U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

Decision

Matter of: Department of Defense—Missile Defense Agency—Purpose Availability of Amounts Appropriated for Homeland Defense Radar-Hawaii

File: B-336723

Date: August 26, 2026

DIGEST

After the Department of Defense (DOD) obligated funds to develop the Homeland Defense Radar – Hawaii (HDR-H) program, it began moving excess radar components to a facility for modification in support of Homeland Defense Radar – Guam (HDR-G) development. We conclude that DOD acted within its legitimate range of discretion when it obligated amounts designated for HDR-H in fiscal years 2018–2022. DOD obligated these amounts to carry out the program by producing components, developing software, and conducting environmental reviews, among other things. DOD did not use any research and development funds designated for HDR-H to carry out the HDR-G program. DOD's use of amounts designated for HDR-H was therefore consistent with the purpose statute, 31 U.S.C. § 1301. DOD's use of these amounts involved no transfers or reprogrammings.

DECISION

In response to the Senate Appropriations Committee report accompanying proposed FY 2025 Department of Defense appropriations, this legal decision addresses whether the Department of Defense (DOD) complied with the purpose statute and any applicable transfer or reprogramming requirements as it obligated amounts to develop Homeland Defense Radar – Hawaii (HDR-H) and later modify radar components to support development of Homeland Defense Radar – Guam (HDR-G).

In accordance with our regular practice, we contacted DOD to seek factual information and its legal views on this matter.[1] DOD responded with its explanation of the pertinent facts and legal analysis.[2]

BACKGROUND

HDR-H was established within a system of ballistic missile defenses designed "to destroy missiles and their warheads before they can reach their targets."[3] The program was administered by DOD's Missile Defense Agency and funded by the Research, Development, Test and Evaluation (RDT&E) Defense-Wide appropriation, which provided funding with a two-year period of availability.[4] Joint explanatory

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[1] GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), *available at* https://www.gao.gov/assets/d24107329.pdf; Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, DOD (Nov. 20, 2024).

[2] DOD, *DOD General Counsel Response to GAO* (Feb. 18, 2025) (DOD Response); Missile Defense Agency (MDA), *Missile Defense Agency Response to Government Accountability Office Request for Information* (Jan. 22, 2025) (with attachment) (MDA Response).

[3] *See* DOD, Missile Defense Agency, *Fiscal Year (FY) 2018 Budget Estimates, Research, Development, Test & Evaluation, Defense-Wide,* vol. 2a of 2, at xxxviii (May 2017), *available at* https://comptroller.war.gov/Portals/45/Documents/defbudget/FY2018/budget_justification/pdfs/03_RDT_and_E/U_RDTE_MasterJustificationBook_Missile_Defense_Agency_PB_2018_Vol2a_Vol2b.pdf, (FY 2018 Budget Estimates) (last visited May 18, 2026); *see also* DOD, *Missile Defense Review, The Ballistic Missile Defense System,* at 1, *available at* https://www.defense.gov/Portals/1/Interactive/2018/11-2019-Missile-Defense-Review/MDR-BMDS-Factsheet-UPDATED.pdf (last visited May 18, 2026).

[4] *See, e.g.*, Consolidated Appropriations Act, 2018, Pub. L. No 115-141, div. C, title IV, 132 Stat. 348, 459 (Mar. 23, 2018); 164 Cong. Rec. H2360, 2369, H2371 (2018). The RDT&E Defense-Wide appropriations were available "for basic and applied scientific research, development, test and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; [and] maintenance, rehabilitation, lease, and operation of facilities and equipment." *See, e.g.*, Pub. L. No. 115–141, 132 Stat. at 459. DOD also received Military Construction (MILCON) funding for HDR-H purposes, which is not at issue in this decision. *See, e.g.*, Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. J, title I, 136 Stat. 49, 529–530 (Mar. 15, 2022); 168 Cong. Rec. H2477, H2942 (2022). Unless otherwise specified, all HDR-H funds discussed in this decision will be those within the RDT&E Defense-Wide appropriation.

statements accompanying annual appropriations acts for fiscal years (FY) 2018 through 2022 each designated a portion of these RDT&E funds for HDR-H.[5] During each year, DOD obligated these amounts to carry out the program by producing radar components, developing software, and conducting environmental reviews, among other activities.[6]

