

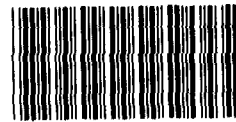
GAO

Report to the Chairman, Subcommittee
on Defense, Committee on
Appropriations, U.S. Senate

July 1991

EXPIRED APPROPRIATIONS

New Limitations on Availability Make Improved Management by DOD Essential



144402



United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-238014

July 18, 1991

The Honorable Daniel K. Inouye
Chairman, Subcommittee on Defense
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

This report was prepared in response to your request that we review the Department of Defense's use of expired appropriations. The report addresses the growth and size of the M accounts and the merged surplus authority through September 30, 1990; the use of these accounts by the Army, Navy, and Air Force to fund upward adjustments of contract costs; and the extent to which that use satisfies all legal requirements. We recommend that the Secretary of Defense improve oversight and control over the use of expired appropriations. A similar report has been provided to the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, and to the Honorable Andy Ireland.

We are sending copies of this report to the Secretaries of Defense, the Army, the Navy, and the Air Force.

Please contact me at (202) 275-4268 if you or your staff have any questions concerning this report. The major contributors to this report are listed in appendix V.

Sincerely yours,

A handwritten signature in cursive script that reads 'Nancy R. Kingsbury'.

Nancy R. Kingsbury
Director
Air Force Issues

Executive Summary

Purpose

Prior to 1990, expired budget authority remained available indefinitely in the M accounts and merged surplus authority. The balances in these accounts could be used to pay valid obligations incurred before the budget authority had expired, including certain upward adjustments. Many lawmakers were unaware of agencies' access to the large balances of budget authority in these accounts. The use of these accounts was highlighted in 1989 when the Air Force informed the Congress that it planned to use almost \$1 billion from the accounts to correct problems in the B-1B bomber's defensive avionics system.

GAO was asked to review the Department of Defense's (DOD) use of M accounts and the merged surplus authority. In response to this request, GAO reviewed (1) the size of the balances in these accounts in the Army, Navy, and Air Force, (2) the purposes for which the services were using the expired budget authority, and (3) the extent to which that use satisfied all legal requirements.

Background

DOD receives appropriations with differing periods of availability for obligation, normally 1, 2, or 3 years. At the end of the period of availability, the budget authority expires and cannot be used to incur new obligations. In 1956, Public Law 84-798 established the M accounts and merged surplus authority as repositories for unspent budget authority from expired appropriations. The M accounts accumulated balances of obligated but unpaid budget authority and the merged surplus authority accumulated balances of budget authority that had not been obligated. The budget authority in these accounts could not be used to incur new obligations. However, it could be used to pay routine bills as they became due and to fund valid but previously unrecorded obligations or increases in amounts originally obligated for a particular activity when circumstances warranted.

Results in Brief

When the Congress established the M accounts and merged surplus authority in 1956, it anticipated that these balances would remain small and that restorations to fund upward adjustments would be required infrequently. However, between 1980 and 1990, the services' combined M accounts grew from \$2.7 billion to \$18.8 billion, and the merged surplus authority grew from \$5.2 billion to \$27 billion.

In addition, the use of these budget authorities to fund upward adjustments to amounts previously obligated increased dramatically. In the Navy and the Air Force, the number of upward adjustments increased

from 72 during fiscal year 1985 to 174 during 1989. Comparable data for the Army was not available. The majority of the upward adjustments were for contract cost overruns, the settlement of claims by contractors, and the funding of contingent liabilities. GAO examined 18 of these upward adjustments as case studies. In nine instances, the adjustments were proper; in three instances, the adjustments were improper; in the remaining six instances, the adjustments were needed because of what GAO considers to be undesirable management practices.

Principal Findings

Growth in Account Balances

The growth in the M accounts and merged surplus authority has been attributed to DOD's procurement of costlier and more technical systems that have longer procurement cycles. Consequently, larger amounts of budget authority accumulated in these accounts before the contracts were completed and the final bills were paid. In addition, although DOD's accounting procedures require an annual audit of the M accounts, the services had not audited these accounts to ensure that the balances represented valid obligations. In March 1990, DOD's Inspector General reported systemic problems in several areas, including reconciliation and validation of obligations.

Increased Service Use of Accounts for Upward Adjustments

Table 1 shows the number and dollar value of Air Force and Navy upward adjustments between 1985 and 1989.

Table 1: Air Force and Navy Requests for Upward Adjustments

	Fiscal year				
	1985	1986	1987	1988	1989
Number of adjustments	72	58	150	164	174
Amount	\$56.9	\$59.0	\$207.7	\$411.1	\$559.9

Note: Comparable information on Army transactions was not available.

Over 50 percent of the budget authority requested in fiscal years 1985 through 1989 was requested for contracts and programs that required upward adjustments more than once.

**Use Not Always
Appropriate**

DOD and service regulations, court cases, and decisions by the Comptroller General help establish the rules governing the proper use of expired budget authority. To determine whether these criteria were being followed, GAO selected 18 upward adjustments as case studies to examine in detail.

Proper Use

GAO considered 9 of the 18 case studies to be a proper use of the expired accounts. For example, in 1989, the Navy used expired budget authority to fund the replacement contract for a 1983 contract that had been terminated by the Navy for default. The Comptroller General has held that expired appropriations may be used to fund a replacement contract when the contracting agency terminates a contract for default by the contractor and enters into a replacement contract to satisfy the agency's continuing bona fide need for the goods or services involved.

Improper Use

Three of the case studies involved the improper use of expired budget authority. For example, the Air Force deliberately omitted the required "qualification and acceptance" testing from a contract to produce satellites because sufficient budget authority was not available at the time of contract award to cover the cost of such testing. The Air Force later used expired budget authority to fund this testing. GAO concluded that it is improper to fund a modification with expired funds when the performance called for by the modification was deliberately omitted from the original contract for budgetary reasons. In another case, the Army used expired budget authority to pay an award by the Armed Services Board of Contract Appeals to an Army contractor. In this situation, the Comptroller General has held, and regulations require, that current budget authority be used to pay such awards.

**Uses Resulting From Poor
Management Practices**

In six of GAO's case studies, the need to use expired budget authority was directly related to poor management practices. For example, in one case the Navy did not definitize or finalize the negotiated price for a contract modification for over 2-1/2 years. In addition, the Navy did not obligate funds to cover the increased cost when the contract modification was authorized. As a result of the delay in definitization, and the Navy's failure to obligate funds before the contract was defined, the Navy used expired budget authority to pay the increased costs. In a similar case, the Navy did not obligate funds when a contract modification was signed, and later used expired appropriations to pay the costs when the contract was definitized. In another case, the Air Force decommitted

and reprogrammed budget authority that had been set aside for contingent liabilities and later used expired appropriations to fund the contingent liabilities when they subsequently materialized.

Recent Legislation Will Require Better Management Practices

Public Law 101-510, dated November 5, 1990, phases out existing M accounts over a 3-year period, eliminates the merged surplus authority, and limits the availability of expired appropriations to 5 years. These changes will reduce the amount of expired budget authority available to agencies. The new limitations on availability of expired budget authority to pay upward adjustments of contract costs will require the services to improve management practices and control of expired appropriations. Under current request and review procedures, justifications for using expired budget authority generally do not explain the circumstances that required the upward adjustment. More complete information on these adjustments would enable agency officials to detect trends in management practices that result in unnecessary use of expired appropriations and to take corrective action.

Recommendation

GAO recommends that the Secretary of Defense direct the services to revise their procedures for the use of expired budget authority to require, in addition to the information already provided in the request and approval process, a comprehensive statement concerning the reason for the upward adjustment. This statement should explain the circumstances, contingencies, or management practices that caused the need for the upward adjustment.

Agency Comments

DOD agreed with GAO's findings and recommendation and said that guidance currently being developed to implement the recent legislatively imposed limitations on the availability of appropriation accounts will also address specific requirements to enhance oversight over the use of expired budget authority (see app. III).

Contents

Executive Summary		2
<hr/>		
Chapter 1		8
Introduction	Creation of the M Accounts and Merged Surplus Authority	8
	Recent Events Focused Congressional Attention on Expired Appropriations	11
	Objectives, Scope, and Methodology	12
<hr/>		
Chapter 2		14
Size and Use of Expired Appropriations Have Increased	M Accounts and Merged Surplus Authority Have Grown	14
	DOD's Use of Expired Budget Authority for Upward Adjustments Increased	17
	Most Upward Adjustments Were Cost Overruns, Claims Settlements, or Contingent Liabilities	18
	Some Programs Requested Multiple and Large Upward Adjustments	18
	Limited Congressional Visibility Over Upward Adjustments	19
	Conclusions	22
<hr/>		
Chapter 3		23
DOD Is Not Always Using Expired Budget Authority Properly	Legal Requirements for Using Expired and Lapsed Appropriations	23
	Procedures for Requesting and Approving Use of Expired and Lapsed Budget Authority	24
	Case Studies Show Improper Uses of Expired Budget Authority and Poor Management Practices	25
	Conclusions	31
<hr/>		
Chapter 4		32
New Legislation Will Decrease Availability of Expired Appropriations and Increase Need for Better Management	New Legislation Changes Agency Procedures	32
	New Legislation Means That Agencies Must Improve Management of Expired Appropriations	33
	Conclusions	34
	Recommendation	35
	Agency Comments	35

Appendixes	Appendix I: Background of Public Law 84-798, November 25, 1956	36
	Appendix II: Summary of 18 Case Studies	38
	Appendix III: Comments From the Department of Defense	49
	Appendix IV: Locations Visited or Contacted	51
	Appendix V: Major Contributors to This Report	53

Tables	Table 1: Air Force and Navy Requests for Upward Adjustments	3
	Table 2.1: Growth in DOD's M Accounts, Merged Surplus Authority, and Budget	15
	Table 2.2: Air Force and Navy Requests for Upward Adjustments	17
	Table 2.3: Reasons for Upward Adjustments	18
	Table 2.4: Programs Requesting Multiple Upward Adjustments	19

Figures	Figure 1.1: The Process of Withdrawals, Restorations, and Transfers of Appropriation Balances	10
	Figure 2.1: Growth in Services' M Accounts and Merged Surplus Authority	15
	Figure 2.2: Growth in DOD's Budget	16

Abbreviations

DOD	Department of Defense
GAO	General Accounting Office
SINGARS	Single Channel Ground and Airborne Radio System

Introduction

The Department of Defense (DOD) receives appropriations to fund its activities and carry out its responsibilities. These appropriations have different periods of availability for obligation depending on their purpose. For example, procurement appropriations are generally available for 3 years, and operations and maintenance appropriations are available for 1 year. At the end of the period that budget authority is current and available to be obligated, the appropriation expires and can no longer be used to pay for new obligations. However, prior to 1990, contrary to a perception among many congressional lawmakers and others, the budget authority in agency appropriations that expired was not lost to an agency. Rather, it remained available indefinitely in accounts known as the M accounts and merged surplus authority to pay valid obligations incurred during the period of availability, including certain upward adjustments.

In particular, two uses of large amounts of budget authority from the M accounts and the merged surplus authority by the military services to pay for upward adjustments of contract costs have recently focused congressional attention on these accounts. It was these upward adjustments that dramatically increased Congress' awareness of the large balances in these accounts and raised concerns over whether the accounts were being used in accordance with applicable laws and regulations. Upward adjustments of contract costs serve as the focus of this report.

