

# To Reduce Waste, Congress Should Allow Defense Department Funding to Rollover

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## KEY TAKEAWAYS

A key part of maintaining a strong national defense is providing the military with proper funding and ensuring that the force gets the most value from those funds.

Allowing the DOD to carry over a portion of its operating funds each year is an easy (and free) reform that will pay handsome dividends.

Congress should authorize a program in the 2021 NDAA and related appropriations act allowing the DOD to rollover 5 percent of unused O&M funds to the next fiscal year.

The Constitution gives Congress the responsibility to “provide for the common defense” and to prohibit expenditures “but in Consequence of Appropriations made by Law.”<sup>1</sup>

As Heritage Foundation analysts have previously recommended, Congress should authorize a program in the 2021 National Defense Authorization Act (NDAA) to allow the Department of Defense (DOD) to roll over a percentage of unused Operations and Maintenance (O&M) funding to the next fiscal year.<sup>2</sup>

Such a policy would allow the DOD to make better purchasing and contracting decisions without the artificial pressure of an end of fiscal year deadline and would lead to better outcomes and a more efficient DOD—objectives that every national leader should desire.

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This paper, in its entirety, can be found at <http://report.heritage.org/ib5090>

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## Current Policy Creates Wasteful Spending

The annual DOD funding bill divides funding among various appropriations. Of them, several—including Procurement; Research, Development, Test and Evaluation; and Military Construction—make the funding available for at least two years, while O&M and Military Personnel are one-year appropriations.

In accordance with language found in every annual DOD appropriations act, O&M funding remaining unused on October 1 is automatically unavailable for new obligations, even if funding was provided late or if unforeseen delays prevented sound fiscal plans from being executed.

This creates multiple issues. Because the DOD and Congress typically assess the need for future funding based on the percentage of funds spent in the current year, any unspent funds at year end portends that that budget item will likely receive less funding the following year. DOD organizations also face the prospect of lost buying power due to expiration of appropriated funding. This creates a pervasive “use it or lose it” mentality that permeates the department, leading to poor spending choices as unnecessary or rushed purchases made in the interest of using up funds.<sup>3</sup> Starting around July of every fiscal year, the various budget offices of the DOD all begin to pester subordinate levels of command with missives to “get your spending levels up,” and those that are lagging are singled out for special attention.<sup>4</sup>

Numerous studies have shown that DOD spending sharply escalates at the end of the fiscal year. Under pressure to obligate funds, DOD agencies tend to spend up to 31 percent of their annual funds in the fourth quarter. DOD contract obligations for the period 2012–2016—normally around \$25 billion per month—double in the month of September as organizations scramble to obligate funds.<sup>5</sup>

With the end of the fiscal year looming comes poor decision making and inefficiency.

American economists Jeffrey Liebman and Neale Mahoney found that IT purchases that surged in the last few months of the fiscal year were of lower quality as judged by the chief information officers from the organizations. They found that projects that start in the last week of the fiscal year have a 2.3 times–5.6 times higher odds of having a lower quality score.<sup>6</sup>

Intuitively, this makes sense. It is only natural that contracting offices with fixed levels of staffing, when faced with a torrent of end-of-year contracts and an inflexible deadline, perform less efficiently and effectively.

## An Opportunity for Policy Change

There is precedent for allowing DOD O&M appropriations to carry over. In the 2020 DOD Appropriations Act, Congress allowed the Defense Health Agency to carry over 1 percent of its O&M funds to the following fiscal year.<sup>7</sup>

During the July 1, 2020, House Armed Services Committee (HASC) mark-up of the 2021 NDAA, Representative Mac Thornberry (R-TX) introduced an amendment to allow the DOD to keep 50 percent of its unused fiscal year (FY) 2021 O&M funds and use those funds in FY 2022. Even though Representative Thornberry retracted the amendment, as the Appropriations Committee (not HASC) has jurisdiction over the matter, if subsequently introduced during the floor debate, the amendment could pass in the full House. HASC Chairman Adam Smith (D-WA) expressed modest support for the proposal.<sup>8</sup> From there it could become an issue to be discussed during the NDAA conference and, from there, potentially into law. Even though this is a modest step, this proposal reflects the most serious attempt to tackle this long-standing issue in years.

Additionally, there are other federal agencies that are routinely provided appropriations that are available until “expended,” known as “no-year” appropriations. The Department of Justice is one such agency.<sup>9</sup>

## Congress Has Not Reacted Favorably in the Past to Such Proposals

Congressional appropriation committees are notoriously protective of their authorities and oversight responsibilities. Appropriators are naturally concerned that allowing the DOD to retain unspent single-year funds, essentially carving out a multiyear appropriation inside a single year appropriation, would reduce the impact of congressional oversight functions.

As a proxy for that discussion, proposals for biennial budgeting, with all appropriations lasting at least two years, have been raised numerous times—even at one point earning the support of President Bill Clinton—but were defeated each time.<sup>10</sup> The pressure is more acute in the House of Representatives with its two-year terms, where if biennial appropriations were made, a given Representative would likely be able to influence only one set of appropriations in a given term.

