

CHAPTER 1:



INTRODUCTION TO FISCAL LAW

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CHAPTER 1

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I. INTRODUCTION.

A. The Appropriations Process.

1. U.S. Constitution, Art. I, § 8, grants Congress the “. . . power to lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States”
2. U.S. Constitution, Art. I, § 9, provides that “[N]o Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.”

B. The Supreme Court’s Fiscal Philosophy: “The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.” *United States v. MacCollom*, 426 U.S. 317 (1976).

C. Historical Perspective.

1. For many years after the adoption of the Constitution, executive departments exerted little fiscal control over the monies appropriated to them. During these years, departments commonly obligated funds in advance of appropriations, commingled funds and used funds for purposes other than those for which they were appropriated, and obligated or expended funds early in the fiscal year and then sought deficiency appropriations to continue operations.
2. Congress passed the Antideficiency Act (ADA) to curb the fiscal abuses that frequently created “coercive deficiencies” that required supplemental appropriations. The Act actually consists of several statutes that mandate administrative and criminal sanctions for the unlawful use of appropriated funds. *See* 31 U.S.C. §§ 1341, 1342, 1350, 1351, and 1511-1519.

II. KEY TERMINOLOGY.

- A. Fiscal Year. The Federal Government's fiscal year begins on 1 October and ends on 30 September.
- B. Period of Availability. The period of time in which budget authority is available for original obligation. DoD Financial Management Regulation 7000.14-R, Glossary, p. 22 [hereinafter DoD FMR]. Most appropriations are available for obligation for a limited period of time, *e.g.*, one fiscal year for operation and maintenance appropriations. If activities do not obligate the funds during the period of availability, the funds expire and are generally unavailable for new obligations thereafter.
- C. Obligation. An obligation is any act that legally binds the government to make payment. Obligations are amounts representing orders placed, contracts awarded, services received, and similar transactions during an accounting period that will require payment during the same or a future period. This includes payments for which obligations previously have not been recorded and adjustments for differences between obligations previously recorded and actual payments to liquidate those obligations. The amount of obligations incurred is segregated into undelivered orders and accrued expenditures - paid or unpaid. For purposes of matching a disbursement to its proper obligation, the term obligation refers to each separate obligation amount identified by a separate line of accounting. DoD FMR, Glossary, p. 21.
- D. Budget Authority. Budget authority means "the authority provided by Federal law to incur financial obligations . . ." 2 U.S.C. § 622(2). It is the authority provided by law to enter into obligations that will result in immediate or future outlays involving Federal Government funds. The basic forms of budget authority are appropriations authority to borrow, and contract authority. Budget authority relates to direct programs. *See also*, DoD, DoD FMR, Glossary, p. 6-7.
 - 1. Examples of budget authority include appropriations, borrowing authority, contract authority, and spending authority from offsetting collections. OMB Circular A-11, Preparation, Submission and Execution of the Budget (2013), § 20.4(b) [hereinafter OMB Cir. A-11].

2. “Contract Authority” is a limited form of budget authority. It is a statutory authority to incur obligations but with liquidation of obligations dependent upon future actions of the Congress. This authority permits agencies to obligate funds in advance of appropriations, but not to pay or disburse those funds absent some additional appropriations authority. DoD FMR, Glossary, p. 10. *See, e.g.*, 41 U.S.C. § 11 (Feed and Forage Act); DoD FMR, vol. 3, ch. 19, para. 190206 (contract authority with respect to Working Capital Fund).

E. Authorization Act.

1. An authorization act is a statute, passed annually by Congress, which authorizes the appropriation of funds for programs and activities.
2. An authorization act does not provide budget authority. That authority stems from the appropriations act.
3. Authorization acts frequently contain restrictions or limitations on the obligation of appropriated funds.

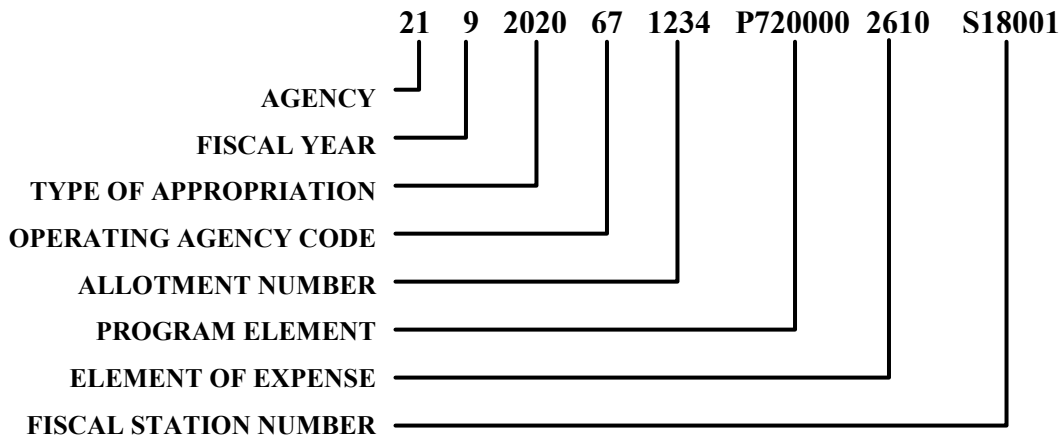
F. Appropriations Act.

