

CHAPTER 2:



AVAILABILITY OF APPROPRIATIONS AS TO PURPOSE

THIS PAGE INTENTIONALLY LEFT BLANK

CHAPTER 2

AVAILABILITY OF APPROPRIATIONS AS TO PURPOSE

I. REFERENCES.....	1
II. CONSTITUTIONAL, STATUTORY AND OTHER BACKGROUND.	1
A. U.S. Constitution	1
B. The Purpose Statute.....	2
C. The “Necessary Expense Doctrine” (a.k.a. The 3-part Purpose Test).	2
III. THE APPROPRIATION ACTS.....	4
A. Overview.	4
B. Appropriations.....	4
C. Continuing Resolution Authorities.....	5
D. Researching Appropriation Acts..	5
IV. EXPRESS STATUTORY PURPOSE: THE DEPARTMENT OF DEFENSE APPROPRIATIONS.....	6
A. The Purpose Analysis Flowchart.....	6
B. Overview of DOD Appropriations.	6
C. Who is the purchase for?	6
D. Classifying the Acquisition:	7
E. Overview of the Major Defense Appropriations.	9
F. Investment/Expense Threshold:	13
G. Systems and the Expense/Investment Threshold.	15
H. Accounting Classifications:	15

Last updated 27 February 2013

I.	GFEB	17
J.	Earmarks.	18
V.	IS THE EXPENDITURE OTHERWISE PROVIDED FOR IN A SEPARATE APPROPRIATION?.....	19
A.	Overview.	19
B.	If there are two appropriations equally available:	20
VI.	LEGISLATION IMPACTING THE USAGE OF AN APPROPRIATION.	21
A.	Impacts Found Within the Actual Appropriation.	21
B.	Organic Legislation.	21
C.	Authorization Act.	22
D.	Miscellaneous Statutory Provisions.....	24
E.	Legislative History.	26
VII.	OTHER DOCUMENTS IMPACTING THE USAGE OF AN APPROPRIATION...27	
A.	Budget Request Documentation.	27
B.	Agency Regulations.	29
C.	Case Law.	30
VIII.	NECESSARY EXPENSE.....	31
A.	Express Statutory Purpose?	31
B.	“Necessary Expense”	31
C.	GAO’s Necessary Expense Doctrine.....	32
D.	The first prong of the “necessary expense” doctrine.....	32
E.	Exploring “necessary expenses”	32

F.	Practical Aspects of applying the “necessary expense” doctrine.	32
G.	Agency Discretion.	32
IX.	TYPICAL QUESTIONABLE EXPENSES.....	33
A.	Overview.	33
B.	Clothing.	33
C.	Food.	34
D.	Bottled Water.	41
E.	Workplace Food Storage and Preparation Equipment	42
F.	Personal Office Furniture and Equipment.	43
G.	Entertainment.	44
H.	Decorations.	45
I.	Business Cards.	46
J.	Telephones.	46
K.	Fines and Penalties.	48
L.	Licenses and Certificates.	49
M.	Awards (Including Unit or Regimental Coins and Similar Devices).	50
N.	Use of Office Equipment.	53
O.	Expenditures for New or Additional Duties.....	53
X.	AUGMENTATION OF APPROPRIATIONS & MISCELLANEOUS RECEIPTS...54	
A.	General Rule - Augmentation of Appropriations Is Not Permitted.....	54
B.	Statutory Exceptions to the Miscellaneous Receipts Statute.	56
C.	GAO Sanctioned Exceptions to the Miscellaneous Receipts Statute.	59

XI. EMERGENCY AND EXTRAORDINARY EXPENSE FUNDS.....	62
A. Definition.	62
B. Historical Background.	62
C. Appropriations Language.	62
D. Statutory Background.	63
E. Regulatory Controls.	64
XII. CONCLUSION.....	69
APPENDIX A: ANALYZING A PURPOSE ISSUE	72
APPENDIX B: PURPOSE ANALYSIS FLOWCHART.....	80

CHAPTER 2

AVAILABILITY OF APPROPRIATIONS AS TO PURPOSE

I. REFERENCES.

- A. U.S. Constitution, Art. I, § 9.
- B. 31 U.S.C. § 1301. The Purpose Statute.
- C. Department of Defense Appropriations Acts and National Defense Authorization Acts (annual legislation found at: <http://thomas.loc.gov/>).
- D. DOD 7000.14-R, Financial Management Regulations (hereinafter “DOD FMR,” found at: <http://www.dod.mil/comptroller/fmr/>).
- E. Department of Air Force, Instr. 65-601, Budget Guidance and Procedures (16 August 2012), available at <http://www.e-publishing.af.mil>.
- F. Principles of Fed. Appropriations Law, (commonly referred to as the “Red Book”) 3d ed., vol. I, chapters. 2-4, GAO-04-261SP (January 2004), found at: <http://gao.gov/legal/index.html>.
- G. A Glossary of Terms Used in the Federal Budget Process, GAO-05-734SP (Sept. 2005) found at: <http://www.gao.gov/products/GAO-05-734SP>.
- H. OMB Cir. No. A-11, Preparing, Submitting, and Executing the Budget (August 2012), § 51 available at: http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/a_11_2012.pdf

II. CONSTITUTIONAL, STATUTORY AND OTHER BACKGROUND.

- A. U.S. Constitution.

1. [Art. I, § 9](#) provides that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” This establishes Congress has having the “power of the purse.” As a result, Congress must annually pass and the President must sign Appropriations Acts before agencies can expend any money.
2. In applying this provision of the constitution, the Supreme Court has said, “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.” *US v. MacCollom*, 426 U.S. 317 (1976). In other words, we must look for specific congressional authority prior to the expenditure of public funds.

B. The Purpose Statute.

1. [31 U.S.C. § 1301\(a\)](#) provides: “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”
2. Congress enacted this statutory control in the Act of March 3, 1809, 2 Stat. 535, as part of a reorganization of the War, Navy, and Treasury Departments to limit the Executive Branch in spending appropriations.

C. The “Necessary Expense Doctrine” (a.k.a. The 3-part Purpose Test). The purpose statute does not require every expenditure to be specified in an appropriation act. That is not possible or feasible. “The spending agency has reasonable discretion in determining how to carry out the objects of the appropriation.”¹ 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 Government Accountability Office (GAO) applies a three-part test to determine whether an expenditure is a “necessary expense” of a particular appropriation:

¹ See PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, THIRD EDITION, VOLUME I, p.4-20, GAO-04-261SP (January 2004)

1. The expenditure must be necessary and incident to the purposes of the appropriation. In other words, the expenditure must bear a logical relationship to the appropriation sought to be charged, and it must make a direct contribution to carryout out either a specific appropriation or an authorized agency function for which more general appropriations are available.
2. The expenditure must not be prohibited by law.
3. The expenditure must not be otherwise provided for; that is, it must not be an item that falls within the scope of some other, more specific appropriation or statutory funding scheme.
 - a. What if you have two equally available appropriations to fund an acquisition? I.e., neither appropriation is more specific?
 - b. Election Doctrine: The GAO's Election Doctrine states that if two or more appropriations are equally available, then the agency may choose which appropriation to use. *Once the agency chooses a certain appropriation for that type of acquisition, however, the agency must continue to use the same appropriations for all acquisitions of that type – i.e., once the agency makes its choice of appropriation, they are bound by that choice.* See section V.B. below for further discussion.

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).

III. THE APPROPRIATION ACTS

- A. Overview. An appropriation is a statutory authorization “to incur obligations and make payments out of the Treasury for specified purposes.”² Generally, an “obligation” is a legal liability that arises from a mutual exchange of promises, or consideration (usually a government promise to pay money in exchange for goods and/or services), between the U.S. Government (USG) and a contractor.³
- B. Normally, Congress has, on an annual basis, passed thirteen appropriations acts.⁴ Some of these acts provide appropriations to a single agency, while others provide appropriations to multiple agencies. See generally, [Principles of Fed. Appropriations Law](#), 3d ed., vol. I, ch. 1, 1-26 – 1-27, GAO-04-261SP (Jan. 2004). These annual appropriation acts are typically broken down as follows:
1. Department of Defense.
 2. Military Construction.
 3. Agriculture, Rural Development, Food and Drug Administration and Related Agencies.
 4. Commerce, Justice, and State, the Judiciary and Related Agencies.
 5. District of Columbia.
 6. Energy and Water Development.
 7. Foreign Operations and Export Financing and Related Programs.
 8. Interior and Related Agencies.

² See A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS, p.13-14, GAO-05-734SP (September 2005).

³ Id. at 70; see also 2013 Fiscal Law Deskbook, Chapter 5: Obligations.

⁴ As of late, Congress has relied upon an Omnibus, Continuing Resolutions or Consolidated Appropriation Act. E.g., Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. 786. [hereinafter *2012 CAA*]

9. Labor, Health and Human Services, and Education, and Related Agencies.
 10. Legislative Branch.
 11. Transportation and Related Agencies.
 12. Treasury and General Government Appropriations.
 13. Veterans Affairs and Housing and Urban Development, and Independent Agencies.
- C. Optimally, each appropriation act is enacted by the President prior to the end of the preceding fiscal year. When the fiscal year begins, if there is no appropriation act for DOD, then DOD may have to stop (or “shut down”) its operations because there is a “funding gap,” or a period of time when it it does not have any appropriated funds to obligate. Congress and the President, however, normally avoid this DOD “shut down” by passing and enacting a Continuing Resolution Authority (CRA), which authorizes DOD to continue obligating funds – under certain conditions – until the President can enact the fiscal year’s appropriation act.⁵
- D. Researching Appropriation Acts. In addition to WestlawTM-based research, Judge Advocates (JA’s) can use the Thomas website (<http://www.thomas.gov/>) of the Library of Congress to conduct research on legislation enacted since 1973. This website also contains a consolidated listing of appropriation legislation enacted since 1998, and a list of pending appropriation bills for the current and upcoming fiscal years.

⁵ See 2013 Fiscal Law Deskbook, Chapter 9: Continuing Resolution Authority (CRA).

IV. EXPRESS STATUTORY PURPOSE: THE DEPARTMENT OF DEFENSE APPROPRIATIONS

- A. The Purpose Analysis Flowchart⁶ may provide a useful visual tool that JA's may use to conceptualize the different statutory and regulatory fiscal law requirements that apply to DOD appropriations.

- B. In each of the two annual appropriations acts devoted to DOD, Congress grants multiple appropriations for different types of purchases that DOD needs to make to successfully execute its mission. See e.g., Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Division A, 125 Stat. 786 (providing over 50 separate appropriations to DOD); Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Division H, 125 Stat. 786.

- C. Who is the purchase for? Congress appropriates funds for DOD in the annual DOD Appropriations Act (DODAA). Congress intends that DOD use their appropriated funds by DOD for the primary benefit of DOD. As a result, to understand whether a unit may obligate appropriated funds for a purchase, Judge Advocates (JAs) must first determine who is the primary beneficiary of the purchase is.⁷ Generally, there are three possible answers to this question: the primary beneficiary of the purchase is the agency (i.e., the JA's unit), the primary beneficiary of the purchase is a *different* U.S. Government (USG) agency, or the primary beneficiary of the purchase is a foreign government, military or population.
 - 1. Interagency Acquisitions (IA's): The IA fiscal law applies whenever the primary beneficiary of the purchase is a *different* USG agency. IA law is a specialized area of fiscal law and is explored in detail in chapter 6 of the Fiscal Law Deskbook.⁸

⁶ *See infra*, Appendix B: Purpose Analysis Flowchart.

⁷ The answer to this question is extremely important, as it will drive the remainder of the JA's purpose analysis. If a unit is unable to answer this question, the JA cannot competently conduct a fiscal law review as to the legality of the purchase.

⁸ See 2013 Fiscal Law Deskbook, Chapter 6: Interagency Acquisitions (IA's).

2. Operational Funding: Operational funding fiscal law applies whenever the primary beneficiary of the purchase is a foreign government, military or population. Operational funding is a specialized area of fiscal law and is explored in detail in chapter 10 of the Fiscal Law Deskbook.⁹
 3. Basic Purpose: For most expenditures, the primary beneficiary of the purchase is the agency (i.e., the unit). The remainder of this outline will focus on these purchases by DOD, when the agency is the primary beneficiary. Once the JA determines that the primary beneficiary is the agency (i.e., the unit), then the JA must determine the nature of the supply item or service that the unit is purchasing.
- D. Classifying the Acquisition: To determine the proper appropriation, a JA must also classify the acquisition. From a Purpose standpoint, DOD units make three types of acquisitions: DOD units acquire expense items (“expenses”), investment items (“investments”), and/or construction.¹⁰
1. Expenses are “the costs of resources consumed in operating and maintaining [DOD],” such as services, supplies, and utilities. Expenses are normally financed with ***Operations and Maintenance (O&M)***¹¹ ***appropriations***. See DOD FMR, vol. 2A, ch. 1, para. 010201. Common examples of expenses include:
 - a. Services;
 - b. Supply items that will be consumed in the *current* period;¹²
 - c. Civilian employee labor;

⁹ See 2013 Fiscal Law Deskbook, Chapter 10: Operational Funding.

¹⁰ Note that the classification of an acquisition into expenses, investments, and construction is limited to the Purpose analysis. Under the Time portion of the fiscal analysis, the JA will classify the acquisition in a different manner to analyze the Bona Fide Need; see 2013 Fiscal Law Deskbook, Chapter 3: Time.

¹¹ Another common acronym for O&M is OMA, Operations and Maintenance, Army. OMA is more common for organizations that utilize operations and maintenance funds from multiple services (e.g., operations and maintenance, Air Force.)

¹² In a prior version of Vol. 2A Chapter 1, the DOD Financial Management Regulation (DOD FMR) defined the “current period” as 2 years or less. Although this is no longer the rule, it may be useful for JAs to use this definition of expenses as supply items that will last 2 years or less as a ‘rule of thumb’ to communicate the expense-investment distinction to their commanders.

- d. Rental charges for equipment and facilities;
 - e. Fuel;
 - f. Maintenance, repair, overhaul, and rework of equipment; and
 - g. Utilities.
2. Investments are the costs that result in the acquisition of, or an addition to, end items. These end items benefit *current and future periods* and generally are of a long-term character. Investments include the “costs to acquire capital assets such as...equipment,” DOD FMR, vol. 2A, ch. 1, para. 010201.D.2., or assets which will benefit both current and future periods and generally have a long life span. ***Investments are normally financed with Procurement appropriations.*** Common examples of investments include:
- a. All items of equipment, including assemblies, ammunition and explosives, modification kits (the components of which are known at the outset of the modification)....
 - b. The costs of modification kits, assemblies, equipment, and material for modernization programs, ship conversions, major reactivations, major remanufacture programs, major service life extension programs, and the labor associated with incorporating these efforts into or as part of the end item are considered investments. All items included in the modification kit are considered investment even though some of the individual items may otherwise be considered as an expense. Components that were not part of the modification content at the outset and which are subsequently needed for repair are expenses. The cost of labor for the installation of modification kits and assemblies is an investment.
 - c. A major service-life extension program, financed in procurement, extends the life of a weapon system beyond its designed service life through large-scale redesign or other alteration of the weapon system.

3. Construction is the erection of a complete and useable facility, or a complete and useable improvement to an existing facility.¹³ Once a DOD unit classifies a project as a construction project, then that construction project includes all the expense and investment items necessary to erect a complete and useable facility or a complete and useable improvement to an existing facility. Construction is funded using Construction Funding rules and is a specialized area of fiscal law explored in detail in chapter 8 of the Fiscal Law Deskbook.¹⁴

E. Overview of the Major Defense Appropriations. The following is a list of the larger and more important defense appropriations followed by a general description, extracted from the appropriations acts themselves, of the purposes to which these appropriations may be applied.

1. Military Personnel (MILPER). Used for “pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations”¹⁵ In effect, MILPER pays for all the allowances that service-members receive on their Leave and Earnings Statement (LES). Government civilian salaries, on the other hand, are paid with the service Operations and Maintenance (O&M) appropriations.
2. Operations and Maintenance (O&M). Used for “expenses, not otherwise provided for, necessary for the operation and maintenance of the [Service], as authorized by law” O&M appropriations pay for the current operations of the force, and for the maintenance of all equipment that the Armed Services need to operate the force, including base maintenance services, vehicle maintenance services, civilian salaries, and all expenses¹⁶ required to operate the force. For most DOD units and organizations, O&M is the only type of appropriation that they can access without higher-level approval.

