



Introduction to Fiscal Law

or

What you can and can't do with money from Congress



Greg Martin
BCEFM Department
Fort Belvoir VA
703-805-3007
gregory.martin@dau.mil
11 August 2016



Constitutional Framework

We the People

- **Article 1 Section 8: The Congress shall have power to lay & collect taxes, duties, imposts & excises, to pay the debts & provide for the common defense & general welfare....**
 - To raise & support armies
 - To provide & maintain a navy
 - To make rules for the government & regulation of the land & naval forces
- **Article 1 Section 9: ...no money shall be drawn from the Treasury, but in consequence of appropriations made by law...**

Power of the . . .





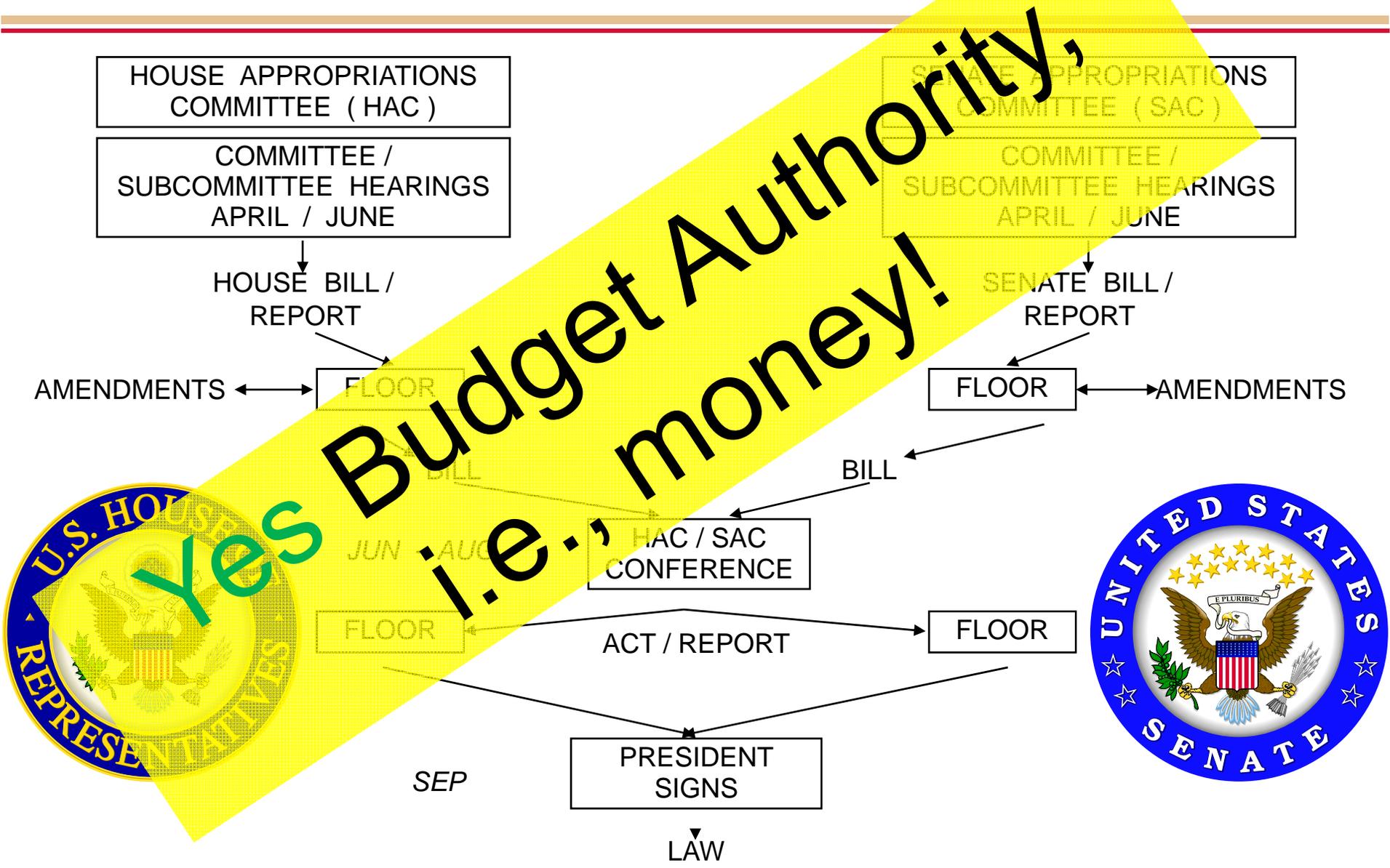
Appropriation Act

- **House Appropriations Committee (HAC)**
- **Senate Appropriations Committee (SAC)**
- **Provide budget authority (BA) - permission to obligate**
- **12 annual appropriations acts – (Jan 07 Reorg)**
 - Defense
 - Military Construction, VA & Other Related agencies
 - Energy and Water Development





Appropriations Process





The Permanent Laws (31 U.S.C)

