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TEACHING NOTE

BUDGET EXECUTION

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INTRODUCTION

Actually executing (i.e., using) the budget authority provided by the appropriation acts is the culmination of efforts by many individuals during several years preceding the targeted fiscal year involved. For the Defense acquisition community, those actions start in acquisition program offices, laboratories, and other buying organizations in the Services and Defense Agencies as they translate estimated costs for the goods and services required for future fiscal years into programming and budgeting requests that are submitted through command channels to their respective Services and Defense Agencies.

Within DoD, these requests for future year funds are developed and evaluated in the Planning, Programming, Budgeting and Execution (PPBE) process and, after many revisions and decisions, ultimately become part of the President's Budget sent to Congress approximately eight months prior to the targeted fiscal year. Congress – through the Congressional Enactment Process – evaluates the President's Budget while considering other information (e.g., input from the Congressional Budget Office) and passes the various annual appropriation bills that provide "funding" (technically, this is "budget authority" but most people use the common expression of "funding") to operate the entire Federal Government for the next fiscal year.

After Congress passes the annual appropriation bills and the President signs the bills into law, the overall budget execution process begins. The sequence of that budget execution process as presented in this teaching note is as follows: (1) administrative division (e.g., apportionment and allocation) of those appropriated funds; (2) steps in using (i.e., executing) and reporting the use of appropriated funds; (3) reprogramming appropriated funds to satisfy changes in requirements; (4) laws pertaining to proper use of appropriated funds; (5) statutory life of appropriated funds; and (6) the liquidation (i.e., payment) of those obligations made when contracts were awarded or when other legal obligation documents were approved (e.g., MIPRs, TDY orders, and payroll actions). In the acquisition community, the vast majority of funds are obligated through the awarding of contracts; hence, the term "contracts" is used in the most generic sense – an obligating document.

Policies discussed in this Teaching Note come from a combination of three primary sources: (1) regulations in the DoD Financial Management Regulation – FMR (DoD 7000.14-R); (2) laws set forth in various Titles and Sections of the United States Code; and (3) interpretations found in the Government Accountability Office (GAO) ***Principles of Federal Appropriation Law*** (better known as the "Red Book"), which is considered by some to be the most authoritative reference on the proper use of appropriated funds.

ADMINISTRATIVE DIVISION OF APPROPRIATED FUNDS

Apportionment Process:

The primary purposes of the apportionment process are to (1) achieve the most effective and economical use of amounts made available, and (2) prevent agencies from obligating funds in a manner that would result in a deficiency or require a supplemental appropriation. Just as the Executive Branch (specifically, the Office of Management and Budget - OMB) consolidates all budget requests from all federal government activities and submits a total federal budget request to Congress for enactment of appropriations, the Executive Branch also initiates action to start the budget execution process.

After the President signs the various appropriation bills into appropriation laws, two separate but related actions occur that start this broad process. The first action is the issuance of a ***Treasury Appropriation Warrant***, which is done by the Department of Treasury. The Secretary of Treasury is responsible for payment of all federal monies. By law (U.S. Code, Title 31, Section 3323), the Secretary of Treasury "may pay out those monies only against a ***warrant***". The U.S. Code further states the warrant shall be "authorized by law, signed by Secretary of Treasury and countersigned by the Comptroller General". The warrant is based on the appropriation law by which a federal agency receives its budget authority and it sets up the Treasury account from which monies may be legally paid. A very loose analogy is that the warrant "opens the agency's checking account"; however, actual cash is not placed in that "checking account" until it is needed to make a payment based on later obligation and expenditure actions. The warrant provides the agency ***outlay authority***. The second action is the actual ***apportionment process***, for which the Director of OMB is responsible. Each federal agency (e.g., DoD) submits a formal request to OMB for the apportionment (i.e., release) of the budget authority provided by appropriation laws applicable to that agency. In the case of DoD, the apportionment requests for the various Services and Defense Agencies are signed by a senior official in the Office of the Undersecretary of Defense (Comptroller). OMB is to then apportion (i.e., distribute) that budget authority (commonly referred to as ***funds***) in a timely manner so respective organizations can actually start using the funds appropriated for the purposes specified in the appropriation law.

OMB apportions funds to federal government agencies and departments on a quarterly, annual or other periodic basis; the percentage of the total appropriation requested by the agency and then released by OMB is basically dependent on the "type" appropriation involved. A "periodic" distribution helps ensure accomplishment of the primary purposes of the apportionment process, which is to provide the funding when actually needed. Investment appropriations (e.g., procurement and military construction) are usually apportioned on an annual basis, while expense appropriations (e.g., operations and maintenance, and military personnel) are usually apportioned quarterly. The RDT&E appropriations contain some elements of investment and some of expense; hence, most RDT&E is apportioned on an annual basis. To assist in the apportionment process, DoD provides OMB planned obligations and expenditures for the various Defense appropriation accounts (based on obligation and expenditure plans from the Services and Defense Agencies).

Impoundment

There are, however, situations in which a President may desire to not apportion the budget authority contained in an appropriations act – even though he signed that Bill into law. The Budget and Impoundment Control Act of 1974 permits the President some latitude in the release of that appropriated funding. Under the provisions of that law, the President may identify a specific amount of funding contained in an appropriations act for a specific purpose and initiate an ***impoundmen***t action. There are two types of impoundment actions specified in the Budget and Impoundment Control Act of 1974: ***deferral*** and ***rescission***.

A ***deferral*** is a temporary impoundment or withholding of funds (e.g., due to technical problems or schedule slip). In a deferral action, the President (actually done by OMB on his behalf) sends a special message (usually a memorandum) to Congress stating his intent to defer for a specific period of time (not longer than the end of the first year of availability) a specific amount of funds appropriated for a specific purpose based on a specific reason for the proposed delay in the release of those funds. If either the House or Senate passes a resolution disapproving the President's proposed deferral action, those funds must be released and made available for obligation. If there is no Congressional action within 45 days of continuous session of Congress, the deferral stands. The deferral action cannot be used to retain the appropriated funds until they go into the expired status. If continued deferral of those same funds in the following year is desired (i.e., in the case of a multi-year appropriation), the President must initiate the same process to defer funds for that following year and must release the funds in a sufficiently timely manner to allow the receiving agency to obligate the funds before they expire.

A ***rescission*** is a permanent impounding or cancellation of funds (e.g., due to program cancellation). In a rescission action, the President (actually done by OMB on his behalf) sends a special message (usually a memorandum) to Congress stating his desire that Congress rescind a specific amount of funds appropriated for a specific purpose based on a specific reason. If both the House and Senate agree with the President's proposed rescission action, Congress must pass a rescission bill or joint resolution to rescind those funds. If Congress does not pass a rescission bill or joint resolution within 45 days of being in continuous session, the funds must be released and made available for obligation.

In addition to this method whereby the President, under the provisions of the Budget and Impoundment Control Act of 1974, may request that Congress rescind a specific dollar amount appropriated for a specific purpose, there are two other methods by which a rescission of previously appropriated budget authority may occur: (1) the administration may include a request for rescission in the President's Budget submission or (2) Congress may initiate a rescission in an appropriations act. In the first situation, because the action would have been initiated by DoD and approved by the President as part of the budget formulation process, it would be a desired action if Congress included it in the appropriations act. In the second situation, because the action would have been initiated by Congress, it might be an action not desired by DoD. For example, during deliberations on the FY 2010 Defense Appropriations Act, there was discussion about rescinding a large dollar amount of funds previously appropriated for the Army's Future Combat System. Army disagreed with the large amount on the basis those funds were required to terminate one of the existing contracts for that system. If the final decision of Congress was to rescind the larger amount and the President signed the bill into law, Army would have to move funds from other areas into that budget line to have sufficient budget authority to pay for the contract termination liability.

Allocation

Subsequent to the OMB apportionment action, USD (C) ***allocates*** DoD's budget authority to the various military services and defense agencies based on appropriations made by Congress. During this process, some funds may be withheld. In the case of acquisition programs, the Undersecretary of Defense for Acquisition, Technology & Logistics (USD (AT&L)) may propose technical withholds on programs that need further review (DAB, Milestones, etc.). USD (C) analysts prepare forms that release the initial allocation of funds reflecting the funds that are on withhold and funds that can be released for obligation purposes. These forms for acquisition programs are signed by USD (C) and countersigned by USD (AT&L). Once the Services and Defense Agencies receive their allocations of funds, their resource managers sub-allocate the funds to major commands or program executive offices, which will subsequently ***allot*** funds to their subordinate program offices for execution.

Some Services and Agencies also use a process by which the headquarters passes "Program Authority" to subordinate organizations as "Budget Authority" is passed. "Program Authority" goes through the acquisition community while "Budget Authority" passes through the resource management community. When used, "Program Authority" is usually more detailed (e.g., down to the project or work unit level) than the terminology used in the "Budget Authority" allotments. Regardless of whether "Program Authority" is or is not passed to subordinate organizations, "Budget Authority" remains the more important sub-division of funds for execution purposes and for tracking against Congressional appropriations.

BUDGET EXECUTION PROCESS OVERVIEW

After funds are allotted (released) to the local level, the following sequence of events normally occurs. Upon receipt of an internally generated request (e.g., Procurement Request, Purchase Order, etc.) to acquire needed goods or services, the servicing resource manager (e.g., comptroller) will execute a ***commitment*** (an "administrative reservation" of funds) for the purpose requested. When reviewing the funds for a commitment, the resource manager will ***certify*** that the funds requested are available in the amount requested, are of the correct fiscal year, and are of the correct appropriation for the work to be done. An ***obligation*** is the "legal reservation" of funds tying the government to a liability (e.g., signing of a contract for goods or services). An ***expenditure*** (also known as ***disbursement***) is the payment of some or all of an obligation and is generally considered to have occurred when the paying finance office issues a check or releases an electronic funds transfer (EFT), which is the preferred method of payment. An ***outlay*** occurs when actual money is withdrawn from the U.S. Treasury and transferred to the recipient's bank account (i.e., "cashing" the check). Allocations, allotments, commitments, obligations and expenditures are carefully controlled to avoid over-spending and to track actual fiscal progress against the original plan.

METHODS TO OBLIGATE APPROPRIATED FUNDS

There are multiple ways by which an acquisition program office or buying command may obligate their appropriated funds. While it is not the intent of this teaching note to address all possible methods, it is appropriate to cover some of the more common methods as well as some that have the potential to cause financial problems. The following are neither fully comprehensive of all possible methods nor are they mutually exclusive (e.g., a discussed method may fall in more than one category).