After FY 2022, the joint explanatory statements accompanying annual appropriations acts no longer designated amounts for HDR-H. In FY 2023 budget documents, DOD stated that it had initiated a broader study on the defense of Hawaii and would "explore alternate options for potential uses of already produced components and technology . . ., [including] placement of sensors in other locations."[7] "With the cessation of funding beginning in FY 2023, [DOD] determined that the [HDR-H] components, including radar panels, were no longer needed for the radar and would be placed into storage as surplus for possible future use."[8]

While DOD was developing HDR-H, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA) also required the agency to begin evaluating the missile defense of Guam.[9] The joint explanatory statement accompanying the Consolidated Appropriations Act, 2022 then designated amounts of funding for this system, now referred to as Homeland Defense Radar – Guam (HDR-G),[10] and the NDAA for Fiscal Year 2022 required DOD to "leverage existing programs of record to expedite the development and deployment" of the system.[11] Congress continued to pass provisions pertaining to HDR-G in the NDAAs for FYs

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[5] *See, e.g.*, Pub. L. No 115-141, § 8006(a), 132 Stat. at 463; 164 Cong. Rec. at H2369, H2371.

[6] MDA Response (Attachment).

[7] DOD, Missile Defense Agency, *Fiscal Year (FY) 2023 Budget Estimates, Research, Development, Test & Evaluation, Defense-Wide,* vol. 2a of 5, at 655 (Apr. 2022), *available at* https://comptroller.war.gov/Portals/45/Documents/defbudget/fy2023/budget_justification/pdfs/03_RDT_and_E/RDTE_Vol2_MDA_RDTE_PB23_Justification_Book.pdf, (FY 2023 Budget Estimates) (last visited May 18, 2026).

[8] DOD Response, at 1.

[9] *See* Pub. L. No. 116-283, div. A, title XVI, § 1650, 134 Stat. 3388, 4071 (Jan. 1, 2021).

[10] *See* Pub. L. No. 117-103, § 8006(a), 136 Stat. at 173; 168 Cong. Rec. at H2144; *see also* DOD Response, at 2.

[11] Pub. L. No. 117-81, § 1665(b)(4), 135 Stat. 1541, 2104–2105 (Dec. 27, 2021).

2023 and 2024 and designate amounts for HDR-G in joint explanatory statements accompanying annual appropriations for the same years.[12] According to DOD's response, it began moving radar components to a facility for modification in support of HDR-G development in January 2024.[13]

The Senate Appropriations Committee report accompanying proposed FY 2025 Department of Defense appropriations stated that congressional defense committees were notified that panels procured for HDR-H were being modified for use in HDR-G.[14] The report stated that because funds were appropriated in FYs 2018–2022 specifically "for the purpose of the HDR-H program of record . . . , a change to the purpose and amount of funds enacted into law should have been notified in accordance with section 8005 of the applicable Department of Defense Appropriations Acts,"[15] which permits DOD to transfer funds upon proper congressional notification.[16]

The report included a provision for us to provide a legal opinion to the Subcommittees on Defense, Senate and House Committees on Appropriations, evaluating DOD's compliance with all applicable appropriations law.[17] In addition, a subsequent letter from the Chairman and the Ranking Member of the Subcommittee on Defense, Senate Committee on Appropriations, referred to the report and asked that we provide such a legal opinion.[18] This decision therefore addresses (1)

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[12] *See* James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, div. A, title XVI, § 1660, 136 Stat. 2395, 2955 (Dec. 23, 2022); National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, div. A, title XVI, § 1669, 137 Stat. 136, 607–609 (Dec. 22, 2023); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. C, title VIII, § 8006(a), 136 Stat. 4459, 4586 (Dec. 29, 2022); Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. A, title VIII, § 8006(a), 138 Stat. 460, 482 (Mar. 23, 2024); 170 Cong. Rec. H1705 (2024); 168 Cong. Rec. S8242 (2022).

[13] DOD Response, at 1.

[14] S. Rep. No. 118-204, at 12 (2024).

[15] *Id.* at 12–13.

[16] *See, e.g.*, Pub. L. No 115-141, § 8005, 132 Stat. at 462–463.

[17] *See* S. Rep. No. 118-204.