Misappropriation Act [Title 31, US Code, Sec 1301]

- Requires that appropriated funds be used **only for the purposes and programs** for which appropriation was made

Bona Fide Need Rule [Title 31, US Code, Sec 1502]

- Appropriations made for **a definite period of time** may be used only for expenses properly incurred during that time
- Requires that appropriated funds be used only for **needs or services** that arise **in the year(s)** of the appropriation's obligation availability period

Anti-deficiency Act [Title 31, US Code, S 1341,1517]

- Prohibits making or authorizing an obligation **in excess** of the amount available in the appropriation, at the appropriation OR apportionment levels
- Forbids obligating funds **in advance** of appropriation
- Requires **fixing responsibility** for violations of the Act
- Can't accept voluntary gifts or services without statutory authority





The Three Legs of the Stool

- **Purpose** (“Colors” of money)
- **Time** (Year)
- **Amount**



Each Appropriation Act defines these

- **But watch for special provisions, e.g.,
“None of the funds made available in this
act may be used to purchase . . .**

DD-1414 Base for Reprogramming



Purpose

Misappropriation Act

Title 31, U.S. Code, Sec 1301

Requires funds to be used only for the purposes and programs for which the appropriation was made

Purpose (Color)

- **Can not spend appropriated funds outside the definition of that appropriation**
- **Money is legally available only for the specified object(s)**
- **Not sure? Read the Acts and the conference reports and your program's justification materials, e.g., P-forms**





Purpose

- **“Necessary expense” doctrine - law can’t specify every expenditure**
 - **While an agency has reasonable discretion in determining how to carry out the objects of the appropriation -- however that discretion is not unfettered! See 6 Comptroller General 619, 621 (1927).**

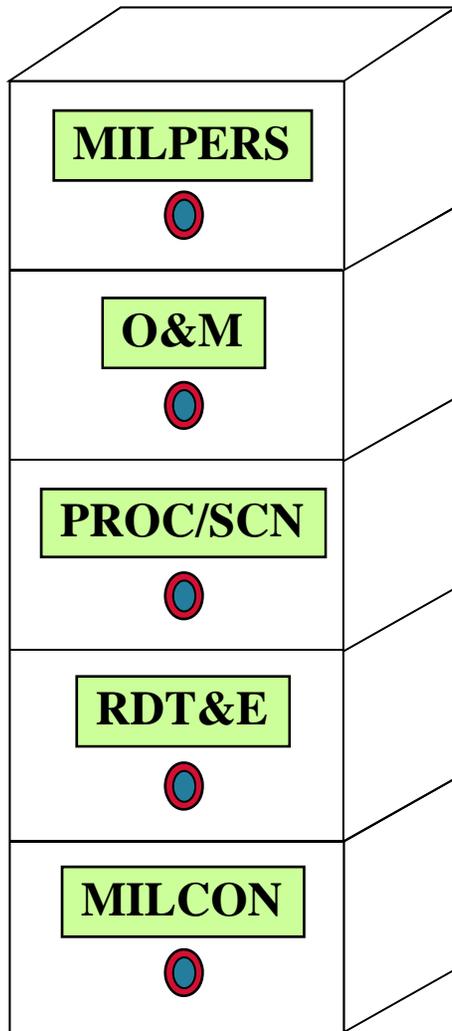


Purpose

- **Major classification of appropriations based on purpose:**
 - **Research, Development, Test and Evaluation (RDT&E)**
 - **Procurement**
 - **Shipbuilding and Conversion, Navy (SCN)**
 - **Operation and Maintenance (O&M)**
 - **MILPERS**
 - **MILCON**



Purpose: The Colors of Money



Military Personnel (MILPERS)

Active & Reserve Forces

Operation & Maintenance (O&M)

Active & Reserve Forces
(civilian salaries, supplies,
spares, fuels, travel, etc...)

Environmental Restoration
Former Soviet Union Threat
Reduction
Overseas Humanitarian,
Disaster, & Civic Aid

Procurement

Aircraft
Missiles
Weapons
Weapons & Tracked Combat
Vehicles
Ammunition
Other Procurement
Shipbuilding & Conversion
Marine Corps
Defense wide procurement
National Guard & Reserves

Research, Development, Test & Evaluation (RDT&E)

Basic Research
Applied Research
Advanced Technology Development
Advanced Component Development
& Prototypes
System Development & Demonstration
RDT&E Management Support
Operational Systems Development

Military Construction (MILCON)

Facilities
Family Housing
Base Realignment & Closure (BRAC)



Time

Bona Fide Need and Availability

Title 31, U.S. Code, Sec 1502

- **Requires funds to be used only for needs or services in the year(s) of the appropriation's obligation period**
- **Can spend only when budget authority is available**



Time

Time (Year)

- **Classification of Appropriations based on time:**
 - One-year
 - Multi-year (2, 3, or 5)
 - No Year “to remain available until expended”

