

## Recommendation 46: Empower the acquisition community by delegating below threshold reprogramming decision authority to portfolio acquisition executives.

### Problem

The current reprogramming process in DoD is too time-consuming and complicated. It involves too many levels of approval, and it does not allow for delegation of decision authority to the mid- and lower-levels of the acquisition system. These lower levels of authority may, in some cases, be where people best understand the tradeoffs being made.

### Background

*Reprogramming* is the act of reallocating congressionally appropriated funds for a purpose other than that originally intended. It is considered a vital part of DoD's ability to maintain enough flexibility to counter rapidly changing threats.

DoD uses reprogramming to increase or decrease a program's funding after an appropriation from Congress is enacted into law. Reprogramming offers the advantage of not requiring new appropriations from Congress. Reprogramming is budget neutral: The requests for increases for higher-priority programs are matched with equivalent decreases in lower-priority programs.

### Role of Congress

Congress explicitly acknowledges the importance of reprogramming in giving the military the ability to respond to unpredictability in the battlefield. Each year when it enacts defense appropriations laws, Congress approves a multibillion-dollar general transfer authority (GTA) permitting DoD to move funds across appropriations accounts and their subdivisions. GTA provisions typically include requirements that transfers must be considered "necessary in the national interest" and "based on unforeseen military requirements."<sup>1</sup>

The congressional defense committees agree to thresholds for each appropriations account, below which DoD may, in some cases, reprogram funding without seeking prior congressional approval. On the basis of these thresholds, reprogramming actions may be divided into *below-threshold reprogramming* (BTR) and *above-threshold reprogramming* (ATR).

At the beginning of each fiscal year, the DoD Comptroller is responsible for compiling a comprehensive statement of the base amounts on which the coming fiscal year's reprogramming actions are based. This annual statement goes into detail at the level of individual budget line items.<sup>2</sup>

If a reprogramming action exceeds BTR thresholds, initiates a new start or termination, or affects a program Congress has designated as an item of special interest, it may not use BTRs. In these cases, DoD must submit a prior approval (PA) request or a Congressional Notification Letter request to the

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<sup>1</sup> See, for example, Section 8005 of Division C, Consolidated Appropriations Act, 2018, Pub. L. No. 115-141 (2018).

<sup>2</sup> "Budget Execution: DD 1414 Base for Reprogramming Actions," Under Secretary of Defense (Comptroller), accessed November 2, 2018, <https://comptroller.defense.gov/Budget-Execution/>.

four congressional defense committees.<sup>3</sup> Internal reprogramming (IR) may be used in cases where reprogramming actions are “required to execute funds properly in accordance with congressional intent,” are deemed “necessary in the national interest,” represent the same “purpose for which the funds were originally appropriated,” and have not been previously rejected by one of the congressional defense committees.<sup>4</sup>

Because IRs do not require PA from as many stakeholders, they are considered by many to be more efficient than PAs.<sup>5</sup> DoD engages in relatively few IR actions each year because IRs must be used for the same purpose as originally appropriated, which is highly dependent on regulatory definitions of what constitutes a given budget line item’s purpose. For example, DoD’s FY 2018 reprogramming documentation showed 24 internal reprogrammings. Some of these consisted of multiple actions, but most addressed individual subcategories of DoD spending. By contrast, DoD engages in hundreds of BTR reprogrammings each year.<sup>6</sup> Anecdotally, part of the reason for this pattern is the long wait time to gain approval for PAs and IRs at the congressional and Office of the Secretary of Defense (OSD) levels, respectively.

### Types of Reprogramming Used in Defense Acquisition<sup>7</sup>

- *Prior Approvals (PAs)* are reprogramming actions that meet one of several conditions. PAs are required for reprogramming actions in cases for which procurement quantities are increased, new starts are initiated, programs are terminated, congressional special interest items are affected, GTA may be used, or BTR thresholds are exceeded. PAs for specific requirements are submitted monthly. A large-scale omnibus PA reprogramming action is submitted prior to June 30 of each year.<sup>8</sup> PAs must be preapproved by the DoD Comptroller, OMB, and all four congressional defense committees.
- *Internal Reprogrammings (IRs)* are reprogramming actions that do not change the congressional intent of a budget line item. They may in some cases, however, move funding across appropriations accounts and therefore require the use of GTA. IRs must be preapproved by DoD, but only require notification (not PA) of the congressional committees.
- *Below Threshold Reprogramming (BTR)* are reprogramming actions that fall below an account-specific amount and do not move funds across appropriations accounts. They may not be used in cases where congressional intent would be altered, congressional special interest items would be affected, or line items would be terminated or initiated as new starts. BTRs may be approved at the Military Service level. Congress is notified of all BTRs on a quarterly basis.<sup>9</sup>
- *Congressional Notification Letters* are reprogramming actions that would not rise above BTR thresholds or move funds across appropriations accounts, but would result in the new start or termination of a line item. They are

