DCMA Administrative Record for FY 2013 Furlough Appeals
TABLE OF CONTENTS
Part B

Location (tab)	Date	Document	Source
1	11/20/2013	Declaration of Roger Bennett	Agency
2	6/14/2013	DCMA Template for Furlough Decision Letters (No Reply)	Agency
3	6/14/2013	DCMA Template for Furlough Decision Letters (Reply Received)	Agency
4	5/30/2013	AFGE Amendment to MOU Covering Administrative Furlough Process	Agency
5	5/24/2013	DCMA Template for Notice of Proposed Furlough	Agency
6	2/20/2013	DoD Furlough Notification Letter to the U.S. Senate	Agency
7	2/20/2013	DoD Furlough Notification Letter to the U.S. House of Representatives	Agency
8	8/7/2012	P.L. 112-155 "Sequestration Transparency Act of 2012"	Agency
9	8/1/2000	DoD Financial Management Regulation 700.14-R, Vol. 3, Ch. 6, "Reprogramming of Appropriated Funds"	Agency
10	11/5/1999	10 USC § 1597(e) Procedure for DoD Involuntary Reduction of Civilian Personnel	Agency

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DECLARATION OF ROGER H. BENNETT

I, Roger H. Bennett, make the following Declaration in lieu of affidavit in accordance with the provisions of 28 U.S.C. §1746. I understand that my declaration is to be filed before the Merit Systems Protection Board and that it is the legal equivalent of a statement under oath.

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts set forth in this affidavit.

2. The statements made herein are based upon my personal knowledge, upon information made available to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

3. I am employed as the Deputy Executive Director, Human Capital for the U.S. Department of Defense, Defense Contract Management Agency Headquarters at Fort Lee, Virginia.

4. I am fully aware of the memorandum, with the Subject Furlough by Secretary of Defense Hagel, dated May 14, 2013, and the authority given to authorize 50 individual mission based exceptions. Based on my position with DCMA I review any request or approval of positions that would have been designated in DCMA as exceptions from the furlough based on Secretary Hagel's memorandum.

5. There were no DCMA employees that were granted one of these 50 mission based exceptions from the furlough based upon a determination that that employee's position was so mission critical that the DMCA mission could not be performed if the employee was subject to the furlough.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed at Fort Lee, Virginia on November 27, 2013.

Roger H. Bennett

Michele L. Hammer
Witness

DEFENSE CONTRACT MANAGEMENT AGENCY
APPROPRIATE LETTERHEAD

MEMORANDUM FOR EMPLOYEE NAME, POSITION TITLE

SUBJECT: Notice of Decision to Furlough

By written notice of **[date]**, you were notified of a proposal to furlough you pursuant to the procedures in 5 CFR Part 752, Subpart D.

I have determined that the reasons provided in the Notice of Proposed Furlough remain valid. The procedures and conditions related to the furlough as proposed have been determined to be the most equitable means of implementing the furlough. Therefore, you will be required to be on a discontinuous furlough during the period beginning July 8, 2013 through September 30, 2013.

In accordance with the procedures and conditions outlined in the notice of proposal dated **[insert same date as in paragraph 1]**, generally, you will be furloughed for no more than 16 hours in each of the pay periods or parts thereof, between July 8, 2013 and September 30, 2013. The maximum furlough time for full-time employees will be no more than 11 workdays, or a maximum of 88 hours. For full-time employees, this maximum is based on a regular work schedule of 80 hours per pay period. A part-time employee's number of hours required for furlough is prorated according to the specific work schedule.

Your supervisor will inform you of the amount of furlough time required prior to each pay period. Please contact your supervisor if you have any questions concerning the scheduling of your furlough days.

When you are on furlough, you will be in a non-pay, non-duty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, must remain away from your workplace, and are prohibited from performing any work-related duties during that time.

If you have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment, you may appeal this action to the Merit Systems Protection Board (MSPB). If you are a preference eligible employee in an excepted service appointment, you may appeal to the MSPB if you have completed one year of current continuous service in the same position or positions similar to the one you now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment

pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. You have the right to be represented in this matter by an attorney or other person you may choose, at no cost to the government.

If you have the right of appeal and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your first furlough day, or 30 calendar days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the Board's regulations from the MSPB website at http://www.mspb.gov. An appeal form that meets all of the Board's requirements is provided at Enclosure 1 and also is available at www.mspb.gov.appeals/forms.htm.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is **[identify appropriate regional office, mailing address, fax and phone number].** MSPB also offers the option of electronic filing at https://e-appeal.mspb.gov/.

The Board will send an Acknowledgment Order and copy of your appeal to the Defense Contract Management Agency, Labor and Employee Relations Division (DCMA-HCL), 3901 A Avenue, Building 10500, Fort Lee, VA 23801; e-mail: Labor.EmployeeRelations@dcma.mil; Phone: (804) 734-2316; Facsimile (804) 734-0116.

If you are a bargaining unit employee, you may grieve this action in accordance with the Article 30 of the Collective Bargaining Agreement between the Defense Contract Management Agency and Council 170, American Federation of Government Employees or you may appeal to the MSPB in accordance with the procedures outlined above, but not both. Your election to proceed under one process will be considered made when you timely file a grievance in writing, or timely file a notice of appeal, whichever event occurs first. To obtain information on filing a grievance under the negotiated grievance procedure, contact your local Union representative.

If you believe this action is taken as reprisal for whistleblowing, you may file a complaint with the Office of Special Counsel (OSC), which can be followed by an Individual Right of Action Appeal filed with the MSPB. The Whistleblower

Disclosure Form, OSC-12, is available at the following web address http://www.osc.gov/RR_OSCFORMS.htm. The web address for an electronic filing of whistleblower disclosure with OSC is at https://www.osc.gov/oscefile/.

You have the right to file a complaint with the Equal Employment Opportunity Office and the Equal Employment Opportunity Commission (EEOC) if you believe that this furlough was effected in a discriminatory manner. Information regarding the federal sector EEO process is available on the EEOC website at http://eeoc.gov/federal/fed_employees/complaint_overview.cfm. You may contact your servicing Equal Employment Opportunity Office at (804) 734-2525.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. Please feel free to contact the undersigned if you have any questions regarding this decision. You are also encouraged to visit the DCMA Furlough Guidance website at www.dcma.mil/furlough and may refer questions to furlough@dcma.mil.

Encl
MSPB Form 185

NAME OF DECIDING OFFICIAL
TITLE

I acknowledge receipt of this notice:

Employee's Signature/Date

DEFENSE CONTRACT MANAGEMENT AGENCY
APPROPRIATE LETTERHEAD

MEMORANDUM FOR EMPLOYEE NAME, POSITION TITLE

SUBJECT: Notice of Decision to Furlough

By written notice of **[date]**, you were notified of a proposal to furlough you pursuant to the procedures in 5 CFR Part 752, Subpart D.

Your written and/or oral replies received in response to that notice have been reviewed and carefully considered. I have determined that the reasons provided in the Notice of Proposed Furlough remain valid. The procedures and conditions related to the furlough as proposed have been determined to be the most equitable means of implementing the furlough. Therefore, you will be required to be on a discontinuous furlough during the period beginning July 8, 2013 through September 30, 2013.

In accordance with the procedures and conditions outlined in the notice of proposal dated **[insert same date as in paragraph 1]**, generally, you will be furloughed for no more than 8 hours per week between July 8, 2013 and September 30, 2013. The maximum furlough time for full-time employees will be no more than 11 workdays, or a maximum of 88 hours. For full-time employees, this maximum is based on a regular work schedule of 80 hours per pay period. A part-time employee's number of hours required for furlough is prorated according to the specific work schedule.

Your supervisor will inform you of the amount of furlough time required prior to each pay period. Please contact your supervisor if you have any questions concerning the scheduling of your furlough days.

When you are on furlough, you will be in a non-pay, non-duty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, must remain away from your workplace, and are prohibited from performing any work-related duties during that time.

If you have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment, you may appeal this action to the Merit Systems Protection Board (MSPB). If you are a preference eligible employee in an excepted service appointment, you may appeal to the MSPB if you have completed one year of current continuous service in the same position or positions similar to the one you

now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. You have the right to be represented in this matter by an attorney or other person you may choose, at no cost to the government.

If you have the right of appeal and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your first furlough day, or 30 calendar days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the Board's regulations from the MSPB website at http://www.mspb.gov. An appeal form that meets all of the Board's requirements is provided at Enclosure 1 and also is available at www.mspb.gov.appeals/forms.htm.

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If you believe this action is taken as reprisal for whistleblowing, you may file a complaint with the Office of Special Counsel (OSC), which can be followed by an Individual Right of Action Appeal filed with the MSPB. The Whistleblower

Disclosure Form, OSC-12, is available at the following web address http://www.osc.gov/RR_OSCFORMS.htm. The web address for an electronic filing of whistleblower disclosure with OSC is at https://www.osc.gov/oscefile/.

You have the right to file a complaint with the Equal Employment Opportunity Office and the Equal Employment Opportunity Commission (EEOC) if you believe that this furlough was effected in a discriminatory manner. Information regarding the federal sector EEO process is available on the EEOC website at http://eeoc.gov/federal/fed_employees/complaint_overview.cfm. You may contact your servicing Equal Employment Opportunity Office at (804) 734-2525.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. Please feel free to contact the undersigned if you have any questions regarding this decision. You are also encouraged to visit the DCMA Furlough Guidance website at www.dcma.mil/furlough and may refer questions to furlough@dcma.mil.

Encl
MSPB Form 185

NAME OF DECIDING OFFICIAL
TITLE

I acknowledge receipt of this notice:

Employee's Signature/Date

Amendment to the Memorandum of Understanding Between The Defense Contract Management Agency And The American Federation of Government Employees, Council 170

Process Covering Potential for Administrative Furlough for FY 2013

Subject: Amendment to the Existing Memorandum of Understanding between the Defense Contract Management Agency and the American Federation of Government Employees, Council 170 concerning the process covering potential for administrative furlough for FY 2013, signed 1 March 2013.