¹³ See United States Code, Title 10 [hereinafter 10 U.S.C.], §2801; see also 2013 Fiscal Law Deskbook, Chapter 8: Construction Funding.

¹⁴ See 2013 Fiscal Law Deskbook, Chapter 8: Construction Funding.

¹⁵ 2012 CAA, *supra* note 3, at Div. A., Title I.

¹⁶ 2012 CAA, *supra* note 3, at Div. A., Title II.

3. Research, Development, Test and Evaluation (RDT&E). Used for “expenses necessary for basic and applied scientific research, development, test and evaluation, *including maintenance, rehabilitation, lease, and operation of facilities and equipment . . .*”¹⁷ Congress provides DOD Research and Development (R&D) organizations (e.g., Defense Advanced Research Projects Agency – DARPA)¹⁸ with its own appropriation to fund the scientific research and development of new technologies that have military applications. Of note is that Congress provides these R&D organizations the RDT&E appropriation to fund not only the scientific research and military development of new technologies, but also their normal operation and maintenance. As a result, these DOD R&D organizations do not receive O&M funds – they must fund their O&M-type expenses with the RDT&E appropriation.

4. Procurement (Various). Congress provides various different Procurement appropriations in the annual DOD Appropriations Act (DODAA) for different categories of investment items. Procurement appropriations include: Ammunition Procurement, Missile Procurement, Aircraft Procurement, Weapons and Tracked Vehicle Procurement, Wheeled Vehicle Procurement, and Other Procurement.¹⁹ The Other Procurement appropriation is a “catch-all” appropriation for investment items that are not purchased with the more specific Procurement appropriations.
 - a. Ammunition Procurement. Used for “construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned

¹⁷ 2012 CAA, *supra* note 3, at Div. A., Title IV.

¹⁸ See Defense Advanced Research Projects Agency (DARPA), *available at*: <http://www.darpa.mil> (last accessed March 17, 2010) (DARPA is one of the major DOD R&D organizations. It funds unique and innovative research through the private sector, academic and other non-profit organizations as well as government labs. DARPA research runs the gamut from conducting scientific investigations in a laboratory, to building full-scale prototypes of military systems. They fund research in biology, medicine, computer science, chemistry, physics, engineering, mathematics, material sciences, social sciences, neuroscience, and other projects).

¹⁹ See 2012 CAA, *supra* note 3, at Div. A., Title III.

equipment layaway; and other expenses necessary for the foregoing purposes”²⁰

b. Missile Procurement: Used for the “construction, procurement, production, modification, and modernization of *missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor*”²¹

(1) Note that missiles are a type of ammunition. DOD, however, may not use the Ammunition Procurement appropriation to buy missiles because Congress provides a more specific appropriation to buy missiles – the Missile Procurement appropriation.

(2) Additionally, if DOD were to obligate all of the funds in the Missile Procurement appropriation, it would still be unable to use the Ammunition Procurement appropriation to buy missiles, because Congress has specified the maximum amount of money that DOD may obligate for missiles in the Missile Procurement appropriation.

c. Other Procurement. There are several other procurement appropriations given to the various services, including one for each of the following: aircraft, missiles, Weapons & Tracked Vehicles, and Shipbuilding and Conversion (Navy only). The language utilized in each of these appropriations is similar to that utilized in the Ammunition Procurement Appropriation above. There is also a residual catch-all procurement appropriation entitled “Other Procurement” which is used for “construction, procurement, production, and modification of vehicles; . . . communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices”²²

²⁰ Id.

²¹ Id.

²² Id.

5. Military Construction (MILCON). Used for “acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property”²³

6. Other Appropriations. Other than the 5 base DOD appropriations (MILPER, O&M, RDT&E, Procurement, and MILCON), Congress creates additional appropriations for other purposes on an annual basis. For example, Congress provides a Family Housing appropriation annually. The Family housing appropriation is used for “expenses of family housing for the [Service] for construction, including acquisition, replacement, addition, expansion, extension and alteration, as authorized by law”²⁴ Family housing has its own separate appropriation and is not paid for with the Service MILCON used to pay for construction related to the DOD training and war-fighting missions. There are numerous additional appropriations not discussed in this outline.

F. Investment/Expense Threshold: In each year’s DODAA, Congress provides an exception to the normal fiscal law that dictates that investment items must be purchased with procurement appropriations. The Investment/Expense Threshold exception allows (not “requires” but see F.2. below) DOD to purchase investment items, not exceeding a certain threshold, with Operations and Maintenance funds.²⁵

1. The current threshold is \$250,000.²⁶ (Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Div. A., tit. 8, §8030 (Dec. 23, 2011) See also 10 U.S.C. 2245a (DOD may not use O&M to purchase any item with a unit cost that is greater than \$250,000).

²³ See 2012 CAA, *supra* note 3, at Div. H., Title I.

²⁴ Id.

²⁵ 2012 CAA, *supra* note 3, at Div. A., Title VIII, Sec. 9011.

²⁶ Since 2008, Congress has allowed for an increase to \$500,000 for Combatant Commanders engaged in contingency operations overseas upon SECDEF approval. See, e.g. 2012 CAA, *supra* note 3, at Div. A., Title VIII Sec. 9011. CENTCOM has historically received approval to use the \$500,000 threshold in support of contingency operations. However, this increased threshold requires a determination by SECDEF each fiscal year and the determination does not always happen contemporaneously with the passage of the Appropriations Act. JAs must verify that SECDEF has made the determination before advising that the increased threshold is in effect.

2. As a result of this congressional authorization, there were two appropriations equally available to fund investment items with a unit cost of \$250,000 or less – O&M or the respective Procurement appropriations. The Election Doctrine of GAO’s 3-part Purpose test required DoD to choose which appropriation to use – and be bound by that choice. In the DOD Financial Management Regulation (FMR),²⁷ DoD elected the respective appropriation (O&M or Procurement),²⁷ but with distinctions depending on the type of investment item. The chart below summarizes DOD’s election:²⁸

Expense/Investment Cost Determination						
Is the item a	If	Then	If	Then	If	Then
Centrally Managed/Asset Controlled Item?	Yes	Is the item purchased from DWCF?	Yes	Is the item part of a full funding effort? *	Yes	Classify as Investment
			No	Classify as Investment	No	Classify as Expense
	No	Is the unit cost more than \$250,000?	Yes	Classify as Investment		
			No	Classify as Expense		

* When intended for use in weapon system outfitting, government furnished material on new procurement contracts or for installation as part of a weapon as part of a weapon system modification, major reactivation or major service life extension.

3. Centrally Managed Items/Asset Control Items. The DOD FMR makes an exception for equipment that is designated for centralized item management and asset control.²⁹ The type of funding used for centrally managed items will depend on the item and program.

²⁷ Department of Defense Financial Management Regulation [hereinafter DOD FMR], vol. 2A, ch. 1, para. 010201. D. (Although the statute permits DOD to purchase investment items valued at \$250,000 or less with O&M funds, the DOD FMR goes a step further by re-defining items costing less than \$250,000 as “expenses,” and directs the use of O&M funds. For fiscal purposes, however, this re-definition has no practical effect on the fiscal analysis). Note that the Appropriations Act states the threshold is “not more than \$250,000” whereas the DOD FMR includes items that “cost less than . . . \$250,000.”

²⁸ DOD FMR, vol. 2A, ch. 1, para. 010201. F., available at: http://comptroller.defense.gov/fmr/current/02a/02a_01.pdf; see also DFAS-IN Manual 37-100-13.

²⁹ The DOD FMR defines Centralized Item Management and Asset Control as:

The management in the central supply system or a DoD-wide or Service-wide acquisition and control system in which the manager has the authority for management and procurement of items of equipment. This includes such functions as requirement determination, distribution management, procurement direction, configuration control and disposal direction. Asset control includes the authority to monitor equipment availability and take such actions as necessary to restock to approved stockage levels.

4. Defense Working Capital Funds (DWCF): A DWCF is a “revolving fund,” a type of fund that Congress authorizes DoD to finance a cycle of operations through amounts received by the fund.³⁰ A DWCF allows DOD (and subordinate units) to continually fund the DWCF from its base appropriations, and the DWCF to use those funds permanently to make purchases of certain equipment and spare parts for equipment maintenance. Generally, DOD uses a separate DWCF for each type of recurring equipment (and related spare parts). When a DOD unit orders DWCF equipment, they pay their O&M to the DWCF. The DWCF uses these unit O&M funds to purchase a stock level of equipment and parts.

G. Systems and the Expense/Investment Threshold. Various audits have revealed that local activities use O&M appropriations to acquire computer systems, security systems, video telecommunication systems, and other systems costing more than the investment/expense threshold.³¹ This constitutes a violation of the Purpose Statute, and may result in a violation of the Antideficiency Act.

1. Agencies must consider the “system” concept when evaluating the purchase of investment items (the system concept does not apply to the purchase of expense items which are purchased with O&M regardless of cost.) The determination of what constitutes a “system” must be based on the **primary function** of the items to be acquired, as stated in the approved requirements document.
2. A system exists if a number of components are designed primarily to function within the context of a whole and will be interconnected to satisfy an approved requirement.
3. Agencies may purchase multiple investment end items (e.g., computers), and treat each end item as a separate “system” for funding purposes, only if the primary function of the end item is to operate independently.
4. Do not fragment or piecemeal the acquisition of an interrelated system of equipment merely to avoid exceeding the O&M threshold.

DOD FMR, vol. 2A, ch. 1, para. 010224. Examples of Centrally Managed Items have included weapon systems, vehicles, spare parts, etc. To find out if an item is centrally managed, check with your supply section.

³⁰ DOD FMR, vol. 2A, ch. 1, para. 010107.B.54.; see also 2013 Fiscal Law Deskbook, Chapter 7: Revolving Funds.

³¹ DOD FMR, vol. 2A, ch. 1, para. 010201.D.2.b.

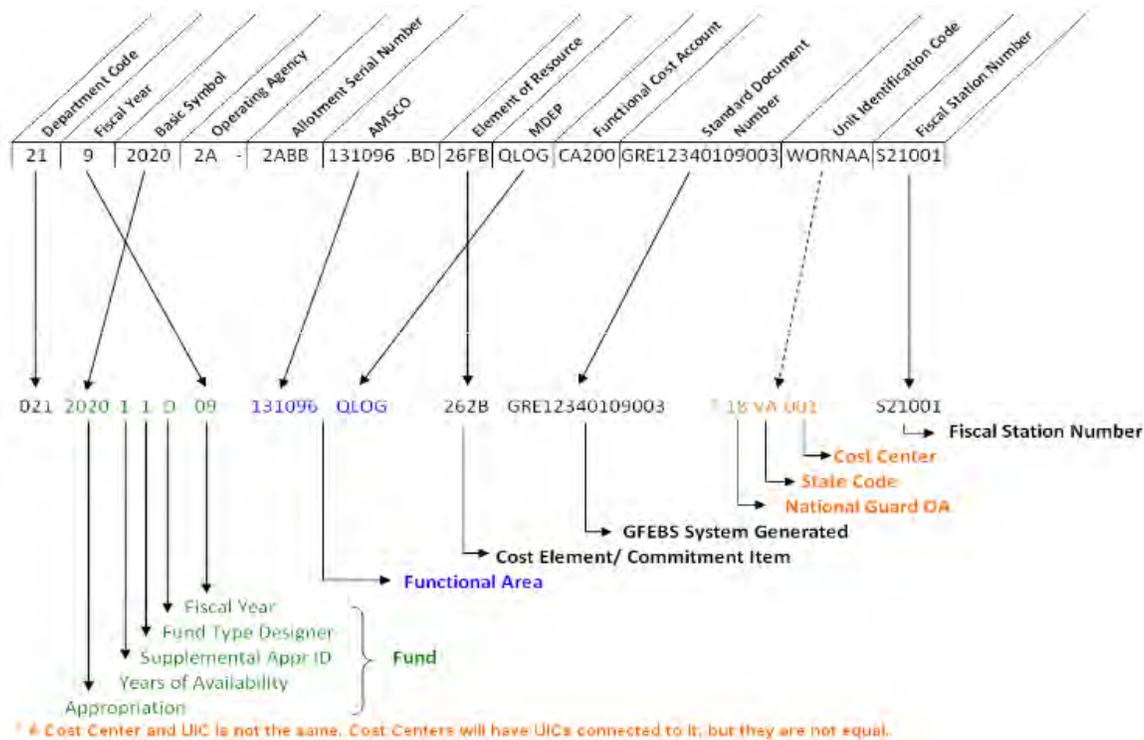
5. Example: An agency is acquiring 200 stand-alone computers and software at \$2,000 each (for a total of \$400,000). The appropriate color of money for the purchase of the 200 computers is determined by deciding whether the primary function of the computers is to operate as independent workstations (i.e., 200 systems) or as part of a larger system. If the computers are designed to primarily operate independently, they should be considered as separate end items and applied against the expense/investment criteria individually.³² If they function as a component of a larger system (i.e., interconnected and primarily designed to operate as one), then they should be considered a system and the total cost applied against the expense/investment criteria.

H. Accounting Classifications: The DoD Financial Managers (accountants) assign accounting classifications to each appropriation type to manage the DOD funds.³³

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	17*1109	57*3020	N/A

³² Normal stand-alone personal computers (PCs) and printers are considered “ancillary IT equipment.” As ancillary IT equipment, when purchasing stand-alone PCs (regardless of whether they are intended to operate on a network) apply the investment/expense threshold to each computer purchased, without aggregating the total cost. Computers used for primarily network administration are not considered ancillary IT equipment. Similarly, cloud based or internal networked computers, such as “Thin clients”, which are incapable of operating outside of a network are likely not considered ancillary IT equipment, therefore when purchasing multiple of them, the total cost must be aggregated for purposes of the I/E threshold. DFAS-IN 37-100-13, Appendix A

³³ This chart is derived from the archived version of the DOD FMR, vol. 6B, App. A. (October 2000).



J. Earmarks. An earmark occurs when Congress designates a portion of an appropriation for a particular purpose by way of legislative language within the appropriation. See A Glossary of Terms Used in the Federal Budget Process, GAO-05-734SP (Sept. 2005).

1. ‘Ceiling Earmarks’: In the 2012 Consolidated Appropriations Act, in the Defense-Wide O&M appropriation, Congress gave the DOD \$30,152,008,000 for non-department O&M activities. It also told the DOD that out of that amount, “not to exceed \$47,026,000 can be used for the Combatant Commander Initiative Fund.”³⁴
2. ‘Floor Earmarks’: “not less than \$34,311,000 shall be made available for the Procurement Technical Assistance Cooperative Agreement Program.”³⁵

³⁴ 2012 CAA, *supra* note 3, at Div. A, Title II.

³⁵ *Id.*

3. Both of these provisions are examples of earmarks. The first is a “ceiling” earmark, meaning the DOD may not spend more than \$47,026,000 for the designated purpose (Combatant Commander Initiative Fund) but may spend less than that, whereas the second is a “floor” earmark, meaning the DOD must spend at least that amount on the designated purpose but may spend more.

V. IS THE EXPENDITURE OTHERWISE PROVIDED FOR IN A SEPARATE APPROPRIATION?

- A. If there is another, more specific appropriation available, it must be used in preference to the more general appropriation. [Use of Oil Spill Liability Trust Fund for Administrative Costs of Processing Oil Pollution Act Claims, B-289209, 2002 U.S. Comp. Gen. LEXIS 145 \(May 31, 2002\)](#); [The Honorable Bill Alexander, B-213137, 63 Comp. Gen. 422 \(1984\)](#) (may not use O&M funds when foreign assistance funds available).

Example: The Air Force is planning to buy air-to-air missiles. Arguably, these missiles are a form of “ammunition” enabling it to purchase the missiles with its “Procurement, Ammunition, Air Force” appropriation. There is, however, a more specific appropriation that the Air Force receives called “Procurement, Missiles, Air Force” that should be used instead.

