United States Government Accountability Office

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Report to the Ranking Member, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

January 2008

SUPPLEMENTAL APPROPRIATIONS

Opportunities Exist to Increase Transparency and Provide Additional Controls

Accountability * Integrity * Reliability

GAO-08-314

GAO Highlights

Highlights of GAO-08-314, a report to the Ranking Member, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

Supplemental appropriations laws (supplementals) are a tool for policymakers to address needs that arise after the fiscal year has begun. Supplementals provide important and necessary flexibility but some have questioned whether supplementals are used just to meet the needs of unforeseen events or whether they also include funding for activities that could be covered in regular appropriations acts. GAO was asked to evaluate (1) trends in supplemental appropriations enacted from fiscal years 1997–2006 and (2) steps that could be taken to increase transparency and establish additional controls over emergency supplemental appropriations. Also, GAO consulted with budget experts to discuss options for reform.

What GAO Recommends

To increase transparency and provide additional controls over the use of supplementals, Congress should consider establishing procedures and mechanisms to ensure that: (1) emergency-designated provisions meet established criteria, (2) emergency supplementals do not become the vehicle for items that do not require the rapid enactment demanded to respond to an emergency event, (3) supplementals are not used where the regular budget and appropriations process should suffice, and (4) a balance exists between flexibility and oversight with regard to the time availability of funds.

To view the full product, including the scope and methodology, click on GAO-08-314. For more information, contact Susan J. Irving, 202-512-9142, irvings@gao.gov.

January 2008

SUPPLEMENTAL APPROPRIATIONS

Opportunities Exist to Increase Transparency and Provide Additional Controls

What GAO Found

The use of supplementals has increased over the last several years, largely as a result of an increase in Department of Defense (DOD) funding and the use of supplementals to provide that funding for activities such as the Global War on Terrorism (GWOT). Over the 10-year period from fiscal year 1997 through fiscal year 2006, supplemental appropriations provided about $612 billion ($557 billion net of rescissions) in new gross budget authority, a five-fold increase over the previous 10-year period. Ninety-five percent of the total supplemental funds were appropriated to 11 departments, with DOD receiving nearly 60 percent of the total. Further, an analysis of the type of emergency prompting the need for the supplemental shows that defense-related emergencies received over 50 percent of the emergency-designated funds. In comparison, 28 percent was to respond to natural or economic disasters and 16 percent went to antiterror, security, and post-9/11 activities. International humanitarian assistance, pandemic influenza, and other activities comprised 3 percent of the total emergency-designated supplemental funds provided over the 10-year period.

The majority of the supplemental funds appropriated over this 10-year period were designated as emergency. Emergency-designated funds do not have to compete for scarce resources that are constrained by budget controls. Although Congress has specified criteria for the emergency designation in Budget Resolutions, these criteria are not self-executing and there are limited screening and enforcement processes.

The increased use of supplementals raises questions about the current incentives and controls surrounding their use. GAO reviewed emergency-designated supplementals and found provisions that were not clearly consistent with emergency designation criteria or did not contain sufficient information for us to make a determination. Also, GAO identified provisions that raise questions about whether supplemental appropriations bills can become vehicles for funding some activities that could be covered in the regular budget and appropriations process. For example, we found $710 million in emergency-designated provisions that appeared to be unrelated to the event/issue(s) that may have prompted the supplemental. In addition, we found that 35 accounts received supplemental appropriations in at least 6 of the 10 years studied, totaling over $375 billion. Twenty-one of these accounts were in DOD and the gross budget authority granted to these 21 accounts ($258 billion) comprised over 40 percent of the total gross budget authority in the supplemental appropriations enacted over the studied period. Finally, over one-third of the supplemental appropriations enacted were available until expended ("no-year" funds). Such no-year funds provide agencies with important flexibility but do not prompt the annual or periodic Congressional oversight typical of funds that are available for a fixed amount of time. If the use of supplemental appropriations is to be limited to addressing unforeseen needs that arise suddenly after the start of a fiscal year, additional controls and increased transparency are needed. Budget experts GAO consulted generally agreed reform was needed but differed on how best to achieve this.

Contents

Abbreviation List

BEA	Budget Enforcement Act
CBO	Congressional Budget Office
CR	Continuing Resolution
CRS	Congressional Research Service
DHS	Department of Homeland Security
DOD	Department of Defense
DOI	Department of the Interior
DOT	Department of Transportation
Econ. Asst.	Bilateral Economic Assistance
EOP	Executive Office of the President
FEMA	Federal Emergency Management Agency
GWOT	Global War on Terrorism
HHS	Department of Health and Human Services
HUD	Housing and Urban Development
OMB	Office of Management and Budget
PAYGO	pay-as-you-go
SAFE	Securing America's Future Economy
SOS	Stop Over-Spending
State	Department of State
USDA	Department of Agriculture
VA	Department of Veterans Affairs

United States Government Accountability Office
Washington, DC 20548

January 31, 2008

The Honorable George V. Voinovich
Ranking Member, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate

Dear Senator Voinovich:

Experience shows that the federal government will need to respond to some level of emergency during a fiscal year. The question is not whether there will be emergency spending, but rather at what point in the budget process these funds will be requested and provided. Although some funding for emergencies is provided through the regular appropriations process, supplemental appropriations laws (supplementals) are a tool available to policymakers to address needs that arise after annual appropriations have been enacted. Just as not all emergency funding is provided through supplementals, not all supplementals are for emergencies. Within a single supplemental appropriations law, some funds may be designated as emergency and others may not.

Supplementals provide important and necessary flexibility, but some have questioned whether supplementals are used just to meet the needs of unforeseen events or whether they also include funding for activities that could be covered in regular appropriations acts.[1] A Congressional Research Service (CRS) report concluded that from the expiration of the Budget Enforcement Act of 1990 (BEA) at the end of the fiscal year 2002 through fiscal year 2005, supplementals net of rescissions[2] increased the budget deficit by almost 25 percent per year.[3] Some experts have also suggested that the increased use of supplementals is symptomatic of

[1]Congressional concern over the use of supplementals is illustrated by the number of proposals to address their use over the years. See for example H.R. 853, 106th Cong. (1999), the Comprehensive Budget Process Reform Act of 1999; S. 3521, 109th Cong. (2006), the Stop Over-Spending (S.O.S.) Act of 2006; and S.1279, 110th Cong. (2007), the Securing America's Future Economy Budget Process Reform Act.

[2]A rescission is legislation enacted by Congress that cancels the availability of budget authority previously enacted before the authority would otherwise expire.

[3]Congressional Research Service, *Supplemental Appropriations: Trends and Budgetary Impacts Since 1981* (Washington, D.C.: Nov. 2, 2005).

breakdowns in the regular, annual budget and appropriations process resulting in greater use of supplementals to support federal programs on an ongoing basis. Both because of the nation's long-term fiscal challenge and the need for reexamination of the government's activities, it is increasingly important to consider as much of the cost of government as possible through the regular budget and appropriations process, which allows for fuller debate about the trade-offs between competing claims.

In light of the need for greater budget transparency and improvements in the budget process overall, you asked that we examine the use of supplemental appropriations. We were asked to evaluate (1) trends in supplemental appropriations enacted from fiscal years 1997–2006 and (2) steps that could be taken to increase transparency and establish additional controls over emergency supplemental appropriations.

To address the first objective, we developed a database that contained information from the 25 supplemental appropriations laws that were enacted from fiscal years 1997–2006 and information from the Congressional Budget Office (CBO) scoring reports that accompanied these laws. The database contained both general information about the laws—such as the public law number and the date of enactment—and information about individual provisions within the laws such as the amount of new budget authority granted and the department/agency and account receiving the funds. For emergency-designated provisions, we used the provision language and/or other information in the law to determine what type of emergency or emergencies may have prompted the funding provision. The categories we developed for this analysis were as follows: Antiterrorism and Security, Defense-Related, International Humanitarian Assistance, Natural and/or Economic Disasters (Domestic), Pandemic Influenza, September 11, 2001, Other, and Not Specified. In limited cases, these categorizations required some professional judgment on the part of the analyst.

To address the second objective, we reviewed relevant literature to identify the rules and guidance that were in place in Congress to govern the use of supplemental appropriations from fiscal years 1997–2006. Then, we conducted a content analysis by having two GAO analysts independently review the information on each emergency-designated provision in the database to analyze consistency with Congressionally specified emergency-designation criteria and determine whether the provision was related to emergency event(s) that may have prompted the supplemental. For any provision where the two did not come to the same conclusion, a third GAO analyst reviewed the information and resolved the discrepancy. We also drew on our analysis of the database and reviewed existing recommendations and proposals from GAO, CBO, CRS, and other sources to develop options for addressing the issues we identified. We then sought opinions from recognized experts in budgeting practices at the federal level from organizations, such as the Center on Budget and Policy Priorities, Center for American Progress, Committee for a Responsible Federal Budget, Committee for Economic Development, and CBO, as well as knowledgeable former Congressional staff, on these options. See appendix I for more details on our scope and methodology.

We conducted this performance audit from November 2006 to January 2008 in accordance with generally accepted government auditing standards.

Results in Brief

The use of supplementals has increased over the last several years, largely as a result of an increase in Department of Defense (DOD) funding and the use of supplementals to provide that funding for activities such as the Global War on Terrorism (GWOT). Over the 10-year period from fiscal year 1997 through fiscal year 2006, supplemental appropriations provided about $612 billion ($557 billion net of rescissions) in new gross budget authority, a five-fold increase over the previous 10-year period. The majority of the funds were designated as emergency. Ninety-five percent of the total supplemental funds were appropriated to 11 departments, with DOD receiving nearly 60 percent of the total. Further, an analysis of the type of emergency prompting the need for the supplemental shows that defense-related emergencies received over 50 percent of the emergency-designated funds.[4] In comparison, 28 percent was to respond to natural or economic disasters and 16 percent went to antiterror, security, and post-9/11 activities. International humanitarian assistance, pandemic influenza, and other activities comprised 3 percent of the total emergency-designated supplemental funds provided over the 10-year period.