1. An appropriations act is the most common form of budget authority.
2. An appropriation is a statutory authorization “to incur obligations and make payments out of the Treasury for specified purposes.” The Army receives the bulk of its funds from two annual appropriations acts:
 - a. The Department of Defense Appropriations Act; and
 - b. The Military Construction Appropriations Act.
3. The making of an appropriation must be stated expressly. An appropriation may not be inferred or made by implication. *Principles of Fed. Appropriations Law*, Vol. I, p. 2-16, GAO-04-261SP (2006).

G. Comptroller General and Government Accountability Office (GAO).

1. The Comptroller General of the United States heads the GAO, an investigative arm of Congress charged with examining all matters relating to the receipt and disbursement of public funds. Until 6 July 2004, “GAO” stood for General Accounting Office.
<http://www.gao.gov/about/index.html>.
2. GAO was established by the Budget and Accounting Act of 1921 (31 U.S.C. § 702) to audit government agencies.
3. GAO issues opinions and reports to federal agencies concerning the obligation and expenditure of appropriated funds.
4. Comptroller General decisions and opinions are identified by a B-number and date (e.g., B-324214, January 27, 2014). Some decisions predating 1995 were published in Decisions of the Comptroller General of the United States. Those decisions have B-numbers but are generally identified by volume, page number, and the year the decision was issued (e.g., 73 Comp. Gen. 77 (1994)).

H. Legacy Accounting Classification (Fund Cites). Accounting classifications are codes used to manage appropriations. They are used to implement the administrative fund control system and to ensure that funds are used correctly. An accounting classification is commonly referred to as a **fund cite**. DFAS-IN 37-100-12, *The Army Management Structure*, provides a detailed breakdown of Army accounting classifications. The following is an example of a fund cite:



1. The first two digits represent the military department. In the example above, the “21” denotes the Department of the Army. For the Air Force, these two digits will be 57; for the Navy, 17; and for the Department of Defense, 97.

2. The third digit shows the fiscal year/period of availability of the appropriation. The “9” in the example shown indicates FY 2009 funds. Installation contracting typically uses annual appropriations. Other fiscal year designators encountered less frequently include:
 - a. Third Digit = X = No year appropriation. This appropriation is available for obligation indefinitely.
 - b. Third Digit = 9/0 = Multi-year appropriation. In this example, funds were appropriated in FY 2009 and remain available through FY 2010.

3. The next four digits reveal the type of the appropriation. The following designators are used within DoD fund citations:

Appropriation Type	Army	Navy	Marine Corps	Air Force	OSD
Military Personnel	21*2010	17*1453	17*1105	57*3500	N/A
Reserve Personnel	21*2070	17*1405	17*1108	57*3700	N/A
National Guard Personnel	21*2060	N/A	N/A	57*3850	N/A
Operations & Maintenance	21*2020	17*1804	17*1106	57*3400	97*0100
Operations & Maintenance, Reserve	21*2080	17*1806	17*1107	57*3740	N/A
Operations & Maintenance, National Guard	21*2065	N/A	N/A	57*3840	N/A
Procurement, Aircraft	21*2031	17*1506		57*3010	N/A
Procurement, Missiles	21*2032	17*1507 (not separate – the combined appropriation is entitled Weapons Procurement)	17*1109	57*3020	N/A
Procurement, Weapons & Tracked Vehicles	21*2033			N/A	N/A
Procurement, Other	21*2035			17*1810	57*3080
Procurement, Ammunition	21*2034	17*1508		57*3011	N/A
Shipbuilding & Conversion	N/A	17*1611		N/A	N/A
Res., Develop., Test, & Eval.7	21*2040	17*1319		57*3600	97*0400

Military Construction	21*2050	17*1205		57*3300	97*0500
Family Housing Construction	21*0702	17*0703		57*0704	97*0706
Reserve Construction	21*2086	17*1235		57*3730	N/A
National Guard Construction	21*2085	N/A	N/A	57*3830	N/A

* The asterisk in the third digit is replaced with the last number in the relevant fiscal year. For example, Operations & Maintenance, Army funds for FY2009 would be depicted as 2192020.

