

Section 502: Modifications to the Defense Modernization Account

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Key Points

Section 502 of the Forged Act proposes several modifications to Section 3136 of Title 10, United States Code, which governs the Defense Modernization Account (DMA). These changes include removing the stipulation that reimbursements to the DMA must come from savings derived from specific projects, eliminating limitations on using DMA funds for increasing procurement quantities or for programs lacking prior authorization, striking the annual cap on transfers from the DMA, and revising the consultation requirements for the Under Secretary of Defense (Comptroller) regarding the account's management. These modifications aim to provide the Department of Defense (DoD) with greater flexibility in managing and utilizing the DMA for modernization efforts.

History of the recommendation

The Defense Modernization Account was established to provide the DoD with a mechanism to fund projects that reduce the life cycle cost of existing or new systems, increase procurement efficiency, address unforeseen contingencies, and support other modernization priorities.¹ The account is funded through appropriations, reimbursements from savings achieved in cost-reduction projects, and transfers of unexpired funds from other appropriation accounts due to efficiencies.¹ The legislative history of the specific modifications proposed in Section 502 requires careful examination of relevant congressional documents, particularly those related to the National Defense Authorization Act (NDAA) for Fiscal Year 2025, as this is the likely legislative vehicle for such changes.³

While a direct historical record detailing the precise genesis of each proposed change within Section 502 might require access to specific committee reports and legislative debates for the 118th Congress, understanding the broader evolution of the DMA provides valuable context. The renumbering of the section from 2216 to 3136 in 2021⁷ signifies an ongoing effort to organize and refine defense acquisition regulations. Furthermore, past amendments to Section 3136, such as those in 2022 and 2024 that added new authorized uses for the DMA¹, illustrate a continuous congressional interest in adapting the account to evolving defense needs.

A 1999 Government Accountability Office (GAO) report on the DMA highlighted its

operations and benefits, focusing on funding status and usage.⁸ This report provides a historical perspective on the account's initial implementation and the types of projects it supported. Examining the findings and recommendations of such reports can shed light on potential challenges or limitations identified over time, which may have contributed to the current proposed modifications. The removal of the requirement linking reimbursements to savings from specific projects, for instance, could stem from a recognition that such a strict linkage might hinder the timely replenishment of the DMA or limit its ability to support a broader range of modernization initiatives. Similarly, the elimination of the transfer cap might be a response to instances where significant modernization opportunities required funding exceeding the previous limit. Analyzing the legislative history surrounding recent NDAs⁶ that have included amendments to Title 10 could reveal discussions and justifications related to enhancing the flexibility and utility of the DMA, potentially foreshadowing the specific changes proposed in Section 502.

Desired Effect of the recommendation

The proposed modifications in Section 502 aim to enhance the flexibility and efficiency of the Defense Modernization Account in supporting the DoD's modernization objectives.

Desired Effect 1: Increased flexibility in funding the Defense Modernization Account. Striking the phrase "out of savings derived from such projects" from subsection (b)(1) allows for a broader range of funding sources to replenish the DMA.¹ Previously, reimbursements under subsection (c)(1)(B)(ii) were explicitly tied to savings generated from life cycle cost reduction projects funded under subsection (d)(1). Removing this restriction could enable the DMA to receive funds from other sources of efficiencies achieved across various defense programs, providing a more robust and adaptable funding mechanism for modernization initiatives. This change acknowledges that savings can be realized in numerous ways beyond just life cycle cost reduction projects and allows those broader savings to contribute to future modernization efforts.

Desired Effect 2: Enhanced flexibility in using the DMA for procurement quantity increases. The removal of paragraphs (1) and (2) from subsection (e) eliminates limitations on using DMA funds to increase the quantity of items or services procured under an acquisition program, even if such an increase might exceed previously established limitations or JROC-approved requirements.¹ This change intends to provide Program Managers with greater agility to capitalize on opportunities for achieving economies of scale or addressing evolving operational needs that might

necessitate adjustments to procurement quantities. For instance, if a program identifies an unforeseen opportunity to significantly reduce unit costs by increasing the procurement volume, this modification would facilitate the use of DMA funds to pursue such efficiencies without being constrained by prior limitations.