The increased use of supplementals raises questions about the current incentives and controls surrounding their use. Our analysis indicates that there are a number of issues to be addressed if the use of supplementals is to be limited to needs identified after the beginning of the fiscal year. Although Congress has specified criteria for the emergency designation in

[4]In some cases, DOD funds did not fall into the defense-related category, typically when the funds were for activities related to natural disasters.

Budget Resolutions, these criteria are not self-executing and there are limited screening and enforcement processes. In our review of emergency-designated supplementals, we found provisions that were not clearly consistent with these criteria as well as provisions that did not contain sufficient information for us to make a determination. These appropriations totaled over $31 billion—or about 5 percent of the supplemental appropriations in the 10-year period. We also found that provisions in supplemental appropriations were not always related to the emergency events that may have prompted the supplemental, which raises questions about the potential use of supplementals to fund items that could have been included in the regular budget and appropriations process. Specifically, we found over $11 billion in provisions that were not emergency designated in laws that had provisions with emergency designations. We also found $710 million in emergency-designated provisions that appeared to be unrelated to the event/issue(s) that may have prompted the supplemental and over $12 billion in provisions in which the relationship to the emergency event/issue(s) that may have prompted the supplemental was unclear. In addition, we saw a pattern that indicated that some programs are regularly funded through supplementals—35 accounts received supplemental appropriations in at least 6 out of the 10 years we studied. Finally, we found that over one-third of the supplemental appropriations enacted were available until expended (referred to as "no-year" funds). Such funds provide agencies with great flexibility but they do not prompt the annual or periodic Congressional review and reconsideration typical of funds that are available for a limited amount of time.

The regular budget and appropriations process provides for greater legislative deliberation, procedural hurdles, and funding trade-offs which may be bypassed through the use of supplementals.[5] If appropriations committee oversight and procedural controls over the enactment of supplementals are less than that applied to the regular process, there may be an incentive to expand the use of supplementals. If the use of supplemental appropriations is to be limited to addressing unforeseen needs that arise suddenly after annual appropriations have been enacted, additional controls and increased transparency are needed. To increase transparency and provide additional controls over the use of supplementals, Congress should consider establishing procedures and

[5]Of course Congress can use any vehicle—a regular, emergency, supplemental, or omnibus appropriation act—to enact appropriations, consistent with its own internal rules.

mechanisms to ensure that: (1) emergency-designated provisions meet established criteria, (2) emergency supplementals do not become the vehicle for items that do not require the rapid enactment demanded to respond to an emergency event, (3) supplementals are not used where the regular budget and appropriations process should suffice, and (4) a balance exists between flexibility and oversight with regard to the time availability of funds.

We consulted individuals with expertise in the budget and appropriations process and reform proposals to obtain opinions on the options that led to the matters for Congressional consideration included in this report. These experts generally agreed that reform was needed but differed on how best to achieve this. Most of the experts suggested that the increased use of supplementals is symptomatic of breakdowns in the regular process—which has resulted in reliance on supplementals as a way to provide funding for federal activities. Given this, they expressed doubts about the likelihood of any reform unless a way was found to return to some "regular order" for the budget and appropriations process. In general they expressed a desire to reduce the complexity of the process and so preferred options that did not add significant procedural hurdles. Most agreed that some limitations on the time availability of funds—i.e., a turn away from "no-year" funds—made sense.

Background

Supplementals provide additional budget authority for government activities for the fiscal year already in progress,[6] over and above any funding provided in regular appropriations laws, continuing resolutions, or omnibus appropriations.[7] The President may also submit to Congress

[6]Budget authority authorizes an agency to enter into financial obligations that will result in outlays of federal government funds. Besides providing additional budget authority, supplemental appropriations acts can also rescind budget authority from previous appropriations and/or transfer unused budget authority from one account to another. In this context, a transfer is equivalent to a rescission from one account and a supplemental appropriation to another account. Transfers do not affect the budget authority total, but they affect outlay totals when the programs involved in the transfer spend out at different rates.

[7]When action on regular appropriation bills is not completed before the beginning of the fiscal year, a continuing resolution (often referred to as a "CR") may be enacted to provide funding for the affected agencies for the full year, up to a specified date, or until their regular appropriations are enacted. An "omnibus" is an occasional appropriation measure that combines several regular, annual appropriations bills into one. From fiscal year 1997 through fiscal year 2006, the budget process included continuing resolutions and/or omnibus appropriations in all 10 years.

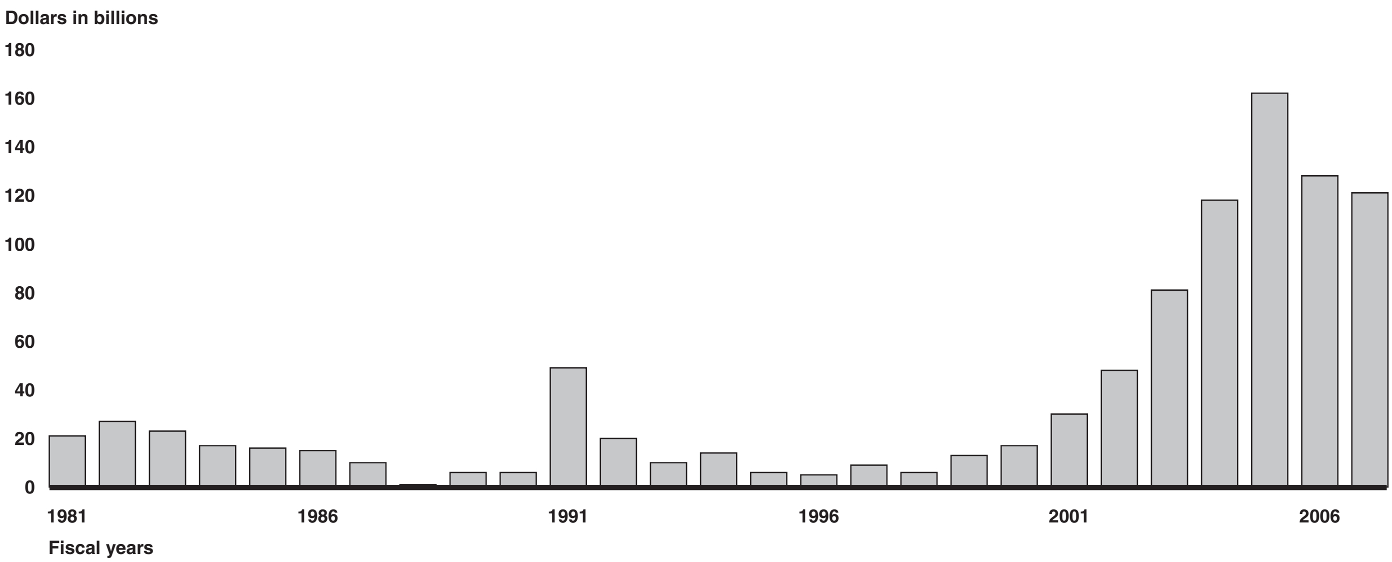
proposed supplemental appropriations the President decides are necessary because of laws enacted after the submission of the budget or that are in the public interest.[8] Within a single supplemental appropriations law, some funds may be designated as emergency and others may not. Emergency-designated funds do not have to compete for scarce resources that are constrained by budget controls.

Figure 1 shows the amount of supplemental gross budget authority (i.e., before rescissions)[9] from fiscal year 1981 through fiscal year 2007. Although our review focused on supplementals enacted from fiscal year 1997 through fiscal year 2006, we included data from fiscal year 1981 through fiscal year 2007 in this figure to provide context.

[8] 31 U.S.C. § 1107.

[9] Under a long-standing budget scorekeeping rule, rescissions are netted against budget authority to arrive at the budget totals. It can be argued, however, that budget authority before rescissions is a more meaningful measure of the effect of supplemental bills on the obligational authority provided to agencies. According to 1990 and 2001 CBO analyses for 1981-1989 and 1992-2000, much of the rescinded funds over this period were unlikely to have been spent if they had remained available, or were scheduled to lapse in the near future.

Figure 1: Supplemental Gross Budget Authority from Fiscal Years 1981 through 2007



Source: GAO presentation of CBO data.

Note: CBO totals shown here differ from those generated by GAO analysis. When scoring appropriations bills, CBO rounds all appropriations to the nearest million. GAO analysis did not round appropriations amounts.

From fiscal year 1981 through fiscal year 1999, fiscal year 1991's nearly $50 billion stands out even in the absence of a consistent pattern. Most of the $48.6 billion in supplemental appropriations provided that year was for the Gulf War. From fiscal year 2000 through fiscal year 2005, however, the amount grew steadily to a peak of over $160 billion. The amount in 2006 declined to just over $128 billion.[10] For fiscal year 2007, just over $120 billion in supplemental gross budget authority was appropriated.