<sup>3</sup> See language in DD 1415-1 request forms for “Implemented Reprogramming Actions” in FY 2018, Under Secretary of Defense (Comptroller) website, accessed August 6, 2018, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2018>.

<sup>4</sup> This list of conditions represents the standard language in FY 2018 DD 1415-3 internal reprogramming notification forms. See, for example, DoD Comptroller, *May 2018 Internal Reprogramming Request*, accessed August 6, 2018, [https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2018/ir1415s/18-13\\_IR\\_May\\_2018\\_Request.pdf](https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2018/ir1415s/18-13_IR_May_2018_Request.pdf).

<sup>5</sup> Former DoD Comptroller and former congressional staffers, discussions with Section 809 Panel, September 2018.

<sup>6</sup> “Budget Execution: Implemented Reprogramming Actions, FY 2018,” Under Secretary of Defense (Comptroller), accessed September 14, 2018, <https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2018>.

<sup>7</sup> Information summarized from DoD Comptroller, “Budget Execution Flexibility Tutorial,” [https://comptroller.defense.gov/Portals/45/Documents/execution/Budget\\_Execution\\_Tutorial.pptx](https://comptroller.defense.gov/Portals/45/Documents/execution/Budget_Execution_Tutorial.pptx), accessed August 21, 2018.

<sup>8</sup> See *Reprogramming Actions Requiring Congressional Approval*, FMR Volume 3, Chapter 6, Section 060401.

<sup>9</sup> See “Budget Execution: 1416 Quarterly Reports,” Under Secretary of Defense (Comptroller), accessed August 21, 2018, <https://comptroller.defense.gov/Budget-Execution/1416QrtlyRptsfy2018>.

### Types of Reprogramming Used in Defense Acquisition<sup>7</sup>

submitted by Defense Agencies in coordination with the DoD Comptroller, and they must be preapproved by all four congressional defense committees.

- *Letter Transfer* (LTRs) are used to process funding transfers that are specifically authorized in legislation. Commonly used types of letter transfer authorities include Environmental Restoration, Drug Interdiction, and Defense Working Capital Funds.
- *Above Threshold Reprogramming* (ATR) is not an official category of reprogramming as defined by the DoD Comptroller. It is, however, a widely used term within the defense acquisition community. The term ATR is commonly used as a catch-all description for reprogramming actions other than BTRs that may not be approved by any authority below the DoD Comptroller. PAs and IRs, for instance, are generally considered subcategories of ATRs.

BTRs may occur when funding does not move from one appropriations account to another. BTRs may be approved at the Military Service level, but the congressional committees must be notified. At the end of each annual quarter, the Military Services and OSD provide detailed reports to Congress of all BTR actions. These reports are made available through a website hosted by the DoD Comptroller. Because of the relatively streamlined process allowing for approval at the Military Service level, acquisition and financial management personnel are able to complete BTR actions on a much shorter timeframe.<sup>10</sup> For example, in the third quarter of FY 2018, the Air Force reported 128 BTR actions in its unclassified Research, Development, Test and Evaluation (RDT&E) accounts alone.

The congressional defense committees set the dollar thresholds that define whether a given reprogramming action is a BTR or ATR. These thresholds vary according to the type of appropriation. The four major types of appropriation for reprogramming are Procurement, RDT&E, Operations and Maintenance (O&M), and Military Personnel. Although all reprogrammings are reported to Congress, PA reprogramming actions require explicit, unanimous approval from the four congressional defense committees before the funds can be reprogrammed. In practice, the reprogramming requests are approved by the chair and ranking members of each defense committee raising the number of affirmative responses required for approval to eight. Individual members of their committees are generally notified of a reprogramming and can raise objections to the chair or ranking member.