[18] Request Letter from Mitch McConnell, Chairman, Senate Appropriations Committee Defense Subcommittee and Christopher A. Coons, Ranking Member, Senate Appropriations Committee Defense Subcommittee to Comptroller General (May 5, 2025).

whether DOD obligated funds designated for HDR-H in accordance with the purpose statute, 31 U.S.C. § 1301(a), which requires that agencies obligate appropriations only for the purpose for which Congress appropriated them; and (2) whether DOD complied with any applicable statutory conditions on its authority to transfer amounts from one appropriation to another or to reprogram amounts within a single appropriation.[19]

DISCUSSION

At issue here is whether DOD complied with the purpose statute when obligating amounts designated for HDR-H and whether any actions at issue were subject to transfer or programming constraints.

Purpose Statute

Under the purpose statute, agencies must obligate appropriations only for the purposes for which Congress appropriated them. 31 U.S.C. § 1301(a). This requires that expenditures bear a reasonable, logical relationship to the purposes of the relevant appropriations and authorizing statutes. *See* B-332322, Oct. 19, 2021. While the text of an appropriation is of paramount importance, it is read in light of authorizing legislation in an effort to give effect to all relevant provisions. *See* B-330862, Sept. 5, 2019; B-323365, Aug. 6, 2014. Where a given expenditure is neither specifically provided for nor prohibited, the question is "whether the expenditure falls within the agency's legitimate range of discretion, or whether its relationship to an authorized purpose or function is so attenuated as to take it beyond that range." B-332322, Oct. 19, 2021 (citing B-223608, Dec. 19, 1988).

Text of the relevant appropriations acts required DOD to obligate amounts "for basic and applied research, development, test and evaluation." *See, e.g.*, Pub. L. No. 115-141, 132 Stat. at 459. DOD was also required to give force to relevant provisions in applicable NDAAs, such as program initiation timelines, requested studies and reports, and deadlines for contracting actions. *See, e.g.*, Pub. L. No. 115-232, 132 Stat. at 2165.

We note that although joint explanatory statements accompanying the annual appropriations acts in FYs 2018–2022 designated amounts for HDR-H, DOD was only required by law to obligate amounts specifically for this program in certain fiscal years. This is because indicia in legislative history documents, such as joint explanatory statements, are legally binding only if Congress incorporates the documents into the text of the statute by reference. *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993); B-332393, May 5, 2021.

[19] *See generally* B-323792, Jan. 23, 2013 (discussing and distinguishing transfers and reprogrammings).

Here, a provision in each annual appropriations act incorporated the designations in the joint explanatory statements by reference, but only "for which the amounts appropriated [for the designated projects] exceed the amounts requested [for those projects]." *See, e.g.*, Pub. L. No 115-141, § 8006(a), 132 Stat. at 463. Accordingly, DOD was required to obligate amounts specifically for HDR-H only in those fiscal years in which the joint explanatory statement designated an amount for HDR-H exceeding DOD's request.[20] *See* B-332393, May 5, 2021 (applying this incorporation by reference provision to a different DOD program).

Though DOD was not always required by law to do so, it nevertheless obligated for HDR-H the amounts designated for the program in each fiscal year's corresponding joint explanatory statement. DOD reports that it obligated within 98–100 percent of the RDT&E budget for HDR-H each year across six general categories: "production of critical radar components;" "Common software development;" "site specific engineering;" "program office personnel and activities;" "Planning and design of HDR-H Command and Control, Battle Management & Communications;" and "Advanced Planning & Environmental Impact Statement."[21]

Agencies have a legitimate range of discretion to determine that an expenditure bears a reasonable, logical relationship to the purpose stated in the appropriation. *See* B-332322, Oct. 19, 2021; B-333826, Apr. 27, 2022. Here, DOD acted within this range when it obligated amounts for activities in the above categories. None of the obligations described appear so attenuated from the purpose of the RDT&E appropriation itself or joint explanatory statement designations for the HDR-H program as to take them beyond that range of discretion. *See* B-333826, Apr. 27, 2022; B-223608, Dec. 19, 1988. These obligations were therefore consistent with the purpose statute.[22]

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[20] Specifically, DOD was required by law to obligate amounts for HDR-H in FYs 2018, 2021, and 2022, but not in FYs 2019 and 2020. *See* 168 Cong. Rec. at H2145; 166 Cong. Rec. at H8247 (2020); 165 Cong. Rec. at H10886 (2019); 164 Cong. Rec. at H8573; 164 Cong. Rec. at H2371.

[21] MDA Response Letter (Attachment). Sound administrative funds control practices may reasonably result in small amounts of expired, unobligated balances. B-335747, Apr. 22, 2024.