1. That a specific appropriation is exhausted is immaterial as to whether funds may be transferred to that appropriation. [Secretary of Commerce, B-129401, 36 Comp. Gen. 386 \(1956\)](#).
2. General appropriations may not be used as a back-up for a more specific appropriation. [Secretary of the Navy, B-13468, 20 Comp. Gen. 272 \(1940\)](#); [Architect of the Capital – Payment for Electrical and Security Improvements, B-306284, Jan. 5, 2006, 2006 U.S. Comp. Gen. LEXIS 5](#).
3. Limitation applies even if specific appropriation is included in the more general appropriation or shares, in part, the same purpose as the general appropriation. [Secretary of the Interior, B-14967, 20 Comp. Gen. 739 \(1941\)](#); [Dept. of the Navy – Settling Claims on Fraudulently-Endorsed Checks, B-242266, Aug. 31, 1993, 72 Comp. Gen. 295](#).

- B. If there are two appropriations equally available:
1. The agency may choose either appropriation. Payment of SES Performance Awards of the R.R. Ret. Board's Office of Inspector Gen., B-231445, 68 Comp. Gen. 337 (1989); Dept. of Homeland Security – Use of Management Directorate Appropriations, B-307382, Sep. 5, 2006, 2006 U.S. Comp. Gen. LEXIS 138. Agency discretion is not questioned generally. Secretary of Agric., A-96689, 18 Comp. Gen. 285, 292 (1938).
 2. **BUT**, once the election is made, the agency must continue to use the selected appropriation to the exclusion of any other, during the current fiscal year. If the agency intends on changing the election, the agency, at the start of the fiscal year, must notify Congress of the intent to change for the subsequent fiscal year. See [Funding for Army Repair Projects](#), B-272191, Nov. 4, 1997; Dept. of Homeland Security – Use of Management Directorate Appropriations, B-307382, Sep. 5, 2006, 2006 U.S. Comp. Gen. LEXIS 138. The election is binding even after the chosen appropriation is exhausted. Honorable Clarence Cannon, B-139510, May 13, 1959 (unpub.) (Rivers and Harbors Appropriation exhausted; Shipbuilding and Conversion, Navy, unavailable to dredge channel to shipyard).
 3. If Congress specifically authorizes the use of two accounts for the same purpose, the agency is not required to make an election between the two and is free to use both appropriations for the same purpose. See Funding for Army Repair Projects, *supra*; See also 10 U.S.C. § 166a (Combatant Commander Initiative Funds are in addition to amounts otherwise available for an activity).

VI. LEGISLATION IMPACTING THE USAGE OF AN APPROPRIATION.

A. Impacts Found Within the Actual Appropriation.

1. Within the actual appropriation, Congress often provides specific direction on the uses to be made of that appropriation. For example, the language utilized in the “Ammunition Procurement, Army” appropriation, quoted on page 2-[11](#) *supra*, narrowly defines the uses the agency can make of that appropriation. Clearly, we cannot use it to pay the salaries of military service members, even those who carry out the ammunition procurement. Likewise, we could not use those funds to buy engines for attack helicopters.
2. By contrast, the language utilized in the “Operation and Maintenance, Defense-Wide” appropriation,³⁶ only broadly prescribes the uses the agency can make of that particular appropriation. Thus, we can use it to pay any expense not covered by a more specific appropriation so long as we determine that expense is necessary and authorized by law.

B. Organic Legislation. Organic legislation is legislation that creates a new agency or establishes a program or function within an existing agency. [Principles of Fed. Appropriations Law](#), vol. I, ch. 2, 2-40, GAO-040261SP (3d ed. 2004). While organic legislation provides the agency with authority to conduct a program, function, or mission and to utilize appropriated funds to do so, it rarely provides any money for the agency, program, or activity it establishes.

1. Organic legislation may be found in appropriation acts, authorization acts, or “stand-alone” legislation. It may also be codified or uncodified.
2. Example: [10 U.S.C. § 111](#) establishes the Department of Defense as an executive department. Various statutes scattered mainly throughout Title 10 of the United States Code establish programs or functions that the department is to carry out. *See e.g.*, [10 U.S.C. § 1090](#) (giving the Secretary of Defense the mission to “identify, treat, and rehabilitate members of the armed forces who are dependent on drugs or alcohol”).

³⁶ For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law, \$30,152,008,000: *Provided*, That not more than \$47,026,000 may be used for the Combatant Commander Initiative Fund authorized under section 166a of title 10, United States Code: *2012 CAA, supra* note 3, at DIV A, Title II.

C. Authorization Act.

1. An authorization act is a statute, passed annually by Congress that authorizes the appropriation of funds for programs and activities.³⁷
2. There is no general requirement to have an authorization in order for an appropriation to occur. By statute, Congress has created certain situations in which it must authorize an appropriation. For example, [10 U.S.C. § 114\(a\)](#) states that “No funds may be appropriated for any fiscal year” for certain purposes, including procurement, military construction, and/or research, development, test and evaluation “unless funds therefore have been specifically authorized by law.” However, there are no practical consequences if Congress appropriates funds without an authorization anyway, as such a statute is “essentially a congressional mandate to itself.” Principles of Fed. Appropriations Law, vol. I, ch. 2, 2-41, GAO-04-261SP (3d ed. 2004).
3. An authorization act does not provide budget authority. That authority stems from the appropriations act.
 - a. However, Congress may choose to place limits in the authorization act on the amount of appropriations it may subsequently provide.
 - b. In the alternative, Congress may also authorize the appropriation of “such sums as may be necessary” for a particular program or function.

Example: In Section 1063 of [the National Defense Authorization Act for Fiscal Year 2002](#), Congress provided as follows:

Section 3(e) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended to read as follows: “(e) APPROPRIATION. — (1) IN GENERAL.— There are appropriated to the Fund, out of any money in the Treasury not otherwise appropriated, for fiscal year 2002 and each fiscal year thereafter through fiscal year 2011, **such sums as may be necessary**, not to exceed the applicable maximum amount

³⁷ E.g., National Defense Authorization Act for Fiscal Year 2013, Pub. L. No., 112-239.

specified in paragraph (2), to carry out the purposes of the Fund (emphasis added).

4. Resolving Conflicts Between an Appropriation Act and an Authorization Act. See generally, [Principles of Fed. Appropriations Law](#), vol. I, ch. 2, 2-42 to 2-50, GAO-04-261SP (3d ed. 2004).
 - a. The general rule regarding statutory construction is “that statutes should be construed harmoniously so as to give maximum effect to both whenever possible.” Reduction of District of Columbia Superior Court’s Appropriations, B-258163, 1994 U.S. Comp. Gen. LEXIS 746 (Sept. 29, 1994).
 - b. If there is an irreconcilable conflict between two statutes or if the latter of the two statutes is clearly intended to substitute for the prior statute, the more recent statute governs. The “intention of the legislature to repeal must be clear and manifest” in either case, however. Nat’l Assn. of Home Builders v. Defenders of Wildlife, 127 S.Ct. 2518 (2007); Posadas v. National City Bank, 296 U.S. 497, 503 (1936).
 - c. Differences in Amount. In general, Congress enacts authorization acts before it enacts appropriation acts. Application of the above rules will therefore usually result in the agency being able to use the amount specified in the appropriation act, regardless of whether it is more or less than what is in the authorization act.

Example 1: For FY 2012, Congress authorized the appropriation of \$30,529,232 to the Army for Operations and Maintenance, but later actually appropriated \$31,072,902 to the Army. The Army may spend the entire \$31,072,902 for Operations and Maintenance.

Example 2: For FY 2002, Congress authorized the appropriation of \$2,075,372,000 to the Army for the procurement of aircraft, but later actually only appropriated \$1,984,391,000 for aircraft procurement. The Army may only spend the lower amount that was appropriated.

- d. Differences in Purpose. An authorization act provision will not expand the scope of availability of a particular appropriation beyond what is permitted by the terms utilized in the appropriation act. See generally, Principles of Fed. Appropriations Law, vol. I, ch. 2, 2-51 to 2-52, GAO-040261SP (3d ed. 2004). An authorization act may decrease the scope of availability of an appropriation by placing further restrictions on the use of those funds, however.

D. Miscellaneous Statutory Provisions.

1. Congress often enacts statutes that expressly allow, prohibit, or place restrictions upon the usage of appropriated funds.

Example of Prohibition: 10 U.S.C. § 2491a prohibits DOD from using its appropriated funds to operate or maintain a golf course except in foreign countries or isolated installations within the United States.

Example of Authorization: 10 U.S.C. § 2261 permits DOD to use its appropriated funds “to procure recognition items of nominal or modest value for the recruitment or retention purposes.”

2. These permissions and restrictions may be either codified or uncodified.
3. The permissions and restrictions may also be either temporary or permanent. If the restriction arises out of a provision in an appropriation act that does not expressly state the duration of the restriction, an agency may presume the restriction is effective only for the fiscal year covered by the act. This presumption may be overcome if the restriction uses language indicating futurity, or if the legislation clearly indicates its permanent character. See Permanency of Weapon Testing Moratorium Contained in Fiscal Year 1986 Appropriations Act, B-222097, 65 Comp. Gen. 588 (1986) (indicating that a restriction applicable to “this Act or any other Act” does not indicate futurity).
4. Locating Pertinent Statutes.

- a. The U.S. Code is broken down into titles which typically cover a given subject matter area.

Example: Statutes pertaining to DOD are typically found in [Title 10](#), so if you want to find a statute dealing only with restrictions on DOD's use of its appropriations, it will likely be found in Title 10. Statutes dealing with all federal employees are generally found in [Title 5](#), so if you want to find a statute that might allow all agencies to use their appropriated funds to pay for employee benefits or training, you would probably start with Title 5.

- b. You can run a general search on either a specialized legal database, such as WestlawTM, or on the U.S. Code website (located at <http://uscode.house.gov/>), or on Cornell University Law School's Legal Information Institute (located at <http://www4.law.cornell.edu/uscode/>).
- c. U.S. Code Annotated Index. This index contains a listing arranged by subject of the codified U.S. statutes.

E. Legislative History.

1. Legislative history is any Congressionally-generated document related to a bill from the time the bill is introduced to the time it is passed. In addition to the text of the bill itself, it includes conference and committee reports, floor debates, and hearings.
2. Legislative history can be useful for resolving ambiguities or confirming the intent of Congress. However, Congress's "authoritative statement is the statutory text, not the legislative history." Exxon Mobil Corp. v. Allapattah Services, Inc., 545 U.S. 546, 568 (2005).
3. If the underlying statute clearly conveys Congress' intent, however, agencies will not be further restricted by what is included in legislative history. Intertribal Bison Cooperative, B-288658, 2001 U.S. Comp. Gen. LEXIS 174 (Nov. 30, 2001); ANGUS Chem. Co., B-227033, Aug. 4, 1987, 87-2 CPD ¶ 127 (stating that "there is a distinction to be made between utilizing legislative history for the purpose of illuminating the intent underlying language used in a statute and resorting to that history

for the purpose of writing into law that which is not there”); Navy – Re-enlistment Gifts, 2006 U.S. Comp. Gen. LEXIS 165 (Use of legislative history to “illuminate intent,” as opposed to “writing into the law that which is not there.”); SeaBeam Instruments, Inc., B-247853.2, July 20, 1992, 92-2 CPD ¶ 30 (indicating that if Congress provides a lump sum appropriation without statutorily restricting what can be done with the funds, a clear inference is that it did not intend to impose legally binding restrictions); LTV Aerospace Corp., B-183851, Oct. 1, 1975, 55 Comp. Gen. 307, 75-2 CPD ¶ 203 (indicating the Navy was not bound by a provision within the conference report accompanying the 1975 Defense Appropriations Act stipulating that adaptation of the Air Force’s F-16 to enable it to be capable of carrier operations was the prerequisite for the Navy’s use of \$20 million in funds provided for a Navy fighter). See also Arlington Central School District Board of Education v. Murphy, 548 U.S. 291 (2006)(rejecting claims for expert fees which were based solely on legislative history and not mentioned in the statute under which the claims were brought).

4. Legislative history also may not support an otherwise improper expenditure. Alberto Mora, Gen. Counsel, U.S. Info. Agency, B-248284.2, Sept. 1, 1992, 1992 U.S. Comp. Gen. LEXIS 1104 (agency violated the purpose statute when it utilized construction funds to host an overseas exhibit that should have been funded with salaries and expenses funds where the agency had only received informal written approval from the Chairmen of the House and Senate Subcommittees to reprogram the construction funds into salaries and expenses funds).

VII. OTHER DOCUMENTS IMPACTING THE USAGE OF AN APPROPRIATION.

A. Budget Request Documentation.

1. Agencies are required to justify their budget requests. OMB Cir. No. A-11, Preparing, Submitting, and Executing the Budget (August 2012).

2. Within DOD, Volumes [2A and 2B](#) of the DOD FMR provides guidance on the documentation that must be generated to support defense budget requests. These documents are typically referred to as Justification Books, with a book generated for each appropriation. Within Volume 2A and 2B:
 - a. [Chapter 2](#) deals with justification documents supporting the Military Personnel Appropriations (“M documents”)(Vol. 2A).
 - b. [Chapter 3](#) deals with justification documents supporting the Operations and Maintenance Appropriations (“O documents”)(Vol. 2A).
 - c. [Chapter 4](#) deals with justification documents supporting the Procurement Appropriations (“P documents”)(Vol. 2B).
 - d. [Chapter 5](#) deals with justification documents supporting the Research, Development, Test and Evaluation Appropriations (“R documents”) (Vol. 2B).
 - e. [Chapter 6](#) deals with justification documents supporting the Military Construction Appropriations (“C documents”) (Vol. 2B).
3. The document is prepared by the actual end user of the funds and is filtered through agency command channels until it is ultimately reviewed by the Office of Management and Budget and submitted by the President as part of the federal government’s overall budget request.
4. These justification documents contain a description of the proposed purpose for the requested appropriations. An agency may reasonably assume that appropriations are available for the specific purpose requested, unless otherwise prohibited.
5. Agencies generally place their past and current year budget submissions onto the web.
 - a. The President’s overall budget materials can be found at: <http://www.whitehouse.gov/omb/budget>.

- b. The Defense-wide budget materials can be found at:
<http://comptroller.defense.gov/Budget2013.html>.
- c. The Army's budget materials can be found at:
<http://asafm.army.mil/offices/office.aspx?officecode=1200>.
- d. The Air Force's budget materials can be found at:
<http://www.saffm.hq.af.mil/budget>
- e. The Navy's budget materials (overview) can be found at:
<http://www.finance.hq.navy.mil/fmb/13pres/books.htm>
- f. The National Aeronautic and Space Administration's budget materials can be found at:
<http://www.nasa.gov/news/budget/index.html>
- g. The Federal Aviation Administration's budget can be found at:
<http://www.faa.gov/about/budget/>
- h. The Environmental Protection Agency's budget materials can be found at: <http://www.epa.gov/ocfo/budget/index.htm>
- i. The Department of the Interior's budget materials can be found at:
<http://www.doi.gov/budget/>.

B. Agency Regulations. See generally, [Principles of Fed. Appropriations Law](#), vol. I, ch. 3, GAO-04-261SP (January 2004).

- 1. Background. When Congress enacts organic legislation establishing a new agency or giving an existing agency a new function or program, it rarely prescribes exact details about how the agency will carry out that new mission. Instead, Congress leaves it up to the agency to implement the statutorily-delegated authority in agency-level regulations.

2. If an agency, in creating a regulation, interprets a statute, that interpretation is granted a great deal of deference. Thus, if an agency regulation determines appropriated funds may be utilized for a particular purpose, that agency-level determination will normally not be overturned unless it is clearly erroneous. Intertribal Bison Cooperative, B-288658, 2001 U.S. Comp. Gen. LEXIS 174 (Nov. 30, 2001).
3. Agency-level regulations may also place restrictions on the use of appropriated funds.