Creation of the M Accounts and Merged Surplus Authority

Public Law 84-798, dated July 25, 1956, established the M accounts and merged surplus authority and transferred the responsibility for managing expired appropriations and paying claims resulting from prior year activities from GAO to the individual agencies. A discussion of the creation of these accounts is contained in appendix I. The creation of these accounts was originally intended to improve the accounting system by which federal agencies paid obligations resulting from prior year activities.

Under the accounting system established by Public Law 84-798, which was recently changed by new legislation, budget authority appropriated by Congress was first considered to be current, then to be expired for a period of 2 years, and finally to be lapsed. At the end of the period that an appropriation was considered current and available for obligation, the budget authority expired and was no longer available to create new obligations. The unobligated balance of expired budget authority was withdrawn to the Treasury and designated as "surplus authority." The balances in the Treasury's surplus authority retained their fiscal year

and appropriation account identity for 2 fiscal years and remained available for restoration¹ to cover upward adjustments to obligations. After that time, the balances lapsed and were transferred to the Treasury's "merged surplus authority," which accumulated unobligated balances for all prior fiscal years. While the Treasury maintained general purpose identity (e.g., Air Force aircraft procurement), it did not maintain the fiscal year identity of the original appropriation for balances in the merged surplus authority.

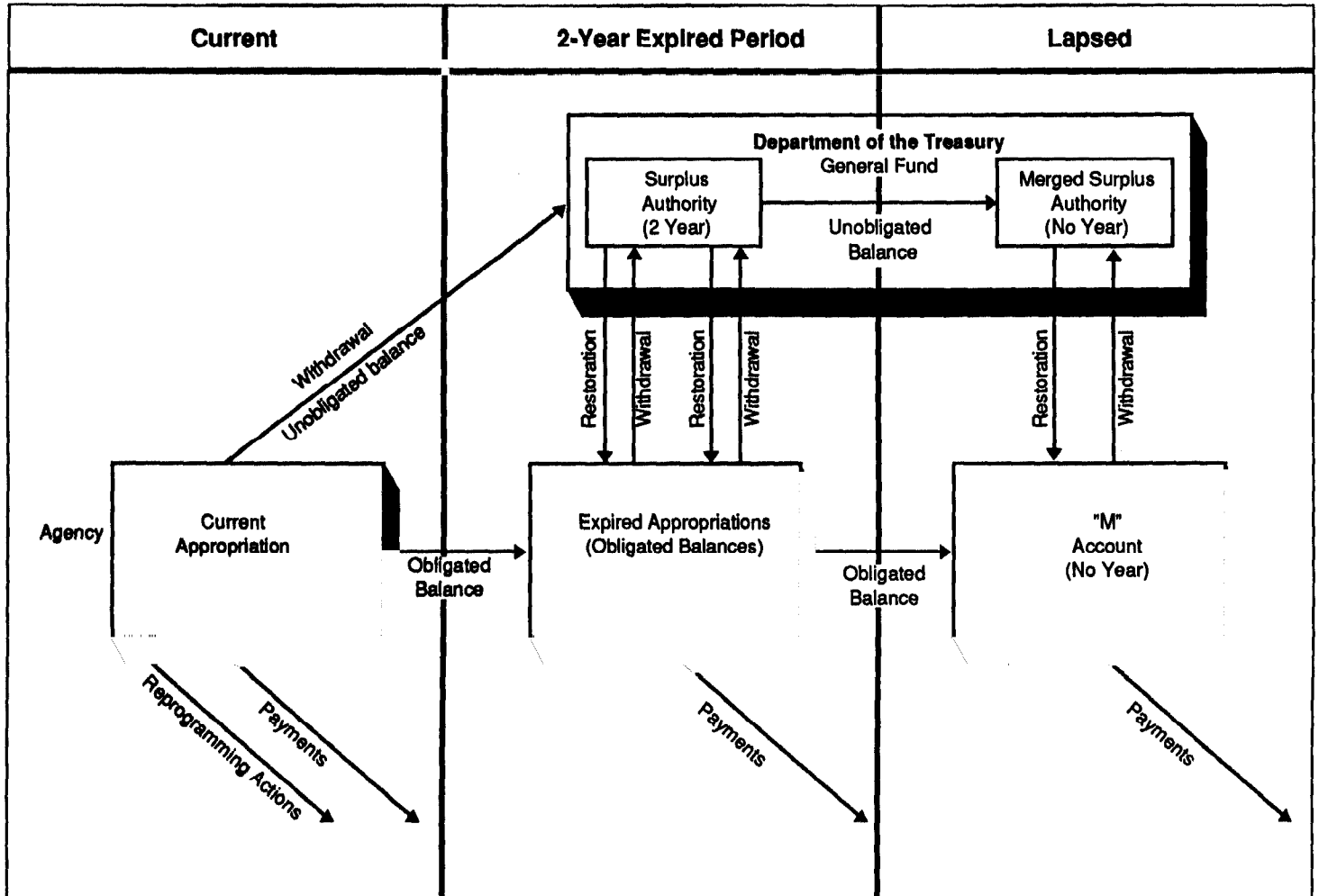
Records of the obligated balances of expired appropriations were maintained by the agencies and retained fiscal year and appropriation account identity for 2 fiscal years. Because expired budget authority was identified by both fiscal year and appropriation, an agency could have violated the Antideficiency Act² if it created obligations in excess of the unobligated and obligated budget authority available for a specific fiscal year expired appropriation account. At the end of the 2-year expired period, any obligated balances not disbursed or expended in payment of previous obligations lapsed and were transferred to an M account where they lose their fiscal year identity. This lapsed budget authority account was maintained by the agency and accumulated unliquidated obligations from all prior appropriations made for the same general purpose.

Balances of lapsed budget authority in the M accounts remained available indefinitely to an agency for payment of previously recorded obligations. Merged surplus authority balances of unobligated lapsed budget authority remained available for restoration to the M account to cover upward adjustments of previously recorded or incurred but unrecorded obligations. Figure 1.1 illustrates the accounting system established by Public Law 84-798 and how current budget authority would expire and lapse over time.

¹Restoration is the term used to describe the transfer of unobligated budget authority from the Treasury's surplus authority or the merged surplus accounts to the expired obligated accounts and M accounts, respectively, to pay for upward adjustments of obligations.

²The Antideficiency Act (31 U.S.C. 1341(a)) prohibits agencies from making expenditures or incurring obligations in excess of available appropriations. It charges responsibility to government officials who incur deficiencies or obligate appropriations without proper authorization (31 U.S.C. 1349, 1350).

Figure 1.1: The Process of Withdrawals, Restorations, and Transfers of Appropriation Balances



The creation of these new accounts provided agencies access to increasingly large balances of budget authority. For example, as of September 30, 1989, the M account balances of the executive agencies totaled approximately \$28 billion.

In 1989, Congress increased the requirements for reporting the use of these accounts. In 1990, Congress enacted legislation that will eliminate the M accounts and merged surplus authority and significantly affect how government agencies pay for obligations arising from prior year activities. These reporting requirements are discussed in chapter 2.

Recent Events Focused Congressional Attention on Expired Appropriations

In 1989, the Air Force used approximately \$1 billion from expired appropriations and the M account to fund modifications to fix the B-1B bomber's defensive avionics system. The source of funds for this transaction was disclosed in hearings before congressional authorization and appropriation committees. We were asked to evaluate whether the use of these accounts for this purpose complied with all applicable laws and regulations. We found that the modifications planned for the B-1B defensive avionics system were within the scope of the original contract and that the Air Force was able to use balances in the expired appropriations to fund the contract modifications.³ This case brought to Congress' attention (1) the services' access to and use of large amounts of expired budget authority that could be used to pay for contract cost increases and (2) the lack of congressional oversight of this process.

In another instance, the Air Force transferred \$238 million from the M account to the stock fund account to offset losses of stock fund cash that resulted from underbilling customers for aircraft fuel sales during fiscal years 1981 to 1986. We reviewed this transaction and reported that the Air Force did not have adequate documentation to justify the transfer of this amount from the M account to the stock fund.⁴ Consequently, Congress directed the Air Force to pay back the \$238 million it had transferred from the M account. This case demonstrated to Congress that, in at least one instance, an expired appropriation was used improperly.

In 1989, at the request of the President's Council on Integrity and Efficiency, the Department of the Treasury's Office of Inspector General coordinated a review of M accounts. Inspectors General in 13 agencies, including DOD, participated in the review, and 12 agencies issued reports on the status of selected accounts. The two most common problems identified in these reports involve poor documentation of M account obligations and the retention of excessive balances in these accounts. The report requested by the President's Council on Integrity and Efficiency was being prepared at the time we issued this report.

³Strategic Bombers: B-1B Program's Use of Expired Appropriations (GAO/NSIAD-89-209, Sept. 5, 1989).

⁴Letter to the Chairman, Subcommittee on Defense, House Committee on Appropriations (B-236940, Oct. 17, 1989).

Objectives, Scope, and Methodology

The Inspector General reports; subsequent testimony by GAO, DOD, and other government agencies; and other reports and information provided by GAO on the control and management of these accounts, caused Congress to become concerned about (1) the large balances available to DOD in the expired appropriation accounts, (2) the services' apparently routine use of large amounts from the M accounts and merged surplus authority to pay for upward adjustments of contract costs and for other purposes, and (3) the lack of congressional oversight of these accounts.

As a result of these concerns, we were asked to review DOD's use of M accounts and merged surplus authority. In response, we reviewed (1) the growth in and current size of these accounts in the Army, Navy, and Air Force, (2) the purposes for which the services were using the accounts, and (3) the extent to which that use satisfied all legal requirements.

Subsequently, Congress enacted legislation as part of the National Defense Authorization Act of 1991 (P. L. 101-510) aimed at strengthening its oversight and control over the use of expired appropriations. This legislation will significantly affect the procedures that all agencies currently use to pay obligations resulting from prior year activities. The legislation, along with its effect on the agencies' future use of expired budget authority, is discussed in chapter 4.

To determine the growth in and current size of DOD's M accounts and merged surplus authority, we obtained Reports of Budget Execution (DD Form 1176) for 1973 through fiscal year 1990 as well as other documents related to financial activity in the services. We interviewed officials of the Department of the Treasury, the Office of the Assistant Secretary of Defense (Comptroller), the Office of the Navy Comptroller, the U.S. Army Finance and Accounting Center, and the Air Force Accounting and Finance Center.

To assess the reasons the services requested authority to cite expired and lapsed budget authority, we obtained and examined documents related to 710 upward adjustments of contract costs made by the Army, Navy, and Air Force from fiscal year 1985 through April 1990. Because we were not able to readily obtain information on all upward adjustments made by the services during this period, we based our analysis on the information that was readily available, although it varied widely from service to service. The Air Force provided information on all upward adjustments of contract costs over \$100,000 made from fiscal

years 1985 through 1989, with the exception of the fourth quarter of fiscal year 1986.

From the Navy we obtained files on upward adjustments made from fiscal years 1985 through 1989, as well as large upward adjustments made during the first 6 months of fiscal year 1990. Because the Army Material Command handles approximately 90 percent of the Army's procurements, we obtained documents related to upward adjustments made by components of that command from September 1989 through April 1990. For each upward adjustment, we obtained the contract number applicable to the increased cost, the system or program, the amount of the upward adjustment, the fiscal year and appropriation cited in the request, the reason for the upward adjustment, and the command within each service in which the request originated.

To determine whether the services were using the M accounts and merged surplus authority properly, we obtained copies of procedures, directives, and regulations that govern the use of expired and lapsed budget authority and that outline the process for requesting and approving the use of these appropriations to pay for upward adjustments of contract costs. In addition, we reviewed court cases and Comptroller General decisions governing the use of expired and lapsed appropriation accounts.

