

## Recommendation 48: Increase to 50 percent the *lesser of 20 percent* restriction that creates artificially low reprogramming thresholds for smaller programs.

### Problem

The large number of budget line items in budget documentation means that many have only a few million dollars in annually allotted funding. These low dollar amounts, combined with language currently in the FMR, mean that reprogramming thresholds for smaller programs are artificially low. These low thresholds reduce flexibility and limit the ability of smaller programs to respond to needs as they arise.

### Background

When determining the threshold applicable to a potential reprogramming action, DoD must abide by percentage limitations in addition to dollar thresholds. Regardless of the dollar amount, reprogramming requests moving more than 20 percent of a line item within the RDT&E or Procurement accounts must receive the same approval from Congress.<sup>1</sup> This approach is sometimes colloquially referred to as the *lesser of 20 percent* rule.

If a line-item dollar total falls below five times the relevant BTR threshold (\$100 million for Procurement or \$50 million for RDT&E), it is effectively limited by the *lesser of 20 percent* rule rather than the normal dollar thresholds. DoD has hundreds of research and development (R&D) programs and procurement programs that are limited by the *lesser of 20 percent* rule and not by the dollar amount threshold.

### Financial Management Regulation

The FMR states the following requirement for congressional approval of a reprogramming for procurement or RDT&E:

*A cumulative increase of [\$20 million for Procurement / \$10 million for RDT&E] or more or 20 percent of the program base amount ....whichever is less.<sup>2</sup>*

The percentage limits and *whichever is less* clause were added following the enactment of the FY 2005 defense appropriations act and its accompanying conference report explanatory statement.<sup>3</sup>

### Discussion

The standard reprogramming thresholds do not, in fact, apply to the majority of line items in DoD's acquisition budget. Line items with smaller dollar values are bounded not by the threshold dollar limits, but rather by an FMR restriction on moving more than 20 percent of funds into or out of a budget line item without PA.

---

<sup>1</sup> Department of Defense, *Financial Management Regulation, Volume 3: "Budget Execution – Availability and Use of Budgetary Resources*, Chapter 6: Reprogramming of DOD Appropriated Funds," 6-9, accessed June 30, 2017, [http://comptroller.defense.gov/Portals/45/documents/fmr/Volume\\_03.pdf](http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_03.pdf).

<sup>2</sup> Ibid.

<sup>3</sup> Department of Defense Appropriations Act, 2005, Pub. L. No. 108-287 (2004). Also see conference report joint explanatory statement for H.R. 4613 in the 108th Congress (Report 108-622), 68.

There are about 2,000 funded line items split about evenly between DoD’s RDT&E and Procurement accounts. About 60 percent of the RDT&E line items are for less than \$50 million, and about 70 percent of Procurement line items are for less than \$100 million (see Table 4-2).<sup>4</sup> Providing relief in this area by increasing or removing the percentage cap would greatly assist DoD in flexibly managing its budget during the fiscal year.

**Table 4-2. Number of FY 2019 Budget Request Line Items that Would Face Artificially Low BTR Thresholds Due to the Lesser of 20 Percent Rule<sup>5</sup>**

	RDT&E (\$10M threshold)	Procurement (\$20M threshold)
Positively funded line items	920	920
Line items below five times the relevant BTR threshold	576	655
Percentage of line items for which <i>lesser of 20 percent</i> rule determines BTR thresholds	63%	71%

***Congressional Reaction Against Certain Funding Reductions***

According to the GAO, in 2003 DoD used the BTR process to reduce funding in hundreds of RDT&E programs to pay for higher priority funding needs.<sup>6</sup> DoD submitted reprogramming reports to Congress months after they would have been useful to the congressional defense committees.

This spotty reporting of funding increases occurred in the early years of the conflicts in Iraq and Afghanistan. The top two programs for which the Air Force used BTRs to increase funding in FY 2003 were airlift squadrons and aerial refueling. The top program for which the Army used BTRs to increase funding was combat vehicle and automotive advanced technology.<sup>7</sup>

GAO also found that reports to Congress could not be supported by the military services’ financial systems. In 2003 more than 30 percent of the BTR actions sent to Congress either differed or were otherwise not supported by Army financial systems.<sup>8</sup>

As of 2018, the need to reallocate large amounts of funding to specific operational needs such as airlift squadrons, aerial refueling, and armored vehicles has become less urgent. DoD has also adopted new financial systems and is improving internal controls as it works toward financial statement auditability. The BTR reports to Congress are now submitted each fiscal quarter in a timely manner and in uniform spreadsheet formats. The problems that led to the *lesser of 20 percent* rule have been addressed through improved business systems and internal controls.

<sup>4</sup> 20 percent of \$50 million is the \$10 million BTR threshold for RDT&E; therefore the majority of RDT&E line items are governed by the 20 percent threshold and not the \$10 million dollar threshold. The same is true of Procurement line items with respect to the \$20 million BTR threshold. Based on Section 809 Panel analysis of FY 2019 budget request R-1 data.

<sup>5</sup> Based on Section 809 Panel analysis of R-1 and P-1 displays in FY 2019 DoD Budget Request from DoD Comptroller website, accessed August 3, 2018, <https://comptroller.defense.gov/Budget-Materials>.

<sup>6</sup> GAO, *Defense Acquisitions: Better Information Could Improve Visibility over Adjustments to DOD’s Research and Development Funds*, GAO-04-944, September 2004, accessed August 29, 2017, <http://www.gao.gov/assets/250/244205.pdf>.

<sup>7</sup> Ibid, 37-38.

<sup>8</sup> Ibid, 11.

## Conclusions

The *lesser of 20 percent* rule materialized as a reaction against DoD's funding of large-dollar line items by reducing funds in many small-dollar line items. These reprogramming practices occurred in the early stages of the Iraq and Afghanistan conflicts, and the circumstances that led to them no longer exist. The *lesser of 20 percent* rule may have been a necessary control when initially added to DoD regulations. The low percentage threshold, however, is no longer necessary to allow for congressional committees to exercise proper oversight over small-dollar defense acquisition programs.

The defense committees and DoD should reach an agreement to allow BTRs of up to 50 percent of budget line item totals. Doing this would have the effect of loosening the current 20 percent constraint on smaller programs, which leads to artificially low dollar thresholds.

BTRs within appropriations accounts and within portfolios would be within the jurisdiction of portfolio managers. BTRs within appropriations accounts but crossing portfolios would be in the jurisdiction of the Military Services. These BTRs would in all cases require notification of resource sponsors, military departments, the DoD Comptroller, and Congress.<sup>9</sup>

## Implementation

### **Legislative Branch**

- Increase the percentage thresholds associated with the acquisition appropriations account categories in the reprogramming section of the FMR. This action would allow for more flexible movement of funds into or out of small dollar RDT&E and Procurement programs. 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**

- After negotiation with the congressional defense committees, the DoD Comptroller should raise the thresholds associated with the "whichever is less" clauses within the Procurement and RDT&E limitations on reprogramming in the FMR.
  - Increase 20 percent to 50 percent in the RDT&E and Procurement clauses of Volume 3, Chapter 6 of the FMR. This action would increase the amount of reprogramming flexibility for small-dollar programs, but not permit DoD to zero out budget line items.

### **Implications for Other Agencies**

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

---

<sup>9</sup> This requirement is already being met via the quarterly publication of departmentwide BTR data on the DoD Comptroller website.