Example: Although the GAO has determined that all federal agencies may purchase commercially-prepared business cards using appropriated funds, all of the military departments have implemented policies that permit only recruiters and criminal investigators to purchase commercially-prepared business cards (everyone else within DOD must produce their business cards in-house, using their own card stock and printers). See [AR 25-30, The Army Publishing Program](#), para. 7-11 (March 2006); [DoD Instruction 5330.03, Defense Logistics Agency \(DLA\) Document Services](#), (Feb. 8, 2006); [AFI 65-601, vol. 1, para. 4.44](#) (Aug. 16, 2012); and [Department of the Navy \(Financial Management and Comptroller\) Financial Policy Manual, NAVSO P-1000, Rev through Change 67, Dec 12, 2002](#).

4. By regulation, the DOD has assigned most types of expenditures to a specific appropriation. See, e.g. [DOD 7000.14-R, Vol.1, Ch. 1](#), and [DFAS-IN Manual 37-100-13, The Army Management Structure](#) (August 2012). The manual is reissued every FY.
5. Researching Defense Regulations.
 - a. The DOD and each of the services have a website containing electronic copies of most of their regulations.
 - (1) DOD Regulations: <http://www.dtic.mil/whs/directives/>.
 - (2) Army Regulations: <http://www.apd.army.mil/>.
 - (3) Air Force Regulations: <http://www.e-publishing.af.mil/>.

- (4) Navy Regulations: <http://doni.daps.dla.mil/>.
 - (5) Marine Corps Regulations:
[http://www.marines.mil/News/Publications/ELECTRONIC LIBRARY.aspx](http://www.marines.mil/News/Publications/ELECTRONIC_LIBRARY.aspx).
 - b. JAGCNET. Those individuals with a CAC may conduct a search of the text of all publications contained within the [JAGCNET library of publications](#).
 - c. There is also a key word-searchable website dedicated to the DOD Financial Management Regulation, DOD 7000.14-R (found at: <http://www.dod.mil/comptroller/fmr/>).
- C. Case Law. Comptroller General opinions are a valuable source of guidance as to the propriety of appropriated fund obligations or expenditures for particular purposes. While not technically binding on the Executive Branch, these opinions are nonetheless deemed authoritative. <http://gao.gov/legal/index.html>

VIII. NECESSARY EXPENSE.

- A. The Purpose Statute, 21 U.S.C. § 1301, does not require Congress to specify every item of expenditure in an appropriations act. Congress, by implication, authorizes an agency to incur expenses that are necessary and incident to the accomplishment of an appropriations purpose. An appropriation for a specific purpose is available to pay expenses necessarily incident to accomplishing that purpose. U.S. Commodity Futures Trading Commission- Availability of the Customer Protection Fund, B-321788, 2011 WL 3510145 (Comp. Gen.) (2011); see also To The Secretary of State, B-150074, 42 Comp. Gen. 226, 228 (1962); Major General Anton Stephan, A-17673, 6 Comp. Gen. 619 (1927); Department of Homeland Security – Use of Management Directorate Appropriations, B-307382, 2006 U.S. Comp. Gen. LEXIS 138.

- B. In some instances, Congress has specifically authorized expenditures as “necessary expenses” of an existing appropriation. See e.g., [10 U.S.C. § 2241\(b\)](#) (authorizing DOD to use its appropriated funds for “all necessary expenses, at the seat of the Government and elsewhere, in connection with communication and other services and supplies that may be necessary for the national defense”); [10 U.S.C. § 1124](#) (authorizing the Secretary of Defense to “incur necessary expense for the honorary recognition of a member of the armed forces” who increases the efficiency or improves operations); [5 U.S.C. §§ 4503-4504](#) (authorizing same for civilian employees).
- C. The GAO applies a three-part test to determine whether an expenditure is a “necessary expense” of a particular appropriation:
1. 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.
 2. The expenditure must not be prohibited by law.
 3. The expenditure must not be otherwise provided for; that is, it must not be an item that falls within the scope of some other appropriation or statutory funding scheme.
- D. 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). The first prong of the “necessary expense” test has been articulated in some other, slightly different ways as well. See Internal Revenue Serv. Fed. Credit Union—Provision of Automatic Teller Machine, B-226065, 66 Comp. Gen. 356, 359 (1987) (“an expenditure is permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of that function”); Army—Availability of Army Procurement Appropriation for Logistical Support Contractors, B-303170, 2005 U.S. Comp. Gen. LEXIS 71 (Apr. 22, 2005) (“the expenditure must be reasonably related to the purposes that Congress intended the appropriation to fulfill”). However, the basic concept has remained the same: the important thing is the relationship between the expenditure to the appropriation sought to be charged.

- E. The concept of “necessary expense” is a relative one. The GAO has never established a precise formula for determining the application of the necessary expense rule. In view of the vast differences among agencies, any such formula would almost certainly be unworkable. Rather, the determination must be made essentially on a fact/agency/purpose/appropriation specific case-by-case basis. See Federal Executive Board – Appropriations – Employee Tax Returns – Electronic Filing, B-259947, Nov. 28, 1995, 96-1 CPD ¶ 129; Use of Appropriated Funds for an Employee Electronic Tax Return Program, B-239510, 71 Comp. Gen. 28 (1991).
- F. A necessary expense does not have to be the only way, or even the best way, to accomplish the object of an appropriation. Secretary of the Interior, B-123514, 34 Comp. Gen. 599 (1955). However, a necessary expense must be more than merely desirable. Utility Costs under Work-at-Home Programs, B-225159, 68 Comp. Gen. 505 (1989).
- G. Agencies have reasonable discretion to determine how to accomplish the purposes of appropriations. See Customs and Border Protection—Relocation Expenses, B-306748, 2006 U.S. Comp. Gen. LEXIS 134 (July 6, 2006). An agency’s determination that a given item is reasonably necessary to accomplishing an authorized purpose is given considerable deference. In reviewing an expenditure, the GAO looks at “whether the expenditure falls within the agency’s legitimate range of discretion, or whether its relationship to an authorized purpose is so attenuated as to take it beyond that range.” Implementation of Army Safety Program, B-223608 1988 U.S. Comp. Gen. LEXIS 1582 (Dec. 19, 1988).

IX. TYPICAL QUESTIONABLE EXPENSES.

- A. Clothing. Agencies may have specific guidance about “questionable” expenditures. See, e.g., AFI 65-601, Budget Guidance and Procedures, vol. 1, ch. 10 (16 Aug 2012). Clothing. Buying clothing for individual employees generally does not materially contribute to an agency’s mission performance. Therefore, clothing is generally considered a personal expense unless a statute provides to the contrary. See IRS Purchase of T-Shirts, B-240001, 70 Comp. Gen. 248 (1991) (Combined Federal Campaign T-shirts for employees who donated five dollars or more per pay period not authorized).
1. Statutorily-Created Exceptions. See 5 U.S.C. § 7903 (authorizing purchase of special clothing, for personnel, which protects them against hazards in the performance of their duties); 10 U.S.C. § 1593 (authorizing DOD to pay an allowance or provide a uniform to a civilian employee who is required by law or regulation to wear a prescribed uniform while performing official duties); and 29 U.S.C. § 668 (requiring federal agencies to provide certain protective equipment and clothing pursuant to OSHA). See also Purchase of Insulated Coveralls, Vicksburg, Mississippi, B-288828, Oct. 3, 2002 (discussing the rules for purchasing clothing); Purchase of Cold Weather Clothing, Rock Island District, U.S. Army Corps of Eng’s, B-289683, Oct. 7, 2002 (unpub.) (discussing all three authorities).
 2. Opinions and Regulations On-point. See also White House Communications Agency—Purchase or Rental of Formal Wear, B-247683, 71 Comp. Gen. 447 (1992) (authorizing tuxedo rental or purchase); Internal Revenue Serv.—Purchase of Safety Shoes, B-229085, 67 Comp. Gen. 104 (1987) (authorizing safety shoes); DOD FMR vol. 10, ch. 12, para. 120220; AR 670-10, Furnishing Uniforms or Paying Uniform Allowances to Civilian Employees, (1 July 1980).

- B. Food. Buying food for individual employees – at least those who are not away from their official duty station on travel status – generally does not materially contribute to an agency’s mission performance. See 31 U.S.C. § 1345 stating that except as provided by law, an appropriation may not be used for subsistence expenses at a meeting, but that this prohibition does not apply to expenses of an employee of the government carrying out an official duty. As a result, food is generally considered a personal expense. See Department of The Army—Claim of the Hyatt Regency Hotel, B-230382, Dec. 22, 1989 (unpub.) (determining coffee and donuts to be an unauthorized entertainment expense).
1. GAO-sanctioned exception where food is included as part of a facility rental cost. GAO has indicated that it is permissible for agencies to pay a facility rental fee that includes the cost of food if the fee is all inclusive, non-negotiable, and competitively priced to the fees of other facilities that do not include food as part of their rental fee. See Payment of a Non-Negotiable, Non-Separable Facility Rental Fee that Covered the Cost of Food Service at NRC Workshops, B-281063, 1999 U.S. Comp. Gen. LEXIS 249 (Dec. 1, 1999).
 2. Regulatory-based “Light Refreshments” Exception.
 - a. In a 2003 opinion, the GAO all but eliminated the “Light Refreshment” exception by prohibiting agencies from paying for refreshments given to any personnel *NOT* on travel status. See Use of Appropriated Funds to Purchase Light Refreshments at Conferences, B-288266, 2003 U.S. Comp. Gen. LEXIS 224, (Jan. 27, 2003).
 - b. This decision was somewhat reversed two years later in National Institutes of Health - Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42 (Mar. 03, 2005) (“NIH opinion”). In that case, the GAO authorized the use of appropriated funds for light refreshments, even for individuals *NOT* in travel status, under certain criteria.³⁸

³⁸ 1) the meals are incidental to the conference or meeting; 2) attendance of the employees at the meals is necessary for full participation in the conference or meeting; and 3) the conference or meeting includes not only the functions (speeches, lectures, or other business) taking place when the meals are served, but also includes substantial functions taking place separately from the meal-time portion of the meeting/conference. National Institutes of Health - Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42, at 3, (Mar. 03, 2005).

- c. The Department of Justice, Office of Legal Counsel (OLC) prohibited the executive branch from following the NIH opinion. <http://www.justice.gov/olc/2007/epa-light-refreshments13.pdf>. OLC opined that “meetings” as used in 31 U.S.C. § 1345 included formal conferences sponsored by government agencies and that “subsistence expenses” included meals and light refreshments.³⁹ Therefore the 31 U.S.C. § 1345 prohibits conference attendees, who are from the local PDS area, from utilizing “light refreshment exception.” The OLC opinion controls the activities of agencies of the federal government even though it is more restrictive than the opinions given by the GAO.
3. Statutory-based Exceptions.
- a. Basic Allowance for Subsistence. Under [37 U.S.C. § 402](#), DOD may pay service members a basic allowance for subsistence.
 - b. Meetings and Conferences. Under the Government Employees Training Act, [5 U.S.C. § 4110](#), there is authority for the government to pay for “expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities.”
 - (1) Conference Sponsored by Non-Federal Entities. Costs associated with meals included in a conference fee can be considered legitimate expenses of attendance under this statute if: 1) the meals are incidental to the conference or meeting; 2) attendance of the employees at the meals is necessary for full participation in the conference or meeting; and 3) the conference or meeting includes not only the functions (speeches, lectures, or other business) taking place when the meals are served, but also includes substantial functions taking place separately from the meal-time portion of the meeting/conference. See National Institutes of Health – Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42 (Mar. 3, 2005).

³⁹ Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences, 32 Op. Off. Legal Counsel 1, 5 (2007).

- (a) For purposes of this exception, the conference or meeting **must not be purely internal government business meetings/conferences.** National Institutes of Health – Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42 (Mar. 3, 2005). Moreover, luncheons disguised as meetings or conferences cannot utilize 5 U.S.C. § 4110. See B-21570, Mar. 22, 1985, 64 Comp. Gen. 406, 408. This authority does not specifically authorize agencies to pay the expenses, including food, of non-governmental employees

 - (b) As this authority is based on 5 U.S.C. § 4110, it does not apply to military members (it applies only to civilian employees). But see JFTR, ch. 4, para. U4510, which authorizes military members to be reimbursed for occasional meals within the local area of their Permanent Duty Station (PDS) when the military member is required to procure meals at personal expense outside the physical limits of the PDS.

 - (c) The OLC opinion may impact the ability of a civilian, who is not in a travel status, to utilize this authority. See Section IX.C.2.c. above.
- (2) Government Sponsored Conference. As part of the NIH opinion, the GAO authorized agencies to pay for the expenses, including food, of conference attendees from other agencies, and even *non-governmental organizations*, at “formal conferences.” National Institutes of Health – Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42 (Mar. 3, 2005).
- (a) As part of the decision, the GAO applied the same 5 U.S.C. § 4110 criteria⁴⁰ to “formal conferences,” but also required sufficient indicia of formality (including, among other things, registration, a published substantive agenda, and scheduled speakers), and stated that the conference must

⁴⁰ *See* Section IX.C.3.b.

involve **topical matters of interest to (and the participation of) multiple agencies and/or nongovernmental participants.**

- (b) The OLC opinion may impact the ability of an agency to utilize this authority. See Section IX.C.2.c. above.
- (3) Army Directive 2011-20- Department of Army Conferences (14 October 2011) as well as the Supplemental Conference Guidance and Data Call for Proposed FY 13 Conference, 29 October 2012, the policy sets down bright line rules for conferences. Under these standards, it is much hard to pay for any food at an approved conference.
- c. Training. Under 5 U.S.C. § 4109 (applicable to civilian employees) and 10 U.S.C. § 4301 and 10 U.S.C. § 9301 (applicable to service members), the government may provide meals when it is “necessary to achieve the objectives of a training program.” See U.S. Army Garrison Ansbach- Use of Appropriated Funds to Purchase Food for Participants in Anti-Terrorism Exercises, B-317423 (Mary 9, 2009), Coast Guard—Meals at Training Conference, B-244473, 1992 U.S. Comp. Gen. LEXIS 740 (Jan. 13, 1992); Use of Appropriated Funds to Purchase Light Refreshments at Conferences, B-288266, Jan. 27, 2003, 2003 U.S. Comp. Gen. LEXIS 224 (including a discussion of providing food, in general, where it furthers the needs of the training program).
- (1) This generally requires a determination that attendance during the meals is necessary in order for the attendees to obtain the full benefit of the training. See Coast Guard – Coffee Break Refreshments at Training Exercise – Non-Federal Personnel, B-247966, 1993 U.S. Comp. Gen. LEXIS 639 (Jun. 16, 1993). See also Pension Benefit Guar. Corp. – Provision of Food to Employees, B-270199, 1996 U.S. Comp. Gen. LEXIS 402 (Aug. 6, 1996) (food was not needed for employee to obtain the full benefit of training because it was provided during an ice-breaker rather than during actual training). In many GAO opinions, the application of this rule appears to be indistinguishable from the 3-part test for Formal Conferences and Meetings under 5 U.S.C. § 4110.

- (2) This exception may even apply to non-federal employees if they are necessary to the training and taking a lunch break separately from the government employees would hurt the training. See U.S. Army Garrison Ansbach- Use of Appropriated Funds to Purchase Food for Participants in Anti-Terrorism Exercises, B-317423 (Mary 9, 2009) (stating that there was no objection if the Garrison Commander involved in an anti-terrorism training exercise determined that the provision of food to nonfederal participants, including host national first responders, allowed federal and nonfederal personnel to train to work in a coordinated fashion without separating for food breaks, as, most likely, they would in an actual antiterrorism response).
- (3) The Training exception requires that the event be genuine "training," rather than merely a meeting or conference. The GAO and other auditors will not merely defer to an agency's characterization of a meeting as "training." Instead, they will closely scrutinize the event to ensure it was a valid program of instruction as opposed to an internal business meeting. See Corps of Eng'rs – Use of Appropriated Funds to Pay for Meals, B-249795, 72 Comp. Gen. 178 (1993) (determining that quarterly managers meetings of the Corps did not constitute "training").
- (4) This exception is often utilized to provide small "samples" of ethnic foods during an ethnic or cultural awareness program. See Army – Food Served at Cultural Awareness Celebration, B-199387, 1982 U.S. Comp. Gen. LEXIS 1284 (Mar. 23, 1982). See also U.S. Army Corps of Engineers, North Atlantic Division – Food for a Cultural Awareness Program, B-301184 (January 15, 2004) ("samplings" of food cannot amount to a full buffet lunch and must be related to the culture being celebrated); AFI 65-601, vol. 1, para. 4.26.1.2.