Internal Organizational Actions: There are several different ways by which a DoD organization can obligate funds "internal" to the activity. For example, civilian personnel pay and credit card purchases (when authorized) may be considered "internal" actions. Placing assigned personnel on TDY/TAD orders to accomplish the organization's mission (using DD Form 1610) and sending personnel to training courses (using DD Form 1556) are other actions "internal" to the organization. These type actions tend to be for relatively minor dollar amounts and the actions are frequently accomplished by administrative personnel of the organization. Obligation of funds occurs as specified in the activity's Standard Operating Procedures (SOP); normally that is when one or more individuals specifically authorized to do so sign the documentation.

Internal DoD Actions: In many situations, a DoD organization needs goods or services that another DoD organization is not only best suited to provide but DoD regulations either recommend or require that the requesting activity use that DoD organization. For example, when a NAVAIR program office needs to conduct Initial Operational Test and Evaluation (IOT&E) or Operational Evaluation (OPEVAL) on its developmental aircraft, it would request the testing be conducted at the Naval Air Weapons Station (NAWS) China Lake, California, or another naval air station equipped to conduct such tests. When an Army program office involved in missile development needs developmental testing conducted on a new missile, it would request the testing be conducted at the appropriate test and evaluation entity at Army Aviation and Missile Command (AMCOM) while an Army electronics program office would request the Army Test and Evaluation Command (ATEC) facility at the Electronic Proving Ground, Fort Huachuca, Arizona, conduct tests on its electronic system. When an Air Force organization needs certain consumable parts and depot-level reparable spare parts, it would acquire those goods from the Supply Management Activity Group of the Air Force Working Capital Fund. Depending on Component regulations, the requesting activity obtains those goods or services from the servicing (providing) activity on a reimbursable basis (i.e., the requesting activity uses its own appropriated funds to pay the servicing activity). Normally, the requesting activity makes the formal request (which has frequently been previously coordinated) and provides the necessary funding on DD Form 448 (Military Interdepartmental Purchase Request - MIPR) and the servicing activity accepts the order and funding on a DD Form 448-2 (Acceptance of MIPR). When funds are obligated depends on whether it is a "direct citation" or "reimbursable order". Additional information about the use of MIPRs is provided later in this teaching note.

Direct Acquisitions: In some cases, a DoD organization needs goods or services that a non-Defense organization is either best equipped to provide or regulations require that the latter organization satisfy the requirement. In those cases, the DoD contracting officer places an order against a non-DoD contract awarded by the other federal agency. For example, if a DoD organization requires office space in a commercial facility (i.e., not on a military installation), generally, that organization is required to submit the request to General Services Administration (GSA) so that agency can negotiate and award the appropriate contract. GSA also has what is called the "GSA Schedules Program" (also referred to as Multiple Award Schedules and Federal Supply Schedules), through which it establishes long-term government-wide contracts with commercial firms to provide access to several million commercial products and services. Federal agencies can order those products and services – at volume discount prices – either direct from the GSA Schedule contractors or through the GSA online shopping and ordering system. Use of this ordering capability has the potential of saving DoD organizations significant budget authority as a result of paying the volume discount prices rather than paying retail prices.

Assisted Acquisition: This is a situation in which the DoD organization sends appropriated funds to another federal agency and requests that that agency award a contract on its behalf to obtain needed goods or services. There are two type ordering processes that fall under this method: "Economy Act Orders" and "Non-Economy Act Orders"; these methods are discussed in more detail later in this teaching note.

External Contractual Actions: These type actions are where the majority of appropriated funds intended for the Defense acquisition community come into play. These consist of contracts awarded to commercial contractors for goods or services for which private industry is best suited to satisfy the requirement. Budget execution for contracting is discussed in more detail later in this teaching note.

MILITARY INTERDEPARTMENTAL PURCHASE REQUEST (MIPR) (DD FORM 448)

This form is used by a DoD activity (i.e., "requesting agency") to place an order for supplies or non-personal services with a "servicing agency" that could be either another DoD activity (i.e., an Internal DoD Action) or a non-DoD federal activity (i.e., a Direct or Assisted Acquisition). When the MIPR is used internally within DoD (i.e., both activities are DoD), it can be either as a "***direct citation***" or "***reimbursable order***". When the MIPR is used externally to DoD (i.e., the servicing agency is non-DoD but federal), it can be as a "***project order***", an "***economy act order***", or a "***non-economy act order***". There are some overlaps in the use of MIPRs as they relate to internal DoD actions and external non-DoD actions.

Direct Citation*:* This refers to a situation in which the servicing (receiving) agency awards a contract on behalf of the requesting agency and uses the appropriation fund cite provided by the requesting agency on the MIPR. The direct citation order is recorded as an obligation by the requesting agency when it is notified in writing that the servicing agency has awarded the contract or when a copy of that contract is received. When direct cite is used, the source document of the obligation is returned to the requesting agency, which accomplishes all required accounting. The term "direct cite" is not valid if there is a reimbursable order to a DoD appropriation account or to a business operation fund (e.g., a revolving fund).

Reimbursable Order: This refers to a situation in which the servicing (receiving) agency accepts funds provided by the MIPR into its own DoD appropriation or business operations fund. Funds are normally considered obligated upon acceptance of the MIPR by the servicing agency (i.e., when the receiving agency signs and returns the DD Form 448-2 to the requesting agency).

<u>MIPR INITIATED OBLIGATION SITUATIONS</u>:

There are three specific situations in which a MIPR may be initiated by a DoD activity for supplies or non-personal services that have special handling requirements. Depending on circumstances, the requested action could be considered either internal to DoD (i.e., both activities are DoD) or external to DoD (i.e., requesting agency is DoD but servicing agency is outside DoD). Each situation has its own set of rules, regulations and, in some cases, laws that apply.

(1) ***<u>Project Order</u>:*** Probably the easiest to understand is the Project Order, which is addressed in U.S. Code, Title 41, Section 23 (***Project Order Act***), and implemented in DoD Instruction 7220.1. Title 41 of the U.S. Code pertains to contracting actions and this specific Section of the law applies only to DoD and the Coast Guard. When a MIPR is handled under the Project Order Act (i.e., Title 41 of the U.S. Code), it is treated as if it were a contract. In other words, it is a "contract" between a DoD or Coast Guard activity and another federal government activity. The issuing document must specifically state the request is a project order. When the MIPR is accepted in writing by the performing activity, the amount shown in the MIPR is recorded as an official obligation. There are three tests that must be satisfied for this action to be considered a "Project Order":

(a) The request must be for a specific, identifiable thing (supply, material, equipment, work or service).
(b) The organization that receives the MIPR order must be capable of performing the requested action.
(c) The work must be started within 90 days of acceptance or by the first of January of the following year.

(2) ***<u>Economy Act Order</u>:*** This is more complicated than the Project Order. The Economy Act Order is addressed in U.S. Code, Title 31, Chapter 15, Section 1535; in the FMR at Chapter 3 of Volume 11A; and further in Sub-part 17.5 of the Federal Acquisition Regulation. As stated in the FAR, this is considered basically an interagency acquisition agreement. An Economy Act order is <u>not</u> treated as if it were a contract and requests submitted by MIPR are normally considered Economy Act orders unless specified otherwise. Although funding cited in this type MIPR is normally obligated when accepted in writing by the performing activity, there is an important difference between this and a Project Order. The servicing agency is simply an extension of the requesting activity relative to the timeliness by which it has to obligate funds. If the servicing agency has not either provided the requested goods/services or awarded an authorized contract with another entity to provide the requested goods/services by the end of the period of the availability of the appropriated funds cited in the MIPR, the remaining funds must be deobligated. Alternatively, the servicing agency can return the funds to the requesting agency prior to the funds going into the expired status so the requesting agency can use them to satisfy another valid requirement. In other words, funds sent to a servicing agency via an Economy Act Order retain their original period of availability for obligation purposes. The servicing agency can do no more with funds received under an Economy Act Order than the requesting agency.

The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if –

(a) the required amount of funding is available;

(b) the head of the ordering agency decides the order is in the best interest of the government;
(c) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and
(d) the head of the ordering agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

(3) ***Non-Economy Act Order:*** The third situation is probably the most controversial in that orders placed by DoD agencies with non-DoD agencies that have authorities in statutes other than the Project Order Act and Economy Act have resulted in serious problems for DoD in the past several years. As early as 2004, Congress became concerned about some interagency contracting actions initiated by DoD and addressed those concerns with an update to Chapter 18, Volume 11A of the FMR, dated August 2008 The concern was that some interagency contracting actions initiated by DoD activities with other federal agencies (e.g., General Services Administration, Department of Interior, Department of Treasury, National Institutes of Health, and the Department of Veterans Affairs) resulted in both contracting and funding issues such as circumventing contracting regulations and incurring greater costs than if the DoD activity had awarded contracts direct with commercial vendors. Generally, problems were driven by three factors: desire to hire a particular contractor; desire to obligate expiring funds; and inability of the DoD contracting workforce to respond to its in-house customers in a timely manner.

These concerns were validated by various compliance audits conducted during 2004 to 2006 by the DoD Inspector General's office in compliance with the previously referenced laws. The DoD Acting Inspector General reported the results of those audits to Congress (the Subcommittee on Readiness of the Senate Committee on Armed Services) on 17 January 2007. The prepared statement of that testimony can be viewed by going to the following internet site: www.dodig.osd.mil/IGInformation/archives/DoD%20OIG%20prepared%20Statement%2001-17-2007.pdf.
Several examples of the audit findings contained in that testimony to Congress follow:

- When a DoD organization initiated its requirement, it did not determine whether it was in DoD's best interest to make the purchase through a DoD contracting office or pay a 2 to 5 percent fee for assistance from a non-DoD agency.
- DoD activities used GSA and Department of Interior revolving funds as places to "park" or "bank" funds that were expiring. When GSA and Interior awarded contracts for DoD customers using those expired funds, the action circumvented DoD appropriations law. At GSA, about $1 to $2 billion expired funds remained in the "bank" at the end of the FY 2005 audit.
- DoD used Interior to purchase approximately $592 million of goods and services from the Federal Supply Schedules. For that service, DoD paid Interior more than $23 million in surcharges to order goods and services that could have been obtained from existing DoD contracts.
- DoD and Interior leased office space for the Counterintelligence Field Activity without proper competition – using a service type contract – instead of following required procedures through GSA. The 10-year, $100 million lease contract was disguised as a service contract and exceeded all thresholds that require Congressional notification and approval.
- The DoD IG audits identified 107 potential Antideficiency Act violations at the four federal agencies previously named (72 of those were at GSA and Interior). Of those 72 at GSA and Interior, 63 involved the bona fide need rule and 17 involved using the wrong appropriation.

