



2017 FINANCIAL MANAGEMENT CONFERENCE

# Appropriations Law Overview

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# ■ General Law Division Resources

- GLD Website (Appropriations FAQs, etc.)
  - <http://www.commerce.gov/os/ogc/general-law-division>
- For in depth questions and guidance, contact
  - Nick Kornegay, Chief
    - [nkornegay@doc.gov](mailto:nkornegay@doc.gov) – 202-482-3653
  - Sarah Coe, Deputy Chief
    - [scoe@doc.gov](mailto:scoe@doc.gov) – 202-482-6807
- Quick, informal questions
  - Main line: 202-482-5391 – [GeneralLaw@doc.gov](mailto:GeneralLaw@doc.gov)





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# Part I: Basic Concepts

# ■ The Power of the Purse

“No money shall be drawn from the Treasury, but in  
Consequence of Appropriations made by law . . .”

Constitution, Article I, section 9, clause 7



# ■ Authority Required

“The established rule is that the expenditure of public funds is proper only when established by Congress, not that public funds may be expended unless prohibited by Congress.”

United States v. MacCollom, 426 US 317 (1976)



# ■ Appropriations

## **What is an Appropriation?**

- A form of budget authority
- The authority to incur obligations and to make payments from the Treasury, including:
  - Annual appropriations
  - Revolving Funds, Gift & Bequest Funds, and Other Permanent, Indefinite Appropriations
- Appropriations may be provided through either annual appropriations acts or authorization acts



# ■ The Obligation of Funds

## What is an Obligation of Funds?

- A definite commitment that creates a legal liability of the Government for the payment of goods and services ordered or received, or a legal duty on the part of the United States that could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States whether payment is made immediately or in the future
- In short: A promise or duty to disburse funds
- Examples:
  - Procurement Contracts, Financial Assistance Awards, Interagency and Other Agreements



# ■ The Recording Statute

31 U.S.C. § 1501

- Requires agencies to promptly record obligations in their financial management system
- May not record obligation until one has arisen
- May not record until there is proper documentation
- For contracts and agreements, obligations arise upon offer and acceptance
- Over- and under-recording are equally improper
- Importance:
  - Provides an accurate picture of existing obligations
  - Failure to follow may lead to an Antideficiency Act violation







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# Part II: Purpose

# ■ The Purpose Statute

31 U.S.C. § 1301

“Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”



# ■ Necessary Expense Rule

- What does it mean when an agency receives an appropriation “for necessary expenses as authorized by law”?
- Necessary Expense Rule:
  - An appropriation is available for those expenses that are necessarily incident to the proper execution or achievement of the object of the appropriation
  - The expenditure must bear a reasonable, logical relationship to the purpose of the appropriation
  - Cannot otherwise be prohibited by law
- Examples:
  - Office Supplies, IT services, HR support



# ■ Necessary Expense Rule

- Discretion is not unlimited
- Generally, cannot use appropriations for items considered “personal expenses” or “gifts”
  - Examples:
    - Food, clothing, trinkets/giveaways/promotional items
  - May be ok when the primary benefit of the expenditure accrues to the agency or where there is a direct link between the purchase and the purpose of the appropriation
  - Ok where specifically authorized by law
  - Seek legal advice where questionable! Assume ‘NO’!
- **DOC Atypical Expense Policy (Nov. 22, 2016)**



# ■ Statutory Purpose Restrictions

- Can be included in the language of an appropriation, in the general provisions of an appropriations act, or in permanent law
- Significant Examples:
  - Travel and subsistence of non-Feds to attend meetings (unless on invitational travel)
  - Grassroots lobbying
  - Publicity and Propaganda
  - May only pay salaries of employees in CONUS who are citizens, permanent residents seeking citizenship, refugees or granted asylum, or owe allegiance to the U.S.
  - Interagency Financing/“Passing the Hat”



# ■ Statutory Purpose Restrictions

- Significant Examples (cont'd):
  - Furnishing/redecorating offices of Presidentially-appointed officials >\$5,000 over the course of the individual's term
  - Portraits of Federal officials
  - Entering into contracts, MOUs, or cooperative agreements, or providing grants, loans or loan guarantees to, any corporation that
    - Has any unpaid Federal tax liability, or
    - Convicted of a felony criminal violation under any Federal law within the preceding 24 months
    - If known by the agency
    - Unless agency has considered suspension/debarment and determined it is not necessary to protect Gov't's interests





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# Part III: Time

# ■ The Time Statute

31 U.S.C. § 1502

“ . . . [A]n appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability . . . .”