Desired Effect 3: Streamlined process for utilizing DMA funds for new initiatives or programs. Striking paragraph (2) from subsection (e) removes the restriction that DMA funds cannot be used for a purpose or program for which Congress has not authorized appropriations, unless the procedures for initiating a new start program are followed.¹ This modification aims to expedite the deployment of DMA funds towards emerging priorities or innovative solutions that might not have been explicitly authorized through traditional appropriations channels. This could be particularly beneficial in rapidly addressing unforeseen threats or capitalizing on breakthrough technologies that require swift funding and implementation.

Desired Effect 4: Increased flexibility in transferring funds from the DMA to relevant appropriation accounts. The removal of paragraph (3) from subsection (f) eliminates the previous annual cap of \$500 million on transfers from the DMA to other appropriations available for purposes outlined in subsection (d).² This change provides the DoD with greater latitude to allocate DMA resources to specific modernization projects as needed, without being constrained by an arbitrary annual limit. This could allow for more substantial investments in critical modernization areas in a given fiscal year, enabling the DoD to respond more effectively to evolving technological landscapes and strategic priorities.

Desired Effect 5: Streamlining the implementation process for the Defense Modernization Account. The modifications to subsection (h)(2) remove the specific requirement for the Under Secretary of Defense (Comptroller) to consult with the General Counsel and Inspector General of the Department of Defense regarding the criteria for projects funded by savings and the accounting procedures for the DMA.¹ This change is likely intended to streamline the administrative processes associated with managing the DMA, potentially reducing bureaucratic hurdles and expediting the utilization of funds for authorized purposes.

Potential Negative impacts of the recommendations

While the proposed modifications aim to enhance flexibility, they also carry potential negative consequences that need careful consideration.

Potential Negative impact 1: Reduced oversight and accountability. The removal of

the explicit link between reimbursements to the DMA and savings from specific projects, coupled with the reduced consultation requirements for the Comptroller, could diminish the transparency and accountability associated with the use of DMA funds.¹ The direct connection to achieved savings provided a clear rationale for replenishing the account. Without this link, it might become more challenging to track the effectiveness of DMA expenditures and ensure that funds are being used appropriately for modernization purposes. The reduced consultation with oversight bodies like the General Counsel and Inspector General on project criteria and accounting procedures could further erode the checks and balances designed to prevent misuse of funds.

Potential Negative impact 2: Risk of funding programs without proper authorization or justification. Eliminating the restriction on using DMA funds for unauthorized programs without adhering to "new start" procedures could lead to the funding of initiatives that have not undergone thorough congressional review and approval.¹ The "new start" procedures are in place to ensure that significant new defense programs are properly vetted and aligned with strategic priorities before receiving funding. Bypassing these procedures through the DMA could undermine Congress's constitutional role in authorizing and appropriating funds for defense activities.

Potential Negative impact 3: Potential for inefficient allocation of funds. Removing the \$500 million annual cap on transfers from the DMA could lead to large sums of money being moved between accounts without sufficient scrutiny, potentially resulting in inefficient allocation or the funding of lower-priority projects.² While increased transfer flexibility can be beneficial for addressing urgent needs, the absence of a limit could create opportunities for mismanagement or the transfer of funds based on expediency rather than a rigorous assessment of modernization priorities.

Potential Negative impact 4: Erosion of congressional control over defense spending. The cumulative effect of these modifications could be a significant reduction in Congress's ability to oversee and control how defense modernization funds are being used.¹ By removing restrictions on funding sources, usage, and transfers, and by reducing consultation requirements, the proposed changes could shift greater budgetary authority to the Executive Branch, potentially weakening the system of checks and balances in defense spending.

Potential Negative impact 5: Impact on Program Managers' planning predictability. While the increased flexibility might seem advantageous, the potential for larger and less predictable fund transfers into and out of the DMA could introduce uncertainty

into Program Managers' long-term planning processes.¹ Program Managers rely on a degree of funding stability to effectively plan and execute modernization projects. Significant and potentially volatile fluctuations in DMA funding availability could disrupt their budget projections and timelines, making it more challenging to manage complex upgrade programs.

Mitigations the organization will take to diminish the negative impacts

To mitigate the potential negative impacts of the proposed modifications, the DoD should proactively implement several key strategies.