- In addition to the previously stated 72 potential ADA violations, the DoD IG expected to find another 250 potential violations at Interior for the use of expired funds that were "parked".
- The audit at GSA found that Army had sent $44 million of O&M funds to GSA for the Army Materiel Command Headquarters Relocation purchase and GSA had used the funds to contract for construction of two modular two-story office buildings at Ft. Belvoir to house the AMC Headquarters and provide office space for about 1,400 military and civilian personnel. Incorrect rationale and justification for using O&M funds was that the contractor provided a service: the use of buildings. "Procurement" of the buildings was actually a construction project.

There is not a specific federal statute stating federal level policy for Non-Economy Act Orders. DoD policy is provided in Chapter 18, Volume 11A, of the FMR. That chapter, dated August 2008, prescribes policies and procedures applicable to transactions where goods or services are procured from Non-Department of Defense (DoD) agencies under statutory authorities other than the Economy Act (Chapter 3, Volume 11A). The remainder of this section on Non-Economy Act Orders restates some key elements of the DoD policy as contained in the FMR:

Overview: Non-Economy Act orders are for intra-governmental support, where a DoD activity needing goods and services (i.e., the requesting agency) obtains those goods and services from a non-DoD agency (i.e., the servicing agency) by sending funds to that servicing agency with the understanding that agency will award a contract on its behalf. Specific statutory authority is required to place an order with a non-DoD agency for goods or services and to pay the associated cost. If that specific statutory authority does not exist, the default will be Economy Act orders, addressed above. Several of the more commonly used Non-Economy Act statutory authorities include, but are not limited, to the "Acquisition Services Fund"; "Franchise Funds" (one of which is provided for in the Federal Financial Management Act of 1994); the Government Employees Training Act (GETA); and the Clinger-Cohen Act (CCA) of 1996.

Initiation of a Non-Economy Act Order: Non-Economy Act orders in excess of the simplified acquisition threshold are require to comply with Part 7 (Acquisition Planning) of the FAR and DoD Components' procedures for "Proper Use of Non-DoD Contracts". The simplified acquisition threshold, as defined in the FAR, means "$100,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 428a), which means $250 thousand for any contract to be awarded and performed, or purchase to be made, inside the United States; and $1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

(1) Justification: Non-Economy Act orders may be placed with another agency for goods or services if --

(a) Proper funds are available;

(b) The Non-Economy Act order does not conflict with another agency's designated responsibilities (e.g., real property lease agreements with GSA).

(c) The requesting agency or unit determines the order is in the best interest of DoD; and

(d) The performing agency is able and authorized to provide the ordered goods or services.

(2) Order: Non-Economy Act orders for work and services outside DoD should be executed by issuance of a DD Form 448 (MIPR) and accepted using DD Form 448-2 (Acceptance of MIPR). If an alternative execution document is used, it must provide information consistent with

the MIPR, to include the purchase request number and DoD Activity Address Code (DODAAC). A Non-Economy Act order shall comply with the documentation standards in Volume 11A, Chapter 1 of the FMR as well as providing several other specific items.

(3) Best Interest Determination: Each requirement must be evaluated in accordance with DoD Components' procedures to ensure Non-Economy Act orders are in DoD's best interest.

Contracting Officer Review: All Non-Economy Act orders greater than $500,000 shall be reviewed by a DoD warranted contracting officer prior to sending the order to the funds certifier or issuing the MIPR to the non-DoD activity. In addition to the review of the contracting officer, the requesting official shall further review the acquisition package to ensure compliance with the FAR Part 7 (Acquisition Planning) and the DoD Components' procedures.

Certification of Funds: Non-Economy Act orders are subject to the same fiscal limitations that are contained within the appropriation from which they are funded. Because the performing (i.e., servicing) entity may not be aware of all the appropriation limitations, the DoD certifying official must certify that the funds cited on the order are available, meet time limitations, and are for the purpose designated by the appropriation.

Bona Fide Need: Non-Economy Act orders citing an annual or multiyear appropriation must serve a bona fide need arising, or existing, in the fiscal year (or years) for which the appropriation is available for new obligations.

Obligation: Provisions of US Code, Title 31, Section 1501 govern recording of an obligation. An amount shall be recorded as an obligation only when supported by documentary evidence of an order required by law to be placed with an agency or when other specific criteria are met.

BUDGET EXECUTION FOR EXTERNAL CONTRACTUAL ACTIONS

The basic budget execution process explained earlier in this Teaching Note applies equally to contractual actions with private industry as it does for intra-governmental actions. The servicing resource manager (e.g., comptroller) ***commits*** funds upon receipt of an internally generated request such as a Procurement Request or Purchase Order and ***certifies*** the funds requested are available in the amount requested, are of the correct fiscal year, and are of the correct appropriation for the needed goods or services. Upon signing the contract, a specific amount of those previously committed funds are ***obligated***. After the contracted goods are delivered/accepted or the services performed/accepted, one of the Defense paying offices pays the contractor; this is the ***expenditure*** or ***disbursement***. DoD policy and procedures relative to payment of contracts is found in Volume 10 of the DoD FMR. When actual money is withdrawn from the U.S. Treasury and transferred to the recipient's bank account, the ***outlay*** occurs. The administration and payment process for contracts is discussed in more detail later in the Teaching Note.

Obligation of funds against contracts during budget execution is governed by a set of laws, regulations, and policy different than those applicable during the preparation of budget requests submitted as part of the President's Budget. Standards for proper recording of obligations are found in 31 U.S.C. § 1501(a); the primary purpose of that statute is to ensure all federal agencies record only those transactions which meet specified standards for legitimate obligations. In addition to that statute, over the years the U.S. Comptroller General [Government Accountability

Office (GAO)] has made decisions that help interpret fiscal laws. This portion of the teaching note relies heavily on Comptroller General decisions and other guidance that may be found in the GAO ***Principles of Federal Appropriation Law*** (better known as the "Red Book"), which may be viewed on-line at http://www.gao.gov/legal/redbook.html. Although there are five volumes to the Red Book, the first three volumes are the most important. In addition to the current "Third Edition" of those three volumes, which is available in both on-line and printed versions, GAO also publishes an annual on-line update of the "Third Edition".

The precise amount of the government's liability should be recorded as the obligation when that amount is known. However, in a situation where the precise amount is not known when the obligation is incurred, an obligation amount must be recorded on a preliminary basis. As more precise data on the liability becomes available, the obligation must be periodically adjusted; that is, the agency must deobligate funds or increase the obligational level as the case may be. For example, in the simple firm fixed-price contract, the contract price is the recordable obligation. The possibility that the contractor may not perform up to the level specified in the contract does not provide a basis for recording less than the full fixed-price contract price as the obligation.

However, for many other types of obligations, the precise amount of government liability cannot be known at the time the liability is incurred. Decisions dealing with certain kinds of contract obligations provide more specific rules. Under a fixed-price contract with escalation, price re-determination, or incentive provisions, the amount to be obligated initially is the fixed price stated in the contract or the target price in the case, for example, of a contract with an incentive clause. [B-255831, July 7, 1995; 34 Comp. Gen. 418 (1955); B-133170, Jan. 29, 1975; B-206283-O.M., Feb. 17, 1983]. As an example, for an incentive contract with a target price of $85 million and a ceiling price of $100 million, the proper amount to record initially as an obligation is the target price of $85 million. [55 Comp. Gen. 812, 824 (1976)]. The agency must increase or decrease the amount recorded (i.e., the target price) to reflect price revisions at the time such revisions are made or determined pursuant to the provisions of the contract. [34 Comp. Gen. at 420–21]. When obligations are recorded based on a target price, the agency should establish appropriate safeguards to guard against violations of the Antideficiency Act. This usually means the organization should commit up to the ceiling price (i.e., an administrative reservation of funds) to ensure sufficient funds are available to cover potential liability. [B-255831, July 7, 1995; 34 Comp. Gen. at 420–21; B-206283-O.M., Feb. 17, 1983]. The difference between the obligated amount ($85 million in the above example) and the committed amount ($100 million) would be considered a ***contingent liability***; that contingency would ripen into a recordable obligation for purposes of 31 U.S.C. § 1501(a) only if and when that contingency materializes. [62 Comp. Gen. 143, 145–46 (1983)] and [37 Comp. Gen. 691– 92 (1958)]. At that time, previously committed funds would be obligated up to the greater of the known liability or the amount committed. If it is anticipated the government's liability will become greater than what has already been committed, the necessary additional amount should be committed and then obligated up to the government's total liability. Once it is known that there is a firm decrease in the committed contingency amount, that decrease can be de-committed and those funds made available for other purposes.

As previously stated, there is a normal administrative process followed by most organizations to avoid over-spending and to track actual fiscal progress against that organization's spend plan; that process includes the careful control of allocations, commitments, obligations, and expenditures. Specifically for contractual actions (to include a new award, modification, change order, letter contract, a task or delivery order, or before the start of an award period on a Cost Plus Award Fee (CPAF) type contract), the estimated price of that action is included in the formal commitment made by the resource manager (e.g., comptroller) as part of the certification as to the “proper purpose, proper fiscal year and available amount” (usually shortened to “purpose, time and amount”). When the contractual action document is signed by the authorized contracting officer, formal obligation is incurred. With regard to the award fee determined to be paid the contractor under a CPAF type contract, the obligation occurs after the award period has passed and the government decision made as to the specific amount the contractor is to be paid.

After contract award and during the period of contract execution (when the contractor is performing the required work and submitting invoices for payment – and the government is reviewing, analyzing and paying for the invoiced work in an appropriate manner) government oversight is required. There is a direct relationship between contract type and degree of oversight; less oversight is required for fixed price types contracts and more for cost reimbursement contracts or those with some type incentive. For example, if earned value information on an on-going Cost Plus Incentive Fee (CPIF) contract indicates a potential cost overrun, the PM should adjust the expected “cost to be incurred” upward (and the fee adjusted downward) in order to calculate a new most likely price. If the new estimated price for the original scope of work is greater than had been originally budgeted, the government has basically two alternatives: (1) increase funds to meet the adjusted most likely price for the original scope of work, which was intended to satisfy the Key Performance Parameter (KPP) objectives laid out in the Acquisition Program Baseline (APB) or (2) reduce contract work scope to meet current and projected funding available for the effort. If additional funds are requested and obtained, at the appropriate time they should then be obligated against the contract.