As we previously noted, not all emergency funding is provided through supplementals. CBO has noted that until 1999 virtually all emergency-

[10]Since this study focuses on supplementals, it does not include any emergency-designated funding included in regular appropriations laws. For example, the fiscal year 2006 and 2007 data do not include the $50 billion and $70 billion respectively in so-called "bridge" funding that was provided to DOD through a separate title in its regular appropriations. These funds were intended to fund operations related to GWOT from the beginning of the fiscal year until a supplemental could be enacted and were designated as emergency. We did include the $26.8 billion in "bridge" funding for fiscal year 2005 that was provided as supplemental funding in fiscal year 2004.

designated funds were provided as emergency-designated supplemental budget authority in response to natural disasters or international crises. But in the 1999 omnibus appropriation act more than $21 billion in appropriations were designated as emergencies. That number rose to $31 billion in 2000. This change illustrates two points of significance to this study: (1) a change in the way the emergency designation is used and (2) the fact that emergency funding can be provided through legislative acts other than supplementals. Although this report focuses on supplementals and so does not look at emergency-designated funds in regular appropriations, their existence emphasizes the fact that the decision on whether to use supplementals and the decisions regarding the emergency designation are separate.

From fiscal years 1991 through 2002, appropriations were governed by the provisions of the Budget Enforcement Act of 1990 (BEA),[11] which Congress and the President adopted in November 1990 as part of a multiyear budget agreement. The BEA established statutory limits on discretionary spending coupled with a "pay-as-you-go" (PAYGO) requirement designed to ensure that new legislation affecting mandatory spending or tax revenues did not increase the deficit. The discretionary spending limits applied to both budget authority and outlays. If the discretionary appropriations enacted for a given year caused any of the caps to be exceeded, the President had to order a sequestration of funds in the category of spending in which the breach occurred.[12]

The BEA did recognize that there would be emergencies for which Congress and the President would want to provide funds over and above the amounts envisioned in the discretionary spending caps and provided a kind of "safety valve." If a provision was designated as "emergency" by both the President and Congress, the discretionary spending caps were raised for both the budget authority and outlays associated with the emergency spending (this is sometimes referred to as being exempted

[11]BEA amended the Balanced Budget and Emergency Deficit Control Act of 1985, sometimes referred to as the Gramm-Rudman-Hollings Act. In this report, the amended Balanced Budget and Emergency Deficit Control Act of 1985 is referred to as the Budget Enforcement Act, or BEA.

[12]Under BEA provisions, new budget authority, unobligated balances, direct spending authority, and obligation limitations were "sequestrable" resources; that is, they were subject to reduction or cancellation under a presidential sequester order.

from the caps).[13] Thus, supplemental appropriations designated as emergency spending did not cause a breach of the caps, did not trigger a sequestration, and were not required to be offset with a rescission.[14] In addition, BEA treated all incremental costs associated with Operation Desert Shield as if they were designated emergency without requiring further action by Congress and the President. Under the BEA, nonemergency supplementals were subject to the discretionary spending caps. If a nonemergency supplemental under consideration by either the House or the Senate would have exceeded the amount allocated to the applicable budget function under the budget resolution, the supplemental was subject to a point of order.[15] In practice, however, such points of order generally were not raised. In some cases, supplemental appropriations have been protected with waivers of the points of order in both the House and the Senate.

Although most budget enforcement mechanisms expired in fiscal year 2002, Congress generally has included overall limits on discretionary spending and exemptions for emergency-designated funding in its Budget Resolutions.[16] In addition, the Budget Resolutions for fiscal years 2005 and 2006 provided exemptions for all appropriations related to overseas contingency operations for the Global War on Terrorism.

[13]In addition to the exemptions for emergency-designated provisions, all of BEA could be suspended in the event of war or low economic growth.

[14]Although at times the President and Congress were able to offset some emergency supplementals with rescissions, the caps are raised by the full amount of the spending designated as "emergency." Thus, in effect the rescissions free up funds under the caps.

[15]A point of order is an objection raised on the House or Senate floor or in committee to an action being taken as contrary to that body's rules. (Under the Constitution, "Each House [of Congress] may determine the Rules of its Proceedings." U.S. Const., Art. 1, § 5, cl. 2.) Points of order are limited to the pre-enactment stage. If a point of order is not raised during consideration of a bill, or is raised and not sustained, the provision, if enacted, is no less valid. In other words, a rule or statute subjecting a given provision to a point of order has no effect or application once the legislation or appropriation has been enacted.

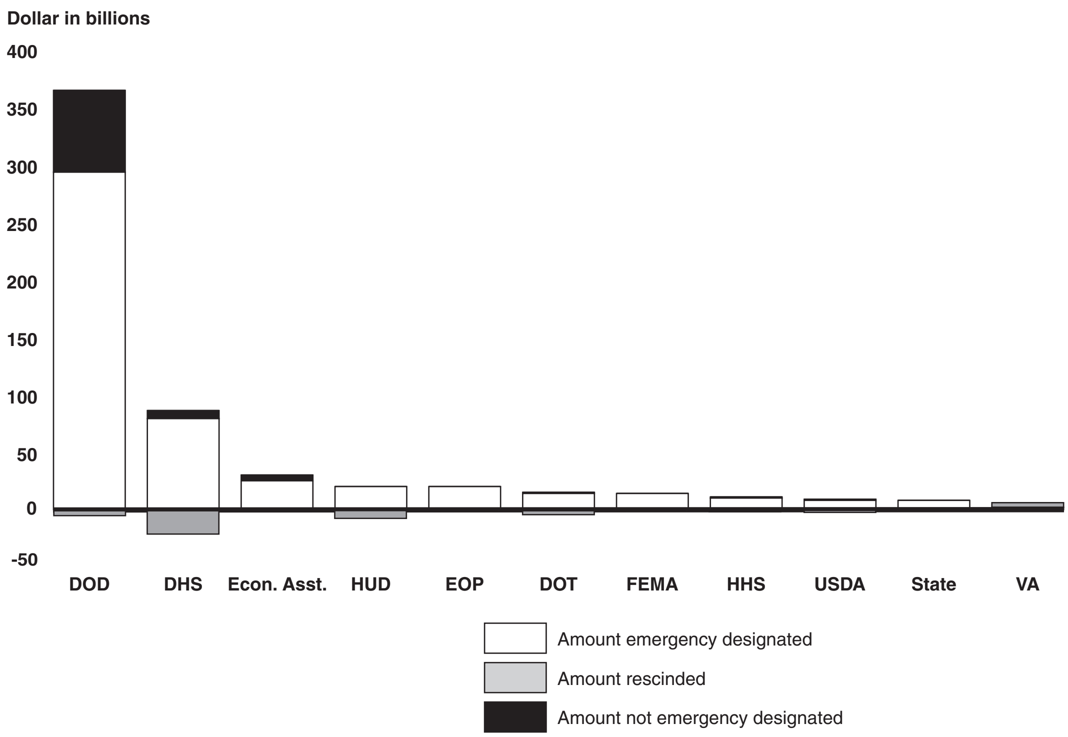
[16]A concurrent resolution is adopted by both houses of Congress as part of the annual budget and appropriations process, setting forth an overall budget plan for Congress against which individual appropriations bills, other appropriations, and revenue measures are to be evaluated.

Increased Use of Supplementals is Largely Attributable to Defense Funding

As figure 1 showed, the use of supplementals has increased over the last several years. Over the 10-year period from fiscal year 1997 through fiscal year 2006, 25 supplemental appropriations laws were enacted providing about $612 billion ($557 billion net of rescissions) in new gross budget authority. In contrast, during the 10 years immediately preceding this period, $126 billion in gross budget authority ($86 billion provided net of rescissions) was provided in 39 supplemental appropriations acts. The majority of the supplemental funds provided from fiscal years 1997 through 2006 received an emergency designation.

Ninety-five percent of the total supplemental funds were appropriated to 11 departments, with the DOD receiving nearly 60 percent of the total (see fig. 2 for the distribution). In comparison, just over 14 percent of the total was appropriated to the Department of Homeland Security (DHS), with other departments receiving 5 percent or less of the total supplemental funds. Factoring in rescissions during the same time period shows that DOD received the most supplemental funds on both a gross and net basis. Ten percent of the total funds rescinded through supplementals over this 10-year period were rescinded from DOD. In contrast, 43 percent of the funds rescinded through supplementals were rescinded from DHS. When the emergency-designated provisions were analyzed by the type of emergency prompting the need for the supplemental, not surprisingly, defense-related emergencies received over 50 percent of the funds.

Figure 2: Departmental Distribution of 95 Percent of the Supplemental Budget Authority and Rescissions from Fiscal Years 1997 through 2006

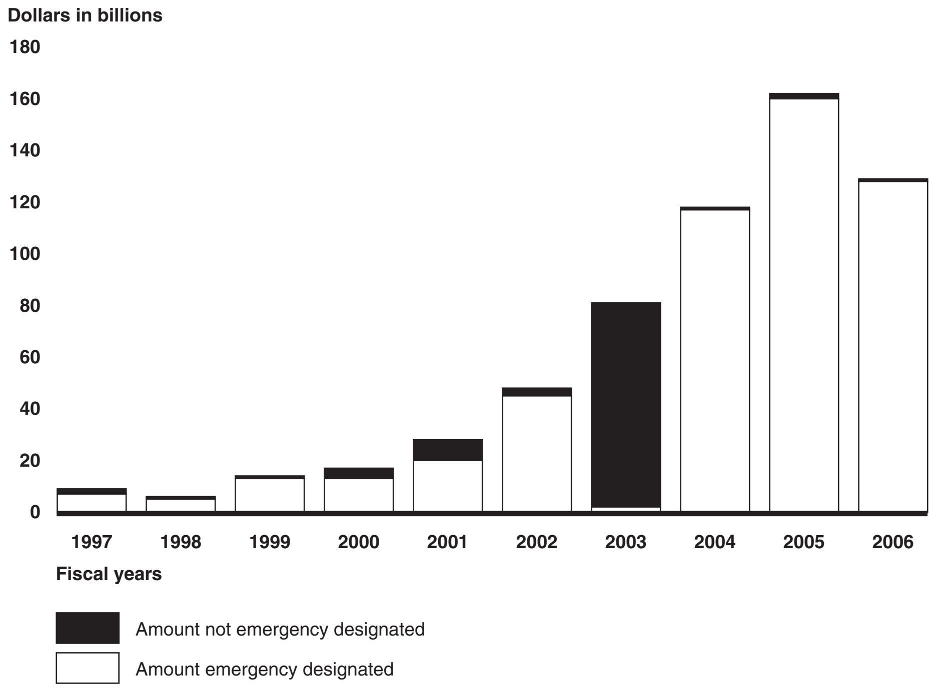


Source: GAO analysis of supplemental appropriations laws from fiscal years 1997-2006.