Mitigation of Negative Impact 1: To address the risk of reduced oversight, the DoD should establish enhanced internal review processes for all projects funded through the DMA. This should include stringent justification requirements for all expenditures, detailed tracking of how funds are utilized, and regular performance audits. Furthermore, even though not explicitly mandated, the Under Secretary of Defense (Comptroller) should continue to consult regularly with the General Counsel and Inspector General on project criteria and accounting procedures to maintain a strong level of independent oversight.

Mitigation of Negative Impact 2: To prevent the funding of unauthorized programs, the DoD should develop clear and rigorous internal guidelines for utilizing DMA funds for new initiatives. These guidelines should ensure that all such initiatives are closely aligned with established strategic priorities and undergo a thorough internal review process that mirrors the scrutiny applied to traditionally authorized programs. Additionally, the DoD should commit to proactive and transparent communication with relevant Congressional committees regarding any significant new programs being funded through the DMA, even if not strictly required by law.

Mitigation of Negative Impact 3: To ensure efficient allocation of funds in the absence of a transfer cap, the DoD should develop and implement robust criteria and prioritization frameworks for all transfers to and from the DMA. These frameworks should be based on a comprehensive assessment of modernization priorities and the potential impact of the transfers on overall defense capabilities. Regular reviews of transfer activities should be conducted to ensure they are strategically justified and contributing to the most critical modernization needs.

Mitigation of Negative Impact 4: To maintain a strong working relationship with Congress and ensure continued congressional oversight, the DoD should commit to providing regular and comprehensive reports on the activities of the DMA. These

reports should include detailed information on all funded projects, fund transfers, and the overall impact of the DMA on defense modernization efforts. Proactive engagement with Congressional committees through regular briefings and consultations will also be crucial in fostering transparency and maintaining congressional confidence in the management of the DMA.

Mitigation of Negative Impact 5: To enhance planning predictability for Program Managers, the DoD should establish clear communication channels and provide regular updates on the projected availability of DMA funds for modernization projects. Developing a transparent and predictable process for accessing DMA funds, even with the increased flexibility in transfers, will help Program Managers better plan and execute their upgrade programs. This could involve establishing internal timelines for funding decisions and providing Program Managers with early indications of potential funding opportunities through the DMA.

DoD Personnel Most Affected

Several categories of DoD personnel will be directly affected by the modifications to the Defense Modernization Account.

Program Managers: These individuals will experience the most direct impact as they are responsible for planning and executing upgrades to existing systems and developing new capabilities. The increased flexibility in accessing DMA funds could provide them with more opportunities to pursue modernization initiatives. However, they will also need to adapt to potentially new application processes and a potentially less predictable funding environment due to the removal of certain restrictions and the transfer cap. The emphasis on strong justification for funding requests will likely increase for Program Managers.

Budget and Financial Management Personnel (Comptroller's Office): Personnel within the Comptroller's office will play a critical role in implementing the revised regulations and managing the DMA under the new framework. They will be responsible for developing the enhanced internal review processes, tracking expenditures, and managing the potentially larger volume and value of fund transfers. The removal of specific consultation requirements might place a greater burden on their internal expertise to ensure proper management and accountability of the DMA.

Acquisition Officials: These individuals involved in the procurement of goods and services will be affected by the removal of limitations on using DMA funds for quantity increases. This could provide them with more flexibility to adjust procurement

strategies to achieve greater efficiency or meet evolving requirements. They will need to ensure that any increased procurement using DMA funds still aligns with broader acquisition regulations and policies.

Requirements Officers (Joint Requirements Oversight Council - JROC Staff):

The removal of the limitation related to JROC-approved requirements for procurement quantity increases might impact how requirements are defined and managed.

Requirements officers may need to work more closely with program managers and acquisition officials to ensure that any increases in procurement quantities funded by the DMA are still aligned with validated operational needs.

Policy and Planning Staff: These personnel will need to adapt their strategic planning processes to account for the potentially more flexible and less restricted use of the DMA. They will be involved in developing the internal guidelines and approval processes for utilizing DMA funds, ensuring that these processes align with overall defense modernization objectives and strategic priorities.