The following modifications to subject MOU are agreed to by the signatories:

"DCMA will follow parameters established by DoD" is amended to reflect the following:

- General rule is that full-time employees will be furloughed 16 hours per pay period across 5 pay periods and eight hours for 1 pay period (88 total furlough hours starting no earlier than 8 July 2013). There are 6 pay periods between 8 July 2013 and 27 September 2013.

- Exceptions:
  - Employees deployed in a combat zone
  - Foreign Nationals
  - Foreign Military Sales (FMS) employees whose positions are exclusively funded from FMS Administrative and FMS case funds and from Foreign Military Financing accounts. Furloughing employees in this category would not reduce the expenditure of DoD budgetary resources and so would not assist in meeting sequestration reductions.

"Additional DCMA established parameters" is amended to reflect the following:

- The only civilian exceptions will be for individuals deployed for CCAS, Locally Engaged Staff, and Foreign Military Sales (FMS) employees whose positions are exclusively funded from FMS Administrative and FMS case funds and from Foreign Military Financing accounts.

"Scheduling" is amended to reflect the following:

- Full-time employees furloughed 16 hours per pay period for 5 pay periods and 8 hours for 1 pay period beginning no earlier than 8 July 2013 (part-time employees pro-rated based on average hours worked per pay period).

- The proposed furlough notice to be given to employees at least 30 days prior to the furlough start date will include a suspense date by which employees should provide their supervisors with their proposed furlough schedule for 16 hours per pay period for 5 pay periods and 8 hours for 1 pay period beginning no earlier than 8 July 2013 and ending 27 September 2013.

- Furlough hours may not be "grouped" at the beginning of the furlough period or "postponed" until the end of the furlough period, e.g. an employee may not take the total 88 hours at the beginning of July or at the end of September.

- To the extent possible, furlough will be scheduled in full days instead of scheduling multiple hours across several days during the same week unless the employee requests otherwise and mission allows.

"Furlough Notices" is amended to reflect the following:

- Proposal notices will be issued to employees on or about 28 May 2013 to 5 June 2012, providing a 7calendar day reply period.

- Decision notices will be issued to employees not later than 5 July 2013 (or at least prior to the first day of furlough).

31 May 2013

For the Union
Patcy A. Wesley, President C-170

For the Agency
James Russell, Deputy Director

DEFENSE CONTRACT MANAGEMENT AGENCY
APPROPRIATE LETTERHEAD

MEMORANDUM FOR EMPLOYEE NAME, POSITION TITLE

SUBJECT: Notice of Proposed Furlough

This memorandum notifies you that the Defense Contract Management Agency proposes to furlough you no earlier than 30 calendar days from receipt of this notice. This furlough is being proposed in accordance with 5 CFR Part 752, Subpart D. This administrative furlough is necessitated by the extraordinary and serious budgetary challenges facing the Department of Defense (DoD) for the remainder of Fiscal Year (FY) 2013, the most serious of which is the sequester that began on March 1, 2013. The Budget Control Act of 2011, as amended by the American Taxpayer Relief Act of 2012, makes across-the-board reductions to budgetary resources for the Federal government. In addition, the DoD must and will protect wartime operations funding for our troops in harm's way. This inevitably means larger cuts in base-budget funding for the Operation and Maintenance (O&M) accounts. Thus, the DoD will need funding in other accounts that can be used to provide the warfighters with what they need to protect national security and fight this war. This furlough is proposed to help meet their need while avoiding a deficit of funds in FY 2013.

If other employees in your competitive level (i.e., generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days/hours, it is because they (1) are currently in a non-pay status, (2) are on an assignment not otherwise causing an expenditure of funds to the agency, or (3) are in a position in which the duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed (e.g., civilians deployed to combat zones).

The following procedures and conditions related to the furlough apply:

1. The furlough will be on discontinuous (intermittent) days, beginning July 8, 2013 through approximately September 30, 2013. Full time employees will be furloughed no more than 11 workdays or 88 hours. If you are a part-time employee, your furlough time off will be prorated, based on your work schedule.

2. Due to the uncertain and potentially fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be

advised in advance of each pay period of the number of furlough hours required to allow financial obligations of the DoD to be met. Generally, you will not be furloughed for more than 8 hours per week during the period between July 8, 2013 and September 30, 2013.

3. Based upon mission and workload considerations and subject to management approval, you may request a specific schedule for furlough. Should you desire to request a specific schedule for furlough, you may provide your supervisor with your proposed furlough schedule in writing. To the extent possible, furlough days will be scheduled in full eight hour days and will be based on mission requirements and employee considerations. Current telework arrangements and work schedules may be impacted by the furlough.

4. Annual, sick, court, military leave, or leave without pay which has been approved for a day which is later designated as a furlough day will be recorded as furlough and you will be placed in a non-pay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

At this time, we do not reasonably anticipate the need for furlough beyond 11 workdays (88 hours). However, should additional furlough days/hours become necessary, you will be given another notice. We recognize the difficult personal financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available.

You will be allowed seven calendar days from receipt of this letter to respond orally and/or in writing, to review the supporting material (located on the DCMA Furlough Guidance website, www.dcma.mil/furlough), and to furnish any affidavits or other supporting documentary evidence in your answer. You have the right to be represented in this matter by an attorney or other person you may choose, at no cost to the government. If you are in a paid status, you and/or your representative, if an agency employee, will be allowed a reasonable amount of official time to review the supporting material, seek assistance, prepare your reply, secure affidavits and statements, consider appropriate courses of action, and make a response. Contact your supervisor to arrange for official time. Management officials have been designated to hear oral replies on behalf of the Deciding Official. To arrange for an oral reply, please contact the individual(s) listed below:

[Insert name(s), phone number(s), and email address(es)]

Your written reply, if any, must be provided to the deciding official, [name and title, email address] no later than seven calendar days from receipt of this letter.

A final written decision, including an explanation of the specific reasons for the action taken, will be given to you as soon as possible after the seven calendar days allowed for your reply.

No decision to furlough you has been made or will be made until full consideration is given to your reply.

Please feel free to contact the undersigned if you have any questions regarding this notice. You are also encouraged to visit the DCMA Furlough Guidance website at www.dcma.mil/furlough and may refer questions to furlough@dcma.mil.

NAME OF PROPOSING OFFICIAL
TITLE

I acknowledge receipt of this notice:

Employee's Signature/Date

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

FEB 20 2013

The Honorable Joseph R. Biden, Jr.
President of the Senate
United States Senate
S-212 Capitol Building
Washington, DC 20510

Dear Mr. President:

In accordance with statute, I am providing a report on potential civilian furloughs within the Department of Defense. Specifically, title 10, U.S.C., section 1597(e), provides that the Secretary of Defense "may not implement any involuntary reduction or furlough of civilian positions ... until the expiration of the 45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reduction or furloughs are required and a description of any change in workload or positions requirements that will result from such reductions or furloughs." This letter provides the report and information required by this section.

We remain hopeful that the Administration and Congress will reach an agreement to avoid the across-the-board reductions in Federal spending required by the Budget Control Act of 2011, commonly known as "sequestration." The Department must, however, continue to plan for such reductions should Congress not take action prior to sequestration taking effect on March 1, 2013. If sequestration is not avoided, the magnitude of the potential reductions will damage force readiness, slow major acquisition programs, and necessitate civilian furlough actions that will negatively affect our Federal civilian workforce. Overall, sequestration will put us on a path toward a hollow force and inflict serious damage on our national security.

If faced with sequestration, the Defense Department will be forced to forego critical objectives. As we make the difficult decisions about how to maintain our national security to the greatest extent we can in light of these destructive cuts, the Department will have to consider furloughs across the entire defense civilian workforce in order to meet the fiscal target mandated by sequestration. Because there will be no change in the requirements for work to be performed by the Department's workforce to maintain our national security, the workload on each employee and the requirements for each position that will result from such furloughs will be increased beyond what can reasonably be achieved. The furloughs contemplated by this notice will do real harm to our national security. Moreover, we understand that furloughs would have serious adverse effects on the livelihood, morale, and productivity of our workforce, and where possible we will take steps to minimize those effects.

Nevertheless, if required, it is my goal to apply furlough actions in a consistent and equitable manner across the Department, though variations may occur because of the mission and budgetary requirements of each military department and agency. Each military department and agency within the Department will prepare detailed sequestration plans, and the Department will submit an updated plan for operations under a sequestration to Congress, as required by section 116(b) of the Continuing Appropriations Resolution, 2013, Public. Law 112-175.

Finally, if furlough actions prove to be necessary, every affected employee would be subject to furlough for up to 22 discontinuous work days (176 total hours), the maximum number of furlough days allowed without triggering additional notification requirements that follow reduction-in-force procedures (though such an extended furlough action would still constitute a temporary placement on non-pay/non-duty status, rather than a permanent separation from service). We will provide affected employees the requisite advance notice before a furlough occurs. The Department is also engaged in the necessary and appropriate discussions with employee unions, and will discharge any applicable collective bargaining obligations that may arise. In the event an agreement is reached that averts sequestration and restores needed funding, we will immediately cancel any furloughs that have resulted and cease furlough planning.

While furloughs would be disruptive and damaging to our ability to carry out the defense mission, there are no viable alternatives for the Department if sequestration actually occurs. We will continue to work with Congress in an effort to avoid sequestration and furloughs. A similar letter is being sent to the Speaker of the House and the defense oversight committees.

Sincerely,

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

FEB 20 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

In accordance with statute, I am providing a report on potential civilian furloughs within the Department of Defense. Specifically, title 10, U.S.C., section 1597(e), provides that the Secretary of Defense "may not implement any involuntary reduction or furlough of civilian positions ... until the expiration of the 45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reduction or furloughs are required and a description of any change in workload or positions requirements that will result from such reductions or furloughs." This letter provides the report and information required by this section.