### Discussion

The pace of reprogramming has become so slow that it routinely is not completed until late in the fiscal year. The slowness is due, in part, to the lack of a single, unified chain of control through which ATR requests may be approved. Individual ATRs can require approval from many different functional communities including comptrollers, fiscal lawyers, the formal acquisition system chain of command, and other offices. PA reprogrammings must also receive approval from all four of the congressional defense committees. Within the defense acquisition community, the need to seek approval from multiple entities at the top of the hierarchy is commonly referred to as the *mother may I* approval process.<sup>11</sup>

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<sup>10</sup> Based on Section 809 Panel staff analysis of “Budget Execution: 1416 Quarterly Reports,” Under Secretary of Defense (Comptroller), accessed September 14, 2018, <https://comptroller.defense.gov/Budget-Execution/1416QrtlyRptsfy2018>.

<sup>11</sup> DoD personnel, interviews with Section 809 Panel, throughout 2017.

### ***Complex Networks of Stakeholders***

Many different stakeholders may need to provide approvals to successfully navigate an ATR request. These stakeholders may include the following:

- Program manager (PM)
- Military Service comptroller appropriation manager
- Military Service budget manager
- Military Service budget director
- Military Service comptroller
- Military Service vice chief of staff
- Military Service secretary
- DoD Directorate for Freedom of Information and Security Review
- DoD Comptroller budget directorates
- DoD Comptroller
- Deputy Secretary of Defense
- Office of Management and Budget<sup>12</sup>

Once required signatures have been obtained, a PA reprogramming request must navigate all four congressional defense committees. Even if three committees provide a same-day response to proceed with the reprogramming, timing of the approval will depend solely on response time for the fourth committee.

### ***Budget Process Impediments to Solving Engineering Problems***

Under the current budget process, the Military Services generally begin compiling weapon system budgets more than 2 years in advance of funding availability. For example, the FY 2017 budget was formulated at the Military Service level throughout early 2015. In July 2015, detailed proposals were submitted to the OSD level and between July and November a cycle of review processes occurred. In September 2015 the Budget Estimate Submissions were presented to OSD. In November 2015, program decision memoranda were presented to OSD. The budget was finalized in December 2015 and presented from OMB to Congress as part of the President's budget request in February 2016. The appropriations committees in both the House and Senate voted to approve funding by the end of May 2016. Congress enacted the regular defense appropriations bill in May 2017 as part of the omnibus funding bill.<sup>13</sup>

Between the budget compilation and appropriations enactment, a weapon system may encounter technical difficulty that requires additional engineering development or possibly additional test and evaluation periods. A common-sense solution to such a scenario would be delaying procurement and increasing development and testing to ensure technical maturity of the weapon system. Such a solution

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<sup>12</sup> Pentagon staff, interviews with Section 809 Panel, and panel research, 2017.

<sup>13</sup> Internal DoD timeline from Brian Melton, *POM Development*, presentation at DAU, March 29, 2017, 17, accessed November 2, 2018, [https://www.dau.mil/Lists/Events/Attachments/8/03-29-2017%20LnL-POM%20Development B.%20Melton.pdf](https://www.dau.mil/Lists/Events/Attachments/8/03-29-2017%20LnL-POM%20Development%20B.%20Melton.pdf). Congressional timeline from "Appropriations for Fiscal Year 2017" committee approval records available at [www.congress.gov](http://www.congress.gov).

could also potentially avoid costly rework later in the program’s lifecycle. Current rules on reprogramming, however, make this prospect unnecessarily difficult.