From our information on upward adjustments made for fiscal year 1985 through the first half of fiscal year 1990, we then judgmentally selected 18 uses of expired and lapsed appropriations, 6 transactions in each of the services, to review as case studies. For the case studies, we selected both large and small dollar value transactions and selected transactions from several components of each service. In each of these case studies, we interviewed individuals at all levels of the request and approval process and obtained documents to substantiate the need for an upward adjustment of contract costs.

Appendix IV lists the organizations and locations visited during our case studies. We conducted our work from October 1989 through April 1991 in accordance with generally accepted government auditing standards.

Size and Use of Expired Appropriations Have Increased

When Congress created the M accounts and the merged surplus authority, it envisioned that account balances would remain small and that agencies would use these accounts infrequently. However, the balances in these accounts have grown, and available records indicate that just as the balances have grown, so has DOD's use of these accounts to fund upward adjustments of contract costs. The most frequently cited reason for restorations, and the largest percentage of budget authority requested, was to fund contract cost overruns. Our analyses showed that certain programs and contracts request multiple and high dollar value restorations.

M Accounts and Merged Surplus Authority Have Grown

Congress did not expect the M accounts and merged surplus authority to accumulate significant amounts of lapsed budget authority. Indeed, Congress felt understated and overstated obligations would balance each other out, keeping these accounts from fluctuating substantially or accumulating large balances.

Despite congressional expectations, since 1956 the M accounts and merged surplus authority have grown substantially. As of September 30, 1990, the Army, Navy, and Air Force M account and merged surplus authority balances totaled about \$18.8 billion and \$27.1 billion, respectively. For example, between 1956, when the accounts were established, and the end of fiscal year 1980, the M accounts grew by approximately \$2.7 billion; however, in fiscal year 1986 alone, the M accounts grew approximately this same amount. The merged surplus authority has also shown growth since 1956, reaching \$15.2 billion in fiscal year 1980 and \$27.1 billion in fiscal year 1990. Table 2.1 and figures 2.1 and 2.2 illustrate the rapid growth of these balances from fiscal years 1980 through 1990.

Chapter 2
Size and Use of Expired Appropriations
Have Increased

Table 2.1: Growth in DOD's M Accounts, Merged Surplus Authority, and Budget
 (Fiscal Years 1980 Through 1990)

Dollars in billions

Fiscal year	M accounts	Merged surplus	DOD budget
1980	2.7	15.2	142.6
1981	3.4	15.3	178.4
1982	3.3	16.3	213.8
1983	4.2	18.4	239.5
1984	5.0	18.3	258.2
1985	6.7	19.8	286.8
1986	9.6	21.3	281.4
1987	12.4	22.8	279.5
1988	15.0	24.4	283.8
1989	18.5	25.4	290.8
1990	18.8	27.1	293.0

Figure 2.1: Growth in Services' M Accounts and Merged Surplus Authority
 (Fiscal Years 1980 Through 1990)

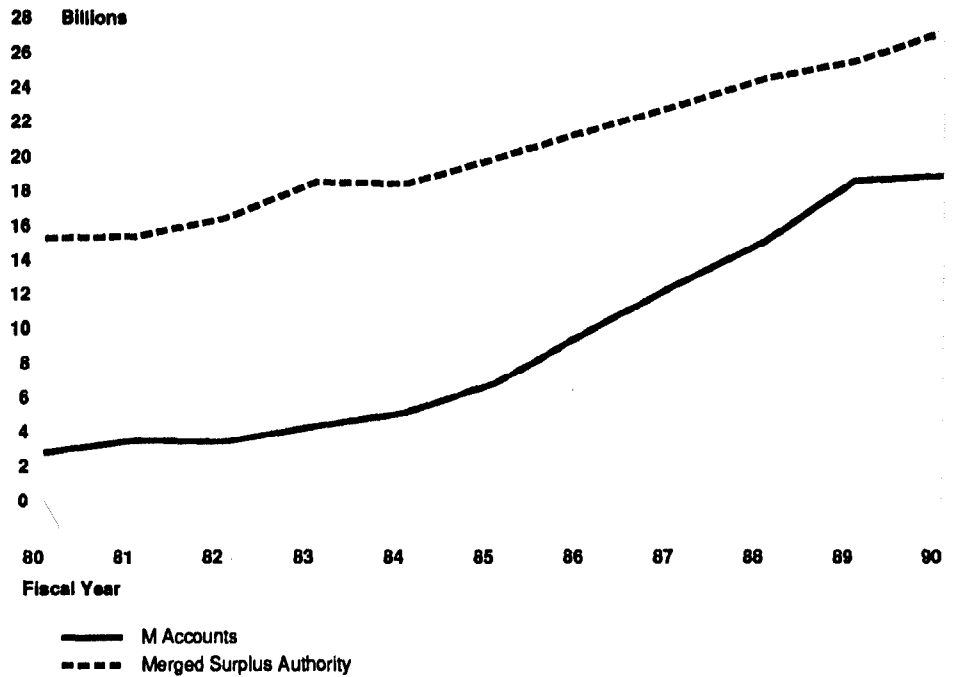
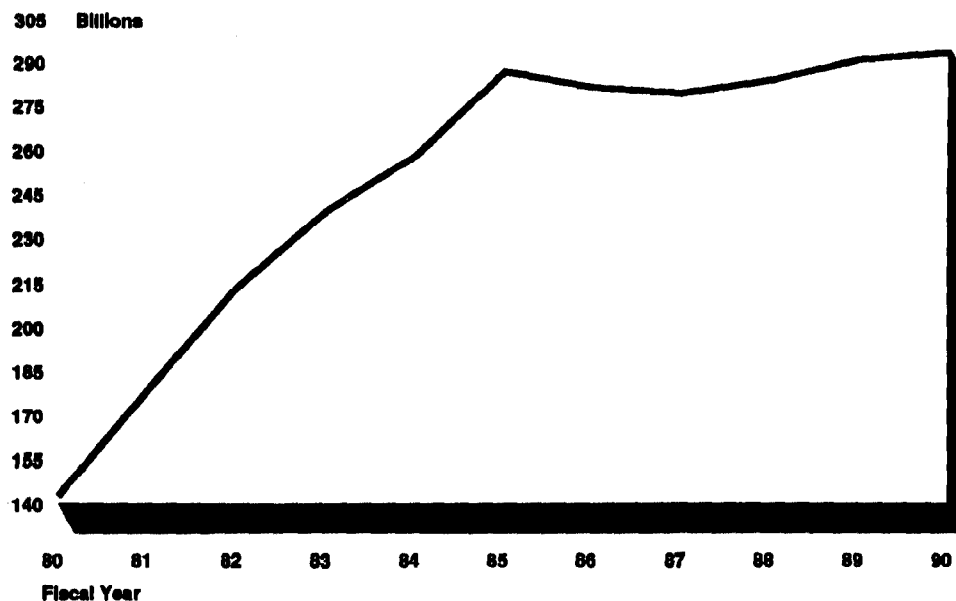


Figure 2.2: Growth in DOD's Budget
(Fiscal Years 1980 Through 1990)



Much of the increase in these accounts occurred during the 1980s, a decade in which DOD's budget was undergoing tremendous growth. The growth in these accounts has been attributed to DOD and the services' procuring costlier and more technical systems and programs that required longer periods of time to go through the entire procurement cycle. A costlier and longer procurement cycle resulted in larger amounts of budget authority being appropriated that had time to expire and lapse into the M and merged surplus accounts.

Another reason for the large balances in the services' M accounts has been that DOD and the services have not audited these accounts to ensure that balances represent valid obligations. DOD's accounting procedures require that unliquidated obligations for all appropriations, including the M accounts, be validated, at a minimum, on an annual basis. In March 1990, DOD's Inspector General released a report on its review of DOD's M account. The Inspector General identified systemic problems in several areas, including reconciliation and validation of obligations, and reported that the unliquidated balances in the M accounts are inaccurate.

In addition, during our audit work, several officials stated that the services were not performing the annual reconciliation and validation of

obligations in the M accounts. They said more emphasis is placed on managing current budget authority, which has greater flexibility and where some benefit can be demonstrated.

DOD's Use of Expired Budget Authority for Upward Adjustments Increased

During the 1980s, while the M accounts and merged surplus authority balances were increasing, the services' use of expired and lapsed budget authority to fund upward adjustments of prior obligations was also increasing. Accordingly, we analyzed documents related to 710 requests by the Army, Navy, and Air Force to determine the annual number of requests, the dollar amounts of the requests, and the reason provided by the service for the need for an upward adjustment of contract costs.

Our analyses of 710 requests shows that the Navy and Air Force use of these accounts increased from fiscal years 1985 through 1989. Table 2.2 displays the number and the aggregate dollar value of upward adjustments by the Air Force and the Navy for each year. Because information on Army adjustments is not available for the entire period, it is not included.

Table 2.2: Air Force and Navy Requests for Upward Adjustments

Dollars in millions

	Fiscal year				
	1985	1986	1987	1988	1989
Number of adjustments	72	58	150	164	174
Amount	\$56.9	\$59.0	\$207.7	\$411.1	\$559.9

Our analyses of the reasons provided by the Army, Navy, and Air Force showed that the services request expired and lapsed budget authority to fund a wide variety of upward adjustments. Among the reasons cited by the services are the need to pay contract cost overruns, settlements of claims by contractors, contingent liabilities, and increases caused by contract changes requiring additional work by the contractor.

Most Upward Adjustments Were Cost Overruns, Claims Settlements, or Contingent Liabilities

Our analyses of upward adjustments of contract costs by the Army, Navy, and Air Force showed that the three most frequently cited reasons for upward adjustments accounted for over half of the requests and expired budget authority requested. Contract cost overruns, the settlement of claims by contractors, and the funding of contingent liabilities from expired budget authority represented 56 percent of the requests and 52 percent of the expired budget authority requested. Table 2.3 shows the reasons cited by the services broken down as a percentage of the 710 requests and as a percentage of expired budget authority requested.

Table 2.3: Reasons for Upward Adjustments

Figures in percent

Reason	Requests	Total expired budget authority requested
Cost overruns	26.2	27.1
Settle claims	16.9	14.3
Contingent liability	12.8	10.2
Contract modification	10.1	4.4
Administrative/accounting error	8.5	4.8
Complete contract	5.7	3.9
Ship build/obligation work limiting date ^a	6.1	7.5
Audit directed	1.9	17.7
All others	11.8	10.1
Total	100.0	100.0

^aPublic Law 99-500 allows the Navy to obligate expired Shipbuilding and Conversion budget authority for certain programs prior to the obligation work limiting date (OWLD) in order to pay for any necessary modifications and corrections to the ship. Between the ship delivery date and the OWLD, sea trials and other testing of the ship are performed.

Some Programs Requested Multiple and Large Upward Adjustments

Our analyses of requests for upward adjustments showed that certain programs had made multiple requests during fiscal years 1985 through 1989 for large amounts of expired and lapsed budget authority to fund upward adjustments of previously obligated budget authority. Over 50 percent of the budget authority requested during this period was for contracts and programs that requested upward adjustments more than once. Several of these programs, such as the Defense Support Program and Blackhawk helicopter, are high cost programs with a high degree of congressional interest. Table 2.4 gives the details on the programs' multiple requests.