Notes: Data do not include governmentwide funds or across-the-board rescissions. DHS was established in March 2003 and subsumed 22 entities from other departments and agencies, such as the Federal Emergency Management Agency (FEMA).

As figure 3 shows, during fiscal years 1997–2006 the vast majority of supplemental appropriations were emergency designated— over $511 billion of the $612 billion in gross supplemental budget authority. Fiscal year 2003 stands out with a large amount of funds that were not emergency designated, primarily targeted to war-related efforts. The lack of emergency designation for these funds could have been the result of the close timing between the supplemental request and the introduction of the fiscal year 2004 Budget Resolution. The Budget Resolution was written to allow for the war-related supplemental. Supplemental funding for similar activities was emergency designated in later years. Although funds that are not emergency designated do not receive any special budgetary treatment, they may receive less scrutiny than appropriations made during the regular budget process.

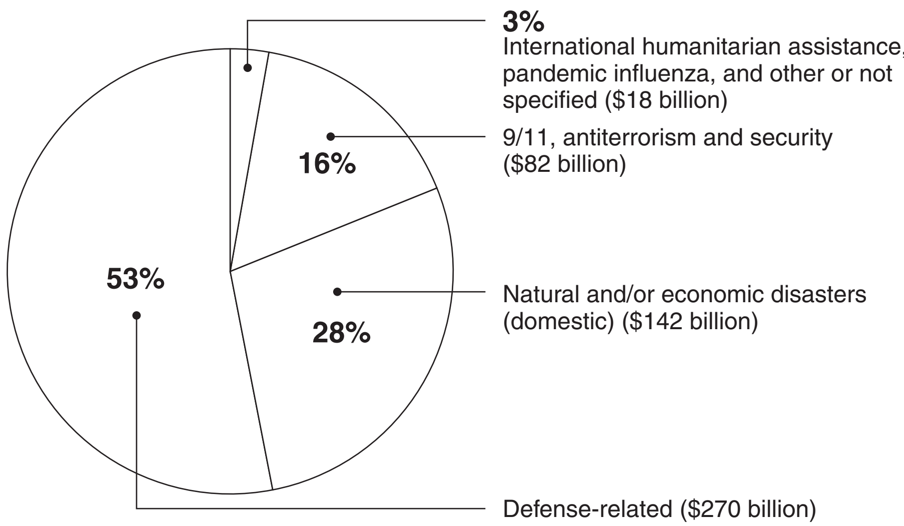
Figure 3: Total Amount of Emergency- and Not Emergency-Designated Supplemental Budget Authority from Fiscal Years 1997 through 2006



Source: GAO analysis of supplemental appropriations laws from fiscal years 1997-2006.

As shown in figure 4, more than 50 percent ($270 billion) of the emergency-designated supplemental funds were appropriated for defense-related activities. In comparison, 28 percent was directed to respond to natural or economic disasters and 16 percent went to antiterror, security, and post-9/11 activities. International humanitarian assistance, pandemic influenza, and other activities comprised 3 percent of the total emergency-designated supplemental funds provided over the 10-year period we studied.

Figure 4: Emergency-Designated Supplemental Funds by Emergency Type



Source: GAO analysis of supplemental appropriations laws from fiscal years 1997-2006.

Additional Controls Could Reduce the Use of Supplementals and Increase Opportunities for Oversight

Our analysis indicates that there are a number of issues to be addressed if the use of supplementals is to be limited to needs identified after the beginning of the fiscal year. Although Congress has specified criteria for the emergency designation in Budget Resolutions, these criteria are not self-executing and there are limited screening and enforcement processes. In our review of emergency-designated supplementals, we found provisions that were not clearly consistent with these criteria as well as provisions that did not contain sufficient information for us to make a determination. We also found that provisions in supplemental appropriations were not always related to the emergency events that may have prompted the supplemental, which raises questions about the potential use of supplementals to fund items that could have been included in the regular budget and appropriations process. In addition, we found that a number of accounts are regularly funded through supplementals, which may indicate that they are being funded through supplementals in lieu of the regular budget and appropriations process. Finally, we found that over one-third of the supplemental appropriations enacted were available until expended (referred to as “no-year” funds). Such funds provide agencies with great flexibility but do not prompt the annual or periodic Congressional review and reconsideration typical of funds that are available for a limited amount of time.

Emergency-Designation Criteria Are Not Self-Executing and May Not Always Be Applied

The term "emergency" is not defined in budget process law. However, in a 1991 report to Congress, the Office of Management and Budget (OMB) proposed what it described as a neutral definition of "emergency requirement," and Congress has included this definition in its Budget Resolutions. The definition requires that for something to qualify as an "emergency" all five of the following criteria must be met:

- a necessary expenditure (an essential or vital expenditure, not one that is merely useful or beneficial);
- sudden (coming into being quickly, not building up over time);
- urgent (a pressing and compelling need requiring immediate action);
- unforeseen (not predictable or seen beforehand as a coming need, although an emergency that is part of an overall level of anticipated emergencies, particularly when estimated in advance, would not be "unforeseen"); and
- not permanent (the need is temporary in nature).

These emergency criteria, modified slightly, have appeared in several proposed budget process reform bills. Although none of the proposed reform bills have been enacted,[17] Congress incorporated the emergency criteria into its Concurrent Budget Resolution in years 2004, 2005, and 2006. In 2003, there was no Concurrent Budget Resolution. We interpreted the continued appearance of the criteria as a statement of Congress' general acceptance of the definition.

Critics of the use of the emergency designation cite numerous examples of funding designated as emergency that they believe meet none of the criteria listed above. In our review of emergency-designated supplemental provisions enacted from fiscal years 1997 through 2006, we found provisions that were not clearly consistent with these criteria as well as provisions that did not contain sufficient information for us to make a determination. These provisions totaled over $31 billion—or about 5 percent of the supplemental appropriations in the 10-year period. Specifically, we found 26 provisions with over $6 billion of the over $500 billion in emergency-designated supplemental funds that stood out as not being clearly consistent with the emergency-designation criteria of

[17] H.R. 853, 106th Cong. (1999), the Comprehensive Budget Process Reform Act of 1999, for example, was defeated in the House on May 16, 2000, by a vote of 166 to 250.

"sudden" and "unforeseen."[18] Most of these funds were appropriated in preparation for a potential emergency—the threat of pandemic influenza. While we do not question the importance or urgency of the pandemic work, applying the emergency designation to preparation for future events does raise questions regarding the application of the "sudden" or "unforeseen" criteria. The remaining funds were primarily provided for research and development activities. Although these are a relatively small portion of total supplemental funding, these examples raise questions about the credibility of the emergency-designation criteria in the budget enforcement process.

In addition, nearly $25 billion was provided in emergency-designated provisions without sufficient explanation for us to determine their consistency with the emergency-designation criteria. Without further explanation in individual provisions as to what prompted the emergency designation, the use of emergency-designated supplemental appropriations for such activities reduces the transparency of the emergency designation.

As we have previously reported, since fiscal year 2002 defense-related funds for GWOT have generally been provided as emergency-designated funds in either supplementals or a separate title (Title IX) of annual defense appropriations acts.[19] Some have questioned the use of the emergency designation for the funds provided for the ongoing military operations related to GWOT—noting that it is problematic for an ongoing event to be considered "sudden" or "unforeseen." However, we do not address this in our analysis, because Congress has provided that some of the funds for overseas contingency operations related to GWOT can be designated emergency and are exempt from certain points of order and other budget enforcement provisions. Proponents of the current approach note that it avoids inflating DOD's "baseline" budget, while including some funds in the regular appropriations process. Indeed the question here is more whether these funds should be provided through supplementals or

[18]Our analysis focused on the application of the "sudden" and "unforeseen" criteria. We did not attempt to judge whether provisions were "necessary" or "urgent" as these are policy judgments, not based purely on objective information. We also did not make judgments on the "not permanent" criterion as it is not well defined. There is no time frame given regarding when an activity has become "permanent." In addition, even "permanent" activities directed by legislation may cease when legislation is repealed or amended.

[19]See GAO, *Global War on Terrorism: DOD Needs to Take Action to Encourage Fiscal Discipline and Optimize the Use of Tools Intended to Improve GWOT Cost Reporting*, GAO-08-68 (Washington, D.C.: Nov. 6, 2007).

through the regular budget and appropriations process, not whether they are designated as emergency. We have previously encouraged the Administration to include known or likely projected costs of ongoing operations related to GWOT within DOD's base budget requests.[20] Whether designated emergency or not, continuing to fund GWOT through supplementals reduces transparency and avoids the necessary reexamination and discussion of defense commitments and funding trade-offs.