All appropriations are annual unless expressly stated otherwise



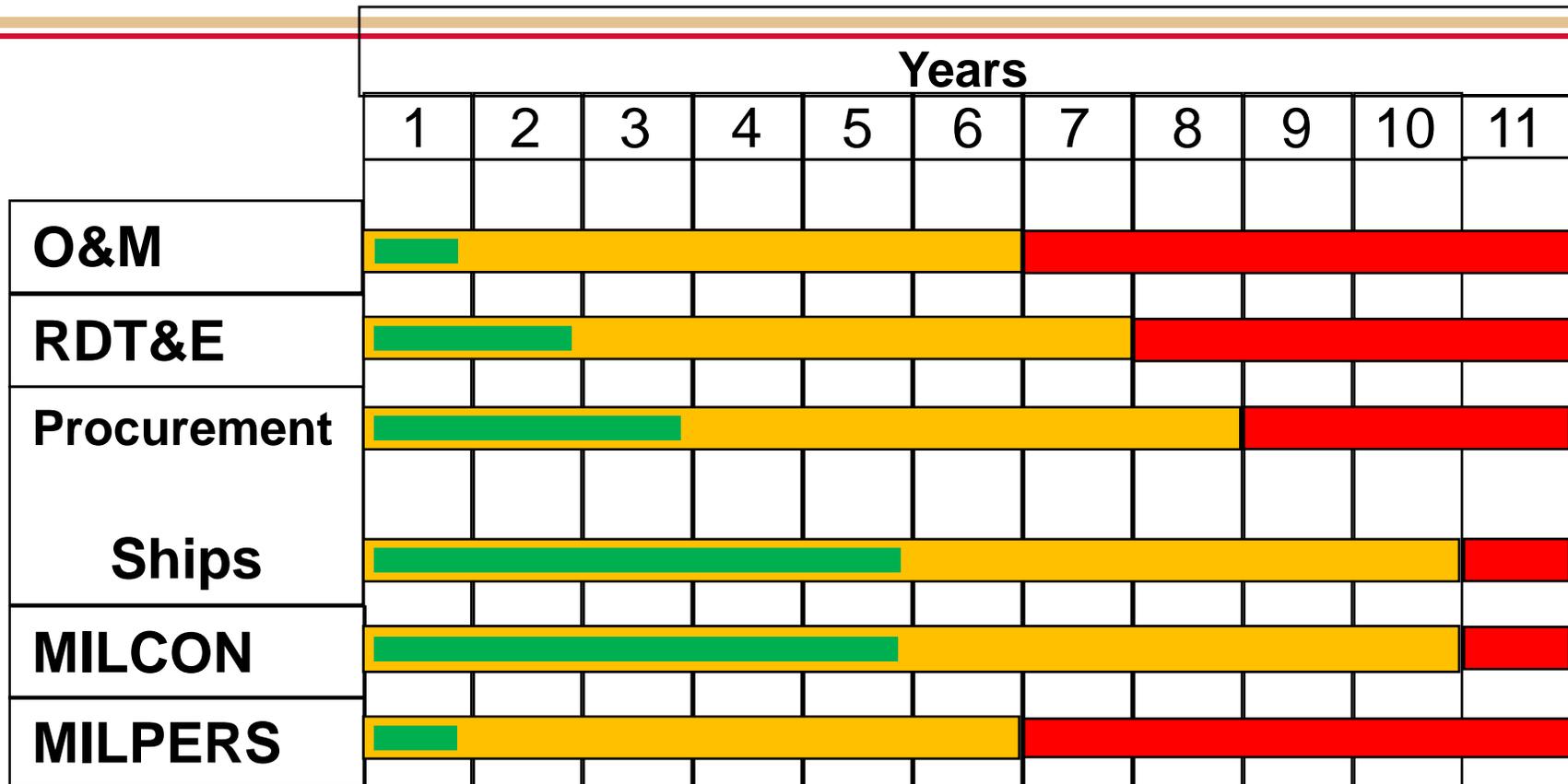


Time

-
- **Classification of Appropriations based on availability for new obligations:**
 - **Current appropriations**
 - **Expired appropriations**
 - **Closed/Cancelled appropriations**



Appropriation Life

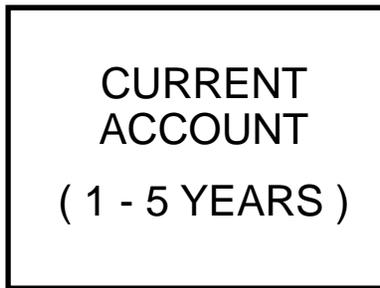


-  **Current Period**: Available for new obligations, obligation adjustments, expenditures, & outlays
-  **Expired Period**: Available for obligation adjustments, expenditures, & outlays
-  **Cancelled**: Unavailable for obligations, obligation adjustments, expenditures, & outlays