- d. Award Ceremonies (for Civilian Incentive Awards). Under 5 U.S.C. §§ 4503-4505 (civilian employees incentive awards), federal agencies may “incur necessary expenses” including purchasing food to honor an individual who is given an incentive award.
- (1) Relevant GAO Opinions. Defense Reutilization and Mktg. Serv. Award Ceremonies, B-270327, 1997 U.S. Comp. Gen. LEXIS 104 (Mar. 12, 1997) (authorizing the agency expending \$20.00 per attendee for a luncheon given to honor awardees under the Government Employees Incentive Awards Act); Refreshments at Awards Ceremony, B-223319, 65 Comp. Gen. 738 (1986) (agencies may use appropriated funds to pay for refreshments incident to employee awards ceremonies under 5 U.S.C. § 4503, which expressly permits agency to “incur necessary expense for the honorary recognition . . .”).
 - (2) Relevant Regulations. Awards to civilian employees must be made in accordance with 5 C.F.R. Part 451. Awards to DOD civilians must also be done in accordance with DODI 1400.25, Volume 451 as well as DOD FMR, vol. 8, ch. 3, para. 0311 (Aug. 1999). For Army civilians, the award must also be made in accordance with AR 672-20, Incentive Awards (29 January 1999) and DA Pam 672-20, Incentive Awards Handbook (1 July 1993).
 - (3) Military Awards. Food may also be provided at ceremonies honoring military recipients of military cash awards under 10 U.S.C. § 1124 (Military Cash Awards), which also contains the “incur necessary expenses” language. However, military cash awards are very rare. Typical military awards, such as medals, badges, trophies, etc., are governed by a separate statute (10 U.S.C. § 1125) which does not have the express “incur necessary expenses” language. Therefore, food may not be purchased with appropriated funds for a typical military awards ceremony.

4. Agencies that are authorized emergency and extraordinary expense or similar funds may also use these funds to pay for receptions for distinguished visitors. See discussion *infra* Part XI of this chapter for an overview.
- C. Bottled Water. Bottled water generally does not materially contribute to an agency's mission accomplishment. It is therefore generally a personal expense.
1. GAO-Sanctioned Exception Where Water is Unpotable. Agencies may use appropriated funds to buy bottled water where a building's water supply is unwholesome or unpotable. See *United States Agency for Int'l Dev. – Purchase of Bottled Drinking Water*, B-247871, 1992 U.S. Comp. Gen. LEXIS 1170 (Apr. 10, 1992) (problems with water supply system caused lead content to exceed "maximum contaminant level" and justified purchase of bottled water until problems with system could be resolved).
 2. GAO-Sanctioned Exception Where Duty is in Remote Area With No Access to Potable Water. Agencies (specifically the Army Corps of Engineers, in this instance) have the discretion to decide between providing water in coolers or jugs for transport or by providing bottled water at remote sites without access to potable water. The agency (CoE) must administratively determine that the best way to provide the water is by using bottled water. Dept. of the Army – Use of Appropriations for Bottled Water, B-310502, Feb. 4, 2008, 2008 U.S. Comp. Gen. LEXIS 38. See also Dept. of the Army, Military Surface Deployment and Distribution Command – Use of Appropriations for Bottled Water, B-318588, Sept. 29, 2009 (allowing purchase of bottled water for use at temporary work sites where potable water is not available).
 3. Bottled Water as a Condition of Employment. Even if providing bottled water to union employees had become a condition of employment, once drinking water is potable, the agency does not have the authority to continue to provide bottled water. An agency cannot bargain over a matter that is inconsistent with federal law. United States Department Of The Navy, Naval Undersea Warfare Center Division Newport, Rhode Island v. Federal Labor Relations Authority, 665 F.3d 1339, 1347 (D.C. Cir. 2012)

4. Relevant Regulations. See also DOD FMR, vol. 10, ch. 12, para. 120324 (permitting the purchase of water where the public water is unsafe or unavailable); AFI 65-601, vol. 1, para. 4.58 (discussing the same); AR 30-22, para. 5-19 (discussing the need to obtain approval from HQDA prior to purchasing bottled water, except in the context of a deployment / contingency).
5. Water Coolers. As distinguished from the water itself, which must be purchased with personal funds unless the building has no potable water, agencies may use appropriated funds to purchase water coolers as “Food Storage Equipment” (see discussion in next paragraph below), but arguably only under severely limited circumstances. There is arguably no valid purpose for water coolers in buildings that are already equipped with chilled water fountains or with refrigerators that dispense chilled water or ice. Where the facility is not so equipped, water coolers may be purchased with appropriated funds so long as the primary benefit of its use accrues to the organization. Under those circumstances, the water in the cooler must be available for use by all employees, including those who did not chip in for the water.

D. Workplace Food Storage and Preparation Equipment (i.e. microwave ovens; refrigerators; coffee pots).

1. In June 2004 the GAO reversed its own precedent⁴¹ and held that food storage/preparation equipment reasonably relates to the efficient performance of agency activities, and thus appropriated funds could be spent for these items regardless of the availability of commercial eating facilities. See Use of Appropriated Funds to Purchase Kitchen Appliances, B-302993 (June 25, 2004). The Comptroller General observed that food storage/preparation equipment provided a benefit to the agency holding that they “increased employee productivity, health, and morale, that when viewed together, justify the use of appropriated funds to acquire the equipment.” Further, the opinion noted that such equipment “is one of many small but important factors that can assist federal agencies in recruiting and retaining the best work force and supporting valuable human capital policies.”

⁴¹ See e.g., Central Intelligence Agency – Availability of Appropriations to Purchase Refrigerators for Placement in the Workplace, B-276601, 97-1 CPD ¶ 230 (commercial facilities were not proximately available when the nearest one was a 15-minute commute from the federal workplace); Purchase of Microwave Oven, B-210433, 1983 U.S. Comp. Gen. LEXIS 1307 (Apr. 15, 1983) (commercial facilities unavailable when employees worked 24 hours a day, seven days a week and restaurants were not open during much of this time).

2. Bottom line: Food preparation and storage equipment may be purchased with appropriated funds, so long as the primary benefit of its use accrues to the agency and the equipment is placed in common areas where it is available for use by all personnel. (Note: agency regulations and policies should be consulted prior to applying this decision.)
- E. Personal Office Furniture and Equipment. Ordinary office equipment is reasonably necessary to carry out an agency's mission, so appropriated funds may be used to purchase such items so long as they serve the needs of the majority of that agency's employees. If the equipment serves the needs of only a single individual or a specific group of individuals, then it is considered a personal expense rather than a "necessary expense" of the agency. This is true even if the equipment is essential for a particular employee to perform his or her job. Under such a scenario, it is the needs of that particular individual that causes the item to be necessary. The item is not "essential to the transaction of official business from the Government's standpoint." Internal Revenue Service – Purchase of Air Purifier with Imprest Funds, B-203553, 61 Comp. Gen. 634 (1982) (disapproving reimbursement for air purifier to be used in the office of an employee suffering from allergies); See also Roy C. Brooks – Cost of special equipment-automobile and sacro-ease positioner, B-187246, 1977 U.S. Comp. Gen. LEXIS 221 (Jun. 15, 1977) (disapproving reimbursement of special car and chair for employee with a non-job related back injury); Cf. Office of Personnel Mgt. – Purchase of Air Purifiers, B-215108, July 23, 1984, 84-2 CPD ¶ 194 (allowing reimbursement for air purifiers to be used in common areas, thus benefiting the needs of all building occupants).
1. Federal Supply Schedule Exception. If the desired equipment is available on the Federal Supply Schedule, the agency may use appropriated funds to purchase it even if the chair does not serve the needs of the majority of workers. See Purchase of Heavy Duty Office Chair, B-215640, 1985 U.S. Comp. Gen. LEXIS 1805 (Jan. 14, 1985) (allowing reimbursement for a heavy-duty office chair normally used only by air traffic controllers since the chair was available on FSS).

2. Exception Based Upon Statutory Authority. The Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., requires federal agencies to implement programs to expand employment opportunities for handicapped individuals. The regulations implementing this Act require agencies to make “reasonable accommodations” to include purchasing special equipment or devices in order to carry out these programs. See 29 C.F.R. 32.3 (“Definitions”). Thus, agencies may purchase equipment for its **qualified handicap employees** as a reasonable accommodation. See Use of Appropriated Funds to Purchase a Motorized Wheelchair for a Disabled Employee, B-240271, 1990 U.S. Comp. Gen. LEXIS 1128 (Oct. 15, 1990) (authorizing purchase); see also Equal Employment Opportunity Commission – Special Equipment for Handicapped Employees, B-203553, 63 Comp. Gen. 115 (1983) (agency could not purchase air purifier for person with allergies because the person did not meet the regulatory definition of a handicapped individual).
- F. Entertainment. Entertaining people generally does not materially contribute to an agency’s mission performance. As a result, entertainment expenses are generally considered to be a personal expense. See HUD Gifts, Meals, and Entm’t Expenses, B-231627, 68 Comp. Gen. 226 (1989); Navy Fireworks Display, B-205292, Jun. 2, 1982, 82-2 CPD ¶ 1 (determining fireworks to be unauthorized entertainment); Liability of Alexander Tripp, B-304233, Aug. 8, 2005, 2005 U.S. Comp. Gen. LEXIS 158 (Sunset dinner cruise in conjunction with staff retreat a “personal expense”; official held not personally liable where he was not properly designated by the agency as a certifying officer).
1. Statutory-based Exceptions. Congress does occasionally provide authority to entertain. See Claim of Karl Pusch, B-182357, 1975 U.S. Comp. Gen. LEXIS 1463 (Dec. 9, 1975) (Foreign Assistance Act authorized reimbursement of expenses incurred by Navy escort who took foreign naval officers to Boston Playboy Club -- twice); Golden Spike Nat’l Historic Site, B-234298, 68 Comp. Gen. 544 (1989) (discussing authority to conduct “interpretive demonstrations” at the 1988 Annual Golden Spike Railroader’s Festival).

2. Agencies may use appropriated funds to pay for entertainment (including food) in furtherance of equal opportunity training programs. Internal Revenue Serv. – Live Entm’t and Lunch Expense of Nat’l Black History Month, B-200017, 60 Comp. Gen. 303 (1981) (determining a live African dance troupe performance conducted as part of an Equal Employment Opportunity (EEO) program was a legitimate part of employee training); U.S. International Trade Commission – Cultural Awareness, B-278805, Jul. 1999, 1999 U.S. Comp. Gen. LEXIS 211 (Int’l Trade Comm’n funds were available to pay for musical performance at cultural awareness event, subject to time limits on reimbursement.).
 3. Agencies that are authorized emergency and extraordinary expense or similar funds may also use these funds to entertain distinguished visitors to the agency. *See* discussion *infra* Part XI of this chapter for an overview. *See also* To The Honorable Michael Rhode, Jr., B-250884, 1993 U.S. Comp. Gen. LEXIS 481 (March 18, 1993) (interagency working meetings, even if held at restaurants, are not automatically social or quasi-social events chargeable to the official reception and representation funds).
- G. Decorations. Under a “necessary expense” analysis, GAO has sanctioned the use of appropriated funds to purchase decorations so long as they are modestly priced and consistent with work-related objectives rather than for personal convenience. *See* Department of State & Gen. Serv. Admin – Seasonal Decorations, B-226011, 67 Comp. Gen. 87 (1987) (authorizing purchase of decorations); Purchase of Decorative Items for Individual Offices at the United States Tax Court, B-217869, 64 Comp. Gen. 796 (1985) (modest expenditure on art work consistent with work-related objectives and not primarily for the personal convenience or personal satisfaction of a government employee proper); *But see* The Honorable Fortney H. Stark, B-217555, 64 Comp. Gen. 382 (1985) (determining that Christmas cards and holiday greetings letters were not a proper expenditure because they were for personal convenience). *See also* AFI 65-601, vol. 1, para. 4.28.2. 41 C.F.R. § 101.26.103-2 (2003) governs the purchase decorative items for federal buildings. Note: Practitioners should consider also the constitutional issues involved in using federal funds to purchase and display religious decorations (e.g., Christmas, etc.).

- H. Business Cards. Under a “necessary expense” analysis, the GAO has sanctioned the purchase of business cards for agency employees. See Letter to Mr. Jerome J. Markiewicz, Fort Sam Houston, B-280759, Nov. 5, 1998 (purchase of business cards with appropriated funds for government employees who regularly deal with public or outside organizations is a proper “necessary expense”).
1. This decision reversed a long history of Comptroller General decisions holding that business cards were a personal expense because they did not materially contribute to an agency’s mission accomplishment. See, e.g., Forest Serv. – Purchase of Info. Cards, B-231830, 68 Comp. Gen. 467 (1989).
 2. See Section VII.B.3. for a discussion on the more restrictive agency regulations on purchasing business cards.
- I. Telephones. Even though telephones might ordinarily be considered a “necessary expense,” appropriated funds may not generally be used to install telephones in private residences or to pay the utility or other costs of maintaining a telephone in a private residence. Congress decided to prohibit government phones in personal residences because their use was subject to great abuse. See 31 U.S.C. § 1348; see also Centers for Disease Control and Prevention – Use of Appropriated Funds to Install Tel. Lines in Private Residence, B-262013, Apr. 8, 1996, 96-1 CPD ¶ 180 (appropriated funds may not be used to install telephone lines in Director’s residence); Use of Appropriated Funds to Pay Long Distance Tel. Charges Incurred by a Computer Hacker, B-240276, 70 Comp. Gen. 643 (1991) (agency may not use appropriated funds to pay the phone charges, but may use appropriated funds to investigate).
1. Exceptions for DOD and State Department. The above prohibition does not apply to the installation, repair, or maintenance of telephone lines in residences owned or leased by the U.S. Government. It also does not apply to telephones in private residences if the SECDEF determines they are necessary for national defense purposes. See 31 U.S.C. § 1348(a)(2) and (c). See also Timothy R. Manns – Installation of Tel. Equip. in Employee Residence, B-227727, 68 Comp. Gen. 307 (1989) (telephone in temporary quarters of National Park Service employee allowed, using same rationale). DOD may install telephone lines in the residences of certain volunteers who provide services that support service members and their families, including those who provide medical, dental, nursing, or other health-care related services as well as services for museum or natural resources programs. See 10 U.S.C. § 1588(f).

2. Exception for Data Transmission Lines. If the phone will be used to transmit data, the above prohibition does not apply. See Federal Commc'ns Comm'n – Installation of Integrated Servs. Digital Network, B-280698, Jan. 12, 1999 (unpub.) (agency may use appropriated funds to pay for installation of dedicated Integrated Services Digital Network (ISDN) lines to transmit data from computers in private residences of agency's commissioners to agency's local area network).

3. Cell Phones. The prohibition on installing telephones in a personal residence does not prevent an agency from purchasing cell phones for its employees, if they are otherwise determined to be a necessary expense. Agencies may also reimburse their employees for the costs associated with any official government usage of personal cell phones, but such reimbursement must cover the actual costs – not the estimated costs – of the employee. See Reimbursing Employees' Government Use of Private Cellular Phones at a Flat Rate, B-287524, 2001 U.S. Comp. Gen. LEXIS 202 (Oct. 22, 2001) (agency may not pay the employees a flat amount each month – in lieu of actual costs – even if the calculation of that flat amount is made using historical data); see also Nuclear Regulatory Commission: Reimbursing Employees for Official Usage of Personal Cell Phones, B-291076, 2003 U.S. Comp. Gen. LEXIS 240 (March 6, 2003).