In the latter situation wherein reduction of contract work scope is considered, the program office should make appropriate trade-offs using the philosophy of “Cost as an Independent Variable” (CAIV). Under the CAIV philosophy, the program manager may treat the difference between the APB objective and its associated threshold as a "trade space," subject to agreement by the user. As discussed in the Defense Acquisition Guidebook (Chapter 2, paragraph 2.1.1.2), cost, schedule, and performance may be traded within the “trade space” between the KPP objective and the threshold without obtaining Milestone Decision Authority (MDA) approval.[1] Trade-offs outside the trade space (i.e., decisions that result in acquisition program parameter changes) require approval of both the MDA and the capability needs approval authority. Validated KPPs may not be traded-off without approval by the validation authority. The program manager and the user representative should work together on all trade-off decisions.

Contract Administration and Payment

Every contract specifies who will administer the contract, the terms and conditions under which payments will be made, and who will make the payments. When the contract is signed and distributed, copies go to the finance office to record the obligation, to the paying office to

[1] The updated and fully interactive DAG may be viewed at https://dag.dau.mil/Pages/Default.aspx.

authorize payment, and to the contract administration office to monitor performance and process payment documents. In the current environment, Integrated Product Teams (IPTs) play a central role in helping to determine the contractor's payment, within the context of his performance or compliance with the contract. Examples of this IPT role include (1) determining the amount of an award fee payment and (2) deciding on acceptance and payment for a delivered end item.

Payments may be made periodically, usually monthly, as the contractor incurs costs and invoices the costs under cost-type contracts or as progress or performance-based payments under fixed price contracts, or when the contractor delivers items specified under the contract. The contractor prepares the requisite standard forms, e.g., Contractor's Request for Progress Payment (SF 1443), provides any supporting documentation needed, and submits it to the Administrative Contracting Officer (ACO). When delivering an item for acceptance, the contractor must also submit a Material Inspection and Receipt (DD Form 250), a Letter of Transmittal, and any other document required by the contract. The ACO may ask the Defense Contract Audit Agency (DCAA) for an audit of the invoice. An audit is usually performed when the contract calls for the reimbursement for costs incurred by the contractor.

After the contract administering agency completes all actions required, the certified invoice and supporting documentation (e.g., signed DD 250) will be forwarded to the paying office designated in the contract for payment. Prior to making payment, the paying office will ensure that budget authority has been properly obligated and is sufficient to cover the invoiced amount.

The paying office (usually DFAS for DoD activities) then prepares a check or electronic funds transfer (EFT) action to pay the contractor and a public voucher containing the funds citation. When the check or EFT clears the Federal Reserve System, there is an outlay of cash from the General Fund of the Treasury. Information for the official accounting records is drawn from the public vouchers and entered into the DFAS automated accounting systems and are ultimately posted to the individual accounts in the general ledger system.

Conceptually, the payment system is not complicated; in practice, however, paying and accounting for payments tends to be a lengthy and complex process. Progress or performance-based payments are not automatic but require an assessment of progress to date, normally done by the Defense Contract Management Agency (DCMA) or another administering agency, before payment is made. In fact, given inadequate performance, payment may be withheld in part or in full. Acceptance procedures for deliverables may also be extensive. In preparing invoices, standard forms, and other documentation supporting the request for payment, the contractor may provide insufficient and/or incorrect information. Errors in documentation lead to rejections that must be corrected and reprocessed.

Insufficiency of obligated funds or failure to find a matching obligation (e.g., due to incorrect citation of funds) will delay payment. Delays in accounting for payments may take months, primarily to find and correct errors. Inaccurate accounting reports increase the already difficult execution problems facing program offices. Resolving errors and fixing delays in accounting, while not actually performed by the program office, nonetheless consume a great deal of program office time due to the need to closely track the resolution of problems. Accounting delays can give the appearance of program delays and excess program funds. This situation may cause the program to be targeted as a source of funds for reprogramming actions.

Contract Funds Status Report

The Contract Funds Status Report (CFSR) (DD 1586) is the report by which a contractor provides the customer funding data on defense contracts that are more than six months in duration. The CFSR is designed to supply funding data about defense contracts to program managers for the following purposes: (a) updating and forecasting contract funds requirements; (b) planning and making decisions on funding changes to contracts; (c) developing funds requirements and budget estimates in support of approved programs; (d) determining funds in excess of contract needs and available for deobligation; and (e) obtaining rough estimates of termination costs. Identification of the specific requirements, preparation instructions and report format for the CFSR is contained in Data Item Description (DID) DI-MGMT-81468A. According to the governing DID, the CFSR – when required for a specific contract – will be a quarterly report.

No specific CFSR application thresholds are established; however, applications to contracts valued at less than $1.5 million in then-year dollars should be carefully evaluated to ensure only the minimum information necessary for effective management control is required. The CFSR requirement will not be applied to firm fixed price contracts (as defined in FAR 16.202) unless unusual circumstances require specific funding visibility. Normally a Contract Performance Report (CPR) is not required for a FFP contract; however, if the requirement for a CPR has been included in the contract, a CFSR may also be required for that contract. Only those parts of the CFSR essential to the management of each acquisition will be required. The DoD program manager (PM) will determine the need for contract funds information and apply only those portions of the CFSR deemed appropriate. To ensure that only minimum data are required over the life of the contract, provisions should be included in the contract to review reporting requirements annually and change them, if necessary, at no charge to the government.

Although the CFSR DID is subject to tailoring, requiring more information in the CFSR Contract Deliverable Requirements List (CDRL) than specified in the governing DID is contrary to DoD policy. Any negotiated reporting provisions shall be specified in the contract and it's CDRL.

REPROGRAMMINGS/TRANSFERS

As defined in Volume 1 of the DoD FMR, ***reprogramming*** is the "realignment of budget authority from the purpose for which appropriated to finance another (usually emergent, unfunded) requirement." Only appropriated funds considered "currently available for obligation purposes" can be reprogrammed. Funding identified in the FYDP can be "shifted" or "moved" (but not reprogrammed) between appropriations because they have not yet been appropriated. Policies relative to reprogramming reflects recognition by Congress that the practice of reprogramming is a necessary, desirable, and timely device for achieving flexibility in execution of DoD programs. Such actions are not DoD requests for additional funds from Congress; rather, they involve the reallocation of resources within the total budget authority already appropriated. When a reprogramming action is contemplated, this reallocation should always be from a lower priority source (i.e., a ***bill payer***) to a higher priority requirement (i.e., a ***bill***).

A ***transfer*** occurs when this type action results in the movement of budget authority from one appropriation account to another appropriation account (e.g., from O&M, Army to O&M, Navy or from Aircraft Procurement, Air Force to RDT&E, Air Force). This type action requires use of General Transfer Authority (GTA). With regard to the term "General Transfer Authority", Congress places an annual dollar limitation on DoD as to how much DoD can transfer between its appropriations; that dollar amount is specified in the annual Defense Appropriations Act and might change from year to year. Appropriation Transfers Authorities are discussed in Chapter 3, Volume 3 of the FMR.

General guidance for reprogramming budget authority provided by the Defense Appropriation Acts is contained in Chapter 6, Volume 3 of the FMR and guidance for reprogramming. The FMR can be found electronically at http://comptroller.defense.gov/fmr/. In addition to guidance contained in the FMR, USD (C) has a web site that provides information on specific reprogramming actions; currently, actions for fiscal years 1999 through 2011can be viewed at that site (http://comptroller.defense.gov/execution/reprogramming/).

The base dollar amounts from which reprogramming actions are taken are those amounts agreed to by the appropriation committees (i.e., normally specified in the appropriations law but potentially in the appropriations conference committee report). In other words, the base amount is what Congress intended DoD to obligate for the specific identified purpose. These dollar amounts are shown on DD 1414 (Base for Reprogramming Actions) when any reprogramming action impacts the item in question. On a quarterly basis, DoD is required to provide Congress an electronic report (DD 1416 (Report of Programs)) that shows congressionally approved programs as enacted, all reprogramming actions that have been approved, congressionally directed undistributed amounts and transfers, and all reprogramming of funds implemented though the use of a below-threshold reprogramming action.

Types of Reprogramming Actions

There are four types of reprogramming actions available to DoD: (1) Congressional Prior Approval; (2) Internal; (3) Congressional Notification; and (4) Below-Threshold Reprogramming (BTR). The following discussion pertains to each type of reprogramming action is a combination of what is contained in the cited chapters of the FMR on BTR actions.

Congressional Prior Approval Reprogramming requests are submitted through USD (C) to Congress on DD Form 1415-1 and applies to actions which:

1. Results in a procurement quantity increase of a major end item (unless specific congressional language allows additional quantities).
2. Affects a congressional special interest item. An item that is known to be or has been designated as a matter of special interest to one or more of the congressional committees. In rare instances, when funds from special interest items are to be reprogrammed from an existing program within the same procurement line item or program element, letter notification to the congressional committees may be made.
3. Involves the use of the Secretary of Defense's general transfer authority (i.e., movement of any amount of funds between appropriations). An exception is given if the funds will be used for the same purpose for which appropriated; then an Internal Reprogramming (IR) action would be used unless the amount exceeds General Transfer Authority (GTA) amount.

4. Exceeds the dollar thresholds specified in **Figure 2** for reprogrammings between elements at the specified level of control (e.g., between program elements within an RDT&E appropriation or between line items within a procurement appropriation). This applies to either increases or decreases at the specified threshold and level of control.
5. Establishes New Programs (i.e., New Starts), which are defined as <u>any</u> program not <u>explicitly</u> justified to and funded by the Congress, that exceed the following thresholds:
   a. Establishes a new procurement program or procurement subprogram estimated to cost $20 million or more within the first 3 years.
   b. Establishes a new RDT&E program, RDT&E project, or RDT&E subproject estimated to cost $10 million or more within the first 3 years.

   For new start programs falling below the above dollar thresholds, a notification letter (fully staffed within Office of the USD (C)) to the congressional oversight committees is required. The requesting Component may initiate the new start program after the expiration of a 30-day notification period unless an objection is received from a committee.
6. Involves the termination of an appropriated program which:
   a. Eliminates a procurement program, subprogram, of $20 million or more.
   b. Eliminates an RDT&E program element, project, or subproject of $10 million or more.