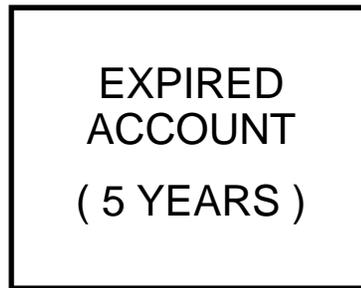
Appropriation Life Cycle

PHASE 1



UNOBLIGATED
BALANCES &
UNLIQUIDATED
OLIGATIONS

PHASE 2



UNOBLIGATED
BALANCES &
UNLIQUIDATED
OLIGATIONS

PHASE 3



Available for new obligations, payments & adjustments



Available for payments & obligation adjustments

FY, appropriation, line item, etc. identity remains



No longer available for payments or obligation adjustments

Adjustments and payments charged to currently available appropriation of same type, up to lesser of 1% of currently available appropriation or unexpended balance of closed appropriation





Time

- In limited cases, prior year money can be use to award a new contract, e.g., original contract was improperly awarded
- Can not enter into a multi-year contract with single-year appropriated money. Enter into single year contracts with option years. Exceptions are by statutory relief, e.g., commercial leases.
- Discount is not justification for a multi-year periodical subscription; must limit to one year.



Time

- **The BONA FIDE NEEDS rule: While an agency has reasonable discretion in determining how to carry out the objects of the appropriation – however, that discretion is not unfettered! See 6 *Comptroller General* 619, 621 (1927).**
- **Can prepay supplies, if reasonable, e.g., end of year money for three months of office supplies is reasonable; six-month supply is not. Affected by normal lead time, e.g., need next summer, but takes 10 months to build.**



Time

- **Can use FY money late in the FY to pay for next year's training, as long as reasonable – if no long range registration requirement, can use Aug/Sep money for classes in Oct/Nov**
- **Can not pay for services before delivery of services (e.g., no prepaying cable bill (unless payment is to a government agency)). Some exceptions like subscriptions.**



Time

- **Can award for a severable services or unseverable contract of up to 12 months that crosses fiscal years and fully fund with funds available for obligation in the year of award**
 - **Janitorial services contract June 2015 – May 2016? Fund with FY15 O&M.**
 - **“Build me a box” contract awarded in April 2015. The company needs 9 months to build the box.**
 - **What happens if I can fund only through September 2015?**



Time

-
- **Miscellaneous issues**
 - **No need to make the “non-severability” determination for one-year service contracts, funded with annual appropriations, crossing fiscal years**
 - **However, must live and die by the sword –**
 - **Same year money throughout the period of performance (Can deobligate “next year” for a new obligation.)**
 - **Obligated up front if fixed-price, O&M**
 - **No more than 12 months**



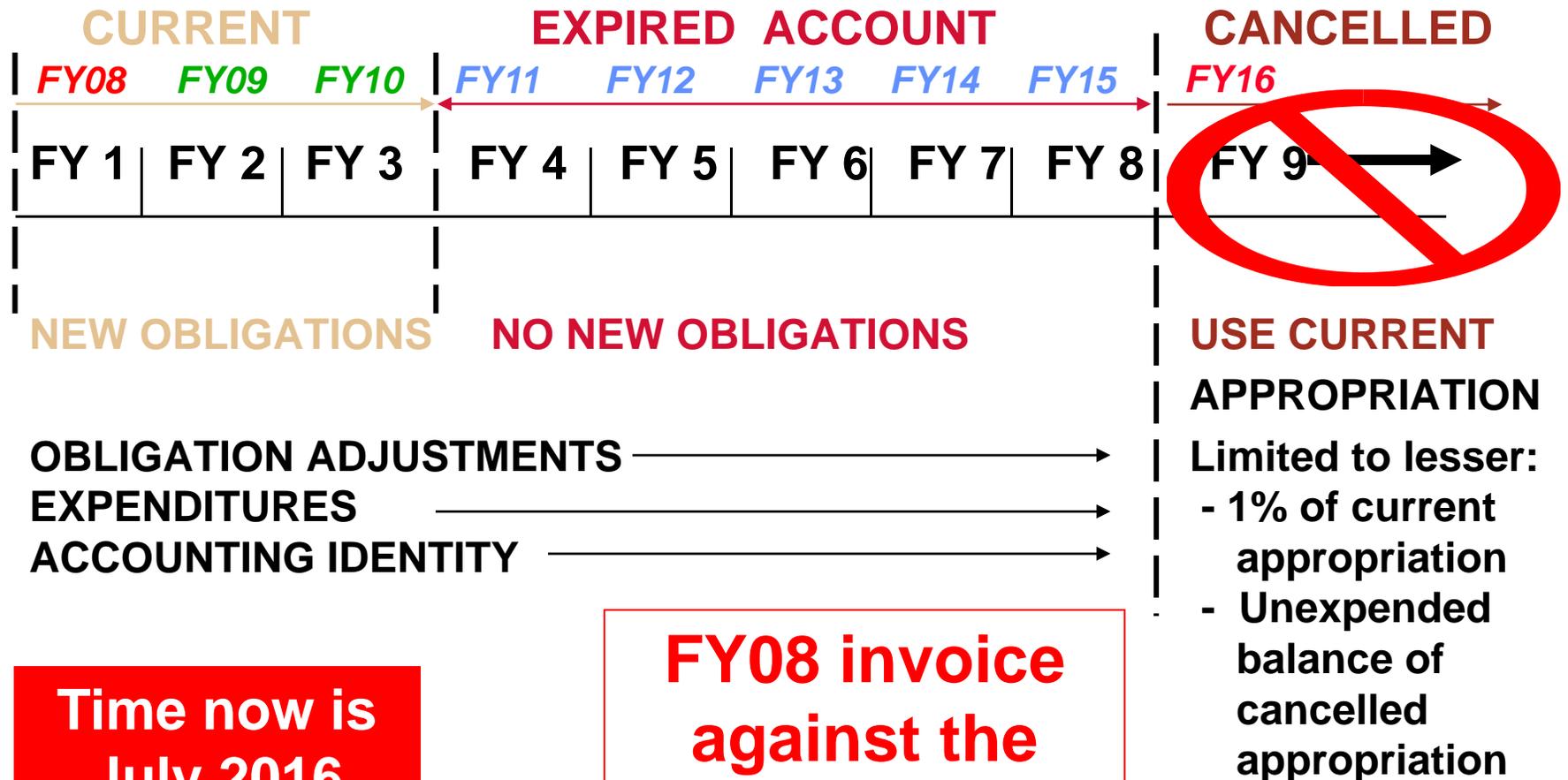
Beware of ...