Table 2.4: Programs Requesting Multiple Upward Adjustments

Dollars in millions

Program/service	Requests	Amount	Reason
Stock fund/AF	8	\$238.3	Audit directed
Defense support program/AF	6	96.3	Cost overrun/contingent liabilities
CVN-71 aircraft carrier/N ^a	23	61.0	Contingent liabilities/contract modifications
F-15A aircraft/AF	2	45.9	Settlement
SSN attack submarine/N ^a	13	38.7	Contingent liabilities/contract modifications
C-130 aircraft/AF	2	25.5	Settlement
Trident I submarine/N	21	17.8	Contingent liabilities/cost overruns
ALQ-126 ECM system/N	2	16.9	Contingent liabilities/cost overruns
SATCOM satellite/N	2	13.1	Original contract default
Phoenix missile/N	2	12.5	Cost overruns/contingent liabilities
F-16 aircraft/AF	2	11.5	Contingent liabilities/contract settlement
Hemmt trailer axle/A	2	11.3	Settlement
M-60 tank/A	2	10.3	Contract finalization
Blackhawk T-700 engine/A	2	8.7	Cost overruns
M74/75 mine/A	4	8.5	Equitable adjustment

^aThese requests occurred between the ship delivery date and the obligation work limiting date.

Limited Congressional Visibility Over Upward Adjustments

Congress does not receive the same degree of advance notice about DOD's intended use of expired appropriations as it does about reprogrammings of current budget authority. Recent legislation has expanded reporting requirements by requiring agencies to submit to Congress an annual report of the activity in expired appropriation accounts during the preceding year. However, this new legislation also limits the requirement that DOD notify Congress in advance of large upward adjustments to contract costs that require the use of expired budget authority.

Reprogramming is the use of funds in an appropriation account for purposes other than those contemplated by Congress at the time of appropriation. Reprogramming actions involve the reapplication of resources rather than requests for additional funds from Congress. Generally, for military personnel and operations and maintenance appropriations, DOD must notify Congress of reprogramming of budget authority that increases a budget activity by \$10 million or more. For procurement appropriations, DOD must notify Congress of reprogramming of budget authority that increases an existing line item by \$10 million or more, adds a new line item of \$2 million or more, or adds a new program estimated to cost \$10 million or more within a 3-year period. For research,

development, test, and evaluation appropriations, DOD must notify Congress of reprogramming of budget authority that increases an existing program element in an account by \$4 million or more, adds a new program of \$2 million or more, or adds a new program estimated to cost \$10 million or more within a 3-year period. The upward adjustments of contract costs that result in increased use of budget authority for particular programs that we focus on in this report involve the use of expired and lapsed budget authority. Although requirements for reporting reprogrammings of current funds to Congress have not been extended to expired appropriations, there is nothing to preclude Congress and DOD from agreeing to extend existing reprogramming requirements to expired budget authority.

Prior to the enactment of Public Law 101-189, dated November 29, 1989, the services provided Congress information on individual upward adjustments of obligations of \$1 million or more that resulted in the use of expired appropriations. The DOD Accounting Manual requires the services to provide this information at least on a quarterly basis, including the original amount of the obligation, the date of the original contract, any prior adjustments, and the reason for the current adjustment. The Army and Air Force provide information on upward adjustments to contract costs throughout their monthly Reports of Budget Execution, a voluminous document detailing activity in all appropriations during the preceding month. The Navy combines information on upward adjustments as an attachment to this report.

Neither format provides Congress a perspective on problems that exist in carrying out a particular contract or how well the program, project, or activity is being managed. For example, Congress did not know (1) the name of the specific program, project, or activity involved, (2) the reasons for and individual amounts of prior adjustments, (3) the total number of previous adjustments, and (4) the numerous adjustments under \$1 million. In Public Law 101-189, Congress expanded its oversight of the services' use of expired appropriations. This legislation requires approval by the Secretary of Defense when restorations of expired unobligated budget authority resulting from late contract changes for a particular program, project, or activity require the contractor to perform additional work totaling more than \$4 million within a fiscal year. It requires advance notification by DOD to the Senate and House Committees on Armed Services and Appropriations if any restoration of expired budget authority causes the total amount restored for a program, project, or activity to exceed \$25 million in a fiscal year.

The National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, modified the requirement in Public Law 101-189 that congressional committees be notified if any use of expired unobligated budget authority caused the total upward adjustments for a program, project, or activity in a fiscal year to exceed \$25 million. Under Public Law 101-510 the notification requirement only applies if the expired budget authority is to be used for contract changes that require the contractor to perform additional work.

Beginning in 1992, Public Law 101-510 also requires agencies to provide an annual report to the President, Secretary of the Treasury, and Congress regarding the unliquidated obligations, unobligated balances, canceled balances, and adjustments to appropriation accounts during the completed fiscal year. The report is also to include a description of any adjustments of obligations that occurred during the previous fiscal year.

The annual reporting requirement will require agencies to provide a great deal of information to Congress regarding expired appropriation accounts, including a description of all adjustments to obligations, after the period of obligational availability has expired. This annual report, however, is not required until several months after the fiscal year has ended. The requirement of advance notification to congressional committees is much more limited and only applies to obligations of expired budget authority involving contract modifications requiring the contractor to perform additional work. Upward adjustments such as those resulting from claims settlements with contractors, contract cost overruns, and payment of contingent liabilities are no longer included in computing the \$25-million threshold for advance notification to Congress.

To determine the effect of the revised notification requirement contained in Public Law 101-510, we analyzed readily available information concerning the 710 upward adjustments of contract costs totaling \$1.4 billion made by the Army, Navy, and Air Force during fiscal year 1985 through March 1990. Our analyses of this limited sample showed that most of these transactions would not have to be referred to Congress under the current advance notification requirements. Specifically, 56 percent of the restorations would not have been referred, such as the claims settlements totaling \$204 million or about 17 percent of the restorations; contract cost overruns of \$385 million representing 26 percent; and payment of contingent liabilities of \$144 million representing 13 percent.

In the 15 programs listed in table 2.4, only two programs needed upward adjustments totaling \$99.7 million as a result of contract modifications requiring additional work by the contractor. Among the multiple adjustments in our sample that would not require advance notification to Congress is the Air Force's use of \$238 million in eight upward adjustments to reimburse the Air Force Stock Fund. GAO later deemed improper the Air Force's use of the expired budget authority and Congress directed the Air Force to reimburse the expired and lapsed accounts.

The Air Force's Defense Satellite Program also used expired budget authority to make multiple adjustments. In this instance, the Air Force's six requests, totaling \$96 million in expired budget authority, were used for the program. Air Force documents characterized these upward adjustments as either the result of cost overruns or the payment of contingent liabilities, neither of which is included in the types of upward adjustments that require advance notification to Congress. We determined that this use of expired budget authority was improper.

Conclusions

The services have routinely been able to make upward adjustments of contract costs because of the large amounts of unobligated expired and lapsed budget authority in Treasury's surplus authority account and the merged surplus account. By using unobligated amounts in expired appropriation accounts, the services do not need to seek congressional approval for reprogramming budget authority to pay for contract cost increases nor to request additional funding for these programs from Congress. The use of expired budget authority does not provide the level of control that Congress would have if DOD funded upward adjustments of contract costs through a reprogramming action or through the full legislative process.

Advance notification to Congress of the services' intent to use expired appropriations to pay for upward adjustments is currently limited to upward adjustments to pay for contract modifications that require additional work by the contractor and that aggregate \$25 million or more within a fiscal year for a program, project, or activity. According to requirements established by Public Law 101-510, Congress will no longer receive advance notification of what we determined in our limited sample to be the three most common reasons for upward adjustments of contract costs, or of the largest aggregate upward adjustments.

DOD Is Not Always Using Expired Budget Authority Properly

Department of Defense and service regulations, court cases, and Comptroller General decisions help establish the rules on the proper use of expired and lapsed budget authority. To determine whether the services' use of those authorities complied with these rules, we selected 18 cases of the services' use of expired authority to pay for upward adjustments of contract costs. We found that in some cases the services' use of the budget authority was proper. However, in other cases, the services used the budget authority improperly or used the authority to recover from poor contract or financial management practices.

Legal Requirements for Using Expired and Lapsed Appropriations

Legal requirements govern the use of expired and lapsed appropriation accounts to fund upward cost adjustments to contracts entered into in prior fiscal years. Comptroller General decisions essentially provide that when contract costs increase as a result of adjustments or modifications based on contract changes that are within the scope of the original contract, appropriations that would have been available to fund the original contract can be used to pay for the upward adjustment.

Because it may be difficult in some cases to determine what constitutes a modification beyond the general scope of the original contract, the Comptroller General and the courts have adopted the "cardinal change" rule. The "cardinal change" rule is based on language in *Air-A-Plane Corporation v. United States* in which the Claims Court stated that

The basic standard...is whether the modified job 'was essentially the same work as the parties bargained for when the contract was awarded. Plaintiff has no right to complain if the project it ultimately constructed was essentially the same as the one it contracted to construct.' Conversely, there is a cardinal change if the ordered deviations 'altered the nature of the thing to be constructed.' Each case must be analyzed on its own facts and in light of its own circumstances, giving just consideration to the magnitude and quality of the changes ordered and their cumulative effect upon the project as a whole. (408 F. 2d 1030 (1969))

In addition, the Comptroller General has concluded that a change would be deemed to be within the scope of the original contract if it was "...essential to fulfillment of [original] contract requirements." A contract modification or change that is not within the scope of the original contract must be treated as a new obligation to fulfill a new bona fide need and must be charged to the appropriation current when the modification was made.¹

¹See 44 Comp. Gen. 399, 402 (1985), and B-207433, Sept. 16, 1983.

As previously stated, when contract costs increase as a result of adjustments or modifications that are based on contract changes within the scope of the original contract, expired and lapsed appropriations that would have been available to fund the original contract can be used to pay for upward adjustment of the previously obligated amount.² The rationale for this rule is that such within-the-scope contract changes relate back to the original contract and are required to fulfill a bona fide need of the fiscal year in which the original contract was executed.³

The relation back (within-the-scope) rule recognizes that the government's liability under a contract may increase subsequently because of changed circumstances or the occurrence of contingencies that were unknown or impossible to quantify when the contract was executed. In such circumstances, it is reasonable to allow an agency to satisfy the modified bona fide need of a prior fiscal year with funds made available by Congress to fulfill that need in the prior fiscal year.

Procedures for Requesting and Approving Use of Expired and Lapsed Budget Authority

Requests to use expired and lapsed budget authority usually originate at the program level where most of the information needed for approval is prepared and documented. These requests are then subject to an internal review and approval process that the services have established. The most important step in the reviewing process is the determination that the effort that needs to be funded is within the scope of the original contract. The scope of the original contract can either be identified in the statement of work, as outlined in the original contract, or interpreted by the contracting officer as what was understood to be included in the contract by both the contractor and the government when the original contract was signed. If the effort is determined to be outside the scope of the contract, expired funds may not be used.

This determination is made either by the contracting officer or by legal counsel. Because each upward adjustment of contract costs is unique, often no clear-cut determination can be made that the upward adjustment is within the scope of the original contract or that the effort relates back to the effort required under the original contract. In these instances, the DOD Accounting Manual provides, and the services have incorporated into their internal request and approval process, that a

²See 61 Comp. Gen. 609, 610 (1982), and 65 Comp. Gen. 741 (1986).

³See 61 Comp. Gen. 609 (1982), and 37 Comp. Gen. 861, 863 (1958).

military department's general counsel should provide appropriate guidance and determinations concerning the scope of a contract.

Once it has been determined that the new effort is within scope, an accounting and finance officer identifies the appropriate year budget authority to fund this effort. This official determines the accuracy of the amount cited and that the funds are associated with a liability established in a previous fiscal year.