[22] Under our three-step purpose analysis, an expenditure must (1) bear a reasonable, logical relationship to the purpose stated in the appropriation, (2) not be prohibited by law, and (3) not be provided for in another appropriation. B-335871, Aug. 28, 2024. We focus on step one of the analysis here, as we are aware of neither a relevant prohibition nor another appropriation that provided for the relevant expenses.

No available evidence indicates that DOD used funds designated for HDR-H in support of HDR-G, either to modify HDR-H parts or for any other purpose. DOD's letter to us states that "no HDR-H funds were used to develop/build components for the HDR-G radar, nor were HDR-H funds used to modify any HDR-H components, including the radar panels, for HDR-G configuration."[23] Line-item designations for HDR-G appeared in the joint explanatory statements accompanying annual appropriations acts beginning in FY 2022 and continued in FYs 2023 and 2024. *See* 168 Cong. Rec. at H2144; 168 Cong. Rec. at S8242; 170 Cong. Rec. at H1705. DOD told us that it did not move parts to a facility for modification to support HDR-G until January 2024.[24]

While the last year of funding designated for HDR-H was available for obligation until the close of FY 2023, DOD explained that it did not divert HDR-H funds to HDR-G, either before or after DOD received amounts designated for HDR-G, and we did not find evidence indicating any such diversion. DOD was explicitly authorized by law to "leverage existing programs of record to expedite the development and deployment" of HDR-G beginning in FY 2022. Pub. L. No. 117-81, § 1665(b)(4), 135 Stat. at 2104–2105. Finally, contracting records corroborate DOD's account of HDR-G development and indicate that agency contracting actions specific to Guam development did not begin until after amounts designated for HDR-G became available.[25]

Accordingly, DOD was authorized to modify excess HDR-H components in support of HDR-G because it received amounts designated for HDR-G beginning in FY 2022. DOD used these amounts to modify existing radar components to expedite HDR-G development, as directed by law. *See* DOD Response Letter, at 1; Pub. L. No. 117-81, 135 Stat. at 2104–2105.

<u>Transfer and Reprogramming Requirements</u>

Transfer is the movement of funds from one appropriation to another and is generally prohibited except as permitted by specific statutory authority. 31 U.S.C. § 1532; B-323792, Jan. 23, 2013; *see also, e.g.*, Pub. L. No 115-141, 132 Stat. at 462 (providing DOD with recurring general transfer authority in section 8005). Reprogramming involves moving funds from one purpose to another within an account. GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 85. Agencies are generally "free to

[23] DOD Response, at 1.

[24] *Id.*

[25] *See* SAM.gov, *Homeland Defense Radar Guam (HDR-G)*, Contract Announcement HQ086222F0004, (Apr. 26, 2022), *available at* https://sam.gov/workspace/contract/opp/f8ca21e753e94f638341f7e4816b90dc/view (last visited May 18, 2026).

reprogram . . . as long as the resulting obligations and expenditures are consistent with the purpose restrictions applicable to the appropriation," but Congress may restrict an agency's authority to reprogram. B-323792, Jan. 23, 2013, at 3.

DOD explained that it did not transfer or reprogram HDR-H funds to other purposes and we did not find evidence of any such transfer or reprogramming.[26] As explained in our purpose statute analysis and supported by the agency's response, because "HDR-H funds were not repurposed for the HDR-G project at any time, or otherwise transferred between appropriation accounts, recourse to [transfer authority] was not required."[27]

CONCLUSION

We conclude that DOD obligations of HDR-H appropriations during FYs 2018–2022 fell within the reasonable range of discretion afforded to the agency, were not diverted to other purposes, and were therefore consistent with the purpose statute. DOD did not transfer or reprogram these funds, and its execution of the funds therefore triggered no statutory requirements pertaining to transfers or reprogrammings.

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General Counsel

[26] DOD Response, at 2.

[27] *Id.* DOD also did not reprogram funds when it issued a partial stop-work order that continued work on radar components but stopped other HDR-H work: the funds supporting the continued work were designated for HDR-H, and DOD obligated for HDR-H nearly all the amounts designated for it. *See* FY 2023 Budget Estimates, at 658–59; DOD Response; MDA Response Attachment. These obligations were consistent both with the availability of amounts designated for HDR-H and with relevant statutory provisions that contemplated operation of HDR-H by 2023 or as soon as possible thereafter. *See, e.g.*, John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636, 2165–66 (Aug. 13, 2018).