-
- **Leases that extend beyond one year – or with automatic renewal**
 - **Leases with low-dollar amount buyout at the end of the lease period**
 - **Pre-existing obligations or contingency liabilities**
 - **Advance Payments**



Appropriation Life - Example

Procurement Appropriation (3-Year Availability)



**Time now is
July 2016**

**FY08 invoice
against the
Procurement
appropriation**



Amount

Anti-deficiency Act

Title 31, U.S. Code, Sec 1341, 1342 & 1517

- Prohibits making or authorizing an obligation in excess of the amount available
 - 1517(a) – Can't spend more than you have, at the apportionment level
 - 1341(a) – Can't spend more than you have, at the appropriation level
- Forbids obligation to pay money from the US Treasury in advance of an appropriation
- Requires agency to fix responsibility for violations of the Act
- 1342 – Can't accept voluntary service or gifts (without statutory authority)

<http://www.gao.gov/legal/lawresources/antideficiencyrpts.html>



Amount

- **Appropriation**
- **Apportionment**
- **Allocation**
- **Allotment**
 - **suballotments**
- **Allowance**





Amount, at what level?



Appropriation from

Congress

Apportionment from

OMB

Allotment from

OSD Comptroller

Sub-Allotment from

Service
Comptroller

Allocation

MAJCOM/TYCOM/
SYSCOM
Comptroller

PMO/Wing/
Base/Region

Look for the citation of 31 U.S.C. 1517 on the document. Document must cite it.

An Allocation can come from an allotment or a sub-allotment



Amount

Amount



Each Appropriation Act defines these

- **But watch for special provisions, e.g.,
“None of the funds made available in this
act may be used to purchase . . .**

DD-1414 Base for Reprogramming



Amount

-
- **Congress has the final word**
 - **Earmarking . . . not to exceed, shall be available, not less than . . .**
 - **Antideficiency Act**
 - **spending more than you have**
 - **accepting voluntary services (like spending more money than you have)**



Augmentation of Appropriations

- **Can't supplement an appropriation without specific statutory authority**
 - **Leases & Fees**
 - **Sales of USDA products**
 - **Customs fines and penalties**
 - **Sale of surplus public property**
- **Can't: Collect conference fees to offset costs of the conference**
- **Mix funds from one year to another – example, paying an obligation using current year money for an obligation that occurred the prior year (Example: Constructive change to a contract for work done in the prior year.)**



Violations

- **What if I'm not sure it would be a violation?**
- **When would/could it happen?**
- **What happens when it does?**
- **What happens if I can't fix it?**



How do I find what I don't know?

- **Always start within your Comptroller**
- **Contracting Officer**
- **Office of Counsel**
- **Comp. Gen Decisions**
 - <http://www.gao.gov/legal/decisions.html>
- **GAO Red Book** (*Principles of Federal Appropriations Law*)
 - <http://www.gao.gov/legal/redbook.html>

<http://www.gao.gov/ada/antideficiencyrpts.htm>



A New Question?

Budget and Accounting Act of 1921: Directed to investigate the receipt, disbursement, and application of public funds . . .

”
.

**Comptroller General will provide
advance decisions.**

Talk to your comptroller



When could it happen?