Provisions in Supplemental Appropriations Were Not Always Related to Emergency Events That May Have Prompted the Supplemental

Supplemental appropriations provide funds outside the regular, annual budget and appropriations process, typically in response to some need, event, or emergency that may arise after the fiscal year has begun. Unlike regular appropriation bills, which are under the jurisdiction of a single appropriations subcommittee in the House and the Senate, supplemental appropriations may include items under the jurisdiction of many subcommittees, with varying purposes and levels of urgency. In considering supplementals, appropriators must grapple with issues of grouping disparate items, considering emergency and nonemergency items together, and determining when requests form enough of a "critical mass" to warrant going forward with a supplemental appropriation bill. This raises two issues that were confirmed in our analysis.

First, supplementals sometimes contain a mix of emergency-designated and nonemergency-designated provisions. Over the 10-year period we examined, 8 of the 25 supplemental appropriations laws that were enacted combined emergency-designated funding with that which was not so designated. In total, over $11 billion of the over $279 billion provided in these laws was not designated as emergency. Emergency-designated provisions may necessarily be on a fast track—and therefore receive less scrutiny—to facilitate a rapid response to some emergency event. Meanwhile, the items that are not emergency designated may benefit from the urgency of the legislation by avoiding the scrutiny and trade-offs that are inherent in the regular budget and appropriations processes.

Second, our analysis showed that some supplementals contain emergency-designated provisions not related to the event/issue(s) that may have prompted the need for the supplemental. From fiscal years 1997 through

[20] See GAO-08-68 and *Global War on Terrorism: Observations on Funding, Costs, and Future Commitments*, GAO-06-885T (Washington, D.C.: July 18, 2006).

2006, over $710 million was provided in emergency-designated provisions found to be unrelated to the emergency that may have prompted the supplemental. Some of these appeared to be for other emergencies and some for activities for which the emergency nature was unclear. For example, $9 million in drought relief was provided in a law entitled "Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006." In another example, the Coast Guard received $110 million for a Great Lakes Icebreaker replacement as part of a $578 million appropriation for the Coast Guard in a section of law entitled "Kosovo and Other National Security Matters." Although these sums are small in terms of the aggregate budget, they may be significant for a given agency or program. In addition, over $12 billion were provided in provisions in which the relationship to the event/issue(s) that may have prompted the supplemental was unclear. For example, one section of a law contained provisions with funding for a myriad of activities—including activities related to stemming illegal immigration, international health programs, and several highway and rail improvement projects—that did not provide information to determine the relationship to the event/issue(s) that prompted the need for "emergency" funding. The appearance of these provisions in supplemental appropriations raises the question of whether supplemental appropriations bills can become vehicles for funding some programs or activities while avoiding the greater scrutiny and trade-offs that occur in the regular appropriations process.

Some Accounts Received Supplemental Funding on a Recurring Basis

Although some supplementals are clearly necessary to provide for costs that were not contemplated in the regular budget and appropriations process, many people suspect that the availability of supplemental appropriations as a funding vehicle may contribute to the underfunding of some programs in the annual budget and appropriations process and subsequent funding through supplementals. For activities that regularly receive emergency-designated supplemental appropriations, there can be an incentive to provide funding in a supplemental rather than in the regular appropriations process where these activities would have to compete with others for limited resources in trade-off decisions. Even if the funds were emergency designated, including them in the regular budget and appropriations process provides greater transparency. When full funding information is not included in the regular budget and appropriations process, it understates the true cost of government to policymakers at the time decisions are made and steps can still be taken to control funding, which is even more important in a time of constrained resources.

In our review of supplementals over the 10-year period, we found that 35 accounts received supplemental appropriations in at least 6 of the 10 years studied, totaling over $375 billion. The majority of these accounts fell within DOD. Table 1 details these accounts, the department in which the accounts reside, and the total new budget authority the account received over the studied 10-year period. DOD had 21 accounts that received supplemental funds in at least 6 out of the 10 years in question. In addition, the gross budget authority granted to these 21 DOD accounts ($258 billion) comprised over 40 percent of the total gross budget authority in supplemental appropriations enacted over the studied period. Overall, the 35 accounts receiving funds on a recurring basis accounted for 61 percent of the gross supplemental budget authority over the 10-year period.

Table 1: Accounts That Received Supplemental Appropriations in at Least 6 of the 10 Years from Fiscal Years 1997 through 2006

Dollars in millions

Department/agency/other	Account	Budget authority
Bilateral Economic Assistance	Economic Support Fund	$7,040
Broadcasting Board of Governors	International Broadcasting Operations	$107
Department of Agriculture (USDA)	Commodity Credit Corporation Fund	$3,812
	Emergency Conservation Program	$442
	National Forest System	$116
	Watershed and Flood Prevention Operations	$475
	Wildland Fire Management	$936
USDA total		**$5,781**
Department of Defense	Aircraft Procurement, Air Force	$1,443
	Defense Health Program	$6,621
	Defense-wide Working Capital Fund	$5,854
	Military Construction, Air Force	$821
	Military Personnel, Air Force	$9,502
	Military Personnel, Army	$42,361
	Military Personnel, Marine Corps	$4,488
	Military Personnel, Navy	$4,552
	Operation and Maintenance, Air Force	$26,147
	Operation and Maintenance, Army	$89,685
	Operation and Maintenance, Army National Guard	$798
	Operation and Maintenance, Army Reserve	$170
	Operation and Maintenance, Defense-wide	$15,652
	Operation and Maintenance, General (Army Corps of Engineers)	$697

Dollars in millions

Department/agency/other	Account	Budget authority
	Operation and Maintenance, Marine Corps	$7,318
	Operation and Maintenance, Navy	$16,067
	Other Procurement, Air Force	$8,793
	Other Procurement, Army	$14,349
	Procurement, Defense-wide	$2,157
	Research, Development, Test and Evaluation, Army	$122
	Research, Development, Test and Evaluation, Defense-wide	$1,096
DOD total		**$258,695**
Department of Health and Human Services	Public Health and Social Services Emergency Fund	$8,501
Department of Homeland Security	Disaster Relief	$89,233
	Operating Expenses (U.S. Coast Guard)	$1,413
DHS total		**$90,646**
Department of State (State)	Diplomatic and Consular Programs	$3,118
	International Narcotics Control and Law Enforcement	$1,060
State total		**$4,178**
Department of the Interior (DOI)	Construction (U.S. Fish and Wildlife)	$354
	Water and Related Resources	$78
DOI total		**$432**
Total		**$375,380**

Source: GAO analysis of supplemental appropriations laws from fiscal years 1997–2006.

Note: Accounts that have changed department during this time period are listed under their current department name.

The Federal Emergency Management Agency's (FEMA) Disaster Relief account repeatedly receives emergency-designated funds through both supplemental appropriations and the regular annual appropriations process.[21] Funding for FEMA's Disaster Relief account is shown in table 2.[22] This analysis shows that on average the appropriations FEMA receives through regular appropriations are less than the average amount received through supplemental appropriations each year. Even when extraordinary events such as Katrina and 9/11 are removed, the supplemental

[21]FEMA's Disaster Relief appropriation is based on a 5-year average of noncatastrophic disasters, which FEMA defines as those that receive less than $500 million in federal aid.

[22]We are currently reviewing how FEMA develops its estimates for the Disaster Relief account for a report to be issued later this year.

appropriations are still of a significant size relative to the regular annual appropriations.

Table 2: Average Annual and Supplemental Funding for FEMA's Disaster Relief Fund

Average appropriations in nominal dollars	Annual	Supplemental[a]	Total
10-year average (1997-06)	$948,396,100	$7,287,620,400	**$8,236,016,500**
5-year average (2002-06)	$1,389,330,600	$12,286,214,200	**$13,675,544,800**
Averages excluding supplementals for 9/11 and Katrina/Rita in nominal dollars[b]			
10-year average (1997-06)	$948,396,100	$1,226,230,000	**$2,174,626,100**
5-year average (2002-06)	$1,389,330,600	$834,060,000	**$2,223,390,600**

Source: GAO analysis of FEMA's fiscal year 2008 Congressional Budget Justification.

[a] Includes release of contingency funds. Contingency funds are designated by Congress as emergency funds but their use is contingent on a Presidential designation of an emergency. Also, the supplemental appropriation for fiscal year 2005 includes $23,409,300,000 of the fiscal year 2006 rescission.

[b] In this calculation, we subtracted supplemental appropriations for 9/11 ($3,353,133,000 for fiscal year 2001 and $9,037,571,000 for fiscal year 2002) and Hurricanes Katrina and Rita ($42,223,200,000 for fiscal year 2005—which also includes $23,409,300,000 of the 2006 rescission—and $6,000,000,000 for fiscal year 2006).

The Department of the Interior's Wildland Fire Management account also receives funds through regular and supplemental appropriations. This account, like FEMA's Disaster Relief account, received supplemental funding in at least 6 of the 10 years studied. Regular budget requests for fire suppression activities are based on a historical 10-year average of suppression expenditures adjusted for inflation. Previous GAO work has found that these estimates often fall short of actual costs. In addition to funds provided through the regular budget and appropriations process, the Wildland Fire Management account received at least $936 million in supplemental appropriations over the studied 10-year period.

In FEMA's case, the imbalance between the amounts of appropriations provided through the annual and supplemental processes is by design. However, the fact that the imbalance exists even with the removal of extraordinary events may indicate a need to revisit how much is provided in the annual process. We have previously reached a similar conclusion in regards to Wildland Fire Management and the same may be true for other programs that receive supplemental funds on a recurring basis. Providing more in the regular appropriations process could result in less funding through supplementals. Again, when funds are regularly provided via supplemental appropriations, the true cost of government is not fully transparent in the regular appropriations process. Therefore, decision makers may not have full information when allocating resources.