4. Exception for Teleworking. In 1995, Congress authorized federal agencies to install telephones and other *necessary equipment* in personal residences for purposes of teleworking. See Pub. L. No. 104-52, § 620 (Codified at 31 U.S.C., § 1348). Congress also required the Office of Personnel Management (OPM) to develop guidance on teleworking that would be applicable to all federal agencies. That guidance may be found at: <http://www.telework.gov/>. The Air Force also has some additional guidance found in AFI 65-601, vol. I, sec. 4I.

- J. Fines and Penalties. The payment of a fine or penalty generally does not materially contribute towards an agency's mission accomplishment. Therefore, fines and penalties imposed on government employees and service members are generally considered to be their own personal expense and not payable using appropriated funds. Alan Pacanowski - Reimbursement of Fines for Traffic Violations, B-231981, 1989 U.S. Comp. Gen. LEXIS 635 (May 19, 1989); To the Honorable Ralph Regula, B-250880, Nov. 3, 1992, 1992 U.S. Comp. Gen. LEXIS 1279 (Fines imposed on Government employees driving Government vehicles also a personal expense). Where the fine itself is not reimbursable, related legal fees are similarly nonreimbursable. In the Matter of Attorney's Fees in Traffic Offense, B-186857, Feb. 9, 1978, 57 Comp. Gen. 270.
1. Exception Based Upon "Necessary Expense" Rule. If, in carrying out its mission, an agency forces one of its employees to take a certain action which incurs a fine or penalty, that fine or penalty may be considered a "necessary expense" and payable using appropriated funds. Compare To The Honorable Ralph Regula, B-250880, 1992 U.S. Comp. Gen. LEXIS 1279 (Nov. 3, 1992) (military recruiter is personally liable for fines imposed for parking meter violations because he had the ability to decide where to park and when to feed the meter); with To The Acting Attorney Gen., B-147769, 44 Comp. Gen. 313 (1964) (payment of contempt fine proper when incurred by employee forced to act pursuant to agency regulations and instructions).
 2. Agencies may also pay fines imposed upon the agency itself if Congress waives sovereign immunity. See, e.g., 10 U.S.C. § 2703(f) (Defense Environmental Restoration Account); 31 U.S.C. § 3902 (interest penalty).
- K. Licenses and Certificates. Employees are expected to show up to work prepared to carry out their assigned duties. As a result, fees that employees incur to obtain licenses or certificates enabling them to carry out their duties are considered a personal expense rather than a "necessary expense" of the government. See A. N. Ross, Federal Trade Commission, B-29948, 22 Comp. Gen. 460 (1942) (fee for admission to Court of Appeals not payable); Colonel Dempsey, B-277033, Jun. 27, 1997, 1997 U.S. Comp. Gen. LEXIS 410 (Fee for state physician's license, DEA certifications not payable, even where advantageous for the Government). But see AFI 65-601, vol. 1, para. 4.60 (Payment for *certain* licenses and certificates, where not used to qualify individuals for employment, allowed).

1. GAO Sanctioned Exception—When the license is primarily for the benefit of the government and not to qualify the employee for his position. National Sec. Agency – Request for Advance Decision, B-257895, 1994 U.S. Comp. Gen. LEXIS 844 (Oct. 28, 1994) (allowing drivers’ licenses for scientists and engineers to perform security testing at remote sites); Air Force—Appropriations – Reimbursement for Costs of Licenses or Certificates, B-252467, 73 Comp. Gen. 171 (1994) (approving payment of licenses necessary to comply with state-established environmental standards); Dept. of the Army – Availability of Funds for Security Clearance Expenses, B-307316, Sep. 7, 2006, 2006 U.S. Comp. Gen. LEXIS 144 (agreeing that costs associated with service-member renouncing foreign citizenship in order to obtain security clearance payable are allowable).

2. Professional Credentials. In 2001, Congress enacted legislation permitting agencies to use appropriations for “expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification; and examinations to obtain such credentials.” Pub. L. No. 107-107, § 1112(a), 115 Stat. 1238 (Apr. 12, 2001), codified at 5 U.S.C. § 5757. The statutory language does not create an entitlement; instead, it authorizes agencies to consider such expenses as payable from agency appropriations if the agency chooses to cover them. *See* AFI 65-601, vol. 1, para. 4.47. But see Scope of Professional Credentials Statute, B-302548, 2004 U.S. Comp. Gen. LEXIS 176 (prohibiting payment for an employee’s membership in a professional association not required for licensing). In 2006, the military received similar authority, codified at: 10 U.S.C. § 2015.

3. On 20 June 2003 the Assistant Secretary of the Army (Manpower and Reserve Affairs) issued a memorandum to MACOM Commanders authorizing payment for professional credentials, as permitted in 5 U.S.C. § 5757. <http://cpol.army.mil/library/train/tld-062003.html> This authority may be redelegated at the discretion of the MACOM Commanders. Scope of Professional Credentials Statute, B-302548, 2004 U.S. Comp. Gen. LEXIS 176 (GAO analysis of the scope of 5 U.S.C. § 5757).

- L. Awards (Including Unit or Regimental Coins and Similar Devices). Agencies generally may not use their appropriated funds to purchase “mementos” or personal gifts. See EPA Purchase of Buttons and Magnets, B-247686, 72 Comp. Gen. 73 (1992) (requiring a direct link between the distribution of the gift or memento and the purpose of the appropriation in order to purchase the item with appropriated funds); See also Purchase of Baseball Caps by Dept. of Energy, B-260260, Dec. 28, 1995, 96-2 Com. Gen. Proc. Dec. ¶ 131 (disallowing the purchase of baseball caps where there was no direct link to the purpose of the appropriation established). Congress has enacted various statutory schemes permitting agencies to give awards, however. These include:
1. Awards For Service Members. Congress has provided specific authority for the SECDEF to “award medals, trophies, badges, and similar devices” for “excellence in accomplishments or competitions.” 10 U.S.C. § 1125.
 - a. The Army has implemented this statute in AR 600-8-22, Military Awards (11 Dec. 2006). The bulk of this regulation deals with the typical medals and ribbons issued to service members (i.e. the Army Achievement Medal, the Meritorious Service Medal, etc).
 - b. Chapter 11 of the regulation allows the presentation of other nontraditional awards for “excellence in accomplishments or competitions which clearly contribute to the increased effectiveness or efficiency of the military unit, for example, tank gunnery, weapons competition, and military aerial competition.”
 - c. While the regulation discusses contests and events of a continuing nature, awards “may be made on a one-time basis where the achievement is unique and clearly contributes to increased effectiveness.” See AR 600-8-22, para. 11-2b.
 - d. Theoretically, these awards could be made in the form of a coin, a trophy, a plaque, or a variety of other “similar devices.” However, the MACOM commander or head of the principal HQDA agency, or delegee, must approve the trophies and similar devices to be awarded within their command or agency. See AR 600-8-22, para. 1-7d. See also Air Force Purchase of Belt Buckles as Awards for Participants in a Competition, B-247687, 71 Comp. Gen. 346 (1992) (belt buckles may be purchased as awards for the annual "Peacekeeper Challenge").

- e. Specific Issues Concerning Unit or Regimental Coins. For a detailed discussion of the issues related to commanders' coins, see Major Kathryn R. Sommercamp, *Commanders' Coins: Worth Their Weight in Gold?*, ARMY LAW., Nov. 1997, at 6.
 - f. The Air Force and Navy/Marine Corps have similar awards guidance. See generally AFPD 36-28, Awards and Decorations Programs, (Jul 30, 2012); SECNAVINST 3590.4A, Award of Trophies and Similar Devices in Recognition of Accomplishments (28 Jan. 1975). See also AFI 65-601, vol. 1, para. 4.31.2.
2. Awards For Civilian Employees. Congress has provided agencies with various authorities to pay awards to their employees. See Chapter 45 of Title 5 of the U.S. Code. The most often utilized authority used as a basis to issue an award to a civilian employee is that found at 5 U.S.C. § 4503.
- a. Regulatory Implementation of this Authority. Awards to civilian employees must be made in accordance with 5 C.F.R. Part 451. Awards to DOD civilians must also be done in accordance with DoD 1400.25-M, subchapter 451 as well as DOD FMR, vol. 8, ch. 3, (June 2010). For Army civilians, the award must also be made in accordance with AR 672-20, Incentive Awards (29 January 1999) and DA Pam 672-20, Incentive Awards Handbook (1 July 1993).

- b. Non-Cash Awards. The statute technically states that the “head of an agency **may pay a cash award** to, and incur necessary expense for the honorary recognition of” one of their employees. The plain reading of this statute implies that non-cash awards, such as plaques and coins, are not authorized to be given to civilian employees. The agency regulations each expressly permit non-cash awards, however. The GAO has sanctioned the giving of non-cash awards to civilian employees. See Awarding of Desk Medallion by Naval Sea Sys. Command, B-184306, 1980 U.S. Comp. Gen. LEXIS (Aug. 27, 1980) (stating that desk medallions may be given to both civilian and military as awards for suggestions, inventions, or improvements); Nat’l Security Agency – Availability of Appropriations to Purchase Food as a Non-Monetary Award, B-271511, Mar. 4, 1997, 1997 U.S. Comp. Gen. LEXIS 105 (deciding that food vouchers may be given to civilian employees as awards). As discussed *supra*, the GAO has also sanctioned the purchase of food as one of the expenses that it deems could be necessary to honor the awardees accomplishments under 5 U.S.C. § 4503. In such circumstances, the award is not the food; the food is just an incidental expense incurred to honor the awardee.
- 3. Agencies that are authorized emergency and extraordinary expense or similar funds may also use these funds to purchase mementoes for their distinguished visitors. See discussion *infra* Part XI of this chapter for an overview.

M. Use of Office Equipment. Governed by the Joint Ethics Regulation, DOD 5500.07-R (Nov. 17, 2011), Standards of Conduct, DOD Directive 5500.07 (Nov. 29, 2007), 5 C.F.R. § 2635, and 5. C.F.R. Part 3601 (available at http://www.dod.mil/dodgc/defense_ethics/). The use of government property to respond to National Guard, Reserve matters is authorized, within certain restrictions. Lorraine Lewis, Esq., B-277678, 1999 U.S. Comp. Gen. LEXIS 104 (Jan. 4, 1999) (agency may authorize use of office equipment to respond to reserve unit recall notification as all government agencies have some interest in furthering the governmental purpose of, and national interest in, the Guard and Reserves). See 5 C.F.R. § 251.202; see also Office of Personnel Management memorandum, Subject: Use of Official Time and Agency Resources by Federal Employees Who Are Members of the National Guard or Armed Forces Reserves (3 June 1999), which provides general guidance to assist federal agencies in determining under what circumstances employee time and agency equipment may be used to carry out limited National Guard or Reserve functions. An electronic copy of this memorandum is on file with the Contract and Fiscal Law Department. See also CAPT Samuel F. Wright, *Use of Federal Government Equipment and Time for Reserve Unit Activities*, RESERVE OFFICERS ASS'N L. REV., May 2001 (providing a good overview of this authority).

N. Expenditures for New or Additional Duties.

1. If during the middle of a fiscal year, legislation or an executive order imposes new or additional duties upon an agency and Congress does not provide that agency with a supplemental appropriation specifically covering that new function, may current appropriations be charged?
2. Test: Are the new duties sufficiently related to the purpose of a previously enacted appropriation? The Honorable Bill Alexander, B-213137, 63 Comp. Gen. 422 (1984); Director, Nat'l Sci. Found., B-158371, 46 Comp. Gen. 604 (1967).

X. AUGMENTATION OF APPROPRIATIONS & MISCELLANEOUS RECEIPTS.

A. General Rule - Augmentation of Appropriations Is Not Permitted.

1. Augmentation is action by an agency that increases the effective amount of funds available in an agency's appropriation. Generally, this results in expenditures by the agency in excess of the amount originally appropriated by Congress.
2. Basis for the Augmentation Rule. An augmentation normally violates one or more of the following provisions:
 - a. U.S. Constitution, Article I, section 9, clause 7: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."
 - b. 31 U.S.C. § 1301(a) (Purpose Statute): "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."
 - c. 31 U.S.C. § 3302(b) (Miscellaneous Receipts Statute): "Except as [otherwise provided], an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without any deduction for any charge or claim."

3. Types of Augmentation.

- a. Augmenting by using one appropriation to pay costs associated with the purposes of another appropriation. This violates the Purpose Statute, 31 U.S.C. § 1301(a). U.S. Equal Employment Opportunity Comm'n – Reimbursement of Registration Fees for Fed. Executive Board Training Seminar, B-245330, 71 Comp. Gen. 120 (1991) (Noting prohibition against using appropriations to finance interagency boards, commissions, committees, etc.); Nonreimbursable Transfer of Admin. Law Judges, B-221585, 65 Comp. Gen. 635 (1986); Department of Health and Human Servs. – Detail of Office of Cmty. Servs. Employees, B-211373, 64 Comp. Gen. 370 (1985).

Example: If the Air Force were to buy air-to-air missiles using its “Procurement, Ammunition, Air Force” appropriation instead of its more specific “Procurement, Missiles, Air Force” appropriation, this would enable it to purchase a greater overall quantity of missiles (some using the missile appropriation and some using the ammunition appropriation) than Congress desired.

- b. Augmenting an appropriation by retaining government funds received from another source.
- (1) This violates the Miscellaneous Receipts Statute, 31 U.S.C. § 3302(b). See Scheduled Airlines Traffic Offices, Inc. v. Dep’t. of Def., 87 F.3d 1356 (D.C. Cir. 1996) (indicating that a contract for official and unofficial travel, which provided for concession fees to be paid to the local morale, welfare, and recreation account, violates Miscellaneous Receipts Statute; note, however, that Congress has subsequently enacted statutory language – found at 10 U.S.C. § 2646 – that permits commissions or fees in travel contracts to be paid to morale, welfare, and recreation accounts); Interest Earned on Unauthorized Loans of Fed. Grant Funds, B-246502, 71 Comp. Gen. 387 (1992); But see Bureau of Alcohol, Tobacco, and Firearms – Augmentation of Appropriations – Replacement of Autos by Negligent Third Parties, B-226004, 67 Comp. Gen. 510 (1988) (noting that 31 U.S.C. § 3302 **only applies to monies** received, not to other property or services).

- (2) Expending the retained funds generally violates the constitutional requirement for an appropriation. See Use of Appropriated Funds by Air Force to Provide Support for Child Care Ctrs. for Children of Civilian Employees, B-222989, 67 Comp. Gen. 443 (1988).

B. Statutory Exceptions to the Miscellaneous Receipts Statute. Some examples of the statutes Congress has enacted which expressly authorize agencies to retain funds received from a non-Congressional source include:

1. Economy Act. 31 U.S.C. § 1535 authorizes interagency orders. The ordering agency must reimburse the performing agency for the costs of supplying the goods or services. 31 U.S.C. § 1536 specifically indicates that the servicing agency should credit monies received from the ordering agency to the “appropriation or fund against which charges were made to fill the order.” See also 41 U.S.C. § 6307 (providing similar intra-DOD project order authority, and DOD FMR, Vol. 11A, Ch.3 (providing policies and procedures for Economy Act orders). Also, there are several statutes other than the Economy Act that provide specific statutory authority for interagency acquisitions which are also exceptions to the Miscellaneous Receipts Statute. See DOD FMR, Vol. 11A, Ch.18 for policies and procedures applicable to non-Economy Act orders. These differences are explained in further detail in the Interagency Acquisitions chapter of this deskbook.
2. Foreign Assistance Act. 22 U.S.C. § 2392 authorizes the President to transfer State Department funds to other agencies, including DOD, to carry out the purpose of the Foreign Assistance Act. See DOD FMR, Vol. 15, Ch. 1 for policies and procedures.
3. Revolving Funds. Revolving funds are management tools that provide working capital for the operation of certain activities. The receiving activity must reimburse the funds for the costs of goods or services when provided. See 10 U.S.C. § 2208; National Technical Info. Serv., B-243710, 71 Comp. Gen. 224 (1992); Administrator, Veterans Admin., B-116651, 40 Comp. Gen. 356 (1960). See also DOD FMR, Vol. 3, Ch. 19 for policies and procedures.