The amount of funds requested determines the appropriate approving official. Requests for lapsed budget authority of over \$100,000 must be approved by the office of the service secretary or a delegated official. The services may include additional review levels. For example, the Air Force requires that all requests for lapsed funds for \$25,000 to \$100,000 must be approved at the command level, such as the Air Force Systems Command. Requests under \$25,000 are approved at the local or subordinate division, such as Aeronautical Systems Division within the Air Force Systems Command.

Case Studies Show Improper Uses of Expired Budget Authority and Poor Management Practices

In 9 of 18 selected case studies, the use of expired and lapsed budget authority was proper. In three of the case studies, the service had violated one of the legal requirements for using expired and lapsed budget authority. In the other six case studies, although the legal requirements were met and the request and approval process was followed, the circumstances giving rise to the request to use expired and lapsed budget authority involved poor management practices on the part of the service. The following section discusses seven selected case studies; the remaining 11 cases are discussed in appendix II.

Proper Uses of Expired Appropriations

In conducting our case studies, we concluded that the services had properly used the expired and lapsed budget authority if (1) the reason for the upward adjustment of contract costs complied with legal requirements for using these appropriations and (2) the service had followed their own internal procedures for requesting and approving the use of these appropriations. In 9 of the 18 case studies, the use of expired and lapsed budget authority was determined to be proper. Two examples of cases that we determined to be proper use of these appropriations are discussed below.

Reprocurement of Radios

The Navy used about \$29 million in expired appropriations to procure secure channel radios that were being developed under an Army contract. In 1983 the Navy originally contracted to buy a different radio (Bancroft) that would provide interim capability until the more capable Single Channel Ground and Airborne Radio System (SINGARS) became available in the early 1990s. The 1983 contract was terminated for default in June 1988, and the Navy initiated plans to issue a replacement contract for radios that were technically similar to the Bancroft radios for delivery in the mid-1990s. Because of concerns about having two different radios in use, particularly when SINGARS would also be available in the mid-1990s, the fiscal year 1989 DOD Appropriations Act directed that "funds appropriated for the procurement of the... Bancroft...radios shall be available only for procurement of SINGARS radios."

The resulting use of \$29 million of expired appropriations for the procurement of SINGARS is consistent with Comptroller General decisions regarding replacement contracts. Such funds may be used when the contracting agency terminates a contract for default by the contractor and enters into a replacement contract to satisfy the agency's continuing bona fide need for the goods and services involved. We have held that funds provided for the original contract remain available to fund a replacement contract of the same size and scope as the original contract. Accordingly, this transaction was an appropriate use of expired and lapsed budget authority.

T-700 Engine Repair and Retrofit

The Army used about \$7.3 million in expired appropriations to fund the negotiated settlement of the contractor's claim for costs associated with the repair and retrofit of T-700 engines. The Army determined that the effort required to repair and retrofit these engines was within the scope of the original multiyear procurement contract in that it was essential to the fulfillment of the original contract requirements.

The Comptroller General has determined that an agency's negotiated settlement of a claim that is within the scope of the contract is properly charged against the appropriation available at the time of the original contract. Accordingly, the Army's use of expired appropriations in this instance was proper.

Improper Uses of Lapsed
Budget Authority

In our 18 case studies we identified three transactions that represent improper use of expired and lapsed appropriations. In these cases, which are discussed below, the services had violated a legal requirement

governing the use of expired and lapsed appropriations to fund upward adjustments of costs of contracts entered into in prior fiscal years.

Deliberate Deferral of Testing for Budgetary Reasons

In February 1988, the Air Force approved the use of about \$113 million in expired appropriations to fund contract modifications calling for "qualification and acceptance" testing of four satellites procured in fiscal years 1983 and 1984 for the Defense Support Program. Although the original procurement contract included some contractor testing, certain qualification and acceptance testing (the deferred testing) was omitted, unlike similar satellite contracts in the program. Air Force documents indicated that this was a deliberate omission because sufficient unobligated funds were not available in the missile procurement appropriation when these contracts were executed to cover the cost of the qualification and acceptance testing.

In December 1987, the Space Division, Air Force Systems Command, requested expired appropriations to fund the previously omitted testing. An Air Force legal opinion dated January 27, 1988, noted that the deferred testing was "considered an integral part of this purchase and the program office had, at the time the contract was awarded, every intent of purchasing this type of testing." Further, the legal opinion stated that the contracting officer had concluded that the modification to include the deferred testing was within the scope of the original contract for these four satellites.

When the Air Force entered into the original contract it knew that qualification and acceptance testing would be required but determined that sufficient funds were not available at that time to pay for such testing. The fact that the Air Force made a deliberate decision not to include the testing in the original procurement contracts precludes the Air Force from making a subsequent determination that the deferred testing was within the scope of and therefore relates back to those contracts. Accordingly, we conclude that the Air Force had no authority to use expired and lapsed budget authority to fund the contract modification to include the qualification and acceptance testing.

Payment of Contract Dispute Award

In 1977, the Naval Air Systems Command contracted for the development and production of the Sidewinder missile. This contract was jointly funded by the Navy, the Air Force, and a foreign government through

the Foreign Military Sales program. In 1981, after the contractor identified a "latent defect,"⁴ the Navy directed the contractor to retrofit the target detectors that had already been completed and correct the contractor's production method to avoid future difficulties. Subsequently, the Navy disputed the contractor's claim for the costs of the retrofit and maintained that the contractor was responsible for the "latent defect."

In 1988, the Armed Services Board of Contract Appeals decided the claim in favor of the contractor. The Board's \$2.5-million award was apportioned among the Navy, the Air Force, and the Foreign Military Sales program. The Navy paid its share of the award using fiscal year 1986 weapons procurement budget authority, which was still available for obligation. The Foreign Military Sales portion of the award was paid using trust funds that have no fiscal year identity and that remain available for obligation indefinitely. The Air Force, however, received approval to obligate lapsed missile procurement budget authority for its share of the award.

The Contract Disputes Act of 1978 established a mechanism for the resolution and payment of claims and disputes arising from contracts of the executive branch. This act provides that monetary awards to a contractor by agency boards of contract appeals ultimately must be paid by the agency using "available funds." The Comptroller General has held that, based on this provision, awards by an agency board of contract appeals must be charged against the appropriation account current as of the date of the award or judgment. Accordingly, we conclude that the Air Force's use of expired budget authority to pay its share of an award by the Armed Services Board of Contract Appeals was improper.

Judgment Related to Purchase of Tank and Pump Units

In September 1982, the Army's Troop Support Command awarded a contract for the production of tank and pump units. The contract provided for an "adjustment for unanticipated economic fluctuation," a condition that permits the government to adjust the price of the contract either upward or downward, depending on whether the costs of labor and material increase or decrease.

On several occasions, the Army contracting officer determined that the labor and material costs of producing the tank and pump units decreased enough to warrant a downward adjustment of the contract

⁴A latent defect is a flaw or other imperfection in an article discovered after the article is delivered to the government. Such defects are inherent weaknesses that are normally not detected by examination or routine test but are present at the time of manufacture.

price. As a result, about \$2.3 million was deobligated from the contract. The contractor disagreed with these determinations and filed an appeal before the U.S. Claims Court.

In January 1989, the Claims Court decided in favor of the contractor, ruling the deobligations made by the Army were improper. In addition, the Court ruled that the contractor was owed interest on the funds from the date they were deobligated to the time they were restored to the contract.

In July 1989, to implement the court decision, the Army requested the use of about \$2.8 million in expired appropriations—about \$2.3 million to restore the funds deobligated and about \$500,000 for the interest owed the contractor.

The Comptroller General has held that under section 13 of the Contract Disputes Act of 1978, 41 U.S.C. 612, monetary awards to contractors by the Armed Services Board of Contract Appeals and judgments against the United States by the Claims Court should be ultimately funded from agency appropriations current at the time of the judgment or award. Consequently, in this instance, the Army improperly used expired appropriations instead of current appropriations to pay for a judgment and interest.

Poor Management Resulted in Use of Expired and Lapsed Appropriations

In six case studies, the need to use expired and lapsed appropriations was directly related to poor management practices. In these cases, the legal requirements for using expired and lapsed budget authority were met, and the services' internal request and approval process was followed. However, in some case studies the service's use of expired and lapsed budget authority enabled them to recover from poor contract management practices. In these instances, the need to use expired and lapsed budget authority resulted directly from undesirable management practices rather than the need to meet changed circumstances or the occurrence of contingencies that were unknown or impossible to quantify when the original contract was executed. These management weaknesses are illustrated by the following examples.

Untimely Definitization of Contract

In 1985, the Navy awarded a contract to produce replacement wings for the A-6E aircraft. The replacement wings were needed because of the reduced life span of the original wings, which had been produced by another contractor. The contractor later determined that the replacement wing it was developing was not entirely compatible with the

A-6E aircraft. As a result, in May 1986, the Navy directed the contractor to modify the replacement wing. In a July 1987 memorandum of agreement, the contractor and the Navy agreed on the details of additional work that was required. The memorandum of agreement provided that the contractor and the Navy would enter into negotiations to determine the net contract price increase, not to exceed \$19 million, that the contractor would receive for the additional work involved. The memorandum of agreement further provided that the price settlement the parties negotiated would be definitized in a formal contract to be issued within 120 days of the start of the negotiations. According to the Navy, no unobligated budget authority was available to cover the \$19 million contract cost increase at the time the memorandum of agreement was signed. However, the Navy stated that it was not required to obligate funds until the contract was definitized. The memorandum was not definitized until February 1990, over 2-1/2 years after it was signed and almost 4 years after the Navy authorized the contractor to perform the additional work. Because of the passage of time, the Navy was able to pay the net contract price increase of \$19 million using expired and lapsed budget authority.

The Navy should have obligated the \$19 million ceiling price specified in the memorandum of agreement at the time it was signed in July 1987 instead of obligating expired and lapsed budget authority 2-1/2 years later when the definitized contract was signed. Furthermore, if unobligated funds were not available to cover the obligation during the 2-1/2 years that elapsed before the modification was definitized, the Navy may have violated the Antideficiency Act.

Purchase of Obsolete Material

In 1985, the Air Force awarded a contract for about \$599,000 to develop the Advanced Recovery Sequencer that goes into the ejection systems of most Air Force aircraft. The contract consisted of several tasks that were to be sequentially authorized. In April 1985, the contractor notified the Air Force contracting officer of its intent to purchase long-lead items to complete one of the tasks. The contracting officer did not respond to this or any correspondence associated with the contractor's intent to purchase long-lead items. In August 1986, the Air Force terminated the contract for the Advanced Recovery Sequencer because of unsatisfactory performance by the contractor.

In April 1987, the contractor submitted a claim consisting of several parts, including a \$41,000 claim for reimbursement for purchase of the long-lead items. The Air Force determined that the government was liable for the costs of the long-lead items because the contracting officer

was deficient in not responding to the contractor's correspondence. In April 1989, the Air Force approved the use of about \$41,000 in expired appropriations to pay for long-lead items that are unique to the Advanced Recovery Sequencer and cannot be used for any other purpose. Although the use of expired appropriations in this instance was not improper, if the contracting officer had responded to the contractor's correspondence, the Air Force would have avoided the need to use expired appropriations and possibly avoided the need to purchase obsolete long-lead items.

Conclusions

The expired budget authority accounts have provided DOD a mechanism to expeditiously fund upward adjustments of contract costs without having to request a reappropriation of funds from Congress. Although, in some cases, DOD has used these accounts for their original purpose, the accounts have also been used improperly and unnecessarily.