While No-Year Funds Provide Flexibility, They May Also Limit Periodic Oversight

Given the timing of the budget process and the combination of the need to provide funds promptly with the desire that they be spent in a thoughtful and targeted manner, it is understandable that supplemental funds would need to be available beyond the current fiscal year. Indeed, in the cases of some emergency events it is likely that funding will need to be available for multiple years. Some funds are available until expended (referred to as "no-year" funding). Over the 10-year period we studied, over one-third of the supplemental appropriations provided (about $209 billion) were available for obligation until expended.[23] These no-year funds provide flexibility but also limit opportunities for oversight and control. The expiration date of single or multiyear funds provides an automatic incentive for revisiting program needs. If the need for funding for a specific emergency continues for several years, it can be argued that such funding subsequently could be considered in the regular budget and appropriations process. No-year funding is available indefinitely and does not prompt annual or periodic Congressional oversight.

Options to Control the Use of Emergency Supplementals

We have identified four proposals that could help increase controls over and transparency of the use of supplementals. These proposals are intended to ensure the following: (1) emergency-designated provisions meet established criteria, (2) emergency supplementals do not become the vehicle for items that do not require the rapid enactment demanded to respond to an emergency event, (3) supplementals are not used where the regular budget and appropriations process should suffice, and (4) a balance exists between flexibility and oversight with regard to the time availability of funds. We consulted individuals with expertise in the budget and appropriations process and reform proposals to obtain opinions on the options that follow. These experts generally agreed that reform was needed but differed on how best to achieve this. Most of the experts suggested that the increased use of supplementals is symptomatic of breakdowns in the regular process—which has resulted in reliance on supplementals as a way to provide funding for federal activities. Given this, they expressed doubts about the likelihood of any reform unless a way was found to return to some "regular order" for the budget and

[23]Funding in regular or supplemental appropriations can be made available for 1 year, multiple years (known as "multiyear" funds), or until expended.

appropriations process. In general they expressed a desire to reduce the complexity of the process and so preferred options that did not add significant procedural hurdles. Most agreed that some limitations on the availability of funds—i.e., a turn away from "no-year" funds—made sense.

Codify Emergency-Designation Criteria and Establish New Mechanisms for Enforcement

The frequent inclusion of the emergency-designation criteria in Budget Resolutions would seem to imply Congressional adoption of these criteria. However our review found some cases where provisions were not clearly consistent with the emergency-designation criteria and many cases where provisions did not contain sufficient information for us to make a determination. These cases raise questions about the credibility of the emergency-designation criteria in the budget enforcement process. The fact that they are in resolutions and not in law may affect the way they are treated. Therefore, codifying these criteria as an amendment to the Congressional Budget Act should be considered. However, most of the budget experts we consulted believed this would make little difference.

Whether or not the criteria are codified, there are a variety of enforcement approaches that could help decision makers to better weigh priorities and assess trade-offs. For example, currently the criteria in Budget Resolutions are not self-enforcing in that they do not require affirmative action to move forward. Legislative language that has an emergency designation is subject to a point of order; it requires a Member (or Members) to make a motion to strike such a provision. This step is rarely taken; if the point of order is raised and sustained, then the provision making the emergency designation is stricken and may not be offered as an amendment from the floor. Congress could flip the default—requiring an affirmative vote to provide an emergency designation. Some of the budget experts we consulted saw merit in this idea, saying it might result in greater visibility and transparency in the process. Others thought it would have little impact. Two suggested retaining the current system but increasing the number of votes needed to overturn or waive any point of order. Another suggested that the point of order be more narrowly targeted—that it strike the emergency designation while leaving the funding provision in the bill. Depending on the statutory or Budget Resolution-imposed spending limits, such a system could require the funding to be offset—i.e., to have trade-offs considered more explicitly.

A related idea would be to require that a statement or narrative justification describing how the provision meets the emergency criteria accompany any provisions carrying the emergency designation. Absent such a justification, the provision would be out of order and could not be considered without an affirmative vote. Provisions with accompanying justifications could still be challenged on substantive grounds, but they would not be subject to a point of order on procedural grounds.

Another approach might be to require explicit review of all emergency-designated provisions (and proposed amendments that carry such a designation) by a special House or Senate "Supplementals Subcommittee" made up of the leadership of the appropriations subcommittees—or their senior designees—in the relevant body.[24] This subcommittee could provide some consistency in the application of the emergency criteria. A number of the budget experts whom we consulted found this worth exploring; a few said it would be important to find a way to assure prompt consideration of emergency needs. This subcommittee might require that proposals be accompanied by a narrative justification of how a proposal meets the emergency criteria.[25] One of the experts suggested the rule might be that if the Supplementals Subcommittee designated funds as "emergency" and provided an explanation of how the criteria were met, then there would be no point of order against the provision or its designation as emergency. This would not, of course, eliminate the ability of a Member to challenge the provision on substantive grounds.

[24]For many decades, there were subcommittees on supplementals in both the House and Senate Appropriation Committees. They were known simply as the Deficiencies Subcommittees and, in later years, the Subcommittee on Deficiencies and Supplementals. The Deficiencies Subcommittees provided deficiency appropriations (an appropriation made to pay obligations for which sufficient funds are not available), supplemental appropriations, and other appropriations (for judgments of United States Courts, for example) across multiple bills to many federal agencies and entities. The Deficiencies Subcommittee dates as far back as the 45th Congress in 1877. The Deficiencies Subcommittees were eliminated in the Senate after the 91st Congress and in the House of Representatives after the 88th Congress (during several Congresses there was no Deficiency Subcommittee and jurisdiction for deficiencies and supplementals was exercised by the full Committees on Appropriations). See U.S. Congressional Research Service, *Appropriations Subcommittee Structure: History of Changes from 1920-2005*, Report No. RL31572, James V. Saturno (Updated Mar. 9, 2005). For an example of a typical Deficiencies Subcommittee hearing considering requests for deficiency and supplemental appropriations see First Deficiency Appropriation Bill, 1926: Hearing Before the House Subcommittee in Charge of Deficiency Appropriations, 69th Cong. (Jan. 11, 1926 through Jan. 23, 1926); see also H.R. Rep. No. 69-175 (1926) and First Deficiency Act, Fiscal Year 1926, Pub. L. No. 69-36, 44 Stat. 161 (1926).

[25]Such a requirement was proposed in the Securing America's Future Economy (SAFE) Budget Process Reform Act (S. 1279), a bill that was submitted on May 3, 2007.

Separate the Consideration of Emergency and Nonemergency Items

In considering supplementals, appropriators must grapple with issues of grouping disparate items, considering emergency and nonemergency items together, and determining when requests form enough of a "critical mass" to warrant going forward with a supplemental appropriations bill. This raises two issues that were confirmed in our analysis. First, supplementals sometimes contain a mix of emergency-designated and nonemergency-designated provisions. Emergency-designated provisions may necessarily be on a fast track—and therefore receive less scrutiny—to facilitate a rapid response to some emergency event. Meanwhile, those provisions that are not emergency designated may benefit from the urgency of the fast-track legislation by avoiding the scrutiny and trade-offs that are inherent in the regular budget and appropriations process. Second, our analysis showed that some supplementals contain emergency-designated provisions not related to the event/issue(s) that may have prompted the need for the supplemental. This raises questions as to whether "emergency" supplementals are not always used just to meet the needs of unforeseen emergencies but also include funding for activities that could be covered in regular appropriations acts, if funded at all.

To address the first of these issues, Congress could consider establishing two tracks for supplemental appropriations: one for emergencies and one for nonemergencies. This would permit emergency-designated funds to proceed on their necessary fast track while allowing more time for the deliberation of nonemergency items. For those provisions not designated emergency, the aforementioned Supplementals Subcommittees could evaluate the necessity for action through supplementals rather than regular appropriations. One current legislative proposal suggests an even more stringent approach—a bill introduced in the House of Representatives on October 16, 2007, to establish requirements for the consideration of supplemental appropriation bills (H.R. 3857) proposes that all supplemental appropriations would have to be emergency designated in accordance with the emergency-designation criteria.

For emergency-designated supplementals, Congress could change the budget process to require that all provisions in emergency supplemental appropriations bills be related to the event/issue(s) that prompted the supplemental. The Supplementals Subcommittees, if established, could be tasked with certifying that each supplemental bill and amendments that offer new areas to be funded meet this requirement. If such a subcommittee is not established, Congress will need to consider another enforcement mechanism. Another proposal, again from H.R. 3857, requires all supplemental appropriations acts to have a single purpose. Under this proposal, it would not be in order for Congress to consider any measure making supplemental appropriations for two or more unrelated emergencies.

Several experts agreed that it made sense to separate emergency and nonemergency supplementals but questioned how this would be enforced. In this vein, one expert proposed eliminating the emergency designation altogether and requiring that all funds be counted under budget caps/resolutions. Other experts raised concerns that the separation potentially could slow the supplementals appropriations process. Experts discussed the need for controls over the timeliness of supplementals, suggesting that agencies should be required to submit disaster estimates within a certain period of time after a disaster and Congress should be required to report a bill related to that disaster a certain number of days after that. This would help avoid situations where “emergencies” that occurred 1 or more fiscal years previously receive emergency-designated supplemental funding. It could also help to ensure prompt consideration of funding for true emergencies. One expert, however, saw a real problem with the idea of creating separate tracks for supplementals, seeing the ability to package them together as an important legislative power that serves to balance against the President’s veto power.