We remain hopeful that the Administration and Congress will reach an agreement to avoid the across-the-board reductions in Federal spending required by the Budget Control Act of 2011, commonly known as "sequestration." The Department must, however, continue to plan for such reductions should Congress not take action prior to sequestration taking effect on March 1, 2013. If sequestration is not avoided, the magnitude of the potential reductions will damage force readiness, slow major acquisition programs, and necessitate civilian furlough actions that will negatively affect our Federal civilian workforce. Overall, sequestration will put us on a path toward a hollow force and inflict serious damage on our national security.

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While furloughs would be disruptive and damaging to our ability to carry out the defense mission, there are no viable alternatives for the Department if sequestration actually occurs. We will continue to work with Congress in an effort to avoid sequestration and furloughs. A similar letter is being sent to the President of the Senate and the defense oversight committees.

Sincerely,

cc:
The Honorable Nancy Pelosi
Minority Leader

U.S. GOVERNMENT INFORMATION GPO

DCMA Administrative Record for FY 2013 Furlough Appeals

Public Law 112–155
112th Congress

An Act

Aug. 7, 2012
[H.R. 5872]

To require the President to provide a report detailing the sequester required by the Budget Control Act of 2011 on January 2, 2013.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sequestration Transparency Act of 2012.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sequestration Transparency Act of 2012".

SEC. 2. SEQUESTER PREVIEW.

Deadlines.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the President shall submit to Congress a detailed report on the sequestration required to be ordered by paragraphs (7)(A) and (8) of section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901a) for fiscal year 2013 on January 2, 2013.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include—

(1) for discretionary appropriations—

(A) an estimate for each category of the sequestration percentages and amounts necessary to achieve the required reduction; and

(B)(i) for accounts that are funded pursuant to an enacted regular appropriation bill for fiscal year 2013, an identification of each account to be sequestered and estimates of the level of sequestrable budgetary resources and resulting reductions at the program, project, and activity level based upon the enacted level of appropriations; and

(ii) for accounts that have not been funded pursuant to an enacted regular appropriation bill for fiscal year 2013, an identification of each account to be sequestered and estimates pursuant to a continuing resolution at a rate of operations as provided in the applicable appropriation Act for fiscal year 2012 of the level of sequestrable budgetary resources and resulting reductions at the program, project, and activity level;

(2) for direct spending—

(A) an estimate for the defense and nondefense functions based on current law of the sequestration percentages and amount necessary to achieve the required reduction; and

(B) an identification of the reductions required for each nonexempt direct spending account at the program, project, and activity level;

DCMA Administrative Record for FY 2013 Furlough Appeals

(3) an identification of all exempt discretionary accounts and of all exempt direct spending accounts; and

(4) any other data and explanations that enhance public understanding of the sequester and actions to be taken under it.

(c) AGENCY ASSISTANCE.—(1) Upon the request of the Director of the Office of Management and Budget (in assisting the President in the preparation of the report under subsection (a)), the head of each agency, after consultation with the chairs and ranking members of the Committees on Appropriations of the House of Representatives and the Senate, shall promptly provide to the Director information at the program, project, and activity level necessary for the Director to prepare the report under subsection (a).

(2) As used in this subsection, the term "agency" means any executive agency as defined in section 105 of title 5, United States Code. Definition.

Approved August 7, 2012.

LEGISLATIVE HISTORY—H.R. 5872:

HOUSE REPORTS: No. 112–577 (Comm. on the Budget).
CONGRESSIONAL RECORD, Vol. 158 (2012):
July 18, considered and passed House.
July 25, considered and passed Senate.

DCMA Administrative Record for FY 2013 Furlough Appeals

CHAPTER 6

REPROGRAMMING OF DOD APPROPRIATED FUNDS ★

0601 PURPOSE

060101. This chapter establishes the policies of the Department for the reprogramming of appropriated funds. Guidance in this chapter reflects recognition by the Congress of the practice of reprogramming DoD funds covered in DoD Appropriations Acts as a necessary, desirable, and timely device for achieving flexibility in the execution of DoD programs. In addition to the procedures in this Chapter, reprogramming of DoD appropriated funds which impact the National Foreign Intelligence Program (NFIP) will be subject to further guidelines approved by the Deputy Director of Central Intelligence/Community Management (DDCI/CM). See Chapter 7 for reprogramming policy for military construction and family housing funds covered by the Military Construction Acts.

060102. Procedures are provided for establishing the base for reprogramming actions; submitting, approving, and processing reprogramming actions; and for the semiannual report of programs reflecting all supplemental appropriations, rescissions, transfers, and reprogramming actions.

060103. The policy herein replaces reprogramming guidance contained in the December 1996, DOD 7000.14-R, "Financial Management Regulation," Volume 3.

0602 REPROGRAMMING DOCUMENTS IN GENERAL

060201. DD 1414, Base for Reprogramming Actions. The DD 1414 establishes the base for reprogramming actions. The document is footnoted to identify those items known to be of special interest to one or more of the congressional committees and those items specifically denied by the Congress. The items should include, as a minimum, those items that are identified in the congressional committee or conference reports using the phrases "only for" or "only to" or are specifically identified as congressional special interest items in the conference report tables. Each item will be carried on the DD Form 1414 in the amount agreed to by the committees.

060202. DD 1415, Reprogramming Action. Reprogramming actions, upon approval of the Department, will be used to request the prior approval (DD 1415-1) of the congressional committees or for internal actions (DD 1415-3) requiring audit-trail type actions.

060203. DD 1416, Report of Programs. This report reflects the congressionally approved programs as enacted, reprogramming actions which have been approved, congressionally directed undistributed amounts and transfers, and reprogramming of funds that have been implemented by a DoD Component using below-threshold reprogramming flexibility. This report is prepared twice yearly, as of March 31 and September 30.

649

DCMA Administrative Record for FY 2013 Furlough Appeals

0603 DETAILED PROCEDURES FOR BASE FOR REPROGRAMMING ACTIONS

060301. General. The DD Form 1414, Base for Reprogramming Actions, establishes the base from which reprogramming actions may be taken. It identifies line items within each appropriation covered in the DoD Appropriations Acts, except those appropriations having no budget activity subdivisions in the budget document presentation and transfer accounts.

060302. Due Date. Following completion of congressional action on the DoD Appropriations Act, a memorandum will be transmitted to the Components to establish the due date and address any specific guidance, as appropriate. The DoD Components will provide two copies of the DD 1414, Base for Reprogramming Actions, to OUSD(C) P&FC, Room 3B872, for review prior to submission to the congressional committees.

060303. Transmittal. Upon notification from the OUSD(C) P&FC that the advance copy of the Base for Reprogramming Action is acceptable, or after the DoD Components have made any necessary changes, the DoD Components will e-mail a copy (or provide a diskette) of the DD 1414, Base for Reprogramming Actions, to OUSD(C) P&FC, and provide the original and one copy of the DD 1414 to the OUSD(C) P&FC for printing and transmittal to the congressional committees. In some instances, copies of the DD 1414s are provided to the congressional committees for clearance prior to final printing. Each DoD Component shall provide an index and number the pages within each appropriation account and in sequence. Final printed copies will be distributed to the DoD Components.

060304. Security Classification. Each DoD Component will be responsible for proper security review and classification of its DD 1414. Each page will be given an appropriate security classification based solely on the data shown on that page, except for the first page of an account section having classified pages. In this instance, the first page shall be marked with the highest classification of the following pages and be footnoted to state that upon removal of pages (classified page numbers) the document will become unclassified. All other pages not having classified data shall be marked "Unclassified." Classified data listed may not be higher than "SECRET" and should be bracketed using black lead pencil. The classifying activity and the appropriate downgrading instruction shall be shown on the first page as well as on each page that is classified.

060305. Detailed Instructions for Preparation of the DD 1414. Detailed instructions for the Base for Reprogramming Actions for the initial appropriations act are provided in the appendices to this chapter.

0604 REPROGRAMMING ACTIONS

060401. Reprogramming Actions Requiring Written Congressional Approval. Two types of reprogramming actions will be used to request the prior approval of the congressional defense committees. Both requests are submitted using DD 1415-1, Prior Approval. The first type is for specific stand-alone requirements. The second type is for the annual Omnibus reprogramming action that was established in FY 1991 to streamline the reprogramming process for the congressional committees and the Department. With the

650

DCMA Administrative Record for FY 2013 Furlough Appeals

exception of a DD 1415 that uses section 104(d) authority (paragraph 060601C), the USD(C) submits all reprogramming actions to the congressional defense committees. The Department is expressly prohibited from preparing or forwarding to the Congress a prior approval reprogramming action except "for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress." Reprogramming actions requiring prior approval of the congressional committees (DD 1415-1) involve the application of funds which:

A. Increase the procurement quantity of a major end item, such as an individual aircraft, missile, naval vessel, tracked combat vehicle, and other weapon or torpedo and related support equipment for which funds are authorized. (In such cases where specific congressional language is provided allowing for additional quantities to be procured within appropriated funds, increases to quantities for major end items shall be submitted to the USD(C) for approval as a DD 1415-3, Internal Reprogramming action.)

B. Affect an item that is known to be or has been designated as a matter of special interest to one or more of the congressional committees. In rare instances, when funds from special interest items are to be reprogrammed from an existing program, subprogram, project, or subproject to another program, subprogram, project, or subproject within the same procurement line item or program element, letter notification to the congressional committees may be made. Letters shall be submitted to the congressional committees by the DoD Component involved only after advance coordination with the applicable OUSD(C) P/B Directorate.