New Legislation Will Decrease Availability of Expired Appropriations and Increase Need for Better Management

The National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, dated November 5, 1990, phases out existing M accounts, eliminates the merged surplus authority, and makes expired appropriations available to agencies for a finite period. In turn, these actions will increase the need for agencies to improve their management and control over the use of expired appropriations.

New Legislation Changes Agency Procedures

In Public Law 101-510, the Congress included language aimed at strengthening its control over the use of expired appropriations. Effective November 5, 1990, Public Law 101-510 restored surplus authority previously withdrawn to the Treasury at the end of fiscal years 1989 and 1990 to agencies' expired appropriation accounts for those years. In the future, unobligated budget authority will no longer be withdrawn from agencies to the Treasury when it expires. Instead, agencies will maintain their own balances of unobligated and obligated expired budget authority by appropriation account and fiscal year.

Effective with balances that will expire on September 30, 1991, Public Law 101-510 directs agencies to maintain separate expired appropriation accounts reflecting obligated and unobligated balances for 5 years. In the past, agencies have tracked the obligated balances of expired appropriations for only 2 years. During the expanded 5-year expired period, agencies can use unobligated balances for upward adjustments of existing obligations but not for new obligations. As in the past, expired obligated and unobligated balances for each appropriation account will retain their fiscal year identity.

At the end of the new 5-year expired period, all obligated and unobligated balances will be canceled, the expired accounts will be closed, and no further disbursements from those accounts may be made. Thereafter, obligations and upward adjustments that would have been chargeable to the expired appropriation account may only be paid out of current appropriations. In using current appropriations to pay for these obligations, agencies are limited to using no more than 1 percent of the current amount appropriated for that purpose. In addition, when using current appropriations to pay prior year obligations, agencies may not make any payment that would cause cumulative outlays to exceed the unexpended balance of the original appropriation account. When the payment of prior obligations from current funds would exceed either of these limitations, agencies must seek reappropriation of canceled balances and defer payment until the appropriation is available.

For example, since the Air Force received \$22 billion for operations and maintenance for fiscal year 1991, the disbursements charged against that appropriation either while it is current, expired, or closed are limited to \$22 billion. If an obligation is made that causes the total obligation attributable to the Air Force's fiscal year 1991 operations and maintenance appropriation to exceed \$22 billion, the Air Force would violate the Antideficiency Act.

Public Law 101-510 eliminated the Treasury's merged surplus authority effective December 6, 1990. As of September 30, 1990, DoD had approximately \$27 billion in lapsed unobligated budget authority in this account. The legislation also provides that any balances in the M accounts for more than 5 years (accounts that expired at the end of fiscal year 1983 and earlier) must be canceled and withdrawn on March 6, 1991, with certain exceptions. The act will also eliminate the M accounts of all federal agencies as of September 30, 1993. During the 3-year transition period from September 30, 1990, to September 30, 1993, amounts transferred to M accounts prior to September 30, 1990, will be canceled at the end of the fifth year after their period of availability has expired.

New Legislation Means That Agencies Must Improve Management of Expired Appropriations

Changes instituted by the National Defense Authorization Act for Fiscal Year 1991 will increase the need for agencies to better manage and control their use of expired appropriations. With the elimination of the merged surplus authority, agencies will no longer have large balances of lapsed unobligated budget authority that they can use to fund upward adjustments of contract costs. In making both routine payments and funding upward adjustments of contract costs, agencies will now be limited by the amount appropriated for a specific appropriation account in a fiscal year.

Based on past experience, expired appropriation accounts are likely to contain sufficient budget authority to fund adjustments to anticipated costs. However, the appropriation accounts will now maintain fiscal year identity during the 5-year expired period. The potential for violating the Antideficiency Act and the limitations on using current budget authority to pay for prior obligations that become due after an appropriation has expired means that agencies must more carefully manage their obligated and unobligated budget authority.

As discussed in chapter 3 and appendix II, our case studies showed several instances where poor management practices have resulted in

increased use of expired appropriations. In these cases, the use of noncurrent budget authority was proper because the service had complied with the legal requirements by establishing a bona fide need for the effort leading to the upward adjustment of contract costs, determining that the need was within the scope of the original contract, and determining that the budget authority needed was attributable to a fiscal year appropriation that had expired. In addition, the services had followed their internal request and approval process for citing expired appropriations.

However, in these several case studies the service had followed management practices that (1) did not allow the services to promptly record and budget for obligations that eventually needed to be paid, (2) resulted in increased contract costs, or (3) allowed the services to decommit and reprogram budget authority that was later needed to fund the original purpose.

These practices could not be systematically identified and corrected because the program office provided only limited information during the request and approval process. Under current procedures, the program officers provide (1) amounts previously obligated and deobligated for the specific contract, (2) the name of the individual who determined that the proposed adjustment is appropriate, (3) the contractor and the purpose of the contract (if a contract is involved), and (4) a brief justification for the upward adjustment, which generally does not include any explanation of the circumstances that resulted in the need for an upward adjustment. Accordingly, it would be difficult for officials in the approval process to detect management practices that result in unnecessary use of expired appropriations and to take corrective action.

Conclusions

Because availability of noncurrent budget authority is now limited, any management practice that does not allow a service to identify valid obligations as quickly as possible must be avoided. Likewise, the services must ensure that they do not follow management practices that might result in unnecessary use of expired appropriations, nor decommit and reprogram budget authority that will later be needed to fund contingent liabilities. Although isolated instances could probably be overcome, the cumulative effect of improper or poor management practices that result in the increased use of expired appropriations could lead to violations of the Antideficiency Act.

More complete information on these adjustments would enhance service and/or DOD oversight over the use of expired appropriations and management practices. Information provided to agency officials on upward adjustments should be sufficient to distinguish between a circumstance or management practice that caused an unnecessary upward adjustment of an obligation resulting in the increased use of expired appropriations, and an increase due to changed circumstances or the occurrence of contingencies that were unknown or impossible to quantify when the original obligation was made.

Recommendation

We recommend that the Secretary of Defense direct the service secretaries to revise their procedures for the use of expired budget authority to require, in addition to the information already provided in the request and approval process, a comprehensive statement concerning the reason for the upward adjustment. This information should explain the circumstances, contingencies, or management practices that caused the need for the upward adjustment.

Agency Comments

The Department of Defense concurred with our recommendation and stated that DOD Comptroller guidance now under development will address specific requirements to enhance oversight over the use of expired budget authority. DOD intends to require the DOD components to document upward adjustments and provide comprehensive justification for each adjustment, including a statement explaining the circumstances, contingencies, and management practices causing the need for the adjustment.

Background of Public Law 84-798, November 25, 1956

Public Law 84-798 was the result of a combined initiative by GAO, the Bureau of the Budget (the predecessor of the Office of Management and Budget), and the Department of the Treasury and was designed to simplify and streamline the federal government's system for paying obligations.

Under the payment procedures in effect at the time, we were responsible for certifying all obligations for all government agencies resulting from prior year activities. Unliquidated obligated balances¹ that remained after 2 years were transferred to an account in the Department of the Treasury called the "Payment of Certified Claims" account. Claims against agencies that resulted from prior year activities submitted after the 2-year period were required to be examined by the agency concerned and certified by GAO before payments could be disbursed from the "Payment of Certified Claims" account.

We testified that the then current accounting system was repetitive, time-consuming, and expensive. We recommended that Congress institute the use of the M accounts and merged surplus authority as a function of a more efficient, cost-effective method of managing unobligated balances and paying claims resulting from prior year activities. We also said that the new accounting system as proposed by Public Law 84-798 would ensure the more timely payment of claims since it would remove us from the process of reviewing and certifying obligations resulting from prior year activities where there was no doubtful question of law or fact. By discontinuing our need to maintain approximately 35,000 detailed ledgers of accounts pertaining to appropriations no longer current, we anticipated a direct savings of approximately \$600,000 annually. In addition, the payment of these obligations would be attributed to the actual agency incurring the claim. Previously, payments made from the "Payment of Certified Claims" account were reported as expenditures of the Department of the Treasury instead of the agency receiving the benefits.

DOD also supported the enactment of Public Law 84-798 and successfully pressed for an additional provision allowing the use of expired unobligated budget authority to cover unforeseen upward adjustments to contract costs. DOD argued that large adjustments of unliquidated obligations in appropriations occurred after the end of the fiscal year due to variations in quantity clauses, price redeterminations, escalation

¹Unliquidated obligated balances of an appropriation account are the balances that remain obligated but unexpended.

clauses, and incentive and cost reimbursement type contracts. According to DOD, the provision in Public Law 84-798 allowing restoration to the M accounts from the merged surplus authority to cover upward adjustments of contract costs would enable an agency to expedite payments by allowing the agency to utilize unobligated budget authority already appropriated and eliminate the need for asking Congress for a reappropriation. We testified that the provision allowing for the restoration of unobligated budget authority would rarely if ever be invoked and that we did not expect the balances in these accounts to fluctuate substantially.

In 1956, Public Law 84-798 transferred the responsibility and authority for maintaining noncurrent appropriation accounts from us to the agencies creating the obligations. Because the entire contracting, purchasing, and payment process for government activities can take considerably longer than the time appropriations are available for obligation, and it is not always possible for agencies to identify all costs they will incur on contracts, the act created mechanisms to pay bills as they became due or to fund increases to previous valid obligations.

Summary of 18 Case Studies

Program/system	Reason for upward adjustment	Determination	Detail on page(s) #
Proper use			
SINCGARS	Navy—Reprocurement of Single Channel Ground and Airborne Radio System.	Replacement of previously defaulted contract to satisfy agency's continuing requirement.	26
T-700 Engine	Army—Repair and retrofit of Blackhawk helicopter engine.	Negotiated settlement of a claim within the scope of the original contract.	26
Iran Foreign Military Sales	Navy—Reimbursement of Iranian Foreign Military Sales for equipment diverted to U.S. Navy.	Activity ordered by President directly related to an activity authorized in a previous fiscal year.	39
Ammunition plants	Army—Contract modifications on environmental cleanup at Army ammunition plants.	Within scope modifications needed due to changed circumstances and the occurrence of unknown contingencies.	39–40
ALQ-126 ECM system	Navy—Cost overruns on the ALQ-126 electronic countermeasures system.	Cost overrun less than the ceiling price of a fixed price incentive contract.	40–41
Air conditioners	Army—Negotiated settlement on contract for vertical air conditioners.	Out-of-court negotiated settlement of contractor's claim.	41–42
CARA	Air Force—Negotiated settlement on contract for Combined Altitude Radar Altimeter.	Out-of-court negotiated settlement of effort within scope of original contract.	42
Aircraft detection and ranging sets	Navy—Reimburse contractor for interest on funds deobligated in error for A-6E aircraft detection and ranging sets.	Out-of-court negotiated settlement of effort within scope of original contract.	43
Runway repair	Air Force—Additional costs due to underestimation of effort required to repair runway at Nellis Air Force Base.	Effort considered within scope of the contract and authorized in a fiscal year that expired.	44
Improper use			
Defense Support Program	Air Force—Contract modifications that fund testing of satellites.	Testing effort deliberately omitted from original contract cannot be considered within scope.	27
Sidewinder missile	Air Force—Fund judgment of Armed Services Board of Contract Appeals in favor of contractor.	Awards by agency boards of appeals must be paid with current budget authority.	27–28
Tank and pump units	Army—Fund judgment for contractor made by Claims Court for tank and pump units.	Judgments under the Contract Disputes Act must be paid with current budget authority.	28–29
Poor management practices			
A-6E Rewing	Navy—To fund contract modification to rewing the A-6E aircraft.	Modifications were not definitized in a timely manner and funds not obligated when effort was identified.	29–30
Advanced recovery sequencer	Air Force—To reimburse contractor for purchase of obsolete parts for the Advanced Recovery Sequencer aircraft ejection system.	Contracting officer did not respond to contractor in a timely manner and prevent purchase of obsolete parts.	30–31
Construction material	Army—To reimburse successor contractor for stolen construction material.	Reimbursement necessary due to government's failure to safeguard material.	44–45
ALQ-162 ECM system	Navy—To fund contract modifications on the ALQ-162 electronic countermeasures system.	Modifications were not definitized in a timely manner and funds not obligated when effort was identified.	45–46
Defense Support Program	Air Force—To fund contingent liabilities for a classified program.	Funds for these contingent liabilities were reprogrammed, which later required the use of expired funds.	46–47
HEDI	Army—Awards, incentive fees, and contingent liabilities on the High Endoatmospheric Defense Interceptor.	Sufficient budget authority was not committed for contingent liabilities.	47–48

Reimbursement of Iranian Foreign Military Sales Account

The Navy properly used fiscal year 1983 aircraft procurement budget authority to reimburse Iranian Foreign Military Sales accounts for military equipment and spares that were diverted to the service's inventory. Aircraft procurement budget authority is current for 3 years before it expires.