DoD submits requests for prior approval reprogrammings on DD Form 1415-1. Requests involving use of GTA must be approved by OMB prior to transmittal to the congressional committees (House and Senate Armed Services Committees (HASC and SASC) and the House and Senate Appropriations Committees (HAC and SAC). Congressional committees provide approval in letter format for the sources (bill payers) and increases (bills) requested in prior approval reprogramming request. The committees may disapprove specific increases or sources requested or change the amount allowed for a requested increase or source. OSD weights each committee's response equally and implements the lowest of the approvals received for both proposed sources and increases via memorandum to affected DoD Component(s).

Most prior approval reprogramming requests are consolidated by each service/defense agency for submission as part of the annual DoD "omnibus" reprogramming submission. However, in urgent cases, DoD may forward an individual prior approval reprogramming request addressing a specific requirement outside of the omnibus request.

<u>Internal reprogramming</u> is done through the use of DD Form 1415-3 and requires approval by the USD (C). Internal reprogramming creates an audit trail and documents actions that realigns appropriated funds to a different line item or appropriation for proper execution of the <u>same</u> requirement with <u>no change in purpose</u>. Such actions may involve the use of GTA and may involve Congressional special interest items. Internal reprogrammings also documents transfers of funds from the congressionally appropriated "transfer accounts" such as *Foreign Currency, Environmental Restoration, Drug Interdiction, and Overseas Contingency Operations Transfer Funds*. This type reprogramming also documents transfers identifying specific line items when a letter notification is used to satisfy Congressional or specific transfer notification requirements.

An example of an internal reprogramming action is one wherein it is assumed a Service requested $100 million in RDT&E funds to conduct a research and development effort; Congress mistakenly appropriated $100 million in procurement funds to conduct that effort; and USD (C) approves an internal reprogramming to move the funds into the correct RDT&E appropriation. If the realignment of funds requires a change of appropriations, then GTA must be used and OMB approval must be obtained after signature of the DD 1415-3 by USD (C). Another example involves ***transfer accounts***; USD (C) may move funds (i.e., internally reprogram within the Department) to or from these ***transfer accounts***. Congress establishes such accounts, appropriates funds for those accounts and then allows DoD to transfer funds from the accounts to another Defense appropriation (e.g., one of the procurement accounts, RDT&E, O&M or MILCON) to be executed for the original purpose. Examples of transfer accounts include those identified in the previous paragraph.

Generally, requirements for additional funding surfacing in a program office would not result in this type reprogramming action. The phrase "internal" does not mean "internal to an acquisition program office".

Congressional Notification Letter (in advance of initiation) requires a 30-day notification to the Defense Committees prior to implementation and the Component may take action on the reprogramming 30 days after Congressional notification unless an objection is received from a committee. Notification letters require identification of specific line items to satisfy the specific transfer notification requirements. Following are appropriate for prior notification actions:

1. Establishment of new programs or line items not otherwise requiring prior approval by Congress.
2. Establishment of new procurement programs, including modifications, costing less than $20 million for the entire effort.
3. Establishment of new development programs costing less than $10 million for the entire effort.
4. Initiation of safety programs or safety modifications costing less than $20 million for the entire effort; these can be initiated immediately following Congressional notification.
5. Termination of programs falling within the "below threshold reprogramming" amounts (i.e., procurement programs or subprograms costing less than $20 million or RDT&E programs, projects, or subprojects costing less than $10 million) as long as the procurement line item or program element is not eliminated.

Below threshold reprogramming (BTR) actions are approved by the individual Services and Defense Agencies. This includes those actions that do not meet the criteria for prior approval or internal reprogramming. In the past several years, Congress has made several policy changes relative to BTR actions prior to the September 2010 update to Chapter 6, Volume 3 of the FMR.

See Figure 1 for specifics on the limits as far as maximum into and out of the different appropriations.

Below Threshold Reprogramming

Amounts are Cumulative Over Entire Period of Obligation Availability

APPRN	MAX INTO	MAX OUT	LEVEL OF CONTROL	OBL AVAIL
RDT & E	Lesser of + $10 M or + 20%	Lesser of - $10 M or - 20%	Program Element	2 Years
PROC	Lesser of + $20 M or + 20%	Lesser of - $20 M or - 20%	Line Item	3 Years SCN: 5 Years
O & M	+ $15 M	- $15 M	Budget Activity (or Defense Agency) Some Sub-Activity Limitations on Decreases (see reference below)	1 Year
MILPERS	+ $10 M	No Specific Congressional Restriction	Budget Activity	1 Year
MILCON	Lesser of + $2 M + 25 %	No Specific Congressional Restriction	Project	5 Years

Reference Sources: DoDFMR 7000.14-R, Volume 3, Chapter 6 (Sep 2010) and Chapter 7 (Feb 2009)

Figure 1

Below-threshold reprogramming actions provide DoD Components with the discretionary flexibility to realign, within prescribed limits, congressionally approved funding to satisfy unforeseen, higher priority requirements. As with DD 1415 reprogrammings, below-threshold actions must net to zero. The BTR limitation is the net value of transfers into or out at the specified level.
Below-threshold reprogramming actions are minor actions not otherwise requiring congressional approval that may be accomplished within the DoD Components and are measured cumulatively over the entire obligation availability of the appropriation. Reprogramming thresholds apply to increases and decreases made to line items in the Procurement and RDT&E accounts.

Any action, when combined with other below-threshold reprogramming actions for the same budget activity, line item or program element, must not exceed the established threshold in total, except when thresholds are exceeded due to the provisions of 31 U.S.C. 1551 et seq.

New start programs cannot be initiated using below-threshold authority.

PERTINENT LAWS ON USE OF APPROPRIATED FUND:

US Code, Title 31 addresses the three primary laws that govern the manner by which funds appropriated for the entire federal government may and may not be used: Misappropriation Act; Antideficiency Act; and Bona Fide Need Rule. Violation of these laws carries various civil and/or criminal penalties.

Misappropriation Act

US Code, Title 31, Section 1301, which deals with the application of monies appropriated by Congress, requires funds be used only for programs and purposes for which the appropriation is made. Generic examples of a violation of the Misappropriation Act include the use of one of the procurement appropriations for an effort that should properly be funded with an RDT&E appropriation or the use of an Operations and Maintenance (O&M) appropriation to buy an item for which one of the procurement appropriations should have been used. Following are several specific examples of other ways a violation of the Misappropriation Act can occur; these involve exceeding a Congressionally set dollar threshold for an item:

a. Using an O&M appropriation instead of a procurement appropriation to buy an item whose system unit cost exceeds $250K. By an amendment in PL 108-7 (Consolidated Appropriations Resolution for FY 2003), Congress stated Defense O&M appropriations may be used to purchase items having a unit cost of not more than $250K; previously, that dollar limit was $100K for a system unit cost. Generally, $250K is the dollar cut-off point between an expense (i.e., funded with O&M) and investment (i.e., funded with procurement). The $250K cut-off between an expense and an investment is more fully described in Chapter 1, Volume 2A of the FMR.

b. Using an O&M appropriation for a construction effort with a total cost equal to or greater than $750K instead of a Military Construction (MILCON) appropriation. Congress allows DoD to use O&M funds for “minor construction”, which is defined as less than $750K for the entire project; a project costing more should be funded with MILCON. The $750K cut-off between the “minor construction” properly funded in O&M and a construction project properly funded in the MILCON appropriation is more fully described in Chapter 6, Volume 2B of the FMR.

Antideficiency Act

There are three specific Sections (1341, 1342 and 1517) in Title 31 of the US Code that address Antideficiency; taken together, these three Sections form the basis for what is commonly known as the Antideficiency Act. These sections and their corresponding prohibitions follow:

a. Section 1341 states that "an officer or employee of the US Government or of the District of Columbia government may not –

(1) make or authorize an expenditure or obligation *exceeding* an amount available in an appropriation or fund for the expenditure or obligation; or

(2) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."

b. Section 1342 states that "an officer or employee of the US Government may not accept voluntary services for the government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property." Over time, two rules pertaining to this law have evolved:

(1) If the compensation for a position is fixed by law, an individual doing the work of that position may <u>not</u> agree to work for nothing.

(2) If the level of compensation for a position is discretionary and that compensation can be set at zero, an individual doing the work of that position may agree to work for nothing.

c. Section 1517 states that "an officer or employee of the US Government may not make or authorize an expenditure or obligation exceeding (1) an apportionment or (2) the amount permitted by regulations as prescribed under Section 1514." Section 1514, in turn, requires the involved agency to issue regulations establishing an administrative control system both to keep obligations within the amount of apportionment, and to enable the agency to fix responsibility for making obligations in excess of the apportionment. Within DoD, that administrative control system takes the level of control down to the allotment issued to the activity that ultimately obligates the funds.

Several examples of violations of Sections 1341 and 1517 follow:

(1) Actions, including clerical recordings or reporting errors, which result in an over-obligation or over-expenditure of funds in any appropriation.
(2) An official involves the government in a contract, obligation or expenditure in advance of appropriations (to include agency-determined subdivision) or without adequate funding authority.
(3) Attempts to avoid an over-obligation or over-expenditure by failure to post to accounting records; by delay in posting until funds are received; by not properly charging the appropriated fund; or by transferring charges or funds between accounts. Whether an over-obligation or over-expenditure had actually occurred in the above circumstances would depend upon the results of corrective actions.