C. Use general transfer authority. Any movement of funds between appropriations or legal subdivisions requires transfer authority. Unless specific transfer authority is provided elsewhere, general transfer authority, which is provided in annual DoD Appropriations and Authorization Acts, must be used. Any movement of funds from supplemental appropriations also uses the general transfer authority provided in the annual DoD Appropriations Act. Section 2214 of Title 10 of the United States Code (U.S.C.) and the annual Appropriations Act provide limitations on programs for which general transfer authority may be used. Such authority may not be used except to provide funds for a higher priority item, based on unforeseen military requirements, than the items for which funds were originally appropriated, and may not be used if the Congress has denied funds for the item. Exceptions to the use of a DD 1415-1, Prior Approval Reprogramming action, may apply if reclassification of programs to the proper appropriation for execution is required (i.e., these actions do not change the purpose for which the funds were originally appropriated). (See paragraph 060402A).

D. Exceed thresholds agreed upon between the committees and the Department, as follows:

1. Military Personnel. A cumulative increase of $10 million or more in a budget activity.

DCMA Administrative Record for FY 2013 Furlough Appeals

2. Operation and Maintenance. A cumulative increase of $15 million or more in a budget activity. When the congressional committees impose reprogramming thresholds on specific subactivity group categories, these threshold amounts are separately identified on the DD 1414, Base for Reprogramming Actions, and reprogramming restrictions apply.

3. Procurement. A procurement program is defined by the items included in the DD 1414, Base for Reprogramming Actions.

a. Increases. Cumulative increases for any program year of $10 million or more (i.e., cumulative over the entire obligational availability of a specific year appropriation).

b. Decreases. Cumulative decreases for any program year of $10 million or more, or 20 percent of the appropriated amount (inclusive of supplemental appropriations and rescissions), whichever is greater.

4. Research, Development, Test, and Evaluation (RDT&E). A research program is defined by the items included in the DD 1414, Base for Reprogramming Actions.

a. Increases. Cumulative increases for any program year of $4 million or more in an existing program element (i.e., cumulative over the entire obligational availability of a specific year appropriation).

b. Decreases. Cumulative decreases for any program year of $4 million or more, or 20 percent of the appropriated amount (inclusive of supplemental appropriations and rescissions), whichever is greater.

E. Initiates a new start. A program, subprogram, modification, project, or subproject not previously justified by the Department and funded by the Congress through the normal budget process is considered to be a new start. Congressional committees discourage the use of the reprogramming process to initiate programs. Except for extraordinary situations, consideration will not be given new start reprogramming requests for which the follow-on funding is not budgeted or programmed. Funding for new starts may not be obligated without prior approval or written notification (see paragraphs 060403 and 060404). A program effort in one year in the Procurement and RDT&E accounts may be extended into a subsequent fiscal year without constituting a new start. This is considered an extension of the effort initiated in the prior year program, and could include a skip year for execution purposes. When this occurs, the program should be footnoted as such on the DD 1416, Report of Programs, with sufficient justification for the extension. Due to the characteristics of Military Personnel and Operation and Maintenance programs, new starts seldom occur in those appropriations. New starts in these appropriations would be significant new programs, efforts, or activities that have not been explicitly justified to the Congress in budget justification material. An example would be the establishment of a Pacific Distribution System. In some instances, a letter notification may be

652

DCMA Administrative Record for FY 2013 Furlough Appeals

appropriate in these circumstances but only with the explicit approval of the USD(C). A prior approval (DD 1415-1) is required if the action involves the following:

1. Establishment of a new procurement line item, procurement program, procurement subprogram, modification, RDT&E program element, RDT&E project, or RDT&E subproject with first-year costs of $2 million or more during any program year (see paragraph 060403B for programs with costs less than $2 million and paragraph 060403C for safety-related modifications whose total cost is less than $10 million).

2. New starts in a procurement program, procurement subprogram, modification, RDT&E program element, RDT&E project, or RDT&E subproject with estimated total costs (all appropriations) of $10 million or more within the first 3 years.

3. The DD 1415-1 should include a brief description of the total program being initiated, total program costs, proposed funding and procurement quantities by year, enough background information to demonstrate that the item is ready for research or procurement and an explanation of how subsequent years' funding will be provided, if the budget line is not included in the budget. The Department will not approve new starts that do not have budgeted or programmed follow-on funding. The DD 1415-1 should also explain why the source funds are no longer needed and any impact. See paragraph 060404 for failure to provide proper notification.

F. Terminates any program that results in the elimination of:

1. A procurement program or an RDT&E program element.

2. A subprogram within a procurement program or an RDT&E project or subproject which is equal to the total amount of the procurement program or program element.

3. A subprogram of $10 million or more within a procurement program or an RDT&E project or subproject within a program element.

See paragraph 060403D for terminations falling within below-threshold limits.

060402. Internal Reprogramming Actions. DD 1415-3, Internal Reprogramming, actions are audit-trail type actions processed within the Department to serve various needs. One is to reclassify funds for proper execution into a different line item, program element, or appropriation than that in which the funds were appropriated. Another includes reprogramming to or from transfer accounts. A third reflects approval to increase quantities, when not otherwise requiring prior approval of the congressional committees.

A. Reclassification Actions. In certain instances, it is necessary to reclassify funds to a different line item, program element, or appropriation than that in which the funds were appropriated by the Congress. Such reclassifications do not involve any change in the substance of the program; the funds will be used for the same purposes originally contemplated

653

DCMA Administrative Record for FY 2013 Furlough Appeals

and budgeted for, testified to, and described in the justifications submitted to the congressional committees, and subsequently appropriated by the Congress. These actions may also involve realignment of congressionally added programs that are more appropriately executed in a different program line or in a different account than the line or account in which the funds were appropriated. In cases where the realignment is between DoD appropriations, then the use of general transfer authority would be involved, along with the legal requirements thereof.

B. Transfer Appropriations. Transfer accounts are those appropriations with funding that will be subsequently transferred to other appropriations for execution. These accounts include, but are not limited to: Environmental Restoration, Army; Environmental Restoration, Navy; Environmental Restoration, Air Force; Environmental Restoration, Defense-Wide; Environmental Restoration, Formerly Used Defense Sites, Drug Interdiction and Counter-Drug Activities, Defense; Overseas Contingency Operations Transfer Fund; Foreign Currency Fluctuations, Defense; and Foreign Currency Fluctuations, Construction, Defense. Movement of funds from these accounts to other appropriations is generally exempt from the use of general transfer authority.

C. Procurement Quantities. Approval for increases to procurement quantities for major end items, not otherwise requiring prior approval of the congressional committees.

060403. Letter Notifications. Letter notification to the congressional committees is required in advance of initiating actions for:

A. A new program, subprogram, project, or subproject not otherwise requiring prior approval.

B. A new program, subprogram, modification, service bulletin, project, or subproject whose total cost is less than $2 million. This notification is also required for all programs funded by line items entitled "Items less than $5 million," "Low Cost Modifications," and "Service Bulletins" unless the President's Budget includes documentation for those programs in the budget justification material.

C. Safety modifications whose total costs (all appropriations) are less than $10 million for the entire effort. Due to the urgency nature of the requirement, these programs may be initiated before the congressional notification letter is submitted.

D. Terminations falling within the below-threshold reprogramming amounts for procurement programs or subprograms costing less than $10 million as long as the procurement line item is not eliminated.

E. Terminations under $10 million for any RDT&E program, project, or subproject as long as the program element is not eliminated.

F. The notification letter should include a brief description of the total program being initiated or terminated and the basis for the action. In addition new start letters should include total program costs, proposed funding, and procurement quantities by year,

654

DCMA Administrative Record for FY 2013 Furlough Appeals

enough background information to demonstrate that the item is ready for research or procurement and an explanation of how subsequent years' funding will be provided, if the budget line is not included in the budget. The notification letter should also provide a description of source of funds and why source funds are no longer needed and the impact. The new start or termination letter must be signed by the senior financial manager or budget officer of the notifying Component, after coordination with the applicable OUSD(C) directorate, with a courtesy copy furnished to OUSD(C) P&FC, Room 3B872, at the time of transmittal to the committees.

G. Notification to the Defense Committees requires a 30-day automatic hold on funds. The DoD Component may implement the subject reprogramming 30 calendar days after receipt by the cognizant committees unless notification to the contrary is received from a committee. See paragraph 0607 for special access programs.

060404. Failure to Provide Proper Notification. Section 8091 of Public Law 106-259, the Department of Defense Appropriations Act, 2001, and section 8096 of Public Law 106-79, the Department of Defense Appropriations Act, 2000, state: "None of the funds in this Act may be used to compensate an employee of the Department of Defense who initiates a new start program without notification to the Office of the Secretary of Defense, the Office of Management and Budget (OMB), and the congressional defense committees, as required by Department of Defense financial management regulations."

060405. Transfer Authority. Any movement of funds between appropriations or legal subdivisions requires transfer authority. There are at least five types of transfer authority:

A. Transfer Appropriations. Authority for Transfer Fund appropriations is contained in the annual DoD Appropriations Act.

B. Foreign Currency Fluctuations. Authority for the Foreign Currency Fluctuations, Defense, appropriation is contained in Public Law 95-457 (92 Stat. 1236) and section 2779 of Title 10 of the U.S.C. Authority for the Foreign Currency Fluctuations, Construction, Defense, appropriation is contained in section 121 of Public Law 99-591, section 2779 of Title 10, U.S.C., and the annual Military Construction Appropriations Act.

C. General Transfer Authority (GTA). GTA is required for transfers between appropriations and legal subdivisions, when other specific authority is not provided. It is included in a general provision in the annual DoD Appropriations Act and is authorized in the annual National Defense Authorization Act. When GTA is used, the Secretary of Defense must make a determination that such action is necessary in the national interest. OMB must also approve the use of GTA. For prior approval reprogramming actions that use GTA, OMB must approve transmittal of the action before forwarding it to the congressional defense committees. OMB approves the use of GTA after congressional approval is received for prior approval actions and after the reprogramming has been signed for internal reprogramming actions.