4. Proceeds received from bond forfeitures, but only to the extent necessary to cover the costs of the United States. 16 U.S.C. § 579c; USDA Forest Serv. – Auth. to Reimburse Gen. Appropriations with the Proceeds of Forfeited Performance Bond Guarantees, B-226132, 67 Comp. Gen. 276 (1988); National Park Serv. – Disposition of Performance Bond Forfeited to Gov’t by Defaulting Contractor, B-216688, 64 Comp. Gen. 625 (1985) (forfeited bond proceeds to fund replacement contract).
5. Defense Gifts. 10 U.S.C. § 2608. The Secretary of Defense may accept monetary gifts and intangible personal property for defense purposes. However, these defense gifts may not be expended until appropriated by Congress. See DOD FMR, Vol. 12, Ch. 3 for policies and procedures. (Additional gift authorities found at 10 U.S.C. § 2601(a) and § 2601(b), are implemented in DOD FMR, Vol. 12, Ch. 30)
6. Health Care Recoveries. 10 U.S.C. § 1095(g). Amounts collected from third-party payers for health care services provided by a military medical facility may be credited to the appropriation supporting the maintenance and operation of the facility.
7. Recovery of Military Pay and Allowances. Statutory authority allows the government to collect damages from third parties to compensate for the pay and allowances of soldiers who are unable to perform military duties as a result of injury or illness resulting from a tort. These amounts “shall be credited to the appropriation that supports the operation of the command, activity, or other unit to which the member was assigned.” 42 U.S.C. § 2651. The U.S. Army Claims Service has taken the position that such recoveries should be credited to the installation’s operation and maintenance account. See Affirmative Claims Note, *Lost Wages under the Federal Medical Care Recovery Act*, ARMY LAW., Dec, 1996, at 38.
8. Military Leases of Real or Personal Property. 10 U.S.C. § 2667(e)(1). Rentals received pursuant to leases entered into by a military department may be deposited in special accounts for the military department and used for facility maintenance, repair, or environmental restoration. See DOD FMR, Vol. 12, Ch. 14, para. 140102 for policies and procedures.
9. Damage to Real Property. 10 U.S.C. § 2782. Amounts recovered for damage to real property may be credited to the account available for repair or replacement of the real property at the time of recovery.

10. Proceeds from the sale of lost, abandoned, or unclaimed personal property found on an installation. 10 U.S.C. § 2575. Proceeds are credited to the operation and maintenance account and used to pay for collecting, storing, and disposing of the property. Remaining funds may be used for morale, welfare, and recreation activities. See DOD FMR, Vol. 12, Ch. 25, para. 250202 for policies and procedures.
11. Host nation contributions to relocate armed forces within a host country. 10 U.S.C. § 2350k (These contributions may only be used for costs incurred in connection with the relocation).
12. Government Credit Card and Travel Refunds. Section 8067 of the FY 2008 Defense Appropriations Act (Pub. Law 110-116) granted permanent authority (“in the current fiscal year and hereafter”) to credit refunds attributable to the use of the Government travel card, the Government Purchase Card, and Government travel arranged by Government Contracted Travel Management Centers, to the O&M and RDT&E accounts of the Department of Defense “which are current when the refunds are received.” See DOD FMR, Vol. 10, Ch. 2, para.020302.C for policies and procedures.
13. Conference Fees. 10 U.S.C. § 2262. In response to a GAO decision that prohibited the retention of conference fees without specific statutory authority,⁴² Congress granted the Department of Defense the authority to collect fees from conference participants and to use those collected fees to pay the costs of the conference. Any amounts collected in excess of the actual costs of the conference must still be deposited into the Treasury as miscellaneous receipts.⁴³
14. Authority to Retain Funds in Environmental Restoration Accounts. 10 U.S.C., § 2703, “Environmental Restoration Accounts,” provides that DOD components are allowed to credit certain amounts to Environmental Restoration Accounts. These funds include those: 1) recovered under CERCLA and 2) any other amounts recovered from a contractor, insurer, surety, or other person to reimburse the DOD or a military department for any expenditure for environmental response activities. See DOD FMR, Vol. 2B, Ch. 13.

⁴² See National Institutes of Health – Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42 (Mar. 3, 2005)

⁴³ This statutory authority has been implemented in DoD FMR vol. 12 ch. 32 (change 2009).

C. GAO Sanctioned Exceptions to the Miscellaneous Receipts Statute. In addition to the statutory authorities detailed above, the GAO recognizes other exceptions to the Miscellaneous Receipts Statute, including:

1. Replacement Contracts. An agency may retain recovered excess procurement costs to fund replacement contracts. Bureau of Prisons – Disposition of Funds Paid in Settlement of Breach of Contract Action, B-210160, 62 Comp. Gen. 678 (1983).
 - a. This rule applies regardless of whether the government terminates for default or simply claims for damages due to defective workmanship.
 - b. The replacement contract must be coextensive with the original contract, i.e., the agency may procure only those goods and services that would have been provided under the original contract.
 - c. Amounts recovered that exceed the actual costs of the replacement contract must be deposited as miscellaneous receipts.
2. Refunds.
 - a. Refunds for erroneous payments, overpayments, or adjustments for previous amounts disbursed may be credited to the appropriation or fund account charged with the original obligation. DOD FMR, Vol. 3, Ch. 15, para. 150204.A.1. Refunds of prior year obligations are not available for obligation until collected and reappropriated by OMB. DOD FMR, Vol. 4, Ch. 2, para. 020408.B. See also Department of Justice – Deposit of Amounts Received from Third Parties, B-205508, 61 Comp. Gen. 537 (1982) (agency may retain funds received from carriers/insurers for damage to employee’s property for which agency has paid employee’s claim); International Natural Rubber Org. – Return of United States Contribution, B-207994, 62 Comp. Gen. 70 (1982); Appropriation Accounting Refunds and Uncollectibles, B-257905, Dec. 27, 1995, 96-1 Comp. Gen. Proc. Dec. ¶ 130 (Recoveries of amounts under fraudulent contract may be deposited to the appropriation originally charged.).

- b. Amounts that exceed the actual refund must be deposited as miscellaneous receipts. Federal Emergency Mgmt. Agency – Disposition of Monetary Award Under False Claims Act, B-230250, 69 Comp. Gen. 260 (1990) (agency may retain reimbursement for false claims, interest, and administrative expenses in revolving fund; treble damages and penalties must be deposited as miscellaneous receipts). See also National Science Foundation- Disposition of False Claims Act Recoveries, B-310725, May 20, 2008 (the Inspector General (IG) of the National Science Foundation may not credit to its appropriation amounts recovered by the Justice Department under the False Claims Act to reimburse investigative costs incurred by the IG’s office that are specifically provided for in its appropriation).
 - c. Funds recovered by an agency for damage to government property, unrelated to performance required by the contract, must be deposited as miscellaneous receipts. Defense Logistics Agency – Disposition of Funds Paid in Settlement of Contract Action, B-226553, 67 Comp. Gen. 129 (1987) (negligent installation of power supply system caused damage to computer software and equipment; insurance company payment to settle government’s claim for damages must be deposited as miscellaneous receipts).
 - d. Refunds must be credited to the appropriation charged initially with the related expenditure, whether current or expired. Accounting for Rebates from Travel Mgmt. Ctr. Contractors, B-217913.3, 73 Comp. Gen. 210 (1994); To The Sec’y of War, B-40355, 23 Comp. Gen. 648 (1944). This rule applies to refunds in the form of a credit. See Principles of Fed. Appropriations Law, vol. II, ch. 6, 6-174, GAO-06-382SP (3d ed. 2006); Appropriation Accounting—Refunds and Uncollectibles, B-257905, Dec. 26, 1995, 96-1 CPD ¶ 130 (recoveries under fraudulent contracts are refunds, which should be credited to the original appropriation, unless the account is closed).
3. Receipt of property other than cash. When the government receives a replacement for property damaged by a third party in lieu of cash, the agency may retain the property. Bureau of Alcohol, Tobacco, and Firearms – Augmentation of Appropriations – Replacement of Autos by Negligent Third Parties, B-226004, 67 Comp. Gen. 510 (1988) (replacement by repair of damaged vehicles).

4. Funds held in trust for third parties. When the government receives custody of cash or negotiable instruments that it intends to deliver to the rightful owner, it need not deposit the funds into the treasury as a miscellaneous receipt. The Honorable John D. Dingell, B-200170, 60 Comp. Gen. 15 (1980) (money received by Department of Energy for oil company overcharges to their customers may be held in trust for specific victims).

5. Nonreimbursable Personnel Details.
 - a. The Comptroller General has held that nonreimbursable agency details of personnel to other agencies are generally unallowable. Department of Health and Human Servs. – Detail of Office of Cmty. Servs. Employees, B-211373, 64 Comp. Gen. 370 (1985); To the Hon. Robert W. Houk, B-247348, Jun. 22, 1992, 1992 U.S. Comp. Gen. LEXIS 837.

 - b. Exceptions.
 - (1) A law authorizes nonreimbursable details. See, e.g., 3 U.S.C. § 112 (non-reimbursable details to White House); The Honorable William D. Ford, Chairman, Comm. on Post Office and Civil Serv., House of Representatives, B-224033, 1987 U.S. Comp. Gen. LEXIS 1695 (Jan. 30, 1987).

 - (2) The detail involves a matter similar or related to matters ordinarily handled by the detailing agency and will aid the detailing agency’s mission. Details to Congressional Comm’ns., B-230960, 1988 U.S. Comp. Gen. LEXIS 334 (Apr. 11, 1988).

 - (3) The detail is for a brief period, entails minimal cost, and the agency cannot obtain the service by other means. Dept. of Health and Human Servs. Detail of Office of Cmty. Servs. Employees, B-211373, 64 Comp. Gen. 370 (1985).

XI. EMERGENCY AND EXTRAORDINARY EXPENSE FUNDS.

- A. Definition. Emergency and extraordinary expense funds are appropriations that an agency has much broader discretion to use for "emergency and extraordinary expenses." Expenditures made using these funds need not satisfy the normal purpose rules.
- B. Historical Background. Congress has provided such discretionary funds throughout our history for use by the President and other senior agency officials. See Act of March 3, 1795, 1 Stat. 438.
- C. Appropriations Language.
 - 1. For DOD, Congress provides emergency and extraordinary funds as a separate item in the applicable operation and maintenance appropriation.

Example: In FY 2012, Congress provided the following Operation and Maintenance appropriation to the Army: "For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and **not to exceed \$12,478,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, \$31,072,902,000.**" (emphasis added)

- 2. Not all agencies receive emergency and extraordinary funds. If Congress does not specifically grant an agency emergency and extraordinary funds, that agency may not use other appropriations for such purposes. See HUD Gifts, Meals, and Entm't Expenses, B-231627, 68 Comp. Gen. 226 (1989).

D. Statutory Background.

1. 10 U.S.C. § 127. Emergency and extraordinary expenses.
 - a. Authorizes the Secretary of Defense and the Secretary of a military department to spend emergency and extraordinary expenses funds for "any purpose he determines to be proper, and such a determination is final and conclusive."
 - b. Requires a quarterly report of such expenditures to the Congress.
 - c. Congressional notice requirement. In response to a \$5 million payment to North Korea in the mid-90s using DOD emergency and extraordinary expense funds, Congress amended 10 U.S.C. § 127, imposing the following additional restrictions on our use of these funds:
 - (1) If the amount to be expended exceeds \$1 million: the Secretary of the Service involved must provide Congress with notice of the intent to make such expenditure and then wait 15 days.
 - (2) If the amount exceeds \$500,000 (but is less than \$1 million): the Secretary of the Service involved must provide Congress with notice of the intent to make such expenditure and then wait 5 days.
2. Other executive agencies may have similar authority. See, e.g., 22 U.S.C. § 2671 (authorizing the State Department to pay for "unforeseen emergencies").

- E. Regulatory Controls. Emergency and extraordinary expense funds have strict regulatory controls because of their limited availability and potential for abuse. The uses DOD makes of these funds and the corresponding regulation(s) dealing with such usage are as follows:
1. Official Representation (Protocol). This subset of emergency and extraordinary expense funds are available to extend official courtesies to authorized guests, including dignitaries and officials of foreign governments, senior U.S. Government officials, senior officials of state and local governments, and certain other distinguished and prominent citizens. See DOD FMR, Vol. 10, Ch. 12, para. 120322.B.
 - a. DOD Publications: DOD Instruction 7250.13, Use of Appropriated Funds for Official Representation Purposes (30 June 2009).
 - b. Army Regulation: AR 37-47, Representation Funds of the Secretary of the Army (18 Sept. 2004).
 - c. Air Force Regulation: AFI 65-603, Official Representation Funds: Guidance and Procedures (24 Aug. 2011).
 - d. Navy Regulation: SECNAV 7042.7K, Guidelines for Use of Official Representation Funds (25 May 2006).
 2. Criminal Investigation Activities. This subset of emergency and extraordinary expense funds are available for unusual expenditures incurred during criminal investigations or crime prevention.
 - a. Army Regulation: AR 195-4, Use of Contingency Limitation .0015 Funds For Criminal Investigative Activities (30 Aug. 2011).
 - b. Air Force Regulation: AFI 71-101, vol. 1, Criminal Investigations Program (8 Apr. 2011).

3. Intelligence Activities. This subset of emergency and extraordinary expense funds are available for unusual expenditures incurred during intelligence investigations.
 - a. Army Regulation: AR 381-141(C), Intelligence Contingency Funds (30 July 1990).
 - b. Air Force Regulation: AFI 71-101, vol. 4, Counterintelligence (8 Nov. 2011).
4. Other Miscellaneous Expenses (other than official representation). This subset of emergency and extraordinary expense funds is available for such uses as Armed Services Board of Contract Appeals witness fees and settlements of claims. [AR 37-47, para. 1-5b](#).
5. Procedures for Use of Official Representation Funds.
 - a. Official courtesies. Official representation funds are primarily used for extending official courtesies to authorized guests. See, e.g., DODI 7250.13, Enc. 3; AR 37-47, paras. 2-1 and 2-2. Official courtesies are defined as:
 - (1) Hosting of authorized guests to maintain the standing and prestige of the United States;
 - (2) Luncheons, dinners, and receptions at DOD events held in honor of authorized guests;
 - (3) Luncheons, dinners, and receptions for local authorized guests to maintain civic or community relations;
 - (4) Receptions for local authorized guests to meet with newly assigned commanders or appropriate senior officials;
 - (5) Entertainment of authorized guests incident to visits by U.S. vessels to foreign ports and visits by foreign vessels to U.S. ports;

- (6) Official functions in observance of foreign national holidays and similar occasions in foreign countries; and
 - (7) Dedication of facilities.
- b. Gifts. Official representation funds may be used to purchase, gifts, mementos, or tokens for authorized guests.
- (1) Gifts to non-DOD authorized guests may cost no more than \$335.00. See DODI 7250.13, Enc. 3 (which cross references 22 U.S.C. § 2694 which in turn cross references 5 U.S.C. § 7342; the amount established in the latter statute is revised by GSA).
 - (2) If the guest is from within DOD and is one of the specified individuals listed in Enclosure 1 to DODI 7250.13, then the command may present him or her with only a memento valued at no more than \$50.00. Enclosure 2 to DOD Directive 7250.13.
- c. Levels of expenditures. Levels of expenditures are to be “modest.” DODI 7250.13, para. Enc. 2; Army Regulation prohibits spending in excess of \$20,000 per event (an entire visit by an authorized guest constitutes one event for purposes of this threshold). AR 37-47, para. 2-4b.
- d. Prohibitions on Using Representational Funds. DODI 7250.13, Enc. 3; AR 37-47, para. 2-10; AFI 65-603, para. 7.2; SECNAVINST 7042.7K, para. 9.
- (1) Any use not specifically authorized by regulation requires Service Secretary approval as an exception to policy. AR 37-47, para. 2-10; AFI 65-603, para. 7.2.
 - (2) Some examples that require the Secretarial approval are:
 - (a) Food for interagency working meetings;

- (b) Entertainment of DOD personnel, except as specifically authorized by regulation;
- (c) Membership fees and dues;
- (d) Personal expenses (i.e., Christmas cards, calling cards, clothing, birthday gifts, etc.);
- (e) Gifts and mementos an authorized guest wishes to present to another;
- (f) Personal items (clothing, cigarettes, souvenirs);
- (g) Guest telephone bills;
- (h) Any portion of an event eligible for NAF funding, except for expenses of authorized guests; and
- (i) Repair, maintenance, and renovation of DOD facilities.

