Colors of Money
The Permanent Laws (31 U.S.C)

**Purpose Statute** [Title 31, US Code, Sec 1301]

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

**Anti-deficiency Act** [Title 31, US Code, S 1341,1517]
Purpose Statute
31 U.S. Code, Sec 1301
Requires funds to be used only for the purposes and programs for which the appropriation was made.

- Can not spend appropriated funds outside the definition of that appropriation
- Money is legally available only for the purpose for which it was appropriated.

- Not sure? Read the DD 1414 and your program’s justification materials, e.g., budget documents in the PRESBUD.
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)**
  - Army
  - Navy
  - Air Force
  - Other Defense

- **Military Construction (MILCON)**
  - Facilities
  - Family Housing
  - Base Realignment & Closure (BRAC)

- **Other**
  - Defense Health Program
  - Chemical Agents & Munitions
  - Destruction
  - Drug Interdiction & Counter-Drug Activities
  - Joint Improvised Explosive Device Defeat Fund
  - Rapid Acquisition Fund
  - Office of the Inspector General
Does the amount make a difference?

Procurement

- Production Labor/Hardware, Initial Spares, AIS E/SW $\geq$ $250K

- AIS E/SW = Automated Information System Equipment/Software; O&M = Operation and Maintenance
- RDT&E = Research, Development, Test & Evaluation; SCN = Shipbuilding and Conversion, Navy
Does the amount make a difference?

Procurement

- Production Labor/Hardware, Initial Spares, AIS E/SW $\geq$ $250K$

O&M

- Replenishment Spares, Civilian Salaries, Travel, Fuel, Minor Construction $<$ $1M$, Supplies, AIS E/SW $<$ $250K$

- AIS E/SW = Automated Information System Equipment/Software; O&M = Operation and Maintenance
- RDT&E = Research, Development, Test & Evaluation; SCN = Shipbuilding and Conversion, Navy
Does the amount make a difference?

Procurement

- Production Labor/Hardware, Initial Spares, AIS E/SW ≥ $250K

O&M

- Replenishment Spares, Civilian Salaries, Travel, Fuel, Minor Construction <$1M, Supplies, AIS E/SW <$250K

Milcon

- Major Construction Projects ≥ $1M

*AIS E/SW = Automated Information System Equipment/Software; O&M = Operation and Maintenance
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Can I ever use different appropriations for the same thing?

• If two appropriations are equally applicable, the agency may choose either one.
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• Be mindful that the Financial Management Regulation (FMR) advises in favor of the RDT&E appropriation if doubt exists whether it or another appropriation is properly chargeable (FMR Vol 2a 010213 B).
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- If two appropriations are equally applicable, the agency may choose either one.
- Be mindful that the Financial Management Regulation (FMR) advises in favor of the RDT&E appropriation if doubt exists whether it or another appropriation is properly chargeable (FMR Vol 2a 010213 B).
- Once the election of an appropriation is made, the agency must continue to use that appropriation until the end of the current fiscal year.
  - That election of funds is binding even if the agency runs out of funds.
  - If the agency wants to change appropriations for the next fiscal year, it must notify Congress of its intent.
• **Congress has “Power of the Purse”**

“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law….”

– The Constitution of the United States, Article I, Section 9, clause 7

• **Purpose Statute:**

“Appropriations shall be applied only to the objects for which the appropriations were made…”

– 31 USC § 1301(a)
Purpose

• “Necessary expense” doctrine - law can’t specify every need
  - While an agency has reasonable discretion in determining how to carry out the objects of the appropriation – however, that discretion is not unfettered.
### Appropriation Life - *Time*

<table>
<thead>
<tr>
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<th>Years</th>
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<tbody>
<tr>
<td></td>
<td>1</td>
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<tr>
<td>O&amp;M</td>
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<tr>
<td>RDT&amp;E</td>
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<td>MILCON</td>
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<td>MILPERS</td>
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- **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

- Line of Accounting is maintained from current period through the expired period.
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 with your Comptroller
• Contracting Officer
• Office of Counsel
• Comp. Gen Decisions
  – GAO Red Book (*Principles of Federal Appropriations Law*)
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
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)

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

Rear Admiral Grace Hopper
## Specific Violations

<table>
<thead>
<tr>
<th>Owner</th>
<th>31 USC #</th>
<th>Amount</th>
<th>Issue</th>
<th>Remedial Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>DISA</td>
<td>1341</td>
<td>$1,923,460</td>
<td>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&amp;M and DWCF</td>
<td>5 days without pay, letter of caution, 2 already retired</td>
</tr>
<tr>
<td>USMC</td>
<td>1517</td>
<td>$4,090,625</td>
<td>Used O&amp;M (vice Procurement, MC) for IT</td>
<td>Counseled, letters of caution, retired</td>
</tr>
<tr>
<td>USMC</td>
<td>1301, 1517</td>
<td>$810,981</td>
<td>Used Procurement, MC rather than MILCON</td>
<td>2 letters of caution and one relieved of duties as Supervisory Eng Tech</td>
</tr>
<tr>
<td>Army</td>
<td>1341</td>
<td>$32,144,000</td>
<td>AMC used OMA instead of MILCOM for major MILCON without congressional approval or enough MILCOM money. Discovered during DOD IG audit.</td>
<td>3 &quot;memorandums of concern&quot;</td>
</tr>
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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)
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 ≥ $1M with O&M
- Investments with O&M ≥ $250K
- Not familiar with GAO Red Book, Chapter 4
How to prevent it

- Lack of or weak training
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Additional Resources

- **CLB 011 Budget Policy**

- **BCF 110 Fundamentals of Business Financial Management**

- **Financial Management Regulation (FMR), Volumes 2A and 2B**