Under the Foreign Military Sales program, Iran was purchasing American military equipment and spare parts. When the Provisional Government of Iran, which replaced the Shah of Iran's government, took American hostages, the United States made the unilateral decision to stop passing military assets to Iran under the program. The President of the United States directed that all undelivered military equipment and spare parts purchased by Iran be sold either to the military services or transferred to other buyers. The Department of Defense compiled information on assets in the various contractors' "pipelines," both titled to Iran and untitled. The military services were asked to determine which of the untitled assets they could use, and Congress authorized DOD to divert the identified assets and equipment to the services' inventories and to reimburse the Iranian Foreign Military Sales accounts. While reconciling the records of Iranian material diverted and payments made to these accounts, the Navy identified various assets, including three Tow Automatic Functional Test Station sets that had been authorized for diversion during prior years to Navy inventory for which the Iranian accounts had not been reimbursed. In August 1989, the Navy used approximately \$2.1 million in fiscal year 1983 aircraft procurement budget authority to reimburse the Iranian accounts for these assets.

We believe the Navy's use of lapsed budget authority for this purpose is appropriate in that it falls within the scope of action directed by the President and is directly related to activity authorized in a fiscal year for which budget authority has expired or lapsed.

Negotiated Settlement of Environmental Cleanup Costs

In 1990, the Army properly cited fiscal year 1987 operations and maintenance budget authority to fund contract modifications on environmental cleanup projects at two Army ammunition plants. Operations and maintenance budget authority is current for 1 year before it expires.

In April 1987, the Army signed a contract for the development of a method to treat contaminated soil and water at Army ammunition plants and to test and treat contaminated soil and water at the Cornhusker Army Ammunition Plant, Nebraska, and the Louisiana

Army Ammunition Plant. The contractor was to research and develop a method to treat contaminated soil and water and to test and treat soil and water at the Cornhusker Army Ammunition Plant using this method. If the soil and water were successfully tested and treated at the Cornhusker Army Ammunition Plant, then the contractor was to use the same method to test and treat the soil and water at the Louisiana Army Ammunition Plant.

Due to circumstances beyond the control of either the contractor or the government, more soil and water had to be treated and tested at the Louisiana Army Ammunition Plant and the time required to complete the effort was longer than expected at both ammunition plants. These additional efforts required contract modifications that were within the scope of the original contract and resulted in an upward adjustment of the original contract cost.

We believe that lapsed budget authority is an appropriate source of funding for within scope contract modifications. The government's liability increased subsequent to the original obligation due to changed circumstances and the occurrence of contingencies that were unknown or impossible to quantify when the contract was executed.

Cost Overruns Associated With ALQ-126 Electronic Countermeasures System

The Navy properly used about \$12 million in expired aircraft procurement appropriations to pay for cost overruns on a contract for the ALQ-126 electronic countermeasures system.

In September 1983, the Naval Air Systems Command awarded a contract for the production of the ALQ-126 system. The contract was funded with aircraft procurement budget authority, which is available for obligation for 3 years before it expires. The fixed-price and incentive fee contract was funded by the Navy and foreign governments through the Foreign Military Sales program and had both a target and ceiling price. Navy officials told us the ceiling price is one of the factors that help to define the scope of a contract. These officials told us they are allowed to fund valid increases in the cost of the contract as long as the total costs do not exceed the ceiling price.

In December 1987, the contractor submitted a claim for cost overruns incurred in the production of the ALQ-126 system. Navy officials told us most of the cost overrun was attributed to production problems experienced by the subcontractors.

The Navy determined the claim was valid, which resulted in the need for \$13 million to pay the claim. Of this amount, the Navy would fund approximately \$12 million and foreign governments would fund about \$1 million. The cost overruns were considered within the scope of the original contract as the total contract costs remained within the ceiling price. The Navy determined the cost overrun was associated with efforts authorized in fiscal years that have since expired.

In December 1988, the Navy requested the use of about \$12 million in expired appropriations to fund the overrun. In January 1989, the request was approved.

The use of expired appropriations to fund the overrun was proper because the total cost of the contract did not exceed the ceiling price established in the original contract and was associated with efforts authorized in fiscal years that had expired.

Negotiated Settlement Related to Purchase of Vertical Air Conditioners

The Army properly used expired appropriations to pay for a negotiated settlement of costs associated with the production of vertical air conditioners. In August 1985, the Army's Troop Support Command awarded a contract for the production of vertical air conditioners. The items were procured with other procurement appropriations, which are available for obligation for 3 years before they expire.

In December 1988, the contractor submitted a claim for additional costs incurred in the production of the air conditioners. The contractor attributed the increased costs to the Army providing defective specifications and directing the contractor to procure material from specified sources.

In June 1989, the Army and the contractor reached a negotiated settlement of the claim for about \$2.7 million, including both principal and interest. The settlement stipulated that interest was owed the contractor from the date the claim was submitted to the date of the settlement.

Expired appropriations can be used to pay the cost of a negotiated settlement of a contractor's claim. Army regulations permit the use of expired appropriations to pay for the costs of interest included in the cost settlement.

The Army determined that the costs included in the settlement were associated with effort within the scope of the original contract and that the effort was authorized in a fiscal year that had since expired. In

August 1989, the Army requested and subsequently obtained approval to use about \$2.7 million in expired appropriations to pay for the cost settlement.

We consider the use of expired appropriations to pay for both the principal and interest parts of the negotiated settlement of a contractor's claim that is within the scope of the original contract to represent a proper use of expired funds.

Negotiated Settlement Related to Purchase of Combined Altitude Radar Altimeter

The Air Force, under a joint contract with the Navy, the Army, and foreign governments, properly used expired aircraft procurement appropriations to pay for a negotiated settlement of costs associated with the procurement of the Combined Altitude Radar Altimeter.

In January 1982, the Air Force Air Logistics Center awarded a contract for the design, development, and production of an altimeter system to be used in several Air Force aircraft. The contract was funded with aircraft procurement appropriations, which are available for obligation for 3 years before they expire. The contract was primarily funded by the Air Force, which had overall program management responsibility.

In February 1988, the contractor producing the system submitted a claim entitled "Request For Equitable Reformation and Upward Adjustment in Price" for about \$120 million. The Air Force initially disallowed the claim, and the contractor filed suit before the Armed Services Board of Contract Appeals. In November 1988, the Air Force and the contractor agreed to a negotiated settlement of about \$98 million. As part of the agreement, the contractor withdrew its suit filed before the Board.

About \$30.8 million of the settlement amount had already been obligated on the contract, leaving settlement costs of about \$67.2 million still needing to be funded. Of this amount, Warner-Robins Air Logistics Center was responsible for funding \$54.6 million, and the remaining \$21.6 million was allocated among the Army, the Navy, another Air Force activity, and foreign governments.

We believe the Air Force properly determined that the effort requiring funding was within scope of the original contract and that \$45.9 million of the costs for which it was responsible was associated with efforts authorized in fiscal years that had lapsed.

Interest on Negotiated Settlement Related to Procurement of A-6E Aircraft Detection and Ranging Sets

The Navy properly used about \$435,000 in expired appropriations to reimburse a contractor for interest on funds deobligated in error.

In May 1987, the Defense Contract Audit Agency determined that a contractor had not provided current, complete, and accurate pricing information on a contract managed by the Naval Air Systems Command and recommended a decrease in the price of the contract. The contract called for the production of Detection and Ranging Sets for the A-6E aircraft and was funded with aircraft procurement budget authority, which is available for 3 years before it expires.

In April 1989, the Navy contracting officer made a final decision to deobligate about \$18.2 million from the contract and demand payment from the contractor. The funds deobligated were fiscal year 1984 to 1987 aircraft procurement funds. The contractor filed an appeal before the Armed Services Board of Contract Appeals.

Navy officials told us they decided to negotiate a settlement before the appeal was heard by the Board because the cost of losing the appeal might exceed any settlement amount negotiated. In January 1990, the Navy and contractor agreed to a settlement of \$3 million, or about \$15.2 million less than the amount deobligated. The settlement required the Navy to reobligate \$15.2 million and for the contractor to withdraw its claim before the Board.

In April 1990, the contractor submitted a claim for interest from the time the funds were deobligated to the time they were restored. The Navy determined that interest on the claim was about \$878,000, of which about \$435,000 was associated with effort authorized in fiscal years 1984 and 1985. In May 1990, the Navy requested the use of about \$435,000 in fiscal years 1984 and 1985 aircraft procurement budget authority that had expired. According to Navy officials, expired appropriations can be used to pay for interest on cost settlements, as long as the settlement is reached out of court and the interest is associated with an effort considered within the scope of the original contract. They said the Navy would have used current appropriations, if the Board had decided the case in favor of the contractor.

In May 1990, the Navy properly approved a request for expired budget authority to fund interest that had accrued as a result of the negotiated settlement of a defective pricing appeal.

Increased Cost of Runway Repair

The Air Force properly used expired operations and maintenance appropriations to repair a runway.

The Indian Springs Air Field is part of Nellis Air Force Base and is used primarily for training exercises. Part of an abandoned runway at Indian Springs serves as an area where live munitions are loaded and unloaded off aircraft participating in the training exercises. This area did not meet all safety requirements and has operated under waiver for several years. The waiver was due to expire in fiscal year 1992.

The Air Force decided to repair part of the runway to bring it up to the specifications required for the loading and unloading of live munitions. In September 1989, the Air Force executed a contract to repair the runway. The contract was funded with operations and maintenance appropriations, which are available for obligation for 1 year before they expire.

Soon after beginning the work, the contractor discovered that the runway was thicker than previously estimated and calculated that more material and labor would be needed to complete the repairs. The contractor submitted a claim for additional costs associated with the repairs.

After determining the additional costs were associated with work considered to be within the scope of the original contract, in October 1989, the Air Force requested the use of about \$277,000 in expired appropriations to pay for the additional repair costs.

The Air Force properly requested the use of expired appropriations to fund an effort considered to be within the scope of the original contract.

Negotiated Settlement Including Cost of Replacing Stolen Equipment

The Army properly used fiscal year 1981 military construction budget authority to settle a contractor's claim for replacement costs of construction materials stolen from a site on Fort Carson, Colorado. However, we have included this case with the examples that involved poor management practices because, if the Army had properly safeguarded the construction site, this particular increase in construction contract cost could have been avoided.