Apportionment Process



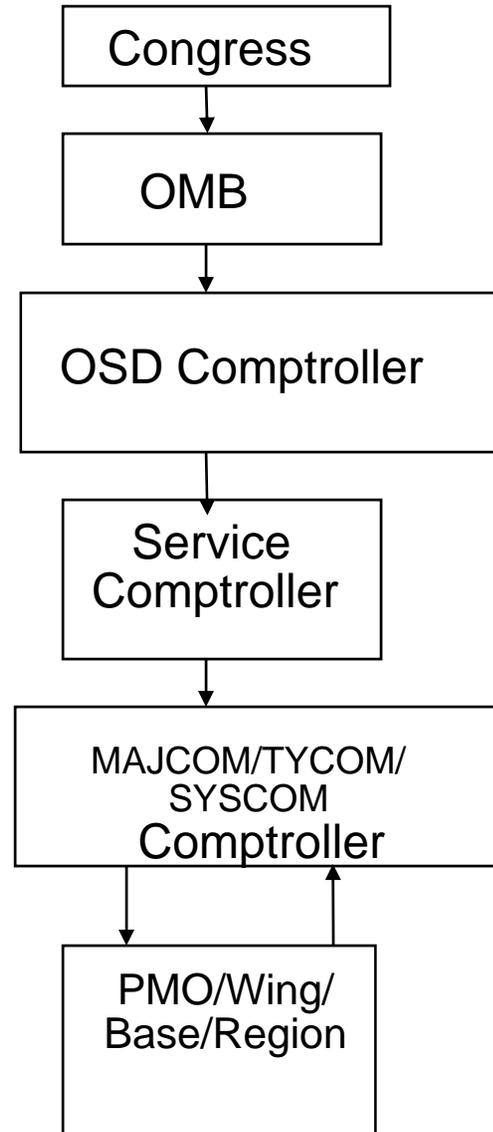
Appropriation

Apportionment

Allocation

Sub-Allocation

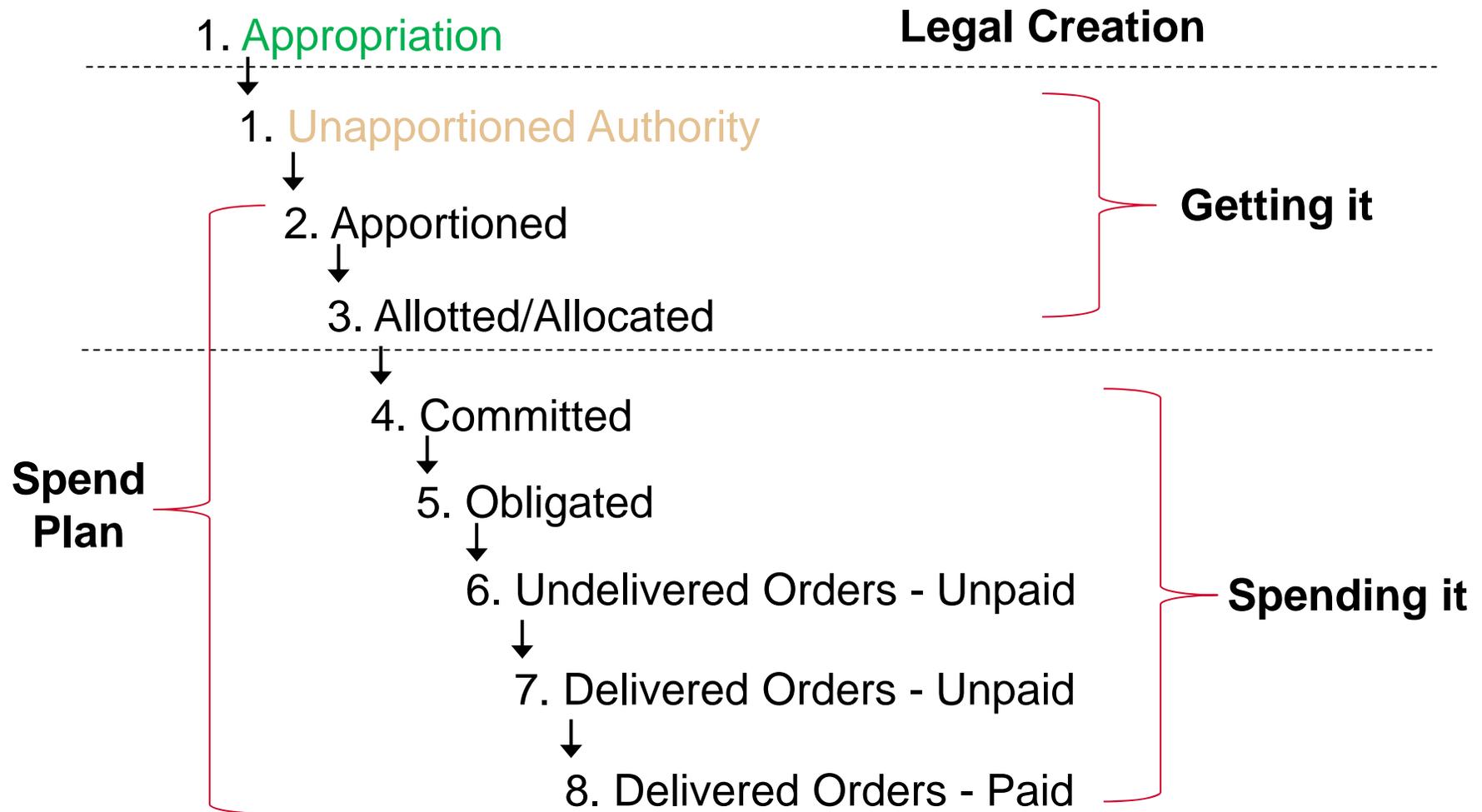
Allotment



- Provides Budget Authority
- Investment – Annual
- Expense – Quarterly
- Defer/ Rescind
- Technical Withholds
- Administrative Withholds
- General Reductions
- Withholds
- General Reductions
- Withholds
- General Reductions



Money in; Money out





Monetary Concepts

Budget Authority
Credit Card Spending Limit



Administrative Reservation of Funds

Commitment
Verification of Available Funds for a specific purpose, e.g., a PR



- P - Purpose
- T - Time
- A - Amount
- or
- C - Color
- Y - Year
- A - Amount

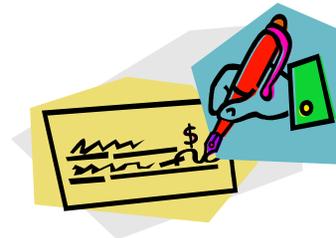
Legal Reservation of Funds

Obligation
A legal/binding relationship, e.g., a signed contract



Simultaneous with EFT

Expenditure
Making the Payment (usually DFAS)



Outlay
Debiting account books for the payment





Commitments

- A commitment is the obligation of the allotment/ allocation in anticipation of
- A commitment is a contractive resource
- Does it have a spend plan?

Could start here!

Submitted purchase request to the contracting shop



FYI

-
- **Unauthorized Commitments: Funds must be concurrent to the “commitment”**
 - **What is an unauthorized commitment?**
A commitment by an unauthorized agent to a contractor –
 - **Can be ratified**
 - **Funds *were* and *are* available**
 - **Price fair and reasonable**



Obligations

- A binding contract is required for orders placed, contracts received, and services received. Instructions require a contract.
- The contract officer is authorized to sign contracts and certify vouchers. The contract officer certifies payment.

When the contract officer signed the contract (separate from entering the contract in the accounting system)

Really happens here!



Delivery Orders

- The receipt of services against a
- Verify
- D

Hard to
undo at
this point

- Confirmation usually followed by outlay to the supplier