Provide More Funding in the Regular Budget and Appropriations Process

Although some supplementals are clearly necessary to provide for costs that were not contemplated in the regular budget and appropriations process, many people suspect that the increased use of supplemental appropriations may contribute to the underfunding of some programs in the annual budget and appropriations process. We found that 35 accounts received supplemental appropriations in at least 6 out of the 10 years, raising questions about whether emergency supplementals are being used to fund activities that could have been included in regular appropriations. Many of the experts we asked suggested this tendency to fund activities through supplementals was a result of overly tight budget caps/resolutions. Most said that more of the federal government’s costs should be considered through the regular appropriations process rather than later through supplementals. However, there was not consensus on the best way to achieve this.

To increase transparency by providing up-front recognition of the likely call on federal resources for some unforeseen situation, Congress could take several steps. For example, Congress could require that accounts that repeatedly receive supplemental appropriations be funded on a realistic historical average. Although some accounts—such as FEMA’s Disaster Relief and Interior’s Wildland Fire Management accounts—are funded on historical averages, data indicate that the methodologies used to develop these averages result in amounts that are frequently insufficient to cover annual costs. In conjunction with using realistic historical averages, Congress might establish an emergency reserve fund to fence off funds for extraordinary events that exceed those historical averages. That fund could be based on a historical average of all emergency spending, excluding military actions. The Securing America's Future Economy (SAFE) Act of 2007 includes a proposal for such a fund.

The reserve fund approach has several potential benefits—the use of emergency reserves may reduce the need for supplemental appropriations, encourage efforts to avoid or mitigate disasters, and highlight potential alternatives to federal action, such as state or local initiatives or private insurance. It also presents pitfalls which would have to be addressed in the design of the reserve fund. For example, there may be pressure to use the reserve even if a triggering emergency does not occur, especially if not all of the funds are needed in a given year. To mitigate against this, Congress might wish to establish more specific criteria for the release and use of such funds—the more specific and measurable the criteria, the more likely there would be agreement over when the funds can be used. Congress could also use the Supplemental Subcommittees that we discussed earlier to apply these criteria and govern the use of the funds.

At least one expert openly supported the idea of an emergency reserve fund. However, he and several others cautioned that this fund would need to have explicit controls to determine when funds could be released to avoid a situation in which the fund is raided when budget caps/resolutions are unrealistic.

Given the changing nature of the nation's defense challenge, funding for military actions could be handled separately. Nevertheless, the use of supplementals could still be limited. The use of the separate title within DOD's regular appropriations in recent years offers one model. As our analysis of GWOT funding has shown, however, whether the separate title model decreases the use of supplementals depends on how it is used. To date, it has been used as a bridge between the regular appropriation and a supplemental. However, more funding could be included in the regular budget and appropriations process in lieu of a supplemental. In addition, although emergency funding has historically been used to support unexpected costs of contingency operations, care needs to be taken with the use of the emergency designation for GWOT funds.[26] Our recent work has shown that changes in DOD's GWOT funding guidance have resulted in billions of dollars being added to GWOT funding requests for what DOD calls the "longer war against terror," making it difficult to distinguish between base costs and the incremental costs to support specific contingency operations.

Another expert suggested taking a different approach entirely by separating the concept of "contingency" from that of "reserve fund." He suggested that both Presidential budgets and Congressional Budget Resolutions should recognize estimates of uncertainty and contingencies—both military and natural disaster—in a manner akin to budget function 920 "allowances."[27] This estimate would not include any real budget accounts or constitute a request for appropriations. Rather, it would be an amount leading to an alternative total—a total should these contingencies or emergencies occur. One approach for this would be to take a 10- or 15-year average of budget authority for natural disasters and show that as a measure of possible additional claims on federal resources. The expert analogized this to insurance—in most years the actual amount needed for emergencies would be less than this estimate, but in others it might be much more. A similar process could be established for military contingency operations. The "allowances" function, or its equivalent, would not provide funds but would be a way to inform budgetary trade-offs and decisions by highlighting the fact that there is uncertainty and that emergency calls on federal resources are likely.

Limit the Legal Availability of Supplemental Appropriations to a Fixed Period of Time

Given the timing of the budget process and the combination of the need to provide funds promptly with the desire that they be spent in a thoughtful and targeted manner, it is understandable that some supplemental funds would need to be available beyond the current fiscal year. Making funds available for obligation beyond the current fiscal year provides flexibility needed to address uncertainty, especially in the immediate aftermath of an emergency. However, some funds are available until expended (referred to

[26] GAO-08-68.

[27] Budget function 920 allowances are included in budgets to ensure that totals reflect estimated budget authority and outlay requirements for future years. They display the budgetary effects of proposals that cannot be easily distributed across other budget functions because the precise effects are uncertain, the proposals are not clearly specified, or they affect multiple functions.

as “no-year” funding), which provides flexibility but reduces opportunities for oversight. As time passes and requirements become clearer, the need for flexibility lessens. Limiting the availability of funds to a fixed period of time would provide Congress the opportunity to revisit funding needs once better information exists.

Over the 10-year period we examined, over one-third of the supplemental appropriations enacted were no-year funds. To balance flexibility and oversight in determining how long funds will be available for obligation, Congress could consider using single or multiyear funds in lieu of no-year funds to the maximum extent possible in supplemental appropriations. Limiting the availability of funds to some fixed period of time could increase the opportunities for Congressional oversight, as well as reduce the use of supplementals by moving subsequent funding requests for past emergencies to the regular budget and appropriations process.

One concern about limiting the time availability of funds is that agencies may rush to obligate expiring funds before the end of the relevant fiscal year. Our work on year-end spending has shown that problems occurred when budget execution was not monitored effectively. This can result in a lack of competition, poorly defined statements of work, inadequately negotiated contracts, and the procurement of low-priority items or services. However, mechanisms exist to limit year-end spending. For example, OMB requires that agencies report their quarterly obligations approximately 20 days after the close of each calendar year. Moreover, reforms in procurement rules have reduced the potential magnitude of problems with year-end spending.

Most experts agreed that limiting the availability of funds would allow for increased Congressional oversight. One expert noted that he could not think of a reason why no-year funds should be in any part of the federal budget.

Broad Views Expressed by Experts

Although individual experts’ opinions on these process reform options varied, there was general agreement that returning to a more limited use of supplemental appropriations will be challenging. They noted that the issues surrounding supplemental appropriations stem from a greater breakdown of and failures in the regular budget and appropriations process. In addition, many noted that when discretionary budget caps are unrealistic there is an increased incentive to use supplemental appropriations. Other experts suggested that it was important to view supplementals as one piece of a broader system for budgeting for contingencies, noting that attention given to issues such as disaster mitigation, emergency reserve funds, government insurance programs, and realistic funding in the regular budget and appropriations process may lessen the need for supplemental appropriations.

Conclusions

To the extent possible, funds should be provided through the regular appropriations process to ensure that trade-offs are made among competing priorities, especially in an environment of increasingly constrained resources. Therefore, controls should be in place to ensure that emergency supplementals are enacted for their intended purpose—to address unforeseen needs that arise suddenly after the start of a fiscal year.

The current incentives and controls surrounding supplemental appropriations may encourage the use of supplemental appropriations for items outside of this purpose. Supplementals are frequently “must pass” legislation with significant incentives for a quick response and are not subject to the same level of scrutiny and trade-offs as the regular budget and appropriations process. As a result, supplementals can be an inviting vehicle for passing legislation that is not directly related to the emergency that may have prompted the supplemental in the first place. Furthermore, the greater scrutiny of the regular budget and appropriations process combined with the expectation of recurring supplemental funds acts as a disincentive for activities to be fully funded through regular appropriations.

Additionally, the controls over the process are relatively weak. The emergency-designation criteria are nonbinding and may be open to debate. The current governance process over emergency supplementals requires Members of Congress to take active steps to strike down the emergency designation—by raising a point of order—as opposed to requiring affirmation of the designation.

The combination of multiple incentives to use supplementals and weaknesses in the controls governing their use could encourage policymakers to use supplemental appropriations in lieu of the regular appropriations process to fund certain activities.

Matters for Congressional Consideration

If the use of supplemental appropriations is to be limited, additional controls and increased transparency are needed. To better target the resources provided through supplemental appropriations, we recommend that Congress consider adopting procedures and rules to increase controls over and transparency of the use of supplementals. Specifically, we recommend that Congress consider establishing procedures and mechanisms to ensure that:

1. Emergency-designated provisions meet established criteria by establishing new mechanisms for enforcement of those criteria, possibly including codification of the criteria and/or creation of review procedures.

2. Emergency supplementals do not become the vehicle for items that do not require the rapid enactment demanded to respond to an emergency event. Among the approaches to be considered might be separate tracks for emergency and nonemergency provisions and/or excluding funding for emergencies that occurred in previous years.

3. Supplementals are not used where the regular budget and appropriations process should suffice by including a greater share of funding in the regular appropriations bills.

4. A balance exists between flexibility and oversight with regard to the time availability of funds by using single or multiyear funds in lieu of no-year funds to the maximum extent possible in supplemental appropriations.

As we agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. At that time, we will send electronic copies to others who are interested and copies of this report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report please contact me at (202) 512-9142 or irvings@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff making key contributions to this report are listed in appendix III.

Sincerely yours,

Susan J. Irving
Director for Federal Budget Analysis
Strategic Issues

Appendix I: Objectives, Scope, and Methodology

The objectives for this report were to evaluate (1) trends in supplemental appropriations enacted from fiscal years 1997–2006 and (2) steps that could be taken to increase transparency and establish additional controls over emergency supplemental appropriations.

To address the first objective, we developed a database that contained information from the 25 supplemental appropriations laws that were enacted from fiscal years 1997–2006 and information from the Congressional Budget Office (CBO) scoring reports that accompanied these laws to permit summary analysis of the use of these supplementals over time. The database contained both general information about the laws—such as the public law number and the date of enactment—and information about individual provisions within the laws. Generally a provision included all of the information contained in a paragraph under an account name. However, in some instances we used our judgment to break out or combine information. In general, if a law provided for several actions under one account header—such as both appropriating and rescinding funds—we would separate out those actions. Additionally, if a law provided several amounts to different activities under one account heading, we might combine those amounts. In total, the database contained 2,662 provisions.