Stakeholders opposed and rationale for Opposition

Several stakeholders, both within and outside the DoD, may oppose the proposed modifications to the Defense Modernization Account.

Congressional Appropriations Committees: These committees are responsible for appropriating funds to the DoD and maintaining oversight of defense spending. They may oppose the modifications due to concerns about the potential for reduced oversight and control over the DMA. The removal of restrictions on funding sources, usage, and transfers, along with the reduced consultation requirements, could be viewed as an infringement on their constitutional authority to control the federal purse. They might be concerned that these changes could lead to less transparency and accountability in how modernization funds are being spent.

Government Accountability Office (GAO): The GAO, as the independent audit arm of Congress, is responsible for ensuring the accountability and transparency of government programs. They might oppose the modifications due to concerns that the reduced restrictions and consultation requirements could increase the risk of inefficient or inappropriate use of DMA funds. The GAO's past scrutiny of the DMA ⁸ suggests an ongoing interest in ensuring its proper management, and they may raise concerns about the potential for decreased accountability under the proposed changes.

Defense Industry Watchdog Groups: These non-governmental organizations often

advocate for greater transparency and accountability in defense spending. They may oppose the modifications if they believe that reduced oversight and fewer restrictions on the DMA could create more opportunities for waste, fraud, and abuse in defense modernization programs. They might argue that the changes could lead to less rigorous scrutiny of how taxpayer dollars are being used for modernization efforts.

Potentially, some elements within the DoD: While the increased flexibility might be generally welcomed within the DoD, some individuals or departments might have reservations. For instance, those focused on strict adherence to established budgetary processes and congressional oversight might be concerned about the potential for less centralized control over modernization funding. Additionally, there might be concerns that the increased flexibility could lead to funding decisions that are not always aligned with long-term strategic priorities.

Additional Resources

To successfully implement the modifications to the Defense Modernization Account, the DoD will likely require several additional resources.

Personnel with Expertise in Financial Management and Auditing: The increased flexibility and reduced external consultation will necessitate enhanced internal oversight. Therefore, the DoD will need additional personnel with expertise in financial management, accounting, and auditing to develop and implement robust internal review processes and ensure the proper tracking and accountability of DMA funds.

Legal Counsel: While the specific requirement for consultation with the General Counsel on certain aspects of DMA management is being removed, legal expertise will still be crucial for interpreting the new regulations and ensuring compliance with all applicable laws and policies. Additional legal counsel might be needed to advise on the implementation of the modified DMA framework.

Policy Analysts: To develop the necessary internal guidelines and approval processes for utilizing DMA funds, particularly for new initiatives, the DoD will require additional policy analysts with expertise in defense acquisition and budgeting. These analysts will be crucial in ensuring that the use of the DMA aligns with strategic priorities and congressional intent.

Enhanced IT Systems: Managing a more flexible and potentially larger DMA will likely require enhancements to existing IT systems. These systems will need to be capable of tracking a greater volume and variety of fund transfers and project expenditures, as well as providing robust reporting capabilities to support both internal oversight and

communication with Congress.

Training Programs: To ensure that relevant DoD personnel, particularly Program Managers and budget officials, fully understand the new rules and procedures for utilizing the DMA, comprehensive training programs will be necessary. These programs should cover the changes in funding sources, usage restrictions, transfer procedures, and internal oversight requirements.

Measures of Success

The success and effectiveness of the modifications to the Defense Modernization Account can be measured through several key criteria.

Increased Efficiency in Modernization Project Execution: A primary measure of success will be an observable increase in the efficiency of executing modernization projects funded through the DMA. This can be tracked by measuring the time taken from project initiation to completion compared to historical data for similar projects. A reduction in bureaucratic delays and faster deployment of modernized capabilities would indicate success.

Demonstrable Cost Savings or Avoidance: The DMA is intended to support cost-effective modernization. Therefore, a key measure of success will be the ability to demonstrate tangible cost savings or cost avoidance achieved through projects funded under the revised regulations. This should involve rigorous tracking and analysis of project costs compared to alternative approaches or the costs of maintaining legacy systems.