- Debit

Even harder by this point





Fixing an oops

The BIG rule!

“It's easier to ask forgiveness than it is to get permission.”

- As quoted in the U.S. Navy's *Chips Ahoy* magazine (July 1986)

**It is not better to
ask for forgiveness
- ASK FIRST.**



Rear Admiral Grace Hopper

Possible Local Actions

- Cancel the obligation (deobligate all of it)
- Descope (deobligate some of it)
- Administrative correction
 - Take out the wrong color and put in the right color
 - Usually means swapping out accounting data



Reprogramming Actions

Reprogramming is the use of funds for purposes other than originally appropriated

- **Provides flexibility in execution of programs**
- **Reprogramming rules are based on agreements between DoD and Congress**
- **Funds can only be reprogrammed within the same fiscal year, not between fiscal years**

Types of Types of reprogramming actions:

- **Below-Threshold Reprogramming (BTR) (DD 1416)**
- **Internal Reprogramming (DD 1415-3)**
- **Congressional Notification Letter (in advance of initiation)**
- **Congressional Prior Approval (DD 1415-1)**



Reprogramming Actions

- Below Threshold Reprogramming (BTR)
 - “Rules” (not law) may be in annual report language for each appropriation
 - Thresholds are applied at different levels depending on the appropriation
 - New starts cannot be initiated with BTR authority
 - Authority does not apply to Congressional special interest items (SIs) and previous Congressionally denied items
 - Thresholds guidance updated in 2015 FMR



Reprogramming Actions

- **Congressional Prior Approval:**
 - Exceeding BTR amounts
 - Increase in major end item quantities
 - Congressional special interest items (SI)
 - Some program terminations
 - Requires HAC/SAC & HASC/SASC letter approval; intelligence actions require House/Senate Intelligence Committees approval



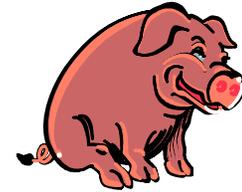
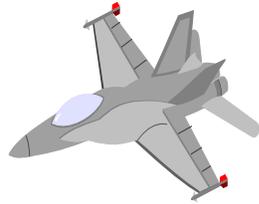
Below Threshold Reprogrammings