D. Intelligence Programs. Authority for transfers in intelligence programs is specified in paragraph 060601.

655

DCMA Administrative Record for FY 2013 Furlough Appeals

E. Special. Additional transfer authority for special situations is contained in various sections of Title 10 of the U.S.C. and in annual National Defense Authorization and Appropriations Acts. Section 127a of Title 10, U.S.C., provides limited transfer authority in the case of certain operations. Use of this transfer authority requires the use of prior approval reprogramming procedures.

060406. Detailed Instructions and Formats for Preparation of DD 1415. Detailed instructions for DD 1415-1 and DD 1415-3 are provided in the appendices to this chapter. Templates are available by contacting the OUSD(C) P&FC reprogramming point of contact at 703-697-0021 (DSN 227-0021).

060407. Submittal by Components. Military Departments must submit proposed DD 1415 actions formally by memorandum addressed to the USD(C) from the Assistant Secretary (Financial Management and Comptroller) of the Military Department. Requests from a Defense Agency should be signed by its Comptroller (or equivalent official). When a prior approval reprogramming for investment programs is required to initiate a new start (paragraph 060401E) or to terminate a program (060401F), a copy should also be provided to the Office of Under Secretary of Defense for Acquisition, Technology and Logistics; Director, Acquisition Resources & Analysis. For all reprogramming actions, the DD 1415 must be e-mailed to OUSD(C) P&FC at the same time as the original and the security review copy are provided to USD(C). The USD(C) will ensure that proposed reprogramming actions affecting the National Foreign Intelligence Program (NFIP) resources are provided to the Deputy Director of Central Intelligence/Community Management for coordination. The DoD Component memorandum shall include the following:

A. Reprogramming actions outside the Omnibus process, before or after the submission of the Omnibus reprogramming to the congressional committees, will only be made for those actions involving critical requirements or unforeseen circumstances that cannot wait for implementation of the Omnibus due to contract award dates or other time sensitive reasons. In these cases, individual reprogramming actions will be entertained, and the transmittal memorandum must clearly define the urgency of the requirement.

B. A statement that the DD 1415–1 Prior Approval reprogramming action has been cleared by the DoD Directorate for Freedom of Information and Security Review, Washington Headquarters Services. The copy with the original "Cleared for Open Publication" stamp should accompany the transmittal memorandum.

C. Because the DD 1415 actions are now being posted on the Comptroller's Home Page on the World Wide Web, the DD 1415 reprogramming action should not refer to or identify the intelligence resources. Therefore, the cover letter transmitting the DD 1415 to the OUSD(C) must contain a statement that the reprogramming does or does not affect NFIP, Joint Military Intelligence Program (JMIP), or Tactical Intelligence and Related Activities (TIARA) resources. If NFIP resources are affected, the reprogramming should be cleared with the Deputy Director of Central Intelligence/Community Management (as delegated by the DCI), and the cover letter should state that this has been done.

DCMA Administrative Record for FY 2013 Furlough Appeals

D. Identification of any new starts being requested, and whether the new starts were approved by PBD or other action.

060408. Signed DD 1415s. The USD(C) has authority to sign all reprogramming actions, and upon signature the reprogrammings are returned to OUSD(C) P&FC for further processing. A DoD Serial Number, in sequence, will be added to the signed DD 1415.

060409. OMB Approval. Any reprogramming action using general transfer authority must have a Secretary of Defense Determination documenting that the transfer is necessary in the national interest. The authority to make that determination has been delegated to the USD(C). For prior approval reprogramming actions using general transfer authority, OMB must also approve the transmittal of the DD 1415-1 before forwarding the action to the congressional defense committees. The OUSD(C) shall obtain formal OMB approval for the specific transfer of funds after congressional responses on the action are received and final results on implementation of the action are determined.

060410. Distribution of the DD 1415. When the DD 1415 is submitted to the congressional committees, a copy of the DD 1415 and the transmittal date will be e-mailed to the submitting DoD Component and to the Deputy Director of Central Intelligence/Community Management if it impacts intelligence resources. After being notified that the DD 1415 has been submitted to the congressional committees, the DoD Component will ensure that the congressional committees receive any classified information that is to be submitted under separate cover.

060411. Congressional Committee Approval of DD 1415 Requests

A. Approval for a Prior Approval Reprogramming Action (DD 1415-1) is obtained by letter from the congressional committees prior to implementation of the action. Each separate committee response is taken into account, and final implementation by OSD of the action reflects the lowest of the approvals received for proposed sources and increases. Often the action is implemented for less than originally requested due to the denial of increases or sources.

B. As copies of the congressional committee approval letters are received, e-mail notification will be made to the applicable DoD Components and OUSD(C) P/B appropriation managers. When the final committee approval has been received, an OSD implementation memorandum will be prepared. The implementing letter will attach copies of the approved DD 1415, data sheets, Secretary of Defense Determination, and committee letters, as applicable.

DCMA Administrative Record for FY 2013 Furlough Appeals

C. No reprogramming request will be approved if the funds requested have been obligated or committed prior to congressional committee review and approval. The obligation of funds prior to consideration by the congressional defense committees denies them a realistic option to deny the request. Such a procedure places the committee(s) in the position of having to approve the request or deny all funds for the continuation of the program in the latter part of the fiscal year. Also, funds that have already been identified for a below-threshold reprogramming should not be incorporated into the DD 1415 unless the funds have not yet been obligated on the new requirement. (If this occurs, the funds cannot be obligated until congressional approval is received).

D. Reprogramming hearings, questions, and transcripts will be handled by each Component involved, unless there is an OSD principal witness.

E. If the congressional committees have denied a reprogramming increase, DoD policy prohibits use of a series of below-threshold reprogramming actions as a means to finance the requested increase. However, below-threshold reprogramming authority may be used to finance increases on reprogramming actions that were approved by the congressional committees, but were not able to be accommodated within the implementation process, as long as the below-threshold reprogramming actions otherwise do not exceed a threshold limitation, affect an item of special congressional interest, or have not been specifically denied by a congressional committee as a reprogramming source. This policy has evolved out of recognition of there being congressionally-approved increases within the Omnibus reprogramming action that were unable to be funded in the USD(C) implementation memorandum, due to a lack of congressionally-approved sources. However, in recent years, the congressional defense committees have requested advance notification before using below-threshold reprogramming to implement approved sources.

060412. Implementation Memorandums for Reprogramming Actions.

A. After all approvals have been obtained for a reprogramming action, a memorandum signed by the USD(C) Deputy Comptroller for Program/Budget or Director for Program and Financial Control will be provided to the applicable Components.

B. If the reprogramming action includes an appropriation transfer, the implementing memorandum will include instructions (data sheet) for processing the SF 1151, Nonexpenditure Transfer Authorization, and include a copy of the combined Secretary of Defense Determination and OMB Approval document approving the transfer.

C. Along with normal distribution, the implementation memorandum will be e-mailed to the applicable DoD Component and to the appropriate OUSD(C) P/B appropriation manager(s), so that funds may be released.

DCMA Administrative Record for FY 2013 Furlough Appeals

060413. Alternate Letters or Revised Actions for New Sources

A. Reprogramming actions may be submitted prior to or after the Omnibus Reprogramming Action. When sources are denied by a congressional committee, new sources to fund the requested increase may be submitted in DD 1415 format or letter format. Except in the most unusual circumstances, alternate sources for items denied in the Omnibus Reprogramming Action will not be submitted to the congressional committees.

B. Revised actions or letters for the signature of the USD(C) should be prepared by the submitting DoD Component. Normal reprogramming procedures apply for processing the revised actions or letters to the congressional committees.

C. The committees have asked that the same data that is furnished with the original submission be provided when identifying a new source of funds.

060414. Appeal to Congressional Committees. The USD(C) may appeal the decision of a committee on a reprogramming action. All proposed appeals to committees initiated by a DoD Component shall be forwarded by memorandum to the USD(C) for further processing within the Department. Any action on a reprogramming subsequent to its original submission to the committees is subject to the same procedures as the original reprogramming.

060415. Withdrawal of Reprogramming Actions

A. When approval of a reprogramming action that was submitted to the congressional committees, but not fully approved, is no longer required, then that action should be formally withdrawn from congressional committee consideration. The need for withdrawal may result when too much time has elapsed for the proposed increase to go under contract or when proposed sources are needed to fund a higher priority reprogramming than that originally submitted.

B. Withdrawal letters for the signature of the USD(C) should be prepared by the submitting DoD Component. Normal reprogramming procedures apply for processing the letters to the congressional committees.

C. Sufficient rationale on the reason for withdrawal should be provided to the congressional committees so they will not question why the action was originally submitted for their approval. If one or more committees have already approved the action, letters should be written to those committees expressing appreciation for their approval.

0605 DD 1416, REPORT OF PROGRAMS

060501. General. The DD 1416, Report of Programs, reflects the congressionally approved programs as enacted, supplemental funding, rescissions, implemented reprogramming actions, congressionally directed undistributed amounts and transfers, and below-threshold reprogramming actions that are implemented by a DoD Component. The amounts on the DD 1416 for column m should be identical to the amounts on the DD 1002, Appropriation Status

659

DCMA Administrative Record for FY 2013 Furlough Appeals

by Fiscal Year Program and Subaccounts, column b (column d for Active Operation and Maintenance appropriations) for comparable "as of dates" and stub entries. Amounts should only deviate when reconcilable differences exist due to posting errors in the DD 1002.

060502. Due Date. The DD 1416, Report of Programs is submitted semi-annually as of March 31 and September 30 and will include all implemented reprogramming actions through that date, together with below-threshold reprogrammings made by the DoD Components through that date. The due dates for these reports shall be approximately 30 working days after the "as of dates." Specific dates will be announced by USD(C) memorandum to the DoD Components. The DoD Components will e-mail a copy (or provide a diskette) of the DD 1416, Report of Programs, to OUSD(C) P&FC at the same time that two copies are delivered to OUSD(C) P&FC, Room 3B872, for review prior to submission to the congressional committees.