Improved Responsiveness to Emerging Threats and Needs: The increased flexibility should enable the DoD to respond more rapidly to unforeseen threats and emerging operational needs. Success can be measured by evaluating the DoD's ability to quickly allocate DMA funds to address urgent requirements or to adopt promising new technologies in a timely manner.

Successful Implementation of New Technologies and Capabilities: The ultimate goal of modernization is to enhance the warfighting capabilities of the U.S. military. Therefore, a critical measure of success will be the successful implementation and fielding of new technologies and capabilities that have been facilitated by the modified DMA. This can be assessed through metrics such as the number of new systems deployed, their operational performance, and their impact on overall military effectiveness.

Maintenance of Audit Readiness and Compliance: Despite the reduced explicit consultation requirements, it is crucial that the DoD maintains a high level of audit readiness and compliance with all relevant regulations. Success can be measured by the results of internal and external audits of the DMA, demonstrating that the increased flexibility has not come at the expense of proper financial management and accountability.

Congressional Feedback and Support: Ultimately, the success of these modifications will also depend on the feedback and support received from relevant Congressional committees. Positive feedback, continued funding support for the DMA, and a lack of significant concerns raised by Congress would indicate that the changes are being viewed as beneficial and are achieving their intended purpose.

Alternative approaches

Several alternative approaches could potentially achieve similar outcomes related to defense modernization, some with potentially greater effectiveness or efficiency than the specific modifications proposed in Section 502.

Targeted Modifications with Sunset Clauses: Instead of broad removals of restrictions, Congress could consider more targeted modifications to Section 3136, focusing on specific limitations that have proven to be particularly burdensome or inefficient. These targeted changes could also include sunset clauses, requiring a reassessment of their effectiveness after a certain period before making them permanent. This approach would allow for a more measured and evidence-based approach to enhancing the DMA's flexibility.

Increased Transparency and Reporting Requirements: Rather than reducing consultation requirements, Congress could instead enhance transparency and reporting requirements for the DMA. This could involve mandating more frequent and detailed reports to Congress on the use of DMA funds, including specific justifications for all expenditures and transfers. This approach would aim to maintain a strong level of congressional oversight while still providing the DoD with some increased flexibility.

Pilot Programs: The DoD could propose implementing the proposed changes on a smaller scale through pilot programs within specific branches of the military or for certain types of modernization projects. This would allow for a thorough evaluation of the impact of the modifications in a controlled environment before implementing them across the entire department.

Dedicated Funding Streams for Specific Modernization Priorities: Instead of

broadly increasing the flexibility of the DMA, Congress could consider establishing dedicated funding streams within the defense budget for specific high-priority modernization areas, such as artificial intelligence, cyber warfare, or hypersonics. This approach would provide more direct funding for critical modernization needs while maintaining clearer lines of accountability and oversight.

Enhanced Oversight Mechanisms: Congress could strengthen existing oversight mechanisms within both the DoD and Congress itself, such as increasing the frequency and scope of audits conducted by the DoD Inspector General and the GAO. This would provide an additional layer of assurance that DMA funds are being used effectively and appropriately, even with increased flexibility.

Section Specific Question 1: How does Section 502 change the rules, eligibility criteria, or funding procedures for using the Defense Modernization Account? How does this impact Program Managers planning upgrades to existing systems?

Section 502 alters the rules governing the Defense Modernization Account by modifying Section 3136 of Title 10, United States Code. It changes the funding procedures by removing the requirement that reimbursements to the DMA under subsection (b)(1) must originate from savings derived from specific life cycle cost reduction projects. This potentially broadens the sources from which the DMA can be replenished. Furthermore, it eliminates eligibility criteria and usage rules outlined in subsection (e), which previously restricted the use of DMA funds for increasing procurement quantities under certain conditions and for programs lacking prior congressional authorization. The removal of the \$500 million annual transfer limit in subsection (f) also significantly changes the funding procedures by allowing for potentially larger and more frequent transfers from the DMA. Finally, the modifications to subsection (h)(2) alter the implementation process by removing specific consultation requirements for the Under Secretary of Defense (Comptroller).