# ■ Period of Availability

- The time during which funds remain available for obligation
  - “Fixed year” funds have a defined period of availability (e.g., one-year, two-year, etc.)
  - “No-year” funds remain available until expended (or rescinded – taken back – by Congress)
- Defined by the appropriations act or other statute providing the funds
- In appropriations acts, unless explicitly stated otherwise, funds are “one-year”
- Once the period of availability has lapsed, the funds are said to “expire” and cannot be used for new obligations



# ■ The *Bona Fide* Needs Rule

- Derived from the time statute
  - Fixed year funds are only available to meet the *bona fide* needs of an agency attributable to the funds' period of availability.
    - FY17 one-year funds are available only for the needs of FY17
    - FY17 two-year funds are available only for the needs of FYs 17 and 18
  - No-year funds are available to meet the *bona fide* needs of an agency attributable to the year in which appropriated and in future year.
- If obligation and delivery/performance are entirely within funds' period of availability, the rule is satisfied



# ■ The *Bona Fide* Needs Rule

## If Performance Extends Beyond Funds Expiration

- Goods

- Ok if delivery is made after the funds expire IF:
  - There was a need when the order was placed, and
  - Delivery is made within a reasonable period
- Consider:
  - Off-the-shelf or built to order?
  - Unforeseen delays?
- Ok to replace stock used in the current year even if used next year

- Financial Assistance

- Regardless of the term of performance, if the agency has a need to make an award, it represents a *bona fide* need of the year the grant or cooperative agreement is awarded



# ■ The *Bona Fide* Needs Rule

## If Performance Extends Beyond Funds Expiration

- Services

- Depends on the nature of the services

- Severable Services

- Continuing or recurring in nature; value received throughout
- Represents a *bona fide* need of the year services are rendered
- May only use funds for a POP within funds' period of availability

- Non-Severable Services

- An indivisible undertaking from which the agency obtains no benefit until completion
- Represents a *bona fide* need of the year services begin
- Must charge entire cost against funds available for that year
  - Cannot incrementally fund



# ■ The *Bona Fide* Needs Rule

## Practical Considerations

- Services
  - Key consideration for determining whether severable or non-severable:
    - *If work is stopped, what do you have?*
- There is room to structure a transaction to meet an agency's needs and be consistent with the *bona fide* needs rule, **with proper planning**



# The *Bona Fide* Needs Rule

A Statutory Exception

- Federal Acquisition Streamlining Act
  - Severable Services Contracts, 31 U.S.C. § 3902
    - May procure severable services beginning prior to funds' expiration and extending beyond so long as performance (excluding option years) is one year or less
  - Multi-year Contracts, 31 U.S.C. § 3903
    - May procure severable services for more than one, but no more than 5 years IF:
      - Agency obligates cost for full term of contract or the first year plus termination costs,
      - Agency determines need is reasonably firm and continuing over term of the contract, and
      - Contract serves the best interests of the Government



# ■ Account Closing Statute

31 U.S.C. §§ 1551– 1558

- Once funds have expired, they may not be used to incur new obligations
- However, for obligations incurred prior to the funds' expiration, the funds remain available for a period of 5 years after expiration to
  - Liquidate obligations (pay invoices)
  - Record obligations not previously recorded
  - Adjust under-/over- recorded obligations
- After that time, the account is closed
  - Amounts chargeable to closed accounts may, within limits, be charged to current accounts





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# Part IV: Amount



# ■ Amount

- Congress determines the agency's spending level through the appropriations process
- Generally, an appropriation provides a specific amount that is available for obligation
- Lump sum appropriations may also contain **earmarks**
  - A portion of the lump sum appropriation intended for a specific purpose
  - May be expressed either as a set amount, a cap, or a minimum that may be obligated for that purpose



# ■ The Antideficiency Act

31 U.S.C. §§ 1341-42; 1349-51; 1511-19

- An agency may not:
  - Obligate or expend funds
    - In excess or in advance of an appropriation
    - In excess of an apportionment by OMB
    - In excess of an agency's allotment or suballotment
    - Required to be sequestered
  - Accept voluntary services
  - Employ personal services
- Except where specifically authorized by law
  - Government-wide authority to accept student volunteers (must consult HR)



# ■ The Antideficiency Act

31 U.S.C. §§ 1341-42; 1349-51; 1511-19

- Violations of the ADA
  - Must be reported to the President, Congress, and GAO
  - Those responsible are subject to administrative discipline
  - It is a crime to knowingly and willfully violate
    - Punishable by up to 2 years in prison and/or \$5,000 fine



# ■ Miscellaneous Receipts Statute

31 U.S.C. § 3302(b)

- Requires that amounts received for the Government from any source be deposited in the Treasury as soon as practicable without deduction, except as provided by statute
- Crediting funds without authority to an agency's own account is an illegal augmentation of appropriations



# Questions?

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