For each provision, we included in the database the provision text; the division, title, and/or chapter in which the provision appeared; information about the entity to which the provision pertained (e.g., department, agency, program); and whether or not the provision provided or rescinded budget authority. If a provision provided new budget authority, we included the amount, how long it was available, and whether or not it was emergency designated. If a provision rescinded budget authority, we noted that and the amount. If a provision did not provide or rescind budget authority, we developed a very general description of what it did do (e.g., transfer funds between accounts, target or limit the use of funds, or amend another law). For emergency-designated provisions, we used the provision language and/or other information in the law, such as the title, to determine what type of emergency may have prompted the supplemental appropriation. The categories we developed for this analysis were as follows:

- Antiterrorism and Security
- Defense-Related
- International Humanitarian Assistance
- Natural and/or Economic Disasters (Domestic)
- Pandemic Influenza

- September 11, 2001
- Other
- Not Specified[1]

In limited cases, these categorizations required some professional judgment on the part of the analyst. For example, if a provision was in a law or section of law for war-related activities but specified that it was providing funds to repair damage from a natural disaster within the United States, we categorized it as a "Natural and/or Economic Disaster (Domestic)." However, other funds provided in the same section of the law that did not contain language specifically relating them to a natural disaster would have been categorized as "Defense-Related."

From the CBO scoring reports, we input data on the budget function code,[2] the subaccount identification code,[3] and the amount of budget authority provided or rescinded.[4]

To address the second objective, we reviewed relevant literature to identify the rules and guidance that were in place in Congress to govern the use of supplemental appropriations from fiscal years 1997–2006. Then, we conducted a content analysis by having two GAO analysts independently review the information on each emergency-designated provision in the database to determine consistency with congressionally specified emergency-designation criteria. Our analysis focused on the application of the "sudden" and "unforeseen" criteria. We did not attempt to judge whether provisions were "necessary" or "urgent" as these are policy judgments, not based purely on objective information. We also did not make judgments on the "not permanent" criteria as it is not well defined. There is no time frame given regarding when an activity has

[1]"Other" was used for 30 provisions that we could not include in the specific categories. "Not specified" means the provision did not specify a causal event.

[2]Each budget account appears in the single budget function (for example, national defense or health) that best reflects its major purpose, an important national need. A function may be divided into two or more subfunctions, depending upon the complexity of the national need addressed.

[3]The subaccount code is a CBO code that further describes the funds in a provision. For example, this code can denote whether a provision provided emergency- or nonemergency-designated funds or rescinded funds.

[4]CBO only scores provisions that provide or rescind budget authority in an amount that rounds to $1 million or more. Therefore, we did not have CBO information for amounts that were less than $500,000.

become “permanent.” In addition, even “permanent” activities directed by legislation may cease when legislation is repealed or amended. The two analysts also determined whether the provision was related to the event that may have prompted the supplemental. The two analysts came to different conclusions in 29 instances (2.8 percent of the 1,014 emergency-designated provisions). For any provision where the two did not come to the same conclusion, a third GAO analyst reviewed the information and resolved the discrepancy. Although we had a high initial rate of agreement between the two independent reviewers, we fully recognize that this was a subjective judgment and other reviewers could reach different conclusions than we did given the same information.

We drew on our analysis of all of the information in the database and a review of existing recommendations and proposals that have been put forth by GAO, CBO, the Congressional Research Service (CRS) and others to develop options for addressing the issues that we identified. We then sought opinions from recognized experts on these options to (1) determine whether they were appropriate and sufficient and (2) ensure that they were feasible and practical. To identify people with expertise in budgeting practices at the federal level, we relied on sources we had used in our background research and review of recommendations and proposals that have been put forth by GAO, CBO, CRS, and others, as well as our experience in this area, to compile a list of individuals with diverse backgrounds in the field. We sought comments on a draft document from experts from organizations such as the Center on Budget and Policy Priorities, Center for American Progress, Committee for a Responsible Federal Budget, Committee for Economic Development, and CBO, as well as knowledgeable former Congressional staff. Six of these people responded to our request. These comments were summarized and incorporated where appropriate.

We conducted our work in accordance with generally accepted government auditing standards from November 2006 to January 2008.

Appendix II: Supplemental Appropriations Laws Enacted from Fiscal Year 1997 through Fiscal Year 2006

Fiscal year	Public law	Date enacted	Title	Gross budget authority: Emergency designated	Gross budget authority: Not emergency designated	Rescissions	Total net budget authority
1997	105-18	6/12/1997	1997 Emergency Supplemental Appropriations for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia	$7,408,906,000	$1,528,179,600	-$8,021,364,000	**$915,721,600**
1998	105-174	5/1/1998	Emergency Supplemental Appropriations and Rescissions, 1998	$5,447,685,000	$688,367,300	-$2,727,212,234	**$3,408,840,066**
1999	106-31	5/21/1999	Emergency Supplemental Appropriations, 1999	$13,034,288,000	$304,821,500	-$1,998,967,000	**$11,340,142,500**
	106-51	8/17/1999	Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act, 1999	$0	$270,000,000	-$270,000,000	**$0**
2000	106-246	7/13/2000	Military Construction, 2001; (Div. B—Emergency Supplemental Act, 2000)	$11,229,933,000	$4,342,450,000	-$403,811,000	**$15,168,572,000**
	106-259	8/9/2000	Department of Defense Appropriations Act, 2001 (Title IX—Additional Fiscal Year 2000 Emergency Supplemental Appropriations for the Department of Defense)	$1,779,000,000	$0	$0	**$1,779,000,000**

Fiscal year	Public law	Date enacted	Title	Gross budget authority: Emergency designated	Gross budget authority: Not emergency designated	Rescissions	Total net budget authority
2001	107-20	7/24/2001	Supplemental Appropriations Act, 2001	$0	$8,369,251,200	-$1,825,062,497	**$6,544,188,703**
	107-38	9/18/2001	2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States	$20,000,000,000	$0	$0	**$20,000,000,000**
2002	107-117	1/10/2002	Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States, 2002 (2nd $20 billion - 9/11 attacks)	$20,000,000,000	$0	$0	**$20,000,000,000**
	107-206	8/2/2002	2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States	$25,113,208,000	$2,753,250,000	-$2,549,400,000	**$25,317,058,000**
2003	108-11	4/16/2003	Emergency Wartime Supplemental Appropriations Act, 2003	$0	$79,188,470,000	-$3,950,000	**$79,184,520,000**
	108-69	8/8/2003	Emergency Supplemental for Disaster Relief Act, 2003	$983,600,000	$0	$0	**$983,600,000**
	108-83	9/30/2003	Legislative Branch, 2003 (Title III—Emergency Supplemental Appropriations Act, 2003)	$938,093,000	$0	-$5,500,000	**$932,593,000**

				Gross budget authority			
Fiscal year	Public law	Date enacted	Title	Emergency designated	Not emergency designated	Rescissions	Total net budget authority
2004	108-106	11/6/2003	Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004	$87,582,898,000	$0	-$35,800,000	**$87,547,098,000**
	108-287	8/5/2004	Department of Defense Appropriations Act, 2005	$27,656,300,000	$611,395,280	-$111,395,280	**$28,156,300,000**
	108-303	9/8/2004	Emergency Supplemental Appropriations for Disaster Relief Act, 2004	$2,000,000,000	$0	$0	**$2,000,000,000**
2005	108-324	10/13/2004	(Division B) Emergency Supplemental Appropriations for Hurricane Disasters Assistance Act, 2005	$14,528,337,310	$0	$0	**$14,528,337,310**
	109-13	5/11/2005	Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005	$83,155,316,000	$481,738,100	-$1,581,576,000	**$82,055,478,100**
	109-54	8/2/2005	Department of the Interior, Environment and Related Agencies Appropriations Act, 2006 (Title VI—Veterans Health Care)	$0	$1,500,000,000	$0	**$1,500,000,000**

Fiscal year	Public law	Date enacted	Title	Gross budget authority: Emergency designated	Gross budget authority: Not emergency designated	Rescissions	Total net budget authority
	109-61	9/2/2005	Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising from the Consequences of Hurricane Katrina, 2005	$10,500,000,000	$0	$0	**$10,500,000,000**
	109-62	9/8/2005	Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising from the Consequences of Hurricane Katrina, 2005	$51,800,000,000	$0	$0	**$51,800,000,000**
2006	109-148	12/30/2005	(Division B) Emergency Supplemental Appropriations Act to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006	$33,297,714,500	$0	-$34,294,822,000	**-$997,107,500**
	109-174	2/19/2006	Supplemental Appropriations for fiscal year 2006 for the Small Business Administration's Disaster Loans Program	$0	$0	$0	**$0**
	109-234	6/15/2006	Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006	$94,970,111,500	$731,960,000	-$1,272,517,500	**$94,429,554,000**

Fiscal year	Public law	Date enacted	Title	Gross budget authority: Emergency designated	Gross budget authority: Not emergency designated	Rescissions	Total net budget authority
	109-289	9/29/2006	2007 Department of Defense Appropriations Act, 2007 (Title X— Fiscal Year 2006 Wildland Fire Emergency Appropriations)	$200,000,000	$0	$0	**$200,000,000**

Source: GAO analysis of supplemental appropriations laws from 1997-2006.

Appendix III: GAO Contacts and Staff Acknowledgments

GAO Contact

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