It should be noted that statutes do <u>not</u> include "commitments" in the definition of potential ADA violations. A commitment is an internal organizational administrative reservation of funds rather than a legal obligation with an external organization. However, if the organization's administrative procedures permit an obligation (e.g., signing of a contract) based on that commitment without returning to the resource manager for re-certification as to proper "purpose, time and amount" as was done when the commitment was initially certified, it is possible that an ADA violation could occur. Organizations should ensure that erroneous commitments do not result in an ADA violation.

d. Reporting requirements for suspected ADA violation:

(1) If an agency suspects there has been an ADA violation, it is to submit a notice of that suspicion to its higher headquarters within 10 days of discovery.
(2) If the results of the follow-on required investigation reveals that there has been a violation, the agency head is required to notify – through OMB - President and the Congress circumstances of that ADA violation. A copy of that notification is also sent to the Government Accountability Office (GAO).

e. Penalties for ADA violations:

(1) The determination of whether an ADA violation has occurred or not does not depend on the specific intent, poor judgment, errors or lack of good faith on the part of the government official involved who may have violated one of the provisions of the Antideficiency Act. There have been Comptroller General decisions (e.g., 35 CompGen 356 and 58 CompGen 46) that have upheld this opinion. Such circumstances may affect the penalty for the violation but are not considered in determining if a violation has occurred.
(2) An official found responsible for violating Sections 1341(a) or 1517(a) of Title 31, US Code is subject to appropriate administrative discipline. Depending on the specific circumstances, that may include removal for the office held, suspension from duty without pay or a written reprimand.
(3) Also, an official found responsible for willfully and knowingly violating Sections 1341(a) or 1517)a) of Title 31, US Code shall be imprisoned for not more than 2 years, fined not more than $5,000, or both.
(4) Precedence established by a 1988 court case (Thurston v. U.S.) states that specific provisions of Section 1351 of Title 31, US Code do not provide for a relief from the penalty given for an ADA violation. In that case, the court found that there are no provisions in that Section that provide grounds under which an individual found guilty of an ADA violation may seek relief from the courts.

Augmentation of Funds

Another type of potential Antideficiency Act violation is the ***augmentation*** of funds wherein a Federal agency supplements its appropriations from outside sources without specific statutory authority. This augmentation prohibition rule is derived from several enactments of Congress rather than a specific statute. As explained in the GAO Red Book, "the objective of the rule against augmentation is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity." In addition, US Code, Title 31, Section 1301(a), states that "appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

Bona Fide Need Rule

U.S. Code, Title 31, Section 1502(a) states that, "The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability, or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title."

Simply stated, the ***Bona Fide Need*** rule (law) requires appropriated funds be used only for goods and services for which a need arises during the period of that appropriation's availability for obligation. Strict interpretation of the law – combined with appropriation act language – means that the need may arise anytime during the period the appropriation act states the funds are available (e.g., two years for RDT&E or three years for all procurement accounts except Ship Building and Conversion, Navy). A Service or Defense Agency may, however, at its discretion, limit the "period of the appropriation's availability" to the first year of the appropriation's availability. When a Service has placed such a limitation on the use of an appropriation beyond the first year, experience has shown this is usually for RDT&E and specifically for that part of the appropriation intended for activity operations (e.g., TDY and office supplies) rather than for actual R&D efforts, which the Service would normally allow. While this might be considered more conservative than intended by Congress, it is within the Service or Agency prerogative to be more restrictive than what is allowed by the U.S. Code.

Several examples of Bona Fide Need follow:

- Supply items: Generally, bona fide need is determined by when the government actually requires (i.e., will be able to use) the supplies being acquired. Supply needs of a future year are the bona fide need of the year in which they are required, unless an exception applies.
  - Lead-time exception: Agencies are permitted to consider normal production lead-time in determining bona fide need for a purchase. For example, if the normal lead-time for an item is 30 days, the government may obligate FY 11 funds for an item required on or before 30 Oct 11 (i.e., 30 days after the end of FY 11).
  - Stock level exception: Agencies may use current year funds to replace stock consumed in the current fiscal year, even though the replacement stock will not be used until the following fiscal year. However, fiscal-year-end stockpiling of supplies in excess of normal usage requirements is prohibited.

- Service contracts: Generally, services are a bona fide need of the fiscal year in which the services are performed. Thus, service contracts have not normally been permitted to cover a period which involves two different fiscal years. However, two important exceptions exist to this general rule:

  - Nonseverable services exception. If the services produce a single or unified outcome, product or report, the services are nonseverable and the government may fund the entire effort with dollars available for obligation at the time the contract is awarded and the contract execution may cross fiscal years. A nonseverable contract is essentially a single undertaking that cannot feasibly be subdivided (Comp. Gen. Decision B-259274, 22 May 1996). The basic concept is that the government does not receive value from the service rendered until that contracted service is completed.

- Statutory exceptions: The FY98 Defense Authorization Act amended Title 10 of the U.S. Code (Section 2410a) to permit authorized DoD agencies to obligate funds available at the time of contract award to finance a severable service contract with a period of performance not to exceed 12 months. For example, the DoD agency may obligate FY 10 funds for a 12 month severable service contract that begins anytime during FY 10 and continues into FY 11. This provision of the statutes provides greater flexibility to DoD agencies and also allows for a better distribution across the year for the workload of the contracting offices supporting buying organizations. However, a Service or Defense Agency has the discretion to limit application of this exception and require subordinate activities to budget for and execute this type contract on a strictly fiscal year basis or a period less than the 12 months.

- Construction contracts: To be properly considered a bona fide need of a fiscal year, construction work must commence prior to 15 December of the following fiscal year (e.g., work must be started by 15 December 2011 to be a bona fide need of FY 2011, which ended 30 September 2011). The government should also consider normal lead-time, normal weather conditions, and factors within government control (e.g., site access availability) in determining bona fide need for construction projects.

  - Weather conditions: A project that cannot reasonably be expected to commence before the onset of winter weather is not a bona fide need of the prior fiscal year.
  - Factors within government control: In considering bona fide need, the government must consider the required delivery date, the normal rate of construction, when the government intends to make facilities, sites, or tools available, and the degree of control the government has over when the contractor may begin work.

STATUTORY LIFE OF APPROPRIATED FUNDS

Based on current law and OSD policy, there are three stages in the life of Defense appropriated funds: ***current***, ***expired***, and ***cancelled***. This structure for Defense appropriations came about primarily in the 1990 timeframe as a result of Congress expanding its oversight role relative to the execution of appropriated funds.

In 1956, Public Law 84-798, "Appropriations-Fiscal Management", established the merged accounts ("M" accounts) and the merged surplus authority account as repositories for unexpended funds. Unexpended funds retained fiscal year identity for 2 years after their period of availability ended. At the end of 2 years, unexpended obligated balances went into the "M" accounts and unobligated balances were withdrawn into the merged surplus authority account. The two accounts (i.e., the "M" account and merged surplus authority account) were used for different purposes.

In 1990, Public Law 101-510, "National Defense Authorization Act for Fiscal Year 1991, eliminated the "M" accounts and cancelled all merged surplus authority. That law allowed the obligated "M" account balances to be cancelled over a 3-year period ending 30 September 1993. The general provisions of that law (Title XIV, Part A: Financial and Budget Matters) contained the following language on this specific subject: (1) "Revises procedures concerning the availability and control of appropriation accounts available for a definite period, closing such accounts on the last day of the fifth fiscal year after the period availability ends." (2) "Provides that, after such an account is closed, it shall remain available for recording, adjusting, and liquidating obligations properly chargeable to that account." (3) "Outlines further provisions concerning charges made to such appropriation accounts." (4) "Requires obligations from such accounts in excess of specified amounts to be made only if the agency head involved has made certain certifications to the Congress." Provisions of Public Law 101-510 on this subject were codified into the U.S. Code in Title 31, Sections 1552 and 1553.

- Section 1552, states the following: "On 30 September of the fifth fiscal year after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account shall be cancelled and thereafter shall not be available for obligation or expenditure for any purpose."

- Section 1553 states the following: "(a) After the end of the period of availability for obligation of a fixed appropriation account and before the closing of that account under section 1552(a) of this title, the account shall retain its fiscal-year identity and remain available for recording, adjusting, and liquidating obligations properly chargeable to that account. (b)(1) Subject to the provisions of paragraph (2), after the closing of an account under section 1552(a) or 1555 of this title, obligations and adjustments to obligations that would have been properly chargeable to that account, both as to purpose and in amount, before closing and that are not otherwise chargeable to any current appropriation account of the agency may be charged to any current appropriation account of the agency available for the same purpose. Also the total amount of charges to an account may not exceed an amount equal to 1 percent of the total appropriations for that account.

Paragraph 100201, Volume 3, Chapter 10 of the DoD Financial Management Regulation, implemented the provisions of Title 31, U.S. Code for the Defense Department and constitutes the policy for this subject for DoD activities. Changes to Title 31 of the Code did not affect an appropriation's period of availability for new obligations. Following an appropriation's legal time limit for new obligations, the unexpended balances (both obligated and unobligated) are transferred to "expired" accounts (managed by the agencies), where they remain for five years. As before, this expired budget authority maintains all of its original accounting identity (appropriation, fiscal year, line item, etc.), and remains available for allowable upward obligation adjustments and payments. However, after the five-year period of being in the "expired" status, any remaining unexpended balances are ***cancelled*** (i.e., ***closed***) and are not available for <u>any</u> purpose. Although not available for making any upward adjustments or payments, the cancelled appropriation account maintains its original identity for accounting purposes only; this is required for tracking purposes to ensure compliance with previously stated sections of Title 31.

Figure 2 below illustrates the three phases of an appropriation life cycle. During Phase 1, the appropriation is considered "currently available" and, depending on the specific appropriation account (based on language in an Appropriations Act), that period will be between one and five years. At the end of the period of "currently available", unexpended balances (both obligated and unobligated) of all appropriations enter Phase 2, which is the "expired" status, where they remain for five years. After five years in the "expired" status, any remaining unexpended balances in an appropriation goes into Phase 3 and is considered "cancelled" and the appropriation is "closed" for obligation or expenditure for <u>any</u> purpose. As previously stated, Chapter 10, Volume 3 of the FMR is the DoD source for guidance on expired and cancelled account implementation. The topic of making payment of funds from the various stages in the life cycle of an appropriation is discussed in greater detail in the later section of this Teaching Note titled "Payment of Old Bills".