These changes have several potential impacts on Program Managers planning upgrades to existing systems. The increased flexibility in funding sources and the removal of restrictions on using DMA funds for quantity increases could provide Program Managers with more options for funding and executing their upgrade projects. They might find it easier to access funds for initiatives that could lead to significant cost savings through increased procurement volumes. However, the removal of the transfer cap could also introduce uncertainty into the availability of DMA funds, as larger transfers out of the account might occur. Additionally, with potentially less external oversight mandated, Program Managers might face increased internal scrutiny and a greater need to provide strong justifications for their funding

requests to ensure alignment with broader modernization priorities. The streamlined implementation process could potentially expedite the approval and release of DMA funds for their projects, but they will need to adapt to any new internal guidelines and procedures established by the DoD to manage the modified DMA.

Section Specific Question 2: What are the key risk management strategies that the DoD should implement to mitigate the potential negative impacts of the increased flexibility in the Defense Modernization Account resulting from Section 502?

To effectively manage the increased flexibility in the Defense Modernization Account resulting from Section 502, the DoD should implement a comprehensive set of risk management strategies. These strategies should focus on maintaining accountability, transparency, and effective oversight. Key strategies include:

1. **Strengthening Internal Controls:** The DoD must enhance its internal review and approval processes for all DMA-funded projects and fund transfers. This includes establishing clear and rigorous criteria for project eligibility, requiring detailed justifications for all expenditures, and implementing robust tracking mechanisms to monitor the use of funds. Regular internal audits should be conducted to ensure compliance with these controls.
2. **Maintaining Robust Reporting to Congress:** Despite the reduced explicit consultation requirements, the DoD should commit to providing regular and comprehensive reports to relevant Congressional committees on the activities of the DMA. These reports should include detailed information on funding sources, project expenditures, transfer activities, and the rationale behind key funding decisions. This will help maintain transparency and allow Congress to exercise its oversight responsibilities.
3. **Developing Clear Prioritization Frameworks:** To prevent inefficient allocation of funds in the absence of a transfer cap, the DoD should develop clear and well-defined prioritization frameworks for utilizing DMA resources. These frameworks should be based on strategic defense objectives and should ensure that funds are directed towards the most critical modernization needs.
4. **Promoting Transparency and Communication:** The DoD should foster a culture of transparency and open communication regarding the use of the DMA. This includes clearly communicating the new rules and procedures to all relevant personnel, particularly Program Managers and budget officials, and ensuring that information about DMA-funded projects is readily available within the department and, where appropriate, to external stakeholders.
5. **Continuing Engagement with Oversight Bodies:** Even though specific

consultation requirements are being removed, the Under Secretary of Defense (Comptroller) should continue to engage regularly with the General Counsel and the Inspector General on matters related to the DMA's management. Their independent perspectives and oversight are crucial for maintaining the integrity of the account.

By implementing these risk management strategies, the DoD can maximize the benefits of the increased flexibility provided by Section 502 while mitigating the potential negative impacts on oversight, accountability, and the efficient use of taxpayer dollars.

Summary

Section 502 of the Forged Act proposes significant modifications to the Defense Modernization Account, aiming to provide the DoD with greater flexibility in funding and executing modernization projects. These changes include removing restrictions on funding sources and usage, eliminating the transfer cap, and streamlining implementation processes. While these modifications offer the potential for enhanced efficiency and responsiveness, they also carry risks related to reduced oversight, potential for misuse of funds, and erosion of congressional control. To mitigate these risks, the DoD should proactively implement enhanced internal controls, maintain robust reporting to Congress, develop clear prioritization frameworks, promote transparency, and continue engaging with oversight bodies. The successful implementation of these modifications will depend on the DoD's ability to balance the benefits of increased flexibility with the need for continued accountability and responsible stewardship of defense resources.

SEC. 502. MODIFICATIONS TO THE DEFENSE MODERNIZATION ACCOUNT.

Section 3136 of title 10, United States Code, is amended—(1) in subsection (b)(1), by striking "out of savings derived from such projects"; (2) in subsection (e)—(A) by striking paragraphs (1) and (2); and (B) by striking "(3) Funds" and inserting "Funds"; (3) in subsection (f), by striking paragraph (3); and (4) in subsection (h)(2)—(A) in subparagraph (A), by inserting the semicolon and inserting "; and"; (B) in subparagraph (B), by striking the semicolon and inserting a period; and (B) by striking subparagraphs (C) and (D).

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