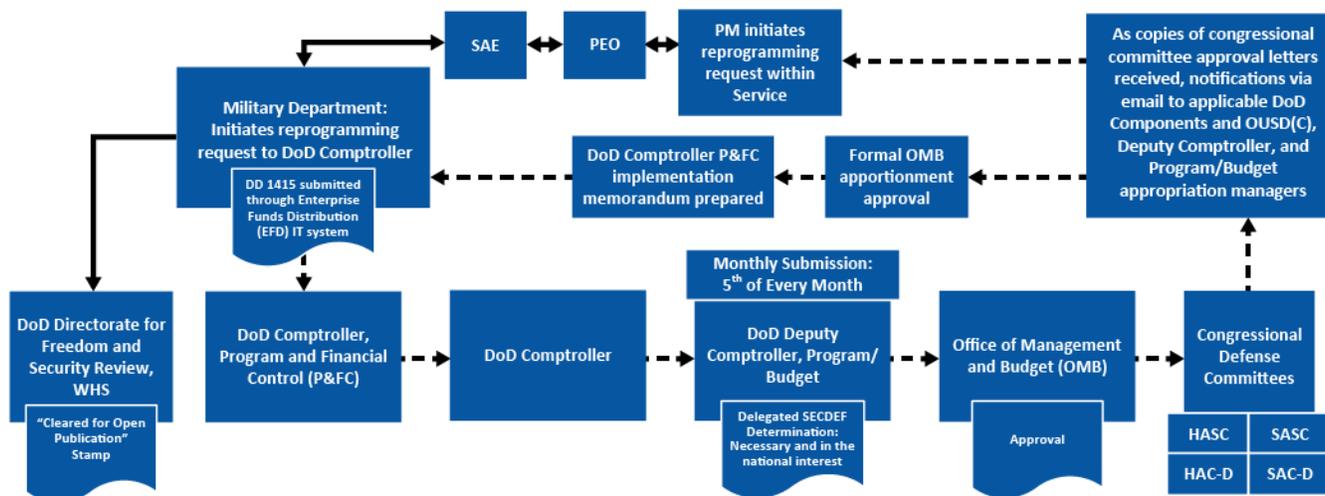
For the Military Service to move funding from production of a weapon system (Procurement funds) to development of a weapon system (RDT&E funds), it must obtain approval from the Undersecretary of Defense (Comptroller) and unanimous approval from the four congressional defense committees.<sup>14</sup> The reprogramming process can take several months before approval or disapproval is known. Lengthy delays sharply reduce the efficacy of reprogramming.

Reprogramming is intended as a source of much-needed funding flexibility due to the size and complexity of the defense budget. Since at least the 1980s, the process has been viewed as cumbersome by most of those involved.<sup>15</sup>

### Prior Approval Process

The PA reprogramming approval process reportedly takes about 75 days from the perspective of the DoD Comptroller. An average of about 75 days elapses from the point at which the DoD Comptroller begins compiling an ATR request to the point at which the request is approved by all four congressional committees. From the perspective of a PM, the process may be much longer due to the additional tiers of control that exist between DoD and the Military Services, as well as within the Military Services.<sup>16</sup> The current reprogramming process is illustrated as a process map shown in Figure 4-1.

Figure 4-1. Current PA Reprogramming Process<sup>17</sup>



<sup>14</sup> The four congressional defense committees are House Committee on Armed Services, Senate Committee on Armed Services, House Appropriations Committee (Defense Subcommittee), and Senate Appropriations Committee (Defense Subcommittee).

<sup>15</sup> GAO, *Budget Reprogramming: Department of Defense Process for Reprogramming Funds*, GAO/NSIAD-86-164BR, July 1986, 3, accessed June 30, 2017, <http://www.gao.gov/assets/80/75702.pdf>.

<sup>16</sup> Based on information from OSD Comptroller, provided to Section 809 Panel staff, March 2017.

<sup>17</sup> Based on Section 809 Panel interviews with DoD Comptroller officials and Panel staff analysis of DoD 7000.14-R Financial Management Regulation, Volume 3, Chapter 6: Reprogramming of DoD Appropriated Funds, updated September 2015.

These 75 days do not include any of the decision-making processes that must occur before the request reaches the DoD Comptroller’s office. These processes occur at the levels of the Military Service, the program executive officer (PEO), and the PM— the offices that have the most real-time awareness of the proposed acquisitions in question.

The initial process of developing a PA request within a Military Service can take a month or more. After all four committees have approved the request, funds are usually released at the PM level within a week or two. From a PM’s perspective, the total time required to complete an ATR reprogramming action “ranges from 4 to 6 months.”<sup>18</sup>

### Case Study: Reprogramming Timeline from a PM’s Perspective<sup>19</sup>

In late 2017, the Army required a PA reprogramming of funds for the procurement of electronic support equipment. Army program personnel began working on the request in December 2017, and it was sent to the congressional committees at the end of January 2018. The fourth congressional committee approved the request at the end of March 2018, and funds were released at the PM level about a week later in early April. In total, the process took roughly 4 months. One senior official involved in the approval described it as a fairly fast ATR.

### **Nondefense Reprogramming**

Other federal agencies also reprogram funding; however, the procedures they use and the approval processes from their appropriations subcommittees differ substantially from those in DoD.<sup>20</sup> The Government Accountability Office (GAO) describes DoD’s procedures for reprogramming as “detailed and sophisticated” compared to other federal agencies.<sup>21</sup>

### **Conclusions**

Reprogramming is intended as a way for DoD to adjust funding within fiscal years outside of the normal budget process. Decreased utility of reprogramming as a management and budgetary tool negatively affects the defense acquisition system.