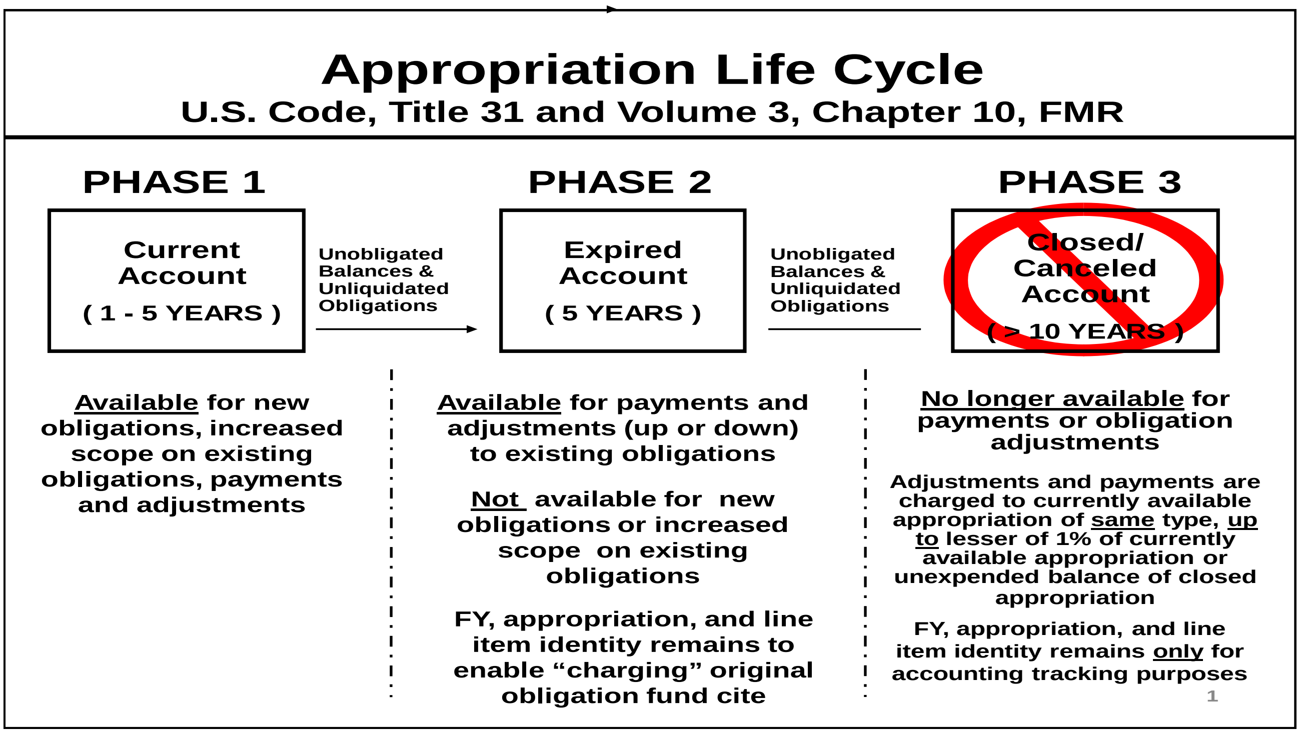

Figure 2

<u>Current Funds:</u>

According to Section 1105, Title 31 of the U.S. Code, "on or after the first Monday in January but not later than the first Monday in February of each year, the President shall submit a budget of the United States Government for the following fiscal year." That budget request is intended to be the funding required to operate the Government for the fiscal year that begins 1 October of that same calendar year. Unless otherwise stated in the appropriations bills passed by Congress during the enactment phase – and signed into law by the President - appropriations provided in those laws are available for obligation purposes only during that specific fiscal year (reference Section 1301(c), Title 31 of the U.S. Code). While many Defense appropriations are considered "***current***" (i.e., available for obligations) only during the one fiscal year associated with the appropriations act, other Defense appropriations are available for obligation purposes for more than one year. The actual period of availability will be specified in the appropriation act. Examples of such multiyear appropriations from the National Defense Appropriations Act for FY 2008 (Public Law 110-116) include the following:

(1) RDT&E, Air Force appropriation is made for "expenses necessary for basic and applied scientific research, development, test and evaluation ……… to remain available for obligation until September 30, 2009." Because FY 2008 begins 1 October 2007 and ends 30 September 2008, the indicated end date means that appropriation is "current" and available to that Service for obligation purposes for two fiscal years.
(2) Aircraft Procurement, Army appropriation is made for the "construction, procurement, production, modification, and modernization of aircraft ………and other expenses necessary for the foregoing purposes ………to remain available for obligation until September 30, 2010." Because FY 2008 begins 1 October 2007 and ends 30 September 2008, the indicated end date means that appropriation is "current" and available to that Service for obligation purposes for three fiscal years.
(3) Shipbuilding and Conversion, Navy appropriation is made for "expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law …….. to remain available for obligation until September 30, 2012." Because FY 2008 begins 1 October 2007 and ends 30 September 2008, the indicated end date means that appropriation is "current" and available to that Service for obligation purposes for five fiscal years.

Based on Title 31 of the U.S. Code and language in the annual Defense-related appropriations laws, following are the legal time limits the indicated appropriation categories (i.e., those of greatest interest to the acquisition community) are considered "current" and available for obligation purposes:

Appropriation Category	Number of Years
Operation & Maintenance	1 year
MILPERS	1 year
RDT&E	2 years
Procurement (excluding SCN)	3 years
SCN (Shipbuilding & Conversion, Navy)	5 years
MILCON	5 years

Expired Funds:

The day immediately after the last day that an appropriation is "current" (i.e., 1 October), that appropriation changes status and is then considered "***expired***". For example, the O&M budget authority contained in the National Defense Appropriations Act for FY 2010 is "current" from 1 October 2009 until 30 September 2010 and moves into the "expired" status on 1 October 2010. The RDT&E budget authority in that FY 2010 appropriations act would move into the "expired" status on 1 October 2011. Once appropriated funds have gone into the "expired" status, they are no longer available for new obligations or increased scope of work on existing contracts.

During the five year expired status period, which is the same for all Defense appropriations, only limited uses can be made of those expired appropriations. According to US Code, Title 31, Section 1553, during this "expired" status period, the appropriation account "retains its fiscal year identity and remains available for recording, adjusting, and liquidating obligations properly chargeable to that account". Further explanation of this requirement is contained in the FMR (Volume 3, Chapter 10, Paragraph 100213F), which states "the level of detail required to be maintained for expired accounts is the same as that required to be maintained for current accounts. The level of detail facilitates cost determinations and program assessment and evaluation, while permitting visibility over expired accounts, providing an appropriate audit trail, and meeting the objectives of the closing accounts legislation." From an operational perspective this means that during the expired status period, any obligation adjustment (upward or downward) or payment against the original obligation fund cite will be made to that fiscal year fund cite. Otherwise, it would not be possible to maintain proper administrative control of that fiscal year's appropriation (i.e., to ensure there is not either an obligation or outlay of an amount greater than has been allotted to the organization).

Obligation adjustments involving "non-contract changes" during this expired status period are extremely limited; specific allowable adjustments include re-procurement actions, incentive and award fee adjustments and price inflation (i.e., escalation or economic price adjustments provided for in the original contract). Those type actions are not considered "contract changes" which are defined in the cited public law as a "change to a contract under which the contractor is required to perform additional work". Such adjustments are to be supported by comprehensive written documentation containing a statement that the charges do not require, involve or result in additional work or changes in scope of the original contract.

Although US Code, Title 10, Section 7313(b) allows some exceptions to the foregoing, these are limited generally to payments to a Working Capital Fund activity; payment to a contractor for unusual cost overruns; and changes in the scope of work for ship overhaul, maintenance and report. If an organization is involved in those type activities, it should request specific guidance and assistance from its appropriate Component comptroller.

According to US Code, Title 31, Section 1553, and Volume 3, Chapter 10 of the FMR, there are two other specific restrictions on the use of expired funds:

- If an obligation of funds from the account to provide funds for a program, project or activity to cover amounts required for contract changes (i.e., the contractor is required to perform additional work) would cause the total amount of obligations from that appropriation during a fiscal year for that program, project or activity to exceed $4 Million, the obligation adjustment must be approved by USD (C). Such approval should be sought when the account to be used for that obligation is no longer available for new obligations.
- If an obligation of funds from the account to provide funds for a program, project or activity to cover amounts required for contract changes (i.e., the contractor is required to perform additional work) would cause the total amount of obligations from that appropriation during a fiscal year for that program, project or activity to exceed $25 Million, the obligation adjustment may not be made until USD (C) notifies appropriate Congressional committees (i.e., HASC, SASC, HAC and SAC) in writing of the intent to obligate such funds (along with other information) and a period of 30 days has passed after that notice has been submitted.

Cancelled Funds:

According to Title 31, Section 1552(a), after the five year expired status period, any remaining balance in an appropriation account (whether obligated or unobligated) "shall be cancelled and thereafter shall not be available for obligation or expenditure for any purpose". Within DoD, the governing directive is Chapter 10, Volume 3, of the FMR. As with many other policies based on law, the statute gives the specific legal requirement while the DoD directive provides both interpretation of the law and the specific instructions to implement the law.

From a practical point of view, if a contractor submits a valid invoice for work accomplished on a contract that has not been legally closed, the contractor is entitled to equitable payment for work performed. Because the appropriation account cited on the existing contract is no longer available for either obligation or expenditure for any purpose, the originally cited appropriation account may <u>not</u> be used to pay that invoice. Instead, "payment may be charged to any current appropriation account of the agency involved that is available for the same purpose" (reference Title 31, Section 1553). As interpreted by the cited FMR (paragraph 100201E), this means that any required upward adjustment to or payment from a closed appropriation account is charged to an appropriation currently available for the same purpose (subject to specific limitations discussed later in the next paragraph). Also, in order to ensure those limitations are not exceeded, it is necessary that the accounting records (i.e., the general ledger control accounts) of those closed appropriation accounts be maintained; this means the accounting identity of the original account must be kept open until all potential valid obligations against "open" contracts of the appropriation account are paid. This is necessary to ensure compliance with limitations stated in Title 31, Section 1553 and in paragraph 100201F of the FMR (also re-stated in the next paragraph).

As an example of how the statute and FMR instructions would be implemented, consider a contract for which RDT&E, Army funds were obligated more than 10 years ago. Obviously, those cited funds have now gone into the closed or cancelled status (i.e., 2 years when current and 5 years when expired). Assume the contract has not yet been closed and a valid invoice of charges against that contract is received by the program office. Further assume today is FY 11. Because RDT&E, Army funds are considered "currently available" for two fiscal years, <u>both</u> FY 2010 and FY 2011 funds are currently available to pay that invoice. Therefore, <u>either</u> of those two years could legally be cited to pay that valid invoice against the "open" contract for which the cancelled RDT&E, Army funds were cited. Because the referenced statute is permissive (i.e., "may") rather than prescriptive (i.e., "shall"), a Service or Defense Agency could be more restrictive than the law permits and could require that <u>only</u> FY 11 RDT&E, Army funds be used. Also, note the FMR addresses these type actions at the appropriation account level rather than at the "program" level; hence, it is not necessary that the currently available funds be from the same program element or line item for which the original contract was awarded.

