

Anatomy of a Budget Gimmick

Efforts to use Pentagon funds to build the wall.

April 6, 2018

The Fiscal Year 2018 Omnibus Appropriations Bill recently passed by Congress includes some new money for border security, but not a new border wall as envisioned by President Trump.

Congress directed the Department of Homeland Security to use \$1.6 billion appropriated to repair and buttress existing barriers along the southern border. In response, the President has reportedly discussed with Defense Secretary Mattis the possibility of using part of the \$700 billion Congress appropriated to the Pentagon for a new border wall.

If the Department of Defense (DOD) did try to repurpose funding for a border wall out of its own accounts, it would create a number of legal and constitutional problems. The first and most obvious is Article I, Section 9, Clause 7 of the Constitution,¹ which vests spending authority, the power of the purse, in Congress. While some of the funds appropriated to the Pentagon may be shifted, there are bright lines set out in the legislation for how appropriated funds must be used.² The Fiscal Year 2018 Department of Defense Appropriations Act does not make any appropriations for constructing a wall along the U.S. border. The administration cannot simply ignore the explicit direction of Congress.³

The agencies that oversee border security and immigration matters are Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), which are agencies of the Department of Homeland Security (DHS). Both DOD and DHS have budget requests, endorsed by the President through his Office of Management and Budget, meant to meet the missions and requirements of each respective department. There must be bright lines between the budgets of different federal departments and the Congressional appropriations process is set up to maintain those lines.

¹ Article 1, Section 9, Clause 7: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.”

² Purpose Statute (31 U.S.C. §1301(a)): “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”

³ Antideficiency Act (31 U.S.C. §1341(b)): “An officer or employee of the United States Government or of the District of Columbia government may not involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.”

Before Congress passed appropriations for FY2018, the House Armed Services Committee, mindful of the need to maintain budget discipline, included a provision in the annual defense authorization bill prohibiting the use of DOD funding for a border wall.⁴ In the House Rules Committee, two Republican Representatives, Steven Palazzo and Trent Kelly from Mississippi (which has no international land border) offered an amendment to strip the language prohibiting the use of DOD money for a border wall through the use of a so-called “self-executing” rule. W.G. Yates and Sons Construction of Philadelphia, Mississippi, was later named one of four finalists by the Trump Administration for construction of the wall.⁵ According to the Center for Responsive Politics, Rep. Palazzo has received \$10,800 in campaign contributions from Yates Construction.⁶

In July 2017, the House considered the “Making America Secure” combined appropriations bill that included \$1.6 billion for construction of the border wall from the Pentagon portion of the bill. After this budget gimmick was publicized, the bill was changed to require the \$1.6 billion to come from DHS.

And the Fiscal Year Omnibus appropriation bill signed by the president in March, 2018 also included funds for further fences and other barriers, but only from the DHS portion of the Act.

Why can't the border wall be funded in DHS through the normal process? One potential answer is that, with a total appropriation of \$55.6 billion for FY2018, DHS can't possibly pay for a \$25 billion wall. Even spreading the costs out over five or more years would mean devoting roughly 10 percent of their overall budget to the barrier.

So, if you're looking for money in the federal government, where do you go? The Pentagon's \$700 billion cache of cash.

But when the Fiscal Year 2018 Omnibus Appropriations bill was passed by the Congress, the chairman of the House Armed Services Committee, Rep. Thornberry, had this to say: “For too long, Washington has asked our troops to do more with less, sending them into harm's way without the training and equipment they need to defend themselves and the country. We have added mission after mission while we cut their funding again and again.”

At Taxpayers for Common Sense, we believe adding a \$25 billion invoice for building a wall along the southern border is another way of asking “our troops to do more with less.” Chairman Thornberry can't have it both ways.

No Pentagon money should be spent on a border wall.

⁴ Section 1039. Rule of construction regarding use of Department of Defense funding of a border wall: “None of the funds authorized to be appropriated by this act or otherwise made available for the fiscal year 2018 for the Department of Defense may be used to plan, develop or construct any barriers, including walls or fences, along the international border of the United States.”

⁵ Wonkblog, “Here are the winners of Trump's other kind of border ‘wall’ design contest”
By Tracy Jan September 7, 2017

⁶ <https://www.opensecrets.org/orgs/recips.php?id=D000031181&cycle=2018>