APPRN	MAX INCREASE	MAX DECREASE	LEVEL OF CONTROL	OBL AVAIL
RDT & E	Lesser of \$10M or 20%*	Lesser of \$10M or 20%*	PROGRAM ELEMENT	2 YEARS
PROC	Lesser of \$20M or 20%*	Lesser of \$20M or 20%*	LINE ITEM	3 YEARS (5 YEARS SCN)
O & M	\$15M	\$15M	BUDGET ACTIVITY or DEFENSE AGENCY SOME BA 1 SUB-ACTIVITY LIMITATIONS ON DECREASES (OPERATING FORCES)	1 YEAR
MILPERS	\$10M	No Congressional restriction	BUDGET ACTIVITY	1 YEAR
MILCON	Lesser of \$2M or 25%	No Congressional restriction	PROJECT	5 YEARS

*Reference: FMR Vol 3; 060401D



Reprogramming Level



RDT&E

Procurement

O&M

MILPER

MILCON

Budget
Activity

Budget
Activity

**Budget
Activity**

**Budget
Activity**

Budget
Activity

**Program
Elements**

Line Item

Activity
Group

Activity
Group

Activity
Group

Projects

Sub Activity

Sub Activity

Project



What happens if you can't fix it?

Sad to be you!



So what happens to me?

- **Administrative**

- An officer or employee who violates . . . "shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office

- **Penal**

- An officer or employee who "knowingly and willfully" violates any of the three provisions cited above "shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both
- The agency head "shall report immediately to the President (Via OMB) and Congress all relevant facts and a statement of actions taken
- Simultaneous report to the Comptroller General (Head of GAO)



Who are the knuckleheads?

Find the dirt!

<http://www.gao.gov/legal/anti-deficiency-act/about>



Specific Violations

Year	Owner	31 USC #	Amount	Issue	Remedial Action
2005	Army NG	1342	\$30,220	Army NG accepted volunteer services from civilians who helped conduct training	Counseling and Letter of Reprimand
	Army	1301, 1341	\$2,827	Bottled drinking water; Funds not appropriated for this	Training
2006	NOAA	1341	\$0	1923 - 2005. Open-ended indemnification clauses with nonprofit entities = open-ended obligations	Renegotiated agreements
	USAID	1341	\$7,484,573	Entered into 5 year lease agreement w/out availability of funds clause	Financial responsibilities and delegation of authority to execute leases removed from office
2007	NASA	1517	\$1,677,000,000	Overobligated balance of carryover/multiyear appn	Demonstrate to Administrator of new preventive admin controls
	Navy	1301, 1341	\$19,337	Bought meals and gifts for employees at banquet	CO: Admin discipline; XO relieved, i.e., fired



Specific Violations (cont.)

Year	Owner	31 USC #	Amount	Issue	Remedial Action
2008	Navy	1517	\$311,076	Overobligated allocation during Continuing Resolution	Letters of reprimand
	USMC	1517	\$4,090,625	Used O&M (vice Procurement, MC) for IT	Counseled, letters of caution, retired
2009	AF (AWC)	1341	\$21,760	Bought light refreshments over 5 years for regional studies events hosted by AWC	Letter of caution and retirement
	Army	1341	\$32,144,000	AMC used OMA instead of MILCOM for major MILCON without congressional approval or enough MILCOM money. Discovered during DOD IG audit.	3 "memorandums of concern"
2010	DISA	1341	\$1,923,460	No MILCON available so DISA split construction into 5 increments to keep pieces below \$750K threshold for minor construction (10 U.S.C. § 2805). Funded with O&M and DWCF	5 days without pay, letter of caution, 2 already retired
	USMC	1301, 1517	\$810,981	Used Procurement, MC rather than MILCON	2 letters of caution and one relieved of duties as Supervisory Eng Tech
	USMC	1341, 1502	\$87,492	Bought training in year X for unspecified delivery dates in year X+1	Letter of caution



Why does it happen?

- **Lack of or weak training**
- **Lack of/weak/ignored internal controls**
- **Lack of familiarity with current Appropriation and Authorization Acts**
- **Willful ignorance (turning a blind eye)**
- **Unwilling to stand tall**
- **Exceeding scope**
- **MILCON \geq \$1M with O&M**
- **Investments with O&M \geq \$250K**
- **Not familiar with GAO Red Book, Chapter 4**



How to prevent it

- ~~Lack of or weak training~~
- ~~Lack of/weak/ignored internal controls~~
- ~~Lack of familiarity with current Appropriation and Authorization Acts~~
- ~~Willful ignorance (turning a blind eye)~~
- ~~Unwilling to stand tall~~
- ~~Exceeding scope~~
- ~~MILCON \geq \$1M with O&M~~
- ~~Investments with O&M \geq \$250K~~
- ~~Not familiar with GAO Red Book, Chapter 4~~