According to Chapter 10, Volume 3, of the FMR, there are specific restrictions on the use of currently available funds used for this purpose. The total amount of charges to the subject appropriation account may not exceed the lesser of the following:

- unexpended balance of the closed appropriation account; or

- unexpired unobligated balance of the currently available appropriation account being charged; or
- one percent of the total original amount appropriated to the current appropriation account being charge.

Experience since the passage of the National Defense Authorization Act for FY 1991 and the resulting elimination of the Merged Accounts has shown this change to have had a significant effect on the availability of current year funds for new obligations. This is because expenditures beyond the five year expired period must now be charged to currently available appropriations. When such charges occur, it reduces the funds available for those items for which the current fiscal year budget was prepared and submitted to Congress and for which Congress passed the appropriation act. This also puts the owner of the current year budget authority in a position of potentially becoming liable for an anti-deficiency violation if current funds are not sufficient to cover the original work effort. This might also require a reduction in the scope of work planned for the current year funds. Submission of a request to Congress for a supplemental appropriation would be a potential option if the magnitude of the problem warranted such action.

LIQUIDATION OF OBLIGATIONS (PAYING "OLD BILLS")

Although the previous section of this teaching note (i.e., "Contract Administration and Payment) addressed the basic concept and methodology of making payments in accordance with terms of the underlying contract, legislative changes in the life-cycle of appropriated fund accounts (i.e., the National Defense Authorization Act for FY 1991) created some specific requirements relative to liquidating obligations made pursuant to those previously awarded contracts. These legislative changes were incorporated into Title 31 of the U.S. Code. These changes established three separate time periods – each with specific requirements – for the liquidation of obligations made with appropriated funds. The three time periods as displayed in Figure 2 earlier in this teaching note are as follows: "current"; "expired"; and "closed", wherein the funds are "cancelled".

Current Time Period:

When a valid, certified invoice or other "bill" from a vendor or supplier arrives at the paying finance office during the fiscal year(s) the appropriation is in a "current" status, determination of the fiscal year funds to be used for payment is relatively simple: pay the certified invoice with the fiscal year funds cited on the original contract or other obligation document. For example, assume a Navy program office awarded a R&D contract in FY 2004 and properly cited its FY 2004 RDT&E, Navy appropriation account, which is "current" for the two year period of FY 2004 and FY 2005. If the contractor submits a valid invoice against that contract during the two year period, the invoice should be paid out of the originally cited FY 2004 RDT&E, Navy appropriation, and "charged" to the specific fund citation stated in the contract.

Expired Time Period:

When a valid, certified invoice or other "bill" from a vendor or supplier arrives at the paying finance office during the fiscal year(s) the appropriation is in an "expired" status, determination of the fiscal year funds to be used for payment should be relatively simple but is often misunderstood: pay the certified invoice with the fiscal year funds cited for the original contract or other obligation document. Continuing with the previous example with FY 2004 RDT&E, Navy funds, those funds go into the "expired" status 1 Oct 2005 (i.e., first day of FY 2006). If the contractor submits an invoice against that contract during the five year period FY 2006 through FY 2010 when the FY 2004 funds are in an "expired" status, the invoice should be paid out of the originally cited FY 2004 RDT&E appropriation and, when funds are available, "charged" to the specific fund citation stated in the contract. As previously stated, paragraph 100213F, Chapter 10, Volume 3 of the FMR says "the level of detail required to be maintained for expired accounts is the same as that required to be maintained for current accounts" in order to ensure proper administrative control of those appropriations.

If funds are not available in the original fund citation to cover the properly chargeable obligation to that line item, a funding realignment between programs within that appropriation account would be accomplished. There are two references governing this situation. In accordance with U.S. Code, Title 31, Section 1553, during the period prior to the appropriation account going into the "closed" status that appropriation remains available for "recording, adjusting, and liquidating obligations properly chargeable to that account". Paragraph 061004, Chapter 6, Volume 3 of the FMR, states for payment during the expired time period, "(I)f funding is not available on that program but funding is available within the appropriation, a funding realignment between programs in that appropriation must be accomplished." After the funding realignment is accomplished to provide sufficient funds to the original line item, the proper obligation would then be made against that originally cited line item and payment would ultimately be made out of that originally cited line when payment is appropriate. The net result of this funding realignment between programs within the appropriation account is that the payment for the "old bill" is paid from the original fund citation when the obligation occurred.

The originally cited appropriation account is used to pay that "old bill" because such funds are still available for necessary upward or downward adjustments to the original obligation amount and for expenditure purposes for the two year "current available" period plus the entire five year "expired" period. In other words, if the paying finance office receives a valid invoice anytime during the period the originally cited appropriation was considered "currently available" plus the five year period that appropriation was considered "expired", the payment should be made out of the originally cited appropriation account.

Closed Time Period:

When a valid, certified invoice or other "bill" from a vendor or supplier arrives at the paying finance office after that appropriation goes into the "closed" status (i.e., funds are "cancelled"), determination of which fiscal year funds should be cited for payment should be relatively simple but is sometimes misunderstood: pay the invoice with currently available funds of the same appropriation account cited for the original contract or other obligation document. This is consistent with U.S. Code, Title 31, Section 1552(a), which states that after the five year expired status period, "the account is closed and any remaining obligated and unobligated balance is cancelled and thereafter shall not be available for obligation or expenditure for any purpose". Section 1553(b) of Title 31 further states that "obligations and adjustments to obligations that would have been chargeable to that account prior to closing and that are not otherwise chargeable to current appropriations of the agency may be charged to current appropriations of the agency for the same purpose". Within DoD, the governing directive is Chapter 10, Volume 3, of the FMR.

Continuing with the previous example with FY 2004 RDT&E, Navy funds, assume the Navy program office awarded a R&D contract during FY 2004 and properly cited its FY 2004 RDT&E, Navy appropriation. Further assume that as of the end of FY 2005 (i.e., 30 September 2005), the contract had not yet been formally closed. On 1 October 2005 (first day of FY 2006) the FY 2004 RDT&E Navy appropriation goes into the "closed" status, at which time the FY 2004 RDT&E funds are "cancelled" and are no longer available for <u>any</u> purpose. A validated invoice that arrives at the paying finance office on or after 1 October 2010 (i.e., FY 2011) should be paid out of "an appropriation currently available for the same purpose". Within DoD, the "same purpose" is considered to be at the appropriation account level; in this example, RDT&E, Navy. While Navy may choose to use only "current year" (i.e., FY 2011) funds of the same appropriation account of the program office for which the original contract was awarded, this is not the legal requirement.

So, if the invoice arrives during FY 2011, that valid invoice may be paid out of either FY 2010 or FY 2011 RDT&E, Navy funds (both of which are still considered "currently available"). Although a Service or agency may choose to restrict payment to only the fiscal year funds of the current year, that is not required by the previously cited statute; again, that statute states "current appropriation of the agency available for the same purpose". Therefore, for multi-year appropriations, more than one year of funding may be available for this purpose. There are, however, limitations on the amount of total payments that may be made from a current appropriation. The amount restriction of payment for those "old bills" is the lesser of (1) unexpended balance of the closed appropriation; (2) unexpired unobligated balance of the currently available appropriation; or (3) 1% of the total original amount appropriated to the current appropriation being charged. If neither FY 2010 nor FY 2011 RDT&E, Navy funds are available to pay that old bill for work performed on a contract that cited FY 2004 RDT&E, Navy funds or if the restriction in the previous sentence is not followed, this may lead to an antideficiency act violation based on non-availability of proper funds to make the valid payment**.**

The above examples assume the invoice is certified as to being a valid invoice or bill for a contract that has not been officially closed. If the Service believes the invoice or bill is not valid and should not be paid, the Service can deny payment of the claim; the contractor then has the option of submitting a claim through the legal system under the provisions of the Contracts Disputes Act of 1978 (as amended). As stated in paragraph 080304 F., Chapter 8, Volume 3 of the FMR, assuming the contractor prevails in their legal action and the Armed Services Board of Contract Appeals (ASBCA) or the Court of Federal Claims rules in favor of the contractor, the amount awarded the contractor is paid by the Department of the Treasury from the Permanent Judgment Appropriation (the Judgment Fund) and the affected DoD Component is then required to reimburse the Department of the Treasury's Judgment Fund for that payment. The following shall be followed when reimbursing the Judgment Fund.

- After the affected DoD Component determines the specific appropriation account originally cited for the contract that led to the claim and subsequent judgment, the affected Component must reimburse the Judgment Fund with funds appropriated for the same purpose as those originally cited on the contract that are <u>currently</u> <u>available</u> for new obligation at the time of the judgment. This is allowed by 63 Comp. Gen. 308 decision (1084). Also, expired funds appropriated for the same purpose may be used.

- Reimbursement to Department of the Treasury's Judgment Fund shall not be charged back to the originally cited appropriation unless the original appropriation is available for new obligations at the time of the judgment. Furthermore, payments of judgments to the Department of the Treasury's Judgment Fund do not subject the original appropriation to a violation of the Anti-deficiency Act.

SUMMARY

Once budget authority has been appropriated by Congress and apportioned by OMB, DoD allocates funding to the Components (i.e., Services and Defense Agencies), which then execute the funds by committing, obligating, expending, and outlaying those funds. During execution, financial managers must be aware of the rules governing the life of appropriations and avoid violating fiscal laws (e.g., antideficiency, misappropriation and bona fide need) while making efficient use of their budget authority, which is usually evaluated based on performance relative to obligation and expenditure plans. Business Financial Managers and other financial management personnel involved in the issuance of documents that can result in the obligation of appropriated funds must be aware of – and comply with – federal, OSD and Component policies pertaining to those documents.

Failure to execute funds according to obligation and expenditure plans and/or failure to meet Component goals for obligations and expenditures often results in the loss of some funds when they are withdrawn from the program office for which they were originally appropriated and reprogrammed to pay for a higher priority requirement. If funds originally appropriated for one program or purpose need to be redirected to another program or purpose, DoD Components must comply with the reprogramming rules established by Congress. The requirement to use currently available appropriations to pay for work done on a contract originally funded with an appropriation that has been cancelled has the potential for a negative impact on work planned for the current year. There are special rules governing the payment of what might be considered "old bills" submitted against contracts that have not been officially closed through bilateral agreement between the contractor and the government. It is in the best interest of the government to formally close out contracts as soon as practical after acceptance of the contracted work effort and final payment to the contractor.