The simplest way to mitigate these problems is to flow more reprogramming authority down to the lower levels of the acquisition system. DoD should allow for more flexibility in its definitions of appropriations lifecycle categories. In other words, definitions should be clarified to encourage program offices to focus more on whether capabilities are being delivered, and less on coordinating the timing of the funding for a system’s lifecycle phases.

Allowing portfolio managers to move funds across appropriations would add complexity to the reprogramming process and potentially require amendments to fiscal law. If portfolio managers were

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<sup>18</sup> Military Service acquisition expert, emails to Section 809 Panel, September 2018.

<sup>19</sup> Army acquisition official, emails to Section 809 Panel, September 2018.

<sup>20</sup> GAO, *Budget Reprogramming: Department of Defense Process for Reprogramming Funds*, GAO/NSIAD-86-164BR, July 1986, 4 and 24, accessed June 30, 2017, <http://www.gao.gov/assets/80/75702.pdf>.

<sup>21</sup> GAO, *Principles of Federal Appropriations Law: Chapter 2, The Legal Framework, Fourth Edition, 2016 Revision*, GAO 16-464SP, 2-47, accessed August 8, 2017, <http://www.gao.gov/assets/680/675709.pdf>.

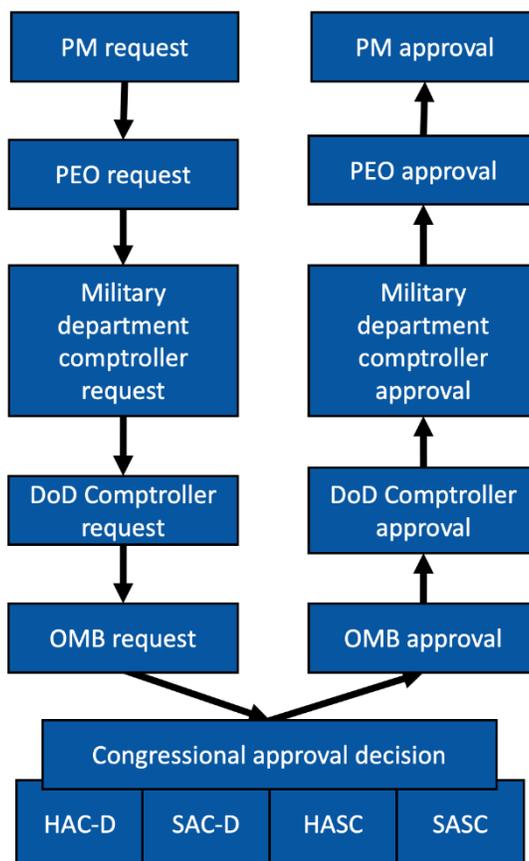
able to move funds from RDT&E accounts to Procurement accounts without PA, it would substantially reduce the congressional committees' oversight and control capabilities.

For these reasons, portfolio managers, or their relevant milestone decision authorities, should be given decision authority over BTR actions that occur within the same portfolio and appropriations account. Decision authority over BTRs crossing portfolio lines should be held by the relevant comptrollers.