060503. Transmittal. Upon notification from OUSD(C) P&FC that the advance copy of the Report of Programs is acceptable, or after the DoD Components have made any necessary changes, the original and one copy of the DD 1416 will be submitted to the OUSD(C) P&FC for printing and transmittal to the congressional committees. Each DoD Component shall provide an index page, and number the pages within each appropriation account. Final printed copies will be distributed to the DoD Components.

060504. Security Classification. Each DoD Component is responsible for proper security review and classification of its DD 1416. Each page will be given an appropriate security classification based solely on the data shown on that page, except for the first page of an account section having classified pages. In this instance, the first page shall be marked with the highest classification of the following pages and be footnoted to state that upon removal of pages (classified pages numbers) the document will become unclassified. All other pages not having classified data shall be marked "Unclassified." Classified data listed may not be higher than "SECRET" and should be bracketed using black lead pencil. The classifying activity and the appropriate downgrading instruction shall be shown on each page that is classified.

060505. Procurement Line Items "Items Less Than $5 million." For programs that are included in an "Items Less Than $5 Million line item, the program or cost growth will be accommodated within the below-threshold authority for the total line item value. The amount of growth to an individual program or to the aggregate line item total cannot exceed $9.999 million.

060506. Program Base Columns Reflecting Congressional Action. Changes due to supplemental appropriations and rescissions will be shown in a separate column from the basic Appropriations Act. The combination of the "Program Base Reflecting Basic Congressional Action" and "Program Base Adjustments Reflecting Enacted Supplementals and Rescissions" columns shall be used for determining how much of the procurement and RDT&E appropriations can be decreased based on percentages when determining the amount that can be reprogrammed using below-threshold authority.

060507. Detailed Instructions for Preparation. Reimbursable program or order amounts are not required unless reimbursable funding was used for the direct program. Detailed instructions for the DD 1416 are provided in the appendix to this chapter.

DCMA Administrative Record for FY 2013 Furlough Appeals

0606 REPROGRAMMING OF INTELLIGENCE RESOURCES

060601. Intelligence Reprogramming Authorities and Flexibilities

A. Section 504 of the National Security Act of 1947 (50 U.S.C. 414). This section provides the authority to reprogram funds provided for an intelligence or intelligence-related activity only if the funds being reprogrammed were specifically authorized for an intelligence or intelligence-related activity. Therefore, funds appropriated but not authorized for an intelligence or intelligence-related activity cannot be reprogrammed unless authorization is obtained statutorily. An intelligence or intelligence-related activity is considered to be authorized for purposes of section 504 only if (a) the activity is specifically identified in congressional justification materials submitted to the Congress and funds are both authorized and appropriated for that activity, or (b) where funds were not formally requested for the activity, Congress has specifically authorized the appropriation of funds, and appropriated funds, for the activity. Generally, a determination of whether funds have been authorized for a particular activity will be made by reference to the classified annex to the Intelligence Authorization Act, or National Defense Authorization Act in the case of the Joint Military Intelligence Program (JMIP) and Tactical Intelligence and Related Activities (TIARA), and the classified annex to the DoD Appropriations Act. Funds that are both authorized and appropriated for one intelligence, or intelligence-related activity, may be reprogrammed to an intelligence or intelligence-related activity that is considered to be a higher priority unforeseen requirement. Funds may not be reprogrammed for an intelligence or intelligence-related activity that was specifically denied by Congress.

B. Section 104(c) of the National Security Act of 1947 (50 U.S.C. 403-4). This section prohibits reprogramming National Foreign Intelligence Program (NFIP) resources without the approval of the Director of Central Intelligence (DCI) except in accordance with procedures issued by the Director. Because the DD 1415 actions are now being posted on the Comptroller's Home Page on the World Wide Web, the DD 1415 reprogramming action should not refer to or identify the intelligence resources. Therefore, the cover letter transmitting the DD 1415 to the OUSD(C) must contain a statement that the reprogramming does or does not affect NFIP, Joint Military Intelligence Program (JMIP), or Tactical Intelligence and Related Activities (TIARA) resources. If NFIP resources are affected, the reprogramming should be cleared with the Deputy Director of Central Intelligence/Community Management (as delegated by the DCI), and the cover letter should state that this has been done. While DCI approval is required only for reprogramming of NFIP resources, OUSD(C) will provide draft copies of all proposed JMIP and TIARA reprogramming actions to the DDCI/CM to meet the requirement for SECDEF consultation with the DCI, based on the composite JMIP and TIARA listing developed by the ASD(C3I) (see paragraph 060602B).

C. Section 104(d) of the National Security Act of 1947 (50 U.S.C. 403-4(d)). This section provides the DCI with essentially the same authority as Section 5 of the Agency Act of 1949, described below; however, the section 104(d) authority is broader in that it provides the DCI with the authority to transfer funds appropriated for an NFIP program to another NFIP program with the approval of the Office of Management and Budget (OMB). Similar to the

DCMA Administrative Record for FY 2013 Furlough Appeals

Section 5 authority, use of this authority does not require the submission of a reprogramming action (DD 1415) or general transfer authority, but does require notification to the House and Senate Appropriations Committees, House and Senate Armed Services Committees and House and Senate Intelligence Committees. If the Community Management Staff (CMS) submits a DD 1415 that uses section 104(d) authority, the USD(C)-signed DD 1415 will be returned to CMS for forwarding to OMB for approval to transmit to the Hill. The CMS will provide a copy of the OMB approval and the date the DD 1415 is transmitted to the Hill to OUSD(C) P&FC.

D. Section 5(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(a)(1)). This section gives the CIA authority to transfer to and receive from other government agencies such sums as may be approved by OMB for activities authorized under section 102(a)(2) and (3), 103(c)(6) and (d), 104(a) and (g), and 303 of the National Security Act of 1947. This authority applies only when the CIA is either the transferring or receiving agency, not to the other transactions involving the NFIP. Use of this authority does not require the submission of a reprogramming (DD 1415) or the use of transfer authority, but does require notification to the House and Senate Appropriations, Armed Services, and Intelligence Committees of the Congress.

060602. Procedures. The same procedures apply to reprogramming intelligence resources as provided in paragraph 0604 with the following exceptions.

A. In addition to the procedures in this Chapter, reprogramming of DoD appropriated funds which impact the National Foreign Intelligence Program (NFIP) will be subject to further guidelines approved by the Deputy Director of Central Intelligence/Community Management (DDCI/CM).

B. The Office of Assistant Secretary of Defense (Command, Control, Communications and Intelligence) [(OASD(C3I), attention DASD(P&E), Room 3D228] has program responsibility for determining the applicability of these provisions to above or below-threshold reprogramming actions that may affect intelligence or intelligence-related activities for JMIP and TIARA, and accordingly, should be informed of all adjustments to these programs prior to initiating an action. The ASD(C3I) shall develop, maintain, and distribute a composite listing of all JMIP and TIARA items to OUSD(C) P&FC, DoD Components, and the DDCI/CM so that JMIP and TIARA resources are identified.

060603. Oversight. Per agreements between the various congressional committees, the House Permanent Select Committee on Intelligence (HPSCI) has jurisdiction over the NFIP, Joint Military Intelligence Program (JMIP), and the TIARA programs, while the Senate Select Committee on Intelligence (SSCI) has jurisdiction over the NFIP only. Therefore, NFIP reprogrammings, other than below-threshold actions, require prior approval from the HPSCI, SSCI, House Appropriations Committee (HAC), and Senate Appropriations Committee (SAC), while reprogrammings affecting the JMIP and the TIARA program require prior approval from the HPSCI, Senate Armed Services Committee (SASC), HAC, and SAC. However, as a matter of practice, the Department submits reprogramming actions to all six committees for the NFIP, JMIP, and TIARA programs for action and/or information. Reclassification actions are not subject to congressional prior approval.

DCMA Administrative Record for FY 2013 Furlough Appeals

060604. Below-Threshold Reprogramming. Below-threshold reprogramming limitations applicable to DoD appropriations (section 0608) also apply to the NFIP except when the below-threshold action within an account crosses Agencies. In this instance, the below-threshold transfer of funds between Agencies, but within the same account, requires the prior approval of all six committees. (Slight differences may apply for other than DoD funds.)

060605. Congressional Approval. Implementation of the requested actions; whether by reprogramming action, letter notification, or justification documentation will not take effect until the action has been approved or cleared by all applicable committees.

0607 REPROGRAMMING OF SPECIAL ACCESS PROGRAMS

060701. Provision in Law. The annual DoD Appropriations Act states: "Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in session in advance to the congressional defense committees."

060702. General. For other than reprogrammings of new starts as stated in paragraph 060701, normal reprogramming procedures as described in this chapter apply to special access programs.

0608 BELOW-THRESHOLD REPROGRAMMING ACTIONS

060801. Purpose. Below-threshold reprogramming actions provide DoD Components with the discretionary flexibility to realign, within prescribed limits, congressionally approved funding to satisfy unforeseen, higher priority requirements. As with DD 1415 reprogrammings, below-threshold actions should net to zero.

060802. Guidelines.

A. Below-threshold reprogramming actions are minor actions not otherwise requiring congressional approval that may be accomplished within the DoD Components and are measured cumulatively over the entire obligation availability of the appropriation. Reprogramming thresholds apply to increases and decreases made to line items in the Procurement and RDT&E accounts. Below-threshold amounts for the Military Personnel and Operation and Maintenance accounts are normally measured only by increases. In recent years, however, written notification to the congressional defense committees has been required for transfers in excess of $15 million out of specified budget activities and subactivities. When the congressional committees impose reprogramming thresholds on specific subactivity group categories, these threshold amounts are separately identified on the DD 1414, Base for Reprogramming Actions and reprogramming restrictions apply. Any action, when combined with other below-threshold reprogramming actions for the same budget activity, line item or program element, must not exceed the established threshold in total, except when thresholds are exceeded due to the provisions of the Closing Accounts Legislation (P.L. 101-510).