** A complete and updated listing of these and other fund account symbols and titles assigned by the Department of the Treasury are contained in *Federal Account Symbols and Titles: The FAST Book*, which is a supplement of the Treasury Financial Manual. The FAST Book is available online and may be downloaded in Word or pdf format, at <http://www.fms.treas.gov/fastbook/index.html>

III. LIMITATIONS ON THE USE OF APPROPRIATED FUNDS.

- A. General Limitations on Authority. The authority of executive agencies to spend appropriated funds is limited.
1. An agency may obligate and expend appropriations only for a proper **purpose**.
 2. An agency may obligate only within the **time** limits applicable to the appropriation (*e.g.*, O&M funds are available for obligation for one fiscal year).
 3. An agency must obligate funds within the **amounts** appropriated by Congress and formally distributed to or by the agency.
- B. Limitations -- Purpose.
1. The "Purpose Statute" requires agencies to apply appropriations only to the objects for which the appropriations were made, except as otherwise provided by law. *See* 31 U.S.C. § 1301. *See also* DoD FMR, vol. 14, ch. 2, para. 020202.B.

2. The “Necessary Expense Doctrine.” Where a particular expenditure is not specifically provided for in the appropriation act, it is permissible if it is necessary and incident to the proper execution of the general purpose of the appropriation. The GAO applies a three-part test to determine whether an expenditure is a “necessary expense” of a particular appropriation:
 - a. The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carry out either a specific appropriation or an authorized agency function for which more general appropriations are available.
 - b. The expenditure must not be prohibited by law.
 - c. The expenditure must not be otherwise provided for; that is, it must not be something that falls within the scope of some other appropriation or statutory funding scheme.

Principles of Fed. Appropriations Law, vol. I, ch. 4, 4-21, GAO-04-261SP (3d ed. 2004). See *Presidio Trust—Use of Appropriated Funds for Audio Equipment Rental Fees and Services*, B-306424, 2006 U.S. Comp. Gen. LEXIS 57 (Mar. 24, 2006).

C. Limitations -- Time.

1. Appropriations are available for limited periods. An agency must incur a legal obligation to pay money within an appropriation’s period of availability. If an agency fails to obligate funds before they expire, they are no longer available for new obligations.
 - a. Expired funds retain their “fiscal year identity” for five years after the end of the period of availability. During this time, the funds are available to adjust existing obligations or to liquidate prior valid obligations, but are not available for new obligations.
 - b. Five years after the funds have expired, they become “cancelled” and are not available for obligation or expenditure for any purpose. 31 U.S.C. § 1552(a); DoD FMR, vol. 3, ch. 10, para. 100201.

2. Appropriations are available only for the bona fide need of an appropriation's period of availability. 31 U.S.C. § 1502(a). *See Magnavox -- Use of Contract Underrun Funds*, B-207433, Sept. 16, 1983, 83-2 CPD ¶ 401; *To the Secretary of the Army*, B-115736, 33 Comp. Gen. 57 (1953); DoD FMR, vol. 14, ch. 2, para. 020202.F.

D. Limitations -- Amount.

1. The Antideficiency Act, 31 U.S.C. §§ 1341-42, 1511-19, prohibits any government officer or employee from:
 - a. Obligating, expending, or authorizing an obligation or expenditure of funds in excess of the amount available in an appropriation, an apportionment, or a formal subdivision of funds. 31 U.S.C. § 1341(a)(1)(A). *See also*, DoD FMR, vol. 14, ch. 2, para. 020202.D.
 - b. Incurring an obligation in advance of an appropriation, unless authorized by law. 31 U.S.C. § 1341(a)(1)(B). *See also*, DoD FMR, vol. 14, ch. 2, para. 020202.E.
 - c. Accepting voluntary services, unless otherwise authorized by law. 31 U.S.C. § 1342. *See also*, DoD FMR, vol. 14, ch. 2, para. 020202.I.
2. Formal subdivisions of funds are subdivisions of appropriations by the executive branch departments and agencies. These formal limits are referred to as apportionments, allocations, and allotments.
3. Informal subdivisions are subdivisions of appropriations by agencies at lower levels, *e.g.*, within an installation, without creating an absolute limitation on obligational authority. These subdivisions are considered funding targets, or "allowances." These limits are **not** formal subdivisions of funds, and incurring obligations in excess of an allowance is not necessarily an ADA violation. If a formal subdivision is breached, however, an ADA violation occurs and the person responsible for exceeding the target may be held liable for the violation. DFAS-IN Reg. 37-1, ch. 3, para. 031402. For this reason, Army policy requires reporting such overobligations. DFAS-IN Reg. 37-1, ch. 4, para. 040204.L.1.

IV. CONCLUSION.

- A. The current fiscal law framework is a result of the appropriations process, judicial interpretation, and historical underpinnings. While the core tenants of fiscal law are founded in the base concepts of purpose, time, and amount (PTA), the remainder of this work will explore these concepts in much greater detail, as well as other more nuanced topics, thereby revealing a rather complex set of laws and guidance.

- B. This work will begin with the core concepts of PTA, explore areas ranging from operation funding authority to continuing resolution authority, and also provide practical information for areas such as performing fiscal law legal research.