Limiting the amount of funds that can be carried over to a percentage, perhaps 5 percent, may serve to allay oversight concerns. Even the authority to carry over 5 percent would make an enormous difference, as typically the DOD struggles in the last weeks of the fiscal year to obligate the last 2 percent to 3 percent of O&M funding.<sup>11</sup>

## Allowing Limited Carryover Would Make the Pentagon More Efficient

Contributing to the pressure to spend soon-to-be-expiring funds is the reality that the DOD has started 14 of the past 19 fiscal years under continuing resolutions. Although continuing resolutions do provide funding based on the previous year's budget, there is a disincentive to spend because of the uncertainty of when and how much money will be available for the current year.<sup>12</sup>

Economists like to say “incentives matter.” Currently all the internal DOD incentives favor those organizations that expend 100 percent of their O&M funding before the end of the fiscal year, no matter how it is done. Military officials proudly report to their superiors that they are “fully obligated” at the end of the year. “But on what?” one may ask.<sup>13</sup> Despite years of trying, changing these incentives has proven beyond the ability of the DOD. Congress should intervene.<sup>14</sup>

In FY 2021 the President's budget for the DOD requested \$288.9 billion in O&M, a little over 40 percent of the total DOD budget.<sup>15</sup> An ability to carry over 5 percent of this FY 2021 amount would equal \$14.5 billion. This amount would provide sufficient flexibility to prevent suboptimal decision making based on an artificial deadline.

By granting the DOD the flexibility to carry over a percentage of its O&M appropriation, Congress can help make the Armed Forces more efficient and effective.

### Recommendations

Congress should:

- Authorize the DOD to carry over 5 percent of its FY 2021 O&M appropriation to the end of FY 2022 in the FY 2021 NDAA and associated Appropriations Act and
- Further require the DOD to report on the efficacy of this authorization as it considers whether to make this exception permanent.

The executive branch should:

- Through the DOD, capitalize on this new authority by ensuring that decisions regarding O&M funding are consistently made across the fiscal year, not driven by an artificial deadline.

The DOD should:

- Provide each organizational level the ability to carry over 5 percent of its individual operating funds rather than centralizing the authority at a higher level.

Achieving and maintaining a strong national defense relies on the proper amount of investment and stewardship of the funds to ensure that the military gets the most value. Allowing the DOD to rollover a portion of the operating funds they are provided is an easy (and free) reform that will pay handsome dividends.

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## Endnotes

1. U.S. Constitution, article I.
2. Frederico Bartels, ed., "The Role of the 2020 National Defense Authorization Act in Rebuilding the U.S. Military," Heritage Foundation *Special Report* No. 208, February 6, 2019, p. 20, [https://www.heritage.org/sites/default/files/2019-02/SR208\\_0.pdf](https://www.heritage.org/sites/default/files/2019-02/SR208_0.pdf). Also see Frederico Bartels, ed., "The 2019 NDAA Must Continue to Rebuild the Military and Make it More Efficient," Heritage Foundation *Special Report* No. 198, February 9, 2018, p. 19, [https://www.heritage.org/sites/default/files/2018-02/SR-198\\_1.pdf](https://www.heritage.org/sites/default/files/2018-02/SR-198_1.pdf).
3. Jason J. Fichtner and Robert Greene, "Curbing the Surge in Year-End Federal Government Spending: Reforming 'Use It or Lose It' Rules," Mercatus Center, September 2014, <https://www.mercatus.org/system/files/Fichtner-Year-End-Spending.pdf> (accessed July 7, 2020).
4. Author's experience.
5. Heidi M. Peters, "End-Year DOD Contract Spending," Congressional Research Service *Report for Congress*, updated November 17, 2017, <https://crsreports.congress.gov/product/pdf/IF/IF10365> (accessed July 6, 2020).
6. Jeffrey B. Liebman and Neale Mahoney, "Do Expiring Budgets Lead to Wasteful Year-End Spending? Evidence from Federal Procurement," *American Economic Review*, Vol. 107, No. 11 (2017), pp. 3510–3549, <https://pubs.aeaweb.org/doi/pdf/10.1257/aer.20131296> (accessed July 6, 2020).
7. Department of Defense FY2020 Appropriations Act, 116th Cong., 1st Sess., <https://www.congress.gov/116/bills/hr2968/BILLS-116hr2968rh.pdf> (accessed July 6, 2020).
8. Sydney J. Freedberg Jr., "HASC Wants to Stop Year-End Spending Sprees," *Breaking Defense*, July 1, 2020, <https://breakingdefense.com/2020/07/hasc-wants-to-stop-year-end-spending-sprees/> (accessed July 6, 2020).
9. Making Appropriations for the Departments of Commerce, and Justice, Science, and Related Agencies for the Fiscal Year ending September 30, 2020, 116th Cong., 1st Sess., <https://www.congress.gov/116/bills/s2584/BILLS-116s2584rs.pdf> (accessed July 6, 2020).
10. Andrew J. Taylor, "Reforming the Appropriations Process," *National Affairs*, Vol. 44 (Summer 2020), <https://www.nationalaffairs.com/publications/detail/reforming-the-appropriations-process> (accessed July 6, 2020).
11. Peters, "End-Year DOD Contract Spending."
12. Pat Towell, Kate P. McClanahan, and Jennifer M. Roscoe, "Defense Spending Under an Interim Continuing Resolution: In Brief," Congressional Research Service *Report for Congress*, August 15, 2019, <https://crsreports.congress.gov/product/pdf/R/R45870> (accessed July 6, 2020) (updated to include the 2020 DOD continuing resolution).
13. Author's experience.
14. Then-DOD Comptroller Robert Hale and Undersecretary of Defense Frank Kendall tried in 2012 to set policy that organizations that had unspent year-end balances would not be penalized by reduced budgets in following years. Pentagon culture and traditions, however, were too strong, and the effort was unsuccessful. Cited in Peters, "End-Year DOD Contract Spending."
15. U.S. Department of Defense, "Fiscal Year 2021 Budget Request," February 2020, [https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021\\_Budget\\_Request.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_Budget_Request.pdf) (accessed July 6, 2020).