663

DCMA Administrative Record for FY 2013 Furlough Appeals

B. Threshold amounts agreed upon among the committees and the Department are contained in paragraph 060401D. New start programs cannot be initiated using below-threshold authority (see paragraphs 060401E and 060404).

C. Normal reprogramming thresholds will not apply based on Closing Accounts Legislation (P.L. 101-510) when currently available appropriations are used to fund obligations or adjustments to obligations which would otherwise have been funded from a canceled account before it was canceled. Within an appropriation, reprogramming thresholds may be exceeded in currently available appropriations for increases or sources used to finance the "Canceled Account Adjustments" line item. If reprogramming thresholds are exceeded for increases or sources to finance these obligations or adjustments to obligations, then column "k," "Below-Threshold Actions not Requiring Approval by the SECDEF or Committees" of the DD 1416 should be footnoted to indicate that the threshold amount has been exceeded due to canceled account adjustments.

D. If the congressional committees have denied a reprogramming increase, DoD policy prohibits the use of a series of below-threshold reprogramming actions to finance the requested increase. However, below-threshold reprogramming actions that preceded the congressional denial will be recognized as valid.

E. Below-threshold reprogramming authority may be used to finance increases on reprogramming actions that were approved by the congressional committees, but were not able to be accommodated within the implementation process, as long as the below-threshold reprogramming actions otherwise do not exceed a threshold limitation, do not affect an item of special congressional interest, or have not been specifically denied by a congressional committee as a reprogramming source. This policy has evolved out of recognition of there being congressionally-approved increases within the Omnibus reprogramming action that were unable to be funded in the USD(C) implementation memorandum, due to a lack of congressionally-approved sources. However, in recent years, the congressional defense committees have requested advance notification before using below-threshold reprogramming to implement approved sources.

F. The below-threshold authority computation starts with the quantity of end items and amount of funds appropriated to a specific line item by the Congress. These baseline amounts are reflected in columns h and i on the DD Form 1414, Base for Reprogramming Actions; in columns b and c on the DD Form 1416, Report of Programs; and in columns b and c on all versions of the DD Forms 1415, Reprogramming Action. The baseline is changed by supplemental appropriations and rescissions, which are reflected in columns d and e of the DD 1416. The net amounts of the appropriated amounts and the supplemental appropriations and rescissions are reflected in columns b and c on all versions of the DD 1415. The first DD 1415 for a particular line item will reflect the same baseline amounts in columns b/c and d/e. Subsequent DD 1415s for a particular line item will retain the same baseline amount in columns b/c (unless a supplemental or rescission has been passed in the interim). Columns d and e will then be the same as columns h/i on the previous DD 1415, as amended by supplemental appropriations and rescissions. Exceptions to this occur when more than one DD 1415 is processed simultaneously, or when the previous DD 1415 was implemented at a different level

DCMA Administrative Record for FY 2013 Furlough Appeals

than was originally approved (Omnibus, for example). Undistributed congressional reductions that are assessed to a particular line item are reflected in columns h/i of the DD 1416; however, they are not part of the baseline, as the distribution is subject to change. The sum of columns b through i on the DD 1416 is the amount from which below-threshold reprogramming authority is calculated.

0609 REPLACEMENT OF ITEMS SOLD FROM INVENTORY

060901. Policy. The current budget policy requires that reimbursements generally cannot be used to replace end items sold from inventory if the replacement end item is not the identical type, model, and series designation unless a reprogramming action is approved by the congressional committees.

060902. Guidelines

A. The requirement for a reprogramming action for small dollar value end items where replacements vary only to a minor extent from the item sold has resulted in unnecessary paperwork and serves no substantive purpose. Replacement of items sold from inventory with a unit cost of less that $5,000 will be treated as a replacement-in-kind (RIK) if an improved model of the same end item is being procured, performs the same warfighting capability, and the inventory objective presented to the Congress is not exceeded. Items satisfying all of these criteria will be financed with the reimbursable proceeds of the sale of the end items issued from inventory without processing a DD 1415 reprogramming action. The amount applied toward the RIK may not be increased beyond the proceeds of that sale.

B. The requirement for a reprogramming action exists when an item of materiel is sold which will require replacement to compensate DoD inventories for the resultant loss of capability or readiness and the replacement item will not be identical to the item sold. It must, however, be a later series of "mod" designation of the same basic model (e.g., sale of a C-130A aircraft and purchase of a C-130E) or an acceptable substitute item used against the same inventory objective or authorized acquisition objective in requirements computations (e.g., sale of an M-48 tank and purchase of an M-60 tank). In this situation, the reimbursement from the sale will be included under reimbursable financing, but the buyback of the replacement items must be shown as direct program financing.

DCMA Administrative Record for FY 2013 Furlough Appeals

0610 REPROGRAMMING POLICY FOR CLOSING APPROPRIATION ACCOUNTS LEGISLATION (P.L. 101-510)

061001. Definitions of Contract Changes for Reprogramming Purposes. For purposes of this reprogramming policy guidance, adjustments to amounts initially obligated in accounts that now are expired are categorized either as within-scope or change-in-scope contract changes. Within-scope changes generally are funded from the appropriation that originally financed the contract until cancellation. Change-in-scope contract changes are financed from appropriations currently available for obligation at the time the change is made. Specific guidelines for determining scope of work changes are defined in Chapter 8 of this Volume.

061002. Use of Currently Available Appropriations to Fund Out-Of-Scope Contract Changes

A. Normal applicable reprogramming (DD 1415) procedures and thresholds will apply when currently available appropriations are used to fund out-of-scope contract changes.

B. Out-of-scope contract changes funded from currently available appropriations will be funded from, and reflected against, the current corresponding line item, program element or program applicable, or comparable, to the program for which the contract change is being made.

C. If an applicable corresponding program no longer exists in the currently available appropriation for the program for which the out-of-scope contract change is being made, a new line item for the program in question will be created to reflect the contract change adjustment. Reprogramming threshold procedures for newly created line items will be the same as for the creation of any other new line item.

D. Any line item or program can be the funding source for contract changes funded from currently available funds. However, the funding source line item or program will also be subject to normal reprogramming thresholds.

061003. Use of Currently Available Appropriations to Fund Obligations or Adjustments to Obligations that Otherwise Would Have Been Funded from a Canceled Appropriation Account

A. Obligations and adjustments to obligations that would have been properly chargeable to a closed account, both as to purpose and amount, shall be charged to an appropriation currently available for the same purpose. Specific limitations are as follows:

1. The sum of all such amounts funded from currently available appropriations shall not exceed the lower of (a) one percent of the originally appropriated amount of the current appropriation being charged or (b) the current unexpended balance of the canceled appropriation account.

666

DCMA Administrative Record for FY 2013 Furlough Appeals

2. For the purpose described in paragraph 1, the unexpended balance is the sum of the unobligated balance plus the unliquidated obligated balance of the appropriation account at the time it was canceled, less any and all obligations incurred and payments made subsequent to the cancellation of the original appropriation account when such obligations and payments would otherwise have been properly charged to the appropriation had the appropriation not been canceled.

B. Normal reprogramming procedures (DD 1415) and thresholds will not apply when currently available appropriations are used to fund obligations or adjustments to obligations which would otherwise have been funded from a canceled appropriation account before it was canceled.

C. Charges to currently available appropriations for obligations or adjustments to obligations that would otherwise have been charged to canceled appropriation accounts shall be reflected in a line item on the Report of Programs (DD 1416) entitled "Canceled Appropriation Account Adjustments."

1. Within an appropriation, reprogramming thresholds may be exceeded in currently available appropriations for increases or sources used to finance the "Canceled Appropriation Account Adjustments" line item.

2. If reprogramming thresholds are exceeded for increases or sources to finance these obligations or adjustments to obligations, column k, Changes not Requiring Approval by Secretary of Defense, of the DD 1416 should be footnoted to indicate that the threshold amount has been exceeded due to canceled appropriation account adjustments.

3. The new line, "Canceled Appropriation Account Adjustments," will be a separate line item or program element and added as an entry within a single budget activity. For all appropriation accounts that do not display line item detail, a memo line shall be shown under any single budget activity.

061004. Use of Expired Appropriations to Fund Contract Changes

A. An expired appropriation remains available for recording, adjusting and liquidating obligations properly chargeable to that appropriation until the appropriation is closed under 31 U.S.C. 1552. Accordingly, an expired appropriation may be used to fund within-scope contract changes properly chargeable to that appropriation in accordance with Chapter 8 of this Volume. When properly chargeable obligations are posted against a line item, funding must be available in that program. If funding is not available on that program, but funding is available within the appropriation, a funding realignment between programs in that appropriation must be accomplished. Because there is no authority to transfer funds in expired appropriations, there can be no transfers between appropriations and legal subdivisions in expired appropriation accounts.

DCMA Administrative Record for FY 2013 Furlough Appeals

B. Expired Operation and Maintenance, Navy appropriations may be used to fund certain payments required because of changes in scope of work in connection with ship overhaul, maintenance, and repair work under 10 U.S.C. 7313.

C. For purposes of the Shipbuilding and Conversion, Navy, (SCN) appropriation, appropriation language normally provides for additional obligations to be incurred after the 5 years of obligation availability, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction. The period of availability of the SCN appropriation is adjusted prior to being canceled based on the schedule of work being performed.