In 1981, the Army executed a contract for the construction of a tactical equipment shop at Fort Carson, Colorado. The project underwent difficulties and, in March 1983, the Army terminated the contract for

default. In April 1983, a successor contractor arranged for completion of the project. Between the time the original contractor left and the successor contractor started work, construction materials were stolen from the construction site. In May 1985, the successor contractor filed a claim with the Army for increases in both cost and time to complete the project that resulted from changes to the contract by the government. This claim included the cost of replacing the stolen construction materials.

The Army denied the contractor's claim in its entirety, and the successor contractor filed an appeal with the Armed Services Board of Contract Appeals under the Contract Disputes Act. Prior to the hearing before the Board, the Army reached a negotiated settlement with the contractor for \$158,750, including interest and the cost of the stolen construction materials. In December 1988, the Army funded the settlement amount using fiscal year 1981 military construction budget authority.

The Army's use of expired budget authority to fund the negotiated settlement was proper, as the claim filed by the contractor under the Contract Disputes Act was determined to be within the scope of the original contract. Accordingly, since the government's liability arose under and was within the scope of the original contract, expired funds could properly be used to pay the settlement.

Increased Cost of ALQ-162 Electronic Countermeasures System

The Navy used about \$4 million in expired aircraft procurement budget authority because it did not definitize a modification in a timely manner.

In December 1979, the Naval Air Systems Command awarded a contract to develop the ALQ-162 electronic countermeasures system. The contractor was subsequently awarded options for the production of the system. Even though the contract was jointly funded by the Army and Navy, the Navy had overall management responsibility for the program. The Navy funded the production of the system with aircraft procurement funds, which are available for obligation for 3 years before they expire.

Navy officials told us they are required to obligate enough funds to pay for the full amount of the modification at the time it is definitized. In addition, they said they must obligate enough funds to cover the target price and commit as a contingent liability enough funds to cover the difference between the target and ceiling price at the time the modification is authorized. In June 1986, the Navy authorized a modification in the form of an Engineering Change Proposal, which had both a target and

ceiling price. The Navy obligated funds to cover the target price but did not establish a contingent liability to fund the difference between the target and ceiling price.

In September 1989, over 3 years later, the Navy definitized the ceiling price of the modification. Navy officials told us they should have definitized the modification earlier than they did and attributed the delay to inadequate monitoring of contractor performance and turnover of staff administering the contract.

The Navy determined that the effort requiring additional funding up to but not more than the ceiling price was considered within the scope of the original contract. Because the effort was authorized in a fiscal year that had since expired, the Navy determined that expired appropriations were needed to fund the modification.

In November 1989, the Navy requested expired appropriations to fund the definitization of three modifications, including the Engineering Change Proposal. Of the amount requested, about \$4 million was needed to fund the Engineering Cost Proposal. The request was approved in December 1989.

If the Navy had definitized the modification in a timely manner, the service could have avoided using expired appropriations and instead would have used current aircraft procurement budget authority.

Payment of Previously Withdrawn Contingent Liabilities

The Air Force withdrew funds committed for a valid requirement in the Defense Support Program, reprogrammed the funds to another program, and then used expired appropriations to replenish the funds previously withdrawn from the program. Although the Air Force was within its authority when it withdrew the previously committed funds, because of the new limitations on the availability of expired appropriations, we have included this case with those involving poor management practices.

The Defense Support Program had committed \$610,000 in fiscal year 1985 other procurement appropriations for award fees on one of its contracts. Other procurement funds are available for obligation for 3 years before they expire. In April 1987, because of program delays, the funds had not been obligated and were about to expire.

In April 1987, Air Force Systems Command, upon direction from Air Force headquarters, withdrew the funds from the program. These funds were reprogrammed to a classified program. In February 1988, the program office determined it would need \$610,000 to pay the contractor for the award fees earned for effort previously funded but withdrawn by the Air Force Systems Command. The effort was considered within the scope of the contract and authorized in a fiscal year that had expired. In March 1988, the program office requested \$610,000 in expired other procurement appropriations. The request was approved in April 1988.

Air Force officials told us that it is common practice to withdraw and reprogram unobligated funds that would otherwise expire. They said that this maximizes the use of current appropriations. According to these officials, the Air Force is permitted to withdraw funds from valid requirements, such as a contingent liability. Air Force officials told us that it was not their intent to supplement current appropriations with expired appropriations.

We consider the use of budget authority in this instance to be representative of financial management practices that must be avoided by the services in the future. Because of the recently imposed limitations on the availability of expired appropriations, it will be critical for the services to avoid withdrawing funds committed for potentially valid requirements. Repeated instances in which expired appropriations are used to replenish previously committed budget authority that was used for other purposes will increase the likelihood that violations of the Antideficiency Act will occur.

Failure to Commit Current Budget Authority for Contingent Liabilities

The Strategic Defense Initiative Organization used about \$6.5 million in expired research, development, test, and evaluation appropriations that was originally intended for other than Strategic Defense Initiative Organization purposes to pay award fees to a contractor.

The High Endoatmospheric Defense Interceptor program is a Strategic Defense Initiative Organization program managed by the Army's Strategic Defense Command. The interceptor is an experiment to determine if current technology can be used to counter the ballistic missile threat to the United States and its allies. In January 1986, the Army awarded a contract to perform the experiment.

In September 1988, the DOD Inspector General determined that the Army improperly obligated about \$8.2 million in fiscal year 1988 research,

development, test, and evaluation budget authority on the contract. These funds are available for 2 years before they expire. In this instance, they were used to pay for award fees and incentive fees. The Army used fiscal year 1988 funds because this was the year payment of the award fee and incentive fees became due. The Inspector General determined that the appropriate year to fund the effort was the year the contractor performed the work, which was 1986.

In April 1989, the Army requested approval from the Strategic Defense Initiative Organization to use about \$8.2 million in expired fiscal year 1986 research, development, test, and evaluation budget authority to replace the fiscal year 1988 budget authority that had been improperly obligated. Of the \$8.2 million approved by the organization, about \$6.2 million was originally intended for non-Strategic Defense Initiative Organization purposes and about \$2 million was from that organization's funding. We were told that expired budget authority that was not originally provided for the Strategic Defense Initiative Organization was needed because the organization did not have enough expired fiscal year 1986 research, development, test, and evaluation funds to replace the fiscal year 1988 funds.

The Army did not commit fiscal year 1986 research, development, test, and evaluation budget authority to cover these fees prior to expiration. Because of the recently imposed limitations on the availability of expired appropriations, agencies must ensure that they commit sufficient current budget authority to satisfy any contingent liabilities that may need to be funded after the appropriation expires.

Comments From the Department of Defense



OFFICE OF THE COMPTROLLER OF THE DEPARTMENT OF DEFENSE

WASHINGTON, DC 20301-1100

APR 25 1991

(Management Systems)

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and
International Affairs Division
U. S. General Accounting Office
Washington, D.C. 20548


Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) Draft Report entitled--"EXPIRED APPROPRIATIONS: New Limitations on Availability Make Improved Management by DoD Essential," Dated March 11, 1991 (GAO Code 392526/OSD Case 8309-A). The Department concurs with all the draft report findings and the recommendation. The DoD response to the recommendation is provided in the enclosure.

It is recognized that more complete information on obligation adjustments would be beneficial for enhancing DoD oversight over the use of expired appropriations and identifying management practices, if any, that result in unnecessary use of expired budget authority. Accordingly, DoD guidance is being developed that will address these significant issues. The guidance should be finalized by May 31, 1991.

The DoD appreciates the opportunity to comment on the draft report.

Sincerely,


for Alvin Tucker
Deputy Comptroller
(Management Systems)

Enclosure

GAO DRAFT REPORT - DATED MARCH 11, 1991
(GAO CODE 392526) OSD CASE 8309-A

"EXPIRED APPROPRIATIONS: NEW LIMITATIONS ON AVAILABILITY
MAKE IMPROVED MANAGEMENT BY DOD ESSENTIAL"

DEPARTMENT OF DEFENSE COMMENTS

RECOMMENDATION

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense direct the Services to revise their procedures for the use of expired budget authority to require, in addition to the information already provided in the request and approval process, a comprehensive statement concerning the reason for the upward adjustment. The GAO further recommended that this information explain the circumstances, contingencies, or management practices which caused the need for the upward adjustment.

DoD Response: Concur. Guidance now under development by the Office of the Comptroller, DoD will address specific requirements to enhance oversight over the use of expired budget authority. The DoD guidance is expected to be completed by May 31, 1991.

Locations Visited or Contacted

U.S. Air Force

Contract Law Center, Wright-Patterson Air Force Base,
Dayton, Ohio

Munitions Systems Division, Eglin Air Force Base,
Fort Walton Beach, Florida

Warner Robins Air Force Logistics Center, Robins Air Force Base,
Georgia

Air Force Logistics Command, Wright-Patterson Air Force Base,
Dayton, Ohio

Air Force Space Systems Division, Los Angeles Air Station,
El Segundo, California

Tactical Air Command, Nellis Air Force Base, Nevada

Air Force Electronic Systems Division, Hanscom Air Force Base,
Boston, Massachusetts

Air Force Ballistic Missile Division, Norton Air Force Base,
San Bernadino, California

Office of the Secretary of the Air Force, Washington, D.C.

Air Force Systems Command, Andrews Air Force Base,
Washington, D.C.

Aeronautical Systems Division, Wright-Patterson Air Force Base,
Dayton, Ohio

Air Force Accounting and Finance Center, Denver, Colorado

U. S. Navy

Navy Finance Center, Crystal City, Virginia

Office of the Comptroller, Crystal City, Virginia

Naval Aviation Systems Command, Crystal City, Virginia

Naval Facilities Command, Alexandria, Virginia

Naval Sea Systems Command, Crystal City, Virginia

Appendix IV
Locations Visited or Contacted

Space and Naval Warfare Systems Command, Crystal City, Virginia

Marine Corps Research, Development, and Acquisition Command,
Quantico, Virginia

U. S. Army

Strategic Defense Command, Huntsville, Alabama

Army Missile Command, Redstone Arsenal, Huntsville, Alabama

Communications-Electronics Command, Fort Monmouth, New Jersey

Army Materiel Command, Alexandria, Virginia

Troop Support Command, St. Louis, Missouri

Aviation Systems Command, St. Louis, Missouri

U.S. Army Corps of Engineers, Fort Worth, Texas

U.S. Army Corps of Engineers, Omaha, Nebraska

U.S. Army Finance and Accounting Center, Fort Benjamin Harrison,
Indiana

Other

Strategic Defense Initiative Organization, Washington, D.C.

Major Contributors to This Report

**National Security and
International Affairs
Division,
Washington, D.C.**

Norman J. Rabkin, Associate Director
Steven F. Kuhta, Assistant Director
John J. Klotz, Assignment Manager
Pathelia Batchelor, Evaluator-in-Charge
W. Bennett Quade, Evaluator-in-Charge
Barbara A. Gannon, Evaluator
Sui-Ying Gantt, Evaluator

**Office of the General
Counsel**

William T. Woods, Assistant General Counsel
Alan N. Belkin, Attorney

**Los Angeles Regional
Office**

Richard Herrera, Regional Assignment Manager
Allen D. Westheimer, Site Senior

Ordering Information

The first five copies of each GAO report are free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

**U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20877**

Orders may also be placed by calling (202) 275-6241.

United States
General Accounting Office
Washington, D.C. 20548

Official Business
Penalty for Private Use \$300

First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100