sec. 2502	4