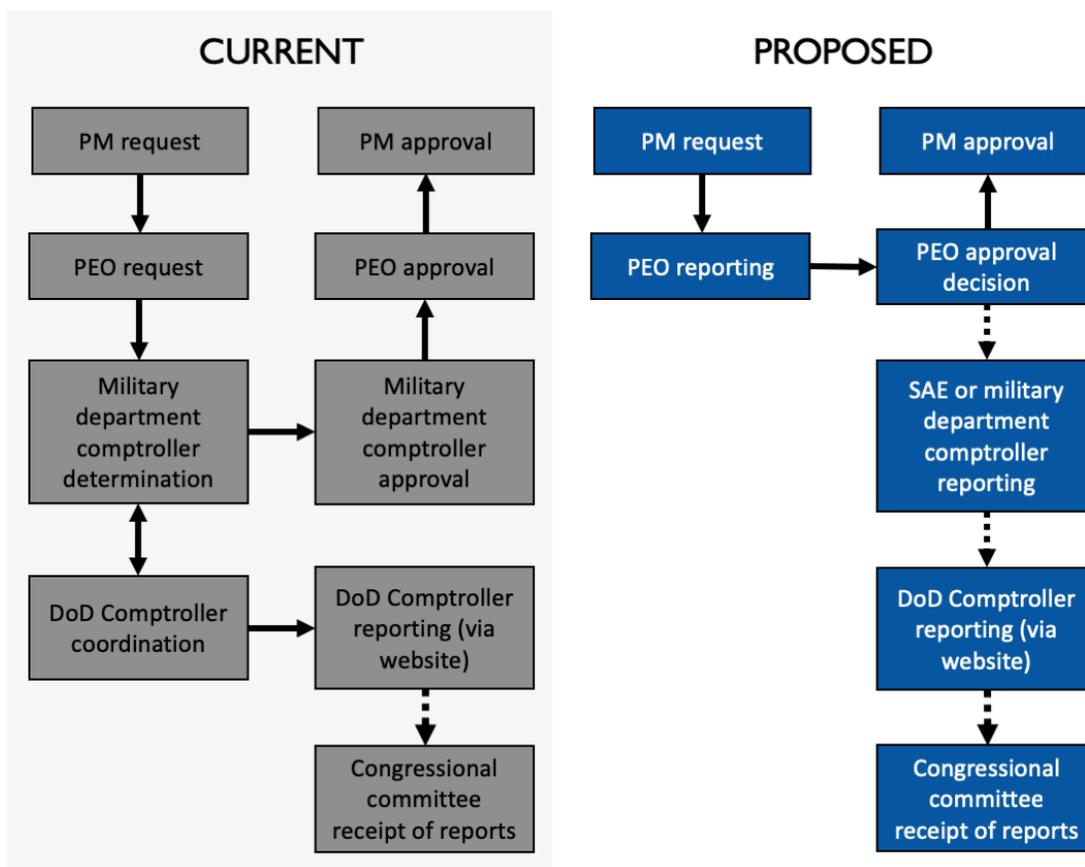
Modifying the approval processes for BTRs would allow for more timely decision making. Rules on BTR approval could be modified to allow Military Service PEOs to make trades within their portfolios, rather than waiting on the Military Service leadership for approval. This improvement could be accompanied by changes in the existing BTR thresholds, which would further flow down authority and allow PEOs to make decisions concerning a broader set of transactions.

A graphical comparison of the current and proposed decision-making structure for the PA and BTR processes is presented in Figure 4-2 and Figure 4-3.

**Figure 4-2. Current Decision Authority Flowchart for PA Reprogramming Actions**



**Figure 4-3. Current and Proposed Decision Authority Flowchart for BTR**



Placing BTR decision authority in the hands of portfolio managers would require a certain degree of trust on the part of OSD, the Military Services and Defense Agencies, and the congressional committees. Stakeholders would also need to show trust to modify Financial Management Regulation (FMR) definitions to allow for greater flexibility when determining which appropriation must be used to address a given requirement. To build this trust, portfolio managers would be required to comply with Service and Defense Agency comptroller instructions.

### Implementation

Recommendations on reprogramming decision authority in this section refer to portfolio acquisition executives (PAEs). If the recommendations described in Section 2 are adopted, PAEs would be a new role in DoD with increased decision authority over requirements development, budgeting, and program execution. Should PAEs not be established within DoD, an alternative role in which to locate reprogramming decision authority would be the currently existing PEOs.

### Legislative Branch

- Obtain concurrence from the congressional defense committees to modify the BTR process to allow for more timely decision making by placing decision authority in the hands of portfolio managers. This change would primarily fall within the jurisdiction of the appropriations committees. It would likely be implemented via the conference report joint explanatory statement of a regular defense appropriations law.

### ***Executive Branch***

- Flow down BTR authority to portfolio executives.
  - Modify the FMR to allow for portfolio managers (the portfolio acquisition executive, should recommendations in Section 2 be adopted) to make decisions on approval of BTR actions, with the concurrence of the relevant Service comptroller and DoD Comptroller, for cases in which a viable funding offset has been identified within the same portfolio.
  - As is currently the case, continue to report all BTR actions to Congress quarterly via DoD Comptroller budget execution documentation.
- Facilitate the ability of program and portfolio managers to obligate funding by clarifying appropriations account definitions in the FMR.
  - Issue clear guidance on FMR interpretation to maximize the extent to which program and portfolio managers can use available funding for approved requirements. Provide guidance on what types of funding they should request in advance of budget requests and what flexibilities are available to them.
- Reduce the timetables involved in BTR requests.
  - In cases where a viable funding offset has been identified within the same portfolio, the process should take no longer than a few weeks from time of request to time of approval or rejection.

### ***Implications for Other Agencies***

- There are no cross-agency implications for this recommendation.