See AR 37-47, para. 2-10.

- e. Approval and accounting procedures. AR 37-47, Chapter 3; AFI 65-603, para 8; SECNAVINST 7042.7J, para 12.
 - (1) Fiscal year letters of authority.
 - (2) Written appointment of certifying and approving officer.
 - (3) Written appointment of representation fund custodian.

- (4) Requests to expend ORFs must be submitted to the representation funds custodian in advance of an event. Any requests for an event that did receive prior approval must be submitted to the Secretary of the Army or his or her designee for retroactive approval. AR 37-47, para. 3-1e(1).
 - (5) Legal review.
- 6. Community Relations and Public Affairs Funds. AR 360-1, para. 4-5. Do not use public affairs funds to supplement official representation funds. Doing so violates 31 U.S.C. § 1301.

XII. CONCLUSION.

APPENDIX A: ANALYZING A PURPOSE ISSUE

ANALYZING A PURPOSE ISSUE.

- A. Determine Whether Congress Has Enacted any Statute on Point.
1. Your primary concern should be whether there is a statute or legislation that addresses your intended purchase.
 2. Locating Codified Statutory Authority.
 - a. The U.S. Code is broken down into titles which typically cover a given subject matter area. You may be able to scan through appropriate volumes/chapters to see if there is something on point.

Example: Statutes pertaining to DOD are typically found in Title 10, so if you want to find a statute dealing only with a restriction on DOD's use of its appropriations, it will likely be found in Title 10. Statutes dealing with all federal employees are generally found in Title 5, so if you want to find a statute that might allow all agencies to use their appropriated funds to pay for employee benefits or training, you would probably start with Title 5.

- b. You can run a general search on either a specialized legal database, such as WestlawTM, or on the U.S. Code website. Note: you may have to run alternate searches utilizing synonyms for your topic (i.e. if someone wants to know whether "T-shirts" may be purchased, you may have to look under "Clothing," "Uniforms," etc).

- c. U.S. Code Annotated Index. This index contains a listing arranged by subject of the codified U.S. statutes.

Example: I need to know whether I can use appropriated funds to operate golf courses. I would go to the latest index of the U.S. Code Annotated and look under the key word “Golf Courses” to find the cross-reference to 10 U.S.C. § 2246. Note: once again you may have to run alternate searches utilizing synonyms for your topic.

- d. Agency Regulations. Agencies will often (but not always) list the statutory authority(ies) upon which the regulation is based. If you can find a regulation dealing with your issue (*see* Part XI.C. *infra.*), you may be able to then locate the underlying statutory authority.

Example: I need to know when I can use appropriated funds to support my post chaplain. AR 165-1, para. 1-7 Chaplain Activities in the United States Army (3 Dec. 2009) contains cross-references to 10 U.S.C. §§ 3073, 3547, and 3581. 10 U.S.C. § 3547 contains some minimal guidance on resourcing chaplains.

- e. GAO Opinions. You could go onto a legal database such as Westlaw™ to find GAO Opinions related to a given topic which often cross-reference the underlying statutory authority. The GAO Website allows for searches of the most recent decisions.
- f. GAO Redbook. The GAO has issued a 3-volume treatise on fiscal issues called “Principles of Federal Appropriations Law.” This set is commonly referred to as the “GAO Redbook.” It contains examples and cross-references to underlying statutory authority throughout each of the topical discussions. The treatise can be found at: <http://www.gao.gov/legal/redbook.html>. The main volumes are supplement with annual updates.

3. Locating Legislation/Uncodified Authority.
 - a. Appropriation Acts. Congress typically passes 13 appropriations acts each year. Some of these acts provide appropriations to a single agency, while others provide appropriations to multiple agencies. In addition to WestlawTM-based research, one can utilize the Thomas website within the Library of Congress (<http://thomas.loc.gov/>) to conduct research on legislation enacted since 1973. This website also has a consolidated listing of appropriation legislation enacted since 1999 and a list of pending appropriation bills for the current or upcoming fiscal year.
 - b. Authorization Acts. Although there is no general requirement to have an authorization act, Congress has enacted a statutory requirement for DOD to have an authorization act each year. As with appropriations acts above, one can use WestlawTM, and/or the [Thomas website](#) to conduct research.
 - c. Other Legislation. Outside of the appropriation/authorization process, Congress will often place statutory restrictions on our actions.
 - d. Issues in Researching Legislation. If Congress does not subsequently codify the legislation, it is often difficult to locate any legislation that restricts our ability to spend appropriated funds. Hopefully, at the head of the agency level, there has been some sort of regulatory or other policy guidance that has been promulgated covering the uncodified restriction.
4. Even assuming you find statutory / legislative authority to conduct your intended acquisition, you must still determine whether there is a regulatory prohibition or other restriction covering that purchase. To do so, *see* Part VII. *infra*.

Example: Congress has given us express authorities to carry out procurements of various weapons programs, construction projects, and research projects. We still have various regulations that give us guidance on how we will carry out those programs and projects. For example, Army regulation and policy permits the installation commander to approve repair and/or maintenance projects amounting to no more than \$3 million. Congress permits us to carry out projects above this threshold, but by regulation, the agency has withheld the approval authority on such projects.

B. Necessary Expense Test.

1. If there is no statute that authorizes your intended purchase, you will have to apply the necessary expense test to determine if you have authority to carry out your intended purchase. See Part VIII *supra* for an overview of this test.
2. If your research uncovers an agency level regulation that addresses your intended purchase (*see* Part VII. *infra*), the proponents of that regulation are likely to have used a necessary expense analysis in drafting the regulation. In such a circumstance, you are probably safe relying upon the regulation to make the intended purchase. If after reviewing a regulation, you feel there is a disconnect between what the regulation permits and what should be permitted under a necessary expense analysis, you should consult your next higher legal counsel.

Example: For several years, AR 165-1 has permitted the use of appropriated funds to conduct religious retreats and workshops. These events would include lodging and food and would also be open to service members as well as their families. Prior to enactment of the 2003 DOD Appropriations Act, there had been no express authority given to DOD to carry out these sorts of programs for family members (This authority is now codified in 10 U.S.C. § 1789). Using a necessary expense analysis, it would be hard to come up with justification for using appropriated funds to pay for lodging and food for participants, especially for the non-service member participants. Various installations eventually raised their concerns – that the regulation did not mesh with the fiscal rules – to DA-level. This high-level attention resulted in a solution being worked out (express authorization from Congress in the form of legislation).

3. It is probably a good idea to have a written document that you retain in your files that addresses the underlying facts as well as your analysis that led to your conclusion that the purchase satisfied the necessary expense test. It would also probably be advisable to have a written document from the requester of the intended items/services that indicates what the underlying facts are.
4. Even assuming you conduct a necessary expense test which leads you to believe you should have the authority to purchase the intended items or services, you still need to determine whether there is a regulatory prohibition or restriction covering that purchase. To do so, *see* Part VII.B. immediately *infra*.

Example: I need to know whether I can buy bottled water for distribution to troops at remote locations in Southwest Asia. I determine there is no statute dealing specifically with this issue. I perform a “necessary expense” analysis and determine that having bottled water for these remotely located troops will definitely contribute materially towards their mission accomplishment (they need water to survive and if the troops are not located near a potable water supply, such as a water buffalo, then bottled water is probably going to be the most effective way to get their water needs replenished). Unfortunately, there are a variety of Army Regulations that place restrictions on the purchase of bottled water, including the approval authority. As a result, looking at just the statutes and doing a necessary expense analysis will not be sufficient.

C. Determine Whether the Agency Has Promulgated any Regulation on Point.

1. Agency Publication Websites. The DOD as well as many of the civilian agencies has a website containing electronic copies of most of their regulations. Most agency publication websites allow you to perform a search of the text of the regulations. Note: you may have to run alternate searches utilizing synonyms for your topic (i.e. if someone wants to know whether “T-shirts” may be purchased, you may have to look under “Clothing,” “Uniforms,” etc. If you know the underlying statutory authority, you can also use it as your keyword (i.e. plug in “10 U.S.C. § 2246” or “10 U.S.C. 2246” or “10 USC 2246” as your search term).
 - a. DOD Regulations (<http://www.dtic.mil/whs/directives/>).

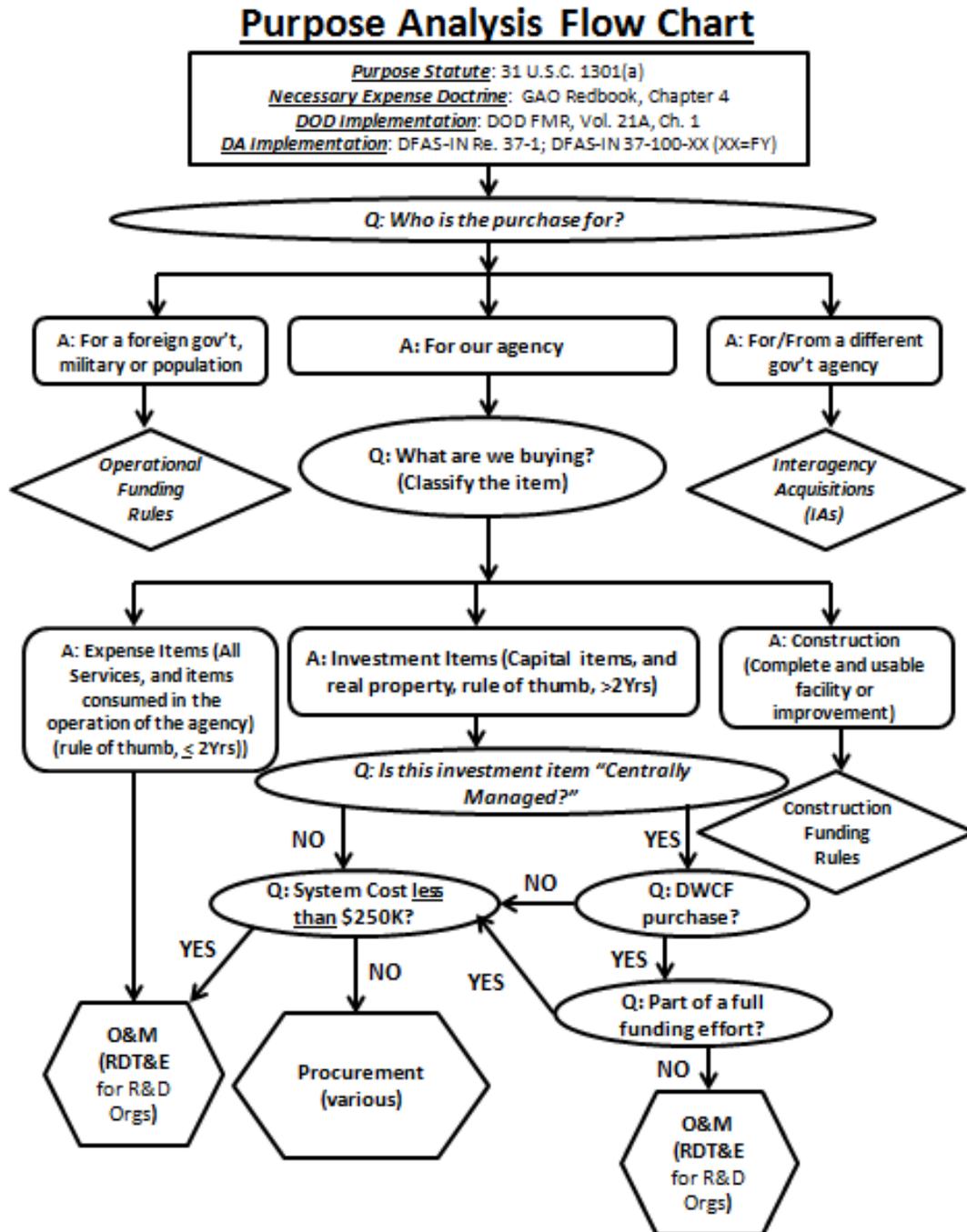
- b. Army Regulations (<http://www.apd.army.mil/>). Unfortunately, the Army website only permits a search of the titles (not the text) of the regulations. To search the text of Army regulations, you must use the JAGCNET website.
 - c. Air Force Regulations (<http://www.e-publishing.af.mil/>).
 - d. Navy Regulations (<http://doni.daps.dla.mil/>).
 - e. Marine Corps Regulations (<http://www.marines.mil/News/Publications/ELECTRONICLIBRARY.aspx>).
 - f. Joint Publications (<http://www.dtic.mil/doctrine/>).
2. Use JAGCNET (<https://www.jagcnet2.army.mil/JAGCNetIntranet/Applications/ejaws/ejaws.nsf/vwAppConfig/frmHome?opendocument>) to Search for Publications. Those individuals with AKO access may conduct a search of the text of all publications contained within the JAGCNET library of publications (most DOD-level and DA-level regulations plus TJAGSA deskbooks).
3. Specialized Websites. In addition to the above websites that compile all agency regulations into one location, there are various other websites that contain regulations specific to the fiscal arena. These include:
- a. DOD Financial Management Regulation (<http://www.dod.mil/comptroller/fmr/>). The DOD Financial Management Regulation, DOD 7000.14-R establishes requirements, principles, standards, systems, procedures, and practices needed to comply with statutory and regulatory requirements applicable to the Department of Defense. This 15 volume set of regulations contains a very user-friendly, key word-searchable function.

- b. [Defense Finance and Accounting Service \(DFAS\) Regulations](https://dfas4dod.dfas.mil/library/)
<https://dfas4dod.dfas.mil/library/>. DFAS handles the finance and accounting services for DOD. It is organized into geographic regions which are assigned a specific DOD service or organization to support (i.e. the Indianapolis office provides services to the Army).

D. Emergency & Extraordinary (E&E) Expenses.

1. As a matter of last resort, if you cannot find a statute or legislation that permits your intended purchase AND you do not believe the item / service is necessary, you could request to use E&E funds to make the purchase.
2. The service regulations already contain guidance on the items / services for which the service secretaries have issued “blanket approvals.” Your purchase probably will not fit into this category, but each of the regulations permit an exception or waiver provided there is adequate justification.

APPENDIX B: PURPOSE ANALYSIS FLOWCHART



SABER	Simplified Acquisition of Base Engineer Requirements
SBA	Small Business Administration
SCA	McNamara-O'Hara Service Contract Act
SCO	Servicing Contracting Office 32B-8
SDN	Standard Document Number
SLA	State Licensing Agency
SLCF	Streamlined Competition Form
SM&W	Special Morale and Welfare
SOF	Special Operations Forces
SOFA	Status of Forces Agreement
SOO	Statement of Objectives 6-56
SOW	Statement of Work
SPS	Standard Procurement System
SSA	Source Selection Authority 8-55
SSEB	Source Selection Evaluation Board
SSP	Source Selection Plan
STARS GWAC	Vehicle managed by GSA
T4C	Termination for Convenience
T4D	Termination for Default
TAA	Trade Agreements Act 13-43
T&E	Train and Equip
T&M	Contract Time and Materials Contract
TCN	Third Country National
TCO	Termination Contracting Officer
TDP	Targeted Development Program
TIN	Taxpayer Identification Number
TINA	Truth in Negotiations Act
TRO	Temporary Restraining Order
UCA	Undefinitized Contract Action
UFM	Uniform Funding and Management
UMC	Unspecified Military Construction
UMMC	Unspecified Minor Military Construction
URD	Uniform Resource Demonstration
USAID	United States Agency for International Development
USARCS	United States Army Claims Service
USD (ATL)	Undersecretary of Defense (Acquisition, Technology, and Logistics)
USD(C)	Undersecretary of Defense (Comptroller)
UTSA	Uniform Trade Secrets Act 16-5
WAWF	Wide Area Work Flow
WD	Wage Determination
WDOL	Wage Determinations Online
WHA	Walsh-Healy Public Contracts Act 14-20
WHCA	War Hazards Compensation Act 31-24