0611 NATIONAL GUARD AND RESERVE EQUIPMENT APPROPRIATION NOTIFICATION PROCEDURES

061101. General. In the National Guard and Reserve Equipment Appropriation (NGREA), the Congress typically appropriates funding in lump-sum amounts to be used for aircraft and miscellaneous equipment, and requests submission of a detailed assessment of modernization priorities by each of the Reserve Component (RC) Chiefs. The Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)) forwards the RC acquisition plans to the congressional committees, along with a consolidated equipment requirements list for all Reserve Components, called the Summary NGREA Acquisition Report.

061102. Procedures for Revisions to the Summary NGREA Acquisition Report

A. Procurement of any item not included in the Summary NGREA Acquisition Report for allocation of the funds appropriated in lump-sum amounts for aircraft and miscellaneous equipment cannot be initiated by a Component until the proper notification to the congressional committees is made.

B. Letters requesting a change to the initial report should be submitted by the cognizant Military Department Assistant Secretary (Financial Management and Comptroller) for the respective Reserve Component requiring a change from the initial allocation directly to the ASD(RA). The ASD(RA) shall obtain coordination from OUSD(C) P/B and transmit letters to the congressional committees.

C. Consistent with other procedures in place for letter notifications pertaining to new starts (section 060403 of this chapter), the following procedures for assuming approval by the committees shall apply.

1. Approvals by the House and Senate Appropriations Committees and the House and Senate Armed Services Committees require a 30-day automatic hold.

2. The DoD Component may implement the reprogramming 30 calendar days after receipt by these committees unless notification to the contrary is received from a committee.

★ - Entire chapter has been revised.

STATUTORY AUTHORIZATION AND PROCEDURE FOR DoD INVOLUNTARY REDUCTION OF CIVILIAN PERSONNEL

10 U.S.C. 15977 § (a) – (e)
United States Code, 2010 Edition
Title 10 - ARMED FORCES
Subtitle A - General Military Law
PART II - PERSONNEL
CHAPTER 81 - CIVILIAN EMPLOYEES
Sec. 1597 - Civilian positions: guidelines for reductions
From the U.S. Government Printing Office, www.gpo.gov

§1597. Civilian positions: guidelines for reductions

(a) Requirement of Guidelines for Reductions in Civilian Positions.—Reductions in the number of civilian positions of the Department of Defense during a fiscal year, if any, shall be carried out in accordance with the guidelines established pursuant to subsection (b).

(b) Guidelines.—The Secretary of Defense shall establish guidelines for the manner in which reductions in the number of civilian positions of the Department of Defense are made. The guidelines shall include procedures for reviewing civilian positions for reductions according to the following order:

(1) Positions filled by foreign national employees overseas.

(2) All other positions filled by civilian employees overseas.

(3) Overhead, indirect, and administrative positions in headquarters or field operating agencies in the United States.

(4) Direct operating or production positions in the United States.

(c) Master Plan.—(1) The Secretary of Defense shall include in the materials submitted to Congress in support of the budget request for the Department of Defense for each fiscal year a civilian positions master plan described in paragraph (2) for the Department of Defense as a whole and for each military department, Defense Agency, and other principal component of the Department of Defense.

(2) The master plan referred to in paragraph (1) shall include the information described in paragraph (3). Such information shall include information for each of the two fiscal years immediately preceding such fiscal year and projected information for such fiscal year and each of the two fiscal years immediately following such fiscal year.

(3) The information referred to in paragraph (2) is the following:

(A) A profile of the levels of civilian positions sufficient to establish and maintain a baseline for tracking annual accessions and losses of civilian positions and to provide for the analysis of trends in the levels of civilian positions within the Department of Defense as a whole and for each military department, major subordinate command of each military department, Defense Agency, and other principal component of the Department of Defense. The profile shall include information on the following:

(i) The total number of civilian employees.

(ii) Of the total number of civilian employees, the number of civilian employees in the United States, the number of civilian employees overseas, and the number of foreign national employees overseas.

(iii) Of the total number of civilian employees at the end of each fiscal year covered by the master plan, the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(iv) Accessions and losses of civilian positions, shown in the aggregate and by the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(v) The number of losses of civilian positions, by appropriation account, due to reductions in force, furloughs, or functional transfers or other significant transfers of work away from the military department, Defense Agency, or other component.

(vi) The extent to which accessions and losses of civilian positions are due to functional transfers or competitive actions that are related to the Department of Defense management review initiatives of the Secretary of Defense.

(vii) The total number of individuals employed by contractors and subcontractors of the Department of Defense under a contract or subcontract entered into pursuant to Office of Management and Budget Circular A–76 to perform commercial activities for the Department of Defense, a military department, a defense agency, or other component.

(B) For industrial-type and commercial-type activities funded through the Defense Business Operations Fund, the following information:

(i) Annual trends in the amount of funded workload for each activity, based upon the average number of months of accumulated, funded workload to be performed, or projected to be performed, by the activity.

(ii) The extent to which such workload is funded by funds that are appropriated from appropriation accounts and managed through the Defense Business Operations Fund.

(C) Information that indicates trends in the extent to which the military department, Defense Agency, or other component enters into contracts with persons outside of the Department of Defense, rather than uses civilian positions, to perform work for the military department, Defense Agency, or other component.

(D) Information that indicates the extent to which the Department of Defense management review initiatives of the Secretary of Defense and other productivity enhancement programs of the Department of Defense significantly affect the number of losses of civilian positions, particularly administrative and management positions.

(4) The Secretary of Defense shall include in the materials referred to in paragraph (1) a report on the implementation of the master plan for the fiscal year immediately preceding the fiscal year for which such materials are submitted.

(d) Exceptions.—The Secretary of Defense may permit a variation from the guidelines established under subsection (b) or a master plan prepared under subsection (c) if the Secretary determines that such variation is critical to the national security. The Secretary shall immediately notify the Congress of any such variation and the reasons for such variation.

(e) Involuntary Reductions of Civilian Positions.—The Secretary of Defense may not implement any involuntary reduction or furlough of civilian positions in a military department, Defense Agency, or other component of the Department of Defense until the expiration of the

45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reductions or furloughs are required and a description of any change in workload or positions requirements that will result from such reductions or furloughs.

(Added Pub. L. 101–510, div. A, title III, §322(a)(1), Nov. 5, 1990, 104 Stat. 1528; amended Pub. L. 102–484, div. A, title III, §371(a), Oct. 23, 1992, 106 Stat. 2382; Pub. L. 103–35, title II, §201(d)(1), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title III, §363, Nov. 30, 1993, 107 Stat. 1628.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, §363(a)(1), substituted "during a fiscal year" for "during fiscal year 1993".

Subsec. (b). Pub. L. 103–160, §363(a)(2), struck out "for fiscal year 1993" after "establish guidelines" in introductory provisions.

Subsec. (c)(1). Pub. L. 103–160, §363(b)(1), substituted "for each fiscal year" for "for fiscal year 1994".

Subsec. (c)(3)(A)(v). Pub. L. 103–35, §201(d)(1)(A)(i), substituted "Defense Agency" for "defense agency".

Subsec. (c)(3)(A)(vii). Pub. L. 103–160, §363(b)(2), added cl. (vii).

Subsec. (c)(3)(C). Pub. L. 103–35, §201(d)(1)(A)(ii), substituted "Defense Agency" for "defense agency" after "to which the military department," and "Defense Agency," for "defense agency" after "for the military department,".

Subsec. (c)(4). Pub. L. 103–160, §363(b)(3), added par. (4).

Subsec. (e). Pub. L. 103–35, §201(d)(1)(B), substituted "on the date" for "of the date".

1992—Pub. L. 102–484 substituted "Civilian positions: guidelines for reductions" for "Employees of industrial-type or commercial-type activities: guidelines for future reductions" as section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c).

PILOT PROGRAM FOR PAYMENT OF RETRAINING EXPENSES

Pub. L. 107–107, div. A, title XI, §1102, Dec. 28, 2001, 115 Stat. 1235, authorized the Secretary of Defense to establish a pilot program to facilitate the reemployment of eligible employees of the Department of Defense who were involuntarily separated due to a reduction in force, relocation as a result of a transfer of function, realignment, or change of duty station, and to pay retraining incentives to encourage non-Federal employers to hire and retain such employees, and provided that no incentive could be paid under such program for training commenced after Sept. 30, 2005.

NON-FEDERAL EMPLOYMENT INCENTIVE PILOT PROGRAM

Pub. L. 103–337, div. A, title III, §348, Oct. 5, 1994, 108 Stat. 2725, authorized the Secretary of Defense to establish a pilot program for the payment of incentives to facilitate the reemployment of eligible employees of the Department of Defense whose employment with the Department was being terminated by reason of the closure or realignment of the military installations where such persons were employed, to pay retraining and relocation incentives to encourage non-Federal employers to hire and retain such employees, and to pay a relocation incentive to an eligible employee if it was necessary for the employee to relocate in order to commence employment with a non-Federal employer under such program, and provided that no incentive could be paid under such program for training or relocations commenced after Sept. 30, 1999.

SKILL TRAINING PROGRAMS IN DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. D, title XLIV, §4435, Oct. 23, 1992, 106 Stat. 2722, authorized the Secretaries of the military departments and the Secretary of Defense, during the period beginning on Oct. 1, 1992, and ending on Sept. 30, 1995, to provide not more than one year of training in training facilities of the Department of Defense to civilian employees of the Department who were separated from employment as

a result of a reduction in force or a closure or realignment of a military installation, and directed the Secretary to publish a register of the skill training programs carried out by the Department not later than Feb. 1, 1993.

INVOLUNTARY REDUCTIONS OF CIVILIAN PERSONNEL IN FISCAL YEAR 1991

Pub. L. 101–510, div. A, title III, §322(b), Nov. 5, 1990, 104 Stat. 1529, provided that after Nov. 5, 1990, an agency or component of the Department of Defense could not implement any involuntary reductions or furloughs of civilian personnel in industrial-type or commercial-type activities in fiscal year 1991 until 45 days after the date on which the agency or component submitted a report to Congress outlining the reasons why such reductions or furloughs were required.